

Representative excerpt only, a courtesy of
Duhaime.org | Learn Law.

THE

FIRST PART

OF THE

Institutes of the Laws of England;

OR, A

COMMENTARY UPON LITTLETON.

NOT THE NAME OF THE AUTHOR ONLY, BUT OF THE LAW ITSELF.

*Quid te vana jurant miscere ludibria chartæ?
Hoc lege, quod possis dicere jure meum est.*

MART.

Major hereditus venit unicuique nostrum à jure et legibus, quam à parentibus.

CICERO.

HÆC EGO GRANDÆVUS POSUI TIBI, CANDIDE LECTOR,

AUTHORE **EDUARDO COKE**, MILITE.

REVISED AND CORRECTED,

With Additions of NOTES, REFERENCES, and PROPER TABLES,

By FRANCIS HARGRAVE and CHARLES BUTLER, Esqrs. of *Lincoln's Inn*,

INCLUDING ALSO

The NOTES of Lord Chief Justice HALE and Lord Chancellor NOTTINGHAM;

AND

An ANALYSIS of LITTLETON, written by an unknown Hand in 1658-9.

THE SEVENTEENTH EDITION,

IN TWO VOLUMES;

With ADDITIONAL NOTES,

By CHARLES BUTLER, ESQUIRE.

VOL. I.

LONDON:

PRINTED FOR W. CLARKE & SONS; C. HUNTER; AND S. BROOKE.

1817.

D E O,
P A T R I Æ,

T I B I,

Proœmium.

OUR author, a gentleman of an ancient and a fair-descended family **de Littleton**, took his name of a town so called, as that famous chief-justice sir John de Markham, and divers of our profession, and others, have done.

The name and degree of our author.

Thomas de Littleton, lord of Frankley, had issue Elizabeth his only child, and did bear the arms of his ancestors, viz. argent a chevron between three escalop-shells sable. The bearing hereof is very ancient and honourable; for the senators of Rome did wear bracelets of escalop-shells about their arms, and the knights of the honourable order of St. Michael in France do wear a collar of gold in the form of escalop-shells at this day. Hereof much more might be said, but it belongs unto others.

His arms.

Instituted by Lewis the Eleventh, king of France, 9 E. 4. 1469.

With this Elizabeth married Thomas Westcote, esquire, the king's servant in court, a gentleman anciently descended, who bare argent, a bend between two cotisses sable, a bordure engrayled gules, bezanty.

Thomas Westcote.

But she being fair, and of a noble spirit, and having large possessions and inheritance from her ancestors de Littleton, and

and from her mother, the daughter and heir of Richard de Quatermeins, and other her ancestors (ready means in time to work her own desire), resolved to continue the honour of her name (as did the daughter and heir of Charleton, with one of the sons of Knightly, and divers others), and therefore prudently, whilst it was in her own power, provided by Westcote's assent before marriage, that her issue inheritable should be called by the name of de Littleton. These two had issue four sons, **Thomas**, Nicholas, Edmund, and Guy, and four daughters.

Our author bore his mother's surname.

Thomas the eldest was our author, who bare his father's christian name **Thomas**, and his mother's surname de Littleton, and the arms de Littleton also; and so doth his posterity bear both name and arms to this day.

Camden.
"The just flourish like the palm-tree, and spread abroad like the cedar in Libanus." Psal. xcii. 12.

Camden, in his Britannia, saith thus: **Thomas Littleton**, alias Westcote, the famous lawyer, to whose Treatise of Tenures the students of the common law are no less beholden, than the civilians to Justinian's Institutes.

The dignity of this fair-descended family de Littleton hath grown up together and spread itself abroad by matches, with many other ancient and honourable families, to many worthy and fruitful branches, whose posterity flourish at this day, and quartereth many fair coats, and [*] enjoyeth fruitful and opulent inheritances thereby.

He was of the **Inner Temple**, and read learnedly upon the statute of *W. 2. De donis conditionalibus*, which we have. He was afterwards called *ad statum et grad' servientis ad legem*, and was steward of the court of Marshalsey of the King's household, and for his worthiness was made by King *H. 6.* his serjeant, and rode justice of assise the Northern Circuit, which places he held under King *E. 4.* until he, in the sixth

King's serjeant, Rot. Pat. 33 H. 6. part. 1. m. 16.
Mich. 34 H. 8. fol. 3. a.
Judge of the Common Pleas, Rot. Pat. 6 E. 4. part. 1. m. 15.

year

year of his reign, constituted him one of the judges of the court of common pleas, and then rode Northamptonshire Circuit. The same king, in the 15th year of his reign, with the prince, and other nobles and gentlemen of ancient blood, honoured him with the knighthood of the Bath.

Knight of the Bath,
15 E. 4.

He compiled this book when he was judge, after the fourteenth year of the reign of King *E. 4.* but the certain time we cannot yet attain unto, but (as we conceive) it was not long before his death, because it wanted his last hand; "for that tenant by *eligit*, statute-merchant, and staple, were in the table of the first printed book, and yet he never wrote of them*."

When he wrote this book.
14 E. 4. tit. Garranty
5.

Litt. Sect. 692. 729.
& 740.

Our author, in composing this work, had great furtherance in that he flourished in the time of many famous and expert sages of the law. [a] Sir Richard Newton, [b] sir John Prisot, [c] sir Robert Danby, [d] sir Thomas Brian, [e] sir Pierce Arden, [f] sir Richard Choke, [g] Walter Moyle, [h] William Paston, [i] Robert Danvers, [k] William Ascough, and other justices of the court of common pleas: and of the king's bench, [l] sir John June, [m] sir John Hody, [n] sir John Fortescue, [o] sir John Markham, [p] sir Thomas Billing, and other excellent men flourished in his time.

The deceases of his contemporaries.

[a] He died 27 H. 6.

[b] He died 39 H. 6.

[c] Died 11 E. 4.

[d] Died 16 H. 7.

[e] Died 7 E. 4.

[f] Overlived our author.

[g] Survived him also.

[h] Died 23 H. 6.

[i] Survived our author.

[k] Died 33 H. 6.

[l] Died 18 H. 6.

[m] Died 20 H. 6.

[n] Removed 1 E. 4.

[o] Removed 8 E. 4.

[p] Died 21 E. 4.

And of worldly blessings I account it not the least, that in the beginning of my study of the laws of this realm, the courts

* That Littleton did intend to write of those tenancies, is plain from the 291st and 324th Sections; but it may be justly questioned whether the fact alleged by my lord Coke, to support his opinion, be true; because in the copy of the Rohan edition, now in Lincoln's-Inn Library, and in that at this time in the bookseller's custody, the Table mentions nothing concerning these tenancies; nor does it seem probable that there ever was any other table, both the copies appearing, on the nicest examination, to be complete. Note to the 11th edition.—See also Note 1 to 163. a. of the present Edition.

of

of justice, both of equity and of law, were furnished with men of excellent judgment, gravity, and wisdom. As in the chancery, sir Nicholas Bacon, and after him sir Thomas Bromley. In the exchequer-chamber, the lord Burghley, lord high treasurer of England, and sir Walter Mildmay, chancellor of the exchequer. In the king's bench, sir Christopher Wray, and after him sir John Popham. In the common pleas, sir James Dyer, and after him sir Edmund Anderson. In the court of exchequer, sir Edward Saunders, after him sir John Jeffery, and after him sir Roger Manwood, men famous (amongst many others) in their several places, and flourished, and were all honoured and preferred by that thrice noble and virtuous queen Elizabeth of ever blessed memory. Of these reverend judges, and others their associates, I must ingenuously confess, that in her reign I learnt many things, which in these Institutes I have published: and of **this queen** I may say, that **as the rose is the queen of flowers, and smelleth more sweetly** when it is plucked from the branch, so I may say and justify, that she by just desert was the queen of queens, and of kings also, for religion, piety, magnanimity, and justice; who now by remembrance thereof, since Almighty God gathered her to himself, is of greater honour and renown than when she was living in this world. You cannot question what rose I mean; for take the red or the white, she was not only by royal descent and inherent birth-right, but by rosel beauty also, heir to both.

Queen Elizabeth.

And though we wish by our labours (which are but *cunabula legis*, the cradles of the law) delight and profit to all the students of the law in their beginning of their study (to whom the First Part of the Institutes is intended), yet principally to my loving friends, the students of the honourable and worthy societies of the Inner Temple and Clifford's Inn, and of Lion's Inn also, where I was some time reader. And yet

Inner-Temple.
Clifford's-Inn.
Lion's-Inn.

of them more particularly to such as have been of that famous university of Cambridge, *alma mea mater*. And to my much honoured and beloved allies and friends of the county of Norfolk, my dear and native country; and to Suffolk, where I passed my middle age; and of Buckinghamshire, where in my old age I live. In which counties, we, out of former collections, compiled these Institutes. But now return we again to our author.

He married with Johan, one of the daughters and coheirs of William Burley, of Broomscroft castle, in the county of Salop, a gentleman of ancient descent, and bare the arms of his family, argent, a fess cheekie or and azure, upon a lion rampant sable, armed gules; and by her had three sons, sir William, Richard the lawyer, and Thomas.

His marriage.

His issue.

In his life-time, he, as a loving father and a wise man, provided matches for these three sons, in vertuous and ancient families, that is to say, for his son sir William, Ellen, daughter and coheir of Thomas Welsh esquire, who by her had issue Johan his only child, married to sir John Aston of Tixal, knight: and for the second wife of sir William, Mary the daughter of William Whittington esquire, whose posterity in Worcestershire flourish to this day. For Richard Littleton his second son, to whom he gave good possessions of inheritance, Alice, daughter and heir of William Winsbury of Pilleton Hall in the county of Stafford esquire, whose posterity prosper in Staffordshire to this day. And for Thomas his third son, to whom he gave good possessions of inheritance, Anne, daughter and heir of John Bottreaux esquire, whose posterity in Shropshire continue prosperously to this day. Thus advanced he his posterity, and his posterity, by imitation of his vertues, have honoured him.

The re-establishment of his posterity, by the matches of his three sons with vertue and good blood.

He gave possessions of inheritance to his younger sons for their better advancement.

he had been commonly cited, and (as he deserves) more and more highly esteemed*.

* This opinion of my lord Coke's, concerning the time of the first impression of Littleton's Tenures, although it hath been followed by Sir William Dugdale, in his *Origines Juridiciales*, and by bishop Nicholson in his Historical Library, is certainly erroneous; for it appears by two copies now in the bookseller's custody, that they were printed twice in London in the year 1528, once by Richard Pynson, and again by Robert Redmayne; and that was the nineteenth year of the reign of H. 8. To determine certainly when the Rohan edition was published, is almost impossible; and before any conjectures can be offered on that subject it will be necessary to consider how conclusive the arguments his lordship draws from our author's not being cited as authority in the books he mentions may be; it either proves what his lordship uses it for, or else that Littleton's authority was not then so well established as it is now (for which he gives us here a very good reason): and that this last is true, the aforesaid editions do sufficiently evince, for their titles and conclusions run thus: "Littleton's Tenures, newly and most truly corrected." And in the end, *Explicium Tenores Littletoni cum alterationibus eorundem et additionibus novis, necnon cum aliis non minus utilioribus*: nay, these very additions are incorporated into the book itself, nor are they distinguished by any mark from the original. The weakness of this argument will further appear, if it should be applied to the discovering the time my lord Coke's Commentary on Littleton was first published, for this was not cited as authority for some time after its publication. The old editions above mentioned, Pynson's and Le Talleur's name, and the manner Littleton's printed in at Rohan, seem to be the only means of discovering what we seek. From those editions we may collect, not only that the Rohan impression is older than the year 1528, but also by what occurs in the beginning and end of them, that there had been other impressions of our author. From Pynson's name at the end of the Rohan edition, it may be concluded that he would not have engaged his friend William Le Talleur to have printed Littleton at Rohan, had he ever before printed any books in French; and that he printed an Abridgment of the Statutes, part of which is in French in the year 1499, appears by one of those books now in the same person's custody. Statham's Abridgment has his name to it, but there is no date, yet it being printed with the same types, and in the same manner, Littleton was at Rohan, and as it is a larger book, it is highly probable it was printed some time after the publication of Littleton's Tenures, and that Pynson's success in the lesser undertaking induced him to venture on the greater, which in those days was the work of two or three years. William Le Talleur

He that is desirous to see his picture, may in the churches of Frankley and Hales Owen see the grave and reverend countenance of our author, the outward man; but he hath left this book, as a figure of that higher and nobler part, that is, of the excellent and rare endowments of his mind, especially in the profound knowledge of the fundamental laws of this realm. He that diligently reads this his excellent work, shall behold the child and figure of his mind, which the more often he beholds in the visual line, and well observes him, the more shall he justly admire the judgment of our author, and increase his own. This only is desired, that he had written of other parts of law, and especially of the rules of good pleading, (the heart-string of the common law) wherein he excelled; for of him might the saying of our English poet be verified:

Thereto he could indite and maken a thing;
There was no wight could pinch at his writing:

so far from exception, as none could pinch at it. This skill of good pleading he highly in this work commended to his son, and under his name to all other students sons of his law. He was learned also in that art, which is so necessary to a complete lawyer; I mean of logick, as you shall perceive by reading of these Institutes, wherein are observed his syllogisms,

Talleur printed a Chronicle of the Duchy of Normandy, as appears by his name and cipher at the end thereof, and the date in the beginning in the year 1487. The book itself is printed without any title-page, initial letter of the chapters, number of the leaves or year, and in a character much resembling writing, and with such abbreviations as are used in manuscripts: all which it is well known to those who have seen many old books, are undoubted proofs of a book's being printed when that art was in its infancy. Upon the whole it may certainly be concluded, that the book was printed some years before 1487; because the above-mentioned Chronicle, which hath not so much marks of antiquity, was printed in that year; and from what has been observed concerning the manner it is printed in, it will be thought by those who are versed in ancient books, to have been published ten years before that time. *Note to the 11th Edition.*

gisms, inductions, and other arguments ; and his definitions descriptions, divisions, etymologies, derivations, significations, and the like. Certain it is, that when a great learned man (who is long in making) dieth, much learning dieth with him.

Seneca.

The commendation of his work.

That which we have formerly written, that this book is the ornament of the common law, and the most perfect and absolute work that ever was written in any human science, and in another place, that which I affirmed and took upon me to maintain against all opposites whatsoever, that it is a work of as absolute perfection in its kind, and as free from error, as any book that I have known to be written of any humane learning, shall to the diligent and observing reader of these Institutes be made manifest, and we by them (which is but a Commentary upon him) be deemed to have fully satisfied that, which we in former times have so confidently affirmed and assumed. His greatest commendation, because it is of greatest profit to us, is, that by this excellent work which he had studiously learned of others, he faithfully taught all the professors of the law in succeeding ages. The victory is not great to overthrow his opposites, for there never was any learned man in the law, that understood our author, but concurred with me in his commendation: *Habe enim justam venerationem quicquid excellit*; for whatsoever excelleth hath just honour due to it. Such as in words have endeavoured to offer him disgrace, never understood him and therefore we leave them in their ignorance, and wish that by these our labours they may know the truth and be converted. But herein we will proceed no farther, for *Stultum est absurdas opiniones accuratius refellere*. It is needfully to confute absurd opinions with too much curiosity.

Cicero.

Aristotle.

And albeit our author in his Three Books cites not many authorities, yet he holdeth no opinion in any of them, but

proved

proved and approved by these two faithful witnesses in matter of law, authority and reason. Certain it is, when he raiseth any question, and sheweth the reason on both sides, the latter opinion is his own, and is consonant to law. We have known many of his cases drawn in question, but never could find any judgment given against any of them, which we cannot affirm of any other book or edition of our law. In the reign of our late sovereign lord king James of famous and ever blessed memory, it came in question upon a demurrer in law, *Whether the release to one trespasser should be available, or no to his companion?* Sir Henry Hobart, that honourable judge and great sage of the law, and those reverend and learned judges, Warburton, Winch, and Nichols, his companions, gave judgment according to the opinion of our author, and openly said, that they owed so great reverence to Littleton, as they would not have his case disputed or questioned: and the like you may find in this part of the Institutes. Thus much (though not so much as his due) have we spoken of him; both to set out his life, because he is our author, and for the imitation of him by others of our profession.

Note.

Mich. 3 Jac. in communi banc. inter Cook & Ilnours.

What is endeavoured by these Institutes.

We have in these Institutes endeavoured to open the true sense of every of his particular cases, and the extent of every of the same, either in express words, or by implication; and where any of them are altered by any latter act of parliament, to observe the same, and wherein the alteration consisteth. Certain it is, that there is never a period, nor (for the most part) a word, nor an &c. but affordeth excellent matter of learning. But the module of a preface cannot express the observations that are made in this work, of the deep judgment and notable invention of our author. We have by comparison of the late and modern impressions with the original print, vindicated our author from two injuries: First, from divers corruptions in the late and modern prints, and

restored our author to his own: Secondly, from all additions and encroachments upon him, that nothing might appear in his work but his own*.

The benefit of these Institutes.

Our hope is, **that the young student**, who heretofore meeting at the first, and wrestling with as difficult terms and matter, as in many years after, was at the first discouraged as many have been, may, by reading these Institutes, have the difficulty and darkness both of the matter and of the terms and words of art in the beginning of his study, facilitated and explained unto him, to the end he may proceed in his study cheerfully and with delight; and therefore I have termed them Institutes, because my desire is, they should institute and instruct the studious, and guide him in a ready way to the knowledge of the national laws of England.

Wherefore called Institutes.

Wherefore published in English.

This Part we have (and not without precedent) published in English, for that they are an introduction to the knowledge of the national law of the realm; a work necessary, and yet heretofore not undertaken by any, albeit in all other professions there are the like. We have left our author to speak his own language, and have translated him into English, to the end that any of the nobility or gentry of this realm, or of any other estate or profession whatsoever, that will be pleased to read him and these Institutes, may understand the language wherein they are written.

Regula.

I cannot conjecture that the general communicating of these laws in the English tongue can work any inconvenience, but introduce great profit, seeing that *Ignorantia juris non excusat*,

* In this Edition several material passages of the author are restored, by collating the text as published by lord Coke with the more ancient printed copies by Letton and Machlinia, Pynson, Redman, &c. as also with several ancient MSS.

excusat, Ignorance of the law excuseth not. And herein I am justified by the wisdom of a parliament; the words whereof be, "**That the laws and customs of this realm the rather** 36 E. 3. cap. 5
 " **should be reasonably perceived and known, and better**
 " **understood by the tongue used in this realm**, and by so
 " much every man might the better govern himself without
 " offending of the law, and the better keep, save and defend
 " his heritage, and possessions. And in divers regions and
 " countries where the king, the nobles, and other of the said
 " realm have been, good governance and full right is done
 " to every man, because that the laws and customs be learned
 " and used in the tongue of the country:" as more at large
 " the said act, and the purview thereof may appear: *Et Regula.*
neminem oportet esse sapientiores legibus, No man ought to
 be wiser than the law.

And true it is, that our books of reports and statutes in ancient times were written in such **French** as in those times was commonly spoken and written by the French themselves. But this kind of French that our author hath used, is most commonly written and read, and very rarely spoken, and therefore cannot be either pure, or well pronounced. Yet the change thereof (having been so long customed) should be without any profit, but not without great danger and difficulty: for so many ancient terms and words drawn from that legal French are grown to be *vocabula artis*, vocables of art, so apt and significant to express the true sense of the laws, and are so woven in the laws themselves, as it is in a manner impossible to change them, neither ought legal terms to be changed.

Our author's kind of French.

In school divinity, and amongst the glossographers and interpreters of the civil and canon laws, in logick, and in other liberal sciences, you shall meet with a whole army of words, which cannot defend themselves *in bello grammaticali*,

36 E. 3. ub. supra.

the grammatical war, and yet are more significant, compendious, and effectual to express the true sense of the matter, than if they were expressed in pure Latin.

Wherefore called the First Part.

This work we have called, "The First Part of the Institute, for two causes: First, for that our author is the first book that our student taketh in hand: Secondly, for that there are some other Parts of Institutes not yet published, viz. The Second Part, being a Commentary upon the statute of *Magna Charta*, Westm. 1, and other old statutes. The Third Part treateth of criminal causes and pleas of the crown: which Three Parts we have by the goodness of Almighty God already finished. The Fourth Part we have purposed to be of the jurisdiction of courts: but hereof we have only collected some materials towards the raising of so great and honourable a building. We have, by the goodness and assistance of Almighty God, brought this twelfth work to an end: in the Eleven Books of our Reports we have related the opinions and judgments of others; but herein we have set down our own.

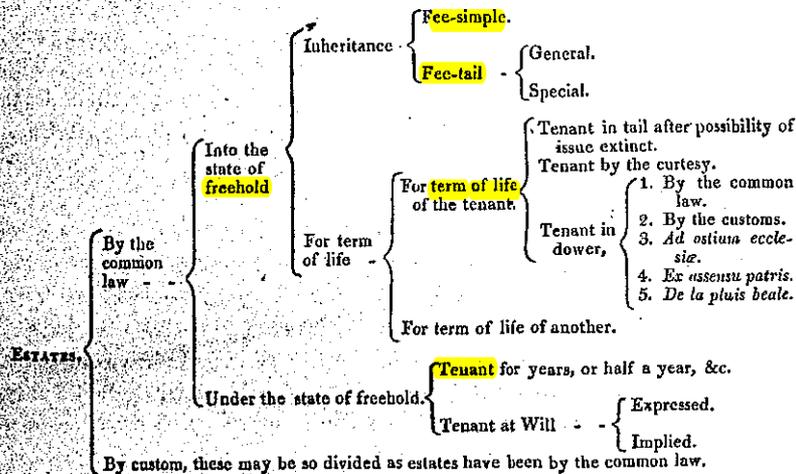
Before I entered into any of these Parts of our Institutes, I, acknowledging mine own weakness and want of judgment to undertake so great works, directed my humble suit and prayer to the Author of all goodness and wisdom, out of the Book of Wisdom; *Pater et Deus misericordiae, da mihi fedium tuarum assistricem Sapientiam! Mitte eam de caelis sanctis tuis et à sede magnitudinis tuae, ut mecum sit et mecum laboret, ut sciam quid acceptum sit apud te!* "O Father and God of "mercy, give me wisdom, the assistant of thy seats! O "send her out of the holy heavens, and from the seat of "thy greatness, that she may be present with me, and "labour with me, that I may know what is pleasing unto "thee." *Amen.*

Lib. Sap. cap. ix. vers. 4. 10.

Our

Our author hath divided his whole work into Three Books. In his First he hath divided estates in lands and tenements, in this manner: for *res per divisionem melius aperiuntur.* Bracton.

A FIGURE of the DIVISION of POSSESSIONS.



Our author dealt only with the estates and terms above-said; somewhat we shall speak of estates by force of certain statutes, as of statute-merchant, statute-staple, and *elegit*, (whereof our author intended to have written) [*] and likewise to executors to whom lands are devised for payment of debts, and the like.

[*] See the first remark to the Preface.

I shall desire, that the learned reader will not conceive any opinion against any part of this painful and large volume, until he shall have advisedly read over the whole, and diligently searched out, and well considered of the several authorities, proofs and reasons which we have cited and set down for warrant and confirmation of our opinions throughout this whole work.

Regula. Incivile est parte una perspecta, tota re non cognita, de ea judicare.

Mine

Mine advice to the student is, that before he read any part of our Commentaries upon any Section, that first he read again and again our author himself in that Section, and do his best endeavours, first of himself, and then by conference with others, (which is the life of study) to understand it, and then to read our Commentary thereupon, and no more at any one time than he is able with a delight to bear away, and after to meditate thereon, which is the life of reading. But of this argument we have, for the better direction of our student in his study, spoken in our Epistle to our First Book of Reports.

And albeit the reader shall not at any one day (do what he can) reach to the meaning of our author, or of our Commentaries, yet let him no way discourage himself, but proceed; for on some other day, in some other place, that doubt will be cleared. Our labours herein are drawn out to this great volume, for that our author is twice repeated, once in French, and again in English.

ANALYSIS of LITTLETON.

FEBRUARY 21, 1658—9.

Synopsis totius Littleton Analyticè.

LITTLETON'S TENURES
May be divided into Two Parts, scilicet,

Titles of	Land of freehold.	Estates of	Inheritance	By the common law, as Fee Simple, Book I. Chap. 1.					
				By statute, as					
		Freehold by	The act of law; tenant	By the Curtesy	-	4.			
				In Dower	-	5.			
		Agreement between party and party; as	Tenant for Life	-	6.				
			Reason of mixture with other possessions, scilicet by	1 Descent, Parcenary, Book III, Ch. 1, 2.					
		Certain qualifications of estates by	other accidents tending to	Ratifying of estates by the act of	Law itself.	strengthens the estate already established, as		Remitter 12	
						Parties	Intituled by right.	by adding a surer and better title thereunto, as	
				The destruction of estates by	Discontinuance of a right			Interested in the possession, as	
						Continuance of a wrong; the	Attornment		Confirmation 9
Either, according to the performances or non-performances thereof, as	Conditions			means how by descent			11		
				means how to prevent it by continual claim		7			
Chattel.	Tenures, scilicet the services which are as it were the bond betwixt the lord and tenant, whereby lands are held to			Reall. Personall.	Certain, Tenant for years			I. 7.	
						Uncertain, Tenant at will.			8, 9, 10.
				The King only, as	Spiritual, Frankalmoinage	Grand Serjeanty		II. 8.	
						Petit Serjeanty		9.	
		Other lords also of these tenements, which are	Bodies	Homage	not continued in the line continued in the line of the lord and tenant, called Homage Ancestrell		1.		
					Fealty			2.	
		Tempo-ral, to be performed by their	Goods	generally throughout the realm	Socage	5.			
					Rents	12.			
		Both these tenants bring	Fees	Escuage			3.		
					Knights Service			4.	
		Bond Villenage		11.					

THE
FIRST PART
OF THE
INSTITUTES
OF THE
LAWS OF ENGLAND.

Chap. 1.

Fee simple.

Sect. 1.

[1.] *TENANT in fee simple is he which hath lands or tenements*
 [a.] *to hold to him and his heires for ever. And it is called in*
Latin, feodum simplex, for feodum is the same that inheritance
is(1), and simplex is as much as to say, lawfull or pure. And
so feodum simplex signifies a lawfull or pure inheritance. Quia feodum
idem est quò hæreditas, et simplex idem est quod legitimum vel purum.
Et sic feodum simplex idem est quodd hæreditas legitima, vel hæreditas
pura. For if a man would purchase lands or tenements in fee simple, it
behooveth

(1) Sir Thomas Smith and Dr. Cowell find fault with Littleton for this explanation of *fee*; but without the least reason. Though *fee*, in its general acceptation, signifies *land holden, as distinguished from land allodial*; yet in our law, it is most frequently used in a particular sense, to denote the quantity of estate in land, which is *always* the sense of the word when we say, that one is *tenant or seised in fee*. Therefore Littleton is not *merely* justified in writing, that *fee is the same as inheritance*; for if in describing who is *tenant in fee simple*, he had explained the word otherwise, he would have misled the student. The censure of Littleton would have been spared, if the difference between attempting to give the etymology of *fee* and its general sense, and professing only to explain a particular use of the word, had been attended to. See *Smith's Commonwealth of Engl.* b. 3. c. 10. *Cow. Interp.* verbum *Fee*, and *Wright's Ten.* 149. In this last book Littleton is well defended. Lord Coke's comment on *fee* is very full to the same purpose. See post. 1. b.

behooveth him to have these words in his purchase, To have and to hold to him and to his heires: for these words (his heires) make the estate of inheritance. For if a man purchase lands by these words, To have and to hold to him for ever; or by these words, To have and to hold to him and his assignes for ever: in these two cases he hath but an estate for term of life, for that there lacke these words (his heires), which words onely make an estate of inheritance in all feoffments and grants.

Vide Sect. 85. "**TENANT;**" in Latin *tenens*, is derived of the verbe *teneo*, and hath in the law five significations. 1. It signifies the estate of the land: as when the tenant, in a *præcipe* of land, pleads *quod non tenet*, &c. this is as much as to say, that he hath not seisin of the freehold of the land in question. And in this sense doth our author take it in this place: and therefore he saith, tenant in fee simple is he which hath lands to hold to him and his heires. 2. It signifieth the tenure or the service whereby the lands and tenements be holden; and in this sense it is said in the writ of right, *quæ clamat tenere de se per liberum servitium*, &c. And in this signification he is called a tenant or holder; because all the lands and tenements in England, in the hands of subjects, are holden mediately or immediately of the king (1). For in the law of England we have not, properly, *allodium*, that is, any subjects land that is not as it is holden; unless you will take *allodium* for *ex solido*, often taken in the Booke of *Domesday* (2): and tenants in fee simple are there called *alodarii* or *alotarii*. And he is called a tenant, because he holdeth of some superior lord by some service. And therefore the king in this sense cannot be said to be a (3) tenant, because he hath no superior but God Almighty; *prædium domini regis est directum dominium, cuius nullus auctor est nisi Deus*. And, as Bracton saith, *Omnes quidem sub eo, et ipse sub nullo, nisi tantum sub Deo*. The possessions of the king are called *sacra patrimonialia*, and *dominica coronæ regis*. But though a subject hath not properly *directum*, yet hath he *utile dominium*. Of these tenants our author speaketh in his second booke. 3. Also, *tenere* signifieth performance, as in the writ of covenant, *quod tenet conventionem*, that is, that he hold or performe his covenant. 4. And likewise it signifieth to be bound, as it is said in every common obligation, *teneri et firmiter obligari*. Lastly, It signifieth to deeme or judge; as in 38 E. 3. c. 4. it shall be holden for none; (that is) judged or deemed for none; and so we commonly say, it is holden in our bookes. And these several significations doe properly belong to our tenant in fee simple. For he hath the estate of the land, he holdeth the land of some superiour lord, and is to perform the services due, and thereunto

6 H. 7. 12.
13 E. 3. 35.
24 E. 3. 65, 66.
44 E. 3. 5.
48 E. 3. 9.
(2 Inst. 501.)
(4 Inst. 192.)
(12 Co. 9. Case of Stammeries)
Mir. des Just.
c. 1. sect. 3.
Customs de Normandy, cap. 28.
Le. st. de 16 R.
2. cap. 5.
14 Ed. 7. 313.
2. 1 Co. 47, in Alton Wood's case.
(Cro. Chn. 82.)
Bract. lib. 1.
cap. 8.

[1.]
[b.]

(1) Same doctrine, 50 Ass. pl. 1. post. 65. Plowd. 408. The origin and principle of this doctrine is well explained in Wright's Ten. 58, and 2 Blackst. Comm. 48. ed. 5. See also Wright's Ten. 137, and Mad. Baron. Anglic. 25.
(2) See post. 5. a. For particulars concerning *Domesday* Book, see the books cited in Wright's Ten. 56, in note p. and also an Account of *Domesday* Book, and an Account of Danegeld, both printed by order of the Antiq. Soc. in 1756.
(3) For examples and consequences of this doctrine, see Dy. 154. Plowd. 212. post. 16. a. 6 Co. 5. b. Finch, fol. cd. 7. 2. Ro. Abr. 513, 514. Post. 2. b. n. 4.

(4) For

thereunto he is bounden by doome and judgement of law. Of the severall estates of land our author treateth in his first booke: and beginneth with fee simple, because all other estates and interests are derived out of the same.
(4 Inst. 202.) *Domesday. Mir. des Just. cap. 2. sect. 15. 17.*

"**Fee simple.**" Fee (4) commeth of the French *ief*, (i. e.) *prædium beneficiarium*, and legally signifieth inheritance, as our author himselfe hereafter expoundeth it. And simple is added, for that it is descendible to his heires generally, that is, simply, without restraint to the heires of his body, or the like. *Feodum est quod quis tenet ex quacunque causâ sive sit tenementum, sive redditus, &c.* In *Domesday* it is called *feodum*. [a] Of fee simple, it is commonly holden that there be three kinds, viz. fee simple absolute, fee simple conditionall, and fee simple qualified, or a base fee (5). But the more genuine and apt division were to divide fee, that is, inheritance, into three parts, viz. simple or absolute, conditionall, and qualified or base. For this word (simple) properly excludeth both conditions and limitations, that defeat or abridge the fee. * Hereby it appeareth, that fee in our legall understanding signifieth, that the land belongs to us and our heires, in respect whereof the owner is said to be seised in fee; and in this sense the king is said to be seised in fee. [b] It is also taken as it is holden of another by service, and that belongeth onely to the subject; *Item dicitur feodum alio modo ejus qui alium feoffat, et quod quis tenet ab alio, ut si sui quæ dicat, talis tenet de me tot feoda per servitium militare*. And Fleta saith, *Poterit unus tenere in feodo quoad servitia, sicut dominus capitalis, et non in dominico; aliis in feodo et dominico, et non in servitio, sicut liberè tenens alicujus*. [c] And therefore if a stranger claim a seigniory, and distreyne and avow for the service, the tenant may plead, that the tenancy is *extra feodum*, &c. of him, (that is) out of the seigniory, or not holden of him that claimeth it; but he cannot plead *extra feodum*, &c. unlesse he take the tenancy, that is, the state of the land upon him. Of fee in the first sense our author treateth in this first booke; and as it is taken in the second sense, in his second booke; and of the third you shall read in our author, Sect. 13. 643, 644, 645, and plentifully in our books quoted in the margin.

Hors de son fee, 28. 28 Ass. 41. 7 H. 4. 30. 2 H. 6. 1. (9 Co. 20, 296. Cro. Jam. 127. Hob. 108. Doctr. Plac. 132. 216.)

"**Lands or tenements.**" Here it is to be observed, that a man may have a fee simple in three kinds of hereditaments, (6) viz. reall, personall, and mixt. Reall, as lands and tenements, whereof our author here speaketh. Personall, as king Edward the first, in the thirteenth yeare of his raigne, *concessit Edmundo fratri suo charissimo, quod ipse et hæredes sui habeant, ad requisitionem suam in cancellariâ nostrâ et hæredum nostrorum, justiciarios*

(4) For the derivation of the word *Fee*, see Wright's Ten. 3, and the books there cited.
(5) See the same division of fee in 10 Co. 97. b. 2 Inst. 96. Vaugh. 273. 2 L. Raym. 1148; and for instances of a qualified fee, see post. 27. Plowd. 557. 10 Co. 97. 7 E. 4. 12. a. Cro. Ch. 430. Hardr. 147.
(6) For the extent of the word *hereditament*, and the difference between that and *tenement*, see post. 6. a.

Brit. fo. 83.
207, 208.
Fleta, lib. 5. cap. 5. & lib. 3. cap. 8.
Bract. lib. 4. 263.
Bract. lib. 2.
cap. 5. 6, 7.
Brit. cap. 34.
fo. 89.
Flet. lib. 3. cap. 2. 8, & 9. & lib. 5. cap. 5.
[c] Bract. fo. 263. & 207.
Pl. Com. in Wils. Cas.
7 H. 4. 46.
8 H. 4. 15.
27 Ass. 33.
18 Ass. 5.
18 E. 3. 46.
24 E. 3. 26.
9 E. 4. 18.
16 H. 7. 4.
10 E. 3. Account 56. 22
R. 2. Disc. 50.
12 E. 4. 3.
15 E. 4. 8. Dy.
8 El. 253, 253-
12 H. 8. 8.
4 H. 7. 2. The case of a person which hath a qualified fee, see in the title of Desc.
* Vide Sect. 4.
[b] Bract. lib. 4. fo. 263.
Flet. lib. 5. cap. 5.
Brit. fo. 205, 207.
[c] 2 Ass. p. 4. 12 Ass. 28.
12 E. 3. tit. & 34. b. 2 Inst.

Rot. pat.
13 E. 1.
(4 Inst. 314.
Cro. Ja. 155.)

justiciarios & ad placita forestarum, quas idem frater noster habet ex dono domini regis Henrici patris nostri, secundum assis. forestæ tenend,' &c. In this case the grantee and his heirs had a personall inheritance in making of a request to have letters patents of commission to have justices assigned to him to heare and determine of the pleas of the forests, and concerneth neither lands or tenements. And so it is if an annuity be granted to a man and his heirs, it is a fee simple personall: (1) *et sic de similibus.* And lastly, hereditaments mixt both of the realty and personalty. As the abbot of Whitbye in the county of Yorke having a Forrest of the gift of William of Percie founder of that abby, and by the charters of king John and of other his progenitors, king Henry the third did grant *abbati et conventui de Whitbye, quod ipsi et eorum successores in perpetuum habeant viridarios suos proprios de libertate sua de Whitbye eligend' de cætero in pleno com. Eborum, prout moris est, ad responsiones et præsentationes faciend' de transgressionibus, quas amodo fieri continget de venatione intra metas forestæ suæ de Whitbye, quam habent ex donatione Willi. de Percey et Alani de Percey filii ejus, et redditione et concessione domini Johannis quondam regis Angliæ patris nostri, et confirmatione nostrâ, coram justiciariis nostris itinerantibus ad placita forestæ in partibus illis et non alibi, sicut viridarii forestæ nostræ hujusmodi responsiones et præsentationes facere debent, et consueverunt. Et si contingat aliquos forensecos, qui non sunt de libertate prædictorum abbatis et conventûs, transgressionem facere de venatione intra metas forestæ prædictæ, quos prædicti viridarii attachiare non possunt, Volumus et concedimus pro nobis et hæredibus nostris quod hujusmodi transgressores per justiciarios forestæ nostræ ultra Trentam attachientur, ad præsentationem viridariorum prædict. ad respondendum inde coram justiciariis nostris itinerantibus ad placita forestæ nostræ in partibus illis, cum ibid. ad placitandum venerint prout secundum assisam et consuetudinem forestæ nostræ fuerint faciend'.* Which charter was pleaded upon the claime made by the abbot of Whitbye before Willoughby, Hungerford, and Hanbury, justices in eire in the Forrest of Pickering, which eire began anno 8 E. 3. And these before them were allowed. And when the king created an earl of such a county or other place, to hold that dignity to him and his heirs, this dignity is personall, and also concerneth lands and tenements. (2) But of this matter more shall be said in the next Chapter, Sect. 14, and 15.

Bract. lib. 4. cap. 9. fo. 263. Brit. cap. 32, & 79. For interpretation of words and etymologies, vid. Sect. 9. 13. 95. 116. 119. 135.

"And it is called in Latin, *feodum simplex*, for *feodum* is the same that inheritance is." Here Littleton himselfe teacheth the signification of *feodum*, according to that which hath been said, which only is to be applied to fee simple pure and absolute. And this and all his other interpretations of words and etymologies throughout all his three bookes (wherein the studious reader will observe many) are perspicuous and ever *per notiora, et nunquam ignotum*

(1) An annuity of inheritance is held to be forfeitable for treason as an hereditament, 7 Co. 34. b. yet being only personal, it is not an hereditament within the statute of mortmain of the 7 E. 1. st. 2, nor is it intailable within the statute de donis. See post. 2. a. b. & 20. a.

(2) Therefore such dignity has been adjudged to be intailable within the statute de donis. See post. 20. a.

(3) For

ignotum per ignotius; and are most necessary, for ignoratis terminis ignoratur et ars.

154. 164. 174. 184. 186. 194. 204. 234. 267. 268. 332. 337. 424. 520. 592. 645. 689. 733.

"Simplex is as much as to say, lawfull or pure." Hereof he treateth onely in this place. And Littleton saith well, that *simplex idem est quodd purum. Simplex enim dicitur quia sine plicis; et purum dicitur, quod est merum et solum sine additione. Simplex donatio et pura est, ubi nulla addita est conditio sive modus; simplex enim datur, quod nullo additamento datur.*

Bract. lib. 2. cap. 39. fo. 52. 62. b. lib. 4. cap. 28. Fleta. lib. 3. cap. 8. Bract. lib. 2. cap. 5. &c. Britt. cap. 34.

"A lawfull or pure inheritance." And therefore it is well said, *quod donationum alia simplex et pura, quæ nullo jure civili vel naturali cogente, nullo precedente metu vel interveniente, ex mera gratuitâque liberalitate donantis procedit, et ubi nullo casu velit donator ad se reverti quod dedit; alia sub modo, conditione, vel ob causam, in quibus casibus non proprie fit donatio, cum donator il ad se reverti velit, sed quædam potius feodalis dimissio; alia absoluta et larga; alia stricta et coarctata, sicut certis hæredibus, quibusdam à successione exclusis, &c.* And therefore seeing fee simple is *hæreditus legitima vel pura*, it plainly confirmeth that the division of fee is by his authority rather to be divided as is aforesaid than fee simple. And he saith well in the disjunctive, *legitima vel pura*, for every fee simple is not *legitimum*. For a disseisor, abator, intruder, usurper, &c. have a fee simple, but it is not a lawfull fee. So as every man that hath a fee simple, hath it either by right or by wrong. If by right, then he hath it either by purchase or descent. If by wrong, then either by disseisin, intrusion, abatement, usurpation (3), &c. In this Chapter he treateth onely of a lawfull fee simple, and divideth the same as is aforesaid.

Fleta. lib. 3. ca. 3. Plowd. 58. b.

"For if a man purchase." Persons capable of purchase are of two sorts, persons natural created of God, as *I. S. I. N. &c.* and persons incorporate or politique created by the policy of man (and therefore they are called bodies politique); and those be of two sorts, viz. either sole, or aggregate of many: again, aggregate of many, either of all persons capable, or of one person capable, and the rest incapable or dead in law, as in the Chapter of Discontinuance, Sect. 655, shall be shewed. Some men have capacite to purchase, but not abilitie to hold: some capacity to purchase, and ability to hold or not to hold, at the election of them or others: some, capacite to take and to hold: some, neither capacite to take nor to hold: and some, specially disabled to take some particular thing.

Persons capable of purchase.

Who have ability to grant. Vide Sect. 57.

11 Eliz. Dier. 282. 11 H. 4. 29, & 26. 7 E. 4. 29. (1 Ro. Abr. 194.)

If an alien Christian or infidel purchase houses, lands, tenements, or hereditaments to him & his heirs, albeit he can have no heirs, yet he is of capacite to take a fee simple (1) but not to hold

This representative excerpt, a courtesy of Duhaime.org | Learn Law, ends here.