THE COMPLEATE COPY-HOLDER.

Wherein is contained a Learned Discourse of the Antiquity and Nature of *Manors* and *Copy-Holds*.

With all things thereto incident, As

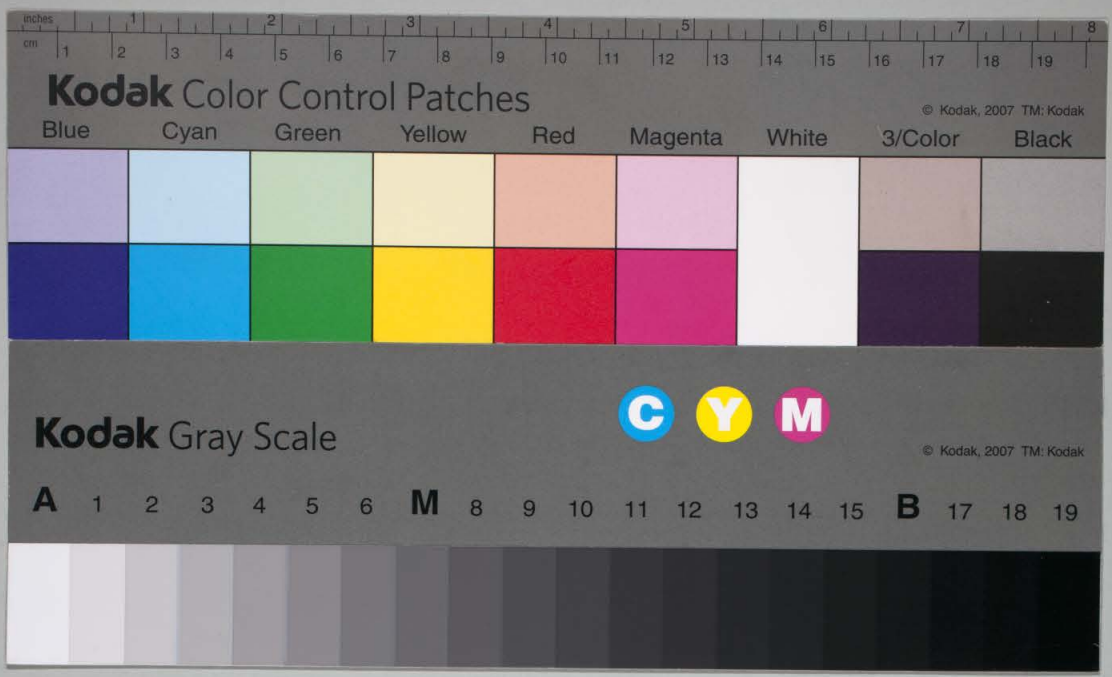
- *Presentments.*
- *Admittances.*
- *Surrenders.*
- *Forfeitures.*
- *Customes, &c.*

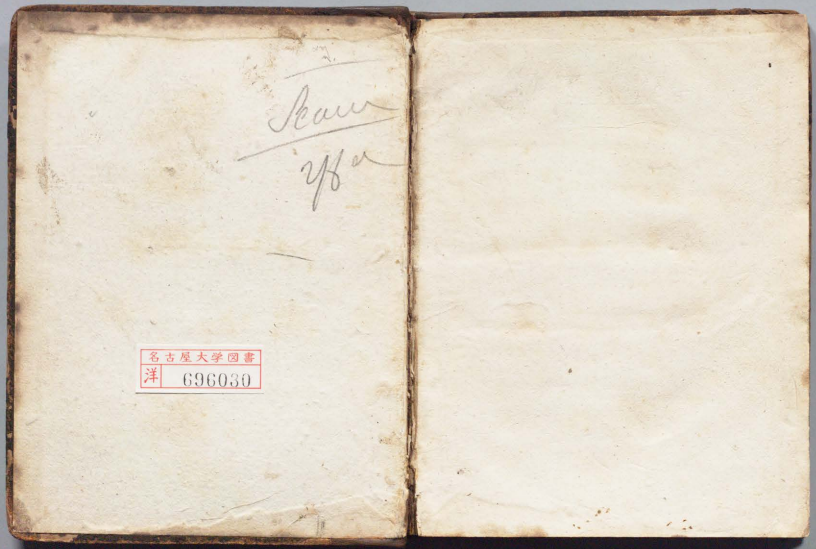
Necessary, both for the *Lord* and *Tenant*.

Together, with the forme of keeping a *Copy-hold Court*, and *Court Baron*.

By Sir EDWARD COKE, *Knight*.

LONDON,
Printed by *T. Cotes*, for *W. Cooke*, and are to be sold at his Shop, at *Furnivalls-Inne* Gate in *Holborne*. 1641.





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TO THE READER.

THis Copy comming to my hands, perused, and reverenced by men learned in the Lawes. I thought most worthy of Publication. The very name of the Composer, who hath beene an Ornament to our Kingdome, is enough to give it sufficient authority, and indeere it to every wise opinion. But the profit which doth attend, is most considerable, it being a subject so materiall, declaring the Antiquitie of Manors and Copyholds;

and written for the good of Lords *and* Tenants; *and by consequence of all men: it cannot but receive a becomming entertainement. In the confidence of this truth, I referre it to all judicious perusall, not a little congratulating my owne happinesse, to have beene an instrument of bringing so excellent a Piece from obscurity, for the benefit of the Common-wealth.*

W. C.

MANORS AND COPY-HOLDS.

SECTION I.

THough a Manor and Copyhold have such mutuall respect, and reciprocall 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 truely apprehended: for a Manor is as the bodie, and Copyholds certaine members of this bodie. In

this Treatise I will discourse of them severally apart, and beginne with the Manor it selfe especially, when common reason teacheth us, that *totum magis illustrat partes, quam partes aliqua illustrant totum.*

Sec. II.

THe *Saxons* (who held *England* in subjection immediately before the comming of the *Normans*) were unacquainted with these Manors, yet in effect they had Manors in those dayes 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 *Fulbecke* termeth them, their demesnes they termed Inlands, because the Lords kept them in their own hands, and enjoyed them in their owne possession, their Services they termed Vtlands, 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 services: their Demesnes were of two sorts; and their services likewise were of two sorts.

Fulbecke in his fourth Dicalogue.

Sec. III.

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

Sec. IV.

TH'other sort of their Demesnes was termed Folklands, because they passed by Polls, and were claymed and challeng'd by the Tenants; not by any assurance in Writings, but onely by the mouth of the people; *Per vocem populi*, and they in effect differed in nothing from Copy-hold Lands at this day.

Sec. V.

TOuching their Services, one sort of their Services were *Servicia libera*, which consisted most commonly in Render, as to pay yearly such a Rent, or in Vser, 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.

Sec. VI.

TH'other sort of Services, were *Servitia villana*, which consisted altogether in Fesance, as to scoure the Lords ditches, to tyle his houses, to thatch his barnes, or such like.

Sec. VII.

AND in the reservation of these Services, the Lords had a speciall respect unto the qualitie of the Land, did they transferre their Bockelands, *bocest*, Free-hold Lands, they would never reserve Villeine Services; did they transferre their Folk-lands, *hoc est*, Coppy-hold Lands, they would never reserve free Services, but still they suited their Services according to the nature of the Land: the reason I gather was this, in those dayes none but men of good account and reckoning enjoyed the said Bocklands, whereas Holblands were in the hands of men of meaner sort and condition, and therefore had not the Lords care beene extraordinary in reserving apt Service they should have much wronged their Tenants; and thus much *Lambert* verifieth, saying, *Terra ex scripto fuit hereditaria, libera, atque immunis: terra vero sine scripto*

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

scripto officiorū quodam servitute fuit obligata: priorem plerumque nobiles aut ingenui, posteriorem vero rustici feri & pagani possidebant. Lambert termeth these Bocklands, *Terras liberas atque immunes, non quod ab omnibus servitiis fuerunt libera aut immunes, sed quod tenentes ipsi fuerunt liberi & servitiis tantum liberis onerati.* But I much wonder, why this Bocklard doth to this day retaine the name of Free-hold Land, sithence time hath bred such an alteration, that in the point of Service, a man can scarce discerne any difference betweene Free-hold Lands, and Copy-hold Lands. The favourable hand of time hath so infranchised these Copy-holders, that whereas in the *Saxons* time, their Services did consist wholly in Feasance; now they consist in Render, in Vser, and in Prender: as Free-holders Services did in those dayes: And on the other side, time hath dealt so unfavourably with Free-holders, and hath so abridged them of their former freedome; that if you compare the Service of the Free-holders, with the Service of the Copy-holders, *senties hunc potius quam illum fore liberum*, How many Free-holders are there at this day, charged with base Services, as many (I doubt not) as there are Copy-holders? No marvell then that many

able men turne Copy-holders, and many Pezants turne Freeholders; no marvell, I say, that men of all sorts and conditions, promiscuously, both Free-holders and Copy-holders, 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 so infranchised these Copy-holders, that they have in a manner shaken off all villaine Service; yet they retaine 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 Free-holders otherwise it is, for they are not in that subjection to their Lords, peradventure in this respect onely Bocklands may be termed Free-hold Lands, and Folkland Villaine Lands; and yet time hath dealt very favourably with Copy-holders in this point of will, as well as in the point of Service.

Sec. VIII.

Bract lib. 4. Tr. 3. cap 9. numb 5. Fleta lib. 5. cap 5. 4.

FOr, as I conjecture, in the *Saxons* time; sure I am, in the *Normans* time, those Copy-holders were so farre subject to the Lords will, that *eorum tenentes tempestive & intempestive pro voluntate Domini possent resumi & revocari*, as *Bracton*, and *Fleta* both speake; the

the Lords upon the least occasion, sometimes without any colour of reason, onely upon discontentment and malice; sometimes againe upon some sudden fantasticke humour, onely to make evident to the world, the height of their power and authority, would expell out of house and home their poore Copy-holders, leaving them helplesse and remedilesse by any course of Law, and driving them to sue by way of Petition.

Sec. IX.

BVt now Copy-holders stand upon a sure ground, now they weigh not their Lords displeasure; they shake not at every suddaine blast of wind, they eate, drinke, and sleepe securely, onely having a speciall care of the mainechance (*viz.*) to performe carefully what duties and services soever their Tenure doth exact, and Custome doth require; then let Lord frowne, the Copy holder 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 *Subpena* or an Action of Trespasse against the Lord. Time hath dealt very favourably with Copy-holders in divers respects.

Sec.

Sec. X.

BVt I perceive my selfe rashly running into an inextricable Labyrinth, I will therefore saile no longer in these unknowne coasts, but will hasten homewards, I will content my selfe with this. I know amongst the *Saxons* th'essentiall parts of a Manor were knowne; but whether there then were the same forme of Manors which is at this day, that I dare not examine, for feare of being accounted more curious than judicious, and therefore leaving the *Saxons*, I draw somewhat nearer home, and come to the *Normans*, from whom wee had the very forme of Manors, which is observed amongst us at this present houre.

Sec. XI.

I Confesse indeede, that sithence the Originall creation of Manors, Time hath brought in some innovations and alterations, as in giving a large freedome unto Copy-holders, both in the nature of their Service, and in the manner of their Tenure. Yet I may boldly say, that the selfe-same forme of Manors remaine unaltered in substance, though

though something altered in circumstance, Demesne termed in Latine *Demanium, Domanium* or *Dominicum*, is taken in a double sense, *proprie*, and *improprie*; *proprie*, for that Land which is in the Kings owne hands; and the *Chopinus* saith, that *Domanium est illud quod consecratum unitum, & incorporatum est regiæ Coronæ*, take *Domanium* in this sense, and then you exclude all common persons from being seized in *Dominico*: for admit the King passe over the Demesne Lands, as soone as they come into a common persons hands, *desinunt esse terræ Dominicales*; for though the Kings Patentee, hath the land granted to him, and to his Heires, yet comming 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 commonly are termed ancient Demesne, *viz.* such Lands as were *quondam* in the hands of *Edw. the Confessor*, may properly be termed generally ancient Demesne, because they were in ancient time in the Kings owne possession, yet to terme them at this day the Lords Demesnes, or the Tenants Demesnes being severed from the Crowne is improper *ea. qua super.*

Chopinus de dominio sortæ lib. 2.

Sec. XII.

THen by this it appeareth that those lands are termed *impropriè* Demesne, which are in the hands of an inferiour Lord or Tenants, nor can such a one in proprietie of speech be said to stand seized of any Land whatsoever *in Dominico suo*, but if you observe narrowly the manner of pleadings, the words are used in a proper sense, for you shall never finde that an inferiour Lord or Tenant, will plead that he is simply seized *in Dominico*, but still with this addition, *in Dominico suo ut de feodo*, and that very aptly, for this word Fee implieth thus much, that his estate is not absolute, but depending upon some superior Lord: therefore I conclude with the *Feudists*, that a common person may aptly be said to stand seized in *Feodo*, or in *Dominico suo ut de feod.* but improperly in *Dominico* simply; the King *è converso* may properly be said to stand seized *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 owne possession; under the second, those Lands which are in the hands of the inferior

ferior Copy holders: His words are these, *Dominicum dicitur quod quis habet ad mensam suam & ideirco Anglice vocat. Bordland; dicitur etiam Dominicum villinagium quod traditurvillanis, quod quis tempestive & intempestive resumere possit, pro voluntate sua & revocare.* *Bract. lib. 4. tract. 3. cap. 9. numb. 5.*

Sec. XIII.

Fleta agreeth with *Bracton* in this division, and unto these two he addes more sorts of Demesne Lands: His words are these; *Dominicum est multiplex; est autem Dominicum propriè terra ad mensam assignata & villinagium, quod traditur villanis ad excolendum, quæ tempestive, & intempestive pro voluntate Domini & poterit revocari sicut est de terra commissa tenend. quàdiu cõmiserit placuerit: poterit & dic. dominicũ de quo quis habet liberum tenementum alius usum fruct. & etiam ubi quis habet liberum tenementum aliter curam de custode ad.ciperit & curator quorũ unus d.citur ab homine, aliusin jure, Dominicum etiam dicitur ad differentiam ejus quod tenetur in servitio. Dominicum denique est omne illud tenementum de quo antecessor obiit sesitus, nec refert, cum usu fructu vel sine, & de quo si ejectus esset recuperare posset per assisam novæ dessisinæ licet alius haberet usum fructũ sicut dici poteris de il-* *Fleta lib. 3. cap. 5.*

lis qui tenent in villenagio qui utuntur & frununtur non nomine proprio sed nomine domini sui.

Sec. XIV.

THis opinion of *Bract.* and *Fleta*, both consenting in one thing Copy-hold Land is parcell of the Lords demesnes, wanteth not moderne authority to second it, for 15. *Eliz.* in the *Exchequ.* 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 granteth a way, *Omnes terras suas dominicales*; the Copy holds parcell of the Manors passe by these generall words; neither doth this want Reason to confirme it; for in the time of *Henry* the 3. and *E.* 2. when *Bract.* and *Fleta* lived, Copy-holders were accompted meere Tenants at will, and therefore after a sort their Lands reputed to continue still in the Lords hands, and now, though custome hath afforded them a surer foundation to build upon, yet the Francke Tenement at the common Law, resting in the Lord, it can be no strange thing to place their lands under the rancke 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-holds are parcell

parcell of Lands demesnes, yet in propriety of speech (if propriety can be in impropriety) they are the more aptly called the Copy-holders demesnes; for though the Franke tenement be in the Lord by the Common Law, yet by the custome, the inheritance abideth in the Copy-holders; and it is not denied, if a Copy-holder be impleaded in making tytle to his Copy-hold, he may justly plead, *quod est seisitus in Dominico suo*, with this addition, *secundum consuetud. Manerii.* Therefore I conclude, that howsoever the Common Law valueth the tytle of the Copy-holder, yet he hath such an interest confirmed unto him by Custome, that the Lord having no power to resume his Lands at your owne pleasure they are (though improperly) called (yet peradventure truly accounted) 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 owne hands, for the maintenance of his owne Boord or Table, be it his waste ground, his arable ground, his pasture ground, or his meadow; be it his Copy-hold which he hath by escheate, by forfiture, 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 indigentes*, but to shew you in what sense it is taken, and how farre it extendeth.

SEC. 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.

SEC. 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.

SEC. XVII.

IN respect of the state of the Law, and so it is opposed to Copy holders, that what Land soever is not Copyhold is Freehold, and in this sense I take throughout this Discourse.

SEC.

SEC. XVIII.

THe name of Freeholders extendeth not only unto Lands held *per servitium militare*, as it did by th'ancient Lawes of *Scots*; and amongst whom Freeholders were knowne by the name of *milites*, but it reacheth likewise to lands holden *per servitia Socagii*, whether in *libero Socagio*, or in *villano Socagio*: *Liberum Socagium* is, where any Tenant holds of any Lord by paying yearely a certaine summe of money in lieu of tillage, and such like services, and not by esenage; and this is termed sometimes common Socage. *Stat. de verb. sign. lit. milit.*

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, reade *Bracton, lib. 2. cap. 8. num. 8. Hactenus de primo defunctionis membro ad secundum properemus, & pauca de servitiis Dominis debitis perstringemus.* *Stat. 37 H 8. Cap. 20.* It is so called.

Services in *individuo* are manifold, in *specie* threefold. 1. Corporall services. 2. Annuall services.

services. 3. Accidentall services.

Corporall 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 solemne oath, or by faithfull promise, from that day forward to become the Lords men for life, for member, for terrene honour, or *adminimum*, to owe unto him faith, for the Lands which they hold of him. Both these Ceremonies are used at the first entrance or admittance of any Tenant, and both tend to one end, *viz.* to inforce 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 solemne oath, in doing homage only giveth his faithfull promise; and thence it is that fealty is accounted the more sacred service

vice, 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 honor. In doing fealty he onely sweareth to become the Lords faithfull Tenant: the reason of this difference I learne to be this, because homage especially concerneth service in warre, & properly appertaineth unto Knights service; but fealty chiefely 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;

Glanv. de verb. fignum Homage.

and this agreeth with the ancient Lawes in *Scotland*, for amongst them none were accounted Freeholders, but onely 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 hee onely sweareth to become the Lords faithfull Tenant.

2. They differ in regard of the persons to whom they are performed, and that two wayes. In respect none is capable of receiving homage, but the Lord in person, but the Lords Steward, or his Bailiffe is capable to receive fealty in the Lords behalfe. 2. In respect that a Lord who hath but an estate for his life in his Scigniory 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 wayes. 1. In respect th t no Copyholder is capable of doing homage, but he is of doing fealty, witnesse common experience. 2. In respect that a Tenant for life or yeares, is unable to doe homage, for tis a ground in Law, that none can doe homage but tenant in fee-simple, or *ad minimum*, tenant in tayle.

SEC. XXI.

BVt a Tenant for life or yeares, are both able to doe fealty, according to *Littleton* rule, that fealties are incident to every tenure, except tenures in Franck-almoigne, and tenants at will, contrary to some erroneus 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 Lands descend unto me, which is holden of *I. S.* by homage, and I doe unto him homage, and after other Lands descendeth unto me by another Ancestor, which is holden of the same Lord by homage, I shall not doe homage againe, but fealty onely, because I cannot twice become the Lords man; but the selfe-same Tenant may severall times doe fealty unto the selfe-same Lord; and therefore if a Copyholder surrendreth Whiteacre unto me, for his Whiteacre I should doe fealty unto the Lord. If after another surrendreth unto me Blackeacre, I shall doe fealtie likewise unto the same Lord. And thus much for services of Submission,

Bracton and *Yorley* 5. H. 7. The Justices of the Common Place, 10. H. 6. held, that Lessee for years cannot doe fealty.

Sect. XXII.

SErvices of Profits are of two sorts tending to the publique profit of the Commonweale, as when the Lord injoyneth his Tenant to amend high wayes, to repaire decayed bridges, or *similia*. 2. Tending to the private profit of the Lord, as where the Tenant is injoyned to be the Lords Carver, Butler, or Brewer, or is tyed to payle the Lords Parkes, to tyle the Lords Houses, to thatch the Lords Barnes, and *similia*. And thus much for corporall services.

Annuall services are in number infinite, in nature all one, for they all tend to th'increase of the Lords Coffers, and are referred 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 referred for Copyhold-Land, but onely for Freehold-Land. I will not enumerate many particulars of annuall services, for that were as endlesse, as numbring the sands of the Sea; onely this I say, that those annuall services which here come within the compasse of my meaning, consist all in Render, none in Feasance, for those annuall services, as well as accidentall services,

ces, which consist in Feasance, I comprehend under corporall services; this 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, and 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 clientelarie, &c.* that duty which the Tenant oweth unto 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 Seignorie, and in this sense, these accidentall services following (which *prima facie*, may seeme 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 this kinde of services.

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

1. *Wardships.*
2. *Herriots.*
3. *Reliefes.*
4. *Amerciaments.*
5. *Forfeitures.*
6. *Escheates.*

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

Sec. XXII.

Wardship. est custodia heredis infra aetatem existentis, *Polidore Virgil* saith, that this *was novi vectigalis genus excogitatum*, to helpe, *Hen.* 3. being oppressed with much poverty, by reason hee 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 abroach. But the 33. Chapter of the grand Customary maketh mention of this to have beene used among the *Normans*, immediatly after the erection of Manors, and that the use of Wardships was a foote before *H.* the thirds time, as appeareth manifestly by *Glanvil*, who writeth very

very largely in many places in his Booke, and lived in *H. the seconds* time; Guardians are either termed *Custodes*, or *Curatores*, *Custides a lege*, *curatores ab homine*, as *Fleta* speaketh. The Civilians make three sorts of *Guardians*, *Tutor testamentarius*. 2. *Tutor a Praetore datus*. 3. *Tutor legitimus*: This in every point agreeth with our Common Law, so wee have *Tutorem testamentarium*, *viz.* where a man possessed of certaine goods and chattells demiseth these unto his child, and withall, committeth the care of his childs body, and disposition of his substance unto some friend, this committee is *Tutor testamentarius*, unto whom belongeth the care and custody of the childs body, and the disposition of his substance, untill hee accomplish the full age of foureteene yeares, and then immediatly hee shall be out of Ward for his body, but his goods may be kept longer, for as for them they shall remaine in the trustees hands, so many yeares as the Testator appointed by his last Will and Testament: for though it be not in the Fathers power to restraine the libertie of his childs 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

If a man be seised of Socage Lands, not holden of the King in Capite, hee may by his last Will and Testament commit the ordering of Theoglands, to what friend soever, for as many yeares as shall seeme most convenient, and that friend is *Tutor testamentarius*, otherwise it is of Lands holden by Knights 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 the age of fourteene. In regard that this priviledge of appointing the heires a Guardian for their Copyhold Land, untill he accomplish the age of fourteene, *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; *hac de Tutore testamentario*. 2. Wee have *Tutorem a Prætore datum, viz.* where a man deviseth goods unto his childe, and appointeth him not Guardian, then it is in the Ordinaries hand to commit the ordering of the Infants goods unto some trustie friend, unto the age of foureteene; at what time the Infant himselfe may chuse a Guardian: for it is a rule in the Civill Law, *Invito curator non datur*, and this Committee *est Tutor a Prætore datus*.

datus. These Guardians termed amongst the Civilians, *Tutores a Prætore dati*, are commonly called Guardians, *pur nurture*; and thus in words we somewhat differ, in matter nothing. 3. We have *Tutorem 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 twofold, either *legitimus jure naturæ*, or *legitimus jure Comuni*; *legitimus jure naturæ*, as where the Father or the Mother hath the Wardship of their heires apparent, be it heire male or female: *Legitimus jure comuni*; and that Guardian is twofold, either Guardian in Chivalrie, or Guardian in Socage; Guardian in Chivalry is, where any Tenant seized of Land, holden by Knights service dieth, his heire male under the age of fourteene, 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 performe Knights service, according to the tenure; but the heire female shall be in Ward, no longer than to the age of sixteene, because the heire female, though shee her selfe be unable to performe Knights ser-

vice, yet at sixteene, she is able to take a husband, who in her behalfe may doe Knights service; and therefore at those yeares shee shall be out of Ward; nay, sometimes shee shall be out of Ward before sixteene; and that is either, where shee is married at the death of her Ancestor, or where shee is any whit above fourteene: when her Ancestor dieth in neither of these Cases shall she be in Ward at all; for though the *Stat. of W. 1. cap.* 22. giveth unto the Lord two yeares next ensuing the fourteenth, yet that is to be understood, where shee is under the age of fourteene, and unmarried at her Ancestors death, and not otherwise. This for Guardian in Chivalry. Guardian in Socage, is, where any one seized of Socage Lands dieth, his heire under the age of fourteene, then the next friend unto the heire, to whom the inheritance cannot descend, shall have the Ward of the heires body, and of his Land, untill the age of fourteene, as if the Land descendeth unto the heire by the fathers side; then the mother, or next cosin of the mothers side shall have the Ward; and if the Land descendeth 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,

Chivalry, and Guardian in Socage, that the one receiveth the commodities of the Land to his owne use, without giving any account; th'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 th'age of foureteene. 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 *here 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 preparation 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 owe unto their Lords, 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,

vide Lamb. in his explication of *Saxons* words *tit. Herriot.*

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 assignment 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 cõparison to a Relief, for it proceedeth rather of grace and good will, than of right; and rather from villaines, than freemen: to this effect speaketh *Fleta*, *Herriottum est quaedam præstatio nobis tenens, liber vel servus in morte sua dominum suum respicit de melliori averio suo vel de secundo meliori, qua quidem præstatio magis, fuit de gratia quam de jure & nullam habet comparationem ad relevium eo quod heredi non contingat quia factum antecessoris.*

Britton. cap. 69.

Fleta lib. 1. 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

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 yeares, as well as upon an estate of inheritance. 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, yet the nature of both these, Herriot Services, and Herriot Custome, 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 a of Relieve, leaving notwithstanding some difference betwixt them, for where the *Saxons* Herriot, consisted usually in the payment of some military weapon; our Relieve in those dayes 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 certaine 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 Relieſe.

Sec. XXV.

RElieſe is a certaine ſumme of money which every Freeholder payeth unto his Lord, being at full age at the death of his Anceſtor, which in effect ſoundeth all one, with theſe words of *Glanvil*, *Heredes majores ſtatim poſt deceſſum anteceſſorum ſuorum poſſunt ſe tenere in hæreditate ſua licet Domini poſſint feodum ſuum cum herede in manus ſuas capere: ita tamen moderate id fieri debet, ne aliquam diſſeiſinam heredibus faciant, poſſunt enim, heredes ſi opus fuerit, vicinet Dominorum reſiſtere, dum tamen parati ſint Relivium aliare tro ſervitia eis inde facere*; with this agreeth the definition of *Hoveman*, *Relivium eſt honorarium quod novus vaſſallus introitus cauſâ patrono largitur quaſi morte uſuali altius vel alio quo caſu feodum creciderit quod jam a novo ſubleviatur*. This reliefe by the ancient Civill Law was termed *Introitus*; and *Vincentius* termeth it *Preſtantionem ſeu ſalutionem ſa-*

Glanv. lib. 7. cap. 3.

Hoveman Comment. de verbo feod & verbo Relivium.

ſtam pro confirmatione ſeu renovatione poſſeſſionis, and that very aptly: for indeede Relieſe 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 Relieſe, *Quia hæredes ea quæ jacens fuit per anteceſſoris deceſſum Relevantur in majus*. *Bracton lib. 2. cap. 36.*

heredes & propter factam relevationem faciend. erit ab hærede quædam præſtatio quæ dicitur Relevium. *Skene* fondly imagineth that it taketh his name, *a relevando*, in another ſenſe; for ſaith he, Relieſe 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 Relieſe, and by payment thereof he relieves, and as it were, raiſeth up againe 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, & fidelitatis reſtitutione quietus erit a Relivii ratione cuſtodiæ*: this Relieſe is twofold. 1. Relieſe Service. 2. Relieſe Cuſtome: Relieſe Service, is that which is paid upon the death of any Freeholder. Relieſe Cuſtome, is that which is paid upon the death, change, or alienation of any Freehold, according to the Cuſtome of the

Skene de verbo ſignum tit. Relief.

Glanvil lib 9. cap. 9.

the place, in many places halfe a yeares profit, in many places a whole yeares 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 consuetudine, præstare 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 fealty and five shillings; then shall the heire double the Rent, and shall pay ten shillings, *viz.* five shillings in the name of a Relieſe, over and above the five shillings, which hee 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, hee payeth five pound, if by halfe a Knights Fee, then he payeth fiftie shillings, if by a quarter of a Knights Fee, hee payeth 25. 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 Relieſe: let us examine

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 quantity, or according to the value, *Cuſidici erant, & adhuc ſub fide ſe liſt.* 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 foure carnes of land, every carne foure yard lands, every yard thirty acres; and every Knights Fee 1920. acres. According to other computations, a Knights Fee contained, 680. but according to most computations, a Knights Fee contained five hides of land, evey 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 fifteene pound *par annum* made a Knights Fee; and therefore, *Camden* saith, that, *Sub Henrico tertio quodammodo coacti fuerũt equites fieri qui tot libras quindecim ex annuis*

Camden in ſua Britan. pag.

exannuis terrarum redditibus colligarunt; and out of *Matthew Paris*, hee writeth, that *anno*, 1256. *Exit edictum regium preceptumque est & acclamatum per totum regnum ut qui haberet 16. libratas terræ & supradictè. armis redimitus tirocinio donaretur, ut Angliæ, sicut Italiamilitia roboraretur, & qui nollent, vel qui non possunt honorem status militaris sustinere pecunia se redimerent.* Others hold, that *census equestris*, was 5 soft e pound revenue in Freehold land: and of this opinion is Sir *Thomas Smith*: others held, that *census equestris*, was twentie pound revenue 5 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 Statute of

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

W. 1. cap. 36. and by *Fitch.* this seemeth something pregnant, for in both these places, Soccage land to the value of twentie pound *per annum*, are put in equipage with a Knights Fee. 3. In a Writ of melior, brought *per Ranulphum de Normanville petentem versus Lucianum de Kyme tenentem P. 3. E. 1.* appeareth, that twelve carues of Land made a Knights Fee, every carue 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 seeme most consonant to reason. For my owne part, I thinke that in the ancient time, a Knights Fee, was measured according to the number of the acres; but in those 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 certainely rated, according to the Custome of the places, and 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 looke no further than to the quantitie of his

Fitch. nat. Brevium. fo 62.

land, for by the quantitie, they could presently judge the value; but now the value is not certainely 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 differene 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 foure 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 mee leave to examine at what time, and by what Law it was first provided, that for every Knights Fee, the fourth part of a Knights Revenue should be payd in the name of a Reliefe, *viz.* 5. *li.* for every Barons Fee, the fourth part of a Barons Revenue, *viz.* one hundred markes; for every Earles Fee, the fourth part of an Earles Revenue, *viz.* one hundred pound; surely Reliefes 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

Glanvil. lib 9. cap 9.

he speaketh to this effect, *Dicitur rationabile relevium alicujus juxta conjecturam regni de feodo unius militis centum solidos, de Soccagio vero quantum valet, census illius Soccagii per annum de Baronia vero nihil certum statutum est quia juxta voluntatem & misericordiam Domini Regis solent Baroniæ capitalia de relevio 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 certaine before the *Statute*. Touching Reliefes paid by Barons, it was an institution of a new Law, because they were before uncertaine; and the reasons 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 Duke, Marquesse or Vicount in *England*. The first Duke that ever was in *England* sithence the Conquest, was the Blacke Prince, eldest sonne to *Ed. the* 3. 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 unknowne, yet they are comprehended under the equitie of the *Statute*, and according to their severall dignities shall pay Reliefe unto the King, a Duke two hundred li. a Marquesse two hundred markes, and so ratably and proportionably. But to conclude, let us compare Herriots and Reliefes together, and observe in what they differ.

1. They differ in this, that a Herriot lieth in Prender, and a Reliefe in Render. 2. In this, that a Herriot is 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 Heriots 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 in esse feodo*. Thus much touching Reliefes, a word touching Amerciaments.

Sec.

Sec. XXVI.

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

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 onely, or other Courts of Record. 3. That Amerciaments are incident unto every Manor whatsoever; but Fynes are incident unto some few

few Manors onely: the reason of this difference is partly grounded upon the former difference; for fithence 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 adverso*, Fines being incident unto Court Leets onely, and those Court Leets being in some few Manors onely, not in every Manor expressly *sequitur*, that Fines are not incident unto every Manor, but unto some few Manors onely. 4. In this, that Amerciaments are afferable *Per pares, per sacramentum proborum & legalium hominum de vicineto, aut secundùm modii delicti majoris vel minoris amerciandi & delinquens. mulctare possunt*: but Fines are never afferable in this kinde; for looke what Fine soever the Court imposeth upon the delinquent, that bindeth sufficiently, without further afferance. Give me but leave to aske two questions, when had this afferance his first conception or creation? 2. How may Amerciaments 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 thinke this Law of afferance was before the

Glanv. lib. 1. cap. 11. *Statute of Magna Charta*; for *Glanvile* thus

speaketh of it, *Est autem misericordia Domini Regis, quod quis per juramentum legalium hominum de vicineto eatenus amerciandus est ne aliquid de suo honorabili contenen. amittat*; and therefore by this appeareth, that this *Stat.* of *Magna Charta*, was but an affirmance of the Common Law in this point of afferance. Touching the second question, 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 necessarily sute with the qualitie of the offence, from the severall natures of offences committed, arise the severall names of punishments inflicted. The offences in respect of the place are twofold, and in respect of the persons twofold. In respect of the place, offences committed, *extra curiam*, of which the Steward by no common possibilitie can have cognizance without the presentment of the homage, and therefore the power of presenting them, and imposing punishments for them, belongeth unto the Jurors of the Leet, and not unto the Steward; and these punishments thus imposed are termed Amerciaments. 2. Offences committed 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 twofold. In respect of the person, they are likewise twofold: Offences committed by private persons. 2. Offences committed by publike Officers, and Ministers of the Court, in the administration of their office, punishments imposed for offences of the former ranke are termed Amerciaments, of the latter ranke Fines, the one afferable *per pares*, th'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* makers was not to make the Jurors Afferors *in omnibus delictis multandis, sed in iis tantummodo puniendis quorum certam pœnam habere notitiam, & intelligentiam*, as *Fleta* speaketh, and therefore sithence the Steward hath more certaine notice of offences committed in *curia* by what

ca. 9. Greisagl. case.

Fleta lib. 2. cap. 58.

persons soever then the Jurors have, and can better judge and discerne 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 afferance of the homage. Thus much concerning Amerciaments: a word concerning Forfeitures.

Sec. XXVII.

Forfeiture commeth of the *French* word *Forfaict, 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 meane, it signifieth the penalty for 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 speake 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 Mortmaine, hee forfeiteth his Freehold. 2. If a Freeholder ceaseth for the space of two whole yeares, 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 hee is tied, hee forfeiteth his Freehold.

Touching the causes from whence 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 pursuite made, waiveth these goods, and leaveth them in any part of the Manor, and be not attached upon the fresh suite of the owner; then are these goods forfeited to the Lord, and are termed waives. 2. If any beasts are found wandering in any place, and be proclaimed in three market Townes adioyning, and are not claimed by the owner in a yeare and a day; then are the beasts forfeited to the Lord, who hath such a liberty, and are termed Estrayes. 3. If any suffer Ship-

Shipwracke upon the Seas, and through the violence of the Waves, goods are cast upon the Shore; and being seized by the Bayliffe, are not claymed within a yeare and a day after the seisure; then are these goods forfeited to the Lord, who hath that Franchize, and are termed Wrecks. 4. If one come to a violent end, without the fault of any reasonable creature, then immediatley 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 quæ movent ad mortem sunt Deodanda*: as it a Horse striketh his Keeper, and killeth him: or if a man driveth his Cart, and secking to redresse it, falleth, and the Cart wheele running over him, presseth him to death; or if one felling a tree, giveth warning to commers 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, & 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 forbeare to enumerate any more in this kind; and to speake more largely of these which I have already enumerated, for three speciall reasons;

 1. Because

1. Because they are duties accruing unto the Lord, not meerely from the Tenants, nor solely by the Act of the Tenants, but most commonly from strangers, and by the sole act of strangers, 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 into such Manors onely 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 knowne to challenge interest in them, as waives, estrayes, and wreckes, the propertie of such goods belong unto the King, *virtute prærogativæ*; and thus much *Bracton* intimateth, when he saith, *Sunt alia quædam quæ in nullius bonis esse dicuntur sicut wreccum maris, &c. & aliæ res, quæ Dominum non habent sicut animalia vagantia, & quæ sunt Domini Regis propter privilegium maritum:* 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

of Gods anger, and these things thus forfeited, were according to the true intendment of the Law to be sold, and money distributed among the poore; 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 truely, nay, more liberally and bountifully with the poore in this kinde, than any inferior Lord, who peradventure out of his uncharitableneſſe, peradventure out of want, will be so farre from adding any thing to that which is due, that hee 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 beseeme this small Treatise, wherein the scope and end I aym at, is this, onely 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.

Sect.

Sec. XXVIII.

Escheates cometh of the *French* word *Echear excidere*, & are termed *excadentiæ*, 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 cleare intitle the Lord, as to Lands Escheated.

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

which the Law hath provided for the obtaining of those severall Services before mentioned, if perchance they be wrongfully deceived by the Tenants; and for method sake, I will begin with corporall Services.

Sec. XXIX.

If any Freeholder refuseth to do homage, or fealty, which are corporall Services of submission; or to mend high wayes, repaire decaied 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 payle the Lords Parke, to tyle the Lords Houses, or to thatch his Barnes, or *similia*; whichare corporall Services tending to the private profit of the Lord; If, I say, any Freeholder refuseth to do any of these Services, being bound unto them by his Tenure; then may the Lord lawfully distreine his cattle or his goods, and detaine 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 Annuall Services.

Sec. XXX.

FOr if any Freeholder refuseth to pay any annuall Rent, or to discharge any annuall payment, according to his Tenure; then may the Lord lawfully distreine 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 Rent continueth of any estate or Franke tenement, no action of debt lyeth for the arrearages of the Rent, nor for any other Service whatsoever; and therefore if a Lease for life be made reserving rent, the Lessor cannot maintaine an action of debt for the arrearages of this Rent, as long as the estate continueth, but presently upon the determination of the estate an action of debt lyeth for the arrearages of the Rent incurred before the time of the determination: but what hath the Law provided no other remedy for those annuall Services, then a distresse? Surely no, before seisein, none, but after seisein once gained, tis at his election, either to distreine, or to bring an Assise: and thus much touching remedies for corporall and annuall Services.

Sec.

Sec. XXXI.

ACcidentall Services are gotten by many differing meanes; By seisure onely; as the Wardship of the heires body together with the Waives, Estraies, Wreckes, Deodands, and such like forfeitures of goods. 2. By th'entry onely, as the Wardship of the heires Land, together with Lands forfeited to the Lord, either upon the breach of some condition, or upon an alienation in Mortmaine. 3. By Seisure or Distresse, as Herriot Services, contrary to the opinion of some who held them gaineable by Distresse only, & not by Seisure, or action, as Herriot Customes; for upon the cloignement of the best beast, the Lord may maintaine an action of detinue against the heire. 5. By entry, or action as Lands forfeited to the Lord, by the ceasing of his Tenant, or Escheat, accruing unto the Lord, either upon the attaindeur or death of his Tenant without heire; in the first, the Lord may enter or maintaine a Writ of Cessavit; in the second, the Lord may enter or maintaine a Writ of Escheate. 6. By Distresse or Action, as Reliefes and Amerciaments. For Reliefes the Lord may distreine, or bring an action of debt; neither doth this any whit impugne the former ground, that as long as the rent doth continue, &c. because indeede Relieſe is the fruit and approvement

of Services rather than any service, and for Amerciaments the Lord may either distreine 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 terræ & heredis* lyeth against the stranger, but to meddle with strangers were to wander out of the little Common weale, and therefore to keepe my selfe within my bounds and limits, I will here conclude, touching the two materiall causes of a Manor, *viz.* Demesnes and Services: a word touching the efficient cause of a Manor, and then I will end the definition of a Manor.

The efficient cause of a Manor is expressed in these words, of long continuance, for indeede time is the mother, or rather the nurse of Manors; time is the foule that giveth life unto every Manor, without which a Manor decayeth and dyeth, for tis not 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 himselfe cannot create a perfect Manor at this day, for such things as receive their perfection by the continuance

tinuance of time, come not within the compasse of a Kings Prerogative, and therefore the King cannot grant Freehold to hold by Copie, 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 betweene the King and his Tenant, where he hath Herriot custome to pay 10. *li.* in Levie 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 verifieth the old saying, *Plus valet vulgaris consuetudo quam regalis concessio*, this is the sole cause why the King cannot create a perfect Manor at this day, and 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, betweene very Lord and very Tenant: but a Common person cannot create a perfect tenure, and consequently cannot create a perfect Manor, before the Stat. of *Quia emptores terrarum*; if any Tenant seized of Land in Fee simple had infeoffed a stranger, he might have reserved what services hee thought fit, or had he reserved no services, yet the

Law would have employed a perfect tenure, betweene 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 seised of Land in Fee, infeoffeth a stranger neither by the expreise reservation of the Feoffor, nor by the implyed reservation of the Law, can there bee a perfect tenure created at this day betweene 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 customs: so a common person can doe nothing which amounteth to the creation of a new tenure, and therefore if there be Lord and Tenant by 10. s. rent, and the Lord will confirme the estate of a Tenant *Tenend.* by a Hawke, a paire of gilt spurres, a Rose or *similia*, this is a voyd confirmation; otherwise had it beene if the Lord had confirmed the estate of the Tenant *Tenendum per 5. s.* that had beene a good confirmation, because it tendeth onely 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

of a Manor purchase forraine land lying without 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 sute and service to one Court, this is but loft 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 traverlable; yet if the Tenants will voluntary submit themselves to such an innovation, and the same bee 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 quæ supra*, But if one Manor holdeth of another, by way of Escheate these two

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 seeme to impugne many authorities which hold at this day, that a tenure may bee created by a common person, for to cleare this colour of contradiction, know that tenures are two fold. First imperfect, as where a man maketh a Lease for yeares or for life, or a gift in tayle, here is an imperfect tenure betweene 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 betweene 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 quanon*, and that is a Court Baron; for

indeede that is the chiefe prop and Pillar of a Manor, which no sooner faileth but the Manor falleth to ground: if wee 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 liberty to parcell the land out to other inferiour Tenants, reserving such duties and Services as they thought convenient, and to keepe Courts where they might redresse misdemeanors within their Precincts; punish offences committed by their Tenants, and deside 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 would should come to the Parliament, such as the King for their extraordinary wisedome or qualitie thought good to call by writ, which writ, ran *hac vice tantum*, yet

Vide Lamb in his explication of *Saxon* words *verba Thorna*. *Bacon* in his elements of the Law. *fol.* 41. 42. 43.

though Lords of Manors lost their names of Barons, and were deprived of that dignity 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 beene so injurious as to eradicate the whole memory of their auncient dignity, in their name there is stamps left of their nobility, for they are still intituled by the name of Lords. These Courts differ from Court Leets in diverse respects: In this, that Court Barons by the Law may be kept once every three weekes, 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 seldome; but a Court Leete by the Statute of *magna Charta* is to bee kept but twice every yeare; one time within the moneth after Easter, and another time within a moneth after *Michal.* 2. In this, that Court Barons may bee 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 & 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,

Magna Charta c. 35. 31. Ed. 3. ca. 13.

this, that Court Barons are incident unto every Manor, so that every Lord of a Manor may keepe a Court Baron, but few have Leets; for inferiour 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 Iudges, but in Court Leets the Steward is Iudge. 6. In this, that in Court Barons the Iewrie consisteth oftentimes of lesse than twelve, in Court Leets never; the reason of that is, because none are impanelled upon the Iewrie but Freeholders, in Court Barons of the same Manor, but in Court Leets strangers are oftentimes impanelled. 7. In this, that Court Barons cannot subsist without two suitors *adminimum* 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 dignity of the King. In many other respects they differ, as that a writ of errour, 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 steade of a Capias is used an Attachment by goods; So in a Court Ba-

nor an action of debt lyeth for the Lord himselfe, because the suitors are Judges, but in a Court Leete the Lord cannot maintaine 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 Manerii sui circuit cohabitant ac manent.* Some thinke it is termed Manor from manuring the ground, and then it taketh its 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

is twofold, *re & nomine*: 2. *Nomine tantum*, *re & nomine*, as where the two materiall causes of a Manor, the efficient cause, *& causa sine qua non*, doe meete 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 transferre 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 discendeth to Co-parceners 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 th' 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 dye 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 Copiholders, 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. yeares, the Grantee in the one case and the lessee in the other, have a kinde of Seignioirity in grosse, and may keepe 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 cometh far short of one. Thus much touching the division of a Manor. I might here handle many collateral jurisdictions, appropriated to

to Lords of Manors, as that our erecting Dove-houses, of proving the Wills 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 Neede not stand to discourse at large th'antiquitie of the Copyholders; for if you cast your eye backe to that is past, you shall easily perceive that Copyholders, though very meanely discended, yet they come of an ancient house; and therefore if in this point you desire satisfaction, call to minde what I have already spoken; and (if I mistake not) it will sufficiently answer your desire. Give me leave to goe a steppe 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 knowne by the name of Villaines or Tenants in Villanage; so termed by the *Normans*, either in respect of Imbecillity

cillity and incertainty of their estates, which were grounded upon a very weake foundation, wholly depending upon the will of the Lord, and Oustable at his pleasure; or in respect of their Services, which savoured of nothing but slavery, whether they were, *certa ac determinata*, or *incerta ac 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 Copiholders were never subject to such incertainties: or lastly, in respect of the persons, who for the most part were Villaines; howsoever some free men did sometimes hold Land by the same Tenure: the least of these three reasons is sufficient to make them deserve that name, but joyne them together, and then hee that judgeth most favorably of them, will thinke this the truest title that could be bestowed upon them, yet some there are, who in behalfe of these Tenants, sticke not to maintaine (howsoever in respect of their estates, they may not unfitly be termed Tenants 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

at this houre. But if wee account those villaine 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 agrue, that their Tenure could in no wise have an apter terme than this; for they confesse, that these Copyholders were for the most part, *Rustici & Pagani*, and their Services wholly, *ad Rusticitatem tendentia:* Howsoever, I dare 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 wee call Rurall Services, were called *villaine* Services; and those men whom we terme 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 Soccages were Rustiques, and in that sense Villaines; 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, *Villanum Soccagium*. But long before these Copiholders, were termed *Villeynes*, and therefore without all doubt their Tenure was in baseneſſe and ſlavery, a degree above the ancient Soccage Tenure; till at length the Lords of Manors being framed to more civility, began then to thinke it a moſt uncharitable part to keepe their poore Tenants in that bondage; therefore out of the remorſe of their owne 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 Roll, or Tenants at will, according to the Cuſtome of the Manor: which ſtyles import unto us three things. 1. *Nomen.* 2. *Originem.* 3. *Titulum.* His name is Tenant by Copy of Court Roule; for he is not called Tenant by Court-Roll, but by Copy of Court-Roll; and this is the ſole Tenant in Law, who holdeth by Copy of any Record, Charter, Deede, or any other thing.

thing. 2. His commencement is at the will of the Lord. For theſe Tenants in their birth, as well as the Cuſtomary Tenants upon the borders of *Scotland*, who have the name of Tenant, were meere Tenants at will: and though they keepe the Cuſtomes inviolared, yet the Lord might, ſans controll, eject them: neither was their eſtate hereditarie, in the beginning; as appeareth by *Britton*: for if they died, 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 meere Tenant at will; for the Freehold at the Common Law, reſteth not in them, but in their Lords; unleſſe it be in Copyholds of Franke Tenure, which are moſt uſuall in ancient Demeſne; though ſometimes out of ancient Demeſne, wee ſhall meete with the like ſort of Copyholds, as in *Northamton-ſhire*, there are Tenants which hold by Copy of Court-Roll, and have no other evidence, and yet hold not at the will of the Lord. Theſe kinde of Copyholders have the Franke Tenure in them, and it is not in their Lords, as in caſe of Copyholds in baſe Tenure. Beſides, Copyholders ſhall not attourne upon the granting away of the Manor, no more than Tenants at will at the Com- *Britton Ca. 66.*

mon Law; and their eſtate can be no infranchiſement 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 performe the Cuſtomes of the Manor, they are as well inheritable, according to the Cuſtome, as he that hath a Franck 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 mee leave in the ſecond place to ſpeake ſomething concerning them.

Sec. XXXIII.

CVſtomes are defined to be a Law, or Right not written, which being eſtabliſhed by long uſe, and the conſent of our Anceſtors, hath beene, and is daily practiſed.

Cuſtome, Preſcription, and Vſage; how-ſoever

ſoever there be correſpondencie amongſt them, and dependancie one on the other, and in common ſpeech, one of them is taken for another, yet they are three diſtinct things; Cuſtome and Preſcription differ in this. 1. Cuſtome cannot have any commencement ſince the memory of man, but a Preſcription may, both by the Comon Law, and the Civill: and therefore where the *Statute*, 1.*H*.8. ſaith, that all actions popular, muſt be brought within three yeares after the offence committed; whoſoever offendeth againſt this *Statute*, and doth eſcape uncalled for three yeares, he may be juſtly ſaid to preſcribe an immunity againſt any ſuch action. 2. A Cuſtome toucheth many men in generall; Preſcription, 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 Vſage, that is the efficient cauſe, or rather, the life of both; for Cuſtome and Preſcription loſe their being if Vſage faile. Should I goe about to make a Cata-

Cuſtome, Preſcription, and Vſage, how they differ.

logue of severall Customes, I should with *Sisyphus saxum volvere*, undertake an endlesse piece of worke, therefore I will forbeare, since the relation would be an argument of great curiosity, and a taske of great difficulty: I will onely set downe a briefe distinction of Customes, and leave the particulars to your owne observation. Customes 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, every City, every Towne, and every Manor. Particular, which are confined to shorter bounds and limits, and have not such choyce 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 Customes of Manors it is in the Copiholders power to sell to whom he pleaseth, but by a particular Custome used in some places, the Copyholder before he can inforce his Lord to admit any one to his Copihold, is to make a proffer to the next of the blood, or to the next of his Neighbours *ab oriente solis*, who giving as much as the partie to whom the Surrender was made, should have

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 yeare without licence is not warranted; yet some particular customes in some Manors doe it: so by the generall Customes of Manors Presentments, or any other act done in the Leete, after the moneth expired, contrary to the Statute of *magna Charta*, and 31. *E.* 3. are voyd, yet by some particular Customes 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 validitie of a Custome. For our direction in this businesse, wee shall doe well to observe these sixe Rules, which will serve us for exact tryall. 1. Customes and Prescriptions ought to be reasonable, and therefore a Custome that no Tenant of the Manor shall put in his Chattell to use his common *in Campis seminatis*: after the Corne severed, untill the Lord have put in his Chattell, is a voyd Custome, because unreasonable; for peradventure the Lord will never put in his Chattell, and then the Tenants shall lose their profits: so if the Lord will prescribe that he hath such a Custome within

in his Manor, that if any mans beasts be taken by him upon his Demesnes damage Feasant, that he may detaine them untill the owners of the beasts give him such recompence for his harmes as he himselfe shall requests 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 voyd prescription, because it is not according to common Right, for hee ought for Iustice 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 onely 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 High way which lyeth through his Manor, should pay him a peny for passing, this prescription is voyd, because it is not upon a good consideration; but if hee will prescribe to have a peny of every one that

that passeth over such a bridge within his Manor, which bridge the Lord doth use to repaire, 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 curtesie, or the feme Tenant in Dower 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 compulsary, 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 voyd, but to prescribe they ought to pay so much money for that purpose is a good prescription, for a payment is compulsary, but a gift is Arbitrary at the voluntary liberty of the giver. 5. They ought to be certaines and therefore if the Lord will prescribe that whensoever any of his Copyholders dye without heire, that then another of the Copyholders shall hold the same lands for the yeere following, this prescription is voyd, for the incertainty; but if the Lord will prescribe to have of his Copyholders, 2. *d.* an Acre Rent, in time of warre

foure pence an Acre, this preſcriptionis certaine enough. 6. They ought to be beneficiall to them that alledge the preſcription; and therefore if the Lord preſcribeth that the cuſtome hath alwayes beene 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, wee ſhall finde many Maximes which make very materiall for this purpoſe, amongſt which I have made choyſe of theſe three, as moſt worthy of your obſervation.

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

2. A

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 Cuſtomes; 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 maintaines not. If there be a Cuſtome within a Manor, that for every houſe or cottage two ſhillings fine ſhall be paid, if any Tenant within theſe liberties make th two houſes of one, or build eth 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 beene doubted, if a man by Preſcription hath courſe of water to his Fulling-mill, hee 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 Eftovers to his house, although they alter the Roomes and Chambers in the house, as by making a Parlor 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 Parlor, yet my neighbours upon this change cannot stoppe my Window; *Causa quæ supra.* 3. Customes are likewise taken strictly, though not always literally. There is a Custome in *London*, that Citizens and Freemen may devise 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

have this strict construction, because they tend to the derogation of the Common Law; yet they are not to be confined to literall interpretation; for if there be a Custome 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 yeares, 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 *e converso*, because an estate during Widdowhood, is lesse than an estate for life. Before the *Statute* of 32. *H.* 8. Lands in certaine Boroughs were devisable by Custome. By the same Custome was *implicite* 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 Predecessors, as in himselfe, and all those whose estate hee hath.

2. To prescribe generally, not tying his Prescription to place, or person, as where a Chiefe Justice prescribeth, that it hath beene used

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 in 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 alleadging 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 clayme 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, 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

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.

Sec. 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. Vpon the person of the Grantor.
2. Vpon the person of the Grantee.
3. Vpon the Grant it selfe.
4. Vpon the thing Granted.
5. Vpon the Instruments, through whose hands, as through Conduit-pipes, the Lands are *Gradatim*, conveyed to the Purchasor.

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

neither respecteth the quality of his Person, nor the quantity of his Estate; for be hee an Infant, and so through the tendernesse 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 joyne in a voluntary Grant 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 fabricke 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 qualitie of his person: for if his interest be Lawfull, be his estate never so great, or never so

so little 'tis not materiall; for be it in Fee, or be it in tayle or dower, or as Tenant by courtesie, for life or for yeares, 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 effected 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 Franck-Tenement of the Manor, as well as 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 onely, for then the Copyholders estate should cease, when the Lords interest determineth, *Nam cessante primitivo cessat derivativum*, but the life of the Copyholders estate is the Custome 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 so ever his estate was, that is enough, for the same Custome that fixeth a Copyholder in-

stantly 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 to his Founder in breaking the Custome. If the Lord granteth a Copyhold, and after doth sever this 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, especially 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 become forfeited, and the Feoffee entreth; yet the Copyhold estate remaineth untouched, because lawfully established by Custome, and yet all meane estates and charges whatsoever, granted by the Feoffee at the Common Law were voidable upon the entry of the Feoffer; for wee have a ground in Law, that when an entry is made

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 the making of the estate. If a man seized of a Manor in Fee, dieth seized, having issue, a daughter; and his wife being *præmunit insfant* with a sonne, and the daughter granteth Lands by Copy, this Grant shall stand good against the sonne, for the daughter was *Legitimus Domina pro tempore*. So if the Feoffee of a Manor, upon Condition to infeoffe 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 Francke marriage, and there is a divorce had, *causa præcontractus*; so that now the interest of the Manor is now 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, remaine good. So if a man espouseth a *feme seigniouresse*, under the age of consent, and after he doth disagree, though the marriage by relation was voide, *ab initio*, yet Copyholds granted before disagreement, shall never be avoided, *causa qua supra*.

If the Lord of a Manor committeth felo-

nie or murder, and proces of Outlawry, be awarded against him, after the Exigent, hee granteth Copyhold estates, according to the Custome, and then is attainted, these Grants are authenticall, though by relation, the Manor was forfeited, from the time of the Exigent awarded. So if the Lord had beene 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 shee avoide these Copyhold estates, because the Copyholders are in by a title Paramount, the title of the *feme, viz.* by Custome. But paradventure, if the 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 avoide 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 thongh 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 hee 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 Lords estate in the Manor; for what Acts so ever are not confirmed by Custome, but onely strengthned by the power, authority, and interest of the Lord, 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 qualitie of his estate, or the qualitie 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 bind the right owner; but that upon his entry hee may avoide them, otherwise wee 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 Maneriі*, 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 Copihold estate be granted by the heire, it may be avoided by the Disseisor, immediatly upon his recovery, or upon his entry; and so if the Disseisor inseoffe 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 Tayle of a Manor discontinueth

nueth and dieth; and after the discontinuance Granteth Copyhold estates, the heire recovering in a Formidon in the Discender, 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 Tayle, the continuance of the possession is a Tort to the heire, and Acts done by Tort-feisors tending to the dis-inheritance of the right owners Custome, will never so strengthen, but they may be adnihilated. So if a man seized 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 entry, or upon her recovery, in a *Cui in vita*.

If a Manor be Granted, *pr. aut. vie*, and *Cestuy que vie* dyeth, and the Grantee continueth still in the Manor, and maketh Grants by Copy, these shall not binde the Grantor of the Manor; for immediately upon the death of *Cestuy que vie*, the Grantee was but a Tenant at sufferance, and had no Manor of Lawfull interest, for a Writ of Entry, *ad terminum qui preteriit*, lieth against him, as against Deforceor.

And so if a Tenant for life of a Manor maketh

maketh a Leafe for yeares of the fame Manor and dieth, Copyhold eftates granted by the Leffee, after the death of the Tenant for life, are voideable by the firft Leffor.

If a Leffee for yeares of a Manor granteth a Copyhold in Reverfion, and before the Reverfion efchue, the terme is expired, the Grant is void; and fo I take the Law to be, if the Leffee furrendreth his terme, and then before his Leafe fhould have ended in point of limitation, the Reverfion falleth, yet the Grantee fhall not have it.

If a Leafe be made for yeares of a Manor, the Leafe to be voide upon the breach of a certaine Condition, if the Condition be broken, and afterwards the Leffee before the entry of the Leffor, granteth eftates by Copy; thefe Grants fhall never exclude the Leffor: for prefently upon the breach of the Condition; the Leafe is voyde, but had the Manor beene granted for life, in Tayle or in Fee, I thinke Law would have fallen out otherwife, for before entry, the Franck-Tenement had not beene avoided, and whereſoever a man may enter and avoide any eftate of Franck-Tenement, upon the breach of a Condition, the Law adjudgeth nothing to

to be in him before entry, and he may waive the advantage which hee might take by the breach of the Condition if he will, and therefore notwithſtanding the accruer of the title of the Grantor; yet before this title be executed by entry, the Grantee hath fuch a lawfull intereſt, that whatſoeſtate ſoever hee granteth by Copy, in the interim ſhall ſtand good againſt the Grantor. And ſo if an Intant infeoffe me of a Manor, though hee 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 Villayne purchaſer of a Manor, before the entry of the Lord, or of Grants made after an alienation in Mortmayne, before the Lord Paramount hath entred 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 ſpiritualties, he be a compleate Parſon, preſently upon the inſtitution, yet as to the temporalities, he is not compleat before Induction. So if a Parſon be admitted inſtituted and indu-

cted, but doth not subscribe to the Articles, according to the Statute of 13. *Eliz.* and granteth Lands by Copy, 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 beene 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 sentence declaratory came; for though the deprivation shall relate to some purposes, yet because the Presentment, is not in it selfe voide, surely a relation shall never be so much favoured, as to avoid a Copyhold estate in this kinde.

Somuch of Grants made by the Lords themselves. In Grants made by Copyholders, as the Law respecteth the quality of the Copyholders estate, so doth it respect both the quality of his person, and quantity of his estate.

The quality of person, for whosoever is uncapable of disposing of Land at the Common Law, cannot without speciall Custome passe away any Copyhold. The quantity of his estate, for no Copyholder can possibly passe

passe away more than is in him; and therefore, if there be joynt Tenants of a Copyhold, one cannot aliene 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 remainder over in Fee to a stranger surrendreth in Fee, and the Lord admits 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 surrenditionis*; I thinke no Fee passeth: for though the Lords admittance may, *prima facie*, seeme to amount to a confirmation of the estate surrendred; the Reversion resting in him to dispose of, according to the Customes; as where a Lessee for yeares 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 looke 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 transferre 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 the making of every Surrender, but they may 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 ensue; 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, & therfore if I devise, that my Executor shall sell my Land, they cannot

cannot sell 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 Authority 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. yeares 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 Authority 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 Gran-

tor; A word of the Grantee.

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 sanæ memoriæ*, an Idior, a Lunatique, an Out-law, 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 disagreeth. 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, Custome doth enable the *feme* to devise a Copyhold to the Baron, but this Custome hath beene 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 inforced to admit by Attorney, but if hee will admit him, it standeth good.

It is not necessary that upon Surrenders of Copiholds, the name of the partie to whose use the Surrender is made, be precisely set downe; but if by any manner of circumstance, the Grantee may be certainely knowne, it is sufficient. And therefore a Surrender made to the Lord Archbishop of *Canterbury*, or the Lord Major of *London*, or the high Sheriffe of

of *Norfolke*, without mentioning, either their Christian-name, or Sir-name, are good enough, and certaine enough, because they are certainely knowne 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 sonne *W.* having more sonnes 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 so incertaine, that no subsequent manifestation of my intention can any way strengthen it.

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

And

And so if I Surrender in the disjunction to the use of *I. L.* or *I. N.* this is insufficient for the incertainty.

And in customary Grants upon Surrenders the Law is not so strict, as in Grants at the common Law, for in Grants at the common Law, if the Grantee be not *in rerum natura* and able to take by vertue of the Grant, presently upon the Grant made, it is meerely voyd. 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 heyre to *I. S.* or to the use of *I. S.* next child, or to the use of *I. S.* next wife; though at the time of the Surrender *I. S.* had no heyre, child, or wife: yet if afterwards he hath a childe, or taketh a wife, his heyre, 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 avoyd 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 Customarie Grants the intent of the Grantor is more respected than it should be by the strict rules of the Law, which appeareth by this, that if a Surrender be made of a Copiehold 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 bee a thing executory and the intent of the Grantor so much favored: yet if a Copyholder will Surrender to the use of the right heires of *I. S.* he being alive, this is voyde because it cannot take effect according to the intent of the Grantor; for he would have the grant to bee executed presently, which cannot bee in regard that *I. S.* can have no heyre till after his death: So

So much of the Grantee, and I come now to the Grant it selfe.

Sec. XXXV.

A Copyhold interest connot be transferred by any other, assurance then by Copy of Court Roll, according to the Custome.

If I will exchange a Copyhold with another, I cannot doe it by an ordinary exchange at the Common Law, but we must surrender to each others use, and the Lord admit us accordingly.

If I will devise a Copyhold I cannot doe it by will at the Common Law, but I must surrender to the use of my last Will and Testament, and in my Will I must declare my intent.

If I am ousted by a Copyholder, a release made to him is voyde, because it would be a prejudice to the Lord, and besides there is no Customary right, upon which the release may inure, but a release inuring by the way of extinguishing where no prejudice accrueth to the Lord, will serve to drowne 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

Co. 4. fo. 26.

lute in Court, and the admittance framed accordingly, this admittance and presentment differing from the effect of the Surrender are both voyde. 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, upon which the release may be grounded, I may by a release at the Common Law, sufficiently confirme this voyde estate. And so upon the same reason if I am ousted of a Copyhold, and the Lord admit him according to the Custome, 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 inlargement to transferre an intereit, and not by way of extinguishment, to drowne 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 Copie, it is become not alienable; and therefore if the Lord of a Manor will grant to me a Copihold in Fee

Fee, and after will grant the inheritance of this Copihold to a stranger in regard that now my Copihold is become no parcell 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 keepe a Court, and so is incapable of taking a Surrender, or making an admittance, therefore I cannot by any meanes alien for no conveiance at the Common Law will serve, because it remaineth still Copihold notwithstanding, and what Customes soever were incident to the Land before severance, doe remaine still undestroyed, as if the land were Burrow English, or Gavelkind 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 onely, not my interest: fithence therefore Copihold estates cannot be conveyed away otherwise than by Copie of Court Roll, according to the custome, let us examine the nature of these customarie grants, wherein three branches are to bee considered. Co. 4. fo. 24.

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.

Sec. XXXVIII.

IF a Copiholder will Surrender to the use of the Lord the interest of the Copihold 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 Copiehold, no Surrender is requisite, for by the Admittance of the Lord according to the custome, the Copieholder is suffi-

sufficiently setled in his Land without any other ceremonie.

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 himselfe, 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 warrantable, 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 conveiances, are uneffectuall and insufficient to convey any

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 doube hee 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 ſurrendreth 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, and from thence they are called Tenants by the Verge.

In ſome Manors 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

tance, 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 meerely void, 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 poſſibility 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 compelable to do it by a *Subpæna* 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 surrendreth out of Court, to the use of his Cosin, 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 revocable, 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 for 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 tooke the surrender, and in all points materiall, according to the true tenure, of the surrender. And therefore if the surrender be 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 entring of it, omitteth the Condition; yet upon sufficient proofe 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 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 Rendrour, and the Leffee 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 Presentment, the other shall be admitted

Co.4.fo.29.b.

to the whole. The same Law is, if those into whose hands the surrender is made, dye before Presentment, upon sufficient proofe 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 Discent.

In voluntary Admittances the Lord is an instrument; for though it is in his power to keepe the Land in his owne hands; 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

serve 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 bind his heire or successor, because Custome hath not sufficiently confirm'dit. 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 avoide 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 been twenty shillings in Gold, and the Lord reserveth it in Silver, this variance of the qualitie of the rent is in force to destroy the Grant: so if the ancient rent hath beene accustomably paid at foure Feasts in the yeare, and the Lord reserveth it at two Feasts. So, if two Copy holds Escheate to the Lord, the one of which hath beene usually demised for twentie shillings rent, th'other for ten shillings rent, and he granteth them both by one Copy, for one rent

of thirty shillings, this is not good; and so if a Copyhold of three acres Escheates, which hath beene ever granted for three shillings rent, and the Lord granteth one Acre, and reserveth *pro rata*, one shilling rent, *verus & antiquus reddit*, is not reserved: but if a Copyhold of six Acres, which hath ever beene demised for sixe shillings rent, Escheateth to two Coparteners, 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 to no other charges or incombrances 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 descents, the Lord is used as a
Co.4. fo.27.b. meere instrument, and no manner of interest 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 hee hath it by right, or by wrong it is not material, these admittances
Co.1 fo.140.b. shall never be called in question for the Lords Title, because they are judiciall acts, which every

every Lord is enjoyned to execute.

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 surrendri*: therefore if there be any variance betweene the admittance and the surr. either in the person, in the estate, or in the tenure, or in any other collaterall points, the Lord doth onely transferre an estate according to the surr. 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 voide; and notwithstanding this admittance the Lord may afterwards admit *I.S.* according to the effect of his authoritie: but had he admitted *I.S.* and *I.N.* joyntly, then the admittance had beene 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
Co.4 fo.28 this terme; this consent is voide to *I.N.* for after the consent of the Executors, *I.N.* is in by the Devise. Yet some are of opinion, that if I surr. 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

by Estoppell to *I.S.* and that he shall onely claime joyntly with his sonne, because hee might have refused an admittance in this manner; but I can hardly be brought, to thinke that this admittance, giving a present interest in theson, who by surrender was to have no interest till the death of his father, should be any such estopell.

If I surr. to the use of *I.S.* for life, and the Lord admits him in Fee, an estate for life
Co.4.fo.29. onely passeth. So if I surr. without mentioning any certaine estate, because by implication of the Law, estate for life onely passeth, though the Lord admit in Fee, no more doth passe, than the implication of Law will warrant. If I surr. 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, only 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;
Co.4.fo.25. 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. The

The reasons of these diversities 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 voyd, but if hee executeth his authority and withall goeth beyond the limits of his warrant, this is voyd for that part onely, 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 then 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 hee 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 bee Grandfather, Father, and Sonne; and the Grandfather is admitted, and dyeth, and the Father entreth, and dyeth before admittance, the Sonne shall have a plaint in the nature of a writ of Ayell, and not an Assize of *Mort d'auncestor*, 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, hee 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 arrearages of Rent, or other Services, and last of all, upon an actuall possession, there shall be *possessio fratris*, before admittance, for if a Copyholder 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, entereth 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 Termer, without an actuall entry, or any claime made by

Co. 4 fo. 23.

Co. 4 fo. 22. b.

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 yeares, 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 discend to the daughter of the first Venter, and not to the sonne of the second Venter. But if the Lease had beene determined living, the Son by the first Venter, and afterwards he had dyed before any actuall entry made, the Law would have fallen out otherwise, because there was a time, when he might have lawfully entred; therefore, where some have imagined that nothing should be invested in the Heire before admittance; because every admittance of an Heire, upon a Discent, amounteth to a Grant, and so may be pleaded, they are in an errour, for though it be true, that after admittance, the Heire may in pleading, alledge this as a Grant, and that hath beene allowed, to avoid the inconveniencies that otherwise should ensue; For if the Copyholder should be driven in pleading, to shew the first Grant, either that being made before the memory of

Co. 4 fo. 22. b.

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 admittance aswell upon a Discent, 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 Discent to him, and that he entred; and well without any admittance; but the Heire cannot plead 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 bee discendable by Custome.

So that I conclude, that an admittance is principally for the benefit of the Lord, to intitle him to his Fyne, and not much necessary for strengthning 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 defeat the Lord of his Fyne:

I

I assure my selfe, 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 compulsary in this point, for either upon paine of forfeiture of their Copihold or of incurring some great penalty, the Heires of Copyholders are inforced 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.

Sec. XLII.

THings that lye not in Tenure, are not Grantable by Copy. As Rents, Bailiwickes, Stewardships, Common in grosse, Advowsions in grosse, and such like. All which are incorporare Hereditaments, and therefore no Rent can issue out of them; neither can they be held by any manner of Service, but an Advowsion 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

Q 3 by

by Copy, according to the Custome, as Vnderwoods growing upon the Manor, being things of continuance, (for after they are cut
Co.4.f.31. 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 yeares, *except. bosc. & subbosc.* 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 Vnderwoods, growing upon the ground for his necessary fuel, notwithstanding this exception in the Lease of the Manor, the Copyholder may cut downe Woods or Vnderwoods according to the Custome, though by exception severed from the Manor, forthough the Lessee of the Manor, in respect of the exception, could not meddle with the Woods or Vnderwoods, and so it might seeme, *prima facie*, very probable that the Copyholder, comming in by the voluntary admittance of 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

on Custome is paramount the exception; Therefore, the exception in the Lease of the Manor, though preceeding 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. prad. 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 certaine.

As if I grant by Copy, twenty loads of Hasell, or twenty loads of Maple in the disjunctive to bee cut downe, and taken by the Co.4.fo.31.a
Grantee in my Manor of Dale, there the Grantee hath election to make choyce of which he Co.5.fo.37.a
pleaseth, because he is to performe the first Act of cutting downe, and taking them, but if I am to cut them downe, and deliver them to the Grantee, then have I the election, and

observe

obſerve this difference touching this point of election.

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 Blackacre, or Whiteacre, to be cut downe yearely 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 beene to be delivered to the Grantee once onely, and not yearely, then by the failor of the Grantor at the day, the election is devolved to the Grantee.

Sec.

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 purchaſor; I will not ſpeake 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 onely at theſe perſons; that by the generall Cuſtome of every Manor, are imployed as neceſſary Inſtruments in Cuſtomary admittances, and will curſarily examine the extents of their authorities, and the qualitie of their offices.

The perſons I ayme at are theſe;
1. The Lord.
2. The Steward.
3. The Vnder-Steward.

Sec. XLIV.

The Lords Authority conſiſteth chiefely in theſe foure things.

1. In puniſhing offences, and miſdemeanors committed within his precincts, as not

performance of Customes, 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, at the Common Law I were left remediesse, this being a bare confidence, and no Condition, but upon Bill exhibited in the Lords Court I shall be relieved, for the Lord upon proofe of the matter may seize the Copyhold, and readmit me, according to the effect of the Confidence.

3. In admitting Copyhold. And in this Custo-

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 discents, in any place where he pleaseth out of the Manor, but so cannot the Steward: and in giving Licence to Copyholders to aliene by deede, and in this point of Licence, the Lords authority doth exceede the Stewards authoritie; 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 Deede, for as many yeares as he shall thinke good, because he is Judge in the Court, and besides the entry of it in the Court Roll is in this manner. *Ad hanc curiam. I.S. petit Licentiam Domini dimittend', &c. Cui Domi-nus licentiam 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 (under reformation be it spoken) I must mistrust the truth of this opinion, for this power of Licensing Copiholds to alien by Deede, is not Customary, for then it were as proper to the Steward, as to the Lord, but it is a power

Co. 4. fo. 27.

of interest annexed to the person of the Lord, in respect of his estate in the Manor, and not in any other Collaterall respect; and therefore if the Steward having a bare authority to execute what the Custome of the Manor doth warrant, sans doubt, hee cannot, *virtute officii*, grant any unwarrantable Licence to aliene by deede, 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 Copyhold, 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.

Sec. XLV.

STeward, is derived from those two words, Stede, and Ward; and so any that doth supply anothers place, or that is in any imployment deputy to another, may according to the true sense of the word be 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

der 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; and not only so, but withall he representeth the Lords person in many imployments, 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 owne 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 Roll, shall be, *Quod Dominus per Senescallum admisit, & licentiavit*, and not that the Steward did admit, or licence; therefore sithence the Steward hath this measure of authoritie and confidence committed unto him, the Lord shall doe very well to be very carefull in making choise of his Steward; for if he be defective in any one of these three qualities, Knowledge, Trust, or Diligence, the Lord may be much prejudiced and damnified; therefore *Elias* wisely giveth the Lord this counsell.

Fleta l. 2. c. 6. *Prouideat sibi Dominus de Seneſcallo circumſpecto & fideli & pacifico & modesto, qui in legibus conſuetudinibuſque prouinciæ Domini ſui in omnibus ueri affectet, quiſque Ballivos Domini in ſuis erroribus & ambiguis ſciat inſtruere & docere, quique egenis parcere, & nec preces uel pretia uelit à tramite inſtitiæ deuiare & perperam ſe iudicare.*

These Stewards for the most part, have Patents for their Offices, yet they may be retained by paroll, & this reteiner by paroll, is as effectuall in all points before discharge, as the most effectuall 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 Steward, as well as a Steward instituted by Patent. But in the Kings Manors, a Steward cannot be retained by paroll by the mouth of the Auditor or Receiver; but to make the Stewards authoritie currant, especially to make voluntary admittances; it is necessary he have a Patent, and then, by vertue of his Patent, without any speciall Authority, or particular Custome, he may justifie the making of any voluntary admittance, upon Escheates or forfeitures, or the doing of any Act belonging to his Office; but though hee

Cok. fo. 30. b.

Cok. fo. 30. a.

may

may *Ex officio*, doe those things without speciall 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 unlawfulnesse 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 hee performeth, as incident to his place, can never be avoided for any such disabilitie, 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 Patent, and in the Patentees absence, a stranger by my appointment keepeth Court, this is authenticall. 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 hee did as Steward, are ever unavoidable. As if a Corporation, retaineth

retaineth a Steward by paroll, and he keepeth a Court, punisheth offences, decideth controversies, taketh surrenders, maketh admittances, either upon surrenders or discents: these Acts being judiciall shall ever stand for currant, though his authority be grounded upon a wrong foundation, for a Corporation cannot institute any such officer without writing. And so if the Kings Auditor or Receiver, retaine 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 stanger 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 keepe a Court; it seemeth that the performance of any judiciall 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 forfeite three manner of wayes.

1. By

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 user, as if the Steward by his Patent being tyed to keepe Court at certaine times of the yeare, without request to be made by the Lord if he faileth, and by his faile 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 hapneth 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 these Offices which concerne private men: for where an officer *ex officio*, or of necessity 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 Clarke of the Warrants *Exigentar Filazar*, or the like in the Common Pleas, because the attendance of these and the

like officers, is of neceſſity for the adminiſtration of juſtice, ſo the attendance of the Clarke of the Market, is of neceſſity for the good of the Common wealth, and ſo is holding of the Sheriffes turne, &c.

By reſuſer the office of a Steward may be thus forfeited, if the Steward be tyed by 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 damnifyed, 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 owne Authority, and his office conſiſteth in performance of the ſelfe ſame duties, that the high Steward himſelfe is to performe, onely in this point the power of the Steward goeth beyond the power of the underſteward, 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-

underſteward though he may take a ſurrender out of the Court, yet he cannot make any admittance out of Court, without eſpeciall Authority 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 neceſſity. As if an office of Stewardſhip deſcend unto an Infant, he may make a Deputy, becauſe the Law preſumeth he is himſelfe uncapable 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 dignity of the perſon, who is *Præpoſitus 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 implyed in law for the convenieney, that hee may make a Deputy, for whom he ought to anſwer. This is one obſervation touching underſtewards, in admittances made by underſtewards, aſwell 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 under-

steward, or of the Steward, because in pleading any admittance a man must say that hee was admitted by such a one understeward or Steward, naming his name. And this shall suffice touching the manner and meanes of granting Copiholds. Suffer mee now in the fourth place to poinct at the severall estates of Copiholders, together with their severall qualities incident to their severall estates.

Sec. XLVII.

All estates whatsoever may be reduced to one of these three heads.

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

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

Of Fee simples, some are determinable, some are undeterminable.

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

Vnde

Vndeterminable, as where Land is given to a man and his heires, without further limitation.

Of Fee tailes, 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 Francketenants 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 collaterall meanes, as estates granted *quia diu fuerit innupta*, to a Widdow *quia diu*

 reman-

remanserit vidua, or to a Minister, *quamdiu 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 yeares as will give a plenary satisfaction to their debts, yet by the *Stat. of westmin. 2.* they may maineraine 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. yeares. Certaine by relation to a certainety, as where Land is granted for so many yeares as *I.S.* hath acres of Land.

Of incertaine Chattells, some are incertaine in their commencement, some incertaine in their determination.

In

In their commencement, as where a Guardian hath an estate during the minority of the heire, all these estates either by the generall or by the particular Customes of Manors, are of Copyholds aswell as of Freeholds, in what manner soever an estate in Fee simple is warranted by the Custome, most inferior estates are by implication likewise warranted. All Francke tenants created by the act of the party, the estate of an occupant, and all Chattells whatsoever, without any other particular Custome, are hereby warranted. *Co. 4. fo. 23.*

But the Law is otherwise, of estates in Dower by the courtesie, 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 commeth 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 Freehold, and shall be subject to the charges and incumbrances, as Land at the Common Law, and howsoever by implication these estates are not allowed in Copyholds, continuing in the Copyhold possession, yet by particular *Co. 4. fo. 22. a*

lar Custome the Wife may bee Tenant in Dower, the Husband Tenant by the Curtesie, a stranger Tenant by Stat. Merchant, Stat. 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 depending upon an estate Taile may by any particular Custome bee allowed, that I may dispute, but cannot determine, for it is *vexata quæstio*, much controverted, but nothing concluded, I will briefely touch the reasons alledged on both sides. They which are against the validity of Intailes by speciall Custome, doe chiefely urge these two reasons, that no estates tayles 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 speciall 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 inconveniencies would ensue, if a Copyholder might be Intailed by speciall Custome, because neither fine nor Common recovery

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 intailing Copyholds are these.

1. In divers Manors they have beene from time to time, not onely reputed as Tenants in tayle, but in every mans mouth termed by that name.

2. A Formedon in the Descender lyeth of a Copyholder, which Writ none can bring but Tenant in tayle.

3. A remainder limitted upon such an estate in such Manors hath beene allowed, and therefore is no Fee conditionall; for upon a Fee, whether absolute or conditionall, a Render can by no meanes depend.

4. It is a common usage there by a Recovery to docke intayles of Copyhold. or to

defeate these estates by presentment, that the Copyholder hath committed a forfeiture, and so the Lord to seize, and then 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 intailed, for it would tend to the subversion and destruction of many mens estates, which from time to time they have enjoyed without contradiction, 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 their severall qualities incident to severall estates.

Sec. 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 dis-

cussing of these two points.

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

2. How Copyholds of inheritance shall descend.

Touching their creation, Copyholds of inheritance, and Copyholds of Franck-Tenement, are created by the same words that Inheritance and Franck-Tenement at the Common Law are created by. Co. 4. fo. 23.

If a Copyhold be granted to a man, 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 & 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 and his heires, and he reciting this estate, re-surrendreth 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 shou'd 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 Franck-marriage with his wife, in these Grants an estate tayle passeth in the first, without the word heires, in the second, without the word body; in the third without either.

If the King by his Steward granteth a Copyhold to a man, and to his heires males, or heires 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 onely passeth.

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

The

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*, *& a rend.* limitted 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 limitted 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 *& harend.* a good Fee-simple passeth without the word *suis*.

If a Copyhold be granted to a man, *& hared hus*, 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 taile doth not passe for want of this word (heires) for what estates soever are intayled 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 in-

tayle since the Statute. And for the same reason, if a Copyhold be granted to a man, and to the issues males of his bodie an estate for life onely passeth.

If a Copyhold be granted to a man, without expressing any certaine 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.

Sect. 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 daugher by one *venter*, and a sonne by an other *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 haeredem.*

But if a Copyholder in tayle, have issue, a sonne

son and a daughter by one *venter*, and a son by another *venter* dieth, and the sonne by the first *venter* entreth 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 dieth 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 discent 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 of my fathers side, it shall goe to the heires of my mothers side rather than escheate.

If there be Father, Vncle and Sonne, and the sonne purchaseth a Copyhold in Fee, and dieth without issue, the Vncle shall inherit and not the Father, because an inheritance may lineally discend, but not ascend.

If

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 Copartenors, or two Tenants in Common of a Copyhold, and one dieth having issue, the issue shall inherit, and not the other by the survivership; but otherwise it is of two joynt Tenants. Should I give way to my Penne, and write of 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.

Co. 4. fo. 22. a.

A discent of a Copyhold, shall not toll an entry. A surrender made by Tenant in tayle (admita Copyhold may be intayled) or by a Baron of a Copyhold, which he hath in right of

of his wife shall make no discontinuance, because these are collaterall 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 reall, or that favoureth 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, he 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 Discender, 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 Francke-Tenant, but he may have an action of trespasse against him at the Common Law; for it is against reason, that the Lord should be Judge where he himselfe is a party.

If in a plaint in the Lords Court touching the tytle of a Copyholder, the Lord giveth false judgement, he cannot maintaine a Writ of false judgement, for then he should be restored to a Francke-Tenant where he lost none.

No Copyholder of base Tenure in ancient Demesne can maintaine a Writ of *droit close*, or a Writ of *Monstraverunt*, but Tenants of Francke-tenure in ancient demesne can.

A Copyholder that may cut downe Timber trees by Custome, by licence of the Lord, maketh a Lease for yeares, 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

vereth 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 realitiy.

If a Copyholder maketh a Lease by Copy for Yeares, or by Deede with Licence, 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 yeares, 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 hee cutteth them downe, when by Custome they belong to the Tenant, because this is a meere personall action, and damages onely are to be recovered.

And if a Copyholder without Licence, maketh a Lease for one yeare, or with Licence maketh a Lease for many yeares, and

the Lessee be ejected, he shall not sue in the Lords Court by plaint, but shall have an ejection firme at the Common Law, because hee hath not a Customary estate by Copy, but a warrantable estate by the rules of the Common Law. Thus much of the manner how Copyholders are to impleade, and be impleaded.

Sec. LII.

I Come now in the sixt 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 expressely provided, that a Copyholder having Copyhold Land, to the yearely value of twenty sixe shillings and sixe 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 expressly provided, that upon the dissolution of Abbyes, and Monasteries, Copyholds should con-

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 expressly provided, that the interest 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 eighteene 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 authority, 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 defeate a Copyholder or Freeholder.

So by the Statute of 13. *Eliz. cap.* 7. It is expreſly provided, that the Copyhold Land, as well as the Freehold Land of a Bankerupt, ſhall be ſold for the ſatisfying of the Creditor.

So by the Statute of 14. *Eliz. cap.* 6. It is expreſly provided, that if any of the Queenes ſubjects goeth beyond the Seaes 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 expreſly 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 briefe under what Statute Copyholders are comprehended by expreſſe

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

Sec. LIII.

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

When an Act in Parliament alereth the ſervice tenure intereſt of the Land, or other thing in prejudice of the Lord, or of the Cuſtome of the Manor, or in 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 *Co. 3. fo 8.*

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 purveiw 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 intayle, 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 Donator. in charta Domini sui manifestè expressa deceteto observet.* which proveth, that the intent of the Statute was, that no hereditament should be intailed within this Statute, but such as one as either was given, or at least may be given by Charter, or Deede; but Copyholds are no such hereditaments, and therefore not within the body of the Act; yet it is holden, that Custome with the cooperation of the Statute will make an estate tayle.

The Statute of *W.* 2. *ca.* 20. which giveth the Elegit, extendeth not to Copyhold, because it would be prejudiciall to the Lord,

and

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. *cap.* 5. which maketh it a forfeiture of Lands, Tenaments, and Hereditaments, to the purchasor 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 intertressed 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 yearely to receive a benefite, in having the Lands after the yeare and the day forfeited unto him; yet because the King is a sharer in this for feiture; therefore Lands by Copy are not comprehended under the generall words; besides the Statute speaketh of the Kings having *annuum dem, & 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 or-

dinary

dinary course of the Law should have *Annum diem & vastum*: if the Tenant of them had committed felony, but such lands are not Lands by Copy; for if a Copyholder committeth 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 Vses, 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 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. *ca.* 1. & 32. *H.* 8. *cap.* 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

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. *ca.* 28. which confirmeth Leases for 21. yeares, or three Lives made by Tenants in tayle, or by the husband and wife, of the Lands of the wife, touch not Copyhold: for the Statute speaketh of Leases made by Deede onely; so that the intent of the Statute is to warrant the Leasing of such Lands only as are Grantable by Deede, but such are not Copyhold lands: for though they may by Licence of the Lord be demised by 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.

Sec. LV.

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

But the Statute of *Marton, cap.* 1. which giveth damages to a *feme*, upon a Recovery
Co.4 fo.30.b. 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 the same Statute.

1. The one which giveth the *Cui in vita*, upon a discontinuance made by the Baron.

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

3. And the third, which giveth a *quod ei deforceat* to particular Tenants extends to Copyhold.

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

And the Statute 32. *H.* 8. *cap.* 9. against Champertie, and buying of Litigious Titles, and *cap.* 28. which giveth an entry in Lieu of
Co 4 fo 26. a *Cui in vita*, extendeth all to Copyholds, because these Statutes are beneficiall to the Common-wealth, and not at all prejudiciall to

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 Disseisor levieth a Fine with proclamations, and five yeares passed without any claime made; this is a barre both to the Lord, and to the Copyholder.

So if a Copyholder make a Feoffment in Fee, and the Feoffee levieth a Fine with proclamation, and five yeares 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 Franck-Tenant, is utterly voide. And whereas it hath beene doubted, that this Statute should not extend to Copyhold; but the Lord should hereby receive grand prejudice; Co.9. fo.105.a.
for he should not onely lose the Fines, upon alienations or descents, and the benefit of forfeiture, but should withall be in hazard to be barred of his Franck-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 privitie in estate, that is betweene him and

the Copyholder he may make claime, as well as the Copyholder himselfe; *Et vigilant hus non dormientibus jura subveniunt.*

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

Sect. LVI.

A Fine is a summe of money paide to the Lord of the Mannor for an Income into any Lands or Tenements. In some Manors Fines are certaine, in some incertaine.

Fines of Copyholds.

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 meanes, 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 Mapor, 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 a Copyhold be granted *du rante vie*, 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 vie*; and the Grantee dieth, and his heire entereth 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 Guirdian.

If the Copyhold Lands of a Bankerupt 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 seize 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 prius*, as if no grant at all had beene 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, he 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 accruer of a new Tytle, where he that recovereth was never admitted nor paid Fine, there upon his recovery, 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'auncester* upon this recovery hee shall be admitted and pay a Fine.

If I take a wife, Copyhold in Fee, though by this inter-marriage, there accrueth 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. *Vid. Plowden com. 418. b.*

If a Copyhold be surrendred 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, hee in the Remainder shall be admitted and pay a Fine.

So if a Copyhold be granted to three *habend. successivè* 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, hee shall be admitted, and 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.

Co. 4. fo. 27. b. But if two joynt-Tenants, two Tenants in Common, or Tenant for life, and hee in the Remainder joyne in the Grant of a Copyhold, one Fine onely is due, and it shall inure, as

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 chiefely 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 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,

ritance, the heire is tyed upon three solemne Proclamations made at three severall Courts, to come in and be admitted to his Copyhold, if he faileth to come; in this failer is a forfeiture *Ipso facto*.

So if a Copyholder be sufficiently warned to appeare, and he faileth, this is a forfeiture *Ipso facto*.

But if he be hindred by sickneſſe, or by over flowing of waters, or if he be much in debt, and feare to be arrested, or if hee be a Bankerupt, 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 *Ipso facto*.

So if a Copyholder be sworne of the homage, and then refuseth to present the Articles according to his Oath; this is a forfeiture *Ipso facto*.

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

But if a Copyholder in presence of the Court speaketh unreverent words of the Lord,

Lord, as that the Lord exacteth & 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 hee 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 Deed, pretending thereby to procure his Land to be Freehold, and teareth in peeces the Court-Roll, this is a forfeiture *Ipso facto*.

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 *ipso facto*. *Co. l. 5. f. 27. b.*

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 *Ipso facto*.

But if the Copyholdder 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.

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 incertainty, 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 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 proofe of the yearely 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 Kingdome, 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

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

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

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 himselfe, 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 *ipso facto*.

But

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

If a Copyholder commiteth waste voluntarily or permissive, this is a forfeiture *Ipso facto*.

Voluntary, as if hee plucketh downe any ancient built house, or if he buildeth any new house, and then pulleth it downe againe; or if he ploweth medow, so that thereby the ground is made worse; or loppeth the trees, or selleth the lopping; or if he cutteth downe any fruit-trees for fuell, having other wood sufficient, this and the like voluntary waste are forfeitures *Ipso facto*.

Permissive, as if he suffereth his house to decay, or fall to ground for want of necessary reparations; or if hee suffereth his medowes for want of mending his banckes to be surrounded, so that it becomes Rushy, or worth nothing; or his arrable ground, so to be surrounded, that it is become unprofitable. These and the like permissive wasts are forfeitures *Ipso facto*.

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.

Sec. LVIII.

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

So, if a Copyholder be Out-lawed, or excommunicate, 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 intytle any other Lord unto his Copyhold, or if hee alieneth by Deede; these and the like ought to be presented.

If a Copyholder maketh a bargaine 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 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 bargaine and sale inrolled according to the Statute, doth bargaine 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 sana 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 common sense.

So

So an Infant that is under the age of foureteene is unable to forfeit his Copyhold, because he wanteth discretion, and till then hee is to be in Ward to the next of his kindred, to whom th'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 shee 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 or ignorance, but by such as proceede from contempt.

If an Infant come not in to be admitted, according to the Custome at three solemne 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 law-

fully taken; or if hee alieneth by Deede, 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 committeth 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, hee shall forfeit the Wardshippe onely, not the inheritance of the Copyhold.

If *Cestuy que use*, of a Copyhold committeth waste, he shall not forfeit the Copyhold.

If the husband committeth waste in Copyhold Lands, which he hath in the right of his wife; this is a forfeiture of the wives Copyhold. *Co. 4. fo. 27. a.*

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

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

So

So, if a Copyhold be surrendred 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, hee cannot forfeit before admittance.

If two joynt Tenants be of a Copyhold, and one committeth waste, he forfeiteth his part onely, for no man can forfeit more than he 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 a Copyhold, yet the remainder is not hereby touched.

And so if a Copyholder be granted to three *habend. successivis*, whereby the Custome of the Manor: this word *successivis* 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 a Lease for yeares by Deed, or without Licence by Copy, and either of these Lessees committeth 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 Escheated to the Lord, and hee regranteth them againe by one Copy.

And thus have I shewed what persons are able to forfeit. I will now in a word shew what persons are able 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

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 Seigniory, 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 dispunishable.

But if Tenant for life be of a Manor, 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 hee 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 benefite of a forfeiture.

As

As if a Lord of a Manor granteth a Copyhold in Fee, and then granteth the Franck-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 benefite of forfeitures made by the Copyholder, as if the Copyholder do make a Feoffment, Leaſe, waſte, deny the Rent, &c. Co. 4 fo. 22.

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.

Sec. LXI.

IF the Lord doth any thing whereby hee 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 eſtoppells 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 Copy-

Copyhold are onely conformable by ſubſequent acknowledgement, and not thoſe forfeitures which tend to the deſtructions of a Copyhold, as if the Copyholder maketh a Feoffment; by this the Copyholder is deſtroyed, and therefore no ſubſequent acknowledgement of the Lord will ever ſalve this ſore.

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

Sec. LXII.

WHereſoever a Copyhold is become not 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 Deede, this is an extinguiſhment. So if hee maketh a Feoffment upon Condition, and then entereth for breach of the Condition: yet the Copyhold is extinguiſhed, becauſe once not demiſable. Co. 4 fo. 31.

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,

Licence, maketh a Lease for 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 Seigniouresse*; this is a suspension onely of the Copyhold, no extinguishment.

So if the interruption be *tortious*, as the Lord be disseised, and this disseisor dieth seised, or if the Land be recovered by false verdict, or erronious judgement; and after the Land is recontinued, it is not extinguished, but may be granted anew by Copy; for *Non valet impedimentum quod de jure non sortitur effectum, & quod contra legem fit 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.

FINIS.