

The Compleat
COPY-HOLDER,

WHEREIN
Is contained a Learned DISCOURSE
of the Antiquity and Nature
OF
Manners and Copy-holds :
Being a GUIDE and DIRECTION

For { Surrenders.
Presentments.
Admittances.
Forfeitures.
Customes, &c.

By Sir EDWARD COKE Knight.

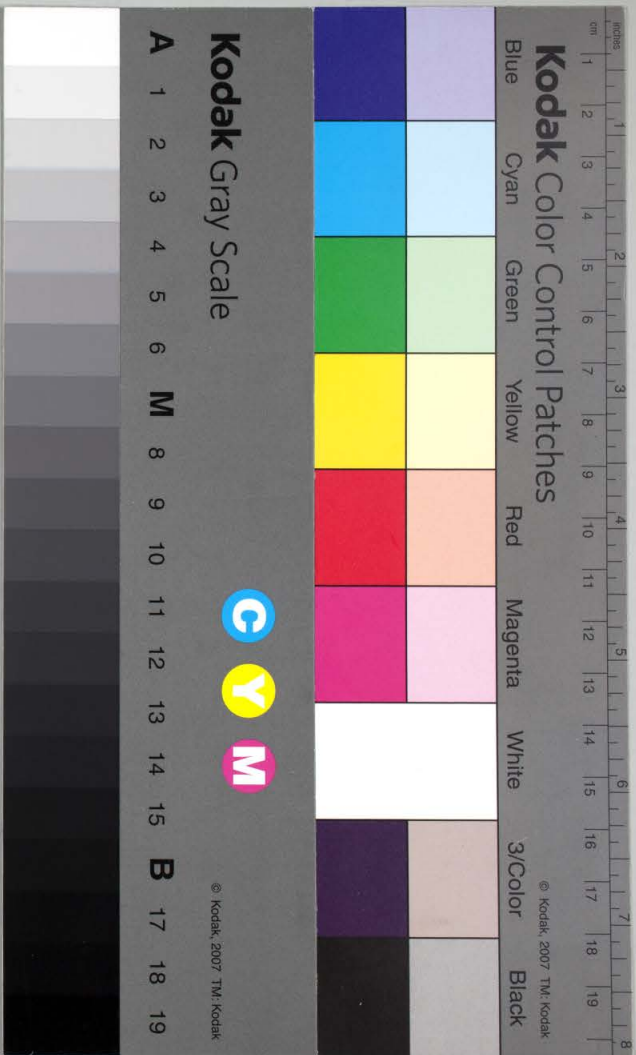
whereunto is newly added
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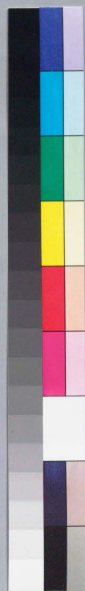
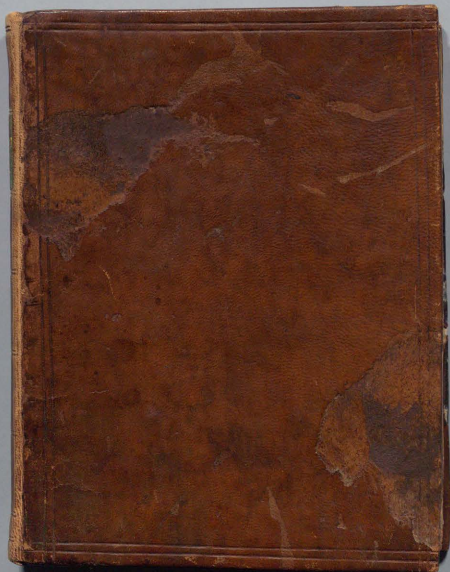
By that Worthy Lawyer CHARLES CALTHROP
of *Lincolnes-Inne* Esquire.

Together, with the Forme of keeping of a *Copy-hold Court*
and *Court Baron* :

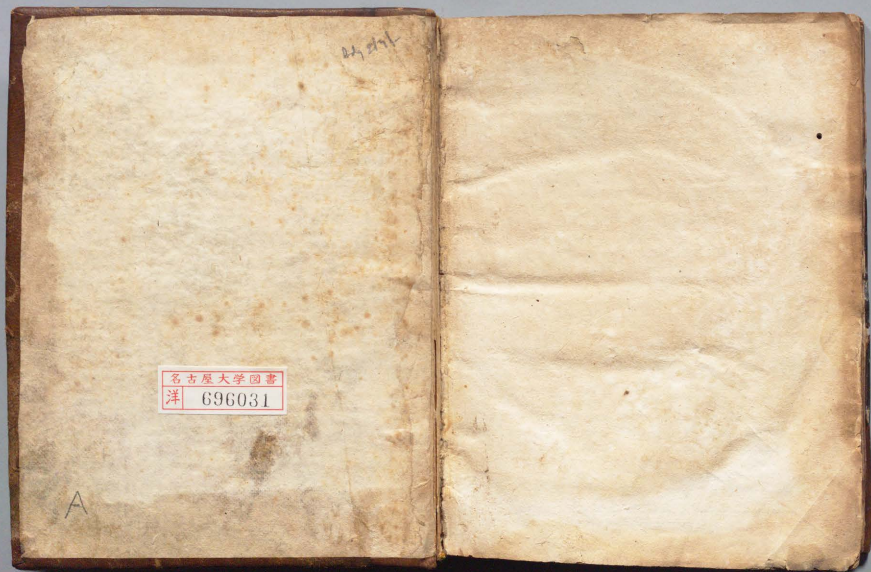
Also, two Tables newly added.

LONDON,
Printed for *W. Lee*; and *D. Pakeman*, at the *Turkes-head*, and the
Rainebow in *Fleet-Street* 1650.





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TO
THE READER.

This Copy coming to our hands, perused, and revered by men learned in the Lawes, Wee thought most worthy of Publication. The very name of the Composer, who hath been an Ornament to this Commonwealth, is enough to give it sufficient Authority, and indeere is to every wise opinion. But the profit which doth attend, is most considerable, it being a Subject so materiall, declaring the Antiquity of Mannors and Copy-holds; and written for the good of Lords and Tenants; and being the best Ground work and GUIDE for keeping of Courts, and for the generall use of all men; it cannot but receive a becoming entertainment. In the confidence of this truth, wee referre it to all judicious perusall, not a little

To the Reader.

litte congratulating our own happinesse, so have beene instruments of bringing so excellent a Piece from obscurity.

And for the further benefit of the Reader, we have added two other Tracts, which have received good approbation, formerly Printed, yet now much corrected, and fitted for the generall Use of this Common-wealth.

W.L. D.P.

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What

(2)

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

SEC. II.

THE Saxons (who held England in subjection immediately before the coming of the Normans) were unacquainted with these Manors, yet in effect they had Manors in those 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 *Falke* 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.

Falke in his fourth Dialectique.

SEC.

(3)

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.

THE 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 Vfer, as where the Lord reserved Common for his Cartell, or in *Prender*, as where the Lord reserved three shillings, and foure loads of Estovers for fuell to be taken yearly in his Tenants grounds.

B 2

SEC.

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

AND in the reservation of these Services, the Lords had a speciall respect unto the qualitie of the Land, did they transerre their Bocklands, *hoc est*, Free-hold Lands, they would never reserve Villeine Services; did they transerre their Folk-lands, *hoc est*, Copy-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 Lordscare beene extraordinary in reserving apt Service they should have much wronged their Tenants; and thus much *Lambert* writteth, saying, *Terra ex scripto fuit hereditaria, libera, atque immunita: terra vero sine scripto*

Lambert, in his
explication of
the Saxon
word, *Terra ex
scripto*.

scripto officiorum quadam servitute fit obligata: priorem plerumque nobiles atque ingenui, posteriorem vero rustici ferè & pagani possidebant. Lambert termeth these Bocklands, *Terras liberas atque immunes, non quod ab omnibus servitiis fuerunt liberae aut immunes, sed quod tenentes ipsi fuerunt liberi & servitiis tantum liberis onerati.* But I much wonder, why this Bocklard doth to this day retain the name of Free-hold Land, sithence time hath bred such an alteration, that in the point of Service, a man can scarce discern any difference betwene Free-hold Lands, and Copy-hold Lands. The favourable hand of time hath so infranchised these Copy-holders, that whereas in the *Saxon* time, their Services did consist wholly in Peasance, 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 freedom; 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 mén 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 theris such small respect had unto the quality of the Land in the reservation of our Services. Yet observe, I pray, though time hath so enfranchised 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.

S E C. VIII.

Or, 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 tempore & intempore pro voluntate Domini possent resumere & rescari*, as Bracton, and Fleta both speake; the

Bract lib. 4.
Tr. 3. cap. 9.
memb. 5.
Fleta lib. 5.
cap. 51.

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

S E C. IX.

But 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 eat, drinke, and sleepe securely, onely having a speciall care of the mainchance (*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.

S E C.

S a c. X.

BVt I perceive my selfe rashly running into an inextricable Labyrinth, I will therefore faile no longer in these unknowne coasts, but will hasten homewards, I will content my selfe with this. I know amongst the *Saxons* th'essential 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 we had the very forme of Manors, which is observed amongst us at this present houre.

S a c. XI.

IConfesse 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 *Demasium*, *Domasium* or *Domicum*, 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 *Demasium est illud deminio, sive quod consecratum unitum, & incorporatum est* lib. 2. *regis Corona*, take *Demasium* in this sense, and then you exclude all common persons from being seized in *Domico*: for admit the King passe over the Demesne Lands, as soone as they come into a common persons hands, *desinunt esse terra Dominicales*; for though the Kings Pattente, hath the land granted to him, and to his Heires, yet coming from the King must necessarily be holden of the King, it is contrary to the nature of Demesne Lands to be holden of any; therefore though those Lands which 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.*

C

S E C.

SEC. XII.

Then by this it appeareth that those lands are termed *improprie* Demefine, 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 *Feo* implicth thus much, that his estate is not absolute, but depending upon some superiour 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 feodo*. but improperly in *Dominico* simply; the King *converso* may properly be said to stand seized *Dominico* simply, but in *Feodo* improperly, or in *Dominico suo ut de feodo*. *Bracton* divideth these Demefine Lands into two branches; under the first are comprehended those Lands which the Lord enjoyeth in his owne possession; under the second, those Lands which are in the hands of the inferior

SEC. XIII.

ferior Copy-holders: His words are these; *Dominicum dicitur quod quis habet ad mensuram suam & idcirco Anglice vocat. Bordlandz dicitur etiam Dominicum villanagium quod traditur villanis, quod quis tempore & intempore resumere possit, pro voluntate sua & revocare.* Bract. lib. 2. tra. 3. cap. 9. num. 5.

Fleta agreeth with *Bracton* in this division, and unto these two he addes more sorts of Demefine Lands: His words are these; *Dominicum est multiplex est autem Dominicum proprie terra ad mensuram assignata & villanagium, quod traditur villanis ad excolendum, quae tempore, & intempore pro voluntate Domini & poterit revocari sicut est de terra commissa tenenda quoad in commissori placuerit: poterit & dicitur dominicum de quo quis habet liberum tenentium autem alius usum fructus. & etiam ubi quis habet liberum tenentium aliter curam de castro de capite & curato quorum unus dicitur ab homine, alius in iure, Dominicum etiam dicitur ad differentiam ejus quod tenetur in servitio. Dominicum denique est omne illud tenentium de quo autem sicut obit sicut, nec refert, cum usum fructum vel sine, & de quo si ejus esset recuperare possit per aliquem nomine desit sine licet alius haberet usum fructum sicut dicitur poterit de illis* Fleta lib. 5. cap. 5.

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

S E C. XIV.

THis opinion of *Bract.* and *Fleta*, both consenting in one, that Copy-hold Land is parcell of the Lords demesnes, wanteth not moderne authority to second it, for 15. *Elizabeth.* in the *Excheq.* I finde it adjudged in the case of a common person, how oever 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 accepted 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 Francke 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 seisinus 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 medow; be it his Copy-hold which he hath by escheate, by forfeiture, or

by purchase, or be it any part of his Freehold Land, of which I must speake a word by the way, not to prove that it is demesne, for *manifesta probatio non indiget*, but to shew you in what sence it is taken, and how farre it extendeth.

SEC. XV.

A Freehold is taken in a double sence; 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 sence 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 sence I take throughout this Discourse.

SEC.

SEC. XVIII.

THE name of Freeholders extendeth not onely unto Lands held *per servitium milite* significat. *litare*, 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 servitium Socæ*, whether in *libero Socagio*, or in *villano Socagio*: *Liberum Socagium* is, where any Tenant holds of any Lord by paying yearly a certaine summe of money in lieu of tillage, and such like services, and not by escuage; and this is termed sometimes 'common Socage.

Socagium villanum is where the ancient services of carrying the Lords dung into the fields, of plowing his ground at certaine dayes, of plashing his hedges, and such are not turned into money, but remaine still unaltered; and if you doubt that such Land is held *per villanum Socagium* cannot come within the compass of Freehold Land: for your satisfaction, reade *Bracton, lib. 2. cap. 8. num. 8. Hactenus de primis defunctiois membro ad secundum properemus et pauca de servitiis Domini debitis pertractemus.*

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

Stat. 27 11 8;
Cap. 20. It is
so called.

services. 3. Accidentall services.
 Corporall services are of two sorts; Services of Submission, services of Profit.

S E C. 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 *admirimum*, 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 enforce every Tenant to acknowledge and confesse himselfe Tenant unto his immediate Lord, yet they differ in many materiall points.

S E C. 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 chiefly concerneth service at home, and properly appertaineth to Socage tenure; and though now 'tis held, that a Tenant by Socage may doe homage, and that homage *ex se* maketh Socage tenure, and not Knights service; yet originally homage was invented for Tenants by Knights service, and such as were bound by their tenure to attend their Lords in the warres; but fealty was primarily devised for Tenants in Socage, and such as were bound by their tenure to manure the Lords ground, and carefully to discharge all rurall affaires;

D and

*Stent. de verb.
 signum Ho-
 mages.*

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 Seigniori 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 that 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, *ex ad minimum*, tenant in tayle.

S e c.

S e c. XXI.

BYta Tenant for life or yeares, are both able to doe fealty, according to *Littletons* rule, that fealties are incident to every tenure, except tenures in Franck-almoigne, and tenants at will, contrary to some erroneous 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 *J. 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 fealty likewise unto the same Lord. And thus much for services of Submission,

D 2

S E C.

SerVICES of Profits are of two sorts tending to the publique profit of the Commonweale, as when the Lord enjoyneth 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 enjoyned to be the Lords Carver, Butler, or Brewer, or is tyed to payle the Lords Parkes, to tyle the Lords Houfes, to thatch the Lords Barnes, and *similia*. And thus much for corporall services.

AnnuaI services are in number infinite, in nature all one, for they all tend to the increase of the Lords Cofters, and are reserved in their duties, as well for Copyhold Land, as Frechold Land; though in the *saxon* time, and long after the Conquest, they were never, or seldome reserved for Copyhold Land, but onely for Frechold Land. I will not enumerate many particulars of annuaI services, for that were as endlesse, as numbring the sands of the Sea; onely this I say, that those annuaI services which here come within the compass of my meaning, consist all in Render, none in Feasance, for those annuaI services, as well as accidentall services,

ces, which consist in Feasance, I comprehend under corporall services; thus leaving both corporall services and annuaI, 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 annuaI 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 annuaI 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 *laxiori sensu*; In *strictiori sensu*, and in that sense the *Fendisti* define, *servitium fore minus obsequii clientelario*, &c. that duty which the Tenant oweth unto his Lord, either in performing some corporall function, or in discharging some annuaI payment. In *laxiori sensu*, and so it signifieth any duty whatsoever accruing unto the Lord, by reason of his Seigniorie; 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 Manory) may very fitly be reduced to this kinde of services.

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

- | | |
|---------------|------------------|
| 1. Wardships. | 4. Accruiements. |
| 2. Herriots. | 5. Forfeitures. |
| 3. Reliefs. | 6. Escheates. |

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

S e c. XXII.

Wardship. est custodia heredis infra
aetatem existentis, Polidore Virgil saith,
that this was *novi vestigialis genus excogita-
tum*, to helpe, *Hem. 3.* being oppressed with
much poverty, by reason hee received the
Kingdome greatly wasted by warres of his
Ancestors, and therefore needing extraordi-
nary helpe to uphold hisestate, the use of
Wardships was let abroad. But the 33.
Chapter of the grand Customary maketh
mention of this to have beene used among
the *Normans*, immediately after the erection
of Manors, and that the use of Wardships
was a foote before *H.* the third time, as ap-
peareth manifestly by *Glanvil*, who writeth
very

very largely in many places in his Booke, *Fleta. lib. 5.*
and lived in *H.* the seconds time; Guardians
are either termed *Custodes*, or *Curatores*, *Cu-
stodes a lege, curatores ab homine*, as *Fleta*
speaketh. The Civilians make three sorts of
Guardians, *Tutor testamentarius. 2. Tutor a-
Fratore 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
chatells 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 testa-
mentarius*, unto whom belongeth the care and
custody of the childs body, and the disposi-
tion of his substance, until hee accomplish
the full age of foureteene yeares, and then im-
mediatly 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 Testa-
ment: for though it be not in the Fathers
power to restrain the libertie of his childs
body longer then to the age of 14. yet the
disposing of his goods he may commit to a-
ny, for as long time as himselfe shall thinke
expedient: So by the Stat. 32. and 34. *H. 8.*

If a man be seised of Socage Lands, not holden of the King in Capite, 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 Pratore 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 fourteene; at what time the Infant himselfe may chuse a Guardian: for it is a rule in the Civill Law, *Imposito curator non datur*, and this Committee is *Tutor a Pratore datus*.

datus. These Guardians termed amongst the Civilians, *Tutores a Pratore dati*, are commonly called Guardians, *per nupture*; 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 natura*, or *legitimus jure Communis*; *legitimus jure natura*, as where the Father or the Mother hath the Wardship of their heires apparent, be it heire male or female: *legitimus jure communis*; and that Guardian is twofold, either Guardian in Chivalric, 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 service,

E vice,

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. 11.* 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 fourteene. Thus much concerning Wardships; a word concerning Herriots.

S e c. 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 *Saxon* 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 suchlike 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 employments, 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 Saxon words, tit. Herriots.

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 Relieues nor 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, ac-
 cording 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
 cōparison to a Relief, for it proceedeth rather
 of grace and good will, than of right; and ra-
 ther from villaines, than freemen: to this ef-
 fect speaketh *Elia*, *Herriotum est quadam*
præstatio ab inenens, liber vel servus in morte
sua dominum suum respicit de meliori averia
sua vel de secundo meliori, qua quidem præstatio
magis, fuit de gratia quam de iure & nullam
habet comparationem ad relevium eo quod heredi
non contingit quia factum antecessoris.

This our Herriot is twofold; Herriot Ser-
 vice, Herriot Custome; Herriot Service, is
 that Herriot which is never due, without spe-
 ciall reservation, and is seldome reserved up-
 on any lesse estate, than an estate of inheri-
 tance. Herriot Custome, is that Herriot
 which

which is never due upon speciall reservati-
 on, 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 coming of
 the *Normans*; who immediately upon the
 Conquest changed the name of the *Saxons*
 Herriot, and termed it by the name a of Re-
 liefe, leaving notwithstanding some diffe-
 rence betwixt them, for where the *Saxons*
 Herriot, consisted usually in the payment of
 some military weapon, our Reliefe 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 inven-
 ted this new kinde of service unknowne a-
 mongst the *Saxons*, and termed it by the
 name of Herriot Service, afterward, up-
 on the enfranchisement 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 merely, *ex gratia*, but now time hath effected it, that they are challenged, *ex debito*. Thus much of Herriots; a word of Reliefe.

S. c. XXV.

Reliefe 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 foundeth all one, with these words of *Glawvil*, *Heredes majores statim post decessum antecessorum suorum possunt se tenere in hereditate sua licet Dominus possint feudum suum cum herede in manus suas capere: ita tamen moderate id fieri debet, ne aliquid disseisinam heredibus faciant. possunt enim heredes si opus fuerit, violentia Dominorum resistere, dum tamen parati sunt Relicium alitero servitia eis inde facere; with this agreeth the definition of *Huotman*, *Relicium est honorarium quod novus vassallus introitus causa patrono largitur quasi morte usuali alium vel alio qua causa feudum ceciderit quod jam a novo sublevatur*. This reliefe by the ancient Civill Law was termed *Introitus*; and *Vincetius* termeth it *Præstationem seu salutionem factam**

*Glawvil. lib. 7.
cap. 9.*

*Huotman Com-
ment. de verbis
suis & verbo
Relicium.*

Etiam pro confirmatione seu renovacione possessionis, and that very aptly: for indeede Reliefe is the key, which opens the gate to give the heire free passage to the possession of his inheritance. *Bracton* giveth this reason why it is called a Reliefe, *Quia hereditas que jacens fuit per antecessoris decessum Relicivatur in manus heredis & propter factam relevacionem faciend. erit ab herede quaedam præstatio que dicitur Relicium. Sicut fondly imagineth that it taketh his name, a relevando, in another sense; for saith he, Reliefe is given by the Tenant or Vassall, being of perfect age, after the expiring of the Wardship, to the Lord, of whom he held his Land by Knights service, it is by Ward and Reliefe, and by payment thereof he relieves, and as it were, raiseth up againe his lands after they were fallen downe into his superiors hands, by reason of Wardship. But these words of *Glawvil* will serve to convince him of error; *Tandem vero eodem ad eam perveniente, & si tunc hereditatis restituitur quietus erit a Relicivo ratione custodia; this Reliefe is twofold. 1. Reliefe Service. 2. Reliefe Custome: Reliefe Service, is that which is paid upon the death of any Freeholder. Reliefe Custome, is that which is paid upon the death, change, or alienation of any Freehold, according to the Custome of the**

*Bracton lib. 2.
cap. 86.*

*Sicut de verbis
suis in Re-
licio.*

*Glawvil lib. 9.
cap. 9.*

the place, in many places halfe a yeares profit, in many places a whole yeares profit, and therefore where *Brasson* saith; *Quid dat Domino Relevium qui succedit jure hereditatis, non autem is qui acquirit;* that is to be taken with this caution, *ni illud etiam consuetudine, prestare debet qui acquirit.* These Relieues 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 foureene, 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 Reliefe, 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 Reliefe: 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, *Cauidici certant, & adhuc sub j. discutit.* 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 Duchie 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, every hide foure yard lands, every yard land 24. acres, according to which computation; a Knights Fee contained 480. acres: so that according to severall computations, a Knights Fee was more or lesse. Others hold, that a Knights Fee was measured according to the quality, not according to the quantity; according to the value, not according to the content: and amongst these, some hold that land to the value of fifteene pound *par annum* made a Knights Fee; and therefore, *Camden* saith, that, *Sub Henrico tertio quodammodò coacti fuerūt equites fieri quot quot libras quindecim ex annuū*

*Camden in suo
Britan. pag.*

ex annis terrarum redditibus colligant; and out of Matthew Paris, hee writeth, that anno, 1256. Exiit editum regium preceptumque est & acclamatum per totum regnum ut qui haberet 26. librata terra & supradicti. armis redimitus tirocinio donaretur, ut Anglia, sicut Italia militia roboretur; & qui nollet, vel qui non posset honorem status militaris sustinere pecunia se redimerent. Others hold, that census equestris, was fortie pound revenue in Freehold land: and of this opinion is Sir Thomas Smith: others held, that census equestris, was twentie pound revenue; and this opinion is confirmed by many authorities, and reasons cited in *Anth. Lowes Case*, by an ancient Treatise, de modo tenendi Parliamentum temporis Regis Edwardi filii Etheldred, where it appeareth, quod comitatus constabat ex viginti feodis unius militis qualibet feodo computato ad viginti libratas. Baronis constabat, ex 13. in feodis ac tertia parte unius feodi militis secundum computationem predictam unum feodum militis constabat ex terris ad valemiam 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. 343, 33.

W. 1. cap. 36. and by *Fisch*. 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 meloe, brought per Ranulphum de Normavile petentem versus Luciam de Kyme tenentem P. 3. E. 1. appeareth, that twelve carnes of Land made a Knights Fee, every carne being in ancient time of the value of five nobles per annum; according to which account, a Knights Fee amounted to twenty pound per annum. These are the severall opinions, touching the quantity of a Knights Fee, imbrace of these, which shall 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 certainly 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

F 2 land 3

*Fisch. nat. Rev.
volum. fo. 62.*

land, for by the quantitie, they could presently judge the value; but now the value is not certainly rated in any place, but increaseth and decreaseth upon every occasion; and therefore reason requireth, that in these dayes a Knights Fee, should be measured, according to the value, not according to the quantity of the Land, for by reason of the different value of the land, one man may be better able to maintaine the dignity of a Knight, with two hundred acres in some place, and of some land, than another with 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, *v.* one hundred pound; surely Reliefs were paid in this manner, before the Statute of Magna Charta, and that is somewhat pregnant by this, that by the very words of that Statute. This Reliefe is termed *Antiquum Relevium*; and by *Glauvil*, who writ before the making of this Statute, this is somewhat manifest, for

*Glauvil lib. 9.
cap. 8.*

he speaketh to this effect, *Dicitur rationale relevium alicuius juxta consuetudinem regni de feodo unius militu centum solidos, de Socagio vero quantum valet, census illius Socagii per annum de Baronis vero nihil certum statutum est quia juxta voluntatem & misericordiam Domini Regis solent Baronis capitales de relevio suis Domino Regi satisficere:* 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 Reliefs paid by Barons, it was an institution of a new Law, because they were before uncertain; 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, Marquess or Vicount in England. The first Duke that ever was in England since the Conquest, was the Blacke Prince, eldest sonne to *Ed. the 3.* The first Marquess 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 Bella monte*, created by *H. 6.*

F 3 But

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 Marquisse two hundred markes, and so ratably and proportionably. But to conclude, let us compare Herriots and Reliefs 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 Herriots are paid by Copyholders, as well as Freeholders; but Reliefs by Freeholders only. 4. In this, that Herriots are ever due upon a speciall reservation, or upon some particular Custome; but Reliefs are incident to the Fee, and are due without reservation or Custome, contrary to the opinion of *Vincentinus*, who holdeth a Reliefe *extrinsecum fore prestationem & non in esse feodo*. Thus much touching Reliefs, a word touching Amerciaments.

S. C.

S. C. XXVI.

A Merciamment is a Pecuniarie punishment for any offence committed against the Lord of any Manor, or (as some more at large define it) it is a 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 frō being in the Lords mercy, to be punished more or lesse at his will and pleasure, and it differeth from a Fine in divers respects.

In that whosoever is fined may lawfully be imprisoned, but whosoever is a mercied 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 sithence Amerciaments are incident unto every Court Baron, and Court Barons are incident unto every Manor: *sequitur ex consequente*, that unto every Manor amerciaments are incident, but *ex 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 viceneto qui secundum modum delicti majori vel minori ameriameto delinquent. multare 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 Statute of Magna Charta; for Glawile thus speaketh

Glawu. lib. 1.
cap. 11.

speaketh of it, *Est autem misericordia Domini Regis, quod, qui per juramentum legalium hominum de viceneto catenus ameriandus est ne aliquid de suo honorabili contenen. amittat*, and therefore by this appeareth, that this Stat. of Magna Charta, was but an afferance 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 suite 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 Lect, 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 there-

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there

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. 1. Offences committed by publique 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 partes*, 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 Assessors in *omnibus delictis multandis*, sed in *is tantummodis puniendis quorum certam partem habere notitiam, & intelligentiam*, as *Fleta* speaketh, and therefore sithence the Steward hath more certaine notice of offences committed *extra* by what persons

co. 3. *Griffep.*
64^e.

Fleta lib. 1.
cap. 9^b.

persons soever then the Jurors have, and can better judge and discern of the natures and qualities of offences committed, *Extra curiam* by publique 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.

S. e. c. XXVII.

Forfeiture commeth of the French word *Forfait, scilicet, quia scelerum & delictorum perpetratio est forisfacturatum 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 speak more liberally in another place, and therefore I will silently passe them over, speaking some few words

touching the causes from whence Forfeitures of Freehold Land arise.

The causes are many, amongst the which I have observed. 1. That if any Freeholder alieneth his Land in Mortmain, 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 adjoining, 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 Estrays. 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 seizure; then are these goods forfeited to the Lord, who hath that Franchise, and are termed Wrecks. 4. If one come to a violent end, without the fault of any reasonable creature, then immediately that thing which is the cause of that untimely death, becommeth forfeited unto the Lord; and it is termed a Deodand; as this old Verse testifieth; *Omnia que movent ad mortem sunt Deodanda*: as if a Horse striketh his Keeper, and killeth him; or if a man driveth his Cart, and seeking to redresse it, falleth, and the Cart wheele running over him, presteth him to death; or if one felling a tree, giveth warning to comers by to look to themselves, and notwithstanding warning given, some body is slain 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 forbear to enumerate any more in this kind; and to speake more largely of these which I have already enumerated, for three speciall reasons;

G 3 1. Because

1. Because they are duties accruing unto the Lord, not merely from 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, estraves, and wrecches, the propertie of such goods belong unto the King, *virtute prerogative*; and thus much *Bracton* intimateth, when he saith, *Sunt alia quedam que in nullius bonis esse dicuntur sicut wrecorum maris, &c. Et alia res, que Dominum non habent sicut animalia vagantia, & que sunt Domini Regis propter privilegium marium*: the reasons why *Devidands* are forfeited to the King, is this;

Devidands were originally invented for the pacifying of Gods wrath, and the appeasing

of Gods anger, and these things thus forfeited, were according to the true intendment of the Law to be sold, and 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 truly, nay, more liberally and bountifully with the poore in this kinde, than any inferior Lord, who peradventure out of his uncharitable nesse, peradventure out of want, will be so farre from adding any thing to that which is due, that hee will rather unjustly subtract 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 be seeme this small Treatise, wherein the scope and end I ayme 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.

S i c

EScheates cometh of the *French* word *Escheat excideret*, & are termed *excadentia*, which imports Lands fallen into the Lord's 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 *animam diem & vastum*; and then it cometh unto the Lord as an Escheate; thus much concerning the nature of Services in generall, and there are so many particular Services in *individuo*, that I might insift in millions more, but feare of incurring the censure of being over tedious, restraineth the forwardnesse of my hand; yet sithence occasion is so favourable to me, I will presume so much upon your patience, as to lay open the severall remedies which

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.

S a c. X XIX.

IF any Freeholder refuseth to do homage, or fealty, which are corporall Services of submission; or to mend high wayes, repaire decayed Bridges; or *similia*, which are corporall Services, tending to the publique profit of the Common-weale, or to discharge the office of a Carver, a Butler, a Brewer, or such like; or to payle the Lords Parke, to tyle the Lords Houses, or to thatch his Barnes, or *similia*, which are 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.

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 isa 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 seisin nor, but after seisin once gained, tis at his election, either to distreine, or to bring an Assize: and thus much touching remedies for corporall and annuall Services.

S e c.

Accidental Services are gotten by many differing meanes; By seisure onely, as the Wardship of the heires body together with the Waives, Estrais, 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 gainable by Distresse only, & not by Seisure, or action, as Herriot Customs; 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 Escheate, 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 Relieves and Amerciaments. For Relieves 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 Reliefe is the fruit and approvement

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of Services rather than any service, and for Amerciaments the Lord may either disteine or bring an account of debt, other remedy the Law hath provided against strangers, for detaining of these duties from the Lord, as to inlist in one: if a stranger will detain the Wards body or the Wards land from the right Lord, a writ *de reitro de custodia terra & hereditate* 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 soule 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

tinnance of time, come not within the compass 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 betwene 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 hac 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 chief 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, betwene 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, between the Feoffor and the Feoffee, for the Feoffee was to hold off the Feoffor by the same services, that the Feoffor held over on his Lord Paramount, but since this Statute, If a Tenant feised of Land in Fee, in feoffeth a stranger neither by the expresse reservation of the Feoffor, nor by the implied reservation of the Law, can there bee a perfect tenure created at this day between the Feoffor and the Feoffee; for the Feoffee shall hold immediately of the Lord Paramount not of the Feoffor, and further, as the King can doe nothing which amounteth to the creation of a new custome: so a common person can doe nothing which amounteth to the creation of a new tenure, and 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 spures, a Rose or *similia*, this is a voyd confirmation; otherwise had it bene if the Lord had confirmed the estate of the Tenant *Tenendum per 5. s.* that had bene 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

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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 lost labour in the Lord to practise any such union; for notwithstanding this union they will be still two in Nature, howsoever the Lord covetto 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 travelable; 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 qua supra*, But if one Manor holdeth of another, by way of Escheate these

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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 impugn many authorities which hold at this day, that a tenure may be 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 imperf. & tenure betwene the Lessor and the Lessee, the Donor and the Donee; and this imperf. & tenure I confesse may be created by a common person at this day. Secondly, perfect betwene very Lord and very tenant in Fee, and such a tenure a common person could never create since the Stat. of *Quia Emptores terrarum*, and consequently a common person cannot create a perfect Manor sithence, for without a perfect tenure a perfect Manor cannot subsist. Thus much touching the definition of a Manor, thus much I say touching the two materiall causes, together with the efficient cause. A word of another cause of a Manor which appeareth not in the definition so manifestly as the other causes doe, this is a cause which among the Logicians is termed, *Causa sine qua non*, and that is a Court Baron; for
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indee 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 Dem. f. 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 decide and debate controversies arising within their jurisdiction; and their Courts were termed Court Barons, because in ancient time such personages were called Barons, and came to the Parliament, and sat 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 wisdom or qualitie thought good to call by writ, which writ, ran *hac vice satum*, y. t
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*File Lambin
his explication
of some words
verbo Thomas
Bacon in his
elements of the
Law. fol. 47^o
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 seldom; 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. s. 1. E. 1.
ca. 15.

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 inferior Lords of Manors cannot keepe Court Leets 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 lewrie consisteth oftentimes of lesse than twelve, in Court Leets never; the reason of that is, because none are impanelled upon the lewrie 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 *ad minimum* but Court Leets can well subsist without any suitors. 8. In this, that Court Barons enquire of no offences committed against the King, but Court Leets 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 error, lyeth upon a judgement given in a Court Leete, but not in a Court Baron. So in a Court Leete a *Capias* lyeth, but in a Court Baron in steade of a *Capias* is used an Attachment by goods; So in a Court Ba-

ron, an action of debt lyeth for the Lord himselfe, because the suitors are Judges, but in a Court Leete the Lord can, or 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 Maneris sui circuitu 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*: 1. *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 insift in the two materiall causes, if the Lord will transerre over to some stranger the services of all his Tenants, and reserve unto himselfe the Demesnes; or if he will passe away the Demesnes, and reserve the services: in both causes the Lord peradventure hath a Manor, *nomine* but not otherwise, because in the one cause he wanteth Demesnes, in the other services. So if a Manor descendeth to Co-parteners and they make partition, and the intire Demesnes are allotted to the one and th' 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 insift 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 chauce to gaine

The name of a Manor, yet it will not be a Manor in the estimation of the law; to insist in this cause, *sine qua non*, If the King grant away a Manor to *I. S.* excepting the Courts and perquisites, the Grantee hath a Manor in name onely: So if all the Freeholders 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 Copyholders, 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 necessarily 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. years, the Grantee in the one case and the lessee in the other, have a kinde of Seigniority 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, or 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 omisso*. And thus closing up this part of my Treatise touching Manors. I come to the other part touching Copyhold.

S E C. XXXII.

I Neede not stand to discourse at large with antiquitie of the Copyholders; for if you cast your eye backe to that is past, you shall easily perceive that Copyholders, though very meanely descended, yet they come of an ancient house; and therefore if in this point you desire satisfaction, call to minde what I have already spoken; 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 incertamy of their estates, which were grounded upon a very weake foundation, wholly depending upon the will of the Lord, and Outable at his pleasure; or in respect of their Services, which favoured of nothing but slavery, whether they were, *certae determinatae, or incertae ac indeterminatae, ubi sciri non poterit vesperere, 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

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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 spter terme than this; for they confesse, that these Copyholders were for the most part, *Rustici & Pagani*, and their Services wholy, *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 call'd *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 Pondmen, than Husbandmen; otherwise we should make their Tenure differ in nothing from ancient Socage Tenure, which I assure my selfe is otherwise: for though Socagres were Rustiques, and in that sense Villaines; yet their Tenure was never noted by the name of a Tenure in Villanage, till in many places their Corporall Services began to be turned into money: then for distinction sake,

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the one began to be called *Liberum Soccagium*; the other, *Villanum Soccagium*. But long before these Coppholders, were termed *Villaynes*, and therefore without all doubt their Tenure was in basenefic 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 enfranchised 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 gentle styles, 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 Rolle; for he is not called Tenant by Court-Rolle, 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. a. 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 inviolated, yet the Lord might, sans controll, eject them: neither was their estate hereditarie, in the beginning; as appeareth by *Briston*: 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 Demeasne; though sometimes out of ancient Demeasne, wee shall meete with the like sort of Copyholds, as in *Northamptonshire*, 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 retourn upon the granting away of the Manor, no more than Tenants at will at the Com-

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Briston 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 parcel of the Lords Demefnes, 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.

S e c. XXXIII.

Customes are defined to be a Law, or Right not written, which being established by long use, and the consent of our Ancestors, hath bene, and is daily practis'd. Custome, Prescription, and Usage; howsoever

soever there be correspondencie amongst them, and dependencie 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 Common Law, and the Civill: and therefore where the *Statute*. 1. H. 8. saith, that all actions popular, must be brought within three years after the offence committed; whosoever offendeth against this *Statute*, and doth escape uncalled for three years, he may be justly said to prescribe an immunity against any such action.
2. A Custome toucheth many men in general; Prescription, this, or that man in particular: and that is the reason why Prescription is personal, 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 allowed after this manner. In such a Borough, in such a Manor, there is this or that Custome. And for Usage, that is the efficient cause, or rather, the life of both; for Custome and Prescription lose their being if Usage faile. Should I goe about to make a Catalogue.

logue of severall Customes, I should with *siftius saxum solvere*, undertake an endlesse piece of worke, therefore I will forbear, since the relation would be an argument of great curiosity, and a taske of great difficulty: I will onely set downe a brieve 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 Copiholder before he can enforce his Lord to admit any one to his Copihold, is to make a profferto 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 Copihold land by deede for more than for one year 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 Prescriptionsought 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, until 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 Tenanes shall lose their profits: so if the Lord will prescribe that he hath such a Custome with

four pence an Acre, this prescription is 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 bene within the Manor, that what distresse soever is taken within his Manor for any common persons cause, is to be impounded for a certaine time within his pound; this is no good prescription, for the Lord is hereby to receive a charge and no commoditie: but if the prescription goeth further, that the Lord should have for every beast so impounded a certaine summe of money, this is a good prescription. If we desire to be more fully satisfied in the generall knowledge of prescriptions and Customes, 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 felons goods, fugitives goods, D:ondans and such like, because they cannot bee forfeited untill it appeare of Record: but waves, estreaies, 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 devisable in any Borough, or City by speciall Custome; A Rent granted out of these Lands was not devisable 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 cortage two shillings fine shall be paid, if any Tenant within these liberties maketh two houses of one, or buildeth a new house, hee shall not pay a fine for any of these new houses; for the Custome onely extendeth to the old. So if I have Estovers appendant to my house, and I build a new house, I shall not have Estovers for this new built house upon this ground. It hath bene 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;

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therefore this alteration is held insufficient to overthrow the Prescription; for if a man by Prescription hath Erovers to his house, although they alter the Roomes and Chambers in the house, as by making a Parlor where there was a Hall, *vel 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 qua 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 th'age of fifteen, 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, *Secundam consuetudinem Maneris*: 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 literal 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 licet*; 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 bene

used, that every Chief Justice may grant Offices; or where a Sergeant prescribeth, *Quod talis habitator consuetudo*, that Sergeants ought to be impleaded by original 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 alledging of a particular Custome, a Copyholder is driven to one of the last, and as occasion serveth, he useth sometimes the one, sometimes the other. If he be to claime Common, or other profit in the feyle 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 alledge, 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.

S E C. XXXIV.

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

1. 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 Purchafor.

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 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, *a Sacramentorum participatione*: notwithstanding these infirmities and disabilities, yet he is capable enough to make a voluntary grant by Copy, for if a *feme seignior* 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 jura*, but *sub p.estate viri*, because the Custome of the Manor is the chiefe *base*, 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

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so little is not materiall; for be it in Fee, or be it in taylor or dower, or as Tenant by custome, 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 cōceded unto him: for as long time as the Custome doth allow, the ancient Rents and Services, being truly 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 derivativus*, but the life of the Copyholders estate is the Custome of the Manor; and therefore whatsoever befallth 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-

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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 propp, such a pillar, unless 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 Feoffor entrench; 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 Feoffor; 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 *privement insensit* with a sonne, and the daughter granteth Lands by Copy, this Grant shall stand good against the sonne, but the daughter was *Legitima Domina pro tempore*. So if the Feoffee of a Manor, upon Condition to infeece 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 per contractus*; 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 seignioresse*, under the age of consent; and after the doth disagree, though the marriage by relation was void, *ab initio*, yet Copyholds granted before disagreement, shall never be avoided, *causa quae supra*.

○ If the Lord of a Manor committeth fele-

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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 attained, these Grants are authentically, though by relation, the Manor was forfeited, from the time of the Exigent awarded. So if the Lord had beene attained 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 Cognise 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 peradventure, 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

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was wanting to the confirmation of her interest: but though the quantity of the Lords estate in the Manor be not respected, yet the quantity of his estate in the Copyhold is regarded. For if a Copyholder in Fee surrender to the use of the Lord for life, the Remainder over to a stranger, or reserveth the Reversion to himselfe, if the Lord will Grant this by Copy in Fee, whatsoever estate the Lord hath in his Manor; yet having but an estate for life in the Copyhold; no larger estate shall passe, then 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 strengthened 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 qualitic of his estate, or the qualitic of his person: for if the Lord, or he who soever it be that maketh a voluntary Grant

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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 Manerii*, for the payment of his debts, &c. and they make voluntary Grants accordingly: these Grants are good, notwithstanding the Executor hath no interest in the Manor, nor is *Dominus pro tempore*.

If a Disseisor of a Manor dieth seized, notwithstanding his heire come in by ordinary course of descent, yet because the Tort commenced by his Ancestor, is still inherent to his estate, if any Copyhold estate be granted by the heire, it may be avoied by the Disseisor; immediatly upon his recovery, or upon his entry; and so if the Disseisor inoffe a stranger of the Manor; notwithstanding the Feeoffee come in by title, yet no grant made by him of Copyhold-Land, shall ever binde the Disseisor, 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 avoide 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 avoied by the *feme*, upon her entry, or upon her recovery, in a *Gul in vita*.

If a Manor be Granted, *pr. aut. vie*, and *Cessay 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 immediatly upon the death of *Cessay 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 preterit*, lieth against him, as against Deisorcor.

And so if a Tenant for life of a Manor maketh

maketh a Lease for yeares of the same Manor and dieth, Copyhold estates granted by the Lessee, after the death of the Tenant for life, are voidable by the first Lessor.

If a Lessee for yeares of a Manor granteth a Copyhold in Reversion, and before the Reversion eschue, the terme is expired, the Grant is void; and so I take the Law to be, if the Lessee surrendreth his terme, and then before his Lease should have ended in point of limitation, the Reversion falleth, yet the Grantee shall not have it.

If a Lease be made for yeares of a Manor, the Lease to be void upon the breach of a certaine Condition, if the Condition be broken, and afterwards the Lessee before the entry of the Lessor, granteth estates by Copy; these Grants shall never exclude the Lessor for presently upon the breach of the Condition; the Lease is voyde, but had the Manor beene granted for life, in Tayle or in Fee, I thinke Law would have fallen out otherwise, for before entry, the Franck-Tenement had not beene avoided, and wheresoever a man may enter and avoide any estate of Franck-Tenement, upon the breach of a Condition, the Law adjugeth nothing
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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 such a lawfull interest, that what estate soever hee granteth by Copy, in the interim shall stand good against the Grantor. And so if an Infant 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 Mortmaine, before the Lord Paramount hath entered for a forfeiture.

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

sted, but doth not subscribe to the Articles, according to the Statute of 13, *Elix.* and granteth Lands by Copy, as before. This Grant shall not conclude the succeeding Incumbent because his Admission, Institution, and Induction were wholly void in themselves, but had the Parson benee deprived for crime or heresie, or for being meere *Lay-cow*, although he be declared by sentence, to be incapable of a Benefice; and so his presentment, voided (*obinitio*) yet becau'e 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 voided, surely a relation shall never be so much favoured, as to avoid a Copyhold estate in this kinde.

So much 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 incapable 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

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pass 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 sursumrestitutionis*; 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 Custome; 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

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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; & therefore if I devise, that my Executor shall sell my Land, they cannot

cannot sell by Attorney, for that were to make in 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 Authority, accompanied with an interest, that Authority may be executed by Attorney, as *Cessus que use*, after the Statute of t. R. 3. and before the Statute 27. H. 8. might have aliened by Attorney; for at that time he had an absolute authority to dispose of the Land at his pleasure, without any confidence reposed in him. And thus much of the Grantor.

tor; A word of the Grantee.

S. e. 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 san. & memori. e.*; 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 disagreeeth. Nay, further, a *feme covert* may receive a Copyhold estate by surrender from her husband, because she commeth not in immediately by him, but by mediate means, *viz.* by the admittance of the Lord according to the surrender.

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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 bene much impugned, therefore I dare not justify the validity of it.

What persons soever are capable of a Grant by Copy, may well take by Attorney, not that the Lord shall be enforced to admit any one by Attorney, because upon every admittance, there is fealty due by the party admitted, which is a duty so inseparably annexed to the persons, that it cannot be discharged by deputy, and therefore no reason the Lord should be enforced to admit by Attorney, but if 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 certainly knowne, it is sufficient. And therefore a Surrender made to the Lord Archbishop of *Canterbury*, or the Lord Major of *London*, or the high Sheriff of

of *Norfolke*, without mentioning, either their Chriftian-name, or Sir-name, are good enough, and certaine enough, because they are certainly 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 uncertainty may be helped.

But if I Surrender to the use of my cofin, or my friend, this is so generall and so uncertaine, that no subsequent manifestation of my intention can any way strengthen it.

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

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

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 meere 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 *T. S.* or to the use of *T. S.* next child, or to the use of *T. S.* next wife; though at the time of the Surrender *T. 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.

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The same Law is if I surrender to the use of him that *L. 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 *serum natura* and able to take, that will serue.

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 Copishold to the use of a last Will, and the Surrender deviseeth it unto two, the one is admitted according to the purport of the Will, this shall inure to both, but though the Surrender be a thing executory and the intent of the Grantor so much favored: yet if a Copisholder will Surrender to the use of the right heires of *L. 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 be executed presently, which cannot be in regard that *L. S.* can have no heyre till after his death:
So

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

S e c. XXXV.

A Copishold interest cannot be transferred by any other, assurance then by Copy of Court Roll, according to the Custom.

If I will exchange a Copishold 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 Copishold 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 Copisholder, 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 accrueeth to the Lord, will serue to drown a Copishold right, and therefore if I surrender out of Court upon condition, to the use of *L. S.* and the presentment is made abso-

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 for 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 enlargement to transferre an interest, 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.

S 2 c. 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 means alien for no conveyance 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 Co. 4. fo. 24. serve no more than an ordinary assurance at the Common Law; for that bindeth my person onely, not my interest: sithence 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 be considered. O 3 1. The

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

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

In some an Admittance without a Surrender or Presentment.

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

S E C. XXXVIII.

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

If the Lord will make a voluntary grant of a Copihold, no Surrender is requisite, for by the Admittance of the Lord according to the custome, the Copiholder is
suffi-

sufficiently settled 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.

S E C. 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 conveyances, 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 bargain, or sale, or such like, I doubt 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 instead 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 Grantors 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 trespass; 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 a 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 compellable to do it by a *subpoena* 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 Cousin, 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.

S E C. XL.

THe Presentment by the generall Customes of Manors, is so be made, at the next Court day, immediately after the surrender, but by speciall Customes, 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 materiaall, 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 prooffe made in Court, the surrender shall not be avoided, but the Roll amended, and this shall be no conclusion to the partie, to plead or give in evidence 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 Custom, 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 Custom, his heire shall be admitted: and so, if I surrender out of Court, to the use of one for life, the Rendrou, and the Lessee for life dieth before Presentment, yet upon Presentment made, he in the remainder shall be admitted. And so, if I surrender to two joyntly, and one dieth before Presentment, the other shall be admitted

to the whole. The same Law is, if those in-
to whose hands the surrender is made, dye
before Presentment, upon sufficient prooffe
in Court, that such a surrender was made, the
Lord shall be compelled to admit accordingly;
and if the Steward, the Bailiffe, or the
Tenants, into whose hands the surrender is
made, refuse to present, upon a Petition or a
Bill exhibited in the Lords Court; the party
grieved shall finde remedy. But if the Lord
will nor 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 Admit-
tance.

S a c. XLII.

Admittances are threefold;
1. An Admittance upon a voluntary
Grant.

2. An Admittance upon Surrender.

3. An Admittance upon a Discent.

Involuntary 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 in-
tent may be reputed, as absolute owner, yet
because in disposing of it, he is bound to ob-
serve

serve the Custome precisely in every point,
and can neither in Estate nor Tenure bring in
any alteration, in this respect the Law ac-
counts him Customes instrument. If the Cu-
stome 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'd it. So
if the Lord faile in reserving *verum & anti-
quum redditum*; as if he reserveth ten shil-
lings, where the usuall rent Customably re-
served, 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 bene accustomably paid at foure
Feasts in the yeare, and the Lord reserveth it
at two Feasts. So, if two Copy holds, Echeate
to the Lord, the one of which hath bene
usually demised for twentie shillings rent,
the other for ten shillings rent, and he grant
th them both by one Copy, for one rent

of thirty shillings, this is not good; and so if a Copyhold of three acres Becheates, which hath beene ever granted for three shillings rent, and the Lord granteth one Acre, and reserveth *pro rata*, one shilling rent, *versus antiquus reddit*, is not reserv'd: but if a Copyhold of sixe 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 claims 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 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 materiall, these admittances 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 sursumreddendi*: therefore if there be any variance betweene the admittance and the furr. either in the person, in the estate, or in the tenure, or in any other collateral points, the Lord doth onely transerre an estate according to the furr. and his authority if it can take such effect. As if I Surrender to the use of *J. S.* and the Lord admits *J. N.* this admittance is wholly void; and notwithstanding this admittance the Lord may afterwards admit *J. S.* according to the effect of his authoritie; but had he admitted *J. S.* and *J. 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 *J. S.* and the Executors agree, that *J. S.* and *J. N.* shall have this terme; this consent is void to *J. N.* for after the consent of the Executors, *J. N.* is in by the Devise. Yet some are of opinion, that if I furr. to the use of *J. S.* in Fee, and the Lord admits *J. S.* together with his eldest sonne and heire apparent, that this is an estate

Co. 4 fo. 18

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Co. 4 fo. 27. B.

Co. 1 fo. 140. B.

by Estoppel to *l. s.* and that he shall onely claime jointly 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 the son, who by surrender was to have no interest till the death of his father, should be any such estoppel.

Co. 4, fo. 29.

If I *surr.* to the use of *l. s.* for life, and the Lord admits him in Fee, an estate for life 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; but if my surrender be absolute, and the Lords admittance be conditionall, the Condition is void, but the admittance in all points else is good.

Co. 4, fo. 25.

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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 complete Tenant to the Lord, no further forth then the Lord pleaseth to allow him for his Tenant. And therefore, if there be Grandfather, Father, and Sonne; and the Grandfather is admitted, and dyeth, and the Father entrech, 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'ancestor*, so that to all intents and purposes, the Heire, till admittance

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Co. 4. fo. 23.

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 Ancestor, for he may enter into the Land; before admittance, take the profits, punish any trespass 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 estoppel, 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 jointly with his Wife, and never be taken as sole Tenant, and the Lord may avow upon him before admittance, for any arrears of Rent, or other Services, and last of all, upon an actual 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 Termes, without an actual entry, or any claime made by

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 actual entry, or any claime. Yet this possession of the Lessee is sufficient, and the Reversion shall descend to the daughter of the first Venter, and not to the sonne of the second Venter. But if the Lease had beene determined living, the Son by the first Venter, and afterwards he had dyed before any actual entry made, the Law would have fallen out otherwise, because there was a time, when he might have lawfully entered; therefore, where some have imagined that nothing should be invested in the Heire before admittance; because every admittance of an Heire, upon a Discent, amounteth to a Grant, and so may be pleaded, they are in an error, 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.

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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 descended upon him, because in truth such an interest is but a particular interest at will, in judgement of Law, although it bee descendable by Custome.

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

Then will some say, if the benefit which the Heire shall receive by the admittance, will not countervale 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 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 enforced in every Manor to come into Court, and be admitted according to the Custome within a short time after notice given of their Ancestors decease. And thus much of the Grant it selfe. A word of the things granted.

S e c. XLIII.

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

by Copy, according to the Custome, as Underwoods growing upon the Manor, being things of continuance, (for after they are cut they will grow againe, *ex stipitibus*) may well be granted by Copy, and so of herbage or any other profit of the Manor, and sometime of the grant of a Copyhold, things shall passe that are severed from the Manor. As if the Lord of a Manor grant his Manor for yeares, *exceptis holsis & subolsis*, growing in certain 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 Underwoods, growing upon the ground for his necessary fuel, notwithstanding this exception in the Lease of the Manor, the Copyholder may cut downe Woods or Underwoods according to the Custome, though by exception severed from the Manor, for though the Lessee of the Manor, in respect of the exception, could not meddle with the Woods or Underwoods, 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 up-

on

on Custome is paramount the exception; Therefore, the exception in the Lease of the Manor, though preceding the Grant of the Copyhold, cannot any way touch or prejudice the Copyholder. And so, if there be a Custome, within a Manor that Copyholders have used to have Common in the Wastes of the Lord, and the Lord granteth away his Wastes, and after granteth a Copyhold, the Copyholder shall have Common, but in alleging the Custome, he shall not say, *Quod infra Manor praed. talis habetur consuetudo*, but that till such a time, *viz.* before the severance, *valis 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 be cut downe, and taken by the Grantee in my Manor of Dale, there the Grantee hath election to make choyce of which he 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.

Co. 4. 6. 1. a

Co. 2. 6. 17. a

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 otherwife it is, where things are not annuall, but are to be performed *antea vice tantum*.

Therefore if the Lord of a Manor granteth by Copy, twenty trees growing upon Black-acre, or Whiteacre, to be cut downe yearly by himselfe, and to be delivered to the Grantee at such a day, though the Grantor faile at his day to make his election, yet his election is not gone, because the things granted are annuall, but had these trees beene to be delivered to the Grantee once onely, and not yearly, then by the faile 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 purchaser; 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 employed as necessary Instruments in Customary admittances, and will cursorily 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 chiefly in these foure things.

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

performance of Customes, breach of By-lawes, nor discharging of du i.s, 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 insit 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 remedlesse, this being a bare confidence, and no Condition, but upon Bill exhibited in the Lords Court I shall be relieved, for the Lord upon prooffe 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 disseints, in any place where he please 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 authority; for though some are of opinion, that it is both usuall and warrantable, for the Steward of a Manor in absence of his Lord, to Licence a Copyholder in full Court to aliene by 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 dimittendi, &c. Cui Dominus 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 Licencing 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

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of interest annexed to the person of the Lord, in respect of his estate in the Manor, and not in any other Collateral 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 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.

S E C. XLV.

Steward, is derived from those two words, Stede, and Ward; and so any that doth supply anothers place, or that is in any employment deputy to another, may according to the true sense of the word 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 pers^{on} in many employments, for in the Lords absence, he sitteth as judge in Court to punish offences, determine controversies, redresse injuries, and the like; and further, some things he performeth in the Lords name, and not in his 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 Senescallū admittit, & licentiat*, 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 *Fl. sa* wisely giveth the Lord this counsell.

Metat. l. c. 6. *Provident sibi Dominus de Senescallo circum-
specto & fideli & pacifico & modesto, qui in legi-
bus consuetudinibusque provincie Domini
sui in omnibus iuri effectus, quisque Ballivos
Domini in suis erroribus & ambiguis sciat
instruere & docere, quisque egenis parcere, &
meo prece vel pressu velit a tramite iustitie devi-
are & perverse iudicare.*

These Stewards for the most part, have Patents for their Offices, yet they may be retained by paroll, & this retainer 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 A& 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 A& belonging to his Office; but though hee

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 unlawfulnessse 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 disability, because he performeth them as a Judge, or at least as *Customes Instrument*; and for his authority, though it prove but counterfeit, if it come to exact trial; 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 authentical. 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 discent: 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 stranger without the appointment of the Lord, or consent of the right Steward, or without any colour of authoritic, 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 certain times of the yeate, without request to be made by the Lord if he faileth, and by his failer the Lord receive any prejudice, this is a forfeiture. But if the Lord be not damnified, then this non user is no forfeiture. As if a Parker attends not for the space of three or foure dayes, and no prejudice or damage hapneth in the interim, this is no forfeiture: and in Offices, which concerne the administration of Justice, or the Commonwealth the Law is more strict then in 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 attendance 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 *Exigentur Felixar*, or the like in the Common Pleas, because the attendance of these and the

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like

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 Commonwealth, and so is holding of the Sherifes turne, &c.

By refusal 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 damnyfyed, and thus much of the Steward.

S = c. 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 goerh 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 incapable to execute it, so if it be granted to an Earle in respect of the exility of the Office in a base Court, and of the dignity of the person, who is *Proprius Comitatus*, and had in ancient time the charge and custody of the whole shire, whose attendance the Law iudgerh to be most necessary, upon the King and the Commonwealth, therefore it is implied in Law for the conveniency, that hee may make a Deputy, for whom he ought to answer. This is one observation touching understewards, in admittances made by understewards, as well as in admittances made by the Stewards themselves it is good order to expresse in the Copy, and in the Court Roll, the name of the 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 point at the severall estates of Copiholders, together with their severall qualities incident to their severall estates.

S E C. 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* sheepe shall stand.

Vnde

Undeterminable, 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 Francktenants are of two sorts, either created by the act of the party, or by the Act of the Law.

Of Francktenants created by the act of the party, some are determinable by death, some by collateral meanes.

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

By collateral meanes, as estates granted *quia diu fuerit innupta*, to a *Widdow quia diu*

S 3

rem an-

remanserit vidua, or to a Minister, *quandiu Sa-*
cerdotium exerceuerit.

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 maineaine 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 certainty, as where Land is granted for so many yeares as *l. 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 *co. 4. fa. 23.* 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.

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 means, 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

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 in-tailed, 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.

S. o. XLIX.

WHat qualities soever are necessarily incident to estates at the Common Law, are incident to estates by Custom. In illustrating this I will confine my selfe to the

dis-

discussing of these two points.

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

2. How Copyholds of inheritance shall descend.

Touching their creation, Copyholds of inheritance, and Copyholds of Frank-Tenement, are created by the same words that Inheritance and Frank-Tenement at the Common Law are created by. Co. 4. fo. 29.

If a Copyhold be granted to a man, and to his heires males, or heires females.

If to a man & *sanguini sui 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 recital seemeth sufficient to passe a good Fee-simple.

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So,

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

If a Copyhold be surrendered to a man, & *femini suo hereditabili de corpore*, or to a man, & *heredibus ex ipso preteritis*, or to a man in Franck-marriage with his wife, in these Grantes 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 longuani suo imperpetuum*, or *sibi & signi suo 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 annum vic. & a rend.* limited upon this estate, is good.

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

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

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

T 3

tayle

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, unless by speciall Custome the word *successive* make their estates severall. Thus much touching the creation of Copyhold estates.

S e c. L a

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

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

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

If there be Father, Vnckle and Sonne, and the sonne purchaseth a Copyhold in Fee, and dieth without issue, the Vnckle shall inherit and not the Father, because an inheritance may lineally descend, 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 Coparteners, or two Tenants in Common of a Copyhold, and one dieth having issue, the issue shall inherit, and not the other by the survivorship; but otherwise it is of two joynt Tenants. Should I give way to my Penne, and write of this Theme till I wanted matter to write on, I should make a large Volume in dilating this one point; therefore I will contract my selfe, intreating you to supply by your private cogitations, what I have either willingly or unwittingly passed over in silence, onely take this caveat by the way.

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

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

of his wife shall make no discontinuance, because these are 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 comenow in the first place to examine how Copyholders are to impleade, and be impleaded.

SEC. LI.

A Copyholder cannot in any Action real, or that 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 meerey 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'ancefor* or a *Formedon* in the Descender, Reverter, or Remainder, or in the nature of any other Writ, as his cause shall require, and shall put in *pleg. de pascuend.*

V

If

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 trespassse 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 Demefne can maintaine a Writ of *droit clofe*, or a Writ of *Mansfructuum*, but Tenants of Francke-tenure in ancient demefne 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 *tenne* 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 reality.

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 trespassse 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.

S E C. LII.

I Come now in the sixth 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 general words: by expresse limitation in precise words;

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

So by the Statute of *1. E. 6. cap. 14.* it is expressly provided, that upon the dissolution of Abbeys, and Monasteries, Copyholds should

continue as they did before the Statute, and should fall into the Kings hands.

So by the Statute of *2. E. 6. cap. 8.* it is 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 eightene or more, under the age of sixtie; not sicke, impotent, lame, maymed, nor having any other just or reasonable cause of excuse upon request made by any man in 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 defraude a Copyholder or Freeholder.

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

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

So by the Statute of the 35. *Eliz. cap. 2.* It is expressly provided, that if any person or persons being convicted of reculancie, repaire not home to their usuall place of abode, nor 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.

This have I shewed in briefe under what Statute Copyholders are comprehended by expresse

(151)

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

S E C. LIII.

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

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

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 AGs.

The Statute of *West. 2. 26. 1.* of intailles, 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 manifesta expressa de cetero observet*; which proveth, that the intent of the Statute was, that no hereditament should be intailed within this Statute, but such an one as either was given, or at least may be given by Charter, or Deede; but Copyholds are no such hereditaments, and therefore not within the body of the AG; yet it is holden, that Custome with the cooperation of the Statute will make an estate taylor.

The Statute of *W. 2. 64. 20.* which giveth the Elegit, extendeth not to Copyhold, because it would be prejudiciall to the Lord, and

an 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. 64. 5.* which maketh it a forfeiture of Lands, Tenements, and Hereditaments, to the purchaser of Excommunications, Bulls, &c. in the Court of *Rome*, against the King, &c. extendeth not to Copyhold, because it would be prejudiciall to the Lord to have the King so farre interessed in his Copyhold without his consent.

The Statute of *2. H. 5. 64. 7.* of Heretiques extends not to Copyholds; for though the Lord of a Manor is yearly 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 forfeiture; therefore Lands by Copy are not comprehended under the generall words; besides the Statute speaketh of the Kings having *annuam decimam, & vicarium* of these Lands forfeited for heresie, as in Lands forfeited for felony; whereby it appeareth, that the meaning of the Statute is, that such Lands onely should be forfeited; in which the King by the ordinary

dinary course of the Law should have *Annum diei et usum*: 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 Vifes, 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 Coparteners at the Common Law, touch

not

not Copyholds, because this alteration of the Tenure without the Lords consent may found 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 Lesing 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 demisable 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.

X 2

But

But the Statute of *Martyn*, cap. 1. which giveth damages to a *feme*, upon a Recovery in a Writ of Dower, where the Baron dieth seized, extendeth to Copyhold.

Co. 4. fo. 10. b.

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 disconfinuance made by the Baron.

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

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

So that the Statute of 31. *H. 8. ca. 12.* of *Monaster.* 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 chap. 28. which giveth an entry in Liew of a *Cui in vita*, extendethall to Copyholds, because these Statutes are beneficiall to the Common wealth, and not at all prejudiciall

Co. 4. fo. 26.

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 void. And whereas it hath bene doubted, that this Statute should not extend to Copyhold, but the Lord should hereby receive grand prejudice, 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.

Co. 9. fo. 105. a.

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 priviledge in estate, that is betwene him and

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

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

SEC. 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 Copyholders.

By speciall Custome Copyholders are to pay Fines upon Licences granted unto them to demise by Indenture, but by generall Custome they are to pay Fines onely upon admittances.

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

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

So

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

If a Copyhold be granted *durante 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 partnor of the profits, and that not in his owne right, but in the right of him to whom he is Gurdian.

If

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

If a Villaine purchase 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 entrench, 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 bene 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.

withstanding the disseisin, but where by a plaint a Copyhold is recovered upon the acquier 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'ancestres* 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 accrue a present interest to me; yet because I am seised, *non jure proprio*, but *jure alieno*, therefore I shall not be admitted, neither shall I pay a Fine.

The same Law is, if she be a Termor of a *vid. Plowden* Copyhold; for though the terme by the com. 18. b. inter-marriage be so vested in me, that I may dispose of it without controule; yet because before dispose I am possessed of it, but in the right of my wife, therefore I shall neither be admitted, nor pay a Fine.

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

Y the

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. success. vic* whereby Custom successive is in force; if any one dieth, he that next succeedeth shall be admitted and pay a Fine.

If two Coparteners, or Tenants in Common of a Copyhold be, and the one dieth, and the other hath all by descent, 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 seized *per mes, & per tout*.

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

But if two joynt-Tenants, two Tenants in Common, or Tenant for life, and 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 poss.* for the better assurance, one Fine onely shall be paid.

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

S E C. 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 Custom, upon the descent of any Copyhold of Inheritance,

Y 2

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 Bankrupt, and keepeth his house, then his default is no forfeiture.

If a Copyholder in the Court be called, and summoned to be sworne of the homage, and refuseth; this is a forfeiture *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 swear 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 reareth 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*. *ca. 27. b.*

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

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

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 prooffe of the yearly value of the Land, whether the Fine be reasonable or not; for if the Lords might Assess 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 forbear, unill 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 if he surrender in Fee, this is no forfeiture, because it did not passe by Livery.

If a Copyholder committeth 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 lopperth the trees, or selleth the topping; or if he cutteth downe any fruit-trees for fuel, 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 bankes to be surrounded, so that it becomes Rushy, or worth nothing; or his arable ground, so to be surrounded, that it become unprofitable. These and the like permissive waists are forfeitures *Ipso facto*.

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

S E C.

S E C. LVIII.

AND such are those offences, which by a 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 intyle 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 bargain and sale of his Copyhold, and it is not rolled according to the Statutes; 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

Z Lands

Lands; all his Copyhold Lands are forfeited.

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

And if a Copyholder by Deed inrolled, bargaineth or selleth all his Copyhold Lands in Dale, or all his Lands in Dale generally, having no Freehold Lands, this is a forfeiture.

This 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 foure-teeene is unable to forfeit his Copyhold, because he wanteth discretion, and till then he is to be in Ward to the next of his kindred, to whom 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 *su. 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 distress lawfully

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fully taken; or if hee alieneth by Deede, or the like; these A&ts 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 waiving given him by the Lord; these A&ts 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 Wardsh ppe onely, not the inheritance of the Copyhold.

If *Cestuy que nste*, 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 wifes Copyhold.

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 surrendered to the use of *I. S.* and before admittance, *I. S.* committeth waste; this is no forfeiture, for by the same reason that hee cannot grant before admittance, 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 A&t, 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 *successivie* taketh place, the first Copyholder cannot prejudice the other two by any A&t: 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.

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If

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.

S a c. L X.

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 Grantor, 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 Mortmain, and then the Lord granteth away his Seigniorie, neither the one nor the other can ever take benefit of this forfeiture.

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

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

As

As if a Lord of a Manor granteth a Copyhold in Fee, and then granteth the Franchisement, 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 he Copyholder do make a Feoffment, Lease, waite, deny the Rent, &c.

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

S E C. LXI.

IF the Lord doth any thing whereby 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 save this fore.

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

S E C. LXII.

WHEREFOEVER 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.

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But if the Lord keepeth the Copyhold Lands, for never so many yeares, or granteth at will, it 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 same 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,

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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 intermarrich with a *feme Seignioresse*; this is a suspension onely of the Copyhold, no extinguishment.

So if the interruption be *torcius*, as the Lord be disseised, and this disseisor dieth seised, or if the Land be recovered by false verdict, or erroneous judgement; and after the Land is reconquered, it is not extinguished, but may be granted arere by Copy; for *Non valet impedimentum quod de jure non sortitur effectum, & quod contra legem sit pro infelico 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.

THE
RELATION
BETWEEN
The Lord of a Mannor
AND THE
Copy-holder his Tenant.

Delivered

In the Learned Readings of the late Excellent
and Famous Lawyer, CHAR. CALTHROP
of the Honourable Society of
Lincolnes-Inne, Esq.

Whereby it doth appeare for what causes a Copy-
holder may forfeit his Copy-hold Estate, and for
what not : and likewise what Lord
can grant a Copy, and
to whom.

Published for the good of the Lords of Mannors, and
their Tenants.

*Non magis pro membris quam pro servandis legibus liberi Civēs
pugnare debent, siquidem sine membris Respublica potest con-
sistere, sine Legibus non potest.*

The second Edition, much corrected and amended; and also
a Table of the Contents newly added.

LONDON,

Printed for *W. Lee*, and *D. Pakeman*, at the Turkes-
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Coppy-Holds.

TH E great injuries which are offered, and small remedies which are used in cases of Coppy-holds, which as it seemeth, doe grow by the obscure knowledge what Law and Custome judgeth in these matters of Coppy-hold; moveth me to shew some part of my Travailes in these points, not thereby to animate Coppy-hold Tenants which would by too much advancing their Tenure, pretend only to be Tenants by Custome, and not Tenants at *Will*, nor to encourage any Coppy-hold Lord, which would by too much abusing these *Tenures*, pretend to have such Coppy-holders onely Tenants at *Will*, and not regard their customes; bur to prove unto you, that as their Title and name sheweth they are Tenants at *Will*, and Tenants by Custome in their Land, and they consist both of their Lords *will* and *custome* of the *Mannour* in their degrees. And that this *Will* and *Custome* be contained within the Limits of Law and reason, according to such rules as shall be hereafter declared.

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First I will shew what a Copy-hold is, then whereof it doth consist, and what estimation the same is of, by the antiquity of time, and by the Lawes and statutes of this Realme.

Master Littleton in his first booke of *Tenures* defineth a Tenant by Copy of Court Role to be where a man is leased of a *Mannour* in which is a *Custom* that hath been used time out of mind, that certain Tenants of the same *Mannour* have used, to have certain Lands and Tenements to hold to them and their heires, in Fee Simple, Fee Tails, or for life at the will of the Lord after the custome of the Mannour: And that they have no other evidence but the Roles of the Courts, by which definition, and by certain other observations of the Law it may be gathered, that a Copy-hold doth consist of these six principall grounds, or circumstances (*viz.*)

First, there must be a *Mannour*, for the maintenance of *Copy-hold*.
Secondly, a custome for the allowing of the same.

Thirdly, there must be a Court holden for the proof of the Copy-holders.

Fourthly, there must be a Lord to give the *Copy-hold*.

Fifthly, there must be a *Tenant* of capacity to take the *Tenement*.

Lastly, the thing to be Granted, which must be such as is Grantable, and may bee held of the

(3)

the Lord according unto the *Tenure*.

But first before I speak of these circumstances, I will briefly declare unto you the Dignity and estimation of *Copy-holders*, by the Antiquity and allowance of time, and by the Lawes and Statutes of this Realme.

It appeareth by a certain Booke intituled *De priséis Anglor. legibus*, translated out of the *Saxon* Tongue by Master Lambert of *Lincolnes Inne*; that *Copy-holds* were long before the Conquest, and then called by the name of (*Bookeland*) as you may see in the beginning of the Booke, in the Treatise *De rerum Copulorum explicacione*; and by Master *BRACIOR* an Ancient Writer of the Lawes of *ENGLAND*, who in his Boke writeth divers preidents and records of King *Henry*, of allowance that *Copy-holders* or *Customary tenants* doing their due services, the Lord might not expell them; according to the opinion of the latter Judges, in the time of *Edward* the third and *Edward* the fourth; and it appeareth by Master *Fitz-Herberts* Abridgement, they were preferred by a *speciall writ* for that purpose, and the Lord thereby compelled to do right. And in the time of *Henry* the fourth, *Tenants* by the *Virge*, which are the same in *Natur*, as *Copy-holders* be, were allowed by the name of *Sokemaines* in *Frankenure*, and in the time of *Henry* 7. were allowed aid of the King for defence of their estates. So that in every Kings time

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8. Hen. 3. Ca. 6.
15. H. 7. 10. 27.
H. 3. 28.



Coppy-holders have had their Allowances according unto their Natures unto this present time: wherein our Iudices are still of opinion, as the said grave Sages have been in times past. Now I will further proceed in some particular use of these Tenures, according to the Lawes and Statutes of this Realm: And because I find none that doth so much deface the estimation of *Coppy-holders*, as Master *Fitz-Herbert* doth in his *Writ De Reſo clauſo*, I will begin with his words and judgement in the same, and proceed to other Authorities.

Master *Fitz-Herbert* saith, that this Terme *Coppyholders* is but a new Terme, newly found out, and that in old time they were called Tenants in Villenage, or base Tenure; and this saith he doth appeare in the old Tenures; for no *Coppy-holders* are there spoken of, although there were at that time such Tenants. But then saith, they were called Tenants in Villenage, and saith as appeareth *Hillar. 14. Henry 4.* If a false judgement be given against them, in the Lords Court, they shall have no remedy, but sue to their Lord by petition, because to hold by Copy of Court Role, which is as he saith base Tenure, is to hold in Villenage, which said opinion of *Fitz-Herbert*, has been by divers wrested, to make no diversity between Tenure in Villenage, and Tenure by Copy of Court Role or base Tenure; wherein whatsoever interpretation may be made, Master *Fitz-Herberts* meaning

Fitz. Nat. Dr.
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meaning is very plaine, and the Book of the old Tenures is to be far otherwise understood: as also I suppose, all other authorities in our Law do make and appoint difference between the said Tenures. And first touching the Book of the old Tenures, it is plaine, that the Booke maketh a plaine distinction between Tenure in Villenage, and Tenure in Fee Base, which is understood this Tenure by Coppyhold, and calleth it a Fee, although a base Fee, and maketh diverse distinctions between them, and saith, that the Tenants in Villenage use doe all such things as their Lord will command them. But otherwise, it is of the Tenants in base Fee. And thus it seemeth the said Booke of old Tenures is by Master *Fitz-Herbert* misrecited; which I am the bolder to affirm, saving the due reverence to his Learning, because one Master *Thornton* of *Lincolns Inne*, a man very learned, in his late reading there upon the *Statute of Forger de ſais*: speaking of *Forging Court Roles*, did plainly affirme the Book of the old Tenures to be mistaken by Master *Fitz-Herbert* in this point. And besides for the further credit of *Coppy-holds*, we ought to consider the great Authority of *Mr. Littleton*, who amongst the rest of his Tenures, doth make a divided Chapter thereof, differing from the Tenure in Villenage, shewing there the Suites and Plaints of *Coppy-holders*, saying that they have an Estate of Inheritance according to the Custom.

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Custom: And delivereth his own opinion, that if a *Coppyholder* doing his services be expelled by the Lord, he shall have an Action of trespass against his Lord: and saith that *Danby* and *Brian* 21. Ed. 4. were of the same minde, according to which is *Bratton*; and the said Presidents of *Hen. 3.* and the Writ used in *Tempore, R. 2.* besides many other reasons at the Common-Law, &c. proving that by use and circumstance things may alter and change their original nature.

As for example, the services of *Socage tenure* was at the beginning, (as *Mr. Littleton* saith) to Till the Lords Land, &c. And yet now by consent of the Lord, and by continuance of time are turned into money, and other Services in lieu thereof. Even so may it be said of *Coppyholds*, as long as the *Tenants* themselves be free, though their *Tenure* were at beginning never so bound and base: yet by course of time, they may gain more liberty and freedom, and grow to more estimation and account. Another reason and Rule there is at the Common Law to this intent, that some things there were which in the beginning were but *voluntary*, and yet in the end by continuance became *compulsary*; as appeareth by the 27. *Ass. pla. 8.* & *Brook tit. prescrip. pla. 49.* That a man that did at the first of his own benevolence repair a high way or a Bridge, by often using to do it, was afterwards compelled therunto *volens nolens*.

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Even so it may be said of the *Coppyholders* who at the first held but at the free wil of the Lord; yet now by usage and continuall granting time out of mind, they have gotten an estate after the Custom, that doing their Services, and behaving themselves well, they cannot by Law or Reason be deprived. Thus much for the allowance of *Coppyholders* by the Common-Law. Now let us consider the Reputation of them by the Statutes and Parliament Law.

It appeareth by the Statute of 1. *Ricb. 3. cap. 11.* & 19. *Hen. 7. cap. 16.* That a *Coppyholder* that may dispend twenty six shillings eight pence by the yeare, shall be Empanelled on a jury, as he that may dispend twenty shillings by the yeare of Free Lands. And by the Statutes of the 2. *Ed. 6. cap. 8.* the Interests of *Coppyholders* are reserved, being found by Office after the death of the Kings Tenants, as well as other estates at the Common-Law; and so doth the Statute of Monasteries, 11. *Hen. 8. cap. 13.* & 1. *Ed. 6. cap. 14.* preserve *Coppyholds* from dissolving. And it will seem that *Coppyholders* are for the good of the common-wealth, and therefore to be maintained. for that some have beene erected and established by Parliament, which were not demisable by *Coppy* before, as appeareth by the Statutes of 35. *H. 8. c. 13.* 37. *H. 6. c. 2.* 6. 2. *Ed. 6. cap. 12.*

What shall be said a *Mannour* and such a *Mannour* as will maintain a *Coppyhold*. A *Mannour* con-

Statutes and
Parliament
Laws.

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consistes in two parts (*viz.*) Demeasnes and Services; and neither of these two parts hath the name of a Mannour without the other: for as a Messuage of Lands cannot be called Demeasnes without Tenants thereunto belonging, to pay Rents and doe Services So on the other part, though a man have Tenants to pay him Rents, and do him Service, and no Messuage or Lands whereupon to keep his Court, and to receive his Rents and Services, this cannot be called a Mannour, but onely a signiory in grosse. *Fitz. ns. brev. s3. & 8.*

Demeasnes are so called, for that the Lord himself occupieth and manureth them *In so maine Demeasne*; but all Lands that have been in the Lords own hands, be not called *Demeasnes*; for all Free-holds and Copy-holds were in his own hands at the beginning. But *Demeasnes* is that which is now, and time out of mind have been in the Lords hands, or occupation of his Bayliffe or Servants: And in that respect also ancient Copy-hold may be to some purpose called *Demeasnes*, because every Surrender is in *Manus Domini*, and every grant *extra manus Domini*; the Lord hath a meddling with it, and may thereupon keep his Court, and for the most part cut down Time ber, and such like: and that is also called *Demeasnes*, which now is in the Lords hands by any new Escheate or forfeiture. And also the
Lands

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Lands which are in the hands of the Copy-holders, and such a *Demeasne* as with other Services will make a Mannour; though the Lord hath none other demeasnes there in his own hands, nor in the hands of his Bayliffe, or servants, such service, as with a Demeasne, shall make a Mannour to maintaine. Copy-holds is where a man holdeth Lands or Tenements freely by suit to the Court of the Lord of the Mannour within the said Fee: But yet every kind of Service will not make a Mannour, for Services are of two kinds, *viz.* That is by Tenure and by Covenant; Service by Tenure is also of two sorts; as if a man at this day giveth his Land in Taile, or leaseth it for Life or Yeares, saving the reversion: here is a Service of Fealty incident to this Tenure, betwene the Donor or the Lessor, and the Donee or the Lessee. And yet though this be a Service by Tenure, yet it is no such Service as will make a Mannour. For if a man at this day be seised of twenty Acres of Land, and *Enfeoffeth* nineteen severall persons of nineteen of these Acres, saving the twentieth to himself, and reserveth of every of his *Feoffees* suite of the Court and other Services to be done to this Court, to be held on the twentieth Acre, though the *Feoffments* be by Deed indented, or in taylor or of Lives, yet all is void, and availeth not to make a Mannour. But it maketh onely a Tenure in grosse; for a Tenure may by
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Br. Copyrif. 31.
53. H. 4.

Pl. 14 Bro.
Tit. Tenure 16.

In the case of
Mans and
Affor.
By the report
of Denham
Lincolns Inne

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divers meanes be created at this day; but a Mannour by no way, by a common person.

A Mannour must be by Prescription, and the Services by continuance, time out of mind.

But although a man at this day cannot make a Mannour, yet he may in some sort enlarge a Mannour by adding more Services unto it. 9. Aff. A man seised of a Mannour did give parcell of the same to hold of him by suit to his Mill within the same Mannour; for this Service the Lord may distrain, and it is there held to be accounted parcell of the Mannour.

In like manner a man may by reserving upon a gift, Intayle, or Lease for life, Services in grosse, increase the Services of an ancient Mannour. *Signior grant le Demeafnes & services del son Mannour de Norfolksey & ceo extend en suite Tome par le melior opinion des Justices de Common Bank le grantes, &c.* may keep a Court there, and so a Mannour to be created at this Day.

What shall be said a Mannour or a Tenure in his proper nature or by Common-Law, and what in respect of Usage or Custome to maintain Coppyholds.

It is to be noted, that although a Mannour of his proper nature ought to consist of demesnes and Services, yet in some Cases that may be a Mannour, and maintain Coppyholders, and a Court Baron by usage and custome, which otherwise by Common-Law

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is not Mannour, nor cannot so be called, &c.

A man seised of a Mannour whereunto be divers free-Tenants, divers Coppyholders, and divers special Customary Tenants, and the customary Tenants do hold to give attendance on the Freeholders at the Lords Court: All the free Tenants dying saving one, the Lord doth bargain and sell the Mannour to an estranger: This is now in respect of the Free Tenants, a Tenure, and no Mannour; in respect of the Coppy-holders, both a Mannour and Tenure; and in respect of Customary Tenants, neither Mannour nor Tenure.

If divers doe hold Lands to dine with the Lord every Sunday in the yeare; this maketh neither good Tenure nor Mannour.

But if they hold to wait on the Lord every Sunday at dinner, and to dine with him; this maketh a good service, but no good Tenure.

If divers doe hold Lands by Coppy of the Mannour of D, and so have done time out of mind, and by the like time there hath been no Free-holders to the said Mannour, although this be no Mannour in its proper nature, yet by usage it is a good Mannour to maintaine Coppy-holds.

A man seised of a Mannour, which time out of mind hath been called by the name of the Mannour of S, and doth demise the same by the name of the Mannour of S, this is good.

If a man seised of a Mannour, whereto be

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six Free-holders, and six Villaines Regardants: The Free-holders die having issue fixe daughters, the Villaines intermarry with them, yet the same is a Mannour, and the Villains there to regardant.

If a man seised of a Mannour whereto he hath Lect and wreck of the sea by prescription, all the *Tenancies* Escheate, yet the Lect and the wreck still remain, and it is a Mannour to that purpose.

If divers do hold Land by Prescription to find the Lords mans meate, and hounds meat, when he commeth to hunt the Fox in the said lands; this maketh a good *Tenure*, but no good Mannour. If divers do hold lands to do suit and Service at the *Lords Court*. This is most properly such service as maketh a Mannour; but if it be to do suit and Service at the *Lords Court*, when it pleaseth themselves, this is neither Mannour nor *Tenure*. If divers do hold lands to repair a Highway within a mile compass, without the bounds of the Lord of the Mannour, this makes a good *Tenure*, but no Mannour. But to repair or mend the ways within the Precinct of the Mannour, is good to enlarge the Mannour.

If divers doe hold lands to pray for the prosperous Estate of the Lord and his Heires, this maketh a *Tenure*, but no good Mannour.

If divers doe hold lands of the Lord to waite upon him at twenty dayes warning, twenty miles

miles distant from the Mannour, this maketh a good Service, but no good *Tenure*. But if it be to waite upon the Lord within the said Mannour, by certain space, this maketh both a good *Tenure* and a good Mannour.

If divers hold Lands to beat or kill the Lords Tenants that shall do Trespasse on the Lords *Demesnes*, this is neither good *Tenure* nor good Mannour. But if it be to beat and kill the Kings enemies that shall do so, this maketh both a good *Tenure* and a good Mannour.

If divers hold Lands by Prescription to doe Service to the Lord, to his Court of the said Mannour, twenty miles distant at a place certain, This is both a good *Tenure* and a good Mannour. But if it be to do Service to his Court at another Mannour, this without Prescription cannot be service from the first Mannour.

If Divers do hold to come to the Lords Court, and there to do nothing, this maketh neither good *Tenure* nor good Mannour. But to come to the Court, though not to be of the Homage, yet to afaire *Amerciements*, or make *Certificates* or any other Service to the Lord, this maketh a good *Tenure* and a good Mannour.

If any do hold Lands to do Divine Service before the Lord and his Tenants in the Courthouse, before the beginning of every Court, this maketh both a good *Tenure* and a good Mannour.

what shall be said a good Custom to be able to maintain a Copy hold.

A Custom to make a Copy hold, must be of necessity in the same Manor where the said Copy holds are so granted, *viz.* That the same Lands are, and time out of mind have beene onely Demised, and demisable by Copy of Court Role: for otherwise the Lord cannot grant it by Copy, because he cannot begin a Custom at this day. But if it have been by like time granted by Copy, though sithence it came to the Lords hands; yet if the Lord never demise the same by *Free-Deed* nor otherwise, but by Copy, then he may well grant again the same by Copy, for it is neither the person of the Lord, nor the occupation of the Land, that either maketh or marreth the Copy hold; but onely the usage and manner of Demising the same: for the prescription of a Copy holder consisteth neither in the Land, nor in the Occupyer, but onely in the usage.

The Division of Customes.

viz. { Customes,
Prescriptions,
Usage and
Limitation. }

The division
of Customes.

THESE foure though they be by some con-founded together, and indeed are of great affinity; yet there be divers differences in their severall natures between them.

Customs

Custom is where by continuance of time, a Right is obtained concerning divers persons in common.

Prescription is where by continuance of time one particular person obtaineth Right against another.

Usage is by continuance of time the efficient cause of them both.

Limitation is where a right may be obtained by reason of a *non* claime, by the space of a certain number of yeates, differing in the account of time, from custom and prescription.

But what measure of time shall make a Custom, divers have differed in opinion; some judging the same to be according to the computation of years, from the time of *K. Hen. 1.* untill the Statute of *Merton cap. 8.* which appointeth the limitation in a writ of right: the account of which time unto the said Statute, from the said *K.* time is 76 years; others have thought a hundred yeares was accepted a *Fee simple*.

But the true measure thereof according to Master *Littletons* Rule, is where a Custom or Usage, or other things have been used, so long as mans memory cannot remember the contrary. That is when such matter is pleaded, that no man then in life, hath not heard any thing, nor know any proof to the contrary.

And by this it appeareth that Customes, and Prescriptions, rest only in the memory of man.

and Limitation consisteth onely of a certaine time, which hath a certain beginning, and certain ending, and is not directed by mans memory, wherein is meant limitation of time, and not limitation of Estates.

If Lands have been demised by Coppy by the space of 60 yeares, and yet there be some alive, that remembereth the same occupied by Indenture, this is not a good Coppy-hold.

And if Lands have been demised by Coppy but 40. yeares, and there is none alive that can remember the same to be otherwise demised; This is a good Coppy-hold: for the number of yeares makes not the matter, but the memory of man. And it is not 60. 80. or 100 yeares that maketh a Coppyhold or a custome, though it makes a Limitation. But such certain number of yeares makes onely a likely-hood, or presumption of a Prescription; that is, that it commonly happneth not that any mans memory alive, can remember alone such a number of yeares. But if any chance to be alive, that remembereth the contrary, then such prescription must give place to such proof.

Custome hath certain speciall vertues in it self, which for the more estimation thereof, I will shortly shew according to certain precepts and principles allowed by all Lawes, both by the Law of God, the law of Nature, and the law of Nations, and by the private law of every Country: as by the Law of God it is

said

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said, *Si quis videtur contentiosus esse, nos solum Consuetudinem non habemus nec ecclesia Dei;* which proveth that the Scripture and the Church of God do attribute somewhat to good customes, though not to evill; and by the Law of Nature, *Consuetudo est altera natura.* And by the Law of Nations, *Consuetudo est optima legis interpret.* And by the Lawes of this Realme, Princes at their Coronation are sworn, as well to keep the Custome of this Land, as the Law of this Land, which Law doth attribute so much to custome, that sometimes it is admitted to derogate from the Common Law; for *Consuetudo bona de causa usitata & approbata, privat communem Legem.*

Whereof Custome doth consist.

Custome although it doth chiefly consist of continuance of time and usage, yet it doth further require seven other necessary properties, incident for the maintenance of a good Custome: Which are these.

First, It must be reasonable, as it appeareth
2. Ed. 4. 24.

Secondly, it must be certain, as appeareth
3. Ed. 3. 13. Ed. 3. 4.

Dum fuit infra aetatem. 3. 14. Ed. 3. 4. 14. H. 4.

Thirdly, it must be according to common
right. 4. 2. Ed. 3. 4.

C

Fourthly,

4. Fourthly, it must be on good consideration
5. *Hen. 7. 9. Bro. tit. praescript. pla. 57. 22. Assi
pla. 58.*
5. Fifthly, it must be compulsory. 42. *Ed. 3.
Avow. 66.*
6. Sixthly, it must be without prejudice to the
King. 3. *Hen. 6. 13. Prescription. Fitz. 1. 22. Ed.
3. Prescription 40.*
7. Seventhly, it must be to his profit that claim-
eth the same. 31. *Ed. 3. Prescription 40 & 28.*

Vlage is the efficient cause, both of Custome
and Prescription; for without Vlage, there can
be neither *custome* or Prescription; for even as
the mind is to man, so is *usage* to *custome*. And
as you see there be divers varieties of minds in
men, so are there many varieties of *customs*; as
you see varieties of Countries, and yet all men
perfect, and all *customs* perfect: some say that
men have their minds affected according to
the constitution of their bodies: And so have
Countries their *Customs*, according to the
constitution of the places; as in *Kent*, and in
North-wales, because those *Countries* have
been most subje& to forraign invasions, (that
very man there, may be of power for resist-
ance,) the inheritance for the most part de-
scends in *Gavelkind* (*viz.*) to every brother
alike; but in the middle parts of the Realm
for whose government *least equality is best*,
the inheritance wholly descendeth to the
eldest brother: And in *Borough* English which

is in divers *Boroughs*, because their substance
commonly is lands; and in such Townes, lands
may be better preserved then goods; there-
fore their youngest sonnes shall onely have
their lands: and as it is in those great parts of
the Realme, so it is in divers private parts and
Mannours, and divers private and speciall Cu-
stomes, as some Mannors have Coppy-hold of
inheritance, some for life or lives: in some
Mannour the Coppy-holders surrender in
one manner, and in some in another fore:
In some the Fine is arbitrary: and in some
certain, *et sic in similibus.*

The usage of every Custome doth not
to be yearly, daily, or continually used, but as
the equality and the nature of the thing where
of the Custome is, doth require, as *custome*
Harriot's when they fall, of Shafts and Foldage
in the ir season, of Common of Estovers in their
time, and for Coppyholders whose Fines are
certain, yet at one time to pay a greater Fine
than at another, and all these are good Customs
though they cannot be used at all times; for
Customs may be sometimes used, sometimes
not used, sometimes altered, and sometimes
not, and therefore in *custome* you may see there
is (*user non user*), Abuser and Interuser.

Vfer is, when according to time and occasion
a *custome* is used.

Non Vfer is when for want of time and oc-
casion, or through negligence, or forgetfulnesse

a *Custom* is not used.

Abuser is that, when *custome* is ill used, for as *Vfer* doth nourish *custome*, so doth Abuser destroy a *custome*; and yet in some cases a *custome* may be sometimes used in one sort, and sometimes in another, and yet a good *custome*, if there be good considerations of the exchanging thereof at times, and this I call Interuser.

If there be a *Coppy-hold*, of an ancient Demesne, and this Land is forfeited to the Lord by waste, and thereupon a seizure awarded thereof, and yet the Lord doth suffer the Tenant still to occupy it, by the space of 20 years, without receiving any Rent for the same, and after grants the said land to the Tenant by *coppy*: this Grant is good, and a good *Vfer* of the *Coppy-hold*. But if after the said *Seizure* awarded, an *Estranger* had entred, and disseised him of his land, and made a *Feoffment* in Fee thereof; and after the Lord re-entred, and grants the same again by *Coppy* unto the first Tenant, this Grant is not good, by reason of the *Vfer* of this land.

If the Lord have used at the admission of his *coppy-hold Tenants* sometime to take for a Fine two-pence, or sometimes foure-pence for an Acre, sometimes twelve pence an Acre, this *Vfer* is so uncertain, that it maketh the fine arbitrable at the Lords will.

If the Lord of a Mannor have used time out of mind

mind to admit his *coppy-hold Tenants* without Fine, this usage shall bind the Lord, as well as a Fine certain.

If the Lord have used to have certain workdayes of his Tenants, and that hath not beene used by the space of twenty yeares last past; yet that non-user is no discharge to the Tenants, so that there be any in life that can remember the same.

If the Tenants have used when they flow their lands, to pay the Lord Rent-corn, and when it lyeth in pasture to pay their Rents in money, this is a good Inter-user.

If the Tenants have used to pay to their Lord every fourth year a double Rent, and every sixth yeare an half Rent, this is a good Inter-user.

If the Tenants have used to have Common of Pasture in their Lords Woods, for their Horse-cattell, and they put in their Neat-cattell, and destroy the Woods, this is an Abuser. But it is but Fineable, and no forfeiture of the Common, which they might have rightfully used: No more then if they have Common for a certain number of beasts in the Lords Soyle, and they will exceed the number; this abuse by their furcharging, is onely fineable, and no Forfeiture.

If a man have a Market to be used one day in a week, the non-user thereof is not forfeiture. And if a man have a market to be used on the *Friday*, and he keepeth the same *Friday* and

Monday, the Mis-user of the *Monday* is no forfeiture of the *Fryday*.

If a man have a *Faire* to be used two dayes, and he keeps it three dayes, this abuse is a forfeiture.

If a man have a *Faire* for one day, and he will keep it two dayes, and that is presented to the *Exchequer*; if the party being called by *Processe*, doth claim both dayes by *Patent*, upon sight whereof it appeares he ought to have but one day by his *Patent*, and the other by prescription be found against him, and that *Day* lost, yet he shall enjoy the other day.

If a man prescribe to have a *Faire* yearely upon *Bartholmew* day, and if the same do fall out on the *Sunday*, then to keep the same the next day following, this is a good *Prescription*.

If the King do grant to the Citizens of *Norwich* the *Franchises* and *Liberties* that *London* hath, and the *Franchises* and *Liberties* that *Souhampton* hath: if the Citizens of *Norwich* do abuse one of these *Liberties* that *London* hath, this is a forfeiture of all those *Liberties* that *London* hath, and of no other. But if the King doth incorporate a *Towne*, and give them by the same *Patent* Speciall *Franchises* and *Liberties*, the abuser of the one of these is a forfeiture of them all.

That

That every Custome must be reasonable; and what shall be said A reasonable Custome.

EVery good *Custome* is grounded upon good *Reason*, and that shall be said in *Reason* a good *Custome*, that in reason is a good *Law*; for *Law* and *Custome* be of that affinity, as both doth allow like *Reason*, and both do forbid like inconveniences. And the finall effect of both is to discusse & to discern every mans true right, and to give to every man that which is his own. For although *Custome* in some cases differ from *Law*, and doth admit execution of some *Acts* without some ceremonies and circumstances required by the *Law*: yet the end and effect of *Custome* is to maintain the like reason that *Law* doth, and to avoid the like inconveniences.

And therefore if a Lord will prescribe to have such a *Custome* within his *Manour*, that if the *Beasts* of any of his *Tenants* do him any *Trespasse* upon any of his *Demesnes*, and there be taken *damme* *fezant*, that then he may detain them untill the owner shall satisfy him for his harmes, as himself shall require. This is no reasonable *Custome* that he should be his own judge. But to prescribe, that if any of the *Coppy*-holders beasts *Trespasse*, &c. and the same be presented at his *Court*, that there should be a forfeiture of his *Copy*-hold, this may be called a reasonable *Custome*.

If

If Tenants of a Mannour will *Prescribe* to hold without paying any Rents or Services for their Cobby-holds, this is no good Custom. But to *prescribe* to hold by Fealty for all manner of Services, is good and reasonable.

If the Lord will *Prescribe* never to hold a Court, but when it pleaseth himselfe, this is not good. But to *Prescribe* never to hold a Court, for the speciall good of any one Tenant, except the same Tenant will pay him a fine for the same, is good and allowable.

That every Custom ought to be certain; and what shall be said a custom certain.

There is nothing more required in all Laws and Customes then certainty; for incertainty in all Cases maketh confusion, and therefore Law and Customedo also agree in this point, that without some kinde of certainty, neither *Law* nor *Custom* can be good: for in divers cases where one thing may be taken to divers intents, and the circumstances of the case such as to which intent the thing was done, cannot be certainly judged, there the same thing so doubtfully done, shall to all purposes be judged void. And incertainty of *Customes* and *Customary* causes, grows chiefly three manner of wayes. That is to say, sometimes of the incertainty of the *Prescriptions*: Sometimes the

the incertainty of the things, and sometimes the incertainty of the cause: and in some of these cases, though there be at first a Semblance of incertainty, yet by circumstances and Contingents, the Incertainties may be turned into Certainties. As if the Lord of the Mannour wil prescribe that whensoever any of his Cobbyholders dye without Heirs, that one other of the Cobby-holders of the same Mannour shall Till the Land for the yeare following; This is no good Custom, because the intent neither is, nor can be certain, which of the Tenants shall perform this Service.

But if the *Custom* be, that if a Cobby holder dye without Heire, that then the eldest Tenant of that name, of the said Mannour, shall have this Land; this is a good *Custom* and containeth in it self sufficient certainty.

If a Cobby-holder do Surrender two Acres of Land into the Lords hand, the one to the use of *J. S.* and the other to the use of *J. N.* and doth not name in Certainty who shall have the one Acre, and who shall have the other, the limitation of this Use is void, for this incertainty.

If a Cobby-hold be surrendered to the use of *J. S.* and his Heires, untill he shall marry *A. G.* and after the said marriage, then to the use of them two in Tail speciall, if after they do marry, then is the Surrender to them in Tail; and till then, to him in Fee.

D If

sometimes according to the limitation, and sometimes contrary to the limitation, as well in cases of *customs*, as in cases of Common Law; for Consideration is the beginning of all Customs, the ground of all Vses, the reason of all Rights, and the cause of all Duties: For without Consideration no Custom can have continuance; nothing is wrought by any Conveyance, no interest transferred, no right removed, no property changed, nor duty accrued. As if the Lord of a Mannour will prescribe, that whosoever passeth the Kings highway, which lyeth through his Mannour, shall pay to the Lord of the Mannour twelve pence for his passage; this prescription is not upon good Consideration: But if he prescribe to have a penny of every one that passeth over such a Bridge, which the Lord of the Mannour doth use to repair, this is a good Prescription, and upon good consideration. If the Lord will prescribe to have a Fine at the marriage of his Copsy-hold Tenants, in which the Custom doth not admit the husband to be Tenant by courtesy, nor the Wife to be Tenant in Dowry, or have her Widdows estate; the prescription of such a Fine is not good: But in such Mannours where the Custom doth admit such particular estates, there a prescription for a Fine at the marriage of his Copsy holders, is upon good consideration.

If

If a Copsy-holder surrender his Land to the use of I. S. so long as I. S. shall serve him in such an office; if I. S. refuse to serve, his estate doth cease.

If a Copsy-holder doth surrender his Land to the use of a stranger, in consideration that the same stranger shall marry his daughter before such a day: if the marriage succeeds not, the stranger takes nothing by the Surrender: But if the Surrender be in consideration that the stranger shall pay such a sum of money, at such a day; though the money be not payed, yet the Surrender standeth good.

If the Copsy-holder in consideration of twenty pounds to be paid by I. S. doth make a Surrender of his Land to N. R. this Surrender is to the use of I. S. because of the consideration expressed in the Copsy, and not to the use of N. R. But if in the Copsy the use be expressed to N. R. and no consideration mentioned, the use expressed shall stand against any Consideration to be averred.

That a Custom must be compulsory; and what shall be said a Custom, and what not.

Custom or Law must be *Compulsary*, and not at the liberty of a man, whether he will perform it or not; for then it were of no force; for all Customs and Lawes have their effect.

effect in two points. That is, in bidding that which is just, and in forbidding the contrary: So that the Lawes and Customes are restrainers of Liberties, and do demand execution of Justice; not that every man should have or do what they would; but that which by Justice they ought, wherunto by duty of Law and Custome, he is compellable; for otherwise it were Voluntary in him, which were to the infringing the Law and good order: As the Poet,

*Oderunt peccare boni virtutis amore.
Oderunt peccare mali formidine p̄na.*

If the Lord will prescribe that every of his Tenants shall give him ten shillings a moneth, to bear charges in time of Warre; this is no good Prescription. But to prescribe that they ought to pay ten shillings a moneth, &c. this is good. For payment is *Compulsary*, but gift is *Voluntary*.

If a Copy-holder do Surrender his Land to the use of *I. S.* so that the said *I. S.* do pay him twenty pounds at such a day. If *I. S.* please to pay the same, this is an absolute Surrender, and not conditionall, because the payment is *compulsary*.

But many Customes there are which at the beginning were voluntary, and now by continuance are grown *compulsary*. According to the Civil Law, *Qua in initio fuerunt voluntatis,*
ex

ex post facto fuerunt necessitatis; which also agreeeth with the Common Law in many cases, as I have partly touched before.

That a Custome must be without prejudice to the King, and by what prescription the King shall be bound, and by what not.

THE King hath that Prerogative over his Subjects, that he is not tryed to time as a common person is; for though a common person may lose his right by non-claim within a certain time, the Kings right is still to be preserved; for *Nullum tempus occurrit Regi*. Yet in speciall cases where the King is not Intituled against such prescription by matter of Record, these such Customes shall bind the King.

As for example, if a Copy-holder prescribe that he holdeth of the King by Copy, this is good, and by Fine certain, and not arbitrable: to have Waife and Strays, and Wreck (but not *Catalis Felonum aut fugitivorum*;) and *Vilagatorum* without Charters.

The Kings *Adwouon* shall never fall into lapse for not presenting within fixe Moneths.

That

*It has a Custom ought to consist of perdurable-
ness of Estate, and of an
able Capacity.*

TO those former parts whereupon I have
declared a good Custom to consist, may
be added two other parts; *viz.* That he which
will claim by Custom, must have a sufficient
and perdurable estate to *prescribe*; and also in
his own right, or in some others, a sufficient
ability or capacity to *prescribe*.

Touching the first it is to be understood
that he which will *prescribe*, must have a cer-
tain and undefeasible estate, and not other-
wise. As if a *Tenant* at Will, or at Sufferance,
after he hath occupied the Land for ten years
will *prescribe* to have the same for ten years
more, this is not good. But a *Tenant* at Will
after the Custom, although he came in at the
first by the Lords Will, yet doing and paying
that which he ought, he may *prescribe* to hold
the Land whether the Lord will or no: and
although a *Coppyholder* may *prescribe* in this
forme against his Lord, yet against an *Es-
tranger*, for a common or such like kind of profit,
he cannot *prescribe*; but in the right of the
Lord: neither yet can a *Tenant* for life, or for
yeeres, *prescribe* in the right of their Own E-
state onely, because it lacketh continuance to
make a *Custom* or *Prescription* (except in some
cases

cases of necessity, the Lord of a *Mannour*, or
of a patronage for yeeres or life, may grant a
Coppy in perpetuity or *prescription* for a lon-
ger time than the estate of the *Grantor* doth
continue, and this is admitted *causa necessita-
tis*, and not *jure prescriptionis*.

To the second, Capacity must be in himself
that doth *prescribe*; which ability and Capacity
must consist in the person of him that doth *pre-
scribe*: For as *prescription* may be sometimes
in respect of estate, *Mannour*, *Lands* or *Offices*;
so may *prescription* sometimes be in respect of
person, which *person* is not to be understood of
a private person, but of a body Politick; not
that many *persons* may *prescribe*, except the
same be incorporate; and to *prescribe* in respect
of their incorporate capacity, and not in re-
spect of their private capacity. As if the *Inha-
bitants* of *Dale* will *prescribe* to have Common
in the Soyle of *S.* this is no good *prescription*, for
that they be not incorporate; they must *pre-
scribe* that *H.* Lord of the *Mannour* of *Dale*,
for him and his *Tenants* within the said *Man-
nour*, have used to have Common within the
said Soyle: so it is for *Coppy*-holders; for they
must *prescribe* in the name of their Lord in such
a case.

If a man *prescribe* that he and his *Ancestors*
have had such an *Annuity* this is not good: But
if a *Bishop* do *prescribe* that he and his *Prede-
cessors* have had such an *Annuity*, this is good.

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The pleading of *Prescription* must be used in form of Law, as other matters that are pleadable, and form must be used (likewise) in pleading of Cobby-holds, and other Customary Titles for avoiding of confusion and discord, as well as in other cases of the Common Law, the form of pleading *prescription* doth differ as the quality of the thing, whereof *prescription* is made, and sometimes doth differ, as the persons do differ which make the *prescription*: As if a Cobby-holder makes his Title to his Land by *prescription*, he must plead that the same Land is and hath been time out of mind *demised* and *demiseable*, by the Cobby of Court-role, according to the custome of the *Mannour* whereof it is holden.

If two men as younger brethren will make their Title to Land in *Gavell kind*, they must say, that the same Land is of the *Tenure* and Nature of *Gavell kind*, which time out of mind have been parted and partable between Heires males.

So if the youngest Sonne maketh his Title to Land in Borough English, he must plead, that time out of mind, the *Custome* of the said *Mannour* hath been, that when, or at what time soever a Cobbyholder dyeth *seised* of any Cobbyhold Lands in the same *Mannour*, having divers Sonnes, that the same hath used *Iure Hereditario*, to descend unto the youngest Sonne, &c.

And

And as the forme doth differ in the things whereof the *prescription* is commonly made, so doth it differ as the persons do differ; He which doth *prescribe* as a private person, shall *prescribe* in him and his Ancestors whose estate he hath. An incorporate person in him and his Predecessors. A Lord of a *Mannour* in him and them which were Lords of that *Mannour*.

A Sheriffe, in him and those which have been Sheriffes of the same County.

A Steward of a *Mannour*, in him and those which have been Stewards there.

A Free-holder, in him and them which have been Freeholders to the said Lord.

A Cobby-holder, shall *prescribe* against an Estranger, that the Lord of the *Mannour*, for him and his Tenants at Will have used the like, &c.

What Necessity a Court Baron is of, whereof it doth consist, how it is defined, and what shall be said a sufficient Court Role to make a Cobby-hold.

EVERY *Mannour* hath a Court Baron incident to it, of common right, and common necessity, and this Court-Baron consisteth of four special parts, *viz.* the Lord, the Steward, the Tenants, and the Bayliffe.

A Court Baron is defined to be an assemblie
E 2 of

of these parts together, within the said Mannour to take Councill, Care and enquire of causes concerning the same Mannour: to see justice duly executed, the acts and ordinances there done to be recorded in the Roles of the same Court, which Roles are the Evidence of all ordinances, duties, customes, and conveyances between the Lord and Tenants of the said Mannour, and are to be entred by the Steward or an Officer indifferent between the Lord and his Tenants, and the same Roles to remain with the Lord, thereby to know his Tenants, his Rents, and his Fines, his Customes, and his Services.

And the particular Grant of every *Coppyhold*, to be copyed out of the Roles, the Coppies thereof to be delivered to every particular Tenant, neither can they make any other Title to their said Tenements, but by their said *Coppy*.

If the Lord of the Mannour having *Coppyhold* Lands surrendered into his hands, will in the presence of his Tenants out of the Court, grant the same to another, and the Steward entereth the same into the Court-Book, and maketh thereof a *Coppy* to the Grantee, and the Lord dye before the next Court, this is no good *Coppy* to hold the Land.

But if the same Surrender and Grant bee preferred at the next Court, in the life of the Lord, and the Grantee admitted Tenant, and a *Coppy* made to him; this is a good *Coppy*.

If the Lord of a Mannour having ancient *Coppyhold*

in his hands, will by a Dced of Feofment, or by a Fine grant this Land to one to hold at the will of the Lord, according to the Custome, yet this cannot make a good *Coppyhold*.

If the Lord in open Court doth grant a *Coppyhold* Land, and the Steward maketh no Entry thereof in the Court Roles; this is not good, though it be never so publicly done; nor no collaterall proof can make it good.

But if the Tenant have no *Coppy* made unto him out of the Role, or if he lose his *Coppy*, yet the Role is still a sufficient Title for his *Coppyhold*: if the Role be also lost, yet it seemeth that by proof he can make this good.

If Ordinances or By-Lawes bee newly made, and Recorded in the Roles of the Court, if the Court Roles be lost, the By-Lawes bee set at liberty; yet if there bee any ancient Customes or Priviledges by *prescriptions* not entred in the Roles, &c. though the Roles bee lost, yet they remain good.

Who shall be sayd such a Lord of a Mannour as hath power to grant a Coppyhold,

A Lord to grant or allow a *Coppyhold*, must be such a one as by *Littletons* Definition is seised of a Mannour, so that he must bee in possession at the time of the Grant; for although

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he have good right and title, yet if hee bee not in possession of the Mannour, it will not serve: and on the other side, if hee bee in possession of the Mannour, though he have neither right nor title therunto, yet in many Cases the Grant and Allowance of such a Coppy is good as *Dominus de facto, sed non de jure*. And in some Cases a Coppyhold shall bee adjudged good, according to the largeness of the state of the Lord that granted the same, and in some Cases shall continue good for a longer time than the estate of the Grantor was at the time of the Grant. But that is to be understood in case of necessity, otherwise it will not be allowed.

If a man seised of a Mannour, in which are divers Coppy-holds demisable for Lives, is disseised, and the Disseisor granteth a Coppyhold, being voyd, for three Lives; this is not good to binde the Disseisor, otherwise it is of a Coppyhold of Inheritance, because it is necessary to admit the next Heire.

If a man have a Title to enter into a Mannour for a condition broken, and he granteth a Coppyhold of the same Mannour (being voyd) at a Court-Paron, this is a good Grant; for the keeping of the Court amounteth to an entry into the Mannour.

A man seised of a Mannour for life, wherunto be Coppyholds of inheritance belonging, and one Coppyholder surrendreth to the Use of a Stranger in Fee, the Lord may grant
this

this in Fee, and this Grant shall binde him in the reversion; but the Coppy holds being demisable for lives, it is otherwise; for then he cannot upon Surrender grant the same, longer then the life of the Grantor. But if the Lord of a Mannour for yeares, or during the minority of a Ward, of which the Coppy-holds are demisable for three lives successively, and not survivingly; in this case if the Coppholder dyeth, the Lord may grant the same; being voyd for three lives at his pleasure, and this shall bind him in the Reversion, or the Heire at his full age.

Who shall be said such a Tenant as may be a Coppy-holder.

ALTHOUGH there seemeth some shew of difference between Coppy-holders and Customary Tenants, yet differ not they so much in nature, as in name; for although some be called Coppyholders, some Customary, some Tenants by the Virg, some base Tenants, some bound Tenants, and some by one name, and some by another; yet they do all agree in substance and kind of Tenure, though they differ in some ceremonies and kind of serving, and therefore the name is not the matter, but the Tenure.

He shall be said a person sufficient to be a Coppy-

Infant feme
Covert, LAKE-
tick Nemo 12.
Bills, 302. & 303

(40)

Coppy-holder, who is of himself able, or by another to do the service of a Coppy-holder; as an infant may be a Coppy holder for his Gardain, and Prochein any may do the service; so may a feme Covert, and her husband shall do the service: But a lunatick, or Ideot cannot be a Coppy-holder, because they cannot do the service themselves, nor depute any other: and the Lord shall retain the Coppy-hold of an Ideot and not the Queen.

A Bond-man or alien born may be a Coppyholder, and the King or Lord cannot seise the same.

But a man cannot be a Coppy-holder unto a Mannour whereof he himself is Lord, although he be but *Dominus pro termino annorum*, or *in iure Vxoris*.

What shall be said such Lands or other things as are demisable by Coppy, and may be holden by Coppy.

IT may be said of Coppy-hold Lands, as is afore-said of the Tenants; they may differ in name, but not in nature: as some are called Coppy-hold Lands, some Customary Lands, some bound Lands, some base Lands, some ancient Lands, some demesne Lands, some encrease Lands, some Mollends, some waste Lands, some work Lands, some loofe Lands and some Veirg Lands.

And although Coppy-hold Lands be specially

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ally so called, because it is holden by Coppy of Court Role, Customary Lands because of some speciall Custome; Bond Lands because of the Bond Tenure, Base Lands because of Base Tenure, Ancient Lands because of the old Demise, Demesne Lands, because of its new Demise, and late being in the hands of the Lord of the Mannour; Increased Lands, because it is late purchased, and laid to the Mannour: Mollands, because it is holden by easie Rents, or no Rents at all: Waste Land, because it hath been lately improved out of the waste of the Mannour: Work Lands, such as hath common appendant belonging to it: Lose Land, because it is holden by uncertainty of Rents; and Veirg Land, because it is holden by the Veirge: Yet all the said Lands are holden in one generall kinde, that is by Custome, and continuance of time; and the diversity of their names doth not alter the nature of their Tenure.

It seemeth by *Littleton*, that onely Lands and Tenements are demisable by Coppy. And therefore if the Lord of a Mannour will grant the Rent charge, or the Office of Stewardship, or Bayliwick of his Mannour, by Coppy, or a Common in grosse by Coppy, these be not good Grants, because they lie not in Tenure, and also because the *Customs* doth not extend unto them, but common appendant to a Tenement or Coppy-hold Lands may be demised with the Tenement by Coppy.

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Demeasne Lands which within time of memory have been occupied by the Lord himself, or his Farmor, is not good to be granted by Coppy, because of the newnesse of the Grant; yet by continuance of time it may be good Coppy hold, when the memory of the contrary is worn away, as hath been said before. Neither can the Lord that granted such a Coppy, put out his Coppy-holder during his life that granted the same, because he should not be conceived to disable his own Grant. If a Coppy-holder do surrender his Coppy-hold into the Lords hands, merely to the use of the Lord, I doubt whether the Lord may grant this again by Coppy, as he may where it comes unto him by foreiure, or by elcheat, because it is made parcel in Demeasne by his own acceptance, and not by the Act of the Law. *q̄uere.*

Note that neither the Statute of *West 2. de donis conditionalibus*, nor any other Statute, that hath not Coppy-holds named in it, doth extend to Coppy-hold Lands, as the Statute *Staple 27. Ed. 3.* nor the Statute of *Hereſſe 2. Hen. 5.* nor the Statute of *Wills 32. Hen. 7.* the eight; nor the Statute of *Limitation*, made the same year, as is now taken contrary to *Maſter Brook in novel caſes. 426.*

But though a gift in Tail of a Coppy holder, be not contained in the same Statute of *West* the second: Yet I think in such Mannour, where time out of mind they have used to make gifts

in Tail of Coppy-hold Lands, there such gifts be good at this day, and they may make Protestation in the nature of any Writ, as appeareth by *Littleton.*

What shall be said a good Surrender.

AS in the conveying of Free Lands there is required some ceremony and publick notice, so is there in the assuring of Coppyholds necessarily some publick fact to be done therein, which is the Surrender. In which ceremony there is contained two effects, the one what is surrendered and to whose use; the other that it be done with the Lords good will, and for what cause it is surrendered into his hands. And although there be divers ways of Surrender in severall Mannours, as within some Mannours to surrender by the hand of another Coppyholder, and in some other to surrender to the Stewards hands, in some to the Bayliffes hands, and some by giving a yard to the Steward, in some by giving his hand, or his glove, which be outward signes of his intent: Yet in all these kinds the words of Surrender must not be divers, but one, and to one effect, and must be either words of Surrender expressed, or words of Surrender implied; and therefore if a Coppy holder will bargain and sell his Land to *T. S.* and this is found by the Homage, and *J. S.* prayeth to be admitted

red Tenant, yet the Heire of the Coppingholder shall avoid the admission, because of the insufficiency of the Surrender, taking by the words of Bargain and Sale, and not by words of Surrender *opi. Sign. Dier 8. Eliz. Folio 251. Lou ill dit. que relees ne vault ture Come une surrender.*

If a Coppingholder cometh into the Court, and desireth his Lord to admit his Sonne to be Tenant in his Fathers place, this seemeth a good Surrender to the use of the Sonne.

If a Coppingholder will in the presence of other Coppingholders of the same Mannour, say that he is content to surrender his Coppinghold Lands to the use of *l. s.* this is no good Surrender: but if he saith he doth surrender into the hands of the Lord to the use of *l. s.* if the Lord will thereunto agree, this is a good Surrender, whether the Lord will or not.

If the Tenant will resigne his interest in the Court, into the Lords hands, therewithall for the Lord to do his will, this is a good Surrender if it be accepted.

If a Coppingholder will say he will be no longer the Lords Tenant, though these words be recorded, yet this is no good Surrender.

If a Coppingholder for life, take a new Estate for life by Copping, this is a surrender of his first Estate.

But if a Coppingholder for life will take a Lease of the same by Indenture for life, this is not a good surrender of the Coppinghold. *Quare.*

If

If a Coppingholder cometh to the Lord, & telleth him, that for the preferment of his Son, in marriage, with such a mans daughter, his will is, to give his Land presently to his Sonne, and desireth the Lord that he would be contented therewith, this is no good surrender.

But if he had said these words in the Lords Court, and the same recorded, or found by Homage as a Surrender, and so presented, then this had been a good Surrender without any other words of Surrender.

That a Coppingholder must be admitted Tenant; and what shall be said a good admittance of a Coppingholder.

IF a Coppinghold descend unto a married woman, and her husband take the profits thereof, and suffer a Court day to passe without admittance of his Wife, and then the Wife dyes, the Husband shall not be Tenant by the courtesie, but in the *12. Eliz. Dier 291. 292.* it seemeth that the contrary should be the better opinion.

An entry before admittance is no forfeiture, without an especiall Custome pleaded, but the Heire may make a forfeiture for non payment of the Rent, as the Custome was there pleaded before admittance.

If

*By Sergeant
Palmer.
12. Eliz. Dier
292.*

*10. Hen. 8. Dier.
42. 16. libere.
Grentifas case.*

If a Copyhold be Surrendered unto the use of a stranger upon condition, and the condition be broken, the party that made the Surrender may reenter, and be a Copyholder to all intents, without any new admission; for he did depart with the *Land* upon a condition.

Also if a Surrender of a *Copyhold* be made to the use of a stranger for life, and the *Lord* makes a Grant thereof to the same stranger in Fee; this shall not bind the Heire of the Tenant, but that he may enter after the death of the Grantee; for he took the *Land* by the Surrender, and not by the Grant made by the *Lord*; for the *Lord* is but an instrument for the conveyance of the *Land*; for if I make a Surrender unto the *Lord* *ea intentione*, that he shall grant over unto such a man, if the *Lord* will not grant the same, I may then reenter, but the stranger hath no means to enforce the *Lord* to grant the same over unto him, but may maintain Trespass against the *Lord*, if he doth suffer me to reenter, and this is the Opinion at this day.

The *Lord* of a Mannour hath that Prerogative in his *Copyholds*, that no stranger can be his Tenant thereof without his speciall assent, and admission; and for that cause a *Copyholder* shall not be liable to any executions of Statutes, or Recognizances, neither shall be *Assets*, in debt or *Formidoo*, neither is contained in any the Statutes afore named, for if it were, then should the

the *Lord* be forced to have a Copyholder whether he would or no, which is against the nature of a Copyhold.

And therefore a Stranger can never enter, though a Surrender made to his use be accepted, except he be admitted Tenant; but otherwise of the Heire, for hee may enter and take the profits before the Admittance after the death of his Father.

Admittance may be three manner of ways; an Expresse Admission, by the words entred into the Court Role, *viz. uade admissus est Tenens*; or by Acceptance, or Implication, as if the *Lord* will accept the Rent by the hands of a Stranger: Thirdly, by admitting one Copyholder, in some Cases the *Lord* shall admit another by Implication to some purposes. And to these three may be added a fourth, which is by the Entry of the Sonne after the death of his Father; and the Tenant in Dower after the death of her Husband, which is lawfull without Admission, till the next Court, and then they must pray to be admitted, &c.

If a Copyholder do surrender his *Land* to the use of *I. S.* and the *Lord* doth grant the same to *I. S.* accordingly, and thereupon hee Enters, yet he is no good Copyholder, till he be admitted. But if *I. S.* appeareth at the *Lord's* Court, and passeth on the *Lord's* Homage, or the *Lord* accepts his Rent or his Fine for the same Copyhold, now he is become a good Copyholder without any further Admission. If

If a Coppingholder surrendreth his *Land* to the use of *I. S.* for life, the Remaynder to the use of *R. N.* for life, and the Lord granteth the same accordingly, and admitteth *I. S.* it seemeth this is a good Admission to *R. N.* that is the Remayder.

In Treppose
by Hagger
against Welfan:
c. Rep. Broom:
Cole.

A Coppingholder in Fee dyeth seised, his heire may make a Surrender to the use of a Stranger without Admission: *quare*. But if a Coppingholder surrendreth to the use of *I. S.* this *I. S.* cannot surrendreth to the use of a Stranger, without being first admitted himselfe.

If a Coppingholder surrendreth all to the use of two joyntly, and they are admitted, if the one of them dyeth, the Survivor needeth not to be admitted again for the moiety: But if a Coppingholder having issue two daughters, and they are admitted, and then the one of them dieth, the other must needs be admitted for the other moiety, for she takes the same by descent.

L' heire dun Coppingholder poit prendre les profits avera accion de Treppas et serva possessio fratris dune Copping hold, devant ascune admittance 12. Eliz. Sigr. Dier 291. poit faire leases per ans. Denby et Bullocks ca.

What

*What shall be said a forfeiture of
a Coppinghold.*

THE Tenant by Copping standeth bound by his Tenure to the Lord, that if he doth any thing to the Lords disinheritance, or in some cases if he doth transgresse the duty of a good Tenant, he shall forfeit his Coppinghold: But because all offences are not equall, so likewise there are degrees of punishment; for there is a difference between offences done wittingly, and willingly, and faults ignorantly and unwillingly committed.

And therefore some offences are forfeitures *ipso facto*, some are onely forfeitures when they are presented and not before, and some are onely fineable.

Forfeitures *ipso facto* are offences that lye in misfeasans, and be apparent forfeitures; Forfeitures that lye in *Non feians*, are where the offence is not apparent, nor affirmatively to be proved without presentment.

Offences Fineable are offences of contempt, *Fineable*, and not of disinheritance.

As if a Coppingholder will in the presence, and sitting of the Court Baron, say that the Lord doth extort and exact undue Rents, and Services of his Tenants, or such other unreverend words; this is only Fineable.

But if he will then and there say, being called forth

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forth

forth to be sworn of his Homage, that he is none of his Lords Tenant, this makes a Forfeiture of his Coppyhold.

But if he will there say, that he will shortly devise a way that he will be no longer any of the Lords Coppyholders, this is neither cause of forfeiture, nor Fine.

If a Coppyholder *sedente Curia*, do strike another Coppyholder or any other stranger, this is onely Fineable, and maketh no Forfeiture.

If the Steward sheweth forth a Court Role to prove that *i. s.* is a Coppyholder, and this notwithstanding he will in the Court say, that he is a Free-holder, and sheweth forth a Free deed and claim thereby, and teareth in pieces the Court Role, and publisheth the Free deed, this is a cause of Fine, and Forfeiture.

But if the said Tenant will there upon some colourable doubt, and question which may arise, whether he be a Free-holder, or Coppyholder, say to the Steward, because he knows not whether the Rent that he should pay, be Free Rent or Coppyhold Rent, he will pay it with protestation that the Rent may be recorded as it shall fall out, and with like protestation offer and do his Service, though in truth he be a Coppyholder, yet this deserueth neither Fine nor Forfeiture.

If a Coppyholder cannot pay his Rent, and will not do his Service, this offence is on the Negative, and maketh no forfeiture till it be presented.

TENANTS

Tenant per Copie ne pot faire wass ne couper bois pur vender, mes pur reparation tantum. 9. Hen. 4. 12. 43. Ed. 3. 31. 80.

But if a Coppyholder doth Alien his Land by free deed, or will commit wite, or demise his Coppyhold contrary to the Custome, or will sue a Replevin against the Lord, for a Distr. lawfully taken for his Rent or Service due, or disclaim in the Land being summoned to the Lords Court, or will there claim it as his freehold, or will in any other Court intide any other Lord unto it, or be attainted of Treason or felony, or continue out-lawd, or excommunicate, during the Lords Court, or refuseth to go with his Lord or other Commissioners for that purpose in the service of the Prince, to suppress Rebels, riots, or unlawfull assemblies. All these offences bee apparent misfeasance and forfeiture *ipso facto* without any presentment.

But if a Coppyholder being of the Grand Inquest at the Assizes or Sessions, shall indite his Lord of any manner of offence committed against the Prince or *Laws* of this Realm, or shal upon Proces Compulsary give evidence against his Lord, which is true, in any cause between his Lord and another Common person, or between the Prince and his Lord without compulsory proces, or shall make any bodily arrest of his Lord by the Commandement of the Sheriffe or other lawfull authority, or shall bring

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any Action or Suit against his Lord in any of the Queens Courts (except a Replevin as in the case aforesaid) All these last recited, be causes of neither Fines or Forfeitures of any Copyhold.

Also a Copyholder not claiming his Copyhold after the death of his Ancestor within a yeare and a day, at the Court if any if any be, it is a forfeiture for ever; per opin. *Catline, Stovells Case* 272. et c. *il pene. ceo dea bone customs in placis Mannours.*

If Copyholders being on a Jury will not find the waste committed, or will not present things presentable, this is a forfeiture of their Tenures, if they be Copyholders; by the opinion of *allin, Dier, and Brooke* 4. *Eliz.* Dier 21 1. pl. 31. 6. et. 7. *Eliz.* 233. b. 9. *Hen.* 6. 44. b.

If a Copyholder will not be sworn to present such offences as are forfeitures, this is a forfeiture of his Estate; so if the alien or make Copyhold free, for tenne pound, the Lord may enter; for they are, willfull Acts, for which the Lord may enter without presentment; But for negligent offences, as for not doing Services or not acceptance of a Copyhold after the death of his Ancestor, the Lord cannot seise without presentment of the Homage. And if an Infant within the yeare after the death of his Ancestor, will not after the Court holden and Proclamation made, pray to be admitted, it is no forfeiture.

unless the Custome of the Mannour be, that an Infant ought to forfeit his Estate by such negligence; for it is but a claim at Common Law, which bares not an Infant, which hath not discretion. Between *Haurey* and *Luckshere* one of his Copyholders. 12. *Eliz.* Rot. 96.

If thirteen Copyholders be sworn in a fe Court, and twelve agree to give Verdict, and the thirteenth will not, it is not a forfeiture; for it is a good Verdict without his assent, and perhaps it is not agreeing to his conscience, and therefore it is not properly a not doing, or deniall to do his duty.

Quere, If here be 12. and 11. agree, and the twelfth will not, for it is not a full Jury. *Pasche* 20. *Eliz.* Co. Bank. 12. 3. Ed. 3. Verdict 4 0. 29. Ed. 3. *ibid.* 45. 12. *Hen.* 4. 10. *Skreene*.

What Office or Power entirely, or dividedly the Lord, Steward, Free-holders, Copyholders, and the Bayliffes have in the Court-Baron.

ALTHOUGH the Lord, the Steward, the Freeholders, the Copyholders, and the Bayliffes of every Mannour, have an intermixt and joynt office and authority in some cases, and to some purposes: yet to other purposes their office is distinct and divided, and every of them doth occupy severall places, persons, and parts.

The *Lord* is chief to command and appoint, the Steward to direct and record, the Freeholder to assere and judge, the Coppingholders to enforce and present, the Bayliffe to attend and execute, &c.

And all these together make a perfect execution of Justice and judgements in a Court Baron; and without all these a Court Baron cannot be holden in his proper nature, in respect of all causes belonging to the perfect jurisdiction of a Court Baron.

And yet a Baron may be held by use & Custom for some Coppinghold causes, though it want one of the said parties (*viz.*) the Freeholders, and there in Coppinghold cases the Steward doth supply the place of a Judge: but no other of the parties aforesaid, except the Freeholders, can be missed or spared in a Court Baron.

But to make some more particular demonstration of the distinct authorities and offices, and first the *Lord* as he is chief in place, so is he in Authority, and occupieth three severall Rooms, the one of a Chancellour in cases of equity, the other of a Justice in a matter of right, the third of himself in cases proper and particular to himself.

The Steward doth occupy the parts of severall persons, that is to say, a Judge to order in cases of Coppinghold; and also a Minister, and Register to enter things into the Court Roles, and in both these to be indifferent between the *Lord* and his Tenants. The

The Freeholders do likewise fulfill two parts, that is, to assere, and judge americiaments, and also to returne and certifie judgements.

The Coppingholders also do hold two severall rooms, *viz.* to enforce of offences committed against the *Lord* within that Mannour, and to present such things as shall be given in charge by the Steward.

The Bayliffe also doth occupy two parts, that is to say, to execute the proces and Commandements of the Court, and also to returne into the Court the Execution of the same Proces.

2. *Ed. 6. Br. Brook No case, 84 pl. 387.* the Tenant per Vnder Steward in Court, within authority of Copyhold Court. *Role Br. 64*
 the *Lord*, or of the High Steward, may demise Coppinghold, and it is a good Grant; for it is in full Court; but contrary it is if it be out of Court. *quere*, if the High Steward without authority may demise out of Court.

Finis Lectura Calthrop.

A Coppyholder being indebted, doth not surrender to his Creditor, upon trust that he shall have the Land to satisfy himself of the debt, and then to be surrendered back again unto him; And after the debt levied, the creditor will not surrender, whereby according to the custome of the Mannour, the Tenant pursues an English Bill to the Lord in his Court, by which the trust is proved by deposition: the Lord seisseth the Land to the use of the first Coppyholder untill &c. And *Wray* was of opinion, that he may well so do, for he hath no other remedy, for the Lord cannot imprison him, as the Lord Chancellor of England may doe: and that the custome of deposition is good, though some do doubt: but *Gawdy* agrees, but he saith that the Lord cannot retain and keep the Land, and if he should so do, the other shall have a *Subpena*, whereunto *Wray* agreeth, that he cannot retain the Land, but seise it and grant it over, which without seising he cannot do, 25. *Eliz. B.* upon the motion of *Cook*, who said that 4. *Hen. 4. 39* and *Fitz. Nat. B. 18.* are according to their opinions: For a Coppyholder shall not have a *Writ of Error*, nor false judgement, upon a judgement against him in Court of the Lord, but he shall sue by bill, and thereupon the Lord shall rescise the Land upon false judgement given by the Steward, and shall make restitution.

If

If one recover a debt by plaint in Court Baron, those of the Court have not power to make execution to the Plaintiffe of the Defendants goods, but they may distraine the defendant, and after the judgement retain the distresse in their hands in safeguard, untill the Defendant hath satisfied the Plaintiffe of that wherein he is condemned by the Court, 40. Court Baron Hen. 6. 17. See the Book of Entrees. Fol. 167. Hen. 4. 27. In Replevin the Defendant said, that one Edward Besfall brought a Writ of Droit close against the Plaintiffe, and one other in the Lords Court in ancient Demeasne, and declared in nature of Assize, and it was found against the Plaintiffe, and damages were taxed; whereby the Defendant being then under Bayliffe, by the Stewards commandement, takes the beasts for execution of the damages, and takes an Assize, and delivers the Monies to the Plaintiffe in Assize; this is a good Plea, and yet this is but a Court Baron. And Fol. 29. by *Hull*; A man recovers ancient Demeasne Lands, and damages in a Court of ancient Demeasne, and the Bayliffe may take the Beasts of him against whom the Recovery is, &c. for execution of Damages in every parcell of the Land holden of the Mannour, although that Land be Frank-fee; and it is not denied 22. *Assize 72.* agrees with 4. *Hen. 6. Me Kitch. 115.* where it is used to make Execution by *levari facias*, that is a good Custome.

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Customs. 38. *Ed.* 3. Customs 137. upon a recovery in Court Baron, the Defendants Cattell were delivered in execution.

Where a Tenant by Copy may plead a special Custom, which is onely proper to him, and his Iredecessors before him.

Ninth *Eliz.* *Taverner* was sued by the Lord *Cromwell*, for that he had committed waste upon his Copyhold; he pleads by the advice of *Manwood*, that he and those who before him had the house wherein he dwelt, had such a Custom by Prescription, that they might fell Timber-trees, &c. And many arguments were against that Custom, in as much as other Tenants of that Mannour, had not such a Custom, but were punishable and had forfeited their Lands for such waste; also that Custom was against common right, and not reasonable; and after long deliberation of the Iudges, it was adjudged, that a Tenant may plead a particular Custom, as if one prescribe to have a way in the Lords Land, &c. And 19. of *Eliz.* one prescribed that he and those of that Tenement his Predecessors had used to have common of Estovers in another Mannour, notwithstanding that the other Tenants have not such a Custom, and it was good by the advice of all the Iustices.

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Where the Tenant may cut down Trees and destroy houses by Customs, and such like Customs, &c.

Fourth *Ed.* 6. Iustice *Dalrymple* Reports, *Sanders*, and divers Iustices; Tenant by Copy of Court Role may prescribe to have Wood growing upon the Land. *Montague*, There is such a Custom, and so used in the Counties of *Mid. Northland* and other places. *Crowne*, It hath been here agreed of late, that Tenant by the Custom may prescribe to suffer their houses to fall, and to destroy their houses; so also here, whereby this is a good Custom. *Montague*, I have heard a Fable, that a Tenant by the Custom may digge in the one part of his house, and burn the other part, by the Custom; But if you will agree that the Tenant by Custom shall have the Land against the Lords Will to him and his Heires by the Custom; why then may they not by the Custom cut down Wood? *Sanders*, I agree to none of your Cases. *Montague*, surely in the *Chancery* it will be over-ruled against you without doubt, and it is necessary that an Act of Parliament be made upon it.

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Where and how Tenant by Coppy may make a
jointure to his wife of the
same Land.

A Stranger brings a Writ of right against the Husband and Wife, in the same Court where the Land is by plea, and the Husband and Wife do appear, and the Demandant doth Count against them, and the Husband and Wife do defend, and say that they have more right then the Demander, and offer to try it by Bartell; and the Demander and Tenants do imparl, at which day the Demander appears, and the Husband and Wife make default, whereby full judgement is given against them; and at the same Court the Recoverer surrenders the same Land into the Lords hands to the use of the Husband and Wife, and the Heirs of their two bodies begotten: and it was said that this Assurance hath been used, 1. *Ed. 6. Dalfisons Reports.*

Poles Hiden Trin. 36. Eliz. Rot. 547. in the Kings Bench: Tenant in Tayle, the remainder in fee; Tenant in Tayle surrenders to the use of *I. S.* in Fee; *I. S.* suffers a Recovery, and vouches the Tenant in Tayl, who vouches the common Vouchee, and by speciall Verdict it was found that there was never any Recovery before in that manner, and it is not yet adjudged, *Gawdy and Clinch*, that the Recovery

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cannot be a Barre; for warranty cannot be annexed to an estate at will; also he shall not recover in value, because of the estate at will. *Penner and Topham Chief Justice to the contrary*, and that warranty may be annexed to Coppyhold Land, though it be an estate at will of the Lord; but as it is an estate in Fee, performing the services & duties, the Law will account them Tenants in Fee: also recovery in value being but a fiction in Law, the common Vouchee shall be accounted to have the Land in value of the Coppyhold, within the Mannour; and the Vouchee 27 *Hen. 8. Br. Recovery* in value 27. that such a Recovery is used in ancient Deemesne upon a Writ of Right, and Voucher over, and that of a Freehold there; yet enquire of such a Recovery upon a plaint there of Land of Base Tenure, for that cannot be warranted, &c.

Bar in the Common Bench, in Trespasse brought by *Comb.* against *Peares and Turner*, *Mitch. 36. & 37. Eliz. Rot. 14. Bromley Brittain Hall in Essex*: Tenant in Tayle of a Coppyhold suffers a Recovery with Voucher, where no Recovery was before; the Lease enters by the Court; that cannot be, but he shall have a Forfeiture in Descender; for the Recovery in Court Baron cannot avayl, because a Warranty cannot be annexed to an Estate which is at the Will of the Lord. Also there can be no Recovery in value; first because there can be no Recovery

See the first
part of the
Institutes fol. 60.
largely argued,
and many Au-
thorities cited.

Adjudged in
the Common
Bench, that a
Recovery can-
not bind an
Estate.

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In Monfield
writs Reports
whether a re-
covery in
Court Baron
may defeat an
Entail. *B. Regis*
1. *Comm. 11.*

in value of Lands out of the Mannour, and the Cobby-land is at the Lords Will : Secondly, Cobby-hold Land is granted by Cobby only ; and if by the Recovery the Tenant may have it, the Course and Custom of the Seigniorie would be destroyed, which shall not be : Thirdly, the Lord shall lose his Fine, and Fealty also ; for the Cobby is *Admissus est tenens, &c. Et dat. Duo de sine pro tali ingressu, &c. Et facit fidelitatem.* Fourth and fifth, *ph. & Mar.* A Cobbyholder surrenders to the use of his Wife for life, the Remainder to the right Heires of the Husband and Wife ; the Wife dies, the Husband survives : the question is, who shall hold the Land ? and it was said that if the Husband had no issue by that Wife, then his Heire shall have it.

Certaine

*Certain Cobbyhold Cases reported
in a certain Book.*

BUT it was said there, that if the Wife had issue by another Husband, it was there doubted. But it was holden by the better opinion in *Dier.* that the Husband and his Heires shall have the Land ; yet if the husband had first two Soones, the Heires of the Husband, and the Heires of the Wife shall have the Land in common after the decease of the Wife ; and for proof thereof he puts this Case. If Land be given for Life, the remainder to two men and their Heires, they cannot have one Heire in the Case : if the Tenant for Life dye before them in remainder, they shall be joint Tenants, and the Heire of the Survivor shall have all : But if none in remainder be in Life, when the Tenant for Life dyes, then the Heires of them in the remainder shall hold in common.

Thirty seventh *Henry* the eighth ; A Cobbyholder to the intent to make an assurance to his Wife, suffers another to bring a Writ of Right in the Cobbyhold Court, and they joine the Bartell, and at the day the Husband and Wife make default, and final judgement was given, and after the Recoverer surrenders the same Land into the Lords hands, to the use of the Husband and Wife and their Heires ; and a good assurance *per Cur.*

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A Copyholder brings an Action upon the Cite against the Lessor for waste and good.

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A Copyholder makes a Lease at Will to another, who commits Waste, which is a cause of Forfeiture, the Lessor brings an action upon the Cite against the Lessee for waste and good. But the Lord shall have a speciall Writ of Trespasse, and not *vi & armis*, because the entry was lawfull. 8 & 9. *Eliz. ibid.*

The Lord *Dacres* enters upon his Copyholder, and Leaseeth it to a stranger for years: the Lessee enters and was ejected by the Copyholder, and he brings a Writ of *Ejectione firme*: the Copyholder pleads that the Lands are demisable *per custome*: and so they were at issue, and he shewed in evidence a Copy made 12. *Hen.* the eighth, by which a Tenant had surrendered the Lands, to have and to hold, &c. and whose Estate he had: and by another Tenant rendering the yearly Rent, Customs and Services; and also he produced certain Witnesses who proved the Land to be Copy by the space of 69 years. The Plaintiffe to destroy the Title of that evidence, shewed certain Rentales that they were free Lands, &c. 9. et 10. *Hen.* 7. and not Copy: and also another Rentall to that intent, in 12. *Hen.* 6. which proved that those Lands were Leasehold for twenty yeares: *per Cur.* this evidence doth not disprove the Copyhold, for it was not within the time of memo-

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ry: but if he had shewed the Indenture of Lease made within 50 yeares, or 40 yeares, so that a man might remember it, then it had been good, although the Statute of Limitation extends not unto it: by the Justices, such evidence as approveth it to be within time of memory is good.

Also by them; if those Lands bee in the hands of the Lord by Forfeiture, Escheat, or Surrender, yet the Custome remaineth; for he may demise them again, and the Custome shall be revived; but by some men, if by Escheat, it be in the Lords hands, the Custome is extinct. 8. & 9. *Eliz. ibidem.*

Addington Lord of *Harlow* in *Essex*, would encrease the Fines of his Copyhold Tenants, which were proved to be certain: and it was holden that he could not encrease them; and it shall be a good prescription to say, alwayes ready to pay such a summe and no more. 18. 19. *Eliz.*

4. *Eliz.* It was moved by *Manwood* Sergeant, if a Copyholder in Fee in right of his Wife do surrender, the Wife being not examined by the Steward, but by some of the Tenants, the Custom permitting it, the Husband dyes: Whether the Wife shall sue by plaint in Nature of a *Cui in vita*, or may enter? And by him she may enter because it is no discontinuance, for that it is a Surrender to the Lord who hath the reversion for if a Tenant in Tail enfeofed him in the Reversion, it is no discontinuance; but if she had been exam-

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mined

The Lord cannot encrease a Fine which is certain.

mined, she should have been barred for ever.

And *Dier*, if a Coppyholder in Taile surrenders to the Lord to the use of a stranger, the Issue may bring a plaint in Nature of a Formdone in disceder, and purge the discontinuance, for it is within the statute *De donis Conditionalibus*, *Lit. Fo. 16. Com. 233. 15. Hen. 8. Br. Sit. Tenant per Copie 24.*

Nota.

And by *Manwood*, no negative Prescription may prevail against a Statute: And the Common Law is no other but an ancient usage throughout all the Realm; and a prime Custom may encounter with it, but not with a Statute.

And by *Dier*, if after the Surrender the Lord admit the Wife again, yet she shall be in by her Husband in construction of the Law.

Coppyhold of inheritance descends unto two sisters by two venters, none of them making entry, and before the Court and admission one of them dyes, her heire shall have her moiety, and not the other sister, by *Dier* chief Justice in the Chancery.

Also if a Coppyholder in Taile surrenders to another in Fee, who is admitted, this is a discontinuance, and so the Husband of his Wife Coppyhold: And he said, that a remitter shall be of a Coppyhold, as it shall be of a Freehold and inheritance at the Common Law. 13. & 14. *Eliz.*

In the *Dutchy* it was in question; whether a Coppy-

Coppyhold may be entailed or not? And by *Wray* Chief Justice, and *Manwood* Chief Baron, the Taile was not Fee simple at the Common Law, if it did not appear by the Custom, and that may be proved by the Court Roles, or by some other proof that there is a Recovery by plain of Formidon, or the Lands had descended according to Land in Taile, as *possessio fratris* shall not be of it, or that the Daughter shall not inherit, before the Sonne which is uncle to the same. *Egerton* was of counsell with this Case which was between *Sherington* and another. 22. *Eliz.*

Hanchet and *Rosse* concerning Land of *Dicot* in *Stepping Hackney*, a Coppyholder of inheritance dies, the Lord grants the Wardship of the Land during the minority of the heire, to the Wife being sole; she takes a Husband and dies: It was demanded whether the Husband should have it or not? And it seemed not; but if it had been a thing in which he had interest to his own use, that he should have it as a Lease for yeares; the Executor shall have it without admittance of the Lord: so the Husband shall have a Lease for yeares made to his Wife, without admittance.

By all the Justices 17. *Eliz.* If a Coppyholder in Fee take an estate in Taile by Charterhold, or take a Lease for yeares by Indenture, his Coppyhold is confounded.

7. & 8. *Eliz.* by *Harpour* and others; a Lessee

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for years of a Mannour may make his Coppies (if the Custome be so) to a man and Heires secundum consuetudinem, &c. for if the Coppingholder in Fee die, his Heire is in by descent, and ought to be admitted, or else he shall compell the Lord to admit him, for it is of necessity. But in Coppies for life or yeares it is otherwise; for by the death of the Tenant, there is not any that can compell the Lord to make him a new Cobby if he will not, but he may retain the Land in his own hands, and therefore the Grants of such Coppies as are expired, made by a lessee for yeares are void.

26. ELIZ.

First, Land demisable, by Cobby in the time of Richard the second, is perfect Cobbyhold; so if it be demised by Cobby 15 or 16 years.

Secondly, if the Lord purchase the Cobbyhold of his Tenant for money, this is clearly a Surrender, and an extinguishment of the Cobby, and it is not demisable by Cobby after: But if the Lord enter for forfeiture without presentment found, that is demisable by Cobby again.

Thirdly, if the Lord bring Trespasse against a Cobbyholder, who pleads that it is Freehold, this is a Forfeiture, and the Lord may enter.

Fourthly, the Lord cannot seise, because his Cobbyholder was sworn to give evidence against him, for this is no forfeiture. Fifth.

Fifthly, if a Cobbyholder disseise his Lord of other Land, that is not a forfeiture of the Cobbyhold. Sixthly, if a Cobbyholder die without Heire, and the Lord enter by Escheat, this is demisable by Cobby again: but if the Lord afterwards do make a feoffment or suffer a Recovery, and after do repurchase it, it is not demisable, but if the Lord reverse the Judgement upon Recovery by error, attainr or deceit, and hath restitution, then it is demisable by Cobby again.

A disseisin doth not extinguish the Custome, nor acts done by the disseisor.

Seventhly, if a Cobbyholder suffer a Recovery to be prescript at common Law by collusion, or make a feoffment, or bargain and sale, and the Lord enters, and makes a Lease for years thereof, this Land is not demisable by Cobby again.

Eighthly, if a Cobbyholder surrender his Land, to the intent that a stranger shall have the Rent out of it by Cobby: it is no good Cobbyhold Rent.

Ninthly, if there be two joint Tenants in common of a Mannour; and a Cobbyholder surrenders to the use of one, this is not Cobby hold Land.

Tenthly, if the Husband and Wife be joint Cobbyholders of the purchase of the Husband during Coverture, and the Husband is attainted of felony and dyeth, this is not a forfeiture of any part of the Cobbyhold: but if the purchase was made before the Coverture, then it is a forfeiture of the Moity. Ele.

Eleventhly, if two Coppingholders exchange by licence, and after the part of the one is recovered by an elder title, he may enter into the Land which the other hath in exchange.

Twelfthly, if two Coperceners Coppingholders make partition, and the one is impleaded, and doth lose by just title, and the recoverer enters into the Land, she cannot enter upon her sister, because she did not pray in aid for the rate. A feme Covett joynt Coppingholder in Fee may surrender her moiety to the use of her Husband, and it is good.

Thirteenthly, the Kings Steward without any patent of his office leaseth divers Coppingholds, and afterwards the Lord Treasurer and those of the Exchequer do lease the same Land for years, and thereupon it was moved, whether Coppies made by the Steward without patent were good? and the Lord Dier thought they were good Coppies, but in the Exchequer the Barons were of another opinion.

Fourteenthly, a man seised of a Mannour, to which Coppingholders for yeates and others are belonging, he deviseth by Testament the same Mannour to a certain person for payment of his debts, during which time divers Coppies expire, and the Devisees grant new Coppies, and afterwards during the term, the Devisees grant in reversion, a particular Tenant surrenders in Court, to the use of the Grantee, and after the Wife of the Devisor recovers in Dower part of the Mannour,

and hath Execution of those Coppingholds assigned by the Sheriffe for her Dower: And it was moved, whether the Wife shall avoid those Coppies made by the Devisees? And Justice *Brown* was of opinion that no; to which *Weston* agreed, for they said, that those are ordinary things, and which must be done of necessity by force of the Custome, and not any deed or new charge created by the Devisees, who are but Officers to execute the Custome which of necessity must be done, for they cannot be made by any others who have the possession of the Mannour; for it hath been adjudged, that such Coppies and ordinary things, as Presentment to a Church made by a Disseisor, or by a Lessee for Life or Years shall stand good, and shall not be avoided by reason of the necessity: but other charges created by the Heire after the death of the Husband, as a Lease for yeates Rent charge in which there is no such necessity, the Tenant in Dower shall discharge them, and although the Wife shall be adjudged in by her Husband, yet she shall not have those things which chance before assignment of her Dower. If a Wardship fall, or an avoidance of a Church, or a villain Regardant hath purchased, and the Heire enters, or presents, these things the Heir shall have, and not the Tenant in Dower; & it may be that the Wife will never sue for her Dower, or peradventure she shall have other Mannours assigned her for the same. And as to the reason, that

it is not a thing of necessity to grant Coppies in reversion, yet they were of opinion that because the Custome doth allow it, it is *Customeley*, and therefore it may be put in execution: for the Custome is annexed unto the Land, and not unto the interest of the Lord. But *Wray* said that of estates that are to Coppingholders and their Heires according to the Custome of the Mannour, if such a Coppingholder die without Heire, the Custome is determined. If such a Lessor for Life or yeares of the same Mannour grant new Coppies, they are not good, and so there is a diversity.

A man cannot devise that his friends shall make Coppies or hold Courts, for none shall make Coppies, but he that is Lord of the Mannour, and hath an interest.

The Lord of the Mannour shall have the government of the Coppinghold during the infancy of his Tenant. Executors shall have a Lease for yeares of Coppinghold Land without any new admittance.

The Husband of a Wife that is Coppingholder for yeares, shall not be newly admitted after the death of the *Wife*, nor be Tenant by the courtlesse.

Where inheritance of a Coppinghold descends, the Heire may enter without admittance; but it was a doubt whether he should have an action of Trespasse against a stranger before admittance; for before admittance he is not properly

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ly Tenant; if such an Heire will not come to the next Court, the Lord may make Proces against him.

A Coppingholder shall have Trespasse against his Lord, if his Lord out him, paying his Services and Customes.

If erroneous judgement be given against a Coppingholder in the Lords Court, the Lord in his Court may reverse it, for it is not amendable in any other place or Court.

If the Lessee of a Coppinghold commit waste, and the Lord seisseth for Forfeiture, the Coppingholder shall not have an action of waste against his Lessee; as if Tenant for life make a Lease for yeares, which Lessee maketh waste, and the Lessor recovers, the Tenant for life shall not have an Action of the Case, but is without remedy; for it was his folly that he would not have a collateral covenant of the Lessee that he should do no waste.

A Coppinghold is not forfeit for herefile by the Stat. of 2. Hen. 5.

A Coppingholder is not Ter-Tenant, but is Tenant at the Lords will; and a Coppinghold is not bound by the Statute of Villis nor of Fines, nor of Limitations.

A Coppinghold shall not be extended by a Statute Merchant or Staple.

The Husband and Wife being seisset of a Mannour to them and the Heires of the Husband; he grants a Rent charge out of it, and dies; the

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the Coppingholder surrenders, the VVife makes another Coppy, and dies, the Grantee shall distrain upon the Coppinghold.

If the Lord of a Mannour hath a great waste, and grants a Rent charge out of the same, and the Coppingholders have Common in the waste, and they put in their Cattell, the Grantee shall distrain them, if they cannot make Prescription.

Nota.

If a Coppingholder surrenders to the use of another, and the Lord will not admit him, nor make a Grant unto him, the Surrender is void.

If there be two joint Coppingholders, and the one commits a forfeiture, he shall forfeit but the Moity.

Lessee for years of a Coppinghold shall have an *ejectione firme*; by *Plowden* and others.

If there be a Lease for years of a Mannour, and one Coppingholder purchase the Reversion in Fee, this is a destruction of the Coppinghold, and the Lessee of the Mannour may put him out, and occupy during his terme. 8. *Eliz.* ad. judge.

A Coppingholder purchaseth the Mannour to him and another in Fee, the companion may occupy the Coppinghold jointly, presently 14. *Eliz.*

Nota; it was agreed in the Common Bench, 21. *Eliz.* that the Bayliffe of a Hundred, or of a bafe Court may take goods upon *levurifacias*, to give Execution to the Plaintiff, as well as the Sheriff, yet they agreed that divers books are against it. 4. *Hen. 6. 22.* Two

See before here fol. 75. and 76.

Two joint Coppingholders in Fee make a partition; that is good and no forfeiture, nor alienation. 12. *Eliz.* agreed in Dutchy chamber.

If a Coppingholder surrenders, and then the Lord doth acknowledge a Statute Merchant, and after the Lord grants it by Coppy, the Coppinghold is liable; for at the time of the acknowledgment it was annexed to the Freehold; but if a coppingholder acknowledge a Statute, that is not liable.

If a man enter with force upon a Coppingholder, he shall not have forceable entry, nor indictment, but the Lord shall have it; and upon restitution to the Lord, the Coppingholder shall enter.

The Lord grants to a Coppingholder his trees growing, or that shall be growing upon the Land, he may fell trees now growing, and no Forfeiture, by reason of the dispensation, but he cannot cut the trees which shall grow in time to come.

If the Disseisor of a Mannour make Copies for life, and the Disseisee enter, he shall defeat them; but of Coppingholds in Fee before Disseisin, and a new grant of them upon Surrender in time of Disseisin, it is otherwise per *Plowden*.

Popham in Case *Ramsfey advers. Arthur* 29. *Eliz.* A Coppingholder may preferbe to have common in the Lords Land.

If a Coppingholder surrenders to the use of another, and the Lord grant it to *cestuy que use*, making

king no mention of the Surrender, yet it is good
per *Flowden*.

If there be a Mannour consisting of Dmeafnes, Freehold and Customary Tenements, if the Lord grant certain of the Coppyholds in Fee, the Grantee may keep Court, and do homage, and the Coppyholders by their oaths may make presentments of their Customes, or of the death of any Tenant, and the Grantee may make in Court a new estate by Coppy, as if it should be a perfect Mannour; but the stile shall not be *Curia Manerii*, but *Curia Halimoi*, id est *Convocatio tenentium*, for when they are assembled they may enform the Lord of their Customes and duties. It was otherwise adjudged in the *Com. Bench*. 29. *Eliz.* between *Dodington* and *Chaffin* for parcel of the Mannour of *M.*

It was adjudged in the common Bench 29. *Eliz.* that where *Sir Peter Carew* being solely seised of the Mannour of *M.* in the County of *Deronshire* for life, granted a Coppie in reversion according to the Custome of the Mannour, and died before the particular Coppyholder: this is a good Coppy in Reversion against the Lord, in whose hands soever the *Signatory* should come.

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THE
ORDER
Of Keeping
A COVRT LEET;
AND
COVRT BARON,
VVith the Charges appertaining
to the same:

Truly and plainly delivered in the Eng-
lish Tongue, for the Profit of all men,
and most commodious for young
Students of the Lawes, and all o-
ther within the Iurisdiction
of those Courts.

Whereunto is annexed Divers New
Additions

Quicquid agas, prudenter agas, & respice finem

LONDON

Printed for William Lee, and Daniel Pakeman,
and are to be sold at their Shops in Fleetstreet.

1650.

(1)



THE ORDER
Of Keeping
A COURT LEET,
AND
COURT BARON.



First, there shall bee a Precept made by the Steward unto the Bayliffe, to warn the Court, by a reasonable time: that is to say, six or more dayes before the Court be kept, in such form as followeth. But it is better if warning be sixteen dayes before, as it is in the Common Bank.

The Precept.

A. B. Generos. Seneschall Manerii predicti, Blackford.
Salvo ejusdem Salutem. Tibi precipio pariter
& mando, quod diligenter pramonere facias omnes
tenentes infra Manerium predictum, tam residentes
quam non residentes, atque omnes tenentes
Custumarios Manerii predicti, quod sint coram me in

A 2 hac

(2)

*hac parte sufficienter deputato apud Blackford prae-
dictam die Iovis, vicesimo sexto die Martii proximo
sunturo post datum huius, ad faciendum scilicet su-
am tam ad vsam Frank' pleg' quam ad Curiam Baron'
& omnia alia que eis incumbunt, & pertinebunt,
& hac nullatenus omittas: & habeas ibi hoc prae-
ceptum. Datum sub sigillo meo, decimo die huius
mensis Martii, Anno Domini 1650.*

After that the Steward is set in the Court, he
must first enter in writing the title of the
Court, in the beginning of the Court Rolle,
with the name of the place, in such form as fol-
loweth.

*The Entry of the Court Leet, and
Court Baron.*

Blackford *V* *ius Franc' pleg' cum Curia. C. L. Generosi
Domini ejusdem ibidem, tunc die Iovis videli-
cet, vicesimo sexto die Martii, An. Dom. 1650.
tunc per A. B. Seneschallum ibidem.*

When that is done, the Steward shall cause
the Bailiffe which serveh the Court, if it be in a
Leet, to make proclamations, that is to say,
three Oyes: and if it be in a Court Baron, then
but one, and after shall say as followeth.

All manner of persons which had warning to
appear here this day to serve in the Court Leet,
and the Lord of the Mannour for his Court
now holden: Draw near, and give your atten-
dance

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dance, and every one answer to his name as
he shall be called, upon pain and perill that
may fall thereof.

And after all be called, and those that are
absent be marked to be amerced, then the Ste-
ward shal cause again (if it be in a Leet) to be made
other three Oyes. Then after the three procla-
mations made, the Steward shall cause the Bai-
liffe to say:

If any will be Essoined, come in, and you
shall be heard.

And in a Court Baron, if any will be Essoin-
ed, or enter any plaint, come in, and you shall
be heard: and then the Steward shall say, Es-
soins and proffers of suit and plea, three times,
and in the End. Essoins for this day.

Then if there be any person that hath any
lawfull impediment that he cannot be there as
he is bound, let one ask an Essoin for him (the
Court sitting) to save his default.

And then the Steward shall enter the Essoin
in the Court Rolle, in this manner:

The manner of entering the Essoins.

A. B. per C. D. Essoinatur de coi. & sic de aliis.
Look also if there be any Tenant in the
Mannour that hath any action, or cause of action,
since the last Court day, let him put in
his plaint, the Court sitting, and it shall be
entred.

L 3

Lo ke

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Look also if there be any Precepts, Attachments or Distresses hanging in the Court Rolls, enquire of them openly in the Court, and know if the Bailiffe have served them.

Also if there be any old Plaints hanging in the Court Roll before this Court holden, cause the parties to be called, and before the Enquest be charged, know if the Plaint shall passe by the Homage.

That done, the Enquest shall be impanelled: Then bid the Foreman lay his hand upon the Book, and swear him in forme following.

The Oath of the Foreman.

Cause the Bailiffe to hold the Book unto the party or parties sworn, but the Steward shall give the Oath,

You shall diligently inquire, and true presentment make of all such things as you shall be charged with, concerning as well the Leet, as the Lords Court of the Mannor: You shall well and truly keep your fellows counsell and your own: you shall not conceal nor hide any thing for favour, feare, promise, nor affection you bear to any person or persons; or present any thing for hatred, or malice you beare to any man: but you shall present and tell the truth, the whole truth, and nothing but the truth, so helpe you God, and by the contents of this Book. And this being done, cause him to kisse the Book.

After

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After the Foreman is sworn by himself, cause three or foure of the Enquest, to lay their right hands on the Book, and give their oath as followeth.

The Oath of the rest of the Jury.

ALL such Oath as *A. B.* hath made before you on this behalf you & every of you shall well and truly keep on your behalves: so help you God, and by the contents of this book.

And then cause every one that is sworne, to kisse the book.

And so in like manner swear the rest.

After they be sworn, cause the Bayliffe to number them that be sworn, as the Steward doth read them.

The Proclamation after the Oath taken.

Then make Proclamation, and say thus, All you that are here sworn, draw near and hear your Charge, and all the rest keep silent, upon pain and perill that shall come thereof. Before the Charge, gather the common Fine, which the Tenants do pay every Leet, according to the Custome of the Mannour.

The Exhortation to be given unto the Jury before the Charge, to consider their Oath.

Masters, the Charge which you have promised by your Oathes to observe, toucheth and concerneth divers good Lawes and Statutes

(6)
utes made for the whole Common Weal of this Realm, and also for the private wealth of every of you: which matters the Lord of this Franchife considering, and wishing your wealth and quietnesse: willing also good Orders to be observed and kept among you, and that Right and Equity might be ministr'd to every of you, hath caused therefore the Leet and Court to be summoned and kept here at this day: I will therefore by your favour, before I enter into the matters of your Charge, declare unto you by what authority you are brought hither, and where in you are bound to serve.

One cause is, for that there hath been granted unto the Lord of this Mannour, a strength and power to keep a Leet or Law-day at two times in the yeare, at which Leet or Lawday, all the Headboroughs, Tithingmen, and Decimers, and all other persons which be resident or dwelling within this Leet, being of the age of twelve yeares or above, are bound by the Law of this Realme to appear: for that there they may hear the Lawes and Statutes opened and declared, that thereby they may know and avoid the danger of the same: and further to enquire of the breakers of the same, and present them, that such offenders might be punished.

The other cause or authority is, for that you be the Lords Tenants, and are bound by reason of your Tenure to appear at the Lord his Court Baron, when it shall happen to be kept, according

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cording to the Law, that is to say, at every three weeks end, and being here by these two Authorities, you are bound to serve in all such things as you are joyntly and lawfully charged withall, as well concerning the Leet, as the Lords Court Baron.

And thus you have heard in brief the causes whereby you are bound to come to this Leet and Court Baron.

Also to the intent that this your Oath which you have taken, may be the better known, I think it good by your patience somewhat to say concerning the same.

First, in swearing, three things chiefly ought to be considered: the first is, that you swear truly, that is, you must feclude all favour and affection to the parties, not fearing the rich, nor pitying the poore, nor considering the simplessesse of any person, nor the smallnesse of the offence, but having the truth onely before your eyes, for love thereof say and speak that which you know to be true, and no further. The second is, you must swear in righteousness, that is, for the very zeale and desire you have in declaring of the truth, for the Execution of Justice, for the observing of Covenants, honest promises, Statutes, Lawes, and good Customs: and having a respect in doing, and performing these things, you do that which is to the Glory of God, the Preservation of the People and Services of the Common-Weal:

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and this manner of swearing is commanded of Almighty God in *Deuteronomy*, saying, *Thou shalt feare the Lord thy God, and serve him, and shalt sweare by his name.* That is we must serve God onely, feare him, and confesse his holy name, which is done by swearing lawfully; swearing also in many other places of Scripture is commanded, but the same conditionally, which is, we must sweare in truth, in judgement, and in righteousness, &c.

Thirdly, in swearing, and taking an Oath, you must do it with judgement, not rashly, nor unadvisedly, but soberly, considering what an Oath is: and to put you in mind thereof, I will in few words declare what an Oath is. An Oath is the calling or taking to witness of God his name, to confirm the truth of that we say. And Saint Paul saith, *An Oath for Confirmation is among men an end of all strife.* For in doubtful and obscure matters, where the knowledge of men faileth, we flie unto God, that he which is the onely truth, may give Testimony unto the truth, and he which useth God for a witness, doth also call for revenge of perjury at his hands, if he deceive and speak not the truth: Also in laying your hands upon the Book, you do sweare, truly to enquire and make a true Presentment of those things wherewith you be charged, and not to let from saying the truth, and doing truly, for favour, fear, love, or malice of any person: you must consider, that in the same Book is contained

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16 17.

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tained God his everlasting Truth and most holy word, whereby we have Remission and forgiveness of our sinnes, and everlasting life. Also in the Gospell Book is contained God his plagues and threats to obstinate sinners, perjured men, false witness bearers, condemners of innocent and guiltlesse persons, so that if willingly you forswear your selves, you utterly forsake God, his Mercy and Truth, the Merits of our Saviour Christ, his Nativity, Life, Passion, Death, Resurrection and Ascension, the Joyes of Heaven, and Everlasting Life, betaking your selves to the Devil, the author of all lies, perjury and deceit: and by forswearing and forsaking the Truth you do forsake Christ, the Light and Truth it self, and although that perjury do escape sometimes unespied, and unpunished and be kept secret between some of you and others, yet your hearts will judge and repute one another false, and be suspicious of each others doings: but God being faithfull, he will not deny himself: and therefore he will not suffer the profanation of his name to be unpunished: also at the last day, when the secrets of all mens hearts shall be opened, then the truth and your own consciences shall accuse you and Christ the righteous Judge shall justly condemne you to Everlasting death and damnation. For this sinne of perjury God by his Prophet hath threatened to punish. ^{Ma'ac.} Wherefore let us pray unto God that we may

B 2 use

use such Oathes as be godly and lawfull, that is, that we swear not rashly, in trifles, or in matters of no weight, but when it is needfull, and necessary onely: also that we do consider the end, that our Oathes may serve to the Honour of God, and to the bolting out and testifying of a Truth. And thus having put you in mind of your duties and Oathes, the which I trust you will diligently weigh and consider in the performing and doing of the same, to the comfort of your Consciences: I will proceed no further herein, but declare unto you the articles of your Charge.

The Charge of a Court Leet.

1 You must understand, that high Treasons, petty Treasons, and Felonies, which are against the Common-Wealth, are to be enquired of, and presented in Court Leet, but not punishable there.

2 The which offences ought to be set down in writing and indented, the one part to remain with the Steward, the other with the Jury, and the same must be delivered to the Iustices of the Assizes at the next Gaole delivery holden within the County. See *Stamford in his Pleas of the Crown, lib. 2. Cap. 24. fol. 85, 86, & 87.* And *Mr. Lambert in his Iustice of Peace, lib. 4. cap. 6.*

3 If any counterfeiteth, clippeth, fileth, washeth, or otherwise falsifieth the money of this

this Realm, or the Coin of any other Realme which is enabled to be currant within this Realm.

5 If any one counterfeiteth Common-wealth Grants or Charters, and put the great Seal or stamp thereunto these are Treasons.

Also counterfeitng of the said Seal is to take Wax Printed with the Seal and to fasten it to a writing not made by the Common-wealth, these are to be enquired of here as Felonies, and to be certified as aletiaid, *Rassal Treason 26.5.*

Eliz. cap. 1. par. clipping, washing, &c.

6 Also if any kill his Master or his Mistresse: or if a Priest or other Religious man kill his Ordinary, this is petty Treason, and to be enquired of here as Felouy, 2. E. 3. cap. 2. *Rassal Treason 1.*

7 And if any Woman kill her Husband, it is petty Treason, and it is to be enquired of as Felony. 19. H. 6. fol. 27.

8 Also cutting out of a mans tongue, and putting out his eyes of malice, is Felony, and to be enquired of here.

9 Also murder is, when any of malice pre-pensed or forethought doth kill another, Feloniously, and it is to be enquired here as bloodshed.

10 Also Manslaughter as a Trespasse is here to be enquired, that is to say, when the place is not appointed to fight, but suddenly they fight together, and the one killeth the other as they

Petty Treason

A Woman to kill her Husband is Petty Treason, Felonies.

Murder.

Manslaughter.

they meet by chance: also it is to be enquired here for bloodshed.

11 Also if one kill another in defending himself, he shall lose his goods.

12 The same Law is where one killeth another by misfortune, &c. *Stamford* 15. a.

13 Also you shall enquire of Rape, which is if a man ravish any woman against her will, be the Wife, Widdow, or Maid, though she afterward consent unto it, it is Felony. You shall enquire also of their aiders, for they shall be judged Ravishers, as well as he that did the deed, 22. *E. 4. fol. 22.*

14 Burglars are those which in the time of Peace, or in the night time with a Felonious intent to rob or kill, do break any houses, Churches, Walls, or Gates, and enter into them; this is Burglary, and here to be enquired of, *Stamford fol. 30. b.*

15 Robbery is when a man taketh any thing from any other person Feloniously, though it were but the value of a peny, this is Felony, and to be enquired of.

16 Also the burning of a house Feloniously is Felony.

17 Also burning of Barnes, adjoining to a house in the night, is to be enquired of, 11. *H. 7. 1.*

18 Also robbing of Churches or Chappels, and taking of any ornaments out of the same Feloniously, is Felony, and to be enquired of.

17 If

In defending himself, and killing by misfortune.

Rape,

Burglary.

Robbery.

Burning of a House or Barn.

Robbing of Churches.

19 If any rescue any which is taken for Felony, that is Felony, and to be here enquired of.

20 Also taking of Doves in a Dove house in the self time with a felonious intent, is Felony, and here to be enquired of.

21 Also taking of young Pigeons, or young Goshawks in their nests, is Felony, and here is to be enquired of.

22 Also of taking of fish feloniously out of Ponds, Stewes, or Trunks, here is to be enquired of. But if the same be taken out of a river, there it is no Felony.

23 Also the taking of tame Deere with a felonious intent, is Felony.

24 The same Law is also for taking of Signets, Swans marked, Peacocks, and the same is to be enquired of.

25 Also if any receive a Felon, knowing of the Felony which he hath done, this is Felony, and here to be enquired of.

26 And note that all other Felonies, which be Felonies by the Common Law, are here to be enquired of.

27 Accessaries are enquirable, and that is if one procure or command another to do a Felony, but is not present when he doth it: this procurer or commander is accessory.

28 Also accessory after Felony done, is where one receiveth a Felon, knowing of the Felony.

29 Escape voluntary, is where one arresteth another

Rescue.

Taking of Doves.

Young Pigeons, and young Goshawks.

Taking of fish.

Taking of Tame Deere,

Signets, Swans, Peacocks.

Receivers.

Accessory.

Accessory after

Felony done. Escape voluntary.

another for Felony, and after suffereth him to go whither he will; this is Felony, and also to be enquired of.

Escape negligent.

30 Escape negligent is, when one is arrested for Felony, and after escapeth against his will that arresteth him, and if he be not freshly pursued and taken before they that do pursue lose the sight of him, he that should have kept him, or his Gaoler, shall lose a grievous Fine, and hereof enquire.

Petty Larceny.

31 Petty Larceny is taking of any thing with a Felonious intent under the value of xx. d. as Hennes, Geese, Pigs. or small things out of Windows, and those things are to be enquired of.

Escheat.

32 You shall understand that the Lord of whom the Land is holden, shall have the Land; by Escheat, where their Tenants be attained of Petty Treason or Felony.

33 And therefore you must enquire whose Lands and Goods, Tenements and Chattels those persons so offending have.

34 Also you shall understand that those matters in the Charge aforesaid, are to be enquired of, and Presented as aforesaid, but not punishable here, but they are to be certified by the Steward in Sessions as aforesaid, but the rest of the matters of the Charge which ensue, are enquirable and Presentable, and be also punishable here in Leet, but not certified as the other were.

¶ Those

¶ Those things which hereunder follow, are to be Presented in Leet, and also to be punished there.

2 First you shall enquire if all your Constables, Headboroughs, Decimers, and all other Suitors, which owe any Suit hither, be here or not, and Present all their names that make default.

Constables, Headboroughs.

3 Also you shall enquire if any Customes or Services, due to this Court, be holden back, how, by whom, and in what Bailiffes time the same was, and Present the same.

Customes and Services.

4 Also you shall enquire if any purprestures be made upon the Land, Wood, or Water, with Blocks, Stakes, Ditch, Hedge, or by, or with any other thing done to the annoyance of the People, that is to say, to the multitude, and not onely to one.

Purprestures.

5 Also if any Walls, Houses, Pales, or Hedges be made or erected to the annoyance of the People, this is to be presented.

Walls, Houses, Pales, or Hedges.

6 If any Common Highways, Waters, Ditches, or Pathes be turned out of their Courses, it is to be enquired of.

Highways, Waters, Ditches, or Pathes.

7 Also you shall enquire if any Encroachments be made on the High-ways of any of the Lords Soil common, or one Neighbour upon another, and present it.

Encroachments.

8 If any Laytals be made, or any Carrion

Laytals be

be cast in Highways, to the annoyance of the People, this is enquirable.

Make frisks.

9 Also if any commonly break the Peace, as making of Frays in disturbance of the People, this is enquirable.

Common Barretours.

10 Also if there be any common Barretours in the Lordship, as Scoulders, or Brawlers, to the annoyance and disturbance of their Neighbours, Present their names.

Breakers of Pound.

11 Also if any break the common Pound to take a Distresse out of the same, Present their names.

Outcries against the Law.

12 If any Outcries be made against the Lawes in disturbance of the People, it is to be enquired of.

Rescues made against the Sheriff or his Officers.

13 Also if any Rescues be made within the Seignory upon the Sheriff or his Bailiffes, or upon any of the Officers, in disturbing of them to take any Person to be arrested, it is to be enquired of.

Evedroppers.

14 You shall enquire if any Evedroppers which stand under Walls or Windows, by night or by day, to heare Tales, and to carry them to others, to make strife and debate between their Neighbours, Present their names.

Breakers of Hedges.

15 Also if there be any common breakers of Hedges, Present their names.

Keepers of Bawdery.

16 If any keep and maintain any Bawdery in their houses, it is cause of breaking the Peace, and it is a vice that corrupteth the Common-Weal, and for that cause it is here to be enquired of.

17 Al-

17 Also if there be any Vagabonds, or those which walk by night and sleep in the day.

18 Also if there be any that be common hunters of Taverns or Alehouses, having not sufficient to live upon, they are to be enquired of.

To go on messige for Thieves.

19 Also if one go in Messige for Theeves, it is to be enquired of.

For corrupting the Waters.

20 Also you shall enquire if any person have watered any Hemp or Flax in any river, running Water streame or Brook, or other common Pond where beasts do use to drink, they shall forfeit for every time so doing xx. s. the one part to the party grieved, or any other which will sue for the same in the Leet, by action of Debt, Bill, Plaint or Information, or otherwise, and Present the Offenders.

This Offence is not inquirable in the Leet, but may be punished there, upon the Abjon or Information of any against the Offenders: for which see the Statute 23. H. 8. c. 17. But upon a Pre-ferment of a Jury in the Leet of such an Offence, the Penalty cannot be levied, but the Offender may be amerced there for the annoyance, and the Amercement estreated, and so levied.

21 Also, if any have, and use any measures of false weights Bushells, Gallons, Yard, or Ell, or false Balances, or Pounds, they are to be enquired of.

Doubleweights

22 Also if any use double Pounds, or measures, that is to say one little or small weight to sell by, and a greater to buy with, in decei-

ving

ving the People, the same is to be enquired of.

Assise of bread

23 You shall also enquire of the Assise of Bread and Ale, that the same be kept, that is to say, that every one sell according unto the rate and price of grain, and that the same be made wholesome for man, and nereof enquire.

Tiplers,

24 Also if Tiplers sell by Cups or Dishes, or measures unsealed, and not sealed, it is enquirable.

Butchers and all Victuallers do sell whol some meat at a reasonable price.

25 Also if Butchers, Fishmongers or other Victuallers sell any corrupt victuall, nor wholesome for mans body, it is enquirable: also that all other that sell victuall if they sell the same at a reasonable price, and not to be excessive, having regard to the prices how victualls be sold in places thereabouts, and he that is convicted, shall pay double that he hath received to the party damaged, and the same to be enquired of.

Hostler for selling his hay and oats.

26 Also that Hostlers do not sell Hay, nor Oats but at reasonable prices, and that they do not take for the Bushell, but an half penny over the common price in the Market, and that they take nothing for the Litter, and this is enquirable.

Inkeeper may bake his bread

27 An Inkeeper may bake his bread for Horses in his House in any Through-fare Town which is no City where no common Bakers dwell, and if he Bake and not make the same according to the prices of Grain, it is to be punished in Leet.

28 Also if any Inkeeper or other person harbor any suspected persons, perceiving them to be of evil behaviour, it is to be enquired of.

Harbouring any suspected person.

29 Also if Millers take an excessive Toll, it is to be enquired of: and he ought to take for Toll but the twenty or the four and twenty Grain according unto the Custome, and according unto the strength of the Water.

Millers.

30 Also if the Miller within the Lordship change the Grain which he hath ground, it is enquirable.

31 Also it is to be enquired, if all the Artificers do make good work as they ought, and if any make deceit in the same in deceiving of the people, you ought to Present their names.

Artificers.

32 Also if any Constable, Ale-taster, Bailiffe, or any other Officers within this Lordship, have well and truly done their Office or no, it is to be enquired of.

Misdemeanour of Officers.

33 Also the Constable ought to see the Peace and Watch to be observed as it ought.

Peace and Watch.

34 If any Treasure be found, that is to say, put in the earth, and no man knoweth who hid the same, this is the Lords if he have the same by speciall Words, or by Prescription.

35 If any Estrayes be, they are enquirable, and that is, if any horse, pigges, hogs, cattell, or Swannes which have come into this Lordship, and have been there a yeare and a day, and not claimed, then the Lord may have the property of the same by Prescription, but the same ought

Estrayes.

first to be impounded in an open Pound, Proclaimed in three Markets next adjoining, and if none claim them, then they shall be seized, and ought to be put into some severall Land, and not in any Covert or Wood where the owner cannot find them, for if they be in Covert the property is not changed, though they be there a yeare and a day.

Waife,

36 Also you shall enquire whether any Thief upon Hue and Cry, or otherwise, doth Waive his goods, that is to say, doth leave or forsake his goods, or any parcell of them, which he hath stollen, by reason whereof the Lord by the Grant is seized: such goods are called Waives, and therefore present the same: also if any Officer seise upon any Thieves goods, though there be no pursuit made, in these Cases the Lord by Grant or Prescription shall have these goods, &c.

He that sleeth.

37 If any sleeth, that is to say, if any be found by indictment guilty of Murder before the Coroner, or if he be indicted of Felony and acquitted, and found that he sleeth; then he shall forfeit his goods to the Lord, who may have them by Charter, and not by Prescription, and this is inquirable.

Horse or Mare scabbed.

38 If any Horse or Mare be put upon a waste ground, and be scabbed, or having an infectious disease, he shall forfeit to the Lord of the Leet ten Shillings, and this is inquirable.

Exigent.

39 If any Exigent be awarded against one indicted

dicted of Felony, by the keeping of his goods, they are forfeit, though after he be acquitted of Felony, and the Lord by Charter shall have his goods, and not by Prescription without Charter, and this is enquirable.

40 If any be outlawed in Debt, Traspasse or Outlawed, or other Personall Action, his goods be forfeited, and the Lord shall have them by Charter, and not by Prescription, and this is inquirable.

41 Also you shall enquire if the common Fine be here payed according to the Custom, and whether the same be gathered according unto the Usage. This is commonly gathered by the Headborough.

Common fine

42 Note that every one that hath view of Free Pledges, ought to have Pillory and Tumbrell to do iustice: also in every Town where there is a Leet, there shall be Stocks, and for default thereof, the Towne shall forfeit five Pound, and the same is enquirable.

Apparell.

43 Also you shall enquire whether any have used in any of their Garments, Velvet, Satten, Damask, Tuffats, Sarcenet, Chamlet, or any Fur, as *Foins*, Iennets, Martins, Squirrel, Fox, Gray, Cony, Hare, or other *Furres* growing within this Land; or Gold, or Silver, in or upon any of their Garments, otherwise then the Statutes made in the 14 yeare H. 8. and 1. and 2. of Ph. and Mary do allow, you shall Present the Offenders.

Vintners,

44 Also you shall enquire whether any Baker, Brewer, Butcher, Cook, Tipler, &c. do take excessive gain or no: also whether they conspire, covenant, promise, or take an oath not to sell vintall but at a certain price, & present the same.

Artificers.

45 Also you shall enquire if any Artificers, Workmen, or Labourers, have conspired, promised, or made any Oathes, that they will not make or do their Works but at certain prices, or not to finish that which another hath begun, or would do but certain Work in a day; present them, for they shall forfeit certain Penalties. 24. H 8. cap. 12.

Tanners, Curriers, and tanned Leather.

46 Also you shall enquire if any Tannier offered to be sold, any Hyde of Bull, Oxe, Steere, or Cow, gashed or cut, he shall forfeit for every one twelve pence.

Curriers.

47 Also no Currier ought to currie any Leather in a Shoemakers house: and none ought to currie any Leather evill tanned.

Crow Nets, & Crow Nests.

48 Also you shall enquire if there bee any Crow Nets, if there be not, the Lord shall have the moiety of ten Shillings, which shall be forfeited by the Parish or Town for not having the same. Also if they destroy nor the Crow Nests when they begin to breed, they shall be amerced.

For the taking and killing of fish.

49 Also you shall enquire if any person by any means hath taken and killed any young Brood, Spawne or Fric of Salmons, Eccles, Pikes, or any other fish, in any Stream, River, Brook, Floodgate, or in the tail of any Mill, and

and present the Offenders. And further, when any Person hath taken in any of the places aforesaid, any Salmons or Trowts out of season, or Pikes, or Pikrels, not being in length ten inches, or any Barbel not being in length twelve inches, or any Salmons not sixteene inches, or Trowts not eight inches long: If any have done so, they shall forfeit certaine penalties.

50 Also you shall enquire if any break by day or night, the head or dam of any Pond, Poole, or Moat, within which the Lord hath Fish, to the intent to scatter, steale, and destroy the Fish, he shall pay to the Lord treble damages, and shall be imprisoned three Moneths, and after finde sureties for seven years of his good abearing.

51 Also you shall enquire if any doe hunt Deere out of the Lords ground, or kill any of his Deere, and present them.

52 Also you shall enquire if any Person doe keep or maintaine any common House, Alley, or place of Bowling, Quoites, Cailles, Tennis, Dicing, Tables, or Carding, or any other unlawfull Games, and present them: if they doe, they shall forfeit certaine penalties: also you shall enquire if any person doe haunt the said Houses and Places: and further, you shall enquire if your Constables and other Officers doe make true search in such places which be suspected to be frequented with any unlawfull Games,

D

Games,

Games, yea or no, if they do not, they shall forfeit certaine penalties, you shall therefore present such Offenders, 33. *H. 8. cap. 9.*

Horses.

53 No Stoned Horſe being of the age of two years, except he be fourteen handſuls high, ſhall be put to Paſture in any Common, Forreſt or Chaſe, upon paine of forfeiting of the ſame Horſe: alſo the ſaid grounds ought to be yearly driven at *Michaelmas* by the Lord, Tythingman, Conſtable, &c. or within fifteen dayes after, upon paine of xl. s. and if upon the ſame driving there bee found any Mare, Fole or Gelding, not likely to be able to bear Foles, or to doe profitable ſervice, the ſame ſhall be ſlaine and buried 32. *H. 8. cap. 13.*

Hue and Cry.

54 Alſo you ſhall enquire if the Inhabitants after Robberies and Felonies committed, doe make freſh Suit from Town to Town, or from County to County, or from Hundred to Hundred according to the Statute of *Wineheſt. 13. E. 1. cap. 2.* For if a man be robbed in the day time, and the Thiefe eſcape, and is not taken within forty dayes after the Robbery, for lack of Hue and Cry, the Borough or Hundred ſhall anſwer to the Party all his Goods and Damages: alſo if any perſon be killed in a Town in the day time, and the Murderer or Manſlayer eſcape, not taken or arreſted by thoſe of the Town, then the Townſhip ſhall be amerced. 18. *Ed. 2.*

55 Alſo you ſhall enquire if your Conſtables

bles and Church-Wardens have appointed a Surveyor for the medding of High-Wayes, leading to Market-Townes, or no; and if any choſen reſuſe the Office, hee ſhall pay xx s. alſo you ſhall enquire whether the ſame Surveyors have taken upon them the ſaid Office, and put the ſame in Execution: and whether the Pariſhioners have done their Duties, and preſent all thoſe that have offended contrary to the ſame Statute, for the Offenders ſhall forfeit certaine penalties.

For the amend-
ding High-
wayes.

56 Alſo you ſhall enquire if the Dirches be ſcoured, and Buſhes cut, according to the Statute made in the firſt year of Queen *Elizabeth*, for not doing of the ſame, they ſhall forfeit ten ſhillings.

Scouring of
Ditches and
cutting of
Hedges.

57 The moiety of all the Forfeitures for theſe Statutes, the Church-Wardens ſhall have to beſtow upon the High-wayes.

Nota;

58 Alſo you ſhall enquire if any perſons have watered any heape or flax in any River, running water, ſream, or Brook, or other common Pond where Beaſts doe uſe to drinke; they ſhall forfeit for every time ſo doing xx s. the one part to the Party grieved, or any other which will ſue for the ſame: and the Statute 32. *H. 8. cap. 17.* doth give a remedy to ſue for the ſame in Lect, by action of Debt, Bill, Plaint, or Information, or otherwiſe.

For watering
Heap or Flax.

59 Alſo you ſhall enquire whether any re- Muſters.
fuſe to come to Muſters before any Perſon Au-
thorized

thorized to take the same, he shall be Imprisoned for ten dayes, except he pay xl s. and if any Persons appointed to take Mustres, receive any money to release any appointed to serve, hee shall forfeit ten times so much as that he received, 4. C. 5. P. & M. ca. 3.

Kyott.

60 If any Persons to the number of twelve make an unlawfull Assembly, for to break any Banks, Inclosures, Parks, Fish-Ponds, Barnes, Houses, and such like; and Proclamation bee made by the Sheriffs or Justice of Peace, that they depart, and notwithstanding they remain together an hour after Proclamation made, every such attempt is Felony: also every Copyholder being a Yeoman, Husbandman, or Labourer, of the age of eighteen yeares, and under threescore, not sick, nor having a reasonable excuse, and being required by the Justice, Sheriffe, &c. to apprehend those Persons aforesaid, and refuse, shall forfeit his Estate during his life, and his Lord may enter: also the Farmer being a Yeoman, &c. refusing, is in the same case to the Land-lord: also it is Felony if any Person without compulsion, bring, send, or deliver any Money, Harnesse, Artillery, Weapons, or Victuals, to any Persons assembled in such manner. Also the Justice of Peace or other Officer may raise a Power to suppress them: and if any Officer kill any such Rebellious Persons, or maim them they shall be free: and if any Person know of any such pretended Rebellion,

lion, and doe not openly declare the same within twenty houres next after such knowledge, he shall be Imprisoned for three Months without Baile or Main-prise, if he be not discharged by a Justice of Peace: also he that letteth or hindereth that Proclamation that the same be not made, committeth Felony.

61 None may trace, destroy, or kill a Leve-^{Tracing of}ret in the Snow with a Dog, or otherwise, ^{hares.} and he that doth it shall forfeit six shillings eight pence, 13. ff. 8. cap. 11.

62 Also you shall enquire if those Persons ^{Licences for} which doe sell Wines be thereunto ^{Wine.} Licenced, according unto the Statute made in the eight year of Ed. 6. &c. upon a grievous Paine and Forfeiture, and for every day occupying or selling of Wine without Licences. Also you shall enquire how many there are Licenced, and Present them. Of this and all other matters and defaults you shall diligently enquire and make a true Presentment.

Then, after the Charge is given, the Steward shall command the Cryer to make Proclamation, and after Proclamation made three times, the Steward shall say:

If any can enform the Steward, or this Enquest of any petty treason, felony, petty Larceny, Purpresture, breaking of Pounds, or of Rescous, or of any other thing done against the Peace, or of

any person of evill behaviour within the Leet, or of any Artificer that doth make deceit, or of any other misdemeanour of any Officer or other Person here, or of any Waife or Stray, Treasure found, or of any other thing here to be enquired of; come in, and you shall be heard.

Then if any come in, he shall be sworn to give evidence to the Jurie. And after that the Steward shall say to the Enquest:

Go you together, and enquire of the matters of your Charge, and when you be agreed I shall be ready to take your Verdict.

An addition of divers other matters enquirable in Leets, not mentioned in the former Edition.

Crosse-bowes
and Hand-
gunns.

IT is lawfull to all Stewards and Bayliffes in their severall Leets and Law-dayes, to enquire, heare, and determine every offence committed contrary to the tenure of the Statute made 33. H. 8. concerning Crosse-bowes and Hand-gunnnes, so that alwayes no lesse Fine than x. l. be assessed upon every such Presentment and conviction; the one moiety of every such Fine to be levied to the use of the Common-wealth, and the halfe of the other moiety to the Owner of the Leet or Law-day by distresse, or action of Debt, and the other halfe of the said moiety to be to the Party that will pursue for the same in any of the Courts of Justice by action, information, &c. wherein no Wager of Law, Effoyn, Protection, &c. 2 And

2 And if any Jurie Sworn and charged to enquire of any offences committed contrary to the said Statute, do wilfully conceal any of the said offences: then the Stewards or Bayliffes before whom any concealment shall be had, have Authority to charge and swear another Jury of Twelve or more, to enquire of such concealment: and if such concealment be found and presented by the said Jurie, then every of the first Jury shall forfeit for every such concealment of every offence, twenty shillings, the moiety to be levied to the Owner of the Leet or Law-day by distresse, or action of debt, and the other to the Informer, to be recovered by Action, Information, &c. wherein no Wager of Law, Effoyn, Protection, &c.

3 But if the Presentment or Suit for any of the said forfeitures be not commenced within one halfe yeare next after the offence committed, then the Offendor shall be thereof clearly discharged, 33. H. 8. 16.

4 Lords in Leets, and their Stewards within the Precinct of their Leets, have Authority to enquire and take Presentment; by oath of Jurors, of all and every offence and offences committed contrary to the Statute 31. Eliz. touching the erecting and maintaineing of Cottages ^{New Cottages;} and Inmates, and upon Presentment made ^{Inmates.} to Levie by distresse to the use of the Lord of the Leet all such summes of money as shall be forfeited by the Statute of 31. Eliz. cap. 9.

5 Stewards

5 Stewards of Leets, Liberties, and Lawdayes, within their severall jurisdictions shall and may heare, enquire, and determine of all and every offence and offences which shall be committed within the Precinct of their Liberties, Jurisdictions, or Franchises against the Tenour of the Act made, *An. Eliz. 6.* for the preservation of Peasants and Partridges, 23. *Eliz. 10.*

Horse-bread.

6 Stewards in their Leets and Lawdayes, have Authority to heare and determine every default and offence of Hostlers or Inholders making horse bread not sufficient, lawfull, and of due assise, according to the price of Corn, committed within the limits of their Jurisdiction, contrary to the Statute in that case provided, 32. *Hen. 8.* 41.

Fish.

7 The Lord of every Leet hath Authority to enquire of all the offences committed contrary to the purport and form of the Statute provided (1. *Eliz.*) for the preservation of spawne and frise of Fish, within the Precinct of the said Leet, such enquiry to be had in maner &c for as common americiaments or other things enquirable in Leets have been lawfully used to be made, and upon every such Presentment had in any Leet Court by the Oath of twelve men, of any offence made contrary to the said Statute, all forfeitures appointed for such offence, shall be unto the Lord of the said Leet, and shall be Levied as Americiaments for fraies committed within

within the Precinct of such Leet, have been used to be Levied. And if that Steward of a Leet or some other for him do not charge the Jury sworn in every Leet to enquire of all offences done within the Precinct of the same Leet concerning the killing of Spwan or Frie of Fish, Kepper, Shedder, or Salmons or Trowts, Pickrell, Salmon-Trowt, or Barbel, being not of lawfull length: and concerning the mash of Nets, and other Engines, he shall forfeit for every offence, x. s. to the Lord of the Leet, and him that will sue for the same.

8 Also if any Jury sworn in a Leet, having charge to enquire of the Premises, doe willingly conceale and make default in Presentment of the offence and Offenders, then the Steward or Bayliffe, or their deputy, may impanell another Jurie within the same Leet to enquire of such concealment, which being found, every of the jurors so concealing shall forfeit xx. s. to the Lord of the Leet for every offence.

9 Saving alwayes to all and every Person and persons, bodies polirick and corporate, and every of them, all such right, title, interest, claime, priviledge, and conservation, and enquiry, and punishment, of and for any the offences aforesaid, as they or any of them lawfully have and enjoy, or of right ought to have and enjoy by any manner of meanes, any thing &c. notwithstanding, 1. *Eliz.* 7. 35. *Eliz.* 7.

Finis de la charge de Court Leet.

E

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unto you, which is the calling or taking to witness of God his Name, to confirme the truth of that you shall say, and present, minding neither fraud nor deceit, but onely the truth, not partiall, but seeking the glory of God, and the profit of your Neighbour, and the Common-Weale of God his people.

The Charge.

First, you shall enquire of the Sutors which owe any Suit to this Court, whether they be here or no, and present their names that make default, for they which be absent ought to be present here as well as you, except they have some lawfull impediment to the contrary, for they hold their Lands, as well as doe their Suit, as to pay their rent, so that if they doe not their Suit, they shall be amerced, or the Lord may have good remedy for the same; otherwise you shall understand, that every common Sutor is bound by the Laws to appear at the Lords Court Baron at every three weeks end: notwithstanding, the Lord for your ease (which he esteemeth more than his own profit) suffereth the same to be kept but seldome, as appeareth, for which cause every of the Tenants ought the more willingly to come unto his Court at such times as he doth appoint for the same: for if they wilfully absent themselves, then they render evill for good, and be-

The Tenants
are bound to
appear at e-
very three
weeks end at
the Lords
Court Baron.

sides

sides that, they incur the danger of perjury: for when they did their fealty, they were sworn to be true Tenants unto their Lord, and to pay and doe all manner of Suits, Customs, and services due for their Tenements, at their day assigned: and therefore let every man remember his oath and duty, and doe his Suits and Services, according to the same, or else he shall fall into the danger aforesaid.

2 Next you shall enquire whether there be any Tenant dead since the last Court day, or before, whose death as yet is not presented, and you shall present the same: also what Lands and Tenements he held of this Lordship at the time of his death, and by what Services, that is to say, whether it were by Socage Tenure, or Copy-hold, and what advantage the Lord shall have by his death, and present it.

3 Socage Tenure is, as if the Tenant holdeth of the Lord by fealty and certaine Rent for all manner of Services, or by homage and fealty for all manner of Services, or by fealty onely for all manner of Services: or to pay a summe of money for Escuage, or to pay a certaine summe of money for Castle Guard: all such Tenures are Tenures in Socage: and all other Tenures which were not Tenures by Knights Service, are Tenures in Socage: and where such Tenants die seised of any Lands so holden, the Lord of whom the Land is so holden, after the death of his Tenant, can have

What Tenants
are dead since
the last Court.

What Land he
holdeth, and
by what Ser-
vice.

What Socage
tenure is.

E 3

no

no more profit but onely his fealty and relief, that isto say, as much Money and Service as one years Rent doth amount unto: as if the Tenant held by Fealty, and ten Shillings Rent, the Lord shall have ten Shillings for a relief, over and besides the ten Shillings which he shall pay for his Rent; and in such case after death of the Tenant, such relief is due to the Lord maintenant, or immediately upon his Ancestors death, so that the Heire be of the full age of xiiii years, and he ought not to tarry for his relief until the day of payment of the Rent, but he ought to have his Relief maintenant, and for that he may distrain immediately after the death of his Tenant.

Relief is as much money as one years Rent.

A Coppingholder doth.

4 Also if a Coppingholder die sole seised of any Lands or Tenements so holden, his Heire being of the age of fourteen yeates, then he shall pay a fine unto the Lord, and do fealty, and be admitted Tenant: but if the Heire be within the age of 14 yeates, then some Gardian shall be admitted to occupy his Coppinghold, and to pay and to do his Service due for the same, that is to say, if Lands descend from the Father, then the Mother or some of her next Kin shall have the occupation of the same Lands, untill the Heire be of the age of fourteen years, and they shall pay a little fine for the Gardianship, and the Heire at his Entrie shall pay the whole fine; you shall enquire thereof, and Present the same.

5 Also

5 Also you shall enquire whether any Tenant which held by Socage Tenure, did make any Feoffment in Fee to his use, and died seised of the use, his Heire being within age, and no Will by him declared of the use, and present it: for the Lord shall have his relief, as well as if he had died seised of the same Lands.

6 Also you shall enquire whether any Freeholder hath aliened or sold away his Freehold Lands or Tenements, or any parcell of them, and present it: for he which hath bought the Land before he enter, ought to come to give notice unto the Lord, that he hath bought the same, and so the Lord shall know his Tenant; and in case where but part is sold, the Service which the former paid unto the Lord, shall bee apportioned, according unto the value of the Lands sold and retained.

Whether any Freeholder hath aliened any of his freehold Land.

7 Also you shall enquire whether any which held by Herriot Service, or Herriot Custome, died seised of any Lands or Tenements so holden, and present it; for the Lord shall have of every of their severall parts divers Herriots at their severall deaths: also if one man have two severall parcell of Land holden by Herriot Service, and by two severall Titles, and died seised of the same, the Lord shall have after his death two Herriots.

Herriot Service, vice Herriot Custome.

8 Also you shall enquire if any Coppingholder die seised of any Lands so holden, and present it: also whether any Coppingholder hath made

Whether any Coppingholder die seised of any Lands made

made any *Lease* of his Coppinghold, or otherwise aliened or sold the same, and present it, for it is a forfeiture of his Coppinghold: for if a Coppingholder will alien or sell away his Coppinghold, he ought to come into the Court and surrender the same into the hands of the *Lord*, to the use of him which shall have the Estate, or else out of the Court, he ought to surrender it unto the Bailiffe, or to some of the Tenants of the *Lordship*, to the use of him which shall have the Estate, and they to whom the surrender is made, ought to present the same at the next Court, and then pay his Fine for the same, and take it to his use in the Court, and do his endeavour to be admitted, and if he be not at the same Court, then the *Lord* shall have the meane profits of the same *Lands*, all the Rent Services and reparations being deducted, untill he be satisfied for his Fine, according to his duty.

How a Coppingholder ought to surrender his Coppinghold.

Whether any Coppingholder hath made any Surrender.

9 Also you shall enquire if any Coppingholder hath made any surrender of his Coppinghold, or any part thereof sithence the last Court day, or before, and present it: and into whose hands it was made, and in whose presence, or to whose use: for at every Surrender the *Lord* ought to have a Fine, and the Party into whose hands the Surrender is made, ought to come to the next Court, and present the same, and to yeeld up and testifie the Surrender into the *Lords* hands, to the use of the Alience, according unto the trust re-

posed

posed in him, or otherwise he forfeiteth his Coppinghold, except he have a reasonable excuse: for that he doth as much as he may to defeat the *Lord* of his Fine, and also to deiate the other party to whose use the Surrender was made. *Note*. The party that received the Surrender hath no right by it.

9 Also you shall enquire if any Tenant of the *Lordship* have given any *Lands* into mortmain, and present it..

10 Mortmain is if a man give or sell any *Lands* to any House of religion, or to any other which be corporate by Grant: also if one make a Feelement upon trust to the use of an House of Religion, or to the use of a Guild or fraternity Corporate, that is Mortmain.

11 Also if one give *Lands* to, or exchange *Lands* with an Abbot, or body Corporate, this is Mortmaine.

12 Also you shall enquire whether any Tenant for Term life, or yeares, or any Coppingholder of this *Lordship*, hath made any Waste, or suffered any Waste to be done upon their *Lands* or Tenements, yea or no.

13 Waste is when any Tenant for Terme of life, yeares, or any Coppingholder pulleth down any house, or cutteth downe any Timber-Trees, or suffereth the house willingly to fall, being on their Copping Tenements, or if any of the Tenants plow up any Meadow ground, or if they suffer any Wall or Pale which were covered,

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vered,

vered, to be uncovered, by reason whereof the same Wall or Pale doth fall in decay, or if any of them digge Coales, Chalk, or Sand, or make any Mines in their Grounds, then they make waste. And if they fell a Tree to the value of three Shillings four pence, this is admitted waste: But if a man cut down Timber to repair the old houses which stand upon parcel of the same ground, and therewith doth repair them, then it is not waste; but if he with the Timber, build a new house, then the cutting down of such Timber is waste: or if he cut down any Timber to sell, to repair such houses which are fallen in decay, such is waste. But if waste be done with a Tempest, no Tenant shall be punished for such waste: but if waste be done by any danger, the Tenant shall be punished for such waste: Also it is no waste to sell in seasonable time such Trees as have been felled within xx. yeares before: but if the Tenant cut downe such Trees to burn upon their Tenements, where they have Wood sufficient, this is waste. Also a Coppingholder may not cut down Wood to sell, but he may to burn, upon his Tenement, or to make reparations as aforesaid.

Whether any Tenant in possession died seised without any Heire.

14 Also you shall enquire whether any Tenant in Possession or Reversion died seised of any Lands or Tenements holden of this Lordship having no Heire at the time of his death, yea or no, and present it; for then the Lord shall have

have the Land holden of him by Eſcuage. You shall understand that none shall have Lands in Fee simple as Heire unto any man, unless he be Heire of the whole blood: for if a man have issue two sonnes by divers women, and dieth seised of the same Land, and the Eldest entereth and dieth without issue, the youngest shall not have the Land as Heire unto his brother, because he is of the half blood, but some other Heire of the Fathers side shall inherit the same Land; and if he have no Heire on the Fathers side, then the next Heire on the Mothers side shall not have the Land, but the Lord of whom the Land is holden shall have the Land by Eſcheat: and so when Land descendeth on the Mothers side, the Heire on the Mothers side shall inherit, and not the Heires of the Fathers side. And you shall understand that a Bastard can never be Heire unto any man, nor yet have Heire unto himself but his Children: therefore if any Bastard die without issue, or any other Tenant have died seised without Heires, you shall present it.

A Bastard may not inherit.

15 Also you shall enquire if any Tenant was seised of any Lands or Tenements, and was put out of his Land by one which had no rightfull Title, and afterward died without any Heire, the Lord shall have his Eſcheat as well as if his Tenant had died seised.

Whether any Tenant died being put out of his Lands by one which had no right.

16 Also you shall enquire whether any Tenant of his Lordship hath committed any petty

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Petty Treason, Felonies, or Murders for the which he was hanged, or for the which he had Judgement to be hanged, though afterward he died by the Act of God, or prayed his Clergy, and was allowed it, and delivered to the Ordinary before the Statute made in the 18. year of Q. Elizabeths Raigne; or else since that Statute was burned in the hand, and delivered out of Prison according to the Statute; for by that Judgement he was attainted, and the Lord entred to the Escheat of his Lands; and therefore if any such be, present it. And whether any Tenant hath committed any petty Treason, Felony, or murder, for the which he hath abjured the Land, or for the which he was outlawed, or for the which he was beheaded, or for the which he was overcome by wager of battell upon an Appeale, or in the combat put to death; and present it: for in all these cases the Lord of whom the Lands are holden, shall have the Lands by Escheat, and also the Evidences concerning the same.

Whether there be any Rents lost, or Services withdrawn.

19 Also you shall enquire if there be any Rents, Customes or Services withdrawn from the Lordship which of right ought to be done, and present it, and what Rents, Customes and Services they are, and by whom they are withdrawn, and where the Land lieth, out of which they be due, and who holdeth the same, that the Lord may have his remedie for the arrears thereof.

18 Also

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18 Also you shall enquire whether the Copyholders or the Farmers of this Lordship do uphold and repair their Tenements, yea or no, and present the same: you shall understand that every Tenant is bound to three things: First, that he be true Tenant to his Lord: secondly, that he sufficiently repair his Tenements: and thirdly, that he pay and do all Suits, Customes and Services at his Dayes assigned: for he took upon him so to do when he did his Fealties; & if he do not pay his Suits, Customes, and Services, the Lord shall have good remedie, and recover the same with his dammages: and if he be a Copyholder, and do the contrary, he doth forfeit his Copyhold.

Whether the Tenants do uphold or repair their Tenements.

19 Also you shall enquire if any Tenant of this Lordship, which is bound by reason of his Tenure to do suit unto the Lords Mill, do the same yea or no, and present it: and whether any have used to withdraw their Suit from the Lords Mill, in not grinding their Corn there, yea or no, and present it.

Whether any Tenants have withdrawn his Service.

20 Also you shall enquire whether any Waif, or Stray is or was within this Lordship, and whether the Lord be answered of the same yea or no: if not, present by whom they are conveyed away: also you shall enquire if any Herriot be conveyed away, yea or no, and present it, and by whom.

Waif and Stray.

21 A Waif is, if a Thief upon Hue and Cry and pursuit after him, or otherwise to escape himself

What a Waif is.

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himselfe of his carriage. without Huy and Cry doth Waife his Goods, that is to say, doth leave and forsake his Goods which he hath stoll, or any parcell of them, by reason whereof the Common-wealth, or any other Lord or Officer in his right or in his own right do feise the Goods: in those cases the Goods so feised are called Waifes: and the same Law is, if any Officer take any Goods of a Theife, suspecting that he hath stoll them, though there be no pursuit made: and in these Cases, the Lord, by reason of a Grant, or by the Prescription, shall have the Goods so waifed, if the Owner of them do not make fresh Suit after the Thiefe to attain him for stealing of the same Goods; which fresh Suit if he make, he shall have his Goods againe, though they be waifed, but then he must sue an Appeal, or else procure the Party to be indicted and Convicted by Evidence at his Pursuit, according to the Statute made 21 H. 8. cap. 11.

What an
Estray is.

22 An Estray is, when an Horse, Mare, Oxe, Sheep, or other Beasts, are in the Lordship, and no man knoweth the Owner of them, they shall be feised unto the use of the Common-Wealth, or to the Lord which hath such an Estray by Grant, or Prescription; and if the Owner come and make claime within a year and a day, then he shall have it againe, or else after the yeare and the day, the property thereof shall be to the Lord which hath the same

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same by Grant or Prescription, so that the Lord make Proclamation thereof according to the Law, in the next Markets, and in the Church.

23 Also you shall enquire, whether any Person have made Rescous against the Lord, or any other Officer, and present it.

24 Rescous is when the Lord distraineth in the Land holden of him for his Rent, or Services behind, or if the Lord come upon the Lands and would distraine, and the Tenant or some other will not suffer him, that is Rescous: also if the Lord distraine for service behind, or for damage feint, and in driving cattell to the Pound, the Beasts enter into the House of the Owner, if in such case he that distraineth doth pray deliverance, and the Possessours will not deliver them, that is a Rescous; therefore you shall present it, if Rescous have been made.

25 Also you shall enquire whether any person hath broken the Lords Pounds, that is, to have taken away a Distresse put in, yea or no, and present it. You shall understand, that if the Lord doe distraine any Tenant for Rent, or Service behind, he may impound the same distresse in a common Pound if he will, or in his own ground, or in his Neighbours if hee will, by the licence of his Neighbour, and all those places in which the Lord doth impound any Cattell, are called the Lords Pound: but always when another doth impound any Distresse

Distresse in his own Pound, or in his Neigh-
bours, it behoveth him to give notice to the
other Party, for that if the Distresse be quick
hee may give it meat, and then if the Beast
die for want of food, hee that was distrained
shall be at the losse, and then he that d'strained
before may distraine againe for the same Rent
or duty.

Whether any
Tenant hath
let any farme
fall to decay,
viz. not main-
tained hus-
bandry as be-
fore.

26 Also you shal enquire if any Tenant of
this Lordship hath let any Farme or Houfe fall
into decay, which at any time sithence the
first year of the Raing of K. H. 7. hath been let
with twenty Acres of Land being in tillage,
yea or no, and present it: for if they suffer their
Houfes to fall into decay, the Lord may take
and distraine for halfe of the issues and profits
of the same, and keep them to his own use,
untill such time as the Houfes shall bee suf-
ficiently builded and repaired, that is to say,
maintained againe for Husbandry. This was
by the Statute 4. H. 7. which is now repealed
by 39. El.

Whether any
have overchar-
ged the com-
mon.

27 Also you shal enquire if any Inhabitant of
Common have overcharged the Common or
High-ways, or your common Fields, by putting
in more Cattell than they ought to keep, and
whether any of them have put their Cattell in
any their Commons aforesaid, before the daies
agreed upon, and present it; for the Lord of any
Commoner (as it seemeth) may distraine the
surplusage dammage feasant, or else you may
make

make among your selves Orders and Lawes for
your own profit, that none shall doe upon pain
of certaine penalties, &c. and by such lawes
the Inhabitants and Commoners shall be
bound &c.

28 Also you shall enquire if any person
have made any Pits in the High-ways, and
whether any Person do commonly use to break
Hedges, and to suffer Hogs to goe unyoked,
or unringed, to the annoyance of their Neigh-
bours.

Whether any
Pits be made
in the High-
ways, Break-
ing of Hedges,
Hogs unyok-
ed or unring-
ed.

29 Also you shall enquire whether any per-
son hath strained or stopped any Ways, Water,
Ditches, Patches, or turned any of them into a
wrong course, and present it.

Stopping
Ways, Wa-
ters &c.

30 Also if any have encroached any Land of
the Lord, that is to say, Land, Meadow, Pa-
sture, Wood, Heath, Moore, or any other vacant
Land without licence of the Lord, by setting of
his Hedge, Pale, or otherwise, and present the
same.

Whether any
have encros-
ed.

Note that all the vacant and waste Land
within the Mannor, is to the Lord of the
Mannor.

31 Also you shall enquire where any Person
have ared, plowed up, or removed away any
Meere-marks, balks, or limits between one
peece of Land and another, and present it.

Whether any
have removed
any Marks.

32 Also you shall enquire if any have stalked
with a bush or beast to kill Deere which is in
the Lords Chase and Parke, and present it.

Whether any
have stalked
with bush, or
beast.

Whether any
have or doe
keep away
any evidences

33 Also you shall enquire if any person hath
or keepeth away any Evidences, Charters, or
Court Rolls, Customary Terrars, or any other
Evidences which concern the Lordship, or any
parcel thereof, yea or no, and present it.

Whether any
have fished,
fowled, haw-
ked.

34 Also you shall enquire if any Person have
fished, fowled, hawked, or hunted in this Lord-
ship or Lords Warren, and present it.

Whether any
have taken a-
ny fefants &c.

35 Also you shall enquire if any person have
taken any Fefants, or Partridges, with Net,
Snare, or other Engine upon the Free-hold of
the Lord of this Mannor, and present it.

Swannes or
Swannes egg.
Concealed
Land.

36 Also you shall enquire if any person have
taken away the Egges of the Lords Swans out
of the ir Nests, and present it.

37 Also you shall enquire if any lands of the
Lords be kept back, or occupied by any with-
out the licence of the Lord: also what land it
is, and how much land hath been so occupied,
and of what value by the yeare the same is,
and present it.

Whether the
Lord have
Villain within
the Lordship.

38 And you shall enquire whether the Lord
have any Villaine within his Lordship, and
what Goods, Chattels, and Lands he hath, what
Estate he hath, that the Lord may seile there-
upon: also what other things be hath: also if
any Villaine carry his goods out of his Lord-
ship without licence of the Lord: or if any
free man espouse a Nefse without licence of the
Lord you shall present the same. Note, if a Vil-
laine purchase Land, and doth alien the same to
another

another before the Lord enter, then the Lord
after shall not enter: otherwise it is if the Lord
enter before the alienation of the Villaine: the
same law is of Goods, but the Lord may not
seife the Goods that the Villaine hath as Ex-
cutor.

Trespasse in
the Corne,
Grasse, &c.

39 Also you shall enquire if any Trespasse
be done in any of the Lords liberties, viz. in
his Corn, Grasse, Medowes, Pasture, Woods,
Hedges, Waters, or Ponds: or if any take Hon-
ney Swarms of Bees, or any Hawks, or ayrie of
Hawks, or such like trespasse, and present
them.

For inclosing
in severally
grounds with-
out licence of
the Lord, &c.

40 Also you shall enquire if any Land be in-
closed, and the same kept in severally, which
ought to lie open, without licence of the Lord
and other Free-holders, you shall present the
same, for that no Tenant of the Lordship shall
lose the Common in the same.

A Copy-hold
ermy not let
longer than a
yeare and a
day.

41 Also if any Copy holder let his Copy-
hold Land for longer time then a year and a day
without licence, except it be by custome that
he may let for longer time, and if he doe, it is a
forseiture, and present the same.

Whether any
be out-lawed.

42 Also you shall enquire whether any Te-
nant of this Lordship hath been out-lawed in
any action of Trespasse, or other action, and
present it, and whether the Lord be answered
of his Goods and Chattels, yea or no, and pre-
sent the same.

43 Also you shall enquire whether any Te-
nant



Granting
greater
Eftates,

Whether the
Bayliffe and
other Officers
doe execute
their Offices.

Whether the
default and
plaints be a-
mended.

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nant for years, or life, have granted any greater or larger Estate than they had in their Lands, or Tenements, yea, or no, and present it, for that is a forfeiture of their Estates.

44. Also you shall enquire if the Bayliffe, Headborough, Constable, and Hayward, and all other Officers, have well and truly executed their Offices, yea or no, and present it.

Note, Headborough nor Constable be not to present in a Court-Baron.

45 To conclude, you shall enquire whether all the defaults and plants that were presented at the last Court be sufficiently amended, yea or no, and whether all the Orders and Laws heretofore made be observed and kept, yea or no, and present it. And further, you shall enquire for all things which in your consciences you think ought to be searched and enquired of, and by the Oaths that you have taken you shall truly and diligently enquire of all the premises, and plainly, without concealing of any fault, bring in a true verdict in writing, subscribed with your owne Hands, Sealed with your Seales, by such an houre, or as soone as you can.

*It is needlesse but in case of Felonie for to deliver their Verdict Sealed, and then it must be indented: but it is convenient to have it in writing,
written*

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written or subscribed by them, or one of them, but not necessary: But to avoyd the blame, ignominy, or slander the Steward might incurre, if they did after deny their doings.

46 And finally, if you shall know any thing that ought to be presented to the Lords advantage, you shall doe us to wit by the Oath that you have made, and bring us in a true Presentment. And now you may depart and enquire of your Charge, having a regard of your Oaths.

FINIS.



