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and Westmerland, to His Sacred
MAJESTIE:



LONDON:

PRINTED BY ROBERT DARKER, Printer to
the Kings most Excellent Majestie: And by
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ALL

W. H. Clayton
Solicitor



THE HUMBLE
PETITION
AND
REPRESENTATION
OF
The GENTRY, MINISTERS, and
others of the Counties of Cumberland
and Westmerland, to His Sacred
MAJESTIE:



Presented by Mr. Samuel Donald

City, Dec 12th 1874

THE HOUSE OF
REPRESENTATIVES
AND
S. B. L. I. O. N.

ORDER OF THE HOUSE OF REPRESENTATIVES
AND SENATE TO HIS SECRETARY
AND CLERK OF THE HOUSE OF REPRESENTATIVES
AND CLERK OF THE SENATE

CO
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Toget
Cop
By
Prince

THE
COMPLETE
COPY-HOLDER

Wherein is contained a
Learned discourse of the An-
tiquity and Nature of *Manors* and
COPY-HOLDS.

With all things thereto Incident,

As { *Presentments.*
Admittances.
Surrenders.
Forfeitures.
Customes. &c.

Necessary, both for the *Lord* and *Tenant.*
together, with the forme of keeping a
Copy-hold Court, and *Court-Baron.*

By Sir *Edward Cooke*, KNIGHT.

LONDON,
Printed for *Matthew Walbanck*, and *Richard*
Best: 1644.



To the Reader.



*His Copie comming
to my hands, peru-
sed, and Reveren-
ced by men Lear-
ned in the Lawes.*

*I thought most worthy of Publi-
cation. The very name of the
Composer, who hath beene an
Ornament to our Kingdome, is
nough to give it sufficient autho-
ritie, and indeere it to every wise
opinion. But the profit which doth
attend, is most considerable, it be-*

To the Reader.

ing a subject so materiall, declaring
the Antiquitie of Manors and
Copiholds; and written for the
good of Lords and Tenants;
and by consequence of all men: it
cannot but receive a becomming
entertainment. In the confidence
of this truth, I referre it to all iu-
dicious perusall, not a little congra-
tulating my owne happinesse, to
have beene an instrument of bring-
ing so excelient a piece from ob-
scuritie, for the benefit of the Com-
mon-wealth.

W. G.



MANORS AND COPY-HOLDS.

SECTION I.



Though a Manor and Copy-hold have such mutuall respect, and reciprocal reference one to the other, as that they are almost in nature of Relatives; yet the knowledge of the one cannot be attained unto, unlesse the sense of the other be truly apprehended: for a Manor is as the body, and copyholds certaine members of this body. In this Treatise I will discourse of them severally, and begin with the Manor it

B felle

selfe especially, when common reason teacheth us, that *totum magis illustrat partes, quam partes aliquae illustrant totum.*

SEC. II.

THE Saxons (who held England in subjection immediately before the coming of the Normans) were unacquainted with these Manors, yet in effect they had Manors in those daies in circumstance, peradventure something varying in substance, surely nothing differing from our manors at this day: they wanted neither demesnes nor services, the two materiall causes of a Manor, as *Fulbeck* termeth them: their demesnes they termed Inlands, because the Lords kept them in their owne hands, and enjoyed them in their own possession; their services they termed Utlans, because those Lands were in the manurance and occupation of certaine Tenants, who in consideration of the profits arising out of these lands, were bound to performe unto their Lords, certaine duties and servi-

Fulbeck in his fourth Decalogue.

(3)

ces: their demesnes were of two sorts;
& their services likewise were of two
forts.

SEC. III.

ONE sort of their Demesnes was
termed Bockland, because they
passed by booke, and they in effect dif-
fered nothing from our Freehold
lands at this day.

SEC. IV.

THE other sort of their Demesnes
was termed Folklands, because
they passed by Polls, and were claimed
and challenged by the Tenants; not
by any assurance in writings, but only
by the mouth of the people, *Per vocem
populi*; and they in effect differed in
nothing from Copyhold Lands at this
day.

SEC. V.

TOUCHING their Services, one sort
of their Services were *Servitia li-*

bera, which consisted most commonly in Render, as to pay yearely such a Rent; or in User, as where the Lord reserved Common for his Cattell, or in Prender, as where the Lord reserved three shillings, and foure loads of Estovers for fuell to be taken yearely in his Tenants grounds.

S E C. VI.

THE other sort of Services, were *Servitia villana*, which consisted altogether in Feasance, as to scoure the Lords ditches, to tile his houses, to thatch his barnes, or such like.

S E C. VII

AND in the reservation of these Services, the Lords had a special respect unto the quality of the Land: Did they transerre their Bocklands, *hoc est*, Free-hold Lands, they would never reserve Villeine Services; did
the y

(5)

they transferre their Folk-Lands, bo-
est, Copyhold Lands, they would never
reserve free Services; but still they suit-
ed their Services according to the na-
ture of the Land. The reason I gather
was this, in those dayes none but men
of good account and reckoning en-
joyed the said Bock-lands, whereas
Holblands were in the hands of men
of meaner sort & condition: and ther-
fore had not the Lords care been ex-
traordinary in reserving apt Service,
they should have much wronged their
Tenants; and thus much Lambert ve-
rifieth, saying, *Terra ex scripto fuit ha-*
reditaria, libera, atque immunis: terra
verò sine scripto officiorum quadam servi-
tute fuit obligata: priorem plerumque no-
biles atque ingenui, posteriorem verò ru-
stici feri & Pagani possidebant. Lambert
termeth these Bocklands, *Terras liberas*
atque immunes, non quod ab omnibus
servitiis fuerunt liberae aut immunes, sed
quod tenentes ipsi fuerunt liberi & servi-
tiis tantum liberis onerati. But I much
wonder, why this Bockland doth to
this day retainè the name of Freehold
land, sithence time hath bred such an
alteration, that in the point of Service,

Lamb. in his
explication of
the Saxon word
Terra ex scripta,

a man can scarce discern any difference betweene Freehold Lands and Copyhold Lands. The favorable hand of time hath so infranchised these Copyholders, that whereas in the *Saxons* time, their Services did consist wholly in Feasance; now they consist in Render, in U^{er}, and in Prender, as Free-holders Services did in those dayes. And on the other side, time hath dealt so unfavorably with Freeholders, and hath so abridged them of their former freedome, that if you compare the Service of the Freeholders with the Service of the Copyholders, *Senties hunc potius quam illum fore liberum.* How many Freeholders are there at this day, charged with base Services? as many I doubt not, as there are Copyholders. No marvell then that many able men turne Copyholders, and many Pezants turn Freeholders; no marvell, I say, that men of all sorts and conditions, promiscuously, both Freeholders and Copyholders, sithence there is such small respect had unto the quality of the Land in the reservation of our Services. Yet observe, I pray, though time hath

hath so enfranchised these Copyholders, that they have in a manner shaken off all villaine Service, yet they retain a badge of their former bondage, for they remaine still subject to their Lords will; therefore at this day they are termed Tenants at will: But with Freeholders otherwise it is; for they are not in that subjection to their Lords: peradventure in this respect only Bocklands may be termed Freehold Lands, and Folkland Villaine Lands: and yet time hath dealt very favorably with Copyholders in this point of Will, as well as in the point of Service.

SEC. VIII.

FOR, as I conjecture, in the Saxons time; sure I am, in the Normans, time, those Copyholders were so farre subject to the Lords will, that *eorum tenentes tempestivè & intempestivè pro voluntate Domini possent resumì & revocari*, as *Braeton* and *Fleta* both speake: The Lords upon the least occasion, sometimes without any colour of reason, onely upon discontentment and

*Braet. lib. 4.
Tr. 3 cap. 9.
numb. 3.
Fleta. lib. 5.
cap. 51.*

malice; sometimes againe upon some sudden fantastick humour, onely to make evident to the world the height of their power and authority, would expell out of house and home their poore Copyholders, leaving them helpelesse and remediless by any course of Law, and driving them to sue by way of petition.

SECT. IX.

BUT now Copyholders stand upon a sure ground, now they weigh not their Lords displeasure; they shake not at every suddaine blast of winde, they eat, drinke, and sleepe securely, onely having a speciall care of the main-chance (*viz.*) to performe carefully what duties and services soever their Tenure doth exact, & Custome doth require; then let the Lord frown, the copyholder cares not, knowing himselfe safe, and not within any danger: for if the Lords anger grow to expulsion, the Law hath provided severall weapons of remedy; for it is at his election, either to sue a *Sub pœna*, or an action of Trespasse against the Lord

Lord. Time hath dealt very favorably
with copyholders in divers respects.

SEC. X.

BUT I perceive my selfe rashly
Brunning into an inextricable La-
byrinth, I will therefore sail no longer
in these unkown coasts, but will ha-
sten homewards, I will content myself
with this. I know amongst the *Saxons*
the essentiall parts of a Manor were
known; but whether there then were
the same form of Manors which is at
this day, that I dare not examine, for
feare of being accounted more curi-
ous than judicious, and therefore lea-
ving the *Saxons*, I draw somewhat
nearer home, and come to the *Nor-
mans*, from whom we had the very
form of Manors which is observed a-
mongst us at this present houre.

SEC. XI.

I Confesse indeed, that sithence the
Originall creation of Manors, time
hath

hath brought in some innovations and alterations, as in giving a large freedom unto Copy holders, both in the nature of their service, and in the manner of their Tenure. Yet I may boldly say, that the self-same form of Manors remain unaltered in substance, though something altered in circumstance. Demesne termed in Latine *Domanium* or *Dominicum*, is taken in a double sense, *proprie* & *improprie*. *Proprie*, for that Land which is in the Kings owne hands; and the *Chopimus* saith, that *Domanium est illud quod consecratum unitum, & incorporatum est regia Corona*, take *Domanium* in this sense, and then you exclude all common persons from being seised in *Dominico*: for admit the King passe over the Demesne Lands, as soone as they come into a common persons hands, *desinunt esse terra Dominicales*; for though the Kings Pattentee hath the land granted to him, and to his Heires, yet coming from the King must necessarily be holden of the King, it is contrary to the nature of Demesne Lands to be holden of any; therefore though those lands which are commonly termed

*Chopimus de
Domanio fronte
lib. 2.*

med ancient Demefne, viz. fuch lands as were *quond.* in the hands of *Ed. the confeff.* may properly be termed generally ancient Demefn, becaufe they were in ancient time in the Kings own poffeffion, yet to terme them at this day the Lords Demefnes, or the Tenants Demefnes being fevered from the Crown is improper *ca. qua fuper.*

SEC. XII.

Then by this it appeareth that thofe lands are termed, *impropiè*, Demefne, which are in the hands of an inferiour Lord or Tenant, nor can fuch a one in propriety of fpeech be faid to ftand feifed of any Land whatsoever *in Dominico fuo*, but if you obferve narrowly the manner of pleadings, the words are ufed in a proper fenfe, for you fhall never finde that an inferiour Lord or Tenant, will plead that he is fimplly feized *in Dominico*, but ftill with this addition, *in Dominico fuo ut de feodo*, and that very aptly, for this word Fee implieth thus much, that his eftate is not abfolute, but

but depending upon some superiour Lord: therefore I conclude with the *Feudists*, that a common person may aply be said to stand seised in *Feodo*, or in *Dominico suo ut de feod.* but improperly in *Dominico* simply; the King & *converso* may properly bee said to stand seised *Dominico* simply, but in *Feodo* improperly, or in *Dominico suo ut de feodo.* *Bracton* divideth these Demesne Lands into two branches; under the first are comprehended those Lands which the Lord injoyeth in his own possession; under the second, those Lands which are in the hands of the inferior Copyholders: His words are these, *Dominicum dicitur quod quis habet ad mensam suam & idcirco Anglice vocat. Bordland; dicitur etiam Dominicum villinagium quod traditur villanis, quod quis tempestive & intempestive resumere possit, pro voluntate sua & revocare.*

*Bract. lib. 4.
tract. 3. cap. 9.
numb. 5.*

SEC. XIII.

FLet's agreeth with *Bracton* in this division, and unto these two he addes more sorts of Demesne Lands:
His

His words are these; *Dominicum est multiplex; est autem Dominicum proprie terra ad mensam assignata & villenagium, quod traditur villanis ad excolendum, quæ tempestive, & intempestive pro voluntate Domini, & poterit revocari, sicut est de terra commissa tenenda, quam diu commissori placuerit: poterit & dici dominicum de quo quis habet liberam tenementum aliter curam de custode dici poterit & curatore quorum unus dicitur ab homine, alius in jure, Dominicum etiam dicitur ad differentiam ejus quod tenetur in servitio. Dominicum denique est omne illud tenementum de quo antecessor obiit se situs, nec refert, cum usu fructu vel sine, & de quo si ejectus esset recuperare possit per assisam nove deseieme licet alius haberet usum fructum, sicut dici poterit de illis qui tenent in villenagio, qui utuntur & fruuntur non nomine proprio sed nomine domini sui.*

Fleta lib. 5. ca. 5.

SEC. XIV.

THis opinion of Bracton and Fleta, both consenting in one, that Copyhold Land is parcell of the Lords demesnes

demesnes, wanteth not modern-
 authority to second it, for 15. *Eliz.* in
 the *Excheq.* I finde it adjudged in the
 case of a common person, howsoever it
 is otherwise in the Kings case; That if
 the Lord of a Manor grāteth away *om-
 nes terras suas dominicales*; the Copy-
 holds parcell of Manors passe by these
 general words; neither doth this want
 Reason to confirme it; for in the time
 of *Henry* the 3. and *H.* 2. when *Bract.*
 and *Fleta* lived, Copyholders were
 accompted meer Tenants at will, and
 therefore after a sort their Lands repu-
 ted to continue still in the Lords hands
 and now, though custome hath affor-
 ded them a surer foundation to build
 upon, yet the Franck Tenement at
 the common law, resting in the Lord,
 it can be no strange thing to place
 their lands under the ranke of the
 Lords demesnes. But to deliver my
 minde more freely in this point, I
 thinke that howsoever, according to
 the strict rules of Law, these Copy-
 holders are parcell of Lands demesnes,
 yet in propriety of speech (if propri-
 ety can be in impropriety) they are
 more aptly called the Copyholders
 demesnes

demesnes; for though the Frank te-
 nement be in the Lord by the common
 Law, yet by the custome the inhe-
 ritage abideth in the Copyholders;
 and it is not denied, if a Copyholder
 be impleaded in making title to his
 Copyhold, he may justly plead, *quod*
est seifitus Dominico suo, with this addi-
 tion, *secundum consuetudinem Manerii*.
 Therefore I conclude, that howsoever
 the common Law valueth the title of
 the Copyholder, yet he hath such an
 interest confirmed unto him by Cu-
 stome, that the Lord having no power
 to resume his Lands at his own plea-
 sure, they are (though improperly)
 called (yet peradventure truly ac-
 counted) the Lords demesnes, and that
 in the eye of the world, howsoever it
 be in the eye of the Law, that these
 Lands alone can properly challenge
 the name of the Lords demesnes (if any
 Lands in the possession of inferior
 Lords, may properly challenge that
 name) which the Lord reserveth in his
 own hands, for the maintenance of his
 owne Boord or Table, be it his waste
 ground, his arable ground, his pasture
 ground, or his medow; be it his Co-
 pyhold

pyhold which he hath by escheat, by forfeiture, or by purchase; or be it any part of his Freehold-Land, of which I must speake a word by the way, not to prove that it is demesne, for, *manifesta probatione non indigent*, but to shew you in what sense it is taken, and how farre it extendeth.

S E C. XV.

A Freehold is taken in a double sense: either 'tis named a Freehold in respect of the state of the land, or in respect of the state of the Law.

S E C. XVI.

IN respect of the state of the Land, so Copyholders may be Freeholders; for any that hath any estate for his life, or any greater estate in any Land whatsoever, may in this sense be termed a Freeholder.

S E C. XVII.

IN respect of the state of the Law; and so it is opposed to Copyholders

ers, that what Land foever is not Copyhold, is Freehold: and in this sense I take throughout this Discourse.

SEC. XVIII.

THE name of Freeholders extendeth not only unto Lands held *per servitium militare*, as it did by the ancient lawes of Scots, amongst whom Freeholders were knowne by the name of *milites*: but it reacheth likewise to Lands holden *per servitiū Soca*, whether in *libero Socagio*, or in *villano Socagio*. *Liberum Socagium* is, where any Tenant holds of any Lord by paying yearely a certain summe of money in lieu of tillage, and such like services, and not by escuage; and this is termed sometimes, common Socage.

Socagium villanum is where the ancient services of carrying the Lords dung into the fields, of plowing his ground at certaine dayes, of plashing his hedges; and such are not turned into money, but remaine still unaltered;

and if you doubt that such Land as is held *per villanum Socagium*, cannot come within the compasse of Freehold Land: for your satisfaction, read *Braeton, lib. 2. cap. 8. num. 8. Hactenus de primo defunctionis membro; ad secundum properemus, & pauca de servitio Domino debitis pertractemus.*

Services in *individuo* are manifold, in *specie* threefold. 1. Corporall services. 2. Annual services. 3. Accidentall services.

Corporal services are of two sorts; services of Submission, services of Profit.

SEC. XIX.

Services of Submission are Homage and Fealty, which are certaine ceremonies used among tenants, whereby they submit themselves unto their Lords, and binde themselves by solemn oath, or by faithfull promise, from that day forward to become the Lords men for life, for member, for terrene honour, or *ad minimum*, to owe unto him faith, for the Lands which they hold of him. Both these

Cere-

Ceremonies are used at the first entrance or admittance of any Tenant; and both tend to one end, viz. to enforce every Tenant to acknowledge and confesse himselfe Tenant unto his immediate Lord: Yet they differ in many materiall points.

SEC. XX.

IN Regard of their severall manner of performance: For, in doing fealty the Tenant taketh a solemn oath; in doing homage only giveth his faithfull promise: and thence it is, that fealty is accounted the more sacred service, though homage be the more humble service, and performed with farre greater reverence than fealty in many respects: For in doing homage, the Tenant kneeleth; in doing fealty he standeth: in doing homage, the Tenant must remaine uncovered; in doing fealty, he may remaine covered; in doing homage, the Lord kisseth his Tenant; in doing fealty, he kisseth him not. Lastly, in doing homage, the Tenant promiseth to become the Lords man for life, for member, and terrene honour;

honor; in doing fealty he only sweareth to become the Lords faithfull Tenant: the reason of this difference I learn to be this; because homage especially concerneth service in warre; and properly appertaineth unto Knights service; but fealty chiefly concerneth service at home, and properly appertaineth to Socage tenure; and though now 'tis held, that a Tenant by Socage may doe homage, and that homage *ex se* maketh Socage Tenure, and not Knights service; yet originally homage was invented for Tenants by Knights service, and such as were bound by their tenure to attend their Lords in the warres; but fealty was primarily devised for Tenants in Socage, and such as were bound by their tenure to manure the Lords ground, and carefully to discharge all rurall affaires: And this agreeth with the ancient Lawes in *Scotland*; for among them none were accounted Freeholders but only Tenants by Knights service; and consequently, none but they could doe homage: and therefore marvell not why in doing Homage, the Tenant promiseth

to become the Lords man for life, for member, for terrene honor, in doing fealty he only sweareth to become the Lords faithfull Tenant.

2. They differ in regard of the persons to whom they are performed and that two waies. 1. In respect none is capable of receiving homage, but the Lord in person: But the Lords Steward, or his Bayliffe is capable to receive fealty in the Lords behalfe.

2. In respect that a Lords who hath but an estate for his life in his Seigniorie cannot receive homage, but such a Lord may receive fealty.

3 They differ in regard of the persons to whom they are performed, and that two waies. 1. In respect that no Copyholder is capable of doing homage, but he is of doing fealty, witness common experience. 2. In respect that a Tenant for life or yeers, is unable to doe homage, for tis a ground in law, that none can doe homage but Tenant in feesimple, or *ad minimum* Tenant in taylor.

B. Maland
Yoxley 5.H.7.
 The Justices
 of the Com:
 mon Place,
 10 H.6. held,
 that Lessee for
 years cannot
 doe fealty.

BUT Tenants for life or yeers,
 are both able to doe fealty, accord-
 ing to *Littletons* rule, that fealties are
 incident to every tenure, except te-
 nures in Franck-almoigne, and Te-
 nants at will, contrary to some erro-
 nious opinions: they differ in regard
 that homage can be but once done
 unto one Lord by the same Tenant;
 and therefore 'tis agreed, that if Land
 discend unto me, which is holden of
I. S. by homage, and I doe unto him
 homage, and after other Land di-
 scendeth unto me by another Ance-
 stor, which is holden of the same Lord
 by homage, I shall not doe homage
 againe, but fealty only, because I can-
 not twice become the Lords man; but
 the selfe-same Tenant may severall
 times doe fealty unto the self-same
 Lord; and therefore if a Copyholder
 surrendreth White-acre unto me, for
 his White-acre I should doe fealty
 unto the Lord. If after another sur-
 rendreth unto me Black-acre, I shall
 doe fealty likewise unto the same
 Lord.

Lord. And thus much for services of Submission.

S E C. XXII

S E R V I C E S of Profits are of two sorts; Stending to the publique profit of the Common weale; as when the Lord injoyneth his Tenant to amend high waies, to repaire decayed bridges, or *similia*. 2. Tending to the private profit of the Lord; as where the Tenant is enjoyned to be the Lords Carver, Butler, or Brewer, or is tied to pail the Lords Parks, to tyle the Lords houses, to thatch the Lords Barns, and *similia*. And thus much for corporall services.

Annuaall services are in number infinite, in nature all one, for they all tend to the increase of the Lords Cofers, and are reserved in their duties, as well for Copyhold land, as freehold land; though in the *Saxons* time, and long after the Conquest, they were never, or seldome reserved for Copyhold land, but only for freehold land.

I will not enumerate many particulars of annuaall services, for that were

as endlesse, as numbring the sands of the Sea; only this I say, that those annuall services which here come within the compasse of my meaning, consist in Render, none in Feasance, for those annuall services, as well as accidentall services, which consist in Feasance, I comprehend under corporall services; thus leaving both corporall services and annuall, I bend my course towards accidentall services, which before I begin to particularize, observe these two things by the way:

1 That accidentall services differ from corporall and annuall services in this; that most accidentall services are incident to the fee, & are due without speciall reservation of the Lord; but most corporall services, and all annuall services are due upon speciall reservation, and are not incident unto the Fee.

2 That service is taken in a double sense, in *strictiori sensu*, and in *latiori sensu*; In *strictiori sensu*, and in that sense the Feudists define, *servitium fore munus obsequii clientelario, &c.* that duty which the Tenant oweth unto
his

his Lord, either in performing some corporall function, or in discharging some annuall payment. In *latiori sensu*, and so it signifieth any duty whatsoever accruing unto the Lord, by reason of his Seigniorie; and in this sense, accidentall services following which *prima facie*, may seem better to ranke under the title of jurisdictions, or rather under the name of the fruits of a Manor) may very fitly be reduced to these kinde of services.

The services I ayme at, and which I mean to treat of particularly in this place are these following;

- | | |
|---------------------|------------------------|
| 1 <i>Wardships.</i> | 4 <i>Amerciaments.</i> |
| 2 <i>Herriots.</i> | 5 <i>Forfeitures.</i> |
| 3 <i>Reliefes.</i> | 6 <i>Escheates.</i> |

Now touching every one of these apart, and first with *Wardships*.

S E C. XXIII.

W *Arshipp. est custodia heredis infra aetatem existentis. Polidore*

Virgil saith, that this was *novi vestigalis genus excogitatum*, to helpe. Hen. 3. being oppressed with much poverry, by reason he received the Kingdome greatly wasted by warres of his Ancestors, and therefore needing extraordinary helpe to uphold his estate, the use of Wardships was set abroad. But the 33. Chapter of the grand Customary maketh mention of this to have been used among the Normans, immediatly after the erection of Manors, and that the use of Wardships was on foot before H. the thirds time, as appeareth manifestly by Glanvill, who writeth very largely in many places in his Book, and lived in H. the seconds time, Guardians are either termed *Custodes*, or *Curatores*: *Custodes à lege*, *Curatores ab homine*, as Fleta speaketh. The Civillians make three sorts of Guardians, 1. *Tutor testamentarius*. 2. *Tutor à Praetore datus*. 3. *Tutor legitimus*. This in every point agreeth with our Common Law, so we have *Tutorem testamentarium*, viz. where a man possessed of certain goods and chattels deviseth these unto his childe and withall, committeth the care of his

Fleta lib. 5. c. 5.

his childes body, and disposition of his substance unto some friend, this comitee is *Tutor testamentarius*, unto whom belongeth the care and custody of the childes body, and the disposition of his substance, untill he accomplish the full age of fourteen yeers and then immediatly he shall be out of Ward for his body, but his goods may be kept longer, for as for them they shall remain in the trustees hands so many yeers as the Testator appointed by his last Will and Testament: for though it be not in the Fathers power to restrain the liberty of his childes body longer then to the age of 14. yet the disposing of his goods he may commit to any, for as long time as himselfe shall thinke expedient: So by the Stat. 32. and 34 H. 8. If a man be seised of Socage Lands, not holden of the King in Capite, he may by his last Will and Testament commit the ordering of Theoglands, to what friend soever, for as many yeers as shall seem most convenient, and that friend is *Tutor Testamentarius*: otherwise it is of lands holden by Kinghts service; for it is not in any mans

Power by his last Will and Testament, to deprive the Lord of that duty which, *de jure*, belongeth to him, and therefore if a Copyholder dieth, his Heire under under the age of fourteen (in regard that this priviledge of appointing the heires a Guardian for their Copyholde land) untill he accomplish the age of fourteen, *de jure*, appertaineth unto the Lord. It seemeth that the Father cannot prejudice the Lord in this kinde, by appointing him another Guardian by his last Will and Testament; *hec de Tutore testamentario*. 2. We have *Tutorem à Prætorè datum*, *viz.* where a man deviseth goods unto his childe, & appointeth him not a Guardian, then it is in the Ordinaries hand to commit the ordering of the Infants goods unto some trusty friend, unto the age of fourteen; at what time the Infant himself may choose a Guardian: for it is a rule in the Civill Law, *Invito curator non datur*, and this Committee *est Tutor à Prætorè datus*. These Guardians termed amongst the Civilians, *Tutores à Prætorè dati*, are commonly called Guardians, *pur nurture*; and thus
in

in words we somewhat differ, in matter nothing. 3. We have *Tutores legitimum*, viz. where the interest doth *de jure* belong unto any, without the nomination of a private person, or the appointment of any publique Officer: and this Guardian is two fold, either *legitimus jure nature*, or *legitimus jure Communi*: *Ligitimus jure Nature*; as where the Father or the Mother hath the Wardship of their heires apparent, be it heire male or female: *Ligitimus jure Communi*; and that Guardian is twofold, either Guardian in Chivalry, or Guardian in Soccage; Guardian in Chivalry is where any Tenant seized of land, holden by Knights service dieth, his heire male, under the age of fourteen, and unmarried; then shall the Lord have the Ward, both of the lands, and body of this heire male, unto the age of 21. because the law intendeth, that before that age, the heire is unable to perform Knights service, according to the tenure; but the heire female shall be in Ward, no longer than to the age of sixteen, because the heire female, though she her self be unable to perform

form Knights service, yet at sixteen, she is able to take a husband, who in her behalfe may doe Knights service; and therefore at those years she shall be out of Ward; nay, sometimes she shall be out of Ward before sixteen; and that is either, where she is married at the death of her ancestor, or where she is any whit above fourteen, when her ancestor dyeth; in neither of these Cases shall she be in Ward at all; for though the *Stat. of W. I. cap. II.* gi- veth unto the Lord two years next en- suing the fourteenth, yet that is to be understood, where she is under the age of fourteen, and unmarried at her Ancestors death, and not otherwise. This for Guardian in Chivalry. Guardian in Socrage, is, where any one seized of Soccage lands dyeth, his heire under the age of fourteen, then the next friend unto the heire, to whom the inheritance cannot dis- cend, shall have the Ward of the heires body and of his land, untill the age of fourteen, as if the land discen- deth unto the heire by the fathers side; then the mother, or next cosin of the mothers side shall have the Ward; and
if

if the Land discendeth to the heire by the mothers side, then the father, or next cosin on the fathers side shall have the Ward. To conclude, observe this difference betweene Guardian in Chivalry, and Guardian in Soccage, that the one receiveth the commodities of the Land to his owne use, without giving any account; the other onely to the use of the heire, to whom he shall be accountable whensoever it shall please the heire to call him to account, after the age of fourteene. Thus much concerning Wardships; a word concerning Herriots.

SEC. XXIV.

Herriot, or Harriot commeth of the Latine word *Herus, Dominus*, because it is a duty appropriated to the Lord; or it is derived from the *Saxon* word, *hera exercitus*, because in the *Saxons* time, when the name of Herriot was first knowne, Herriot signified nothing else but a tribute given to the Lord for his better prepara-

*Vide Lamb. in
his explication
of Saxons
words, tit.
Herriot.*

paration towards warre, as a horse trapped, or a speare, or armour, or a sword, or some such like Military weapon; and therefore in this sense importing a thing appertaining to the warre, and being due unto the Lord, by reason of this service, which Tenants ow unto their Lords in many warlike imployments, it may very fitly be derived from hence: This their Herriot among the *Saxons* little differed from our Reliefe at this day, howsoever now they differ *ex diametro*: But let us examine the nature of our Herriots at this day, and not search into the nature of their Herriots in those dayes; for that were to examine the nature of Reliefes, not Herriots. *Britton* thus speaketh; A Herriot is a Render, made at the death of a Tenant to his Lord, of the best beast found in the possession of the Tenant deceased, or of some other, according to the ordinance and assignement of the party deceased to the use of the Lord, which toucheth not the Land at all, nor the heire, nor his inheritance, neither hath any comparison to a Reliefe, for
ic

Brit. cap 69.

it proceedeth rather of grace and good will, than of right, and rather from villaines, than freemen: to this effect speaketh *Fleta*, *Herriotum est quaedam præstatio, ubi tenens, liber vel servus in morte sua dominum suum respicit de meliori averio suo vel de secundo meliori, que quidem præstatio magis fuit de gratia quam de jure, & nullam habet comparationem ad relevium eo quod heredi non continget quia factum antecessoris.*

*Fleta lib. 4.
cap. 18.*

This our Herriot is twofold; Herriot service, Herriot Custome. Herriot Service, is that Herriot which is never due, without speciall reservation, and is seldome reserved upon any lesse estate, than an estate of inheritance. Herriot Custome, is that Herriot which is never due upon speciall reservation, but is challenged upon some particular Custome, and is usually payd upon an estate for life, and for yeeres, as well as upon an estate of inhericance. Touching the originall of these Herriots, doubtlesse they are not of that antiquity which the name doth promise, for though among the *Saxons*, the name of Herriot was knowne,

knowne, yet the nature of both these, Herriot Services, and Herriot Customs, was utterly unknowne, untill the comming of the *Normans*; who immediately upon the Conquest, changed the name of the *Saxons* Herriot, and termed it by the name of a Reliefe, leaving notwithstanding some difference betwixt them, for where the *Saxons* Herriot, consisted usually in the payment of some military weapon; our Reliefe in those daies consisted wholly in the payment of a certaine summe of money, and presently after, the *Normans* had thus wholly altered the name, and somewhat altered the nature of the *Saxons* Herriot, then upon the parcelling of their lands unto inferior Tenants, they invented this new kinde of service unknowne amongst the *Saxons*, and termed it by the name of Herriot Service: afterward, upon the infranchisement and manumission of certain villaines; these Herriot Customes were given to the Lords, as a continuall, future gratulation: so that originally, as *Britton*, and *Fleta* well note, they were granted meerely, ex

gratia, but now time hath effected it
that they are challenged, *ex debito*.
Thus much of Herriots; a word of
Reliefe.

SEC. XXV.

Reliefe is a certaine summe of
money which every Freehol-
der payeth unto his Lord, being at
full age at the death of his Ancestor,
which in effect soundeth all one, with
these words of *Glauvil*, *Heredes maio-*

*Glauvil. lib. 7.
cap. 9.*

res statim post decessum antecessorum su-
orum possunt se tenere in hereditate sua, li-
cet Domini possint feodem suum cum be-
rede in manus suas copere: ita tamen mo-
derate id fieri debet, ne aliquam disseizi-
nam heredibus faciant, possunt enim, he-
redes si opus fuerit, violentia Domina-
rum resistere, dum tamen parati sunt Re-
liuium alia retro seruitia eis inde facere;

with this agreeth the definition of
Hotoman, *Reluium est honorarium quod*
novus vassallus introitus causa patrono
largitur quasi morte usuali altius vel alio
quo casu feodū ceciderit quod jam a no-
vo subleuatur. This reliefe by the an-
cient

Hotoman Com-
ment. de verbo
feod & verbo
Reluium.

cient Civill Law was termed *Introitus*; and *Vincentius* termeth it *Præstationem seu solutionem factam pro confirmatione seu renovatione possessionis*, and that very aptly: for indeed Reliefe is the key, which opens the gate to give the heire free passage to the possession of his inheritance. *Bracton* giveth this reason why it is called a Reliefe,

*Bract. lib. 2.
cap. 86.*

Quia hereditas que jacens fuit per antecessoris decessum, Releviatur in manu heredis & propter factum relevationem faciend. erit ab herede quadam præstatio que dicitur Relevium.

*Skene de verbo
fignum. tit. Re.
liefe.*

Skene fondly imagineth that it taketh his name, a *relevando*; in another sence; for saith he, Reliefe is given by the Tenant or Vassall, being of perfect age, after the expiring of the Wardship, to the Lord, of whom he held his Land by Knights service, it is by Ward and Reliefe, and by payment thereof he relieves, and as it were, raiseth up again his lands after they were fallen downe into his superiors hands, by reason of Wardship. But these words of *Glanvil* will serve to convince him of error; *Tandem vero eodem ad ætatem perveniente, & facta ei hereditatis*

*Glanvil. lib. 9.
cap. 9.*

resti-

restitutione quietus erit a Relivio ratione
custodie : This Reliefe is twofold,
 First, Reliefe Service. Second, Re-
 liefe Custome : Reliefe Service, is
 that which is paid upon the death of
 any Free-holder. Reliefe Custome,
 is that which is paid upon the death,
 change, or alienation of any Free-
 hold, according to the Custome of the
 place, in many places halfe a yeeres
 profit, in many places a whole yeeres
 profit, and therefore where *Bracton*
 saith, *Quod dat Domino Relevium qui*
succedit jure hereditatis, non autem is
qui acquirit ; that is to be taken with
 this caution, *nisi illud etiam consuetudi-*
ne, prestare debet qui acquirit. These
 Reliefes are paid, as well for lands
 holden in Soccage, as lands holden by
 Knights service : for lands holden in
 Soccage in this manner ; If a Tenant
 in Soccage die, his heire above the age
 of fourteene, then shall the heire
 double the Rent that his Ancestors
 was wont to pay to the Lord, as if
 the Tenant holdeth of his Lord by fe-
 alty, and five shillings ; then shall the
 heire double the Rent, and shall pay
 ten shillings, *viz.* five shillings in the
 name of a Reliefe, over and above the

five shillings, which he payeth for his Rent. For lands holden by Knights service in this manner; if a Tenant by Knights service dieth, his heire of full 21. if he holdeth by an intire Knights Fee, he payeth five pound, if by halfe a Knights Fee, then he payeth fifty shillings, if by a quarter of a Knights Fee, he payeth twenty five shillings, and so proportionably, who so holdeth more, payeth more, and who holdeth lesse, payeth lesse; yet for the fuller apprehension of the quantity of a Reliefe: let us examine what a Knights Fee signifieth. A Knights Fee, is so much land as in ancient time was accounted a sufficient living for a Knight, but whether this was rated according to the quantitie, or according to the value, *Causidici certant, & adhuc sub iudice lis est.* Some hold according to the quantity, and that according to the severall computations used in severall places. A Knights Fee was either more or lesse; as in the Dutchie of *Lancaster*: a Knights Fee contained foure hydes of land, every hyde four carnes of land, every carne foure yard lands, every yard thirty acres; and every Knights Fee 120. acres.

aces. Acc
ions, a K
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Knights Fee
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red accordi
cording to
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therefore,
Henrico tertio
equis fieri q
exonius be
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writeth, tha
regium precept
tum regnum
terre & supradic
nis conuenerit, q
lita uoluerit
my possunt bono

acres. According to other computations, a Knights Fee contained, 680. But according to most computations, a Knights Fee contained five hides of land, every hide foure yard lands, every yard land 24. acres, according to which computation, a Knights' Fee contained 480. acres: so that according to severall computations, a Knights Fee was more or lesse. Others hold, that a Knights Fee was measured according to the quality, not according to the quantity; according to the value, not according to the content: and amongst these, some hold that land to the value of fifteen pound per annum made a Knights Fee; and therefore, Camden saith, that, *Sub Henrico tertio quodammodo coacti fuerunt equites fieri quotquot libras quindecim annuis terrarum redditibus colligunt*; and out of Matthew Paris, he writeth, that anno, 1256. *Exit edictum regium preceptumque est & acclamati per totum regnum ut qui haberet 16. libras terre & supradict. armis redimitus tirocinio donaretur, ut Anglia, sicut Italia militia roboraretur, & qui nolent, vel qui non possunt honorem status militaris sustinere*

Smith. de rep.
pag. 31, 32, 33.

Fitch. nat. Bre-
vium fo. 62.

stinere pecunia se redimerent. others hold that *census equestris*, was forty pound revenue in Freehold land: and of this opinion is Sir Thomas Smith: others held, that *census equestris*, was twenty pound revenue; and this opinion is confirmed by many authorities, and reasons cited in *Anth. Lowes Case*, by an ancient Treatise, *de modo tenendi Parliamentum tempore Regis Edwardi filii Etheldred*, where it appeareth, *quod comitatus constabat ex viginti feodis unius militis quolibet feodo computato ad viginti libratas. Baronia constabat, ex 13. in feodis ac tertia parte unius feodi militis secundum computationem predicta unum feodum militis constabat ex terris ad valentiam 20. li.* and therefore where the Statute of *Ed. 2. de militibus*, provideth that a Knights living shall be measured by the value of twenty pound *per annum*; this is but an affirmance of the Common law. 2. This is strengthened by the words of the Stat. of *W. 1. cap.* and by *Fitch.* this seemeth something pregnant, for in both these places; Soccage land to the value of 20. pound *per annu*, are put in equipage with a Knights Fee. 3. In a

Writ

Writ of mesne, brought *per Ranulphum de Normanvile petentem versus Luciam de Kyme tenentem* P. 3. E. 1. appeareth that twelve carnes of Land made a Knights Fee, every carne being in ancient time of the value of five nobles *per annum*; according to which account, a Knights Fee amounted to twenty pound *per annum*. These are the severall opinions, touching the quantity of a Knights Fee, imbrace of these, which shall seem most consonant to reason. For my own part, I think that in the ancient time, a Knights Fee, was measured according to the number of the acres; but in these dayes, according to the value of the land: the reason of this alteration is; that though in ancient time, as well as in these dayes, some lands were farre more fruitfull than others; yet the value of every quantity of land was certainly rated, according to the Custome of the places, & never upon any occasion was the land increased or decreased; and therefore were they to examine whether any man had a sufficient living for a Knight, they would look no fur-

ther than to the quantity of his land ; for by the quantity , they could presently judge the value ; but now the value is not certainly rated in any place , but increaseth and decreaseth upon every occasion ; and therefore reason requireth , that in these dayes a Knights Fee should be measured according to the value , not according to the quantity of the Land , for by reason of the different value of the land , one man may be better able to maintaine the dignity of a Knight , with two hundred acres in some place , and of some land , than another with four hundred acres of other land . But howsoever it is , whether a Knights Fee be rated according to the value , or according to the quantity let it here rest .

Now give me leave to examine at what time , & by what law it was first provided , that for every Knights Fee the fourth part of a Knights revenue should be paid in the name of Reliefe , viz. 5. li. For every Barons Fee , the fourth part of a Barons revenue , viz. one hundred marks ; For every Earles Fee , the fourth part of an Earles Revenue ,

venue, viz. one hundred pound; surely Reliefs were paid in this manner, before the *Statute of Magna Charta*, and that is somewhat pregnant by this, that by the very words of that *Statute*. This Reliefe is termed *Antiquum Relevium*; and by *Glanvil*, who writ before the making of this *Statute*, this is somewhat manifest; for he speaketh *Glanvil, lib. 9. cap. 9.* to this effect, *Dicitur rationale relevium alicujus juxta consuetudinem regni de feodo unius militis centum solidos de Soccagio verò quantum valet, census illius Soccagii per annum de Baronia verò nihil certum statutum est quia juxta voluntatem & misericordiam Domini Regis solent Baronia capital. de releviis suis Domino Regi satisfacere:* from whence I gather, that *Statute of Magna Charta*, was in part an affirmance of the Common law, in part an institution of a new Law.

Touching Reliefe paid by Knights, it was but an affirmance of the Common Law, because they were certain before the *Statute*. Touching Reliefs paid by Barons, it was an institution of a new law, because they were before uncertaine, and the rea-

sons why Dukes and Vicounts are not mentioned in this Statute, as well as Earles, Barons, and Knights, is this, because when that Statute was made, there was neither Dnke, Marquesse or Vicount in *England*. The first Duke that ever was in *England* sithence the Conquest, was the Black Prince, eldest sonne to *Ed. the third*. The first Marquesse that ever was in *England*, was *Robert Earle of Oxford*, created by *R. 2.* And the first Vicount that ever was in *England*, *Dominus de Bello monte*, created by *H. 6.*

But though at the making of this Statute, these dignities were unknown, yet they are comprehended under the equity of the Statute, and according to their severall dignities shall pay Reliefe unto the King, a Duke two hundred *li.* a Marquesse two hundred marks, and so ratably and proportionably. But to conclude let us compare Herriots and Relieves together, and observe in what they differ.

1. They differ in this, that an Herriot lyeth in Prender, and a Reliefe in Render. 2. In this, that a Herriot is paid

paid in the name of a Tenant deceased; but a Reliefe in the name of an heire, who is become Tenant. 3. In this, that Herriots are paid by Copyholders, as well as Freeholders; but Reliefe by Freeholders only. 4. In this, that Herriots are ever due upon a speciall reservation, or upon some particular Custome; but Reliefes are incident to the Fee, and are due without reservation or Custome, contrary to the opinion of *Vincentinus*, who holdeth a Reliefe *extrinsecam fore prestationem & non inesse feodo*; Thus much touching Reliefes: a word touching Amerciaments.

S E C. XXVI.

A Merciamment is a Pecuniarie punishment for any offence committed against the Lord of any Manor, or (as some more at large define it) it is a certain summe of money imposed upon the Tenant by the Steward by oath, and presentment of the homage; for the breach of any by-law made, either for the profit of the whole kingdome, or for the benefit of the little
Com.

Commonwealth among themselves, or for default of doing suit, or for other misdemeanors, punishable by the same Court, infinite in number and quality; and this word Amerciament taketh his name from being in the Lords mercy, to be punished more or lesse at his will and pleasure, and it differeth from a Fine in divers respects.

1. In that whosoever is fined may lawfully be imprisoned, but whosoever is amerced cannot. 2. In this, that Amerciaments are incident unto Court Barons, as well as unto Court leets, and Fines are never incident to any Court barons, but to Court leets only, or other Courts of Record. 3. That Amerciaments are incident unto every Manor whatsoever; but Fines are incident unto some few Manors only: the reason of this difference is partly grounded upon the former difference; for sithence Amerciaments are incident unto every Court Baron, and Court Barons are incident unto every Manor: *Sequitur ex consequente*, that unto every Manor amerciaments are incident, but *ex aduerso*,
Fines

Fines being incident unto Court leets only, and those Court leets being in some few Manors only, not in every Manor expressly *sequitur*, that Fines are not incident unto every Manor, but unto some few Mannors onely:

4. In this, that Amerciaments are afferable *Per pares, per sacramentum proborum & legalium hominum de viceneto, qui secundum modum delicti majori vel minori Amerciamento delinquent, mulctare possunt*: but Fines are never afferable in this kinde; for look what Fine soever the Court imposeth upon the delinquent, that bindeth sufficiently, without further afferance.

Give me but leave to ask two questions, when had this afferance his first conception or creation? 2. How may Amerciament in Court leets be discerned and distinguished from Fines imposed in the same Court, since they are both pecuniary punishments for offences committed? Touching the first question, I think this law of afferance was before the *Statute of Magna Charta*; for *Glanvile* thus speaketh

Glanv. lib. 1. cap. 11.

of it, *Est autem misericordia domini Regis quod quis per juramentum legalium hominum*

hominem de viceneto catenus amerciam-
us est ne aliquid de suo honorabili conte-
nen. amittat; and therefore by this
 appeareth, that this *Stat. of Magna*
Charta, was but an affirmance of the
 Common law in this point of affe-
 rance. Touching the second questi-
 on, know that 'tis not in the power
 of the Court to impose a Fine, or an
 Amerciament at their election for
 any offence committed, but still the
 quality of the punishment must neces-
 sarily suit with the quality of the
 offence, from the severall natures of
 offences committed, arise the severall
 names of punishmets inflicted. The of-
 fences in respect of the place are two
 fold, and in respect of the persons two
 fold. 1. In respect of the place, offences
 comited, *extra curiam*, of which the Ste-
 ward by no comon possibility can have
 cognizance without the presentment
 of the homage, and therefore the po-
 wer of presenting them, and impos-
 ing punishments for them, belongeth
 unto the Jurors of the Leet, and not
 unto the Steward; and these punish-
 ments thus imposed are termed Amer-
 ciaments. 2. Offences committed
 in

in Curia, of which the Steward can take sufficient notice, without the helping hand of the homage, and therefore the punishments of these offences belong unto the Steward, not unto the Jurors; and these punishments thus imposed are termed Fines. Thus in respect of the place, offences are two fold. In respect of the person, they are likewise two fold: 1 Offences committed by private persons 2. Offences committed by publique Officers, and Ministers of the Court, in the administration of their office. Punishments imposed for offences of the former rank are termed Amerciaments, of the latter Fines, the one afferable *per pares*, the other not; and the reason why the Statute of *Magna Charta* in this point of afferance, extendeth not unto any offences committed in Court by private Persons, or publique Officers: neither unto any offences committed *extra Curiam*, by publique Officers in administration of their Office, is this, because though the words of the Statute are generally extending unto all offences whatsoever; yet th' intent of the Statute

Co. 8. Greisler's
 case.

Fleta lib. I. cap.
98.

tute makers was not to make the Jurors Afferors *in omnibus delictis multandis*, sed *in iis tantummodo puniendis quorum certam possint habere notitiã, & intelligentiam*, as *Fleta* speaketh: and therefore sithence the Steward hath more certain notice of offences committed *in Curia* by what persons soever then the Jurors have, and can better judge and discern of the natures and qualities of offences committed, *Extra Curiam* by publike Officers, than Jurors can; therefore surely the intent of this Statute, was to leave the punishment of these offences to the discretion of the Steward, and not the assentance of the homage. Thus much concerning Amerciaments: a word concerning Forfeitures.

SEC. XXVII.

FORFEITURE commeth of the French word *Forfait*, *scelus, quia scelerum & delictorum perpetratio est forisfacturarum causa & origo*. In our Language it signifieth the effect of transgressing, rather than the transgression it selfe, I mean, it signifieth the penalty for the

the offence committed, rather than the act it selfe, whereby the offence it selfe is perpetrated, and it extendeth both unto lands and unto goods; unto lands, both Copyhold and Freehold.

Touching the causes from whence springeth the forfeiture of Copyhold lands, I shall have occasion to speak more liberally in another place, and therefore I will silently passe them over, speaking some few words touching the causes from whence Forfeitures of Freehold land arise.

The causes are many, amongst the which I have observed. 1. That if any Freeholder alieneth his Land in Mortmain, he forfeiteth his freehold. 2. If a Freeholder ceaseth for the space of two whole years, to performe such Services, or to pay such Rents, as he is tied unto by his Tenure, and hath not upon his land sufficient goods or chattels to be distrained, he forfeiteth his Freehold. 3. If any Freeholder infringeth any condition whereunto he is tied, he forfeiteth his freehold.

Touching the causes from whence
grow

grow the forfeitures of goods, they are likewise in number many, and from the severall causes of forfeiting goods, arise severall names of goods forfeited. 1. If a Felon stealeth goods, and upon pursuit made, waiveth these goods, and leaveth them in any part of the Manor, and be not attached upon the fresh suit of the owner; then are these goods forfeited to the Lord, and are termed waives. 2. If any beasts are found wandring in any place, and be proclaimed in three market towns adjoyning, and are not claimed by the owner in a year and a day; then are the beasts forfeited to the Lord, who hath such a liberty, and are termed Estrayes. 3. If any suffer Shipwrack upon the Seas, and through the violence of the Waves, goods are cast upon the Shore; and being seized by the Bayliffe, are not claimed within a yeer and a day after the seisure; then are these goods forfeited to the Lord who hath that Franchise, and are termed Wrecks. 4. If one come to a violent end, without the fault of any reasonable creature, then immediately that thing which is the cause of that

untimely death, becommeth forfeited unto the Lord; and it is termed a Deodand; as this old verse testifieth; *Omnia quae movent ad mortem sunt Deodanda*: as if a Horse striketh his keeper, and killeth him: or if a man driveth his Cart, and seeking to redresse it, falleth, and the Cart wheele running over him, presseth him to death; or if one felling a tree, giveth warning to comers by to look to themselves, and notwithstanding warning given, some body is slaine by the fall of the tree: the Horse in the first case, the Cart and the Horses in the second case, and the Tree in the third case, are forfeited to the Lord as Deodands: many other sorts of forfeited goods I might adde unto this, but I will forbear to enumerate any more in this kinde; and to speak more largely of these which I have already enumerated, for three speciall reasons.

1. Because they are duties accruing unto the Lord, not meerly from the Tenants, nor solely by the act of the Tenants, but most commonly from strangers, and by the sole act of stran-

E gers,

gets, and therefore I confesse are not aptly ranked under the name of Services. 2 Because a perfect Manor may well subsist, without their assistance; since they adde nothing to the perfection of the essence of a Manor. 3 Because they are not incident unto every Manor, but unto such Manors only as can challenge them, either by speciall prescription, or by Patent from the King; for primarily and originally these forfeitures of goods, belonged to the King for these reasons: especially, because what goods soever have no certaine owner known to challenge interest in them, as waives, estrayes, and wrecks, the property of such goods belong unto the King, *virtute prerogative*; and thus much *Braetton* intimateth, when he saith, *Sunt alia quedam que in nullius bonis esse dicuntur, sicut wreckcum maris, &c. & alie res, que Dominum non habent, sicut animalia vagantia, & que sunt Domini Regis propter privilegium marium*: the reasons why *Deodands* are forfeited to the King, is this.

Deodands were originally invented

for the pacifying of Gods wrath, and the appeasing of Gods anger, and these things thus forfeited, were according to the true intendment of the Law to be sold, and mony distributed among the poor; and therefore upon whom could the law have better conferred this benefit, or rather imposed this charge then upon the King, who representeth Gods person upon the earth, and whom the Law presumeth will deale more justly, and truly, nay, more liberally and bountifully with the poore in this kinde, than any inferior Lord, who peradventure out of his uncharitableness, peradventure out of want, will be so farre from adding any thing to that which is due, that he will rather unjustly substract part, or unconscionably detaine the whole.

Since therefore, these Forfeitures of goods neither adde to the perfection of a Manor, neither are incident unto every Manor, to spend any further time about a subject so superfluous would ill beseem this small Treatise, wherein the scope and end I aim at, is this, only to present to your

view what things soever are necessarily requisite to the essence of every Manor, and what Services soever are incident unto every Manor: and thus much concerning Forfeitures; a word concerning Escheats.

SEC. XXVIII.

EScheates commeth of the French word, *Echeat*, *excidere*, and are termed *Excadentia*, which imports lands fallen into the Lords hand for want of heire, generall or speciall, to inherit them, but before the Lord enter into an Escheate in this kinde, the homage ought to present it, and being presented proclamation ought to be made to give notice to the world, that if any man come in, and justly claime, he shall be received; the homage then finding it clear, intitles the Lord, as to Lands Escheated.

Besides this ordinary sort of Escheate, there is another sort of Escheate, and that is, where any Freeholder commiteth Felony, and is attainted, the King shall have *animum diem & vastum*; and then it commeth

unto

unto the Lord as an Escheate; thus much concerning the nature of Services in generall, and there are so many particular Services in *individuo*, that I might insift in millions more, but feare of incurring the censure of being over tedious, restraineth the forwardnesse of my hand: yet sithence occasion is so favourable to me, I will presume so much upon your patience, as to lay open the severall remedies which the Law hath provided for the obtaining of those severall Services before mentioned, if perchance they be wrongfully deteived by the Tenant; and for method sake, I will begin with corporall Services.

SEC. XXIX.

IF any Freeholder refuseth to doe homage, or fealty, which are corporall Services of submission; or to mend high wayes, repaire decayed Bridges; or *similia*, which are corporall Services, tending to the publique profit of the Common weale, or to discharge the office of a Carver, a Butler, a Brewer, or such like; or to

paile the Lords Park, to tile the Lords Houses, or to thatch his Barns; or *st-milia*; which are corporall Services tending to the private profit of the Lord; If, I say, any Freeholder refuseth to doe any of these Services, being bound unto them by his Tenure; then may the Lord lawfully distreine his cattle or his goods, and detein them untill satisfaction be given, by performing such Services as the Law doth require, and the same remedy which the Law hath provided for Corporall Services, is likewise provided for Annual Services.

S E C. XXX.

OR if any Freeholder refuseth to pay any annuall Rent, or to discharge any annuall payment, according to his Tenure; then may the Lord lawfully distrein and in a Replevin brought by the Tenant, may avow the distresse, and justifie the taking. But no action of debt will lye for these annuall Services, no more than for Corporall Services; for it is a ground in Law, that as long as the

the the Rent continueth of any estate
 or Franke tenement, no action of debt
 lyeth for the arrerages of the Rent,
 nor for any other Service whatsoever;
 and therefore if a Lease for life be
 made reserving rent, the Lessor can-
 not maintain an action of debt for the
 arrerages of this Rent, as long as the
 estate continueth, but presently upon
 the determination of the estate an
 action of debt lyeth for the arrerages
 of the Rent incurred before the time
 of determination: But what hath the
 Law provided no other remedy for
 those annuall Services, than a distresse?
 Surely no, before seisein, none, but af-
 ter seisein once gained, 'tis at his ele-
 ction, either to distrein, or to bring
 an Assize: and thus much touching
 remedies for corporall and annuall
 Services.

SEC. XXXI.

Accidentall Services are gotten
 by many differing means; 1. By
 seisure only, as the Wardship of the
 heires body, together with the Waives,

indeed Reliefe is the fruit and ap-
 provement of Services rather than any
 service, and for Amerciaments the
 Lord may either distrain or bring an
 account of debt: other remedy the
 Law hath provided against strangers,
 for detaining of these duties from the
 Lord, as to insist in one: if a stranger
 will detaine the Wards body or the
 Wards land from the right Lord, a
 Writ *de recto de custodia terre & here-*
dis lyeth against the stranger; but to
 meddle with strangers were to wan-
 der out of the little Common weale,
 and therefore to keep my self within
 my bounds and limits, I will here con-
 clude, touching the two materiall
 causes of a Manor, *viz.* Demesnes and
 Services: a word touching the effici-
 ent caule of a Manor, and then I
 will end the definition of a Ma-
 nor.

The efficient cause of a Manor is
 expressed in these words, Of long con-
 tinuance, for indeed time is the mo-
 ther, or rather the nurse of Manors;
 time is the soule that giveth life unto
 every Manor, without which a Ma-
 nor decayeth and dyeth, for 'tis not
 the

the two materiall causes of a Manor, but the efficient cause (knitting and uniting together those two materiall causes) that maketh a Manor. Hence it is that the King himself cannot create a perfect Manor at this day, for such things as receive their perfection by the continuance of time, come not within the compasse of a Kings Prerogative, and therefore the King cannot grant Freehold to hold by Copy, neither can the King create any new custome, nor doe any thing that amounteth to the creation of a new custome, and therefore a composition made between the King and his Tenant, where he hath Herriot custome to pay 10. li. in Levy thereof every time it falleth, is no binding composition: for this amounteth to the creation of a new custome. *Et hæc omnia & similia sunt temporum non regum seu principum opera*, which fully veri- fieth the old saying, *Plus valet vulgari consuetudo quam regalis concessio*, this is the sole cause why the King cannot create a perfect Manor at this day, & this is the chiefe cause why a common person cannot create a perfect Manor,

but not the sole cause; for there is this cause farther; a perfect Manor cannot subsist without a perfect tenure, between very Lord and very Tenant: but a Common person cannot create a perfect tenure, and consequently cannot create a perfect Manor: before the Statute of *Quia emptores terrarum*, if any Tenant seized of Land in Fee-simple had infeoffed a stranger, he might have reserved what services he thought fit, or had he reserved no services, yet the Law would have employed a perfect tenure between the feoffor and the feoffee, for the feoffee was to hold off the feoffor by the same services, that the feoffor held over on his Lord Paramount, but since this Statute, If a Tenant seized of Land in fee, infeoffeth a stranger, neither by the expresse reservation of the feoffor, nor by the implied reservation of the Law, can there be a perfect tenure created at this day between the feoffor and the feoffee; for the feoffee shall hold immediately of the Lord Paramount not of the feoffor, and further; as the King can doe nothing which amounteth to the creation of a new

custome : so a common person can
 doe nothing which amounteth to the
 creation of a new tenure, and there-
 fore if there be Lord and Tenant by
 10^s. rent, and the Lord will confirm
 the estate of a Tenant *Tenend.* by a
 Hawk, a paire of gilt Spurs, a Rose, or
similia, this is a void confirmation; o-
 therwise had it been if the Lord had
 confirmed the estate of the Tenant
Tenendum per 5^s. that had been a good
 confirmation, because it tendeth only
 to the abridgement of an old tenure,
 and not to the creation of a new, and
 as it is with a confirmation, so it is
 with a composition. Upon the reason
 of this ground, it is, that if the Lord
 of a Manor purchase forrain land ly-
 ing with out the Precincts and bounds
 of the Manor he cannot annex this
 unto the Manor though the Tenants
 be willing to doe their Services, for
 this amounteth to the creation of a
 new tenure, which cannot be effected
 at this day; And therefore if a man
 having two Manors, and the Lord
 would willingly have the Tenants of
 both these Manors to doe their suite
 and service to one Court, this is but
 lost

lost labour, in the Lord, to practise any such union; for notwithstanding this union they will be still two in Nature, howsoever the Lord covet to make them one in Name, and the one Manor hath no warrant to call the Tenants to the other Manor, but every act done in the one to punish the offenders, in the other is traversable; yet if the Tenants will voluntarily submit themselves to such an innovation, and the same be continued without contradiction, time may make this union perfect, and of two distinct Manors in nature, make one in name and use: and such Manors peradventure there are thus united by the consent of the Tenants and continuance of time, but the Lords power of it selfe is not sufficient to make any such union, *causa qua supra*. But if one Manor holdeth of another, by way of Escheat, these two manors may be united together, *fortior enim est dispositio legis quam hominis*. But in this, that I exclude common persons from being able to create a tenure, I may seem to impugn many authorities which hold at this day, that a tenure may be created

ted by a common person; for to clear this colour of contradiction know that tenures are two fold. First, imperfect, as where a man maketh a Lease for years or for life, or a gift in taile, here is an imperfect tenure between the Lessor and the Lessee, the Donor and the Donee; and this imperfect tenure I confesse may be created by a common person at this day. Secondly, perfect, between very Lord and very Tenant in fee, and such a tenure a common person could never create since the Stat. of *Quia Emptores terrarum*, and consequently a common person cannot create a perfect Manor sithence; for without a perfect tenure, a perfect Manor cannot subsist. Thus much touching the definition of a Manor, thus much I say touching the two materiall causes, together with the efficient cause. A word of another cause of a Manor which appeareth not in the definition so manifestly as the other causes doe, this is a cause which among the Logicians is termed, *Causa sine qua non*, and that is a Court Baron; for indeede that is the chiefe prop and Pillar

Pillar of a Manor, which no sooner faileth but the Manor falleth to ground: if we labour to search out the antiquity of these Court Barons, we shall finde them as ancient as Manors themselves. For when the ancient Kings of this Realme, who had all the lands of England in Demesne did conferre great quantities of land upon some great personages, with libertie to parcell the land out to other inferior Tenants, reserving such duties and Services as they thought convenient, and to keepe Courts where they might redresse misdemea- nors within their Precincts; punish offences committed by their Tenants, and decide and debate controversies arising within their jurisdiction; and their Courts were termed Court Barons, because in ancient time such personages were called Barons, and came to the Parliament, and sate in the upper house; but when time had wrought such an alteration, that Manors fell into the hands of meane men, and such as were farre unworthy of so high a calling: then it grew to a custome, that none but such as the King

Vide Lamb. in his explication of Saxon words verbo Tharus. Bacon in his elements of the Law. fol. 41. 42. 43.

*Manor Court
1551
1552
1553*

King would, should come to the Parliament, such as the King for their extraordinary wisdom or quality thought good to call by Writ, which Writ ran, *hac vice tantum*, yet though Lords of Manors lost their names of Barons, and were deprived of that dignitie which was inherent to their names, yet their Courts retaine still the name of Court Barons, because they were originally erected, for such Personages as were Barons; neither hath time been so injurious as to iradicate the whole memory of their ancient dignitie, in their name, there is stamps left of their nobilitie, for they are still intituled by the name of Lords. These courts differ from Court Leets in divers respects: In this, that Court Barons by the Law may be kept once every three weeks, or (as some thinke) as often as it shall please the Lord, though for the better ease both of Lords and Tenants, they are kept but very seldom; but a Court Leete, by the Statute of *magna Charta*, is to be kept but twice every yeere; one time within the moneth after Easter, and another time

Magna Charta.
C. 35. 31. E. 3.
Ca. 15.

time within a moneth after *Michal*.
 2. In this, that Court Barons may be kept in any place within the Manor, (contrary to the opinion of *Brian*.) But a Court Leete by the Statute of *Magna Charta*, is to be kept in *certo loco ac determinato*, within the Precinct. 3. In this, that originally Court Barons belonged unto inferior Lords of Manors, but Court Leets originally belonged unto the King. 4. In this, that Court Barons are incident unto every Manor, so that every Lord of a Manor may keep a Court Baron, but few have Leets; for inferior Lords of Manors cannot keepe Court Leetes without speciall prescription, or some speciall Patent from the King. 5. In this, that in Court Barons, the suitors are Judges, but in Court Leets the Steward is Judge. 6. In this, that in Court Barons the Jewrie consisteth oftentimes of lesse than twelve, in Court Leets never; the reason of that is, because none are impanelled upon the Jewrie out Free-holders, in Court Barons, of the same Manor: But in Court Leets strangers are oftentimes impanelled.

7. In this, that Court Barrons cannot subsist without two suitors *ad minimum*, but Court Leets can well subsist without any suitors. 8. In this, that Court Barons enquire of no offences committed against the King, but Court Leetes inquire of all offences under High Treason committed against the Crowne and dignitie of the King. In many other respects they differ, as that a Writ of error lyeth upon a judgement given in a Court Leete, but not in a Court Baron. So in a Court Leete, a *Capias* lyeth, but in a Court Baron, in stead of a *Capias*, is used an Attachment by goods: So in a Court Baron, an action of debt lyeth for the Lord himself, because the suitors are Judges, but in a Court Leete, the Lord cannot maintain any action for himselfe, because the Steward is Judge; but omitting these with many more, I come to the Etymologie of a Manor. Some derive the word Manor *a manendo*, and then it taketh his name either from the Manor-house which the Lord maketh his dwelling place, or else *a manendo, quia Dominus ac tenentes in*
Mane-

Manerii sui circuitu cohabitant ac manent. Some thinke 'tis termed Manor from manuring the ground, and then it taketh it's name either from the Lords Demesnes, which the Tenants are bound to Manure, or else from the Land remaining in the Tenants hands, which are likewise tilled and manured; others are of opinion, that it is derived of the French word *mesner*, which signifieth to governe or guide, because the Lord of a Manor hath the guiding and directing of all his Tenants within the limits of his jurisdiction; and this I hold the most probable Etymologie, and most agreeing with the nature of a Manor: for a Manor in these dayes signifieth the jurisdiction and royalty incorporate, rather than the Land or Scite; Thus much touching the Etymologie. A word touching the division of a Manor; A Manor is twofold. 1. *Re & nomine*: 2. *Nomine tantum*. *Re & nomine*, as where the two materiall causes of a Manor, the efficient cause, & *causa sine qua non*, doe meet and joyne together. *Nomine tantum*, as where any of these causes is wanting; as to insist

in the two materiall causes, if the Lord will transerre over to some stranger the services of all his Tenants, and reserve unto himselfe the Demesnes; or if he will passe away the Demesnes, and reserve the services: in both causes, the Lord peradventure hath a Manor, *nomine*, but not otherwise, because in the one cause he wanteth Demesnes, in the other Services. So if a Manor descendeth to Co-partners, and they make partition, and the intire Demesnes are allotted to the one, and the intire services to the other, the Manor is now in suspence, for neither of them hath any Manor, but in name onely: but if part of the Demesnes, and part of the Services be allotted to each one, then have they each of them a Manor, not *nomine tantum*, but *re & nomine*. To insist in the efficient causes, If the King at this day will grant a great quantitie of Land to any subject, injoyning him certaine duties and services, and withall willeth, that this should beare the name of a Manor, howsoever this may chance to gaine the name of a Manor, yet it will

not be a Manor in the estimation of the Law. To insist in this cause, *sine qua non*. If the King grant away a Manor to *I. S.* excepting the Courts and perquisites, the Grantee hath a Manor in name onely. So if all the Freeholders die but one, if the Lord purchase all the Freeholders land, or passe away the Services of the Freeholders, or release unto his Freeholders all their services, notwithstanding the Demesnes and the Services of the Copy-holders, yet the Lord hath but a Manor in Name, because the Freeholders are wanting, which are the maintainers and upholders of the Court Baron, and consequently necessary helpe to the perfection of a Manor. So if the Lord granteth away the inheritance of all his Copyholders, or demiseth all his Lands granted by Copie to another for 2000. yeeres, the Grantee in the one case, and the Lessee in the other; have a kinde of Seigniority in grosse, and may keep a Customary Court, where the Steward shall be Judge, and shall take surrenders, and make admittances; and this in the eye of the world

is a Manor, though in the judgement of the law it commeth farre short of one. Thus much touching the division of a Manor. I might here handle many collaterall jurisdictions, appropriated to the Lords of Manors, as that our erecting Dove-houses, of proving the Wils of their Tenants deceased within their Precincts in many places; of inclosing Common, leaving sufficient besides for the other Commoners, with many of the like; *Sed hæc libens libensque omitto.* And thus closing up this part of my Treatise touching Manors: I come to the other part touching Copyhold.

SEC. XXXII.

I Need not stand to discourse at large the antiquity of the Copyholders; for if you cast your eye back to that is past, you shall easily perceivè that Copyholders, though very meanly descended, yet they come of an ancient house; and therefore if in this point you desire satisfaction, call to minde what I have already spoken;

spoken; and (if I mistake not) it will sufficiently answer your desire. Give me leave to goe a step further, and to examine the severall names which Copyholders have had from time to time allotted unto them, together, with their proper Etymologies: immediatly upon the Conquest: they were known by the name of villaines, or Tenants in Villanage; so termed by the *Normans*, either in respect of Imbecillity and incertainty of their estates, which were grounded upon a very weak foundation, wholly depending upon the will of the Lord, and Oustable at his pleasure; or in respect of their Services, which favoured of nothing but slavery, whether they were *certainae determinata*, or *incertainae indeterminata, ubi sciri non poterit vespere, quale servitium facere deberent in Crastino*, as *Bracton* speaketh; contrary to the opinion of some, who hold, that the Service of Copyholders were never subject to such incertainties: or lastly, in respect of the persons, who for the most part were Villaines; howsoever some freemen did sometimes hold Land by the same te-

Sure: the least of these three reasons
 is sufficient to make them deserve that
 name, but joyn them together, and
 then he that judgeth most favorably
 of them, will think this the truest title
 that could be bestowed upon them:
 yet some there are, who in behalfe of
 these Tenants, stick not to maintaine
 (howsoever in respect of their estates,
 they may not unfitly be termed Te-
 nants in Villanage, being in such
 strange subjection to their Lords) that
 neither in respect of their Services,
 nor their Persons they could merit
 that name; especially if we take the
 word in that reproachfull sense that it
 is usually taken in at this houre. But
 if we account those villain Services
 which any way touch Husbandry, as
 Plowing, Sowing, Reaping and such
 like; and these men villaines, who
 exercise themselves in any point of
 Husbandry, then they argue, that
 their Tenure could in no wise have an
 apter terme than this; for they con-
 fesse, that these Copyholders were
 for the most part, *Rustici & Pagani*,
 and their Services wholly *ad Rustici-*
ratem tendentia: Howsoever, I dare
 not

not wholly disallow of this opinion, though I cannot altogether approve of it, for I admit, and in a manner consent, that amongst the *Normans*, these Services, which we call Rurall Services, were called villain Services; and those men whom we term Husbandmen were termed villaines; and doe hold that the Copyhold Services in those dayes were more slavish, than Rurall; and they themselves rather Bondmen, than Husbandmen; otherwise we should make their tenure differ in nothing from ancient Soccage tenure, which I assure my selfe is otherwise: for though Soccagers were Rustiques, and in that sense Villains; yet their tenure was never noted by the name of a tenure in Villenage, till in many places their Corporall Services begun to be turned into money: then for distinction sake, the one began to be called *Liberum Soccagium*, the other, *Villanium Soccagium*. But long before these, Copyholders were termed Villaines, and therefore without all doubt their tenure was in baseness and slavery, a degree above the ancient Soccage tenure; till at length

length the Lords of Manors being framed to more civility, began then to thinke it a most uncharitable part to keep their poore Tenants in that bondage; therefore out of the remorse of of their own consciences, and the compassion of their Tenants miseries, by little and little, they infranchised them, and released them of their heavier burthens, reserving services of another nature in lieu of them. Thus having shaken off the fetters of their bondage, they were presently freed of their opprobrious name, and had other new gentle stiles, and titles conferred upon them; they were every where then called Tenants by Copy of Court Role, or Tenants at will, according to the Custome of the Manor: which stiles import unto us three things. 1. *Nomen*. 2. *Originem*. 3. *Titulum*. His name is Tenant by Copy of Court Role; for he is not called Tenant by Court Role, but by Copy of Court Role; and this is the sole Tenant in law; who holdeth by Copy of any Record, Charter, Deed, or any other thing. 2. His commencement is at the will of the Lord.

For

For these Tenants in their birth; as well as the Customary Tenants upon the borders of *Scotland*, who have the name of Tenant, were meer Tenants at will: and though they keep the Customs inviolated, yet the Lord might, sans controul, eject them: neither was their estate hereditary, in the beginning; as appeareth by *Britton*: for if they dyed, their estate was presently determined, as in case of a Tenant at will at common law; and in some points, to this present houre, the law regardeth them no more, than a meer Tenant at will; for the freehold at the common law, resteth not in them, but in the Lords; unlesse it be in Copyholds of Frank Tenure, which are most usuall in ancient Demesne; though sometimes out of ancient Demesne; we shall meet with the like sort of Copyholds, as in *Northamptonshire*, there are Tenants which hold by Copy of Court Role, and have no other evidence, and yet hold not at the will of the Lord. These kinde of Copyholders have the Frank Tenure in them, and it is not in their Lords, as in case of Copyholds in
base

Britton Ca. 66.

base tenure. Besides, Copyholders shall not attourn upon the granting away of the Manor, no more than Tenants at will at the Common law; and their estate can be no enfranchisement to a villaine, no more then a meere estate at will. And further, their lands are parcell of the Lords Demesnes, as well as lands granted away at Will, according to the course of the common law; and for his title and assurance, that is according to the custome of the Manor: For the Custome of the Manor hath so established, and so fixed them in their land, that if they doe their Services and Duties, and perform customes of the Manor, they are as well inheritable, according to the custome, as he that hath a Frank Tenement at the common law: and sithence custome is the life and soule of Copyhold Estates, and whatsoever shall, or can be spoken touching Copyholds, ariseth from this Head, and from this fountaine; Give me leave in the second place to speake something concerning them.

S E C. XXXIII.

Customs are defined to be a law,
or Right not written, which be-
ing established by long use, and the
consent of our Ancestors hath been,
and is dayly practised.

Custom, Prescription, and Usage;
howsoever there be correspondency
amongst them, and dependancy one
on the other, and in common speech,
one of them is taken for another, yet
they are three distinct things. Custom
and prescription differ in this. 1. Cu-
stom cannot have any commencement
since the memory of man, but a Pre-
scription may, both by the com-
mon law, and the Civill: and there-
fore where the Statute. 1. H. 8.
saith, that all actions popular; must
be brought within three yeares af-
ter the offence committed; who-
soever offendeth against this Sta-
ture, and doth escape uncalled for
three yeeres, he may be justly said to
prescribe an immunity against any
such Action. 2. A Custom touch-
eth many men in generall; Prescrip-
tion,

Custom, Pre-
scription, and
Usage, how
they differ.

tion, this, or that man in particular : and that is the reason why Prescription is personall, and is alwayes made in the name of some person certaine, and his Ancestors, or those whose estate he hath ; but a Custome having no person certaine in whose name to prescribe, is therefore called and alledged after this manner. In such a Borough, in such a Manor, there is this or that Custome. And for Usage, that is the efficient cause, or rather the life of both ; for Custome and Prescription lose their being, if Usage faile. Should I goe about to make a Catalogue of severall Customs, I should with *Sisiphus, saxum volvere*, undertake an endlesse peece of worke, therefore I will forbear, since the relation would be an argument of great curiositie, and a taske of great difficultie : I will onely set down a brieve distinction of Customs, and leave the particulars to your own observation. Customs are either Generall or Particular. Generall, which are part of the Common law, being currant through the whole Common-wealth, and used in every County,

County, every Citie, every Towne, and every Manor. Particular, which are confined to shorter bounds and limits, and have not such choice of fields to walke in, as generall Customes have. These particular Customes are of two sorts, either disallowing what generall Customes doe allow, or allowing what generall Customes doe disallow, as for example sake. By the generall Customs of Manors, it is in the Copiholders power to sell to whom hee pleaseth, but by a particular Custome used in some places, the Copyholder, before he can inforce his Lord to admit any one to his Copyhold, is to make a proffer to the next of the blood, or to the next of his Neighbors, *ab oriente solis*, who giving as much as the party to whom the Surrender was made, should have it: so on the other side, by the generall Customes of Manors, the passing away of Copyhold land by Deede, for more than for one yeere without licence, is not warranted; yet some particular customes in some Manors doe it: so by the generall Customes of Manors, Presentments, or any

any other Act done in the Leete, after the moneth expired, contrary to the Statute of *Magna charta*, and 31. E.3. are void; yet by some particular Customs, such acts are good, and so in millions of the like, as in the sequell of this discourse shall be made manifest. And therefore, not to insist any longer in dilucidating this point, let us in few words learne the way how to examine the validity of a Custom: For our direction in this businesse, we shall doe well to observe these sixe Rules, which will serve us for exact tryall. 1. Customs and Prescriptions ought to be reasonable, and therefore a Custom that no Tenant of the Manor shal put in his Cattell to use his common in *Campis seminatis*, after the Corne severed, untill the Lord have put in his Cattell, is a void Custom, because unreasonable; for peradventure the Lord will never put in his Cattell, and then the Tenants shall lose their profits: so if the Lord will prescribe that he hath such a Custom within his Manor, that if any mans beasts be taken by him upon his Demesnes damage Fesant, that he

he may detaine them untill the owners of the beasts give him such recompence for his harmes, as hee himselfe shall request; this is an unreasonable Custome, for no man ought to be his owne Judge. 2. Customes and Prescriptions ought to be according to common right, and therefore if the Lord will prescribe to have of every Copyholder belonging to his Manor, for every Court he keepeth a certaine summe of money, this is a void prescription, because it is not according to common Right, for hee ought for Justice sake to doe it *Gratis*; but if the Lord prescribe to have a certaine Fee of his Tenants, for keeping an extraordinary Court, which is purchased only for the benefit of some particular Tenants, to take up their Copyholds and such like; this is a good prescription, and according to common right. 3. They ought to be upon good consideration, and therefore if the Lord will prescribe that whosoever passeth through the Kings Highway which lyeth through his Manor, should pay him a peny for passing, this prescription is void, because

it is not upon a good consideration; but if he will prescribe to have a penny of every one that passeth over such a bridge within his Manor, which bridge the Lord doth use to reaire, this is a good prescription, and upon a good consideration. So if the Lord will prescribe to have a fine at the marriage of his Copyholder, in which Manor the custome doth admit the Husband to be Tenant by the courtesie, or the feme Tenant in Dowrer of a Copyhold, this prescription is good, and upon a good consideration; but in such Manors, where these estates are not allowed, the Law is otherwise. 4. They ought to be compulsory, and therefore if the Lord will prescribe that every Copyholder ought to give him so much every moneth to beare his charges in time of warre, this prescription is void; but to prescribe they ought to pay so much money for that purpose, is a good prescription; for a payment is compulsory, but a gift is Arbitrary at the voluntary liberty of the giver. 5 They ought to be certain; and therefore, if the Lord will prescribe that

when-

whensoever any of his Copyholders die without heire, that then another of the Copyholders shall hold the same lands for the yeer following, this prescription is void, for the incertainty; but if the Lord will prescribe to have of his Copyholders, 2^d. an Acre Rent, in time of warre 4^d. an Acre, this prescription is certain enough.

6. They ought to be beneficiall to them that alledge the prescription; and therefore if the Lord prescribeth that the custome hath alwayes bene within the Manor, that what distresse soever is taken within his Manor, for any common persons cause, is to be impounded for a certaine time within his pound; this is no good prescription, for the Lord is hereby to receive a charge, and no commoditie: but if the prescription goeth further, that the Lord should have for every beast so impounded a certaine summe of money, this is a good prescription. If we desire to be more fully satisfied in the generall knowledge of prescriptions and Customes, we shall finde many Maximes, which make very materiall for this purpose, amongst which, I

have made choyce of these three, as most worthy of your observation.

1. Things gained by matter of Record only, cannot be challenged by prescription, and therefore no Lord of a Manor can prescribe to have felcons goods, fugitives goods, Deodands and such like; because they cannot be forfeited untill it appeare of Record: but waives, estraies, wrecks, and such like may be challenged by prescription, because they are gained by usage, without matter of Record.

2. A custome never extendeth to a thing newly created; and therefore if a Rent be granted out of Gavelkind-Land, or land in *Borough-English*, the rent shall descend, according to the course of the Common Law, not according to the Custome. If before the *Statute. 32. H. 8.* Lands were deviseable in any Borough, or City by speciall Custome; A Rent granted out of these Lands, was not deviseable by the same Custome; for what things soever have their beginning since the memory of man, Custome maintains not. If there be a Custome within a Manor, that for every

every house or cottage, 2^s. Fine shall be paid, if any Tenant within these liberties maketh two houses of one, or buildeth a new house, hee shall not pay a fine for any of these new houses; for the Custome onely extendeth to the old. So if I have Estovers appendant to my house, and I build a new house, I shall not have Estovers for this new built house upon this ground. It hath been doubted, if a man by Prescription hath course of water to his Fulling-mill, he converting these into Corne-Mills, whether by this conversion, the Prescription is not destroyed, in regard that these corne-mills are things newly created; but because the qualitie of the thing, and not the substance is altered; therefore this alteration is held insufficient to overthrow the Prescription; for if a man by Prescription hath Estovers to his house, although they alter the Roomes and Chambers in the house, as by making a Parlour, where there was a Hall, *vel e converso*, yet the Prescription stands still in force: and so if by Prescription I have an ancient Window to my Hall,

and I convert this into a Parlour, yet my neighbours upon this change cannot stop my Window; *Causa quæ supra.* 3. Customes are likewise taken strictly, though not alwayes literally. There is a custome in London, that citizens and freemen may devile in Mortmayne: A citizen that is a forreiner, cannot devise by this custome. An Infant by the custome of *Gavelkind*, at the age of fifteene, may make a Feoffment; yet he cannot by the custome make a Will at that age to passe away his Land; to make a Lease, and a Release, which amounteth to a Feoffment. If there be any custome that copyhold-lands may be leased by the Lord, *vel per Supervisor; vel deputatum supervisoris*: This custome giveth not power to the Lord, to authorize any by his last Will and Testament, to keepe a court in their owne name, and to make Leases, *Secundum consuetudinem Manerii*: but these customes have this strict construction, because they tend to the derogation of the common law; yet they are not to be confined to littrell interpretation; for if there be a custome

some within any Manor, that copyhold lands may be granted in *Feodo simplici*, by the same custome they are grantable to one, and the heires of his body, for life, for yeeres, or any other estate whatsoever; because, *Cui licet quod majus, non debet quod minus est non licere*; so if there be a custome that copyhold lands, may be granted for life; by the same custome they may be granted, *Durante viduitate*, but not *è converso*, because an estate during Widdowhood, is lesse then an estate for life. Before the Statute of 32. H.8. Lands in certaine Boroughs were devisable by custome: By the same custome was *implicitie* warranted, authorizing Executors to sell lands devisable. Now with your patience, I will onely point at the manner of pleading of customes, I finde a foure-fold kinde of Prescribing.

1. To prescribe in his Predecessours, as in himselfe, and all those whose estate he hath.

2. To prescribe generally, not tying his Prescription to place, or person, as where a Chiefe Justice pre-

scribeth, that it hath been used, that every Chiefe Justice may grant Offices; or where a Sergeant prescribeth, *Quod talis habetur consuetudo*, that Sergeants ought to be impleaded by originall Writ, and not by Bill.

3 To Prescribe a place certaine.

4 To prescribe in the place of another.
 The first sort of these Prescriptions, a Copyholder cannot use, in regard of the imbecillity of his estate; for no man can Prescribe in that manner, but onely Tenants in Fee simple, at the Common Law.

The second sort of these may be used sometimes by Copyholders in the pleading of a generall Custome, but in alledging of a particular Custome, a Copyholder is driven to one of the last, and as occasion serveth, he useth sometimes the one, sometimes the other. If he be to claime Common, or other profit in the soyle of the Lord, then he cannot Prescribe in the name of the Lord, for the Lord cannot Prescribe to have Common or other profit in his owne soyle; but then the Copyholder must of necessity Prescribe in a place certaine, and alleadge,

alleadge, that within such a Manor; there is such a custome, that all the Tenants within that Manor, have used to have common in such a place, parcell of the Manor: but if he be to claime common, or other profit in the soyle of a stranger, then he ought to prescribe in the name of his Lord, saying, that the Lord of the Manor, and all his Ancestors, and all those whose estate he hath, were wont to have a common in such a place for himselfe, and his Tenants at will, &c.

S E C. XXXIV.

THUS much of customes. I come now home to Copyholders: and in the third place I hold it the best course to dilate upon the manner and meanes of granting Copyholds; wherein I will onely rely upon these five parts.

- 1 Upon the person of the Grantor.
- 2 Upon the person of the Grantee.
- 3 Upon the Grant it selfe.
- 4 Upon the thing Granted.
- 5 Upon

5 Upon the Instruments, through whose hands, as through Conduits-pipes, the lands are *gradatim* conveyed to the Purchaser.

And first, of the person of the Grantor. Sometimes the Lord himselfe is Grantor; sometimes a Copyholder. In voluntary Grants made by the Lord himselfe, the law neither respecteth the quality of his Person, nor the quantity of his Estate; for be he an Infant, and so through the tenderness of his age, insufficient to dispose of any land at the Common law, or *non compos mentis*, an Idiot, or a Lunatique; and so for want of common reason, unable to traffique in the world; or an Out-law in any personall action, and so excluded from the protection of the law; or an Excommunicate, &c. and so restrained, *ab omnium fidelium communione*, or at least, à *Sacramentorum participatione*: notwithstanding these infirmities and disabilities, yet he is capable enough to make a voluntary Grant by Copy, for if a *feme seignioresse* take Baron, and they two joyn in a voluntary Grant
by

by Copy, this shall ever binde the *Feme* and her heires, and yet she is not *sui juris*, but *sub potestate viri*, because the custome of the Manor is the chiefe *basis*, upon which stands the whole fabrick of the Copyhold estate: and therefore what custome doth confirme to a Copyholder, the law will ever allow, and never seeke to avoid it, in respect of any such imperfection in the Grantors persons; and the quantity of the Lords estate is no more respected than the quality of his person: for if his interest be lawfull, be his estate never so great, or never so little 'tis not materiall; for be it in Fee, or be it in taylor or dower, or as Tenant by courtesie, for life or for years, as Guardian, or as Tenant by Statute, or as Tenant by Elegit, or at will; the least of these estates, is a sufficient warrant to the Lord, to Grant any Copyhold escheated unto him, for as long time as the custome doth allow; the ancient Rents and Services, being truely reserved: and these Grants shall ever binde them that have the Inheritance, or Frank-Tenement of the Manor, as well as offices

offices granted for life, by the chiefe Justice of the *Common Pleas*, whose office is but at will, shall ever conclude the succeeding Justice. The reason of the Law is this: A Copyholder upon voluntary Grants made by Copy, doth not derive his estate out of the Lords estate only, for then the Copyholders estate should cease, when the Lords interest determineth, *Nam cessante primitivo cessat derivativus*, but the life of the Copyholders estate is the custom of the Manor; and therefore whatsoever befalleth the Lords interest in his Manor, be it determined by the course of time by death, by forfeiture, or other meanes; yet if the Lord were *Legitimus Dominus pro tempore*; how small soever his estate was, that is enough: for the same custome that fixeth a Copyholder instantly in his land upon his admittance, will likewise preserve, and protect his interest, to the end, in such manner, that though the Lords interest faileth, yet his shall never fall to ground, being upheld by such a proppe, such a pillar, unlesse perchance the Copyholder offer violence

lence to his Founder in breaking the custome. If the Lord granteth a Copyholder from the Manor, by granting the inheritance to a stranger, though now one of the chiefe pillars of a Copyhold estate is wanting, viz. to be parcell of the Manor; yet because the Land, at the time of the Copyholders admittance, had this necessary incident, this severance, being a matter *ex post facto*, cannot amount to the destruction of the Copyhold, especiall being the sole act of the Lord himselfe. If a Manor be granted upon condition, and before the condition is broken, the Land is granted by Copy, then the Manor becomes forfeited, and the Feoffer entreteth; yet the Copyhold estate remaineth untouched, because lawfully established by custome, and yet all mean estates and charges whatsoever, granted by the Feoffee at the common law, were voidable upon the entry of the Feoffer; for we have a ground in law, that when an entry is made for breach of a condition, the party to all intents and purposes, is in the same plight that he was in at the time
of

of the making of the estate. If a man seized of a Mannor in Fee, dyeth seized, having issue, a Daughter, and his wife being *privement in seint* with a sonne, and the daughter granteth lands by Copy, this Grant shall stand good against the sonne, for the daughter was *Legitima Domina pro tempore*. So if the Feoffee of a Mannor, upon condition to infeoffee a stranger, the next day maketh a voluntary Grant by Copy, this shall binde, and yet his interest was to have but small continuance. If a Manor be granted with a *feme* in Franke marriage, and there is a divorce had, *causa precontractus*; so that now the interest of the Manor is granted to the *feme* onely, and by relation, the marriage is void, *ab initio*: yet because the Baron was *Legitimus Dominus pro tempore*, any Copyholders estates granted, before the divorce, remaines good. So if a man espouseth a *feme seignioresse*, under the age of consent, and after she doth disagree, though the marriage by relation was void, *ab initio*, yet Copyholds granted before disagreement, shall never

ver bee avoided, *causa qua supra.*

If the Lord of a Manor committeth felony or murder, and proces of outlawry be awarded against him; after the Exigent, he granteth Copyhold estates, according to the custome, and then is attainted, these Grants are authentick, though by relation, the Manor was forfeited from the time of the Exigent awarded. So if the Lord had been attainted by Verdict, or confession; any Grant by Copy, after the felony, or murder committed, shall stand good, notwithstanding the relation. If the Lord of a Manor acknowledge a Statute, and then granteth lands by Copy; and after the Manor is delivered to the Cognisee in extent, the Grant cannot by this be impeached. And if the Lord of a Manor taketh a wife, and after maketh Copyhold estates, according to the custome, and dieth, though the *feme* hath this Manor assigned unto her for her Dower, yet cannot she avoid these Copyhold estates, because the Copyholders are in by a title Paramount, the title of the *feme*, viz. by custome. But peradventure, if the heire

heire after the death of his Ancestor, before the assignment made unto the *feme* for her Dower, had granted Lands by Copy, the *feme* might avoid these Grants, because instantly upon the death of the Baron, her title received his perfection, and nothing more was wanting to the confirmation of her Interest: but though the quantity [of the Lords estate in the Manor be not respected, yet the quantity of his estate in the Copyhold is regarded: For if a Copyholder in Fee, surrender to the use of the Lord for life, the Remainder over to a stranger, or reserveth the Reversion to himselfe; if the Lord will Grant this by Copy in Fee, whatsoever estate the Lord hath in his Manor; yet having but an estate for life in the copyhold; no larger estate shall passe, then he himselfe hath,

Quia nemo potest plus juris in alium transferre quam ipse habet: and further observe, that sometimes the law respecteth the quantity of the Lordsestate in the Manor, for what acts soever are not confirmed by custome, but only strengthened by the power,

authority and interest of the Lords have no longer continuance than the Lords estate continueth: and therefore it is held, that if a Tenant for life of a Manor, granteth a licence to a copyholder to Alien, and dieth, the licence is destroyed, and the power of alienation ceaseth. As for the quality of the Lords estate in the Manor, that is much more now respected, than either the quantity of his estate, or the quality of his person: for if the Lord or he who soever it be that maketh a voluntary Grant by copy, hath no lawfull interest in the Manor, but onely an usurped title, his Grant shall never so binde the right owner; but that upon his entry he may avoide them, otherwise we should make custome an agent in a wrong, which the law will never suffer; and yet if the Lord of a Manor by his Will in writing deviseth, that his Executor shall Grant copyhold estates, *Secundum consuetudinem Mauerii*, for the payment of his debts, &c. and they make voluntary Grants accordingly: these Grants are good, notwithstanding the Executor hath no interest in the

Manor, nor is *Dominus pro tempore*.

If a Disseisor of a Manor dieth seized, notwithstanding his heire come in by ordinary course of descent, yet because the Tort commenced by his Ancestor, is still inherent to his estate; if any copyhold estate be granted by the heire, it may be avoided by the Disseisor, immediately upon his recovery, or upon his entry; and so if the Disseisor infeoffe a stranger of the Manor; notwithstanding the feoffee come in by title, yet no Grant made by him of copyhold land, shall ever binde the Disseised, no more than a Grant made by the Disseisor himselfe.

If Tenant in taile of a Manor discontinueth and dieth; and after the discontinuance Granteth copyhold estates, the heire recovering in a Forfeiture in the Descender, may avoid these Grants; for though the Discontinue come in under a just title, yet his interest being determined by the death of the tenant in taile, the continuance of the possession is a Tort to the heire; and Acts done by Tortfeasors

tending

tending to the dis-inheritance of the
 right owners custome, will never so
 strengthen, but they may be anihila-
 ted. So if a man seised of a manor
 in right of his wife, Alieneth this
 manor and dieth, any Grant made of
 copyhold estates, after his death may
 be avoided by the *feme*, upon her en-
 try, or upon her recovery, in a *Cui*
in vita.

If a manor be Granted, *pr. ant. vie,*
 and *Cestuy que vie* dieth, and the Gran-
 tee continueth still in the manor, and
 maketh Grants by copy, these shall
 not binde the Grantor of the manor;
 nor immediately upon the death of
estuy que vie, the Grantee was but
 Tenant at sufferance, and had no
 manor of lawfull interest, for a Writ
 Entry, *ad terminum qui preterit*,
 lieth against him, as against Defor-
 or.

And so if a Tenant for life of a ma-
 nor maketh a Lease for yeares of the
 same manor and dyeth; Copyhold e-
 states granted by the lessee, after the
 death of the Tenant for life, are void-
 le by the first lessor.

If a lessee for yeares of a manor

granteth a copy hold in Reversion, and before the reversion eichue, the terme is expired, the Grant is void; and so I take the law to be, if the Lessee surrendreth his terme, and then before his lease should have ended in point of limitation, Reversion falleth, yet the Grantee shall not have it.

If a Lease be made for yeeres of a Manor, the lease to be void upon the breach of a certaine condition, if the condition be broken, and afterwards the lessee before the entry of the lessor, granteth estates by copy; these Grants shall never exclude the lessor, for presently upon the breach of the Condition; the lease is void, but had the Manor been granted for life, in Tayle or in Fee, I think law would have fallen out otherwise, for before entry, the Frank-Tenement had not been avoided, and wheresoever a man may enter and avoid any estate of Frank-tenement, upon the breach of a condition, the law adjudgeth nothing to be in him before entry, and he may waive the advantage which he might take by the breach of the condition if he will, and therefore not

with

withstanding the accruer of the title of the Grantor : yet before this title be executed by entry, the Grantee hath such a lawfull interest, that what estate soever he granteth by Copy, in the interim shal stand good against the Grantor. And so if an Infant infeoffe me of a Manor, though he may enter upon me at his pleasure, yet Grants made by me, by copy, before his entry; shall never be defeated by any subsequent entry.

And the same Law is of Grants made by a Villaine purchaser of a Manor, before the entry of the Lord, or of Grants made after an alienation in Mortmayne, before the Lord Paramount hath entered for a forfeiture.

If a Parson after Institution, and before induction, a Manor being parcell of his Gleab Lands, grants Lands by Copy, and after is inducted: this admitting of the Copyholders, is no binding act, for though, as to the spiritualities, he be a compleate Parson, presently upon the institution, yet as to the temporalities, hee is not compleate before Induction. So if a Par-

Son be admitted, instituted and indu-
 cted, but doth not subscribe to the
 Articles, according to the Statute of
 13. Eliz. and granteth Lands by Co-
 py, as before: This Grant shall not
 conclude the succeeding Incumbent,
 because his Admission, Institution,
 and induction, were wholly voide in
 themselves; but had the Parson been
 deprived for crime or heresie, or for
 being meere *Laicus*, although he be
 declared by sentence, to be uncapable
 of a Benefice; and so his presentment,
 voide (*ab initio*) yet because the
 Church was once full, untill the sen-
 tence declaratory came; for though
 the deprivation shall relate to some
 purposes, yet because the Present-
 ment, is not in it selfe voide, surely
 a relation shall never be so much fa-
 voured, as to avoide a Copyhold
 estate in this kinde.

So much of Grants made by the
 Lords themselves. In Grants made
 by Copyholders, as the Law respect-
 eth the quality of the Copyholders
 estate, so doth it respect both the qua-
 lity of his person, and quantitie of his
 estate.

The quality of person ; for who-
soever is uncapable of disposing of
Land at the Common Law, cannot
without speciall Custome, passe away
any Copyhold. The quantitie of
his estate; for no Copyholder can pos-
sibly passe away more than is in him ;
and therefore, if there be joynt Te-
nants of a Copyhold, one cannot ali-
ene the whole. But if there be two
joynt Tenants of a Manor, and a
Copyholder escheateth, one of them
may grant this Copyhold, and his
Companion shall never avoide any
part of it.

If a Copyholder for life (the re-
mainder over in Fee to a stranger) sur-
rendereth in Fee, and the Lord ad-
mits accordingly, yet an estate for
life onely passeth.

So if the Lord of a Manor granteth
a Copyhold for life, where an estate
in Fee is warrantable, and the same
Grantee surrenders in Fee, to the use
of a stranger ; and the Lord admits
him, *secundum officium sursum redditio-*
nis; I think no Fee passeth: for though
the Lords admittance may, *prima fa-*
cie, seeme to amount to a confirmati-

on of the estate surrendered; the Reversion resting in him to dispose of, according to the Custome; as where a Lessee for yeeres; at the Common Law, maketh a Feoffment in Fee, and maketh a Letter of Attorney to his Lessor, to deliver Livery and seisin, who executeth it accordingly, though the Lessor be used as an instrument to performe the will of the Lessee; yet this being his voluntary act, the Law taketh it as a consent for the passing away of the whole inheritance; but if you look narrowly into both Cases, you shall finde the difference in the Latter Case, by the Feoffment, the Fee is devested out of the Lessor; and therefore a consent will serve to transfere the Reversion; but in the former Case, the Reversion is not pluckt out of the Lord, by the Surrender, and therefore an implied consent is too weake to remove it. I will onely adde one observation more, and so I will end with the Grantor.

The Law is not so strict to a Copyholder, as that he must come personally into Court, upon making of every Surrender, but they may Sur-
ren-

surrender by Attorney, as well as Livery and Seisin may be made by Attorney at the Common Law; and should the Law be otherwise, great inconveniencie would eniue; for how should Copyholders that are in prison, or languishing upon bed, or beyond the Seas, surrender, but by Attorney.

But note this difference, if a man hath a bare Authority joyned with a Confidence without interest, this Authority cannot be executed by Attorney; and therefore If I devise, that my Executors shall sell my Land, they cannot sell it by Attorney, for that were to make an Attorney upon Attorney, which the Law will in no wise permit; and though a man have an Authority joyned with an interest, yet if the Authoritie be warranted by speciall custome onely, it cannot be executed by an Attorney: and therefore if there be a speciall Custome, that a Copyholder for life may make estate, for 20. yeers to continue after his death, these estates cannot be made by Attorney. So if there be a speciall Custome, that an Infant at the age of discretion may surrender a

Copyhold ; this Surrender being confirmed by speciall Custome onely, cannot be made by Attorney. And so if there be a custome, that a Copyholder out of the Court may surrender into the hands of the Lord, by the hands of two Customary Tenants, such Surrenders must be done in person.

But wheresoever there is a generall Authoritie, accompanied with an interest, that Authoritie may be executed by Attorney, as *Cestuy que use*, after the Statute of 1.R.3. and before the Statute 27. H. 8. might have aliened by Attorney ; for at that time he had an absolute Authority to dispose of the Land at his pleasure, without any confidence reposed in him. And thus much of the Grantor ; A word of the Grantee.

S E C.

SEC. XXXV.

THe same persons that are capable of a Grant by the Common Law, are capable of a Grant by Copy, according to the Custome of the Manor.

An Infant, a man of *non sana memorie*; an Ideot, a Lunatique, an Outlaw, or an Excommunicate, may be Grantees of a Copyhold estate.

The Lord himselfe may take a Copyhold to his owne use, one joynt Tenant may receive a Copyhold from the hands of his joynt companion, because it passeth by Surrender, not by Livery.

A *feme covert* may be a purchaser of Copyhold, and this purchase shall stand in force, untill her Husband disagreeeth. Nay, further, a *feme covert* may receive a Copyhold estate by surrender from her husband, because she commeth not in immediately by him, but by mediate meanes, *viz.* by the admittance of the Lord according to the Surrender.

As

As the *Feme* is capable of receiving a Copyhold from the hands of the Baron; so by speciall Custome, the Baron may take a Copyhold from the hands of his *Feme*, for in some Manors, customes do enable the *Feme* to devise a Copyhold to the Baron, but this custome hath been much impugned, therefore I dare not justifie the validity of it.

What persons soever are capable of a Grant by Copy, may well take by Attorney, not that the Lord shall be enforced to admit any one by Attorney, because upon every admittance, there is fealty due by the party admitted, which is a duty so inseparably annexed to the persons, that it cannot be discharged by deputy, and therefore no reason the Lord should be enforced to admit by Attorney, but if he will admit him, it standeth good.

It is not necessary, that upon Surrenders of Copyholds, the name of the partie to whose use the Surrender is made, be precisely set down; but if by any manner of circumstance, the Grantee may be certainly known, it
is

is sufficient. And therefore a Surrender made to the Lord Archbishop of Canterbury, or the Lord Major of London, or the high Sheriffe of Norfolk, without mentioning, either their Christian-name, or Sir-name, are good enough, and certaine enough, because they are certainly known by this name, without further addition. So if I Surrender to the use of the next of my blood, to the use of my wife, to the use of my brother or sister, having but one brother, or one sister, these Surrenders are good without any additions, because the Grantee may certainly be knowne by these words.

If I Surrender generally into the hands of the Lord, not expressing to whose use the Surrender shall be, this Surrender is a good Surrender, and shall enure to the benefit of the Lord.

If I Surrender to the use of my son *W.* having more tonnes than one of that name, yet by an averment, this incertainty may be helped.

But if I surrender to the use of my cosin, or my friend, this is so generall, and

and so uncertaine, that no subſequent
 manifeſtation of my intention can
 any way ſtrengthen it.

So if three Surrender, to the uſe of
 three or foure of *St. Dunſtons* Pariſh,
 not naming the Pariſhioners by their
 names, this Surrender is utterly
 void.

And ſo if I Surrender in the diſ-
 junction to the uſe of *I. L.* or *I. N.*
 this is inſufficient for the uncertai-
 nty.

And in cuſtomary Grants upon
 Surrenders, the Law is not ſo ſtriſt, as
 in Grants at the Common law, for in
 Grants at the common Law, if the
 Grantee be not *in rerum natura*, and a-
 ble to take by vertue of the Grant,
 preſently upon the Grant made, it is
 meere void. But in cuſtomarie
 Grants upon Surrenders, the law is
 otherwiſe: for though at the time of
 the Surrender, the Grantee is not in
eſſe, or not capable of a Surrender, yet
 if he be in *eſſe* and capable at the time
 of the Admittance, that is ſufficient;
 and therefore if I Surrender to the
 uſe of him that ſhall be heire to *I. S.*
 or to the uſe of *I. S.* next childe, or to
 the

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the use of *I. S.* next wife ; though at the time of the Surrender *I. S.* had no heire, childe, or wife : yet if afterwards he hath a childe, or taketh a Wife, his heire, his childe, or his wife may come into the Court, and compell the Lord to admit according to the Surrender. So if I Surrender to the use of him that shall come next into *Pauls* after such an houre, whose fortune soever it is to come first, the Lord must admit, and I shall never avoide it.

The same law is, if I Surrender to the use of him, that *I. S.* shall nominate, or that I my selfe shall nominate to the Lord at the next meeting; the reason of the law is this, a Surrender is a thing executory, which is executed by the subsequent Admittance, and nothing at all is invested in the Grantee, before the Lord hath admitted him according to the Surrender, and therefore if at the time of the Admittance the Grantee be in *rerum natura*, and able to take, that will serve.

Besides in Customary Grants, the intent of the Grantor is more respected.

cted than it should be by the strict rules of the law, which appeareth by this; that if a surrender be made of a Copihold to the use of a last Will, and the surrender deviseth it unto two the one is admitted according to the purport of the Will, this shall inure to both; but though the Surrender be a thing executory, and the intent of the Grantor so much favored: yet if a Copiholder will Surrender to the use of the right heires of *I. S.* he being alive, this is void because it cannot take effect according to the intent of the Grantor; for he would have the grant to be executed presently, which cannot be in regard that *I. S.* can have no heire till after his death: So much of the Grantee, and I come now to the Grant it selfe.

SEC. XXXVI.

A Copyhold interest cannot bee transferred by any other, assurance then by copy of Court Role, according to the custome.

If I will exchange a copyhold with another, I cannot doe it by an ordinary

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ary exchange at the common law, but we must surrender to each other's use, and the Lord admit us accordingly.

If I will devise a Copihold I cannot doe it by will at the common law, but I must Surrender to the use of my last Will and Testament, but in my Will I must declare my intent.

If I am ousted by a Copyholder, a release made to him is void, because it would be a prejudice to the Lord, & besides there is no customary right upon which the release may inure, but a release inuring by way of extinguishing where no prejudice accrueeth to the Lord, will serve to drown a Copyhold right, and therefore if I surrender out of Court upon condition, to the use of *I. S.* and the presentment is made absolute in Court, and the admittance framed accordingly, this admittance and presentment differing from the effect of the Surrender, are both void. Yet because upon the admittance the Lord is satisfied of his fine, and so nothing at all prejudiced, and besides here is a customary right,

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upon

Co. 4. f. 25.

upon which the release may be grounded, I may by a release at the common law, sufficiently confirme this voide estate. And so upon the same reason if I am ousted of a Copyhold, and the Lord admit him according to the custom, a release made by me at the common law will extinguish my right; but if I make a lease for yeares of a Copyhold, I cannot by my release passe my Reversion, because this release injureth by way of enlargement to transferre an interest, and not by way of extinguishment, to drown a right, but my way is to surrender my reversion into the hands of the Lord, and he to Grant it over to the lessee.

SEC. XXXVII.

IF Copyhold land come into that plight that it cannot passe by Copy, it is become not alienable, and therefore if the Lord of a Manor will grant to me a Copyhold in Fee, and after will grant the inheritance of this Copyhold to a stranger, in regard that now my Copyhold is become no parcel

cell of the Manor, and so I cannot surrender into the hands of the Lord and the Grantee of the inheritance, though I am to him a tenant, and am tyed to doe unto him all manner of services which are due without keeping of Court; as to pay Rent, to discharge Herriots and all other Duties of the same nature: yet because the Grantee cannot keep a Court, and so is incapable of taking a Surrender, or making an admittance, therefore I cannot by any meanes alien; for no conveyance at the common law will serve, because it remaineth still Copyhold notwithstanding, and what customs soever were incident to the land before severance, doe remain still undestroyed; as if the land were Burrow English, or Gavelkinde before, it so continueth, and a decree in Chancery will not serve no more than an ordinary assurance at the common law; for that bindeth my person only, not my interest: sithence therefore Copyhold estates cannot be conveyed away otherwise than by Copy of Court role, according to the custome, let us examine the nature of these customarie

Co. 4. fo. 24.

grants, wherein three branches are to be considered.

- 1 The Surrender.
- 2 Presentment.
- 3 Admittance.

In some Grants a Surrender is sufficient without Presentment or Admittance.

In some an Admittance without a Surrender or Presentment.

In some a Surrender and Admittance, and both necessary ; and in some, a Surrender, Presentment, and Admittance, are all requisite.

S E C. XXXVIII.

IF a Copiholder will Surrender to the use of the Lord, the interest of the Copyhold is sufficiently vested in the Lord immediately upon the Surrender, without any admittance of the Lord, because the Lord cannot admit himselfe.

If the Lord will make a voluntary grant of a Copihold, no Surrender is requisite, for by the admittance

mittance of the Lord according to the custome, the Copyholder is sufficiently settled in this land without any other ceremony.

If a Copyholder will Surrender in Court to the use of a stranger, besides the surrender, the Admittance is requisite; and if the Surrender be made out of Court into the hands of the Lord himself, which the generall custome will warrant, or into the hands of the Bailiffe, or of two Tenants of the Manor, which by speciall custome onely is warantable, besides a Surrender, two other ceremonies are requisite; the one a true presentment of the Surrender in Court, by the same persons into whose hands the Surrender was made; the other is an Admittance of the Lord, according to the effect and tenor both of the Surrender and presentment.

But now more particularly of every one of them apart, and first of a Surrender.

SEC. XXXIX.

THis word Surrender, is *vocabulum artis*, and therefore where a Surrender is needfull, if this one word be wanting, all other words, used in ordinary coveiances, are uneffectuall and insufficient to convey any Copyhold estate, for if a Copyholder come into Court, and offer to passe his Copyhold by word of grant, of gift, of bargaine, or sale, or such like, I doubt he will faile of his purpose, for as he is tyed to a singular forme of assurance, so is he restrained to peculiar words in his assurance.

Surrenders are made in severall sorts according to the severall customes of Manors.

In some Manors, where a Copyholder surrendereth his Copyhold, he useth to hold a little rod in his hand, which he delivereth to the Steward or Bayliffe, according to the Custome of the Manor, to deliver it over to the party, to whose use the Surrender was made in the name of
Seisin,

Seisin, and from thence they are called Tenants by the Verge.

In some Mannors, in stead of a wand, a straw is used, and in other Manors a glove is used, *Et consuetudo loci semper est observanda.*

A Surrender (where by a subsequent Admittance the Grant is to receive his perfection and confirmation) is rather a manifesting of the Grantors intention than of passing away any interest in the possession: for till Admittance, the Lord taketh notice of the Grantor as Tenant, and he shall receive the profits of the Land to his owne use, and shall discharge all Services due to the Lord, but yet the interest is in him, but *secundum quid*, and not absolutely; for he cannot passe away the Land to any other, or make it subject to any other incumbrance than it was subject to at the time of the Surrender, neither in the Grantee is any manner of interest invested before admittance; for if hee enter, he is a trespasser, and punishable in trespasse; and if he surrender to the use of another, this Surrender is meerey voide, and by no matter,

ex post facto can be confirmed; for though the first Surrender be executed before the second; so that at the time of the Admittance of him, to whose use the second Surrender was made, his Surrenderer hath a sufficient interest as absolute owner; yet because at the time of the Surrender, he had but a possibility of an interest; therefore the subsequent admittance, cannot make this Act good, which was void *ab initio*: but though the Grantee hath but a possibilitie upon the Surrender, yet this is such a possibility, as is accompanied with a certainty, for the Grantee cannot possibly be deluded, or defrauded of the effect of his Surrender, and the fruits of his Grantee: for if the Lord refuse to admit him, he is compellable to doe it by a *Sub pena* in the Chancery, and the Grantors hands are ever bound from the disposing of the Land any other way, and his mouth ever stopped from revoaking, or countermanding his Surrender. But peradventure, if a Copyholder languishing in extremity, Surrendereth out of Court, to the use of his

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Cofin, in consideration of consanguinitie, or to the use of his sonne, in consideration of naturall love and affection, and after, recovereth his health before presentment, this Surrender is recoverable, or countermandable: but if it be granted upon valuable consideration; as for the discharge of debts, or for a summe of money paid, though it be made out of Court, yet it is as binding as any Surrender whatsoever made in Court. And thus much of a Surrender; a word of a Presentment.

SEC. XL.

THe Presentment by the generall Customes of Manors, is to be made at the next Court day, immediately after the surrender: but by speciall Custome, in some places, it will serve at the second or third Court. And it is to be made by the same persons that took the surrender, and in all points materiall, according to the true Tenure of the Surrender. And therefore if the Surrender be
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conditionall, and the Presentment be absolute, both the Surrender, Presentment and Admittance thereupon are wholly void.

But if the Conditionall Surrender be presented, and the Steward in entering of it, omitteth the Condition; yet upon sufficient prooffe made in Court, the Surrender shall not be avoided, but the Roll amended, and this shall be no conclusion to the partie, to plead or give in evidence of the truth of the matter.

If I surrender out of Court, and die before Presentment; if Presentment be made after my death, according to the Custome, this is sufficient; so if hee, to whose use the Surrender is made, dieth before Presentment, yet upon Presentment made after his death, according to the Custome, his Heire shall be admitted: and so, if I Surrender out of Court, to the use of one for life, the Rendrou, and the Lessee for life dieth before Presentment, yet upon Presentment made, he in the remainder shall be admitted. And so, if I Surrender to two joyntly, and one dieth before
Pre-

Presentment, the other shall be admitted to the whole. The same law is, if those into whose hands the Surrender is made, die before Presentment, upon sufficient prooffe in Court, that such a Surrender was made, the Lord shall be compelled to admit accordingly; and if the Steward, the Bailiffe, or the Tenants, into whose hands the Surrender is made, refuse to present, upon a Petition, or a Bill exhibited in the Lords Court; the party grieved shall finde remedy. But if the Lord will not doe him right, he may both sue the Lord, and them that took the Surrender, in the Chancery, and shall there finde reliefe. Thus much of Presentments. A word of Admittance.

SEC. XLI.

- Admittances are threefold:
1. An Admittance upon a voluntary Grant.
 2. An Admittance upon Surrender.
 3. An Admittance upon a Discant.
- In

In voluntary admittances the Lord is an instrument; for though it is in his power to keep the land in his own hand; or to dispose of it at his pleasure and to that intent may be reputed as absolute owner, yet because in disposing of it, he is bound to observe the Custome precisely in every point, and can neither in Estate nor Tenure bring in any alteration, in this respect the law accounts him Customes instrument. If the Custome doth warrant an estate onely, *Durante viduitate*, and the Lord admits for Life; this shall not binde his heire or successor, because custome hath not sufficiently confirmed it. So if the Lord faile in reserving *verum & antiquum redditum*; as if he reserveth ten shillings, where the usuall rent customably reserved, is twenty shillings: this may be a meanes to avoid the admittance, and the law is very strict in this point of reservation: for though the ancient accustomable rent be reserved according to the quantity; yet if the quality of the rent be altered, the heire may avoid this Grant: for if the ancient rent from time to time hath

hath been twenty shillings in Gold, & the Lord reserveth it in Silver, this variance of the quality of the rent is in force to destroy the Grant : so if the ancient rent hath been accustomably paid at foure Feasts in the yeare, and the Lord reserveth it at two Feasts, So, if two Copyholds Escheate to the Lord, the one of which hath been usually demised for twenty shillings rent, the other for tenne shillings rent, and he granteth them both by one Copy, for one rent of thirty shilling, this is not good ; and so if a copyhold of three acres Escheates, which hath been ever granted for three shillings rent, and the Lord granteth one Acre, and reserveth *pro rata*, one shillings rent, *verus & antiquus reddit*, is not reserved : but if a Copyhold of six Acres, which hath ever been demised for six shillings rent, Escheateth to two Copartners, and one granteth three Acres, reserving three shillings *pro rata*, this is a perfect reserving.

In Admittances upon surrender, the Lord to no intent is reputed as owner, but wholly as an instrument, and the party admitted, shall be subject

Co. 4. fo. 27. b.

to no other charges or incōbrances of the Lord, for he claimes his estate under the party that made the surrender: and in the plaint, in the nature of a Writ of entry in the *per*, it shall be supposed in the *per* by him, not by the Lord; and as in admittances upon surrenders; so in admittances upon discents, the Lord is used as a meer instrument, and no manner of interestt passeth out of him, and therefore, neither in the one nor in the other, is any respect had unto the quality of his estate in the Manor: for whether he hath it by right, or by wrong it is not materiall, these admittances shall never be called in question for the Lords title, because they are judiciall acts, which every Lord is enjoyned to execute.

Co. 1. 140. b.

Besides in admittances upon Surrenders, the Lord being accounted nothing but a necessary instrument, it followeth that he hath a bare Customary power to admit, *secundum formam & effectum sursum reddendi*: therefore if there be any variance betwene the Admittance and Surrender either in the person, in the estate, or in the tenne,

renuse, or in any other collaterall points, the Lord doth only transference an estate according to the Surrender and his authority if it can take such effect. As if I Surrender to the use of *I. S.* and the Lord admits *I. N.* this admittance is wholly void; and notwithstanding this admittance the Lord may afterwards admit *I. S.* according to the effect of his authority: but had he admitted *I. S.* and *I. N.* joyntly, then the admittance had been void for the one, and good for the other, like the Case of a Devise: where a Devise of a terme is made to *I. S.* and the Executors agree, that *I. S.* and *I. N.* shall have this terme; this consent is void to *I. N.* for after the consent of the Executor, *I. N.* is in by the Devise. Yet some are of opinion, that if I surrender to the use of *I. S.* in Fee, and the Lord admits *I. S.* together with his eldest sonne and heire apparent, that this is an estate by Estoppel to *I. S.* and that he shall only claime jointly with his sonne, because hee might have refused an admittance in this manner; but I can hardly be brought, to think that this admittance
giving

Co. 4. fo. 23.

Giving a present interest in the sonne, who by surrender was to have no interest till the death of his father, should be any such estoppel.

Co. A. fo. 29. If I Surrender to the use of *I. S.* for life, and the Lord admits him in Fee, an estate for life onely passeth. So if I surrender without mentioning any certaine estate, because by implication of the law, estate for life only passeth, though the Lord admit in Fee, no more doth passe, than the implication of law will warrant. If I Surrender with the reservation of a rent, and the Lord admits not, reserving any rent, or reserving a lesse rent than I reserved upon the surrender, this admittance is wholly void: but if the Lord reserveth a greater rent, then is the reservation void, onely for the surplusage, and the admittance so far currant as it agreeth with my surrender. If I surrender upon Condition, and the Lord omits the Condition, the admittance is wholly void; but if my surrender be absolute; and the Lords admittance be conditionall, the Condition is void, but the admittance in all points else is good.

Co. A. fo. 25.

The reasons of these diversities are

are these, where an Authority is given to any one to execute any Act, and he executeth it contrary to the effect of his authority, this is utterly void; but if he executeth his authority, and withall goeth beyond the limits of his warrant, this is void for that part only, wherein he exceedeth his authority. These Admittances upon Surrender, differ from Admittances upon Discents in this; that in Admittances upon Surrender, nothing is vested in the Grantee before Admittance, no more than in the Voluntary Admittances; but in admittances upon Discents, the heire is Tenant by Copy immediately upon the death of his Ancestor, not to all intents and purposes; for peradventure he cannot be sworne of the homage before, neither can he maintaine a plaint in the nature of an Assize in the Lords Court before, because till then he is not compleate Tenant to the Lord, no further forth then the Lord pleaseth to allow him for his Tenant. And therefore, if there be Grandfather, Father, and Sonne; and the Grandfather is admitted, and dyeth,

the Father entreth, and dyeth before admittance, the Sonne shall have a plaint in the nature of a Writ of Ayell, and not an Affize of *Mort d' aunccestor*, so that to all intents and purposes, the Heire, till Admittance, is not compleat Tenant; yet to most intents, especially as to strangers, the Law taketh notice of him, as of a perfect Tenant of the land instantly upon the death of his Auncestor, for he may enter into the Land; before Admittance, take the profits, punish any trespasse done upon the ground, Surrender into the hands of the Lord, to whose use he pleaseth, satisfying the Lord his fine, due upon the Discent, and by estoppell, hee may prejudice himselfe of his inheritance, for if an Estrange come and Surrender to the use of him and his Wife, before Admittance, he shall ever claime joyntly with his Wife, and never be taken as sole Tenant, and the Lord may avow upon him before admittance, for any arerrages of Rent, or other Services: and last of all, upon an actual possession there shall be *possessio fratris*, before admittance, for if a Co-

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Co. 4. fo. 23.

Co. 4. fo. 22. b.

pyholder in Fee have issue, a Sonne and a Daughter by one Venter, and a Sonne by another Venter, and dyeth seised, and his Sonne by the first Venter, entreth into the Land, and dyeth before Admittance, the Daughter shall inherit, as Heire to her brother; and not the Sonne by the second Venter, as Heire to his Father: and many times the possession of a Guardian, or a Tearer, without an actuall entry, or any claime made by the Heire, will make a *possessio fratris*. As if a Copyholder in Fee, having issue, a Sonne or a Daughter, by one Venter, and a Sonne by another Venter; by licence of the Lord, maketh a Lease for yeers, and dyeth, and the Sonne of the first Venter dyeth, before the expiration of the Terme, being neither admitted, nor having made any actuall entry, or any claime. Yet this possession of the Lessee is sufficient, and the Reversion shall descend to the Daughter of the first Venter, and not to the Sonne of the second Venter. But if the Lease had bene determined, the Sonne living, by the first Venter, and afterwards he had

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dyed before any actuall entry made,
 the Law would have fallen out o-
 therwise, because there was a time,
 when he might have lawfully entered;
 therefore, where some have imagined
 that nothing should be invested in the
 Heire before Admittance; because e-
 very Admittance of an Heire, upon a
 Discnt, amounteth to a grant, and so
 may be pleaded, they are in an error;
 for though it be true, that after Ad-
 mittance, the Heire may in pleading
 alledge this as a Grant, and that hath
 beene allowed, to avoide the inconve-
 niences that otherwise should ensue;
 For if the Copyholder should be dri-
 ven in pleading, to shew the first
 Grant, either that being made before
 the memory of man, is not pleadable,
 or since the memory of man, and
 then Custome failes, for this reason,
 the law hath allowed a Copyholder,
 in pleading to alledge any Admit-
 tance aswell upon a Discnt, as upon
 a Surrender, as a Grant: and yet he
 may, if he will, alledge the admittance
 of his Ancestors, as a Grant, and
 shew the Discnt to him, and that he
 entred, and well, without any Admit-
 tance;

tance; but the Heire cannot pleade that his Ancestor was seised in Fee, at the will of the Lord, by Copy of Court Roll, of such a Manor, according to the Custome of the Manor, and that he dyed seised, and that the Copyhold discended upon him, because in truth such an interest is but a particular interest at will, in judgement of Law, although it be discenable by Custome.

So that I conclude, that an admittance is principally for the benefit of the Lord, to intitule him to his Fyne, and not much necessary for strengthening of the Heires title.

Then will some say, if the benefit which the Heire shall receive by the Admittance, will not countervaile the charges of the Fyne, he will never come in, and take up his Copyhold in Court, and so defeate the Lord of his Fine: I assure my self, if it were in the election of the Heire to be admitted, or not to be admitted, he would be best contented without admittance, but the Custome in every Manor is compulsory in this point, for either upon paine of forfeiture of

their Copyhold, or of incurring some great penalty, the Heires of Copyholders are enforced in every Manor to come into Court, and be admitted according to the Custome within a short time after notice given of their Ancestors decease. And thus much of the Grant it selfe. A word of the things granted.

S E C. XLII.

THings that lye not in Tenure, are not Grantable by Copy. As Rents, Bailiwicks, Stewardships, Common in grosse, Advowsons in grosse, and such like. All which are incorporate Hereditaments, and therefore no Rent can issue out of them; neither can they be held by any manner of Service, but an Advowson appendant, a Common appendant, or a Faire appendant may passe by Copy, by reason of the principall thing to which they are appendant, and generally what things soever are parcell of the Manor, and are of perpetuity, may be granted by Copy, according to the Custome, as Under-woods growing
up-

upon the Manor, being things of continuance (for after they are cut, they will grow againe ; *ex stipitibus*) may well be granted by Copy ; and so of herbage or any other profit of the Manor ; and sometime of the Grant of a Copyhold, things shall passe that are severed from the Manor. As if the Lord of a Manor grant his Manor for yeers, *except. bosc. & subosc.* growing in certaine Copyhold ground, and the Lessee by his Steward granteth a Copyhold, within which Manor there is a Custome, that every Copyholder may take within his Copyhold Woods, and Under-woods, growing upon the ground for his necessary fuel, notwithstanding this exception in the Lease of the Manor, the Copyholder may cut downe the Woods or Underwoods, according to the Custome, though by exception severed from the Manor, for though the Lessee of the Manor, in respect of the exception, could not meddle with the Woods or Under-woods, and so it might seeme, *prima facie*, very probable that the Copyholder, comming in by the voluntary admittance of

Co.4. fo. 31.

the Lessee, should have no more Authority nor interest then the Lessee himselfe had; yet because the Copyholder being once in by Custome, and so his title being grounded upon custome is paramount the exception; Therefore, the exception in the lease of the Manor, though preceding the Grant of the Copyhold, cannot any way touch or prejudice the Copyholder. And so, if there be a Custome, within a Manor that Copyholders have used to have Common in the Wastes of the Lord, and the Lord granteth away his Wastes, and after granteth a Copyhold, the Copyholder shall have common, but in alledging the Custome, he shall not say, *Quod infra Maner. pred. talis habetur consuetudo.* but that till such a time, viz. before the severance, *talis habebatur & toto tempore, &c. consuetudo,* and then shew the severance. If there be an incertainty in the things granted, the Grant is not therefore insufficient; for by the election of him that is the first agent, it may be made certain.

As if I grant by Copy, twenty loads of Hasell, or twenty loads of Maple
in

in the dis-junctive to be cut downe,
and taken by the Grantee in my Ma-
nor of Dale, there the Grantee hath
election to make choyce of which he
pleaseth, because he is to perform the
first Act of cutting down, and taking
them, but if I am to cut them down,
and deliver them to the Grantee, then
have I the election, & observe this dif-
ference touching this point of electiō.

Co.2.fo.37.a.

Co.4.fo.27.

If a Grant be made in the dis-junctive of two annuall things, and things of continuance; if the election belong to the Grantor, and he faileth at the day to make election, yet his election is not determined, but continueth the same after the day, that it was before the day, but otherwise it is, where things are not annuall, but are to be performed *unica vice tantum*.

Therefore if the Lord of a Manor granteth by copy, twenty trees growing upon Black acre, or White acre, to be cut down yearly by himselfe, and to be delivered to the Grantee at such a day, though the Grantor faile at his day to make his election, yet his election is not gone, because the things granted are annuall, but had these
trees

trees been to be delivered to the Grantee once onely, and not yearly, then by the failor of the Grantor at the day, the election is devolved to the Grantee.

SEC. XLIII.

AND thus much of the thing granted, a word of the Instruments, through whose hands, as through Conduit-pipes, the lands are *gradatim*, conveyed to the purchaser; I will not speak of those men, that are used as Instruments by speciall Custome to present in Court, Surrenders taken out of Court. These I have sufficiently spoken of already. I will here point only at these persons; that by the generall Custome of every Manor, are imployed as necessary Instruments in Customary admittances, and will curfarly examine the extents of their authorities, and the quality of their offices.

The persons I ayme at are these;

- 1 The Lord.
- 2 The Steward.
- 3 The Under-Steward.

SEC. XLIV.

THE Lords Authority consisteth chiefly in these foure thing.

1 In punishing offences, and misdemeanors, committed within his precincts, as not performance of Customs, breach of by-lawes, not discharging of duties, and such like.

2 In deciding controversies arising about the title of Copyhold land, lying within his bounds; and when he sitteth as Judge in Court, to end debates of this nature, he is not tied to the strict forme of the common law, for he is a Chancellor in his Court, and may redresse matters in Conscience upon Bill exhibited, where the common law will afford no remedy in the same kinde, as to insist in one familiar example.

If I Surrender a Copyhold to the use of a stranger, upon confidence, that such debts being by me discharged, he shall Surrender backe this Copyhold; I upon discharge of the debts demand a Surrender, and he refuseth,

fuseth, at the common law I were left remediless, this being a bare confidence, and no Condition, but upon Bill exhibited in the Lords Court I shall be relieved, for the Lord upon proove of the matter may seize the Copyhold, and readmit me, according to the effect of the Confidence.

Co. 4. 31. A.

3 In admitting Copyhold. And in this Customary power of admittance, the Lord doth somewhat outstrippe the Steward, for the Lord may make either admittances upon voluntary Grants, admittances upon Surrenders, admittances upon discent, in any place where he pleaseth out of the Manor, but so cannot the Steward: and in giving licence to Copyholders to aliene by deed, and in this point of licence, the Lords authority doth exceed the Stewards authority; for though some are of opinion, that it is both usuall and warrantable, for the Steward of a Manor in absence of his Lord, to licence a Copyholder in full Court to aliene by Deed, for as many yeares as he shall think good, because he is Judge in the Court; and besides, the entry of it in
the

the Court Role is in this manner. *Ad
hanc curiam. I. S. petit Licentiam Do-
mini dimittendi, &c. Cui Dominus li-
centiam dat, &c.* and therefore this
licence being granted in the Lords
name in full Court, the Lord shall
never enter for a forfeiture, but shall
ever be estopped, to say the contrary,
but that he did give licence, yet (un-
der reformation be it spoken) I must
mistrust the truth of this opinion; for
this power of licensing Copyholds to
alien by Deed, is not Customary, for
then it were as proper to the Steward
as to the Lord; but it is a power of
interest annexed to the person of the
Lord, in respect of his estate in the
Manor, and not in any other Collate-
rall respect; and therefore if the Ste-
ward having a bare authority to exe-
cute what the Custome of the Manor
doth warrant, *sans doubt*, he cannot,
virtute officii, grant any unwarranta-
ble licence to aliene by deed, no more
than to commit waste: for the one
act, as well as the other, tendeth to
the breach of custome, and both of
them without a sufficient allowance,
amounts, to the forfeiture of a Copy-
hold,

hold, but by expresse words in the Stewards Patent, or by speciall authority given him by the Lord, or by some particular Custome warranting the same, the Steward may in Court lawfully licence Copyholders, to aliene as well as the Lord may. And thus much of the Lord.

S E C. XLV.

STeward, is derived from those two words, *Stede* and *Ward*; and so any that doth supply anothers place or that is in any employment deputy to another, may according to the true sense of the word bee termed a Steward, as the high Steward of *England*, because the King appointeth him in divers matters to exercise his place: and so the under Sheriffe may be termed by the name of the Sheriffes Steward, being his Deputy, and how properly the Lords Steward is so named, any man may judge by this, that the whole authority of the Steward is derived from the Lord, as from the head; & not only so, but withall he representeth the Lords person in many
im-

employments, for in the Lords absence he sitteth as Judge in Court to punish offences, determine controversies, redresse injuries, and the like; and further, some things he performeth in the Lords name, and not in his own name, for if the Steward admitteth any Copyholder, or by speciall Authority, or particular Custome, licenceth a Copyholder to aliene, this admittance and licence shall be made in the Lords name, and the entry in the Court Role, shall be, *Quod Dominus per Senescallum admisit, & licentia- vit*, and not that the Steward did admit, or licence; therefore sithence the Steward hath this measure of authority and confidence committed unto him, the Lord shall doe very well to be very carefull in making choise of his Steward; for if he bee defective in any one of these three qualities, Knowledge, Trust, or Diligence; the Lord may be much prejudiced and damnified; therefore *Fleta* wisely giveth the Lord this counsell.

Provideat sibi Dominus de Senescallo circumspetto & fideli & pacifico &

*modesto, qui in legibus consuetudinibus-
que provincie Domini sui in omnibus
tueri affectet, quisque Ballivos Domini
in suis erroribus & ambiguis sciat in-
struere & docere, quique egenis par-
cere, & nec prece vel pretio velit à trami-
te justitia deviare & perverse judi-
care.*

These Stewards for the most part,
have Patents for their Offices, yet
they may be retained by Paroll, and
this retainer by Paroll, is as effectual
in all points before discharge, as the
most effectual institution by Patent:
for a Steward thus retained, may take
Surrender out of Court, or make
voluntary Admittances, or any other
Act incident to the office of a Ste-
ward, as well as a Steward institu-
ted by Patent. But in the Kings
Manors, a Steward cannot be retained
by Paroll by the mouth of the Audi-
tor or Receiver; but to make the
Stewards authoritie currant, espe-
cially to make voluntary admittan-
ces; it is necessary he have a Patent,
and then, by vertue of his Patent,
without any speciall Authority, or
particular Custome, hee may justifie
the

Co. 4. fol. 30. b.

Co. 4. fol. 30. a.

the making of any voluntary admittance, upon Escheates or forfeitures, or the doing of any Act belonging to his Office; but though he may *Ex officio*, doe those things without special warrant, yet dutie bindes him before he make any voluntary admittance to informe the Lord Treasurer of *England*, the Chancellor, and Barons of the Exchequer, or any of them for his better direction, and the Kings better benefit: the Law is not very curious in examining the imperfections of the Stewards person; nor the unlawfulness of his authoritie, for be he an Infant, or *non compos mentis*, an Idiot, or Lunatique, an Out-law, or an Excommunicate; yet what things soever he performeth, as incident to his place, can never be avoided for any such disability, because he performeth them as a Judge, or at least as Customes Instrument: and for his authority, though it prove but counterfeit, if it come to exact triall; yet if in appearance or outward shew, it seemeth currant, that is sufficient. As if I grant the Stewardship of my Manor of Dale by Pa-

L

tent,

tent, and in the Patentees absence, a
 stranger by my appointment keepeth
 Court, this is authentically. If a grant
 of a Stewardship be made to one, and
 for some fault or defect in the Grant,
 it is avoidable, yet Courts kept by
 him before the avoidance, shall stand
 in force : and whatsoever he did as
 Steward, are ever unavoidable. As if
 a Corporation retaineth a Steward
 by Paroll, and hee keepeth a Court,
 punisheth offences, decideth contro-
 versies, taketh Surrenders, maketh
 admittances, either upon Surrenders
 or discents : these Acts being judiciall
 shall ever stand for currant, though
 his authoritie be grounded upon a
 wrong foundation ; for a Corporati-
 on cannot institute any such Officer,
 without writing. And so if the Kings
 Auditor or Receiver, retaineth a
 Steward by Paroll, he may lawfully
 execute any judiciall Act : but things
 which he performeth, as Customes
 instrument, not as Judge, such as are
 voluntary admittances, neither in the
 retainer by the Corporation, or in
 this retainer by the Kings Officers,
 shall any whit binde : but if a stranger
 with-

without the appointment of the Lord, or consent of the right Steward, or without any colour of authoritie, will of his owne head, come into a Manor, and keep a Court; it seemeth that the performance of any judicall duty, or the executing of any act whatsoever will not be warranted, especially if the Court be kept without warning given to the Bayliffe by precept, according to the Custome.

The Office of a Steward may be forfeit three maner of wayes.

1 By Abuser.

2 By *Non user*.

3 By Refuser.

By abuser, As if the Steward burne the Court Rolles, or if he taketh a bribe to winke at any offence, or use partiality in any cause depending before him, these and the like abuses will make him subject to a forfeiture.

By *Non use*, As if the Steward by his Patent, being tyed to keepe Court at certaine times of the yeere, without request to be made by the Lord if he faileth, and by his failer, the Lord receive any prejudice, this is a

forfeiture. But if the Lord be not, damnified, then this *non user* is no forfeiture. As if a Parker attends not for the space of three or foure dayes, and no prejudice or damage happeneth in the interim, this is no forfeiture: and in Offices, which concerne the administration of Justice, or the Commonwealth, the Law is more strict then in the Offices which concerne private men: for where an officer *ex officio*, or of necessitie ought to attend for the administration of Justice, or for the good of the Commonwealth, there *Non user*, or non attender in Court, is a forfeiture, though this be prejudiciall to no man, as the office of the Chamberlaine in the Exchequer, a Protonotary, Clark of the Warrants, *Exigentur Filizar*, or the like in the Common Pleas, because the attendance of these and the like officers, is of necessitie for the administration of Justice, so the attendance of the Clarke of the Market, is of necessity for the good of the Commonwealth, and so is holding of the Sherifpes turne, &c.

By Refuser, the office of a Steward
may

may be thus forfeited, if the Steward be tyed in his Patent to keepe Court upon a demand or request, to be made by the Lord, if the Lord demandeth or requesteth him to keepe a Court, and he faileth; this is a forfeiture, though the Lord be thereby nothing damnified. And thus much of the Steward.

SEC. XLVI.

THe under Steward is the Stewards deputy, and sometimes appointed by writing, sometimes by Paroll, and the extent of his Authority, is as great as the Stewards own Authority, and his office consisteth in performance of the selfe same duties that the high Steward himself is to performe, onely in this point the power of the Steward goeth beyond the power of the under-steward; that the Steward can make an admittance out of Court, and it shall stand good if entry be made in the Court Roll, that he that is admitted, hath paid his fine, and hath done fealty; but the under-

der-Steward, though he may take a Surrender out of the Court, yet he cannot make any Admittance out of Court, without especiall Authoritie or particular Custome.

Some have thought, that an understeward may be made without speciall words in the Stewards Patent, authorizing him to make a Deputy: but surely, since it is an office of knowledge, trust and discretion, it cannot, unlesse it be in cases of necessitie. As if an office of Stewardship descend unto an Infant, hee may make a Deputy, because the Law presumeth he is himselfe incapable to execute it, so if it be granted to an Earle in respect of th'exility of the Office in a base Court, and of the dignitie of the person, who is *Prepositus Comitatus*, and had in ancient time the charge and custody of the whole shire, whose attendance the Law intendeth to be most necessary upon the King and the Common-wealth, therefore it is implied in Law for the conveniencie, that he may make a Deputy, for whom he ought to answer. This is one observation touching understewards,

wards, in admittances made by under-
stewards, as well as in admittances
made by the Stewards themselves, it is
good order to expresse in the Copy,
and in the Court Roll, the name of
the understeward, or of the Steward,
because in pleading any Admittance,
a man must say that he was admitted
by such a one understeward or Ste-
ward, naming his name. And this
shall suffice touching the manner and
means of granting Copyholds: Suffer
me now in the fourth place, to point
at the severall estates of Copyholders,
together with their severall qualities
incident to their severall estates.

SEC. XLVII.

All estates whatsoever may be re-
duced to one of these three
heads.

- 1 Inheritance.
- 2 Francktenant.
- 3 Chattells.

All Inheritances are of two sorts,
either Fee simples, or Fee tails.

Of Fee simples, some are de-

L 4 ter-

terminable, some are undeterminable.

Determinable, as where Land is given to a man and his heires, for so long time as *Pauls* steeple shall stand.

Undeterminable, as where Land is given to a man and his heires, without farther limitation.

Of Fee tailles, some are generall, some are speciall.

Generall, as where Land is given to a man and the heires of his body, or heires males, or females of his body.

Speciall, as where Land is given to a man, and the heires, males or females, which he shall beget of such a woman.

All Franketenants are of two sorts, either created by the act of the party, or by the act of the Law.

Of Francketenants created by the act of the party, some are determinable by death, some by collaterall meanes.

By death, as estates granted during the life of the Grantor, of the Grantee, or of a Stranger.

By

By collaterall meanes, as estates granted *quā diu fuerit innupta*, to a Widdow, *quā diu remanserit vidua*, or to a Minister, *quā diu Sacerdotium exercuerit*.

Of Francke tenants created by the act of the Law, some are Francketenants *simpliciter*, some *secundum quid simpliciter*, as the estates of a tenant in Dower, of a tenant by the courtesie, of an occupant, a tenant in taile, after possibility of issue extinct, *secundum quid*, as the estates of a Tenant by Statute Merchant, *Stat. Staple & Elegit*; who though they are to have the Land, but for so many yeeres as will give a plenary satisfaction to their debts, yet by the *Stat. of Westm.* 2. they may maintaine an Assize, which no other Tenant having but a Chattell can have.

All Chattells are either certaine, or incertaine: Of Chattells certaine, some are in themselves certaine, some are made certaine by relation to a certainty. Certaine in themselves, as where Lands are granted for 20. 30. or 40. yeers. Certaine by relation to a certainty, as where Land
is

is granted for so many yeares as I. S. hath acres of Land.

Of incertaine Chattels, some are incertain in their commencement, some incertain in their determination.

In their commencement, as where a Guardian hath an estate during the minority of the heire, all these estates either by generall or by the particular customes of Manors, are of Copyholds aswell as of Feeholds, in what manner soever an estate in Fee simple is warranted by the custome, most inferior estates are by implication likewise warranted. All Frank tenants created by the act of the party, the estate of an occupant, and all Chattels whatsoever, without any other particular custome, are hereby warranted.

Co. 4. f. 23.

But the law is otherwise, of estates in Dower by the curtesie, by Statute Merchant, Statute Staple, or Elegit, for as long as such a Copyhold, by the custome of the Manor grantable in Fee simple, continueth in the Copyholders hands, it is not lyable to any of these estates, but if once it

Co. 4. f. 22.

com-

cometh to the Lord by Escheate,
 Forfeiture, or by other meanes, so
 long as it remaineth reunited to the
 Manor, it is in the nature of a Free-
 hold, and shall bee subject to the
 charges and incumbrances, as land at
 the common law, and howsoever by
 implication these estates are not al-
 lowed in Copyholds, continuing in
 the Copyhold possession, yet by par-
 ticular custome the Wife may be Te-
 nant in Dower, the Husband Tenant
 by the curtesie, a stranger Tenant by
 Statute Merchant, Statute Staple, or
 Elegit, of a Copyhold, resting in the
 Copyhold, aswell as if it rested in
 the Lord; whether an estate tayle, or
 an estate tayle after possibility of issue
 extinct, which hath a necessary de-
 pending upon an estate tayle, may by
 any particular custome be allowed,
 that I may dispute, but cannot deter-
 mine; for it is *vexata questio*, much
 controverted; but nothing concluded,
 I will briefly touch the reasons al-
 ledged on both sides. They which
 are against the validity of Intailes by
 speciall custome, doe chiefly urge
 these two reasons, that no estates
 tayles

rayles were before the *Stat. de donis conditionalibus*, but all Inheritances were Fees conditionall, and the Statute being made 13. E. 1. which is within the memory of man, it cannot be that any Customes have any Commencement, since the Statute; for then a custome might begin within time of memory, which is altogether repugnant to the rules of custome.

Two great inconveniences would ensue, if a Copyholder might be Intailed by speciall custome, because neither fine nor common recovery can barre it; so that he hath such an estate, that he cannot of himselfe, without the assent of the Lord, dispose of it, either for the payment of his debts, for the advancement of his wife, or preferment of his yonger sonnes.

SEC. XLVIII.

THE maine reasons insisted upon in defence of intayling Copyholds are these.

I In divers Manors they have been from time to time, not only reputed as

as Tenants in taylor, but in every mans mouth termed by that name.

2 A *Formedon* in the *Defender* lieth of a Copyholder, which Writ none can bring but Tenant in taylor.

3 A remainder limited upon such an estate in such Manors hath been allowed, and therefore is no Fee conditionall; for upon a Fee, whether absolute or conditionall, a render can by no means depend.

4 It is a common usage there by a Recovery to dock intails of Copyhold, or to defeate these estates by presentment, that the Copyholder hath committed a forfeiture, and so the Lord to seize, and to surrender it to the purchaser; and therefore there is not that inconvenience which is supposed in the Copyhold, *scilicet*, want of power to dispose of such an estate without the Lords consent.

5 Much inconvenience would depend upon this if Copyholds might not be intayled, for it would tend to the subversion and destruction of many mens estates; which from time to time they have enjoyed without contradiction,

tradition, and therefore for the quiet of the common wealth how necessary it is that Copyholds should be intayled, let any man judge.

Thus much of the severall estates of the Copyhold. A word of the severall qualities incident to severall estates.

S E C. XLIX.

WHat qualities soever are necessarily incident to estates at the common law, are incident to estates by custome. In illustrating this, I will confine my selfe to the discussing of these two points.

1 What words will create Copyholds of inheritance, and what Copyholds of Frank Tenant.

2 How Copyholds of inheritance shall descend.

Touching their creation, Copyholds of inheritance, and Copyholds of Frank Tenement, are created by the same words that inheritance and Frank Tenement at the common law are created by.

If a Copyhold be granted to a man,
and

and to his heires males, or heires females.

If to a man & *sanguini suo hereditabili.*

If to a Deane and Chapter, or to a Major and commonalty, without any expresse estate, or without a limitation of some inferior estate. In all these Grants, a perfect estate in Fee passeth.

And so peradventure if I surrender a Copyhold to a man & his heires, and he reciting this estate, resurrendeth in the same manner to me, that I surrendred to him, not making any mention of my heire, yet this recitall seemeth sufficient to passe a good Fee simple.

So, if I surrender unto you as large an estate, as *I. S.* hath in his Manor of *D.* and he hath a Fee simple in his Manor, it is somewhat probable, that an estate in Fee simple should passe, by reason of his relation without the word Heires.

If a Copyhold be Surrendred to a man, & *semini suo hereditabili de corpore*, or to a man, & *heredibus ex ipso procreatis*, or to a man in Frank Marriage

age with his wife; in these Grants an estate taylor passeth in the first, without the word heires, in the second, without the body; in the third without either.

If the King by his Steward granteth a Copyhold to a man, and to his heires males or his females, no Fee simple passeth, because the Lord never intended to passe such an estate.

If a Copyhold be granted to an Abbot, and to his heires, an estate for life only passeth.

So if I Grant a Copyhold to a man in Fee simple, *ac sanguini suo in perpetuum*, or *sibi & assign. suis in perpetuum*; yet the word heires wanting no greater estate than for his life passeth.

The same law is, if a Copyhold be granted to a man, and to his heires, as long as *I. S.* shall live, this is onely an estate, *per anter vie*, & *à rend.* limited upon this estate is good.

But if a Copyhold be granted to a man, and to his heires, as long as such a tree shall grow in such a ground this is a good Fee, and a render limited upon it is void.

If a Copyhold be granted to *I. S.* and *I. N. & heredibus*, they are joynt Tenants for life; and no inheritance passeth unto either; because of the uncertainty for want of this word (*suis*) but if a Copyhold be granted to *I. S.* onely & *herend.* a good Fee simple passeth without the word *suis*.

If a Copyhold be granted to a man, & *heredibus*, an estate tayle doth not passe, for want of the words *de corpore*. And if a Copyhold be granted to a man, & *liberis aut puer. suis de corpore*; an estate tayle doth not passe for want of this word (*heires*) for what estates soever are intayles since the Statute *De donis Conditionalibus*, were fee simples conditionall; but this could be no Fee simple conditionall before the Statute without the word (*heires*) and therefore no intayle since the Statute. And for the same reason, if a Copyhold be granted to a man, and to the issues males of his body an estate for life onely passeth.

If a Copyhold be granted to a man, without expressing any certain estate

by implication of Law, an estate for life onely passeth; and if I grant a Copyhold to three, *habendum successive*, they are joynt Tenants, unlesse by speciall Custome the word *successive* make their estates severall. Thus much touching the creation of Copyhold estates.

S E C. L.

THE discents of Copyhold of inheritance are guided and directed by the rules of the Common Law, as well as the creation of Copyhold estates.

If a Copyholder in Fee-simple having issue, a sonne and a daughter by one *venter*, and a sonne by another *venter*, dieth; and the sonne by the first *venter* entreth and dieth; the Land shall discend to the daughter, *Quia possessio fratris de feodo simplici facit sororem esse heredem*.

But if a Copyholder in taylorie, having issue, a sonne and a daughter by one *venter*, and a sonne by another *venter*, dieth; and the sonne by the first *venter* entreth

entireth and dieth, the sonne of the second *venter* shall inherit.

If a man having issue, a sonne and a daughter by one *venter*, and a sonne by another *venter*, the eldest sonne purchaseth a Copyhold in Fee, and dyeth without issue, the daughter shall have the Land, not the yonger sonne, because he is but of the halfe blood to the other.

If a man hath a Copyhold, by descent from his mothers side, if he die without issue, the Land shall goe to the heires of the mothers side, and shall rather escheate, than goe to the heires of the fathers side; but if I purchase a Copyhold, and die without issue, the Land shall goe to the heires of my Fathers side: but if I have no heires by my Fathers side, it shall goe to the heires of my mothers side rather than escheate.

If there be Father, Unckle and Sonne, and the sonne purchaseth a Copyhold in Fee, and dieth without issue, the Uncle shall inherite, and not the Father, because an inheritance may lineally descend, but not ascend.

If there be three brothers, and the middle brother purchaseth a Copyhold in Fee, and dieth without issue, the eldest shall inherit, because the worthiest of blood.

If there be two Copartners, or two Tenants in Common of a Copyhold, and one dieth having issue, the issue shall inherit, and not the other by the survivorship; but otherwise it is of two joynt Tenents. Should I give way to my Penne, and write on this Theame till I wanted matter to write on, I should make a large Volume in dilating this one point; therefore I will contract my selfe, intreating you to supply by your private cogitations, what I have either willingly or unwittingly passed over in silence, onely take this caveat by the way.

Though all qualities necessarily incident to estates at the Common Law, are likewise incident to Copyhold estates; yet the Law is not so of collaterall qualities, without speciall Custome; and therefore a Copyhold shall be no assets to the heire.

A discent of a Copyhold, shall not roll

roll an entry. A Surrender made by Tenant in taylor (admit a Copyhold may be intayled) or by a Baron of a Copyhold, which he hath in right of his Wife, shall make no discontinuance, because these are collatterall qualities, and not necessarily incident.

Thus much of the severall estates of Copyholds, together with their severall qualities incident to their severall estates. I come now in the first place to examine how Copyholders are to impleade, and be impleaded.

SEC. LI.

A Copyholder cannot in any Action real, or that favoereth of the realty, or hath a dependance upon the realty, implead or be impleaded in any other Court, but in the Lords Court, for or concerning his Copyhold, but in Actions that are meerely personall, he may sue or be sued at the Common Law.

If a Copyholder be ousted of his

Copyhold by a stranger, hee cannot implead him by the Kings Writ, but by Plaint in the Lords Court, and shall make protestation to prosecute the sute in the nature of an Assize of novell disseisin, of an Assize of *Mort D'ancestor* of a *Formedon* in the Descender, Reverser, or Remainder, or in the nature of any other Writ, as his cause shall require, and shall put in *pleg. de prosequend.*

If a Copyholder be ousted by the Lord, he cannot maintaine an Assize at the Common Law, because he wanteth a Franck-Tenant, but he may have an action of trespassse against him at the Common Law; for it is against reason, that the Lord should be Judge, where he himself is a party.

If in a plaint in the Lords Court touching the tyle of a Copyholder, the Lord giveth false judgement, hee cannot maintain a writ of false judgement, for then he should be restored to a Franck-Tenant, where he lost none.

No Copyholder of base Tenure in ancient Demesne, can maintaine a Writ of *droit close*, or a Writ of *Mon-*
stra-

straverunt, but Tenants of Fanckenture in ancient demesne can.

A Copyholder that may cut down Timber trees by Custome, by licence of the Lord, maketh a Lease for yeeres, the Lessee cutteth downe trees, the Copyholder shall not have a Writ of waste, but shall sue at the Lords Court to punish this waste.

If a *feme* Dowable, by Custome of a Copyhold; by plaint in the Lords Court, recovereth Dower and damages, no Action of debt lieth at the Common Law for these damages, because the Action, though it be in it selfe personall, yet it dependeth upon the realitie.

If a Copyholder make a Lease by copy for yeares, or by Deede with License, an Action of debt lieth for the Rent, reserved upon either Lease at the common law; but I much doubt whether he can avow for the Rent, either in the one, or in the other, no more than *Cestuy que use*, before the Statute 27.H.8. cap.10. could avow for the Rent reserved by him upon a Lease for yeeres, and yet he could maintaine an Action of debt for

such a Rent; because an Action of debt is grounded upon the contract.

If a stranger cut downe trees growing in the Copyhold ground, an action of Trespasse lieth at the common law against him; so doth it against the Lord, where he cutteth them downe, when by Custome they belong to the Tenant, because this is a meere personall Action, and damages onely are to bee recovered.

And if a Copyholder without licence, maketh a Lease for one yeere, or with Licence maketh a Lease for many yeers, and the Lessee be ejected, he shall not sue in the Lords court by Plaint, but shall have an *ejectione firme* at the common law, because he hath not a customary estate by Copy, but a warantable estate by the rules of the common law. Thus much of the manner how Copyholders are to impleade, and be impleaded.

S E C.

I Come now in the first place, to shew under what Statutes Copyholders are comprehended. Copyholders are comprehended under Statute, either by expresse limitation in precise words, or by a secret implication upon generall words. By expresse limitation in precise words;

As by the Statute of the first of R. 3. *cap. 4.* it is expreffely provided, that a Copyholder having copyhold land, to the yeerly value of twenty fixe shillings and fixe pence; above all charges may be impanelled upon a Jury, as well as he that hath twenty shillings, *per annum* of Freehold-land.

So by the Statute of 1. E. 6. *cap. 14.* it is expressely provided, that upon the dissolution of Abbyes, and Monasteries, Copyholds should continue as they did before the Statute, and should fall into the Kings hands.

So by the Statute of 2. E. 6. *cap. 8.* it is expressely provided, that the interest

terest of a Copyhold, should be preserved, notwithstanding it be not found by Office, after the decease of the Kings Tenant.

So by the Statute of 1. *Mar. cap. 12.* it is expressly provided, that if any Copyholder being Yeoman, Artificer, Husbandman, or Labourer, and being of the age of eightene or more, under the age of sixtie; not sicke, impotent, lame, maymed, nor having any other just or reasonable cause of excuse upon request made by any man in authoritie, refuseth to aide Justices in suppressing of riotous persons, that then immediately he shall forfeit his Copyhold to the Lord, of whom it is held during the Copyholders naturall life.

So by the Statute of 5. *Eliz. cap. 14.* it is expressly provided, that the forging of a Court Roll, to the intent to defraud a Copyholder, shall be as well punishable, as the forging any other Charter, Deede, or writing sealed, whereby to defeat a Copyholder or Freeholder.

So by the Statute of 13. *Eliz. cap. 7.* It is expressly provided, that the Copyhold

pyhold land, as well as the Freehold land of a Bankrupt, shall be sold for the satisfying of the Creditor.

So by the Statute of 14. *Eliz. cap.* 6. It is expressly provided, that if any of the Queens subjects goeth beyond the Seas without licence, that then the Queene shall not onely take the ordinary profits of the fugitives Copyhold Land, as they arise, but shall let, set, and make Grants by Copy, and usuall Wood-sales, and other things, to all intents and purposes, as a *Tenant pro terme durante vie*, may doe.

So by the Statute of the 35. *Eliz. cap.* 2. It is expressly provided, that if any person or persons being convicted of recusancie, repaire not home to their usuall place of abode, not removing from thence above five miles distant, that then any person, or persons thus offending, shall not onely forfeit their Freehold land to the Queene; but withall their Copyhold Land to the Lord, or Lords of whom it is holden.

Thus have I shewed in brieft under what Statute Copyholders are com-
pre-

prehended by the expresse limitation in precise words. Now I will shew you as briefly as I can, under what Statute they are comprehended by secret implication upon generall words.

S E C. LIII.

SOME hold that all Statutes that speake generally of Tenants, extend to Tenants by Copy : but it is much to be feared that we shall wander from the Truth, if we give credit to this conceit : for if we peruse the Statute, we shall meete with an infinite number of them that speake generally of Tenants, and yet touch not Tenants by Copy ; wherefore not giving way to this opinion, as being erroneous, I will set you down an infallible rule, which will truly direct you in the exposition of the generall words in Statutes ; and that is thus.

Co. 3. fol. 8.

When an Act in Parliament altereth the service, tenure, interest of the land, or other thing in prejudice of the Lord, or of the custome of the Manor

nor, or prejudice of the Tenant, there the generall words of such an Act in Parliament extend not to the Copyhold; but when an Act is generally made for the good of the common wealth, and no prejudice may accrue, by reason of the alteration of any interest, service, tenure or custome of the Manor, there usually Copyholds are within the generall purview of such acts.

The Statute of *West. 2. ca. 1.* of intailes, extendeth not to Copyholds, because it would be prejudiciall to the Lord; for by this meanes the Tenure is altered: for the Donee intaile, without any speciall reservation ought to hold of the Doner by the same Service that the Doner holdeth over; besides the words of the Statute are, *Quod voluntas Donatoris in charta Domini sui manifesta expressa de cetero observet*, which proveth, that the intent of the Statute was, that no hereditament should be intailed within this Statute, but such an one as either was given, or at least may be given by Charter, or Deed; but Copyholds are no such hereditaments,
and

and therefore not within the body of the act; yet it is holden, that Custom with the cooperation of the Statute will make an estate taylor.

The Stat. of *W.2.c.20.* which giveth the *Elegit*, extendeth not to Copyhold, because it would be prejudiciall to the Lord, and a breach of the custome that any stranger should have interest in the lands holden by Copy without the admittance, and ordinary allowance of the Lord.

The Statute of *16.R.2.ca.5.* which maketh it a forfeiture of lands, Tenements, and Hereditaments, to the purchaser of Excommunications, Bulls, &c. in the Court of *Rome*, against the King, &c. extendeth not to Copyhold, because it would be prejudiciall to the Lord to have the King so farre interessed in his Copyhold without his consent.

The Statute of *2.H.5.ca.7.* of Heretiques extends not to Copyholds; for though the Lord of a Manor is yearly to receive a benefit in having the lands after the yeere and the day forfeited unto him; yet because the King is a sharer in this forfeiture; there-

therefore lands by Copy are not comprehended under the generall words; besides the Statute speaketh of the Kings having *annuum diem, & vastum* of these lands forfeited for heresie, as in lands forfeited for felony; whereby it appeareth, that the meaning of the Statute is, that such Lands onely should be forfeited, in which the King by the ordinary course of the law should have *Annuum diem & vastum*, if the Tenant of them had committed felony: but such lands are not lands by Copy; for if a Copyholder committed felony, his Copyhold is presently forfeited to the Lord; therefore copyholds are out of the generall purview of this Statute.

SEC. LIV.

THE Statute of 27. H. 8. ca. 10. of uses, toucheth not Copyholds, because the transmutation of possession, by the sole operation of the Statute without allowance of the Lord, or the Agreement of the Tenant, would tend to the prejudice, both of the Lord, and of the Tenant, and the

the branch of the same Statute which speaketh of Joyntures toucheth not Copyholds, because Dowers of Copyholds are warranted by speciall custome onely, and not by the common law, or by the generall custome.

The Statute of 31. of H. 8. cap. 1. & 32. H. 8. 32. by which joynt Tenements and Tenants in common are compellable to make partition by a Writ *de partitione faciend.* As copartners at the common law, touch not Copyholds, because this alteration of the Tenure without the Lords consent may sound to the prejudice of the Lord.

The Statute of 32. H. 8. c. 28. which confirmeth leases for 21. yeares, or three lives made by Tenants in taylor, or by the husband and wife, of the lands of the wife, touch not copyhold: for the Statute speaketh of leases made by Deed only; so that the intent of the Statute is to warrant the leasing of such lands only as are Grantable by Deed, but such are not copyhold lands: for though they may by licence of the Lord be demised by

Inden-

Indenture, yet in their owne name they are demiseable onely by copy; and therefore out of the generall purview of the Statute: for the same reason, the same Statute *cap. 34.* which giveth an entry to the Grantee, of a Reversion, upon the breach of a condition by the particular Tenant, toucheth not copyholds.

S E C. LV.

THe Statute of *17. E. 2. cap. 10.* which giveth the Wardships of Idiots land unto the King, toucheth not the Ideers copyhold; for thereby great prejudice would accrue to the Lord.

But the Statute of *Marion, cap. 1.* which giveth dammages to a feme, upon a Recovery in a Writ of Dower, where the Baron dieth seised, extendeth to copyhold.

So that the Statute of *Westm. 2. cap. 3.* and the three severall branches of *Co. 4. fo. 30. b.* the same Statute.

1. The one of which giveth the *Cui*

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in

in vita, upon a discontinuance made by the Baron.

2 The second which giveth the receipt unto the *feme* upon the Barons refusal to defend the wives title.

3 And the third, which giveth a *quod ei desorceat* to particular tenants extends to copyhold.

So that the Statute of 31. H. 8. ca. 13. of *Monaster*, which provideth for the avoidance of doubling of estates.

Co. 4. fo. 26.

And the Statute 32. H. 8. cap. 9. against *Champertie*, and buying of Litigious Titles, and chap. 28. which giveth an entry in lieu of a *Cui in vita*, extendeth all to copyholds, because these Statutes are beneficiall to the common wealth, and nor at all prejudiciall to the Lord in the alteration of Tenure estate, Service, &c.

So the Statute of 4. H. 7. cap. 24. of Fines, extendeth to copyholds: for if a copyholder be Disseised, and the Desser levieth a Fine with proclamations, and five years passeth without any claime made; this is a barre both to the Lord, and to the copyholder.

So

So if a copyholder make a Feoffment in Fee, and the Feoffee levieth a fine with proclamation, and five years passe, the Lord is barred; but if a Copyholder levie a fine, and five yeares passe, the Lord is not barred, for the Fine levied, the Copyhold having no Frank Tenant, is utterly void. And whereas it hath been doubted, that this Statute should not extend to copyhold; but the Lord should hereby receive grand prejudice; for he should not only lose the Fines, upon alienation or discents, and the benefit of forfeiture, but should withall be in hazard to be barred of his Frank tenant and inheritance.

To that I answer, if the Lord receive any such prejudice, it is through his owne default, for not making claime, for in regard of the privity in estate, that is between him and the Copyholder he may make claime, as well as the Copyholder himselfe; *Et vigilantibus non dormientibus jura subveniunt.*

Thus have I shewed under what Statutes Copyholds are comprehended. I come now in the seventh place, to speak of fines.

S E C. LVI.

A Fine is a summe of money paid to the Lord of the Manor for an Income into any lands or Tenements. In some Manors Fines are certaine, in some uncertaine.

Fines of Copy holds. By speciall custome Copyholders are to pay Fines upon licences granted unto them to demise by Indenture, but by generall custome they are to pay Fines onely upon admittances.

If the Lord having a Copyhold by Escheate forfeiture, or other means, maketh a voluntary admittance, a fine is due unto the Lord.

If a Copyholder surrendreth to the use of a stranger, and the Lord admitteth, a fine is due to the Lord.

So if a Copyhold descendeth, and the Lord admitteth the heire, where by the custome of the Manor, the wife is to have Dower, and the Husband is to be Tenant by the curtesie of a Copyhold, either of them shall be admitted, and shall pay a Fine to the Lord:

If

If a Copyhold be granted *durante vita*, and the Grantee dieth, living, *Cestuy que vie*, and a stranger entreth as a generall occupant, he shall be admitted, and shall pay a Fine.

And so if a Copyhold be granted to one and his heires, *durante vita*, and the Grantee dieth, and his heire entreth as a speciall occupant, where by the custome of the Manor, a Copyhold may be extended, upon the extent, the party shall be admitted, and shall pay a Fine.

Where by the Custome of the Manor, the Bailiffe of the Manor is to have the Wardship of the Copyhold heire; being under the age of fourteene, such a Guardian shall neither be admitted, nor pay a Fine, because he is but a partner of the profits, and that not in his owne right, but in the right of him to whom he is Guardian.

If the copyhold Lands of a Bankrupt be sold according to the Statute of the 13. *Eliz. cap. 7.* the Vendee shall be admitted and pay a Fine.

If a Villaine purchaseth a copyhold, the Lord of the Villaine may enter,

and feize it, and the Lord of the Manor shall admit him, and have a Fine.

If a copyhold be granted upon condition, and the condition be broken, and the Granter entreth, hee shall not be admitted, neither pay a Fine, because upon the breach of the condition, and the entry, he is to all intents, *in Statu quo primis*, as if no grant at all had been made.

If a copyholder in Fee surrendreth for life, reserving the Reversion, and the Lessee for life dieth, the copyholder shall not be admitted to his Reversion, neither shall he pay a Fine, because the Reversion was never out of him.

If a copyholder be disseised, and then entereth upon the Disseisor, or recovereth by plaint, in the nature of an Assize, hee shall not be admitted, neither shall he pay a Fine, for he continueth still Tenant by copy, notwithstanding the disseisin, but where by a Plaint a Copyhold is recovered upon the accrewer of a new Tyle, where he that recovereth was never admitted nor paid Fine; thereupon his recovery,

covery, an admittance is requisite, and a Fine is due: as if a Copyholder dieth seised, a stranger abateth, and the heire recovereth by Plaint in the nature of an Assize of *Mort d'ancester*; upon this recovery hee shall be admitted, and pay a Fine.

If I take a Wife, with Copyhold in Fee, though by this inter-marriage there accrue a present interest to me; yet because I am seised, *non jure proprio*, but *jure alieno*, therefore I shall not be admitted, neither shall I pay a Fine.

The same law is, if she be a Termor of a Copyhold; for though the terme by the inter-marriage be so vested in me, that I may dispose of it without controule; yet because before disposer I am possessed of it, but in the right of my Wife; therefore I shall neither be admitted, nor pay a Fine. *Vide Plowd. com. 418. b.*

If a Copyhold be surrendered for life, the remainder to a stranger, though the admittance of Tenant for life be sufficient to invest the estate in him in the Remainder, yet upon the death of Tenant for life, he in the re-

mainder shall be admitted, and pay a Fine.

So if a Copyhold be granted to three, *habend. successive*, whereby Custome successive is in force; if any one dieth, he that next succeedeth shall be admitted and pay a Fine.

If two Copartners, or Tenants in common of a Copyhold be, and the one dieth, and the other hath all by discent, he shall be admitted, shall pay a Fine. But if two joynt Tenants be of a Copyhold, one dieth, the other shall have all by the survivorship without admittance, or paying Fine, because joynt Tenants to all intents and purposes, are seised *per my, & per tout*.

If two severall Copyholders joyne in a Grant of their copyhold by one copy; or if one Copyholder having severall copyholds, granteth them by one Copy; yet the Grantee shall pay severall Fines, for they shall inure as severall Grants.

But if two joynt-Tenants, two Tenants in Common, or Tenant for life, and he in the Remainder joyne
in

in the Grant of a Copyhold, one Fine onely is due, and it shall inure, as one Grant onely: so if a Surrender be made, and after a common Recovery is had by Plaint in the nature of a Writ of entry, in *Le post*, for the better assurance, one Fine onely shall be paid.

And thus much of Fines. I come now in the next place to Forfeitures; wherein I will chiefly rely upon these foure points.

- 1 What Acts amount to a Forfeiture.
- 2 What persons are able to forfeit.
- 3 What persons are able to take benefit of a Forfeiture.
- 4 What Acts amount to a confirmation of an estate forfeit.

SEC. LVII.

OF Acts which amount to Forfeiture, some are Forfeits, *eo instante*, that they are committed: some

some are not Forfeits till presentment. Offences which are apparant and notorious, by which the Lord by common presumption, cannot chuse but have notice, are Forfeitures, *eo instante*, that they are committed: As if by speciall Custome, upon the discent of any Copyhold of Inheritance, the heire is tyed upon three solemne Proclamations made at three severall Courts, to come in and be admitted to his Copyhold, if hee faileth to come; in this failer is a forfeiture, *Ipsa facta*.

So if a Copyholder be sufficiently warned to appeare, and hee faileth, this is a forfeiture, *Ipsa facta*.

But if he be hindred by sicknesse, or by overflowing of waters, or if he be much in debt, and feare to be arrested, or if he be a Bankrupt, and keepeth his house, then his default is no forfeiture.

If a Copyholder in the Court be called, and summoned to be sworne of the homage, and refuseth; this is a forfeiture, *Ipsa facta*.

So if a Copyholder be sworne of the homage, and then refuseth to pre-

sent the Articles according to his Oath; this is a forfeiture, *Ipsò facto.*

So if a Copyholder will sweare in Court, that he is none of the Lords copyholder, this is a forfeiture, *Ipsò facto.*

But if a copyholder in presence of the court speaketh unreverent words of the Lord, as that the Lord exacteth and extorteth unreasonable Fines, and undue-Services, this is fineable only, but no forfeiture; and if he saith in Court, that he will devise a meanes no longer to be the Lords copyholder, this is neither cause of fine nor forfeiture; for peradventure the meanes that he intended was lawfull, *viz.* by passing away his copyhold, *Et ubi sensus verborum est multiplex, verba semper sunt accipienda in meliori sensu.*

If the Steward sheweth a court Roll to a Copyholder, to prove, that his land is holden by Copy, and that the Copyholder saith he is a Freeholder, and sheweth a Deede, pretending thereby to procure his land to be Freehold, and teareth in peeces the
court-

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Court Roll, this is a forfeiture *Ipsa facto*.

Co. 4.27. b.

So if the Lord, upon the admittance of a Copyholder; the Fine, by the custome of the Manor being certaine, demandeth his Fine, and the Copyholder denieth to pay it upon demand, this is a forfeiture *Ipsa facto*.

This

So if a Copyholder will sue a Replevin against the Lord, upon the Lords lawfull distresse for his Rent or Services, this is a forfeiture *Ipsa facto*.

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But if the Copyholder be in doubt whether it be due or not, and therefore intreateth the Lord, that the homage may inquire the truth, this is no forfeiture.

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If the Fine by the custome of the Manor be incertaine, though a reasonable Fine be assessed, yet because no man can provide for an uncertainty, the Copyholder is not bound to pay it presently upon demand, but shall have convenient time to discharge it: if the Lord limit no certaine day for payment thereof, and if within convenient time it be not dif-

A. M. B. v. C.

A. M. B. v. C.

discharged, this is a forfeiture without presentment.

But if the Fine be unreasonable, though it be never paid, it is no forfeiture, and it shall be determined by the opinion of the Justices before whom the matter dependeth, either upon a demurre, or in Evidence to the Jury, upon the confession or prooffe of the yeerly value of the land, whether the Fine be reasonable or not; for if the Lords might Assesse unreasonable Fines at their pleasures, then most estates by Copy, which are a great part of the kingdom, and which have continued time out of minde, might now at the will of the Lords be defeated, and destroyed, which would be very inconvenient.

If the Lord demanded his Rent, and the Copyholder denieth to pay it, this is a forfeiture *Ipsa facto*.

So if the Copyholder saith, that he wanteth money to discharge the Rent, and therefore intreateth the Lord to forbear, untill he be better provided, unlesse the Lord giveth his consent; this non-payment is a forfeiture, *Ipsa facto*.

For

For a Copyholder knowing his day of payment, is to provide against the day; but if the Lord commeth upon the Copyholders ground, and demandeth his rent, and neither the Copyholder himfelfe, nor any other by his appointment, is there present to answer their demand, though this be a deniall, in law, of the rent, yet this is no forfeiture.

But if the Lord continueth in making demand upon the ground, and the Copyholder is still absent, this continuall deniall in law, amounteth to a deniall in fact, and maketh the Copyholders estate subject to a forfeiture without presentment.

If a Copyholder for life suffereth a recovery by plaint in the Lords court, as Copyhold of the inheritance, this is a forfeiture *Ipsò factò*.

But if he surrender in Fee, this is no forfeiture, because it did not passe by livery.

If a Copyholder committeth waste voluntarily or permissively, this is a forfeiture *Ipsò factò*.

Voluntary, as if he plucketh down any ancient built house, or if he buildeth

deth any new house, and then pulleth it down againe; or if he ploweth meadow, so that thereby the ground is made worse; or loppeth the trees, or selleth the lopping; or if he cutteth down any fruit trees for fuell, having other wood sufficient, this and the like voluntary waste are forfeitures *Ipsò factò.*

Permissive, as if he suffereth his house to decay, or fall to ground for want of necessary reparations; or if he suffereth his meadowes for want of mending his bankes to be surrounded, so that it becomes Rushy, or worth nothing; or his arable ground, so to be surrounded, that it is become unprofitable. These and the like permissive wastes are forfeitures *Ipsò factò.*

And thus much of acts which are forfeitures, *eo instante*, that they are committed. A word of those Acts which are said not forfeitures till presentment.

SEC. LVIII.

AND such are those offences, which by common presumption, the Lord cannot of himself have notice of without notice given, as if a Copyholder committeth felony or treason.

So, if a Copyholder be Outlawed, or excommunicated that the Lord may have the profits of his Copyhold land, a presentment is necessary.

So, if a Copyholder goeth about in any other court to intitle any other Lord unto his Copyhold, or if he alieneth by Deed; these and the like ought to be presented.

If a Copyholder maketh a bargain and sale of his Copyhold, and it is not inrolled according to the Statute; this is no forfeiture; no more than a Feoffment without livery, because nothing passeth.

So if a copyholder maketh a feoffment of all his lands in Dale, and maketh livery in his charter lands, no part of his copyhold land is thereby for-

forfeited; but if Livery be made in any part of the Copyhold lands, all his copyhold lands are forfeited.

If a Copyholder by Deede of bargain and sale inrolled according to the Statute, doth bargain and sell all his Lands in Dale, having both Copyhold and freehold; his copyhold is not thereby forfeited; for the Law will construe this to extend to his freehold onely, rather than by any over-large construction make a forfeiture in this kinde.

And if a copyholder by Deed inrolled, bargaineth or selleth all his copyhold Lands in Dale, or all his Lands in Dale generally, having no freehold Lands, this is a forfeiture.

Thus I have shewed you what Acts amount to a forfeiture. Now I will shew you what persons are able to forfeit.

SEC. LIX.

A Man of *non sane memoria*, an Idiot, or a Lunatique, though they be able to take a Copyhold, yet they are unable to forfeit a Copyhold, because they want common reason, nay comon sense.

So an Infant that is under the age of fourteene, is unable to forfeit his copyhold, because he wanteth discretion, and till then he is to be in Ward to the next of his kindred, to whom the inheritance cannot descend; or to the Lord, or the Bayliffe of the Manor, as the Custome shall warrant.

So a *feme covert* by any Act she can doe of her selfe, cannot possibly forfeit her copyhold, because she is not *sui juris*, sed *sub potestate viri*: but if she doe any Act which amounteth to a forfeiture by the consent of her husband, this is in her a forfeiture.

An Infant at the age of discretion may forfeit his Copyhold, not by offences which proceede from negligence

gence or ignorance, but by such as proceed from contempt.

If an Infant come not in to be admitted, according to the Custome at three solemn proclamations made at three severall Courts; or if he will suffer his houses to goe to ruine, or his ground to be surrounded; these Acts favouring of negligence onely, are no forfeitures.

So if an Infant Copyholder sueth a Replevin against the Lord, upon a distresse lawfully taken; or if he alieneth by Deed, or the like; these Acts relishing of ignorance onely are no forfeitures.

But if he denieth from time to time to pay the Lord the Rent, or committed voluntary waste, notwithstanding often warning given him by the Lord; these acts proceeding from malice and contempt, are forfeitures; and so if he committeth felony or treason.

If a Guardian of a Copyholder committeth waste, he shall forfeit the Wardship onely, not the inheritance of the Copyhold.

If *Cestuy que use*, of a Copyhold

committeih waste, he shall not forfeit the Copyhold.

5 If the husband committeth waste in Copyhold lands, which he hath in the right of his wife; this is a forfeiture of the wifes Copyhold.

6 But if a stranger committeth waste without the consent of the husband, this is no forfeiture though the wife consenteth.

7 If a Disseisor of a Copyhold committeth waste; this is no forfeiture.

8 So, if a Copyhold be surrendered to the use of *I. S.* and before admittance, *I. S.* committeth waste; this is no forfeiture, for by the same reason that hee cannot grant before admittance.

9 If two joynt Tenants be of a Copyhold, and one committeth waste, he forfeiteth his part onely, for no man can forfeit more than hee hath granted.

And therefore if there be tenant for life, with a remainder over, of a Copyhold, and the Copyholder for life purchaseth the Manor, committeth waste, or doth any act, which amounteth to the extinguishment, or the forfeiture
of

of a Copyhold, yet the remainder is not hereby touched.

And so if a Copyhold be granted to three, *habend. successive*, whereby the custome of the Manor, this word *Successive* taketh place, the first Copyholder cannot prejudice the other two by any act: he can doe no more, than if a Copyholder in Fee by licence, maketh lease for years by Deed, or without licence by Copy, and either of these lessees commiteth waste, the reversion is not hereby forfeited.

If I have two severall Copyholds, by two severall Copies, and I commit waste in one, this is a forfeiture of this one onely, and not of the other.

And so if I grant these severall Copyholds by one Copy, yet they continue severall as they did before, and the forfeiture of the one is not the forfeiture of the other.

The same law is, if two severall Copyholds Escheate to the Lord, and he regranteth them againe by one Copy.

And thus have I shewed what persons

sons are able to forfeit. I will now in a word shew what persons are to take benefit of a forfeiture.

SEC. LX.

Regularly it is true, that none can take benefit of a forfeiture; but he that is Lord of the Manor at the time of the forfeiture.

And therefore if a Copyholder maketh a Feoffment, and then the Lord alieneth, neither the Granter, nor the Grantee can take benefit of this forfeiture, for neither a right of entry, nor a right of action can ever be transferred from one to another. And therefore if a Freeholder alieneth in Mortmaine, and then the Lord granteth away his Seigniorie, neither the one nor the other can ever take benefit of this forfeiture.

So if a lessee for life committeth waste, and then the lessor granteth away the reversion, this waste is made unpunishable.

But if Tenant for life be of a Manor,

nor, with remainder over in Fee to a stranger.

If a copyholder committeth waste, and then Tenant for life of the Manor dieth before entry; yet he in Remainder may enter, for he had an interest in the Manor at the time of the forfeiture committed, though he could not enter, by reason of the State in Tenant for life, which being determined, his entry is now accrued unto him for the forfeiture committed in the life of Tenant for life.

And sometimes, he that is neither Lord of the Manor, at the time of the forfeiture committed, nor ever after shall take benefit of a forfeiture.

As if a Lord of a Manor granteth a Copyhold in Fee, and then granteth the Frank Tenement, or the inheritance of this Copyhold to a stranger; the grantee, though no Lord of the Manor, nor able to keepe any Court, shall take benefit of forfeitures made by the Copyholder, as if the Copyholder doe make a Feoffment, lease, waste, deny the Rent, &c.

Co 4. fo. 24.

Thus have I shewed what persons are able to take benefit of a forfeiture. I will now in one word shew what acts amount to a confirmation of an estate forfeited.

S E C. LXI:

IF the Lord doth any thing whereby he doth acknowledge him his Tenant after forfeiture; this acknowledgement amounteth to a confirmation; as if he distreyneth upon the ground for Rent due after forfeiture; or if he admitteth after the forfeiture, or the like: these are estoppels to the Lord, so that he can never enter, so the Lord have notice of such forfeitures before any such act, which may amount to a confirmation be done: yet some make this difference, that these forfeitures onely which destroy not the Copyhold are onely conformable by subsequent acknowledgement, and not those forfeitures which tend to the destructions of a Copyhold; As if the Copyholder

holder maketh a Feoffment ; by this the Copyholder is destroyed , and therefore no subsequent acknowledgement of the Lord will ever save this fore.

And this shall suffice for forfeitures. I come now in the last place, to shew what acts amount to the extinguishment of a Copyhold.

§ E C. LXII.

WHERESOEVER a Copyhold is become demisable by Copy, either by the Act of the Lord, by the act of the law, or by the Act of the Copyholder himselfe, it is extinguished for ever.

By the Act of the Lord ; As if a Copyholder Escheateth, and the Lord granteth away any estate by Deed, this is an extinguishment. So if hee maketh a Feoffment upon condition, and then 'entreteth for breach of the condition : yet the Copyhold is extinguished, because once not demisable.

But

But if the Lord keepeth the copyhold lands, for never so many yeares, or granteth at will, this destroyes not the copyhold, because it continueth ever demisable by copy.

By the Act of the law; As if the copyhold escheated be extended upon a Statute or Recognizance acknowledged by the Lord, or if the *feme* of the Lord hath this land assigned unto her for her Dower, although these impediments be by the act of the law: yet because they are lawfull, the land can never after be granted by Copy:

By the act of the copyholder himselfe; As if he accepteth a lease for yeares at the common law, either mediate or immediate from the Lord of the copyhold, this is an absolute extinguishment.

But if he accepteth a Lease for yeares of the Manor, the copyholder by this hath not continuance, but this is no extinguishment, because the land continueth still grantable by copy.

If a copyholder with licence make a lease for yeares to a stranger; or without licence, maketh a lease for yeares

yeares to the Lord, the copyhold is not hereby extinguished, and yet it is not demisable by copy.

So if a copyholder intermarrieth with a *feme Seignioresse*; this is a suspension only of the copyhold, no extinguishment.

So if the interruption be *torcious*, as the Lord be disseised, and this disseisor dieth seised, or if the land be recovered by false verdict, or erroneous judgement; and after the land is recontinued, it is not extinguished, but may be granted arrere by copy; for *Non valet impedimentum quod de jure non sortitur effectum, & quod contra legem sit pro infecto habetur.*

And so I conclude with copyholders, wishing that there may ever be a perfect union betwixt them and their Lords, that they may have a feeling of each others wrongs and injuries; that their so little common wealth, having all his members knit together in compleate order, may flourish to the end.

F I N I S.

points to the Lord, the copyhold is
not hereby extinguished, and yet it is
not capable by copy.
So if a copyholder intermarries
with a free & gentle; this is a full
transferment of the copyhold, in ex-

tinuation.
So if a partition be between, as
the Lord be divided and this divided
divided, or if the land be recove-
red by false verdict, or erroneous
judgement; and after the land is re-
covered, it is not extinguished, but
may be granted again by copy; for
the copyhold is not destroyed, but
only the possession is changed.

And so I conclude with copyhold-
ers, wishing that there may ever be
a perfect union betwixt them and
their Lords, that they may have the
joy of each others wives and in-
herits; that their to him common
wealth, having all his members join-
together in corporate order, may
flourish to the end.

received them as a burnt-offering.

Exod. 16. 4.

7 And in the time of their visitation, * they shall shine, and runne to and fro like sparks among the stubble.

Deut. 8. 2. |
|| Or, meet.

* Matth. 13. 43.

8 They * shall judge the nations, and have dominion over the people, and their Lord shall be for ever.

* Matth. 19. 28.

1. Cor. 6. 2.

9 They that put their trust in him shall understand the truth: || and such as be faithfull in him, shall abide with him: for grace and mercy shall be to his saints, and he hath care for his elect.

|| Or, and such as be faithfull shall remain with him in love.

10 But the * ungodly shall be punished according to their own imaginations, which they have neglected the righteous, and forsaken the word.

* Matth. 25. 41.

11 For whoso despiseth wisdom and nurture, he is miserable, and their hope is vain, their labours unfruitfull, and their works unprofitable.

12 Their wives are || foolish, and their children wicked.

|| Or, light, or unchaste.

13 Their offspring is cursed: wherefore cursed is the barren that is undefiled, which hath not known the sinfull bed: neither shall she bring forth the fruit in the visitation of souls.

14 And *blessed* is the * eunuch, which with his hands hath wrought no iniquity, nor imagined wicked things against God: for unto him shall be given † the speciall gift of faith, and an inheritance || in the temple of the Lord: he shall be acceptable to his minde.

* Isa. 56. 4, 5.

† Gr. the chosen.

|| Or, amongst the people.

15 For glorious is the fruit of good labours: and the root of wisdom shall never fall away.

16 As for the children of adulterers, they shall not come to their perfection, and the seed of the unrighteous bed shall be rooted out.

|| Or, be partakers of holy things.

17 For though they live long, yet shall they have nothing regarded: and their last age shall be without honour.

Math. 7. 1. * time; yet standing not fast, they shall be
shaken with the winde: and through the force
of windes they shall be rooted out.

5 The unperfect branches shall be broken
off, their fruit unprofitable, not ripe to eat
yea, meet for nothing.

† Or, sleeps. 6 For children begotten of unlawfull fathers
are witnessies of wickednesse against their
parents in their triall.

7 But though the righteous be prevented
with death: yet shall he be in rest.

8 For honourable age is not that which
standeth in length of time, nor that is measur-
ed by number of yeares.

9 But wisdome is the gray hair unto men
and an unspotted life is old age.

* Gen. 5. 24.
Hebr. 11. 5. 10 * He pleased God, and was beloved
of him: so that living amongst sinners he was
translated.

11 Yea, speedily was he taken away, lest
that wickednesse should alter his understand-
ing, or deceit beguile his soul.

† Or, pervert. 12 For the bewitching of naughtinesse, doth
obscure things that are honest: and the wanton
dring of concupiscence, doth undermine the
simple minde.

¶ Or, sanctified, or consummated. 13 He being made perfect in a short time
fulfilled a long time.

14 For his soul pleased the Lord: therefore
hasted he to take him away from among the
wicked.

15 This the people saw, and understood
not, neither laid they up this in their minds.
That his grace and mercy is with his saints,
and that he hath respect unto his chosen.

16 Thus the righteous that is dead shall
condemn the ungodly which are living; as
youth that is soon perfected, the many yeares
and old age of the unrighteous.

worth.

not

12 Therefore let us lie in wait for the righteous: because he is not for our turn, and he is contrary to our doings: he upbraiddeth us with our offending the law, and objecteth to our infamie the transgressings of our education.

13 He professeth to have the knowledge of God: and he calleth himself the childe of the Lord.

* John 7.7.
Ephes. 5.13.
* Isa. 53.3.

14 He was made * to reprove our thoughts.
15 * He is grievous unto us even to behold: for his life is not like other mens, his wayes are of another fashion.

Or, false
coin.

16 We are esteemed of him as || counterfeitis: he abstaineth from our wayes as from filthines: he pronounceth the end of the just to be blessed, and maketh his boast that God is his father.

17 Let us see if his words be true: and let us prove what shall happen in the end of him.

* Psal. 22.
8.9.

18 For if the just be the * sonne of God, he will help him, and deliver him from

* Jer. 11.19.

19 Let us * examine him with despitefulness and torture, that we may know his meeknesse, and prove his patience.

20 Let us condemn him with a shamefull death: for by his own saying he shall be respected.

21 Such things they did imagine, and were deceived: for their own wickednesse hath blinded them.

† Gr. preferred or esteemed the reward

22 As for the mysteries of God, they knew them not: neither hoped they for the wages of righteousness: nor † discerned a reward for blamelesse souls.

* Gen. 1.26.
27. and 5. 1.
Eccles 17. 3.

23 For God created man to be immortal, and made him to be an * image of his own eternity:

P
Pronominal

P
Pronominal

Life in the

