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.

Quod te vasa fuerant misere huilibra charta?  
Hoc lege, quod possis dicere jure meum est.  
Maior haresius vel unicum nostrum jure et legibus, quam a parentibus.

HAEC EGO GRANDIANUS POSUI TIBI, CANDIDE LECTOR,

AUTHORIB EDWARDO 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 1653-9.

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.
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.

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.

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 engrailed gules, bezanty:

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 Littleston. These two had issue four sons, Thomas, Nicholas, Edmund, and Guy, and four daughters.

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, 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 civilains 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 by enjoyment fruitful and opulent inheritances thereby.

He was of the Inner Temple, and read learnedly upon the statute of W. 2. De donis conditionibis, which we have he was afterwards called ad statum et gradum 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. 5., his sejant, and rode justice of assise the Northern Circuit, which places he held under King E. 4. until he, in the sixth 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.

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 of the tenant by elegie, statute-merchant, and staple, were in the table of the first printed book, and yet he never wrote of them."


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

Our author bore his mother's surname.

Camden. "The just shall flourish like the palm- tree, and spread abroad like the cedar in Lebanon." Psal. xcv. 12.

The best kind of quartering of arms.
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 Maidment, men famous (amongst many others) in their 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 associates, I must ingenuously confess, that in her life 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 brance thereof, since Almighty God gathered her to his rest, 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 roseal beauty also, heir to both.

And though we wish by our labours (which are but canabili logis, 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
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 William Dugdale, in his Origines Juridiciose, and by bishop Nicholas 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 Redmanyn; 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 are such as these: "Littleton's Tenures, newly and most truly corrected." And in the end, Excerpta Tenuris Littletoni cum alterationibus corrigendis et additis suis, necnon cum alius non minus utilissibus: may, these very additions are incorporated into the book itself, nor are they distinguished by an 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 is printed in at Rohan, seem to be the only means of discovering what we seek. From these editions we may collect, not only that the Rohan impression is older than the year 1528, but also 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 have engaged his friend William Le Talleur to have printed Littleton at Rohan, had he ever before printed any books in French; as that he printed an Abridgment of the Statutes, part of which is in French, in the year 1499, appears by one of these 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 type; 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.

THE PREFACE.

He that is desirous to see his picture, may in the churches of Frankley and Hales Owen see the grave and reverend endowments 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 visible 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:

There he could induce and make a thing:

There was no might 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 commendeth 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 charter, number of the leaves or year, and in a character much resembling writing, and with such abbreviations as are used in manuscripts: all which 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.

PREFAE.
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 assumed to be of absolute perfection in its kind, and as free from error, as any book that I have known to be written of humane learning, shall to the diligent and observing reader of these Institutes be made manifest, and we by them satisfied that, which we in former times have so confirmed and assumed. His greatest commendation, it is of greatest profit to us, that by this excellent work of which he had studiously learned of others, he taught all the professors of the law in succeeding ages. The victory is not great to overthrow his opposites, for never was any learned man in the law, that understood 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.

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 consists. 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 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.

What is endeavoured by these Institutes.
restored our author to his own: Secondly, from all additions and encroachments upon him, that nothing might appear in his work but his own.

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 instruct the studious, and guide him in a ready way to the knowledge of the national laws of England.

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.

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, 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 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 by the said act, and the purview thereof may appear: Et Regula, 

Our author's kind of French.

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 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, to 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.

In school divinity, and amongst the glossographers and interpreters of the civil and canon laws, in logick, and in
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 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 to be of the jurisdiction of courts: but hereof we have collected some materials towards the raising of so honourable a building.

Before I entered into any of these Parts of our Institutes, I, acknowledging mine own weakness and want 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 assiduam Sapientiam! Mitte eam de calis sanctis tuis et a 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.

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 aperientur. 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.

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. Invidia est parle una perspecta, tota re non cognita, de ea judicata.
THE PREDACE.

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

Chap. 1. Fee simple. Sect. 1.

TENANT in fee simple is he which hath lands or tenements to hold to him and his heirs 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 quod hæreditas, et simplex idem est quod legitimum vel purum. Et sic feodum simplex idem est quod hæreditas legitima, vel hæreditas pura. For if a man would purchase lands or tenements in fee simple, it beloneth

(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 alodial; 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. Vol. I.

beloneth him to have these words in his purchase, To have and to hold to him and to his heirs: for these words (his heirs) 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 assigns for ever: in these two cases he hath an estate for term of life, for that there lacketh these words (his heirs), which words only make an estate of inheritance in all feoffments and grants.

Vide Sect. 85.

"TENANT," in Latin tenens, is derived of the verb tenere, and hath in the law five significations.

1. It signifies the estate of the land; as when the tenant, in a precise of land, pleads quod non tenet, &c. this is as much as to say, that he hath not seizin 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 heirs. 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, quod clamat tenere de se per liberum servitium, &c. (2) In the signification he is called a tenant or holder; because all the lands and tenements in England, in the hands of subjects, are held mediately or indirectly of the king (1). For in the law of England we have 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 Book of Domesday (2): and tenants in fee simple are there called allodarii or alodarii. 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; and that dominus regis est directum dominium, causas nullas author est nisi Deus, and no Bracton saith, Omnes quidem sub eo, et ipse sub nullo, nisi tanti sub Deo. The possessions of the king are called sacra patrimonium, and dominii causerum regis. But though a subject hath not properly directum, yet hath he utile directum. Of these tenants our author speaketh in his second booke. 3. Also, tenere signifieth performance, as in the writ of contract, quod tenor contractum est, that is, he hold or perform his covenant. 4. And likewise it signifieth to be bound, as it is said in every common obligation, teneri et fermitur obligari. Lastly, it signifieth to demne 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 books. And these several significations do properly belong to our tenant in fee simple. For he hath the estate of the land, he holdeth the land of some superior lord, and is to perform the services due, and therefore

Thereunto he is bound by doome and judgment of law. Of the several 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.


"Fee simple." Fee (4) commeth of the French feud, i.e. prae
dium beneficiarium, and legally signifieth inheritance, as our author himself hereafter expoundeth it. And simple is added, for that it is descendible to his heirs generally, that is, simply, without restraint to the heirs of his body, or the like. Feodum est quod tenet ex quiete causa teneitum, sive tenementum. And in Domesday it is called feudum. (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, or conditionall, or qualified and base. For this word (simple) properly excepteth both conditions and limitations, that defeat or abridge the fee. * Hereby it appeareth, that fee in our legal understanding signifieth, that the land beloneth to us and our heirs, 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 solely to the subject. Item dictor feudum alieno modo ejus qui alienum feogat, et quod quis tenet ab alio, ut si sit qui dicit, tali tenenteске me tot feoda per servitium militarum. And Fleta saith, Potest quis tenere in feodo servitium militarum, sicut dominus capitall, et non in dominio; nisi in feodo et dominico, et non in servitio, sicut liber tenens alicuius. (c) And therefore if a stranger claim a seigniory, and distress and awer for the service, the tenant may plead, that the tenancy is extra feudum, &c. of him, (that is) out of the seigniory, or not holden of the landlord that claimeth it; he may not plead extra feudum, &c. unless he take the tenancy, that is, the state of the land upon him. Of fee in the first sense our author treateth in his first book: and as it is taken in the second sense, in his second book; and of the third you shall read in our author, Sect. 13. 643. 644. 645, and plentifully in our books quoted in the margin.

For the derivation of the word Feod see Wright's Ten. 3, and the books there cited.

(4) See the same division of fee in 10 Co. 97. 6. 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. Hardw. 147.

(5) For the extent of the word hereditament, and the difference between that and tenement; see post. 6. a.

(1) And
2. a.]

Of Fee simple. L. I. C. I. Sect. 1.

justiciarii ad placita forestarum, quas idem frater noster habet ex domo domini regis Henrici patriis nostri, secundum assis, forestas tenens;[44] in this case the grantee and his heirs had a personal inheritance in making of a request to have letters patents of commission to have justices assigned to him to hear 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 personal: (1) et sic de similibus. And lusty, heredities mix both of the reality and personality. As the abbot of Whitby in the county of York having a forest of the gift of William of Pencis founder of that abby, and by the charters of king John and of other his progenitors, king Henry the third did grant and confirm to Whitley quod et conuenisse in perpetuum habendi viridarios suas proprias de libertate suâ de Whitley eligiunt de catena in pleno com.Eorundem, prout moris erat, ad responsiones et presentationes faciendo de transgressionibus, quas anno fere contiguæ de venatione intra metas forestarum suæ de Whitley, quam habent ex donationi Willi. de Percey et Alani de Percey filii ejus, et redditione et concessione domini Johannis quondam regis Angliae patriis nostris, et confirmatione nostrâ, coram justiciariis nostriis itinerantibus ad placita forestarum in partibus illis et non aliis, sicuti viridarius forestae suas hujusmodi responsiones et presentationes facere debent, et conuenirent. Et si continent aliqua foresessio, qui non sunt de libertatem predictorum abbatis et conventus, transgressionem facere de venatione intra metas forestarum predictae, quas predicti viridarios attacchare non possunt. Volumus et concedimus pro nobis et hereditatis nostri quod hujusmodi transgressore per justiciarios forestae nostræ ultra Tresplanat attachment, ad præstaminion viridarium predictam, et respondentem inde coram justiciariis nostriis itinerantibus ad placita forestarum nostro in partibus illis, cum bibi, ad placitandum veniret prout secundum assisam et consuetudinem forestae nostræ fuerint faciendo. Which charter was pleaded upon the claim made by the abbot of Whitley before Willoughby, Hungerford, and Hanbury, justices in cire in the forest of Pickering, which cire began anno 8 E. 3. And these before them were allowed. And when the king created an emul of such a county or other place, to hold that dignity to him and his heirs, this dignity is personal, and also concerneth lands and tenements. (2) But of this matter more shall be said in the next Chapter, Sect. 14. and 15.

(7. Ca. 33.)


For interpretation of words and etymologies, vide Sect. 10. 16. 105. 116. 119. 123.

And it is called in Latin, feudum simplex, for feudum is the same that inheritance is. Here Littleton himself teacheth the signification of feudum, 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 books (wherein the studious reader will observe many) are perspicuous and ever per notoria, et nequaquam ignorant

2. a. 3. b.


ignotum per ignotum; and are most necessary, for ignorantis terminis ignorantur et ars.

A lawfull or pure inheritance. And therefore it is well said, quod donum omnium aliud fee est pura, quae nullo jurie civili vel admin. super. nullo praecedente metu vel interveniente, as mere gratuitique liberitatis donantis procedit, et nullu causa vel donator ad se revertit quod dat; alia sub modo, conditione, vel ob causam, in quibus causis non propriis fit donatione, eam donantem liberitatis donantis procedit, alia absoluta et larga; alia stricta et coercetata, sicuti hervedinis, quibusdam a successione excusis, &c. And therefore seeing fee simple is hereditatis 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 legitim. 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 disseision, inquisition, abolition, usurpation (3), &c. In this Chapter he treateth only of a lawfull fee simple, and divideth the same as is aforesaid.

For if a man purchase. Persons capable of purchase are of two sorts, persons natural created of God, as L. S. I. N. &c. and persons incorporate or politic created by the policy of man (and therefore they are called bodies politic); and those be of two sorts, viz. either sole, or aggregate of many: as, 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 sheweth. Some men have capacity to purchase, but not ability to: some men have capacity to purchase, and ability to hold or not to hold, at the election of them or others: some, capacity to take and to hold; and some, neither capacity to take nor to hold: and some, specially disabled to take some particular thing.

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

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