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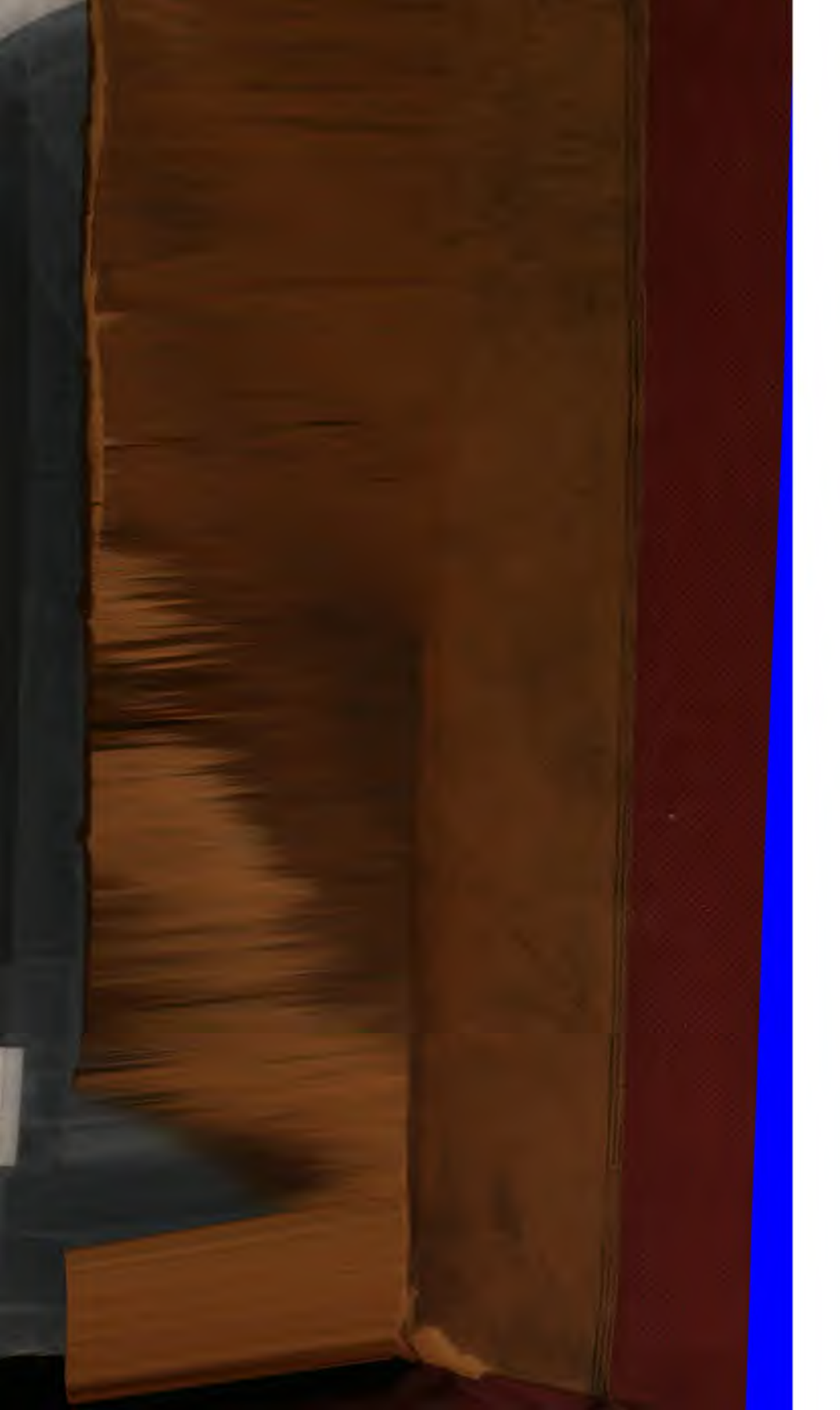
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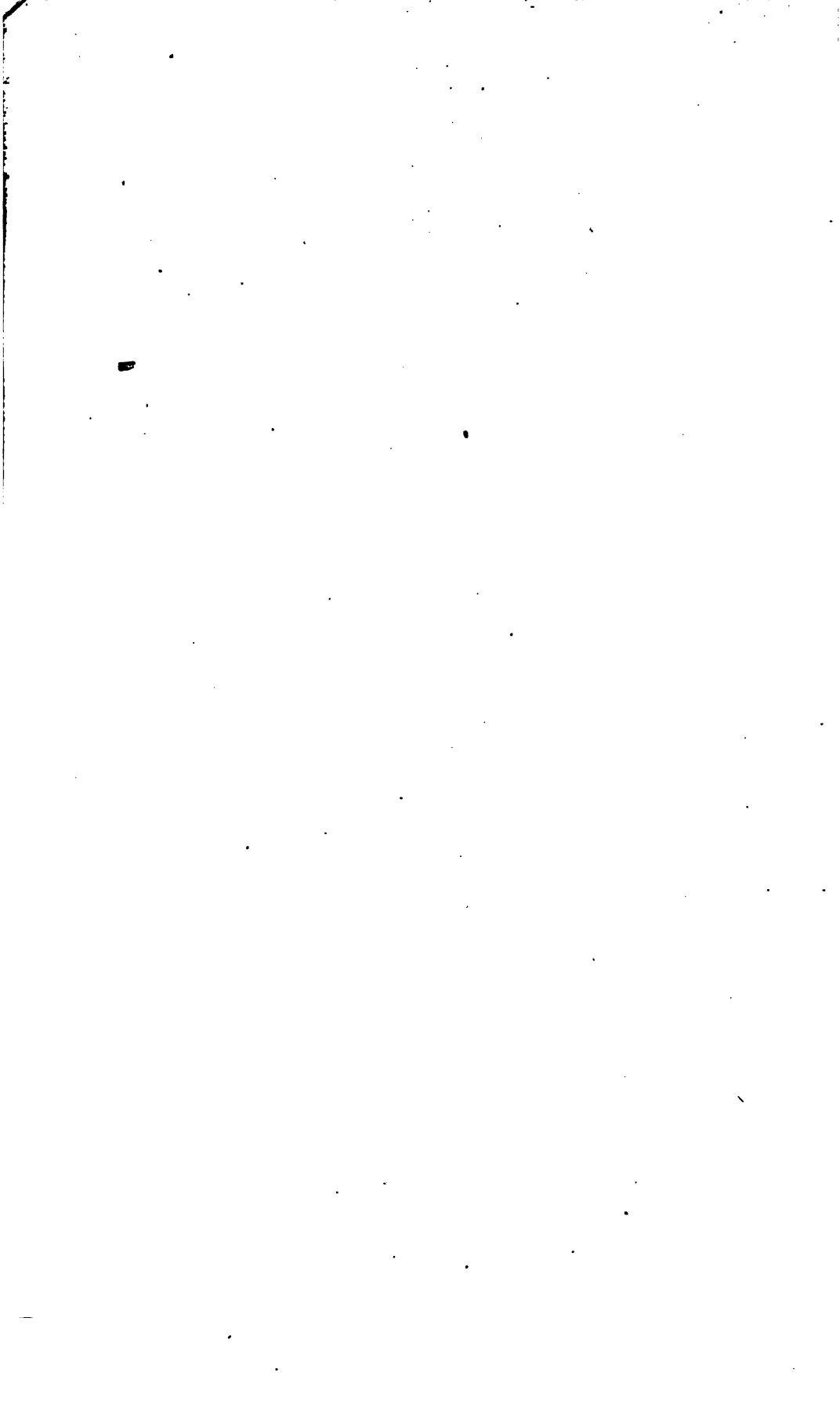


ADVERTISEMENT.

THE Author designs to publish occasionally a short report of any new cases which may be decided in relation to copyhold, customary freehold, or ancient demesne tenure, or the jurisdiction of courts baron or courts leet; and to refer in each report to the corresponding text in the present work.

It is also in the contemplation of the Author to submit for the adoption of stewards of manors, (where no established custom prevails,) a list of fees, which, in reference to the few decisions in the courts of law on that subject, and to the more general practice, gathered from a variety of cases, and several references that have been under the author's consideration, may appear to him to be calculated to prevent the too frequent questions raised with respect to the charges made by stewards on the admittance of new tenants. And in furtherance of this object the Author invites any communications which stewards of manors may be disposed to make to him.

TRINITY VACATION,
1834.



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ADDENDA.

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718. n. (g) *add* "The honor of *Knarebrough* in Yorkshire is a peculiar. See a recent interesting publication of the customs of the Forest of *Knarebrough*."
783. n. (a) *add* "2 Cr. & Jerv. (Ex.) 302, in *Att. Gen. v. Parsons*."
791. n. (e) *add* "And see as to the distinction between toll-traverse and toll-thorough, Lord *Pelham v. Pickersgill*, 1 T. R. 660. Lord *Falmouth v. George*, 5 Bing. 286."
794. n. (b) *add* "And the right will not pass *de novo*, merely by the general words of 'free warren, &c.' *Carr v. Smith*, cited 2 Cr. & Jerv. (Ex.) 294, in *Att. Gen. v. Parsons*."
795. n. (b) *after* 5 Co. 104. a. *add* "And see as to the effect of the words 'And to have free warren in all *demesne* lands in the manor, &c.' *Att. Gen. v. Parsons*, 2 Cr. & Jerv. (Ex.) 279. In that case (p. 308) Lord *Lyndhurst*, C. B., in delivering his very able judgment, said, Though the word '*demesne*' may in some cases be applied to any fee-simple lands a man holds, yet it is more correct and usual to apply it to the lands of a manor, which the lord of that manor either actually has, or potentially may have in *propriis manibus*."
799. *add* "The qualified common law right of the public to use the sea and the sea shore, does not extend to the right of bathing in the sea. *Blundell v. Catterall*, 5 Barn. & Ald. 268."
811. n. (b) *add* "But see per *Bayley J.* 3 Barn. & Cress. 686-7, in *Rex v. Mayor, &c. of West Looe*. Vide also post. p. 825, n. (c)."
818. After the words '*quarter sessions*,' 6th line, *add* (as a note) "Vide 1 Ed. 4. c. 2. [Appendix (477).] Post 825. n. (a)."
830. n. (a) *add* "It was held in *Green v. Davies*, 3 Barn. & Ald. 60, that under a custom for a court of pleas in a borough to be held before the steward and port reeve, or their sufficient deputy or deputies, the court might be held by a person appointed to act as deputy by one in whom both offices were united, such offices not being incompatible."
849. n. (a) [*Deputy Steward*] *add* "It is only when the office is purely ministerial that the duties may, as a thing of course, be performed by deputy, and the deputy though he may act in his own name, except in special cases, should act in the name of his principal. Com. Dig. Officer D. 5. *Ante*, pt. 1. p. 146. N. B. Under a grant of a franchise all writs should be returned by, or at least in the name of, the Principal, unless the grant contain a special provision authorising the return to be made by the grantee of the liberty, *by his or their bailiff or bailiffs*, as in *Newland v. Cliffe*, 3 Barn. & Adolp. 647."
868. [*Hayward*] *add* (as a note) "It is however established in some places as a public annual office, conferring a settlement. *Rex v. Inhab. of Whittlesea*,

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- 4 T. R. 807. The Hog-ringer is a public officer, but the Pinder is not necessarily so. *Rex v. Inhab. of Clisby*, 4 Barn. & Adolp. 155.
- (16.) [Appendix] At the end of the note on the nature, &c. of essoins add "In a very recent case the Demandant in a writ of right having signed judgment of *non pros*, after giving a more distant day for adjourning the essoin than by law he was intitled to give, the judgment was set aside as irregular, the court recognising the rule, that it is incumbent on the plaintiff to adjourn the essoin where the defendant has cast one regularly, on pain of being nonprossed for his neglect. Tr. Term. 1833. *Twyning* Demandant; *Lowndes* Tenant, 10 Bing. 65."
- (425.) [*Hayward's Oath*.] n. (a), add "being chosen by the jury under an ancient usage, and it is then considered as a public annual office, conferring a settlement, like the office of Hog-ringer. *Rex v. Inhab. of Whittlesea*, 4 T. R. 807. *Rex v. Inhab. of Clisby*, 4 Barn. & Adolp. 155."

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- 313 n. (a) [1st Vol. *Estrinsic Evidence*] add "Ante, p. 180. n. (d). And see *Harris v. Bp. of Lincoln*, 2 P. W. 137. *Beaumont v. Fell*, ib. 141. Amb. 175. n. 1. *Thomas v. Thomas*, 6 T. R. 676. *Careless v. Careless*, 1 Meriv. 384. *Doe & Huthwaite*, 3 Barn. & Ald. 682. *Doe & Westlake* 4. ib. 57."
372. [1st. Vol. *Bankruptcy*]. last line, add (as a note) "It was decided in *Lloyd v. Lander*, 5 Madd. 283, that a bankrupt is not a necessary party to a bill of foreclosure, an equity of redemption of copyhold being potentially vested in the assignees, although no bargain and sale be made to them."
590. [1st Vol. *Evidence*.] After the judgment of Lord *Ellenborough* in *Doe & Hall* add "It has been lately decided that the provisions of the 48 Geo. 3. c. 149 are merely revenue regulations, and were not intended to vary the rules of evidence; and that an examined copy of the court roll is evidence of a surrender made out of court. *Doe d. Cawthorn v. Mee*, 4 Barn. & Adolp. 617. S. C. (*Hawthorn v. Mee*.) 3 Nev. & Mann. 424."

ERRATA.

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- 725, n. (d), for *Roe v. Staverton*, read *Rex v. Staverton*.
- 752, n. (b), for 457 read 147.
- Ib.*, n. (d), for *Kitch*. 117, read *Kitch*. 146-7.
- 798, n. (a) for Churchwarden read Churchward.
- (28), [Appendix] line 21, for devise read demise.
- (396), [Ib.] for *Doe d. Roberts*, read *Doe d. Leach*.

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- 125, [1st. Vol.] line 16, for it should certainly seem, read it has been thought.
433. [1st Vol.] line 11, for assessed, read assised.
- 486-7, [1st. Vol.] for *Chalk v. Danvers*, read *Clark v. Danvers*.

A
TREATISE
ON
COPYHOLD · TENURE,
ETC. ETC. ETC.

PART THE SECOND.

CHAP. XVIII.

Of Customary Freeholds, (or Privileged Copyholds).

THE origin and peculiar character of this species of tenure will, I think, be best illustrated, by selecting some few passages from the *Law Tracts* of Sir *William Blackstone*, title "Considerations on the question, whether tenants by copy of court roll, according to the custom of the manor, though not at the will of the lord, are freeholders qualified to vote in elections for knights of the shire." (a)

After showing by an able argument, chiefly drawn from the authorities of *Bracton*, *Fleta*, and *Britton*, that estates of this nature are no other than what were well known to our ancient law, under the denomination of estates in *privileged villenage* or *villain socage*, and that they were not free lands at the common law, our learned commentator thus proceeds (b):

"As the villan-socman was distinguished from the pure villain, in that he could not be removed from his estate at the

(a) By the stat. 31 G. 2. c. 14, the privilege of voting for knights of the shire was denied to all persons holding estates by copy of court roll. But see reference to 2 W. 4. c. 45. s. 19, enabling copyholders for a life or lives,

or any larger estate, of the clear yearly value of not less than ten pounds, to vote in the election of a knight or knights of the shire, *ante*, pt. 1. p. 661. n. (b).

(b) p. 132.

will of the lord; ‘*a gleba amoveri non debet, quamdiu velit et possit facere debitum servitium* ;’ so, since this will of the lord, is by custom become merely nominal, the same nominal distinction is kept up between the common copyholders and this privileged sort; the words ‘at the will of the lord,’ being still preserved in the copies of the former, and totally omitted in those of the latter; which omission is, indeed, almost the only difference now remaining betwixt them; common copyholders having arrived (by a series of encroachment on their lords) at nearly the same estate of enfranchisement, which the privileged copyholders alone enjoyed by the antient law.”

“Farther to confirm what has been said, Lord *Coke* (cop. s. 32,) (giving an account of these tenures, which he calls copyholds of frank tenure) observes, that they ‘are most usual in antient demesne: though sometimes out of antient demesne we meet 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.’ And so Mr. *Kitchin* (tit. cop.) (*a*) says, ‘I have seen in the county of Northampton, copyholders of frank tenure, out of antient demesne; and they have used a writ of right close, and have no other evidence but by copies, according to the custom of the manor; but their copies are not at the will of the lord.’ And again, (tit. court of antient demesne) (*b*), ‘in surrenders of lands in antient demesne of frank tenure, it is not used to say, to hold at the will of the lord, in these copies; but to hold according to the custom of the manor, by the services before due; and it is not said there, at the will of the lord.’ To these may be added Mr. *West*, who (Symboleography, S. 603,) first lays down the general definition of a copyholder; ‘he which is admitted tenant of any lands or tenements within a manor, that time out of memory of man have been demisable, and demised to such as will take the same, in fee, fee tail, for life, years, or at will, according to the custom of the said manor, by copy of court

(*a*) p. 159 of the Author’s edit. (*b*) p. 194 of the Author’s edit.

‘ roll of the same manor. And therefore they be called tenants by copy of court roll, because they have no other writings or evidence, concerning such their lands and tenements, but only the copies of the rolls of the courts of the manors, within which they lie.’ And then (S. 605.) he distinguishes the present species of copyholds from others, thus : ‘ In some manors, the tenants have the lands granted unto them and their heirs, in fee, fee tail, or for life, or years, according to the custom of the manor ; and not at the will of the lord according to the custom : it which case the rolls and copies ought to be made accordingly.’ All which proves, that the omission of these words in its original, was neither fraudulent nor accidental, but is a badge well known to the law, as a kind of family distinction between such copyholds as ‘are descended from pure, and such as are from privileged, villenage.”

And after exemplifying his argument by a copy of a court roll in the old chartuary, or collection of ancient deeds and forms in conveyancing, Sir *William Blackstone* adds (a) :— “ This seems to be convincing evidence, that these tenures are of the same nature with *Bracton’s* villan-socage ; being chiefly found in antient demesne ; the tenants not amesnable to the county court ; the lands not transferable but only by surrender ; not capable of a recovery at common law (b), but only by writ of right close, according to the custom of the manor ; and though held by copy of court roll, yet not at the will of the lord. Those who imagine them to be of any other species of tenure, would do well to inform us what that tenure is, and to support their opinion with authorities equally cogent. Taking this then for proved, that the tenants in question are of the nature of villan-socmen ; it will next be our business to shew,

(a) p. 136.

(b) According to the case of *Oli-ver & Taylor*, 1 Atk. 474, (citing *Baker & Wase*, in Lord *Macclesfield’s* time,) a recovery might be suf-

fered in the Court of Common Pleas of customary freeholds, passing by surrender in a Borough Court. But now see 3 & 4 W. 4. c. 74. § 2. Vide also ante, pt. 1, p. 84, et seq.

that these estates in villan-socage are not comprised under the denomination of *Free Lands and Tenements* or *Freehold*, within the meaning of the statutes of Henry the Sixth. And here it will be necessary to distinguish two senses of the word *franktenement* or *freehold*; the ambiguity of which expression hath occasioned the principal embarrassment, to such as have already considered this question. By the word '*freehold*' then is sometimes meant the *interest* or estate itself, which the tenant holds in the land, sometimes the *tenure* by which that estate is holden." (a)

Again, (b) "That such as have a freehold interest only in lands, and not a freehold tenure, are incapable of voting at elections, will appear by considering the consequences of the opposite doctrine; which would be the allowance of all copyholders, of the basest kind, to have equally votes. For they may likewise have a freehold interest, as Lord Coke has before observed; being generally either tenants for life or in fee; in which case it is held, that they have *fee and freehold by custom*, (Kitch. tit. Cop.); or in other words, that the latter, viz. the copyholder in fee, hath a *customary estate of inheritance*, (9 Rep. 75. b.): terms, that in their import are at least equivalent to the *customary freehold*, which our courts of law have sometimes applied to the estate of villan-socmen."

And again (c): "It hath been before hinted, and must not be dissembled, that our law books and courts of law have frequently (especially of late years) distinguished these estates, in antient demesne and elsewhere, by the name of *customary freeholds*; and have laid it down that they cannot be copyholds, unless held at the will of the lord, (Cro. Car. 229. 2 Vent. 143. Carth. 432. Lord Raym. 1225.): and also, that a freehold may be surrendered by custom in court, without the will of the lord; and that the alienee shall not be tenant at will, but shall have the inheritance. (Fitz. Abr. tit. Corone, 310.

(a) Vide ante, pt. 1, tit. 'Pleading, &c.' p. 604. Ib. n. (f).

(b) p. 138.

(c) p. 144.

Custom, 12. Bro. Abr. tit. Custom, 2, 17. Tenant per Copie, 22. 9 Rep. 76. Co. Litt. 59. b. 1 Roll. Abr. 562.) But in all these cases the terms 'freehold and freeholder,' are put in opposition to 'common copyhold and copyholder,' to *un mere copyholder*, as Brook expresses it, (Ten. per Copie, 22.,) or such as are sprung from the pure villenage of our ancient tenures. For it would be absurd to say that lands, holden by copy, are not copyholds in *any* sense. The truth is, that these lands are of such an amphibious nature, that, when compared with mere copyholds, they may with sufficient propriety be called freeholds; and, when compared with absolute freeholds, they may with equal, or greater propriety, be denominated copyholds. We do not contend that they are copyholds of base tenure, subject to *all* the servile badges of pure villenage; but copyholds of a privileged tenure, retaining some badges of servility and not others; or rather (negatively) that they are not, purely and absolutely, freeholds. Whereas the question in all the adjudged cases above cited has been, whether *common* copyhold or not; and it has been very justly determined that this species of lands is not common copyhold: but it does not therefore follow that it is purely and simply freehold; being on the contrary usually distinguished into a third intermediate state, under the mixed and complicated denominations of customary freehold, free copyhold, or as Lord Coke expresses it, (Cop. s. 32.,) copyhold of frank tenure."

"It perhaps may be also objected, that Lord Coke (in the passage just cited,) declares, that in these copyholds of frank tenure, the *freehold* resteth in the tenant and not in the lord (a). But this word 'freehold' must there be understood

(a) It is not so, the freehold is in the lord, as we shall presently see, but there is much *dicta* for Lord Coke's position. Vide N. 1. Co. Lit. 59. b. *Hughs v. Harrys*, Cro. Car. 229. *Rogers v. Bradly*, 2 Vent. 143.

Gale v. Noble, Carth. 432. 5 East 66, 77, in *Roe d. Conolly v. Vernon & Vyse*. 7 East 304, in *Doe & Danvers*. Mann. Ex. Pr. 359. *Bingham v. Woodgate*, post. p. 685.

to denote the *interest*, and not the *tenure* of the land (*a*). And this depends upon a nicety in the modern law, derived from a very substantial and solid reason in the old law. When lands were in fact held in pure villenage, the tenant was really tenant at the lord's will, and therefore the law did not allow him to have the freehold of the land, but declared it to remain in the lord; for tenant at will hath hardly any interest at all, much less a freehold interest. Afterwards, when these villeins became modern copyholders, and had acquired by custom a sure and indefeasible estate for life or in fee, but yet continued to be stiled in their copies tenants at the will of the lord; (the omission of which, in their state of villenage, would have been a manumission of their persons, *Mirr. c. 2. s. 28. Litt. s. 204, 205-6,*) the law still supposed it an absurdity to allow, that such as were thus nominally tenants at will could have any freehold interest: and therefore continued, and still continues, to determine that the freehold of lands so holden abides in the lord of the manor, and not in the tenant, though he *really holds* to him and his heirs for ever, since he is also *said to hold* at another's will. But as to these copyholders of free or privileged tenure, the case is otherwise. They do not, nor ever did, hold at the lord's will; either in fact, or nominally. There is therefore no absurdity in allowing them capable of enjoying a freehold interest; and on that account the law doth not suppose the freehold of these lands to rest in the lord of whom they are holden, but in the tenants themselves (*b*). *Bracton* indeed makes a distinction (*l. 2. c. 8. s. 2.*) between *native* villan-socmen, who are born within antient demesne, and such as are *adventitious*, who hold by compact and convention with the lord; apprehending that, though the latter may have a freehold interest, the former cannot. 'Compact and the consent of the lord may make the latter's estate a freehold:' and again, 'in the person of one it shall be free-

(*a*) Ante, p. 668. n. (*a*).

is an erroneous supposition, ante p.

(*b*) This, as I have before noticed, 669 (n. *a*.); et vide post.

‘hold, in the person of the other villenage.’ And yet, granting their *interest* to be freehold, it does not follow that their *tenure* is free; for their services, though certain, were not free but villan services; and therefore *Bracton* in the same section declares, that ‘although the service be certain from a villan ‘socage, yet the tenant shall not therefore have a freehold.’”

“2. A second argument to shew that these tenures in villan-socage are not free tenures, will arise from their method of transfer or alienation, which was before remarked; namely, by surrender into the hands of the lord, and not by the usual conveyances by deed at the common law. Of these, feoffment with livery of seisin is still the principal, and was the only original conveyance by which a freehold could pass, till the statute of uses in the reign of Henry the Eighth.”

And after adducing as a third ground of argument, that tenants in villan-socage are not free tenants, their inability to sue or be sued for their lands, or of course to levy a fine or suffer a recovery in the King’s courts of common law (*a*), but only in the court baron of the lord, by the peculiar writ of right close (*b*), the learned author further observes (*c*):—“4. A fourth argument to prove that this tenure cannot be a free tenure, is this: that though the lands be not held at the will of the lord, and therefore the tenant cannot, nor ever could, be ousted at the lord’s pleasure, as was formerly the case in common copyholds; yet still the lands are liable to forfeiture, and the tenant may be ousted by his own default, for the non-payment and non-performance of his rents and services: which no free tenant, *per liberum servitium*, could be by the common law. For the writ of *cessavit* (by which lands may now be

(*a*) Ante, p. 667 n. (*b*) Note, “A fine levied or recovery had of lands in the King’s court proves them to be frank-fee.” Old Nat. Brev. tit. *briefe de recto clauso*. F. N. B. 13.

(*b*) Ante, pp. 666–7. Copyholders in ancient demesne cannot maintain

a writ of right close. Vide post. tit. “*Ancient Demesne*,” and reference there to the act 3 & 4 W. 4. c. 27, by which the writ of right close is abolished from the 31st Dec. 1834.

(*c*) p. 153.

recovered against a freeholder, for such default for two years together,) was first given by the statute of Gloucester, 6 Ed. 1, before which the lords had no remedy, but that of distress, for subtraction of freehold services: and at present, this writ of *cessavit* may be defeated, even pending the suit, by tender of amends to the lord. But it is the very condition of the tenure in question, that the lands be holden only so long as the stipulated service is performed; ‘*quamdiu velint et possint facere debitum servitium, et solvere debitas pensiones*,’ as is the doctrine of *Bracton*, *Britton*, and the rest, above cited. So too the lord may seize their lands for alienation contrary to the custom; (Bro. Abr. tit. Custom, 17;) and it is not improbable that he has likewise the power of seizing, if the heir comes not in to be admitted in court at the death of the ancestor, and for other causes, according to the peculiar customs of each respective manor (a). Now it is impossible that tenants thus dependant on their lords, who may by law take the advantage of sudden forfeitures, and destroy their estates, can or ever could be ranked in the same class with absolute freeholders, whose estates are not liable to be defeated upon any such servile conditions.”

And having relied, as a fifth ground of argument against these tenants being freeholders, on the circumstances of their not being members of the county court, where all elections by freeholders are directed to be made, and their not being contributory to the wages of the knights of the shire, which were formerly raised by their constituents to defray their expenses in parliament, our able commentator thus concludes (b):—“6. The last argument that shall be offered upon this head is a very concise one, and is this; that, however the lawyers may at times have denominated these tenures a sort of base species of freehold, in contradistinction to mere copyholds, yet the law in the main regards them as being

(a) But see *Gale v. Noble*, Carth. (b) p. 159.

properly *copyhold* and not *freehold* tenures; else they could not have subsisted to this day. For they must otherwise have been involved in the general fate of the rest of our antient tenures, when by the statute of 12 Car. 2. c. 24, they all were abolished and reduced to free and common socage;—except only tenures in *frankalmoign* (*a*), and tenures by copy of court-roll (*b*). Free and common socage these tenures cannot be; their surrenders, and admittances, their frequent fines for alienation, and peculiar paths of descent, (from which two last, as not being their universal properties, no argument hath been hitherto drawn,) their forfeitures, recoveries, and privileges, (still regulated by particular custom in derogation of the common law,) most clearly evince the contrary. Nor will it be pretended that they are of the nature of *frankalmoign*. There remains therefore no other choice; tenures by copy of court-roll they must be. This is their indelible character: it is to this they owe their present existence, and survival of other tenures. The statute has reduced all manner of lay *freeholds* to one and the same level, of free and common socage: but *copyholds* remain as they were, as various, as singular, and as servile in their tenure as ever. These tenures therefore not being free and common socage, must necessarily remain *copyholds*, as entirely as in the time of *Bracton*; of a superior order, indeed, and distinguished by some advantages (formerly real, now nominal only,) over the baser sort; but still far short of the dignity, the immunities, and the independence of that *freehold* tenure, which for more than three hundred years has constituted an elector of knights of the shire to serve in the *English Parliament*.”

(*a*) The tenure by which all ecclesiastical persons and corporations, and lay impropiators, now hold their lands and tithes, and who even as to such tithes have a freehold interest, though issuing out of copyhold land, being a distinct inheritance. See stat.

16 & 17 Car. 2. c. 1. 10 Ann. c. 23. 1 Bl. Tr. p. 115, 116, 117. Co. Lit. 100. b. n. (1.)

(*b*) But part of the honorary services in *grand serjeanty* are also retained by the statute of 12 Car. 2. Co. Lit. 108. a. n. (1.)

The above perspicuous, classical, and highly interesting definition of the tenure now under our consideration, would, I submit, fully justify me in proceeding, without any introductory remarks, to a statement of some few cases which appear to have established that the freehold is in the lord in *privileged* copyholds, passing either by surrender, or by deed of grant or bargain and sale, and admittance, as well as in *ordinary* copyholds (*a*).

But I think it right (with reference to the immediate subject of the above extracts from the Law Tracts of Mr. Justice *Blackstone*) to notice, that customary freeholders, although holding by copy of court-roll, were in one instance allowed to vote for knights of the shire (*b*), even after the statute of 31 Geo. 2. c. 14. (*c*); and the right of customary freeholders not holding by copy of court-roll, to vote at county elections, has been considered as less doubtful (*d*). Yet as the statute of 18 Geo. 2. c. 18. enacted, that no person should vote in any election of a knight or knights of the shire, without having a freehold estate in the county for which he voted, of the *clear* yearly value of forty shillings; and since it has been determined, that the *freehold* of these estates, of such at least as are within and *parcel of* the manor, is in the lord, even when they pass (as frequently is the case) by *deed* of grant or bargain and sale and admittance, and are not held at the will of the lord, I agree with Mr. Serjeant Heywood (*e*) in supposing, that these tenants had formerly (*f*) no right to vote at county elections.

I wish also to remind the reader, that there is a difference in

(*a*) Probably it would be held that customary lands not being *within* and *parcel of* the manor, but being *held of* the manor (as in ancient demesne tenure) form an exception to the rule, and that the freehold of those lands is presumptively in the tenant. Post. p. 678. n. (*a*). See note (*c*) to *Le Fleming v. Simpson*, 1 Mann. & Ry.

269.

(*b*) Contest for *Leicestershire*, 1770. Heyw. C. 81.

(*c*) Ante, p. 665 n. (*a*.)

(*d*) *Gloucestershire* case. Heyw. C. 82. Male 134, 285. Rogers 160. n.

(*e*) Heyw. C. 85.

(*f*) *i. c.* prior to 2 W. 4. c. 45. Ante, pt. 1. p. 661. n. (*b*).

the mode of pleading between pure copyholds, and those of a privileged nature (denominated customary freeholds) (*a*), arising principally out of the circumstance of the former being held, not only *secundum consuetudinem manerii*, but also *ad voluntatem domini*, whereas the latter are held according to the custom of the manor, but not at the lord's will (*b*). With this exception, however (*c*), there would appear to be no grounds of distinction between ordinary and privileged copyholds, when the latter are held by *copy of court-roll*, and pass by *surrender* and admittance (*d*), although not held at the will of the lord (*e*).

And that it is a settled rule that the equitable fee of customary freeholds, even when it is acquired by way of resulting trust, and although the custom of the manor is not to recognise an alienation by will, or to permit any trusts to appear upon the court-rolls, is devisable (*f*).

(*a*) Ante, pt. 1. pp. 605, 608. Vide also *Burrell v. Dodd*, 3 Bos. & Pul. 378. *Leigh v. Williamson*, 9 Wentw. 123.

(*b*) *Hughes v. Harrys*, Cro. Car. 229. *Gale v. Noble*, Carth. 432. *Rogers v. Bradly*, 2 Vent. 144. *Hill v. Bolton*, Lutw. 1171. *Crouther v. Oldfeild*, Ib. 125. S. C. Salk. 365. S. C. 2 Lord Raym. 1225. S. C. 6 Mod. 19. 11 Mod. 53.

(*c*) And see as to the writ of *Right Close*, and of *Monstraverunt*, post. tit. 'Ancient Demesne,' pp. 694, 695.

(*d*) In many manors customary estates pass by deed or surrender, but the custom sometimes requires that the grantee should be admitted in the life-time of the grantor, which was held to be a good custom in *Fenn & Mariott*, Willes 430. Ante,

pt. 1. p. 30. And see *Perryman's case*, 5 Co. 84.

The reader is reminded that a wife is equally excluded from dower of a trust estate in privileged copyholds or customary freeholds, as in ordinary copyholds. *Godwin v. Winsmore*, 2 Atk. 526. *Forder v. Wade*, 4 Bro. C. C. 521. Ante, pt. 1. p. 93.

(*e*) The court of B. R. held in *Doe & Danvers*, 7 East 299, that a right of entry in customary freeholds, passing by *surrender* and admittance, but not held at the will of the lord, is not tolled by descent. And now by 3 & 4 W. 4. c. 27. § 39. no descent, discontinuance, or warranty will bar a right of entry for the recovery of land.

(*f*) *Wilson v. Dent*, 3 Sim. 385. And see *Wardell v. Wardell*, 3 Bro. C. C. 116.

It is observable, however, that the case of *Hussey v. Grills* (a), is an authority that a devise of an equitable interest in customary freeholds, where there is no custom to surrender the legal interest to the use of a will, or where the customary interest is not devisable, must be attested according to the statute of frauds: And in another case (b), the court would appear to have felt a distinction, as to the relevancy of that statute, between a devise of customary lands passing by deed and admittance, and a devise of the like lands passing by *surrender* and admittance. But as it would seem to be a recognised principle, that a customary freeholder has no *freehold* interest, in the strict legal sense of that word, even when the estate passes by deed of grant or bargain and sale and admittance, the court must be presumed to have been influenced in the above case of *Hussey & Grills*, (supposing that case to have been rightly decided,) by the circumstance of the will alone being operative in a devise of customary freeholds, passing by deed of grant or bargain and sale and admittance, whereas the will is to be deemed declaratory only of the uses of the surrender, when lands of that tenure pass by *surrender* and admittance, the same as in a devise of ordinary copyholds.

This distinction is deducible from the words of Lord *Hardwicke*, who, in his judgment in that case, said "There is no evidence that there can be in this manor a surrender of a customary freehold to the use of a will. Agreed, there never was any such. The foundation of the determinations as to copyholds is that the party may dispose by surrender and will. As there is no method of passing the legal estate of these customary freeholds in this way, there is no reason to hold them out of the stat. of frauds: And as the legal estate is not, so is not the trust."

In the recent case of *Willan v. Lancaster* (c) it appeared

(a) Amb. 299. Ante, pt. 1. p. 332. n.

(b) *Doe v. Danvers*, 7 East 299.

(c) 3 Russ. 108.

that the customary freehold lands held of the manor were not devisable, but were transferred by deed and admittance, the operative words of the deed being 'bargain sell and surrender.' The particular lands were vested in a trustee, in trust for the testator for life, and after his decease for such purposes as he should appoint by deed, or by will or codicil, to be by him *legally executed*; and the question was, whether a codicil not executed according to the statute of frauds would pass the equitable interest.

The case was argued merely with reference to the question, whether the equitable interest of a customary freehold would or would not pass by a will not executed according to the statute of frauds. And Lord *Gifford*, M. R., desired that the question might be considered with reference to the construction to be put upon the words 'to be by him legally executed,' by which the testator might have meant 'executed according to the statute of frauds.' The case was afterwards argued before Sir *John Copley*, M. R., and the report merely states, that his Honor was of opinion, that the customary lands did not pass by the codicil.

It may be proper also to premise that I have not discovered any case in which the question has arisen, whether there may be a general occupant of customary freehold lands, but as an occupancy is for supplying a freehold (*a*), and as the freehold remains in the lord in *privileged* as well as in *ordinary* copyholds, the former would seem, with reference to the law of occupancy, to stand on the same footing as the latter, and to be subject to special, but not to general occupancy (*b*).

I have been equally unsuccessful in my endeavours to discover some judicial authority, or at least some respectable dicta, to prove the perfect accordance, or to establish a clear distinction, between privileged and ordinary copyholds, with regard to the operation of the writ of *elegit*, and from which

(*a*) Per *Holt*, C. J., in *Smartle v. Penhallow*, 1 Salk. 189. (*b*) Ante, pt. 1. pp. 63, 64, 108.

the latter are clearly exempt (*a*). The chief inducement to the decision that ordinary copyholds are not included in the statute of 13 Ed. 1. c. 18, appears to have been, the possible prejudice which the lord might sustain by the introduction of a new tenant, without his consent (*b*); and this principle would seem to apply equally to customary freeholds, (or privileged copyholds,) even when not held at the will of the lord, as the lord's assent to the change of tenancy, is implied in the admittance, which, (however unsubstantial the act may be considered at the present day,) is, I believe, an obligation invariably imposed upon the alienation of customary freeholds, although passing by deed of bargain and sale, or other act of assurance, not applicable to ordinary copyholds.

It may also be difficult to establish a distinction between privileged and ordinary copyholds, in the construction of the act of 13 Ed. 1. of *elegit*, consistent with the rule, that the freehold is never taken out of the lord, in lands of the one tenure or the other, and which would seem to exclude the sheriff from any jurisdiction over customary freeholds, equally as in the case of ordinary copyholds (*c*).

But the necessity of an admittance by the lord of the manor,

(*a*) Ante, pt. 1. pp. 60, 105.

Since the last edition of this work was published, it has been suggested that customary freeholds are liable to be extended at the suit of a judgment creditor, under the writ of *elegit*; see Mann. Excheq. Prac. p. 43. Sed qu.? unless where the lands are not within and *parcel* of, but *held of* the manor, the freehold then being vested in the tenant, ante, p. 674 n. (*a*.) In p. 362, Mr. Manning states that customary freeholds in ancient demesne are extendible, for which he cites *Cox & Barnsly*, Hob. 47, and other authorities. And see

Martin v. Wilks, Mo. 211. 2 Inst. 397. But it is observable that in the case of lands of ancient demesne tenure, the freehold is in the tenant. See 2 Inst. 325.

(*b*) Ante, pt. 1. p. 99.

(*c*) The case of an ejection is an exception to this rule, but it is to be recollected that an ejection is, in principle, an action of trespass, founded on a common law title; and also that the party bringing the ejection, must first procure admittance to the estate in question, and which he could enforce by showing a colourable right.

in order to perfect the conveyance of customary freeholds, and the absence of any actual freehold interest in the tenant, would appear to be the only grounds favourable to the opinion, that lands of customary freehold tenure, passing by deed and not held at the will of the lord, are not affected by an extent:—and the exemption is clearly not to be maintained on the ground of any right, which the tenants of such lands may have, to implead and be impleaded in the court of the lord of the manor, *exclusively*; for the sheriff upon an *elegit*, delivers only a *legal* and not an *actual* possession (*a*); and to obtain an actual possession the plaintiff must proceed by ejectment. A further argument to be urged against the latter ground of exemption, (and which may also be urged against the supposition of any such privilege resulting from the freehold interest never having been taken out of the lord,) is, that lands of the tenure of ancient demesne are extendible, although ancient demesne is a good plea, where the freehold is in question (*b*); for a tenant by *elegit* has but a chattel interest (*c*); and by this execution, neither the freehold, nor the possession, is removed (*d*). It must not be forgotten, however, that although the *actual* possession is not removed by the sheriff's entry, and delivery of possession, under an *elegit*, yet that the *legal* possession so acquired, lays the foundation of an ejectment to recover the actual possession; and also that tenants by *elegit*, have the same remedy by assize, as freeholders are entitled to (*e*).

I shall now proceed to notice the cases to which I have before adverted, deciding, as I submit, that the freehold is vested in the lord, and not in the tenant, in all customary freeholds,

(*a*) Saunders 69. n. 3. 2 Cru. Dig. 73. Alden's case, 5 Co. 105.

(*b*) Post. tit. "Ancient Demesne."

(*c*) Co. Lit. 42. a.

(*d*) Ib. Coke v. Barnsley, 1 Brownl. 234.

(*e*) 2 Inst. 396. Note, the stat. of Westm. 2. c. 18, gives such tenants a writ of *novel disseisin* if ejected, and afterwards a writ of *re-disseisin*. Ib. 394–6. F. N. B. 189. I. And see Co. Lit. 154. a; and n. 11. ib.

whether passing by surrender, or by deed of grant or bargain and sale, and admittance (a).

In the case of *Stephenson v. Hill* (b), which was an action on the statute of 2 E. 6. c. 13, for the payment of tithes of corn and grain, and wherein the question was, whether the defendant could set up any prescription, which would by virtue of the statute of 31 H. 8. exempt him from payment of tithe, or (as Lord *Mansfield* put it) whether customary freeholders can in point of law prescribe in *non decimando*, Lord *Mansfield* and Mr. Justice *Denison* said, it was a settled point that the freehold is in the lord; and Lord *Mansfield* added, "This is rather stronger than the case of copyholds: for copyholders had acquired a permanent estate in their lands before these persons had done so."

The case of *Doe d. Reay v. Huntington & others* (c), was this:—the lord by his deed, dated subsequently to the stat. of *quia emptores*, 18 Ed. 1. granted and confirmed to the tenant his customary or tenant right estate (d), freed and discharged

(a) But if by the custom a feoffment should be requisite, as well as a surrender, I apprehend that the freehold would be considered to be in the tenant. It was said argo. in *Stephenson v. Hill*, *infra*, that these customary estates in the north never pass by *feoffment*, but by grant and admittance.

N. B. A custom that all feoffments of *freehold* lands within the manor, must be presented at the court baron has been adjudged to be reasonable. *Perryman's case*, 5 Co. 84. It was objected in that case that 'to say that the custom of the manor should divest an estate of freehold and inheritance vested by solemn livery would be against law.' To which it was answer-

ed and resolved, that 'in the case at bar when the feoffment is presented according to the custom then it takes effect by force of the livery before.'

(b) 3 Burr. 1278.

(c) 4 East 271.

(d) It appears by the report that the tenement in question was one of the customary or tenant-right estates *within the manor, and holden of the lord* by certain ancient customary rents and services, descendible from ancestor to heir according to a customary mode, differing in some respects from the rule of descent at common law, and not devisable by will, either directly or by means of a surrender; but the land appears not to have been holden at the will of

of all rents customs and services, (*excepting a rent of one penny yearly, and suit of court with the service incident thereto, and all royalties, escheats, &c.*) belonging to the seigniori, so far as might consist with and not be prejudicial to the immunities thereby granted;—and Lord *Ellenborough*, in delivering the opinion of the Court of King's Bench upon a case reserved at the trial, in which the questions were, under what class of tenure the estate was ranged before the above grant, and secondly, the effect of that deed as it respected the tenant's right to devise the estate, gave his full sanction to the above previous decisions that in the case of customary tenant-right estates, although alienable by deed of bargain and sale and admittance, the freehold is in the lord, by the following observations:—"These customary estates known by the denomination of *tenant-right* are peculiar to the northern parts of *England*, in which border-services against *Scotland* were anciently performed, before the union of *England* and *Scotland* under the same sovereign. And although these appear to have many qualities and incidents which do not properly and ordinarily belong to villenage tenure, either pure or privileged, (and out of one or other of these species of villenage all copyhold is derived,) and also have some which savour more of military tenure by *escuage uncertain*, which, according to *Littleton*, sect. 99, is *knights service*; and although they

the lord.

At the end of the form of the pleadings in *Leigh v. Williamson*, (in trespass,) 9 Wentw. 129, (in which the land was stated to be of customary freehold tenure, descendible from ancestor to heir, and devisable by custom) there is the following note, "The books are very barren on this species of tenure, but it certainly arose in the northern court, [coast] near *Scotland*, for the defence of the borders; therefore in its creation un-

likely even to be descendible, much less devisable; but the descent is now generally established, and perhaps the devisability also in this manor: and I am informed by a gentleman of the north, that many of these estates, to this day, are not devisable, at least not without leave of the lord, and seemingly the defendant relies upon this. If the license of the lord is necessary, it should be stated in the replication.

"A. Dawson."

seem to want some of the characteristic qualities and circumstances which are considered as distinguishing this species of tenure; viz. the being holden at the will of the lord, and also the usual evidence of title by copy of court-roll, and are alienable also, contrary to the usual mode by which copyholds are aliened, viz. by deed and admittance thereon (if indeed they could be immemorially aliened at all by the particular species of deed stated in the case, viz. a bargain and sale, which at common law could only have transferred the use); I say, notwithstanding all these anomalous circumstances, it seems to be now so far settled in courts of law that these customary tenant-right estates are not freehold, but that they in effect fall within the same consideration as copyholds, that the quality of their tenure in this respect cannot properly any longer be drawn into question." His lordship further observed, that by the deed of confirmation, the tenement had become frank fee, *i. e.* holden in free and common socage, and devisable by the statute of wills: that the words "freed, &c." amounted to a release of the services, &c. not excepted, and that the case bore a strong analogy to the tenure of ancient demesne; and to show that the customary qualities were extinguished by the deed, his lordship cited *Griffith v. Clarke (a)*, which was the case of a release by a fine, after the statute of *quia emptores*, "*de omnibus servitiis et consuetudinibus, salvo servitiis infra scriptis, viz. pro unâ virgatâ terræ 2. s. rent sect curiæ et relevio,*" and the release was *de uno messuagio et unâ virgatâ terræ*; and the court held the custom of ancient demesne extinguished by the release, but that the rent, suit of court, and relief continued by the saving, as the remnant of the ancient seigniori. Lord *Ellenborough* also ruled, that the immediate customs of the land in question had become extinguished, and the land of course devisable, the same as any

(a) Mo. 143. And also 49 E. 3. firmation, pl. 5. 9 Co. 140. Vide, 7. Per *Belknap*, C. J. Bro. Abr. tit. post. tit. 'Ancient Demesne,' p. Ancient Demesne, pl. 8. Ib. Con- 712.

In the manor of Irthington Cumberland the mode of conveyance is by deed
of bargain & sale & surrender with license. It is held that the benefit of the
statute of 1774 had no effect in Irthington to pass the legal estate
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other socage land, under the statute of wills, and consequently that the defendants, who were devisees, were entitled to it under the devise made to them.

In the manor of Irthington in Cumberland, and other the manors parcel of the barony of Gilsland, the estates pass by customary conveyance of bargain and sale, the operative words being grant bargain sell alien and surrender all, &c. the customary property of, &c. held of the lord as parcel of the manor of A., parcel of the barony of Gilsland, habendum to the alienee his heirs and assigns for ever, at the will of the lord, according to the custom of the manor; with the license of the lord indorsed thereon by the steward. And in all these manors the freehold of the customary tenements is in the lord (a).

Another case of peculiar interest connected with this subject is *Doe d. Cook & Wife v. Danvers* (b). The estate appeared, by a case reserved at the trial, of ejectment, for the opinion of the Court of King's Bench, to be holden of the manor of Stebunheath, otherwise Stepney, in Middlesex, by copy of court-roll, (but not *ad voluntatem domini*,) and to pass by *surrender* and admittance, and to have been leased under

(a) *Doe d. Earl of Carlisle v. Towns*, 2 Barn. & Adolp. 585. A court is held twice a year for the manors within the above barony, at which the tenants are called by the roll, and proclamations are made in case of death or alienation, for the heirs or new tenants to appear, and on appearance the names of such tenants are entered on a roll by the steward, who receives a fee of one shilling from each tenant, and a further fee of five shillings for the indorsement of a license of alienation. In the above case of *Doe & Towns* proclamation had been made for the defendant to be admitted to two customary

tenements, as the heir of J. T., and the steward tendered to the defendant a written admittance on a stamp, which he refused to accept, but was willing to have his name inrolled and to pay the customary fee of one shilling. Upon such refusal the lord seised quousque. But the court of B. R. held that such an inrolment was not an admittance within the provisions of the stamp act of 55 Geo. 3. c. 184, but that on an alienation the estate passed by the customary conveyance, and that on a descent the heir became entitled as in the case of freehold property.

(b) 7 East 299.

a previous license from the lord ; and it also appeared to have been surrendered by the late owner, to the uses of her will. And the court ruled, that it being so circumstanced, whether held *at the will of the lord* or not, *the freehold was in the lord* and not in the tenant, and that with respect to all the questions arising in the case, it was to be taken and considered as copyhold.

The court had entertained a doubt in the above case how far the will could be considered a will in writing under the terms of the surrender, and whether under the 7th and 9th sections of the statute of frauds, the will must not be signed by the party, as thrown out by Lord *Kenyon* in *Doe d. Tempest v. Dancer* (1796), and according to what is reported to have been said by Lord *Hardwicke*, in *Tufnell & Page*, " that " when such will was in writing, and signed by the party, that " was sufficient." But they now expressed themselves satisfied, that a will to direct the uses of a surrender of a copyhold or of a customary estate *passing by surrender*, was not within the statute of frauds, and need not be signed, unless such signature be required by the terms of the surrender to the uses of the will ; and added, that although they thought it would have been the sounder construction to have holden, that copyholds were comprised in the general words of the 5th and 6th sections of the act, " all devises and bequests of any lands " or tenements ;" yet it was a settled point, that the lands pass by the surrender and will taken together, as if the devisee's name was inserted in the surrender, and that they do not pass by the will : that the 7th section, requiring declarations or mentions of trusts of land to be in writing, signed by the party enabled to declare the trust, or by his will ; and the 9th section requiring all grants and assignments of trusts to be also in writing, signed by the party granting or assigning, or by such last will or devise, did not extend to surrenders of copyhold or customary estates, but referred only to such will as the statute recognized, viz. a will attested by three or four wit-

nesses,—a will of such lands not being a creation or declaration,—or a grant or assignment of a trust (a). And as to the question which had arisen, whether the will stated in the case was to be considered a will in writing, the court referring to 1 And. 34. 3 Leo. 79. 2 Keb. 128. *Carey & Askew*, 2 Bro. C. C., and a note to *Wagstaff v. Wagstaff*, 2 P. W. 259. & (b), also ruled, that the instrument in question, which was the written instructions for a will disposing of the above customary estate to the lessor of the plaintiff, and which had been pronounced as the will of the testator by the prerogative court, was a will in writing within the terms of the surrender; and judgment was therefore given for the plaintiff.

It is proper, however, to apprise the reader, that in a recent case (c), (in which the principal question was, whether the effect of a union of the fee of customary tenements with the estate for life of the lord, was an absolute extinguishment of the customary interest, or only a suspension of it during the life of the lord (d),) the present Master of the Rolls held, that, as the custom of the manor required a *bargain and sale*, as well as a surrender and admittance, to pass the customary tenements which were the subject of the suit, they were plainly freehold (or, in other words, that the freehold was in the tenant, and not in the lord). And his Honor added, “The necessity of surrender and admittance is probably a remnant of the ancient tenure of villenage, and does not affect the freehold nature of the interest, although it prevents the customary tenement from being strictly of freehold tenure,—a distinction which is well established.” But, with great deference to so high an authority, I would submit that, as the form of the deed of conveyance was not calculated to pass a freehold interest either at common law, or under the statute of uses, the above case is not distinguishable from that of *Doe & Huntington*, and that, con-

(a) Ante, pt. 1, p. 107.

see 3 Russ. 112, argo. in *Willan & Lancaster*.

(b) Ante, pt. 1, p. 291, et seq.

(c) *Bingham v. Woodgate*, 1 Russ. & Myl. 32. S. C., (called also *Hudleston v. Corbett*.) 1 Taml. 183. And

(d) Vide this case, ante, pt. 1, pp. 44, 646.

sistently with the opinion expressed by the court in the last mentioned case, and in *Stephenson & Hill (a)*, and *Burrell & Dodd (b)*, the customary tenements in the principal case, 'fell within the same consideration as copyholds,' the freehold interest, therefore, being in the tenant, and not in the lord (c).

In concluding my observations on the qualities of customary freehold tenure, it is proper to notice, that the Court of Common Pleas, in the case of *Burrell v. Dodd (d)*, decided that customary or tenant-right estates, held of the lord by certain rents and services according to the custom of the manor, are not within the statutes of partition, and, consequently, that it was a sufficient objection to the plaintiff's obtaining judgment under a writ *de partitione faciendâ*, that the land, upon the face of the plea, appeared not to be *freehold*, properly so called. And the court, in giving judgment, observed, that in some points the law regardeth such tenants no more than as mere tenants at will, "for the freehold at the common law resteth not in them but in their lords, unless it be in copyholds of frank tenure, which are most usual in ancient demesne." This case may therefore be added to the several other authorities fixing the freehold interest in the lord, in *customary freehold lands*, whether passing by *surrender* or by *deed* of grant or bargain and sale (e).

I have had frequent occasion in the course of the present chapter to speak of tenants in ANCIENT DEMESNE; and I purpose now to proceed to a consideration of the peculiar nature and properties of that tenure.

(a) Ubi sup.

(b) *Infrâ*.

(c) Vide also 1 Sho. 287. 2 Sir W. Bl. 1116. *Brown v. Rawlins*, 7 East, 409. S. C. (*Bourne v. Rawlins*) 3 Smith, 405. *Milbank & Dallaval*, 19 Eliz. cited in *Brown & Rawlins*, (7 East, 429, 430.) 10 East 276, argo. in *Curtis v. Daniel*.

(d) 3 Bos. & Pul. 378.

(e) See the note to *Carey v. Askew*, Eden's Ed. of Brown's C. C.

2d vol. p. 59. Mr. Eden there mentions that this doctrine (as he was informed) had been discussed, as applying to certain customary estates within the manors of the Bishop of Durham, but that the question had not called for judicial determination. And see further as to customary freeholds, ante, pt. 1, p. 194 (tit. 'SURRENDER'); p. 605. (tit. 'PLEADING'); p. 626. (tit. 'MANDAMUS').

CHAP. XIX.

Of Ancient Demesne.

It may be proper to premise, that the *Court of Ancient Demesne*, is a Court Baron, and not a Court of Record (a); a writ of error, therefore, does not lie in it, but the relief is by writ of false judgment (b).

The *tenure of Ancient Demesne* is confined to such lands as were held in socage of manors belonging to the crown in the reign of Edward the Confessor (c), and in the reign of William the Conqueror (d), and sometimes therefore designated 'socage in ancient tenure'—and whenever a question arises as to the particular lands being *ancient demesne*, it is to be decided by the production of Domesday-book (e); wherein the lands which were in the possession of King Edward, are called *terræ Regis Edwardi*, and those which were in the possession of William the Conqueror, are called *terræ Regis*.

(a) Kitch. 187, cites 9 Ed. 4. 43. 3 H. 4. 26. Ib. 190. 4 Inst. 269. Comy. 94, and 1 Salk. 340, in *Hunt v. Bourne* (or *Burn*). And the suitors are the judges of the court. Kitch. 190, (cites 34 H. 6. 38; 12 H. 4. 17; 3 H. 4. 16; 6 H. 4. 2). 4 Inst. 269. *Jentleman's case*, 6 Co. 11 b. F. N. B. 11. G. (n. b.)

(b) F. N. B. 12. Kitch. 187, 190. *Jentleman's case*, sup.

(c) F. N. B. 14. D. Kitch. 192.

(d) 2 Inst. 542. 4 Inst. 269. *Lex. Man.* 26-7. *Hunt v. Burn*, 1. Salk. 57. S. C. Holt 60. F. N. B. 14 D.

(e) 9 Co. 31, a. Kitch. 192, cites 49 E. 3. 22.; and also a trial, 7 H.

6. 34, in which it was certified by domesday-book, that London was not ancient demesne. (N. B. The appendix to the second General Report from the Commissioners on Public Records, reprinted 1819, p. 467, cites for this 37 H. 6. 27. Vide 2 Leo. 191.) *Saunders v. Welch*, cited 1 Salk. 57. *Gilb. Ev.* 69. *Lex. Man.* 28. *Doe d. Rust v. Roe*, 2 Burr. 1048. But whether parcel or not of a manor which is ancient demesne, is to be tried *per pais*. Kitch. 192-3, cites 12 Ass. 18. 22 Ass. 45. *Hunt v. Burn*, sup. *Hopkins v. Pace*, 1 Sho. 271, ca. 168. S. C. Comb. 183. 9 Co. 31. a. Br. Trials pl. 120.

Domesday-book (*a*), which about fifty years ago was reprinted by government, under an address of the House of Lords (*b*), records the survey made by command of William the Conqueror, of all the manors throughout England, except those

(*a*) The better opinion seems to be, that this book was compiled upon the introduction, or rather on the complete establishment, of feudal tenure in England by William the Conqueror, for the purposes of military defence; and, as Sir *Martin Wright* supposes, (*Ten.* 56), "in order to discover the quantity of every man's *fee*, and to fix his *homage*." Sir *Wm. Blackstone* observes, "We learn from the Saxon Chronicle (A.D. 1085), that in the 19th year of King William's reign, an invasion was apprehended from Denmark; and the military constitution of the Saxons being then laid aside, and no other introduced in its stead, the kingdom was wholly defenceless; which occasioned the king to bring over a large army of Normans and Bretons, who were quartered upon every landholder, and greatly oppressed the people. This apparent weakness, together with the grievances occasioned by a foreign force, might co-operate with the king's remonstrances, and the better incline the nobility to listen to his proposals for putting them in a posture of defence. For as soon as the danger was over, the king held a great council to inquire into the state of the nation; the immediate consequence of which was the compiling of the great survey, called Domesday-book, which was finished in the next

year; and in the latter end of that very year the king was attended by all his nobility at Sarum; where all the principal landholders submitted their lands to the yoke of military tenure, became the king's vassals, and did homage and fealty to his person." 2 vol. *Com.* 48. And adds, (*Ib.* p. 51.) "In consequence of this change, it became a fundamental maxim and necessary principle (though in reality a mere fiction) of our English tenures, 'that the king is the universal lord and original proprietor of all the lands in his kingdom: and that no man doth or can possess any part of it, but what has mediately or immediately been derived as a gift from him, to be held upon feodal services.'"

The reader, however, is reminded, that most of our ancient text writers are agreed, that military services and fiefs may be traced to the Saxon polity, but that the feudal law was completely established about the middle of the reign of William the Conqueror. Vide *Harg. & Butt.* notes to *Co. Lit.* 64. a. & b., 65. a., 191. a.

(*b*) And is said to be executed with the most scrupulous fidelity and correctness: See first Report of the House of Commons on Public Records, Appendix A. l. a. 1 *Phill.* on *Ev.* 321.

in the northern counties, viz. Northumberland, Cumberland, Westmoreland, and Durham (*a*); and part of Lancashire.

This survey is supposed by some ancient writers, to have been undertaken about the year 1081, and to have been finished in 1086 (*b*); but the exact time of its commencement is differently stated by historians, some affirming that it was begun in 1085, and finished in about a year (*c*).

Domesday-book has been sometimes called *Liber de Wintonia*, or *Rotulus Wintoniæ*, which is considered to be evidence of the first place of its deposit. It appears to have been re-

(*a*) A valuable supplement to Domesday-book was, a few years ago, reprinted, entitled the Boldon-book, or Survey of the Palatinate of Durham. In the appendix to the second general Report from the Commissioners on Public Records, (p. 475,) it is stated, that Hugh Pudsey, called also, De Puteaco, De Pusar, and De Pusaz, nephew to Stephen, king of England, caused this survey to be made in 1183; and that it probably had its name from Boldon, a village and parish near Sunderland, in the same diocese, where either it was compiled, or according to the census of whose inhabitants, the other manors, &c. in that bishopric were regulated. This useful work adds, "Of the motives or reasons which led to this compilation, we have no record; but Bishop Pudsey affected the state of a sovereign in his own palatinate; in which there were many royal rights, which had been enjoyed by its prelates long before the conquest, and were continued long after; several of which remain even to the present day. And perhaps it was in consequence of

"these exclusive rights, that when
"the general census, known by the
"name of Domesday-book was made,
"the bishoprick of Durham was
"passed by, as it was found to contain
"no rights which could be
"claimed by the monarch, without
"trenching on those which had been
"possessed by its bishops through a
"long series of years."

This record it seems is frequently appealed to, and has been admitted as evidence in trials at law, on questions affecting the seigniorial rights of the see of Durham.

One copy of the Boldon-book is in the bishop's auditor's office, Durham; another in the library of the Dean and Chapter in the same city; and a third among the manuscripts of Archbishop Laud, at Oxford.

(*b*) See *Lex Man.* 27. 4 *Inst.* 269.

(*c*) Baron Maseres, in the notes to his '*Excerpta ex Orderico Vitali,*' p. 259, represents the survey to have begun as early as 1071. See *App. to 2nd Gen. Rep. from Comm. on Pub. Rec.* p. 382, et seq.

moved to Westminster soon after its completion, and kept under seal in the Exchequer, till, in 1696, it was deposited in the chapter house.

Ancient writers are not agreed as to the derivation of the word ‘*Domesday*.’ It has been affirmed (*a*), and with apparent probability, to be a corruption of *Dome-boc*, which was the appellation given to *Alfred’s* register or code of Saxon laws; but the word ‘*domesday*’ was frequently used, even so long back as the eleventh century, to denote a survey (*b*).

As there can be no appeal from *domesday-book*, and no averment made against it (*c*), so it has not inappositely been called *liber judicarius* (*d*); and we have a further clue to the signification of the word ‘*Domesday*,’ in Sir Edward Coke’s 4th Inst. (*e*), who in adverting to its uncontrollable truth and verity, says, “*And therefore in that respect like the doome and judgement at Doomesday.*”

Domesday-book was frequently appealed to in ancient times, as will be seen by consulting several of the authorities already referred to (*f*).

In the case of *Griffin v. Palmer* (*g*), the issue was whether the manor of Bowden in Northamptonshire were ancient demesne or not; and the Court of Common Pleas awarded that the plaintiff ‘*habeat recordum libri de Domesday hic in Oct. Mich., &c.*’ and on production of the book at the trial it appeared, that the manor of Bowden in Leicestershire was ancient demesne, but that Bowden in Northamptonshire was not.

The like issue was taken in ejectment for lands in Longhope

(*a*) See Bishop Kennett’s *Paroch. Antiq.*

(*b*) See App. to second Gen. Report from Commissioners on Public Records, 381, 383-4.

(*c*) 4 Inst. 269.

(*d*) *Spelm. Gloss. v. Domesday.*
And see 4 Inst. 269.

(*e*) P. 269. So Redborne, *Angl. Sacr. tom. i. p. 257.* “*Vocatus Domysday; et vocatur sic, quia nulli parcat sicut nec magnus dies judicii.*”

(*f*) Ante, p. 687. n. (*e*).

(*g*) 1 Brownl. 43. S. C. Hob. 183.
Ca. 230. Lex Man. 30.

in Gloucestershire, and at the trial Domesday-book was brought into court by an officer of the Exchequer, by which it appeared that *Hope* was Ancient Demesne, but there was no mention of *Longhope*, upon which the counsel for the defendant offered to prove that *Hope* and *Longhope* were one and the same place; but the court would not admit such proof, and held that the defendant should have pleaded that it was known as well by the one name as the other (*a*).

And unless the manor or land is mentioned under the title *terræ Regis* or *terræ Regis Edwardi* (*b*), in Domesday-book, it will not be deemed Ancient Demesne, although the book itself should furnish evidence of a grant thereof from the Crown (*c*).

There are three sorts of tenants in Ancient Demesne, one who hold their lands freely by the grant of the King; a second, who hold of a manor which is Ancient Demesne, *but not at the will of the lord*, and whose estates pass by surrender, or deed of grant or bargain and sale, and admittance, and denominated customary freeholders (*d*); and a third who hold of a manor, which is Ancient Demesne, by copy of court roll, *at the will of the lord*, and denominated copyholders of base tenure, which latter cannot maintain a writ of Right Close (*e*) or *Monstraverunt* (*f*), but are to sue by plaint in the lord's court (*g*).

(*a*) *Holdy v. Hodges*, 1 Sid. 147. S. C. (*Holdage v. Hodges*) 1 Lev. 106. And see similar issues as to the manor of Sudbury in Suffolk, Dy. 250. b. 9 Co. 31. a; and the manor of Otterbury, *Saunders v. Welch*, cited 1 Salk. 57. *Vide also*, 1 Nels. Abr. 210. (A). 1 New Abr. 110. (A. marg.)

(*b*) *Ante*, p. 687.

(*c*) Kitch. 192-3. *Saunders v. Welch. sup.*

(*d*) And these, it is said, even when holding by copy of court roll, may have a *Monstraverunt*, and use a writ of Right Close, Kitch. pp. 158-9, 194. Co. Cop. s. 32. Tr. 58.

(*e*) See as to this writ, post. p. 695, et seq.

(*f*) Br. Abr. 'Ancient Demesne,' pl. 41. Kitch. 159. F. N. B. 14 D. 16 E. Co. Cop. s. 51. Tr. 118, 119; *Pymmock v. Hilder*, Cro. Jac. 559. See as to this writ, post. p. 694-5.

(*g*) *Ante*, pt. 1. p. 562. et seq.

Of the Privileges incident to this Tenure.

It should seem that by the terms of the original grants of land, of the tenure of ancient demesne, the grantees bound themselves to cultivate the King's demesnes for the sustenance of his household (*a*); and to supply provisions for the King's garrisons, and for the soldiers in other places, in time of war or rebellion (*b*); for which services certain privileges were secured to them, regarding both their persons and estates, for they appear to be excused (but in respect only of their lands held in ancient demesne) from serving on juries or inquests out of their manor or seigniory (*c*); and from taxes and tallages granted by parliament, if not specially charged (*d*); and from payment of pontage and toll of passage (*e*): And this latter privilege extends as well to tenants who hold of a subject as of the king;

(*a*) See 1 Leo. 232, in *Ward & Knight's* case. 2 Inst. 221, 542. 4 Inst. 269. Lex Man. 29, 81. 2 Sho. 16, in the *King v. Bettsworth*. Hob. 48, in *Cox v. Barnsly*.

(*b*) See the Town of Leicester's case, 2 Leo. 191. Lex Man. 29 n. *Ib.* 32-3.

(*c*) F. N. B. 14 F. 4 Inst. 269. Br. Auncien Demesne, pl. 42. "Tenants of ancient demesne shall be exempt from the leet, view of frankpledge, and from Sheriff's tourns." Br. Aunc. Dem. pl. 49, cites the Reg. fo. 181. And see F. N. B. 14. E. marg. But ancient demesne is no exemption from serving the office of high constable. *King v. Bettsworth*, 2 Sho. 75. S. C. Anon. 1 Vent. 344.

(*d*) But I apprehend that all general acts of Parliament extend to ancient demesne lands, when the te-

nure is not prejudiced by the purview of such acts. See 1 And. 71, &c. 4 Inst. 270. Hob. 48. Com. Dig. Ancient Demesne (K). *Ante* pt. 1. p. 99.

(*e*) Br. Aunc. Dem. pl. 43, 49. *Ib.* Priviledge, pl. 56, F. N. B. 14, 228. 2 Inst. 542. 4 Inst. 269. Kitch. 194. Hob. 48, in *Cox v. Barnsly*. Ancient Demesne tenants were also exempt from contribution to the expenses of knights in Parliament; see all the authorities referred to in this note. Vide also *ante*, p. 672. Heyw. C. 82, [2d ed.]

Tenants in ancient demesne, *holding by copy of court roll*, were excluded by 31 Geo. 2. c. 14, from the privilege of voting at elections. *Vide* Heyw. C. 75, &c. Male [2d ed.] 133, 285. *Ante* p. 674. But see reference to 2 W. 4. c. 45, *ante* pt. 1. p. 661, n. (*b*).

and to tenants for life or years, or even at will (*a*). But the exemption from toll is only in respect of such things as arise or grow on the land, or as are bought for manuring it, or for the necessary use of the tenant and his family, and does not extend to general merchandize (*b*); but this was formerly doubted (*c*).

Whether merchandize or not is to be shown on the other side, so that the tenant may allege an exemption generally (*d*). He need not prescribe for the privilege, as it is incident to his estate, and it is sufficient to say that he is *tenant* and *inhabitant* within the manor of A., which is ancient demesne (*e*): And though safer to allege notice that he was tenant in ancient demesne, it does not seem to be necessary (*f*).

Tenants in ancient demesne are also to be impleaded in the lord's court only by a writ of right close (*g*), directed to the lord of the manor, commanding him to do the tenant who prosecutes the writ, what is right in his court (*h*); and if tenants in ancient demesne are otherwise impleaded, they may plead their tenure in abatement of the suit, but this, as we shall presently see, is only where the realty may come in question.

(*a*) F.N.B. 228 D. *Savery v. Smith*, 2 Lutw. 1146. 2 Leo. 191. 2 Vin. Abr. 481 (C). 1 Roll. Abr. 322 (C). And to the lord himself, F. N. B. 228 B. *Savery v. Smith*, sup. Br. Auncien Demeane, pl. 43: (If he be tenant also, 1 Roll. Abr. 322 D, cites 9 H. 6. 25. b). See the form of the writ of exemption from Toll, F. N. B. 228. A.

(*b*) *Ward v. Knight*, Cro. Eliz. 227. S. C. 1 Leo. 232-3. 2 Inst. 221. 1 Roll. Abr. 321 (B). 2 Leo. 191.

(*c*) F. N. B. 228. A. & E. 1 Roll. Abr. 321 (B) pl. 2, 3.

(*d*) Lutw. 1146-7, in *Savery v. Smith*.

(*e*) *Ib.* In the case of the Town

of Leicester, 2 Leo. 191, *Shute*; Just. was of opinion, "that an inhabitant within Ancient Demesne, although he be not tenant, shall have the privileges."

(*f*) *Savery v. Smith*, sup.

(*g*) But see reference to the act of 3 & 4 W. IV. c. 27, post p. 695. n. (*f*).

(*h*) 2 Inst. 542. 4 Inst. 269. See the forms of this writ. Reg. f. 9. F. N. B. 11. A tenant in Ancient Demesne may also have a bill of fresh force in the court of Ancient Demesne, within forty days after disseisin, without any writ sued, Kitch. 188-9. F. N. B. 13 E. Br. Aunc. Dem. pl. 1, cites 26 H. 8. 4.

Of the Writs of Monstraverunt; and de non ponendis.

Monstraverunt. Should tenants in ancient demesne be distrained by their lords to perform other customs or services than they and their ancestors have usually performed, they may be relieved by the writ of *monstraverunt* (a), founded on a petition and ordinance of Parliament (b), and directed to the lord, commanding him not to distrain contrary to such ancient usage, upon which another writ of *monstraverunt* may be sued, directed to the sheriff, commanding him to cause justice to be done, if the lord be disobedient.

But the lord cannot be put to answer the attachment, before the court be certified by the exchequer, that the manor is ancient demesne, therefore the plaintiff in the *monstraverunt* should sue a special writ to the treasurer and chamberlain of the exchequer, to certify the same (c).

Yet it seems that the certificate lawfully coming into court by *certiorari* and *mittimus*, is conclusive, though there be no issue joined, whether frank fee or ancient demesne (d).

The sheriff may make resistance and rescous to any distress by the lord; and in case of the lord's distraining again, the tenants may sue an attachment against the lord, returnable in the King's Bench or Common Pleas, and recover their damages (e). If the lord distrain them pending the attachment, they may have a special attachment directing the sheriff to make deliverance (f).

The writ of *monstraverunt* may be sued generally, without showing the names of the tenants, but in the attachment against the lord, the tenants suing it must be named (g), or at

(a) See the forms of this writ, F. N. B. 14, 15.

(b) 18 Ed. 1. 27. It should seem that the tenants may have this writ without being distrained, 40 Ed. 3. 44. F. N. B. 14 F.

(c) F.N.B. 16 C. See this writ. *Ib.*

(d) *Ib.* n. a., cites 7 H. 6. 32. 39. E. 3. 6.

(e) F. N. B. 15 B.

(f) F. N. B. 15 I.

(g) Plowd. 129. F. N. B. 15 D., F. And see 4 Inst. 269.

least the tenants distrained after the prohibition are named by their proper names, and the others by the general words *homines manerii* (a).

But if one of those named in the attachment will not sue, he may be severed, and the death or nonsuit of one will not prejudice his companions, although the count in the *monstraverunt* be joint (b).

And one tenant may sue the writ of attachment alone, by his proper name, and in the name of the other tenants by the above general words (c).

If frank tenants, and tenants by base tenure join in a *monstraverunt*, the writ shall abate only as to the latter (d).

De non ponendis. In case of being impannelled on any inquest, tenants in ancient demesne may have the writ *de non ponendis in assisis et juratis*, and if, in contempt of such writ, the sheriff will return them, they may have an attachment against him (e).

Of the Writ of Right Close (f).

This writ has been said to be peculiar to lands in ancient

(a) F. N. B. 15 F. Those only who are specially named in the writ of attachment shall recover damages, F. N. B. 16 B.

(b) F. N. B. 15 G. *Ib.* 16 E. For though the count be joint, the tenures are several, and so the torts and damages are several, *Ib.* n. b. The plaintiffs in the attachment may count severally: And the day or place where the lord distrained need not be alleged in the count. F. N. B. 16 A.

(c) F. N. B. 15 H.

(d) F. N. B. 16 E, F.

(e) 1 Nels. Abr. 212 (C) pl. 1. 1 New Abr. 111 (B.) pl. 2 marg.

(f) By the 3d & 4th W. 4, c. 27, (referred to in pt. 1, p. 562, n. (d), and which will be found in the Appendix,) the Writ of Right Close is abolished from the 31st of Dec. 1834; but as the Act is not yet in operation, I think it right that my observations on that form of action in the last edition of this work, should have a place in the present one.

demesne (*a*), but the observation would seem to be unfounded (*b*). The writ is directed to the lord of the manor, or sometimes to the bailiff, and he that brings it, may make protestation to pursue it in nature of what writ he pleases; either in nature of a proper writ of right, or of an assise of *novel disseisin, cui in vitá*, or any other real writ; and therefore it may be brought by tenant for life, in tail, or in dower (*c*).

The demandant in a writ of Right Close cannot remove the plea out of the lord's court for any cause (*d*). But the tenant may remove the same by *recordare* for several causes, as that the lands are frank-fee, and not ancient demesne (*e*); or that there be no suitors, or only one suitor (*f*); or from a just apprehension of partiality, as that the demandant is steward (*g*).

If the tenant for special cause remove the plea into the Common Pleas by *recordare*, although the plea be without writ, yet he cannot show *new* cause to retain the plea in C. B.; but if the cause be general, as *that the tenant claims to hold at common law*, there the tenant may show any special cause to prove the tenements frank-fee, as, for instance, a confirmation by the lord (*h*).

(*a*) Booth's Real Actions, 116.

(*b*) The writ of right called *præcipe in capite*, and which lies where the lands are holden of the King *in capite*, as of his crown, is close, F. N. B. 5 E. Reg. Brev. 4 b. Booth's Real Actions, 87-8. The writ of Right Patent, indeed, when brought in the King's court, *quia dominus remisit curiam*, is also close. Booth's Real Actions, 87-8. And see *ante*, p. 666. tit. "Customary Freeholds."

(*c*) F. N. B. 11 F. Booth, 116.

(*d*) 34 H. 6. 35. 2 E. 3. 35. And see 3 H. 4. 14. 2 Vin. Abr. 495-6. pl. 9. marg. F. N. B. 13 B.

Ib. n. a. Inst. 269. But see 2 E. 3. 29.

(*e*) F. N. B. 13 B. & C. Booth, 117. 4 Inst. 269. Com. Dig. Ancient Demesne (G. 5). 2 Vin. Abr. 495-6. pl. 9.

(*f*) F. N. B. 13 C. 4 Inst. 270. So, it should seem, if there are four suitors only. Br. Cause a remover plea 35. F. N. B. 13 C. marg.

(*g*) Booth, 117. Rast. Ent. 242 b. The demandant being bailiff, does not seem to be a cause of removal. F. N. B. 13 B. (n. a), cites 11 H. 6. 10.

(*h*) F. N. B. 13 F. *Ib.* (n. a) cites 9 H. 6. 34-5. 21 E. 3. 32.

If the demandant and tenant put themselves upon the grand assize (*a*), or the tenant plead a foreign plea, or vouch a foreigner to warranty (*b*), then a *supersedeas* is to be granted out of Chancery to the lord of ancient demesne, or his bailiff (if the writ were so directed), to surcease; and on such foreign voucher the defendant should sue his writ of *warrantia charta* against the vouchee, returnable in the Common Pleas, and then he may have the *supersedeas* out of Chancery to surcease, until the plea be determined in C. B. (*c*).

And if the lord or bailiff proceed after such writ sued forth, the tenant may have an attachment against him to answer the contempt in the Common Pleas, to the King and to the party (*d*). So if the record in ancient demesne is removed by *recordare*, and the lord or bailiff proceed in the plea, the tenant may sue a *certiorari*, directed to the justices of the Common Pleas, to certify the tenor of the record into Chancery, and of the removal; and on the certificate into Chancery, the tenant shall have an attachment, returnable in the Common Pleas, to answer to the King, and to the tenant who sued forth the *recordare* (*e*).

(*a*) But where in a writ of Right Close the plaintiff made protestation to sue in nature of a writ of right at common law, and the tenant joined the mise [or issue,] upon the *mere right*, and put himself on the grand assize, the record was removed by an *accedas ad curiam* into the court of C. B., and it was held, that the tenant's putting himself upon the grand assize, was not a sufficient cause for removing the record, but that he should have a jury in the nature of the grand assize; and a *procedendo* was awarded. *Stafford's case*, Dy. 111 b. And see *Lex Man.* 41. *Rast. Ent.* 242. But see 1 H.

7. 29. Booth, 117. F. N. B. 13 H. (n. b).

(*b*) See as to voucher into the county by tenant in ancient demesne, the vouchee having nothing to be summoned by within the seignory. Dy. 69 b. pl. 35. *Vide* also F. N. B. 13 G. (n. b).

(*c*) F. N. B. 13 G. & H. Br. Aunc. Dem. pl. 35, cites 1 H. 7. 30. If the tenant plead bastardy, &c., a *supersedeas* also goes to the lord to surcease, for the court of Ancient Demesne cannot write to the Bishop. Reg. 9 a. 1 Com. Dig. 354.

(*d*) F. N. B. 14 A.

(*e*) F. N. B. 13 H.

But if the plea of *warrantia chartæ* be discontinued in C. B. then the demandant may sue a writ out of Chancery, directed to the justices of C. B., to certify the King in Chancery if the plea of *warrantia chartæ* be pendent, or discontinued, so that if discontinued or determined, the court of Ancient Demesne may be directed to proceed in the plea (*a*).

We have already seen that a writ of error does not lie to reverse a judgment in a court of Ancient Demesne, but that the party may have a writ of false judgment (*b*). Where it was assigned for error, that the writ of Right Close was directed to the bailiffs, when it appeared by the record that the plea was holden before the suitors, and also that twelve recognitors only were returned, instead of twenty-four, the judgment of the manor court was affirmed (*c*).

When Ancient Demesne is a good Plea; and of the general rules of Pleading as to lands of that Tenure.

In all cases where a recovery against the tenant in ancient demesne could make his land frank-fee, there *Ancient Demesne* is a good plea (*d*): it may therefore be pleaded in bar in assize, or *re-disseisin* (*e*), and all real actions (*f*).

(*a*) F. N. B. 14 A.

(*b*) *Ante*, p. 687. But as a copyholder cannot have a writ of Right Close, (*ante*, p. 691,) if one recover against him in ancient demesne by writ of Right Close, he shall not have a writ of false judgment, nor assign this for error, for then he should be restored to a freehold which he never lost. 14 H. 4. 34. The recovery, however, it seems would be void, and might be avoided by plea. 1 H. 5. 12. F. N. B. 12 B. (n. b).

(*c*) *Abrahall v. Nurse*, 3 Leo. 63. S. C. Bendl. 279. In *Lex Man.* p. 41, the reason assigned for over-

ruling the first exception is, that it should be intended that the bailiffs were likewise suitors.

(*d*) 8 H. 6. 34. 1 Roll. Abr. 322. (E) pl. 1. See generally as to this plea, Com. Dig. Anc. Dem. (F. 5.)

(*e*) 7 H. 6. 35. b. 1 Roll. Abr. 322, pl. 7. *Coke v. Barnsley*, 1 Brownl. 234. So in assize of rent out of land in ancient demesne. Dy. 8, pl. 14; but see Br. Aunc. Dem. pl. 3. *Ib.* Priviledge, pl. 7. Vide post, pp. 701, 702, as to assize by tenant by *elegit*, and *stat. merchant*.

(*f*) 8 H. 6. 1. 1 Roll. Abr. 322. (E) pl. 2. 4 Inst. 270. It may be

Ancient demesne is also a good plea wherever the interest of the land is bound, or the realty by intendment may come in debate; as in an ejectment (*a*); but if not so pleaded it will be too late after judgment to take advantage of the change of tenure (*b*); and, indeed, it should seem, that in ejectment, it must be pleaded within the first four days of the term (*c*), and that the plea must be with leave of the court (*d*), on an affidavit stating, that the lands are holden of a manor which is ancient demesne, that there is a court of ancient demesne regularly holden, and that the lessor of the plaintiff has a freehold interest (*e*). But the plea may be filed *de bene esse*,

pleaded after a release of a default, upon the return of the Grand Cape. 8 H. 6. 1. 1 Roll. Abr. 324. (H) pl. 1. In *formedon* tenant not allowed to plead ancient demesne after the view. Fitz. Abr. Aunc. Dem. pl. 12, cites Hill. 50. E. 3. 10. *Contra in præcipe quod reddat*. Br. Aunc. Dem. pl. 10, cites 50 E. 3. 9. The prayee in aid shall not plead ancient demesne, because the tenant has affirmed the jurisdiction before by the aid prayer. Br. Aunc. Dem. pl. 15. 2 Vin. Abr. 488. (H) pl. 4.

(*a*) *Smith v. Arden*, Cro. Eliz. 826. S. C. 2 And. 178. S. C. (called *Alden's case*), 5 Co. 105. S. P. Hob. 47, in *Cox v. Barnsly*. 1 Bulst. 108. 2 Roll. Rep. 181. Comb. 40. 4 Inst. 270.

(*b*) Neither in such a case could the suitors of the manor court refuse to execute a writ *de procedendo ad executionem judicii*. *Gybon v. Bowyer*, Mo. 451.

(*c*) *Smith v. Roe*, Barnes 331. Sir G. Cooke's Rep. Pract. C. B. 103. Prac. Reg. C. P. 2. *Holdfast v. Carl-*

ton, Sir G. Cooke 43. *Pease v. Badtite*, Barnes 336. *Bingham v. Barker*, cited Barnes 187. *Doe & Thomas*, Barnes 185. *Deighton d. Roberts & Wife v. Forster*, 2 Barnes 156. *Denu d. Wroot v. Fenn*, 8 T. R. 474. But see as to country cause, *Doe & Robinson*, 2 Str. 1120. The plea of ancient demesne has been allowed after imparlance. *Marshall v. Allen*, Latch 83. S. C. Palm. 406. S. C. Cro. Car. 9. S. C. cited Willes 239. Dy. 210. b. pl. 27. Ib. 373. b. pl. 13. n. Com. Dig. Abatement (D. 1.); yet see *contra* in Replevin, *Vincent v. Wallis*, Sty. 197. Vide also Hetl. 177. *Clarke v. Hampton*, 4 Jac. cited in *Marshall & Allen* sup. Ante, pt. 1. p. 606.

(*d*) *Barnard*. Rep. B. R. 7, 352, 365. Andr. 368. 1 Sir W. Bl. 197. *Tidd's Pr.* 680. [8th Ed.]

(*e*) *Smith v. Roe*, sup. *Doe d. Rust v. Roe*, 2 Burr. 1046. *Hatch v. Cannon*, 3 Wils. 51. *Tidd's Pr.* 680. [8th Ed.] But formerly the affidavit was not thought necessary in ejectment. *Goodright v. Shuffill*, 2 Lord Raym. 1418, cites *Earl Co-*

where the four days would expire before cause could be shown and the plea pleaded (*a*).

An affidavit to verify the fact of the land being ancient demesne, would seem to be necessary in all cases where the plea is to the jurisdiction of the court, and therefore in a plea of ancient demesne in formedon (*b*); yet it was formerly held that foreign pleas only, and not pleas to the jurisdiction, were to be sworn to (*c*). It should certainly seem that the plea of ancient demesne is good without a defence (*d*).

Ancient demesne is likewise a good plea in replevin (*e*); in a writ of mesne or of ward (*f*); in account against guardian in socage, or bailiff of a manor (*g*); in a writ of admeasurement of pasture (*h*); and in partition (*i*), the land being col-

ningsby's case. An affidavit that the lands are reputed to be ancient demesne would seem to be sufficient, there being a probable cause shown to plead it. *Doe d. Henant v. Thomas & others*, Barnes 185.

(*a*) *Doe d. Morton v. Roe*, 10 East 523.

(*b*) *Hatch v. Cannon*, ubi sup. And see 1 P. W. 476. Anon.

(*c*) *Cholmondley v. Broom*, Carth. 402. S. C. 3 Salk. 173. S. C. 5 Mod. 335. 12 Mod. 123. Vin. Abr. 'Foreign Plea,' 1 Saund. 98. n. 1. 1 Chitty on Plead. 429. And see *Goodtittle v. Rogers*, Barnard. Rep. B. R. 7. 2 Vin. Abr. 503. pl. 27.

(*d*) *North v. Hoyle*, 3 Lev. 182. *Smith v. Frampton*, Ib. 405. *Farrers v. Miller*, 1 Sho. 386. But see S. C. (*Ferrer v. Miller*), 1 Salk. 217, Carth. 221, where *Holt*, C. J., said that the plaintiff might have refused the plea for want of a defence.

In præcipe quod reddat ancient demesne a good plea, without travers-

ing that it is frank-fee. Br. Traverse per &c. pl. 185.

(*e*) 4 H. 6. 19. 7 H. 6. 35. b. 21 E. 3. 10, 51. 29 E. 3. 9. 30 E. 3. 12. b. 2 H. 7. 17. 21 E. 4. 3. a. 10 H. 7. 14. 2 Vin. Abr. 482. pl. 5. Br. Aunc. Dem. pl. 4, cites 40 E. 3. 4. 4 Inst. 270. *Alden's case*, 5 Co. 105. a. *Cox v. Barnsly*, Hob. 47. *Owen's case*, Ow. 24. Godb. 64, ca. 76. Scroggs 123. F. N. B. 11 L, (n. a). And even after a deliverance made in replevin. 30 E. 3. 12. b. 1 Roll. Abr. 324. (H), pl. 2.

(*f*) But see reference to 3d & 4th W. 4. c. 27, by which the writ of right of ward is abolished after the 31st Dec. 1834,) ante, p. 695. n. (*f*.)

(*g*) 4 Inst. 270. *Alden's case*, sup. Hob. 47.

(*h*) 8 H. 6. 34. Br. Aunc. Dem. pl. 20, 37. 1 Roll. Abr. 322. pl. 9.

(*i*) *Grace v. Grace*, Tr. 12 Jac. 1 Roll. Abr. 322. pl. 10. *Pont v. Pont*, Sir T. Raym. 249. But see reference to 3d and 4th W. 4. c. 27,

laterally though not directly in question. It has been said to be a good plea also in assize by tenant by *elegit*, the statute giving an assize to such tenants, not extending to ancient demesne lands (a); but the case of *Smith v. Arden* (b) has fully decided that ancient demesne lands may be extended on an *elegit*, under the statute of 13 Ed. 1., neither the freehold nor the possession being removed by such execution.

When ancient demesne is pleaded, it is essential to allege, that the lands are *held of* some manor which is ancient demesne, and not that they are *parcel of* such manor, for that would imply that they were part of the demesnes, and pleadable only at common law (c). And when lands are pleaded in a real action, as being frank-fee though held of a manor which is ancient demesne, it should seem that it is not sufficient for the demandant to say that the lands are frank-fee, but that he must plead specially how they became so (d).

(by which the writ of partition is abolished after the 31st Dec. 1834); ante, p. 695. n. (f.)

(a) Br. Aunc. Dem. pl. 33. Ib. Parlement & Statutes, pl. 81, cites 22 Ass. 45. And see 2 Vin. Abr. Anc. Demeane, (E) pl. 15. marg.

(b) Cro. Eliz. 826. 5 Co. 105. 2 And. 178. And see *Cox* (or *Coke*) v. *Barnsly*, Hob. 47. S. C. 1 Brownl. 234. *Martin v. Wilks*, Mo. 211. Hut. 117. Ante, p. 679, tit. 'Cus-tomary Freeholds.'

(c) Br. Aunc. Dem. pl. 34, cites 41 Ass. 7. Ib. pl. 6, cites 41 E. 3. 22. 11 Co. 10 b, cites also 48 E. 3. 11 a. b. Fitz. Aunc. Dem. 9. Kitch. 193, cites 36 H. 6. 18. *Brittel v. Bade* (or *Dade*), 1 Lord Raym. 43. 1 Salk. 186. *Kite v. Lauray*, 3 Salk. 34. *Baker v. Wich* (or *Winch*), 1 Salk. 56. S. C. Comb. 186. S. C.

(*Parker v. Winch*), 12 Mod. 13. See the pleadings in this case, (called *Barker v. Winch*), Lex Man. Appx. p. 24, pl. 7. Vide also *Hatch v. Cannon*, 3 Wils. 51. *Doe d. Morton v. Roe*, 10 East 524.

Note, it is said that land may be ancient demesne, though parcel of a manor which is not ancient demesne. 1 Roll. Abr. 321 (A), pl. 1, cites 30 E. 3. 12. And see 2 Leo. 191. But see ante, p. 687. 2 Burr. 1048. *Hopkins v. Pace*, 1 Sho. 271.

(d) Kitch. 193, cites 41 E. 3. 22. 12 Ass. 16. 22 Ass. 45.

As wastes are part of the demesnes of a manor, improvements by the lord cannot be ancient demesne. 5 Ass. 2. 1 Roll. Abr. 321 (A), pl. 2. F. N. B. 14 D. (n. a).

"Frank-fee may be held of a manor of ancient demesne," Kitch. 193,

But ancient demesne is not a good plea in an assize by tenant by statute merchant, &c., as a chattel interest only is demanded, and not the freehold (*a*). Nor can it be pleaded in waste upon the statute of Gloucester (*b*), for the sheriff cannot be commanded by the court of ancient demesne, to inquire of the waste (*c*).

Nor can it be pleaded in trespass (*d*); nor in debt in the superior courts, for damages recovered in the court of ancient demesne (*e*); nor in detinue of charters (*f*); nor in a *warran-*

cites 11 H. 4. 85. And see 1 Roll. Abr. 321 (A), pl. 1. Br. Aunc. Dem. pl. 15. Comb. 183, in *Heydon & Pace*.

Br. court baron, pl. 3, cites 7 H. 4. 27, that if land and damages are recovered in assize in ancient demesne court, on execution the bailiff may sell the beasts, and deliver the money to the recoveror in execution of his damages; and per *Huls*, that if a man recover damages in ancient demesne, the bailiff may make execution in land, which is frank-fee held of the manor.

(*a*) 2 E. 2. 1 Roll. Abr. 323, pl. 15. 2 Inst. 397. *Martin v. Wilks*, Mo. 211. 2 Vin. Abr. 484, pl. 15.

(*b*) 7 H. 6. 35. By the opinion of all the court, except *Walmsley*, *Owen's case*, 36 Eliz. Ow. 24, cites 2 H. 7. 17. 21 E. 4. 3. Per three Justices (*Walmsley* doubting) in *Green v. Baker*, M. 37 Eliz. 1 Roll. Abr. 323, pl. 18. Lex Man. 40. Contra. Br. Aunc. Dem. pl. 37, cites 8 H. 6. 34. Ib. pl. 20, cites also 7 H. 6. 35. Ib. Parlement, pl. 17. Kitch. 189, cites 7 H. 6. 37. 8 H. 6. 83. And see Cro. Eliz. 826, in *Smith v. Arden*. *Cox v. Barnsly*,

Hob. 47-8.

(*c*) 2 Inst. 306. 2 Saund. 254, in *Green v. Cole*. Action of waste upon the statute does not lie in ancient demesne. Br. Parlement, pl. 17, cites 8 H. 6. 35. For the court cannot award process to the sheriff to inquire of waste; "but waste lies by writ of right there, and shall have process at common law, viz. distress infinite, *quære inde*, for writ of waste was not at common law." Br. Aunc. Dem. pl. 40, cites 32 H. 6. 25. Ib. Waste, pl. 141, cites S. C. (called by error 23 H. 6. 25). Vide also on this plea in waste, 2 Vin. Abr. 484-5, pl. 18, 22.

(*d*) 46 E. 3. 1. 2 H. 7. 17. Br. Aunc. Dem. pl. 7, 36. *Smith v. Arden* (or *Alden's case*) ubi sup. *Cox* (or *Coke*) v. *Barnsly*, Hob. 47. S. C. 1 Brownl. 234. *Rodd v. Lord Coningsby*, Bunb. 132. 1 Roll. Abr. 322 (E), pl. 11, 12, 13. Kitch. 188, cites 46 E. 3. 1. 47 E. 3. 22. 2 Vin. Abr. 482-3, pl. 11, 12, 13. 4 Inst. 270.

(*e*) 39 H. 6. 3. Kitch. 189.

(*f*) 1 Roll. Abr. 323 (E), pl. 14. Kitch. 189.

tia chartæ (a); nor in a *quare impedit*, for the court cannot write to the bishop (b); nor by the lord, in an action against him, for the land is frank-fee in his hands (c); nor in an action against the lord and others (d); nor for a lessee for years (e); nor for a copyholder (f).

It may here be proper to repeat, that in all actions concerning *copyholds*, it is essential that the copyhold tenure should be pleaded; and this rule of course extends to copyhold lands held of a manor which is ancient demesne: if therefore they are stated to be held of A. of his manor of B. which is ancient demesne, it will be considered that the lands are pleadable in the lord's court by writ of right close (g); and if pleaded that they are *parcel of* the manor, it must be understood that the lands are part of the *demesnes*, and therefore, together with the manor, impleadable only at common law (h).

I shall conclude my observations on the doctrine of pleading, in cases affecting tenants in ancient demesne, or their lands of that tenure, by noticing, that it is not necessary, in order to establish an exemption from toll in respect of an estate held in ancient demesne, to set forth what interest the tenant has in

(a) F. N. B. 135. K. Kitch. 189.

(b) 1 Roll. Abr. 323, pl. 17, cites 7 H. 6. 35. Br. Aunc. Dem. pl. 20. Hob. 48, in *Cox v. Barnsly*. Nor in an action upon the stat. 5. R. 2. Kitch. 188-9, cites 2 H. 7. 17. 21 E. 4. 3. Hob. 47. Nor in a *juris utrum* of his free alms. 32 E. 1. 2 Vin. Abr. 483, pl. 16. 1 D'Anv. 659, pl. 16. Kitch. 189.

(c) 41 E. 3. 22. 1 E. 3. 14. F. N. B. 11 (M). 1 Roll. Abr. 323, (G), 325, (I), pl. 19. 2 Vin. Abr. 487 (G), pl. 2 & marg.

(d) 41 E. 3. 22. 1 Roll. Abr. 323 (G), pl. 3. 2 Vin. Abr. 487 (G), pl. 3.

(e) 41 E. 3. 22. b. 1 Roll. Abr.

323 (G), pl. 1. Fitz. Abr. Aunc. Dem. pl. 9.

(f) *Smith v. Frampton*, 3 Lev. 405. *Brittle v. Bade* (or *Dade*), 1 Lord Raym. 43. 1 Salk. 186. And see *Wilkins v. Gregory*, Cary 121-2.

(g) Which writ we have seen cannot be maintained by a copyholder, *ante*, pp. 671 (n. b.), 691.

(h) *Brittle v. Bade* (or *Dade*), *sup.* *Doe d. Rust. v. Roe*, 2 Burr. 1046. *Kite v. Laury*, 3 Salk. 34. *Baker v. Wich* (or *Winch*), or *Parker v. Winch*, 1 Salk. 56. Comb. 186. 12 Mod. 13. *Smith v. Frampton*, *sup.* *Ante*, p. 701. *Ante*, pt. 1, p. 606.

the particular lands; and the allegation that the tenants of ancient demesne lands are quit *of toll in all places in England*, is sufficient, though they are only discharged of toll as to such things which arise on the lands, or are for the necessary support of their families (a): And that where in trespass for erecting a stall in the market-place, the defendant, a butcher, pleaded in bar a custom for the tenants in ancient demesne to erect stalls, &c., and to be quit of stallage *for their goods sold therein*, and that he did on a certain day set up a stall there *to sell flesh*; this was on demurrer adjudged to be an ill plea, the defendant not setting forth that the stall was set up to sell *his* flesh, and it might have been the flesh of another butcher, and so not within the custom (b).

Of Fines and Recoveries (c).

Fines are to be levied and recoveries suffered of lands in

(a) *Savery v. Smith*, 2 Lutw. 1144. S. C. 3 Salk. 36. See the pleadings in this case, *Lex. Man. Appx. p. 29. ca. 10. Ante, p. 693.*

(b) *Chafin v. Betsworth*, 3. *Lev.* 190. See the pleadings in this case, *Lex Man. Appx. p. 27. ca. 9.*

(c) But by 3d and 4th Wm. 4. c. 74, see Appendix, it is provided that no fine shall be levied or common recovery suffered after the 31st Dec. 1833; and that tenants in tail shall have power to dispose of the lands entailed, either in fee simple or for any less estate, but in the case of tenants in tail in remainder, and other cases mentioned in the Act, certain persons are therein denominated protectors, and required to give their consent to such disposition.

And by the same Act, (Sect. 4,) a provision is made that no fine or recovery levied or suffered in a superior court, of lands of ancient demesne tenure, shall be reversed upon a writ of disceit, except as to the lord of the manor.

And also, (Sect. 5,) that a fine or recovery of ancient demesne lands levied or suffered in the manor court, after a fine or recovery thereof in a superior court, shall be as valid as if the tenure had not been changed by such prior fine or recovery.

And likewise, (Sect. 6,) that in every case in which the tenure of ancient demesne may have been suspended or destroyed by a fine or recovery in a superior court, provided that the lord of the manor shall not

ancient demesne in the court of the manor upon a writ of Right Close (a); and the fine may be *sur concessit* as well as *sur conuissance de droit* (b). And if pleaded in *placito conventionis secundum consuetudinem manerii* it is sufficient, though not said to be upon a writ of Right Close (c).

But it should seem that a fine levied in the lord's court by tenant in tail is a discontinuance only, and no bar (d), for that is only when the fine is levied in the court of Common Pleas with proclamations by virtue of the statute of 4 H. 7; yet it has been doubted whether by custom a fine *with proclamations* in the manor court, is not a bar, notwithstanding the statute *de donis* (e); but the better opinion is that it is no bar even by custom (f). A fine by tenant in tail levied in the court of *Ancient Demesne* would, however, be a bar to the issue in tail, under the statute of limitations, 21 Jac.; but where the tenant in tail leased for three lives by a fine *sur concessit*, the court held that the issue in tail, notwithstanding a second fine levied to enure to the conuzee in fee, had a right of entry for twenty years, after the expiration of the lease for lives, when the discontinuance determined, and therefore that the plaintiff was entitled to recover in ejectment, even supposing his lessor

have reversed the same prior to the 1st of January, 1834, and that he was not barred of his right to reverse such fine or recovery by any law in force on the first day of the then session of Parliament, and provided that the right of the lord shall in any manner have been recognised within 20 years immediately preceding the 1st of January, 1834, such lands shall, from the last mentioned day, again become parcel of the manor: And that no writ of disceit for the reversal of any fine or recovery shall be brought after the 31st of Dec. 1833; vide also 3rd & 4th Wm. 4. c. 27.

s. 36, in the Appendix, by which the writ of disceit is abolished from the 31st December, 1834.

(a) 2 Inst. 513. 1 Cru. 86. *Hunt v. Bourne* (or *Burn*), 1 Lutw. 770, 781. S. C. 57, 244, 339, 422. S. C. (*Hunt v. Browne*), 3 Salk. 34. S. C. 1 Comy. 93.

(b) 1 Lutw. 770, 771, in *Hunt & Bourne*.

(c) *Ib.* 781.

(d) *Hunt v. Bourne*, *sup.*

(e) *Elmes' case*, Dy. 373. a. S. C. 1 And. 71.

(f) 2 Inst. 515. 4 Inst. 270.

to be barred of a formedon, by twenty years having passed after the right of action accrued (*a*).

And a recovery suffered in the court of Ancient Demesne, according to the custom of the manor, is a bar to an entail, equally with a recovery of socage lands in the Common Pleas (*b*).

A recovery may be suffered, or a fine levied, of lands held by the tenure of ancient demesne, in the court of Common Pleas (*c*); yet the jurisdiction of the court has been doubted (*d*), without, however, any apparent good reason; but as the effect of such a recovery and fine, is to make the lands frank-fee, so long as they stand in force (*e*), and therefore operating to the lord's prejudice, he may reverse the same by writ of Disceit (*f*),

(*a*) *Hunt v. Bourne*, *ubi sup.*

(*b*) *Hunt v. Burn* (or *Browne*)
1 Salk. 57, 3 Salk. 34. And see
Kitch. 190, cites 50 Ass. 9. 2 Cru.
162. *Green v. Proude*, 1 Mod. 117.
3 Keb. 310. 1 Vent. 107; in this
case the court rolls being destroyed,
a copy of a recovery of an ancient
date under the steward's hand, was
admitted as evidence. But see *ante*,
p. 704 (n. c.)

(*c*) Kitch. 191. *Preston on Conv.*
1 vol. p. 266. But see *ante*, p. 704
(n. c.).

(*d*) 1 Cru. 86. And see 2 Inst.
513.

(*e*) 2 Inst. 513. 4 Inst. 270.
Kitch. 191, 192. 1 Roll. Abr. 324
(I), pl. 1 to 7 incl. *Br. Aunc. Dem.*
pl. 12. *Fitz. Abr. Cause de re-
mover plee*, pl. 10. 1 Salk. 57, in
Hunt v. Burn. *Ante*, p. 671 n. (*a*).
So equally in a recovery at the com-
mon law in an assize, 11 H. 4. 86.
2 Vin. Abr. 488. pl. 4. So a re-
covery in a *præcipe quod reddat*.

F. N. B. 13 C. But the lands are
not frank-fee before judgment. 2 E.
3. 26. Kitch. 191. A fine levied in
C. B. by tenant in Ancient Demesne,
in a *warrantia chartæ*, does not make
the land frank-fee, for the land does
not pass by it, 21 E. 3. 32 b. 1 Roll.
Abr. 324, pl. 6. 2 Vin. Abr. 488.
pl. 6.

(*f*) 1 E. 3. 5. 26 b. 2 Vin. Abr.
497. *Zouch v. Thompson*, 1 Salk.
210. 3 Salk. 35. *Earl of Plymouth*
v. James, Lutw. 711. *Humfry v.*
Bathurst. *Ib.* 740. *Rex v. Fire-
brass*. *Pra. Reg. C. P.* 373. *Rex*
v. Comyns. *Ib.* 374. *Griffith &*
Agard, 3 Leo. 117: In this case it
was held to be sufficient that the
words '*cujus hæres ipse est*' were in
the body of the writ without stating
in the beginning of the writ, that
the plaintiff was cousin and heir,
&c.; and that the allegation *de an-
tiquo dominico dominæ reginæ Angliæ*
was good, without saying *coronæ*
sux, &c. And I apprehend that the

but not by a *Scire Facias* (a); and the rule extends to the King, when lord of such a manor, as well as a private person (b).

As far as respects the lord, the fine in the court of Common Pleas is *coram non judice*, and consequently no bar to him under the statute of non-claim (c), or the statutes of limitation (d); for a fine may establish the right of another, but cannot establish its own defects (e). Some doubts, however, have been entertained, whether a second fine in the court of Common Pleas would not operate as a bar to the lord, under the statute of non-claim, after five years (f); and it should certainly seem, that a fine of elder date will hinder the reversal of a fine of later date by writ of disceit, but not *e converso* (g).

The lord in pleading need not set forth any estate, it being sufficient that he is *dominus pro tempore* (h); even a termor may have the writ of disceit (i). And if the lord's estate be

writ is not in the nature of a writ of error, and consequently that the limitation of twenty years, by 10 & 11 W. 3. c. 14, does not extend to the writ of Disceit. And see 2 vol. Preston on Conv. 102. For the form of the writ of Disceit, vide 1 Lutw. 711. But see reference to the Act of 3rd and 4th Wm. 4. c. 27; and 3rd and 4th Wm. 4. c. 74, ante p. 704, n. (c.)

(a) *Zouch v. Thompson*, 3 Lev. 419.

(b) 7 H. 4. 27. Br. Aunc. Dem. pl. 13. *Ib.* 15, cites 11 H. 4. 85. F. N. B. 97 D. (n. b & c.) *Rex v. Mead*, 2 Wils. 17. *Stowel v. Lord Zouch*, Plowd. 370. 1 And. 74.

(c) *Zouch v. Thompson*, 1 Salk. 210. S. C. 3 Salk. 35. S. C. Lord Raym. 179. *Cockman v. Farrer*,

Skin. 14. Plowd. 370. 3 T. R. 173. And see 2 Vin. Abr. 497 (Q). F. N. B. 13 C. (n. a). Br. Aunc. Dem. pl. 39.

(d) Com. Dig. 348. E. 2.

(e) *Zouch v. Thompson*, sup.

(f) 2 Inst. 518. Plowd. 370. marg. *Lord Zouch v. Bamfield*, 1 And. 172. *Cockman v. Farrer*, sup. S. C. Sir T. Raym. 462, where, referring to 2 Inst. 518, that a fine is a bar after five years, it is said, "it's intended another fine, and not the same which was first levied."

(g) F. N. B. 97 D. (n. b), cites 21 E. 3. 25, 26.

(h) *Zouch v. Thompson*, 1 Salk. 210. S. C. 3 Salk. 35. S. C. 3 Lev. 419.

(i) 1 E. 3. 5, 26 b. *Earl of Plymouth v. James*, 1 Lutw. 713.

determined, it must be shown on the other side (*a*); nor is it necessary to show before whom the court was held, but only that the lands are pleadable *in curia manerii* (*b*).

When a fine is reversed by a writ of disceit, it ceases to be binding on the parties themselves (*c*), and consequently on the issue in tail (*d*); but whilst the fine remains in force the tenancy is changed by way of estoppel, and the parties themselves are bound (*e*); so also is a disseisee (*f*).

It should seem, however, that a particular course of descent in ancient demesne lands, would not be changed by a fine at common law, in as much as a custom governing the descent runs with the land, and is in respect of the land, and not of the seigniorship (*g*), the same as in gavelkind lands, the custom whereof is not changed by a fine or recovery at common law (*h*): But it has been said that a peculiar customary descent in gavelkind lands, runs not with the lands simply, but by reason of the ancient demesne, and that the custom would therefore be destroyed by a fine at common law (*i*).

Although a fine of ancient demesne lands cannot be reversed

(*a*) *Zouch v. Thompson*, ubi sup.

(*b*) *Earl of Plymouth v. James*, ubi sup.

(*c*) 4 Inst. 270. Kitch. 191, cites 8 E. 4. 6. 3 H. 4. 6. *Lampet's case*, 10 Co. 50. a.

(*d*) *Cary v. Dancy*, Cro. Eliz. 471. b.

(*e*) 21 E. 3. 25. F. N. B. 13 C. (n. a.) 2 Leo. 192, ca. 240. Pending a writ of right close, the tenant accepts a fine *come ceo*, &c., yet the land remains ancient demesne as to that action. 12 H. 7. Rot. 103. F. N. B. 13 C. n. marg.

(*f*) 7 H. 4. 3. F. N. B. 13 C. (n. a.)

(*g*) Dy. 72. b. pl. 4. Dal. 12. pl. 21. per *Hale and Brown*, Just. And

see 49 E. 3. 8. per *Kirton*, Just. 49 E. 3. 7, 8. Br. Abr. Aunc. Dem. pl. 8. Ib. Confirmation, pl. 5.

(*h*) *Finch's Law* 15. Rob. Gav. [3d Ed. by Wilson] p. 90.

(*i*) *Finch's Law* 16, cites 6 E. 6, & Dy. sup. n. (*g*). Vide also Dal. 12. Per *Montague*, C. J., cited Rob. Gav. [3d Ed.] p. 91. Customs merely collateral and not incident to the tenure, are not necessarily destroyed by a change in the tenure, or in other words, the *estate* of the tenant may continue, though the *quality* of it be altered. See Bro. Abr. as in n. (*g*) sup. Vide also *Doe & Huntington*, 4 East 282, 290-3. *Wiseman v. Cotton*, 1 Lev. 79. S. C. 1 Sid. 135.

as to one person, and remain good as to another, yet it may be reversed as to part of the land, and remain good as to the residue (a).

Of the manner of bringing the writ of Disceit.

When a fine is levied of ancient demesne lands in the Common Pleas, the ter-tenant is the person against whom the writ of *disceit* properly lies (b); and persons to whom estates in remainder are limited by the fine need not be named in the writ (c), but those in remainder are to be summoned by *scire facias* to show cause, if they can, why the fine should not be reversed (d).

The writ of *disceit* may be brought against the conuzee as well as the conuzor, and against the heir of the conuzor or conuzee, as the fine works a real disceit, and not a personal tort only (e). It may be brought, I apprehend, against the conuzor or conuzee alone (f), but then there must be a *scire facias* against the ter-tenant (g).

(a) F. N. B. 98 P. 17 E. 3. 31. 21 E. 3. 20. Fitz. Abr. Disceit, pl. 37, 44. 1 Lord Raym. 178-9, in *Zouch v. Thompson*. 1 Lutw. 713. Keilw. 43, pl. 10. *Lee & Loveday*, 1 Leo. 290. S. C. 3 Leo. 120.

(b) 16 E. 3. 66. Lutw. 713, in the Earl of *Plymouth v. James*, cites Fitz. Fines, 30. *Zouch v. Thompson*, 1 Salk. 210. S. C. 3 Salk. 35. F. N. B. 97 D. n. b. & c.

(c) F. N. B. 97 D. n. b. & c. 2 Vin. Abr. 496. (P. 2.) pl. 1, cites Thel. Dig. 48. lib. 5. cap. 17. s. 2; citing Trin. 26 E. 3. 65.

(d) 21 Ass. 79 b. pl. 13. Br. Disceit, pl. 21, cites 21 Ass. 13. 2 Vin. Abr. 497 (R), pl. 2. marg. F. N. B. 97 D. (n. c), cites 21 E. 3. 56.

(e) *Zouch v. Thompson*, sup. Yet it seems that the writ does not abate by the death of the conuzee, the action being trespass only in its nature. *King v. Due* (or *Dewe & Kirley's case*), 3 Leo. 3. S. C. Mo. 13. pl. 49.

(f) Win. Ent. 26. Herne 93. Lex Man. 36, marg. F. N. B. 97 D. (n. c).

(g) 7 H. 4. 44. 8 H. 4. 29. F. N. B. 97 D. (n. c). In Vent. 211, (*Anon.*), it is said, "In a writ of disceit to reverse a fine of land in ancient demesne, after assignment the conuzee shall be made party. So in a writ of error, though the tertenant shall not be turned out of possession without a *scire facias*."

In an action on the case in nature of *disceit* brought against the vouchee only, to reverse a recovery of lands in ancient demesne, the court of C. B. held that the demandant and tenant also ought to be before the court, to prevent collusion between the lord of the manor and vouchee (*a*); and it was agreed that the action should be discontinued, and a new action brought against the demandant, tenant, and vouchee.

It has been held that if the conuzee be in possession, and the conuzor releaseth to him by deed all his right, though the fine should be afterwards avoided, yet the conuzee shall hold the lands by virtue of the release (*b*); and yet after the fine levied, the conuzor had no right in the land, but only a possibility to have the land again after the fine made void by a writ of *disceit* (*c*): So also the estate of the conuzee shall stand after reversal of the fine, if confirmed by the heir of the conuzor (*d*): And after reversal of the fine, the heir of the conuzor shall not enter upon the *ter-tenant*, without a *scire facias* (*e*).

By what acts Ancient Demesne Lands become frank-fee.

Ancient demesne lands, as we have already seen (*f*), may become frank-fee by a fine or recovery in the court of Common Pleas; and if the lord be a party to a fine at common law, he shall never afterwards have a writ of *disceit* (*g*): They are also made frank-fee by the lord's joining with the tenant in a fine upon a writ of warranty of charters (*h*).

(*a*) *Rex v. Hadlow*, 2 Sir W. Bl. 1170.

(*b*) F. N. B. 98 A. Kitch. 191. *Lampet's case*, 10 Co. 50 a.

(*c*) *Lampet's case*, sup.

(*d*) *Drew Barrentine's case*, 3 Leo. 12.

(*e*) *Cary v. Dancy*, Cro. Eliz. 471 b. *Lee & Loveday*, 1 Leo. 290. 3 Leo. 120.

(*f*) Ante, p. 706.

(*g*) 30 E. 3. 13 b. F. N. B. 13 C. (n. a).

(*h*) 21 E. 3. 32 b. 1 Roll. Abr. 325, pl. 27. *Contrà*, if such a fine be levied by the tenant alone, Ib. 324, pl. 6, cites S. C. See reference to 3d & 4th W. 4. c. 27, (by which the writ of *warrantia chartæ* is abolished after the 31st Dec. 1834,) ante, p. 695. n. (*f*).

A fine, with a grant and render to the tenant *without execution*, will likewise make the land frank-fee (*a*). So also a fine upon a release with warranty to the tenant (*b*); but it appears to be doubtful whether ancient demesne lands will become frank-fee by a fine upon a release without warranty (*c*).

It should seem that a fine levied by the tenant without any original writ will make the land frank-fee till reversed (*d*).

And when lands held in ancient demesne escheat to the lord, they become frank-fee, as he then holds them of the lord paramount (*e*); and if he be disseised thereof his remedy is in the courts of common law (*f*).

Again, if ancient demesne lands come to the king, they are frank-fee (*g*), even though the king grant them over again to another in fee or for life (*h*); and therefore to prove the land frank-fee, it is sufficient to show the feoffment or charter of the king (*i*): So, if the king give lands of ancient demesne, to hold in *frank-almoign*, they become frank-fee (*k*).

If the lord confirm ancient demesne lands to the tenant, to

(*a*) 40 E. 3. 4 b. 1 Roll. Abr. 324 (I), pl. 2. And see Br. Aunc. Dem. pl. 4. 2 Vin. Abr. 488, pl. 2.

(*b*) 21 E. 3. 25. 1 Roll. Abr. 324, pl. 3. And see *Griffith v. Clarke*, Mo. 143.

(*c*) 40 E. 3. 4. b. 1 Roll. Abr. 324, pl. 5.

(*d*) 26 H. 8. Ass. 13. 1 Roll. Abr. 324, pl. 7.

(*e*) Kitch. 191, cites 18 Ed. 3. 19. Com. Dig. Anc. Dem. (C. 2).

(*f*) 41 Ass. 7. Br. Aunc. Dem. pl. 34. Fitz. Aunc. Dem. pl. 18.

(*g*) Kitch. 190, 191. 1 Roll. Abr. 324, pl. 9, cites 17 E. 3. 52. 75 B. 21 E. 3. 46 b; cites also contra 18 E. 3. 19. 21 E. 3. 56. 21 Ass. 13.

(*h*) Kitch. 191, cites 13 H. 4. 7.

1 Roll. Abr. 324, pl. 10, cites 11 H. 4. 86. a. b. Br. Aunc. Dem. pl. 15.

(*i*) F. N. B. 13. C. But if a manor of ancient demesne come to the king, and he alien it to another, the lands held of the manor continue ancient demesne, but the demesnes are frank-fee. 21 E. 3. 56. 21 Ass. 13. Br. Aunc. Dem. pl. 32. 1 Roll. Abr. 324, pl. 8.

(*k*) Kitch. 191, cites 6 H. 4. 2. So also if the lord before the stat. of *quia emptores* had enfeoffed another of ancient demesne land, to hold by knights service, for all land in ancient demesne is by *socage* only. F. N. B. 13 D. *Ib.* 14 B. & C. 4 Inst. 270.

hold by the same services, there could be no change of tenure, I apprehend, except such confirmation should be by fine *come ceo*, &c. (a); but if the lord confirm to the tenant, to hold *freely*, by the services before due, this makes the land frank-fee (b); yet the tenure only is changed, and not the estate of the tenant (c).

Upon a confirmation by the lord to hold by less services, or by certain services for all services, it would seem not to be fully settled whether the land would become frank-fee or not (d).

But if the lord enfeoff another of the tenancy (e), even with a saving of the ancient services (f), the land will become frank-fee. And it has been decided that a release by the lord, *by fine*, of all services and *customs*, excepting certain specified services, will extinguish the tenure of ancient demesne (g); and that a deed of confirmation to hold by certain services, *at common law*, will discharge ancient demesne lands from the customs of the manor, and make them frank-fee, although the estate of the tenant would not be changed otherwise than in quality (h).

(a) 30 E. 3. 13. b. 1 Roll. Abr. 325, pl. 23. *Griffith v. Clarke*, Mo. 143. Ante p. 682.

(b) 30 E. 3. 13. 1 Roll. Abr. 325, pl. 23; but see Fitz. Abr. Aunc. Dem. pl. 30.

(c) Kitch. 191, cites 49 E. 3. 7. *Beaumont's case*, 9 Co. 140.

(d) In favour of the lands becoming frank-fee, *vide* 21 E. 3. 32 b. Fitz. *Cause de remover ple*, 18. 21 E. 3. 33. 2 Vin. Abr. 491, pl. 25, 26, 30. Com. Dig. Anc. Dem. (C. 2.) See *contrà*. 30 E. 3. 12. b. Fitz. Aunc. Dem. pl. 30. Br. Aunc. Dem. pl. 18, cites 21 E. 3. 32, and states that the plea was removed out of ancient demesne, the tenant claiming to hold at common law, and that the better

opinion was that the confirmation did not alter the estate, nor the nature of the land: See also 2 Vin. Abr. 491, pl. 25. marg. F. N. B. 15 A. n. b. Confirmation to hold by meaner services no frank-fee. Kitch. 191, cites 30 E. 3. 16.

(e) 1 Roll. Abr. 324, pl. 12. Ib. 326, pl. 3.

(f) For he cannot hold by the ancient services. 1 Roll. Abr. 325, pl. 20. Fitz. Aunc. Dem. pl. 41.

(g) *Griffith v. Clarke*, Mo. 143. N.B. the fine was levied in the time of Ed. 2. and of course, after the stat. of *quia emptores*, and not previously as supposed by Mr. Watkins, see 1 Vol. on Cop. 368.

(h) Per *Belknap*, C. J. 49 E. 3.

Again, we have seen that a confirmation to the tenant of customary freehold lands discharged of all *customs* and services, excepting certain rent and suit of court, extinguishes the customary tenure, and converts it into free and common socage (*a*).

But the tenure of ancient demesne will sometimes be restored; for instance, if ancient demesne lands come to the king, and the king regrant them, *to be held of the same manor*, they again become ancient demesne (*b*).

And if the king, seised of land in ancient demesne, grant it out for life, it is frank-fee for the time only (*c*).

It is said also, that if the king seise ancient demesne land, without title, and grant it to another, and the patent be repealed, and he who has right is restored to the land, it will become ancient demesne again (*d*).

If the lord confirm land of ancient demesne tenure to the tenant, to hold by certain services for all services, during life, the land will be frank-fee during life only, and afterwards become ancient demesne again (*e*).

So also if the lord confirm to a disseisor, to hold at common law, if the disseisee re-enter or recover, the land shall be ancient demesne again (*f*).

7. Br. Aunc. Dem. pl. 8. *Ib.* Confirmation, pl. 5. Fitz. Avowrie, pl. 59. *Ib.* Aunc. Dem. pl. 42. *Beaumont's case*, 9 Co. 140. Ante, tit. 'Customary freeholds,' p. 682.

(*a*) *Doe & Huntington*, 4 East 271. Ante, p. 680, et seq.

(*b*) 21 Ass. 13. Kitch. 190. But if granted to hold of another manor, the lands would remain frank-fee. F. N. B. 13 C.

(*c*) 11 H. 4. 84. Kitch. 191. *Ib.* 192, cites 17 E. 3. 52. But see 2 Vin. Abr. 489, pl. 10.

(*d*) 1 Roll. Abr. 326. L, pl. 4, cites 21 E. 3. 46 b.

(*e*) 21 E. 3. 33. 1 Roll. Abr. 325, pl. 30.

(*f*) 1 Roll. Abr. 326 (L), pl. 1, cites 49 E. 3. 9. But in 50 E. 3. 10. 25, it was held, that if the lord disseise the tenant, and *make a feoffment*, and after the tenant recover in ancient demesne, yet the seignory is not revived. 2 Vin. Abr. 493. (L), pl. 2. Br. Aunc. Dem. pl. 6, 10. "The coming of the land into the hands of the lord does not change the nature of it, unless he makes a feoffment thereof." 2 Vin. Abr. 493 (L), pl. 3. marg. cites 21 Ass. 13.

It has been said that if the lord release the services of ancient demesne land for a certain time, the land will become frank-fee for the time (*a*), but this seems to be very questionable (*b*).

Although after a fine of ancient demesne lands at common law, no fine could be levied, or recovery suffered of such lands, in the manor court, until the fine at common law should be reversed by a writ of *disceit* (*c*); yet it should seem that a person claiming under a *paramount* title, must sue at common law, so long as the land remains frank-fee in the hands of the immediate possessor (*d*); but on recovery at common law by a disseissee of ancient demesne lands, after a fine by the disseisor, the lands will be ancient demesne again (*e*). It appears, however, that the election to sue in the manor court for the recovery of ancient demesne lands, is not taken away in all cases, by the lands becoming frank-fee; for although a disseisin by the lord will make ancient demesne lands frank-fee as to him, so long as they remain in his hands (*f*), yet the tenant has his option, in such a case, to sue either by writ of Right Close, or at common law (*g*).

(*a*) See 1 Roll. Abr. 325, pl. 31.

(*b*) *Ib.* cites contra, 30 E. 3. 13. b.

(*c*) Kitch. 191. Ante, p. 706.

(*d*) But see 50 E. 3. 24. b. 1 Roll. Abr. 326 (L), pl. 3, where it is said, that if the land be made frank-fee as to those in possession, yet it shall not be said to be frank-fee as to those who claim paramount this making of it frank-fee.

(*e*) 3 E. 3. 33. 1 Roll. Abr. 326 (L), pl. 3, cites 50 E. 3. 24. b. Therefore, if in such case judgment be given in the court of ancient demesne, and the recoverer enters, in trespass

brought against him for the entry, he cannot justify by force of the recovery there, for it was *coram non jūdice*. F. N. B. 13. C. *Ib.* (n. a.), cites 7 H. 4. 3. And see 2 Preston on Conv. 102.

(*f*) 20 H. 6. 33. 41. Ass. 7. F. N. B. 12 E. 1 Roll. Abr. 325, pl. 17.

(*g*) 30 E. 3. 13. 41. Ass. 7. Fitz. Aunc. Dem. pl. 18. F. N. B. 12 E. 1 Roll. Abr. 325, pl. 18.

But as to the writ of right close, vide reference to the act of 3d & 4th W. 4, c. 27, ante p. 695. n. (*f*). And see the act in the Appendix.

 PART THE THIRD.

CHAP. XX.

OF THE JURISDICTION OF COURTS BARON (a).

Origin and Nature of the Court Baron.

A COURT BARON, which it is to be recollected is not a court of

(a) The stile of the court is CURIA BARONIS *E. C. militis manerii sui prædicti*, (having the manor's name written in the margin,) *tenē tali die, &c. Coram A. B. seneschallo ibidem.* 4 Inst. 268.

CURIA (court) is a place where justice is judicially ministered, and is derived *à cura, quia in curiis publicis curas gerebant.* Co. Lit. 58 a. *Curia*, which occasionally seems to have implied the court or manor house only of the lord, in one or two entries in Domesday-book, appears to have a more immediate reference to manorial jurisdiction. App. to 2nd General Report from Commiss. on Pub. Records, p. 442, cites tom. 1. fol. 35 b. ib. fol. 265 b.

BARONIS.—The title of *Baron*, like all or most of the dignities or titles of honour now existing in England, originated in the feudal institutions of the Normans, and seems about the end of the Conqueror's reign to have supplanted the Saxon title of *Thane*.

Those possessing original baronies, and other great lords, having, during the practice of subinfeudation, called their immediate vassals barons, the principal barons, who alone were summoned to attend the councils of the king, and who held of the king *in capite* [2 Inst. 7], were called *barones majores*, or *barones regis* (or *regni*), to distinguish them from the inferior barons, denominated *barones minores*, and who held by knights service and escuage [4 Inst. 46]. The latter appear about the end of the reign of King John to have lost the appellation of baron altogether.

Sir *William Blackstone* observes, "A baron's is the most general and universal title of nobility; for originally every one of the peers of superior rank had also a barony annexed to his other titles. But it hath sometimes happened that when an antient baron hath been raised to a new degree of peerage, in the course of a few generations

record (*a*), is incident to every manor (*b*), and is incapable of severance under any grant of such court, or any reservation thereof in a grant of the manor (*c*), except only in the case of the king (*d*).

“ the two titles have descended dif-
 “ ferently ; one, perhaps, to the male
 “ descendants, the other to the heirs
 “ general ; whereby the earldom or
 “ other superior title hath subsisted
 “ without a barony : and there are
 “ also modern instances, where earls
 “ and viscounts have been created
 “ without annexing a barony to their
 “ other honours : so that now the
 “ rule doth not hold universally that
 “ all peers are barons. The original
 “ and antiquity of baronies have oc-
 “ casioned great inquiries among our
 “ English antiquaries. The most
 “ probable opinion seems to be, that
 “ they were the same with our pre-
 “ sent lords of manors ; to which the
 “ name of Court Baron (which is the
 “ lord’s court, and incident to every
 “ manor) gives some countenance. It
 “ may be collected from King John’s
 “ *Magna Charta*, that originally all
 “ lords of manors, or barons, that held
 “ of the king *in capite*, had seats in the
 “ great council or parliament: till about
 “ the reign of that prince, the conflux
 “ of them became so large and trouble-
 “ some, that the king was obliged to
 “ divide them, and summon only the
 “ greater barons in person ; leaving
 “ the small ones to be summoned by
 “ the sheriff, and (as it is said) to sit
 “ by representation in another house ;
 “ which gave rise to the separation
 “ of the two houses of parliament.
 “ By degrees the title came to be

“ confined to the greater barons, or
 “ lords of parliament only ; and there
 “ were no other barons among the
 “ peerage, but such as were summon-
 “ ed by writ, in respect of the tenure
 “ of their lands or baronies, till Ri-
 “ chard the Second first made it a
 “ mere title of honour, by conferring
 “ it on divers persons by his letters
 “ patent.” See 1 Vol. Com. 398-9.

The principal mansion or castle of every barony was called the *caput baroniæ*, and was appropriated to the use of the person intitled to the barony, and when the barony descended to daughters, the *caput baroniæ* was allotted to the eldest. It appears to have been subject to curtesy, but not to dower. 1 Inst. 39 b. 31 b. 2 Inst. 17.

(*a*) Co. Lit. 117, b. 2 Inst. 143. 4 Inst. 268.

(*b*) 8 H. 7. 1. Kitch. 7, 8, 70. 2 Inst. 99. 4 Inst. 268. Being incident to a manor of common right, it is not lost merely because no court hath, time out of mind, been holden within the manor. Ow. 35.

The entry is sometimes “ The Great Court of, &c.”: this is but a court baron. Kitch. 156.

(*c*) 10 H. 8. 34. Kitch. 70. *Brown v. Goldsmith*, 1 Brownl. 175. Mo. 870. Hob. 108. Br. Incidents, pl. 34, cites 19 H. 8.

(*d*) Mo. 870, in *Brown v. Goldsmith*. See also Sir Robert Acton’s

The Court Baron was ordained, as well for the maintenance of the services and duties stipulated for by lords of manors (*a*) on their granting out lands to others in fee, previous to the statute of Westminster 3. (*b*); as for the purpose of determining actions of a personal nature, as debt, or trespass (*c*), or detinue of goods (*d*), where the debt or damage was under forty shillings (*e*); and, it should seem, not only as between the tenants of, but as against strangers coming within, the manor (*f*).

It was adjudged in a late case in the court of B. R. upon an application for a mandamus to receive and admit a plaint in a manor court (of ancient demesne), that a chartered right in the steward and suitors of the court, of determining plaints of debt, (though exceeding forty shillings,) trespass *vi et armis*, &c., was not lost by non-user for near fifty years (*g*).

But *account* does not lie in a court baron (*h*); nor *trespass vi et armis* (*i*).

According to some ancient authorities, the court baron had

case, Dy. 288 b. And it should seem from the same authority, that the profits of court may be excepted, even by a common person. *Ib.* Vide also Com. Dig. Cop. (R. 1. Court Baron.)

(*a*) Kitch. 6. Scroggs, in his Pract. of Courts Leet and Courts Baron, pp. 82-3, says, that these courts were ordained for the three purposes of adjusting differences between lord and lord adjoining; between lord and tenant; and between tenant and tenant. See also *ante* pt. 1. p. 2.

(*b*) *Ante* pt. 1. p. 2 to 6.

(*c*) Britt. 61. Kitch. 148.

(*d*) Kitch. 146, cites 6 E. 2. 34 H. 6. 53. But not detinue of writings. F. N. B. 47 B. Kitch. 148.

(*e*) 19 H. 6. 8. Kitch. 6, 146. 2 Inst. 311. 4 Inst. 264-8. On at-

tempt to hold plea in court baron of any matter of the value of forty shillings, writ of prohibition lies. Finch L. 451. 3 Bl. Com. 112. But by charter or prescription, as in the case of the Castle of Dover, a court baron may hold pleas above forty shillings, and award a *capias*. Kitch. 187. These, however, are courts of record. Kitch. 187-8, cites 6 E. 4. 3.

(*f*) Kitch. 146 Br. Court Baron, pl. 1.

(*g*) *Rex v. The Steward & Suitors of the Manor of Havering Atte Bower*, 5 Barn. & Ald. 691. And see *Rex v. The Mayor & Jurats of Hastings*, *Ib.* 692. n. *Ante* p. 716. n. (*b*.)

(*h*) Kitch. 146, cites 43 E. 3. 19.

(*i*) Co. Lit. 118. a. F. N. B. 47. A. 2 Inst. 311, 312. Kitch. 146-8. But see 7 E. 4. 23, cited Kitch. 146.

conusance, originally, of all pleas of land within the manor, to the exclusion of all other jurisdictions, except by a *remisit curiam* from the lord (*a*), and this by the writ of right patent; but it is to be remembered, that the writ of right patent is a command from the King to the lord, that he will do right to the party complaining (*b*); and that the plea may be removed by writ of *tolt* into the county court, and from thence into the court of Common Pleas, by writ of *pone* (*c*):—It is also to be observed, that the issue by writ of right patent never could be tried in the court baron, by the great assize, but by wager of battel only (*d*), and that should issue be joined there, upon the great assize, or foreign plea be pleaded, prohibition lies (*e*).

The reader is here apprised that by prescription a court baron may have jurisdiction, as a peculiar, to grant probate and administration, and to take cognizance of testamentary causes (*f*), as in the manor of *Mansfield*, and of *Cowle* and *Caversham* in *Oxfordshire* (*g*).

Where and when to be kept.

The Court Baron, it is clear, may be held at any place within the manor (*h*), but it appears formerly to have been thought that it must be held at a place certain (*i*). Although it would be void if held out of the manor (*k*), yet we have

(*a*) 2 Bac. Abr. 205. Kitch. 147.

(*b*) Kitch. 146, 151.

(*c*) Booth's Real Actions, 86. n. *Ib.* 89, 90, 91. See further, as to the writ of right patent, *post*. And note, that it is abolished from 31st Dec. 1834. *Vide* 3rd & 4th W. 4. c. 27, in the Appendix.

(*d*) See the act 59 Geo. 3. c. 46, abolishing appeals of murder, treason, felony, or other offences, and trial by wager of battel in writs of right.

(*e*) F. N. B. 4 E. Kitch. 147; who also says, 'if plaint of debt or

trespass be sued there, and foreign matter is pleaded, it shall not be tried in court baron,' cites 1 H. 5. 12.

(*f*) *Denham v. Stephenson*, Salk. 41. *Atkins v. Hill*, Cowp. 286. 3 Bac. Abr. 39. Toll. Ex. 49.

(*g*) Off. of Ex. 43.

(*h*) Kitch. 186, cites 8 H. 7. 4. A. 24. E. 3. Co. Cop. s. 31. Tr. 50. Scroggs 83. Ow. 35.

(*i*) So the opinion of *Brian*. Kitch. 186. Co. Cop. s. 31. Tr. 50.

(*k*) Co. Lit. 58. a. Glanv. 19. Kitch. 186. Ow. 35.

already seen that, by custom, courts for several manors may be held together in one of them (*a*).

It is proper and usual to give fifteen days' notice of the court, including three Sundays, but even three or four days would probably be deemed sufficient (*b*).

The Court Baron is frequently held with the *Court Leet*; and then the various acts are referred to the court, to which they respectively apply (*c*): and when there are both *freehold* and *copyhold* lands within the manor, the proceedings of the *common law* and *customary* court baron may be entered on the same roll (*d*).

The Court Baron was anciently held once in every three weeks (*e*), but this was for the convenience of the suitors, and where the jurisdiction as to plaints in nature of personal actions is not established by charter or prescription (*f*), or has fallen into desuetude, the court is more generally held once only in the year (*g*); and I apprehend that the lord, in the absence of an established usage, could not compel a more frequent attendance of the suitors, without some good cause for it being shown (*h*).

*Of the Suitors to the Court, and before whom it is to be kept;
and herein of the Steward.*

Freehold tenants alone are suitors to the Court Baron, and it is essential to the existence of the court, that there should be

(*a*) *Ante* pt. 1. p. 6.

(*b*) *Ib.*

(*c*) 1 *Freem.* 525. ca. 707.

(*d*) *Co. Lit.* 58. a. *Com. Dig.* Cop. (R. 2.)

(*e*) *Scroggs* 40, 83. *Co. Cop.* s. 31. *Tr.* 50. *Co. Lit.* 58 a.

(*f*) *Post* sect. v.

(*g*) It has been decided that the court baron may be held even at night. *Mo.* 68. ca. 185. *Ante* pt. 1.

p. 6.

(*h*) See 2. *Bac. Abr.* 206. marg. where it is said "The court of B. R. has granted informations against lords and stewards, for oppressing the tenants, by warning courts baron every three weeks, and distraining them to appear or pay a certain sum of money upon no occasion at all, but to extort amercements from them." But see *Scroggs* 40.

two suitors *ad minimum* (a). The reason assigned for this is, that freemen could only be tried by their peers, or equals, and that if there be one tenant only, he has no peer, or judge, and therefore, must appeal to the court of the lord paramount (b). In *Bradshaw v. Lawson* (c), Lord *Kenyon* said, that this point was so well settled, that cases need not be cited to prove it, and he would only mention that of *Rumsey v. Walton*, which was an action on a judgment alleged to have been recovered in a court baron, and on the trial at the Hereford summer assizes, 1760, before *Foster, J.* the plaintiff proved the court to have been holden before the steward; on which it was objected that such a court could not be legally held, without two *free suitors*; and the judge being of that opinion, the plaintiff was nonsuited.

And according to the case of *Chetwode v. Crew* (d), such suitors could not be created by a conveyance of part of the demesnes of the manor at this day. Suppose a conveyance to be made by one of two free suitors to a corporate body, it would I apprehend be a suspension only of the suit, so that on

(a) Br. Court Baron pl. 23. Ib. Comprise pl. 31. Ib. Suit pl. 17. Kitch. 7, 8. Co. Lit. 58. a. *Tonkin v. Crocker*, 2 Lord Raym. 864. *Rex v. Staverton*, Yelv. 190-1. Scroggs 84.

There is an instance in the Register, f. 11, of a cause being removed out of a court baron, by reason of there being but four suitors there. *Br. cause a remover plee, &c.* pl. 35. Ib. Suit. 17. And see 1 Watk. on Cop. 9, who says, "But it should seem that there must be more than two frank tenants holding of the manor, to enable the lord to hold a court, for otherwise, if one of those two were the plaintiff, and the other of those two the defendant, the lord

would be under some difficulty to try them by their peers."

And by ancient custom in the manor of Dymock, there must be three benchers of the free suitors at the least, or no court can be holden. 1 Watk. on Cop. 10, (n.) [2d Ed.]

(b) 1 Watk. on Cop. 9.

(c) 4. T. R. 446. See also *Rex v. Mein*, Ib. 480. In *Glover v. Lane*, 3 T. R. 447, Lord *Kenyon* said, "To constitute a manor it is necessary not only that there should be two freeholders within the manor, but two freeholders holding of the manor, *subject to escheats.*" And see *Willes*, 619.

(d) *Willes*, 614..

a subsequent conveyance by the corporation to a person capable of performing suit, a court might be held (*a*).

And if *A.* should be the only free suitor, and he should convey part of the land holden by him of the manor to *B.* I incline to think that the right to hold a court baron would revive.

The suitors of the court baron are the judges of it (*b*), even in a plea holden by force of a writ of right (*c*); and it has been thought that the court baron could not, even by prescription, be held before the steward, being a thing of common right (*d*), but the authorities are quite the other way (*e*).

It has been said that there is this distinction, namely, that where pleas in a court baron are held by writ, then it must be before suitors, and the bailiff of the lord of the manor; but where without writ, then it must be *coram sectatoribus* only (*f*).

(*a*) *Tonkin v. Crocker*, 2 Lord Raym. 864.

(*b*) Kitch. 145-6. 4 Inst. 268. 4 Co. 26 b, 33 b. *Jentleman's case*, 6 Co. 11 b. *Lord Cobham and Browne's case*, 1 Leo. 217. *Rex v. Morgan*, 1 Sir W. Bl. 398. *Eure v. Wells*, T. Jones, 23. *Lovell & Golston's case*, Godb. 68. Ib. 49, ca. 60. Scroggs 88. "In a court baron action of debt lieth for the lord himself, because the suitors are judges," Ib. 84. Kitch. 145.

"*Nota per Fineux and Keble*, that in court baron the suitors are judges, and in the leet the steward is judge (12 H. 7. 16)." Br. tit. Court Baron, &c. pl. 9.

It is not in the court baron alone that the suitors are the judges. "*Nota per Chock, Justice*, that in court baron, county, or hundred, the suitors are judges, and the bailiff and sheriff are only ministers, (6 E. 4. 3)." Br. tit. Court Baron, &c. pl. 11.

(*c*) "*Nota* that the suitors are

judges in county court, court baron and hundred, as well in writ of right patent, as in justicies, and other suits there; and the sheriff, steward, or bailiff, are not judges there *quod nota bene* (39 H. 6. 5.)" Br. tit. Judgment, pl. 118. *Jentleman's case*, sup.

(*d*) *Pill or Pell v. Towers*, Cro. Eliz. 791. S. C. Noy 20. *Armyn v. Appleoff*, Cro. Jac. 582. 2 D'Anvers, 295. tit. Court Baron. 1 Nels. Abr. 501.

(*e*) 1 Leo. 316. pl. 444. 1 Mod. 173. *Rex v. Morgan*, sup. *Tonkins* or *Tonkin v. Crocker*, 2 Salk. 604. S. C. 2 Lord Raym. 860. S. C. Lutw. 1211. Nels. Lex Man. 57-8, Rast. Ent. 553 a. Co. Ent. 118. b. 570 b. Winch's Ent. 1014. *James v. Tutney*, Cro. Car. 497, Win. 30. *Eure v. Wells*, T. Jones, 23. W. Jones, 434. Mar. 28.

(*f*) *Pells v. Towers*, sup. And see Scroggs 88. Godb. 49. ca. 60. But in *Jentleman's case*, sup. it was re-

There would certainly seem to be a contradiction in terms, to say that the same persons are suitors and judges of the court, but it is now fully established that the suitors are the judges of the court baron, notwithstanding the expression in some books of authority, that the steward is the prothonotary only of the court (a).

The steward, however, is a *constituent* part of the court, and not merely a ministerial officer as was formerly supposed (b).

This question was raised, and fully put at rest, in the case of *Holroyd v. Breare & Holmes* (c), which was an action of trespass, for breaking and entering the plaintiff's house, and seising and taking his cattle, &c.; the defendants first pleaded the general issue, and secondly justified, the one as steward of the court baron of the manor of *Wakefield*, and the other as his bailiff, stating that on the 12th of September, 1817, at a court of the said manor, holden before certain then suitors of the said court, according to the custom of the said court, one *J. A.* levied his plaint against *Sarah Holroyd*, and afterwards recovered on the plea aforesaid, against her £9. 14s. for his damages and costs; and the defendant *Breare* on the 5th of December, 1817, as such steward of the manor, caused his precept to be issued to take the goods of the said *Sarah Holroyd* in execution, which precept was delivered to the defendant *Holmes*, as bailiff, to be executed, and that by virtue of that precept, the goods in question were by him seised, and the trespasses committed. There was another similar justification, setting out a judgment recovered in the same court, at the suit

solved, that be the plea held by writ, or without writ, the suitors are judges. *Vide* also *Lex. Man.* 56. pl. 8. Ante, p. 721. n. (c).

(a) *Rex v. Morgan*, *ubi sup.* Earl of *Shrewsbury's* case, 9 Co. 49. a.

(b) See 1 *Freem.* 473, in *Howard v. Wood*, S. C. T. Jones, 126. S. C. 2 *Lev.* 245. *Calthr.* p. 54. [2d Ed.]

says "The steward doth occupy the part of several persons, that is to say, a judge to order in cases of copyhold, and also a *minister* and register to enter things into the court rolls, and in both these to be indifferent between the lord and his tenants."

(c) 2 *Barn. and Ald.* 473.

of *J. C.* against *Sarah Holroyd*. At the trial, at the summer assizes, 1818, for the county of York, before *Bayley, J.* the principal question was, whether the goods which had been seised were wholly or in part the property of the plaintiff, or of *Sarah Holroyd*. The jury found a verdict for the plaintiff. It appeared also, that the defendant *Breare* was not in any respect personally concerned in the seizure of the goods, but only as having, in his character of steward of the court baron, signed the precept for taking *Sarah Holroyd's* goods in execution. And on this it was contended, that the steward acted in a judicial and not a ministerial character, and that he was not therefore liable for the acts of his bailiff. This was denied on the other side. The point was reserved by the learned judge, with leave for the defendant *Breare* to move to have a verdict entered for him, in case the court should be of opinion that he was not liable. A rule *nisi* to that effect having been obtained, the plaintiff's counsel now urged, that the steward of a court baron was only a ministerial officer, the suitors being the judges of the court, and that it was his duty, as their minister, to see that their judgments were executed properly; and although no action would lie against a judge for what he might do judicially, yet that it was otherwise in the case of a ministerial officer. They also contended, that the steward in the immediate case was answerable, precisely on the same principle as the sheriff was, *viz.* that the law holds it to be his duty to execute the office in person, and therefore makes him answerable, *civiliter*, for the acts of his officer.

For the defendants it was argued, that no instance being produced in which a similar action had been maintained, went strongly to show that the steward was not liable; and that the distinction between the principal case, and that of the sheriff, was obvious, for the sheriff was no part of the court, out of which the process issued, but that the steward of the court baron was so, and his situation to be compared to the signer of writs in the superior courts, who could not be liable for a mis-

execution of them by the sheriff; and that the passages cited (*a*), only showed that the steward of a court baron was a minister of that court for some purposes, as, for instance, to register their proceedings, and the like; but that they did not show that he was their minister, for the purpose of executing their process.

Abbott, C. J. in delivering the opinion of the court, noticed the argument by the plaintiff's counsel, that in the court baron the free suitors are the judges, and observed, that they certainly were so for the purposes stated in the authorities which had been cited. The court were, however, of opinion that the steward was not merely a minister of that court, but a constituent and essential part of it. The court could not be holden without him. No mandate was directed to him as an officer; but he made his mandate to the bailiff. His lordship further observed, that there was this material distinction between the mandate of the sheriff, and that of a steward of a court baron: in the former, the sheriff commands the bailiff to make the levy, and it concludes thus "So that I may have the same before the court, &c." But in the warrant of the steward the bailiff is directed to levy, so that he (the bailiff) may have the same before the court on the day appointed. This therefore was more like the writ of the superior court to the sheriff, than the warrant of the sheriff to his bailiff. That (added his lordship) would seem to be decisive, to show that the bailiff, and not the steward, is the minister of the court baron for the execution of its process, and that he is not the servant of the steward in this respect. The court was therefore of opinion, that the steward was not for the particular purpose a minister, but part of the court itself. And if so, the action was not maintainable against him; and the rule for entering a verdict for him was therefore made absolute.

The above case of *Holroyd v. Breare & Holmes*, having

(*a*) 4 Inst. 268. c. 57. 1 Inst. 58. Judgment, pl. 118. (See these authorities, ante, p. 721. n. (*b*.)
Br. tit. court baron, pl. 11. Ib. tit.

overruled the authorities, that the steward of a court baron is a *ministerial* officer only (a), goes a great way towards confirming the opinion expressed in some of the books, that a *mandamus* will lie to be restored to the stewardship of a court baron.

In *the King v. The Churchwardens of Kingscleere* (b), *Hale*, C. J. said, that a *mandamus* lay for the steward of a court baron, "if he be not at will only, because he is an officer of justice." (c) But there are several authorities that a *mandamus* will not lie for a steward of a court baron, 'as being a private thing and not concerning the administration of justice.' (d)

In *Ilé's* case, in B. R. (e) *Twisden* said 'it was ruled in 1652, in this court, that a *mandamus* did not lie to be restored to a stewardship of a court baron, but of a court leet it did, for there the steward was judge, but of a court baron the suitors

(a) A *mandamus* is never granted to compel a mere ministerial officer to do his duty. *Rex v. Dr. Walker*, Bul. N. P. 199. Ante, pt. 1. p. 624.

(b) 2 Lev. 18.

(c) Ante, pt. 1. p. 625. And in *the King v. Stanton*, Cro. Jac. 259, (S. C. Yelv. 192,) *Yelverton*, *Williams*, and *Croke*, held against the opinion of *Fleming*, C. J. (*Fenner* doubting) that a *quo warranto* lies of a court baron, because 'it is matter of right to hold courts, and to administer justice, and to hold pleas, and to draw assemblies of men together, and to swear officers; which if any doth without right, he is to render an account thereof.' And see *Scroggs*, 94. *Rex v. Stafferton & Brown*, 1 Bulst. 54. Br. *Quo Warranto*, pl. 4.

But in *the King v. Hulston*, 1 Str. 621, where an information was granted in the nature of a *quo warranto*,

against the defendant, for exercising the office of steward of a court leet, the court said they would not grant it in the case of a court baron, that being only a private right, and no court of record.

It has been refused for holding a court leet in a manor, being a private right. *Rex v. Cann*, T. 10 and 11 G. 2. Andr. 14. See further as to *quo warranto* of court baron. Com. Dig. *Quo Warranto*. (A) & (B). And see as to *quo warranto* of court leet, post ch. 21.

(d) See *Stamp's* case, 1 Sid. 40. *Middleton's* case, Ib. 169. *King v. Street*, 8 Mod. 98. Comb. 127. But see Yelv. 191, in *Roe v. Staverton*, where a court baron is described to be a court of justice.

(e) 1 Vent. 153. Ante, pt. 1. p. 625.

are judges.' *Hale* said he was of another opinion, the steward being judge of that part of the court which concerns the copyholds, and register of the other.

The steward being the judge of a customary court would seem, however, to be an insufficient reason for a *mandamus* lying to restore him to the office (*a*). It is, I apprehend, the public or private nature of the office alone, by which the court of King's Bench would be influenced at the present day, in granting or refusing an application for a *mandamus* to be restored to the stewardship of a court baron; and it is obvious that the steward of the court baron, where pleas of debt are holden, and real actions were always formerly, and are now sometimes, commenced, is more in the nature of a public officer, than the steward of a customary court, which is for copyhold purposes only, and in which the acts of the steward are chiefly of a ministerial nature.

This section may properly be concluded by reminding the reader, that a grant *for life*, by deed, of the stewardship of a manor, and of the courts thereto belonging, is good (*b*); and by referring him to the first part of the present work (*c*), where I have suggested that an infant, being of years of discretion, may preside in a court baron; and that the stewardship of a court baron may be granted in reversion (*d*).

(*a*) An application for a *mandamus* to swear in a steward of customary court, was once refused by *C. J. Holt*. See *Anon.* 12 Mod. 665. Ante, pt. 1. p. 625. n. (*b*).

(*b*) *Bartlett v. Downes*, 3 Barn. & Cress. 616. S. C. 5 Dow. & Ry. 526. S. C. 1 Car. & Pay. 522. Ante, pt. 1. p. 142.

A grant to two for a term of years is good, for the appointment determines with the lives of the grantees, and will not go to the executors or administrators. Ante, pt. 1. p. 141.

And note. A bishop may grant the stewardship of a manor

for life, notwithstanding the stat. 1 Eliz. c. 19. if usually so granted before that statute. Sir *John Trelawney v. Bishop of Winchester*. 1 Burr. 219. And see *Young v. Stoell*, Cro. Car. 279. *W. Jones*, 310. *Young v. Fowler*, Cro. Car. 555. S. C. Mar. 38. *Ridley v. Pownell*, 2 Lev. 136.

A bishop grants the stewardship of a manor for life, and says not for whose life, it shall be for the life of the grantee. *Cook v. Younger*, Cro. Car. 16.

(*c*) p. 136.

(*d*) p. 141.

SECTION II.

Of the Services due from Freehold Tenants.

WE have *fully* discussed the nature of the services due to the lord of a manor, in respect of copyhold land, and *partially* also the nature of those due in respect of land of freehold tenure (*a*). It may, however, be proper to take a brief view of the obligations imposed on the tenant, by the original grants, under which *socage* lands are held derivatively at this period. And although it is very far from my intention to enter upon a minute consideration of the nature and origin of the feudal polity, or doctrine of tenure, yet a few preliminary observations on the contrasted properties of ancient and modern English tenure, may not be deemed unacceptable, or inapplicable to the immediate subject of our inquiries.

The feudal constitution, (described by Sir *Martin Wright* (*b*) to be a military policy of the northern conquering nations,) which by degrees established itself over the western world, to the exclusion of the Roman laws, seems not to have been universally adopted in this country, till about the middle of the reign of William the Conqueror (*c*).

Previous to its introduction into England, the possessions of land were *allodial*, a word signifying positive unqualified right, the owner having the complete and absolute property, and not holding of any particular lord; whereas a *feud*, *fief*, or *fee*,

(*a*) Ante, pt. 1. ch. 8.

(*b*) Ten. p. 6. And Sir *W. Blackstone*, [2d vol. Com. p. 45,] observes, that "the constitution of feuds had its origin from the military policy of the northern or *Celtic* nations, the Goths, the Huns, the Franks, the

Vandals, and the Lombards, who all migrating from the same *officina gentium*, as Crag very justly entitles it, poured themselves in vast quantities into all the regions of Europe, at the declension of the Roman empire."

(*c*) Ante, p. 688. n. (*a*).

denoted stipendiary property, or a tract of land, held by gratuitous donation, on condition of performing certain stipulated services, chiefly of a military nature. These gifts were originally dependent on the will and pleasure of the grantor, but afterwards were extended to a term of one or more years, subsequently to the life of the feudatory (*a*), and ultimately were made hereditary.

Such grants as were purely military were denominated *proper* feuds, and those in which the consideration moving to the grant, or the services reserved, were not strictly conformable to that character, were deemed *improper* feuds (*b*).

The fundamental maxim of feudal tenure is, that all lands were originally granted by the king, and are therefore holden immediately or mediately of the crown (*c*).

Until the middle of the seventeenth century, a considerable (and according to Sir *William Blackstone* (*d*) the greatest) part of the lands in England, were holden by *knight-service* (*e*), (a tenure implying personal military duty,) and principally of the king *in capite*:

(*a*) Feudatory or beneficiary estates, when granted at will only, were called *Munera*, and when afterwards granted for life, they were termed *Beneficia*, which word is still retained amongst ecclesiastics, whose estates are called *Benefices*; and the term *Feuda* was first used when estates began to be granted in perpetuity. Spelm. Posth. Treat. of Feuds, 4, 6, 9. Wright's Ten. 19. Vide as to the distinction between *allodial* and *beneficiary* possessions, Roberts. Hist. Emp. Charles 5th, p. 258.

(*b*) For a full illustration of this obsolete doctrine, the author would urge an attentive perusal of Sir *Martin Wright's* introduction to the law of tenures; and of the history of

feuds, in the early part of Chief Baron *Gilbert's* treatise on tenures, and also, the 4th chap. of the 2d vol. of Sir *William Blackstone's* Commentaries. Et vide Harg. & Butl. notes to Co. Lit. 64. a, 191. a.

(*c*) Ante, p. 688. n. (*a*.) The note here referred to shows that our ancestors were not originally beneficiaries, but voluntarily submitted to this fiction of tenure.

(*d*) 2 vol. Com. 73.

(*e*) It should seem that knight-service was the implied tenure, if no particular services were reserved on a grant by the king, prior to the 12. Car. 2. See Dalr. on Feud. Prop. p. 24.

Escuage is sometimes confound-

The tenure by knight-service was abolished by 12 Car. 2. c. 24 (a), and differed very little from a proper feud, being created by pure words of donation (b), transferred by livery or investiture, and perfected by homage or fealty. This tenure drew to it the advantages of *relief*, and *primer seisin* (c), *wardship*, *livery* (d), *aid* for knighting the lord's eldest son, and marrying his eldest daughter, and for ransoming the lord's person (e), and also *escheat*. The services were occasional,

ed with knight-service, [Co. Lit. § 103.] but it merely describes the pecuniary assessment calculated by the amount of a knight's fee, to excuse a personal attendance, for which such service was compounded, or perhaps a pecuniary aid reserved in some instances, in lieu of personal service. Wright's ten. 123. 2 Bl. Com. 75.

(a) The prerogative of compelling the heir to be knighted when of age, or to pay a fine to the king, was abolished by 16 Car. 1. c. 20. 2 Bl. Com. 69, 70.

(b) Wright's ten. 141. 2 Bl. Com. 63.

(c) *Primer seisin* seems to be little more than an additional relief, payable by those who held of the king *in capite*. When a tenant *in capite* died seized of a knight's fee, the king was intitled to receive of the heir, if of age, a year's profits of the land, when in possession, and half a year's profits if held in reversion, expectant on an estate for life. Indeed the king was intitled to enter and receive the profits until livery was sued, which being generally sued within a year and a day after the death of the tenant, it was usual to take the first fruits, or a year's profits of the land. This gave rise to the claim by the Popes of the

first year's profits of every benefice, by way of first fruits.

(d) *Primer seisin* was not paid, unless the heir was of age, but if under the age of 21, being a male, or 14, being a female, the lord was intitled to the *wardship*, and was called guardian in chivalry, which gave him the custody of the body and lands, without account, during such minority. And the lord by the 3 Ed. 1. c. 22. could keep the female heir in ward until 16. The male, on attaining 21, and the female 16, could sue out their *livery* to obtain the lands out of the guardian's hands, and for this half a year's profits of the land were paid. These advantages to the lord excused the infant heir from *livery*, and in the case of tenants *in capite*, from *primer seisin*. The ascertainment of the profits arising from these fruits of tenure, suggested the antiquated proceeding of an *inquisitio post mortem*, charging the itinerant justices or justices in eyre, to inquire by a jury of the county, (on the decease of any person of fortune,) the value of his estate, the tenure of it, and who, and of what age, his heir was. 2 Bl. Com. 68.

(e) But the genuine feudal aid appears to have been purely military,

but with us restrained, as in Normandy, to forty days, and not altogether uncertain, as in proper feuds (*a*).

The residue of the lands in England were divided into the three tenures subsisting at the present day, viz. 1. *free socage* (*b*), (which, with the lands held by knight-service, were alike denominated *frank tenements*): 2. *pure villenage*: and 3. *privileged villenage*, or *villain socage* (*c*). The properties and diversities of the two latter are fully treated of in the first and second parts of the present work (*d*), and I propose now to offer some few observations on the nature of socage tenure, and the services incident to it.

Socage is a term as old as domesday-book: it first occurs in *Glanvil* (*e*), and, according to the opinion of our best lawyers, is a tenure *per servitium socæ*, but by *Somner* (*f*) thought to be derived from the Saxon word *Soc*, importing a privilege, and *Agium* importing service (*g*).

and not a contribution to the private necessities of the lord. Wright's ten. 41. See further as to aids, post, p. 731. n. (b). Wright's ten. p. 40, &c. 105, &c.

(*a*) Wright's ten. 140, 141. 2 Bl. Com. 62. The proper knight-service was to attend the king in his wars; but there were other species of knight-service of an honourable nature, as *grand serjeanty*. Some services of grand serjeanty are purely military, as to bear the king's banner or his lance, in time of war; and others are honorary only, and in time of peace, as to perform certain offices at the king's coronation; and in some cases these services may be executed by deputy. Co. Lit. § 153, 155-7. The honorary services of grand serjeanty were, as well as the tenure by copy of court roll, reserved by the stat. of 12 Car. 2.

The services of *petit serjeanty*, as

to render to the king a warlike weapon, are not mentioned in that statute, but *petit serjeanty* still exists, and is considered to be a dignified branch of socage tenure. Co. Lit. 108 b. n. 1.

(*b*) Or free tenure in common socage.

(*c*) These are the only lay tenures now subsisting, but it is to be remembered that the tenure of frank-almoign (or free alms), was also reserved by the stat. of Car. 2, and which is of a spiritual nature, being the tenure by which religious houses held their lands, and by which many ecclesiastical and eleemosynary foundations hold lands at this day. 2 Bl. Com. 101.

(*d*) Ch. 2. and ch. 18.

(*e*) Somner's treat. of Gav. 143.

(*f*) *Ib.* 133, 141. And see 2 Bl. Com. 80, 81.

(*g*) 1 Inst. 86. a. And see Mr.

Socage tenure is at least agreed to have been originally a conventional service of a certain and determinate, and not of a military nature (*a*); in some respects, however, it resembles tenure by knight-service or chivalry, socage land being held of a superior lord by fealty, and subject to relief and escheat, and also (previous to the statute of Charles 2nd) to aids (*b*), marriage and wardship, (though of a different nature from those incident to knight-service,) and to fines for alienation, when held of the king *in capite* (*c*).

Christian's note on this derivation, 2 Bl. Com. 81, citing Bract. Spelman, &c., against Mr. Somner's, and Sir William Blackstone's opinions.

(*a*) *Burgage* and *Gavelkind* are included in socage tenure. Sir Martin Wright [ten. 145] says "All our English fees or holdings, whether they be Frank or Emphiteuticary, Burgage or Gavelkind, (though Burgage and Gavelkind have many qualities different from common socage,) do now fall under the notion of socage tenures, which, though they vary in point of service, *succession*, and the like, as improper feuds, do nevertheless retain the nature of feuds; inasmuch as they are held of some lord or superior by fealty, and usually by some other certain service or acknowledgment; and inasmuch as they yield or pay relief and may escheat." And see Co. Lit. § 162.

The student is reminded that the descent in burgage-tenure is sometimes (by force of the custom called *Borough English*), to the youngest son, and in Gavelkind tenure is to all the sons equally.

(*b*) The aid *de relief* was taken by inferior lords, being a sum to enable them to pay their fines for relief

or seisin to the lord paramount. Wright's ten. 107, cites Madox. Hist. of the Excheq. 428. Glanv. lib. 9, cap. 8. And inferior lords frequently took aids to enable them not only to pay their fines to the king, but even their debts. All, however, except the above three ancient aids, were abolished as to inferior lords, by King John's Charter, c. 12, 15; which also ordained that no aids should be taken by the king, without consent of parliament. This provision was omitted in Henry 3rd's charter, and the old aids re-exacted until, by stat. 25 Ed. 1. c. 5, 6, the clause in the charter of King John was revived. Aids were completely arbitrary until King John's charter, and were not fully ascertained until the stat. West. 1. 3 Ed. 1. c. 36, which fixed the aid of a knight's fee at 20s., and of socage lands, to the value of £20 a year, at 20s. This only extended to inferior lords; but the same provisions were made as to the king's tenants *in capite*, by 25 Ed. 3. c. 11. The aid for ransoming the lord's person, was, as a thing of course, still left uncertain. Wright's ten. 108, *et seq.* 2 Bl. Com. 63, *et seq.*

(*c*) 2 Bl. Com. 69.

But since the abolition act of 12 Car. 2d, the only services incidental to lands of socage or freehold tenure, are those of which I shall now treat; premising that, upon thus briefly introducing to the reader's consideration the subject of ancient and modern English tenure, it may not be thought irrelevant to notice, that the more general opinion is that freehold lands were devisable before the conquest, but at that period, or soon after, the power of disposition ceased as a consequence of feudal tenure, except as to certain socage lands by the custom of some cities and boroughs (*a*).

FEALTY.—(*and herein of the ancient tribute of Homage.*) From the earliest period of the feudal system the service of *fealty* was incidental to, and inseparable from, every tenure, with the exception of tenure in *frank-almoign* (*b*), and such as hold at will or by sufferance (*c*), so much so, that if lands were granted without the reservation of fealty, the tenure was deemed to be *allodial* (*d*), but nevertheless the oath of fealty might always be dispensed with.

When feuds became hereditary (*e*), besides an oath of fealty,

(*a*) And it is observable that upon a distinction raised after the stat. of quia emptores, between the *land* and the *use* or profits of the land, and the invention of *feoffments to uses*, the use or profits could be disposed of by will even before the stat. 27 Hen. 8. c. 10.

Socage lands and two-thirds of lands held by knight's service, were made devisable by 32 & 34 Hen. 8, and the latter being converted into socage tenure in the 12 Car. 2, all lands became devisable, copyholds excepted. Vide 32 Hen. 8. c. 1. 34 & 35 Hen. 8. c. 5. 12 Car. 2. c. 25. 29 Car. 2. c. 3. Co.

Lit. 111 b. n. 1, 4. Ante, pt. 1. p. 107. Vide also Co. Lit. 111 b. n. 1, 4. Wright's Ten. 172, et seq.

(*b*) 9 Co. 123, in *Anth. Low's case*. Co. Lit. § 131. Wright's ten. 35, 139. Vide also a learned comment on the oath of fealty, Sulliv. Feud. L. lect. 6. p. 68.

(*c*) Co. Lit. 67 b. n. (2). Ib. 68 b. n. (5).

(*d*) Ante, p. 727.

(*e*) Homage was performed only when the grant was of an estate of inheritance, that is, in fee-simple or fee-tail. Co. Lit. § 90; but fealty is to be done by tenant for life (Co. Lit. § 93), or even for years, if he

the parent (as Mr. Justice *Blackstone* has observed) of our oath of allegiance (*a*), the tenant (or vassal), after the ceremony of corporal investiture, a form imitated in our modern feoffments of land, usually did *homage* to his lord, which differed from the former in this respect, namely, that the fealty was a profession of fidelity, and the homage an acknowledgment of tenure (*b*). Homage was taken in the following manner, viz. the tenant being ungirt and uncovered, and kneeling before the lord, holding his hands close together between the hands of his lord, spoke thus;—"I become your man from this day forth for life and member, and for worldly honour, and shall owe you my faith for the land I hold of you, saving the faith I owe unto the sovereign Lord my King, and to my other Lords." (*c*)

And this mode of taking a pledge from each tenant signified protection and warranty on the part of the lord (*d*). But this in later times was held to be peculiar to *homage aunces-trel* (*e*).

holds immediately by grant or lease from the lord of the manor, but not by tenant at will, except by custom. Kitch. 260. Co. Lit. § 84. Ib. § 132. Ib. 93 a. n. 1. And even as to tenant for years, see the year-books referred to in n. (2). Co. Lit. 67 b.

(*a*) And see Sulliv. Feud. L. p. 283.

(*b*) Homage of every kind, as far as it relates to tenures, is now wholly at an end. 12 Car. 2. c. 24. Co. Lit. 105 a. n. (1). See a general observation on the reason for discharging tenures from homage, and on the advantages arising from it whilst it remained, both to the lord and tenant, particularly to the latter where the homage was aunces-trel. Ib. 67 b. n. (1).

(*c*) Bract. f. 80. Glanv. l. 9. c. 1. Britt. f. 173. Flet. l. 3. c. 16. Co.

Lit. tit. 'Homage.'

(*d*) Bract. f. 80. Co. Lit. 67 b. n. (1).

(*e*) Ib. 2 Inst. 11. And see Co. Lit. § 143. F. N. B. 134 F.

Littleton in treating of HOMAGE AUNCESTREL tells us that such homage is where the tenant and his ancestors, whose heir he is, have held the same lands of the same lord, and his ancestors, whose heir the lord is, time out of memory of man, by homage, and have done to them homage, which seems to be a strange and unusual tenure, and scarce possible to continue between the same lord and tenant, and their ancestors, and of the same lands, and this time out of mind: And Lord *Coke* doubted whether, even in his time, there was any relique of this tenure in

Homage was performed only when the grant was of an estate of inheritance, that is, in fee-simple, or fee-tail (*a*); but fealty is to be done by tenant for life (*b*), or even for years if he hold immediately by grant or lease from the lord, but not by tenant at will, except by custom (*c*).

If required *fealty* is to be iterated on every change of the lord, and on every new purchase or descent, it differing in this respect from *homage*, which, except in special cases, is only due once, so that if other lands held of the same lord, descended to a person who had already done homage to the lord, no further homage could be required (*d*).

It should seem that homage as well as fealty was done by women when of age (*e*), but that homage was not exacted from *femes covert*, the husband doing both *fealty* and *homage* to the lord for the lands of his wife, if they had issue when livery was sued; and doing *fealty* (*f*), but not *homage*, if they had no issue (*g*). And therefore until there was issue intitling the husband to curtesy, the homage seems to have been suspended (*h*).

An infant, though he might have performed homage, cannot do fealty it should seem, as that is only to be done upon

England, because of this double prescription, both in the blood of the lord and the tenant. Co. Lit. § 143. Ib. 67 b. n. 1. 105 a. n. (1). At all events the tenure of *homage auncestrel*, as implied in the general words "all tenure by homage," was taken away by the stat. of 12 Car. 2. c. 24. Co. Lit. 105 a. n. (1).

(*a*) Co. Lit. § 90.

(*b*) Co. Lit. § 93.

(*c*) Kitch. 260. Co. Lit. § 84. Ib. § 132. Ib. 93 a. n. (1). Even as to tenant for years, see the year-books referred to in n. (2). Co. Lit. 67 b.

(*d*) 21 H. 8. Fealty 8. Kitch. 260. Co. Lit. 68 b. n. (5).

(*e*) F. N. B. 257 F. Co. Lit. 65 b. 66 a. But see *contra*, Glanv. lib. 9. c. 1.

(*f*) Mr. Watkins was of opinion that the wife only should do fealty for *copyhold* lands, she alone being admitted tenant. Ante, pt. 1. p. 429. And see *Combe's case*, 9 Co. 76 a.

(*g*) F. N. B. 257 F. Kitch. 260.

(*h*) Br. Fealties & Homage, pl. 10, 16. F. N. B. 257 F. (n. b). But see Co. Lit. 66 a. &c., where *Littleton* gives an instance of joint homage by the husband and wife, the husband alone repeating the words, which Lord *Coke* says must mean before issue had between them.

oath (*a*); and as no man can swear by attorney, fealty must necessarily be done in person (*b*).

The lord, in his own person, could alone receive the tribute of homage (*c*), and for this reason a corporation, who can appear only by attorney, could not take homage (*d*); but fealty might always be received by the steward of the lord's court, or the bailiff (*e*).

The oath of fealty or pledge of fidelity, (and which was consequential to homage,) used always to be made immediately after the tenant had performed his homage, and was formerly deemed of the first importance, the seisin of fealty being a sufficient seisin of all other services (*f*). The oath is now usually administered, or rather respited, and an entry thereof made on the manor rolls (*g*), at the first court after the new tenant's title accrues, and the latter is not only the more general, but the more advisable mode, except, indeed, in those instances, if any exist, where fealty is the only service rendered (*h*).

(*a*) Bract. 78. Co. Lit. 65 b. 2 Inst. 11. But Kitch. p. 260, says "In a *per que servitia* an infant was constrained to attorn, and to make fealty, notwithstanding his non-age," cites 20 Ed. 3, tit. 19. And see 24 E. 3. 63-4. Hal. MSS, cited N. 5. Co. Lit. 65 b.

(*b*) Co. Lit. 68 a. *Combe's case*, 9 Co. 76. See a singular instance of fealty by attorney, Hal. MSS, cited Co. Lit. 68 a. n. 5. In France, both homage and fealty may be done by proxy, if the lord consents, and by the custom of some of the provinces even without. *Ib*.

(*c*) Bract. l. 2. f. 80. Co. Lit. § 92.

(*d*) Kitch. 260.

(*e*) Co. Lit. § 92. Co. Cop. § 20. Tr. 15. Ante, pt. 1. p. 429.

(*f*) *Bevil's case*, 4 Co. 8. Co. Lit.

68 b. That seisin of fealty doth not estop the tenant from traversing the seisin of other services, vide 41 E. 3, 25. 50. *Lilburne's case*, Hal. MSS. Co. Lit. 68 b. n. (6).

(*g*) See ante, pt. 1. p. 429.

(*h*) Co. Lit. 68 b. n. (5). And see further as to fealty, *Sulliv.* 68. Ante, pt. 1. ch. 8. Vide also as to the lord's remedy for fealty, post. p. 736. It appears by Kitch. p. 261, that the lord is not constrained to avow on a feoffee, even in case of the death of his tenant, without notice of the feoffment, but may distrain the feoffee and avow upon the feoffor, and in the case of the tenant's death after such alienation, the lord may distrain the issue, and avow upon him. And indeed, by stat. 21 H. 8. c. 19, he need not avow or justify of any person certain. As to the remedy for

SUIT OF COURT.—I have already shown that a court baron is incident to every manor; and at this court the freehold tenants were anciently and are still compellable to perform their suit and service, as well to inquire of and maintain the rights of the lord, as to form a jury for the trial of matters in dispute between their fellow-tenants (*a*); which duty led, in the early feudal institutions, to their designation of peers of the court, *pares curiæ*.

We have also seen that suit of court by freeholders may be done by attorney, but that such attorney cannot be appointed by parol (*b*): And that joint-tenants and coparceners shall do but one suit, the eldest sister performing the suit in the latter instance, and the other joint-tenants or coheirs being contributory for the suit done for them (*c*). But if there be two coparceners and the eldest will not do suit, then the lord may compel the youngest to make suit, who shall have contribution against the eldest (*d*).

It has likewise been already stated, that a woman is not allowed to sit on the homage to try issues in a court baron, where the suitors are the judges, nor even to make presentment, unless the husband die without an heir, but that the husband, and not the wife, is to perform all the services to the lord, in respect of the wife's freehold lands (*e*).

The remedy for neglect of suit of court, as well as for refusal to do fealty, is by *distress infinite* of the beasts or other personal property of the party distrained upon (*f*); but the

neglect of fealty, see *infra* n. (*f*). And, N.B., it was held in *Bevil's case*, 4 Co. 10 b, and in *Bennet v. King*, 3 Lev. 21, that fealty and such casual services as might not happen within the periods mentioned in the act, were not within the stat. of limitation, 32 H. 8. And see Co. Lit. 115 a. Ante, pt. 1. p. 573.

(*a*) See ante, pp. 716, 717, 719, 720.

(*b*) Stat. Merton. 20. H. 3. c. 10.

And see F. N. B. 156 D. Kitch. 293. Ante, pt. 1. p. 431.

(*c*) Ante, pt. 1. p. 105, 433. 2 Inst. 116. See also Fitz. Abr. 162. 1 H. 4. 3 a. Kitch. 291.

(*d*) Fitz. Abr. 159 E. Kitch. 291.

(*e*) Ante, pt. 1. p. 432. But see, as to *copyholds*, ante, p. 734. n. (*f*).

(*f*) F. N. B. 158 et seq. Kitch. tit. 'Suit.' 3 Bl. Com. 231. See reference to the late stat. of limitation, post. p. 737. n. (*e*).

distress is considered as a pledge only for the performance of the services, and cannot be sold; for which reason I apprehend that it can in no case be deemed immoderate or excessive (*a*), under the statute of Marlborough (*b*).

But it should seem that for suit to a hundred court one cannot distrain, except by prescription, and in the lands charged with the suit, although a hundred court is no more than a court baron, and the suitors there are judges (*c*).

And it is to be recollected, that suit of court is not incident to tenure, unless it be suit service, so that if it should appear that the tenure was created subsequently to the stat. of *quia emptores*, I apprehend that the lord could not distrain for the subtraction of suit, except under a special reservation of the remedy of distress, or by prescription.

RENTS OF ASSIZE, &c.—HERIOTS.—These subjects are already treated of at some length in our consideration of the services due to the lord of the manor from his *copyhold* tenants (*d*), to which I must beg to refer the reader, being anxious to avoid any unnecessary repetition in a work which I feel has much less pretensions to novelty of matter than of arrangement.

I am induced, however, to offer an additional observation with reference to the provisions of the late act of parliament for the limitation of actions and suits relating to real property (*e*). By the second section it is enacted that after the 31st of December 1833, no person shall make an entry or distress, or bring an action to recover any land or rent, but within twenty years after the right to do so accrued to the party himself, or to some person through whom he claims; and the third section enacts that the right shall be deemed to have accrued, in cases of dispossession or discontinuance of pos-

(*a*) Co. Lit. 68 b. n. (5). Finch
L. 235. *Bevil's case*, 4 Co. 8 b. 3 Bl.
Com. 12, 231.

(*b*) 52 H. 3. c. 4.

(*c*) F. N. B. 161 D. n. (*a*).

(*d*) Ante, pt. 1. ch. 8.

(*e*) 3d & 4th W. 4. c. 27. N.B. By
the first sect. the word 'rent' is de-
clared to extend to heriots, and all
services and suits for which a dis-
tress may be made.

session of land, or of receipt of rent, at the time of such dispossession or discontinuance of possession, 'or at the last time at which any such profits or rent were or was so received.' (a) But it is provided by the fifteenth section, that when the possession of the land, or the receipt of the rent, shall not at the time of passing the act have been adverse to the title of the claimant, then the right of entry, or distress, or action, shall not be barred for the space of five years afterwards, although the period of twenty years, thereinbefore limited, shall have expired.

And I submit that the effect of the second and third sections of the above act, taken independently of the fifteenth section, is to destroy the remedy which the law had afforded, by a distress, for the recovery of quit rents, as between the same lord and tenant, in those cases where twenty years may have elapsed since the last payment, but that under the fifteenth section the remedy is revived for a period of five years, where there was not an adverse possession of the rent at the time of passing the act.

RELIEFS.—Fully according with the more general opinion that the *proper*, or ancient relief is not a service, but a fruit or improvement of service (b), this subject might, perhaps, have been introduced with greater propriety at the end of the present chapter, in treating more generally of the *fruits of tenure*, but from the contrariety of opinion as to the true character of the *proper* relief, (induced, possibly, by the circumstance of its being recoverable by distress (c),) and also from the affinity

(a) The 3d sect. also makes a particular provision as to the time of the right first accruing in cases of a claim on death, or on alienation, or of a reversionary interest, or on a forfeiture or breach of condition. Vide the act in the Appendix.

(b) See 2 Roll. Abr. 514, 515, (D) pl. 3 & 4. 3 Co. 66, in *Pen-*

nant's case. Co. Lit. 83. a. Wright's Ten. 98. (n. k). Therefore the executors of the lord shall have an action of debt for relief. *Leak's* case, 32 H. 8, cited 4 Co. 49 b.

(c) The lord may distress, but his executors or administrators cannot. Post. pp. 741, 742.

which the relief bears to the exactions prevailing under the feudal system, to which some allusions have been incidentally made, I have preferred classing the observations which it is my design to offer on the law of reliefs, with the consideration of the services usually rendered, at this day, for lands of freehold tenure. And another motive for this preference of classification is, that a relief is sometimes due by *reservation*, or under an immemorial *custom*, in a particular manor (*a*).

The relief has been supposed to have originated after the Conquest, and to have been established on the plan of the Danish heriot (*b*), upon estates in England being made hereditary; but the better opinion is, that it was a fruit of feudal tenure, and was paid as an acknowledgment for the renewal of the feud, when the succession was arbitrary and dependent on the will of the lord (*c*); and that it was continued to be paid by the heir, by way of fine for taking up the estate, after feuds became hereditary (*d*).

The relief is by some ancient writers supposed to have been originally paid in horses and arms, and to have given place to a money payment upon the ordinance called the assize of arms in the twenty-seventh year of Henry the Second, by which every man's armour was directed to be preserved for his heir (*e*). But others are of opinion that the relief was originally paid in money with us, as in Normandy (*f*). And certain it is that the relief has been frequently confounded with the heriot, although there is a great distinction between them, which Sir Henry Spelman thus notices "Heriots" (he observes) "were *militiæ apparatus* which the word signifieth, and devised to keep the conquered nation in subjection, and to support the public strength and military furniture of the kingdom: the

(*a*) Post. p. 742.

(*b*) See the Appendix to 2d Gen. Rep. of Commissioners on Public Records, p. 451.

(*c*) Ib. Wright's Ten. 15. Spelm. Treat. of Feuds, 33. 2 Bl. Com. 65.

(*d*) But the ancient relief it seems was only payable if the heir, at the

death of his ancestor, had attained twenty-one. 2 Bl. Com. 66. Co. Cop. § 25. Tr. 28.

(*e*) See App. to 2d Gen. Rep. of Comm. on Pub. Rec. p. 451.

(*f*) Ib. n. 1. Wright's Ten. 100.

(*u. o.*)

“reliefs for the private commodity of the lord, that he might not have *inutilem proprietatem* in the seignory. The heriots were therefore paid in habiliments of war; the reliefs usually in money: the heriot for the tenant that died, and out of his goods; the relief for the tenant that succeeded, and out of his purse: the heriot whether the son or heir enjoyed the land, or not; the relief by none but him only that obtained the land in succession.” “I stand the longer” (adds Sir Henry Spelman) “herein, for that not only the report, but even Domesday itself (a), and generally all the ancient monkish writers have confounded heriots and reliefs.” (b)

It may, I think, be inferred from several of our ancient text writers that William I. and perhaps Henry I. required reliefs to be paid by military tenants in habiliments of war, on the plan of the Danish heriot, but that they were reduced to some certainty by the laws of the former, and restricted by the latter to a *just* and *lawful relief*; after having been exacted arbitrarily by William II (c).

(a) In the Appendix to 2d Gen. Rep. from the Comm. on P. R. p. 451, it is observed, that the heriot occurs more rarely in the Domesday Survey than might have been expected; and that the first establishment, if not the introduction of the compulsory heriot into England, is found in a law of King Canute, *Lex Anglo. Sax. Wilk.* p. 144. And see *Sulliv. Feud. L.* p. 281. *Co. Lit.* 83. a. n. (1).

(b) And see *Co. Lit.* 83. a. n. (1). *Sulliv. Feud. L.* p. 281. *Bract.* l. 2. c. 36. 86. a.

(c) See *Wright's Ten.* 99, 100, 101. The relief of a knight's fee is thought to have been certain, even at common law, viz. 100s. *Co. Lit.* 76 a; but the composition for reliefs of Earls and Barons, though the relief itself was reduced and made less

arbitrary in the reigns of William, and Henry I., is generally supposed not to have been ascertained and fully established until the Charters of King John and Henry III., which restored the more ancient Norman relief, in money, fixing the relief of both Earls and Barons *ad centum libras*. *Ib.* But Lord *Coke* in his 2 *Inst.* p. 7, supposes that the lawful and just relief mentioned in the Charter of Hen. I. to be paid by an Earl and Baron was certain, viz. the fourth part of the yearly value of his Earldom or Barony, (i. e. an Earl 100l. and a Baron 100 marks,) and that the second chapter of *Mag. Ch.* was but a restitution and declaration of the ancient Common Law. And see *Co. Lit.* 83 b.

The titles of Duke, Marquess, and Viscount did not exist in England at

The relief of socage lands, to which all tenures, with the exceptions already mentioned, were reduced by the Stat. 12 Car. 2. c. 24, was fixed so long back as the 40th law of William I. at a year's rent, which has been constantly taken as a relief for socage lands up to the present day (*a*); the sum now rendered as a relief having reference to the quit rent payable in respect of the particular lands.

A relief being a fruit of service *only*, is not within the limitation of 50 years, prescribed by 32 H. 8. c. 2. in the case of an avowry or conusance for suit and service (*b*).

Yet it should seem that the lord may distrain for the *proper* relief (*c*), as distinguishable from a prescriptive or *improper* relief (*d*), and cannot (as some say) have an action of debt (*e*);

the time of Magna Charta, (9 H. 3. cap. 2.) but they were considered to be comprehended under the equity of the stat. and subject to reliefs according to their dignities, viz. a Duke 200*l*, or one-fourth of the supposed yearly value of a dukedom, and a Marquess 200 marks, or one-fourth of the yearly value of two baronies. Co. Cop. § 25. Tr. 32-3. And see *Anth. Lowe's case*, 9 Co. 124 b. The exact amount paid as a relief by a Viscount does not appear to be known. Co. Lit. 83 b.

See further as to relief for lands held by knight-service, ante, p. 731. n. (b).

(a) Glanv. lib. 9. c. 4. f. 71. a. Fleta. Lib. 3. c. 17, § 11. Lit. § 126-7. 2 Inst. 232. 2 Roll. Abr. 515 (E.) Wright's Ten. 105. (n. w.) Sir Edward Coke in his Copyholder [§. 25. Tr. 28] says, "If a tenant "in socage die, his heir above the "age of fourteen, then shall the heir "double the rent that his ancestor "was wont to pay to the lord; as,

"if the tenant holdeth of his lord by fealty, and 5*s*., then shall the heir double the rent, and shall pay 10*s*., viz. 5*s*. in the name of a relief, over and above the 5*s*. which he payeth for his rent."

(b) 2 Inst. 95. N. 2. Co. Lit. 83. a. *Bevil's case*, 4 Co. 10, 11. *Ante*, pt. 1. p. 100, n. (c). Yet in avowry for relief, the avowant must allege a seisin of the services. 2 Inst. 96. N.B. The late stat. of limitation (3d & 4th W. 4. c. 27), embraces all services, ante, p. 737. n. (e), but would seem not to extend to reliefs.

(c) But the distress could not be sold, I apprehend, under the stat. 4 Geo. 2. c. 28. Scroggs 98.

(d) i. e. a relief presumed to have been reserved by a lost deed, with a clause of distress. Gilb. Dis. 8.

(e) Co. Lit. 47 b, 83 b, 162 b. Gilb. Dis. 7. But see *contra* as to action of debt, Co. Cop. § 31. Tr. 45. *Hungerford v. Havyland* or *Harryland*, W. Jones, 132. S. C. 2 Bulst. 323. S. C. Latch. 37, &c.

but that his executors or administrators may have an action of debt for the relief, as well against the tenant as against his executor, and cannot distrain (*a*): and as the relief is incident of common right to socage tenure, it is not necessary to set forth a title to it in replevin (*b*).

There is, however, it appears this distinction as to the mode of recovering a relief, namely, that when it is due by prescriptive reservation, or by custom (*c*), the lord cannot distrain for it, unless he can show a title to the remedy as well as the payment itself, either by prescription or custom (*d*).

It has been held that acceptance of rent from the new tenant, is no bar of the relief due from the old tenant (*e*). And that a relief cannot be apportioned; so that on the death of one of several coparceners, who are but as one tenant to the lord, no relief is payable (*f*).

SECT. III.

Of Amercements.

AN amercement (*g*) is in latin called *misericordia*, because

S. C. 2 Roll. Rep. 371. See also Dy. 24 a. ca. 149. Lord North's case, 2 Leo. 179. And Kitch, p. 86, says, "It seems, the lord shall have debt for relief, and clearly the executors shall have debt for relief, 32 H. 8. 20. 19 H. 6." *Ante*, pt. 1. p. 436.

(*a*) See Co. Lit. as in the last note. 1 Sho. 36. in *Shuttleworth v. Garret*. 1 Roll. Abr. 665. Lord St. John v. *Brandring*, Cro. Eliz. 883. S. C. Noy. 43. It was held in this case that the relief being certain, wager of law was not allowable.

(*b*) *Freeman v. Booth*, 3 Lev. 145.

(*c*) As where lands are held of A. of his manor of B. by payment of rent and a customary relief of one year's value by the heir. N. B. The sum paid as relief custom is very uncertain, and in some places is a year's, and in others half a year's profits, and is frequently payable on alienation, as well as on death. Co. Cop. § 25. Tr. 27-8.

(*d*) *Hungerford v. Havyland*, *ubi sup.* Gilb. Dis. 8.

(*e*) *Parham v. Norton*, Cro. Eliz. 886. S. C. Mo. 643. S. C. cited in *Pennant's case*, 3 Co. 66 a.

(*f*) 3 Leo. 13, ca. 30.

(*g*) *Wite* or *Wita* is an old Saxon

it ought to be assessed mercifully by the peers or equals of the delinquent (*a*).

It is, I apprehend, the province of the homage of a court baron to assess every amercement, the statute of Magna Charta, (9 Hen. 3.) cap. 14, having provided that freemen (*b*) should be amerced after the manner of the fault committed, and that the amercements should be assessed *only* by the oath of honest and lawful men of the vicinage; that Earls and Barons should not be amerced but by their peers (*c*); and that an Ecclesiastical person should not be amerced in respect of his spiritual benefice, but in respect of his lay tenement (*d*); and the stat. of Westm. 1. (3 Ed. 1.) c. 6, having enacted that no man should be amerced without reasonable cause, and according to the quantity of his trespass, ‘*and that by his or their peers.*’

Yet by prescription the steward, even of a court baron, where the suitors are the judges, may assess an amercement (*e*); but then the amercement must be affeered by the peers or equals of the offender, that is, by free tenants of the manor:— And where debt was brought for an amercement, which though affeered did not appear to be so by free tenants, the action was held not to lie (*f*).

The practice of affeering amercements arose out of the above statute of Magna Charta, it being considered that the

word, also signifying amercement. So likewise the word *Bote*, and the word *Wera* or *Were*.

(*a*) Co. Lit. 126 b.

(*b*) The word ‘*freeman*’ implies a freeholder, and extends as well to sole corporations, as bishops, &c., as to laymen, but not to corporations aggregate. 2 Inst. 27.

(*c*) Or equals [*per pares*].

(*d*) “Although this stat. be in the negative, yet long usage hath prevailed against it, for the amercement of the nobility is reduced to a cer-

tainly, viz. a duke 10*l.*, an earl 5*l.*, a bishop, who hath a barony, 5*l.* &c. In the Mirror it is said that the amercement of an earl was 100*l.*, and of a baron an hundred marks.” 2 Inst. 28. And see *Griesley’s* case, 8 Co. 40 a.

(*e*) *Blunt v. Whitacre*, 1 Leo. 242. But see *Romleston v. Alman*, Cro. Eliz. 748.

(*f*) *Baldwin v. Tudge*, 2 Wils. 20. And see *Conyers v. Franke*, 3 Lev. 19.

extent of a fault committed could only be known by the affeerment of the peers of the offender (*a*).

But as the act of affeerment is no otherwise prescribed by that stat., or by the above stat. of Westm. 1, than by the constructive sense of the provisions just cited, the spirit, as well as the literal meaning of those provisions would seem to be satisfied by an amercement by the homage in a *particular sum*, without any affeerment (*b*).

Yet as it is by the judgment of his *peers* that every man is to be amerced, it is better, and has been thought essential (*c*), that two, at least, of the homage should be appointed affeerors (*d*), even when the homage amerce in a sum certain, in order that the office of the homage, and that of the affeerors, should not be confounded (*e*); and the affeerment, it should seem, must be made at the same court (*f*).

And it is the more usual, and certainly the more advisable course, for the homage of the court baron to adjudge the party to be amerced in general terms, *quod sit in misericordia*, and then to have the sum ascertained by affeerors (*g*).

Should the amercement be immoderate, and the lord or steward neglect to have it moderated by affeerment, the writ of *moderata misericordia* may be sued out, directed to the lord or his bailiffs, commanding them that they moderately

(*a*) Br. Amerc. pl. 50, cites 10 H. 6. 7.

(*b*) *Matthews v. Cary*, 1 Sho. 62. *Per Holt*, C. J., in *Brook v. Hustler*, 11 Mod. 76.

(*c*) See Gilb. Eq. Rep. 211, in *Edwards v. Hughes*. 2 Vin. Abr. 'Amercement' (D).

(*d*) Kitch. 153, who there says "in all court barons *three* are sworn to ratify the amerancements;" but this, I apprehend, is a misprint, for in the same page he says, "If the steward or the bailiff will assess any amercement without confirming by *two* upon

their oaths, after that the homage hath presented the offenders, there is a special writ upon the stat. of Mag. Ch. c. 14."

(*e*) Hob. 129, per *Hobart*.

(*f*) 3 Keb. 363, in *Cutler & Creswick*. Scroggs, 150.

Sworn affeerors are absolutely essential in a court leet. 3 Lev. 206. Gilb. Eq. Rep. 211. Post. tit. 'Courts leet,' (Amercement).

(*g*) *Brook v. Hustler*, *sup.* S. C. 1 Salk. 56. *Griesley's case*, 8 Co. 40 b. But see Hob. 129, in *Willon v. Hardingham*.

amerce the party according to the quantity of his fault, &c., which writ is founded on the above stat. of Magna Charta, c. 14; and the process upon it is *alias* and *pluries*, and attachment, which attachment is directed to the sheriff (*a*).

When two or more are amerced for the same trespass, they cannot join in a writ *de moderata misericordia*, as they should be severally amerced (*b*).

And if the lord or steward amerce any tenant or party in the court baron, without cause, and distrain for the amercement, trespass will lie (*c*).

Where, according to an established custom in the particular manor, a by-law is made, and a penalty laid upon every tenant guilty of a breach thereof, such penalty is in the nature of a fine set by the Court, and no affeerment can be necessary (*d*): Indeed an affeerment or alteration of the penalty would be illegal (*e*). But if the fine in such a case were discretionary, then I apprehend affeerment would be essential (*f*).

A Court Baron not being a court of record, neither the lord nor steward can fine or imprison (*g*): nor can the lord or steward assess an amercement for a private trespass done to the lord, except perhaps by custom (*h*).

The lord of a manor cannot distrain for an amercement in a

(a) F. N. B. 75. Kitch. 153. Co. Lit. 126 b.

(b) *Godfrey's case*, 11 Co. 43 a.

(c) F. N. B. 75. C. Kitch. 153. Co. Lit. 126 b.

(d) *Castle v. Oldman*, 1 Leo. 203. *Davies v. Lowden*, Cart. 29. *Griesley's case*, 8 Co. 38 b. *Morgan's case*, 8 Mod. 301. But in the latter case one Just. was of opinion that the custom was abrogated by Magna Charta. And see *Edwards & Hughes*, ubi sup.

(e) *Scarning v. Cryer*, 3 Leo. 8. S. C. Mo. 75. S. C. Bendl. 159.

(f) *Morgan's case*, sup.

(g) Co. Cop. s. 26. Tr. 34. *Gries-*

ley's case, *Godfrey's case*, sup. 1 Roll. Rep. 74. *Waterman v. Cropp*, Godb. 381. Scroggs 5. And see *Lord Cobham v. Brown*, 1 Leo. 217. But it would seem that the Admiralty Court, which is no court of record, may fine and imprison for a contempt in court. *Sparks v. Martyn*, 1 Vent. 1.

(h) See *Blunt v. Whitacre*, 1 Leo. 242. *Partridge v. Walker*. P. 16. Car. 2. B. R. Scroggs 147. Kitch. p. 154, says "The lord cannot amerce a man in his own court for trespass made to himself, by the law, but he may by custom."

court baron, as of common right (*a*), for he shall not have a double distress, and he may distrain for the service itself (*b*); but the remedy for an amercement is action of debt (*c*), in which action the defendant, prior to the late act (*d*), was allowed to wage his law (*e*).

It should seem, however, that the King by his prerogative may distrain for an amercement, as of common right (*f*); and that in every case a distress for an amercement in a court baron may be good by prescription (*g*).

The bailiff of a manor cannot distrain *ex officio*, nor *per mandatum* of the lord, but must have a special warrant from the lord or steward (*h*), and it should seem that the precept must be set forth in the pleadings (*i*).

The bailiff is not punishable in trespass for levying damages by command of the steward, although the party plead to the jurisdiction, unless, indeed, the verdict be defeated by a writ of false judgment (*k*).

In trespass on distress for an amercement in a court baron the defendant must plead the exact title of the court, before whom it was held, that the trespass was committed *intra manerium*, and not merely that it was presented that a trespass

(*a*) *Pell* or *Pill* v. *Towers*, Noy 20. Cro. Eliz. 792. *Rowleston* v. *Alman*, Ib. 748. *Blunt* v. *Whitacre*, ubi sup. Scroggs 145. But see Co. Cop. s. 31. Tr. 45. 1 Brownl. 36.

(*b*) Gilb. Dis. 16. *Goosey* v. *Pot*, Ow. 146. *Allen* v. *Givers*, Mo. 185. *Godfrey's* case, 11 Co. 45 a. *Pell* or *Pill* v. *Towers*, sup. Ante, pt. 1. p. 432.

(*c*) 12 R. 2. *Statham*, f. 62. Kitch. 86. Ib. 145, 153-4. Gilb. Dis. 11.

(*d*) By 3rd and 4th W. 4, c. 42, s. 13, wager of law is abolished.

(*e*) Kitch. 153. Scroggs 137. Co. Lit. 295. a. *Contra* in debt for fine

or amercement in court leet, because the leet is a court of record. Co. Lit. 295. a. Scroggs 137. See as to the mode of waging law, post. p. 750. n. (b).

(*f*) *Rowleston* v. *Alman*, sup.

(*g*) Ib. And see cases, ante p. 745. n. (h); sup. n. (a).

(*h*) *Rowleston* v. *Alman*, sup. *Steverson* v. *Scrogs*, Cro. Eliz. 698.

(*i*) *Lamb* v. *Mills*, 4 Mod. 377. The bailiff should be sworn to the due discharge of the duties of his office. See Scroggs 99. 1 Roll. Rep. 338.

(*k*) Kitch. 148.

was committed (*a*), and that the distress was made *intra jurisdictionem curiæ* (*b*).

It should seem that the amercement is lost by the death of the tenant before it is levied, as it is *quasi actio personalis* (*c*); and not like the case of relief, where action lies against an executor (*d*).

SECT. IV.

Of By-Laws.

THE tenants of a manor, or vill, it is said, may make by-laws touching their commons and the like, to bind themselves, but not strangers (*e*); and again it is said, that where a by-law is for the public good, as to make a cause-way or bridge, it is binding on all, though all do not agree (*f*), and even without a custom (*g*); but I apprehend that a by-law in a court baron will bind only such tenants as are assenting, unless it be made under an immemorial custom, or by prescription (*h*). And even

(*a*) *Armyn v. Appletoft*, Cro. Jac. 582. *Scarning v. Cryer*, 3 Leo. 7. S. C. Mo. 75. S. C. Bendl. 160. And see *Parham v. Norton*, Cro. Eliz. 886. *Blunt v. Whitacre*, *ubi sup.* But see *Lukin v. Eve*, Mo. 89.

(*b*) Anon. 1 Mod. 75.

(*c*) *Jackman v. Hoddesdon*, Cro. Eliz. 351. Being a personal default, the cattle of a stranger or lessee of the tenant could not be distrained. *Pell or Pill v. Towers*, *ubi sup.* And see 41 E. 3. 26 b. p. 23, cited Dy. 317 b. n. a. *Goosey v. Pot*, *ubi sup.*

(*d*) Co. Lit. 295 a. *Ante*, p. 742.

(*e*) *Vide* Br. tit. Customs, pl. 32, cites 21 H. 7. 40. *Lex Man.* 42. pl.

1. Hob. 212, in *Norris v. Staps*.

(*f*) *Vide* Kitch. 89, 156, cites 44 E. 3. 19. Br. tit. Customs, pl. 6. And see 1 Mod. 194, in *Rogers v. Davenant*. 8 E. 1. Ass. 413, cited Kitch. 89.

(*g*) 5 Co. 63 a, in the *Chamberlain of London's* case. In that case a by-law for repairing a church or a highway were considered equally for the public good, and therefore binding. Scroggs 140. But some of the books distinguish between the two cases, and deem the latter only good. 44 E. 3. 19. Kitch. 89.

(*h*) See Kitch. 89, 156. Hob. 212. Mo. 579.

with a custom in favour of a by-law, a stranger could not be bound by it (a), as every custom must be reasonable in its commencement.

So where the by-law was that no tenant should put a steer on the common being a year. old or more, upon pain of sixpence for every offence, and that it should be lawful to distrain for the same, it was adjudged on demurrer in replevin, that this by-law was void; for where a man hath right of common for all commonable cattle, it is against common right to restrain him from one particular sort of cattle; but if the by-law had been that none should put in his cattle before a particular day, it had been good, for that would not take away, but only order the inheritance (b).

And where the homage, under a custom to make by-laws for the well ordering of a common, ordained that no commoner should put his sheep in a particular part of the common, under a penalty of 3s. 4d. to the lord, upon demurrer in replevin, this was adjudged to be a good law, especially since it did not take all the common, but only for sheep, *and in a particular place* (c).

And again where the inhabitants of a particular place used to repair a bridge for the convenience of the commoners, and a by-law was made that the inhabitants should repair the bridge before a certain day, under a penalty, and this not being done, the default was presented at the next court, and one of the inhabitants was distrained; and on demurrer in replevin the plaintiff had judgment, because the defendant had set forth *that the steward made this by-law, with the consent of the*

(a) 11 H. 7. 14. 21 H. 7. 40. Fitz. Abr. tit. Prescrip. pl. 67. Br. Abr. tit. Prescrip. pl. 40. Ib. Customs, pl. 32, 75. Kitch. 89, 156.

(b) *Erbery v. Latton*, 1 Leo. 189. S. C. 1 And. 234. One cannot prescribe to make by-laws to alter inhe-

ritances. 49 Ass. 8. Kitch. 90. And see per *Manwood*, 15 Eliz. Kitch. 156.

(c) *James v. Tintney or Tutney*, Cro. Car. 497. S. C. W. Jones, 430. S. C. Win. 30. And see the argument of the Ch. J. in S. C. Mar. 28.

homage, whereas all by-laws are to be made by the *homage* (a).

When a by-law is made by custom, the breach of it need not be presented by the *homage*, nor is it necessary in *replevin* to aver the necessity of a by-law (b). And notice of it is unnecessary, it being proclaimed in court, where every tenant is bound to attend (c).

And when a penalty is inflicted for a breach of a by-law, for which the lord distrains, and does not say whose cattle they were, yet it is said they shall be intended to be the cattle of the offender (d).

The penalty for a breach of a by-law made at a court baron, is in the nature of a fine rather than an *amercement*, and is not *affeerable*.

In the case of *Scarning v. Cryer* (e), under a custom to make by-laws, and to set penalties on those who offended against them, and distrain for the same, a by-law was made, and at another court the defendant was presented for a breach of it, by which the penalty (which was 20s.) was forfeited, but *ex gr. cur'*. the penalty was *affeered* at 6s. 8d.; and upon a demurrer to the *conuzance*, it was adjudged ill, not only because a pain of a certain sum, as this was, could not be altered, but also because the defendant pleaded that the presentment was made *coram sectatoribus*, without showing their names (f).

Where the custom of the manor authorising the *homage* to make by-laws, and assess penalties on breach thereof, should be silent as to the remedy, and there should be no prescription for a distress, the penalty could only be recovered by action of

(a) *Wells v. Cotterell*, 3 Lev. 48. *Vide* the pleadings in this case, *Lex. Man. App.* p. 31. pl. 11. But see the report of *James & Tintney*, in *Mar.* 28; and *Lord Exeter's case*, *Scroggs* 140.

(b) *Lord Cromwell's case*, 3 Leo. 33. *S. C. Dy.* 323. *Lex Man.* 42. And such by-laws bind the tenants

as well freeholders as copyholders, *Anon.* (but *qu. S. C.*) *Godb.* 50.

(c) *James v. Tintney*, *sup.*

(d) *Lex Man.* 42. pl. 2.

(e) 3 Leo. 7. *S. C. Bendl.* 159. *S. C. (Scarning v. Criett)*, *Mo.* 75.

(f) *Vide* also *Garret v. Higby*, *T. Jones*, 129.

debt by the lord, supposing the penalty given to him by the custom, and it would seem that the defendant might wage his law in this action, as well as in an action of debt for an amercement in court baron (*a*).

SECT. V.

Of Plaints in nature of Personal Actions.

ALL pleas in a court baron of common right, and of a personal nature, are, or rather were prior to the above mentioned act of parliament, determinable by wager of law (*b*); yet by prescription they could only be determined by a jury, and the trial might always have been by jury, with the consent of the parties (*c*).

But unless warranted by charter or prescription, the lord cannot compel the suitors of the court baron to be sworn, as between party and party (*d*), except, indeed, in a writ of right patent, wherein a plea is held of freehold, and then as the writ

(*a*) *Tyndal v. Toller or Tucker*, Bendl. 140. S. C. cited Mo. 277. 1 Leo. 204. Wager of law is now abolished, ante p. 746. n. (*d*).

(*b*) 2 Inst. 143. Kitch. 225, 384. In waging his law the defendant was to bring with him eleven persons, of his neighbours, that would avow upon their oath, that in their consciences he said the truth. Scroggs 136. Co. Lit. 295 a. But it would seem to be doubtful whether six or eleven were necessary. 2 Vent. 171. 3 Bl. Com. 343. In the case of the *King v. Williams*, 2 Barn. & Cress. 538, the court refused to assign compurgators. But see 1 N. R. 297, in

Barry v. Robinson.

(*c*) 33 H. 8. 143. Kitch. 225, 384.

(*d*) 2 Inst. 142. Br. Court Baron, pl. 2, 23. And see Kitch. 82. But to inquire for the lord of the articles belonging to the court baron, or hundred, they may be sworn, 2 Inst. 142. N. B. The stat. of Westm. 2. c. 36, subjecting lords and stewards of courts procuring suits to be instituted, to a fine to the King, and to treble damages to the party grieved, (and who at common law could only recover single damages,) extends to courts baron and courts leet. 2 Inst. 444.

is *mandatum regis*, an oath may be administered (*a*). So that it must frequently happen, that for want of evidence of a charter or prescription, pleas of debt, even under 40*s.* cannot be tried in the court baron.

The process on plaint in a court baron is summons, and distress infinite, till the defendant appears (*b*), but the court has not power to make execution as in the superior courts (*c*); and the distress in a court baron, even of goods taken upon a judgment, is only in nature of a pledge, and cannot be sold, except by special custom (*d*):—Neither are the goods forfeited to the lord, even if the manor belong to the King (*e*).

Yet by special custom a *levari facias* may be awarded in a court baron, and the goods sold; but in any proceedings consequent on the execution, the custom must be pleaded (*f*).

Should a debt be divided in a court baron, so as to reduce

(*a*) By stat. of Marl. 52 H. 3. c. 22, none may distrain his freeholders to answer for their freeholds, nor for any things touching their freehold, without the King's writ; nor shall cause his freeholders to swear against their wills, for no man may do that without the King's commandment: And this act was confirmed and enlarged by 15 R. 2. c. 12. 16 R. 2. c. 2. *Vide* Bract. lib. 3. fo. 106. Kitch. 225, 384. 2 Inst. 142–3. 2 Bac. Abr. 206.

(*b*) In *Tubervill v. Tipper*, 2 Roll. Rep. 493, it was agreed that process in court baron was summons, *attachment*, and distress infinite. And see 38 E. 3. 3. 1 E. 4. 10, cited Br. Court Baron, pl. 5, 10. Bulst. 53. *Vide* also 34 H. 6. 53, & 37 H. 6. 53, cited Kitch. 152. Scroggs 84. Lex. Man. 58. But N. B. the attachment in the above case of *Tubervill & Tipper*, appears to have been awarded *secundum consuetudinem cu-*

ria. *Vide post*.

(*c*) 4 H. 6. 17. Br. Court Baron, pl. 6, 7. *Ib.* Execution, pl. 80, cites 22 Ass. 72. Fitz. Execution, pl. 110. But in *Doe & Parmiter*, B. R. Hil. 24 Car. 2, it was said *per Cur.* that the constant course in all courts was *levari facias*, which was meant in the old books by a *Distringas*; see Scroggs 93.

(*d*) *Vide* Br. Abr. as in n. (*c*), *sup.* *Trye v. Burgh*, Noy 17. *Pell v. Towers*. *Ib.* 20. *Hewet v. Norberow*, Bulst. 52.

(*e*) *Gomersall v. Medgate*, Yelv. 194. S. C. (*Gomersale v. Ways*), Cro. Eliz. 255. Lex. Man. 58–9. And see *Hewet v. Norberow*, *sup.*

(*f*) See the authorities, *sup.* n. (*c*) & (*d*). Sometimes, by custom, a *venditioni exponas* is awarded, after the third attachment, for sale of goods distrained on non-appearance. Scroggs 203.

each plaint below 40*s.*, the defendant may have a *supersedeas*; and of this the defendant might formerly have waged his law (*a*).

The want of summons in a plea of debt, in an inferior court, renders all the proceedings illegal (*b*); but where, in trespass, the defendant pleaded that an attachment was awarded on non-appearance, *secundum consuetudinem curiæ*, and the plea was demurred to for irregularity, a summons being the first process, and not an attachment, it was adjudged that the attachment should be intended to be *after the summons* (*c*).

The court baron not being a court of record, a *capias* cannot be awarded by it, except indeed by charter or prescription (*d*); and for the same reason a writ of error does not lie on a judgment in the court baron, but the party may have a writ of false judgment (*e*).

The proceedings in the court baron, as in all other inferior courts, are traversable, and should therefore be set forth at length in the pleadings (*f*); but in replevin in court baron, the plaint cannot be removed, either by plaintiff or defendant, by *pone* or *recordari*, without cause shown in the writ (*g*).

A regular interlocutory judgment may be set aside by the judge of every inferior court, in order to let in a trial of the merits (*h*); but he cannot grant a new trial, or set aside a verdict, except for irregularity, fraud, or surprise (*i*).

(*a*) F. N. B. 239 H. Br. Court Baron, pl. 20. Ante, p. 746. n. (*d*).

(*b*) 1 Str. 457.

(*c*) *Tubervill v. Tipper*, ubi sup.

(*d*) Kitch. 117. Ante, p. 717. n. (*e*).

(*e*) Scroggs 84, 93. Kitch. 187. Co. Lit. 117 b. *Atwood's case*, Lex. Man. App. pl. 17. *Basset v. Harris*, Ib. pl. 18. And see Br. Court Baron, pl. 21.

(*f*) *Garret v. Higby*, T. Jones 129. *Scarling v. Criell*, or *Scarning v. Cryer*, Mo. 73. S. C. 3 Leo. 7. S. C. Bendl. 159. Lex. Man. 57.

(*g*) F. N. B. 70 A. B. Gilb. Dis. 105. If after removal of the plaint, the party be distrained again for the same cause, he shall have the writ of recaption. F. N. B. 73 C. See further as to removal of plaints in courts baron, post p. 754. n. (*g*).

(*h*) *Rex v. Peter*, 1 Burr. 568.

(*i*) *Bailey v. Bourne*, 1 Str. 392. *Blacquiere v. Hawkins*, Dougl. 379. *Jewell v. Hill*, 1 Str. 499. *Rex v. Urling*, Fortesc. 198.

See further as to proceedings in plaints of debt, &c. in Court Baron, post. Append. to 2d & 3d parts.

SECT. VI.

Of the Writ of Right Patent (a).

A WRIT of right patent, properly so called (*b*), is a writ brought by him who has the full and mere right of property in the *fee simple* of the land, to recover the right of possession, to which he cannot be restored without a judgment first had for him in the King's court, or *some court baron* (*c*).

The writ of right patent, like all other original writs in real actions, is sued out of the high court of Chancery, and is directed to the lord of the manor, of whom the land is holden, commanding him to do right to the demandant in his court:— but if the lord is not in England, the writ is directed to his bailiff (*d*); and then the Chancellor of England is to be certified thereof (*e*).

The original thus sued forth is to be brought to the steward of the manor, of which the land is holden, at some court baron, who, after pledges to prosecute are given, and after entering the demand made by the writ, is to deliver the writ again to

(a) See the form of this writ in the Appendix to 2d & 3d parts.

Sed vide ante, pt. 1. p. 562. n. (d), referring to a bill introduced into parliament for abolishing real actions, and plaints in nature thereof, with some exceptions; and see the act since passed (3d & 4th W. 4. c. 27) in the Appendix; and reference to it, ante, pp. 671, 693, 695.

(b) Writs of right are of several sorts, as the *Writ of right patent*, (of which we are now speaking): *Writ of right close* of lands in ancient demesne (already fully treated of, ante, tit. 'Ancient Demesne'): *Writ of right of London*, (concerning lands in London, and directed to the mayor and sheriffs,) F. N. B. 6 A. Booth's

Real Actions, 117: And *Writs of right de rationabili parte*, and of *advowson*, Booth 119. 121. F. N. B. 9, 30 B. All other writs of right, as the *Writ of dower unde nihil habet*, the *Writs of escheat, formedon, de rationabilibus divisis, quo jure, &c.* are writs of right in their nature only. Booth 125.

(c) Bract. l. 5. c. 1, &c. Booth 85.

(d) Booth 90. F. N. B. 1 H. Com. Dig. Droit (B. 3). Where the King is lord, the writ is directed to the bailiff. *Capell v. Church*, Mo. 1.

(e) F. N. B. 1 F. There must be fifteen days at the least between the *teste* and the return of the writ. Booth 1, 92.

the demandant, with whom it is to remain, and which is not the case as to any other writ (*a*).

If the lord refuse to hold his court, there shall be a writ to him to do it; and upon that an alias, pluries, and attachment (*b*).

But where the lord remits his court to the King (*c*), or has no court (*d*), then the writ is directed to the sheriff (*e*); and though it was formerly the practice to commence this action in the court baron, and to remove it afterwards into the county court, by writ of *tolt* (*f*), and from thence into the Common Pleas, by writ of *pone* (*g*), yet, without all this circuitry, the

(*a*) Booth 90.

(*b*) F. N. B. 3 E. Com. Dig. Droit (B. 3).

(*c*) See form of license from the lord. Rast. 246. a. F. N. B. 3 A.

(*d*) But we read that, if the lord has no court for the poorness of his manor, the writ shall be directed to the lord paramount. F. N. B. 2 A. Com. Dig. Droit (B. 3).

(*e*) Sir *Ed. Coke*, [4 Inst. 271,] in treating of the jurisdiction of the coroner, says, "besides his judicial place, he hath also authority ministerial, as a sheriff, &c., viz. "where there is just exception taken to the sheriff, judicial process shall be awarded to the coroner for the execution of the king's writs, in which cases he is *locum tenens vice-comitis*, and in some special cases the king's original writ shall be immediately directed unto him."

(*f*) See the form of a writ of *tolt*. 3 Bl. Com. App. No. 1. s. 2. In *Rex v. Morgan*, 1 Sir W. Bl. 399, *Wil-mot*, J. said 'the writ (of *tolt*) ought to have been directed to the suitors of the court, and not to the steward, who is only the prothonotary of the court.'

(*g*) Booth 86. n. See the form of the writ of *pone*, 3 Bl. Com. App. No. 1. s. 3. When the bailiff or steward delay the demandant, and will not send out process, he may remove the plea into the county court by *tolt*, and afterwards, (on the return of the *tolt*,) into the Common Pleas, by *pone*, or *recordari facias*. Booth 89, 90. F. N. B. 3 F. Com. Dig. Droit (B. 5). The demandant might always remove the plea without cause, first by *tolt* into the county court, and then by *pone* into the Common Pleas; but the tenant, I conceive, cannot remove the plea by *tolt*, nor even by *pone* without alleging a cause, yet, with good cause shown, as if the bailiff favour the demandant, the tenant may remove the plea out of the lord's court by a *recordari*, *per saltum*, into the Common Pleas. Booth 90, 91. F. N. B. 3 G. 4 A. C. D. 69, 70, 119. Rast. Ent. 245. a. Com. Dig. Droit, (B. 5.) (B. 6). *Rex v. Morgan*, sup. The cause assigned at the end of the writ of *pone* is mere form, and cannot be traversed by the sheriff. *Talbot v. Binns*, 8 Bing. 71. *Parkes v. Renton*, 3 Barn. & Adolp. 105. And see F.

demandant may have his writ of right, immediately returnable into the Common Pleas, which is most safe and usual (*a*): But the writ must state that the lord of the fee has remitted his court (*b*); and it is not then material whether he gives license or not; for if this be omitted, it will be sufficient if the lord send his license to the King in Chancery afterwards (*c*).

I have shown in treating of customary plaints in nature of real actions (*d*), that the grand writ of right must be brought by the statute of limitations of 32 Hen. 8. (*e*), within sixty years after the title has accrued, if the action be upon the seisin of the ancestor, and within thirty years if brought upon the demandant's own seisin, and have adverted also to the general principles governing the pleadings in a real suit (*f*), to which I would add, that in a real action the tenant is obliged to begin (*g*), for he affirms that he has more right than the de-

N. B. 70. n. (b.) See as to the removal of a plea by the demandant from a court of ancient demesne. Ante, p. 696.

(a) Booth 91.

(b) See the form of writ of right patent, *quia dominus remisit curiam*, post. App. to 2d & 3d parts.

(c) F. N. B. 2 F., 3 A. Booth 91.

(d) Ante, pt. 1. pp. 583, 584.

(e) C. 2.

(f) Ante, pt. 1. pp. 579, 612.

To the cases there cited, showing that the demandant is not allowed to amend the proceedings in a writ of right, add *Hull v. Blake*, 4 Taunt. 572. *Adams* demandant, *Radway* tenant, 1 Marsh. 602.

(g) Co. Ent. 182. Hughes Abr. 86. Gilb. Ev. 146. *Heydon v. Ibgrave*, 3 Leo. 162. S. C. Gouldsb. 23. *Dowland & Slade*, 5 East 288. *Worley v. Blunt*, 9 Bing. 635. *Spicers v. Morris*, Ib. 687. "The tenant

"first begins his case, because the
"seisin is first prayed for and joined
"by him; however, if the tenant
"tenders the demy-mark in court,
"at the time of the trial, the de-
"mandant must then begin, so held
"by Mr. J. Heath, in *Throgmorton*,
"Bart. v. *Broker*, Gloucester Sum-
"mer Assizes, 1800, who cited the
"case in Mo. 762. But it seems
"questionable whether that case
"warrants it; these three points
"were ruled by the court, 1st. That
"the demy-mark ought to be ten-
"dered at the joining of the seisin,
"yet the judges now take it at the
"appearance of the jury. 2d. The
"tenant ought to begin in the giv-
"ing of evidence. 3d. The jury can-
"not find a special verdict." Booth
98. n. u. "Tender of the demy-
mark is upon the swearing of the
jury." Br. Droit 41. And see *Chitty*
on Plead. 3 vol. 653. n. b. "Tender

mandant; but it is some compensation to the tenant for thus exposing his title to his opponent, that the demandant is bound to show his pedigree on the face of the count (a).

And I would further observe that in such actions the estate sought to be recovered should be described with great precision, to enable the sheriff to deliver seisin thereof to the demandant (b):—and further that the rule of pleading is that every *precipe quod reddat* must express the vill in which the land lies, and not the hamlet only (c), but every parish is considered, *prima facie*, to be a vill, so that the contrary must be shown (d).

To enter more fully into a discussion of the nature of the grand writ of right would be inconsistent with the object of the present treatise; I shall therefore conclude this section with recommending to the student who may be desirous of acquiring a complete knowledge of the principles of this complicated suit, an attentive perusal of the able illustrations contained in Rast. Entr., Fitzherb. Nat. Brev. and Booth's Real Actions, where the proceedings, from the summoning of the tenant (e), to the trial and verdict by the grand assize, are accurately traced; and where also much interesting information is afforded as to the various process and forms connected therewith; such as the

of the demy-mark before the swearing of the assize is sufficient to put the demandant to show the seisin of the ancestor:" Per Wood, Baron, in *Hardman v. Clegg*, 1 Holt's N. P. Rep. 670. See further as to the tender of the demy-mark, *Ib.* 673. n. *Spiers v. Morris*, ubi sup.

(a) Per Alderson, J., in *Worley & Blunt*, ubi sup. Ante, pt. 1. p. 580.

(b) Ante, pt. 1. p. 581.

(c) 9 E. 4. 36. 8 E. 4. 6. 34 H. 6. 18. Booth 3. But in dower it may be in an hamlet, as no certain land is demanded. So in assize, as the recovery shall be by view of the jurors.

Ib. Vide as to the cases in which a view may be demanded, *Davis v. Lees*, Willes 345, &c. Dy. 210 b.

(d) 8 East 176. And see Booth 3, (n. e).

(e) See particularly Booth (p. 4. n. h.) for instructions as to the mode of making out a *precipe* for the writ, and summoning the tenant, and proclamation of summons. As to the latter vide also post, Appendix. (Instructions for holding a customary court.)

And see the form of *precipe*, warrant, summons, and sheriff's return in writ of dower, 2 Saund. by Serj. Williams, 43, n. (1.)

summons, attachment, distress, default, grand cape, saver default, imparlance, pleading in abatement, view, essoign, voucher, warranty, aid prayer (a), receipt, &c. (b). But I must again notice that by the recent act of 3rd & 4th W. IV. c. 27, all real actions, with trivial exceptions, are abolished from the 31st December, 1834 (c).

SECT. VII.

Of the Fruits of Tenure; and Seigniorial Franchises.

ESCHEAT.—The word *escheat* is a feudal term importing a return of tenure (d); and there can be no escheat, I apprehend, but *per defectum sanguinis* (e), that is, for default of heirs, or, more correctly speaking, *pro defectu tenentis* (f); but lands may re-

(a) Vide also as to aid prayer; *Onslow v. Smith*, 2 Bos. & Pul. 384. And see as to view, Br. Abr. 2d. pt. fol. 303, &c. 2 Inst. 480. Ante p. 756 n. (c).

(b) And see Lee's Pract. Dict. vol. 2. p. 1061, &c. 10 Wentw. 213, &c. *Tissen v. Clarke*, 3 Wils. 419, 541, 558. *Luke v. Harris*, 2 Sir W. Bl. 1261, 1293. *Pearson v. Maynard*, 1 Taunt. 415. *Hardman v. Clegg*, 1 Holt's N. P. Rep. 657. Chitty on Plead. vol. 3. p. 635, &c. Com. Dig. tit. 'Droit.' Reeve's Hist. of the Eng. L. 1 vol. c. 7. Ib. c. 4. p. 172-3. Co. Lit. 259 b.

Vide also *Windle v. Ricardo*, 1 Brod. & Bing. 17, in which the court of Common Pleas held, that an action did not lie against the sheriff, for an erroneous return of the writ of summons by the officer of the court, (who had endorsed on the writ that the

four knights were duly sworn); and that the sheriff being only commanded to summon the knights, was not chargeable with negligence, because one of them did not appear when called by the officer.

(c) See the act in the Appendix.

(d) It is said that a foundership cannot escheat, nor be forfeited, being annexed to the blood. Br. Eschete, pl. 9; Ib. Corodies, pl. 5, cites 24 E. 3. 33, 72. But again it has been said that a foundership may come to the king by escheat. Br. Petition, pl. 26, cites 5 E. 4. 118.

(e) Sir *G. Sands'* case, Hardr. 494. S. C. 2 Freem. 129. 1 Sid. 403. Jenk. 203, pl. 27. But see Co. Lit. 13 a. *Burgess v. Wheate*, 1 Sir W. Bl. 133, &c., 141, &c. Ante, pt. 1, pp. 483-4.

(f) Hardr. 494, 495. 1 Eden 201.

vert to the lord *per delictum tenentis*, that is, for felony (*a*); but this is rather a forfeiture than an escheat (*b*); and extends to lands purchased by or descending to the party after committing the felony (*c*).

And in the case of high treason the forfeiture of freehold land is to the king by the common law, of whomsoever the land be holden (*d*), and not to the lord (*e*), who is considered to be de-

(*a*) Attainders that give escheat to the lord must be by judgment of death given in some court of record against the felon, found guilty, by verdict or confession, of the felony, or it must be by outlawry of him. Bacon's Use of the Law, 38. 10 Vin. 143 (A. 2.) pl. 3. N. B. by the 54th Geo. 3. c. 145. corruption of blood is taken away, except for the crime of treason, or of murder, or of abetting the same. Ante, pt. 1. p. 523.

(*b*) The stat. 25th Ed. 3. c. 2. makes this distinction between escheats and forfeitures, declaring that in the cases of *high treason* the forfeiture of escheats pertaineth to the king, as well of the lands and tenements holden of others, as of himself; and that in cases of *petit treason*, the escheats ought to pertain to every lord of his own fee. See Sir Martin Wright's Treat. of Ten. p. 117. (n. x.), who adds "So that in the clause relating to forfeitures for *high treason*, escheats and forfeitures are plainly distinguished; inasmuch as *escheats* themselves are for such treasons declared to be forfeited. And the lord Coke, (2 Inst. 64,) observes this difference between them, saying, that where a lord is attainted of high treason, there the king hath the land by forfeiture,

"of whomsoever the land is held, and not in respect of any *escheat*, by reason of any *seigniority*. Vide Bro. tit. Eschete. Mo. 160. Upon this difference we may easily account for *gavelkind* lands being forfeitable for *treason*, though they do not *escheat* for *felony*; for though the lord may connive at or dispense with all the causes of escheat, (po-test dominus feloniam remittere, Zasius in usus Feud. cap. 10. fol. 95,) or might remit the *escheat* itself as a perquisite of tenure; yet he could not dispense with the publick laws of forfeiture, or with offences against any other person than himself." And see further as to the distinction between *escheat* and *forfeiture*, Sir W. Bl. pp. 143-4, 145, &c. in *Burgess & Wheate*.

(*c*) Br. Eschete, pl. 3, cites 48 E. 3. 2. Finch, 71 b.

(*d*) Sup. n. (*a*). Br. Eschete, pl. 14, cites 22 Ass. 49. Co. Lit. 13 a, cites *Nicholl's* case, Plow. Com. And see Consider. on the Law of Forfeit. for High Treason, 4th Ed. p. 60, 65. Hale, H. P. C. v. 1. c. 23.

(*e*) This, since the stat. 33 H. 8. c. 20. applies to lands held in fee tail as well as fee simple; and the forfeiture is before office found. *Dow-*

prived of his seigniori, as a punishment for his failing in that caution that was due to the public in the choice of his tenant (*a*); though of petit treason the forfeiture is to the lord (*b*): but even where the tenant, that is to say a tenant in fee simple, is guilty of felony only (*c*), the king is intitled to the land for a year and a day (*d*), to the prejudice of the lord (*e*).

But if the heir in fee simple commit treason in the lifetime of his father, the lord shall have the land by escheat, and not the king by forfeiture, as the son never was seised (*f*).

And lands vested in the lord by attainder of felony, are not divested by a subsequent act of high treason (*g*).

If a tenant be outlawed of felony, and the lord enter by escheat, [or forfeiture,] the tenant on reversing the outlawry may re-enter, but not without a *scire facias* against the lord, as he is in by title (*h*).

And if after outlawry of the principal on felony, the accessory is convicted and executed, and the lord enter on the lands of the accessory for an escheat; and afterwards the principal reverses the outlawry, and pleads to the felony and is acquitted, the heirs of the accessory shall re-enter on the lord (*i*).

If a person be outlawed on an *indictment* (*k*) for felony, a

tie's case, 3 Co. 11 a. And the estate of a trustee is forfeited by attainder, as the king cannot be a trustee. Jenk. 190, pl. 2; but in such cases it is usual for the crown to regrant the estate *ex gr.* to the *cestuy que trust.* Mo. 196. Vin. Abr. Uses. (C.) Co. Lit. 13 a. n. 7.

(*a*) Wright's Ten. 119. Consider. on the Law of Forfeit. for High Treason, p. 61.

(*b*) Ante, p. 758. n. (b.)

(*c*) By which is to be understood felony punishable by death. 2 Inst. 38.

(*d*) 'When tenant in tail or tenant for life is attainted, then the king

shall have the profits of the lands during the life of tenant in tail, or of the tenant for life.' 2 Inst. 37.

(*e*) Magna Charta, c. 22. 17 Ed. 2. c. 16. Standf. Pleas of the Crown, lib. 3. c. 30. Br. Corone, pl. 208. And see 2 Inst. 36, citing Glanv. Bract. Brit. Flet. and the Mirror.

(*f*) Br. Eschete, pl. 6, cites 11 H. 4. 10, 11. Co. Lit. 13 a.

(*g*) 3 Inst. 213.

(*h*) Br. *scire facias*, pl. 109, cites 8 H. 6. 2.

(*i*) 9 Co. 119 b, in Lord *Sanchar's case*. 3 Inst. 231.

(*k*) *Contrà*, on *Appeal*, as the writ does not contain the time when the

conveyance pending the process, and before outlawry, will not defeat the lord of his escheat; but a feoffee might traverse the time of the feoffment, or the felony itself (*a*).

When a man having an estate in freehold lands for his own life, or the life of another, commits treason or felony, the whole estate, it is said, is forfeited to the crown, and no escheat to the lord (*b*).

A remainder or reversion in fee is capable of seisin, and may escheat, as well as an absolute fee (*c*), and on the death of the tenant for life, if a stranger abates, the lord may have a writ of intrusion (*d*). But as the lord by escheat, is in by title, and not by way of estate, he shall not have the benefit of a warranty made to the tenant, nor take advantage of a voucher or condition (*e*).

That which does not lie in tenure, as a rent charge, advowson, common, or the like, cannot escheat (*f*), but if the grantee die without heir, or should the grant be to a corporation, and the corporation be dissolved, the rent, advowson, &c. would be extinct (*g*). Yet a rent charge, advowson, common, or other

felony was committed. Co. Lit. 13 a. & b.

(*a*) 3 Inst. 230, cites 49 E. 3. 11. 7 E. 4. 1, 2. Co. Lit. 13 a. b: but on attainder upon *verdict*, a feoffee could only traverse the time. 3 Inst. 231.

(*b*) Bacon's Use of the Law, 40. But copyholds, whether held in fee simple or for life are forfeited to the lord; and if intailed the forfeiture is to the lord during the life of the offender, *Ib.* And see *ante*, pt. 1. pp. 522, n. (*c*); 523.

(*c*) Br. Prerog. pl. 25, cites 15 H. 4. 11. Dy. 137. pl. 26, cites 3 H. 6. And the lord by escheat would be intitled to distrain for the rent reserved by a lease for life, but could not enter by force of condition broken. Co. Lit. § 348.

(*d*) Br. Eschete. pl. 6. cites 11 H. 4, 10, 11. *Ib.* Intrusion. pl. 4, cites 45 E. 3, 3:—but it seems he may have the writ of escheat instead of intrusion, if he please. Br. Intrusion, pl. 7. *Ib.* Eschete, pl. 4, 6. Yet see 6 H. 7, 9. Br. Eschete, pl. 16, 22.

(*e*) Bulst. 164. 2 And. 148. sup. n. (*c*).

(*f*) Br. Eschete, pl. 22, cites 13, E. 3. *Ib.* pl. 7, cites 11 E. 4, 82. *Ib.* pl. 9. cites 24 E. 3, 72. *Ib.* Intrusion, pl. 8. *Ib.* Corodies, &c. pl. 5. *Ib.* Prerogative, pl. 1.

(*g*) Br. Extinguishment pl. 2, cites 27 H. 8. 10. *Ib.* Prerogative, pl. 1, cites S. C. Co. Lit. 13. b. *Dean & Canons of Windsor v. Webb*, Godb. 211. 3 Inst. 21. And a sole

thing which is not held, will be forfeited by attainder of treason or felony (*a*).

And on attainder of felony the lord shall have the title deeds, though they are said not to be forfeited by such attainder (*b*).

It should seem that a trust of freeholds is forfeitable for high treason, since the statutes of 27 H. 8. c. 10, and 33 H. 8. c. 20 (*c*); but not for felony (*d*). Nor is the trust of a term attendant on the inheritance forfeitable for felony (*e*). The lord, however, is intitled to a term attendant on an escheated inheritance (*f*).

A right of action cannot escheat (*g*), but a right of entry may, that is, the lord I conceive may enter by virtue of the right, but cannot have a writ of escheat (*h*).

If a trustee of freehold land die without an heir, the lord will be intitled at law by escheat (*i*), and, according to the more general opinion, without being subject to the trust in

corporation is equally within the rule. There are authorities, however, against a donor, and favourable to the lord by escheat. *Johnson v. Norway*, Winch 37. S. C. (*Johnson v. Morris*) Mich. 20. Jac. C. B. Hal. MSS. cites 21 E. 4. 1. 21 H. 7. 9. *Southwell v. Wade*, Poph. 91. S. C. 1 Roll. Abr. 816 A. *Vide* also n. 2. Co. Lit. 13 b.

(*a*) Br. Eschete, pl. 9, cites 24 E. 3. 72. *Ib.* Corodies, pl. 5, cites S. C. & 24 E. 3. 33.

(*b*) Br. Chart. de terre, pl. 59.

(*c*) 1 Hal. H. P. C. 248. *Att. Gen. v. Sands*, 3 Ch. Rep. 34. S. C. Nels. Ch. Rep. 131. S. C. Hardr. 495. But it was not forfeitable at common law. *Ford & Sheldon's case*, 12 Co. 2. *Marquis of Winchester's case*, 3 Co. 3. a.

(*d*) *Att. Gen. v. Sands*, sup.

(*e*) *Ib.* But a chattel real, not attendant on the inheritance, is forfeitable to the King for felony, by his

prerogative. *Rex v. Exors. of Sir John Dacombe*, Cro. Jac. 513. *Att. Gen. v. Sands*, sup.

(*f*) *Thrupton v. Att. Gen.* 1 Vern. 340.

(*g*) Br. Eschete pl. 26. *Argo*. Godb. 310. *Marquis of Winchester's case*, 3 Co. 2 b. And see 10 Co. 48. a.

(*h*) 6 H. 7. 9. Br. Eschete pl. 16. *Ib.* pl. 26, cites 32 H. 6. 27. Godb. 309, argo. A right of entry is forfeited to the King by attainder of high treason, but a right of action is not forfeited for treason, either at common law, or by the stat. 33 H. 8. Consid. on the law of forfeit. for high tr. p. 82. And see *Downtie's case*, 3 Co. 10. b. *Vide* also reference to 3d and 4th W. 4, c. 27, abolishing the writ of escheat, &c., ante, p. 753, n. (a). Post p. 765, n. (e).

(*i*) Jenk. 190, ca. 92. *Ib.* 245. ca. 30. *Eales v. England*, Ch. Pr. 200-2. *Burgess v. Wheate*, 1 Sir W. Bl. 141. See this case, *Eden's Ca.* Ch. 177.

equity (*a*). If however, a *cestuy que trust* of freehold land die without an heir, or is attainted of felony, there is no escheat or forfeiture, for a *use* was not forfeited for treason or felony at common law, but the trustee shall hold the land discharged of the trust (*b*).

But in copyhold cases, where the lord is privy to the creation of the trust, a very powerful argument suggests itself for the interposition of equity in favour of the *cestuy que trust* in the former instance, and of the lord in the latter (*c*).

A devise by a person, who afterwards dies without an heir, will prevent an escheat (*d*); and a power given to executors to

(*a*) *Burgess v. Wheate*, ubi sup. Harg. Juris. Exer. vol. 1. 390. And see Jenk. 190. ca. 92, where it is stated that the King or lord by escheat cannot be seised to any use or trust, for they are in the post and paramount the confidence. Ib. 245, ca. 30. Ante p. 758 n. (e). But there is now no distinction between those in the *per* and *post*, as to relief in equity, except in the case of dower, founded not upon reason but practice. 1 Sir W. Bl. 155, 162. Vide also Nels. Ch. Rep. 107, in *Stephens v. Baily*. But see *contra*, *Eales v. England*, ubi sup. Vide also Cart. 67. And it has been held that a mortgagor may redeem after a forfeiture by one claiming under the mortgagee. *Pawlett v. Att. Gen.* Hardr. 469.

See an extract in the appendix from the stat. 39 & 40 Geo. 3. c. 88. authorising the King to direct the execution of any trust of lands which escheat, and to make grants of escheated lands, for the purpose of restoring the same to the family of the person whose estate the same had been; which act recites that lands, &c. might become vested in the crown by escheat, which *in the hands of a*

subject would be chargeable with certain trusts.

(*b*) See Jenk. as in the last two notes. *Sir G. Sands' case*. Hardr. 494. S. C. 1 Sid. 403. S. C. 2 Freem. 129. S. C. Nels. Ch. Rep. 131. S. C. 3 Ch. R. 33. Br. feoffments to uses pl. 34, cites 5 E. 4. 7. Cary 14, 15. *Marquis of Winchester's case*, ubi sup. Hargr. Juris. Exer. vol. 1. p. 387, &c. And see 1 Sir W. Bl. 184, in *Burgess & Wheate*, as to an equity of redemption. Vide also *Middleton v. Spicer*, 1 Bro. C. C. 202-3; and Mr. Hargrave's note thereon in 1 vol. Juris. Exer. p. 393.

As to forfeiture for high treason by *cestuy que trust* of freeholds since 33 H. 8, see ante, p. 761.

(*c*) But see 3 Ves. Jun. 752. 1 Stra. 454. Vide as to an *equitable* escheat of copyholds, ante, pt. 1. p. 482, et seq. And see the recent case of *Weaver v. Maule*, 2 Russ. and Myl. 97.

(*d*) 1 Roll. Rep. 214, cites 48 E. 3. 3. And an escheat is prevented, even by the title of a moiety of an heir. 2 P. W. 614, in *Eastwood & Vinke*.

But the King, by his prerogative,

sell the land, will bind it in the hands of the King by escheat (*a*).

But the lord may enter for an escheat upon the death of a disseisee without heir (*b*), unless the disseisor should have aliened by feoffment, for then the lord would have a tenant by title (*c*): it follows that a disseisee may enter on the lord by escheat, unless there has been a descent of the land, either from the lord, or from the disseisor (*d*); and the law is the same upon an ordinary alienation by a disseisor, and the death of the alienee without issue (*e*).

The lord after recovery by writ of escheat, cannot avoid a term of years created by a tenant, who subsequently to the lease dies without an heir, or is attainted of felony, but will take charged with the term (*f*).

And any avoidable estate, as a feoffment by an infant or person *non compos mentis* shall bind the lord by escheat (*g*). So also a lease by husband seised in right of his wife, made without the concurrence of the wife (*h*). So again as to an alien-

would be intitled to a sum charged by the testator for the benefit of a charity, supposing the testator to die without an heir, and without any next of kin. *Henckman v. Att. Gen.* 2 Sim. & Stu. 498.

(*a*) *Manning v. Andrews*, 1 Leo. 260. And see 10 Mod. 361-2, citing 49 E. 3. 16.

(*b*) Br. Ent. Cong. pl. 63, cites 27 Ass. 32.

(*c*) Co. Lit. 268. b. [Or grants and renders the land by fine, Fitz. Ent. Cong. pl. 38; but this I apprehend, presupposes a bar by non-claim.]

(*d*) Br. Ent. Cong. pl. 92. And see 10 Mod. 362, argo. And if the lord would plead a release made by

the disseisee to the disseisor, he must show it. 10 Co. 93. in Dr. *Leyfield's* case.

(*e*) Co. Lit. 240. a.

(*f*) *Per Coke*, 8 Co. 45, in *Whittingham's* case. Br. Extinguishment, pl. 23. cites 3 Ass. 1. Ib. Prerog. pl. 120, cites 11 H. 6. 7. *Needham & Poole*, Dy. 115 b. marg.

(*g*) 7 Co. 7 b, in the *Earl of Bedford's* case. 1 Roll. Rep. 402. 8 Co. 42. b. 44 a, in *Whittingham's* case, (sup.) 4 Co. 125, in *Beverley's* case. But if an infant make livery by attorney, the feoffment is not voidable, but *ipso facto* void. *Beverley's* case, and *Whittingham's* case, sup.

(*h*) *Per Coke*, Ch. J. 1 Roll. Rep. 402.

ation by the husband by fine, where the wife afterwards dies without an heir (*a*).

And I apprehend that an escheat of freehold lands will not alter the course of descent, where the law takes notice of a peculiar custom, as in gavelkind, and borough english tenure (*b*), even if the escheat were to the King, and the lands were afterwards regranted by him, reserving other services (*c*).

The reader is here reminded that though gavelkind lands are forfeited for high treason, yet they do not escheat for felony, nor is the King intitled to a year and day waste (*d*):

(*a*) Per *Hobart*, Ch. J. Hob. 261. But it should seem that the lord is not bound by every estoppel, for if a person were to take a lease by indenture of his own lands, though binding upon him, the lord would not be bound by it, in case of an escheat. 1 Leo. 158, ca. 224.

(*b*) Custum. of Kent, cited Rob. Gav. by Wils. 85. Somn. 144-9. 14 H. 4. 9 b. 11 H. 7. 25 b. Br. Custom 19; Extinguishm. 14, cites 14 H. 4. 2, 3. But see *contrà* per *Windham*, J. 1 Keb. 505. Gouldsb. 106. Lamb, 594 Dub.

N. B. Escheat is not a title by descent,—strictly speaking, indeed, it is a title neither by purchase nor descent. Co. Lit. 186. n. 2. Lord *Coke* calls it a casual profit. Co. Lit. 92 b. *Bracton*, l. 2. f. 23, considers it as a species of reversion.

(*c*) 2 Bac. Abr. 243. (G.) Lamb. Peramb. 591-3. Dal. 23. 3 Keb. 216. 1 Sid. 138. 2 Sid. 83. And see *Doe d. Lushington v. the Bishop of Landaff & others*, 2 N. R. 508. Nor would the customary descent be altered on an escheat of copyhold

lands, which were afterwards re-granted by the lord to hold by copy; but if copyholds which escheat are not re-granted, they merge in the freehold, or rather the copyhold interest is extinguished, the two tenures being incompatible. Ante pt. 1, pp. 19, 120, 647.

See 8 H. 6. c. 16, and 18 H. 6. c. 6, preventing grants of land seized into the King's hands before escheators, unless the King's title be found, and until a month after the return of the inquest in the Chancery or Exchequer, except to the party grieved, and who tenders his traverse, and which are held to extend to an escheat where no *immediate* tenure of the crown is found. *Doe & Redfern*, 12 East. 109. In this case it was also held, that the 8th s. of 2 & 3 Ed. 6. c. 8, avoids an inquisition not finding the tenure, equally with one alleging total ignorance. *Semble*, that the King's right shall not be presumed against a mesne tenure, without office found. *Ib.*

(*d*) Ante, p. 759. And see Lamb. 634. Consid. on the law of forfeit.

But this is only where the party submits to the judgment of the law, and does not hold in the case of outlawry for felony (a).

If an alien purchase lands and die, the law casts the inheritance on the King, who upon office found shall have them; and if an alien have issue a son and be made denizen, and shall afterwards have another son, and purchase lands and die, the lands will not escheat, but shall go to the youngest son (b). If, however, an alien be made denizen, and shall purchase lands and die without issue, the lands will escheat to the lord (c).

In enforcing the lord's right by escheat, it is to be recollected, that when lands are held by distinct services, there must be distinct writs of escheat (d).

It is also proper to notice, that by particular acts, the lord may be barred of his writ of escheat, as by a fine *come ceo* levied with proclamations in the court of Common Pleas (e); or by acceptance of fealty, or avowing for rent in a court of record, or accepting rent from the feoffee or heir of a disseisor (f); but the acceptance of rent from the disseisor himself would be no bar to the lord by escheat (g); nor perhaps from the feoffee or heir, if received in ignorance of the feoffment or descent; the acceptance of rent being an act of an ambiguous nature (h).

for high treason, p. 61-2. Rob. Gav. by Wils. p. 288-9.

(a) Rob. Gav. by Wils. p. 290.

(b) Br. Eschete, pl. 28.

(c) Co. Lit. 2 b.

(d) Br. Eschete, pl. 13, cites 21 H. 7. 39. Vide reference to 3d and 4th W. 4, c. 27, abolishing the writ of escheat, &c., ante, p. 753, n. (a).

(e) A right of entry or action to recover land is limited by the act of 3d & 4th W. 4. c. 27, to twenty years next after the time at which the right shall have first accrued to some person through whom the party claims, or shall have first accrued to

the party himself, and by the first sect., or explanatory clause, it is declared that the person through whom another person is said to claim shall mean 'any person who was intitled to an estate or interest to which the person so claiming, or some person through whom he claims, became intitled as lord by escheat.'

(f) Co. Lit. 268. a & b. Br. Eschete. pl. 18, cites 7 E. 6. 2 Bulst. 153.

(g) See Co. Lit. and Br. Abr. as in the last note.

(h) *Doe & Hellier*, 3 T. R. 171. Ante, pt. 1. pp. 549, 550.

FELO DE SE.—It frequently happens that the lord of a manor is intitled by grant from the crown to the goods and chattels of every person convicted of *felo de se* (*a*) within the particular manor, which naturally suggests the propriety of treating briefly of this subject, under the head of the present section.

A person who, in possession of the powers of reasoning, lays violent hands on himself, and is wilfully (*b*) the occasion of his own death, is termed a *felo de se*, but in common parlance it is considered as a perfectly distinct offence from the murder of another (*c*), and from other felonies; so much so that a grant of *bona et catalla felonum*, would not pass the goods and chattels of a *felo de se* (*d*).

But no person under the age of discretion, or being *non*

(*a*) It is almost needless to notice that the goods and chattels of the offender are totally forfeited by conviction of felony in general, and on conviction of high treason or misprision of treason, petit treason, manslaughter, and even of excusable homicide, of petit larceny, and by outlawry of treason or felony, standing mute when arraigned of felony, &c. &c.

(*b*) It is said too, that he who in maliciously attempting to kill another, happens to kill himself, is a *felo de se*, being the only agent. 1 Hawk. P. C. c. 27. s. 4. 3 Inst. 54. 3 Bac. Abr. 142 (A). 4 Bl. Com. 189.

(*c*) Stam. P. C. 183, &c.

(*d*) *The King v. Sutton*, 1 Saund. 273. S. C. 1 Sid. 420. S. C. 2 Keb. 526, 533. And see the pleadings in S. C. Lex Man. App. pl. 20. Vide also 1 Vent. 32. 4 Leo. 6. ca. 28.

So a grant of goods and chattels of

felons, or felons of themselves, will not intitle the grantee to the debts due to such felons. *The King v. Sutton*, sup. And see *Ford & Sheldon's case*, 12 Co. 1 b. 2 a. *The Mayor of Southampton v. Richards*, 1 Sid. 142. Per *Shute*, Ow. 155. 1 Leo. 202. *Lord Northampton v. Lord St. John*, 2 Leo. 56. 1 Vent. 32. But in 2 Roll. Abr. 195 (E). pl. 1, it is held, that if the King grant *certain liberties*, and (among other things) grant *omnia bona et catalla felonum de se*, within such a place, it shall pass obligations, specialties, and debts due to the felon; for though in other cases a grant of *omnia bona et catalla* by the King, will not pass specialties and debts, yet in the *grant of a liberty it will*; see also Com. Dig. Waife (C). So by a grant of *goods and chattels* of felons of themselves, the grantee shall have such felon's *ready money*. 2 Sho. 133, Anon.

compos mentis (a), can be *felo de se*, even though, in the latter case, the person becomes of sound mind before he dies (b).

Neither is a person who designs to commit suicide deemed a *felo de se*, unless he die within a year and a day after the act (c).

A *felo de se* forfeits all chattels, real as well as personal, belonging to him at and after the time of committing the act, or of which he may be possessed jointly with or in right of his wife (d). And the inquisition having relation to the act of suicide, all intermediate alienations are avoided (e).

But the act of suicide does not work a corruption of blood, so that the lands of inheritance of a *felo de se* are not forfeited, nor is his wife barred of her dower (f).

The forfeiture of the goods and chattels of a *felo de se* is

(a) It has been thought that a person who kills himself must be *non compos mentis*, on the supposition that no man in his senses could do a thing so repugnant to nature and reason, 3 Mod. 100; but in Hawk. Pl. C. c. 27. s. 3, this notion is justly exploded. And see 4 Bl. Com. 189.

(b) Plow. Com. 260. Fitz. Abr. tit. 'Coron.' pl. 412, 244, cites 8 E. 2. 22 E. 3. 3 Inst. 54.

(c) 3 Inst. 54.

(d) Plow. Com. 260, in *Hales v. Petii*. 3 Inst. 55. 1 Hale, H. P. C. 413. It has been said that *choses in action* to which a *felo de se* is jointly intitled with another, are wholly forfeited, with the exception of the case of two joint merchants; *contra*, as to joint personal chattels *in possession*. 8 E. 4. 4. Plow. Com. 259. b. 3 Inst. 55. Sir T. Raym. 7. But

again it has been said, that he shall forfeit a moiety only of such joint chattels as may be severed, and nothing as executor or administrator. Hawk. P. C. c. 27. s. 7. 3 Bac. Abr. 143 (C).

Equity will relieve against a forfeiture of a chattel by a trustee, *King v. Cooper*, Hardr. 176; even against the King, upon the stat. of 33 H. 8. c. 39; but the application should be to the Court of Exchequer, as a court of revenue. *Ib.* 176, 469. 1 Vern. 439. 2 Atk. 223.

(e) Plow. Com. 260. 5 Co. 110.

(f) Plow. Com. 261. 3 Inst. 55. Britt. c. 7. 1 Hawk. P. C. c. 27. s. 8. Hale, H. P. C. 413. Corruption of blood is taken away by 54 Geo. 3. c. 145, in all cases except treason and murder, ante, p. 758. n. (a).

to the King (*a*), or his lawful grantee (*b*), and they cannot be

(*a*) Where the forfeiture belongs to the crown it is now usual for the King to make a warrant under his sign manual, on a memorial being presented by a creditor of the deceased, authorising the Ecclesiastical Court to grant letters of administration to the memorialist; and the administrator would be answerable for the debts of the deceased, and could not dispute the validity of the administration, against his own act. *Megit v. Johnson*, Dougl. 542. Serjt. Williams' ed. of Saund. 1 vol. 272, a. n. 1.

(*b*) Ante, p. 766, n. (d). Whether a grant from the crown of the chattels of all felons of themselves will pass the chattels of a *felo de se*, claimed under a franchise forfeited by attainder of treason after such grant, see the *Bishop of Chester v. Webb*, Dy. 107 b.

By the stat. of 4 & 5 W. & M. c. 22, it is enacted, that no corporation, lord or lords of manors, or other person or persons, having grants by charter, or other good conveyances, who have inrolled, and had the same allowed in and by the court of B. R., shall be compelled to plead the same to any inquisition returned by any coroner; and that if there be any corporations, lords of manors, or other persons, who have such charters, or grants from the crown, for felons' goods, deodands, and other forfeitures, such corporations, &c. shall not be compelled to inrol their whole charters and grants, but bring in the same to the clerk of the crown of the said court, who shall inrol so much there-

of as may express and set forth the grants of such felons' goods, deodands, and forfeitures, and no more; and from and after such inrolment, no corporation, &c. or other persons, grantees of such goods or forfeitures, shall be compelled to plead the same in the said court, to any inquisition thereafter filed therein, touching any goods found thereby: and the act inflicts a penalty upon any clerk of the crown who shall issue out any process against any grantees of such felons' goods, deodands, and other forfeitures, after such inrolment or entry. See Lex. Man. p. 74. Vide also the following note in Serjt. Williams' ed. of Saund. Rep. p. 272. " Since the passing of this act, [4 & " 5 W. & M. c. 22. sup.] the coro- " ners have discontinued returning " their inquisitions into the K. B. " If a man be found *felo de se* by " the coroner's inquisition, the jury " ought also to find whether he had " any goods and chattels at the time " he committed the felony, or not; " and if he had any, to specify the " same in an inventory annexed to " the inquisition; the form may be " seen in the books of practice of the " crown, Crown Circ. Assist. 90, &c. " The goods may then be seized for " the use of the King or his grantee; " and if trespasses be brought against " the grantee for such seizure, he " must in his justification set out " the grant of goods of felons of " themselves, and the inquisition be- " fore the coroner finding the deceased " to be such a felon, by which he " forfeited his goods, and that those

claimed by prescription, as in the case of estrays, waifs, wreck, &c. (a).

It would seem that such goods are not liable in the hands of the King, to the debts of the *felo de se*, nor indeed in the hands of the grantee, except to satisfy debts due to the crown (b).

Nor are the goods and chattels forfeited until it be found by the coroner's inquisition, (upon the oath of twelve men,) that the party is *felo de se* (c); which finding must be *super visum corporis* (d).

The coroner, who is a judicial officer (e), must be present at the view of the body, or the inquisition will be void (f); and he is at such view to administer the oath to the jury, *super visum corporis*. Doubts have been entertained whether a coroner can act by deputy (g); and as it has been a common practice to appoint more than one coroner in a county, there would seem to be some grounds for this doubt (h).

"in question were his. If the coroner's inquisition omit finding the goods of the *felo de se*, that, it seems, may be supplied by a writ of *melius inquirendum* directed to the sheriff, 1 H. H. P. C. 415."

(a) *Fozley's case*, 5 Co. 109 b. Co. Lit. 114 b.

(b) 4 Leo. 6. ca. 28.

(c) Plow. Com. 260. *Rex v. Ward*, 1 Sid. 150. S. C. 1 Keb. 548. But see S. C. 1 Lev. 8, in which it is said that the goods were held to be forfeited to the King, by the act itself, before inquisition; but this seems to be a mistake, vide n. l. to 1 Saund. 362.

(d) 3 Inst. 55. 4 Inst. 271. 1 Hale H. P. C. 414, 415. 1 Hawk. P. C. c. 27. s. 11, 12.

(e) But as no other officer is recognised by the law in an inquisition of this nature, it is the duty of the

coroner to summon the jury, so that he acts also in a ministerial character. Vide also 4 Inst. 271.

(f) 1 Hawk. P. C. c. 27. s. 11, 12. 2 Ib. c. 9. s. 23-4. 2 Hale, H. P. C. 58. See the act of 4 Ed. 1. st. 2. Vide also *Rex v. Ferrand*, (the *Oldham case*), 3 Barn. & Ald. 260; 1 Chitty K. B. 745; in which the court of B. R. refused to grant a mandamus to compel the coroner to proceed in the inquiry of the cause of death, the whole proceeding being illegal and extra-judicial; for the jury had first seen the body, and were then sworn by the coroner's clerk, and subsequently were sworn by the coroner, but not *super visum corporis*.

(g) *Rex v. Ferrand*, sup. And see Crompt. Just. 227. 2 Hale H. P. C. 58.

(h) But see *ex parte Parnell*, 1

If the body cannot be found, the coroner has no jurisdiction, but a presentment may be made, as well in that case, as upon the coroner's omission, either before the justices of oyer and terminer, or before the justices of the peace, who have power by their commission to inquire of all felonies; or the presentment may be in the King's Bench, if the offence be committed in the county where that court sits (*a*).

It was formerly supposed that the executors or administrators of the deceased, could not traverse the coroner's inquisition (*b*), though they should have a traverse to an inquisition by justices of the peace for the county (*c*): but it should seem to be fully settled that the coroner's inquisition may be removed by the executors or administrators of the deceased into the K. B. by *certiorari*, and there traversed (*d*).

No traverse, however, can be taken to an inquisition not finding the party *felo de se*, as if the inquisition find that he was *non compos mentis* (*e*):—yet, if it should appear that the find-

Jac. & Walk. 451, where a coroner had acted by deputy for twelve months, and no notice was taken by the court of its illegality; and see 3 Barn. & Ald. 264, in *Rex v. Ferrand*.

(*a*) *Foxley's case*, ubi sup. *Stanlack's case*, 1 Vent. 182. 1 H. H. P. C. 414. 2 lb. 589. 1 Hawk. P. C. c. 27. s. 12. 3 Inst. 55. But the Grand Jury have no power to find such an inquisition, under a general charge from the judge of assize. *Rex v. Kilmington*, 1 Burr. 17.

(*b*) 3 Inst. 55, cites Stanf. Pl. Cor. 183. d. And see Br. Coron. pl. 151. lb. Travers per sans ceo, pl. 229, citing 8 E. 4. 4. 3.

(*c*) 3 Inst. 55.

(*d*) 1 Hawk. P. C. c. 27. s. 12. 2. lb. c. 9. s. 52. Lord Hale also was of opinion that the inquisition was traversable. Hal. H. P. C. 416, 417, cites *Barclay's case*, B. R. 1658; and

Page's case in the Exch. P. 45 E. 3. And see *Rex v. Storke*, 3 Keb. 800, citing *Rowell's* [or *qy. Aldenham's*] case. *Ripley's case*, T. Jones, 198. S. C. Skin. 45. *The Queen v. Clerk*, Salk. 377. S. C. 7 Mod. 16. 2 Lev. 141, in the *King v. Packer*. *The King v. Aldenham (or Alderman)*, lb. 152. 3 Keb. 564–6, 604. *The King v. Stanlake (or Stanlack)*, 2 Keb. 859. S. C. 1 Vent. 181. *Vide also* 1 Vent. 239, 278.

(*e*) *Rex v. Storke*, sup. And see Anon. 1 Vent. 239. 1 Saund. Rep. 363. n. 1. by Serjt. Williams. But see Br. Coron. pl. 151.

Although a coroner returns the inquisition to B. R. finding the deceased *non compos*, yet he is not obliged to return the depositions, unless something should be depending before the court to render it necessary, 2 Str. 1073.

ing in such a case, were obtained by any indirect proceedings of the coroner, the court of B. R. would grant a *melius inquirendum* directed to the sheriff or to special commissioners, who are to proceed on the testimony of witnesses, but not *super visum corporis* (a): It is, however, the practice not to grant a *melius inquirendum* when the inquisition is traversable (b), nor unless a manifest misbehaviour in the coroner is established by affidavit (c).

It appears that if the goods of a *felo de se* are in the possession of any person who refuses to deliver them up, the King may prefer an information in the Exchequer, in the nature of trover and conversion; and that in case of debts being due to the deceased, the King may either proceed by information in B. R., as in the case of the *King v. Sutton* (d), or in the Exchequer, by his Attorney-general, and that the latter is the most usual practice (e).

See further as to the duty of a coroner, 4 Inst. 271; 2 Hawk. P. C. c. 9; 2 Hal. H. P. C. c. 8; the stats. 4 Ed. 1. st. 2, and 25 Geo. 2. c. 29, furnishing additional powers for the removal of coroners in cases of extortion, neglect of duty or misdemeanor; *ex parte Parnell*, ubi sup.; 7 T. R. 52; and 2 Barn. & Ald. 203.

A coroner has been committed for falsely returning an inquisition of *felo de se*, the party being lunatic. *Rex v. Wakefield*, 1 Str. 69.

(a) 2 Hawk. P. C. c. 9. s. 53. *Rex v. Bunnay*, 1 Salk. 190. S. C. 3 Mod. 238. *Rex v. Hethersal*, 3 Mod. 80. And see Cro. Eliz. 371. And the omission to find the goods of the *felo de se*, may be supplied by a writ of *melius inquirendum*. Hale H. P. C. 415. 2 Keb. 859, in *Stanlake's* case. And see S. C. 1 Mod. 82. Ante p. 768 n. (b).

(b) *Ripley's* case, T. Jones 198. Yet upon a case clearly made out

against the coroner, the court of B. R. would set aside the inquisition. *Barclay's* case, and *Stanlake's* case, ubi sup. Anon. Vent. 352. In *Stanlake's* case, 1 Mod. 82, *Newdigate* said, "that in the case of *Miles Bartly*, "[*Barclay*] the inquiry was not filed, "and that that was the reason why "a new one was granted."

(c) *Rex v. Hethersal*, *Rex v. Bunnay*, and *Ripley's* case, sup. 1 Vent. 182, 352.

(d) 1 Saund. 273 (ubi sup.): In this case the reporter suggests that the information ought to have averred the fact, that the party was found *felo de se*, and then to have shown the substance of the inquisition, and concluded with a *prout &c.* And see 2 Lutw. 1342. But this does not seem to be necessary, see N. 7 to 1 Saund. 275 a.

(e) 1 Saund. 272 a. n. (1) by Serjt. Williams.

And that a grantee of the chattels of a *felo de se*, may bring an action of trover for the recovery of goods detained by a third person; and may have a *scire facias* for debts of record, or an action of debt for any other debt due to the deceased (a).

As the goods of a *felo de se* are not forfeited until inquisition found, the forfeiture is saved by a pardon of the offence before such finding (b); but a general pardon after inquisition, without words of restitution, will not revert the property in the administrator of the deceased, though it will operate as a release of a debt which the King might otherwise have claimed (c).

The coroner's inquest must show with certainty the nature of the felonious act, and describe the wound, and conclude that it was the cause of the death (d), *sic seipsum murdravit*,

(a) Ib. Serjt. Williams adds, "in which action it is necessary to state in the declaration, the nature of the debt, the grant of such felon's debts to the plaintiff, or some of his ancestors; and the inquisition before the coroner, whereby an action, &c. Brownl. Rediv. 181. Asht. 205. and if the debt arises on a bond or other specialty, it seems proper to aver, that the deceased had such bond or specialty in the place, at the time he killed himself. The defendant in his plea must deny the debt to be due to the deceased, and therefore, if the declaration states that the defendant was indebted to the deceased by bond, he must plead *non est factum*; if on a simple contract, *non sumpsit*, &c.; if he says *nil debet* to the plaintiff, he admits that he was indebted to the deceased, and all that will be incumbent for the plaintiff to prove, is, that he is a grantee of such goods; and the defendant will not be permitted to

"give any other evidence but payment to the plaintiff."

(b) *Rex v. Saloway*, 3 Mod. 101. *Rex v. Ward*, 1 Sid. 150. S. C. 1 Keb. 548. But see S. C. 1 Lev. 8. 1 Keb. 66.; ante, p. 769 n. (c). See also *Lock v. Etherington*, 1 Sid. 264.

(c) *Toomes v. Etherington*, 1 Saund. 361, S. C. 1 Lev. 120; 1 Sid. 167. 1 Keb. 628. And see the pleadings in this case, *Lex. Man. App. ca. 21*; 1 Saund. 352 b. *Rex v. Saloway*, sup. Vide also 5 Co. 110 b. in *Foxley's case*. 2 Mod. 53, in *Rex v. Turvil*. 3 Mod. 242-3, in *Rex v. Johnson*. 2 Hawk, P. C. c. 37. s. 54.

(d) *The Queen v. Clerk*, 1 Salk. 377. S. C. 7 Mod. 16. *Lex. Man. 83. ca. 12*. And see *Anon. 12. Mod. 112*.

In the above case of the *Queen & Clerk, Holt, C. J.* held, that a coroner need not go *ex officio* to take the inquest, but ought to be sent for; that to bury the body without sending for the coroner was a misdemeanor, and that the body might be dug up again within a reasonable time, and so

or it will be quashed (a):—but if it be full in substance, the coroner may be served with a rule to amend a defect in form (b): So, where it was found that G. *seipsum felonice submersus fuit*, but it was not said, that he *threw himself into the water*, nor did the inquisition conclude with, ‘*and so he died*,’ the court ordered the inquisition to be amended, the substance, namely, *felonice submersus fuit*, being found (c).

DEODANDS.—Deodands (which sometimes also belong to the lord of the manor by grant from the crown) are defined to be *omnia quæ movent ad mortem* (d), and have been supposed to have originated in the notion which our ancestors had of purgatory; for when a person came to a sudden and untimely death, without having time to confess and be absolved by the priest, and to receive the *extreme unction*, that thing which had been the occasion of his death was given to God, from whence it is called a Deodand; but it was a gift to the Church, to be distributed by the priests in charities to almsmen, to pray the soul of the deceased out of purgatory (e).

It is the duty of the coroner to inquire not only of the death as not to produce infection. And see 5. 122 a. Hawk. Pl. C. 66-7, c. 26. s. 6. 2 Hal. H. P. C. 58. But this should be with leave of the court of B. R. *Barclay's case*, ubi sup. 1 Str. 167, 533.

(a) Inquisitions have been quashed for omitting this conclusion. *Rex v. Aldenham* (or *Alderman*), 2 Lev. 152. S. C. 3 Keb. 604. 1 Hawk. P. C. c. 27. s. 13, 14. But it would not seem to be essential. See *Hales v. Petit*, Plow. 255. a. *Rex v. Warner*, 1 Keb. 66. *The Queen v. Clerk*, ubi sup.

(b) *Rex v. Harrison*, 1 Sid. 225. 1 Hawk. P. C. c. 27. s. 15.

(c) *Rex v. Glover*, 1 Sid. 259. S. C. 1 Keb. 907. And see *Rex v. Saloway*, 3 Mod. 100.

(d) *Lex Man. 72. Bract. 1. 3. c.*

5. 122 a. Hawk. Pl. C. 66-7, c. 26. s. 6.

(e) *Lex Man. 72.* Lord Coke's definition of deodands is in these words. “When any moveable thing inanimate, or beast animate, do move to, or cause the untimely death of any reasonable creature by mischance in any county of the realm, (and not upon the sea, or upon any salt water,) without the will, offence, or fault of himself, or of any person; they being so found by lawful inquisition of 12 men, being *pretium sanguinis*, the price of blood, are forfeited to God, that is to the King, God's lieutenant on earth, to be distributed in works of charity for the appeasing of God's wrath.” 3 Inst. 57. Being

of man, but of *deodands*, wreck of the sea, and treasure trove (*a*); and nothing can be forfeited as a deodand till found by such inquest, to have been the occasion of death (*b*); but after such inquisition the sheriff is answerable for the value of the thing forfeited, and may levy the same on the town where it fell, so that the inquest ought to find the value of it (*c*).

It should seem that the inquisition has relation to the death, and that the forfeiture cannot be saved by any intermediate alienation (*d*); therefore where the finding by the inquest was eleven months after the seisure, such after-finding was held to be a good justification in trespass against the officer (*e*). But nothing is forfeited where the party receiving an injury does not die within a year and a day (*f*).

The right of property in deodands cannot be claimed by prescription (*g*) but is in the King, or such lords of manors and others as have grants thereof inrolled in the Crown Office (*h*); and when forfeited to the King they were formerly disposed of for some charitable, or, perhaps, superstitious uses, by the King's chief almoner; but they are now appropriated as part of the casual revenues of the crown (*i*).

It was an ancient rule that where a person within the age of discretion, viz. fourteen years, was killed by an ox, horse, or the like, the animal was forfeited as a deodand; but that if the death were attributable to the absence of discretion, as if it were occasioned by a fall from a horse which he was incapable

Being founded in superstition rather than on principles of sound reason and policy, the Court of King's Bench sanctions the finding of as small a sum as possible. Fost. Cr. L. 266. 2 Barnard. 82.

(*a*) 4 Inst. 271.

(*b*) *Foxley's case*, 5 Co. 110 b. 2 Bac. Abr. 294.

(*c*) Hawk. P. C. c. 26. s. 8. 5 Co. 110 b, in *Foxley's case*. 1 Hale H. P. C. c. 32. p. 419.

(*d*) Arg. Plow. Com. 260. b, in *Hales v. Petit*. 2 Bac. Abr. 294. Hawk. P. C. c. 26. s. 7.

(*e*) Keilw. 68 b.

(*f*) Hawk. P. C. c. 26. s. 7.

(*g*) *Foxley's case*, 5 Co. 110 b.

(*h*) Co. Lit. 114 b. See extract from 4 & 5 W. & M. c. 22, ante, tit. *Felo de se*.

(*i*) Lex. Man. 72. Molloy, 225, c. 1. s. 13. Fost. Cr. Law, 265-6.

of managing, then there was no deodand (*a*):—But this distinction no longer prevails (*b*).

All the ancient authorities are agreed that in *aqua dulci*, a vessel or boat may become a deodand, but that in *aqua salsa*, even if it be an arm of the sea within a county, there can be no deodand, because of the perils to which persons are exposed by winds and tempests (*c*). The rolls of parliament furnish numerous instances of petitions founded on the latter distinction (*d*), which, however, would appear to be a principle of common law (*e*).

Consistently with this diversity it was resolved upon a trial at bar, that a ship lying at Redriff, in Kent, which at low water turned over, and occasioned the death of one of the shipwrights at work under her, was a deodand to Lord Salisbury, the lord of the manor (*f*).

The above rule that *omnia quæ movent ad mortem sunt deodanda*, has been of late years much relaxed, for though formerly, wherever the thing which was the occasion of a person's death was in motion at the time, not only that part which was the immediate occasion of the death was forfeited, but also all things moving together with it (*g*); yet at this day if a man

(*a*) 8 E. 2. tit. Coron. 389. 3 Inst. 57.

(*b*) 1 Hawk. P. C. c. 26. s. 4.

(*c*) Bract. 1. 3. c. 5. 122 a. 3 Inst. 57. 1 Hal. H. P. C. 422, 423–4. Hawk. P. C. c. 26. s. 6. 2 Molloy, 225. c. 1. s. 13.

(*d*) 51 E. 3. number 73. 1 R. 2. nu. 106. 4 R. 2. nu. 33. 1 H. 5. nu. 35. Pryn's Abr. of Cott. Rec. 150, 164, 192, 537. 3 Inst. 58.

(*e*) 3 Inst. 58.

(*f*) 2 Molloy 225. c. 1. s. 13.

(*g*) See the case of the lord of the manor of *Hampstead*, 1 Salk. 220, where a cart endeavouring to pass a loaded waggon was driven on a bank

and overturned, and a person in the cart was thrown under the wheels of the waggon and killed, and *Pollexfen*, Ch. J. & *Gregory*, to whom the point was referred on the home circuit, gave their opinion that the cart, waggon, and all the horses were deodands, as they all moved *ad mortem*. In this case the Ch. J. at first doubted whether the cart was a deodand, but is reported to have grounded his opinion on the recollection of a case where a man was thrown by his horse in a river, (but not by the violence of the stream,) and carried by the stream to a mill, and there killed by the wheel, and both horse and wheel

be killed by the wheel of a coach going over him, the wheel *only* is a deodand to the King or the lord of the manor, as being the only immediate cause of the death; and the value set by the coroner's inquest on the wheel or other thing forfeited, is taken in lieu thereof (*a*).

Apart from the natural influence of the superstition on which I have shown the deodand to be founded (*b*), it would be difficult to account for this singular practice of distinguishing between the wheel of a vehicle and the body to which it is attached, the weight of which body may be deemed to have moved to the death in a far greater degree than the action of the wheel; and for which reason it is said, that where a thing *not in motion* causes a person's death, that part only which is the immediate cause is forfeited, but that if a man be killed by a bruise from a waggon wheel, being *in motion*, the loading also would be forfeited, because the weight thereof made the hurt the greater (*c*).

It is quite clear that when a person is killed by a fall from a carriage, or from a horse, the carriage or horse is a deodand (*d*); but there is this distinction, namely, that if a man riding through a river, is thrown *by the violence of the stream* and drowned, then the horse or carriage is not considered to have moved to the death, and shall not be forfeited (*e*).

were forfeited. Vide also, 1 Hale's H. P. C. 420, citing 8 E. 2. coron. 308, 403; 3 E. 3. coron. 326, 342, that where a cart fell upon or ran over a man and killed him, both cart and horses were forfeited; and where *Hale* also notices, that if the timber which hung a bell fell and killed a man, the timber and bell were both forfeited; but see contra, *Rex v. Crosse & another*, 1 Sid. 207. Post, p. 777.

(*a*) *Rex v. Rolfe*, Fost. Cr. Law, 266. *Rex v. Grew*, Say. 249. Ante, p. 774. n. (*c*).

(*b*) Ante, p. 773. Ib. n. (*e*).

(*c*) Hawk. P. C. c. 26. s. 6. So it is said that a ship, by a fall from which a man is drowned in fresh water, shall be forfeited, but not the merchandize therein, because they no way contribute to his death. Ib.

(*d*) Hawk. P. C. c. 26. s. 3, 4. 1 Hal. H. P. C. 420.

(*e*) Lord *Chandos'* case, Cro. Jac. 483. S. C. Poph. 136. S. C. (the *King v. Lord Cavendish*), 2 Roll. Rep. 23. S. C. cited 1 Salk. 220. And see Poph. 136.

And when a person is killed by the fall of part of the loading of a waggon or cart, the part only which fell, and not the whole of the load, is a deodand (*a*).

It is immaterial to whom that which is the immediate cause of death may belong, therefore if *A.* kill *B.* with the weapon of *C.* the weapon is a deodand, although there be no blame attaching to *C.* (*b*).

Whatever forms part of, or is affixed to, the freehold cannot be forfeited as a deodand, unless severed before the accident occurs (*c*):—So that if a man be killed by the sail of a windmill, neither the sail, nor the linen affixed to it, shall be forfeited (*d*).

So also if a door or gate cause the death of any person, it will not be a deodand (*e*). So again, if a man be hanged by a bell rope in a church, the better opinion is that the bell shall not be forfeited (*f*).

ESTRAYS.—An estray is any *beast* not being wild, found wandering within some lordship or manor, without authority (*g*): And swans or cygnets may be taken as estrays (*h*), but no other fowl (*i*).

(*a*) Fitz. Forfeiture, pl. 20. And see Jenk. 64. pl. 21. 1 Sid. 207.

(*b*) Br. Forfeiture de terre, pl. 112, cites Doct. & Stud. lib. 2. c. 51. f. 157.

(*c*) Hawk. P. C. c. 26. s. 5. 1 Sid. 207.

(*d*) 1 Sid. 207.

(*e*) Ib.

(*f*) Ib. *Axminster Parish* case. 8. C. 1 Lev. 136; Lord Raym. 97. And see 6 Mod. 187, in the *Queen v. Wheeler*. Hawk. P. C. c. 26. s. 5.

If a man fall from a hay rick and is killed, it has been said (but not adjudged) that the rick shall be forfeited. Hale, H. P. C. 422, cites 3

E. 3. coron. 348.

(*g*) If persons have commonable rights within the manor, the lord is to take notice whether the beasts are beasts of the common or not, having the mark of the commoner. Br. Estray, pl. 3. S. C. (Sir *John Tiptoft's* case) 7 Co. 16 b. And by Kitch. 79, "one cannot take the king's beasts for a stray, though they were within the manor by two years, 39 Ed. 3. fol. 4." And see Fitz. Abr. Estray, pl. 3. 10 Vin. 487-8.

(*h*) 7 H. 6. 27, 28. Kitch. 79. Fitz. Bar. pl. 6. Br. Double Plee, pl. 41.

(*i*) 4 Inst. 280.

When no one can make title to estrays, called *animalia vagantia* (*a*), the law gives them to the king, or to lords of manors, claiming under a grant from the crown, or by prescription (*b*), in order that the cattle may not perish.

Within a convenient time, of which a court of law is to adjudge (*c*), and properly at the next market-day of the nearest market-town (*d*), the lord should cause proclamation to be made of the seizure of the estray, which proclamation should show the description of the estray, as a horse, cow, &c. and state such other particulars as may enable the owner to recover his property (*e*), on tender of a reasonable compensation for the expense of pasturage, &c.; and until such tender be made, the lord is justified in retaining the estray (*f*). But if any difference arise as to the amount of compensation, the lord should demand a certain sum, in order that the reasonableness of the amends may be tried (*g*), for the owner cannot be presumed to know what sum would make proper satisfaction to the lord (*h*).

(*a*) Bract. 1. 3. f. 120. Godb. 150.

(*b*) *Taylor v. James*, Godb. 150. *Englefeld's case*, W. Jones 285. *Haslewood's case*, Ow. 14. Co. Lit. 114 b. See plea in bar to an action of trespass, alleging seisin in fee of the manor, and a prescription to have estrays, Lex. Man. App. 123. ca. 39. Estrays cannot be claimed in gross by prescription. *Tottersall's case*, W. Jones 283.

(*c*) Per *Hobart*, C. J. in *Pleadal v. Gosmore*, Win. 68.

(*d*) *Henly v. Walsh*, Holt 564. But according to some cases, the proclamation should be in the two nearest market towns. Br. Estray, pl. 10. Finch's Law. 45. Kitch. 79. *Brownlow v. Lambert*, Cro. Eliz. 716. *In three markets adjoining*, Bacon's Use of the Law, 65. Once in the church and twice in the markets,

Kitch. 79. Proclamation in markets and church of the parish, 39 E. 3. 3. Br. Estray, pl. 4. Britt. 26. Kitch. 78-9. Scroggs, 133. *Brownlow v. Lambert*, sup.

(*e*) *Taylor v. James*, sup. The owner may claim at any time after the year and a day, if proclamation be not made. Britt. 26. Kitch. 79.

(*f*) Br. Justification, pl. 17, cites 44 E. 3. 12. Kitch. 79. *Pleadal v. Gosmore*, sup. 10 Vin. Abr. 490 (E), pl. 5. Holt 564, in *Henly v. Walsh*.

(*g*) *Taylor v. James*, sup. S. C. Noy. 144. S. C. cited 11 Mod. 89, in *Henly v. Welch* (or *Walsh*).

(*h*) *Henly v. Walsh*, 2 Salk. 686; S. C. Holt, 564. And see Co. Entr. 40, 170 (B).

The owner should make sufficient proof of the identity of his property, by reference to marks, or by the testimony of his neighbours, &c. ; and the lord must, at his peril, restore it, and he cannot put the owner to his oath (*a*).

If no claim be made within a year and a day (*b*), the estray belongs to the lord, but he has not an absolute property in it until the year and day are passed (*c*) ; and if the beast should again stray, though the lord may chase it back, yet it has been said, that he could not recover it from another into whose possession it should come, and that if it should be seized by the lord of another manor, such second lord should proclaim *de novo* (*d*).

But it should seem that if the estray is taken from the lord, he may maintain a special action on the case, for such taking (*e*) ; and that trespass will lie, upon the constructive possession, even before seizure (*f*) ; but the lord could not prescribe to

(*a*) *Taylor v. James*, ubi sup. Indeed it should seem that it is sufficient for the owner to prove his right of property on the trial. 2 Salk. 686.

(*b*) *Henly v. Welch*, 11 Mod. 90. S. C. Holt 564. According to this case, the year and day is to be computed from the first proclamation ; yet some suppose that the relation is to the time of the seizure. See Sir H. Constable's case, 5 Co. 107, b. Mo. 11. pl. 43. In the latter case, the right of property was held to have relation to the time of seizure, so as to intitle the executors of a lessee for life of a manor to an estray, in preference to the reversioner. *Vide contra*, as between a lessor and lessee of a manor, 12 Co. 100, Anon.

But note, " if an estray happen within the manor of the wife, if the husband die before seizure, the wife shall have it : for that the property was not in the wife before seizure." Co. Lit. 351 b, cites 43 E. 3. 8. 10

H. 6. 11. 39 E. 3. 17.

(*c*) Br. Estray, pl. 11, cites 33 H. 8. Kitch. 79. Finch's Law 45. Bacon's Use of the Law 65. 12 Co. 101, Anon. *Burdet v. Mathewman*, Clayt. 107 :—According to this case, the lord could not maintain trespass, until the year and day are passed.

(*d*) *Pleydell v. Gosmore*, (or *Pleadal and Gosmore*, Hutt. 67 (*ante*). *Harvey v. Blacklole*, Brownl. 236. And see Br. Abr. sup. (n. c.). If an estray escape into another franchise *before seizure*, the better opinion is that the second lord shall have it, the property not being changed. F. N. B. 91 B. n. a. Dy. 338. a. pl. 40.

(*e*) *Burdet v. Mathewman*, sup.

(*f*) F. N. B. 91. B. And see *Smith v. Milles*, 1 T. R. 480. *Harvey v. Blacklole*, Brownl. 236. But see Dy. 338 a. pl. 40 marg. per *Noy*, Att. Gen. But even trover lies against a stranger for an estray without actual seizure. Per *Keeling*, C. J. *obiter*, 2

amerce any stranger driving the estray out of the manor, in the manor court (*a*).

As the right of property in an estray is not changed within the year and day, the lord cannot work the beast (*b*), without being subject to an action of trespass (*c*); but if a cow be taken it may be milched, because that tends to the preservation of the animal (*d*).

And it should seem that the king's prerogative gives him a property in an estray, even before seizure (*e*).

An estray should be kept *in loco aperto*, on land in the lord's possession, being part of the demesnes of the manor; and the bailiff of the lord cannot delegate his authority, or deliver the estray to be kept by another (*f*).

Should an estray be unruly, the lord may use restraint, as by fettering a colt, but in the same way only as he would fetter his own beasts, to prevent their breaking down fences (*g*).

If two tenants in common be of a manor to which estrays belong, no action would lie by the one against the other tenant in common who should alone seise an estray, unless by prescription the one is to have the first estray, and the other the second, and one of them should take the beast pertaining to the other (*h*).

Keb. 589: And see Bul. N. P. 33, where it is said that a lord who seises an estray or wreck, may before the year and day expired maintain trover against a stranger; for he has more than a possession, viz. a possession that will turn into a property; [cites *Sir William Courtney's case*, C. B. Salk. MSS. *Pye & Pleydel*, Berks 1750. per Clarke, Bar. S.P.] *Vide* also 2 Williams's Saund. 47 a. n. 1. 2 Taunt. 306-9. 7 T. R. 398.

(*a*) Dy. 199 b, cites 29 H. 8. Benl. Rep. [23 pl. 38.]

(*b*) *Bagshaw v. Goward* (or *Gawin*), Cro. Jac. 147. Noy. 119. Yelv. 96. And see Godb. 151, in *Taylor v. James*, Win. 68, in *Pleadal v.*

Gosmore, 12 Co. 101. Anon.

(*c*) *Oxley v. Watts*, 1 T. R. 12.

(*d*) *Bagshaw v. Goward*, Noy 119. Cro. Jac. 148. (sup). So a sheep taken as an estray might be sheared, Ib. per Noy, Att. Gen. citing *Prideux's case*.

(*e*) Dy. 338 b. pl. 40.

(*f*) See *Taylor v. James*, in Godb. and Noy, (ubi sup.)

(*g*) Winch 68, 125, in *Pleadal v. Gosmore*; *Hobart*, C. J. contra, citing *Harvey v. Blacktote*, ubi sup.

(*h*) Co. Lit. 200 a.

See as to estrays belonging to infants or others under disability, Post. p. 784. n. (c.) tit. 'Wreck.'

WAIF. (*Bona fugitivorum.*) Waifs are, in strictness, such stolen goods only as a felon upon hue and cry, or other pursuit, waives or casteth from his person (*a*).

These are forfeited to the king, or to the lord of the franchise (*b*); but are only to be claimed by special grant or by prescription, and do not belong to the lord of a hundred or manor, by reason of the hundred or manor (*c*).

And even these shall be restored to the owner, if he make fresh suit, that is, if he pursue the felon as soon as he has notice of the theft (*d*), and whether he be taken or not, and this at common law; so also by the stat. 21 H. 8. c. 11, if the owner give evidence upon the indictment, and the felon be attainted (*e*):—but after seizure by the king or the lord, the owner cannot retake the goods, though upon fresh suit (*f*); for by the seizure the property is changed (*g*).

If, however, the owner challenge the goods upon fresh suit, and before seizure, they shall not be forfeited (*h*).

In an action against the lord of a manor for misusing a horse stolen from the plaintiff, who alleged that he made fresh suit, the court held that the defendant ought to have traversed the fresh suit whereof the plaintiff had declared, the property being thereby preserved (*i*).

And in trover for goods seised, *ut bona waiviata*, it was

- (*a*) Br. Estray & Wayfe, pl. 2. Leo. 192.
Foxley's case, 5 Co. 109. S. C. Cro. Eliz. 694. Either the stealing or the waiving may be traversed. Br. issues joines, pl. 68, cites 12 E. 4. 5. Ib. Traverser *per* &c. pl. 241, cites S. C.
- (*b*) Br. Forfeit. de terres, pl. 110, cites 21 E. 4. 16. Ib. Estray & Wayfe, as above.
- (*c*) Br. Estray, pl. 2, cites 44 E. 3. 19. As to prescriptive title, see Co. Lit. 114 b.
- (*d*) 7 H. 4. 44. Br. Fresh suit, pl. 4. Ib. Estray & Wayfe, pl. 7, cites 21 E. 4. 16. *Rooke v. Denny*, 2
- (*e*) Scroggs 130. Br. Estray & Wayfe 8, cites Dr. and Stud. lib. 2. ca. 3 & 51.
- (*f*) Hale H. P. C. 541. Br. Forfeiture de terres, pl. 110, cites 21 E. 4. 16. Stamf. f. 186. A. Kitch. 80.
- (*g*) Rastal Restitution 2. Kitch. 80.
- (*h*) *Dickson's case*, Hetl. 64-5. In this case the court was divided as to the forfeiture, the goods being seised before the owner came, and the fresh suit not being wholly within view of the felon.
- (*i*) *Rooke v. Denny*, 2 Leo. 192.

adjudged without argument, that the defendant ought to allege a felony committed, &c., and that the goods were waived by the felon (*a*).

But if the goods are not seized by the king or the lord, he who was robbed may seize them, even twenty years after (*b*).

Goods stolen and left in the house of the felon, or of another person, or in another's custody, or secreted, even if the felon flee, are not, properly speaking, waifs; and these may be retaken by the owner without fresh suit (*c*).

The goods of a merchant alien cannot be forfeited as waifs, and if waived by the felon after the alien's death, they belong to the executor of the alien (*d*).

It is the better opinion that the lord may have trespass or trover against a stranger, for waif taken out of his manor, even without any seizure (*e*); but that the property is not changed before seizure, so as to give the lord a title as against a second lord, into whose franchise it should stray (*f*).

Bona fugitivorum are the proper goods of him who flies for felony, and they cannot be taken as waifs (*g*); and the lord of a hundred or manor, although he may prescribe for waifs (*h*), cannot prescribe for goods of felons and fugitives (*i*). These, however, may be forfeited to the lord, under a special grant from the crown; but not until it is found upon indictment that the party fled for the felony (*k*).

(*a*) *Davies' case*, Cro. Eliz. 611.

(*b*) Br. Forfeiture de terres, pl. 110, cites 21 E. 4. 16. Kitch. 80.

(*c*) *Foxley's case*, *ubi sup.* S. C. Mo. 572. But it has been held, that if a thief leave my horse or his own horse, in an inn, for a certain sum by the week for his meat, it is not any waif; yet if he leave it there without any agreement for his meat, it is a waif. P. 1 Ja. B. 22 Vin. Abr. (Waife) 408, pl. 1, 2.

(*d*) Per *Doderidge, J.* in *Waller*

v. *Hanger*, 3 Bulst. 19. Vide also Scroggs 130.

(*e*) F. N. B. 91 B. Kitch. 80. Scroggs 132. Ante p. 779.

(*f*) 12 H. 8. 10. F. N. B. 91 B. n. a. Ante, pp. 779, 781.

(*g*) Br. *Estray & Wayfe*, pl. 2, cites 44 E. 3. 19. But see contra, *Ib.* pl. 9, cites 29 E. 3. 29, & M. 37 H. 8.

(*h*) Ante, p. 781.

(*i*) Br. *Estray & Wayfe*, as sup. n. (*g*).

(*k*) 5 Co. 110 b. in *Foxley's case*.

WRECK.—It should seem to have been a principle of common law, that the fragments of a vessel wrecked at sea, and the lading thereof, were forfeited to the king, in virtue of his prerogative right to all goods of which the ownership could not be established (*a*); and this identification, when the art of navigation was very imperfect, was necessarily a matter of great difficulty. But it has been supposed that goods wrecked upon the sea were given to the king, to compensate for the great charges incurred by the state in scouring the seas of pirates (*b*).

The better opinion is, that even at common law, if any person, or any animal, escaped from the vessel, whether alive or dead, whereby the ownership of the lading could be traced, neither the vessel nor the lading were wreck; and the statute of Westm. 1. (3 E. 1.) c. 4. has clearly established that principle, declaring that where a man, a dog, or a cat, escape quick out of the ship, such ship, nor barge, nor any thing within them, shall be adjudged wreck; and that this act was only a declaration of the common law, may be inferred from various books of great authority, particularly from *Bracton*, written before the statute, and the *Mirror*, written after it (*c*).

And in a very ancient case it was adjudged, that if a ship be pursued by enemies, and after being taken and ransacked is put adrift, and subsequently is cast on land, where her crew arrive, there shall be no wreck (*d*).

(*a*) And this prerogative right would not pass by general words of all privileges, royalties, &c. in a grant from the crown of the seignory. *Marquis of Winchester's case*, 3 Co. 4 b. *Ford & Sheldon's case*, 12 Co. 2. 2 Rol. Abr. 195 E. Com. Dig. Grant. (G. 6.) Sir W. Jones, 349. 2 Vol. Ca. & Opin. 451. Per *Bayley, J.* in *Scrutton v. Brown*, 4 Barn. & Cress. 497. And see *Alcock v. Cooke*, 5 Bing. 340, which case has decided that a grant of Duchy lands, is subject to the same incidents as a grant of lands belonging to the crown. And see 8 Barn. & Cress. 743. 757,

in *Rowe & Brenton*. Com Dig. Franchises (D. 3).

(*b*) 2 Inst. 167. *Hamilton & Smyth v. Davis*, 5 Burr. 2738.

(*c*) See Bract. lib. 3. f. 120. Britt. f. 7. 26. 85. Flet. lib. 1. c. 41. Mirr. c. 1. s. 13. and c. 3. s. de wrecks. Vide also 2 Inst. 166-7. *Sir H. Constable's case*, 5 Co. 107 b. *Sutton v. Buck*, 2 Taunt. 311.

(*d*) *Fishlake's case*, 5 R. 2, cited 2 Inst. 167. But see the Bailiffs, &c. of *Dunwich v. Sterry*, post p. 786.

See further as to what constitutes wreck, 22 Vin. Abr. 537 et seq.

And when goods are cast on land,

Although the above statute speaks generally of a wreck, it extends to the three cases of *flotsam*, *jetsam*, and *lagan*, (or *ligan*) (*a*).

Flotsam maris is where a ship perishes, and the goods float upon the sea. *Jetsam* is where the goods of a ship, which afterwards perishes, are cast into the sea for disburthening it. *Lagan* (or *ligan*) is when any ponderous goods of a vessel, which afterwards perishes, are cast into the sea, and with a view to recover them, a cork or buoy is fastened to them; and none of these goods are called wreck, unless driven upon shore (*b*).

When goods are taken as wreck, the owner should prove his right to the property within a year and a day after the seizure (*c*); or his executors or administrators, in case he should die within that period (*d*).

The king is an exception to this limitation of time, and may prove his right of property at any period (*e*).

And if the goods seized as wreck be *bona peritura*, the sheriff may sell such goods within the year and day (*f*).

and are not wreck, and are stolen, the owner may have a commission of *oyer and terminer*, directed to certain persons to inquire of those who did the trespass, and to hear and determine the same, and to make restitution to the party; and a writ to the sheriff to return *probos et legales homines*, &c. before the said justices. F. N. B. 112. C. 2 Inst. 168.

(*a*) 2 Inst. 167. "And of them the Admiral has jurisdiction." Sir *H. Constable's case*, 5 Co. 106 b.

(*b*) See Sir *H. Constable's case*, sup. And even then the right to them will be preserved by any *indicia* of ownership. *Hamilton & Smyth v. Davis*, 5 Burr. 2732. *Sutton v. Buck*, 2 Taunt. 311.

(*c*) The year and a day is given by the stat. Westm. 1. c. 4. Ante, p. 783. *Infra*, p. 786 n. (*c*). Though a

(special) property is in law vested in the lord before seizure, yet the year and day is accounted from the seizure, as it is by that act alone the owner can know where to make his claim. 2 Inst. 168, citing 35 H. 6. 27. And see Br. Wreck, pl. 2. Bailiffs, &c. of *Dunwich v. Sterry*, post p. 786.

The property of infants and others under disabilities is equally bound, after the year and day, as well in the case of wreck, as of an estray. Sir *H. Constable's case*, 5 Co. 108 b.

(*d*) 2 Inst. 168.

(*e*) *Ib.* Br. Wreck. pl. 2, cites 35 H. 6. 27. Kitch. 24, cites 45 H. 6. 32.

(*f*) 2 Inst. 168. Plow. Com. 466. Kitch. 24. And see a provision as to the sale of perishable goods, 1 & 2 Geo. 4. c. 75. § 27.

Although wreck of the sea is the property of the king by common law right (*a*), yet like waifs and estrays it may belong to a subject by grant (*b*), or by prescription (*c*). And it has been adjudged that by prescription wreck may belong to the Lord High Admiral (*d*).

When a subject is intitled to wreck by grant or prescription, he is said to have a constructive possession, and also a special property vested in him even before seisure, so that he may have his action of trespass or trover against any person taking it

(*a*) Scroggs 127. "The king shall have wreck of the sea throughout the whole realm; and sturgeons taken in the sea, or elsewhere within the realm, except some privileged places, be the kings." Kitch. p. 24. "The king by his prerogative is intitled to large fish, as whales and sturgeons." Bract. l. 3. f. 120.

(*b*) See several opinions on adverse claims to the right to wreck within the honour of Bramber, under grants from the crown, 2 vol. Ca. & Op. 452, &c. And note that those adverse claims gave rise to the case of *Biddulph & Ather*, 2 Wils. 23; in which it was held that two allowances in eyre, and a judgment in trespass 400 years since, were not conclusive evidence against usage for 92 years past to have wreck of the sea.

Vide also *Chad v. Tilsed*, 2 Brod. & Bing. 403, in which an exercise of right over a small bay for 40 years, was held to be evidence from which anterior usage ought to be presumed, to induce a liberal interpretation of a grant of wreck made by Hen. 8. in favour of the proprietary right claimed; but *Dallas, C. J.* observed, that what is done under usurpation, and

in opposition to the clear words of a grant, could not constitute legal usage, but that long usage might be the best exposition of a grant of remote antiquity containing general words,—the rule being, that 'if the language of an ancient grant be obscure or doubtful, constant usage may be resorted to, to expound, though not to control the deed.'

Vide 1 & 2 Geo. 4. c. 75. § 25, 26.

(*c*) Co. Lit. 114 b. 2 Inst. 168. Br. Wreck, pl. 1, citing 11 H. 4. 16. See further as to wreck by prescription, 2 vol. Ca. & Op. 456. *Saunders' case*, Mo. 224. A right to wreck on another man's lands, of necessity gives a right of way over the lands to take it. 6 Mod. 149. Anon.

(*d*) *Wiggan v. Branthwaite*, 12 Mod. 260. S. C. 1 Lord Raym. 474. S. C. Holt 758. In this case, *Holt, Ch. J.* said, he made no doubt but some wreck might belong to the Admiral by prescription, as that about the Cinque Ports, and such places, where he was most conversant in ancient times; grounding his opinion on the antiquity of the office. Vide 1 & 2 Geo. 4. c. 75. § 24.

away (a); even though the goods should be part of the cargo of a ship from which some person escaped alive to land (b).

It is clear therefore that if a stranger take possession of wreck after seizure, an action either of trespass or trover lies against him (c); but the absolute property in wreck is not vested in the lord until after the year and day (d).

In the parish of *East-dean*, in *Sussex*, there is a custom for the lord of the manor, when a ship is wrecked there, and cast on the lands held of the manor between the flux and reflux of the sea, to bury the dead, and to take care of those who are living and cast on the land, being either sick or wounded, and to preserve the shipwrecked goods for the use of the owners, and for this the lord to have the *best anchor and cable*; and this has been held to be a good custom, it not being unreason-

(a) F. N. B. 91 D. *Smith v. Milles*, 1 T. R. 480. Bul. N. P., 33. Ante, p. 779, n. (f), p. 784. But see Hawk. Pl. C. 93. c. 33. s. 24, who says, it seems that the taking of wreck before seizure cannot be felony, because no one has property of the goods at the time of the taking. And see Kitch. 49, citing 22 Ass. 99.

(b) And though the owners within the prescribed period [1 & 2 Geo. 4. c. 75, § 26] claimed and identified them, and though the taking was before the seizure by the grantee. *The Bailiffs, &c. of Dunwich v. Sterry*, 1 Barn. & Adolp. 831.

(c) 10 H. 7. 6. Kitch. 24. The Stat. West. 1. c. 4. (already cited) further enacts, that the goods shall be saved and kept by view of the sheriff, coroner, or the king's bailiff, and delivered into the hands of such as are of the crown, where the goods were found; so that if any sue for those goods, and after prove that they were his, or perished in his keeping, within a year and a day,

they shall be restored to him without delay; and if not, they shall remain to the king, and be seized by the sheriffs, coroners and bailiffs, and shall be delivered to them of the town, *which shall answer before the justices* of the wreck belonging to the king. And where wreck belongeth to another than to the king, he shall have it in like manner. And he that otherwise doth, and thereof be attainted, shall be awarded to prison, and make fine at the king's will, and shall yield damages also. And if a bailiff do it, and it be disallowed by the lord, and the lord will not pretend any title thereunto, the bailiff shall answer if he have whereof, and if he have not whereof, the lord shall deliver his bailiff's body to the king. By answering before the justices is meant, that wreck shall not be tried in the admiralty court, but before the king's justices at common law. 2 Inst. 168. And see 15 R. 2. c. 3. Kitch. 24.

(d) Vaugh. 168. Scroggs 127.

able to have some manner of recompence even for a charitable act (*a*). But where in trover for an anchor and cable, the defendant pleaded a custom in the manor of *Miching*, in *Sussex*, that if any ship or boat sailing on the sea, strikes on the land held of the manor and perishes, though it is not wreck, yet the best anchor and cable, &c. belong to the lord of the manor, the plea was adjudged ill, no *custom of salvage* being found, and the alleged custom being void for want of any manner of consideration to support it (*b*).

The lord of a manor has been held not to be intitled to salvage for taking charge of wreck against the owner's consent, and therefore not in the instance of parts of a ship being thrown on the land within the manor, when the servants of the owner are there to take care of them for him (*c*).

TREASURE TROVE.—It would appear by several ancient authors (*d*), that treasure trove, at some far distant period, belonged to the finder; but even before the Conquest (with perhaps some exceptions) (*e*), it was a rule of common law, that treasure trove belonged to the king by his prerogative (*f*), or to some lord of a manor or liberty, by special grant (*g*), or by prescription (*h*).

The term *treasure* is restricted to gold and silver (*i*), but it may be either in bullion (*k*), coin, or plate; and the right of

(*a*) *Simpson v. Bithwood*, 3 Lev. 307. See the pleadings in this case in Appx. to *Lex. Man.* pl. 41, p. 126.

(*b*) *Geere v. Burkensham*, 3 Lev. 85.

(*c*) *Sutton v. Buck*, 2 Taunt. 302.

(*d*) *Stauf. f. 39. Glanv. l. 1. c. 1. l. 14. c. 2. Britt. 7, 26, 85. Bract. l. 3. f. 120. 2 Inst. 168. 3 Inst. 132.*

(*e*) 3 Inst. 133,

(*f*) *Kitch. 78. 3 Inst. 132-3.*

(*g*) *Ib. Fitz. Abr. tit. Corone, pl. 241, 436, cites 22 E. 3. 8 E. 2. Kitch. 78.*

(*h*) *Co. Lit. 114 b. 3 Inst. 132-3, cites 21 H. 6. tit. Prescription 4. 22 E. 3. cor. 241. 1 H. 7. 33. 9 H. 7. 20. 46 E. 3. 16. Stamf. pl. cor. 39. b. lib. fo. 109 b.*

(*i*) 3 Inst. 132.

(*k*) "Veins of gold and silver in the ground of subjects, also belong to

the king or the lord presupposes the impossibility of an identification of the property of the person who concealed it (*a*); but it is immaterial whether it be found hidden in the ground, or in the walls or roof, or ruins of any house, or other building, or elsewhere (*b*); though treasure found in the sea still belongs to the finder (*c*).

We are told by *Glanvill* and *Bracton*, that the fraudulent concealment of treasure trove, was an offence punishable by death; but it was long since adjudged that the punishment should be by fine and imprisonment only (*d*).

FAIRS, MARKETS, TOLLS, &c.—These franchises are annexed to many manors, but are to be claimed only by grant from the crown (*e*), or by prescription (*f*); and even if the grant of a fair or market be preceded by a writ of *ad quod damnum*, or the usual words *quod non sit ad nocumentum*, &c. be omitted in the grant, yet the patent shall be repealed by *scire facias*,

the king by his prerogative, for they are royal mines." 3 Inst. 132. But this has been doubted, unless the quantity of gold or silver was of greater value than the quantity of base metal. Plowd. 336. 1 Bl. Com. 294. And now by 1 W. & M. st. 1. c. 30. and 5 W & M. c. 6, mines of copper, &c. shall not be looked upon as royal mines, though gold or silver may be extracted from them in any quantities, but the king may have the ore (other than tin in Devon and Cornwall) paying the price stated in the act.

(*a*) Stath. tit. Coron. Kitch. 78. Or by his executors, Fitz. Abr. Coron. 446, cites 22 H. 6.

(*b*) Bract. l. 2. f. 10. 3 Inst. 132.

(*c*) Britt. f. 26. Kitch. 78. 2 Inst. 168.

(*d*) Stath. tit. Coron. Fitz. Abr. Coron. 265, cites 22 E. 3. 3 Inst. 133. Kitch. 49. Treasure trove as well as wreck shall be inquired of by the coroner. 3 Inst. 133. Ante, pp. 773-4. (tit. 'Deodand').

(*e*) As an evil rather than a good might result from the establishing of additional fairs or markets, it is usual, previous to a grant by the king, to have a writ of *ad quod damnum* issued and returned. The *King v. Butler*, 3 Lev. 222. 2 Vent. 344. And see 3 Burr. 1818, in *Rex v. Marsden*; 7 Barn. & Cress. 49. n.

(*f*) Co. Lit. 114. b. 2 Inst. 220. And see *Hill v. Smith*, 10 East 476. 1 Wils. 112. Tenants in ancient demesne have a qualified exemption from toll, ante, pp. 692-3.

if it be to the nuisance of the king or others (a). But it has been held, that an uninterrupted user for twenty years, gives a *prima facie* right to a fair or market, and affords a sufficient answer to an indictment for a nuisance to a highway, although the party is liable to be proceeded against for the usurpation of the franchise (b).

The grantee or owner for the time being of the franchise of a market, may have an action on the case against a person who erects a stall upon his own ground near to the market, for selling meat, &c. though he should not take toll, or usurp a franchise (c). And by grant or prescription the owner of such a market may prevent persons, being inhabitants of the place, from selling in private houses (d). In the case of Dorking Market, tried before *Heath, J.* (e), a man had fitted up an inner room in a public house, and corn was pitched and sold there; and the plaintiff recovered against him in an action on the case, on the same ground as in the prior of Dunstable's case, because it was done secretly.

And in the case of the bailiffs of *Tewkesbury v. Brick-*

(a) 2 Inst. 406. *Rex v. Butler*, ubi sup. 2 Roll. Abr. 140. pl. 2. Com. Dig. Market (C. 2). And notwithstanding the issuing of the writ, an action would lie by the private owner of a market that was injured. 1 Sir W. Bl. 581. If a fair or market be set up without patent, to the nuisance of another, the party aggrieved may have an assise of nuisance, returnable into the King's Bench. F. N. B. 184. A.

(b) *Rex v. Smith et al.* 4 Esp. 111. And see *Yard v. Ford*, 2 Saund. 172. Ib. 175. n. 2.

A *quo warranto* will not lie merely for encouraging and promoting the holding of a market, it being at most a misdemeanour, and no usurpation of a franchise. *Rex v. Marsden*, 3

Burr. 1812. S. C. 1 Sir W. Bl. 579. And it seems doubtful whether an information in nature of a *quo warranto*, for a usurpation upon the crown by holding a fair or market, can be granted on the application of a private person. *Ib.*

(c) *Mosley v. Chadwick & others*, 7 Barn. & Cress. 47, n. (a).

(d) *Sir Oswald Mosley v. Walker*, 7 Barn. & Cress. 40. 9 Dow. & Ry. 863. And see *Prior of Dunstable's case*, 11 H. 6, 13. Br. Abr. 'Prescription', pl. 98. 7 Barn. & Cress. 47. n. Com. Dig. tit. 'Market,' (F. 2.) Vin. Abr. tit. Market (B). 2 Roll. Abr. tit. 'Market,' B. pl. 1.

(e) 2 Taunt. 133.

nell (a), it was held that an action on the case for toll lies, equally against the seller of corn by sample, as the seller of corn pitched in bulk.

But it is at least very doubtful whether the grantee of a newly created market, can maintain an action for the disturbance of his franchise, against a person selling marketable articles in his own shop within the limits of the market place, on the market day (b).

It has been adjudged that if a grantee of a market suffer another to erect a market in his neighbourhood, and to use it uninterruptedly for three and twenty years, he is barred of an action on the case for a disturbance of his franchise (c).

The lord of a manor having a grant of a fair or market generally, may hold it at any place where it can be most conveniently held (d); and if the grant prescribe a particular vill, the lord may remove the fair or market to any situation within the precinct of his grant; and, after notice, may have trespass against any person going upon his soil in the old market-place (e).

Upon the grant of a fair or market, the lord shall have a court of *Piepowdre* (or *Pipowders*) as incident thereunto without any special words, it being for the advancement of justice, and not of a private interest (f).

(a) 2 Taunt. 120. And see *Moseley v. Pierson*, 4 T. R. 104.

(b) *The Mayor, &c. of Macclesfield v. Pedley*, 4 Barn & Adolp. 397. And see *Prince v. Lewis*, 2 Car. & Pay. 66.

(c) *Holcroft v. Heel*, 1 Bos. & Pul. 400.

When equity will interfere to enforce the lord's right to tolls, see *Mayor, &c. of Reading v. Winkworth*, 5 Pri. 473. *Duke of Norfolk v. Myers*, 4 Madd. 83. Ante pt. 1. p. 633.

(d) *Dixon v. Robinson*, 3 Mod. 107. *Rex v. Cotterill*, 1 Barn. & Ald. 67.

(e) *Curwen v. Salkeld*, 3 East 538.

(f) 2 Inst. 221. 4 *ib.* 271. The court of pipowders is incident to a fair or market, as a court baron is to a manor. It is, however, a court of record, to be holden before the steward, and its jurisdiction consisteth in these four essentials: 1. The cause of action must arise in the time of the particular fair or market. 2. It must relate to things which concern the market, therefore, if one slander particular wares to the injury of another, previous to the market, the court has no jurisdiction. 3. It must arise within the precinct of the fair

And the right to appoint a clerk to the fair or market, is also incident to the franchise, and he will be intitled to his reasonable fees (*a*).

But as a toll is a matter of private benefit to the lord, it is not necessarily incident to a fair or market, as was adjudged in the case of *Northampton* (*b*), wherein it was resolved, that if the toll granted with a fair or market be unreasonable, the grant of the toll is void, and the fair or market shall be accounted a free fair or market:—And the exaction of an outrageous toll would intitle the king to seise the franchise into his own hands (*c*).

In the late case of *Brett v. Beales* (*d*), Lord *Tenterden* referred to *Truman & Walgham* (*e*) and other authorities establishing that one may have *toll-traverse* by prescription, so also *toll-thorough* for some reasonable cause to be shown, as to repair a way, &c., but the judgment of the court in the principal case was, that the repair by the corporation of *Cambridge*, of certain bridges over the *Cam*, and some of the streets, was not a sufficient consideration to support a claim of toll-thorough in all parts of the town.

It has been decided that, although every person has a right to go into a public market to buy and sell, without paying any

or market. 4. The plaintiff or his attorney must take an oath according to the stat. 17 Edw. 4. c. 2. and 1 R. 2. c. 6; but this does not conclude the defendant. *Hall & Jones's case*, cited 4 Inst. 272. And see *Hall v. Pyndar*, Dy. 133 a, and the several cases there referred to.

(*a*) 4 Inst. 273. c. 61.

(*b*) M. 39 & 40 Eliz. cor. rege. 2 Inst. 220. S. C. (*Heddy v. Wheelhouse*), Cro. Eliz. 558. And see *The Mayor, &c. of Northampton v. Ward*, 2 Str. 1239. S. C. 1 Wils. 115. *Davenporty case*, (*Holloway v. Smith*), 2 Str. 1171. *Lowden v. Hieron*, 1 Holt, N. P. 547. 6 East 438. Com.

Dig. Market F. 1. 7 Barn. & Cress. 50, in *Mosley & Walker*.

(*c*) 2 Inst. 219. 1 Wils. 114.

(*d*) 10 Barn. & Cress. 508. S. C. 1 Moody & Malk. 416.

(*e*) 2 Wils. 296. A special consideration need not be shown to support a claim to *toll-traverse*. *Rickards v. Bennett*, 1 Barn. & Cress. 223; 2 Dow. & Ry. 389. See as to the evidence requisite to support toll-traverse, *Vines v. Reading Corporation*, 1 You. & Jerv. 4. 4 Bing. 8. Persons interested in the result may, from necessity, be competent witnesses in an action for toll-traverse. *Lancum v. Lovell*, 9 Bing. 465.

toll, if none be due by prescription, yet the owner is intitled to *Stallage* and *Piccage*, that is, to a compensation for placing a stall, and for any breaking up of the ground; and the remedy for this is trespass (*a*).

These franchises may be forfeited by non-user (*b*), (which would naturally induce the presumption of a surrender of them to the crown (*c*);) or by mis-user, so that should the grantee neglect to perform the terms prescribed by the patent, it might be repealed by writ of *scire facias* (*d*).

FREE CHASE OR PARK (*e*). (*Free Warren: Free Fishery, &c.*) Although these subjects are in some degree connected with the preceding considerations on manorial franchises, I do not feel that they are of a nature to call for any lengthened commentary in the present treatise.

The reader, however, is reminded that *Free Chases or Parks* were tracts of land granted to a subject, under one or other of those names, or grounds converted by the owner into chases or parks, under a license from the crown, and were considered as smaller forests; but that they were not subject to the forest laws, the grantee having no power to appoint officers of the forest, or to hold courts (*f*):—It is also to be recol-

(*a*) *The Mayor, &c. of Northampton v. Ward*, ubi sup. And see *Mo. 474*. 1 Barn. & Ald. 71, in *Rex v. Cotterill*. A table placed in an open market is considered as a stall. *The Mayor, &c. of Norwich v. Swan*, 2 Sir W. Bl. 1116.

Both *Stallage* and *Piccage* are derived from the right to the soil. See as to both, *Com. Dig. Market (F. 2)*. 2 Roll. Abr. 123. 15 Vin. 244-5.

And the party intitled to *stallage* may waive the tort and bring assumption. *Mayor, &c. of Newport v. Saunders*. 3 Barn. & Adolp. 411.

(*b*) *Leicester Forest case*, Cro. Jac. 155.

(*c*) Br. Franchise 10, 26.

(*d*) *Ib.* 14, 22. 12 Mod. 271.

(*e*) A park consists of vert, venison, and inclosure, and a determination in either of these requisites amounts to a disparkment. Sir *Charles Howard's case*, Cro. Car. 60.

(*f*) 4 Inst. 314. But it appears that royal forests were sometimes granted by the crown to a subject, with express authority for the administration of justice there. *Leicester Forest case*, sup.

lected that these franchises can only be claimed by grant, or by prescription (*a*).

And I am induced to avail myself of this opportunity of referring the student to Lord *Coke's* 4 Inst. [p. 299, *et seq.*] and to Mr. Justice *Blackstone's* Commentaries [vol. 2. c. 27], for a clear and interesting exposition of the forest laws, as they existed in the Saxon æra, and as new modelled upon the Norman conquest; and the more so as it will be seen by the legal authorities adverted to, that the arbitrary and oppressive character of the forest laws, was maintained by the establishment of several courts (*b*), imitative of those ordained by our

(*a*) See Co. Lit. 114 b. 11 Co. 87 b. Lord *Coke*, (4 Inst. 318) says, "And it is to be observed that a man may have a free chase as belonging to his manor, in his own woods, as well as a warren or park in his own grounds; for the chase, warren, and park, are collateral inheritances, and not issuing out of the soil, as the common doth; and therefore if a man hath a chase in other men's grounds, and after purchase the grounds, the chase remaineth."

As to commonable rights and other like privileges in chases or parks, (and which may also exist by prescription in forests,) see 4 Inst. 298-9, &c.

(*b*) The courts of the forest were, 1. The *Woodmote* court, or court of attachments kept before the verderors every forty days, for the presentment and inrolment only of attachments *de viridi et venatione*: 2. The court of survey or lawing of dogs, held every third year: 3. The *Swainmote Court* held thrice in the year by the steward (who acted ministerially only) before the verderors, (there being

most commonly four in each forest,) as judges of the court; and at this court the attachments of the foresters were presented, and the freeholders within the forest were to appear and make inquests and juries; but the court did not follow up its conviction by judgment: and 4. The court of the *justice seat*, holden before the chief justice of the forest, called in the books *justice in eyre*, and which could not be kept oftener than every third year; and only on forty days' summons, one writ of summons being directed to the sheriff of the county. And at the sessions of this *justice in eyre* he was to proceed on the presentments made at the *Swainmote* courts, before a jury. It should seem that a presentment or indictment of this court, previously found in the *swainmote*, was not traversable, but that an indictment in the court of the *justice seat*, not found in the *swainmote*, might be traversed, it having been presented but by one jury. 4 Inst. 291, cites 8 E. 3. *Itinere Pickering*, 147 a. 21 E. 3. 48. See further as to these courts. Com. Dig. Chase (R).

Saxon ancestors, for the more substantial and legitimate objects of maintaining the good order of society, and the relative rights of its component members, and of which I propose to take particular notice in the introductory part of the next and concluding chapter (*a*).

FREE WARREN.—The franchise of free warren is to be claimed only by grant from the crown or by prescription, which supposes such a grant (*b*), and the effect of it is to vest in the grantee a property in such wild animals, or inferior species of game, as are deemed the beasts and fowls of warren (*c*).

If a person having a free warren alien the lands, the right of warren is extinct, nothing being reserved, and the land only being granted; but a reservation of the warren would be good (*d*).

(*a*) It appears almost unnecessary to remind the student that by the charter 9 H. 3, [*carta de foresta*,] (the immunities of which Mr. Justice *Blackstone* observes, ‘ were as warmly contended for, and extorted from the King with as much difficulty, as those of magna carta itself,’ 2 vol. Com. p. 416,) many forests were disafforested, and the penalties of the forest laws greatly relaxed, and that by many subsequent statutes and long disuser, ‘ this prerogative is now become no longer a grievance to the subject.’

(*b*) 11 Co. 87 b. Co. Lit. 114 b. Br. Warren. pl. 1, cites 3 H. 6. 12. Manw. Warren. Forest. pl. 43. And in trespass against the game-keeper of the lord of the manor, it lies upon the defendant to prove a royalty in justification of the entry upon the plain-

tiff’s land, by showing a grant of a free warren from the Crown. *Pickering v. Noyes*, 4 Barn. & Cress. 639.

(*c*) See F. N. B. 86-7, and the notes. Beasts and fowls of warren, are hares and rabbits, pheasants and partridges. Manw. 95. In Co. Lit. (233 a.) a roe is also named as a beast of warren, and quail, rail, woodcock, herne, mallard, &c. as fowls of warren. Grouse are not birds of warren. The Duke of *Devonshire v. Lodge*, 7 Barn. & Cress. 36. Beasts of park or chase are, buck, doe, fox, martron, and roe. Manw. 94. Co. Lit. 233 a. 8 Co. 138 b. Beasts of forest or venary are, hart, hind, hare, boar, and wolf. Manw. 91. 8 Co. 138 b.

(*d*) Br. Warren, pl. 3, cites 35 H. 6. 55.

And if a person having a manor in which there is a free warren should enfeoff another of the manor, *with the appurtenances*, the warren would not pass (a), for a warren is not necessarily appurtenant to a manor, though it may be so by prescription (b).

The franchise of free warren implies a sole and *exclusive* (c) power of killing game within the ambit of the grant, on condition of preventing others from doing so, and therefore, as Sir *William Blackstone* says (d), "A man that has the franchise of warren is in reality no more than a royal game-keeper."

Whether or not a person may have a property, *ratione soli*, in such *feræ naturæ* as are denominated game, or how far such possible right may be affected by any manorial privileges in lords of manors, emanating from the King and founded on principles of feudal tenure, does not appear to be a question so immediately connected with the subject of the present treatise, as to call for particular animadversion in this place (e); but

(a) Br. Warren, pl. 7. And see *ib.* pl. 5, citing 14 H. 4. 6.

(b) *Bowston v. Hardy*, Cro. Eliz. 547. S. C. 5 Co. 104 a. By prescription a person may have a warren in a forest, but there must be an allowance of it in eyre, that is in the court of the forest. Sir *Richard Harrison's* case, W. Jones 280.

(c) But a free warren is not necessarily an *exclusive* right, for in one case a prescription for the lord of the manor, his tenants and farmers, to fowl in the warren of another, was held good upon demurrer. *Davies's* case, 3 Mod. 246.

(d) 2 vol. Com. 39.

(e) I have pleasure, however, in referring the reader for much useful information on the character of the game laws of this country, and for the means of forming his own

judgment on the controverted right of lords of manors, to sport over the grounds of others within their respective seigniories, to Mr. Chitty's treatise on the game laws, and to Professor Christian's notes to the commentary of Mr. Justice *Blackstone*, [2 vol. Com. c. 27.] on the right of property in such animals *feræ naturæ*, as come under the denomination of game, in which the learned Professor opposes the doctrine advanced by Sir *W. Blackstone*, that the sole property of all the game in England, and, as a consequence, the exclusive right of taking and destroying it, is vested in the King, as the ultimate proprietor of the soil. The reader's particular attention is also called to a useful work published a few years since, intitled "A treatise on the rights of manors as

assuming that a right of property may exist in this species of

“deduced from the most ancient and best authorities, with a report on “the game laws, and comment,” the author of which wholly dissents from the arguments of Professor Christian.

I am induced to express my assent to Sir *Wm. Blackstone's* position, that the sole right of property in all wild animals became vested in the King, from the period, at least, of the establishment of the feudal system in this country; and I conceive that the right of the lord of a manor or other royalty, to take and kill game within the confines of his seignory, either as an exclusive right, or concurrently with the owners of the soil, is founded on the prerogative title of the King. Whether the right be exclusive or concurrent must depend on the words of the grant, or evidence of usage, for the right may exist by prescription, which presupposes a grant. But an exercise for several years of the right of sporting, which might be referrible to the tenant's acquiescence, will not induce the presumption of an ancient grant. *Pickering v. Noyes*, 4 Barn. & Cress. 639.

It is clear that an ancient grant from the Crown of the franchise of taking and killing game within a limited district, would give the grantee the power of going over the grounds of others, without being considered a trespasser. Such a grant would in fact vest the franchise of a *free warren* in the grantee, which alone can justify a person's sporting on another's soil, or, indeed, even on his

own. 2 Bl. Com. 39. Vide also the above case of *Pickering v. Noyes*, in which the court of B. R. held that it was for the defendant, upon the issue joined, to prove first that he had such a royalty, and secondly that at the time in question he was in the due exercise of it.

It does not appear to me that the lord of a manor can claim any right of sporting over grounds not in his own possession, under the provisions of the several acts of parliament authorising lords of manors to appoint game-keepers, and empowering such keepers, for the preservation of game, to search for noxious animals and engines of destruction, and also to kill game for the use of the lord; I apprehend, indeed, that the powers of game-keepers appointed under the acts of parliament alluded to, would be held to extend only (as far as they may be protected by the provisions of those acts against an action of trespass,) to such lands as should be in the lord's immediate possession, and those perhaps belonging to others, over which the lord had a right to sport under an ancient grant from the Crown, or by prescription. The case of the Earl of *Ailesbury v. Patison*, Dougl. 28, clearly shows that the Courts of Law are disposed to circumscribe, as much as possible, the powers of the acts of 22 and 23 Car. 2, and the 5th of Anne, and other subsequent statutes, authorising lords and ladies of manors to appoint game-keepers; for in that case Lord *Mansfield* held, that the words “*manors or other royalties,*”

animal, *ratione soli* (a), yet it is clear that such right would be subservient to the franchise of free warren (b), and it should certainly seem that a free warren over the lands of another person, may exist by prescription (c).

in the first mentioned act, did not extend to a hundred or Wapentake, which would have been expressed, if the legislature had meant the act to apply to royalties of a higher nature than a lordship or manor.

[But N.B. The provisions of the act of 1st & 2d W. 4. c. 32. have somewhat extended the powers of lords of manors over game. The act not only authorises the lord to appoint game-keepers to preserve or kill game within the limits of the manor for the lord's use ; but by the 10th sect. the lord may pursue and kill game upon the wastes and commons, and give authority to any certificated person to enter upon such wastes and commons, for the purpose of pursuing and killing game. And by the 15th sect. the owner of land, in *Wales*, of the clear annual value of £500, not being within the bounds of any manor, may appoint a game-keeper, to preserve or kill the game thereupon.]

I would further submit, that the franchise of sporting over the grounds of another, under a grant to the lord of a manor, may be lost, as well by a conveyance of the demesnes of the manor without reserving the franchise, as by non-user, such discontinuance of the exercise of the right, inducing the presumption of a release and extinguishment of it, which extinction seems to be perfectly consistent with established principles of

tenure, as between the lord and the owner of land within his manor. (See ante, p. 794, as to the extinction of a free warren.) But it is probable that on an extinguishment of the right of the grantee of the Crown, the prerogative right, to the extent of that formerly exercised by the lord under the particular grant, would revive.

(a) The case of *Sutton & Moody*, Salk. 556 ; 1 Lord Raym. 250 ; Comb. 458 ; 5 Mod. 375 ; 12 Mod. 144, is an authority that the courts will presume a right of property to game in the owner of the land on which it is killed, *ratione soli*, as against a perfect stranger ; but it is a possessory property only. F. N. B. 87 A. And see 12 H. 8. 10. 11 Co. 87 b. 4 Inst. 320. 2 Bl. Com. 419. Post. p. 798. n. (a).

(b) *Sutton v. Moody*, sup. The frequency of these grants is urged by Sir *William Blackstone* in favour of his position, that the exclusive right of taking and destroying game belonged to the King. 2 Com. 417.

(c) Br. Warren. pl. 2, cites 34 H. 6. 28. Ib. pl. 3. And see *Davies's* case, ante, p. 795. n. (c). *Rex v. Talbot*, Cro. Car. 311. *Fowler v. Seagrave*, Bulst. 254. *Sutton v. Moody*, sup. But an alienation of the land without reserving the warren would extinguish the right. Br. Warren, pl. 3, cites 35 H. 6. 55. Dy. 306. Ante, p. 794.

The grant of free warren would

When the right of property in wild animals can be claimed *ratione privilegii*, it nevertheless continues only so long as they remain within the limits of the particular franchise, except, indeed, that the property would not be changed by being hunted by the owner, or even by a stranger, out of the free chase or warren, and killed in the grounds of another person (*a*).

FREE FISHERY, &c.—A free fishery in its more ordinary acceptation, means an exclusive right of taking and killing fish in an arm of the sea (*b*), or navigable river (*c*) being an

seem to give a right to appoint a warrener to preserve the game, who is justified by ancient usage in killing dogs, cats, and vermin. *Wadhurst v. Danme*, Cro. Jac. 45.

(*a*) 2 Bl. Com. 419. The learned judge there also states, (and so the law clearly seems to be,) that “if a man starts game on another’s private grounds and kills it there, the property belongs to him on whose ground it was killed, because it was also started there, the property arising *ratione soli*: whereas if after being started there it is killed in the ground of a third person, the property belongs not to the owner of the first ground, because the property is local, nor yet to the owner of the second, because it was not started in his soil; but it vests in the person who started and killed it, though guilty of a trespass against both the owners.” And see *Churchwarden v. Studdy*, 14 East 249.

(*b*) There can be no prescription for a right to fish in the sea, as an-

nexed to certain tenements, such right being common to all the king’s subjects. *Ward v. Creswell*, Willes 265. Kitch. 45, cites 8 E. 4. 10. ‘If the water ebb and flow upon my land, every one may fish there;’ per *Choke*, *ib*.

Fishing with stake nets on the sea coast near the mouth of a river, is not prohibited either by the statute or the common law of Scotland. *Earl of Kintore Appel.*, *Forbes & others Resp.* 4 Bli. N. S. 485. In which case it was held that proprietors of fisheries on the sea coast intitled only by the terms of their grant to fish with a net and coble, cannot be restrained from fishing with stake nets on the suit of owners of fisheries in a river.

(*c*) Some of the books seem to extend the term *free fishery* to public rivers, though not arms of the sea. See 2 Bl. Com. 39. Per Lord *Mansfield*, in *Carter v. Murcot*, 4 Burr. 2164. Per *Holt*, C. J., in *Warren v. Matthews*, 1 Salk. 357.

arm of the sea (*a*), under a grant from the crown (*b*), and is therefore considered as a royal franchise (*c*); and as the jealousy with which this privilege was viewed by the people led to a declaration in King John's charter, [c. 47,] that where the banks of rivers had been first defended in his time, they should be laid open; and in the charter of 9 Hen. 3. c. 16, that no banks should thenceforth be defended, but such as were so in the time of Henry his grandfather (*d*), it has been suggested that 'a franchise of free fishery ought now to be at least as old as the reign of Henry the 2d.' (*e*)

Although it has been supposed that a *several* fishery is a perfectly distinct franchise from a free fishery, in that the owner of a several fishery 'must be, or at least derives his right from, the owner of the soil' (*f*), which is not requisite in a free fishery, for that term imports the right to fish in the waters of another (*g*); and from a *common* of piscary, in that the latter does not imply an exclusive right (*h*); yet others have slighted these distinctions, and considered a free fishery merely as a liberty to fish in the *several* fishery of the grantor (*i*), and to

(*a*) *River Bann* case, Sir John Davis's Rep. 55.

(*b*) The right must be clearly proved, and cannot be presumed. *Carter v. Murcot*, ubi sup.

In a late case where the lord claimed the exclusive privilege of cutting sea-weed (*vraic*) from rocks covered at ordinary tides by the sea, and which right, in the absence of any grant from the crown, could only be sustained by evidence of long and undisturbed enjoyment, the evidence being of a continued adverse claim without resistance, followed up by suit, the court of appeal (privy council) set aside the judgment in favour of the lord. *Benest v. Pison*, 1 Knapp. (P. C.) 60.

(*c*) 2 Bl. Com. 39.

(*d*) See the case of *Weld v. Hornby*, 7 East 195.

(*e*) 2 Bl. Com. 39, 417. 1 Campb. 312 n.

(*f*) 2 Bl. Com. 39. And see *Kitch.* 46, cites 17 E. 4. 6. *Ib.* 47, cites 22 E. 4. 116.

(*g*) *Kitch.* 46, cites 4 E. 3. *Trespass* 222. 7 H. 7. 13. 18 E. 4. 5.

(*h*) Free fishery held to import an exclusive right, equally with a *several* piscary. *Smith v. Kemp*, Salk. 637. 8. C. Carth. 285.

Common of piscary may be prescribed for as appendant to land. *Kitch.* 46.

(*i*) 2 Sid. 8, cited 2 Bl. Com. 40.

be synonymous with *common* of piscary (*a*); and others again have denied that ownership of the soil is necessarily included in a several fishery (*b*).—These conflicting opinions are ably digested by Mr. Hargrave in his learned note above referred to, but that very distinguished lawyer thought proper to leave the question open to future discussion. It would seem, however, to be settled that a fishery in a navigable river described in an ancient grant ‘*separalem piscariam*’ is an incorporeal and not a territorial hereditament, but that where the terms of the grant are unknown, the owner of a several fishery, would be presumed to be owner of the soil (*c*). And the case of *The King v. Ellis* (*d*), shows that particular privileges in the grantee, are inconsistent with a mere incorporeal fishery.

It was decided in the case of *Scrutton v. Brown* (*e*) that a grant by the lord of a manor, (possessing the franchise of a fishery,) of a messuage, &c., and certain sea-grounds, *oyster-layings, shores, and fisheries, with full and free liberty to fish, dredge, and lay oysters thereon*, did not convey a mere privilege and easement only, leaving in the grantor the general property in the soil, but the soil itself, and that the operation of the words ‘sea-grounds’ was not qualified and restricted by the super-added words ‘oyster-layings,’ ‘liberty to fish,’ &c.

The grant in the last-mentioned case described the sea-grounds, &c. to be bounded by the *high and low water*

(*a*) See 2 Bl. Com. 40. *Upton v. Dawkin*, 3 Mod. 97. Comb. 11. *Peak v. Tucker*, cited Carth. 286, marg. But see Salk. 637.

(*b*) Co. Lit. 122 a. Bract. f. 208 b. And see Mr. Hargrave’s note [7] to Co. Lit. 122 b. Where a person exercising the right of fishing in the river Severn, between certain limits within a manor bordering on the river, under a grant from the Crown, also exercised the privilege of landing nets on the beach, and driving stakes, the court

of King’s Bench considered that some territorial right passed by the grant, and that the party was therefore rateable under 43 Eliz., but expressed a clear opinion that a mere incorporeal fishery was not within that statute. *The King v. Ellis*, 1 Mau. & Selw. 652.

(*c*) *The Duke of Somerset v. Fogwell*, 5 Barn. & Cress. 875.

(*d*) Sup. n. (*b*).

(*e*) 4 Barn. & Cress. 485.

marks, and the court of B. R. held that those words were to be construed with reference to the rule of common law upon the subject of accretion (*a*), and that as the high and low water marks shift, the property conveyed also shifts, for that land between high and low water marks can only vest in a subject as the grantee of the crown, and that the crown by a grant of the sea-shore would convey not that which at the time of the grant was between the high and low water marks, but that which from time to time should lie between those two *termini*.

It has been adjudged that every subject may fish in navigable rivers, the king's prerogative right being confined to whale and sturgeon (*b*); and that the rule extends even to arms of the sea (*c*), unless an exclusive right exists by prescription (*d*).

The reader is reminded that in the case of *The Mayor & Commonalty of Orford v. Richardson*, Lord *Kenyon* (the other three judges of the court of B. R. concurring) held, that there may be a prescriptive right in a subject to a *several* fishery in an arm of the sea (*e*); and that in the case of *Rogers v. Allen* (*f*), *Heath, J.*, held, that a *several* fishery in a navigable river, may pass as appurtenant to a manor.

(*a*) This case is therefore confirmatory of the decision of *The King v. Lord Yarborough*, 3 Barn. & Cress. 91, 4 Dow. & Ry. 790, ante, pt. 1. p. 40, that land gradually and imperceptibly added to the demesnes of a manor by the alluvion of ooze, sand, &c., belongs to the lord, and not to the King, and so distinguishable from the case of large spaces of land left by the sudden retirement of the sea.

(*b*) Ante, p. 785. n. (*a*). And see stat. 17 Edw. 2. c. 11, *de prerogativa regis*.

(*c*) *Warren v. Matthews*, 6 Mod. 73. S. C. 1 Salk. 357. Anon. 1 Mod.

105. Ante, p. 798.

(*d*) *Carter v. Murcot*, 4 Burr. 2162. 4 T. R. 439, in *The Mayor, &c. of Orford v. Richardson*. And see *Bagott v. Orr*, 2 Bos. & Pul. 472. In the case of *Chad & Tilsed*, 2 Brod. & Bing. 406, (ante, p. 785,) *Dallas, C. J.*, observed that 'if the usage had been only of forty years' duration, and had been applied to establish an exclusive right over an arm of the sea, *that* could not destroy the right of the subject.'

(*e*) 4 T. R. 439. Hargr. Tr. 19.

(*f*) 1 Campb. 312. See this case on a point of evidence, ante, pt. 1. p. 600.

When a river, not navigable, runs between two manors, and is the meer and boundary of the manors, each lord has a moiety of the river and fishery (a).

And when no manorial franchise is claimed in an inland river, not navigable, the right of fishery is in the proprietors of the land on either side, as owners of the soil or bed of the river, and generally extends *ad filum medium aquæ* (b).

The franchises of free chase, free warren, and free fishery may, I apprehend, like other franchises, be lost by non-user or abuser, as well as by surrender to the crown (c); but we have seen that minor prescriptive rights exercisable by the lord of a manor, will continue, notwithstanding the court baron should be lost (d).

(a) Davis's Rep. 155. 1 Mau. & Selw. 661, in *The King v. Ellis*.

(b) *Carter v. Murcot*, ubi sup. And see Davis's Rep. 155.

(c) Cro. Jac. 155. 12 Mod. 271. And see as to misuser, ante, p. 792. But the misuser of one of several

franchises, not dependent on each other, is not a forfeiture of the whole, but of the one only which has been mis-used; contra, if the one is wholly dependent on the others. Br. Franchises, pl. 14.

(d) Ante, pt. 1. p. 7.

CHAP. XXI.

OF THE JURISDICTION OF COURTS LEET.

Origin and Nature of the Court Leet.

THE leet, which is a court of record (*a*), is described as one of the most ancient tribunals noticed by our common law (*b*), and is accounted the King's Court, for although this franchise is frequently held by the lord of a hundred or manor, under a grant from the crown, or by prescription, which presupposes such grant (*c*), yet the lord is intitled only to the profits of the court (*d*), and (in legal phraseology) the day is to the king (*e*).

The court leet is by some writers said to be derived out of the sheriff's *tourn* (*f*); but the observation may, I think, be considered as a mere *obiter dictum*, as far, at least, as it may tend to impugn the opinion of many of our ancient law authorities, that the jurisdiction and privileges of the leet were purchased of the crown by thanes or barons, and others of large territorial possessions, in order that the people might have justice rendered to them nearer to their own homes; and

(*a*) Br. tit. Leet & Tourn, pl. 39.
F. N. B. 82. 2 Inst. 143. 4 Inst.
263. Kitch. 82. Hetl. 62.

(*b*) 7 H. 6. 12. 2 Inst. 70. 3
Burr. 1860. And it is said to have
been ordained by king Alfred. Mirr.
c. l. § 3. *Bullen v. Godfrey*, 1 Roll.
Rep. 73. Judge Jenkins in his *papic
consultum*, written during the Com-
monwealth, states (p. 1.) that the
court leet was established long be-
fore the Conquest. And see Rits.
on Courts Leet 34.

(*c*) 2 Inst. 72. Finch's Law, 246.

F. N. B. 160-1, and the notes. Co.
Cop. s. 31. Tr. 51.

(*d*) 41 E. 3. 26. Br. Leet 4. Kitch.
82. The lord of a leet cannot claim
the wastes by prescription, which
may belong to one who has a manor
without a leet. See 9 H. 6. 44.
cited, Br. Leet, 2.

(*e*) 41 E. 3. 26. 44 E. 3. 19. Br.
Leete, pl. 4. 5. Kitch. 82. 2 Inst.
140. Co. Lit. 117 b.

(*f*) 4 Inst. 261. Cromp. 230 b.
Shepp. Court Keeper's Guide, 4.

whereby I conceive the power of the sheriff, in his tourn, was superseded, or at least suspended, to the extent of the local confines of each particular grant.

The close resemblance which the leet jurisdiction bears to the Anglo-Saxon institutions, beginning with Ethelbert in 561 (*a*), would seem fully to justify the opinion formed of its great antiquity, but I do not find that the term *leet* is mentioned in any historical work illustrative of the Anglo-Saxon jurisprudence.

The generic character of the leet jurisdiction may, perhaps, be best illustrated by a reference to the territorial divisions, and to the several independent communities established by the Anglo-Saxon kings, and by a brief sketch of the different ranks of people, and the mode of administering justice at that period of our history.

It is supposed that the Anglo-Saxon monarchs divided their territories into shires or counties, and townships, in imitation of their continental sub-divisions, called by the Romans *pagi et vici*, as such divisions are frequently mentioned by historians before the end of the heptarchy (*b*); and it seems equally probable, that King Alfred, who has the credit of that great and judicial polity, was not in fact the first to introduce the division of the kingdom into counties; but our historians certainly appear to be agreed, that he made a new and more regular division of it, differing from that which subsisted under the heptarchy, and probably introduced the sub-divisions of

(*a*) I submit that the remedial, if not the alleged legislative character of the ancient court leet, may be traced even to the continental Saxon institutions. The Gaugrave held his Gauding, or Moot, every six weeks, and all the tenants within the Gau owed suit and service to this court; and presentments were there made by the Burmeysters or Bailiffs, similar to those of the Court

Leet, of all who neglected to appear at the court, and of bloodshed, assaults, and all other crimes punishable by loss of life or limb. Vide *Speculum Saxonicum*; and also an interesting and erudite article in the Edinburgh Review of February, 1822, No. 72. p. 287 et seq.

(*b*) See 3rd vol. of Henry's Hist. of Great Britain, p. 311.

shires or counties into *trithings*, or *laths*, or *rapes* (a); and without doubt he has the merit of the still further subdivision of *trithings* into *hundreds*, and of each hundred into *decenaries*, *tithings*, or districts, consisting of about ten families (b).

The lowest orders of the people among the Anglo-Saxons were complete slaves, either by birth or by forfeiture of their freedom by crimes or breach of faith, and were incapable of any office of trust or honour; but the introduction of Christianity led to frequent manumissions, and established another class of people called *frilaxin*, and persons so made free were considered to be in a middle state only, between slaves and freemen.

Those who were freemen from their birth were called *ceorls*, and constituted a middle class between the nobility and such labourers and mechanics as were slaves, or descended from slaves; and being generally devoted to agriculture, a *ceorl* was the usual name for a husbandman or farmer; but the acquisition of five or more hydes of land, the attainment of priest's orders, or making three voyages beyond sea in his own ship and with his own cargo (c), advanced a *ceorl* to the dignity of a thane; and his degree of nobility was considered to be higher than the next description of thane I shall notice.

(a) Ib. 317. Spelm. Vita Ælfrida, p. 74. St. Amand, Hist. Essay, p. 68. These intermediate divisions between Shires and Hundreds still subsist in England, the first (*i. e.* *Trithings*), in the county of York, where, (as is observed by Mr. Just. Blackstone in his commentaries,) by an easy corruption, they are denominated *Ridings*; the second (*i. e.* *Lathes*), in the county of Kent; and the latter (*i. e.* *Rapes*), in the county of Sussex.

(b) The subdivision of the kingdom by our Anglo-Saxon ancestors,

and the general character of English jurisprudence at that period, bear a strong affinity to the polity and integral communities of the Scandinavian nations. The *Hærad* appears to have been the primary division of their land, analogous to the Anglo-Saxon Hundred; and this district was usually subdivided into quarters, and occasionally into *tithings*. See Edinburgh Review of February, 1822, p. 293.

(c) 3rd vol. Henry's Hist. of G. B. p. 325. St. Amand, p. 73.

A ceorl who had a propensity to arms, often became the attendant of some warlike earl, and was called his *huscarle*; and by obtaining a reward from his patron, in land or warlike habiliments, was likewise considered as a thane, and this was the lowest degree of nobility. The higher class of thanes were denominated kings' thanes, and appear to have been of three different degrees.

The thanes were the only nobility among the Anglo-Saxons, but the princes or members of the royal families were of a still superior rank.

With respect to the Anglo-Saxon jurisprudence, it should be premised that the kings were considered as the chief judges in their respective territories, and frequently administered justice in person. Alfred the Great, we are told, sometimes employed both day and night in hearing causes on appeal, with the aid of learned men, acting as assessors, and forming a supreme court of justice. But after the establishment of monarchy, it was found to be necessary to appoint a Chief Justiciary, to preside in the King's Court in his absence; and the first institution of that office is supposed to have been at the time of the incursion of the Danes.

The supreme tribunal of our Anglo-Saxon ancestors was the WITTENA-GEMOT (*a*); which was not only a court of civil and criminal jurisdiction, but all the affairs of state, political and ecclesiastical, were there debated and regulated (*b*).

The ordinary assembly of the members of this court appears to have been at the festivals of Easter, Whitsuntide, and Christmas, it being the prerogative of the king to appoint the time and place of their meetings; but on very solemn and important occasions, all the constituent members were summoned, who being numerous, and the persons interested

(*a*) Wittena-gemot or assembly of wise men. Wilk. L. Sax. p. 14, 72, 76-9, 102, &c. Spelm. Gloss. in voc. Hist. Eliens. c. 10. 3 vol. Hen-

ry's Hist. of G. B. 372. Turn. Hist. of the Angl.-Sax. 220, 261.

(*b*) 3 vol. Henry's Hist. of G. B. p. 369.

in their debates being still more so, the wittena-gemot was frequently held in the open air, on some extensive plain (*a*), and on the banks of a river near a large town, for the benefit of water and provisions (*b*); and often under a large tree, for the convenience of shade and shelter (*c*).

The next court in point of importance of Anglo-Saxon institution was the SHIRE-GEMOT, which was for the trial of both criminal and civil causes; and here transmissions of real property were recorded, and ecclesiastical affairs transacted (*d*). The shire-gemot was held in each county twice in every year, viz. in the Spring and Autumn; and was attended by the bishop and clergy of the diocese, the *alderman* (*e*) of the

(*a*) 1 Tyrr. Hist. Engl. Introd. civ. cv. Camd. Brit. Isle of Man. Spelm. Gloss. voc. Mallobergium. Eadmer. 9 & Seld. Spicileg. 197. Lamb. Preamb. Kent. 441-3, tit. Eareth. Mr. Watkins in his 2nd vol. on Cop. [p. 10.] notices that the Welch and Irish, and other ancient nations, held also their courts of justice in the open air, and generally on the slope of a hill; and adds, "In deed so prevalent was this custom among the Britons, that the top of a hill or eminence became, at length, significative of a court of justice; and the names of several persons who had jurisdiction were allusive to it;" [cites Owen's Welch Dict. voc. Bre. Brezyn, Breyr, Crug, &c.] "And vestiges of this custom remain among us to this day in the *Moot*, or *Mute*, or *Parling Hills*, still known in various parts of this and the neighbouring islands." [cites Spelm. Gloss. v. Mallobergium, & Whit. Manch. B. 1. C. 8.]

(*b*) Henry's Hist. G. B. 3rd vol.

p. 373. For the names of the places where the Wittena-gemots met, see Hody's Hist. of Convocations, referred to *ib*.

(*c*) Edda. Fab. viii. North Antiq. vol. ii. p. 53 n. (A.) 1 Tyrr. Hist. Engl. 160. Transl. Mall. vol. ii. p. 56. And see 2 Watk. on Cop. p. 9 to 16. Kennet's Paroc. Antiq. Glos. v. Franciplegium.

(*d*) Vide Turner's Hist. of Anglo-Sax. p. 192, 261. There is a remarkable affinity to the Anglo-Saxon Shire-govemment in the constitution of the Norman Isles. See the excellent article in the Edinb. Review of Feb. 1822, already referred to.

(*e*) The earldorman [or alderman] or, as he was called in the Danish times, the *earl*, of a shire or county, was a person of the highest dignity and greatest power among the Anglo-Saxons, and this magisterial office was generally enjoyed by the thanes of the largest estates and most ancient families. 3rd vol. Henry's Hist. of G. B. p. 342.

shire, the *shiregerieve* (*a*) law-men, magistrates, and thanes (*b*). The court, after a discourse from the bishop on their relative duties as Christians, and from the alderman or one of his assessors, on the laws of the land, and the duties of good subjects and citizens, proceeded to try, first, the causes of the church, next, the pleas of the crown, and lastly, the controversies of private parties (*c*). The decision on evidence of facts appears to have been by the votes of the whole assembly, collected by the law-men; who, when any question of law arose, answered it by the *dome-boc* or law-book (*d*).

The shire-gemot often continued for several days, without finishing the whole of its business: so that another court called a *county court* was directed to be held by the shiregerieve, from four weeks to four weeks, to determine the causes left undecided at the shire-gemot (*e*).

(*a*) The *shiregerieve* was an officer appointed in every shire, inferior in dignity to the alderman, and who acted as his assessor and chief minister when present, and supplied his place when absent. 3rd vol. Henry's Hist. of G. B. p. 344.

(*b*) It seems to have been the royal prerogative, both before and after the establishment of monarchy, to appoint the *aldermen*, *shiregerieves*, *domesmen*, and other civil and military officers, but this power was at length vested in the Wittena-gemot. 3rd vol. Henry's Hist. of G. B. p. 361; or in the shire-gemot, see *ib.* p. 343.

(*c*) 3rd vol. Henry's Hist. of G. B. 348.

(*d*) It appears that independent of the wittena-gemot and shire-gemot courts, a special general *placitum*, or plea of land, was frequently held in different parts of England, as might best suit the parties in the

cause. Turner in his Hist. of the Anglo-Sax. (p. 193, &c. 264,) has selected several cases of the kind from ancient documents; one in which a *general placitum* was held first at London, and in a few days after at Northampton, and subsequently, on the death of one of the parties, at Walmesford, in eight hundreds; and another in which 'a *great placitum* of the citizens and hundreds' was held at Cambridge.

A great gemot or general placitum was sometimes convened from eight hundreds and sometimes from three. 3 Gale 469, 473, cited Turn. Hist. of Anglo-Sax. 262; who also notices, that by the laws of *Canute* it was ordered that there should be two shire-gemots, and three burgh-gemots, every year, and that the bishop and earldorman should attend then, for which is cited, Wilk. p. 136.

(*e*) These subordinate county courts appear sometimes to have been

It was originally the province of this subordinate or county court, to hold also an inquest or view of frank-pledge (*a*), to see that every person above twelve years of age was in some tything or decennary, and had taken the oath of allegiance, and found security to the king for his good demeanor.

Dr. Sullivan, in his lectures on the laws of England (*b*) observes that, “ since the time of King Edgar, at least, this court “ has been divided into two, the criminal matters, both ecclesi- “ astical and civil, and also the view of frank-pledge, were dis- “ patched in one court called the *tourn*, that is, the *circuit*, “ from the bishop and sheriff’s going circuit through the coun- “ try; and the civil business was dispatched in another, called “ the *county court*. The law was, that the sheriff and bishop “ should twice in the year (*c*) go their circuit or tourn, namely, “ in the month following Easter, and the month following “ Michaelmas; and should hold their court in every hundred “ of the county; but *the view of frank-pledge* was to be taken “ only once a-year, namely, the tourn after Easter. But for “ the more ready dispatching civil causes, the county court “ was held once a month, that is in twenty-eight days, reckon- “ ing a month by four weeks, and not by the calendar.”

There would appear to have been several courts of judica- ture established on the subdivision of shires or counties, pos- sessing a similar jurisdiction to the shire-gemot, but which were nevertheless subordinate to it, each court in its order of superiority having an appellant jurisdiction.

The one which was next in point of importance to the shire-gemot, I apprehend, was the *trithing court*, in which the *trithing-man* or *lathgerieve*, who was the next magistrate below the *alderman*, and above the *hundredary*, presided;

called *folckmotes*, and the shire- grieve, the law-men, and the parties and their witnesses in the causes to be tried, were alone obliged to attend them. See further as to folckmotes, post. p. 811.

(*a*) See further as to this subject, post. p. 821, et seq.

(*b*) P. 269.

(*c*) See Powell on courts leet, p. 13.

and this court was composed of the members of about three or four hundreds within that division of the county which was called a *trithing*, *lath*, or *rape* (*a*).

This court is stated by our chroniclers to have been discontinued at an earlier period than those I am about to mention, and to have left but few vestiges behind it (*b*).

The next court in order of superiority was the *hundred court*, and this had jurisdiction over ten tithings, or that division of a county which was termed a *hundred*, and the presiding magistrate at this court was called the *hundredary*, who was generally a thane residing within the hundred, and elected to the office (considered to be both honourable and lucrative) by the other members (*c*).

This court usually met once every month, and all the members, in imitation of their German ancestors, appeared in their arms (*d*), it being a custom, at the opening of every meeting, for each of the members to touch the hundredary's spear with his own, in token of their submission to his authority, and of their readiness to fight under his command (*e*).

The archdeacon, and sometimes the bishop, presided in this court with the hundredary, and it should seem that the court had no power to condemn any person to death or slavery (*f*).

(*a*) Ante, p. 805. n. (*a*).

(*b*) 3rd vol. Henry's Hist. of G. B. p. 342.

(*c*) 3rd vol. Henry's Hist. of G. B. p. 339.

(*d*) And this obtained for it the name of the *Wapentac*.

(*e*) 3rd vol. Henry's Hist. of G. B. p. 340, cites Wilk. Leg. Sax. 203.

(*f*) 3rd vol. Henry's Hist. of G. B. p. 340, who also states that the proceedings of this court were summary, and that all questions were determined by the votes of the members collected by the hundredary, who could only pronounce the sentences.

The Anglo-Saxon hundred court seems to have survived the trithing court, and to have been discontinued in the reign of Edward the Third; but there are hundred courts existing at this day, possessing both civil and criminal jurisdiction, under the title of courts baron and courts leet, and which probably were granted to barons and others of great rank on the decline of the Saxon jurisprudence. And hence, I apprehend, the *baron's mote* or *moot court*, as distinguishable from the court baron incident to every manor, and which latter court, as we have seen, is not

The chief court in cities and towns appears to have resembled the hundred court (*a*), and to have been called the *burgemote*, or *folc-gemot*, [*or folckmote,*] and was composed of all the burgesses (*b*), the presiding magistrate being called the *alderman* or *towngerieve*, and in sea-ports, the *portgerieve* (*c*). This court was held monthly, and on particular emergencies the chief magistrate had authority to convene special meetings by the sound of the *mot-bell* (*d*).

We have already seen that each hundred division was again divided into ten tithings, each tithing consisting of about ten families. One of the most respectable members of each tithing was elected the chief magistrate, and was sometimes called the a court of record. Ante, pp. 715, 716.

There are, however, hundred courts, without the appendage of a leet franchise, and then they are merely courts baron; the freeholders being the only suitors, and being also judges of the court.

(*a*) The ward inquest in the city of London seems to correspond with the leet of the hundred.

Lord Coke observes that the ward-mote in the city of London is derived from ward and mote, that is, the ward court, and adds; "In London the parishes are as towns, and the wards are as hundreds." 4 Inst. 249.

No notice is taken in Domesday-book of the county court, or the hundred court, nor does it contain positive evidence of a popular magistracy in ancient burghs, but this may be accounted for by the circumstance of the leet jury being a common law right belonging to all burghs, and to towns and manors held in ancient demesne, constituting independent communities. See the article in the Edinb. Review referred to, ante, p. 805. n. (*b*).

(*b*) Mr. Serjt. Merewether in his very learned and interesting report of the *West Looe* case, has urged with great ability, that 'burgess' and 'inhabitant' are synonymous terms.

(*c*) In sea-ports and haven-towns, the court resembling the hundred court, was called the *portmote* or *portmoot* court, *curia portus*. 4 Inst. 148. See the introduction to the report of the *West Looe* case above referred to, in which Mr. Serjt. Merewether observes, [p. 39. n. b.] "Port did not in the Saxon times, mean, according to its modern acceptation, only a sea-port, or a haven, but, also, generally any town."

(*d*) Wilk. Leg. Sax. p. 204. "Folc-gemots were ordered not to be held on a Sunday; and if any one disturbed them by a drawn weapon, he had to pay a wite of one hundred and twenty shillings to the ealdorman." Turner's Hist. of the Anglo-Sax. p. 264, cites Wilk. 42. Vide post p. 820, as to the leets of borough and great towns.

alderman or *freeburgh*, but more commonly *borsholder*, or *tithingman* (a).

An assemblage of the tithing, with this magistrate at their head, constituted a court of justice; and it was the duty of the borsholder or tithingman to convene the members of his tithing, and to put their sentences into execution; and if not submitted to, the cause was referred, by way of appeal, to the next superior court.

Besides the hearing and determination of controversies arising among the decennaries, it was customary at the tithing courts for each member to produce his warlike habiliments to be inspected, and at these courts new members were admitted, and testimonials given to those who had occasion to remove into other tithings (b).

The subdivision of each hundred into tithings or decennaries was admirably adapted for the preservation of the peace and good order of society; for it appears that all the members of each decenary or neighbourhood, (as it was sometimes called,) and who were of the same rank (c), were pledges or sureties

(a) From the Saxon word *borh*, a surety, and *alder*, a head or chief. Spelm. Gloss. p. 86.

Lord Coke says "of burghs some be incorporate and some not; and some be walled and some not. It was in former times taken for those companies of ten families, which were one another's pledge, and therefore a pledge is in the Saxon tongue *borhoe*, whereof some take it that a burgh came; whereof also commeth headborough or borowhead, *capitalis plegius*, or chiefe pledge, viz. the chiefe man of the borhoe whom *Bracton* calleth *frithburgus*; and hereof also commeth burgbote, which as *Fleta* saith, signifieth *quietantiam reparationis murorum civitatis aut burghi*."

"Every city is a burgh, but every burgh is not a city." Co. Lit. 109 a.

The office of *constable*, at the present day, seems to correspond with that of *borsholder* in the Saxon æra; for the terms *tythingman* and *borsholder* are frequently used in modern statutes as synonymous with *constable* and *head-borough*. Sometimes where two constables are chosen at a court leet, for a particular township or parish, another officer is elected for the same precinct, called a *third-borough*, who acts as an assistant constable.

(b) 3rd vol. Henry's Hist. of G. B. p. 334-5.

(c) Thanes were not members of any tithing, the family of each thane being considered as a separate tith-

for the good behaviour and probity of each other; so that if any member committed a crime, the tithing or decennary by which he was pledged, were within one and thirty days to bring him forth, to answer for the offence; and on failure of so doing, they were compelled to pay the mulct prescribed by the law for the crime committed; unless indeed they could prove on oath before a magistrate, that none of the members were accomplices in the crime, and also engaged to bring the offender to justice as soon as they could apprehend him. So again if any member sustained an injury or loss, the rest contributed to redress or repair it; and in case of gross misconduct, the offender was expelled the decennary, and became an outlaw and vagabond (*a*).

In further support of this admirable system of police, (and upon patriarchal principles,) the head of every family was under a heavy responsibility, and had great authority over all the members of his family; and became also responsible for the good conduct of every stranger staying with him for three days and nights.

During the Anglo-Saxon æra, the sovereignty and the police of the country were still further maintained by an obligation imposed on every person above the age of twelve years, (with, perhaps, all or some of the exceptions I shall presently mention, in tracing the similarity of the leet jurisdiction, and the Anglo-Saxon tourn,) to swear allegiance to the King, and submission to the laws, before his countrymen in the hundred court or folc-gemot (*b*), on pain of an imprisonment, after which he became law-worthy, or a *legalis homo*; and this, as we have already seen, was inquired of in the division of the

ing, and he himself responsible for all the members.

(*a*) 3rd vol. Henry's Hist. of G. B. p. 337. The members of a decennary, were sometimes called *deciners* or *deziners*. The term *dizein*

we also find used by some of our ancient law authors. See *Mirr. c. l. s. 17*. Hence, probably, by a misprint or corruption, the terms *doziners*, and *dozein*.

(*b*) 2 Inst. 70.

subordinate shire-gemot or county court, termed the inquest or view of frank-pledge (*a*).

It may be difficult to determine at what particular period the court leet was established, as an appendant juridical franchise, and whether before or after the discontinuance of the Anglo-Saxon trithing and hundred courts.

And although the appendancy of the court leet to a hundred or manor, may be thought to furnish evidence of its being of feudal origin, yet if it be true that the word leet is of Saxon derivation (*b*), the affirmance of the existence of the court, as an appendant franchise, even before the conquest (*c*), is greatly strengthened; and it may be proper to notice, that the tenure of land in England in the Anglo-Saxon æra, is very far from supplying an argument unfavourable to the supposed appendancy of the franchise to a hundred or manor at that period, as it appears that the Saxon tenure bore a strong affinity to the free socage tenure existing in England at the present day; for the Saxon lands in general were allodial, but subject to military services; and were not only descendible (*d*), but alienable at the pleasure of the owner, and devisable.

(*a*) Sulliv. 269. Ante, p. 809.

(*b*) Lord Coke informs us that *leþ*, *leth* or *leet* is a Saxon word, and cometh of the Verb *ꝥelapian* or *ꝥeleþian* (*ꝥ* being added *euphoniae gratia*); i. *convenire*, to assemble together, *unde conventus*. 4 Inst. 261. It is also said to be derived from the Saxon word *læt*, signifying *censura*, *arbitrium*, “because this court redressed wrongs by way of judgment against any person of the frank-pledge, who had done any wrong or injury to another.” Lex. Man. 131. And again it is supposed to be derived from the Saxon *leob*, *plebs*, and to mean the *populi curia* or folkmote. See Ritson on court leet, in the in-

roduction. It rather appears to me, however, to be derived of the Saxon word *leþ*, to assign, [or grant,] being a juridical franchise held by a subject under a grant from the crown.

(*c*) See Ritson on courts leet 4. Per Lord Mansfield, 3 Burr. 1860. Ante, p. 803. And we are told that the earls of each county, and the lords of each leet, and likewise representatives of towns, chosen by the burgesses of the town were summoned to the Wittena-gemot. See Lamb. Arch. 239, cited 2 Bac. Abr. p. 94.

(*d*) The descent of Saxon lands was to all the sons equally, as gavelkind lands in Kent, which seems to be a customary relic of Saxon law,

In taking leave of the judicial polity of our Anglo-Saxon ancestors, and previously to entering on an inquiry into the constitution and authority of the court leet, as it appears to have existed from the period of the Norman conquest, it should be mentioned that the Wittena-gemot court, and those I have noticed of a subordinate jurisdiction, would seem to have been continued for a considerable time after the conquest; but William the Conqueror becoming jealous of the legislative functions of this assembly, established a constant court in his own hall (*a*), thence called *aula regia*, or *aula regis* (*b*). This court was composed of the officers of the King's palace, of which the justiciar [*capitalis justiciarius totius Angliæ*] was the president; and who was also the principal minister of state.

The *aula regis* removed with the King from one part of the kingdom to another; and all matters both civil and criminal, and regarding the revenue, were transacted there (*c*).

and, like gavelkind lands, they were not forfeitable for felony. Sulliv. 278.

(*a*) *Aula*, *halla*, or *hauia*, a hall or chief mansion house, was the usual appendage of a manor. Domesd. tom. i. 21 b. Ib. 285 b. Ib. 286 b. Ib. 12, 293, 307 b. 308. Ib. 368 b. Ib. 63. Ib. 309. Ib. 29 b. Ib. 32 b. So *caput manerii*, 1 vol. 11, 26, 166. 2 vol. 227, 293 b. See App. to 2nd Gen. Rep. of the Comm. of Pub. Rec. p. 441. So the term *hall* is sometimes applied to a court baron; and hence also the *town-hall*, *shire-hall*, &c. 2 Watk. on Cop. 18. Hence too the Hallmote courts in the city of London. 4 Inst. 249.

In Yardley Hastings in Northamptonshire, and many other places, the manor court is opened in an ancient hall, and then, from its dilapidated state, adjourned to some inn, or other convenient place within the

manor.

(*b*) According to Sullivan, this court existed even in the Saxon times, under the term *curia regis*. See his Lect. on the Laws of England, p. 271; and I apprehend that the Wittena-gemot was a branch of this court.

(*c*) The latter were heard in the Treasury, called the Exchequer from the chequered cloth wherewith that table was covered; but all criminal matters were heard only in the hall; the civil pleas were heard in either court. This was the sovereign court of the kingdom, [Mad. c. 8.] where justice was administered by the King himself and his officers; consisting of the *justiciar*, the chancellor, [who formed all patents, and had the custody of the seal both for writs and patents,] the *treasurer* or *auditor*, [who presided in matters relating to the revenue,] the *constable* and *már-*

In some cases of very great importance, as upon the levying of war, or raising an escuage, it was customary to summon to the *aula regis* those who held of the King *in capite*, and this is considered to have been the foundation of the English parliament, as far as regards the jurisdiction of the Upper House, but whether the Commons of England made part of that assembly, or at what period the lower house was instituted on its present representative system, does not clearly appear (*a*); the more general opinion, however, is that *barones majores* (*b*), were alone summoned to the *curia regis*, and that the *barones minores* first sat by representation, in the reign of Henry the Third (*c*), the overwhelming influence of the greater barons inducing the institution of this popular assembly (*d*).

And it is generally supposed that about this period, or as some say about the twenty-third Ed. 1., the crown was induced, as a further check to the power of the barons, to create a cer-

shall, [who determined all matters of war and peace, according to the law of nations and of arms,] the *seneschal* or *steward & marshall*, [who determined all quarrels between the King's menial servants, and had the charge of the prisoners, and the control of the King's household,] and the *chamberlain*, [who had the charge of the King's money issued out of the treasury.]

(*a*) The Commons of England certainly appear to have formed part of the Wittenagemot courts, or parliamentary assemblies, in the Saxon æra. And it is a natural conclusion that the parliament is not a feudal institution, but has resulted from the concentration of the remedial and judicial authorities of the kingdom. Ante, p. 814. n. (*c*).

(*b*) Ante, p. 715. n. (*a*).

(*c*) Brady's answer to Petit, 133.

Camd. Britt. 13. Dugd. Orig. Jur. 18. But see 4 Inst. 2, where Lord Coke says that lords and commons of ancient times sat together, and refers to Rot. Parl. 5 E. 3 nu. 3.

And it is by no means improbable that after the greater barons were allowed to alienate their lands in fee, those holding of them by subinfeudation, and termed the *barones minores*, were summoned to convocation for a time, and that these afterwards constituted the knights of the shire, or representatives of counties, in the lower house.

(*d*) Spelm. Gloss. 69. Seld. tit. Hon. 692. Selden does not determine the point, but [p. 704. ib.] says that it was attempted, 17 John, to bring in the *barones minores*, as appears by the great charter granted by him at Runnymede.

tain number of free boroughs (*a*), conferring the privilege of returning two of their burgesses to share with the knights of the shire, the legislative powers of the third estate of the high court of parliament. It is observable, however, that these grants were quite distinct from charters of incorporation, which came into use about the reign of Henry the Fifth, and in some of which, particularly those granted after the reign of Henry the Sixth, the common law right of voting was altered, and in others not so. But the greater proportion of lay corporations appear to have been created in and subsequently to the reign of Queen Elizabeth.

The power of the justiciar (*b*), and of the barons becoming equally a subject of jealousy with the crown, it was deemed necessary to introduce a new judicial policy, which gave rise to the courts as they now exist in Westminster Hall. And to obtain countenance to this division of the courts, the King himself sat in person in the Court of King's Bench, and hence the power which that court still retains over other jurisdictions, and the idea of the king being always present in it (*c*).

(*a*) Vide Mr. Serj. Merewether's observation in his preface to the Report of the West Looe Case, that it was not in consequence of their being trading towns that the boroughs were summoned to send representatives to parliament, as advocated by Dr. Brady and others, though at an early period of our history burgesses were summoned by special writs for special purposes, as to settle the *staple*, &c. And see 2 Pryn. B. P. R. 95. et seq. 4 Pryn. P. W. 186. et seq. So also port towns, some not being boroughs, and others which were then representative boroughs, were summoned by a writ to send three or four masters of vessels, or others of the

town if there were not sufficient masters of vessels, to a *council* at Westminster, to treat with the King, or with others of his council, upon certain matters relating to the King and his honour, and the defence and preservation of the realm, and the shipping thereof. See the above preface of Mr. Serj. Merewether, p. 5.

(*b*) This power is represented by Sir *William Blackstone* to have induced King John to consent to that article which forms the 11th chapter of Magna Charta, and enacts that "*communia placita non sequantur curiam regis, sed teneantur in aliquo loco certo.*" 3d vol. Com. p. 39.

(*c*) Bacon. Abr. 2 vol. 95:

When the courts of Westminster Hall began to draw to themselves the jurisdiction of the courts existing under the Anglo-Saxon jurisprudence, and after this important change in the administration of justice had introduced the offices of *justices errant*, or *itinerant* (a), *justices of assize* and of *gaol delivery*, and of *the peace*, with the courts of *quarter sessions*, &c. the jurisdiction of the county court was restrained to pleas of debt under 40*s.* and all pleas of land were discussed in the higher tribunals; and in course of time the various *mote* or *moot* courts of which we have spoken, fell altogether into disuse. Nor was it likely that the leet, so analogous in its juridical character and powers, to that branch of the county court which is called the Sheriff's Tourn, should long survive the shock of this great innovation, and hence may be traced the very mouldering state of that once venerable fabric, the *Court Leet*.

It is clear, however, that the ancient powers of the leet are but little circumscribed by any legislative ordination; on the contrary, that they have been recognized and enlarged by several acts of parliament: I shall now therefore the more un-

(a) The proceedings of the court of the justices in *Eyre* [in itinere] show that it was in effect nearly the same as the Saxon Shire-gemot. See the MS. formerly belonging to Sir M. Hale in Lincoln's Inn Library. Mr. Ritson in his treatise on courts leet, [p. 7. n. u.] in adverting to the practice among our ancestors of administering justice in the most public manner, and generally, for the convenience of the suitors, in the open air, (see ante, p. 807,) and as a curious illustration of that principle, observes "that the justices itinerant in the time of Edward the First, sat at the Stone-cross, (opposite the Bishop of Worcester's house, now Somerset-place,) in the Strand. This venerable monument, which

" was even then ancient, (Pat. 4. E. 2. pl. 2 m. 15 d.) is mentioned by Stow as standing headless in 1598. The justices probably in bad weather sometimes sat in the bishop's house; as the steward or bailiff of a leet would, for the same reason, occasionally do in the church, where, notwithstanding a canon, (1 Burn. E. L. 361,) it is in many places still held." And in another part (p. 15.) the same author observes, "Dr. Hickes thought that justices itinerant were originally instituted by Henry II. Dis. Epis. p. 8. 48; but Mr. Madox has produced evidence of their existence in the reign of King Stephen. (Hist. Ex. p. 100)."

hesitatingly proceed to a further illustration of the constitution, and to an inquiry into the present practice, of this relic of Saxon jurisprudence.

Appendantcy of the Leet(a).

It will necessarily be inferred from the preceding observations on the nature and origin of the court leet, that it may be appendant to a hundred (*b*), or to a manor (*c*). And although there possibly may be instances of leet jurisdictions existing by prescription (*d*), as separate and unappended franchises, yet as the court was instituted under the powerful influence of the ancient thanes or barons, to invest them with precisely the same judicial character as the sheriff in his tourn, and for the ease of their tenantry, (who were thereby excused from attending the tourn, held, perhaps, at some distant part of the hundred (*e*),) it is very possible that such franchises, if any do exist, were originally granted by the crown, with reference to some manorial possessions, over which the grantee exercised baronial

(*a*) The style of the court is "The court leet with *view of frank pledge* of *E. C. Knight*, held, "&c." and if appendant to a manor and held with the court baron, it may be thus, "The court leet with *view of frank-pledge*, and court *baron*, of *E. C. Knight*, for the *manor of S. &c.*"

(*b*) And see 8 H. 7. 1. Mar. 75. *Lord Norris v. Barret*, Mo. 426. *Lawson v. Hare*, 2 Leo. 74. 2 Inst. 122.—but Kitch. (p. 78) says that a leet is of necessity incident to a hundred, and cites the above case from the year book (8 H. 7. 1); and see Br. Leet. 23, citing 13 H. 7. 19. Yet it has been held that a leet is not incident to a hundred, *as one liberty cannot be incident to another*, but that

a leet may be appendant to a hundred, 12 H. 7. 16. Br. Leet. pl. 24. Ib. Incidents, pl. 18.

(*c*) 33 H. 6. 4. 18 H. 6. 11. Br. Incidents, pl. 2, 29. 1 Leo. 218. Where three *coparceners* were seised of a manor in fee, to which a leet was appendant, and the King purchased two parts of the manor, it was adjudged that the leet was still appendant to the third part of the manor. Bendl. 11, pl. 45. 1 And. 26. Dy. 30 b. pl. 209.

(*d*) A title to a leet may clearly be made by prescription only. Co. Lit. 114 b. 2 Inst. 72. Ante, p. 803. But it gives no title to the wastes. Br. Leet, 2. Ante, p. 803, n. (*d*).

(*e*) Ante, p. 803-4.

powers; though the fact is incapable of being established at this far distant period, in the absence of the original grants, and also, perhaps, of the more ancient court rolls.

A leet may also be appendant to a vill, or to an ancient messuage (*a*), but it cannot be prescribed for as appendant to a church or chapel (*b*).

It frequently happens in chartered boroughs that the corporation are lords of a manor, purchased under a license of mortmain, extending over the precincts of the borough, to which manor a leet jurisdiction is appendant, and in those instances the franchise exactly accords with the leet of a private person.

In other boroughs and large towns which have not received a charter of incorporation, the mayor or bailiff, or other chief municipal officer, is chosen at the court leet appended to the manor of some private lord, whose jurisdiction encompasses the particular borough or town (*c*); and those places may therefore be said to have no other local magistracy than the common law officer of the court leet. And even in some corporate places the common law election of a chief magistrate is still imitated (*d*).

Ancient leets, indeed, were equivalent in all respects to corporate jurisdictions; and all corporations, and their powers, have been superinduced upon the leet, the capital burgesses in corporate towns corresponding with the members of the leet jury of ancient boroughs (*e*).

When a leet exists in a borough or town, and the powers of the court are exercisable by the mayor, or other chief magisterial officer, and there is no trace of its original institution, it is not devoid of probability that the jurisdiction does not exist

(*a*) 18 H. 6. 11. Br. Incidents 29. For it may be presumed that the house is the site of a manor. See *Gittins v. Comper*, 2 Brownl. 217.

(*b*) 10 E. 3. 5. 18 H. 6. 11. Fitz. Leet 8. Br. Incidents 29. *Tyrringham's case*, 4 Co. 37 a. 2 Brownl. 200, in *Rowles & Mason*.

(*c*) See post p. 830. n. (*a*) p. 842.

(*d*) As at *Yarmouth and Bridgenorth*. Vide also the case of the borough of *Holt*, (*Rex v. Rowland*), 3 Barn. & Ald. 130, post p. 842. n. (*b*).

(*e*) See Mr. Serj. Merewether's preface to the *West Looe case* already referred to.

under a grant from the crown, as an appendant franchise, but that it is a more immediate vestige of the Anglo-Saxon jurisprudence, the term *leet* now used in the style of the court, having, in the adaptation of modern terms to ancient institutions, succeeded to that of *folcmote* (a).

When the Court Leet is to be held.

By Magna Charta, c. 35, no sheriff or *his* bailiff shall keep his tourn in the hundred but twice in the year, once after Easter, and again after the feast of Saint Michael (b), and *the view of frank-pledge* (c), shall be at the feast of Saint Michael, 'so that every man may have his liberties which he had or 'used to have in the time of King Henry our grandfather, or 'which he hath purchased since;' but this clause of the above statute is to be understood of the leet of the tourn, and not of other leets (d); at least not to such as were granted to private persons previously to that statute; but some think that Magna Charta, so far as regards the time for holding tourns and leets, was introductive of a new law (e).

(a) Ante, p. 811.

(b) And by 31 E. 3. c. 15. every sheriff shall make his tourn yearly one time within the month after Easter, and another time within the month after Saint Michael; and if held in any other manner it is void. Fitz. Tourn, pl. 2, cites 38 H. 6. 7.

(c) Meaning that part of the business of the tourn which related to the taking of sureties. Ante, p. 809. Co. Lit. 115 a. n. 10.

(d) 6 H. 7. 2., 8 H. 7. 1. 24 H. 8. 2 Inst. 72. N. 11. Co. Lit. 115. a. And see Br. Leet, 21, 23. 1 Roll. Rep. 201. 2 Leo. 74, per *Rhodes*, in *Lawson & Hares*. Fitz. Tourne, pl. 2. But there are authorities to the contrary. Kitch. 88. Per *Pe-*

riam, 2 Leo. 75. 2 Hal. Hist. P. C. 71. W. Jones, 290. *Dakin's* (or *Dacon's*) case, 2 Saund. 290. S. C. 1 Vent. 106. This was a case in the manor of the mayor, &c. of the city of London, called the King's manor, in the Borough of Southwark.

(e) See 2 Hawk. P. C. 56, where it is said "it seems that no court leet granted since the statute, can be holden at any other time than what is limited by it, because every such court is derived out of the tourn:" Co. Lit. 115 a. n. 12. But as to the reason given in Hawk., see ante, p. 803.

Whether there is any distinction in this respect between leets claimed by grant and those claimed by pre-

A leet held by charter, must be kept on the day or days mentioned in the charter, and when held by prescription, it is to be kept on such certain day or days as may have been the immemorial usage (*a*); and a court leet may be held even oftener than twice in the year, by prescription (*b*); and when the established period is a month after some certain feast, it is to be accounted a lunar month, twenty-eight days (*c*). But the court cannot be held on a Sunday (*d*).

A court leet, it should seem, may be adjourned if the business of the particular court require it, and this should be done by three proclamations (*e*).

Where to be held, and of the proper notice.

The leet of the tourn, or sheriff's frank-pledge is by the statute of Magna Charta, c. 35, to be kept *in certo loco ac determinato* within the precinct (*f*); but it should seem that courts leet of lords of hundreds or manors may be held in any place within the precinct, where the lord shall please (*g*), and they are sometimes held in the church or chapel. There is, however, a canon prohibiting the keeping of temporal courts, *leets*, or lay juries, in the church, chapel, or church-yard (*h*).

It is usual for the bailiff to give fifteen days' notice of the court leet (*i*), by virtue of a precept from the steward of the

description, see *Porter v. Gray*, Cro. Eliz. 245. And note that "The King hath power to make and create a leet anew, where none was before." 1 Brownl. 36.

(*a*) 2 Inst. 72. Kitch. 88. Br. Leet 32. And once or twice a year on reasonable warning, if a court have been kept at uncertain times. 2 Inst. 72.

(*b*) *Edwards v. Hughs*, Gilb. Eq. Rep. 209. 8 Mod. 297. (*Morgan's case*). 1 Roll. Rep. 201. *Partridge's case*, 2 Leo. 28, 75. W. Jones, 290. *The Queen v. Jennings*, 11 Mod. 228.

Keilw. 148. Gilb. Ex. Rep. 209. Co. Lit. 115 a.

(*c*) Cro. Jac. 167.

(*d*) 2 Saund. 291. 1 Vent. 107.

(*e*) Scroggs 26. And see Kitch. 11.

(*f*) Scroggs 83. Co. Cop. s. 31. Tr. 50.

(*g*) Br. Court Baron 8, cites 8 H. 7. 3. Ow. 35. Per *Bryan* Kitch. 88, citing 8 H. 7. 4.

(*h*) 1 Burn. E. L. 361. (Can. 88.) Ante p. 818. n. (*a*).

(*i*) "About fourteen days." Jenk. Pac. Cons. 2, 3. "Six or more days." Scroggs 13. But in the absence of

manor, which, in the more ordinary form, commands the bailiff to warn the tenants and residents to appear at the place and time appointed for holding the court, and to summon twenty-four honest and lawful men of the hundred or manor, to inquire for the King of all matters appertaining to the leet, and the bailiff to attend with the names of the persons he may have summoned.

I apprehend that notice of the court leet need not be personally served on the suitors, but that it may be given in the church or market, according to the general usage of the particular place, though if it be not an ancient leet (*a*), personal notice is said to be necessary; and clearly no person could be amerced for non-attendance, unless the accustomed warning had been given (*b*).

SUIT REAL. Prior to the statute of Marlborough (*c*), (as may be collected from the preceding observations illustrative of the Anglo-Saxon jurisprudence,) all persons of whatever rank in life, both men and women (*d*), servants (*e*) as well as masters, from the age of twelve to sixty years (*f*), were compellable to

an established usage, three or four days' notice only would seem to be sufficient. Greenw. of County courts, &c., p. 283, in his instructions for holding the sheriff's tourn or court leet, says "Let the sheriff (or steward) make a precept unto the bailiffs to summon the court by a reasonable time, to wit, fifteen or sixteen days before the court be kept (if it be less time it is sufficient in law). And see Br. Action upon the case 75. Rits. on Courts Leet, 41.

(*a*) *Brook v. Hustler*, 11 Mod. 76. Ante, p. 821.

(*b*) Br. Action upon the case 75,

cites 38 H. 6. 16.

(*c*) 52 H. 3. c. 10.

(*d*) But women were never sworn to allegiance in tourns or leets. Co. Lit. 122. b. Br. Leet, &c. 38:—for women and infants under twelve years, are equally out of the law. F. N. B. 161. A.

(*e*) Fitz. Lete et Hundr. 5, cites 2 H. 4. 16. A custom for servants to be sworn before the constable and portreeve, who have no power to hold a leet, is not good. Br. Leet 10, cites 2 H. 4. 15.

(*f*) Britt. c. 29. Flet. 1. 2. c. 52. Mirror. c. 1. s. 17. 2 Inst. 120-1. Br. Incidents 28.

attend the tourn in which they had been commorant or conversant for a year and a day (*a*); with the exception only of clergy having *curam animarum* (*b*); but by that statute, archbishops, bishops, abbots, priors, earls, barons, religious men and women, are excused from attending tourns, 'unless their appearance should be especially required thereat for some other cause (*c*);' and persons having tenements in different hundreds, are by the same statute excused from attending any tourn, but in the bailiwick where they dwell (*d*).

We have seen that Lord *Coke* was of opinion that the statute of 9 Hen. 3. c. 35, extended only to the leet of the tourn, and not to the leets of private persons (*e*); but we learn that he put an opposite construction on the above statute of 52 H. 3, and thought that the exemption of the latter act extended not only to the King's view of frank-pledge, but to the views of frank-pledge of other lords (*f*). It is difficult, however, to reconcile this distinction with the language of the two statutes. The first expressly limits the period of holding the *view of frank-pledge* to the feast of Saint Michael, and then, having used a term equally applicable to the franchises of individual

(*a*) 7 E. 2. 204. 8 E. 2. 276-7.

(*b*) 2 Inst. 121.

(*c*) Britt. c. 29. 2 Inst. 120-1.

But the exemption is personal, and therefore the proprietor of lands which are parcel of a dissolved monastery, held in frank-almoign, and discharged of secular services, is not exempt from attending the court leet.

Dacre v. Nixon, 2 Roll. Rep. 56.

Tenants in ancient demesne are also exempt from suit to the sheriff's tourn; and probably from suit to any leet, except that of the particular manor to which they are tributary, and of which the tenants were considered in ancient times to form an independent community. Ante p. 692, n. (*c*). And see Br. Leet,

&c. 38. And I imagine that a barrister or attorney, whose attendance is required in the King's courts at Westminster, could not be amerced for not doing suit at the leet. 1 Vent. 16, 29. And see 1 Mod. 22, ca. 60. 1 Sid. 431, ca. 19. Aliens are incapable of being *sworn* in leets. Palm. 14. Viner Alien. (A. 3.) Br. Denizen, pl. 2. Mirror, c. 1. s. 17; but the better opinion seems to be, that they are not exempt from attending the court leet. Mirr. c. 5. s. 1. 1 Hale, H. P. C. 64. 2 Inst. 121.

(*d*) 2 Inst. 122. Fitz. Lete et Hund. 1.

(*e*) Ante, p. 821.

(*f*) 2 Inst. 121-2.

persons, it excepts all existing liberties of the like nature (*a*); but the latter statute, it is to be observed, speaks only of the *tourns* of sheriffs, and of *bailiwicks* within which *such* tourns were held, and does not use the term *frank-pledge*.

It is, at all events, the better opinion that no man can be of two leets (*b*). So if a man hath a house within different leets, he shall be taken to be conversant where his bed is (*c*). And if a leet jurisdiction be annexed to a manor within a hundred to which a leet is also appendant, the lord of the hundred has not even a concurrent jurisdiction with the lord of the manor, for the one jurisdiction is as high as the other (*d*).

Suit to the leet is due by reason of resiancy, and has no reference to tenure; it is therefore called suit real, and not suit service (*e*).

Suit real cannot be done by attorney (*f*), the statute of Merton, 20 Hen. 3. being confined to suit service by freeholders (*g*); nor, as it should seem, can suit real be released (*h*); but the attendance may be essoigned (*i*), which is generally done by the payment of a penny, or some such nominal sum.

And the non-performance of suit real is to be punished by amercement, "because for suit real no distress can be taken, but for the amercement in default thereof." (*k*)

(*a*) And see in the Appendix the act of 1 Ed. 4. c. 2. interdicting sheriffs, &c. in their tourns or *law days* from fining and imprisoning upon any indictment or presentment, and which expressly excepts out of the operation of the act, persons having liberties or franchises by grant or prescription.

(*b*) F. N. B. 159. n. c. Ib. 160. A. Kitch. 65-6, cites 18 H 6. 13.

(*c*) 2 Inst. 122. And see *The King v. Adlard*, 4 Barn. & Cress. 780, where *Abbott*, C. J., in quoting this passage from Lord *Coke*, said "This is a plain authority that the

word *Inhabitant*, when the view of frank-pledge is spoken of, cannot mean an occupier."

(*d*) Br. Leet. pl. 13, cites 21 E. 3. 3.

(*e*) 12 H. 7. 15. 7 E. 2. 204. Kitch. 82, cites 45 E. 3. 23. Ib. 145. Ib. 291. 2 Inst. 99, 104, 120.

(*f*) Kitch. 145. F. N. B. 25 C.

(*g*) 2 Inst. 104. Ante, p. 736.

(*h*) *Tott v. Ingram*, 1 Brownl. 186. But see *Fitz. Abr. Avow.* 211, 212. Br. Incidents, pl. 28.

(*i*) *Mirr.* c. 1, a. 17. See as to essoign, ante, pt. 1. p. 431.

(*k*) 2 Inst. 118. And see *Gilb.*

CERT-MONEY; COMMON FINE. It should seem to have been the practice for the lord of a hundred or manor, who had a sufficient influence with the crown to obtain the grant of a leet franchise, to claim from his tenants a certain annual sum *pro serto letæ*, as a mean of fixing them with a contribution towards the purchase of the franchise, which secured to them, not only an exemption from attending the sheriff's tourn, as we have already noticed, but likewise the advantages of a summary redress in all matters within the jurisdiction of the leet (a).

The money thus paid to the lord was in some places called *cert* or *certainty money*, and in others *chief* or *King's silver*; and in others again, as some suppose, *common fine*, or *head money*, or *head pence*; but it has been thought that the common fine was originally a payment to essoign the appearance of all the suitors, except the chief pledges (b).

The proper remedy for this payment is action of debt (c); but where the cert-money is to be paid at the day of the leet, the defaulters may be amerced, yet as it is for the private advantage of the lord, he cannot distrain for cert-money or chief silver, without he can also prescribe in the distress (d). And this is the only matter of a private nature where a prescription to amerce is allowable (e).

Dis. 13. F. N. B. 159 D. (n. a.) 161
D. (n. a.)

(a) *Bullen's case*, 6 Co. 77 b.
Scroggs 2.

(b) *Ritson on Courts Leet*, p.
120.

(c) A court of equity will not en-

tertain a bill for law-day silver.
Thornhagh v. Hartshorn, Bunb. 237.

(d) *Godfrey's case*, 11 Co. 44 b.
1 Roll. Abr. 211. (A. 2.) (C. 2.),

cites 13 H. 4. 9.

(e) *Scroggs 2*.

Mandamus to enforce a court: Forfeiture of Leet.

As the leet was originally granted for the more convenient administration of justice, the lord is compellable to hold a court by writ of mandamus (a): and a leet is forfeitable by non-user; and by acts of abuser (b).

A long disuser of the franchise will induce the suspicion of a defect in title:—So in *Darell* (or *The King*) v. *Bridge* (c), on a motion for an information in nature of *quo warranto* for holding a court leet, there appeared to have been a grant from the crown in 14 Jac. 1. to *R. M.*, his heirs and assigns, of the privilege of holding courts leet, and a court was held by the defendant in 1740, claiming under a conveyance of the manor of *S.* with all courts, &c. in 1739, wherein courts leet were expressly mentioned, but there were no mesne conveyances between the original grant of the leet and 1702, when and previous to 1739 conveyances were made of the manor, ‘with all courts thereunto belonging;’ and the court of B. R. observed, that as there appeared to have been no exercise of the grant till 1740, there was strong suspicion of some defect in title, and therefore it must go to be tried by a jury.

The usurpation of a leet is indeed accounted so great a grievance to the people, as to have been adjudged to be an indictable offence (d).

By the opinion of some, a leet is forfeited by the neglect of appointing an able steward, or of electing such officers as are essential to the exercise of justice, as constables, aleconners, &c. or of providing particular instruments of punishment, as pillory,

(a) *Rex v. Willis*, Andr. 279.
Com. Dig. Mandamus (A). 2 Roll.
Rep. 107.

(b) 2 Hawk. P. C. c. 11. § 5.
Bro. Abr. Franchise, pl. 10, 26.

Tottersall's case, W. Jones 283.
Cro. Jac. 155. F. N. B. 160. A. (n.
d.) 9 Co. 50. Scroggs 3, 4.

(c) 1 Sir W. Bl. 47.

(d) 6 Mod. 183.

tumbrel, stocks, &c. (a); and clearly the franchise may be seized *quousque* for any such neglect (b).

SECT. II.

Of the Steward of the Court Leet, (and herein of his authority to impose fines);—And of the Office of Bailiff.

WHETHER the steward of a court leet is to be considered as judge of the court, not only in the absence of the lord, but also in his presence, or whether he is to be deemed an assistant judge, assessor, or lawgiver only, when the lord happens to be present, (analogous to the shiregerieve in the Anglo-Saxon shire-gemot court,) the office of steward of a leet court is obviously one of very high importance, and such as ought only to be filled by a person of considerable legal learning, and of sound judgment and discretion (c).

I have already ventured opinion, that the steward pre-
sides in a customary court. representative character only,

(a) *Steverton v. Scrogs*, Cro. Eliz. 698. S. C. Mo. 573, 607. *Totter-sall's* case, ubi sup. Per *Popham*, Cro. Eliz. 125, in *Partridge's* case. Kitch. 24. Br. *Quo warranto*, pl. 8. And see *Keilw.* 138, &c. But as to stocks, see *Carter 29*, in *Davis v. Lowden*, where *Bridgman*, C. J. distinguished between stocks and pillory, &c. and said that the former were originally not to punish, but only as the constable's gaol, to keep men in hold, but that as to pillory and tumbrel the lord was bound to find them, and not the inhabitants.

It should seem that for the neglect of providing stocks, a vill is punishable by amercement in leet, and that any of the inhabitants may be dis-

trained for the amercement. *Steverton v. Scrogs*, sup. So also as to pillory and the like instruments of punishment, if a prescription be alleged. *Ib.*

(b) *Lex. Man.* 25.

(c) 4 *Inst.* 261, &c. The steward of the court leet ought to be a barrister. Per *C. J. Holt*, *Scrogs* 33. *Ante*, pt. 1. p. 134.

In a recent case the court of B. R. adverted to the necessity of a steward's possessing legal knowledge, and considered the charges of an attorney for holding a court leet, as charges made in his professional character, and therefore taxable. *Lusmore v. Lethbridge*, 4 *Barn. & Ald.* 898.

and that there is no principle of law to prevent the lord of a manor from holding his own customary court in person (*a*), and the same rule would seem to extend to a court baron, where the suitors are judges of the court. But in a court leet, which we have seen is a juridical franchise held under a grant from the crown, and not necessarily incident to a hundred or manor, the steward appears to me to be an essential officer, filling exactly the same judicial character as the sheriff in his *tourn*, and not inaptly described as a man 'indifferent 'between the lord and the law.' (*b*)

A condition appears to have been annexed to every grant of a leet franchise, that the lord should appoint an able steward (*c*), and this circumstance is much in favour of the more general opinion, that the lord cannot hold his own court leet. To this may also be added, the decision in *Cholmely & Morton* (*d*), that the mayor, if owner of a fair, cannot be a good steward of it. And we find it laid down in various books, that the court leet is held before the steward, and that he is the judge in it (*e*); nor am I aware that it is stated in any book of authority, that the lord *or* steward presides as judge of that court, though the expression, as referrible to a customary court, is by no means unfrequent (*f*).

(*a*) Ante, pt. 1. p. 145.

(*b*) Powell on the jurisdiction of courts leet, p. 43. It is there said that the lord cannot sit as judge in his own court, *in regard that the profits of the court accrue to him*; but this reasoning would equally apply to the disqualification of the sheriff in his *tourn*, if the statement be correct that he is intitled to the profits of the court. See Com. Dig. Leet (A.)

"The theory was said to be that suitors only were judges in county courts, but late decisions have ruled the sheriff to be judge also." Per *Bayley*, J. Durham Summer Assizes, 1830. And see *Tinsley v. Nassau*,

1 Moody & Malk. 52; post, p. 840.

n. (*a*).

(*c*) Ante, p. 827.

(*d*) 2 Sho. 180.

(*e*) 4 Inst. 261. 6 Co. 12, in *Jentleman's* case, Com. Dig. Leet. (M. 1). And see Dy. 70 b, in *Wilthers v. Iseham*.

(*f*) Co. Lit. 58 a. 4 Co. 26 b. Co. Cop. s. 45. Tr. 102. But it is proper to notice, that, in the case of the *Queen & Jennings*, 11 Mod. 215; C. J. *Holt* is stated to have said, "that in a *private* leet the lord may sit as judge, and exclude the steward," to which is added, (but I conceive as an observation only of the

Previously to the discussion of the general authority of the steward of the court leet, it may be expedient to take a brief view of the relative powers and duties of the steward and bailiff, more particularly as regards the mode of impanelling the leet jury, for this, with reference to the highly important functions connected with the elective franchise of some few ancient boroughs (*a*), may be thought to involve a great constitutional question, and is a subject which in abler hands, and unrestrained by the limits necessarily prescribed to a work like the present, could not fail to excite very considerable interest.

reporter,) ‘*Quære*, If so in a *publick* leet.’

I cannot, however, bring my mind to the conclusion that the lord can preside as judge even in the court leet of a manor, situate within a hundred to which a leet jurisdiction is also appended, and there are many such instances; vide *Keene’s case*, 1 Freem. 348; the *Queen v. Jennings*, ubi sup. *Rex v. King*, 3 Keb. 197, 230, 251; *Loader v. Samuel et al.* Cro. Jac. 551; *Cook v. Stubb*, Ib. 583.

The sheriff’s tourn is frequently designated by the ancient law writers, the leet of the hundred, from the circumstance of the tourn having been held in each hundred; but when a leet jurisdiction is appended to a hundred, it is as much a *private* leet, as the leet of a manor; and there would seem to be no other distinction between the two franchises than this, namely, that the hundred leet has jurisdiction over such matters as the manor leet should omit to inquire of, just as the sheriff in his tourn, has jurisdiction over any matters omitted to be inquired of in the hundred court leet, or in the manor court leet, when no hundred leet exists:—The dictum therefore of C. J. Holt (if

the authority for it is to be relied upon) must, I think, be held to extend to courts leet generally.

In addition to the reasons already given for supposing that the lord cannot hold his court leet in person, see the language of the act, 4 Ed. 4. c. 1, and the several other statutes subsequently extracted in the Appendix, authorising stewards of courts leet to inquire of various offences. Vide also the act of 1 Eliz. c. 17, post. p. 833–4.

(*a*) See the portreeve of *Yeovil’s case*, 2 Roll. Rep. 82. *Peterborough case*, Heyw. B. 56. *Milborne Port case*, Ib. 57, 63–9. *St. Mitchell case*, Ib. 378. “At Newport, in Cornwall, “which has never had a charter of “incorporation, the officers called “vianders are annually elected at “the lord’s leet, and are jointly the “returning officers for the year.” “At St. Michael a portreeve chosen “by a jury of the chief inhabitants, “out of the six principal tenants, “who are called deputy lords of the “manor, makes the return.” Ib. 60. And see the borough of *Fowey case*, 1 Peckw. 512. Append. 3 Barn. & Cress. 683–5, in *Rex v. Mayor, &c. of West Looe*.

As a general proposition it must, I think, be allowed, from considerations founded equally on principle and practice, that the steward of a court leet presides there wholly in a judicial character, and that every ministerial act is to be executed by the bedell or bailiff of the court (*a*), sworn to a due performance of his duty (*b*). This opinion cannot appear as a mere hypothesis to those who have contemplated the organic structure of the leet jurisdiction, and are familiar with the language of our ancient statutes, and text writers, and the general system of court keeping.

We have seen that the tourn of the sheriff is a branch of the ancient shire-gemot court, over which the alderman (ealdorman or earl) presided, and that the shiregerieve (or sheriff), the next officer in rank in the shire, supplied his place when absent, and acted as his assessor when present; and that the decision on questions between party and party, was by the votes of the whole assembly, collected by the lawmen, and regulated, as to any legal points that might arise, by a reference to the dome-boc, or law book (*c*).

These lawmen (*lahmen*) were the first students or professors of law, some of whom, after the accustomed previous examination, were appointed assessors to the aldermen, shiregerieves, &c., and others acted as pleaders. Three appear to have been the number at first appointed to assist the alderman, &c. in judgment, but the number was afterwards increased to seven, and then to twelve. These assessors, or assistant judges, were sworn to a faithful discharge of their duties, and not to suffer any innocent man to be condemned, nor any guilty person to be acquitted. The institution of assessors would seem to have been even earlier than the reign of Alfred the Great (*d*).

(*a*) Co. Lit. 234 b. But a custom for the steward of a court leet to nominate the persons to be summoned by the bailiff as jurors, is good. The *King v. Joliffe*, 2 Barn. & Creas. 54. And see *Crane v. Holland*, Cro. Car. 138. Post p. 844.

(*b*) Kitch. 91. Scroggs 99.

(*c*) Ante, p. 808.

(*d*) Some are of opinion that the *lahmen* (and *ræd-boran*) of the Anglo Saxons, were the same with the jurors of more modern times. But this opinion is open to very strong objections. See 3 vol. Henry's Hist. of G. B. 346-7. Sed vide Turner's

It is, I submit, but a natural inference that the sheriff, in his tourn, acted in the same judicial character as he was wont to fill in the parent court, the shiregemot, in the absence of the ealdorman;—and equally so that on the introduction of the trial by jury (*a*), the judicial and ministerial characters in the sheriff's tourn were not blended, but that the office of impanelling the jury devolved on a subordinate officer of the court, corresponding with the bedell or bailiff of the court leet, and in exact accordance with the ministerial duty of the sheriff at the present day (*b*). That this was the practice in the tourn, and that this was originally, and as a constitutional principle, the practice also in the leet, may be thought to appear by the few references I propose to make to our statute law, and to the combined theoretical and practical works of several very eminent lawyers.

In the Appendix to the first part of this treatise will be found an extract from an act of parliament passed in the reign

Hist. of the Anglo-Sax. l. 11. c. 9. p. 270. et seq.

See the article in the Edinb. Review, referred to ante, p. 804. n. (*a*) where it is stated that the leet jury of the Anglo-Saxon Hundred was constituted of the twelve eldest Thanes, who were to go out with the Reeve, and to swear on the halidome, that they would neither say forth respecting the innocent, nor conceal the guilty, and that these corresponded to the twelve men of the Raffst-næmpd of the Swedish Hærad, but that in this assembly the tithingmen were absent, and all criminal proceedings must have been appeals at the suit of individuals, except where the Næmpdamen could make presentment of their own personal knowledge.

(*a*) It is not disputed that this institution existed in the time of the

Conqueror: indeed it is supposed by some to have been introduced into this country in his reign. The principle of the trial by jury may be traced to the Anglo-Saxon custom of allowing a party to clear himself of an accusation by compurgators, generally twelve in number, who were to swear that they believed him innocent of the charge. But these *juratores* appear to have been originally named by the party accused, though afterwards, perhaps, by the court, [Sulliv. 275,] and their functions seem to accord more with the principle of our wager of law, than with that of the trial by jury.

(*b*) It may be right to mention, that the sheriff is in some cases constituted judge by act of parliament, as in re-disseisin by the stat. of Merton, c. 3. 'All his proceeding by force of that act is of record, and a

of Richard the Third (*a*), which is, I submit, conclusive evidence that the sheriff acted judicially *only* in the leet of the tourn, and that the jury were impanelled by the bailiff or other ministerial officer. The preamble of the above act is in these words: "Forasmuch as divers great inconveniencies and per-
 "juries do daily happen in divers shires of England by untrue
 "verdicts given in inquisitions and inquiries before sheriffs in
 "their tourns, by persons of no substance nor behaviour, nor
 "dreading God, nor the world's shame, by reason whereof
 "divers and many of the King's lieges of divers parts of Eng-
 "land, by exciting and procuring of their evil willers be wrong-
 "fully *indicted*, and other that ought of right to be indicted,
 "by such excitation and procuring oftentimes be spared, con-
 "trary to common right and to good conscience." And it
 then enacts, that no *bailiff* nor other officer should from thence-
 forth return or impanel any such person, in any shire of Eng-
 land, to be taken or put in or upon any such inquiry in any of
 the said tourns, but such as werè of good name and fame, and
 had lands and tenements of freehold, within the same shires, to
 the clear yearly value of 20*s.* at the least, or of copyhold, to the
 clear yearly value of 26*s.* 8*d.* at the least: and that if any bailiff
 or other officer within the said counties should thereafter re-
 turn or impanel any person contrary thereunto, he should lose
 for every person that he so impanelled and returned, not be-
 ing of the sufficiency aforesaid, as often as he so offended, 40*s.*:
 and the sheriff other 40*s.* the one half to the King and the
 other half to the person suing; and that every such indict-
 ment before any sheriff in his tourn otherwise taken should be
 void.

By 1 Eliz. c. 17. 'for the preservation of spawn and fry of
 fish,' it is enacted, [s. 8, 9, & 10,] that the lord of every leet
 should have full power and authority to inquire of all the of-
 fences contrary to the purport, tenor, and form of that statute

' writ of error lies on a judgement s. 10. *infra*. 2 Barn. & Cress. 58.
 ' given against him.' 6Co. 12 a. citing (a) 1 R. 3. c. 4.
 44 E. 3. 10. And see 1 Eliz. c. 17.

within the precinct of their said leet: such inquiry to be had in manner and form, and after such sort as common amerciaments; or other things inquirable in their court leet, were lawfully used and accustomed to be had and made: and that upon every such presentment had in any court or leet, by the oath of twelve men or more, as aforesaid, of any offence or offences made contrary to the tenor of that statute; then all such forfeiture above in that statute limited and appointed for such offence, should be unto the lord of the said leet for the time being, to his own use for ever, and should be levied in such manner and form, as amerciaments for affrays committed within the precinct of such leet were used and accustomed to be levied: and that if any leet after the first day of June then next should be kept, and the steward of the said leet for the time being, or other for him, did not charge the jury sworn in such leet, to inquire of all the offences done within the precinct of the said leet, contrary to the tenor and form of that statute; then the steward of the said leet to lose and forfeit forty shillings; the one moiety to the Queen, and the other moiety to the person suing for the same; and that if any jury sworn in any leet, and being charged to inquire of the offences committed within the precinct of that leet, did wilfully and willingly conceal and make default in presentment, or did not present the offence and offenders; that then it should be lawful to the *steward* or *bailiff* of the leet, or his or their deputy for the time being, to impanel one other jury within the said leet, and to inquire of such concealment, default, or non-presentment (a); and that upon such concealment, &c. found and presented, every of the said jurors which so did conceal, make default or not present, should lose and forfeit for every such offence twenty shillings to the lord of the said leet, the same to be levied in manner and form aforesaid, for the other offences therein expressed.

(a) See reference to this stat. per *Best, J.* in *The King v. Joliffe*, 2 *Barn. & Cress.* 64. *Scroggs*, [p. 16,] says "In some cases the steward may

"impanel a second jury, to inquire into the concealments of the first, and fine them," cites this stat. & 33 *H. 8.* c. 6. And see *Kitch.* p. 31.

By the year book; 7 H. 6. 12 b. if the bailiff of the court or other officer refuse to make a panel to inquire, &c. upon the command of the steward, or refuse to execute his office, he may be fined. 1 Roll. Abr. 219 (Y) pl. 2. 542. (Y) pl. 3. Br. Lect. 14.

Kitchin, in tracing the origin of the court leet [p. 6:], says, "It is called the view of frank-pledge, for that the King there may be certified by the view of the steward, how many people are within every leet; and also to have account and view by the steward, of their good government and manners in every leet."

Again [p. 82.] "Where one hath a leet he hath but the amercements, and the day is to the King, and for that the steward represents the person of the King, cites 41 E. 3. 27." (And see S. P. Powell, p. 83, citing 41 E. 3. 31.) Again [p. 82.] Kitchin says, "If the steward of the Leet command the bailiff to impanel a jury to inquire for the King upon pain of £40, and he refuse to do it, he may put upon him the pain of £40, and at the second time £50, or more; and note, that upon all pains the lord may have an action of debt," cites 7 H. 6. 13.

Again [p. 280.] "The lord of a leet shall not prescribe to amerce the *petty jury*, for their false verdict, the same being found by the grand jury; for it is no good custom, but they may be amerced for concealing of any thing which is presentable there, and this is by custom. M. 9. H. 6. 42. Custom."

Greenwood [on County Courts, &c.] in adverting to the institution of the court leet [p. 275:] observes, "This court is a court of record in all things that appertain to the tourn or leet, and the sheriff of the tourn, or steward of the leet, are therein judges of record. For whosoever hath the leet, hath the same authority within the precinct, as the sheriff hath within the tourn." Again [p. 9.] "Every bailiff of franchises, deputy and clerk of every sheriff, and under-sheriff and every other person which hath authority, or takes upon him to return any inquest, jury, or tales, or to intermeddle with the execution of process in any court of record, are, as well as

the under-sheriff, to take the oath mentioned in that statute for the due execution of their office, or forfeit £40. 27 Eliz. c. 12.”

Scroggs, in his instructions for holding a court leet, after noticing the usual form of proclamation, and that the suit roll should be called over, and the constables, &c. questioned as to their compliance with the orders they received at the previous courts, says, [p. 15.] “ Then *choose* a jury, and name a foreman, whose oath is as follows :—You shall well and truly inquire, and true presentment make, of all such articles, matters, and things, as shall be given you in charge ; the King’s counsel, your companions’, and your own, you shall keep secret and undisclosed. You shall present no man for envy, hatred, or malice, nor spare any man for fear, favour, or affection, or any hope of reward ; but according to the best of your knowledge, and the information you shall receive, you shall present the truth, the whole truth, and nothing but the truth, so help you God.”

Kitchin in his general directions for holding a court leet [p. 12.] says, “ After this [viz. calling the suit roll, and entering the essoins] *the jury shall be empanelled*, and first one shall be sworn, and after three or four together, and the oath shall be as followeth :—You shall inquire and faithfully make presentment of all things which I shall give you in charge ; your companions’ counsel, the King’s, and your own, you shall keep, and you ought to present the truth, and nothing but the truth, so help you God.” (a)

Again [p. 13.] “ If any stranger be there, if there be not sufficient residents there *to be impanelled*, the steward may impanel a stranger there, for that it is to inquire for the King,” &c. cites 3 H. 7. 4. Again [p. 224.] “ If there be not twelve *to be sworn*, the steward may swear a stranger which comes within the view to be sworn in leet ;” cites S. C.

(a) In terminating the charge to the jury (p. 40), Kitch. says, “ Go together and inquire ye of the matter of your charge, and when you are agreed, I shall be ready to take your verdict.”

And again, [p. 89.] "If there be not twelve to be sworn, the lord (a) may cause strangers to be of the enquest;" cites 2 H. 7. 4.

In the Court Keeper's Companion, printed in 1717, after pointing out that the court leet is to be opened by the bailiff, by three proclamations, requiring the attendance of the suitors, and that the resiant rolls, to be delivered in by the constables or tithing-men, should then be called over, the following direction is given [p. 3.]:—"The resiants of each tithing being called over, proceed to impanel your juries, *by calling upon the bailiff or tithing-man for the return of the court leet jury*; and after proclamation made, say: You good men that are returned on the jury, to inquire for our sovereign lord the King, in this court leet,—Answer to your names," &c.

A very useful work intitled 'The Compleat English Copyholder,' printed in 1735, in the instructions given to stewards of courts leet, says [p. 348.], "*The steward must call on the reeve or bailiff for a return of the jury*, which must consist of twelve at least," and "*having made choice of a foreman*, he must call over the jury, [and] fine those that do not appear," &c.

In Fitzherbert's Nat. Brev. under the title '*Writ pro exoneratione sectæ ad curiam com' vel baron'*, it is said—

'And if a man have lands within the precinct of several leets, or in one county, and he dwell within the precinct of one of them, and he be distrained to come unto another leet within the precinct of which he dwelleth not, then he shall have a writ unto the sheriff, or *bailiffs of the court*, &c. that they do not distrain him to come to that leet, within the precinct whereof he dwelleth not; and the writ is such:

'The King to his bailiffs of the honour of C. in the county of Lincoln; or, to the *bailiff of A. of B.* in the county of, &c.

(a) Unless this word be meant only to express the power of the court, or be a misprint, an inference might be drawn from the observation that the law permits the lord to hold

his own court leet, contrary to the more general opinion, and to which I have assented in the beginning of the present section.

‘greeting: Whereas by the common council, &c. that they who have lands in divers hundreds have no necessity to come to the view of frank-pledge, except in the bailiwick where they shall be dwelling; we command you, that you distrain not *A.* to come to the view of frank-pledge in your court, or in the court of your lord of the honour aforesaid in the county aforesaid, against the form, &c. and the distress, if any, &c.

‘And it appeareth that if the party be distrained, after that he hath sued the writ directed unto the sheriff, or bailiffs, that they do not distrain him, that he shall have an attachment against them: but it seems reasonable, that first he have an attachment against the sheriff, or against *the bailiffs*, who distrained him to come to the leet in the hundred where he is not dwelling, if he be dwelling within the precinct of another leet, because the statute of Marlebridge is a prohibition in itself, and he who doth contrary to the statute doth wrong unto the party, upon which he may have an attachment, without suing forth any writ.’

‘Note, That men or women who have entered into religion, ought not to come unto the sheriff’s tourn, or unto the leet of any other without great cause; and if they be distrained to come, they may have a writ out of the Chancery to discharge them, which shall be such:’

‘The King to the Sheriff, &c. Whereas by the common council, &c. that men who have entered into religion have no necessity to come to the sheriff’s tourn, &c. or thus, *to the view of frank-pledge*, unless their presence be required for some special cause; we command you, that you distrain not the abbot of *I.* to come to your tourn; or thus, to the view of frank-pledge in your hundred of *F.* against the form of the provision aforesaid, and the distress, &c.

‘And the abbot shall have such a writ unto the *bailiffs* of another lord, that they do not distrain him to come to his leet.’

The ancient form of precept from the steward to the bailiff on assembling a court leet was as follows:

‘ *W. S.* gent. steward of the hundred [or manor] of *S.* To the bailiff of the same hundred [or manor] greeting. You are hereby required to warn the leet to be kept by your hundred [or manor]. [or leet and court baron to be kept for the hundred of *S.* and manor of *A.*] the first day of April, &c. by nine of the clock in the forenoon of the same day, at the usual place there [or at the now dwelling house of, &c. as the case is.] Given under my hand, &c.’ (a).—Or thus :

‘ *J. K.* steward to the bailiff thereof health: I command likewise and appoint, that diligently you give to understand the view of frank-pledge, of the court there to be held against the Thursday, that is to say, the sixteenth day of October next coming, after the date of these presents, and have there this command: And as, &c. Dated under my seal the first day of this month of October, &c.’ (b).—Or thus :

‘ *A. B.* gent. steward of the manor or hundred or leet aforesaid. To the bailiff thereof, greeting: I command you, that you summon and warn all the tenant of the said manor, as well residents as not residents, and all customary tenants of the manor aforesaid, that they be before me at *H.* aforesaid, on Thursday the 26th day of March next coming, to do then suit unto the view of frank-pledge, and all things thereunto belonging, &c. Dated, &c.’ (c).

The form of precept to the bailiff for assembling the court, given in Scroggs [p. 13.], (and the same form is given in the book called *The Compleat English Copyholder*, p. 346.) is as follows :

‘ A precept to warn the tenants, and summon a jury at a court leet.

To the bailiff, &c.

Manor of *S.* These are to will and require you to give public notice within the said manor, that the court leet and view of frank-pledge for the same manor, (with the court baron of *A. B.* esquire, lord of the said manor,) will be holden at the —, on Monday the — day of —, at ten of

(a) Shepp. 25.

(c) Jenk. Pac. Cons. 3.

(b) Kitch. 11. Greenw. 284.

the clock in the forenoon ; and that you warn all the tenants of, and resiants within the said manor, that do owe any suit or service at the said court, that they and every of them personally be and appear at the time and place aforesaid, then and there to do and perform the same. And likewise that you summon twenty and four honest and lawful men of the said manor, to be and appear at the time and place aforesaid, to inquire for our sovereign lord the King, of all such matters as to the said courts do appertain ; and that you yourself be then and there also personally present, and have you there the names of such persons as you shall have so summoned, and this precept. Given under my hand and seal, &c.'

It is, I think, but a fair conclusion from the foregoing observations and references, that the bailiff of a leet jurisdiction is an indispensable officer, possessing functions of no trivial importance, and bearing a very close resemblance to the sheriff in his present ministerial character, as far, at least, as respects the criminal branch of his office (a).

The remark of *C. J. Abbott* in the case of *Holroyd & Breare*, already cited at some length (b), that the steward of a court baron is not a minister of that court, but a constituent and essential part of it, appears to me to sustain the analogy between the sheriff, at this day, and the bailiff of a court leet.

No mandate (observed his lordship) is directed to the steward, but he makes his mandate to the bailiff, and (added the Ch. J.) there is this material distinction between the mandate of the sheriff and that of the steward of a court baron ; in the former, the sheriff commands the bailiff to make the levy, and concludes, ' So that *I* may have the same before the court, &c.' but in the warrant of the steward, the bailiff is

(a) But the sheriff is a constituent part of the county court, so that he is not responsible for the acts of his bailiff done in execution of the judg-

ments of the court. *Tinsley v. Nassau*, 1 Moody & Malk. 52. Ante p. 829. n. (b).

(b) Ante, p. 722 et seq.

directed to levy, so that *he* (the bailiff,) may have the same before the court on the day appointed.

It is true that in the particular case the question arose upon the execution of the process of the court, which was a court baron, where the suitors are the judges, but if the steward of that court, possessing at most a qualified judicial character, is not responsible for a ministerial act, it is no easy task to reconcile that irresponsibility with the execution of a ministerial duty by the steward of a court leet, who presides as judge of the court, with reference more particularly to the justly admired principles of the trial by jury, ingrafted by act of parliament, or usage, on the Anglo-Saxon jurisprudence; nor does the difficulty seem to be diminished by any supposed amenability of the steward for a violation of his judicial functions.

In the case of the *King v. Harrison (a)*, a motion was made in the court of B. R. for an information in nature of a *quo warranto* against the steward of a court leet, (which, according to a ms. note of the late Mr. Serjt. Hill, in the margin of the report of this case in my possession, was the court of Birmingham,) and against the bailiff and constables, for impanelling a jury not duly summoned, the bailiff being alleged to be the proper officer to summon the jury, *who should be all freeholders*. It appeared that six persons stated to have no right were sworn, and that six freeholders who were present, and who had not been summoned, refused to be sworn to act with them, and thereupon the steward swore six more, and the jury, so constituted by the steward, chose the bailiff of the manor and constables. A rule was obtained for the defendant to show cause why an information should not go against him. On showing cause he relied on the refusal of the six freeholders to be sworn, and the constant course of choosing such officers, urging that it would be dangerous to make a precedent of trying the right of such choice by a *quo warranto*.—The court observed, that there was no room for any complaint against the

(a) 8 Mod. 135.

constables or bailiff, but, if any, it was against the steward, and a rule was made for him to attend, and to show cause why an attachment should not go;—the rule for the rest was in the meantime enlarged.

With the principal and more important duties of the bailiff of the court leet, I am disposed, therefore, to class that of impanelling the Jury (*a*), and without any distinction in the office when the lord of the leet possesses only an ordinary jurisdiction, and when a leet franchise exists in a borough or town, of which the head municipal officer is elected by the jury of the court leet (*b*).

(*a*) It should seem that peculiar customs exist in particular places on the point adverted to. I infer from the *ms.* note of Mr. Serjt. Hill, just referred to, that a custom of this nature was relied upon in the *King & Harrison*. And it is settled that by custom the steward may nominate the persons to be summoned as jurors. *The King v. Joliffe*, ante, p. 831. n. (*a*). In that case *Abbott*, C. J. said, "The leet jury is rather in the nature of a grand jury."

(*b*) See *The King v. Joliffe*, sup. Sometimes the Jury merely present, in writing, the candidate who may have the most votes, but have no control over the poll. In *The King v. Rowland*, 3 Barn. and Ald. 130, the plea to a *quo warranto* against the defendant, as Mayor of the Borough of Holt in Denbighshire, after stating an immemorial court leet, and view of frank-pledge, holden within the Borough, set out a charter of 13 H. 4, confirmed by letters patent of Queen Elizabeth; and a *by-law* that the Mayor and Burgesses, or such of them as chose to attend, should assemble at the court leet,

held within one month after Michaelmas, and should elect one of the Burgesses to be Mayor for the ensuing year; and that since the *by-law* the usage had been conformable to it, and the court in part holden in the morning and in part in the evening, the one being called the morning and the other the evening court; and that the custom had been to elect the Mayor at the morning court, which Burgess was sworn into office by the steward of the Lordship, or his deputy. It then stated that on the 27th October, 1818, a court leet was held before C. W. W. W. Esq. the steward, in the morning, which was duly adjourned to the evening of the same day; and that the defendant was duly elected at the morning, and sworn in at the evening court. The replication, after tendering issues on the different facts alleged in the plea, denied that the mode of election had been according to the supposed *by-law*, or that the defendant was duly sworn.

At the trial at the Shrewsbury Summer Assizes, 1819, the mode of election set out in the defendant's

Sometimes, indeed, the bailiff of a leet, when appended to a manor or borough, is *chosen by the jury of the court* (a), and possesses a clear prescriptive right to exercise a discretionary power in impanelling the jury, and in the case of the *King v. Bingham* (b), Lord *Ellenborough* deemed that very important function a sufficient ground for an information in nature of a *quo warranto*, calling upon the defendant to show by what authority he claimed to be bailiff of the manor and borough of Gosport in the county of Southampton. His lordship's observation was, that he did not doubt that the office as appendant to a court leet, was such for which the information would lie, and noticed particularly the argument that the bailiff was an officer having a discretionary power as to the persons whom he

plea was proved, with the addition that the custom had been to swear the jury of the leet at the morning court, and then to take the poll for Mayor; and that at the evening court the jury used to make a written presentment of the person who had the majority of votes to the Steward to be sworn in. The jury had on this occasion presented to the steward the candidate opposed to the defendant, but the latter having the majority of legal votes, the steward swore him into the office of Mayor. The jury did not appear ever to have exercised any discretion over the poll.

It was contended for the Crown that the presentment by the jury should have been stated in the plea. *Holroyd, J.* over-ruled the objection, but with liberty to enter a verdict for the Crown, if the Court of B. R. should be of a different opinion.

A rule *nisi* having been moved for accordingly, the above objection was urged on the part of the Crown, and judgment asked at all events, on the

issue, "not duly sworn." But *Abbott, C. J.* observed, that all that was alleged in the defendant's plea, was proved, and that the presentment was merely ministerial on the part of the Jury. That it was their duty to present the person having the majority of legal votes, and they had no discretion on the subject; and that the presentment was as an entry by a Town Clerk, and not forming a material part of the appointment, it was not necessary to allege it in the defendant's plea. *Holroyd, J.* added, that if the presentment were an essential part of the custom, it would put it in the power of the jury to defeat any election, and that the foundation of the mode of election was the by-law, which was wholly silent as to any presentment.

(a) See *The King v. Joliffe*, post. 844-5.

(b) 2 East 308. It appeared also in this case that the bailiff was sworn in with the other officers chosen by the jury.

should select for the jury; adding, that the bailiff having no fees annexed to his office, there was no other convenient civil mode of trying the right to it.

The general practice and forms of court keeping appear to me also to be favourable to the opinion, that all ministerial acts in a court leet are to be executed by the bailiff; and so far, at least, as my own experience extends, the steward of the court is totally ignorant even of the names of the jurors, until the delivery to him by the bailiff, of the list of persons summoned as jurymen, together with the resiant roll, or names of those who are liable to perform suit to the lord at the particular court.

But I have suggested that the general practice for the bailiff to exercise an uncontrolled power of impanelling the jury of a court leet, may possibly be opposed by a special custom prevailing in some few manors, and that such a custom would be good (a).

The case of *Crane v. Holland* (b) would seem to have established the legality of such a custom, for it was there held that one may be judge and officer, *diversis respectibus*. In that case, which was error of a judgment in Northampton, where the court is held before the mayor and two bailiffs, the error assigned was because the bailiffs being judges of the court, could not also be officers to whom process should be directed, 'there being no custom that can maintain any to be both officer and judge.'—But the court of B. R. held that it might be good by custom.

And in the case of *the King v. Joliffe* (c), which was a *quo warranto*, calling upon the defendant to show upon what authority he claimed to exercise the office of mayor of the borough of Petersfield, it appeared by the defendant's plea that at the court leet of the borough, the jury presented a fit person to be mayor of the borough for a year, and that the person so presented had always been sworn in at that court before the steward, and that the defendant had been presented

(a) Ante, p. 842. n. (a).

Cress. 63.

(b) Cro. Car. 138. 2 Barn. &

(c) 2 Barn. & Cress. 54.

and sworn in as mayor according to that usage. And by the eighth replication it further appeared, that the court leet had immemorially presented a fit person to be bailiff, who was always attendant upon the court; and that at the court mentioned in the plea, the steward nominated the fourteen persons who served on the jury, and issued his precept to the bailiff to summon those persons, and that the bailiff did accordingly summon them, whereas, (as it was alleged in the replication,) 'by the law of the land, the steward should have issued his precept to the bailiff to summon a jury, and the particular persons should have been selected by the bailiff.' Rejoinder that from time immemorial the steward had been used to nominate the jurors: and issue thereon. At the trial the defendant proved that for more than twenty years the precept to the bailiff had always contained a list of persons whom the steward directed him to summon as jurors. The learned judge, (Mr. J. Burroughs,) told the jury that slight evidence, if uncontradicted, became cogent proof; and they found a verdict for the defendant. A rule nisi for a new trial was obtained on the ground that there was not sufficient evidence to warrant the finding of the jury; or to enter judgment for the crown, *non obstante veredicto*, on the ground that the custom set out in the rejoinder was bad in law. On cause being shown against the rule, the court held that there was no ground for a new trial, but that the observations of the judge, and the verdict of the jury, were well warranted by the evidence.

Abbott, C. J., expressed an opinion that there was nothing in the usage proved to contravene the public policy, or any known rule or principle of law. And that in reference to the passage in *Hawk*, P. C. b. 2. c. 10, § 15. which had been relied upon as showing that the bailiff was to select the jury, because the sheriff might fine him for not making a panel, there was nothing inconsistent in saying that it is the bailiff's duty to make the panel, although the sheriff decides upon the persons to be named in it. His lordship added that there was

also another answer to the argument, viz. that the passage might refer to the traverse jury, and not to the grand inquest.

I submit, in conclusion of these observations, that it is most difficult to suppose that the steward of a court leet is capable of discharging any ministerial or subordinate duty, either in or out of court, as being wholly inconsistent with his judicial character, and with those organic principles of the leet jurisdiction, which, even in its present faded form, are not wholly screened from the searching eye of the antiquary (*a*).

WE will now proceed to a more general consideration of the duties and powers of the steward of a court leet.

It has been said that the Steward of a leet may take a recognizance of the peace (*b*), and not only fine but imprison, and it is the better opinion that he may fine for a contempt of court, and commit the person guilty of the act of contempt, until the fine be paid (*c*), and also that the steward may award a person to prison for a gross misdemeanour in face of the court (*d*): and again it is said that in matters within the province of the leet,

(*a*) It certainly would not be easy to reconcile the performance of a ministerial duty by the steward of a court leet, with the notion that he is a man 'indifferent between the lord and the law.' Ante, p. 829. "It is of the greatest consequence to the law of England, and to the subject, that the powers of the judge and jury are kept distinct," &c. Per *Hardwicke*, C. J. in *Rex v. Poole*, Com. Dig. 'Enquest.' (A. 1.)

(*b*) 7 H. 6. 12. 10 H. 6. 8. 11 H. 6. 7. 4 Inst. 263-4. Powell of Leet 32-3. Br. Leet 29. But this has been denied. Shepp. 9.

(*c*) But that course would be very unadvisable, as an action of debt lies, post. p. 849.

(*d*) 31 H. 6. Fitz. Abr. Lete 11.

Earl of Lincoln v. Fisher, Ow. 113. 13 H. 4. 12. 10 H. 6. 7. 21 H. 7. 32. Crompt. J. P. 92 b. 130 b. These authorities are strengthened by the act of 1 Ed. 4. c. 2., (see Appendix,) declaring that sheriffs in their tourns or *law-days*, should not have power to fine or imprison on indictment, or presentment there, in which act there is an express exception of persons holding liberties and franchises by grant or prescription. But the steward's power to imprison has been denied. *Godfrey's case*, 11 Co. 43 b. And see 1 Roll. Rep. 35, 74. Scroggs 5, 16. Shepp. 9. Kitch. 81, says, *Quære* of committing a tenant to prison since Magna Charta, c. 29.

the steward hath powers equal with the Justices of the Bench (*a*).

In one particular instance, indeed, it should seem that he has a still greater power, for if there are not sufficient suitors present to constitute a jury, he may compel a stranger passing by to be sworn (*b*); and consequently impose a fine on him for his refusal (*c*).

We shall presently see that all felonies are inquirable at the court leet, those, at least, which were so at common law, and those of which the leet has express jurisdiction by statute law:—this is to be done by indictment or inquisition by roll indented under the seals of the jurors consisting of not less than twelve persons, whereof one part is to remain with the person indicting, and the other part with the steward, to be certified by him to the King's justices at the next gaol delivery (*d*), and persons against whom such charges by indictment or inquisition are found may be committed by the steward to prison (*e*); but the leet cannot arraign and deliver the persons indicted (*f*):—And except for felony the steward hath no power to inquire by indictment or inquisition, therefore an indictment in leet of assault and battery without bloodshed is not good, for such indictment before the sheriff in his tourn was adjudged void (*g*); nor can a steward in leet take indictment of robbery out of his precinct (*h*).

(*a*) Br. Leet 14 cites 7 H. 6. 12.

(*b*) 7 H. 6. 12. 12 H. 7. 15.
Br. Leet 14, 24. Kitch. 13. Ib.
89, cites 2 H. 7. 4. Ib. 224, cites
3 H. 7. 4. 1 Roll. Abr. 542 (Y),
pl. 1, cites 7 H. 6. 13. " This
power must, however, be confined
to those courts in which it is the usage
to swear and discharge the jury in
the course of the day." Rits. 6. n.
See post. sect. 5.

(*c*) 7 H. 6. 12. Shepp. 8, 9.

(*d*) See further on this subject,
post., sect. 5.

(*e*) Kitch. 81, says ' The steward
may send a prisoner taken for felony
to the gaol,' cites 13 H. 4. 12.

(*f*) Cromp. J. P. 151, cites 8 H.
4. 17.

(*g*) Dy. 233 b. pl. 14, cites 13 E.
4. 10.

(*h*) Br. Corone, pl. 194, where it
mentions that a *capias* was awarded
against the lord of the leet and his
steward for taking such an indict-
ment, cites 41 ass. 30. Ib. Leet 18,
cites S. C.

It is generally supposed that the steward of a court leet may be retained by parol (*a*); except in the case of the King or a corporation, when it is certain that a patent or deed is essential (*b*).

The better opinion is that the office of steward of a court leet, being a judicial appointment, is not grantable in reversion, even in the case of the King (*c*); and that such office is forfeitable for non-user or mis-user (*d*).

It would clearly appear that a mandamus lies to restore the steward of a leet (*e*). And we have seen that an information in nature of a *quo warranto* has been granted against a person for exercising the office of steward of a court leet (*f*). But I have also shown that, in one instance, it was refused, as being a private right (*g*).

DEPUTY-STEWARD.—It does not appear to have been decided whether the steward of a court leet can exercise the office by deputy, but at all events, as it has been doubted whether even a general steward of a manor can act by deputy in the absence of

(*a*) Co. Lit. 61 b. Dy. 248 a. Scroggs 28. But see Scroggs 35. Comb. 285. It is better to retain the steward of a court leet by deed:—and certainly is essential if the appointment be for life or years; or to enable the steward to recover his salary by writ of annuity. Ante, pt. 1. pp. 135, 143.

(*b*) Com. Dig. Cop. R. 5. Ib. Leet, M. 1. 19 Vin. tit. 'Steward of Courts,' F. 11 Co. 4, in *Curlé's* case. Ante, pt. 1, pp. 134, 135.

(*c*) *Curlé's* case, 11 Co. 4. *Howard v. Wood*. T. Jones 126-7. S. C. 1 Freem. 473. S. C. 2 Lev. 245. S. C. 2 Sho. 21. Co. Lit. 3 b. Ante, pt. 1. p. 141. Ante, p. 726. But it has been thought that a judicial office could be granted in reversion by usage, W. Jones 311. Hardr.

357. 2 Vent. 188. And that the King may so grant without usage. *Savage's* case, cited Mar. 42. 4 Mod. 280. Co. Lit. 3 b. n. 5. Ante, pt. 1. p. 142.

(*d*) 9 Co. 50 a. Per *Chock*, Br. forfeit. de terres, pl. 54.

(*e*) *Ile's* case, 1 Vent. 153. *The King v. the Churchwardens of Kingscleere*, 2 Lev. 18. *Stamps' case*, 1 Sid. 40. Sir T. Raym. 12. But see 12 Mod. 666. *Rex v. Cann*, T. 10 & 11 G. 2, Andr. 14.

(*f*) *The King v. Hulston*, 1 Str. 621. *The King & Medlicot*, 2 Barnard. B. R. 222. Ante, tit. 'Court Baron.' p. 725, n. (*c*).

(*g*) *Rex v. Cann*, Andr. 14. Ante, p. 725, n. (*c*).

an express power, or an established custom, I must suppose that the steward of a court leet, who presides there in a judicial character, could not depute a person to perform the duties of the office for him, unless an authority of that nature should be contained in his patent or deed of appointment, or he could show an established custom for it (*a*).

What fines may be imposed by the Steward of a Court Leet.

The steward may set a fine on any man for a contempt or disturbance in court (*b*), and such fine is recoverable in an action of debt (*c*); but the fine must be reasonable (*d*), though it should seem that the reasonableness need not be averred (*e*); nor need the fine be affeered, as in the case of an amercement (*f*).

In an action of debt for a fine imposed on the defendant at a court leet the plaintiff set forth in his declaration that he had a leet within his manor of H., to which, &c., and that at a court held, &c. before J. S., his steward, he the said steward told the defendant that he was a suitor, and ought to be sworn to inquire, &c., who replied "in saying so thou liest," and for those words the steward set a fine of 20*s.*, for which the action was brought. The case was at issue upon a plea of *nil debet*, and a verdict was given for the plaintiff. It was moved in arrest of judgment, that this was not a contempt for which

(*a*) See *Scambler v. Waters*, Cro. Eliz. 637. The *Earl of Rutland & Spencer's case*, 4 Leo. 243-4. Cro. Car. 50, 279, 556. Vide also *Scroggs* 36-7. Ante, pt. 1. pp. 145-6.

An infant cannot preside either as steward or deputy-steward in a court leet. *Scambler v. Waters*, Cro. Eliz. 637. Ante, pt. 1. p. 136.

(*b*) *Griesley's case*, 8 Co. 38 b. Dy. 233 b. pl. 14. Kitch. 82, 86.

Action upon the case will lie by the lord of the leet against a person disturbing his steward in holding a court leet. 38 H. 6. 16. Br. action on the case, pl. 75.

(*c*) Br. Leet 29. Kitch. 81-2, 86, cites 7 H. 6. 13. 10 H. 6. 7.

(*d*) *Griesley's case*, sup. 2 East 59, in *Davidson v. Moscrop*.

(*e*) Co. Ent. 571-2. 2 East 59.

(*f*) Kitch. 82, cites 10 H. 6. 7.

a fine ought to be imposed, but the court decided otherwise, and that the action was well brought (a).

And where the defendant had put on his hat in contempt of the court, and on being admonished by the steward of the impropriety, he replied that he did not value what he (the steward) could do to him, whereupon the steward set a fine of 40s., for which the lord of the leet brought an action of debt, and it was adjudged that the action lay (b): But in a case where the observation only implied a doubt of the right of holding the court in the particular place, it was adjudged that the steward was not justified in setting a fine of 5*l.*, for the words spoken (c).

The refusal to make a presentment is a contempt, for which the steward may assess a fine on the jury (d); but the fine must be set severally (e), and so in all cases, except only where there is an uncertainty of persons, as in a fine on a town for the escape of a felon (f): and if any suitor present in court refuse to be sworn on the jury (g), or if any of the jury depart without giving their verdict (h), or give it before all are agreed (i), they may be fined by the steward.

The steward is also authorised to set a reasonable fine on any person elected by the jury to fill the office of constable or tithing-man, who being present should refuse to be sworn (k); and on a constable or tithing-man refusing to make presentment (l).

(a) *Earl of Lincoln v. Fisher*, Cro. Eliz. 581. S. C. Ow. 113. S. C. Mo. 470.

(b) *Bathurst v. Cox*, Sir T. Raym. 68. Scroggs 150-1.

(c) *Berrington v. Brooks*, T. Jones 229.

(d) 10 E. 3. (or E. 4.) 4. Powell 32. Kitch. 82.

(e) *Bullen v. Godfrey*, 1 Roll. Rep. 73. 11 Co. 43. Dy. 211 b. pl. 31.

(f) 11 Co. 43 b, in *Godfrey's case*.

(g) 10 H. 6. 7. 39 E. 3. 44 E. 3. 15. Kitch. 82. Ib. 86, cites 13 H. 6. Leet 11. And see *Swan v. Morgan*, Lex Man. App. 80.

(h) *Griesley's case*, 8 Co. 38 b.

(i) 40 Ass. 10. 1 Roll. Abr. 219. (Y) pl. 4.

(k) *Fletcher v. Ingram*, Salk. 175. S. C. 5 Mod. 130. S. C. 1 Lord Raym. 70. S. C. Skin. 635. 2 Hawk. P. C. 64.

(l) *Griesley's case*, sup., cites 10 H. 6. 7. a.

We have also seen that the bailiff's refusal to execute his office is an offence fineable by the steward of a court leet (a).

But a fine for contempt can only be set when the offence is committed in court, so where in replevin the defendant justified the taking a distress for a fine set on the plaintiff by the steward of the leet, for that he (the plaintiff) did not appear at the court to do suit and service there: upon demurrer to this plea the plaintiff had judgment, the court holding that the offence ought to have been presented, and the plaintiff amerced; and *Periam* said 'if the steward shall assess the fine, he will assess it too grievous, and so the party shall have no remedy, but for ameracements a *moderata misericordia* lieth,' citing 10 H. 6. 7. (b); but this writ, as it should seem, only lies where a person is amerced in a court baron or other court which is not a court of record, and not even there, if the amercement be affected (c).

Of Amercements.

An amercement is generally considered to be the act of the jury (d), and a fine the act of the court (e), though it has been

(a) Ante, p. 835.

(b) *Hall v. Turbett*, Cro. Eliz. 241. And see *Lukin v. Eve*, Mo. 88-9. 8 Co. 41 a. This applies equally to a constable not present at the time of his election, whose refusal is to be presented at the next court, and then he shall be amerced. *Fletcher v. Ingram*, ubi sup.

In replevin the defendant avowed for distress for pain assessed in leet for not serving as constable, nor finding sufficient deputy, according to the custom that he that is chosen must serve *per se* or another. And it was held on demurrer that the presentment was ill, being that the

plaintiff should find sufficient person to serve for him, not giving him liberty to serve for himself. *Escourt v. Stokes*, 1 Keb. 416.

(c) F. N. B. 75 A. Ib. 76 D, and n. (a). *Stubbs v. Flower*, 1 Bulst. 125.

(d) 7 H. 6. 12, cited Br. Leet 12. Ib. 'Fine pur contempts,' 44. Ib. Amercement 65. 8 Co. 41. Palm. 7. 3 Keb. 362, in *Culler v. Creswick*. *Morgan's case*, 8 Mod. 300. S. C. Gilb. Eq. 209. 2 East 59.

(e) See Br. Abr. as in the last note. Keilw. 65. pl. 5. *Godfrey's case*, 11 Co. 43 b. 2 East 59.

said that the amercement is the act of the court, and the affeerment the act of the jury (*a*).

We have just seen that for not appearing at the court leet the suitor is to be amerced, as a fine can only be set by the steward for an offence in court (*b*), and the jury are to present that the party ought to do suit at the particular court (*c*). But it is not necessary to prove notice on the suitors (*d*).

No person can be amerced in leet for a private trespass done to the lord (*e*); nor could the right be upheld even by custom (*f*), though this was formerly doubted (*g*). But a deciner may be amerced for non-payment of the *certum letæ*, if a prescription be shown for it, but clearly not without (*h*).

An amercement in a court leet, as in a court baron, should be reasonable (*i*), and must be affeered (*k*); and yet it has been said, that if the jury will amerce in a *certain* amount there needs not any affeerment (*l*).

The affeerment of an amercement must be in open court by two or more persons appointed by the steward and sworn for that purpose, and not by the jurors at large (*m*); but the

(*a*) See 8 Co. 406, in *Griesley's* case, 2 Keb. 613, in *Rex v. Dickenson*. 1 Sho. 62, in *Matthews v. Cary. Stephens v. Haughton*, 2 Str. 847. Vide also the case of an amercement for not appearing at the sheriff's tourn, where the assessment of it was considered to be a judicial act, *Gryffyth v. Biddle*, Cro. Car. 275. The jury are to amerce, and the sum assessed is to be affeered by officers elected by the steward. *Evelin v. Davies*, 3 Lev. 206. *Wilton v. Hardingham*, Hob. 129. Per *Dolbin*, J. 1 Sho. 62, in *Matthews v. Cary*. 8 Mod. 298.

(*b*) *Hall v. Turbett*, Cro. Eliz. 241.

(*c*) *Ib.*

(*d*) *Ib.* Skin. 393, in *George v.*

Lawley.

(*e*) 1 Roll Abr. 211 (C) pl. 1, cites 12 H. 4. 8 b. *Rex v. Dickenson*, 1 Saund. 135. S. C. 2 Keb. 606, 613. *Rex v. Ayers*, 2 Keb. 139. 3 Keb. 644. Sir T. Raym. 160.

(*f*) *Wood v. Lovatt*, 6 T. R. 511.

(*g*) 12 H. 4. 8, cited Br. Leet 12. *Ib.* Custom 16. *Ib.* Amercement 19.

(*h*) *Ante*, p. 826.

(*i*) Co. Lit. 126. 2 Inst. 27. *Ante*, p. 743, et seq.

(*k*) *Mirr.* c. 5. s. 1. Br. Amerciament 50, cites 10 H. 6. 7. 8 Co. 39 b. *Sup. n.* (*a*).

(*l*) Per *Holt*, C. J. in *Matthews v. Cary*, 1 Sho. 62; & 11 Mod. 76, in *Brook v. Hustler*.

(*m*) *Evelin v. Davies*, 3 Lev. 206. *Lex Man.* 13. *App. Sup. n.* (*a*).

affeerors may be selected from the jury; and this is the constant practice (*a*).

The reasonableness of an amercement once affeered cannot be questioned in a writ of error, nor shall the party have a *moderata misericordia* (*b*); the latter writ, indeed, is only applicable to courts that are not courts of record (*c*).

Of the Remedies for Fines and Amercements.

We have seen that a fine set by the steward in leet is recoverable in an action of debt (*d*). It may also be recovered by distress (*e*), even without a custom, a distress being incident to a court leet of common right (*f*); and the lord may sell the distress (*g*); but when the fine is not of common right, or when it is for a private advantage of the lord, it cannot be distrained for, without a prescription (*h*).

An amercement in a court leet is recoverable either by action of debt (*i*), or by distress; and though it is said in some of the books that a man may prescribe for amercement in leet to distrain and *sell* the distress (*k*), yet it should seem that the

And it must be made at the same court, and be so pleaded. *Cutler v. Creswick*, 3 Keb. 363. (*g*) Br. Leet 20. Ib. Distress 40, 72, cites 3 H. 7. 4.

(*h*) 11 Co. 44 b, in *Godfrey's case*. (*i*) Br. Dette 180, cites 10 H. 6. 7. Keilw. 66 b. 8 Co. 41 b. Kitch.

(*b*) *Stubbs v. Flower*, 1 Bulst. 86. And wager of law was not allowed even before the stat. of 3d. & 4th W. 4. c. 42, (ante, p. 746).

(*c*) F. N. B. 75 A. Ante, p. 851. (*d*) Ante, pp. 849, 850. And see *Doe v. Ball*, Lex Man. 85, App. Keilw. 66 b. Kitch. 86. 10 H. 6. 7.

(*e*) *Swan v. Morgan*, Lex Man. 80, App. Keilw. 66 b. (*k*) Br. Leet 34. Ib. Prescrip. 40, cites 21 H. 7. 40. "The lord may sell the distress taken for an amercement in leet, as the King may sell the distress, for that it is the King's court, 3 H. 7. f. 4." Kitch. 85. Br. Distress 72.

(*f*) 1 Roll. Abr. 668. F. pl. 2, 3. *Pierson v. Ridley* (or *Ridge*), 2 Keb. 701, 739, 745. Sir T. Raym. 204. 1 Vent. 105. *Godfrey's case*, 11 Co. 45 a.

remedy by distress is of common right, equally as for a fine (*a*).

And the distress may be taken in any place within the precinct of the leet (*b*); even in the common street (*c*). But the cattle of a stranger cannot be taken, as in a distress for non-performance of suit (*d*).

In justifying a distress for an amercement, the defendant must show that the offence was committed within the jurisdiction of the leet; and for this purpose he ought to plead the bounds of the leet with certainty (*e*); and it is requisite also to show in what sum the plaintiff was amerced, or rather the particular sum set by the affeerors (*f*).

The bailiff in justifying the distress for an amercement may plead the amercement without averring the fact, but this is in trespass only; in replevin it is otherwise, for there he must recover on the merits, as he makes a title for the return of the goods (*g*).

It has been said that the bailiff of a court leet cannot distrain for an amercement without a special warrant from the steward, not even by command of the lord of the manor (*h*).

(*a*) 1 Roll. Abr. 666. F. pl. 2. 1 Brownl. 36. Kitch. 85, cites 10 H. 7. 15, and other cases from the year books. *Griesley's case*, 8 Co. 41. *Godfrey's case*, 11 Co. 45 a. Br. Distress 45. Ib. Prescription 61, cites 9 H. 7. 22. Scroggs 145. Gilb. Dis. 12, 13. The power of distress is suspended by the possession of the King. Br. Leet 8. Kitch. 85-7. Ante, p. 853. n. (*f*).

(*b*) Br. Leet 28, cites 2 H. 4. 24. Kitch. 86, cites 8 R. 2. Avowry 194.

(*c*) Kitch. 86, cites 34 E. 2. 19 E. 2. Avowry 221.

(*d*) *Goosey v. Pot*, Ow. 146. *The Prior of Tindal's case*, 41 E. 3. 26.

Br. Leet 4. Scroggs 146. But see Kitch. 86.

(*e*) *George v. Lawley*, Skin. 393. *Wilton v. Hardingham*, Hob. 129.

(*f*) *Evelin v. Davies*, 3 Lev. 206. *Wilton v. Hardingham*, sup. *Brook v. Hustler*, 1 Salk. 56.

(*g*) *Stephens v. Haughton*, 2 Stra. 847. *Lamb v. Mills*, Skin. 587. S. C. 4 Mod. 378. *Matthews v. Carey*, Carth. 73. S. C. 3 Salk. 52.

(*h*) Carth. 75, in *Matthews v. Carey*. And see *Lamb v. Mills*, sup. 'Not without an especial warrant from the steward or lord,' per *Popham*, in *Steverton v. Scroggs*, Cro. Eliz. 698. 'The bailiff may distrain for lawful amercements, by reason of

In debt for an amercement the declaration ought to express the names of the affeerors, or it shall be intended to be done by the steward (*a*); and it should also aver that the affeerment was made at the same court as the amercement (*b*).

And in *Monnop v. Thomas* (*c*), upon a distress for an amercement in leet, it was held that the issue whether C. and H. were *afferratores curiæ prædictæ* ought to have been tried by the record.

In an avowry for an amercement in leet it is not sufficient to say *præsentatum fuit* at the leet, that the plaintiff did such an act, but he must aver the act, and not rely upon the presentment (*d*).

And in debt for an amercement in leet the declaration must also aver inhabitancy, as well at the time of the amercement as of the offence, but this will be cured by verdict, for it must be proved at the trial (*e*).

Where in debt for amercement the declaration stated it to have been affeered at a court holden before the steward, but it appeared in evidence that the court was really holden before the deputy steward, the variance was held to be fatal (*f*). And where in debt for an amercement the declaration stated that the defendant was summoned to serve on the jury of the court *leet* and court *baron*, but the summons was to serve on the jury of the *leet* only, the plaintiff was nonsuited, Lord *Mansfield* observing that this was a matter of strict law, and

the office,' per *Gandy*. *Ib.*

It should seem that the bailiff of a liberty of the Duchy may distrain *ex officio*, for fines and amercements for the King, and keep the same fifteen days, and that such distress may then be sold, unless the party enter into bond or show good cause, but that he cannot replevy. See *Rits. on Courts Leet*, 121 n.

Whether the bailiff is punishable if there be any irregularity in the

distress, see *Keilw.* 52, pl. 3. *Ib.* 66 b.

(*a*) 8 Co. 40 b, in *Griesley's* case. *Cutler v. Creswick*, 3 Keb. 362-3. *Keilw.* 66 a.

(*b*) *Cutler v. Creswick*, sup.

(*c*) Cro. Eliz. 860.

(*d*) Sir T. Raym. 337.

(*e*) Bul. N. P. 167, cites *Wicker & Norris*, 8 G. 2.

(*f*) *Wyvill v. Shepherd*, 1 H. Bl. 162.

the plaintiff was bound to prove the averment in the declaration, which the summons did not prove (*a*).

It should seem that in debt for amercement in leet for not abating a nuisance, it is not necessary to allege notice of the order, for the party being within the jurisdiction of the leet, is to take notice of it at his peril (*b*), and this rule applies equally to an amercement for breach of a by-law (*c*).

The defendant may traverse the fact of the presentment in debt for amercement in leet (*d*):—But where an amercement had been estreated into the duchy court of Lancaster, and paid, the court of B. R. would not grant a *certiorari* to remove the record and proceedings out of a court leet, in order to inquire into the propriety of an amercement, *Rex v. Heaton* (*e*). The case was this—The manor and liberty of the *Savoy* is parcel of the possessions of the Duchy of Lancaster. Previous to the Easter court the *steward* issues his warrant to the *chief bailiff*, requiring him to summon all resiants, &c. to appear and do suit and service, and also to warn a sufficient number of resiants to be upon pain to serve offices, &c.; whereupon the chief bailiff issues his precept to the *deputy* to summon them accordingly. *Heaton* had been so summoned to attend the court at twelve o'clock on the 3d May, 1787; he came accordingly at the exact time, and waited a few minutes at the court house, but the steward not being there, he desired one of the officers present to take notice that he had duly attended, and that being elsewhere engaged, he was obliged to go away. Though it was the practice to issue the summonses for twelve o'clock, it had not been usual to open the court till near one o'clock, and this was generally known. The court was opened on this occasion at the usual time, and *Heaton* not appearing, the jury presented him, and amerced

(*a*) *Gery v. Wheatley*, 1 H. Bl. 163 n.

(*b*) *Lee v. Boothby*, M. 11 Car. B. R. Vin. Abr. Incroachment, pl. 2. Ib. Condition (B. d.) pl. 6.

(*c*) Ante, p. 749.

(*d*) Carth. 74. 1 Lord Raym. 470. Bul. N. P. 167. See further as to traverse, post. sect. 5.

(*e*) 2 T. R. 184.

him for his default in the usual sum of £5, and the amercement was duly affeered. In Trinity term following, the amercements were estreated by the steward, and the estreat roll delivered by him upon oath into the court of the duchy chamber of Lancaster; in consequence of which the usual writ of *levari facias et capias* issued, under the duchy seal, to the bailiff of the liberty (a), into whose hands *Heaton* paid the £5.

A rule was obtained in the court of B. R. calling on the steward of the manor and liberty of the Savoy to show cause, why a writ of *certiorari* should not issue to remove into that court the record and proceedings of the court leet, held as above mentioned, in order that the same might be quashed for irregularity: And it was urged against the rule, that *Heaton* had no claim to this indulgence, his attendance being merely illusory, and a *certiorari*, being originally a prerogative writ, was never granted of course; and that in point of law it was a decisive objection to the application, that the fine had been estreated and paid; that the records and proceedings of the leet were become part of the records of the duchy chamber, and could no more be removed than the presentments and fines of any other inferior court, after they were estreated into the Exchequer (b); nor was *Heaton* without remedy, for he might have applied to the duchy court to remit or mitigate the fine [amercement] according to equity. In support of the rule it was contended, first, on the merits, that *Heaton* having attended as above stated, had thereby showed his respect to the court, and that on a *certiorari* he would be intitled to traverse the presentment itself (c); and secondly, on form, the party being intitled to his *certiorari* if the presentment appear on the face of it to be informal (d). And that there were two

(a) See as to a distress by the bailiff of a liberty of the Duchy, ante, p. 855, in notis.

(b) The case of the *Sheriff of London and Middlesex*, T. Jones 169,

was cited.

(c) *Rex v. Roupell*, Cowp. 458. Dy. 13. pl. 64.

(d) Cowp. 460. 1 Saund. 135.

objections to the presentment. 1st, That it was an amercement without affeerment, but even if in truth affeered, yet not being recorded, it must be taken that there was none, for that fact could not be tried *per pais* (a). 2dly, That the amercement ought to have been by the court, and not by the jury (b). But the court, without hearing the other side on the objection to the presentment, were clearly of opinion that a *certiorari* would not lie, as the *fine* [amercement] had been estreated and paid.

Amercements in the King's leet are to be estreated into the Exchequer (c) and may be levied by *levari facias*; and action of trespass for any thing done in the execution of that process must be brought in the office of pleas in the Exchequer, the bailiff levying the distress as officer of that court (d).

And the above cited case of the *King & Heaton*, shows that amercements set at courts of which the King is lord in right of his Duchy of Lancaster, are to be recovered by a similar process out of the duchy court.

SECT. III.

Of By-Laws.

BY-LAWS may by custom be good in the court leet (e), as well as in the court baron (f), and they are to be embodied in the presentments and verdict of the jury and homage; but it is

(a) *Monnop v. Thomas*, Cro. Eliz. 860. Ante, p. 855.

(b) Ante, p. 851-2. Fitzg. 46, 109. 1 Barnard. 214.

(c) Anon. Hardr. 471. In ordinary cases the amercements are estreated or extracted from the court roll, or record of proceedings in the leet, and a warrant from the steward

to the bailiff to levy the same subjoined.

(d) 1 Roll. Abr. 533. Lane 55-6.

(e) Lane 56. Br. Custom 32. Ib. Prescrip. 40. Fitz. Prescrip. 67. *Ruddock's case*, 6 Co. 25 a. S. C. Cro. Eliz. 648-9.

(f) Ante, p. 747. et seq.

clear that they are not binding of common right (*a*), except as to matters properly cognisable in the leet, such as the neglect of repairing highways, bridges, &c. (*b*). And in pleading the custom the by-law must be set forth (*c*).

And I must suppose that a custom to make by-laws at a court leet, regarding matters of a private nature, and not naturally belonging to the leet, could not be supported (*d*). But in the case just cited from Hardress' Reports (*e*), it appeared that at a court leet, held for the King within the honour of *Grafton*, a person was fined 20*l.*, according to a by-law for the payment of 5*l.* a month by every one within the leet that should receive or place an inmate within any house there, without giving security to the overseers of the parish, to discharge the parish. The fine was estreated into the Exchequer, and process issued to levy it; and *Hale*, C. Baron, held it to be a good by-law, and frequent in leets, but said that it was hard to estreat the fine thither without taking the usual remedy for it by distress, and to extend the party's lands upon it, when, perhaps he might have something to plead to it, as that he was not within the leet, or that he received no inmate. But the party was put to plead, the officers of the court observing that it was usual to estreat such fines into the Exchequer, *when they belonged to the King*.

We have seen that the freehold tenants of a manor are bound

(*a*) *Wormleighton v. Burton*, Cro. Eliz. 448. Lane 56.

(*b*) 5 Co. 63 a, in the *Chamberlain of London's* case. Vide also Kitch. 82, 156, cites 11 H. 7. 14. 21 H. 7. 40. Ib. 89, cites 44 E. 3. 19. *Jeffrey's* case, 5 Co. 66 b. *Galeward's* case, 6 Co. 60 b. *Abbot v. Weekly*, 1 Lev. 176. And a by-law must be just and reasonable to be supported, per *Parker*, C. J. 10 Mod. 133.

(*c*) *Gerrish v. Rodman* (or *Rodborne*), 3 Wils. 155, 164.

(*d*) *Gouldsb.* 79. pl. 13. *Scroggs* 141. *Rex v. Arnould*, Tr. 21 Car. 2. B. R. cited ib. 142. Kitch. 89. Per *Tirrel*, in *Earl of Exeter v. Smith*, Carter 173. S. C. 2 Keb. 368. But see contra in the last case (per *Wild & Archer*). Vide also *Clarke's* case, 5 Co. 64 a. Whether a by-law for repairing a church is for the public good, and therefore binding, see ante p. 747 n. (*g*), Co. Lit. 110 b.

(*e*) Anon. 471. Ante p. 858. *Scroggs* 11. And see Lane 55-6.

to take notice of a by-law in a court baron (*a*):—When, therefore, a by-law in court leet is established by custom, I apprehend that personal notice of it would be unnecessary, as every inhabitant within the precinct of a leet is bound to attend the court.

SECT. IV.

Of the Election of Officers at the Court Leet.

CHIEF MAGISTRATES, &c. — We have seen that in some manors the jury of the court leet are invested with the highly important power of choosing the mayor, portreeve, or other chief municipal officer of the borough or town to which the leet jurisdiction is appended (*b*), but that in others the jury merely present in writing the candidate who may have the majority of votes; and have no control over the poll (*c*). And that in places where no charter of incorporation exists, *vianders* or other functionaries are chosen at the leet, who are the returning officers for the year (*d*).

(*a*) Ante, p. 749.

(*b*) Ante, pp. 842, 844.

When a resiant inrolled as such at the court leet of a borough, becomes thereby intitled to vote at the election of members of parliament, the inrolment will be compelled by a *mandamus* to the mayor or other proper officer; but it is essential to establish the connexion between the leet and corporation by affidavit. *Rex v. Mayor, &c.*, of West Looe. 3 Barn. & Cress. 683. Ante, p. 830. n. (*a*).

(*c*) Ante, p. 842 n. (*b*). And see *The King v. Bankes*, 3 Burr. 1452, in which the court of B. R. discharged a rule previously granted calling on the lord of the leet for the borough manor of Corfe Castle, Dorsetshire, and on the steward, the bailiff, and deputy bailiff, and upon the jury summoned and ready to be

returned, to show cause why a *mandamus* should not issue, requiring the lord and his steward to hold a court leet, and the bailiff, or in his absence, the deputy bailiff, to return and deliver unto the court leet, the panel or list of the jury summoned by the bailiff, and requiring the steward to swear the jury, and the jurors to be sworn, and to proceed to the election of a mayor, (and which rule had been amended by inserting the name of the mayor *de facto*):—the ground for discharging the rule appears to have been that the election was not merely colourable, (and clearly therefore void,) but *doubtful*, and fit to be tried on an information in nature of a *quo warranto*. Vide also the act 11 Geo. I, c. 4. in the Appendix.

(*d*) Ante, p. 830, n. (*a*).

BAILIFF.—We have also seen that in some manors the bailiff is chosen by the jury, and sworn in with the other officers elected at the court leet (*a*). When that custom does not prevail, he is more usually appointed by the steward, but sometimes by the lord.

CONSTABLES.—The better opinion is that both high and petit constables were recognised by the common law, the former being officers of hundreds, and the latter officers of tithings (*b*): And they appear in ancient times to have been chosen at the court leet, or, when no leet existed, at the tourn (*c*).

It has, however, been doubted whether the high constable is an officer of which the common law took notice (*d*). Lord *Coke* supposed that a petit constable was an officer at common law, but that the constable of a hundred was created by the statute of Winchester (*e*); yet that statute has on the contrary been thought to furnish evidence of the previous existence of such officers (*f*).

There is a singular paucity of authorities as to the power of the court leet to elect a constable for a vill or hamlet, where no such office previously existed, or to elect a second constable or tithing-man, where there had previously been one

(*a*) Ante, pp. 843, 845.

(*b*) Crompt. 6 b. 2 Hawk. P. C. c. 8. s. 6. Ib. c. 10. s. 33. *The King v. King*, 3 Keb. 231, cites *The King v. Samois*, Hil. 16 & 17 Jac. Lamb. office of Constable, 16. 1 Mod. 13. *The Queen v. Wyatt*, 2 Lord Raym. 1193. 1 Salk. 175, 381. Fortesc. 127. 1 Bac. Abr. 683.

(*c*) 4 Inst. 265. *The King v. Bernard*, 2 Salk. 502. S. C. Comb. 416. *Rex v. Goudge*, 2 Str. 1213. *Rex v. Hewson*, 12 Mod. 180. *Rex v. Adlard*, 4 Barn. & Cress. 779.

(*d*) *Abbot v. Moore*, 1 Mod. 13.

(*e*) 4 Inst. 267. And see two useful little works, the one called 'the Exact Constable,' published in 1680, and the other called 'The Complete Constable,' published in 1692. Lamb. office of Constable, 5. 3 Keb. 231. Cro. Eliz. 375-6, in *Sharrock v. Hannemer*. 2 Lord Raym. 1195. Per *Twisden*, 1 Mod. 13.

(*f*) 2 Hawk. P. C. c. 10. s. 33. *James v. Green*, 6 T. R. 232. *Sed qu.* and see extract from this stat. (13 Ed. 1. st. 2. c. 6) in the Appendix.

constable only; yet it is generally supposed that the court leet, in either the one case or the other, possesses a discretionary power; for, as at common law, the constables were subordinate officers to the conservators of the peace, so are they now the proper officers of the justices (a). And in *James v. Green* (b), Lord *Kenyon* said, "It is no new thing, if we may have recourse to analogous cases, at this day to appoint officers in places where none were in fact appointed before, if by law such an appointment may be made. In the case of vills, the court have, in modern times, frequently granted writs of mandamus to appoint overseers of the poor for the first time, as soon as the exigencies of the place required it."

But in *Abbot v. Moore* (c), *Moreton* said "The book of Villarum in the Exchequer sets out all the vills, and there cannot be a constablewick created at this day."

It has been the subject of great controversy whether the election of constable belongs of common right to the jury of the court leet, or to the steward (d); but it clearly appears that the right of election is in the jury (e).

A refusal to serve the office by a person not present at the time he is elected may be punished by amercement (f), but his act of contempt should be presented at the succeeding court.

When a constable or tithing-man chosen at the leet is present and refuses to be sworn, the steward may set a fine upon him (g); and when absent, or if the steward refuse to ad-

(a) 1 Salk. 381. 1 Lord Raym. 175. S. C. 1 Lord Raym. 70. S. C. 5 Mod. 127. *The King v. Stevens*, T. Jones 212. It should seem to be a settled principle that a corporation cannot elect a constable, except by special custom. *The King v. Bernard*, sup. S. C. Skin. 669. *The King v. Routledge*, 2 Dougl. 536.

(b) 6 T. R. 232.

(c) 1 Mod. 13. Vide also, per *Holt*, 12 Mod. 181, in *Rex v. Hewson*. Yet see *Village of Chorley* case, 1 Salk. 176, in which *Holt* said, "a village and a constable are correlatives, but a hamlet has no constable." Vide also 12 Mod. 180, per *Keiling*, C. J. cited ib. 181.

(d) *The King v. Bernard*, ubi sup.

(e) *Fletcher v. Ingram*, 1 Salk.

175. S. C. 1 Lord Raym. 70. S. C. 5 Mod. 127. *The King v. Stevens*, T. Jones 212. It should seem to be a settled principle that a corporation cannot elect a constable, except by special custom. *The King v. Bernard*, sup. S. C. Skin. 669. *The King v. Routledge*, 2 Dougl. 536.

(f) Ante, p. 851, n. (b).

(g) Ante, p. 850. And see *Doe & Ball*, Lex. Man. App. 85. pl. 24. *The King v. Harpur*, 5 Mod. 96. *Griesley's case*, Sav. 93, 8 Co. 38.

minister the oath to him (*a*), he is to go before a justice of the peace to be sworn (*b*). And a refusal to accept the office of constable is an indictable offence (*c*).

Should the leet neglect or refuse to choose a constable, the justices in sessions may appoint one (*d*), but only until the lord shall hold a court (*e*); and the sessions cannot discharge a constable appointed at the leet, except under the provisions of the act of 13 and 14 Car. 2. c. 12. which directs that in case any constable shall die, or go out of the parish, any two justices may make and swear a new one, until the lord of the manor shall hold a court leet; and that if any officer shall continue above a year in his office, the justices in their Quarter Sessions may discharge him, and put another in his place, until the lord of the manor shall hold a court (*f*).

If a person be elected constable in a court leet by spleen, although the sessions cannot interfere, yet the Court of King's Bench will discharge such person, and the constable previously appointed must act until another be duly chosen and sworn (*g*).

(*a*) But the steward is compellable by *mandamus* to administer the oath to him. Comb. 285.

(*b*) *Rex v. Dr. Franchard*, 2 Str. 1149. *Rex v. Stevens*, ubi sup. *Prigg's case*, Aley, 78. *Fletcher v. Ingram*, ubi sup.

(*c*) Post. p. 866. ('Tithing Man.')

(*d*) *Abbot v. Moore*, 1 Mod. 13.

(*e*) *Rex v. Davis & Gosling*, 2 Stra. 1050. And see *Rex v. Goudge*, Ib. 1213. *Rex v. Stevens*, T. Jones 212. *Village of Chorley case*, 1 Salk. 176. S. C. Holt, 153. *Rex v. Hewson*, 12 Mod. 180. So where there is no leet, *Lord Wentworth's case*, 1 Bulst. 174. *Terry & Furness*, 21 Car. 2. B. R., Scroggs 85. The justices should issue their summons, signifying to the party that

he has been elected constable, and requiring him to take the oath, &c. *Rex v. Halford*, Comb. 328-9. And see *Prigg's case*, sup.

(*f*) 1 Bulst. 174. *Rex v. Davis & Gosling*, sup. *Limington case*, 2 Stra. 798. *Rex v. Burden & Wakeford*, Barnard. B. R. 51. *Herson's case*, 5 Vin. Abr. 429, pl. 3; 6 Vin. 587, pl. 5. See extract from the above mentioned stat. in the Appendix.

(*g*) *The King v. Wright*, 1 Keb. 489. Anon. 12 Mod. 256.

A person elected constable who is not *idoneus*, (that is, not possessing honesty, knowledge and ability,) may be discharged by the leet, or by the court of B. R. *Griesley's case*, 8 Co. 41 b. 42 a. 1 Bulst. 174.

Though it is generally considered that a person is not bound to attend two leets (*a*), yet when a leet is held for a manor within a hundred, it has been held that a tenant of the manor leet is not excused from serving the office of constable for the hundred; but that a custom for the exemption might be good (*b*).

The office of a constable would appear to be a personal and not a pecuniary service, and therefore a person is not liable to serve the office unless he be resident in the parish (*c*); this, indeed, seems to be deducible from the custom of appointing constables at the court leet, and that practice in ancient times

(*a*) Ante, p. 825. And see Cro. Jac. 584. *Rex v. Routledge*, 2 Dougl. 537. Scroggs 2. Hughes' Abr. tit. Avoury, p. 170. But if a private leet has only a partial jurisdiction, the residents, as to all matters not cognizable there, must attend the superior leet, if any exist, otherwise the sheriff's tourn. 1 Roll. Abr. 542. Scroggs 3.

It may be a good custom for the chief pledges of the inferior leet, and a limited number of residents, to attend the grand leet. Cro. Jac. 584. Scroggs 3. Shepp. (p. 7.) says "If a man dwell within the precinct of another leet, and have lands only in my leet, I may not compel him to do service to my leet: And yet if he dwell sometimes in one place and sometimes in another, and one of those places is within my leet, where he dwells at the time my leet is held, in this case and at this time, he must do service at my leet, for he may do suit at both places at several times." And see the next note.

(*b*) *Rex v. King*, 3 Keb. 197, 230. *Keene's case*, 1 Freem. 348. *The*

Queen v. Jennings, 11 Mod. 215. *The King v. Genge*, Cowp. 13.

In the above case of *Rex v. King, Hale, C. J.*, said "there was this difference between a leet in ancient borough, who in Eyre appeared by four, and was always looked on as distinct from the hundred, and leet in *upland* towns is far different, and regularly he that owes suit to the leet owes none to the hundred, but by custom may do so." See as to the authority of that case, Cowp. 15.

"The privilege of having special customs derogating from the common law is in general denied to inferior places, such as *upland* towns, not being either cities or boroughs, and hamlets; though it is allowed to larger or more important districts, such as counties, manors, hundreds, honors, cities and boroughs." *Co. Lit.* 110 b. n. (2). And see 43 E. 3. 32 a.

(*c*) *Rex v. Adlard*, 4 Barn. & Cress. 779. Contrà as to the office of overseer. *Rex v. Hall*, 1 Barn. & Cress. 123. *Rex v. Poynder*, Ib. 178.

will help to show the description of persons liable to serve the office.

In the above case of *Rex v. Adlard, Abbott*, C. J., said "It was argued, however, that a non-resident occupier may be appointed to this office, because it may be executed by deputy. I do not know that the appointee can substitute a deputy of his own authority alone, without the sanction or consent of some other authority; but supposing that he can, we think it by no means follows that he is therefore compellable to take upon him an office in its nature requiring personal services, especially where no necessity for his appointment is shown."

A barrister who regularly attends the courts at Westminster, and a practising attorney, are exempt from serving the office of constable, but a physician whose profession is private and exercisable at his residence, has not a claim to a similar exemption (*a*).

It has, however, been said, that if a gentleman of quality be chosen constable of a town which has sufficient persons besides to execute this office, and there be no special custom concerning it, perhaps he may be relieved by the court of King's Bench (*b*).

From the nature of the office it seems inconsistent that it should be imposed upon women (*c*), and in *Prouse's* case (*d*), the court of B. R. held a custom that every one should be a constable or tithing-man, according to their several houses, to

(*a*) *Pordage's* case, 2 Keb. 578. S. C. 1 Mod. 22. S. C. 1 Sid. 431. Vide *Herson's* case, 5 Vin. 429, 431; 6 Vin. 587, where a person who had been elected by the leet and discharged by the sessions, because he was a Master of Arts, and the court of B. R. granted a writ to compel him to be sworn at the leet.

A certificate under 10 & 11 W. 3. c. 23, discharging persons from serving pariah offices, is no exemption from being sworn constable at a court

leet. *Birmingham* case, (*Rex v. Darbyshire*), 2 Burr. 1182.

(*b*) 2 Hawk. P. C. c. 10. 1 Bac. Abr. 686. *Rex v. Wright*, ubi sup. But see *Pordage's* case, sup.

(*c*) Women were originally compellable to attend the tourn, but women, as well as men, who had entered into religion, were excused by the stat. of Marlborough, ante, pp. 824, 838.

(*d*) Cro. Car. 389.

be bad, "for then a woman being an inhabitant in one of the said houses, it may come to her course to be constable, which the law will not permit."—But according to *Vane's case* (a), a custom in a vill where there are several houses, that every one shall be constable in turn, is good; "for though it shall happen to the turn of a widow, she may hire one to serve, and then he who so serves is sworn, and he is the constable and not a deputy."

And in the *King v. Stubbs* (b), where a woman had been appointed an overseer, *Ashhurst, J.*, said "the only question is whether there be any thing in the nature of the office that should make a woman incompetent? and we think there is not. There are many instances where, in offices of a higher nature, they are held not to be disqualified, as in the case of the office of high-chamberlain, high-constable, and marshal; and that of a common constable."

TITHING-MAN (THIRDBOROUGH, &c.)—The term tithing-man is more frequently used as synonymous with constable (c), though it often imports a subordinate or assistant constable; and the constable chosen for a manor sometimes has jurisdiction over distinct hamlets or vills, for which a particular constable or tithing-man is appointed (d).

We have just seen that a person elected constable or tithing-man, who refuses to be sworn, may be fined by the steward of the court leet, if the person so chosen be present, and that he may be amerced, if absent: it is also a settled principle that he may in either case be indicted at the assizes or quarter sessions (e). In all indictments for such offence it is proper

(a) 1 Sid. 355. Hil. 19 & 20 Car. 2. 5 Vin. 432, pl. 5. And see Comb. 243.

(b) 2 T. R. 406.

(c) So also the term Headborough. Ante, p. 812. n. (a.)

(d) See *Birmingham case*, (*Rex*

v. Darbyshire,) ubi sup.

(e) *Ib.* 1 vol. Ca. & Opin. 237. *Prigg's case*, Aley. 78. 12 Mod. 180. And see *Rex v. Lone*, 2 Stra. 920, which was an indictment against a person who had been elected constable at a wardmote court for the

to set forth the manner of every such election, before whom the court leet was holden, the notice and refusal, &c.; for it has been adjudged insufficient to say, in general terms, that the party was duly elected, or that he had notice thereof, without setting forth the special circumstances (a).

But the case of *Rex v. Brain* (b), is an authority, that a refusal to take the oath of office is, *primâ facie*, evidence of a refusal by the party to take upon himself the execution of the office; and upon a motion in arrest of judgment in that case, the court of B. R. held, that it was not necessary to state that the defendant had refused to be sworn, but that the offence was sufficiently charged in the indictment by alleging that he obstinately and contemptuously refused to take upon himself the execution of the office, although duly required so to do.

ALECONNERS: LEATHER-SEALERS.—These and other similar officers are frequently chosen at courts leet, and when the assise regulations were more highly valued, and consequently more rigidly enforced, the duties of those officers were deemed of no mean importance (c); but at the present day they are but as the shadow to the substance.

HAYWARD.—Sometimes this officer is elected and sworn in at the court leet, but it is generally, if not universally, where a leet is appended to a manor, and the court leet and court baron are held together; and when it exists as a totally dis-

city of London, for refusing to accept the office. And see *Rex v. Brain*, 3 Barn. & Adolp. 614.

(a) *Prigg's case*, ubi sup. 1 Burn's J. 496. *Rex v. Fuller*, 1 Bos. & Pul. 182.

(b) *Suprà*. See in Stark. Crim. Pleading, 2d Ed. p. 619, a precedent of an indictment against a person for not taking on himself the office of chief constable in a hundred, without

any statement that he refused to be sworn.

(c) See the pleadings in *Randall v. Whiston*, in which a prescription was alleged for a leet and a market, and a custom for the ale-tasters chosen at the leet, to cut any butter exposed to sale, which was deficient in weight. Lex. Man. App. 93. pl. 27.

tinct office from that of bailiff, which is more frequently, but not always the case, it partakes more of a private than a public character, the duties of the office being principally the care of the boundary fences, impounding of estrays, and the like.

SECT. V.

Of the Jury and their Presentments.

ALL offences cognizable in the leet, are to be inquired of, and presented, by suitors of the court (*a*), sworn and charged as a jury for that purpose, and consisting of not less than twelve (*b*); and when more than twelve are sworn, if twelve agree it is good enough (*c*): And it has been said, that the day being passed, the presentments in leet, where neither life nor freehold are concerned, cannot be shaken or questioned by any tribunal whatever (*d*); the reason for which is, that no process is there awardable against the party to compel him to answer (*e*): but although a presentment in leet, not affecting either life or freehold, is probably not traversable at the leet,

(*a*) But see ante, p. 847, of the power of the steward to swear strangers, if there are not twelve suitors. And note, that in the Rector of *Wigan's* case, 2 Str. 1207, the in-burgesses of Wigan, who were bound by usage to act as jurors at the court leet of the lord of the manor, having refused to attend at two courts, so that no business could be done, the court of B. R. granted a mandamus to enforce their attendance.

(*b*) Scroggs 84, cites Old Book of Entries, 392. Kitch. 89, cites 6 H. 4. 1; 45 E. 3. 26. Br. Leet 7.

Cutler v. Creswick, 3 Keb. 362.

(*c*) See Shepp. 20; who there says "If the custom of the place be to make two or more juries, or one grand jury and divers petit juries, it is good to observe it."

(*d*) Dy. 13 b. pl. 64. 1 Hawk. P. C. 217. s. 72. Scroggs 84. Kitch. 84, citing 19 H. 8. 11. 41 E. 3. 27. 2 R. 3. 12. But he also says in the same page, that though presentments by twelve shall not be traversed, yet you shall have recovery by writ of false presentment, cites 5 E. 3. 26. 21 E. 3. Tit. Bar. 271.

(*e*) Scroggs 85.

yet it is settled, that all presentments in leet may be removed by *certiorari* into the Court of King's Bench, and there traversed (*a*). It is observable also that the jurisdiction of the court, if not the presentment itself (*b*), was at all times traversable (*c*). And that an averment may be made against a presentment made by less than twelve (*d*).

We have seen that by the act of 1 Eliz. c. 17, for preserving the spawn and fry of fish, the steward of a court leet is authorised to impanel a second jury, to inquire of any concealments by the jury originally sworn, and that a penalty of 20*s.* is imposed on every juryman so wilfully concealing and making default in presentments (*e*). And it should seem that the perjury or wilful concealment of a jury in leet, was always inquirable there by another jury, and punishable by fine (*f*).

If presentment be not made in leet of articles of which that court has cognizance, then they are to be presented in tourn (*g*). And if not there, then before the Justices in Eyre, and if not there, then in the King's Bench (*h*). So if there should be any neglect of presentments in the leet of a manor, situate within a hundred, to which a court leet be appended, the articles

(*a*) *Rex v. Roupell*, Cowp. 458. 2 Hawk. P. C. c. 10. s. 13, 76. In 11 Mod. 228, it is said, that where a presentment in a leet is removed by *certiorari*, the style of the court must be set out exactly, but that there needs no such nicety in pleading.

It is too late for a removal of the presentment, after the amercement has been estreated into the Duchy court of Lancaster. Ante, p. 856-7.

(*b*) In Dyer's Reports, 13 b, pl. 64, *Fitzherbert* cited Britton as an authority, that every presentment in leet and tourn is traversable. Cowp. 460, per *Aston, J.* It is to be recollected, that in an action, founded on the mere right, as in replevin, or in debt for an amercement, the presentment is clearly traversable. Carth.

73-4. 1 Lord Raym. 470.

(*c*) Br. Presentment in court 1, cites 41 E. 3. 26. Rits. 132, 143. And see Keilw. 66-7. Scroggs 85. 2 Hawk. P. C. c. 10. s. 76.

(*d*) Ante, p. 868.

(*e*) Ante, p. 834. And see this stat. in the Appendix.

(*f*) *Mirr.* c. 1. s. 17. 520-1. 17 E. 2. Br. Custom, 3 Fitz. Abr. Custom, 1. 1 Roll. Abr. 560. pl. 13, 14. Ante, p. 834, n. (a).

(*g*) *Loader v. Samuel*, Cro. Jac. 551. Kitch. 84. Ante, pp. 830, 864. But the neglect is to be pleaded, and cannot be presumed. 2 Hawk. P. C. c. 10. s. 64.

(*h*) Kitch. 84, cites 41 E. 3. 27. 10 H. 4. 4.

neglected to be inquired of in the manor leet, would be inquirable in the hundred leet (*a*).

The jurisdiction of a leet jury like that of a grand jury, is confined to things done or neglected to be done since the last court (*b*); and it was decided in the case of *Davidson & Moscrop* (*c*), that a custom for the jurors to be charged and sworn at one court, to inquire and present, and to return such their presentments at the then *next court*, was bad in law (*d*).

The case of *Moore v. Wickers* (*e*) has been looked upon as an authority against the validity of a custom for the jury of a leet to enter into shops for examining weights and measures, and to destroy any such that might be found to be deficient, but I am about to show, by an extract from the judgment of the court of B. R. in *Willcock v. Windsor*, that too much importance has been attached to the observation made by *Probyn J.* in the above case of *Moore & Wicker* (*f*).

(*a*) *Cook v. Stubbs*, Cro. Jac. 583. *Rex v. King*, 3 Keb. 197, 230, 251. Ante, p. 830 (n.) The neglect of the lord of a manor leet is not punishable in the hundred leet, but in the Eyre. Br. Leet 13, cites 21 E. 3. 3, 4.

(*b*) Keilw. 66 b.

(*c*) 2 East. 56. 3 Barn. & Adolp. 49.

(*d*) But it is said, that in some manors the jury continue in office for a whole year. Rits. 9. And see *Wicker & Norris*, cited 1 Wils. 250.

(*e*) Andr. 47, 191. But Note, in the manor of St. Giles in the Fields, Bloomsbury, there is a custom for six aleconners to be appointed by the *steward*, and for them or the major part of them, to search into and weigh all loaves not exceeding three penny loaves, or half-quartern loaves,

and to present all bakers whose bread is found wanting in due weight, or who should hinder such aleconners in the execution of the duties of their office. See the *Duke of Bedford v. Alcock*, 1 Wils. 248, which was an action of debt for an amercement set on a baker within the above manor, who refused to permit the aleconners to weigh his bread; and wherein it was held that a count, upon a *mutuatus*, might be joined with counts in debt, for an amercement in a court leet. 2 Bro. Ent. 83-4 was cited as an authority for it. And see *Palmer v. Barfoot*, Lutw. 440. Vide also *Vaughton v. Atwood & others*, 1 Mod. 202; S. C. (*Vaughan v. Wood*) 2 Mod. 56; and the notice taken of it in the judgment delivered by Lord *Tenterden*, in *Willcock & Windsor*, post p. 874.

(*f*) Post p. 874.

The late case of *Willcock v. Windsor* (a) was an action of trespass in the court of King's Bench, for breaking and entering the plaintiff's dwelling-house and yard in the parish of Saint James, Clerkenwell, and breaking, bruising, perforating, and destroying divers pots of the plaintiff there found, &c. Pleas,—first the general issue; secondly, that the defendant, *Windsor*, was the bailiff of a prescriptive court leet holden in and for the manor of Clerkenwell, otherwise called St. John's, Clerkenwell, on Ascension day in every year; that the other defendants, being inhabitants of the manor and suitors of the court, were, at the said court holden on ascension day, the 28th of May, 1829, sworn as a jury for the manor to inquire and make true presentment of all such matters and things as should be given them in charge, or appear to be the object of their inquiry, and particularly according to the custom of the said manor from time immemorial, to examine weights and measures, and see they were just and according to the legal standards in that behalf; and for the purpose of making such inquiry and examination, the said court was then and there, according to the usage and custom of the said manor, adjourned: and the said jurors, so sworn as aforesaid, had a day given them to bring in their presentments until the 15th of December in the said year 1829: and it was averred that there was and had been within the manor from time immemorial an ancient and laudable custom, viz. "That the jurors of the jury of the said court leet to the number of twelve or more, for the time being, after they were and are so sworn as aforesaid, and during the adjournment of the said court, from time whereof, &c., have entered, and have been used and accustomed to enter, and of right ought, &c., and still of right ought, &c. with or without the bailiff of the said manor for the time being, into any dwelling-house with the appurtenances of and belonging to any person being an inhabitant and resiant within the said manor, and selling goods there by weights and measures, and having weights or measures in his custody, therein used and to be used by him in and for

(a) 3 Barn. & Adolp. 43.

the sale of goods within the said manor, at seasonable times in the day time by the outer door or doors of such dwelling-house, with the appurtenances, the same being respectively open, for the purpose of searching for and examining, and to search for and examine such weights or measures, and to see that they were and are just, and according to the legal standards in that behalf; and if upon examination any of the said weights or measures have been or shall be found by the said jurors to be false, deceitful, or deficient, and not according to the legal standards in that behalf, then the said jurors for all the time aforesaid have broken and destroyed, and have used and been accustomed to break and destroy, and of right ought, &c. and still of right ought, &c. such last mentioned weights or measures so being false, deceitful, or deficient, to prevent the same from being afterwards fraudulently, deceitfully, and unlawfully used within the said manor." The plea then stated, that before and at the time when, &c. the plaintiff was a resiant within the manor, and carried on the business of an ale-house keeper there, in the said dwelling-house and yard; that the pots mentioned in the declaration were measures used by him in the sale of beer and ale there; that *Windsor*, being bailiff of the manor, and the other defendants being the leet jury, in the execution of their duty, during the said adjournment, entered into the said dwelling-house at a seasonable time by the outer doors, which were then open, to search for and examine measures, and did examine the measures in question, (they not having been previously examined by the defendants,) and upon such examination the said jurors did find that the same were false, deceitful, deficient, and less than the legal standard; wherefore the said jurors, according to the custom, broke and destroyed them to prevent their being afterwards fraudulently used within the manor, as they the defendants lawfully might, &c.; and they traversed being guilty in any place out of the manor. There were other pleas, setting up a similar justification. The plaintiff demurred generally to the special pleas. The defendants joined in demurrer.

In support of the demurrer it was contended, that a custom to break deficient measures could not be valid, inasmuch as the duty of the jury was only to examine and present, and that by breaking the vessels they destroyed that which ought regularly to be the evidence for or against their presentment; that it did not appear on the pleadings that the measures were, but only that they were found by the jury to be, defective; and lastly that the adjournment stated in the pleadings was unreasonable, and could not be grounded on valid custom.

The following is a copy of the judgment of the Court, delivered by Lord *Tenterden*, C. J., as reported by Messrs. Barnewall and Adolphus.

“ The demurrer in this case is founded on two objections to the several pleas, the one to the custom set forth (which his Lordship read as stated in the pleadings); the other to the adjournment of the court, and the time given to the jury to bring in their presentments, until the 15th day of December, 1829, which was said to be an unreasonable length of time on the face of the plea, the court having been holden on the 28th day of May, in the same year. The objection to the custom was principally founded on the case of *Moore v. Wickers*, [Andr. 47, 191.] In that case, which was an action of debt in the court-leet of the manor of *Stepney*, to recover the amount of an americiament affeered, the plaintiff declared that he was lord of the manor, and prescribed for a court leet, and set out a custom that the jurors sworn and charged at any such leet to present, have presented, and used at such leet to present, after their being sworn, all such things as have been before or after their being sworn presentable, and that such jury had been used to be adjourned, &c. The plaintiff further declared that the defendant was a cheesemonger within the jurisdiction, and obstructed the jurors, then in the execution of their duty, from entering into his shop and trying his weights and balances; that the jury at a subsequent court presented this obstruction, whereupon the defendant was amerced, and the americiament affeered to £4 19s. There was a verdict for the

plaintiff, and a writ of error brought, wherein several errors were assigned; of which the second was, that the presentment was ill, because the jury have no authority to enter into the shops of persons to examine their weights and measures; if the jury of a leet have such a power, it must be by custom, and none was set out on that record; and if it was, it was a question whether it would be reasonable. On the argument the judges threw out their several impressions on the points raised, the only one of which relating to the present question is that of *Probyn, J.*, who is reported to have said, that a custom for the jury of a leet to enter into houses for examining weights and measures, they being only sworn to present, he thought would not be good. But the case was adjourned, all the court intimating an opinion that the proceeding was erroneous in not setting out the time of the obstruction, and afterwards when the case was stirred again, no one appearing for the defendant in error, the judgment was reversed, the court saying there was a strong objection in the case, but not intimating what it was. We do not consider that decision any authority against the validity of the custom here, because there no such custom was pleaded, and there was no judgment of the court against it. On the other hand, there is a case in which a similar custom was adjudged good. In *Vaughan v. Attwood & others* [1 Mod. 202.] the custom justified under was, that the homage used to choose every year two surveyors to take care that no unwholesome victuals were sold within the manor, and that they were sworn to execute their office truly for the space of one year, and that they had power to destroy whatever corrupt victuals they found exposed to sale. The plea then stated that the defendants being chosen surveyors and sworn to execute the office truly, examining the plaintiff's meat, found a side of beef corrupt and unwholesome, and that therefore they took it away and burned it. *North, C. J.*, it seems, doubted; but the other three judges said, 'it is a good reasonable custom. It is to prevent evil, and laws for prevention are better than laws for punishment. As

for the great power it seems to allow to these surveyors, it is at their own peril if they destroy any victuals that are not really corrupt, for in an action, if they justify by virtue of the custom, the plaintiff may take issue that the victuals were not corrupt. But here the plaintiff has confessed it by the demurrer.' We think the reasons alleged in support of that custom were sound and good, and for the like reasons we hold the present custom to be valid. Such customs prevail in many manors, and they are, in our opinion, very useful to the public, as affording a protection against fraud and deceit. They are also recognised by the statute 35 G. 3. c. 102. s. 6., and 55 G. 3. c. 43. s. 12., two statutes making provision for preventing the use of false weights and measures, and containing a proviso that they shall not lessen the authority of persons appointed at a leet for the examining, breaking, and destroying weights or balances, or measures.

" An objection was taken with reference to this part of the case, that the averment was not that the plaintiff's pots were, in fact, false, deceitful, and deficient, and not according to, but less than the legal standard, but only that the jury found them to be so; and for this *Palmer v. Barfoot* [Lutw. 440.] may be cited. But in that case the custom alleged was, that the inspectors should seise, and take as forfeited, the bread of foreign bakers, if it should not be of just weight, or should be deceitfully or insufficiently made or baked; and the averment was that the defendant found it, on view and inspection, to be insufficiently baked. The justification, therefore, did not bring the case within the words of the custom, and the plea was holden to be bad, without the court throwing out any opinion against the custom itself, which seems to have been acquiesced in as good. But here the custom laid and the justification coincide. The custom is, if any of the said weights and measures shall be found to be false, &c., and the averment corresponds. We think also that the objection arising out of the adjournment cannot prevail. It is averred to have been made according to the usage and custom of the said manor, and

nothing appears to prove that the length of time for which it was made was of necessity unreasonable or disproportioned to the occasion. In large and populous manors, such as this of *Clerkenwell*, it would be impossible for a jury to execute this function of examining all weights and measures within a day, or even within a short space of time. An adjournment, therefore, must in such cases be necessary, and the period of it must be governed by circumstances, and in some degree be left to the discretion of the court-leet, that discretion being, of course, to be exercised duly, and subject to control. The case of *Davidson v. Moscrop* [2 East 56.] is very distinguishable from the present. All that was decided there was, that a custom for the jurors to be charged and sworn at one court, to enquire and present, and to return such their presentments at the then *next court*, was bad. But here the adjournment is of the same court; and if the jury present the plaintiff's offence on the adjournment day, the presentment will not be made at another court. We are of opinion, therefore, that there must be judgment for the defendants."

A custom for the jury of the court leet to examine weights and measures, and seise them if defective, also exists in the manor of *Stepney*, and was recognised in the late case of *Sheppard v. Hall* and three others (*a*). There the four defendants pleaded that they with divers, to wit, twenty others, were duly sworn as a leet jury of the manor court, to inquire of weights, &c. according to the custom, and that the jury were authorised by the custom to seise and carry away defective weights, &c., and to enter shops within the manor by day for the purpose of their inquiry; and they alleged that they *being on such jury* examined and seised the plaintiff's weights, &c. which they found defective. Replication, *de injuriâ*, whereupon issue was joined. At the trial before Lord *Tenterden* it appeared in evidence, that only five of the jury were in the plaintiff's shop when the examination and seisure took place, the

(a) 3 Barn. and Ad. 433.

rest being in another shop in the same street. It was contended on the behalf of the plaintiff, that upon this evidence it did not appear that twelve jurors were together, when the proceedings were taken. But Lord *Tenterden* was of opinion that the objection, if it arose, was upon the record; and he therefore left to the jury, as the only question of fact in the case, whether or not the defendants took away any weights, &c. that were not defective, and a verdict was found for the defendants. A rule was afterwards obtained calling upon them to show cause why judgment should not be entered for the plaintiff, *non obstante veredicto*, or a new trial had.

And upon cause being shown, it was argued on the part of the defendants that, admitting the averment to be ambiguous, and that it was not alleged with sufficient precision that the defendants and the rest of the jury were acting together, yet that there was a constructive presence of the jurors who were outside the shop, and that the defective statement was cured by verdict, for which Lord *Huntingtower v. Gardiner* (a), and other authorities, were cited. The court held that the objection was a valid one on the record, and that the defendants, as four only of the jury, did not bring themselves within the custom relied upon; and Mr. Just. *Patteson* was of opinion that there was no ambiguity in the expression "being on such jury," and that the question of an ambiguous expression being cured by verdict did not properly arise in Lord *Huntingtower & Gardiner*. Judgment for the plaintiff, *non obstante veredicto*.

Every presentment in leet must be certain, and state the precise day of holding the court (b), and before whom it was held (c); and should set forth the power under which the court acts, that is, whether it exists under a grant or by prescription (d); though this does not appear to be absolutely essential (e). In *Lawson v. Hare* (f), in replevin, it was held, on

(a) 1 Barn. and Cress. 297.

(d) *Jerrat v. Caldwell*, Cro. Jac.(b) *Dacon's case*, Vent. 107. S. C.

184.

2 Saund. 290.

(e) Scroggs 8. *Rex v. Gilbert*, 1(c) That is *coram seneschallo*. 3

Salk. 200. S. C. 12 Mod. 4.

Keb. 251.

(f) 2 Leo. 74.

demurrer, that the leet being claimed out of the hundred, it was sufficient for the defendant to allege that he was seised of the hundred, without showing any other title, though it would have been otherwise if the hundred itself had been in question.

In the case of a nuisance it must be shown at what place it was committed, and that such place is within the jurisdiction of the court (*a*); and the presentment must conclude to the common nuisance of all the King's subjects (*b*); for it is not sufficient to say *ad nocumentum diversorum* (*c*), or *ad nocumentum habitantium* (*d*), as the leet cannot amerce for a particular trespass or injury to the lord of the manor, or any other person, where an action will lie to recover damages, but for public nuisances only (*e*).

And in the case of presentments for stopping the common highways, the *locus ad quem*, as well as the *locus a quo*, should be stated (*f*).

The proper mode of inquiring of felonies in leet is by indictment or inquisition, by roll indented under the seals of the jurors, to be afterwards certified to the King's justices at the next gaol delivery (*g*).

The inquisition of a leet jury in cases of felony, is in nature of a bill of indictment by the grand jury; but probably, before the introduction of the petit jury, the finding of the leet jury was conclusive (*h*).

According to the Mirror (*i*), all presentments in a court

(*a*) Br. Leet 33, cites 5 H. 7. 2. in presentment for not repairing a common highway are not favoured. And see Keilw. 89 a, pl. 9.

(*b*) *Anon.* 1 Vent. 26. *Prat v. Stearn*, Cro. Jac. 382. 2 Keb. 500. Sir T. Raym. 160. *Rex v. Inhabitants of Limehouse*, 2 Sho. 455.

(*c*) *Hughes v. Bishop of London*, 3 Keb. 106. *Rex v. Ayers*, 2 Keb. 139. (*g*) See 1 Ed. 3. st. 2. c. 17. *Crompton*, J. P. 151. Presentment of felony in leet, and the steward certifies it to the justices at the next sessions by *indenture*, this shall serve for indictment.

(*d*) Mo. 356.

(*e*) *Rex v. Dickenson*, 1 Saund. 135. Br. Indictm. 1, cites 27 H. 8. 2. *Ib.* Lex. Man. App. pl. 30. Ante, p. 852. Leet 1, cites S. C.

(*f*) *Ayer's case*, 3 Keb. 644. But (*h*) Rits. 15, 16.

objections on account of informalities (*i*) c. 1. s. 17.

leet are to be sealed with the seals of the jurors, so that none may do fraud by increasing or diminishing them; yet it would seem that it is not necessary that ordinary presentments in leet should be either sealed or indented.

In the case of *Sir George Colebrook v. Elliott (a)*, the offence charged in the presentment was the defendant's having in his custody, and exposing to sale, a loaf of bread not of the weight required by 3 Geo. 3. c. 11, which act did not fix the price, and on that account the court of B. R. held that the offence was not cognizable in the leet, the assise not having been broken. An objection had been taken to the presentment in this case, that it was neither sealed nor indented; but the court were agreed, that the latter objection was not maintainable.

Of Offences cognizable in the Court Leet; and the general Articles presentable there.

In former ages most offences were punished by imprisonment, or by a mulct or pecuniary fine, which payment is supposed in many cases to have been a fixed sum proportionate to the magnitude of the crime, or the degree in society of the person injured (*b*); but even in the reign of William the Conqueror, many offences were punished with death or mutilation (*c*). Indeed the punishment of death may be traced back to the Anglo-Saxon æra (*d*); for it is recorded of King Alfred that he hanged thirty unjust judges in one year; who are said to have been the judges in the tourns, ealdermen of counties, or their deputies, the sheriffs (*e*).

(a) 3 Burr. 1860.

(b) See Sulliv. F. L. 275.

(c) Reeve's Hist. Engl. L. 1 vol. 16, 83, 193.

(d) Treason, murder, rape, and robbery, were punished as capital offences, but mutilation was afterwards substituted as the punishment

for rape; which by 3 Edw. 1. was punished as a trespass only, but was again made felony by 13 Ed. 1. and benefit of clergy was taken away by 18 Eliz. Sulliv. 275. Bract. 3. c. 28; post. articles inquirable in leet, (tit. Rape).

(e) Sulliv. 275.

The court leet never could arraign and *deliver* persons indicted for felony (*a*); nor inquire of any felonies which were not such at common law; in proportion therefore as the severity of our criminal code increased, the number of offences punishable in the court leet of necessity diminished.

The offences which the leet is to inquire of and afterwards to certify to the King's justices, at the next assizes or gaol delivery of the county (*b*), are treason, (but which is inquirable *as felony only*,) murder, rape (*c*), manslaughter, arson, burglary, sacrilege, grand and petit larceny (*d*), rescue, accessaries, voluntary escape, and every offence which was deemed felony at common law; and also negligent escape (*e*).

There are, however, various offences which are not only inquirable in the court leet, but also punishable there by fine, amercement, &c., such as nuisances, disturbances, breach of assise, forestalling, the refusal to accept or neglect to execute certain public offices, the non-observance of certain acts enjoined, and the commission of others prohibited by particular statutes, &c.; and I propose to exhibit in alphabetical order the various matters which are to be inquired of in the court leet, referring to some authorities under each title, and avoiding any animadversion on the antiquated nature of several of the articles; conceiving that this arrangement may best assist the steward, who, under very particular circumstances, may think it desirable in his charge to the jury, to detail the various offences and other matters which are properly cognizable in the court leet.

(*a*) Br. Franchises 5, cites 8 H. 4. 18. Ib. Leet 11, cites S. C.

(*b*) Ante, p. 878.

(*c*) But see as to murder and rape, ante, p. 879. n. (*d*); post. 'articles inquirable in leet,' 'Murder,' 'Rape.'

(*d*) The distinction between grand and petit larceny no longer exists, see 7 & 8 Geo. 4. c. 29.

(*e*) In cases of felony, the jury are also to inquire what lands and

tenements, and also what goods and chattels, the felon had at the time the felony was committed; the former escheat to the lord, subject to the King's year and day waste, (ante, p. 759); and the latter are forfeited to the King, and sometimes to the lord of the leet, by grant or prescription, ante, pp. 766. n. (*a*); 768. n.

(*b*).

ARTICLES

INQUIRABLE IN THE COURT LEET ^(a).

Accessaries.—Kitch. 41 (receivers of felons). Jenk. P. C. 12 (accessary before and accessary after the fact). Shepp. 41 (accessaries before or after the offence). And see Pow. 76.

Adultery.—3 Inst. 206 ('in ancient times adultery and fornication were punished by fine and imprisonment, and inquirable in tourns and leets by the name of Letherwite'). And see 2 Inst. 488. Jenk. P. C. 10 (adultery is to be inquired of as felony). [But indictment lies at common law for adultery. Salk. 552.]

Affray.—See *Assault* and *Battery*. [Prescription in leet for every affray or bloodshed, to pay so much; and to distrain for it, and sell the distress is good; for it is the King's court. Br. Prescrip. 106, cites 11 H. 7. 13, 14].

Aleconners, or *Ale-tasters*. See *Vaughton v. Atwood* et al. 1 Mod. 202. And see post. *Officers*.

Alehouse-keeper.—Jenk. P. C. 16, 17 (selling beer or ale without license:—alehouse-keeper licensed or unlicensed, selling beer or ale in unsealed measures, or less than full measure: encouraging tiplers, or suspicious persons: not furnishing accommodation to strangers). Kitch. 45 (bread and beer is inquirable in the leet, and not in the tourn of the sheriff, but see 18 H. 6. 13). Jenk. P. C. 17 (if any alehouse-keeper shall suffer any persons to sit tipling in his house above the space of an hour, he forfeits 10s. and the tipler ten groats a piece). Ib. (if any alehouse-keeper suffer

(a) Vide as to articles inquirable and sheriff, and on the method of keeping a court leet, court baron, concerning the offices of coroner hundred court, &c., published in 1620.

any one to be drunk in his house, the drunkard forfeits 5s., the alehouse-keeper 10s.). And see Greenw. 293. Shepp. 54 (if a tipler sell not by measures allowed and sealed, he may be punished by the common law or upon the statute). And see Kitch. 21. Post *Tiplers*.

Allegiance. Jenk. P. C. 20 (if all deciners be present).—Mirr. c. 1. s. 17; Britt. c. 29; Flet. 2. c. 52. s. 6. 17. (whether all above twelve years of age have been put in dozein [dizein], and sworn fealty to the King; and of the receivers of others). And see Pow. 19, 23, 80; Shepp. 42. Post *Chief Pledges*.

Approvers.—Flet. 2. c. 53; Britt. c. 29. (those who shall have retained approvers). [For the signification of the term 'Approver,' vide 3 Inst. 129. c. 56].

Arson.—Jenk. P. C. 11. (burning of a house or barn adjoining to a house). Kitch. 48 (if one feloniously in the night burn a barn adjoining to a house, 11 H. 7. 1). Shepp. 40. (burning of houses or barns of corn, out-houses adjoining to dwelling-houses in the night). Greenw. 288 (if any one feloniously burn any dwelling-house, or barns, or stacks, or mows of corn in the night season, it is felony at the common law). Pow. 74 (feloniously burning any dwelling-house, or any barn adjoining, or any stacks or mows of corn near any barn or dwelling-house in the night). And see Stat. Wallie.

Artificers.—Jenk P. C. 19 (if any one shall use any art, mystery, or manual occupation, having not been brought up apprentice thereunto by the space of seven years).

Assault and Battery.—The Stat. for view of Frankpledge (a) 18 Edw. 2. 1325 (of bloodshed, and of frays made).—Kitch. 44, 73 (assault upon a person only is not inquirable and punishable by presentment in leet, but bloodshed is, cites 8 E. 4, 5. 4 H. 6. 9. 11 H. 6. 29. 22 E. 4. 22). And see

(a) Vide Ritson on Courts Leet, p. 56 (n. d.) who says, "this has been denied to be a statute; and with some reason, as it seems to be nothing more than a sheriff or steward's charge in the tourn or leet."

Stat. Wall. Pow. 89. Kitch. 73 (if any affray were so that the King's people were disturbed, for that is more than particular, 1 R. 3. 1). Jenk. P. C. 21 (common disturbances of the peace, that is to be presented). Scroggs 7 (it seems reasonable that private or particular assaults and batteries, though there be no bloodshed, should be inquirable in leet. *Bacon J. and Walter* thought they might, *Rolle contra*, Pas. 24 Car. 1. B. R). (a).

Assise.—Stat. 18 Edw. 2; Stat. Wall. (of the assise of bread and ale broken). Britt. c. 29; Flet. 2. c. 52. s. 21, 27; Kitch. 21, 42-5; Jenk P. C. 24; Shepp. 52; Powell 109; Scroggs 10; Mirr. c. 1. s. 17 (breach of assise). Vide also Co. Lit. s. 234. 3 Burr. 1862, 1863-4 ('the setting the assise, which must fix both price and weight, is the basis of the leet jurisdiction, and it cannot take cognizance of an offence created by act of parliament, regulating the weight, &c. as in the 3 Geo. 3. c. 11'). See 51 Hen. 3. st. 1, 8 Anne c. 18, repealing the last act. Stat. 31 Geo. 2. c. 29, repealing the laws respecting the assise of bread, but confirming the principle of fixing both price and weight, and saving the right or custom of lords of leet franchises, to inquire of and punish the breach of assise of bread. Vide also ante, pp. 879, 880.

Barretors.—See *Scolds*.

Bows and Arrows.—[By 33 H. 8. c. 9, (see Appendix,) for the encouragement of archery, and debarring unlawful games, every male subject was compellable to have a bow and arrows; and the stewards of leets and law-days were authorised to inquire of the offences mentioned in the act. See Kitch. 27-8.] Vide also *Crass Bows*, post.

Brothels; (Disorderly Houses).—Kitch. 20 (keeping houses of ill-fame is a cause to break the peace, and a vice which

(a) A steward may fine for an assault in leet (*sedente curia*) in disturbance and contempt of the court, but an indictment there of assault and battery without bloodshed is not

good, for such indictment before the sheriff in his tourn was adjudged void. Dy. 233. b. ca. 14, cites H. 13. E. 4, 10. Ante, pp. 846, 847, 849.

corrupteth the state). And see Jenk. P. C. 22. Scroggs 20. Ib. (you are to inquire of all unlicensed alehouses, and present the offenders; and if any inns or alehouses have a license, yet you are to inquire if they keep good order in their houses, otherwise you are to present and punish the offenders).

Burglary.—Stat. 18 Edw. 2 (of breakers of houses, and of their receivers). And see Britt. c. 29. Flet. 2. c. 52. Kitch. 17. Jenk. P. C. 11. Shepp. 40. Pow. 75.

Chief Pledges.—Stat. 18 Edw. 2 (and if all the chief pledges be come, as they ought to come, and which not). Kitch. 19 (if the capital pledges appear). Pow. 80 (if the capital or chief pledges of every decennary appear: these pledges correspond with the tithing-men of the present day). Britt. c. 29; Flet. 2. c. 52. s. 5; Mirr. c. 1. s. 17 (if all the chief pledges be come to the view, and if they have their dozeins [*dizeins*, ante pp. 812, 813]. entire).

Church.—Jenk. P. C. 19 (if any person of the age of sixteen years or more, shall wilfully absent himself from church or chapel, he shall forfeit for every month 20℥, one third to the Lord Protector [the crown] another third to the poor of the parish, and the other third to the informer).

Clippers, &c. of Money.—Stat. 18 Edw. 2 (of clippers and forgers of money). Kitch. 43 (clipping of gold and silver is inquirable, cites 22 Edw. 4. 22). Ib. 16. And see Jenk. P. C. 8.

Clothes: Clothiers.—Stat. 18 Edw. 2 (of cloth-sellers and carriers of leather dwelling out of merchant towns). Mirr. c. 1. s. 17 (of sellers of old clothes, dwelling out of great towns.) [Vide 4 Edw. 4. c. 1, post. Appendix.]

Coin.—See *Treason*.

Common.—[Vide, act 32 H. 8. c. 13, post. Appendix.] Kitch. 23, 32. [N. B. Inclosures of, and encroachments on, commons, are not public injuries, and therefore cannot be inquired of in leet. Scroggs 86. Cro. Eliz. 448. Lex. Man. 141.]

Conspiracies.—Kitch. 27 (if any butcher, baker, &c., conspire not to sell but at certain prices, cites 2 E. 6. c. 15.) Ib.; Jenk. P. C. 28 (if workmen or labourers conspire not to work but at certain prices, or not to do but certain labour, &c., the latter cites 24 H. 8. c. 12). Mirr. c. 1. s. 17 (all manner of conspiracies). [And see the above stat. of 2 & 3 Ed. 6. c. 15, post Appendix.]

Constables.—See post. *Officers.*

Cottages.—[By stat. 31 Eliz. c. 7 (said to have been passed to prevent the lords of great wastes from converting the whole into building purposes, ante pt. 1. p. 108), a penalty of 10*l.* is inflicted for erecting or converting a building into a cottage, without laying four acres of land to it of the party's own freehold; and 40*s.* a month for continuing such cottage; and justices of the peace and lords of leet are authorised to inquire of and hear and determine all offences against the act, as well by indictment as otherwise by presentment or information, and to award execution for the forfeitures by *feri facias*, *elegit*, *capias*, or otherwise, as the cause should require. And see s. 6. of the same act, against receiving inmates into such cottages. And n. to 21 Jac. 1. c. 21. post. Appendix. Jenk. P. C. 32-3. Pow. 152.]

Crossbows & Handguns.—[See the prohibitory acts 33 Hen. 8. c. 6. and c. 9. post Appendix. Kitch. 28-9, 42.]

Crow-nets.—[See 24 H. 8. c. 10. Kitch. 30, 43]. Jenk. P. C. 29 (towns to be amerced for not providing nets for destroying crows and rooks). Com. Dig. 'Leet,' 167 (L. 14) (occupiers of land to be amerced at the discretion of the steward, and he ought to give this act in charge.—[*Note*, this part of the act was repealed by the stat. 8 Eliz. c. 15, and the repeal continued by several other acts which are all expired, whereby this clause seems to be now in force].)

Curriers.—[See Stat. 1 Jac. 1. c. 22, repealed by 48 Geo. 3. c. 60. post. Appendix. Mirr. c. 1. s. 17. Jenk. P. C. 28. Kitch. 29.]

Deciners.—See post, *Suitors.*

Deer.—Jenk. P. C. 12; Kitch. 18, 100; Pow, 73 (taking of tame deer and swans marked is also felony). Jenk. P. C. 29; Kitch. 31; Pow. 150 (hunters and stealers of deer are here to be inquired of and presented).

Disturbers.—See post, *Noctivagancy*.

Doves: (Dovecotes.)—Stat. 18 Edw. 2 (of such as take doves in winter by door-falls or engines). *Vide* also Stat. Wall. Shepp. 60. Kitch. 17 (taking doves in the dove-house in the night is felony and inquirable in leet, but not where they are taken in their roost out of the dove house, cites Stamford. 25 C. 22 Ass. 29. 18 H. 8. 2). And see Pow. 64. Jenk. P. C. 11 (taking of doves out of a dove-house in the night time is felony). Britt. c. 29 (of the takers of another's doves) (a).

Dozeins: (Dizeins.)—Stat. 18 Ed. 2 ('and if all the dozeins be in the assise of our Lord the King, and which not, and who received them'). Ante, 'Chief Pledges.'

Drunkness.—See post, *Tiplers*.

Escape.—Stat. 18 Edw. 2 (of persons imprisoned, and after let go without mainprize). *Ib.* (of escapes of thieves or felons). Kitch. 18, citing Stamford. 32 I. 33 B. (*voluntary*, i. e. if a person after taking another for felony allows him to escape, this is felony: *negligent*, i. e. if a person is

(a) It was held in *Bowlston v. Hardy*, Cro. Eliz. 548 (S. C. 5 Co. 104 b. Mo. 420, 453) that dovecotes could be erected by the lord of a manor only, and that if a private person erected a dovecote he was punishable in leet for a nuisance, but that an action on the case did not lie. And see *Bond's case*, Mo. 233, which supposes the right to exist not only in the lord of a manor, but in the parson of a parish. It is difficult, however, to imagine that a right could exist prescriptively in any individual, which, if exercised by

another, would be deemed a public nuisance. Indeed the above authorities appear to have been over-ruled, or, more properly speaking, denied. See *Dewell v. Sanders*, Cro. Jac. 490, in which the court also held, that so far as the erecting of a dove-house (or rather the storing of it with pigeons) might be a nuisance, it extended itself beyond the boundary of any leet jurisdiction existing in the particular place, and therefore was not inquirable in the court leet, but by the justices of assise. *Vide* also 1 Roll. Rep. 201.

arrested for felony, and afterwards escape through the negligence, though against the will, of his keeper, and if he be not freshly pursued and taken before the keeper-lose sight of him, that is fineable, and inquirable in leet). Vide also Jenk. P. C. 12. Pow. 77. Greenw. 288. 1 Hale, H. P. C. 603 ('an escape is presentable in a leet, but they cannot set a common fine or amercement there, but it ought to be sent to the next *Eyre*, &c. or may be removed into the King's Bench by *certiorari*, and there the common fine or amercement set, and this by the statute of Westm. 1. c. 3).

Escheat.—See post *Forfeiture*.

Estray.—Kitch. 22 ('if any estrays be, it is inquirable'). And see Shepp. 12, 43. Ante, p. 777 et seq.

Eye-droppers.—Jenk. 22; Kitch. 20 (such as stand under walls, windows, at doors or other places to carry tales to others, thereby to cause debate or strife amongst their neighbours). Vide also Scroggs. 20. Shepp. 48. Pow. 91.

False Measures.—See *Measures*, post.

Felonies.—Kitch. 15. (of all felonies at the common law, but not of the death of a man, cites 22 E. 4. 22). Br. Leete 26, cites S. C. And see ib. 2. 2 Inst. 181. Shepp. 10, 39. Pow. 53. 2 Hale, H. P. C. 71 (leets have power to receive indictments of felonies at common law, but not of felonies by act of parliament, unless specially limited to them). See post, *Treason*.

Fish.—Kitch. 27; Pow. 73 (the taking of fish feloniously out of ponds, stews, or trunks, in the night; but when taken in the river it is not felony). Jenk. P. C. 29 (if any person shall either by day or by night break down the head or dam of any pond, pool, or moat, wherein the lord hath fish, with an intent to steal or destroy the said fish, he shall pay to the lord treble damages, and be imprisoned three months, and be bound to good behaviour for seven years). Vide also, 1 Eliz. c. 17, for preserving the spawn and fry of fish. (post, Appendix.) Shepp. 59, 60. Pow. 146.

Forestalling, Regrating, and Engrossing.—[See the 12 Geo. 3. c. 71. repealing all the stats. concerning these offences.]—Jenk. P. C. 18 (forestallers, regrators, and ingrossers, are here also to be presented or informed against). Shepp. 52, 53 (these are offences against the common law, and so to be inquired of still:—and the offender to be amerced). And see Kitch. 45. Pow. 104-5. Greenw. 293. 4 Bl. Com. 157-8.

Forfeiture.—Shepp. 43-4 ('the escheats of all felonies did pertain to lords, and therefore are inquirable here: you are to inquire, therefore, of all kinds of forfeitures to the state'). Ante, pp. 757, et seq. 766.

Franchises.—See post *Treasure Trove, Waif, Wreck.*

Fugitives.—Stat. 18 Edw. 2, ('and if there be any of the King's villains fugitive dwelling otherwise than in the King's demesnes, and of such as be within the King's demesnes, and have not abiden a year and a day'). Ib. ('and if there be any of the lord's villains in franck-pledge, otherwise than in this court'), [but it should seem that this latter section was not in the original.] Vide also Kitch. 19. Jenk. P. C. 14, 15 (the jury is to inquire of these offences and present them).

Gaming Houses (and Playing at Unlawful Games). [See 33 Hen. 8. c. 9. Kitch. 32. Lex. Man. 146. Scroggs 20].

Hamsoken; (Homesoken), or the invasion of a house.—[Britt. c. 29. Stat. Wall.]

Hares.—[Vide the stat. 14 and 15 H. 8. c. 10, (post, Appendix) against tracing and destroying Hares in the snow. And see Kitch. 39, 43. Jenk. P. C. 32. Pow. 149.]

Highways.—[See 2 & 3 P. & M. c. 8, 18 Eliz. c. 10, post, Appendix.]—Lex. Man. 146 (such who do not their day's work in mending the highways contrary to the statute 2 and 3 P. and M. c. 8). [The liability to repair, and the want of reparation should appear in the presentment. *Rex v. Johnson*, 1 Keb. 527; *et vid. Broughton v. Bennet*, 2 Keb. 514, in which the court of B. R. held that lessee for years

was not bound to repair *ratione tenuræ*. Neglect of scouring a ditch in a public highway is punishable in leet, although the act of 18 Eliz. c. 10. gives the forfeitures for highways to the surveyors. *Stephens v. Hayns*, Sir *T. Raym.* 250.]

Horsebread.—See post, *Innholders*.

Hostlers.—See post, *Innholders*.

Hue and Cry.—Stat. 18 Edw. 2 (of cries levied and not pursued). Scroggs 10 (all who shall levy a hue and cry without cause, or neglect to levy one where they ought, or to pursue one rightly levied). And see Stat. Wall. Kitch. 33, 99. Jenk. P. C. 30. Pow. 158.

Innholders.—[See the stat. 21 Jac. 1. c. 21, (post, Appendix). Pow. 113.]

Larceny.—Stat. 18 Edw. 2. (‘ of petty larcens, as of geese, hens, or sheafs). *Ib.* (of thieves that steal clothes, or of thieves that do pilfer clothes through windows and walls). *Ib.* (of such as go in message for thieves). Jenk. P. C. 13 (petit larceny is also here to be inquired of). *Ib.* 23 (also if any go in message for thieves, knowing them to be thieves). Vide also Kitch. 18, 20. Pow. 64.

Letherwite.—See *Adultery*.

Maiming, (Mutilation).—[Jenk. P. C. 10.]

Malt.—[See stat. 2 & 3 Edw. 6. c. 10, post, Appendix.]

Manslaughter.—Jenk. P. C. 9. (is here to be inquired of as bloodshed). Kitch. 16 (manslaughter is here inquirable).—And see Pow. 55.

Measures: (False Measures and Weights).—Stat. 18 Edw. 2, (of false measures, as bushels, gallons, yards, and ells). *Ib.* (of false balances and weights). *Ib.* (of such as have double measure, and buy by the great and sell by the less). And see Kitch. 21 (cites 8 H. 6. 5. Mag. Ch. c. 25. 51 H. 3. 5. 27 E. 3, 10). *Ib.* 45 (cites Britt. f. 32, 71). Jenk. P. C. 23-4. Shepp. 16, 52. Pow. 119. Scroggs 10. Greenw. 295. 55 Geo. 3. c. 43. 5 Burn J. 545. 5 Geo. 4. c. 74. 6 Geo. 4. c. 12. *Willcock v. Windsor*, 3 Barn. and Adolp. 43. Ante, p. 871. [N. B. The punishment of knavish bakers

was anciently to stand in the pillory, and of knavish brewers to stand in the tumbrel, or dung cart. Vide *Stat. Judicium Pillorie*. 51 H. 3. stat. 6. 3 Inst. 219. 4 Bl. Com. 157.]

Miller.—Kitch 22 ('if any miller within the lordship change the corn which he hath to grind, it is inquirable'). See also Jenk. P. C. 23. And see post, *Toll*.

Murder.—Kitch. 43 (you may inquire in leet of all felonies at common law, but not of the death of a man, cites 22 E. 4. 22). Yet see Kitch. 16. Stat. Wall. Britt. c. 29. Flet. 2. c. 52. Br. Leet 18 (a steward in leet cannot take indictment of the death of a man, and if he do the lord shall be punished for contempt, cites 41 ass. 30). And see Fitz. tourne de Vis. 5. Ib. Lete et Hundr. 10. Shepp. 17. But see Jenk. P. C. 9 (murder to be inquired of in leet, as bloodshed). And see Pow. 53-4.

Musters.—[See the act 4 & 5 P. & M. c. 3, post, Appendix. Kitch. 36, 43. Pow. 153.]

Noctivagancy.—Stat. 18 Edw. 2 (of such as sleep by day and watch by night, and eat and drink well, and have nothing). Ib. (of such as continually haunt taverns, and no man knoweth whereon they do live). And see Jenk. P. C. 22. Kitch. 20 ('also, if there be any vagabonds or wanderers, and those which walk by night, and sleep by day, and if there be any which are common haunters of taverns, or alehouses, and go about having nothing to live of'). Ib. 44-5 (night walkers are inquirable in leet, cites 4 H. 7, 1). Shepp. 48 (he that sleepeth by day and walketh by night). Vide also Rastal, 'Leete' 2. Poph. 208. Pow. 93-6.

Nuisances.—Stat. 18 Edw. 2 (of walls, houses, dykes, and hedges set up or beaten down to annoyance). Ib. (of bounds withdrawn and taken away). Ib. (of ways and paths opened or stopped). Ib. (of waters turned or stopped, or brought from their right course). And see Stat. Wall. Kitch. 41, 44 (of ways and paths taken away or stopped; of waters wrong turned or stopped, or taken away, of corrupters of water by lime, flax, &c.) And see Jenk. P. C. 21.

Shepp. 45. Kitch. 44 (stopping the highway is there inquirable, 27 H. 8. 32, for that is a common annoyance to all the King's subjects). Ib. (common nuisances, as ditches and hedges made to the disturbance of the people, cites 9 H. 6. 44. 10 H. 6, 7). And see Br. Leete 2, 26. Flet. 2. c. 52. Britt. c. 29. Co. Lit. 56.—Kitch. 44 (purprestures in highways are inquirable there; and presentment may be in leet for not cleansing a ditch adjoining the highway, cites 1 R. 3. 1. 3 H. 7. 1. 47 E. 3. 12. And see Jenk. P. C. 20. Shepp. 12, 13. Flet. 2. c. 52. Jenk. P. C. 21 (if any walls, houses, pales, or hedges be made or erected within the jurisdiction of this court, to the annoyance of the people). Br. Leete 30 (presentment in leet of the inclosure of a common is void, for it is a wrong, but not a common nuisance, for that must be to the injury of a great number of people, as the destruction of a highway or the neglect to repair a bridge, cites 27 Ass. 6). And see Shepp. 44. Pow. 81–2. 1 Anders. Rep. 234. ca. 251, where the presentment was held void, being for *diverting* the highway, and not for stopping or obstructing it.

Officers, viz.—Aleconners; Constables; Tithing-men, &c.—Jenk. P. C. 20, 25 (their neglect is to be inquired of and presented in leet). And see Pow. 18, 157. Shepp. 49. Ante, pp. 827, 861. et seq.

Outlaws.—Stat. 18 Ed. 2; Stat. Wall. (of persons outlawed returned, not having the King's warrant). Britt. c. 29; Flet. 1. 2. c. 52 (of outlaws, and those who have abjured the realm returned, and of their goods and receivers). And see Mirr. c. 1. s. 17. Jenk. P. C. 27. Kitch. 23 (“if any person be outlawed in debt, trespass, or other personal action, his goods are forfeited, and the King shall have them, unless they be granted unto the lord by charter: this is also here inquirable”). And see Shepp. 12. Pow. 160, &c.

Peacocks.—See *Swans*.

Pheasants and Partridges.—See the act 23 Eliz. c. 10, for their

preservation, in the Appendix. Kitch. 31. Jenk. P. C. 33. Pow. 148.

Pigeons.—Kitch. 17 (taking of young pigeons, or young goshawks [goss hawks] in their nests in the night is felony and inquirable in leet, cites 14 H. 8. 18 E. 4. 8). And see Jenk. P. C. 11. Pow. 64. Greenw. 287.

Pillory, Tumbrel, &c.—Jenk. 28 ('the jury are to inquire whether there be within the leet a pillory, and tumbrel, and stocks, to punish offenders according to law: in every town where there is a leet, there ought to be stocks; and in default thereof, the town shall forfeit £5'). And see Kitch. 24. Pow. 156. Shepp. 16. [Vide also, ante, pp. 827–8; and *quere* if it is not the duty of the lord to provide a pillory, tumbrel and the like instruments of punishment; and note the distinction there as to stocks.—And see *False Measures and Weights*, ante].

Pound-breach.—Kitch. 20 (if any break the common pound, or take distress from thence, present their names). Ib. 41 (of breaking the common pound). Jenk. P. C. 21 (inquiry is also to be made of all pound breakers, such as break the common pound, *to take any distress out of the same*, their names are to be presented). And see Stat. Wall. Pow. 89. Scroggs 21 (you are to inquire of all pound breach and rescue: if any cattle be put in the lord's pound, and taken out by force, otherwise than by due course of law, this is called pound breach, and by you inquirable, &c.) [But *Note*—According to *Sanderson's case*, 4 Leo. 12, pound breach is not inquirable in leet, not being a common nuisance. *Sed quere*, whether it is not in the nature of rescue, and inquirable and punishable in leet accordingly.] Shepp. 16 (lack of stocks, pillory and tumbrel, ducking stool, *common pound*, cites old book of entries 390, 495. Pow. 156). Greenw. 292.

Purprestures.—Stat. 18 Edw. 2 (of purprestures made in lands and waters to annoyance). And see *Nuisances*.

Rape.—Stat. 18 Edw. 2 (of women ravished not presented

before the coroners). Kitch. 41, in his breviat of charge, says (of ravishing a woman, which is not presented before the coroner). See also Kitch. 16, 17 (citing Stamf. 23. b. Rastal Rape 2). Pow. 48. Kitch. 17 (rape as felony, which is felony made by the statute, is not inquirable in leet, nor any thing given by statute, unless it be inquirable by express words, but that which is made petit treason by statute, is inquirable as felony by the common law, cites 11 H. 7. 22). 2 Inst. 181 (if rape had not been made felony by the stat. of W. 2, but had been felony when that act was made, then should the court of the leet have inquired of it, as of a felony by the common law; but seeing it was made felony by that statute, it hath been often adjudged that the leet cannot inquire thereof: for albeit it was once felony, yet the nature of the offence being changed, as is above said to be no felony, when another act made it felony again, yet could not the leet inquire thereof, as of a felony). And see Br. Abr. Leet pl. 22, (cites 6 H. 7. 4; Fitz. Lete et Hundr. pl. 10, citing 7 H. 6. 12). Vide also Kitch. 16, 43. Pow. 53, 59 (rape as felony is not inquirable, but as trespass). Vid. also Greenw. 286. But see Jenk. P. C. 9 (rape is also here to be inquired of). [Rits. on Courts Leet, p. 18, 19, urges on the authorities of Britt. Kitch. &c. that rape is inquirable in leet, as a felony at common law; and observes that those who would allow it to be inquired of as trespass, should recollect, that where a trespass is by statute turned into felony, the trespass is merged; for which he cites Bul. N. P. 32.] [N. B. By statute W. 1 (3 E. 1.) c. 13, rape was made punishable as a trespass by two years' imprisonment and fine:—and was made felony by W. 2 (13 E. 1. st. 1.) c. 34: and benefit of clergy was taken away by 18 Eliz. c. 7. Previously to the stat. W. 1. rape was punishable by mutilation, and in old time was felony, ante, p. 879. n. (d).]

Rescue.—Kitch. 17 (the rescue of any taken for felony is felony, and here inquirable, cites 1 H. 7. 9.—Jenk. P. C. 22

(if any rescue be made within the jurisdiction of the court, upon the sheriff or any of his bailiffs, or any other officers, it is to be inquired of and presented). And see Pow. 89. Shepp. 41. Scroggs 21. Greenw. 288.

Scolds.—Jenk. P. C. 21 (if there be any common barretors within the jurisdiction of the leet, *common scolds*, or makers of debate, to the annoyance and disturbance of their neighbours, this is inquirable). And see Hob. 246. Pow. 90. Shepp. 48. Scroggs 20. *Per Cur.* in *The Queen v. Foxby*, 6 Mod. 11, 178, 213 ('the frequent repetition of it to the disturbance of the neighbourhood, makes it a nuisance, and as such it always has been punishable in leet, and *ideo* indictable'). Mo. 847. 2 Str. 1247. [A scold is said to be punishable by being put into the ducking-stool, *Queen v. Foxby*, sup. 1 Hawk. P. C. c. 75. s. 14.]

Sorcerers.—Flet. 2. c. 52. Britt. c. 29 (of sorcerers, &c. and their receivers). And see Pow. 60, 61. Greenw. 287.

Stocks.—[Vide 4 Jac. 1. c. 5. s. 2. for repressing drunkenness. See also *Pillory*, ante: *Tiplers*, post.]

Suitors: Deciners.—Stat. 18 Edw. 2 (first you shall say unto us by the oath that you have made, if all the jurors that owe suit to this court be come, and which not). Ib. ('of customs and services due to this court withdrawn, how, and by whom, and in what bailiff's times'). Kitch. 19 (if the suitors and deciners, *scil.* if any of them which are resident appear in person, or not; and if any of them make default, to present their names). Ib. 41 (suitors, viz. residents, which owe suit royal [real], capital pledges and deciners, of those of twelve years and not sworn). Jenk. P. C. 20 (if all constables, headboroughs, deciners, tithingmen, and all others that owe any suit to this court, be present to do their suit and service, and to present the names of all that are absent or make default). And see Flet. 2. c. 52. Britt. c. 29. *Mirr.* c. 1. s. 17. Ante, *Chief Pledges*.

Swans.—Kitch. 18 ('also the taking of tame deer, with a

felonious intent, is felony, the same law the taking of cygnets, *swans*, marked, and peacocks, and here inquirable,' cites Stamf. f. 25, C. 18 H. 8. 2). Vide also as to swans, cygnets, or peacocks, marked, Shepp. 41. Pow. 73.

Tiplers.—[By 1 Jac. c. 9, and 4 Jac. c. 5. presentment is to be made in leet of persons who shall continue drinking or tipling, or shall suffer persons to continue drinking or tipling in alehouses, &c. See also 7 Jac. c. 10. 1 Car. 1. c. 4. Greenw. 293. And see *Alehouse-keeper*, ante.]

Tithing-men.—See *Officers*.

Toll (Excessive Toll).—Kitch. 22 (also if millers take excessive toll, is inquirable). Jenk. P. C. 25 (if any millers take excessive toll, they are to be inquired of). And see Shepp. 17. *Per* Rhodes, Serj. 4 Leo. 12 ('excessive toll is inquirable in leet').

Treasa: High-Treason.—Kitch. 16 (high-treason inquirable in leet as felony). Ib. 43 (it is said that treason, as forging of money, is inquirable, cites 9 H. 6, 44). Br. Leet. 2 (cites S. C.). Jenk. P. C. 8 (the jury is to inquire of all high-treasons). And see Pow. 46, 48–9. Greenw. 286. Shepp. 10, 11 ('the things which are here only to be inquired of, and not to be punished, are all felonies, which were so by the common law, though now they be made treason, as of such as are enemies to the King; falsify or abuse the King's coin or seal'). Ib. 39 (you are to inquire of all offences which are or were felonies by the common law, except about the death of a man; and in this consideration you are to inquire of those offences, that being treason do include felony, or be only felony, and those offences that being felonies by the common law are now by some statutes made treason;—so you were to have inquired of and presented all that did imagine or endeavour the taking away the life of the King, &c.; so you are to inquire of any that levy war against the kingdom or adhere to the King's enemies; counterfeit any of the great seals or money; kill the justices of the one or other bench, in doing

their offices, and such like offences.) Scroggs 84 (courts leet inquire of all offences under high-treason committed against the state and dignity of the King).

Petit-Treason.—Br. Ley gager, 99 (of petit-treason, but not of high-treason, cites 10 H. 6. 7). Kitch. 16, 43 (petty treason is inquirable, but as felony at the common law), cites 12 Ass. 30, 19 H. 6. 47. 6 H. 7. 4. Ib. (petty treason, and ancient felonies, that is to say, felonies at the common law, but not the death of a man). Jenk. P. C. 9 (petty treasons are, if any man kill his master or mistress, or a woman her husband; this is to be inquired of here as felony). And see Pow. 46, 52. Kitch. 50, citing Stamf. 2.

Treasure-Trove.—Stat. 18 Ed. 2 (of treasure found). And see Stat. Wall. Britt. c. 29. Flet. 2. c. 52. Mirr. c. 1. s. 17. Kitch. 22. Greenw. 299. Sed vid. Br. Leet 43. Ante, p. 787.

Tumbrel.—See *Pillory*, ante.

Vagabonds, (Wanderers).—See *Noctivagancy*, ante.

Victuals, (unwholesome Victuals).—Scroggs 21 (you are to inquire of all bakers, butchers, poulterers, and others, that they vend good and wholesome meat and drink, fit for man's body; if any offend herein, you are to present and punish the offenders). Ib. 10. See also Br. Leet 1. 4 Inst. 263. Kitch. 21. Shepp. 45, 54. Pow. 114, 115. Greenw. 294–5. *Vaughton v. Atwood* (or *Vaughan v. Wood*), 1 Mod. 202, 2 Mod. 56. 3 Barn. & Adolp. 48. Ante, p. 874.

Villeins.—See *Fugitives*, ante.

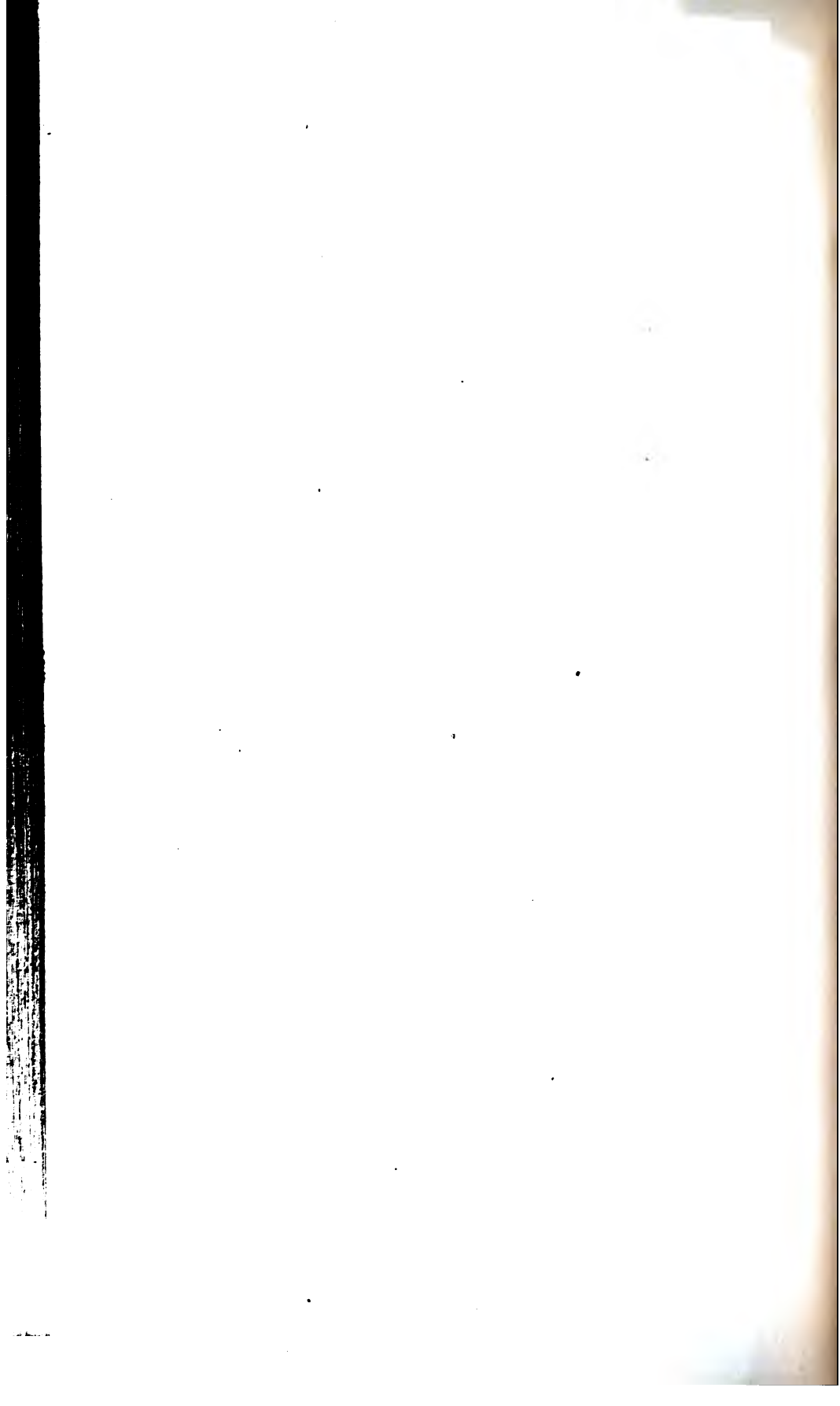
Usurers.—Pow. 101 (usurers are offenders against the common law). And see Stat. Wall. Britt. c. 29. Flet. 2. c. 52. Mirr. c. 1. s. 17. Shepp. 17.

Waif, (bona fugitivorum).—Br. Leet 5 (the lord of the leet hath power to try waif by inquest, but the lord of the hundred not, for he cannot try by jury, having no power to compel them to be sworn, cites 44 E. 3. 19). Kitch. 45 (cites S. C.) Vide also, ib. 23. Jenk. P. C. 27. Shepp. 12. Ante, pp. 781–2.

Weights, (false weights, scales, and measures).—See *Measures*, ante.

Wreck.—Kitch. 24 (by the stat. of 15 R. 2. c. 3. wreck of the sea may be tried and determined by the law of the land; for that and for the profit of the King and the lord, it is inquirable in the leet). Ante, p. 783 et seq.

END OF THE THIRD PART.



APPENDIX
TO
THE COPYHOLDER (a).

Rules to be observed in holding a Customary Court Baron.

CALLING THE COURT.

At the accustomed period of the year for holding a general court, the steward is to issue his precept to the bailiff of the manor, in the form [A.] (b), upon which the bailiff should affix a written notice of the place, day, and hour, appointed for the court, to the door of the parish church, or cause the notice to be read in the church by the clerk. The safer course is to give fifteen days' notice, but I apprehend that a much shorter period would be deemed sufficient (c).

In order to lay a secure foundation for any proceeding at law against a copyholder for a forfeiture, by reason of his neglect of suit to the manor court, it would be advisable to serve a summons upon him personally (d).

And when a mise is joined upon a plaintiff in the nature of a writ of right (e), it is expedient not to trust to a general notice, but to summon all the homage personally, in order to secure the attendance of at least twelve customary tenants, as it is generally considered that every issue in every court, shall be tried by twelve persons, and not by less (f).

(a) Part I. (Vol. 1.)

(b) Post. "Forms of Precepts, &c."

(c) *Ante*, Pt. 1. p. 6.

(d) *Ante*, Pt. 1. pp. 431, 528.

(e) All plaintiffs in nature of writs of right (except plaintiff of dower or free-bench) are abolished, from the 31st Dec. 1834 by 3 & 4 W. 4. c. 27. See the act post. And reference to it, *ante*, pt. 1. p. 562. n. (d). Pt. 3. p. 753. n. (a).

(f) Kitch. 222-3, cites Fortesc. fol.

54 & 57; and says, "The stat. West.

"2. c. 13, is that the sheriff shall in-

"quire by twelve, and not by less, and

"the same law shall be in leet. And

"for that this statute doth not extend

"to court baron, presentment of articles

"there by less than twelve may be, for

"one may hold court baron though there

"be but two suitors, and then they may

The Court Day.

Manor Rolls. } On the day appointed for the court, the steward is
Minute Book. } to be prepared with the rolls of the manor for such
 references as may be necessary to his guidance as the judge of the
 court, upon any applications for admittance, or for licences, &c., and
 for the inspection of the tenants of the manor, on payment of the ac-

“ inquire by two of articles for the lord ;
 “ but hard it is when every one is in-
 “ heritable to the laws of the realm,
 “ and the trial of the law is by twelve,
 “ of issue joined between party and
 “ party, that by your not power, that is
 “ to say, that there should not be twelve
 “ tenants of every jury, to take from me
 “ my tryal, which the law gives to me ;
 “ and if you will try issue by less than
 “ twelve, you may impanel three or
 “ four of the friends to the parties, and
 “ to have no number certain under
 “ twelve, but to have such a number
 “ as the steward pleaseth, and to be at
 “ his choice, how many shall be sworn
 “ of a jury, and how many shall be im-
 “ pannelled, is inconvenient where there
 “ are more within the manor to be im-
 “ pannelled ; and so it seems if there be
 “ not twelve to try the issue, they fail
 “ of power to minister law and to do
 “ justice ; and copyholder may sue by
 “ bill in chancery, where there are not
 “ twelve homagers within the manor, or
 “ in action of trespass at the common
 “ law, and the party ought to be ad-
 “ mitted in the lord’s court, to the intent
 “ to bring trespass at the common law,
 “ and there law is more truly administer-
 “ ed than in court barons ; and also if
 “ any sue in court barons for copyhold,
 “ he shall make his protestation to sue
 “ in nature of his writ at common law,
 “ and the process and proceedings shall
 “ be according to the course of the
 “ common law, and they shall join issue
 “ according to the course of the common

“ law, and there (*venire facias*), is, that
 “ they shall cause to come twelve free
 “ and lawful men according to the course
 “ of the common law, and for that it
 “ seems that tryal of issues there be-
 “ tween parties shall be by twelve and
 “ not by less.”

Vide also Kitch. 223, where he adds
 “ Enquest shall be by custom of the
 “ realm between party and party, in a
 “ court of record, by twelve at the
 “ common law,” cites Dr. & Stud. f. 14.
 Again in the same page he says, “ Verdict
 “ of 11 shall not be taken,” cites 41
 Ass. 11. 41 E. 3. f. 31, & 29 Ed. 3. f.
 33. And again in the same page,
 “ Every inquisition taken in the sheriff’s
 “ turn shall be by twelve, and the same
 “ law is said there in a leet by the
 “ equity of the statute of 6 H. 4. fol. 3.
 “ Notwithstanding, seek if less than
 “ twelve may try issue between parties
 “ in the court of a lord of copyhold, or
 “ not, where there are not twelve within
 “ the manor ; for it is held by some,
 “ that it shall be tried by less, and I have
 “ seen a trial between three or four.
 “ But I intend it is hard, and especially
 “ where there are twelve and more
 “ copyholders within the manor, and
 “ also it appears in the register, that an
 “ action was removed out of the court
 “ baron, because there were but four
 “ suitors, and so I conclude, *issue for*
 “ *copyholders shall not be tried by less*
 “ *than twelve*, 6 H. 4. f. 1.” Ib. p. 224.

Vide also Co. Lit. 155. b. n. 3.

customed fees (a): and he is also to be prepared with a minute book for recording the proceedings of the day, the style of the court being already written in it.

Steward's appointment. Should it be the first court holden by the steward for the particular manor, it is usual and proper for him, previous to the opening of the court, to read his appointment to the stewardship, to the tenants assembled.

Opening the court. The bailiff is then to open the court by an audible proclamation; thus—"O YES; All manner of persons that owe suit and service to the customary court baron of ———, here this day to be holden for the manor of ———, or that have been summoned to appear at this court, draw near and give your attendance, every tenant answering to his name as he shall be called."

Suit roll. The suit roll should then be called over, marking against such of the tenants as appear [*ap.*], and against such as are duly essoined [*ess.*] (b).

Swearing the homage. This being done the homage are to be sworn (c), and their names written in the minute book, marking against them as they are sworn, "SW.", and when sworn, the steward is to give them their charge.

Breviat of Charge. Unless any new tenant should be on the homage, this charge is usually confined to a brief detail of the business to be transacted, as far as the proposed acts of transmission of copyhold lands within the manor, have come to the steward's knowledge, and to the reminding the homage of their duty, to present the death

(a) These references will be greatly facilitated by keeping a very correct index book of all copyhold assurances, voluntary grants, licences, &c., under an alphabetical entry of the names of the copyholders of the manor.

(b) *Ante*, pt. 1. p. 431. It behoves every lord of a manor to call over the names of the copyholders at each general court, in order that the tenants may be the better enabled to watch over his interests, and to defeat any attempt to convert the copyhold into freehold tenure; for we have seen that copyholds are within the statute of non-claim, 4 Hen. 7, when the fine is levied by a disseisor, *ante*, pt. 1. p. 100.; and it was decided in *Margaret Podger's case*, 9

Co. 105, that the lord shall not be allowed five years after the death of the copyholder, even if he be a copyholder for life, but must make his claim within five years after the fine is levied. It must not, however, be supposed, that it is in the power of the copyholder *covinously* to effect a bar to the lord by a feoffment and fine; the contrary was decided in *Fernor's case*, 3 Co. 77, Toth. 165, where the copyholder continued in possession, and paid his rent; and was recognized in the above case of *Margaret Podger*. See also Co. Lit. 330. b. N. 1. *Ante*, pt. 1, p. 517, et seq.

(c) See the Oath post. "Forms of Precepts, &c." [B.]

of any tenants since the last court, in order that the lord may claim his advantages of heriot, &c.; and that the estates of such deceased copyholders may be put upon proclamation; and to present for enrolment any surrenders taken out of court by the tenants, or the bailiff or reeve, (when that is allowed by the usage of the manor): And likewise any acts by which the copyhold tenements may have been forfeited to the lord, as by executing a feoffment with livery, leasing for a term of years without license, committing waste, or the like.

Full charge. But when there are any new tenants, it may be proper to give the charge more at length, calling the attention of the homage, to the following detail of their duty, (and with such additional observations in conclusion, as the particular business of the day may seem to require on the part of the steward, as the judge of the court,) viz.

First. Reminding the homage, that it is their province to present the death of any of the tenants, since the last general court, and whether they left any heir inheritable by the custom, and any surrenders taken out of court by themselves or other tenants of the manor, or the bailiff or reeve, when such a custom prevails (*a*).

Secondly. Impressing upon them the particular necessity of their informing themselves of any alienation of copyhold property within the manor, by a common law assurance, and especially by deed of feoffment either with or without a fine, and whether by way of sale or mortgage, or otherwise, which alienation by feoffment would be a forfeiture to the lord of the estate so conveyed, and ought therefore more particularly to be presented in court for his instruction (*b*).

Thirdly. The necessity also of their inquiring of any leases of copyhold property, (or of any mortgage by demise operating as a lease,) beyond the term of a year, or any greater term permitted by the custom of the manor, without the license of the lord for so doing; and which would also be a forfeiture, and presentable at the court (*c*).

Fourthly. Whether any of the copyhold tenants have been convicted of treason, or felony (*d*), or been outlawed for any capital crime (*e*), or have committed *voluntary* waste by pulling down houses, &c. (*f*),

(*a*) *Ante*, pt. 1. pp. 153-4.

(*b*) *Ante*, pt. 1. p. 516.

(*c*) *Ante*, pt. 1. p. 518, &c.

(*d*) *Ante*, pt. 1. p. 522.

(*e*) *Ante*, pt. 1. p. 526.

(*f*) *Vide extract*, at the end of the Appendix, of the judgment of the court

of B. R. in the recent case of *Doe d. Grubb v. Earl of Burlington*, showing that the pulling down of a barn, or other outbuilding, may be waste, but that if the jury should find that no damage was occasioned thereby, the consequences of waste would not attach.

cutting down trees, digging for mines or the like: or *permissive* waste, by neglecting to repair buildings, or injury to lands in not attending to the ordinary rules of cultivation (a), or have inclosed where no inclosure has been before, or removed or abated an ancient inclosure, or land mark (b).

Fifthly. Whether any purchase has been made within the manor, by an alien or other persons incapacitated from purchasing or holding copyhold tenements (c).

Sixthly. Whether any encroachments have been made on the waste of the lord, in order to their immediate removal, as a possession for twenty years would be deemed adverse as to the lord (d).

And lastly, charging the homage of their duty, to inquire of all other things concerning the lord's interest, or which in their consciences ought to be inquired of as between the lord and tenant, or as between tenant and tenant, and to make due presentment thereof accordingly.

Presentments. The homage are generally prepared with their presentments, but if not, they are to retire and consider of them.

The next step is for the steward to enter in his minute book, the several presentments of deaths, surrenders out of court, acts of forfeiture, &c. and also a minute of any surrenders, warrants to enter satisfaction on conditional surrenders by way of mortgage, licenses to demise, &c. taken or granted since the last court, by the lord, or by the steward, or any person acting under his deputation.

The several surrenders and warrants out of court should then be indorsed thus: "Presented and inrolled at a court held for the manor of ——— this ——— day of ———," to which the foreman and another homager are to subscribe their names.

Proclamations. When any tenant's death is presented, the bailiff should notify it at the door of the court by proclamation, thus:

"If any one can make any title or claim to the copyhold tenements holden of this manor, whereof *A. B.* lately died seised, let him appear, and he shall be admitted, and in default, the same will be taken into the hands of the lord, for want of a tenant: this is the [1st.] proclamation."

(a) *Ante*, pt. 1. p. 526-7.

(b) *Ante*, pt. 1. p. 529.

(c) *Ante*, pt. 1. p. 133, 541, et seq.

(d) *Ante*, pt. 1. pp. 512, 513, 526, 560. Fisher 180.

And if no claim should be established at the same court, a like proclamation is to be made at the succeeding general court, and to be repeated at the third general court, should no claim be established at the second.

So when there is a custom to compel a surrenderee to be admitted, if any surrender made out of court is presented, or if any surrender be made in court, the bailiff is to notify such surrender, thus :

“ *A. B. [the surrenderee]* come into court and be admitted to the “ copyhold tenements holden of this manor, and surrendered to your “ use by *C. D.*, or the same will be seised into the lord’s hands.”

Surrenders in court. If any tenant should desire to make a surrender in court, of all, or part of his copyhold lands, the steward by reference to the court rolls, is to satisfy himself that the person is seised for the estate he proposes to transmit to another, and, since the act of 48 G. 3. c. 149, is to make the copyholder sign a declaration of the proposed surrender being made on a sale, or mortgage, or otherwise, and, if on a sale or mortgage, of the amount of the consideration money to be paid, in order that the sum may appear on the face of the court rolls, and of the copy thereof, to be delivered to the purchaser, or mortgagee, and by which the amount of the stamp duty is to be regulated.

And then, (the copyholder holding one end of the rod, or other symbol, and the steward holding the other end,) the steward is to say, “ You surrender into the hands of the lord of this manor, by my “ hands and acceptance by the rod, All, &c., with their appurtenances, “ *and all your estate and interest therein*; to the use of *C. D. and “ his heirs for ever*, according to the custom of this manor.”

Should the surrender be for life only, or other particular estate, the words in italics are to be omitted, and others substituted to meet the particular case.

If the surrender be conditional by way of mortgage, the steward will add, “ But on the express condition, that this surrender is to be “ void, on payment to the said *C. D.* of £—— and lawful interest “ for the same, on the —— day of —— *next*, [or as the case may “ be].” And the copyholder is to answer affirmatively, relinquishing the rod or other symbol into the steward’s hand.

Examination of feme covert. When the surrender is of the copyhold of the wife, or when the alienation of the husband does not

defeat the wife's customary dower (*a*), she is to join in the surrender, and is previously to be questioned by the steward, apart from her husband, as to her voluntary consent to the proposed act, the same as on levying a fine of freehold lands prior to the act of 3rd and 4th *W.* 4. c. 74. (*b*).

Arrears of rent. It would seem that a copyholder is not chargeable with any arrears of rent due before his admission, so that previous to the admittance of any new tenant, the steward should ascertain that no rent remains due (*c*).

Admittances. If any persons attend to be admitted, the steward is to investigate their claims, with reference to the title, as it already appears upon the court rolls, or may be deduced by will, or intestacy, or otherwise, and to make a short minute of the circumstances, to enable him afterwards to draw out the admission in due form, and when the will or other document is very long, and it cannot be left with him, he will require to have a copy or full extract from it.

Being satisfied of the claimant's right to admittance, the steward (he having hold of one end of the rod or other symbol, and the claimant holding the other) is to say: "The lord of this manor, by me his steward, doth admit you tenant to the copyhold tenements holden of this manor, of which *A. B.* lately died seised, [or which have been surrendered to your use, at this court, by *A. B.*] [or which were surrendered by *A. B.*, to your use, on the — day of —.] And this is to hold to you and your heirs, [or as the case may be] at the will of the lord, by the accustomed fine, heriot, rents, and services; in token whereof I deliver to you this rod, [or other symbol,]" and which the steward relinquishes into the hand of the new tenant.

(*a*) *Ante*, pt. 1. p. 90. et seq. p. 163.

(*b*) *Ante*, pt. 1. p. 159. et seq. Post p. (12).

The 77th sect. of the above mentioned act, authorising married women to convey by *deed*, expressly excepts the case of a copyhold, where the wife, or she and her husband in her right, may be seised for an estate at law, and which prior to the act could have been passed by a surrender.

By the 90th sect. a surrender either in or out of court by a husband and

wife, of copyhold lands in which she alone, or she and her husband in her right may have an *equitable* estate, the wife being separately examined as if the estate were an estate at law, will bind the wife and all persons claiming under her; and all surrenders made prior to the act, of lands similarly circumstanced, the wife having been separately examined by the person taking the surrender, are thereby declared to be valid.

(*c*) *Ante*, pt. 1. p. 434-5.

The preceding observations, although applicable only to copyholds of inheritance, will render it unnecessary to lay down any particular rules for the steward's guidance, when the copyholds are held for lives. The only material variation in those cases, is, that the copyholder for lives, when desirous of adding or exchanging a life, surrenders *absolutely* to the lord, for the existing life or lives, to the intent that he will re-grant for the old and new lives, and the steward signifies that the lord by his hands grants seisin accordingly.

And when the reversionary cestui que vies have a legal interest, and there is no special custom authorising the first life to destroy the whole estate (*a*), they must join in the surrender.

Fine. When the fine is certain, or the lord and tenant have agreed on the amount, it is then to be paid with the steward's fees, and also the court fees, (being usually a small payment to the bailiff, on every surrender and admittance;) but if the fine be uncertain and no agreement has been made, the steward is to assess it, and appoint a day and place for the payment (*b*).

Fealty. It was at this stage of the court business, that the oath of fealty, now usually, if not invariably, commuted by a small payment, and entered as respited, was administered (*c*).

Surrender to will. When admittance has taken place, the copyholder should be advised, notwithstanding the provisions of the act of 55 G. 3. c. 192, to surrender his estate to the uses of his will (*d*), which is to be made in the manner already explained, the uses of the surrender being thus stated by the steward, viz. "to the use of such person or persons, for such estate or estates, intents and purposes, as he (the copyholder) by his last will and testament in writing already made, or afterwards to be made, hath given, devised, directed, or appointed, or shall give, devise, direct or appoint the same."

Precept to seise. If three proclamations have been made as to any copyhold tenement, or if the party intitled to admission has been served personally with notice to appear at the court, and the heir or other person so intitled should not attend and claim to be admitted,

(*a*) *Ante*, pt. 1. pp. 33, 152.

(*c*) *Ante*, pt. 1. p. 430.

(*b*) *Ante*, pt. 1. p. 419, &c.

(*d*) *Ante*, pt. 1. p. 263.

the steward is to issue a precept to seize the same (a) in the form [C] (post. "Forms of Precepts, &c.")

Customary Recoveries (b).

When a copyholder, tenant in-tail, attends in court for the purpose of suffering a recovery, in order to acquire an absolute customary fee, the steward should first ascertain whether he has been admitted, and if not, he will admit him according to the form of the gift, that is, to hold to him and the heirs general or special of his body, as the case may be, to be holden, &c., and this on payment of the customary fine.

The tenant in tail is then to surrender to the use of a tenant to the plaintiff, in fee, who must be admitted.

The steward thereupon makes a minute of the following acts and proceedings, which are to be so entered upon an interrogatory address by the steward, to the demandant, tenant, &c., [as for instance, you C. complain against B. &c., and make protestation, &c. and you B. appear and answer to C. &c.] viz.

Noticing that C. (the demandant) enters a plaint against B. (the tenant) of a plea of land of the aforesaid tenements, by the description of, &c. and makes protestation to prosecute his plaint in nature of a writ of entry, sur disseizin in the post at common law, and finds pledges to prosecute, viz. 'John Doe and Richard Roe.'

That B. prays to answer without farther process, which is granted.

That thereupon C. in person demands the tenements of B. as his right, &c. and of which he was seised in fee, &c. in time of peace, &c. by taking the profits or esplees, &c. and into which B. hath not entry, but after the disseisin of Hugh Hunt within 30 years last past (c).

That B. in person defends his right, and vouches to warrant A. (the tenant in tail) who enters into the warranty.

That thereupon C. demands the tenements of A., and saith that he was seised, &c. and into which, &c.

(a) *Ante*, pt. 1. p. 351-2; but it would seem that a written precept to seize is not absolutely necessary. *Ante*, pt. 1. p. 355.

(b) I think it proper to re-insert these instructions in the present edition, al-

though by the act of 3d and 4th W. 4. c. 74. customary recoveries are abolished from the 31st December, 1833.

Vide instructions in reference to the provisions of the above statute, post p. (11.)

(c) *Ante*, pt. 1. p. 584.

That *A.* defends his right, and vouches to warrant *D.* (the common vouchee) who enters into the warranty.

That *C.* then demands the tenements of *D.*, and saith that he was seised, &c. and into which, &c.

That *D.* defends his right, and denies that Hugh Hunt did so disseise *C.*, and puts himself on the homage.

That *C.* craves leave to imparle to a certain hour, which is granted, and the same hour given to *D.* (*a*).

That at the said hour *C.* attends, but *D.* though called [*which is done by the bailiff's standing at the door of the court, and requiring that D. will come into court, and answer to C. on his plea of land, according to his defence, and is a form only, as D. purposely absents himself during the rest of the proceedings*] cometh not, and that upon his contempt and default, the court adjudge that *C.* do recover his seisin against *B.*, and that *B.* have of the customary lands of *A.* within the manor, &c. (*b*) to the value, &c. and that *A.* have of the like customary lands of *D.* to the value, &c. and the said *D.* in mercy, &c.

That *C.* prays the lord's precept to the bailiff, (*W. Y.*) to deliver him seisin, which is granted returnable forthwith. [And here the precept in the form [*D.*] (*c*) is signed by the steward and given to the bailiff, who retires with *C.* to sign the return indorsed upon it.]

That *W. Y.* and *C.* again attend, the former certifying that he had executed the precept and caused seisin to be delivered to the latter.

That *C.* prays admission, [and here *C.* is to be admitted accordingly, to hold in fee.]

Lastly. *C.* the demandant and *A.* the tenant are to surrender, and also release (*d*), the premises and all their estate, &c. to the use of *A.* in fee, [or as he may desire,] and the steward will then admit *A.* accordingly (*e*).

(*a*) Unless other business requires attention, this is mere form, as the next minute may be fixed.

(*b*) Ante, pt. 1. p. 81.

(*c*) Post. "Forms of Precepts, &c."

(*d*) See Scroggs, 310, 484, 492 [4th edit.] Cro. Eliz. 391. *Pigott on Recoveries*, p. 103. A MS. note in my copy of *Pigott*, citing *Greenwood's Jurisd. of Courts*, 455, and Scroggs, 288, suggests

the expediency of taking a surrender and release, as no warranty can be annexed to the estate of a copyholder. And although it is certainly better to conform to this practice, yet I cannot think that it is essential. Ante pt. 1. pp. 59, 60.

(*e*) When the recovery is suffered by attorney, which may be done even by a *feme covert*, by virtue of the act of 47 G. 3. s. 2. c. 8., [but see n. (*b*), ante,

Surrender to bar an estate-tail under 3rd & 4th W. 4. c. 74.

By the operation of this statute a different course is prescribed to the steward when a copyholder, subsequently to the 31st of December, 1833, attends in court for the purpose of barring an estate-tail, and of acquiring an absolute or base customary fee.

If the party should not have been already admitted, either separately, or by the previous admission of the particular tenant, under the rule of law, that an admission of a tenant for years or for life is the admission of all in remainder, he is, of course, first to be admitted tenant of the estate in tail, and then, under the 15th, 40th, and 50th sections of the above mentioned act (*a*), he must surrender to the use of himself in fee, or to any such particular uses as he may desire (*b*).

Should the party be tenant in tail in remainder, he is to be informed by the steward that a surrender by him alone, would only create a base fee, though under the 19th section of the above act he might afterwards, with the concurrence of the particular tenant, intitled for a term of years determinable on a life or lives, or any greater estate, as protector of the settlement under the 34th section of the act (*c*), or

p. (9),] the steward must notice that the tenant in tail appears and answers, vouches, &c. by such a person his attorney, duly constituted by a certain power, &c.; and which letter of attorney is to be inrolled at the end of the proceedings of the day.

(*a*) The 16th section enacts that the power of disposition shall not be exercised by women tenants in tail *ex provisione viri* under 11 Hen. 7. c. 20. except with the assent required by that act. And the 18th section has provided, that the power shall not extend to cases where the reversion is in the Crown; or to tenants in tail after possibility of issue extinct. And the 20th section prohibits the issue of tenants in tail from barring their expectancies.

(*b*) By the 50th section a disposition by a tenant in tail, whose estate shall be an estate *at law*, must be by surrender, but a disposition by a tenant in tail, whose estate shall be merely an estate

in equity, may be either by a surrender, or by deed, as provided for by the 53rd section, and by which equitable tenants in tail of copyhold lands are authorised to dispose of such lands by deed, and the deed is not required to be inrolled otherwise than by entry on the court rolls [see sect. 54]. The 53rd section also requires that if there shall be a protector, he shall consent to such disposition by a distinct deed, to be entered on the court rolls, and the lord or steward to indorse or sign a memorandum thereon, testifying the entry thereof on the rolls. And it also provides that every disposition by deed by an equitable tenant in tail of copyholds, shall be void against any person claiming the lands for valuable consideration under any subsequent assurance, duly entered on the court roll, unless such deed of disposition be entered thereon before the entry of such subsequent assurance.

(*c*) The consent of the protector to

alone after the determination of the particular estate, acquire an absolute customary fee by an ordinary surrender.

If the tenant in tail be a feme covert she may acquire an absolute customary fee, when intitled in possession, or a base fee when intitled in remainder, or, in the latter case, an absolute reversionary fee, the protector of the settlement concurring, by a surrender from herself and her husband, the wife being examined by the steward as to her voluntary consent; such surrender is to be made to the use of the wife and her heirs, or to any other uses that may be desired (a).

a disposition of copyhold lands may be given to the person taking the surrender, or by deed. If the consent be given in court the entry of the surrender on the rolls is to contain a statement that the consent had been given, and if the surrender be made out of court, the memorandum of surrender must contain a statement that the consent had been given, and be signed by the protector. [§. 52.] And if the consent be given by deed, such deed, executed by the protector, must be produced to the lord or steward at the time when the surrender shall be made, and the lord or steward is to indorse on the deed an acknowledgement that the same was produced within the time limited, and to cause such deed and indorsement to be entered on the court rolls, and after entry thereof, is to indorse and sign a memorandum thereon, testifying such entry on the court rolls. [§. 51.]

When a married woman is the protector, she and her husband are as one owner, unless the prior estate was settled to her separate use, and then she alone is the protector of the settlement. [§. 24.]

The 45th sect. enacts, that a married woman being either alone or jointly with her husband protector of a settlement, may in the same manner as if she were a feme sole, give her consent to the disposition of a tenant in tail.

Under the 27th, 28th, and 31st sec-

tions, no woman in respect of her dower, nor a bare trustee, heir, executor, administrator or assign, is to be deemed the protector of the settlement, except that under a settlement made prior to the act, the person who, being a bare trustee, would, if the act had not passed, been the proper person to make the tenant to the precipe is to be deemed the protector. And see sect. 28, as to the person to be the protector when there shall be more than one estate prior to an estate tail, and the owner of any such prior estate shall be excluded from being the protector by being a bare trustee heir, &c.

(a) A surrender would seem also to be the proper mode of conveyance under the above mentioned act, by a feme covert *equitably* intitled to an estate tail, though I apprehend that she might bar the intail by deed, to be entered on the court rolls, see sect. 53 & 54; but the deed would require to be acknowledged under the 79th section.

N.B. By the 76th section of the above stat. the court of Common Pleas is to regulate the fees to be paid for entries of deeds on the court rolls of manors, and for the indorsements thereon, and for taking the consent of the protector, when not given by deed, and for taking surrenders by tenants in tail of copyhold lands, and entering such surrenders, or the memorandums thereof, on the Court Rolls.

Adverse Customary Plaints (a).

At this stage of the proceedings, the bailiff should make further proclamation thus: "O Yes. If any person will enter any plaint, let him come into court and he shall be heard."

The steward will then enter any plaints in the order they are tendered (b).

We will suppose that *A.* the eldest son and heir of *B.*, who was the eldest son and heir of *B. B.*, has been kept out of possession of a copyhold tenement by *C.* for upwards of 50 years, and that he is advised to try his title in a customary writ of right.

The steward on receiving the plaint and prayer of process from the demandant, will make a minute under a similar interrogatory address as in suffering a recovery, that *A.* claiming to be the eldest grandson and heir by custom of *B. B.* complains against *C.* of a plea of land, to wit, Of, &c. and makes protestation to prosecute his plaint in the form and nature of a writ of right patent at common law, and finds pledges, &c. and prays process, &c. (c).

And that a precept was accordingly issued to the bailiff to summon *C.* to appear and answer to the plaint at the next general court, and

(a) N.B. Plaints in nature of possessory actions and writs of right are abolished from the 31st Dec. 1834, with the exception of a plaint for free bench. *Ante*, p. (1). n. (c). And see as to a plaint in nature of writ of dower, *Ante*, Pt. 1. p. 568.

(b) It is submitted that the instance which follows of the entry of a plaint in the manor court, in the nature of the grand writ of right, will serve as an instruction to the steward in all other cases of suits, in the nature of real actions, for the recovery of copyhold rights.

(c) See the form of this plaint and prayer of process at the end of Precedents of court rolls (*First Court*). Vide also, plaint in nature of an assize of novel disseisin, and prayer of process, post "Forms of Precepts, &c." [F. 1.]:—

Plaint in nature of an assize of mort d'ancestor, and prayer of process, [F. 2.]:—Plaint in nature of formedon in remainder, and prayer of process, [F. 3.]: And plaint of customary dower, and prayer of process, [F. 4.]

An important case occurred a short time since of a plaint in nature of a writ of right in the manor of Lambeth, *Angell* demandant, *Angell* tenant, in which the pleadings were very special. A verdict was found for the tenant.

Much useful information will be found as to the proceedings in a plaint in nature of a writ of dower, and of a writ of right of dower, by analogy to the common law writs, in the 1st vol. of *Roper's Law of Husband and Wife*, p. 425, et seq. And see Booth 118, 166, et seq. 3 Chitty on Plead. 593, et seq. *Ante*, pt. 1. p. 568.

that the same day is given to *A.*: which precept is then to be awarded in the form [E. 1.] (*a*).

With all convenient speed after this court, and at least 15 days before the return of the precept of summons, the defendant is to be summoned on the above plaint, for which purpose the bailiff should go between sun-rise and sun-set, on the most conspicuous part of the estate, accompanied by two copyhold tenants at the least, and with them cite or warn the defendant, by reading the summons aloud, and by sticking a white wand on the land demanded, (a copy of the precept and summons being also appended to the wand,) to appear on the return of such precept. The defendant should also if possible be summoned personally, by delivering to him a copy of the summons and showing him the original precept (*b*); and, in analogy to the practice in real actions (*c*), proclamation of the summons should be made by the bailiff at the door of the church or chapel where the land in question is situated (*d*), immediately after divine service, on some Sunday, 14 days at the least before the return of the precept writ of summons.

On or before the next court day, the bailiff is to indorse the return of the precept, in the form [E. 2.] (*e*).

(*a*) Post. "Forms of Precepts, &c."

(*b*) I apprehend that a personal summons would alone be sufficient. As to the formalities of executing a summons, see Dalton's Office of Sheriff, 149. Booth's Real Actions, 5. Chitty's Plead. 3d vol. 624-5. An actual summons in real actions is now much disused, but the names of the summoners are returned by the sheriff. Booth's Real Actions, 5, and n. 1, ib.

(*c*) By 31 Eliz. c. 3, s. 2, "for avoiding of secret summons in real actions, without convenient notice of the tenants of the freehold," it is enacted, that after every summons upon the land in any real action, 14 days at the least before the day of the return thereof, proclamation of the summons shall be made on a Sunday [immediately after divine service, and sermon, if any sermon there be, and if no sermon there be, then forthwith after divine service]

at or near to the most usual door of the churches or chapel of that town or parish where the land whereupon the summons was made doth lie, and the proclamation so made as aforesaid shall be returned, together with the names of the summoners; and that if such summons should not be proclaimed and returned according to the tenor and meaning of that act, then no *Grant Cape* should be awarded, but *Alias and Pluries* summons as the case should require, until a summons and proclamation should be duly made and returned according to the tenor and meaning of that act. Vide *Earl Clanrickard v. Earl Leicester*, W. Jones 7. *Furnis v. Waterhouse*, 1 Mod. 197.

(*d*) Even if the church is in another county, still the proclamation should be made at the church door. *Register's case*. Cro. Eliz. 472.

(*e*) Post. "Forms of Precepts, &c."

at such court the steward will enter a minute of the return by the bailiff of his having summoned *C.* as commanded (*a*).

The bailiff will then call on *A.* to appear, or that he will lose his writ against *C.* (*b*).

Afterwards *C.* is to be called by proclamation three times (*c*) to answer to the plaint of *A.* (stating the substance of it), or that further damages will be awarded against him (*d*).

Should *C.* be prevented from attending by sickness or otherwise, he should cause himself to be essoined (*e*).

See Rast. Ent. 130.

The demandant has until the next term appearance, but more usually directly, a considerable time for preparation and advice intervening between the courts. Chitty's Plead. 3d ed. 3.

It should seem that one proclamation is sufficient, except in the King's Bench. Kitch. 11, 12.

See Chitty's Plead. 3d vol. 623.

Essoins.—The following is a summary of their nature, and of the rules applicable to them. Essoine, *essoine*, from the french *essonier*, or to excuse, to save the default of a party for that time, for some just cause, as sickness, &c. And this is as to the demandant as the tenant, 2 Inst. 5. There are five kinds of essoins. 1. de servitio regis.—2. internamium.—3. ultra mare.—4. de malo tempore. This, however, is not allowed in a writ in its nature only, 2 Inst. 5. (and which is the common *de malo veniendi*. When an essoin is cast, if it be not challenged, there is always a day given to the demandant and tenant, but if challenged, the essoin with the challenge is not to be adjudged, or adjourned, Lutw. Carth. 48. In all, except the *de malo tempore* essoin, the demandant shall be allowed for a year and a day, 2 Inst.

137, 252. If an essoin be not cast on the first day, a *ne recipiatur* may be entered the next day, which is the day of exceptions. But if a *ne recipiatur* be not entered, the essoin may be cast on the fourth day of the return, Com. Dig. Exoine (B. 4.). Non adjournment of the essoin will be error, Com. Dig. Exoine (E.) 1 Lord. Raym. 79. If the demandant does not appear at the day to which the essoin is adjourned, to demand the tenant, he ought to be nonsuited, 2 Vent. 117. So, it should seem, if the tenant demur to the challenge, and it be adjudged for him, Com. Dig. Exoine (E). When there is a non-appearance before issue joined, without any essoin cast, there ought to be process before judgment be given for the demandant, so in case of non-appearance after an essoin cast, because perhaps the tenant may excuse both non-appearances, Lutw. 862. But where an essoin is challenged, and adjourned, and the tenant does not maintain his essoin, or demur to the challenge, a *petit cape* is not to be awarded, but judgment of seisin ought to be given, Ib. Carth. 49. Essoins are allowed both before and after issue joined, Booth, 15. The tenant cannot be essoined after the vouchee has entered into warranty, Hob. 47. Nor shall there be an essoin after issue in dower, Hutt. 69. An essoin is not

On the supposition of the attendance of *A.* in person, and of *C.* his attorney *D.*, the steward will enter, that *A.* appears in person, and that *C.* appears and puts in his place *D.* against the said *A.* in a plea of land.

A. is thereupon to produce his count or declaration against *C.*, and a copy of it should be delivered to the tenant, if he appear in person, otherwise to his attorney (*a*).

[The entry of this count or declaration in the precedents of copyhold rolls, will show the proper form of it. (It should commence with the title of the particular court).

See as to the various process and forms, &c. such as summons, attachment, distress, default, grand cape, saver of default, imparlance, pleading in abatement, view, essoin, voucher, warranty, aid prayer, receipt, &c. in the grand writ of right, and consequently as to the analogous proceedings, &c. (as far as the same are applicable to copyhold tenure,) in *plaints in nature of the grand writ of right*, F. N. B.; *Booth Real Actions*; *Ante*, pt. 3. pp. 756-7.]

The steward will then proceed with his minutes thus.

allowed to a corporation, 2 T. R. 16. 1 Lord Raym. 79. Nor in an assize of novel disseisin, 2 Inst. 249, 418. Nor for the tenant in an assize of mort d'ancestor, 2 Inst. 249. No essoin shall be cast for an attorney, but the common essoin, 2 Inst. 394. If an essoin be disallowed when it ought to be granted, it will be error, but it will be no error if granted when it need not, Hob. 47. Dy. 26 b. 1 Lord Raym. 80. When an essoin shall not be allowed, see Com. Dig. Exoine [B. 3.] (c). And see generally as to essoins, Booth 14, et seq.

Imparlanche. Either demandant or tenant may imparle, and the court may give what day they think fit, Booth 36, 96. The more common signification is time to plead. A general imparlanche is, of course, when the defendant is not bound to plead the same term [or court], but a special imparlanche, which is when a party prays it with a saving of all ad-

vantages, is not allowed without leave of the court. Tidd 467, 468. After general imparlanche no plea to the [or plaint] is to be received, but in tenure, joint-tenancy, several tenancy may be pleaded in abatement after imparlanche, Booth 37. What may be pleaded in abatement after a general special imparlanche, see Com. Dig. Abatement (I. 19, 20.)

View. In most real actions after demandant hath counted, (or even before Willes 345-6,) the tenant may demand the view, but not when it is clear that he knows what lands are demanded (I. 19, 20.) View may be granted after general imparlanche, Booth 39. In what actions it is not grantable, see Booth 37, et seq.

(a) The steward is here reminding that when a party is not allowed to amend, he is not allowed to discontinue. *Maidment v. Jukes*, 2 N. R. 429. *Ante* pt. 1. p. 581.

at thereupon *A.*, in his own proper person, demands against the *C.*—Messuages, &c. as his right and inheritance, by plaint in the and nature, &c. and says that *B. B.*, grandfather of *A.*, was thereof in his demesne as of fee, &c. in time of peace, &c. to within 60 years last past,) by taking the profits or esplees, &c. that from *B. B.* the right descended to *B.* the father of *A.*, as eldest son and heir by custom of *B. B.*, and that from *B.* such descended to *A.*, as his eldest son and heir by custom, and that as the right of *A.* he offers, &c.

at thereupon *C.*, by his said attorney, denies the right of *A.*, and himself upon the homage, and prays a precept of recognition, and that *A.* doth the like (*a*).

at such precept is granted for the then next court: which precepts to be awarded in the form [H.] (*b*).

at such succeeding court, the parties and their advocates and witnesses being in attendance, the steward will enter the bailiff's return to the precept of recognition, and then the jurors impanelled by the bailiff to try the issue, if not challenged (*c*), are to be sworn in the form [I.] (*d*), and the witnesses to be produced on either side, and so to be sworn in the form [K.] (*e*).

at the pleadings, the nature of the case, and the evidence to be produced in support of the title of the tenant in possession, *as he holds firmative of the question in issue* (*f*), are to be first stated to the jury, and when that evidence is gone through, the advocate for the defendant opens his case and supports it by evidence, and afterwards the plaintiff's side is heard in reply.

But a similiter doth not seem to be absolutely necessary. Booth 96. *Y.* 653 n. (*a*). See the form of *Mise. post.* "Forms of Precepts, &c." [G. 1.] Vide also form of *mise on a nature of an Assise of mort d'an-* *post.* [G. 2.] *Rast. Ent.* 131. *Demy-mark* should be tendered before the *mise*, in order to put the defendant to show the *seisin of his ancestor* it should seem that it may be tendered at the appearance of the jury. Booth 98 n. (*u*). Ante pt. 3. pp.

cases are to govern the trial of any issue in copyhold cases, so the whole panel or any of the jurors may be challenged for any just cause, as interestedness, partiality, &c.; see 3 Bl. Com. 359, et seq. It is usual for each party to strike out a certain number of the persons returned as jurors. In one case 48 were returned and six struck out by each party.

(*d*) *Post.* "Forms of Precepts, &c."

(*e*) *Ib.*

(*f*) See 3 Bl. Com. 366.

(*g*) It should seem that this rule is not altered by a tender of the *demy-mark*. Booth 98, n. *u*; *Supra* n. (*a*).

Post. "Forms of Precepts, &c."

As the law and rules in freehold

The steward must then sum up the evidence to the jury with precision and impartiality, and they will immediately retire and consider of their verdict, and on their return, after the bailiff has called over their names, the steward is to ask the jury, "*Do you find for the tenant or for the demandant?*" And he then enters in the minute book, "verdict for the tenant or demandant," [as the case may be] (a): if the verdict be for the tenant, the steward will also enter, that "therefore it is considered that he (the tenant) do hold the tenements to him and his heirs, quit of the demandant and his heirs for ever;" but if the verdict be for the demandant, the entry is, that "it is therefore considered that the demandant do recover his seisin of the tenements, and do hold the same to him and his heirs, quit of the tenant and his heirs, for ever." And a precept to the bailiff to put the demandant into possession, is to be awarded at his request, the same as on suffering a common recovery, and actual possession is to be given to the demandant accordingly (b).

Further instructions as to Plaints. Should the defendant be an infant, the steward immediately after the entry of the bailiff's return to the precept of summons, and calling on the demandant and tenant to appear, will enter in his minute book, that *A.* appears and showeth that he is an infant, and prays the court to assign *E.*, as his next friend, to prosecute his plaint against *A.*, and that *E.* is admitted by the court accordingly.

And then *A.* is to count against *C.* as before instructed, with this difference only, that the count after giving the title of the particular court, will commence thus: "*A.* by *E.*, who is admitted by the court here to prosecute for the said *A.*, who is an infant under the age of twenty-one years, as the next friend of the said *A.*, demands," &c.

Should *C.* not appear at the second court, the steward will make an entry of such default, and of the award of grand cape, and second summons; which latter precept is to be executed in the same manner as the first was, it being doubtful whether the words 'take into the hands of the lord' are more than form (c).

(a) The jury cannot find a special verdict. Booth 98. n. (u).

(b) Force cannot be used to obtain possession, ante, pt. 1, p. 583. But I

apprehend that the verdict would sustain an ejectment. And see ante, pt. 1, p. 583, n. (c).

(c) Mr. Chitty (3d vol. Plead. 632.)

amercements. If any copyholder should have been amerced for default or otherwise (*a*), an entry should now be made thereon by the steward; and such amercement is to be assessed by two of the best and most respectable tenants of the manor, who are to be sworn as assessors in the form [L.] (*b*).

licenses. As licenses, whether to demise or to take down buildings, or to do otherwise, operate as a dispensation of the forfeiture, which would otherwise accrue to the lord, and form no part of the ministerial acts of the steward, he is to exercise his discretion in complying with any conditions which may be made by the tenants for this act of dispensation, unless indeed custom has established the right to a license of this nature by a common law assurance, on payment of a settled sum, and he is to make a minute of the terms of the grant, and to return it to the homage (*c*).

At the conclusion of the business of the day, the steward should read over the heads of the several entries in his minute-book, to the tenants; and at the foot of the minutes should be written,

“ We present this as our verdict.”

Then the foreman is to subscribe his name, and so each homager is to do the same, according to their priority of admission to copyholds within the manor (*d*). And then the bailiff is to declare the court at an end, and to make a proclamation thus :

“ YES ; All manner of persons that have appeared at this customary court baron of A. Z., have leave to depart hence, keeping their day and hour on a new summons.” (*e*).

As to that part of the process which relates to the view, and taking of the view into the lord's hands, I have already by any means discovered the mode of executing it; but I rather think it may be best in this instance to let the bailiff to take with him the viewmen (who must be distinct men from the summoners) to the lands, and to let them verbally take possession of them in the name of the lord, when the viewers have taken the view of them.”

It should be borne in mind that a judgment by default before issue joined, is not a judgment, but a writ of right will lie against the party who recovereth. *Ante*,

pt. 1, p. 582.

(*a*) *Ante*, pt. 1, p. 430.

(*b*) *Post*. “ Forms of Precepts, &c.”

(*c*) *Ante*, pt. 1, pp. 544, 546.

(*d*) When any tenant enters the court after the homage are sworn, it is proper to let him sign his name, as having been present during part of the proceedings, but not sworn.

(*e*) If it be found necessary to adjourn the court, it should be done by a proclamation of this nature, stating the hour to which it is so adjourned, when the bailiff should proclaim the re-assembling of the court.

Special Court.

It is sometimes found to be convenient to hold a *special* court baron, to effect a proposed transmission of copyhold property and in that case, it is usual to summon two or three homagers of the manor, and after the court has been opened by the bailiff, to administer the following oath to them, viz.

“ You, and each of you, shall inquire, and true presentment make
“ of all such things as shall be given to you in charge, and of
“ such other matters as shall come to your knowledge, presentable
“ at this court (*b*); this you shall do, without fear, favour, or affect
“ hatred, or malice, So help you God.”

The steward will then explain to the homage, the nature of the business, for which the court is called, who will make their presentments accordingly; and the entries by the steward of the assurances, will correspond with the like minutes at a general court, which minutes are also in like manner to be presented as the vouchers of the homage, and then the bailiff discharges the attendance of the persons assembled, by a similar proclamation as on the occasion of a general court.

Further instructions in particular Cases.

Bankruptcy. When a bankrupt is intitled to copyhold lands, except as regards any copyholds belonging to him as tenant in tail, the steward is to require the production (for the purpose of presentment) of the bargain and sale of one of the commissioners, authorising the person (usually the bankrupt (*c*)) to surrender the copyhold lands, and is to accept a surrender accordingly, and to admit the surrenderees.

But the following provisions in the act of 3 & 4 W. 4., c. 74, regard to copyholds belonging to a bankrupt as tenant in tail, are to be observed by stewards of manors when the fiat issued subsequently to the 31st Dec. 1833 (*e*).

The 55th sect. repeals the bankrupt act of 6th Geo. 4. c. 1.

(*a*) *Ante*, pt. 1, p. 7.

(*b*) *Ib.*

(*c*) “ See the reason for this in the precedent of bargain and sale of the copyhold of a bankrupt, post. “ copyhold assurances.”

(*d*) *Ante*, pt. 1, pp. 370, 371–2.

If the surrender should have been

previously made out of court, it is to be produced at the court, and presented by the homage.

(*e*) See *ante*, pt. 1, pp. 80, 81, 371 n. (*a*), as to copyhold lands surrendered in the bankrupt for an estate tail, and the fiat issued prior to 31st Dec. 1833.

as relates to the power given to the commissioners to make sale of lands vested in the bankrupt for an estate tail, but not to extend to the lands of a bankrupt under any commission or fiat issued on or before the 31st Dec. 1833, nor to revive former acts. The 56th sect. authorises any commissioner acting in the execution of a fiat issued after the 31st Dec. 1833, in the case of an actual tenant in tail of lands of *any tenure, by deed* to dispose of such lands to a purchaser, and to create by such disposition as large an estate in the lands, as the actual tenant in tail could have done, if he had not become bankrupt, the consent of the protector, if any, being made requisite to a disposition of such intailed lands for an absolute estate in fee. The 56th and 57th sections give to the disposition of the commissioner the same force as the disposition of the tenant in tail, or owner of a base fee, would have had, if no bankruptcy had taken place. The 58th sect. places the commissioner, with reference to any dealings with the property, in the situation of the tenant in tail, in cases where there is a protector of the settlement.

The 59th section requires that the deed of disposition of a bankrupt's copyhold property under the provisions of the act, shall be entered on the court rolls, and that if there shall be a protector, and his consent be given by a distinct deed, the consent shall be void unless the deed of consent be executed either on or before the day on which the deed of disposition shall be executed by the commissioner, and that such deed of consent shall be entered on the court-rolls by the lord or steward, who is to indorse on the deed, a memorandum, signed by him, testifying the entry of the same on the court-rolls.

And the 66th sect. provides that every disposition to be made under the act by any commissioner, of lands held by copy of court roll, where the bankrupt's interest shall not be merely an estate in equity, shall have the same operation as a surrender, and that the person to whom such disposition shall have been made, may claim to be admitted in the same manner as if the lands had been surrendered to his use, on paying the fines and fees which could have been demanded if the lands had passed by surrender. This clause is restricted to a disposition under the act, and it is clear, I submit, that the provisions of the act of 6 Geo. 4 (*a*), as to a bankrupt's copyhold

(*a*) See ante, pt. 1, pp. 371, 372. And note that any powers of appointment exercisable by a person becoming bankrupt, may be exercised by the assignees chosen by the creditors, so as to entitle the appointee to claim to be admitted. *Ante*, pt. 1, p. 373.

property, other than in respect of intailed lands, are unrepealed by the above stat. of 3 & 4 W. 4.

Insolvency (a). The steward is to inrol the conveyance and assignment of the insolvent's real and personal estate from the provisional to the general assignee, and by which, under the provisions of the act of 7 Geo. 4. c. 57, the copyhold property of the insolvent becomes *vested* in such general assignee, without his admission (*b*).

Inclosure allotments (c). When under inclosure acts the proprietors are required to be admitted to the new allotments, within a limited period, the act and award are to be briefly presented, and then admission will follow on the prayer of each copyholder; the recital of such act and award need not be repeated in each admission as it will be sufficient to refer to the inrolment of them, under the first admittance, but the presentment of the act and award should form a part of each *copy* of admission.

Exchanges (d). Upon an exchange of copyholds, the parties should surrender to each other by distinct acts, to the use of the surrenderer and his heirs *in exchange*, &c. and then admission will follow in the ordinary form.

Purchases by the lord (e). If the lord purchase copyholds in the name of a trustee, the surrender and admittance will of course be the same as if the trustee had purchased on his own account. And when the lord purchases in his own name, the tenant is to surrender the estate in the common form, and also release all his right, &c. *to the use of the lord and his heirs, to the intent that he may do therewith his will and pleasure.*

(a) *Ante*, pt. 1, pp. 374, 375-6. mitted. *Ante*, pt. 1, p. 375-6.

(b) And note that any powers of appointment over copyholds exercisable by a person becoming insolvent, may be exercised by the general assignee, so as to entitle an appointee to claim to be ad-

(c) *Ante*, pt. 1, p. 27. And see *Cane v. Baldwin*. 1 Stark. 65.

(d) *Ante*, pt. 1, p. 151.

(e) *Ante*, pt. 1, pp. 43, 151, 645.

PRECEDENTS OF COURT ROLLS.

FIRST COURT.

[*Copyholds of Inheritance.*]

or of ——— } A General Court Baron of *A. Z.* (*a*), lord of
 county of ——— } the said manor, holden in and for the said
 manor, on ——— the ——— day of ——— in
 the ——— year of the reign of our sovereign Lord
 William the fourth, by the grace of God of the
 united Kingdom of Great Britain and Ireland King,
 Defender of the Faith, and in the year of our Lord
 ———. Before *J. S.*, steward of the said manor.

Homage { John Doe,
 { Richard Roe, } Sworn { Thomas Styles,
 { &c. } { William Goodtitle,
 { } { &c. }

*ment of the death of A. B., 1st proclamation, and admit-
 tance of C. B. his customary heir (b.)*

At this court the homage present the death of *A. B.*, late
 the customary tenants of this manor; and thereupon pro-

en a feme covert is lady of
 the style of the court should
 general court baron of *A. Z.*
 his wife, in right of the said
 and the words of grant "the
 and lady, acting in right of
 lady, do grant," &c.

en an infant under 14 years
 , pp. 111, 473) is lord of the
 e courts should be held in the
 the socage guardian until the
 nt of ward. Note. Wardship
 can be of heirs only, *i. e.*
 infant is in by descent. 2 Mod.
 . Lit. 87 b. 88 b.

h copy to be made as evidence
 s to contain the several corre-

sponding figures, commencing with the
 title of the court, (showing before whom
 it is held,) but omitting the names of
 the homage; as for instance, the copy
 for *C. B.* is to contain the title of the
 court, and (1. *a*) and (1. *b*); and the
 copy for *E. F.* is to contain the title of the
 court, and (2. *a*) (2. *b*) (2. *c*) and (2. *d*).

It is usual to mark the amount of the
 fine in the margin, both of the court-
 roll and copy; and the title of each en-
 try, (which I propose to give in a pa-
 renthesis,) should be written in the
 margin of the court-rolls. Each copy
 should be examined with the rolls, and
 signed by the steward.

clamation is made for any person or persons claiming title to the customary or copyhold hereditaments lying within and holden of this manor, whereof the said *A. B.* died seised, to come into court and be admitted.

(1. *b.*) Now at this court comes *C. B.*, the eldest son and according to the custom of this manor of the said *A. B.*, and to be admitted to all and singular the customary or copyhold hereditaments lying within and holden of this manor, whereof the said *A. B.* so lately died seised as aforesaid, to wit, to [All, &c.] their appurtenances, and to which same premises the said *A. B.* was admitted at a general court holden for this manor, on the ——— of ———. To which said *C. B.* the lord of this manor, by the said steward, grants seisin thereof by the rod, to have and to hold unto the said ——— hereditaments and premises, with their appurtenances, unto the said *C. B.* and his heirs, to be holden of the lord by copy of court-roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient accustoms, rents or rents, [heriot when it shall happen] and other duties and services therefore due and of right accustomed; and so, (saving the right of the lord,) the said *C. B.* is admitted tenant thereof, and to the lord on such his admittance, a fine [certain] of £— — and his fealty is respited.

(Presentment of the death of C. D., and first proclamation)

(2. *a.*) At this court the homage present the death of *C. D.* one of the customary tenants of this manor, and thereupon proclamation is made for any person or persons claiming title to the customary or copyhold hereditaments lying within and holden of this manor, whereof the said *C. D.* died seised (*a.*), to come into court and be admitted.

(Presentment of his will and admittance of E. F. his devisee)

(2. *b.*) And the homage also present, that the said *C. D.* in and by his last will and testament in writing, bearing date the ——— day of ———, the probate whereof is now produced in court, gave and devised All, &c., and all other his real estates whatsoever, unto the said *E. F.* his heirs and assigns for ever.

(2. *c.*) Now at this court comes the said *E. F.*, and prayeth

(*a.*) If *C. D.* had surrendered to the lord, “ were surrendered by him to the lord, the uses of his will, add here, “ and which “ of his will.”

mitted to all and singular the customary or copyhold hereditaments lying within and holden of this manor, so devised to him by the will of the said *C. D.* as aforesaid, to wit, to [All, &c.] and their appurtenances, and to which same premises the said *C. D.* was admitted at a special court holden for this manor, on the ————. To which said *E. F.* the lord of this manor, by the steward, grants seisin thereof by the rod, to have and to hold ———— hereditaments and premises, with their appurtenances, unto the said *E. F.* and his heirs, to be holden of the lord by the copy of court-roll at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rents, [heriot when it shall happen,] and other duties and services therefore due and of right accustomed. And so (saving the lord) the said *E. F.* is admitted tenant thereof, and pays to the lord on such his admittance, a fine certain of £— — —, and his fealty is respited.

(*Surrender to will.*) (a).

And afterwards at this same court, the said *E. F.* in open court surrenders into the hands of the lord of this manor, by the steward and acceptance of the said steward by the rod, according to the custom of this manor, all and singular the said customary or copyhold ———— hereditaments and premises, with their appurtenances, to which he hath been admitted at this court as aforesaid, for the use of such person or persons, and for such estate or interest, ends, intents, and purposes, as he the said *E. F.* in and by his will and testament in writing, already made or hereafter to be made, hath given, devised, directed, limited, or appointed, or shall hereafter devise, direct, limit, or appoint the same.

(*Proclamation of the death of G. H., first proclamation, and default recorded.*)

At this court the homage present the death of *G. H.* late one of the customary tenants of this manor, and thereupon proclamation is made for any person or persons claiming title to the customary or copyhold hereditaments lying within and holden of this manor, of the said *G. H.* died seised, to come into court and be admitted, but no one comes, therefore let a second proclamation be made at the next court (b).

(a) *Ante*, pt. 1, p. 263.

(b) No copy is necessary.

(*Presentment of an absolute surrender from I. K. to N. O. undivided moiety, in consideration of an annuity, and adm of N. O.*)

(4. a). At this court the homage present, that on the ———, now last past, *I. K.* then late of, &c. but then of, &c. the customary tenants of this manor, came before *L. M.* of &c., steward, for that purpose and turn only, of the said *J. S.*, (chief steward of this manor,) and, for and in consideration of an annuity of £——, secured to be paid to him the said *I. K.* and his assigns for his life, by *N. O.* of, &c., in such manner as is mentioned in an indenture bearing date, &c. and made between, &c., did out of court surrender into the hands of the lord of this manor, by the hands and assistance of the said deputy steward by the rod, according to the custom of this manor; All that the one undivided moiety or equal half part of the said *I. K.*, (the whole into two equal parts to be divided,) came in all, &c., and of and in the appurtenances thereunto belonging to which same undivided moiety and premises the said *I. K.* was admitted at a general court holden for this manor on the ———; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and all the estate, right, interest, trust, benefit, property, claim, and demand whatsoever of the said *I. K.* in, to, or out of the said undivided moiety of the said hereditaments and premises, to the use of the said *N. O.* and his heirs and assigns for ever, according to the custom of this manor.

(4. b). Now at this court comes the said *N. O.*, and prays to be admitted to the said undivided moiety, hereditaments, and premises so surrendered to his use as aforesaid; *to whom* the lord of this manor, by the said steward, grants seisin thereof by the rod, *to* ——— *and to hold* the said undivided moiety or equal half part, of all and singular the said ——— hereditaments and premises, with their appurtenances, unto the said *N. O.* and his heirs, to be held of the lord by copy of court-roll at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the annual rent or rents, and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *N. O.* is admitted tenant thereof, and pays to the lord for a fine

(a) The presentment of the surrender copy, but it would not require a statement out of court should be included in the

his admittance the sum of £ — — (a), and his fealty is re-
 [See form of Surrender to Will, ante (2. d)].

Presentment of conditional surrender from P. Q. to R. S.)

At this court the homage present, that on the — day of
 , now last past, *P. Q.*, of, &c., one of the customary tenants
 manor, came before the said steward, and in consideration of
 m of £ —, well and truly paid to the said *P. Q.* by
 of, &c., did out of court surrender into the hands of the lord
 manor, by the hands and acceptance of the said steward by
 , according to the custom of this manor, all, &c., with their
 appurtenances: (and to which said premises the said *P. Q.* was ad-
 mitted at a special court holden for this manor, on the — day of
 ;) and the reversion and reversions, remainder and remainders,
 issues, and profits thereof; and all the estate, right, title, inter-
 est, benefit, property, claim, and demand whatsoever, of the
P. Q. in, to, or out of the said hereditaments and premises, and
 part thereof, to the use of the said *R. S.*, his heirs and assigns
 , according to the custom of this manor, subject, nevertheless,
 upon this express condition, that if the said *P. Q.*, his heirs,
 administrators, or assigns, did and should well and truly
 cause to be paid, unto the said *R. S.*, his executors, ad-
 ministrators, or assigns, the full sum of £ —, of lawful money, &c.,
 — day of —, with interest for the same, after the rate
 pounds per cent. per annum, computed from the date of the
 surrender, clear of all taxes and deductions whatsoever, then
 the surrender was to be void and of no effect (b).

Absolute surrender from T. U. to V. W. and his admittance.)

At this court comes *T. U.* one of the customary tenants of
 manor, and in consideration of the sum of £ —, of lawful money,
 which he has in hand well and truly paid by *V. W.*, of, &c., in open
 court, he surrenders into the hands of the lord of this manor, by the
 hands and acceptance of the said steward by the rod, according to the
 custom of this manor, all, &c., with their appurtenances, (and to which
 premises the said *T. U.* was admitted at a general court holden for

we have here assumed that the fine (b) No copy is necessary.

y.

this manor on the — day of —): and the reversion and versions, remainder and remainders, rents, issues, and profits there and all the estate, right, title, interest, trust, benefit, property, claim and demand whatsoever of the said *T. U.*, in, to, or out of the said premises and every part thereof; to the use of the said *V. W.*, his heirs and assigns for ever, according to the custom of this manor.

(6. b). Now at this court comes the said *V. W.*, and prays to be admitted to all and singular the said customary or copyhold hereditaments and premises so surrendered to his use at this court as aforesaid; *to whom* the lord of this manor, by the said steward, grants seisin thereof by the rod, *to have and to hold* the said — — — hereditaments and premises, with their appurtenances, unto the said *V. W.* and his heirs, to be holden of the lord, by copy of court roll at the will of the lord, according to the custom of this manor, with fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed; and (saving the right of the lord) the said *V. W.* is admitted to the use thereof, and pays to the lord on such his admittance a fine certain of £— — —, and his fealty is respited. [See form of Surrender Will, ante (2. d)].

(*License to V. W. to devise.*)

(6. c). And afterwards, at this court, the lord of this manor, by the said steward, doth give and grant to the said *V. W.* full license and authority to demise and lease all and singular the said — — — hereditaments and premises, with their appurtenances, to which the said *V. W.* hath been admitted at this court as aforesaid, to any person or persons willing to take the same as lessee or lessees of the said *V. W.*, (but not by way of mortgage,) his, her, or their executors, administrators, and assigns, to hold for any term or number of years not exceeding twenty-one years, computed from the — day of — — — last, saving always to the lord or lady, lords or ladies of this manor for the time being, all and all manner of fines, hereditaments, rents, customs, and services therefore due and of right accustomed, and for this license the said *V. W.* hath paid for a fine the sum of £— — —, [if the custom has settled the fine, add,] “according to the custom of this manor.”

acknowledgment by C. D. of payment and satisfaction of monies secured by the conditional surrender of A. B.) (a)

At this court comes *C. D.*, of, &c. and acknowledges to have received of *A. B.*, of, &c., one of the customary tenants of this manor the sum of £ — — —, being in full of all principal and interest monies due and owing from the said *A. B.* on a conditional surrender of certain customary or copyhold hereditaments lying within and without of this manor, made by the said *A. B.* to the said *C. D.*, on the — day of —, in the year —, for securing the principal sum of £ — — —, with lawful interest for the same, as in the said surrender is expressed; and therefore the said *C. D.* prays that the steward will enter satisfaction of the aforesaid principal and interest monies on the court-rolls of this manor, whereupon satisfaction is entered by the said steward accordingly.

presentment of warrant to enter satisfaction on a conditional surrender from A. B. to C. D.)

At this court the homage present a warrant under the hand of the steward of, &c., bearing date the — day of —, whereby the said *C. D.* did acknowledge that he had received of *A. B.*, of, &c., one of the customary tenants of this manor, the sum of £ — — —, being in full of all principal and interest monies due and owing from the said *A. B.* on a conditional surrender of certain customary or copyhold hereditaments lying within and holden of this manor, made by the said *A. B.* to the said *C. D.*, on the — day of —, in the year —, for securing the principal sum of £ — — —, with lawful interest for the same, as in the said surrender is expressed; and therefore the said *C. D.* did by the said warrant authorise the steward of this manor, to enter satisfaction of the aforesaid principal and interest monies on the court-rolls of this manor, whereupon satisfaction is entered by the said steward accordingly (*b*).

No copy is necessary. The mode of entering satisfaction pursuant to this warrant is for the steward to enter the following note in the margin of the court-roll containing the conditional surrender, or the presentment of it, if made out of court, viz. "All principal and interest monies secured by this conditional surrender have been discharged, as will

" appear by an acknowledgment made
" at and entered upon the rolls of a court
" holden for this manor on the — day
" of —. *J. S.*, steward."

(*b*) I have supposed the succeeding conditional surrender to be from the mortgagor named in this warrant, and the entry of that surrender shows, that it is not necessary to include the warrant in the

(Surrender by A. B. (by attorney) to E. F. and his admittance)

(9. a). At this court comes *A. B.*, of, &c. one of the customary tenants of this manor, by *C. D.*, of, &c., his attorney in this behalf lawfully constituted, by virtue of a power of attorney under the hand and seal of the said *A. B.*, bearing date the — day of —, intended to be inrolled at this court, and in consideration of the sum of £—, to the said *C. D.* for the use of the said *A. B.* in law well and truly paid by *E. F.*, of, &c., in open court surrenders the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, all, &c., with their appurtenances, and to which same premises the said *A. B.* was admitted at a general court holden for this manor on the — day of —; and the reversion, &c., and all the estate, &c., to the use of the said *E. F.* his heirs and assigns for ever, according to the custom of this manor.

(9. b). Now at this court comes the said *E. F.* and prays, [Admittance to follow in the form 6. b].

(Surrender by G. H. (by way of settlement on his marriage) to L. M. and N. O. upon trusts, and their admittance.)

(10. a). At this court comes *G. H.*, one of the customary tenants of this manor, and in consideration of a marriage agreed upon, intended to be shortly hereafter had and solemnised between the said *G. H.* and *I. K.*, of, &c., [or, pursuant to a covenant in this behalf contained in an indenture, bearing date, &c. being the settlement made previous to the marriage then intended, and since had and solemnised between the said *G. H.* and *I. K.* now his wife,] in open court, surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, all, &c., with their appurtenances, and to which same premises, the said *G. H.* was admitted at a special court holden for this manor, on the — day of —; and the reversion, &c., and all the estate, &c., to the use of *L. M.*, of,

copy. The mode of entering satisfaction pursuant to the warrant, is for the steward to make the following note in the margin of the court-roll containing the conditional surrender or the presentment of it if made out of court, viz. "All principal and interest monies secured by

" this surrender have been discharged
" as will appear by a warrant to the
" satisfaction inrolled at a court holden
" for this manor on the — day of —
" ——. *J. S.*, steward." *Ante*, p.

p. 242.

O., of, &c., their heirs and assigns for ever, according to the of this manor. But, nevertheless, *in trust for the said G. H. and his heirs, in the mean time, and until the said intended marriage shall be had and solemnised, and immediately after the solemnisation thereof* (a), upon and for the several trusts, intents, and purposes hereinafter expressed, that is to say, upon trust during the natural lives of the said *G. H.* and *I. K.* his intended wife, to pay the rents and profits of the said customary or copyhold hereditaments and premises, from time to time, as they shall grow due, to be received, unto such person or persons, and in such manner as *I. K.*, notwithstanding the said intended coverture by any other means, notes, in writing, signed with her own hand, but not by way of appointment, shall direct or appoint; And for want of such direction or appointment from time to time, upon trust to pay the same rents and profits, into the proper hands of the said *I. K.* for her use and benefit, exclusive of the said *G. H.*, who is not to be troubled therewith, nor are the same to be subject to his debts, or engagements. And it is hereby declared that the receipt or receipts of the said *I. K.*, or of such her appointee or appointees as she shall think fit, shall be a good and sufficient discharge for so much of the said rents and profits, as shall be therein respectively acknowledged or expressed to be received. And after the decease of either of them, the said *G. H.*, and *I. K.*, his intended wife, then in being, the survivor of them, the said *G. H.* and *I. K.*, and his or her assigns for and during the term of his or her natural life, and from the decease of the survivor of the said *G. H.* and *I. K.*, his intended wife, in trust for all or any such one or more of the child or children of the said *G. H.* by the said *I. K.* to be begotten, for such parts or estates, in such parts, shares, and proportions, manner and manner as shall be directed with, under, and subject to such powers, provisoes, restrictions and limitations over, for the benefit of any one or more of the child or children, as they the said *G. H.* and *I. K.* by any deed or writing, writing or writings, to be by them sealed and delivered in the presence of and attested by two or more credible witnesses, shall direct or appoint; and for want of such joint direction or appointment, then, as the survivor of them, the said *G. H.* and *I. K.*, by deed or deeds, writing or writings, to be by such survivor sealed

the surrender be made after the said *I. K.* shall be described throughout as *I. H.*, the wife of *G. H.*

pursuant to articles executed by the said *I. K.*, the words in italics to be omitted.

and delivered in the presence of, and attested by two or more credible witnesses, or by his or her last will and testament in writing, or by codicil or codicils thereto, to be signed and published in the presence of, and attested by three or more such witnesses, shall direct or appoint, and for want of any such direction or appointment, and as to such premises of the premises, concerning which no such direction or appointment shall be made, so as to be a complete disposition of the custody thereof in fee simple and inheritance thereof; and subject to any income or direction or appointment to be made as aforesaid, in trust for all and every the child and children of the said *G. H.* by the said *I. K.* lawfully begotten, equally to be divided between and amongst them share and share alike, their respective heirs and assigns for ever as tenants in common:—But in case there shall not be any child of the said *G. H.* by the said *I. K.*, or being such, and all and every of them shall happen to die under the age of twenty-one years, without leaving issue of his, her, or their body or respective bodies lawfully begotten and living, or her, or them surviving, then in trust for the survivor of the said *G. H.* and *I. K.*, his or her heirs and assigns for ever. [But if the surrender be made pursuant to a covenant in marriage articles, whereunto trusts are declared, then omit the words in italics, and all subsequent words to them, and say, “Upon and for such trusts, intents, and purposes as are expressed and declared concerning the same customary and copyhold hereditaments and premises in and by the said indenture of the — day of —, or such of them as are now subsisting, and capable of taking effect” (*a*)].

(10. *b*). Now at this court come the said *L. M.* and *N. O.* who pray to be admitted to the said customary or copyhold hereditaments and premises, with their appurtenances, so surrendered to them as aforesaid; *To whom* the lord of this manor, by the said indenture, grants seisin thereof by the rod, *to have and to hold* the said — hereditaments and premises, with their appurtenances, unto the said *L. M.* and *N. O.* and their heirs, upon and for such trusts, intents, and purposes, nevertheless, as aforesaid, to be holden of the lord of this manor, by fealty, suit of court, and the ancient annual rent

(*a*) Should it be thought desirable to give the trustees a power of sale, or a power of leasing with the license of the lord, (and with the approbation of the parents or the survivor of them, and of

the guardians of the children, after the decease,) the trusts should be declared by a separate instrument containing the powers. *Ante*, pt. 1, pp. 230 et seq. 475, 481.

and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *L. M.* and *N. O.* admitted tenants thereof, in manner and form aforesaid, and pay the lord on such their admittance, a fine certain of £— — —, and the same duties and services are respited.

Surrender by P. Q. and R. S. (trustees for sale of W. Y.) to T. V. and his admittance.)

a). At this court come *P. Q.*, of, &c., and *R. S.*, of, &c., customary tenants of this manor, and by virtue, and in pursuance of the trusts reposed in them by the surrender hereinafter recited, and in consideration of the sum of £— — — to them in hand truly paid by *T. V.*, of, &c., in open court, surrender into the hands of the lord of this manor, by the hands and acceptance of the lord's steward, by the rod, according to the custom of this manor, with their appurtenances, (and to which same premises, the said *P. Q.* and *R. S.* were admitted at a general court, holden for this manor, on the — day of —, upon and under a surrender, lawfully made thereof, to their use, by *W. Y.*, of, &c., late one of the customary tenants of this manor, upon the trusts, and for the intended purposes, in the same surrender mentioned.) And the said lord, &c., and all the estate, &c., to the use of the said *T. V.*, his heirs and assigns for ever, according to the custom of this manor.

b). Now at this court comes the said *T. V.* by *X. Z.* his attorney in this behalf, appointed by the court (*a*), and prays to be admitted to the said customary or copyhold hereditaments and premises, surrendered to his use as aforesaid, to which said *T. V.* (in the person of his said attorney) the lord of this manor, by the said steward, seisin thereof by the rod, to have and to hold the said — hereditaments and premises, with their appurtenances, to the said *T. V.* and his heirs, to be holden of the lord by copy of tenure, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due, and of right accustomed, (saving the right of the lord) the said *T. V.* (in the person of his said attorney) is admitted tenant thereof, and pays to the lord on his admittance, a fine certain of £— — —, and his fealty is taken.

(*b*) *Ante*, pt. 1, p. 360.

(*Surrender to uses by T. W. pursuant to the marriage articles his son V. W. ; and admittance of V. W. for life.*)

(12. *a*). At this court comes *T. W.* one of the customary tenants of this manor, and in pursuance of certain articles executed previous to a marriage lately had and solemnised between *V. W.* (elder son of the said *T. W.*) and *S. T.* spinster, and in consideration of the said marriage, and of the natural love and affection which the said *T. W.* hath and beareth for his said son *V. W.*, in open court surrendered the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor. All, &c., with the appurtenances, to which said hereditaments and premises the said *T. W.* was admitted at a special court held for this manor, on the — day of ——. And the reversion, residue, and all the estate, &c., to the use of the said *V. W.* and his assigns during the term of his life, without impeachment of any such disability as he may commit with the license of the lord or lady, lords or ladies of this manor for the time being (*a*); and from and immediately after the decease of the said *V. W.* to the use of the said *S. W.*, now wife of the said *V. W.*, and her assigns, during the term of her life with the like permission to commit waste, as is hereinbefore given to the said *V. W.* (*b*); and immediately after the decease of the survivor of the said *V. W.* and *S.* his wife, to the use of the first son of the body of the said *V. W.* by the said *S.* his wife to be begotten, and of the heirs of the body of such first son lawfully issuing, and in default of such issue, to the use of the second, third, fourth, and all every other son and sons of the body of the said *V. W.* by the said *S.* his wife, to be begotten severally, successively, and in remainder one after another, as they and every of them shall be in priority

(*a*) Should the lord consent to waive his right to enter for a forfeiture of the tenant for life, a limitation is to be here inserted to trustees and their heirs for the life of *V. W.* for preserving the contingent remainders, *ante*, pt. 1, pp. 475 to 480.

(*b*) When a provision of this nature is meant to be in bar of dower and freebench, that intention should be declared by a separate instrument; and when it is desired to create a power of sale, or

any other powers frequently inserted in marriage settlements, such as a power for the husband to limit a jointure to a future wife, or to charge the land with portions for children by such settlements, it will be necessary to vest the estate in trustees, declaring the trust by a separate instrument, to be recited to in the surrender to and admittance of the trustees. *Ante*, pt. 1, pp. 272 seq., 475, 481.

and seniority of age, and of the several and respective heirs of
 dy and bodies of all and every such son and sons lawfully issu-
 e elder of such sons and the heirs of his body issuing to be
 preferred, and to take before the younger of the same son and
 and the heirs of his and their body and bodies issuing, and for
 of such issue, to the use of the said *T. W.* his heirs and
 for ever, according to the custom of this manor.

B.) And at this court comes the said *V. W.*, and prays to
 titted for the term of his life, by virtue of the said surrender
 e by the said *T. W.* to his use as aforesaid, and with such
 lers over as in the same surrender are mentioned, to all and
 r the aforesaid customary or copyhold — — heredita-
 and premises, with their appurtenances; *to whom* the lord of
 nor, by the said steward, grants seisin thereof by the rod, *to*
ad to hold the said — — hereditaments and premises
 before described, and so surrendered by the said *T. W.* as afore-
 ith their appurtenances, unto the said *V. W.* and his assigns,
 term of his life, and with such remainders over as aforesaid,
 lden of the lord by copy of court roll, at the will of the lord,
 g to the custom of this manor, by fealty, suit of court, and
 ent annual rent or rents, and other duties and services there-
 and of right accustomed, and so (saving the right of the lord)
V. W. is admitted tenant thereof, *in manner and form afore-*
d pays to the lord on such his admittance, a fine certain of
 —, and his fealty is respited.

ment of the deaths of V. W. and wife, Recovery suffered by
V. W. their eldest son, and his admittance in fee.) (a).

At this court the homage present the deaths of *V. W.*, late
 the customary tenants of this manor, and *S. W.* his wife,

ave thought it right to show in
 at edition the mode of barring
 copyholds prior to the act of
W. 4. c. 74., (passed only the
 1833,) for abolishing common
 , and plaints in nature thereof.
 rious forms suggested (as acts
 by the provisions of the above
 s well for the purpose of a

disposition in fee by a tenant in tail in
 possession, and by a tenant in tail in
 remainder, with the consent of the te-
 nant for life, (the protector of the settle-
 ment,) as for acquiring a base fee when
 the tenant for life is not concurring,
 will be found at the beginning of the
 rolls of the second court, post.

leaving *J. W.*, of, &c. their eldest son, who by virtue of a certain surrender made by *T. W.*, the father of the said *V. W.* at a court held for this manor on the — day of —, is now tenant in tail general in possession, according to the custom of this manor, of all singular the customary or copyhold hereditaments hereinafter described, and to which the said *V. W.* was admitted at the last mentioned court for the term of his life, with such remainders over were expressed in the aforesaid surrender.

Now at this court comes the said *J. W.*, and in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, All, &c. with their appurtenances: And the reverend &c. and all the estate, &c. to the use of *B.*, his heirs, and assigns forever, according to the custom of this manor, and for the purpose suffering a common recovery of the said hereditaments and premises in the manner hereinafter mentioned, *to which* said *B.*, (being present here in court,) the lord of this manor, by the said steward, gave seisin of the same premises by the rod, *to have and to hold* the messuages, tenements, hereditaments, and premises, with their appurtenances, unto the said *B.* and his heirs by copy of court roll according to the will of the lord, according to the custom of this manor, by fealty of court, and the ancient annual rent or rents and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *B.* is admitted tenant thereof, but he paid no fine to the lord for such his admittance, because this estate is already had for further assurance, and his fealty is respited.

And afterwards (sitting the court) comes *C.*, of, &c., and in open court makes his plaint against the said *B.* of a plea of disseisin of the tenements aforesaid, by the names and descriptions of — messuages, — stables, — orchards, — gardens, — acres of land, — acres of meadow, and — acres of pasture, with their appurtenances within this manor and the jurisdiction of this court, and makes protestation to prosecute his plaint in this court, in the form and nature of a writ of entry *sur disseizin en le post* at common law, according to the custom of this manor, and finds pledges to prosecute to wit, John Doe and Richard Roe, whereupon the said *B.* being present here in court, prays leave to make answer to the said *C.* without further process, and it is granted to him.

And thereupon the said *C.* in person demands against the said *B.* the tenements aforesaid, with their appurtenances, as his right

ance, and saith that he was seised of the same in his demesne in fee and right, at the will of the lord, according to the custom of this manor, in time of peace, in the time of our lord the king that now is, by taking the profits or esplees thereof to the value, &c.; into which the said *B.* hath not entry but after the disseisin, made by Hugh Hunt unjustly and without judgement made upon the same, within thirty years last past, and therefore prosecutes his claim, &c.

Thereupon the said *B.*, present here in court, defends his right, &c., and voucheth to warrant the said *J. W.* who (present here) enters into the warranty, and freely warrants the tenements aforesaid, with their appurtenances, to the said *B.*

Thereupon the said *C.* demands against the said *J. W.*, tenant by his own warranty, the tenements aforesaid, with their appurtenances in form aforesaid, and saith that he was seised of the same in his demesne as of fee and right, at the will of the lord, according to the custom of this manor, in time of peace, in the time of our lord the king that now is, by taking the profits or esplees thereof to the value, &c., and into which, &c., and therefore prosecutes his plaint, &c.

Thereupon the said *J. W.*, present here in court, defends his right, &c., and voucheth to warrant *D.*, who also, present here in court, enters into the warranty, and freely warrants the tenements aforesaid, with their appurtenances, to the said *J. W.*

Thereupon the said *C.* demands against the said *D.*, tenant by his own warranty, the tenements aforesaid, with their appurtenances, in form aforesaid, and saith that he was seised of the same in his demesne as of fee and right, at the will of the lord, according to the custom of this manor, in time of peace, in the time of our lord the king that now is, by taking the profits or esplees thereof to the value, &c., and into which, &c., and therefore prosecutes his plaint, &c.

Thereupon the said *D.* tenant by his own warranty, defends his right, &c., and saith that the said Hugh Hunt did not disseise the tenements aforesaid, with their appurtenances, as he by his plea and declaration above doth allege; and of this he puts himself upon the homage (*a*). And the said *C.* craves leave to imparle until the next day before four of the clock of the afternoon of this day, and it is granted.

This is of the same force as a writ of *assize* at common law. See *Stafford's* case, Dy. 111. b.

is granted to him by the court, and the same hour is given to said *D.*

And afterwards, at the said hour, the said *C.* cometh into court person, but the said *D.*, although solemnly called, cometh not ag but departeth in contempt and maketh default, therefore it is considered and adjudged by the court, that the said *C.* do recover seisin against the said *B.* of the tenements aforesaid, with their purtenances ; and that the said *B.* have of the customary lands tenements of the said *J. W.* within this manor and the jurisdiction of this court, to the value, &c. And that the said *J. W.* have of customary lands and tenements of the said *D.* within this manor the jurisdiction of this court, to the value, &c. And the said *D.* mercy, &c.

And thereupon the said *C.* prays the lord's precept, according the custom of this manor, to be directed to *E.*, bailiff of this manor to cause full seisin of the tenements aforesaid, with their appurtenances, to be delivered to him, which is granted accordingly, returnable here forthwith (*a*).

And afterwards, (sitting the court,) the said *E.* and *C.* come into court, and the said *E.* certifies to the court that by virtue of the said precept to him directed, he hath caused full seisin of the tenements aforesaid, with their appurtenances, to be delivered to the said *C.*, as by the said precept he was commanded, &c.

Whereupon the said *C.* prays to be admitted tenant thereof, whom the lord of this manor by the said steward grants seisin thereof by the rod, *to have and to hold* all and singular the said messuages, tenements, hereditaments and premises, with their appurtenances unto the said *C.* and his heirs, *to be holden* of the lord by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rack-rent and other duties and services therefore due and of right accustomed, and so (saving the right of the lord) the said *C.* is admitted tenant thereof, but he pays no fine, because, &c., and his fealty is respited.

And afterwards at this same court, the said *C.* and *B.*, in their own proper persons, surrender into the hands of the lord of this manor, by the hands and acceptance of the said steward by the hands of the lord, according to the custom of this manor ; and also release all

(*a*) See this precept, post. [D]. "Forms of Precepts, &c."

the said messuages or tenements, hereditaments and premises, their appurtenances, so recovered, and to which the said *C.* is admitted as aforesaid; and the reversion and reversions, and the rents, issues, and profits thereof; and all the right, title, and interest whatsoever of them the said *C.* and each or either of them, in and to the same premises and every part thereof, to the use of the said *J. W.* his heirs and assigns according to the custom of this manor. To which said *J. W.*, steward of this manor, by the said steward, grants seisin thereof by *to have and to hold* the said messuages or tenements, hereditaments and premises, with their and every of their appurtenances, unto the said *J. W.* and his heirs, to be holden of the lord by copy roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient rent or rents and other services therefore due and of right accustomed; and so (in the right of the lord) the said *J. W.* is admitted tenant thereof in the manner and form last aforesaid, and pays to the lord on such admittance a fine certain of £— — —. [*But if J. W. had been admitted in tail, and paid a fine to the lord, then the entry would be, that he pays no fine to the lord on such his admittance, having paid a fine on his admittance in tail at this court,*] (a), and his fealty sworn.

of right patent by A., against C., and precept of summons awarded.)

At this court comes *A.*, of, &c., claiming to be the eldest son and heir, according to the custom of this manor, of *B. B.*, formerly one of the customary or copyhold tenants of this manor, in his own proper person, and complains against *C.*, gentleman, of a plea of land (to wit) of ——— messuages, — tofts, — — outhouses, — orchards, — gardens, — acres of land, — acres of meadow, and — acres of pasture, with the appurtenances, situate and being in the parish of ———, in the county of ——— aforesaid, and within and holden of this manor, by copy of court roll, at the will of the lord, according to the custom of this manor, and the said *A.* makes protestation to prosecute his plaint in

(a) *Ante*, pt. 1, p. 410.

this court, in the form and nature of a writ of our said lord the of right patent at common law, according to the custom of this manor, and finds pledges to prosecute his said plaint in this to wit, John Doe and Richard Roe, and the said *A.* prays thereupon, to be made against the aforesaid *C.*, according to the custom of this manor.

Therefore, according to the custom of this manor, a precept awarded and issued to *W. Y.*, bailiff of this manor, that he by summoners, according to the custom of this manor, summon the *C.* to be and personally to appear at the next general customary baron, to be holden for this manor, that is to say, at —, parish of — aforesaid, on — the — day of — next ensuing, at ten o'clock in the forenoon, to answer to the *A.* in the plea aforesaid. And the same day is given to the said the same place, &c. (*b*).

Here follows the power of attorney, from the said to the said *C. D.* (see 9. a).

Know all men, &c. [the power to be copied verbatim].

Examined by me

J. S., steward

(a) See Forms of Precepts, &c. [E 1.] post.

(b) See the entry of the bailiff's return to this precept, and further proceedings under the above plaint, at the end of the second court.

If at the next court the parties and their counsel and attornies should attend, and a compromise should take place, the entry on the rolls should be as follows :

And also at this court came as well the said *A.* as the said *C.* by their respec-

tive counsel and attornies and the said *A.* doth not declare the said *C.* nor doth he further prosecute his said plaint. Therefore considered that the said *A.* thing by his plaint, and that *C.* do go thereof without day, & that he the said *C.* hold the tenement aforesaid with the appurtenances and his heirs for ever, quit of the said *A.* and his heirs for ever.

SECOND COURT.

Manor of ——— } A general court baron of *A. Z.* lord, &c.
 county of ——— } [*for the manner of entering the title of
 the court, &c. and the names of the homage,
 see ante, p. (23).*]

*stance of A. B. tenant in tail, in possession; surrender by him
 der to acquire an absolute customary fee; and his admittance
 o; and surrender to will.)*

At this court the homage present that *T. W.*, late one of
 customary tenants of this manor, and whose death was pre-
 sent the last general court, in and by his last will and testament
 bearing date, &c. (the probate whereof is produced in
 have and devised all his customary or copyhold hereditaments
 this manor by the description of, &c. unto the said *A. B.* and
 of his body, with certain remainders over.

At this court comes the said *A. B.* and prays to be admitted
 customary or copyhold hereditaments lying within and holden
 manor so devised to him as aforesaid, to wit, to all, &c. (to
 said hereditaments the said *T. W.* was admitted at a court
 for this manor on the — day of —,) to which said
 the lord of this manor by the said steward grants seisin
 by the rod, *to have and to hold* the said customary or copy-
 — hereditaments and premises with their appurtenances
 said *A. B.* and the heirs of his body, according to the form
 of the devise so made to him as aforesaid, to be holden of
 by copy of court roll, at the will of the lord, according to the
 of this manor, by fealty, suit of court, and the ancient annual
 rents, and other duties and services therefore due and of right
 ed, and so (saving the right of the lord) the said *A. B.* is
 tenant thereof, in manner and form aforesaid, and pays to the
 a fine on such his admittance, the sum of £ — —, and
 is respited.

And afterwards at this court comes again the said *A. B.*,
 the purpose of barring and extinguishing the estate tail of and
 id hereditaments and premises to which he the said *A. B.* is
 d as aforesaid, and all remainders and reversions expectant
 n, and of vesting the same premises in him, the said *A. B.*

and his heirs absolutely,[†] according to the custom of this manor, by virtue and in pursuance of the provisions in this behalf contained in an Act of Parliament passed in the 3rd and 4th years of the reign of his present Majesty, King William the Fourth, for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance (a), did in open court surrender into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, all and singular the — — hereditaments and premises hereinbefore described with the appurtenances to the same premises belonging or appertaining; and the reversion and reversions, remainder and remainders, issues, and profits thereof; and all the estate, right, title, interest, benefit, power, claim, and demand whatsoever of the said *A. B.*, in or out of the same premises and every part thereof, to the use and behoof of the said *A. B.*, his heirs and assigns for ever, according to the custom of this manor.

(1. c.) To which said *A. B.*, upon his prayer, the lord of this manor, by the said steward, grants seisin of the said premises by the rod, *to have and to hold* the said customary or copyhold — — hereditaments and premises with their appurtenances unto the said *A. B.* and his heirs, to be holden of the lord by copy of roll at the will of the lord, according to the custom of this manor, in fealty, suit of court, and the ancient annual rent or rents, and other duties and services, therefore due and of right accustomed; (saving the right of the lord) the said *A. B.* is admitted tenant in manner and form last aforesaid, and pays to the lord for a year such his admittance the sum of £— —, and his fealty is respited.

(1. d.) And at this court the said *A. B.*, in open court surrenders into the hands of the lord of this manor by the hands and acceptance of the said steward by the rod according to the custom of this manor, all and singular the said customary or copyhold — — hereditaments and premises with their appurtenances, to which he, the said *A. B.* hath been admitted tenant for an estate in customary fee since this court as aforesaid, to the use of such person or persons, and for such estate or estates, ends, intents, and purposes, as he, the said *A. B.* in and by his last will and testament in writing already made, or hereafter to be made, hath given, devised, directed, limited, appointed, or shall give, devise, direct, limit, or appoint the same.

(a) See § 15, 40, 50.

admittance of A. B., tenant for life, and of C. D., tenant in tail, in remainder: surrender by them to E. F., a purchaser; and his admittance, and surrender to will.)

(2. a.) At this court the homage present that *R. S.* late one of the customary or copyhold tenants of this manor, and whose death was presented at a court holden for this manor, on the — day —, and by his last will and testament in writing bearing date, &c., (the probate whereof is produced at this court,) gave and devised all his customary or copyhold hereditaments, holden of this manor, by the description of, &c., unto *A. B.*, of, &c., and his assigns, during the term of his natural life, and from and immediately after the decease of the said *A. B.* unto *C. D.*, of, &c., and the heirs of his body, with divers remainders over.

Now at this court come the said *A. B.* and *C. D.*, and pray to be admitted respectively, according to the form and effect of the devise so made to them by the said will of the said *R. S.* deceased, to the customary or copyhold hereditaments, lying within and holden of this manor, whereof the said *R. S.* so died seised as aforesaid, to wit, to all, &c., with the appurtenances, (to which same premises, the said *R. S.* was admitted at a court holden for this manor on the — day of —,) to which said *A. B.* and *C. D.* the lord of this manor, by the said steward, grants seisin thereof by the rod, *to have and to hold* the said — — hereditaments and premises with their appurtenances unto the said *A. B.* and his assigns for the term of his natural life, and from and immediately after his decease unto the said *C. D.*, and the heirs of his body, according to the form and effect of the devise so made to them, the said *A. B.* and *C. D.* respectively, by the said will of the said *R. S.* deceased as aforesaid, to be holden of the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties, and services therefore due and of right accustomed, and so (saving the right of the lord) the said *A. B.* and *C. D.* are admitted tenants thereof, for such estates and interests, and in such manner and form as aforesaid, and pay to the lord for a fine, on such their admittance the sum of £ — — — (*a*); and their respective fealties are respited.

(*a*) If by the custom of the manor, remainder-men are to be admitted separately from the tenant for life, and to pay a distinct fine, then say “and pay

“ to the lord for fines on such their admittance respectively as in the margin.”

(2. b.) And at this court come again the said *A. B.* and *C. D.* for the purpose of barring and extinguishing the said estate-tail and in the hereditaments and premises hereinbefore described which the said *C. D.* is so intitled as aforesaid, and all reversions and reversions expectant thereupon, and of conveying and assuring the same hereditaments and premises, with their appurtenances to the use of *E. F.* of, &c. his heirs and assigns for ever, according to the custom of this manor, pursuant to a contract for sale lately entered by the said *A. B.* and *C. D.* with him the said *E. F.*, and for a consideration of the sum of £ ——— of lawful money of the United Kingdom of Great Britain and Ireland, current in England, to the said *A. B.* and *C. D.* in hand well and truly paid by the said *E. F.* at the time of making this surrender; and by virtue and in pursuance of the provisions in this behalf contained in an act of parliament passed in the 3rd and 4th years of the reign of his present Majesty King William the Fourth, for the abolition of fines and reversions, and for the substitution of more simple modes of assurance in open court, surrender into the hands of the lord of this manor, the hands and acceptance of the said steward, by the rod, according to the custom of this manor, All and singular the customary copyhold ——— hereditaments and premises hereinbefore described, and to which the said *A. B.* and *C. D.* respectively have been so admitted at this court as aforesaid, with the appurtenances to the same premises belonging or appertaining; and the reversions, reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, benefit, power, claim and demand whatsoever of the said *A. B.* and *C. D.* respectively in, to, and out of the same premises and every part thereof; to the use of the said *E. F.* his heirs and assigns for ever, according to the custom of this manor.

(2 c. & d.) And at this court comes the said *E. F.* and prayeth to be admitted to the said customary or copyhold hereditaments and premises, with the appurtenances, so surrendered to his use at this court as aforesaid, to whom the lord of this manor by the said steward gives seisin thereof by the rod, *to have and to hold* the said ——— hereditaments and premises with their appurtenances unto the said *E. F.* and his heirs, to be holden of the lord, by copy of court roll, according to the will of the lord, according to the custom of this manor, by fe

(a) See § 15, 22, 40, 42, 50, 52.

court, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *E. F.* is admitted tenant thereof, and the lord for a fine on such his admittance the sum of £— — —, the said fine is respited. [Surrender to will to follow as in the last precedent.]

Surrender by C. B. tenant in tail in remainder, to the use of himself for life, with the consent of the tenant for life, (the protector of the remainder,) and admittance of C. B. to the remainder in fee.

At this court comes *C. B.* first and eldest son of *A. B.* of, and also the said *A. B.* (the said *C. B.* being seised of and well entitled to the customary or copyhold hereditaments hereinafter described with their appurtenances, for a customary estate in tail general, in remainder, expectant on the decease of the said *A. B.*, under and against the limitations contained in [state whether under a customary way of settlement, or a will] to which same hereditaments the said *A. B.* was admitted for his life by virtue of the same [surrender in bill] at a court held for this manor the — day of ———(a); and the said *C. B.* for the purpose of acquiring a base customary fee in the said hereditaments and premises, and with the consent of the said *A. B.* signified openly in court immediately previous to the execution of this surrender, in compliance with the direction in that behalf contained in an act of parliament passed in the 3rd and 4th years of the reign of his present Majesty King William the Fourth for the abolition of fines and recoveries, and for the substitution of the more simple modes of assurance (b), did in open court surrender the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, &c. with the appurtenances to the same premises before and appertaining; and the reversion and reversions, remainders, rents, issues and profits thereof; and all the

the same form assumes that the surrender referred to, was fully pre-registered and enrolled on the admittance of the said *C. B.* was in the seisin, and that the admittance of the said *C. B.* for life is the admittance of the said *C. B.* in remainder.

See the next precedent for effecting the same object as the present one, but which supposes a custom for tenants in remainder to be admitted.

(b) See § 22, 52.

estate, right, title, interest, use, trust, benefit, power, claim and whatsoever of the said *C. B.* in, to, or out of the same premises every part thereof, to the use of the said *C. B.* his heirs and assigns for ever, according to the custom of this manor.

(3. *l.*) To which said *C. B.*, upon his prayer, the lord of the manor, by the said steward, grants seisin of the said premises by the rod, *to have and to hold* the said — — hereditaments and premises with their appurtenances unto the said *C. B.* and his heirs and assigns, remainder, expectant and to take effect in possession, on the death of the said *A. B.*, to be holden of the lord, by copy of court roll, according to the will of the lord, according to the custom of this manor, by fealty of court, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *C. B.* is admitted tenant thereof in manner and form last aforesaid, and pays to the lord on such his admission a fine certain of £ ———, and his fealty is respited (*a*).

(Admittance of C. B. tenant in tail in remainder, and surrender of use of himself in fee, with the consent of the tenant for life, and admittance of C. B. to the remainder in fee, and his surrender of the will.)

(4. *a.*) At this court comes *C. B.* first and eldest son of *A. B.* &c. and prays to be admitted for a customary estate in tail general in remainder, expectant on the decease of the said *A. B.*, under and in virtue of the limitations contained in [state whether under a surrender or a will of settlement, or a will], to All, &c. with the appurtenances thereto, to which same hereditaments the said *A. B.* was admitted for his life, by virtue of the aforesaid [surrender or will], at a court held for the manor, the — day of —; to which said *C. B.* the lord of the manor, by the said steward, grants seisin thereof by the rod, *to have and to hold* the said — — — — hereditaments and premises with their appurtenances, unto the said *C. B.* and the heirs of his body, remainder, expectant and to take effect in possession on the decease of the said *A. B.*, to be holden of the lord, by copy of court roll, according to the will of the lord, according to the custom of this manor, by fealty of court, and the ancient annual rent or rents, and other duties and services, therefore due and of right accustomed; and so (saving the right of the lord) the said *C. B.* is admitted tenant thereof, in manner and form last aforesaid.

(*a*) Then may follow a surrender to will as in the next precedent.

form aforesaid, and pays to the lord on such his admittance, a fine of £ — — —, and his fealty is respited.

b.) And afterwards at this court comes the said *C. B.*, and also the said *A. B.*, and the said *C. B.* for the purpose of barring and extinguishing the estate tail in remainder of and in the said hereditaments and premises, to which he is so intitled as aforesaid, and remainders and reversions expectant thereupon, and of vesting the same premises in him the said *C. B.* and his heirs absolutely, in remainder, expectant on the decease of the said *A. B.*, and with the consent of the said *A. B.*, signified openly in court immediately previous to the acceptance of this surrender, in compliance with the direction in that behalf contained in an act of parliament passed in the 3d and 4th years of the reign of his present Majesty William the Fourth for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance (a), did in open court surrender into the hands of the lord of this manor, by the hands of the steward, in acceptance of the said steward, by the rod, according to the custom of this manor, all and singular the — — — hereditaments and messuages hereinbefore described, with the appurtenances to the same messuages belonging or appertaining; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and all the right, title, interest, benefit, power, claim, and demand whatsoever of the said *C. B.* in to or out of the same premises and every part thereof, to the use of him the said *C. B.* his heirs and assigns for ever in remainder as aforesaid, according to the custom of this manor.

c.) To which said *C. B.*, upon his prayer, the lord of this manor, by the said steward, grants seisin of the said premises by the words *to have and to hold* the said — — — hereditaments and messuages with their appurtenances, unto the said *C. B.* and his heirs, in remainder, expectant and to take effect in possession on the decease of the said *A. B.*, to be holden of the lord by copy of court-roll, at the will of the lord, according to the custom of this manor, by fealty, suit and service, and the ancient annual rent or rents, and other duties and services, therefore due and of right accustomed; and so (saving the right of the lord) the said *C. B.* is admitted tenant thereof in manner and form last aforesaid, and pays to the lord on such his admittance a certain sum of £ — — —, and his fealty is respited.

d.) And afterwards at this court the said *C. B.* in open court

(a) See § 22, 52.

surrenders into the hands of the lord of this manor, by the hands acceptance of the said steward, by the rod, according to the custom of this manor, all and singular the said customary or copyhold — — hereditaments and premises with their appurtenances, to which he the said *C. B.* hath been admitted tenant, for an estate in remainder customary fee simple, at this court as aforesaid, to the use of any person or persons, and for such estate or estates, ends, intents and purposes, as he the said *C. B.* in and by his last will and testament in writing, already made or hereafter to be made, hath given, devised, directed, limited or appointed, or shall give, devise, direct, limit or appoint the same.

(Surrender by C. D. tenant in tail in remainder, in order to acquire a base fee; and his admittance accordingly; and surrender to will.)

(5. a.) At this court comes *C. D.* of, &c. who by virtue of a surrender made at a court held for this manor on the — — day of — — and of the admittance at the same court of *A. B.* of, &c. to the customary or copyhold — — and hereditaments hereinafter described, for an estate for the term of his life (*a*), is now seised of the same hereditaments for an estate to him the said *C. D.* and the heirs male of his body in remainder, expectant and to take effect in possession on the decease of the said *A. B.*, with several remainders over, and for the purpose of acquiring a base fee in the same customary or copyhold hereditaments, by virtue and in pursuance of the provisions contained in an act of parliament passed in the 3d and 4th years of the reign of the present Majesty, for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance (*b*), in open court he surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, All, &c. with the appurtenances to the same premises belonging or appertaining; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and all other estate, right, title, interest, benefit, power, claim and demand whatsoever of the said *C. D.* in to or out of the same premises, and every part thereof, to the use of him the said *C. D.* his heirs and assigns

(a) The next precedent assumes that men to be admitted.
there is a special custom for remainder-

(b) See §. 15, 40, 50.

in remainder, expectant and to take effect in possession on the
 use of the said *A. B.*, and according to the custom of this manor.
 B.) And at this court comes again the said *C. D.* and prays to
 be admitted to the said customary or copyhold hereditaments, in re-
 spect, and according to the form and effect of the surrender so
 made thereof by him at this court as aforesaid; to whom the lord
 of this manor, by the said steward, grants seisin thereof by the rod,
 and to hold the said customary or copyhold — — and
 hereditaments with their appurtenances, unto the said *C. D.* and his
 heirs in remainder as aforesaid, to be holden of the lord, by copy of
 roll, at the will of the lord, according to the custom of this
 manor, by fealty, suit of court, and the ancient annual rent or rents
 and other duties and services therefore due and of right accus-
 tomed, and so (saving the right of the lord) the said *C. D.* is admitted
 to the said customary or copyhold in manner and form aforesaid, and he
 pays to the lord for a fine on such his admittance the sum of £— — —,
 and his fealty is respited.

C.) And afterwards at this court the said *C. D.* surrenders into
 the hands of the lord of this manor, by the hands and acceptance of
 the said steward by the rod, according to the custom of this manor,
 the said singular the said customary or copyhold — — here-
 with and premises, with their appurtenances, to the use of such
 persons or persons, and for such estate or estates, ends, intents and
 purposes, as he the said *C. D.* in and by his last will and testament,
 writing, already made or hereafter to be made, hath given, devised,
 limited, limited or appointed, or shall give, devise, direct, limit or
 do otherwise at the same.

*Admittance of C. D., tenant in tail, in remainder, and surrender,
 and admittance to acquire a base fee; and admittance to the base fee.)*

D.) At this court the homage find and present that at a court
 held for this manor, on the — day of —, *A. B.*, of, &c.,
 was admitted to the customary or copyhold — — and heredita-
 ments hereinafter described, for the term of his life, under and by
 the limitations contained in the last will and testament of
 the late of, &c., deceased, presented and inrolled at the last-
 mentioned court, and by which said will the same customary or copy-

hold hereditaments were devised, from and after the decease of said *A. B.*, unto *C. D.*, of, &c., and the heirs male of his body fully issuing, with certain remainders over.

Now at this court comes the said *C. D.* and prays to be admitted for a customary estate in tail male, in remainder, expectant on the decease of the said *A. B.*, under and by virtue of the limitations contained in the said will of the said *T. W.*, deceased, to All, &c. with the appurtenances, to which said *C. D.*, the lord of this manor, the said steward, grants seisin thereof by the rod, *to have and to hold* the said ——— hereditaments and premises, with the appurtenances, unto the said *C. D.* and the heirs male of his body in tail male, in remainder, expectant and to take effect in possession on the decease of the said *A. B.*, to be holden of the lord, by copy of court-roll according to the will of the lord, according to the custom of this manor, by fealty and suit of court, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *C. D.* is admitted tenant thereof in the same manner and form aforesaid, and pays to the lord for a fine on his admittance the sum of £— — —, and his fealty is respited.

(6. b.) And afterwards at this court comes again the said *C. D.* for the purpose of acquiring a base fee in the said customary or copyhold hereditaments, by virtue and in pursuance of the provisions contained in an act of parliament, passed in the 3rd and 4th years of the reign of his present Majesty King William the Fourth, for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance (a), in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, All and singular the ——— hereditaments and premises hereinbefore described, and which the said *C. D.* hath been so admitted at this court as aforesaid, with the appurtenances to the same premises belonging or appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, benefit, power, claim, and demand whatsoever of the said *C. D.*, in to or out of the same premises and every part thereof, to the use of him and his heirs and assigns for ever, according to the custom of this manor. (Admittance and surrender to will to follow as in the precedent.)

(a) See as in the last note.

nder by a feme covert intituled to an equitable estate tail,
her husband, in order to acquire an equitable customary
mple.)

at this court the homage find and present, that at a court held for
nor on the — day of —, the customary or copyhold —
and hereditaments hereinafter described, were surrendered by
f, &c. (since deceased), to the use of *C. D.* of, &c. and *E. F.*
their heirs and assigns for ever, according to the custom of
nor, upon the trusts expressed and declared in an indenture
date, &c. and made between the said *A. B.* of the first part,
of, &c. spinster (since deceased) of the second part, and the said
and *E. F.* of the third part, and inrolled at the said last men-
court (*a*), (being the settlement made previously to a marriage
and solemnized between the said *A. B.* and *H. H.*); and
the same court the said *C. D.* and *E. F.* were admitted tenants
same customary or copyhold hereditaments, upon the trusts of
l settlement. And the homage also find and present, that
the only daughter of the said *A. B.* and *H.* his wife, by virtue
trusts of the aforesaid settlement, became on the decease of
rivor of the said *A. B.* and *H.* his wife, *equitably* intituled in
ion to the said customary or copyhold hereditaments herein-
scribed for an estate to her the said *M. B.*, and the heirs of
y; and that the said *M. B.* lately intermarried with, and is
e wife of *R. W.* of, &c.

at this court come the said *R. W.* and *M.* his wife, and for
pose of barring the equitable estate tail, to which she the said
is so intituled as aforesaid, of and in the customary or copyhold
— and hereditaments hereinafter described, with their
enances, and all remainders and reversions expectant there-
and of vesting the same hereditaments and premises in the said
for an equitable estate in fee simple, according to the custom
manor, by virtue and in pursuance of the provisions contained
ct of parliament passed in the 3rd and 4th years of the reign of
sent Majesty, King William the Fourth, for the abolition of fines
coveries, and for the substitution of more simple modes of

f the settlement should not have much of the limitations and trusts of the
eviously presented and inrolled, deed, as will establish the claim of the
esentment should embrace so feme covert to an *equitable* estate tail.

assurance, and the said *M. W.* being first examined by the said steward separately and apart from her said husband, and freely and voluntarily consenting thereto (a), in open court surrender into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, All, &c., with appurtenances to the same premises belonging or appertaining; the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, benefit, power, claim and demand whatsoever of the said *R. W.* and *M. W.* wife, respectively, in, to, or out of the same premises and every part thereof, to the use of the said *M. W.*, her heirs and assigns forever according to the custom of this manor (b).

(*Surrender by a feme-covert, equitably intitled in fee simple, to her husband, to a purchaser.*) (c).

(8.) At this court the homage find and present, that *A. B.*, of the late one of the customary or copyhold tenants of this manor, in his last will and testament in writing, bearing date the ——— of ———, (the probate whereof is produced at this court,) gave and devised all his messuages, lands, and hereditaments, lying within the holden of this manor, and therein mentioned to have been surrendered to the uses of his will, unto *C. D.*, of, &c., and *E. F.*, of, their heirs and assigns, upon the trusts therein mentioned, in the mean time and until his (the said testator's) daughter *H. B.* should attain the age of twenty-one years, and when and so soon as she should attain that age, then in trust for his said daughter *H. B.*, her heirs and assigns for ever. And the homage also present, that

(a) See *infra*, n. (c).

(b) I apprehend that the admittance of *M. W.* under this surrender is unnecessary.

(c) A surrender (under the private examination of the steward as to voluntary consent) would seem to be the proper mode of conveying the equitable interest of a married woman in copyhold lands, whether such interest be an estate in fee or fee tail, see §. 90 of 3 & 4 Wm. 4. c. 74, ante pp. (7), n. (b),

(11), (12.) But I apprehend that a married woman could bar an equitable tail in copyholds, by deed, to be entered on the court-rolls, see §. 53 & 54; and that an equitable estate in fee, in copyholds, of a married woman, might be conveyed by deed, see §. 77; but in each of the latter cases, the deed would require to be acknowledged under the 79th sect. of the above act. Ant.

(12), n. (a).

A. B. afterwards departed this life, and that the said will was proved by the executors therein named, in the prerogative court of Canterbury, on or about the — day of ——. And they further shewed, on the production of the certificate of the baptism of the said *A. B.*, that she attained the age of twenty-one years on the — day of ——. And the homage also present, that the said *H. B.* was intermarried with and is now the wife of *G. H.*, of, &c. And at this court came the said *G. H.* and the said *H. H.* his wife, and in consideration of the sum of £ — — of lawful money of Great Britain and Ireland, current in England, did give unto them the said *G. H.* and *H. H.* his wife, in hand well and lawfully paid by *I. K.*, of, &c., and the said *H. H.* being first examined by the said steward separately and apart from her said husband, and freely and voluntarily consenting thereto, in open court, did deliver into the hands of the lord of this manor, by the hands and assistance of the said steward by the rod, according to the custom of this manor, All, &c., with the appurtenances to the same premises then being or appertaining; to which same premises the said *C. D.* and *E. F.* were admitted, at a court holden for this manor on the — day of —, upon the trusts of the said will of the said *A. B.* deceased; and the reversion and reversions, remainder and remainders, issues and profits thereof; and all the estate, right, title, interest, benefit, power, claim and demand whatsoever of the said *G. H.* and *H. H.* his wife respectively, in, to, or out of the same premises or any part thereof, to the use of the said *I. K.*, his heirs and assigns for ever, according to the custom of this manor (*a*).

(Surrender of C. D., tenant in tail in remainder, by the consent of the protector of the settlement, for the purpose of converting an estate in fee simple; and admittance of C. D. to the remainder in fee; and surrender to will.)

At this court the homage present, that on the — day of —, *C. D.*, of, &c., claiming to be intitled to the customary or

admittance would not be necessary in this case.

And to acquire the legal customary admittance it would be requisite for *I. K.*

to claim to be admitted under a surrender to be made to him by *C. D.* and *E. F.* the devisees in trust.

copyhold hereditaments hereinafter described, for an estate to him and the heirs of his body, in remainder, expectant on the decease of *A. B.*, of, &c., under and by virtue of the limitations contained in the [state whether a surrender by way of settlement or a will] came before *W. B.*, deputy steward, for that purpose and turn only of the said *J. S.*, chief steward of this manor, and, for the purpose of barring and extinguishing the said estate tail to which the said *C. D.* was so intitled as aforesaid, of and in the same hereditaments, and all remainders and reversions expectant thereupon, and of vesting the same hereditaments in the said *C. D.* and his heirs absolutely, in remainder, from and after the decease of the said *A. B.*, according to the custom of this manor, did out of court, with the consent of the said *A. B.*, signified by his signature to the memorandum of the same surrender, in compliance with the direction in that behalf contained in an act of parliament passed in the third and fourth years of the reign of his present Majesty king William the Fourth, for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance, surrender into the hands of the lord of this manor, by the hands and acceptance of the said deputy steward, by the rod, according to the custom of this manor, All, &c., with the appurtenances to the same premises belonging or appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, benefit, power, claim and demand whatsoever, of the said *C. D.*, in, to, or out of the same premises and every part thereof, to the use of him the said *C. D.*, his heirs and assigns for ever, according to the custom of this manor.

Now at this court comes the said *C. D.*, and prays to be admitted to the said hereditaments and premises, according to the form and effect of the aforesaid surrender, to whom the lord of this manor, by the said steward, grants seisin thereof by the rod, *to have and to hold* all and singular the said ——— hereditaments and premises, with their appurtenances, unto the said *C. D.* and his heirs, in remainder, expectant and to take effect in possession on the decease of the said *A. B.*, to be holden of the lord, by copy of court-roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *C. D.* is admitted tenant

thereof, in manner and form last aforesaid, and pays to the lord on such his admittance, a fine certain of £ — — —, and his fealty is respited.

(9. b). And afterwards at this same court the said *C. D.* in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward by the rod, according to the custom of this manor, all and singular the said customary or copyhold — — — hereditaments and premises, with their appurtenances, to which he the said *C. D.* hath been admitted tenant for an estate in remainder in fee simple, at this court, as aforesaid, to the use of such person or persons, and for such estate or estates, ends, intents and purposes as he the said *C. D.*, in and by his last will and testament in writing already made or hereafter to be made, hath given, devised, directed, limited or appointed, or shall give, devise, direct, limit or appoint the same.]

(Presentment of Surrender by C. D. tenant in tail in remainder, in order to acquire a base fee; and admittance to the base fee.)

(10.) At this court the homage find and present that at a court holden for this manor, on the — day of —, *A. B.*, of, &c., was admitted to the customary or copyhold — — — and hereditaments hereinafter described, for the term of his life, under and by virtue of the limitations contained in the last will and testament of *T. W.*, late of, &c., deceased, presented and inrolled at the last mentioned court, and by which said will the same customary or copyhold hereditaments were devised, from and after the decease of the said *A. B.*, unto *C. D.*, of, &c., and the heirs male of his body lawfully issuing, with certain remainders over (*a*). And the homage also present that on the — day of —, the said *C. D.* came before the said steward, and for the purpose of acquiring a base customary fee in the said hereditaments hereinafter described, by virtue and in pursuance of the provisions contained in an act of parliament passed in the third and fourth years of the reign of his present Majesty king William the Fourth, for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance, did out of court

(*a*) If *C. D.* were admitted under a special custom controlling the rule, that the admittance of the tenant for life is the admittance of all persons intitled in remainder, such separate admittance of *C. D.* must also be presented.

surrender into the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, All, &c., with the appurtenances to the same premises belonging or appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, benefit, power, claim and demand whatsoever, of the said *C. D.*, in, to, or out of the same premises and every part thereof, to the use of him the said *C. D.*, his heirs and assigns for ever, according to the custom of this manor.

Now at this court comes the said *C. D.*, and prays to be admitted to the said customary or copyhold hereditaments and premises, according to the form and effect of the surrender so made thereof by him as aforesaid, to whom the lord of this manor, by the said steward, grants seisin thereof by the rod, *to have and to hold* all and singular the said — — hereditaments and premises, with their appurtenances, unto the said *C. D.* and his heirs in remainder, expectant and to take effect in possession on the decease of the said *A. B.*, to be holden of the lord by copy of court-roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *C. D.* is admitted tenant thereof in manner and form last aforesaid, and pays to the lord for a fine on such his admittance the sum of £— — —, and his fealty is respited. [Surrender to will to follow.]

(Presentment of Surrender out of court by a feme covert, tenant in tail, and her husband, in order to acquire an absolute customary fee, and admittance of the feme covert, in fee.)

(11). At this court the homage present that on the — day of —, *E. F.*, of, &c., and *C.* his wife, came before the said steward, and for the purpose of barring and extinguishing the estate tail of and in the customary or copyhold hereditaments hereinafter described, to which the said *C. F.* was intitled by virtue of the last will and testament of her father *A. B.*, late of, &c., deceased, bearing date, &c., and of her admittance to the same hereditaments, at a court holden for this manor on the — day of —, and all remainders and reversions expectant thereupon, and of vesting the same hereditaments in the said *C. F.* and her heirs absolutely, according to the custom of

this manor, the said *C. F.* being first examined by the said steward separately and apart from her said husband, and freely and voluntarily consenting thereto, did by virtue and in pursuance of the provisions contained in an act of parliament passed in the third and fourth years of the reign of his present Majesty king William the Fourth, for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance ^(a), surrender into the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, All, &c., with the appurtenances to the same premises belonging or appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, benefit, power, claim and demand whatsoever of the said *E. F.* and *C.* his wife respectively, in, to, or out of the same premises and every part thereof, to the use of the said *C. F.*, her heirs and assigns for ever, according to the custom of this manor.

Now at this court comes the said *C. F.* and prays to be admitted to the said customary or copyhold hereditaments and premises, according to the form and effect of the surrender so made thereof by the said *E. F.* and her the said *C. F.* his wife, as aforesaid; to which said *C. F.* the lord of this manor, by the said steward, grants seisin thereof by the rod, *to have and to hold* all and singular the said — — hereditaments and premises, with their appurtenances, unto the said *C. F.* and her heirs, to be holden of the lord by copy of court-roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *C. F.* is admitted tenant thereof, in manner and form last aforesaid, and the said *E. F.* and *C.* his wife, pay for a fine on such the admittance of her the said *C. F.* the sum of £— — —, and her fealty is respited.

(Presentment of surrender by a feme covert equitably intitled in remainder in fee, and her husband, to a purchaser.)

(12). At this court the homage present that on the — day of —, *L. M.*, of, &c., and *J.* his wife, (the said *J. M.* claiming to be *equitably* intitled to the hereditaments hereinafter described for an

(a) See §. 50, 77, 90.

copyhold hereditaments hereinafter described, for an estate to and the heirs of his body, in remainder, expectant on the decease of *A. B.*, of, &c., under and by virtue of the limitations contained in the [state whether a surrender by way of settlement or a will] before *W. B.*, deputy steward, for that purpose and turn only of the said *J. S.*, chief steward of this manor, and, for the purpose of barring and extinguishing the said estate tail to which the said *C. D.* was so intitled as aforesaid, of and in the same hereditaments and all remainders and reversions expectant thereupon, and of vesting the same hereditaments in the said *C. D.* and his heirs absolute in remainder, from and after the decease of the said *A. B.*, according to the custom of this manor, did out of court, with the consent of the said *A. B.*, signified by his signature to the memorandum of the same surrender, in compliance with the direction in that behalf contained in an act of parliament passed in the third and fourth years of the reign of his present Majesty king William the Fourth, for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance, surrender into the hands of the lord of the manor, by the hands and acceptance of the said deputy steward by the rod, according to the custom of this manor, All, &c., with the appurtenances to the same premises belonging or appertaining to the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, benefit, power, claim and demand whatsoever, of the said *C. D.*, in, out of the same premises and every part thereof, to the use of the said *C. D.*, his heirs and assigns for ever, according to the custom of this manor.

Now at this court comes the said *C. D.*, and prays to be admitted to the said hereditaments and premises, according to the form and effect of the aforesaid surrender, to whom the lord of this manor by the said steward, grants seisin thereof by the rod, *to have and to hold* all and singular the said ——— hereditaments and premises, with their appurtenances, unto the said *C. D.* and his heirs in remainder, expectant and to take effect in possession on the decease of the said *A. B.*, to be holden of the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed, and so (saving the right of the lord) the said *C. D.* is admitted to

in manner and form last aforesaid, and pays to the lord on his admittance, a fine certain of £ — — —, and his fealty is — — —.

And afterwards at this same court the said *C. D.* in open surrenders into the hands of the lord of this manor, by the hand and acceptance of the said steward by the rod, according to the custom of this manor, all and singular the said customary or copyhold — — — hereditaments and premises, with their appurtenances, in and by the said *C. D.* hath been admitted tenant for an estate in fee simple, at this court, as aforesaid, to the use of the said person or persons, and for such estate or estates, ends, intents and purposes as he the said *C. D.*, in and by his last will and testament already made or hereafter to be made, hath given, devised, directed, limited or appointed, or shall give, devise, direct, or appoint the same.]

Admittance of Surrender by C. D. tenant in tail in remainder, in order to acquire a base fee; and admittance to the base fee.)

At this court the homage find and present that at a court for this manor, on the — — day of — —, *A. B.*, of, &c., admitted to the customary or copyhold — — — and hereinafter described, for the term of his life, under and by the limitations contained in the last will and testament of the late *A. B.*, of, &c., deceased, presented and inrolled at the last court, and by which said will the same customary or copyhold hereditaments were devised, from and after the decease of the said *A. B.*, unto *C. D.*, of, &c., and the heirs male of his body lawfully issuing, with certain remainders over (*a*). And the homage find and present that on the — — day of — —, the said *C. D.* came before the said steward, and for the purpose of acquiring a base customary or copyhold in the said hereditaments hereinafter described, by virtue and in pursuance of the provisions contained in an act of parliament passed in the third and fourth years of the reign of his present Majesty king George the Fourth, for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance, did out of court

C. D. were admitted under a custom controlling the rule, that the separate admittance of *C. D.* must also be presented.

surrender into the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, All, &c., with the appurtenances to the same premises belonging or appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all estate, right, title, interest, benefit, power, claim and demand whatsoever, of the said *C. D.*, in, to, or out of the same premises and every part thereof, to the use of him the said *C. D.*, his heirs and assigns for ever, according to the custom of this manor.

Now at this court comes the said *C. D.*, and prays to be admitted to the said customary or copyhold hereditaments and premises, according to the form and effect of the surrender so made thereof to him as aforesaid, to whom the lord of this manor, by the said steward grants seisin thereof by the rod, *to have and to hold* all and singular the said — — hereditaments and premises, with their appurtenances, unto the said *C. D.* and his heirs in remainder, expectant and to take effect in possession on the decease of the said *A. B.*, to be holden of the lord by copy of court-roll, at the will of the lord according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services theretofore due and of right accustomed; and so (saving the right of the lord) the said *C. D.* is admitted tenant thereof in manner and form last aforesaid, and pays to the lord for a fine on such his admittance the sum of £ — —, and his fealty is respited. [Surrender will to follow.]

(Presentment of Surrender out of court by a feme covert, tenant in tail, and her husband, in order to acquire an absolute custom, and admittance of the feme covert, in fee.)

(11). At this court the homage present that on the — day of —, *E. F.*, of, &c., and *C.* his wife, came before the said steward and for the purpose of barring and extinguishing the estate tail of — in the customary or copyhold hereditaments hereinafter described which the said *C. F.* was intitled by virtue of the last will and testament of her father *A. B.*, late of, &c., deceased, bearing date, — and of her admittance to the same hereditaments, at a court holden for this manor on the — day of —, and all remainders and reversions expectant thereupon, and of vesting the same hereditaments to the said *C. F.* and her heirs absolutely, according to the custom

manor, the said *C. F.* being first examined by the said lord separately and apart from her said husband, and freely and lawfully consenting thereto, did by virtue and in pursuance of the provisions contained in an act of parliament passed in the third and fourth years of the reign of his present Majesty king William the Fourth, for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance (*a*), surrender into the hands of the lord of this manor, by the hands and acceptance of the said lord, by the rod, according to the custom of this manor, All, &c., the appurtenances to the same premises belonging or appertaining, and the reversion and reversions, remainder and remainders, issues and profits thereof; and all the estate, right, title, interest, benefit, power, claim and demand whatsoever of the said *E. F.* and her wife respectively, in, to, or out of the same premises and part thereof, to the use of the said *C. F.*, her heirs and assigns forever, according to the custom of this manor.

At this court comes the said *C. F.* and prays to be admitted to the said customary or copyhold hereditaments and premises, according to the form and effect of the surrender so made thereof by the said *E. F.* and her the said *C. F.* his wife, as aforesaid; to which the lord of this manor, by the said steward, grants seisin of the said premises by the rod, *to have and to hold* all and singular the said premises — hereditaments and premises, with their appurtenances, unto the said *C. F.* and her heirs, to be holden of the lord by copyhold, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed; (saving the right of the lord) the said *C. F.* is admitted tenant of the said premises in manner and form last aforesaid, and the said *E. F.* and *C. F.* do pay for a fine on such the admittance of her the said *C. F.* the sum of £ — — —, and her fealty is respited.

Admittance of surrender by a feme covert equitably intitled in remainder in fee, and her husband, to a purchaser.)

At this court the homage present that on the — day of — — — *L. M.*, of, &c., and *J.* his wife, (the said *J. M.* claiming to be lawfully intitled to the hereditaments hereinafter described for an

(a) See §. 50, 77, 90.

estate to her and her heirs in remainder, expectant on the decease of *H. B.*, the widow of *A. B.*, late of, &c., deceased, under and in virtue of the last will and testament of the said *A. B.*, whereby the same hereditaments were devised by him to *C. D.*, esquire, and *E. F.*, gentleman, their heirs and assigns, upon the trusts therein mentioned,) and for carrying into effect a contract or agreement made and entered into by them the said *L. M.* and *J.* his wife, *N. O.*, of, &c., and in consideration of the sum of £— — — — — lawful money of the united kingdom of Great Britain and Ireland, then current in England, unto the said *L. M.* and *J.* his wife, in full, well and truly paid, by the said *N. O.*, at the time of making the same surrender, and the said *J. M.* being first examined by the steward, separately and apart from her said husband, and freely and voluntarily consenting thereto, did, by virtue and in pursuance of the provisions contained in an act of parliament passed in the first and fourth years of the reign of his present Majesty king William the Fourth, for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance (*a*), surrender in the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, &c., with the appurtenances to the same premises belonging thereto, pertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, interest, benefit, power, claim and demand whatsoever, of the said *L. M.* and *J.* his wife respectively, in, to, or out of the same premises, and every part thereof, to the use of the said *N. O.*, his heirs and assigns for ever, in remainder after the decease of the said *L. M.* and according to the custom of this manor (*b*).

(Second proclamation on the death of G. H.)

(13). At this court, the second proclamation is made for any persons, claiming title to the customary or copyhold hereditaments lying within and holden of this manor, whereof *G. H.* (whose name was presented at the last general court) died seised, to come into court and be admitted, but no one comes, therefore let a third proclamation be made at the next court (*c*).

(*a*) See §. 77, 90.

not be necessary.

(*b*) The admittance of *N. O.* would

(*c*) No copy would be necessary.

*ment of Surrender by A. B. to C. D., a purchaser, in fee ;
and his admittance, and surrender to will.)*

a. & b). At this court the homage present that on the ———
—— in the year of our lord ———, *A. B.*, of &c., came before
the steward, and for carrying into effect a contract made and en-
treated by the said *A. B.* with *C. D.*, of &c., for the sale to him of
certain copyhold hereditaments hereinafter described, and the customary
rule and inheritance thereof, and in consideration of the sum of
—— of lawful money of the united kingdom of Great Britain and
Ireland, current in England, unto the said *A. B.*, in hand paid by the
said *C. D.* at the time of making the same surrender, did out of court,
bring into the hands of the lord of this manor, by the hands and
assistance of the said steward, by the rod, according to the custom of
this manor, All, &c., with the appurtenances to the same premises be-
longing, or in anywise appertaining (to which said premises the said
C. D. was admitted at a court holden for this manor on the ——— day
of ———); and the reversion and reversions, remainder and remain-
ders, issues, and profits thereof; and all the estate, right, title,
claim, benefit, power, claim, and demand whatsoever of the said *A.*
in or out of the said hereditaments and premises, and every part
thereof, to the use of the said *C. D.* his heirs and assigns for ever, ac-
cording to the custom of this manor.

At this court comes the said *C. D.*, and prays to be admitted to
the said hereditaments and premises, so surrendered to his use by the
said *A. B.* as aforesaid: to which said *C. D.*, the lord of this manor,
the said steward grants seisin thereof by the rod, *to have and to*
enjoy the said customary or copyhold hereditaments and premises, with
the appurtenances, unto the said *C. D.* and his heirs, to be holden of
the lord, by copy of court roll, at the will of the lord, according to the
custom of this manor, by fealty, suit of court, and the ancient annual
rents, and other duties and services therefore due and of right
demanded, and so (saving the right of the lord) the said *C. D.* is ad-
mitted tenant thereof, and pays to the lord for a fine on such his ad-
mittance the sum of £——, and his fealty is respited. [Then
follows a surrender by *C. D.* to the uses of his will, see ante,
]

(*Presentment of the deaths of A. B. and his wife, and adm
of D. B. and E. B. their children, as tenants in common, t
former surrender.*)

(15. a). (16. a). At this court the homage present the deaths
and C. his wife, late respectively customary tenants of this manor
that they had issue, only one son and one daughter, namely D.
E. B., which facts are verified by the affidavit of T. S. intended
inrolled at this court: And they also present, that the said D.
E. B. are intituled to be admitted in equal undivided moieties
tenants in common in fee simple, according to the custom of this
to the customary or copyhold hereditaments, hereinafter described
and by virtue of a surrender made thereof, by the said A. B.
his wife, at a court holden for this manor, on the —
—— (a).

(15. b). And at this court comes the said D. B. and prays
admitted to one undivided moiety, or equal half part, (the whole
two equal parts, to be divided) of all and singular the hereditaments
lying within and holden of this manor so surrendered by the said
and C. his wife as aforesaid, to wit, All, &c. with the appurtenances
thereunto belonging, to which said D. B. the lord of this manor
the said steward, grants seisin thereof by the rod, *to have and*
the said one undivided moiety, or equal half part of the said copyhold
or copyhold — — hereditaments and premises, with their appurtenances,
unto the said D. B. and his heirs, to be holden of the lord of this manor
copy of court roll, at the will of the lord, according to the custom
this manor, by fealty, suit of court, and the ancient annual
rents, and other duties and services therefore due, and of right
demanded, and so (saving the right of the lord) the said D. B. is a
tenant thereof, and pays to the lord on such his admittance
certain of £ — — —, and his fealty is respited.

(16. b). And at this court comes the said E. B. (by the said D.
attorney, in this behalf appointed by the court) and prays to
be admitted to one undivided moiety, or equal half part, (the whole
equal parts to be divided) of all and singular the hereditaments

(a) I have here supposed a surrender lives, and after the death of
to have been made by A. B. and C. his survivor, to the use of all the children
wife, of the estate of the wife, to the marriage, as tenants in common
use of themselves, for their respective simple.

and holden of this manor, so surrendered by the said *A. B.* and his wife, as aforesaid, to wit, to all, &c. [the description to be read] with the appurtenances thereunto belonging, to which said *E.* (in the person of her said attorney) the lord of this manor, by the said steward, grants seisin thereof by the rod, *to have and to hold* the said one undivided moiety, or equal half part, of the said customary or hold hereditaments and premises, with their appurtenances, unto the said *E. B.* and her heirs, to be holden, &c. and so (saving the right of the lord) the said *E. B.* (in the person of her said attorney) is admitted tenant thereof, and pays to the lord on such her admittance, a fine of £ — — —, and her fealty is respited.

Statement of the death of F. G., first proclamation, and admittance of H. G. and J. G. in coparcenary.)

a). At this court the homage present the death of *F. G.*, late of the customary tenants of this manor, and thereupon proclamation made for any person or persons claiming title to the customary or hold hereditaments, lying within and holden of this manor, whereof the said *F. G.* died seised, to come into court and be admitted.

b). Now at this court come *H. G.* spinster, and *J. G.* spinster, the only children and coheiresses, according to the custom of this manor, of the said *F. G.* deceased, and pray to be admitted in coparcenary, to all and singular the hereditaments lying within and holden of this manor, whereof the said *F. G.* so died seised as aforesaid, with the appurtenances, and to which same hereditaments and premises, the said *F. G.* was admitted tenant at a general holden for this manor, on the — day of —, to which said *H. G.* and *J. G.* the lord of this manor, by the said steward, grants seisin thereof by the rod, *to have and to hold* the said customary or hold — — hereditaments and premises, with their appurtenances, unto the said *H. G.* and *J. G.* and their heirs, as tenants in coparcenary, to be holden of the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due, and of right accustomed, and so (saving the right of the lord) the said *H. G.* and *J. G.* are admitted tenants thereof in coparcenary as aforesaid, and pay to the lord on such their admittance, a fine of £ — — —, and their fealties are respited.

(Conditional surrender from K. L. to M. N. and his admittance.

(18. a). At this court comes *K. L.* of, &c., one of the customary tenants of this manor, and in consideration of the sum of £— — — — — paid to him in hand well and truly paid by *M. N.* of, &c., in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, All, &c., with the appurtenances, to which same premises the said *K. L.* was admitted, at a court holden for this manor, on the — — — — day of — — — — ; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, benefit, power, claim, and demand whatsoever, of the said *K. L.* in, to, or out of the same premises, and every part thereof to the use of the said *M. N.*, his heirs and assigns for ever, subject nevertheless to and upon this express condition, that if the said *K. L.*, his heirs, executors, administrators, or assigns, do and shall not well and truly pay, or cause to be paid to the said *M. N.*, his executors, administrators, or assigns, the sum of £— — — — of lawful money of &c., on the — — — — day of — — — —, together with interest for the same, after the rate of five pounds per centum per annum, computed from the date of this surrender, clear of all taxes and deductions whatsoever, (being the same principal and interest monies, as are mentioned to be secured by the covenant of the said *K. L.* with the said *M. N.*, contained in an indenture or deed of covenants bearing even date with this surrender); Then this present surrender shall cease and be void, otherwise the same is to remain in full force and virtue.

(18. b). (a) And afterwards at this court comes the said *M. N.*, and prays to be admitted to the customary or copyhold hereditaments and premises, with their appurtenances, so surrendered to his use as afore- said, to whom the lord of this manor by the said steward, grants seisin thereof by the rod, *to have and to hold* the said — — — — hereditaments and premises, with their appurtenances, unto the said *M. N.* and his heirs, subject nevertheless to and upon the condition mentioned in the above surrender, to be holden of the lord, by copy of court roll, and the will of the lord, according to the custom of this manor, by fealty

(a) It is sometimes the agreement of the parties, that the mortgagee should be admitted tenant to the lord immediately after the surrender, but it is more usual not to disturb the legal estate until the condition is broken, particularly in manors where the fine is arbitrary.

court, and the ancient annual rent or rents, and other duties
 therefor due, and of right accustomed, and so (saving
 the right of the lord) the said *M. N.* is admitted tenant thereof, and
 the lord on such his admittance, a fine certain of £ — —, and
 his fealty is respited.

Admittance of breach of conditional surrender, from P. Q. to R. S.)

). At this court it is represented to the homage by *R. S.* of, &c.
 that a fine was made in payment of the principal sum of £ — — —,
 and was returned to him the said *R. S.* by a conditional surrender from *P. Q.* of
 the customary tenants of this manor, of certain customary
 freehold hereditaments, lying within and holden of this manor, and
 the said surrender was presented and inrolled at the last general court,
 and the sum of £ — — — is now due and owing for principal and
 interest upon and by virtue of the said surrender, and thereupon
 the present that the condition of the surrender, so made to the said
P. Q. aforesaid, is broken, and the estate of the said *R. S.* thereby
 is become absolute at law.

Admittance of R. S. on the above forfeited condition.)

). Now at this court, the said *R. S.* prays to be admitted to
 the freehold or copyhold hereditaments, lying within and holden of
 this manor, so surrendered to his use as aforesaid, to wit, to all, &c.
 the appurtenances, to whom the lord of this manor, by the said
P. Q. grants seisin thereof by the rod, *to have and to hold* the said
 freehold or copyhold — — — hereditaments and premises, with
 the appurtenances unto the said *R. S.* and his heirs, to be holden of
 the lord, by copy of court roll, at the will of the lord, according to the
 custom of this manor, by fealty, suit of court, and the ancient annual
 rents, and other duties and services therefore due, and of right
 accustomed, and so (saving the right of the lord, and the right of any
 other persons having an equity of redemption in the premises) the
 said *R. S.* is admitted tenant thereof, and pays to the lord on such his
 admittance, a fine certain of £ — — —, and his fealty is respited.

(Presentment of surrender by A. B. and wife to the trustees of marriage settlement; and admittance of the trustees.)

(20). At this court the homage find and present that by an indenture bearing date, &c. and made between *A. B.* of, &c., of the first part, *C. D.* of &c., spinster of the second part, and *E. F.* of &c., and *G. H.* of &c., of the third part: reciting, that a marriage had been solemnized upon and was intended shortly thereafter to be had and solemnized between the said *A. B.* and *C. D.*; and reciting that the said *A. B.* was seised of the freehold hereditaments thereafter described and intended to be thereby granted and released for an estate of inheritance in fee simple in possession, and that the said *C. D.* was seised of the copyhold hereditaments thereafter described and covenanted to be surrendered for an estate of inheritance in fee simple in possession, according to the custom of this manor, and after also reciting that upon the celebration of the said marriage it was proposed and agreed that the said freehold hereditaments should be conveyed and assured to for and upon the uses, trusts, intents, and purposes thereafter limited, expressed, declared, and contained of, and concerning the same; and that the said copyhold hereditaments should be surrendered to the use of the said *E. F.* and *G. H.* and their heirs, upon and for the trusts, intents, and purposes, and in manner mentioned in the covenant or agreement that behalf thereafter contained: It was witnessed that in celebration of the said then intended marriage, and for the nominal consideration therein expressed, the said *A. B.* did grant, bargain, sell, and release unto the said *E. F.* and *G. H.* (in their actual possession then being by virtue of the bargain and sale for a year therein expressed unto) and to their heirs and assigns, all and singular the freehold hereditaments — and hereditaments therein particularly described, with the appurtenances, to hold the same unto the said *E. F.* and *G. H.* and their heirs and assigns, to, for, and upon the uses, trusts, intents, and purposes, and under and subject to the powers, provisoes, declarations, and agreements in the said indenture of release and settlement, limited, expressed, declared, and contained of and concerning the same freehold hereditaments. And by the said indenture of release and settlement was covenanted and agreed that the said *A. B.* and *C. D.* his then intended wife, should and would either before, or with all convenient speed after the solemnization of the said then intended marriage, surrender, according to the custom of this manor, the custom

old hereditaments therein and hereinafter described, with their appurtenances, to the use of the said *E. F.* and *G. H.*, their heirs and assigns for ever, upon and for such trusts, intents, and purposes, as best and nearest correspond with the uses, trusts, and limitations before expressed, declared, and contained, of and concerning the freehold hereditaments thereby conveyed and assured. And they also find and present, that a marriage was duly had and solemnized between the said *A. B.* and *C. D.* soon after the date and execution of the hereinbefore in part recited indenture of release and settlement. And they further find and present, that on the — day of — the said *A. B.* and *C.* his wife, came before the said steward, and in pursuance of the said covenant or agreement in that behalf mentioned contained in the said indenture of release and settlement, and the said *B.* being first examined by the said steward separately and apart from her said husband, and freely and voluntarily consenting thereto, did out of court surrender into the hands of the lord of this manor by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, All, &c. with the appurtenances to the same premises belonging, or in anywise appertaining, (and to the same hereditaments and premises the said *C. B.* (then *C. D.*) admitted at a court held for this manor on the — day of —); together with the reversion and reversions, remainder and remainders, rents, and profits thereof; and all the estate, right, title, interest, power, claim, and demand whatsoever, of the said *A. B.* and *C. D.* respectively, in, to, or out of the same hereditaments and premises, and every or any part thereof, to the use of the said *E. F.* and *G. H.* and their heirs and assigns for ever, according to the custom of this manor, but nevertheless upon and for the trusts, intents, and purposes before expressed and declared, or referred unto, of and concerning the customary or copyhold hereditaments and premises, in and by the said indenture of release and settlement.

And at this court come the said *E. F.* and *G. H.* and pray to be admitted to the said customary or copyhold — — hereditaments and premises so surrendered to their use by the said *A. B.* and *C.* his wife aforesaid, to which said *E. F.* and *G. H.*, the lord of this manor, the said steward, grants seisin thereof by the rod, *to have and to hold* — — hereditaments and premises, with their appurtenances, unto the said *E. F.* and *G. H.*, and their heirs, but nevertheless upon and for the trusts, intents, and purposes, expressed and declared, or referred unto, concerning the same customary or copyhold hereditaments and premises, in, and by the said surrender so made

thereof by the said *A. B.* and *C.* his wife as aforesaid, to be holden for the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual rent or rents, and other duties and services therefore due, and of right accustomed; and so (saving the right of the lord) the said *E. F.* and *G. H.* are admitted tenants thereof in manner and form aforesaid, and shall pay to the lord for a fine on such their admittance the sum of £ — — — and their fealties are respited.

(*Bailiff's return to precept of summons in plaint of right patrimonial*
A. demandant, C. tenant.)

(21. *a*). At this court *W. Y.*, the bailiff of this manor, returns, that in pursuance of the precept to him issued at the last general court, to holden for this manor, he did duly summon *C.* to appear at this court to answer to the plaint of *A.* entered at the last general court, as directed in the said precept he was commanded (*a*).

(*a*) *Essoin*. Should the tenant be advised to cast an *essoin*, it is to be entered thus:—

And now here at this court the said *C.* caused himself to be *essoined de malo veniendi* against the said *A.* of the plaint aforesaid, and had therefore day by his *essoin* here till ——— the ——— day of ——— next, here at this court to be then holden at ten o'clock in the forenoon. And the same day is given to the said *A.* here, &c. And thereupon at this court, and the said *essoin*, were adjourned till ——— the said ——— day of ——— next at ten o'clock in the forenoon of the same day. [*See as to essoins, ante, pp. (15), (16).*]

Should *C.* not appear, the entry will be thus:—

And now here at this court comes the said *A.* and offers himself against the said *C.* of the plea aforesaid, and the said *C.* comes not, but makes default:—

Grand Cape. Therefore according to the custom of this manor, it is considered that the messuages, lands, tenements, and hereditaments aforesaid, with the

appurtenances, be taken into the hands of the lord, &c. and the day, &c. [*R. Ent. 130*]. And a precept is awarded and issued to *W. Y.*, bailiff of this manor, [*See Forms of Precepts, &c. p. F. 3.*] that he take into the hands of the lord, of this manor by the view of good and lawful men, customary copyhold tenants of this manor, the said hereditaments, with their appurtenances, [*Ante p. (18), n. (c).*] and by good summoners, according to the custom of this manor, summon the said *C.* to appear and personally appear at the next general customary court baron to be holden for this manor, that is to say, at ——— in the parish of ——— aforesaid, on ——— the ——— day of ——— now next ensuing at ten o'clock in the forenoon, to answer to the said *A.*, as well of the principal plea, as of the default aforesaid. And the same day is given to the said *A.*, at the same place, &c.

N. B. Petit Cape is after appearance or view granted; and is a summons to answer for the default only. *O. N. 162. Jac. L. D. CAPE PARVUM.*

t in plaint of right patent, plea, mise joined, and precept of recognition awarded) (a).

b). And at this court comes the said *C.*, by *D.* his attorney, constituted, and thereupon the said *A.* in his own proper [or by the said *E.* his next friend, as the case may be,] demands the said *C.* — messuages, — tofts, — barns, — out- — orchards, — gardens, — acres of land, — acres low, and — acres of pasture, with the appurtenances, situate in the parish of —, in the county of — aforesaid, and holden of this manor by copy of court roll, at the will of the lord, according to the custom of this manor, as the right and inheritance of the said *A.*, according to the custom of this manor, by plaint in court, in the form and nature of a writ of our said lord the king, for right patent at common law, according to the custom of this manor; whereupon the said *A.* says that *B. B.*, deceased, grandfather of the said *A.*, and formerly one of the customary or copyhold tenants of this manor, was seised of the tenements aforesaid, with the appurtenances, in his demesne as of fee and *right (b)*, at the will of the lord, according to the custom of this manor, in time of peace, in the time of King George the Third, late king of Great Britain, to wit, within the years now last past, by taking the esplees and profits thereof (c), of the value, &c., and that from the said *B. B.* the right descended to the father of the said *A.*, the demandant, as the eldest son and heir of the said *B. B.*, according to the custom of this manor, and that from the said *B.*, the right descended to the said *A.*, the demandant,

should *A.* be an infant, the following entry of the admission of *E.* as next friend *John Amy*, is to precede the declaration against *C.* viz.:

whereupon the said *A.* sheweth in court, that he the said *A.* is an infant under the age of 21 years, whereupon he prays the court here to assign next friend *E.*, of, &c. as the next friend of the said *A.*, to prosecute the said *C.* in the nature and form aforesaid against the said *C.* Wherefore the said *E.* is admitted by the court to prosecute the said plaint, in the

nature and form aforesaid, for the said *A.* (being an infant under the age of 21 years,) against the said *C.* *Ante*, p. (18).

(b) It is necessary for a demandant in a writ of right to allege in his count, that his ancestor was seised of *right*, as well as in his demesne as of fee. *Ante*, pt. 1, pp. 581, 612.

(c) A writ of right cannot be maintained without showing an actual seisin by *taking the esplees*, either in the demandant himself, or the ancestor from whom he claims. *Ante*, pt. 1, p. 581.

as the eldest son and heir of him the said *B.*, according to the of this manor, and that such is the right of the said *A.*, the dem he the said *A.* offers, &c. and therefore prosecutes his plaint, &c.

(21. *c*). And at this court proclamation being solemnly made said *C.* to come into court and plead to the plaint and declarahibited by the said *A.*, comes the said *C.* by the said *D.*, his a and denies the right of the said *A.* the demandant, and the the said *B.* *B.* from whom, &c. and the whole, &c. and especi tenements in the aforesaid plaint and declaration described, w appurtenances; and the said *C.* puts himself upon the homage ing to the custom of this manor, and prays that a recognition made whether he the said *C.* hath a greater right to hold th ments aforesaid, with the appurtenances as he now holds them. said *A.*, the demandant, to hold the same tenements with the a nances, as he hath demanded the same, &c.

(21. *d*). And the said *A.*, being present here in court, d like (*b*).

(21. *e*). Therefore a precept (*e*) is issued by the said ste *W. Y.*, the bailiff of this manor, commanding him that he sum good summoners, twelve good and lawful men, copyhold tenants manor, that they be before the lord or steward of this manor, next court here to be holden, that is to say, at —, in the p —, in the said county of —, on —, the — day of next coming, at the hour of — of the clock in the forenoon same day, ready upon their oaths, to make recognition of the joined between the said *C.* and *A.* (*d*).

Here follows the above mentioned affidavit o
(see 15. *a.* 16. *a*). [the affidavit to be
verbatim.]

Examined by me,

J. S., stewa

(*a*) See other forms of count, Chitty's Plead. 3d. vol. 640, 641-2, 667.

(*b*) See form of *General Mise* in the manor court, *post* "Forms of Precepts, &c." [G. 1.]: Form of mise on plaint of assize of mort d'ancestor, [G. 2.]: Form of mise on plaint of formedon in re-

mainder, [G. 3.]

(*c*) See *post* "Forms of I &c." [H. 1.] *Vide* also, [H. 2.] precept of recognition in assize d'ancestor.

(*d*) See continuation of the proceedings at the end of the 3rd c

THIRD COURT.

manor of — } A general court baron of *A. Z.* lord, &c.
 county of — } [See this form, *ante*, p. (23).]

rd proclamation on the death of G. H., and precept to seise.)

At this court the third proclamation is made for any person or persons claiming title to the customary or copyhold hereditaments within and holden of this manor, whereof *G. H.* (whose death presented at a general court held the — day of —), died seised, came into court and be admitted, and because no person claims to the title and to be admitted to the same hereditaments, a precept is made and issued to *W. Y.*, the bailiff of this manor, to seise the customary or copyhold hereditaments into the hands of the lord of this manor, until some person or persons shall appear and establish their right to be admitted to the vacant tenancy (*a*).

At the succeeding general court a minute must be entered of the precept made by the bailiff, of his having seised the estate as commanded by the precept].

nowledgment by M. N. of payment and satisfaction of monies secured by the conditional surrender of K. L.)

At this court comes *M. N.* of &c., and acknowledges to have received of *K. L.* of &c., on the — day of — now last past (*b*), the sum of £ — — —, being the full amount of all principal and interest monies secured to him the said *M. N.*, by and under a conditional surrender, of certain customary or copyhold hereditaments, lying within and holden of this manor, made by the said *K. L.* to the use of the said *M. N.* and his heirs, at the last general court, and under the said surrender the said *M. N.* was admitted at the same court; and the said *M. N.* therefore prays that the said steward will enter his ac-

But if the custom allows of an *ab-* surrender was strictly performed, and in
 seisure, this entry must be altered that case the surrenderor might re-enter
 accordingly. *Ante*, pt. 1, p. 352, et seq. without new admittance. *Ante*, pt. 1,
 This I have supposed to be the pp. 241, 363, 411. See a similar entry
 which the money was made pay- where the condition was forfeited, *ante*,
 to that the condition of the sur- p. (29).

knowledge of satisfaction of the aforesaid principal and monies on the court rolls of this manor: *Whereupon* satisfaction entered by the said steward accordingly.

(*Acknowledgment of satisfaction of monies secured by the conditional surrender of P. Q. to R. S., deceased; and Re-surrender from the heir of R. S. to P. Q., and his admittance.*)

(3. a). At this court comes *A. B.* of &c., sole acting executor last will and testament of *R. S.* of &c., and acknowledges to have received of and from *P. Q.* of &c., all principal and interest monies secured and made payable under and by virtue of a conditional surrender, of certain customary or copyhold hereditaments, lying and holden of this manor, made by the said *P. Q.* to the use of the said *R. S.*, and his heirs, at a general court held for this manor on the — day of — [or made &c. and inrolled at the last general court, as the case may be], and under which surrender the said *P. Q.* was admitted at the same court; and the said *A. B.* therefore acknowledges that the said steward will enter his acknowledgment of satisfaction of the aforesaid principal and interest monies on the court rolls of this manor: *Whereupon* satisfaction is entered by the said steward accordingly (a).

(3. b). And afterwards at this court comes *C. S.* of &c. eldest son and heir, according to the custom of this manor, of the said *R. S.* deceased, and in consideration of the payment and satisfaction in money of the aforesaid, of the principal and interest monies secured by the said conditional surrender, in open court, surrenders into the hands of the steward of this manor, by the hands and acceptance of the said steward, the said *C. S.* rod, according to the custom of this manor, All, &c. with the appurtenances, to which said hereditaments and premises, the said *R. S.* was admitted at the last general court held for this manor, under and by virtue of the aforesaid conditional surrender; and the reversion, and all the estate, &c. to the use of the said *P. Q.*, his heirs and assigns for ever, according to the custom of this manor.

(a) The money not being paid in this case at the time it became due, a re-surrender from the heir of the mortgagee would be necessary, which follows, with the re-admittance of the mortgagor.

Ante, pt. 1, pp. 241, 405.

For the mode of entering satisfaction upon the court-rolls, under this a preceding acknowledgment, see *ante* (29), (30).

). Now at this court comes the said *P. Q.*, &c. [then *P. Q.* is e-admitted].

ment of the death of *L. O.*, and first proclamation; present of his will; and admittance of *T. C.* and *W. B.* his devisees (trust.)

). At this court the homage present the death of *L. O.*, late the customary tenants of this manor, and thereupon proclaimed for any person or persons claiming title to the customary hold hereditaments, lying within and holden of this manor, of the said *L. O.* died seised, to come into court and be d.

). And afterwards at this court the homage present that the *O.*, in and by his last will and testament in writing, bearing the — day of — (the probate whereof is produced in gave and devised all his customary or copyhold hereditaments, &c. within this manor, unto his friends *T. C.* and *W. B.* and theirs, upon and for such trusts, intents, and purposes, as in the all are expressed (a).

. Now at this court come the said *T. C.* and *W. B.* and pray admitted to the customary or copyhold hereditaments, within this so devised to them as aforesaid, upon and for the trusts, intents purposes expressed concerning the same, by the said will of the *O.* deceased, to wit, to All, &c. with the appurtenances, and to same hereditaments and premises, the said *L. O.* was admitted special court holden for this manor, on the — day of — : h said *T. C.* and *W. B.* the lord of this manor, by the said grants seisin thereof by the rod, *to have and to hold* all and the said — — hereditaments and premises, with their appurtenances, unto the said *T. C.* and *W. B.*, and their heirs, upon and trusts, intents, and purposes expressed and declared concerning the same, in and by the said will of the said *L. O.* deceased, to be of the lord, by copy of court roll, at the will of the lord, accord-

when the trusts are very long, of contingent nature, it may be deemed to admit the trustees, with a reference to the will, leaving the trusts to be presented and re-

corded, together with the eventual circumstances calling for a surrender on the part of the trustees. *Ante*, pt. 1, p. 481 et seq.

ing to the custom of this manor, by fealty, suit of court, and the annual rent or rents, and other duties and services therefore due of right accustomed, and so (saving the right of the lord), the *T. C.* and *W. B.* are admitted tenants thereof, in manner and form aforesaid, and pay to the lord for a fine on such their admittance the sum of £ — — —, of the lord's favour (*a*), and their fealty is respited.

(Presentment of the death of M. R., and first proclamation; presentment of her will, and admittance of A. B. the devisee for life)

(5. *a*). At this court the homage present the death of *M. R.* late one of the customary tenants of this manor, and thereupon proclamation is made for any person or persons claiming title to the customary or copyhold hereditaments, lying within and holden of this manor, whereof the said *M. R.* died seised, to come into court and be admitted.

(5. *b*). And afterwards at this court the homage present, the said *M. R.* in and by her last will and testament in writing, bearing date, &c. (the probate whereof is produced in court), gave and assigned, &c. lying within and holden of this manor, unto *A. B.* his assigns, for the term of his life, with such remainders over, as in the said will are expressed.

(5. *c*). Now at this court comes the said *A. B.*, and prays to be admitted to the customary or copyhold hereditaments, lying within and holden of this manor, so devised to him for his life as aforesaid, with such remainders over as in the said will of the said *M. R.* died are mentioned, to wit, to All, &c. with the appurtenances, and to the same premises the said *M. R.* was admitted at the last general view of the holden for this manor; to which said *A. B.*, the lord of this manor, by the said steward, grants seisin thereof by the rod, *to have and to hold* the said — — — hereditaments and premises, with their appurtenances, unto the said *A. B.* and his assigns, for the term of

(*a*) I have here supposed the fine to be arbitrary.—To prevent its being considered a fine certain, the amount should be varied from that which was paid by *L. O.* on his admittance, *Ante*, pt. 1, pp. 403, 423 et seq. And the admit-

tance being of two persons tenants, the lord would be inclined to a larger fine than he could have exacted if there had been only one tenant. *Ante*, pt. 1, p. 398, et seq.

with such remainders over, as in the said will of the said *M. R.* expressed, and according to the purport and true meaning of the will, to be holden of the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, the ancient annual rent or rents, and other duties and services before due, and of right accustomed, and so (saving the right of the said *A. B.* is admitted tenant thereof in manner aforesaid, he pays to the lord for a fine on such his admittance, the sum of — —, (a) of the lord's favour, and his fealty is respited.

Admittance of B. B. an infant, as heir of A. B. ; and appointment of guardian.)

a). At this court, after the first proclamation having been made at the last general court held for this manor, for any person or persons claiming title to the customary or copyhold hereditaments, lying within the manor of this manor, whereof *A. B.* then lately died seised, to come into court and be admitted, comes *B. B.* an infant of the age of — years or thereabouts, eldest son and heir, according to the custom of this manor, of the said *A. B.* deceased, and prays to be admitted to the said hereditaments, to wit, to All, &c. with the appurtenances, to the said —, &c. [admittance to follow in the ordinary form: and then an appointment of guardian, (if such be the custom of the manor,) (b)]

b). And because of the infancy of the said *B. B.*, the lord of this manor, by the said steward, doth grant and commit the wardship of the customary or copyhold — — hereditaments and premises, to which the said *B. B.* hath been so admitted as aforesaid, unto *C. D.* his next heir, to whom the same hereditaments and premises cannot descend, until the said *B. B.* shall attain his full age, according to the custom of this manor, he the said *C. D.* answering such services as are or ought to be performed by him, as such guardian as aforesaid, according to the custom of this manor, and rendering a full and just account when required unto required.

As the admittance of a tenant for life, and the admittance of all in remainder, the same is to be assessed accordingly.

Ante, pt. 1, pp. 362, 405.

(b) *Ante*, pt. 1, pp. 66, 471.

(Revocation of guardianship assigned by the lord.)

(7). Because the aforesaid *C. D.* did not perform the condition which the said custody was granted as aforesaid, but contrary trust reposed in him, the said *C. D.* (the infant) and his custodians lands ill-treated; and abused his power in that behalf committed. Wherefore the custody or wardship of the said infant, and of his customary or copyhold tenements, heretofore committed to the said *C. D.* as aforesaid, is accordingly by the lord of this manor revoked, and all intents and purposes utterly and absolutely annulled (*a*).

(Admittance of E. D. widow, to the tenements assigned to her free-bench.)

(8). At this court, after a second proclamation made at the general court held for this manor, for any person or persons claiming title to the customary or copyhold hereditaments, lying with the holden of this manor, whereof *C. D.* then lately died seised, to come into court and be admitted, comes *E. D.* the widow of the said *C. D.* and prays to be admitted for the term of her life, according to the custom of this manor, to the hereditaments hereinafter described, such part of the customary or copyhold hereditaments, holden of this manor, and of which the said *C. D.* so died seised, as hath been assigned for the customary dower of her the said *E. D.* by *F. D.* the elder and heir, according to the custom of this manor, of the said *C. D.* deceased (*b*), to wit, to All, &c. with the appurtenances, and to the same premises (*together with other hereditaments*) the said *E. D.* was admitted at a general court held for this manor, on the day of ———, to which said *E. D.* the lord of this manor by the steward, grants seisin thereof by the rod, to have and to hold the ——— hereditaments and premises, with the appurtenances to the said *E. D.* and her assigns for her life, to be holden of the lord by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and the ancient annual

(*a*) 2 Watk. on Cop. 108.

(*b*) Entry and admittance seem to be necessary, when the dower is, as here supposed, of a portion of the land, and

not of a portion of the interest in the land. *Ante*, pt. 1, pp. 95, 96. And see particularly *Chapman v. 2 Sho.* 184.

and other duties and services therefore due, and of right accus-
ed, and so (saving the right of the lord) the said *E. D.* is admitted
thereof in manor and form aforesaid, and pays to the lord for a
year such her admittance, the sum of £ — — —, of the lord's fa-
vour, and her fealty is respited.

*This form will also serve, with little variation, for the admittance
of a widow, tenant by the curtesy of a portion only of the
husband's land; see references in n. (b) ante, p. (74).]*

Admittance of F. D. as heir of C. D., subject to free-bench.)

At this court, after a second proclamation made at the last
court, held for this manor, for any person or persons claiming
the customary or copyhold hereditaments, lying within and
of this manor, whereof *C. D.* then lately died seised, to come
to court and be admitted, comes *F. D.* the eldest son and heir, ac-
cording to the custom of this manor, of the said *C. D.*, and prays to
be admitted to the same hereditaments, as tenant in fee simple, accord-
ing to the custom of this manor, subject to the customary dower, or
free-bench, of *E. D.* the widow of the said *C. D.*, and to which she
has been admitted at this same court, to wit, to All, &c. with the ap-
purtenances, to which said *F. D.* the lord of this manor, by the said
court, grants seisin thereof by the rod, *to have and to hold* the said
hereditaments or copyhold — — — hereditaments and premises, with
all appurtenances, unto the said *F. D.* and his heirs, (subject never-
theless to such customary widow's estate, dower or free-bench, as
aforesaid,) to be holden of the lord, by copy of court roll, at the will of
the lord, according to the custom of this manor, by fealty, &c. and so
(saving the right of the lord) the said *F. D.* is admitted tenant thereof
in manor and form aforesaid, and pays to the lord for a fine on such
her admittance, the sum of £ — — —, of the lord's favour, and his
fealty is respited.

*Surrender and release of free-bench, by J. H. widow of G. H. to
L. H. the customary heir.)*

At this court comes *J. H.* widow of *G. H.*, late one of the
natural tenants of this manor, and in consideration of the natural

love and affection which she hath and beareth for *L. H.* eldest the said *G. H.* deceased, by her the said *J. H.*, in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, and doth also remise, release, and for ever quiet the customary dower, widow's estate, or free-bench, right, title, or interest whatsoever, of her the said *J. H.* in, to, or out of All, which same premises the said *L. H.* was admitted as the customary heir of the said *G. H.*, subject to the said dower, widow's estate, or free-bench of her the said *J. H.* (a), at a general court held for this manor, on the — day of —, To the use of the said *L. H.* and his heirs, according to the custom of this manor, to the end and effect that the said *L. H.* and his heirs, may henceforth have, hold, enjoy, and enjoy all and singular the hereditaments and premises hereinafter described, freed and discharged of and from the customary dower, widow's estate, or free-bench of her the said *J. H.*, in, to, or out of the same premises, or any part thereof, and of and from all actions, claims, and demands, in respect thereof, or in any wise made thereunto.

[*This form will serve, with very little variation, for a release of the husband, of his estate by the customary curtesy, when admittance is unnecessary.*]

(*Surrender and release of equity of redemption, by A. B. to C. D. and his admittance.*)

(11. a). At this court comes *A. B.*, one of the customary tenants of this manor, and in consideration of the sum of £ — —, to the hand well and truly paid by *C. D.* of &c., in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, and doth also remise and release, All, &c. with the appurtenances which same hereditaments and premises were, at a general court holden for this manor, on the — day of —, duly surrendered by the said *A. B.* to the use of the said *C. D.* and his heirs, subject to a condition for avoiding the said surrender, on payment to the

(a) The wife is here supposed to be before unnecessary. See the release of the dower of a portion only of the interest in the land, and her admittance there-

his executors, administrators, or assigns, of the sum of £ — — — lawful interest for the same, at the time therein mentioned, and past, and by virtue of which same conditional surrender, the sum — — — is now due and owing to the said *C. D.* from the said *A.* and the reversion and reversions, remainder and remainders, issues, and profits thereof; and all the estate, right, title, interest, and benefit, property, claim, and demand whatsoever, of the said *A. B.* in, to, or out of the same premises, and every part thereof, to the use of the said *C. D.*, his heirs and assigns for ever, according to the custom of this manor.

1. *b.*) Now at this court comes the said *C. D.* and prays to be admitted to the said customary or copyhold hereditaments and premises, surrendered and released to his use, at this court as aforesaid, to the said *C. D.*, &c. [*admittance of C. D. to follow in the usual form.*] (*a.*)

Surrender and release of right from G. G. and F. his wife, to H. H. the tenant.)

2.) At this court come *G. G.* of, &c. and *F. G.* his wife, she the said *F. G.* claiming to be intitled to the fee simple and inheritance, according to the custom of this manor, of and in the hereditaments hereinafter described, and in consideration of the sum of £ — — —, of lawful money, paid to them in hand well and truly paid by *H. H.*, the present tenant of the same hereditaments, and the said *F. G.* being first examined by the said steward, separately and apart from her said husband, and she the said *F. G.* fully and voluntarily consenting thereto (*b.*), in open court, surrender the same hereditaments, by the hands and acceptance of the said steward, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, and she the said *F. G.* also do respectively remise and release, All, &c. with the appurtenances, to which same premises the said *H. H.* was admitted, at a certain court holden for this manor, on the — — — day of — — —; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, trust, benefit, property, claim, and demand whatsoever, of the said *G. G.* and *F. G.* his wife, or either of them, in, to, or out of the same premises, and

3.) And as *C. D.* was not admitted to the conditional surrender, a fine of course be payable upon this

admittance. *Ante*, pt. 1, pp. 172, 383, 411.

(*b.*) *Ante*, pt. 1, p. 243.

every part thereof, to the use of the said *H. H.* his heirs and for ever, according to the custom of this manor (*a*).

(Presentment of bargain and sale of the copyhold lands of a bankrupt by one of the commissioners, to a purchaser; and of a surrender by the bankrupt, under the authority contained in that deed, and admittance of the purchaser; and his surrender to will)

At this court the homage find and present, that by an indenture of bargain and sale, bearing date the — day of —, and made between *A. B.*, esquire, (one of the commissioners named in the bankruptcy thereafter mentioned to have been then lately issued by *C. D.*, of, &c.,) of the first part; *E. F.*, of, &c., and *G. H.*, of, &c. (assignees chosen as thereafter mentioned of the estate and effects of the said *C. D.*) of the second part; the said *C. D.*, of, &c., of the third part; and *I. K.*, of, &c., of the fourth part; reciting that at a customary court baron holden for this manor, on the — day of —, the said *C. D.* was admitted on the surrender of the said *L. M.*, of, &c., [or as the customary heir of, &c., as the case may be,] to all and singular the copyhold hereditaments therein described, with their appurtenances, to hold to him the said *A. B.* and his heirs, according to the custom of this manor; and reciting that a fiat of bankruptcy was on the — day of — issued against the said *C. D.*, directed to the said *A. B.*, and other the commissioners of the court of bankruptcy, established by an act of parliament in the first and second years of the reign of his present Majesty William the Fourth, intituled “An Act to establish a court of bankruptcy,” under which the said *C. D.* was adjudged to have become bankrupt. And also reciting that the said *E. F.* and *G. H.* were since duly chosen and appointed by the creditors of the said *C. D.* to be the assignees of his estate and effects. And after further reciting that the said *A. B.*, pursuant to the powers created by and under an act of parliament passed in the sixth year of the reign of his late Majesty King George the Fourth, and the act of parliament therein before referred unto, or one of them, caused the said copyhold hereditaments thereafter described, and the customary fee simple and annuity thereon, and the right of redemption thereof, and the right of purchase thereof, in possession, to be put up to sale by public auction.

(*a*) An admittance would not be necessary in this case. *Ante*, pt. 1. pp. 241 et seq., 381, 416.

on the — day of —; and that at such sale the said *I. K.*
 was declared to be the highest bidder for and purchaser
 of the said hereditaments, at or for the price or sum of £— — —.
 Witnessed that for carrying the said sale and purchase into
 effect and in consideration of the said sum of £— — —, of lawful
 value of the united kingdom of Great Britain and Ireland, current in
 the year —, unto the said *E. F.* and *G. H.*, assignees as aforesaid, with
 their own consent and approbation of the said *A. B.*, and also of the said
C. D. (testified as therein mentioned,) in hand paid by the said *I. K.*
 the sum of — of the execution thereof, and for the nominal consideration
 therein expressed. The said *A. B.*, in further pursuance and execution
 of the powers vested in him as aforesaid, did, as far as he lawfully
 might, bargain and sell, limit and appoint, convey and assure:
 unto the said *E. F.* and *G. H.*, and also the said *C. D.*, did re-
 ceive and bargain and sell, remise, release and confirm unto the said
E. F. and *G. H.*, his heirs and assigns, All, &c., together with all ways, &c., and
 appurtenances whatsoever, to the said hereditaments and premises
 therein expressed, or in anywise appertaining; and the reversion and rever-
 sion, remainder and remainders, rents, issues and profits thereof; to hold
 unto the said *E. F.* and *G. H.*, their heirs and assigns, the customary or copyhold — — hereditaments and premises,
 and or intended to be thereby bargained and sold, limited and
 assured, or otherwise assured, with the appurtenances thereof, unto
 the use of the said *I. K.*, his heirs and assigns for ever, but
 nevertheless according to the custom of this manor, and subject to the
 customs, suits and services payable and to be performed in re-
 spect to the same premises, to the lord or lady, lords or ladies of this
 manor for the time being. And the said *A. B.*, in further pursuance
 and execution of the powers given to him by the said fiat and the said
C. D., respectively, or one of them, did thereby entitle and authorise
 the said *C. D.*, on behalf of him the said *A. B.*, to surrender all and
 the whole of the customary or copyhold — — — hereditaments
 and premises thereinbefore described, with their appurtenances, ac-
 cording to the custom of this manor, so and in such manner, and to the
 said *E. F.* and *G. H.*, and unto the said *C. D.*, and unto the said
 end purpose that the said *I. K.* might be admitted thereto as
 purchaser thereof as aforesaid, he the said *I. K.* previously agree-
 d to compound with the lord or lady, lords or ladies of this
 manor for the fines, dues and other services payable and performable
 according to the custom thereof. And the homage also find and present that
 on the — day of —, the said *C. D.* came before the said steward,
 and in compliance with the said authority and di-
 rection in that behalf mentioned and contained in the said indenture

of bargain and sale, and for the purpose of dispossessing himself of his customary right, title or interest then vested in him, of, in or to the hereditaments therein after described, and for the considerations expressed in the same indenture of bargain and sale, did out of court surrender the same into the hands of the lord of this manor, by the hands and according to the command of the said steward by the rod, according to the custom of this manor. All and singular the said customary or copyhold — — — hereditaments and premises comprised in the said indenture of bargain and sale, and hereinbefore described, with their appurtenances; reversions and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, benefit, claim and demand whatsoever of the said *C. D.*, in, to or out of the same hereditaments and premises, and every part thereof, to the said *I. K.*, his heirs and assigns for ever, according to the custom of this manor.

Now at this court comes the said *I. K.* and prays to be admitted to the said customary or copyhold hereditaments and premises so surrendered to his use by the said *C. D.* as aforesaid, (and to which premises the said *C. D.* was admitted at a court holden for this manor on the — day of —,) to which said *I. K.*, the lord of this manor, by the said steward, grants seisin thereof by the rod, *and to hold* the said — — — hereditaments and premises with their appurtenances, unto the said *I. K.* and his heirs and assigns holden of the lord, by copy of court-roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and sufficient annual rent or rents and other duties and services thereof and of right accustomed, and so (saving the right of the lord) the said *I. K.* is admitted tenant thereof, and pays to the lord for such his admittance the sum of £— — —, and his fealty is received. [Then will follow a surrender by *I. K.* to the uses of his will, ante, p. (25).]

(Presentment of surrender of the copyhold lands of an insolvent debtor, by the assignee appointed by the court, to a purchaser, and his admittance, and surrender to will.)

At this court the homage find and present, that by an indenture bearing date the — day of —, and made between [See this precedent (taken from the form of conveyance in the schedule to the act of 1852, c. 38) in the precedent of the surrender, post]. And the homage find and present that the said conveyance and assignment from the said assignee to the said *E. F.* hath been duly entered on the

of this manor, pursuant to the provision and direction in that behalf made and contained in an act of parliament passed in the seventh year of the reign of his late Majesty King George the Fourth, intituled "An Act to amend and consolidate the laws for the relief of insolvent debtors in England." And they also find and present that the said *E. F.*, in pursuance of and obedience to an order of the said court for relief of insolvent debtors, caused the said customary or copyhold hereditaments to be put up to sale at, &c., on the — day of — last, and that at such sale *G. H.*, of, &c., was declared to be the highest bidder for and purchaser of the same hereditaments, and the customary fee simple and inheritance thereof, at or for the price or sum of £——. And they also find and present that on the — day of —, the said *E. F.* came before the said steward, and by virtue and in execution of the trust or power reposed in him in that behalf, by and under the said act of parliament passed in the seventh year of the reign of the said late Majesty, and in further pursuance of and obedience to the said order of the said court for relief of insolvent debtors, and in consideration of the sum of £—— of lawful money, &c., to him by the said *E. F.*, as such assignee as aforesaid, in hand well and truly delivered by the said *G. H.*, at the time of making the same surrender, did the said *E. F.* of court surrender into the hands of the lord of this manor, by the said steward, and acceptance of the said steward, by the rod, according to the custom of this manor, All, &c., with the appurtenances, to the same hereditaments belonging or appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the right, title, interest, benefit, power, claim and demand whatsoever, of the said *E. F.*, in, to, or out of the said hereditaments and appurtenances, and every part thereof, to the use of the said *G. H.*, his heirs and assigns for ever, according to the custom of this manor.

Now at this court comes the said *G. H.*, and prays to be admitted to have and to hold the said customary or copyhold — — hereditaments and appurtenances, with their appurtenances, so surrendered to his use as aforesaid (and to which same premises the said *A. B.* was admitted at a certain time to holden for this manor, on the — day of —,) to which premises the said *G. H.*, the lord of this manor, by the said steward, grants seisin of the said premises by the rod, *to have and to hold* the said — — hereditaments and premises, with their appurtenances, unto the said *G. H.*, his heirs, to be holden of the lord, by copy of court-roll, at the will of the lord, according to the custom of this manor, by fealty, suit and service, and the ancient annual rent or rents, and other duties and

services therefore due and of right accustomed; and so (save the right of the lord) the said *G. H.* is admitted tenant thereof, and to the lord for a fine on such his admittance, the sum of £— and his fealty is respited. [Then will follow a surrender by *G.* to the uses of his will, see ante, p. (25).]

(Bailiff's return to precept of recognition in plaint of right between A. demandant, C. tenant; Trial and Verdict.)

At this court *W. Y.*, the bailiff of this manor, returns, that by virtue of the precept to him issued at the last general court holden at this manor, he hath impannelled twelve good and lawful men, copyholders and tenants of this manor, to appear and make recognition of the right joined between *C.* and *A.* as by the said precept he was commanded, and which panel here followeth to wit.

E. F., foreman.	} sworn. {	R. S.
G. H.		T. V.
I. K.		W. Y.
L. M.		B. D.
N. O.		F. E.
P. Q.		H. G.

Who being sworn to say the truth, whether the said *C.* hath more right to hold the tenements, which the said *A.* hath demanded again of him by his customary writ of right, as he the said *C.* now holds the same, than the said *A.* to have them as he demandeth, and on no account but the truth; and having heard and impartially considered the evidence, as well on the behalf of the said *C.* the tenant, as of the behalf of the demandant, have found their verdict for the said *C.* the tenant. Therefore it is considered by the court that the said *C.* do hold the tenements aforesaid, with the appurtenances, to him the said *C.* and his heirs for ever, according to the custom of this manor, quit of the said *A.* and his heirs for ever.

[Should C. the tenant have made default at the last court, and not appeared at this court, by D. his attorney, the entry may be made for the lord.]

At this court *W. Y.*, the bailiff of this manor, returns, that by virtue of the precept to him issued at the last general court holden at this manor, he hath impannelled twelve good and lawful men, copyholders and tenants of this manor, to appear and make recognition of the right joined between *C.* and *A.* as by the said precept he was commanded, and which panel here followeth to wit.

manor, he did take into the hands of the lord of this manor, by view of *R. S.* and *T. W.*, good and lawful men, copyhold tenants of this manor, the messuages, lands, tenements, and hereditaments, and the appurtenances, which *A.* in his plaint against *C.* at a general court holden for this manor, on the — day of —, claims as his own and inheritance, according to the custom of this manor; and that to the pursuance of the aforesaid precept, he did duly summon the said *C.* to appear at this court, to answer to the said plaint, and why, and he the said *W. Y.* was commanded.

And now at this court the said *C.* appears by *D.* his attorney, lawfully constituted by virtue of a certain instrument in writing, bearing date the — day of —, and also by *J. P.* esquire, his counsel learned in the law, and is ready to answer to the said plaint, and the said *A.* by *H. B.*, esquire, his counsel learned in the law, comes and answers and releases to the aforesaid *C.* his default, which he made at the said general court, held here on the — day of — (*a*).

And afterwards the said *A.* in his own proper person demands, &c. *and will follow the count, plea, and mise, and award of precept and cognition, in the form given ante, p. (67-8).]*

Suppose *A.* not to have been admitted as the heir of his grand-uncle *B. B.*, probably *C.* would be admitted in the following plea in abatement.

in abatement. And at this court the said *C.* by *G. K.* gentleman, his attorney lawfully constituted by virtue of a certain instrument in writing, bearing date the — day of — now last past, and also by *J. P.* Esquire, his counsel learned in the law; and as to the said *A.*, entered at a general court baron held for this manor on the — day of —, the said *C.* demands that the said *A.* ought not to be admitted in his said plaint, because he claims that the said *A.* was not at the time of making his said plaint a customary copyhold tenant of this manor, as admitted upon the court-rolls of this manor to any customary or copyhold tenant within this manor. And this

he the said *C.* is ready to verify when, where, and as the court shall award, whereupon he prays judgment if the said *A.* ought to be answered to his said plaint, &c.

Time to answer. And now at this court comes the said *A.* by *H. B.* his counsel learned in the law, and prays time to answer, &c. to the plea aforesaid, until the next general court baron to be holden here for this manor, on the — the — day of — next, at ten o'clock in the forenoon, and he hath taken this time, &c. And the same day is given to the said *C.* here, &c. [*Under the pleadings here supposed, the first act at the next court would be the admittance of A. as the grandson and customary heir of B. B., (see ante, pp. (13), (39)). And then it may be presumed that C. would withdraw his plea in abatement, and the entry would be thus :]*

Inrolment of a grant of lands escheated or forfeited) (a).

Manor of ——— } Be it remembered that on the — day of
 county of ——— } ———, in the — year of, &c. and in the
 our Lord —, A. Z. lord of this manor, of his special grace
 our, did out of court give and grant seisin by the rod, according
 custom of this manor, unto A. B. of, &c. of All, &c. with
 appurtenances, which same hereditaments and premises [*here
 whether the copyhold interest vested in the lord by escheat or
 forfeiture, and by what means,*] to hold the said — — heredita-
 ments and premises, with the appurtenances, unto the said A. B. and
 his heirs, to be holden of the lord, by copy of court roll, at the will of
 the lord, according to the custom of this manor, by fealty, suit of
 court, and the ancient annual rent or rents, and other duties and ser-
 vices therefore due, and of right accustomed, and so (saving the right
 of the lord) the said A. B. was admitted tenant thereof, and paid to
 the lord for a fine, on such his admittance, the sum of £ — —, of
 the lord's favour, and his fealty was respited.

Examined by me,

J. S., steward.

(Inrolment of a license to demise.)

Manor of ——— } Be it remembered that on the — day of
 county of ——— } ———, in the year of our Lord —, the
 lord of this manor did out of court give and grant to A. B. one of the
 copy tenants of this manor, full license, power, and authority to
 demise and lease to any person or persons willing to take the same,
 and to the said A. B., but not by way of mortgage, and to the
 heirs, administrators, and assigns of such person or persons,
 with the appurtenances, to which same premises the said
 A. B. was admitted at a general court held for this manor on the
 day of ———, to hold for any term or number of years not ex-
 ceeding — years, computed from the — day of ———, saving
 to the lord of this manor, and to all and every the lord and
 lords and ladies of this manor for the time being, all and all
 manner of fines, heriots, rents, customs, and services therefore due and
 to be paid.

Grants of this nature should be immediately previous to the entry of the then
 according to their dates, immediately preceding court.

of right accustomed ; and for the said license the said *A. B.* pay
 fine the sum of £— — —, *according to the custom of this*
 [When the custom has not fixed the fine, the words in *italics*
 omitted.] (a).

Examined by me,
 J. S., s^r

(Inrolment of Deed of Enfranchisement, A. Z. to C. D.)

[Vide the precedent of deed, post. 'Copyhold Assurances.']

*(Inrolment of Deed of Enfranchisement under a power in t^r
 riage settlement of, &c.)*

[Vide the precedent of deed, post. 'Copyhold Assurances.']

*(Entry of conveyance and assignment by the provisional ass^r
 A. B., an insolvent debtor, to the assignee appointed
 court.) (b).*

[Vide the precedent of deed, referred to in surrender from
 assignee appointed by the court, to a purchaser, post. 'Copyh^o
 assurances.']

*(Entry of deed of consent by A. B., protector of a settlemeⁿ
 &c.)*

[Vide the precedent of deed, post. 'Copyhold Assurances.']

*(Entry of deed of disposition by A. B. to bar an equitable
 tail.)*

[Vide the precedent of deed, post. 'Copyhold Assurances.']

(a) Any other licenses (operating as a dispensation of acts of forfeiture) granted subsequently to the then last general court, should be inrolled in the same manner.
 (b) *Ante*, p. (22). Pt. 1, p.

(Further Precedents of Court Rolls.)

te. In the succeeding court the copyholds are supposed to be for lives, subject to a heriot on death.]

FOURTH COURT.

the manor of — } A general court baron of, &c. [For
county of — } this form see *ante*, p. (23).]

itary Grant to A. B., and to C. D. and E. F., his nominees.) (a).

At this court comes *A. B.*, of, &c., and takes of the lord the manor, by delivery of seisin by the said steward, by the rod, according to the custom of this manor, All, &c., [here state whether the manor fell into the hands of the lord by determination of a former copyholder, or escheat, or forfeiture,] *to have and to hold* the said — hereditaments and premises, with the appurtenances, unto the said *A. B.*, now aged — years or thereabouts; *C. D.*, of, &c., now aged — years or thereabouts; and *E. F.*, of, &c., now aged — years or thereabouts, for the term of their lives and the life of the survivor of them, *successively*, to be holden of the lord, by copy of tenancy, at the will of the lord, according to the custom of this manor, with suit of court, heriot when it shall happen, and the ancient rents or rents, and other duties and services therefore due and to be paid as accustomed; and so (saving the right of the lord) the said *A. B.* is admitted tenant thereof, and pays to the lord for a fine, for the term and interest so granted as aforesaid, the sum of £——, the said fine be certain, say “and he pays to the lord for the estate and interest so granted as aforesaid, a fine certain of £— —” (*b*);] and the said tenancy is respited.

It is here supposed *A. B.* to be the copyholder for three lives, of land which has fallen into hand, either by determination of a former copy, or by escheat or forfeiture.

(*b*) The steward is here reminded that the certainty of the fine is essential to a tenant right of renewal of copyholds for lives. *Ante*, pt. 1, p. 423, et seq.

(*Presentment of the death of C. D., and surrender by A. E. F., (the surviving lives,) in order to a renewal.*) (a)

(2. a). At this court the homage present that *C. D.*, the life named in a certain voluntary grant made of the tenements after described, at a court holden for this manor on the ———, departed this life since the last general court.

And afterwards at this court come *A. B.*, the first life named aforesaid voluntary grant, and *E. F.*, the third life named same grant, and in open court surrender into the hands of the lord of this manor, by the hands and acceptance of the said steward, with the rod, according to the custom of this manor, All, &c., with the tenancies thereof; and all the estate and interest of the said *A. B.* and *E. F.* respectively, therein or thereto, to the intent that the lord should re-grant the same premises to the said *A. B.* and *E. F.*, and to the said *A. B.* of, &c., now aged ——— years or thereabouts, for the term of their lives, and the life of the longest liver of them successively, according to the custom of this manor.

(2. b). To which said *A. B.*, *E. F.*, and *G. H.*, the lord of this manor, by the said steward, grants seisin thereof by the rod, and to hold the said ——— hereditaments and premises with the appurtenances, unto the said *A. B.*, *E. F.*, and *G. H.* for the term of their lives, and the life of the longest liver of them successively, to be holden of the lord, by copy of court-roll and the will of the lord, according to the custom of this manor, by fealty of court, heriot when it shall happen, and the ancient annual rents, and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *A. B.* admitted tenant thereof, and pays to the lord for a fine, and for the further estate and interest so granted, the sum of £——— (his fealty is respited).

(a) I have supposed this to be a surrender of the last mentioned copy, upon the death of *C. D.*, for the purpose of adding the life of *G. H.*, to the lives of

A. B. and *E. F.*

(b) In this precedent and the following, I have assumed that the tenant right of renewal.

ment of the death of A. B. (the first life), and proclamation for C. D. (the second life) to take admittance.) (a).

At this court the homage present that *A. B.*, late one of the ordinary tenants of this manor, of one messuage and — acres of land common of pasture for ———, died since the last general whereupon there accrued due to the lord of this manor a heriot best beast of the said *A. B.* at the time of his death; and that of, &c., is next in reversion for the term of his life, according to the custom of this manor. And at this court proclamation is made to the said *C. D.* to come in and be admitted to the said tenements, and he does not appear, therefore his default is recorded (*b*).

Admittance of C. D. (the second life); surrender by him and E. F. (the third life); and re-grant to G. H., a purchaser.)

(a). At this court comes *C. D.*, the life next in succession after the death of *A. B.*, whose death was presented at the last general court, and prays to be admitted under and by virtue of a grant made at a court holden at this manor on the — day of —, to the said *A. B.* and *C. D.*, and *E. F.*, of, &c. for the term of their lives and the life of the longest liver of them *successively*, to All, &c., with the appurtenances: and the said *C. D.*, the lord of this manor, by the said steward, grants the same hereof by the rod, *to have and to hold* the said — — — — — tenements and premises, with the appurtenances, unto the said *C. D.*, according to the form and effect of the aforesaid grant, to be held of the lord, by copy of court-roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when they shall happen, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *C. D.* is admitted tenant thereof, in and to the said tenements and form aforesaid, and his fealty is respited.

(b). And afterwards, at this court, come the said *C. D.* and *E. F.*, in consideration of the sum of £—— of lawful money, &c., to them in full and truly paid by *G. H.*, of, &c., in open court surrender into

have supposed that *A. B.*, *C.* (*b*) No copy of the roll would be necessary.
E. F. were equal purchasers, a full fine on the original grant.

the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor. All and singular the said customary or copyhold — — — hereditaments and premises, to which the said *C. D.* hath been so seized at this court as aforesaid; and all the estate and interest therein of the said *C. D.* and *E. F.* respectively therein or thereto, to the intent that the lord may re-grant the same premises to the said *G. H.*, his heirs, executors and administrators (*a*), for the term of the lives of the said *C. D.* and *E. F.*, and the life of the longest liver of them, according to the custom of this manor; to which said *G. H.*, the lord of this manor, the said steward, grants seisin thereof by the rod, to have and to hold unto the said *G. H.*, his heirs, executors and administrators, for the term of the lives of the said *C. D.* and *E. F.*, and the life of the longest liver of them, to be holden of the lord, by copy of court-roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and other duties and services therefore due and of right accustomed (saving the right of the lord) the said *G. H.* is admitted and received thereof, in manner and form aforesaid, and his fealty is respited.

(Surrender by the said G. H., and re-grant to him for the lives.) (b).

(5. *a*). At this court comes *G. H.*, of, &c., who holds the same copyhold hereditaments hereinafter described, for the term of the lives of *C. D.* and *E. F.*, and the life of the longest liver of them, and in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, All, &c., with the appurtenances, and all the estate and interest of the said *G. H.* therein or thereto, to the intent that the lord may re-grant the same premises to the said *I. K.*, of, &c., now aged — years or thereabouts, and *L.*

(*a*) It would be more regular to extend the grant to the executors and administrators of the purchaser, as special occupants, (*ante*, pt. 1, pp. 63-4, 415;) although the form here given presupposes a negotiation between *G. H.* the

purchaser, and the lord, for a new copy of the existing copy, and a re-grant for three new lives.

(*b*) I have here supposed that the lord wishes to exchange both the lives of *C. D.* and *E. F.* to add a third, and is the sole purchaser.

now aged — years or thereabouts, for the term of their lives, the life of the longest liver of them successively, according to the custom of this manor.

b). To which said *G. H.*, *I. K.*, and *L. M.*, the lord of this manor, by the said steward, grants seisin thereof by the rod, *to have and to hold* the said — — hereditaments and premises, with the appurtenances, unto the said *G. H.*, *I. K.*, and *L. M.*, for the term of their lives, and the life of the longest liver of them successively, to be holden of the lord, by copy of court-roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, and heriot when it shall happen, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed; and giving the right of the lord) the said *G. H.* is admitted tenant in fee simple, and pays to the lord for a fine, for the estate and interest so granted as aforesaid, the sum of £ — —, and his fealty is respited.

Respite of C. D. (the second life); surrender by him and E. F. (the third life), in order to fill up the copy.) (b).

c). At this court comes *C. D.* the life next in succession after the death of *A. B.*, whose death was presented at the last general court, and he is admitted tenant under and by virtue of a grant made by the lord holden for this manor, on the — day of —, to the said *A. B.* and *C. D.* and *E. F.* of, &c. for the term of their lives and the life of the longest liver of them successively, to All, &c. with the appurtenances: to which said *C. D.* the lord of this manor, by the said steward, grants seisin thereof, by the rod, *to have and to hold* the said — — hereditaments and premises, with the appurtenances, unto the said *C. D.*, according to the form and effect of the aforesaid grant, to be holden of the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall happen, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed, and so

although the custom should fix the fine in the lives in succession, yet the said *L. M.* would be trustees for *C. D.* *Ante*, pt. 1, p. 485, et seq.

It may be supposed here that *A. B.*

was the sole purchaser, and paid the full fine; and that the renewal-fine was paid by his devisee or personal representative. *Ante*, pt. 1, pp. 485-6.

(saving the right of the lord) the said *C. D.* is admitted tenant in manner and form aforesaid, and his fealty is respited.

(6. *b.*) And afterwards at this court come the said *C. D.* and *E. F.* and in open court surrender into the hands of the lord of this manor by the hands and acceptance of the said steward, by the rod, and to the custom of this manor, all and singular the said customs and copyhold — — hereditaments and premises, to which the said *C. D.* hath been so admitted at this court as aforesaid; and the whole estate and interest of the said *C. D.* and *E. F.* respectively thereto, *to the intent* that the lord may re-grant the same premises to the said *C. D.*, and *E. F.*, and *G. H.*, of, &c., now aged — — or thereabouts, for the term of their lives and the life of the longest liver of them *successively*, according to the custom of this manor.

(6. *c.*) To which said *C. D.*, *E. F.*, and *G. H.*, the lord of this manor, by the said steward, grants seisin thereof, by the rod; *and to hold* the said — — hereditaments and premises, with all appurtenances, unto the said *C. D.*, *E. F.*, and *G. H.*, for the term of their lives, and the life of the longest liver of them *successively* holden of the lord, by copy of court roll, at the will of the lord according to the custom of this manor, by fealty, suit of court, heriot, and other services which shall happen, and the ancient annual rent or rents, and other services and services therefore due and of right accustomed; and so (saving the right of the lord) the said *C. D.* is admitted tenant thereof, and pays to the lord for a fine, for the further estate and interest therein granted as aforesaid, the sum of £——, and his fealty is respited.

(Presentment of the death of C. D. (the second life), and so forth, by A. B. (the first life), in order to fill up the copy; and the lord's grant to A. B., and to E. F. and G. H., his nominees.) (a)

(7. *a.*) At this court the homage present that *C. D.* the second life named in a certain voluntary grant made of the tenements herebefore described at a court holden for this manor on the — — day of — — departed this life since the last general court.

And afterwards at this court comes *A. B.*, the first life named in the aforesaid voluntary grant, and in open court surrenders into the hands of the lord of this manor by the hands and acceptance of the said steward, by the rod, and to the custom of this manor, all and singular the said customs and copyhold — — hereditaments and premises, to which the said *C. D.* hath been so admitted at this court as aforesaid; and the whole estate and interest of the said *C. D.* thereto, *to the intent* that the lord may re-grant the same premises to the said *A. B.*, and *E. F.*, and *G. H.*, of, &c., now aged — — or thereabouts, for the term of their lives and the life of the longest liver of them *successively*, according to the custom of this manor.

(*a*) I have here supposed that *A. B.* surrendered the whole interest therein to the lord, and that he was the sole purchaser, and that by the custom of the manor, the first life may be granted to the lord, and he may re-grant the copy. *Ante*, pt. 1, p. 48.

the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, All, &c. with the appurtenances thereof; and all the estate and interest now subsisting under and by virtue of the aforesaid voluntary grant, *to the intent* that the lord may re-grant the same premises to the said *A. B.*, *E. F.*, (the third life named in the aforesaid voluntary grant,) and *G. H.*, of, &c. now aged — years, or thereabouts, for the term of their lives, and the life of the longest liver of them *successively*, according to the custom of this manor.

b. To which said *A. B.*, *E. F.*, and *G. H.*, the lord of this manor, by the said steward, grants seisin thereof, by the rod; *to have and to hold* the said — — hereditaments and premises, with the appurtenances, unto the said *A. B.*, *E. F.*, and *G. H.*, for the term of their lives, and the life of the longest liver of them *successively*, to be taken of the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall happen, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *A. B.* is admitted tenant thereof, and to the lord for a fine, for the further estate and interest so granted aforesaid, the sum of £——, and his fealty is respited.

Surrender by A. B. (the first life), and re-grant to the said A. B., C. D. (the second life), and G. H. his nominees.) (a).

a. At this court comes *A. B.*, the first life named in a certain voluntary grant made of the tenements hereinafter described, at a court taken for this manor on the — day of —, and in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, All, &c. with the appurtenances thereof; and all the estate and interest now subsisting under and by virtue of the aforesaid voluntary grant, *to the intent* that the lord may re-grant the same premises to the said *A. B.*, *C. D.*, (the second life named in the aforesaid voluntary grant,) and to *G. H.*, of, &c. now aged — years, or thereabouts, in substitution for the life of *E. F.*, named as the third life in such

I have here also supposed that by the custom the first life may surrender the copy.
was the sole purchaser, and that

former grant,) for the term of their lives, and the life of the liver of them, *successively*, according to the custom of this manor.

(8. *b*). To which said *A. B.*, *C. D.*, and *G. H.*, the lord of the manor, by the said steward, grants seisin thereof, by the rod, *and to hold* the said — — hereditaments and premises, with the appurtenances, unto the said *A. B.*, *C. D.*, and *G. H.*, for the term of their lives, and the life of the longest liver of them *successively*, as copyholden of the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall happen, and the ancient annual rent or rents, and other duties and services therefore due, and of right accustomed; and so (saving the right of the lord) the said *A. B.* is admitted tenant thereof, and pays to the lord for a fine, on such exchange of life as aforesaid, the sum of £——, and his fealty is respited.

(*Reversionary grant for three lives.*) (*a*).

(9). At this court come *A. H.* the only child of *G. H.* of, and which said *G. H.*, *I. K.*, of, &c. and *L. M.*, of, &c. hold the curtilage or copyhold hereditaments hereinafter described, for the term of their lives, and the life of the longest liver of them *successively*, and the lord of the manor takes of the lord of this manor, by the said steward, by the rod, according to the custom of this manor (*b*); the reversion of *A. B.* with the appurtenances, *to hold* the same unto the said *A. B.* now aged — years or thereabouts, *A. B.*, now aged — years or thereabouts, and *C. D.*, now aged — years or thereabouts, for the term of their lives, and the life of the longest liver of them *successively*, as copyholden of the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall happen, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *A. H.* is acknowledged to have taken such reversionary

(*a*) In the absence of any special custom, a grant in reversion operates as an admittance. *Roe & Loveless*. 2 Barn. and Ald. 453. *Ante*, pt. 1, pp. 378, n. (*b*), 556-7.

(*b*) Grants of this nature are not common, but may exist by special custom.

Ante, pt. 1, pp. 115, 116, 422.

The custom prevails in some copyhold manors usually granted to lessees for a term of years, and in such cases the copyholders have not a tenancy of renewal.

resaid, and he paid, as a fine for the same, the sum of
 —, and his fealty is respited until, &c.

*under by G. H., and re-grant to N. O., a mortgagee, and his
 admittance.)*

a). At this court comes *G. H.* who holds the customary or
 and hereditaments hereinafter described, for the term of the lives
 said *G. H.*, *I. K.*, of, &c. and *L. M.*, of, &c. and the life of the
 deliver of them *successively*, and in consideration of the sum of
 —, of lawful money, &c. to him the said *G. H.* in hand well and
 said by *N. O.* of, &c. in open court surrenders into the hands of the lord
 manor, by the hands and acceptance of the said steward, by the rod,
 according to the custom of this manor, All, &c. with the appurtenances;
 the estate and interest of the said *G. H.* therein or thereto, *to*
int that the lord may re-grant the same premises to the said
 his executors, administrators, and assigns, for the term of the
 the said *G. H.*, according to the custom of this manor, subject
 unless to and upon this express condition, that if the said *G. H.*,
 his executors, or administrators, do and shall well and truly pay,
 to be paid unto the said *N. O.*, his executors, administrators,
 assigns, the sum of £— — —, of lawful money aforesaid, on
 — day of —, with interest for the same, after the rate of
 — cent. per annum, computed from the date of this surrender,
 and all taxes and deductions whatsoever, (and being the same
 principal and interest monies as are mentioned to be secured by the
 indenture of the said *G. H.* contained in an indenture bearing even
 date with this surrender): Then the said *N. O.*, his executors, ad-
 ministrators, or assigns, shall forthwith, at the costs and charges of
 the said *G. H.*, re-surrender the said hereditaments and premises into
 the hands of the lord, to the intent that he will re-grant the same to
 the said *G. H.* for the term of his life.

b). To which said *N. O.* the lord of this manor, by the said
 steward grants seisin thereof by the rod, *to have and to hold* the said
 customary or copyhold hereditaments and premises, with the appur-
 tenances, unto the said *N. O.*, his executors, administrators, and as-
 signs, for the term of the life of the said *G. H.* subject nevertheless to
 the express condition aforesaid, to be holden of the lord, by
 the court roll, at the will of the lord, according to the custom of

this manor, by fealty, suit of court, heriot when it shall happen, the ancient annual rent or rents, and other duties and services before due and of right accustomed; and so (saving the right of the said *N. O.* is admitted tenant thereof, in manner and form as aforesaid, and pays to the lord for a fine, on such his admittance, of £— — —, and his fealty is respited (a).

(Conditional surrender by way of mortgage, from *A. B.* copyholder for three lives) to *G. H.*, and his admittance.)

(11. a). At this court comes *A. B.*, who holds the custody of the copyhold hereditaments hereinafter described, for the term of years of him the said *A. B.*, *C. D.*, of, &c. and *E. F.*, of, &c. and of the longest liver of them successively, and in consideration of a sum of £— — —, of lawful money, &c. to the said *A. B.* in hand and truly paid by *G. H.* of, &c., in open court surrenders the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, &c. with the appurtenances to the same premises belonging, or otherwise appertaining, to the intent that the lord may re-grant the said premises to the said *G. H.*, his executors, administrators, and assigns, for the term of the lives of the said *A. B.*, *C. D.*, and of the life of the longest liver of them, according to the custom of this manor, upon this condition nevertheless, that if the said *G. H.*, his heirs, executors, or administrators, do and shall v

(a) In this surrender I have presumed that *G. H.*, *I. K.*, and *L. M.*, were equal purchasers, so that *G. H.* could not give a security beyond his own life.

As the surrender to the lord operates as a merger of the copyhold interest, I submit that the mortgagee should always be admitted, when the mortgage is of a copyhold for lives, and the legal interest is made the subject of transfer:—it is true that the lord would be intitled to a heriot on the death of the mortgagee, *ante*, pt. 1, p. 447, but it is the same in mortgages of heriotable copyholds of inheritance, when the surrenderee is ad-

mitted.

And as the whole interest of the copyholder, and vests in a mortgage of copyholds for lives, the mortgagee would also submit, that a release in equity of redemption, is more than the subject of a common law release than of a surrender in the copyhold to the lord.

(b) I have here presumed that *G. H.* was the sole purchaser, and by the custom, as the first *cestuy que tient* in the copy, could destroy the copyhold estate created by it. *Ante*, p. (3)

estate created by it. *Ante*, p. (3)

pay, or cause to be paid, unto the said *G. H.*, his executors, administrators or assigns, the full sum of £ — — —, of lawful money said, with interest for the same, after the rate of 5*l.* per cent. per ann., computed from the date of this surrender, clear of all taxes and duties whatsoever, (and being the same principal and interest as are mentioned to be secured by the covenant of the said *G. H.* contained in an indenture bearing even date with this surrender,) the said *G. H.*, his executors, administrators, or assigns, forthwith, at the costs and charges of the said *A. B.*, his executors, administrators, or assigns, re-surrender the said hereditaments and premises, with the appurtenances, into the hands of the lord of the manor, to the intent that he will re-grant the same premises to the said *A. B.*, *C. D.*, and *E. F.*, for the term of their lives, and the life of the longest liver of them *successively*.

b. To which said *G. H.* the lord of this manor, by the said *G. H.*, grants seisin thereof by the rod, *to have and to hold* the said manor or copyhold hereditaments and premises, with the appurtenances, unto the said *G. H.*, his executors, administrators, and assigns, for the term of the lives of the said *A. B.*, *C. D.*, and *E. F.*, and the life of the longest liver of them, subject nevertheless to and upon express condition aforesaid, *to be holden* of the lord, by copy of right roll, at the will of the lord, according to the custom of this manor, with all fealty, suit of court, heriot, when it shall happen, and the ancient and accustomed rent or rents, and other duties and services therefore due and accustomed; and so (saving the right of the lord) the said *G. H.* admitted tenant thereof, in manner and form aforesaid, and pays to the lord for a fine, on such his admittance, the sum of £ — — —, and the fealty is respited.

Surrenderment of conditional surrender, by way of mortgage, from A. B. (a copyholder for three lives) to G. H.) (a).

2). At this court it is presented by the homage, that *A. B.*, who is the customary or copyhold hereditaments hereinafter described, for the term of the lives of him the said *A. B.*, *C. D.*, of, &c. and *E. F.*, of

I have here presumed that *A. B.* the sole purchaser, but had no power to destroy the legal estate of the *cestui que vies*; so that in case of

the admittance of the mortgagee, he would have an equitable lien only on the estate, after the death of *A. B.*

&c. and the life of the longest liver of them *successively*, on the day of ———, now last past, came before the said steward, consideration of the sum of £———, of lawful money, &c. by the said *A. B.* by *G. H.*, of, &c. did out of court surrender in the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, &c. with the appurtenances to the same premises belonging or pertaining; and all the estate, right, title, and interest, of the said ——— at law or in equity, in, to, or out of the same premises, and every part thereof, *to the use* of the said *G. H.*, his executors, administrators, assigns, for and during the natural lives of the said *A. B.*, *C. E. F.*, and the life of the longest liver of them *successively*, according to the custom of this manor, subject nevertheless to and upon express condition, that if the said *A. B.*, his heirs, executors, administrators, did and should well and truly pay, or cause to be paid to the said *G. H.* his executors, administrators, or assigns, the sum of £———, of lawful money aforesaid, on the ——— day of ——— with interest for the same after the rate of 5*l.* per cent. per annum computed from the date of the said surrender, clear of all taxes and deductions whatsoever, (and being the same principal and interest as are mentioned to be secured by the covenant of the said ——— contained in an indenture bearing even date with the said surrender) then the said surrender was to be void, otherwise to remain in full force and virtue.

(*Admittance of G. H. under a forfeited condition, in a surrender of copyholds for lives.*) (a).

(13.) At this court it is found and presented by the homage that default was made in payment of the said principal sum of £——— secured to *R. S.*, of, &c., by a conditional surrender from *L. M.*, of certain customary or copyhold hereditaments, lying within the manor of this manor, and held by the said *L. M.* for the natural lives of him the said *L. M.*, *B. B.*, of, &c., and *C. C.*, of, &c., and the life of the longest liver of them *successively*, which same surrender was presented and inrolled at the last general court held for this manor, by which default the condition of the said surrender hath become forfeited.

(a) This form is framed on the presumption of a forfeiture of a condition, in a surrender similar to the last

at this court comes the said *R. S.*, and prays to be holden to the customary or copyhold hereditaments lying with- holden of this manor, so surrendered to his use as aforesaid, to All, &c., with the appurtenances, to whom the lord of this by the said steward, grants seisin thereof by the rod, *to have hold* the said customary or copyhold — — hereditaments emises, with the appurtenances, unto the said *R. S.*, his rs, administrators, and assigns, for and during the lives of *L. M.*, *B. B.*, and *C. C.*, and the life of the longest liver of *accessively*, to be holden of the lord, by copy of court roll, at of the lord, according to the custom of this manor, by fealty, court, heriot when it shall happen, and the ancient annual rent, and other duties and services therefore due and of right accus- and so (saving the right of the lord, and of any person having y of redemption in the premises,) the said *R. S.* is admitted hereof, in manner and form aforesaid, and pays to the lord for a such his admittance, the sum of £— — —, and his fealty is

entment of warrant to enter satisfaction on conditional sur- der of copyholds for lives; Re-surrender to mortgagor; and re-admittance.)

a). At this court the homage present a certain warrant under of *C. D.*, of, &c., bearing date the — day of —, whereby *C. D.* did acknowledge to have received of and from *A. B.*, of, principal and interest monies secured and made payable under virtue of a conditional surrender of certain customary or copy- hereditaments, lying within and holden of this manor, made by *A. B.* at a court held the — day of —, [or made out of , &c., and inrolled at a general court held, &c.] and therefore *C. D.* thereby authorised the steward of this manor to enter on for the same on the court rolls thereof: whereupon satis- s entered by the said steward accordingly.

b). (a) And afterwards at this same court comes the said *C. D.*,

we here presumed that *A. B.* very similar, where the mortgagor, (a sole purchaser, and by the cus- sole purchaser,) has no power, by the cus- the first *cestuy que vie*) could de- custom, to destroy the legal estate of the whole estate. *Ante*, p. (92,) the other *cestui que vies*. See *ante*, p. (97.) n. (a).

orm of re-surrender will be

and, in consideration of such payment and satisfaction as aforesaid, the said *A. B.* at the next court held in open court, surrenders into the hands of the lord of this manor, the hands and acceptance of the said steward, by the rod, according to the custom of this manor, All, &c. with the appurtenances, (to the same premises the said *C. D.* was admitted, to hold to his heirs, executors, administrators, and assigns, for the lives of the said *E. F.* of, &c., and *G. H.* of, &c., and the life of the longest liver of them *successively*, by virtue of the said conditional surrender, at the next court held for this manor, on the — day of —); and all the right, and interest whatsoever, of the said *C. D.* therein or thereunto, *to the intent* that the lord may re-grant the aforesaid custom of this manor, copyhold hereditaments and premises to the said *A. B.* for the lives of the said *A. B.*, *E. F.*, and *G. H.*, and the life of the longest liver of them *successively*, according to the custom of this manor.

(14. *b.*) To which said *A. B.* the lord of this manor, by the hands of the steward, grants seisin thereof by the rod; *to have and to hold* unto the said *A. B.*, for the lives of the said *A. B.*, *E. F.*, and *G. H.*, and the life of the longest liver of them *successively*, to be held of the lord, by copy of court roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when the same shall happen, and the ancient annual rent or rents, and other duties and services, therefore due and of right accustomed, and so (saving the right of the lord) the said *A. B.* is admitted thereto, in manner and form aforesaid, and pays to the lord, for a fine on such his admittance, the sum of £ — — —, and his fealty is respited.

(*Surrender by A. B. (a copyholder for three lives), to the lord, by the hands of the steward, for the same lives; and his admittance.*) (*a*)

(15. *a.*) At this court comes *A. B.*, who, at a court holden in open court, at the manor, on the — day of —, was admitted to the said copyhold hereditaments hereinafter described, to hold to himself, his heirs, executors and administrators, [or his heirs, as the custom may be,] for the lives of *C. D.*, *E. F.*, and *G. H.*, and

(*a*) I have here presumed that *A. B.* was the sole purchaser, and that a grant for lives in *succession* is not customary in the particular manor.

Note. A grant by copy for three lives, and for the heirs of others, will not give an estate *tenet per totum sui que vias*, without a custom to the contrary. See pt. 1, p. 120.

longest liver of them (a), and, in consideration of the sum of —, of lawful money, &c., to him in hand well and truly *I. K.*, of, &c., in open court surrenders into the hands of the steward of this manor, by the hands and acceptance of the said steward, by and according to the custom of this manor, All, &c., with the appurtenances; and all the estate, right, title and interest whatsoever in and to the said *A. B.* in, to, or out of the same premises, to the use and behoof of the said *I. K.*, his executors and administrators, [or his heirs according to the custom may be,] for and during the lives of the said *C. D.*, *E. F.*, *G. H.*, and the life of the longest liver of them, according to the custom of this manor.

(b). To which said *I. K.*, (being present here in court,) the lord of this manor, by the said steward, grants seisin of the same premises unto the said *I. K.*, to have and to hold the said customary or copyhold — — — — — hereditaments and premises, with the appurtenances, unto the said *I. K.*, his, &c., for and during the lives of the said *C. D.*, *E. F.*, *G. H.*, and the life of the longest liver of them, to be holden of the lord of this manor, by copy of court-roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall be due, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed; and so (saving the honour of the lord) the said *I. K.* is admitted tenant thereof, in manner and form aforesaid, and pays to the lord for a fine on such his admission, the sum of £ — — —, and his fealty is respited.

Assistance of a widow to her free-bench, in copyholds for the lives.) (b)

At this court comes *B. B.*, widow of *A. B.*, whose death had been presented at this court, and who held the customary or copyhold tenements hereinafter described, for the term of the lives of him or her, *A. B.*, *C. D.*, of, &c., and *E. F.*, of, &c., and the life of the longest liver of them *successively*, and prays to be admitted

under the form of *A. B.*'s admissions as executors or administrators, (as the case might be,) would be special occupants. *Ante*, pt. 1,

pp. 64, 415. There can be no general occupant of copyholds. *Ib.* 63, 108, 415.

(b) *Ante*, pt. 1, p. 90.

according to the custom of this manor (a), for the term widow's estate, to the same hereditaments, to wit, to All, &c. the appurtenances; to which said *B. B.*, the lord of this manor, said steward, grants seisin thereof by the rod, *to have and to hold* the said ——— hereditaments and premises, with the appurtenances, unto the said *B. B.*, for the term of her widow's estate to be computed by copy of court-roll, at the will of the lord, according to the custom of this manor, by fealty, suit of court, heriot when it shall be required, and the ancient annual rent or rents, and other duties and services therefore due and of right accustomed; and so (saving the right of the lord) the said *B. B.* is admitted tenant thereof, in manner and form aforesaid, and pays to the lord for a fine on such her admittance the sum of £ — —, and her fealty is respited.

(Surrender of a Widow's estate, and grant for three lives.)

(17. a). At this court comes *F. C.*, widow of *A. C.*, deceased, who claims to hold the customary or copyhold hereditaments hereinafore described, for the term of her widowhood, according to the custom of this manor, and in open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the said steward, by the rod, according to the custom of this manor, All, &c., with the appurtenances; and all the estate, right and interest of the said *F. C.* therein or thereto, *to the intent* that the lord may re-grant the said premises to the said *F. C.*, for the lives of herself and her son and daughter *C. C.* and *H. C.*, and the life of the longest liver of them *successively (b)*, according to the custom of this manor.

(17. b). To which said *F. C.*, the lord of this manor, by the hands of the steward, grants seisin thereof by the rod, *to have and to hold* the said ——— hereditaments and premises, with the appurtenances, unto the said *F. C.*, *C. C.*, and *H. C.*, for the term of their lives.

(a) But when a wife is intitled to the whole of the copyhold for her life, or widowhood, or other estate, admittance would not seem to be necessary, except by special custom, her interest being a continuation of the possession of the husband. *Ante*, pt. 1, pp. 95, 366.

(b) This surrender supposes *F. C.*, (the husband of *F. C.*), to have had a last life named in the former copyhold, that his widow, and their children (*C. C.* and *H. C.*), were purchasers of the lives successively.

f the longest liver of them *successively*, to be holden of the copy of court-roll, at the will of the lord, according to the of this manor, by fealty, suit of court, heriot when it shall and the ancient annual rent or rents, and other duties and therefore due and of right accustomed, and so (saving the he lord,) the said *F. C.* is admitted tenant thereof, in manner aforesaid, and pays to the lord for a fine on such her admitt- sum of £— — —, and her fealty is respited.

der of copyhold for lives, to the lord, as purchaser; and re-grant for one life, to a trustee for the lord.) (a).

. At this court comes *B. H.*, one of the customary or copyhold of this manor, and in consideration of the sum of £—, of money, &c., to him in hand well and truly paid by the said *A. Z.*, of this manor, in full and open court surrenders into the hands of the lord of this manor, by the hands and acceptance of the lord, by the rod, according to the custom of this manor, and to the uses All, &c., to which said customary or copyhold hereditaments and premises, with other hereditaments, the said *B. H.* was bound to hold to him his executors, administrators and assigns, for the life of the longest liver of them, at a court holden for this manor the — day of —; and all the estate, right, title, interest, benefit, power, claim and demand whatsoever, which the said *B. H.* now hath in, to, or out of the same premises, or any part thereof, to the use of the said *A. Z.*, lord of this manor, to the intent that he may do therewith his will and pleasure.

And afterwards at this court the lord of this manor, by his said will in consideration of the sum of 5*s.*, of lawful money aforesaid, to be paid by *C. D.*, of, &c., doth grant seisin by the rod, according to the custom of this manor, unto the said *C. D.*, of all and singular the hereditaments and premises hereinbefore described (b), *to have and*

we here supposed, that the lord preferred acting on his own in a single life, (*ante*, pt. 1, his own trustee. surrendered to the lord out of the entry would be, "of All, &c., t and parcel of the customary

" or copyhold hereditaments heretofore
" granted to *B. H.* of, &c., to hold by
" copy of court-roll of this manor, for
" the lives of, &c., (and which said he-
" reditaments and premises lately came
" into the hands of the said lord of this
" manor by purchase of and from the
" said *B. H.*")

to hold the said hereditaments and premises, with the appurtenances unto the said *C. D.*, for the term of his life, to be holden of the copy of court-roll, at the will of the lord, according to the custom of the manor, by fealty, suit of court, heriot when it shall happen, the amount of £— —, being an apportionment of the ancient annual rent of — — — — — (a), and other the duties and services therefore due and of right to be performed, and so (saving the right of the lord,) the said *C. D.* is to be tenant thereof, in manner and form aforesaid, and his fealty is

FORMS OF PRECEPTS, SUMMONSES, PLAIN

[A.]

(Precept to the Bailiff to summon a General Customary Court)

The manor of ——— } To *W. Y.* bailiff of the said manor
in the county of ——— }

These are to require you to summon and give notice to the said manor and respective customary tenants of the said manor of ———, to appear at a customary court baron, to be holden for *A. Z.*, the same manor, on ———, the ——— day of ———, at ——— the forenoon, at the usual and accustomed place, being the ——— ———, then and there to do their respective suit and pay their respective rents due to the lord of the manor of aforesaid. And these are also further to require you to give notice to the said court, to all other persons in any wise concerned in the matter thereof, in order that they may appear at the time and place so mentioned, and for your so doing this shall be your sufficient warrant. Given under my hand and seal, this ——— day of ———, in the ——— year of our Lord ———.

J. S., steward of the aforesaid manor.

(Notice pursuant to the above precept.)

The manor of ——— } Notice is hereby given, to all persons
in the county of — } may concern, that a general customary court baron of *A. Z.* will be holden for the said manor, on ——— the ——— of ——— next, at ——— o'clock in the forenoon, at the usual and accustomed place, being, &c., when and where all customary tenants of the said manor are required to attend, and to perform their suit and pay their respective rents due to the lord of the said manor. This ——— day of, &c.

W. Y., Bailiff.

(a) *Ante*, pt. 1, pp. 114, 115, 434.

[B.]

(The Oath to be administered to the Homage.)

A. B. “ You as FOREMAN of this homage, shall inquire, and true assentment make, of all such things as shall be given to you in charge, and of all such other matters as shall come to your knowledge, presentable at this court, and this you shall do, without fear, favour, affection, hatred, or malice, to the best of your understanding, to help you God.”

C. D., E. F., G. H., and I. K. (and so four at a time according to their seniority of tenancy.) “ The like oath which *A. B.*, your foreman, hath taken on his part, you and every of you, shall well and truly observe and keep, on your respective parts, So help you God.”

[C.]

(Precept to seise quousque, after three Proclamations.)

The manor of _____ }
 the county of _____ } To *W. Y.* bailiff of the said manor.

Whereas public proclamation hath been made at three *consecutive* general courts baron, holden for the said manor, on the _____ day of _____, the _____ day of _____, and the _____ day of _____ (*a*), for any person or persons, claiming title to the customary or copyhold lands and hereditaments, lying within and holden of the same manor, which *A. B.* lately died seised, to come into court and be admitted thereto, and for as much as no one came to take up, and be admitted to the said lands and hereditaments:—It is Commanded and Ordered that you *W. Y.* do seise, and you are hereby authorised and required to seise, into the hands and for the use of the lord of the said manor, the said customary or copyhold lands, and hereditaments, of which the said *A. B.* so died seised, *in the mean time, and until some person or persons shall appear and make good his or their claim, to be admitted tenant or tenants thereof:*—And you are hereby commanded to make your return to this precept at the next general

a) Ante, pt. 1, p. 353. When by the custom a surrenderee is compellable to be admitted, and neglects to appear after three proclamations, [*ante*, pt. 1, p. 349, *ante*, pp. (6), (8),] instead of the words within brackets say, “for *C. D.* to come in and be admitted by virtue

of a certain surrender made, &c. by *A. B.* of All, &c., and for as much as the said *C. D.* did not come to take up, &c: It is commanded, &c. to seise the said customary or copyhold hereditaments into the hands, and for the use of the lord of the said manor, until, &c.”

court baron, to be holden for the said manor. Given under
and seal, this — day of —, in the year of our Lord —

J. S. steward of the manor of — aforesaid.

[If one only of several coheirs should neglect to claim his share, that circumstance must be stated, and the warrant is then confined to the undivided share of such defaulter.]

(The Bailiff's Return to be indorsed on the above Precept.)

I do hereby certify that by virtue of the within precept, I did in the presence of *S. R.* and *W. T.*, copyhold tenants of the within mentioned manor, seize the within mentioned lands and hereditaments into the hands and for the use of the lord, until, &c., as commanded in the same precept. Witness my hand this — day of —.

(Precept to seize absolutely.)

When by the custom of the manor, the estate is forfeited for non-appearance of the heir or the devisee, after three proclamations, the copyholder is to be commanded to make an *absolute* seizure, for which the form [C] will be proper, omitting the words in italics in the above precept.

And when the forfeiture is for neglect of suit and service, personal summons, or for executing a feoffment, levying a fine, or without license, committing treason or felony, or the like, the copyholder should recite the act occasioning the forfeiture, and that the copyholder have upon their oaths presented, that he the said — (the copyholder) by such, &c. hath forfeited all and singular his customary or copyhold lands, lying within and holden of the said manor, unto the lord of the same manor; and then conclude, "It is therefore commanded and required, that you *W. Y.* do seize, and you are hereby authorized and required to seize, the said lands and hereditaments, with the tenancies, so forfeited as aforesaid, into the hands of the lord of the said manor, and that you answer to him the profits and espleases thereof." "Given, &c."

And the like return is to be made and indorsed by the bailiff of the manor, a seizure *quousque*, omitting the words "until, &c."

[D.]

(Precept to the Bailiff to seize, on suffering a Recovery.)

The manor of — }
in the county of — } To *W. Y.* bailiff of the said manor.

Know you that at a court now holden in and for the said manor

ment of the same court, hath recovered his seisin against *B.*
 _____ messuages, _____ acres of land, _____ acres of
 _____, and _____ acres of pasture, with the appurtenances within
 _____ manor, and the jurisdiction of this court, by default; therefore I
 bid you that, without delay, you cause full seisin of the tenements
 _____, with the appurtenances, to be delivered to the said *C.*; and
 forthwith make return of this precept. Given under my hand
 _____, this _____ day of _____, in the year of our Lord _____.

J. S. steward of the said manor.

(The Bailiff's Return to be indorsed.)

_____ hereby certify, that full seisin of the within mentioned tene-
 _____ with the appurtenances, hath been delivered by me to *C.*, as by
 _____ in written precept I was commanded. Witness my hand, this
 _____ day of _____.

[E. 1.]

Writ to summon the Tenant to appear to the Plaintiff, in a Customary Writ of Right.)

_____ manor of _____ } To *W. Y.*, bailiff of the said manor, greet-
 _____ unty of _____ } ing:—
 _____ use *A.* complains against *C.* in a plea of land, in the manor
 _____, and makes protestation to prosecute his plaint in the court of
 _____ manor, in the nature of a writ of our lord the king, of right
 —Therefore, I command you, that you summon, by good sum-
 —the said *C.*, to be and appear at the next court baron or custo-
 —court, to be holden for the said manor, on _____, the _____ day of
 —, at the usual and accustomed place, being, &c. to answer to
 —plaint, and have you there the summoners and this precept.
 —at the court baron or customary court of the said manor,
 —y hand and seal, this _____ day of _____, in the year,

J. S. steward of the said manor.

(Summons pursuant to the above precept.) (a).

_____ manor of _____ } To *C.*
 _____ unty of _____ }
 _____ virtue of the precept of the steward of the said manor directed
 _____ by _____ bailiff of the same manor, a copy whereof is within written,

(a) See as to the mode of serving this summons, *ante*, p. (14).

We do hereby require and command you, that you be and a the next general court baron or customary court, to be holden said manor, on — the — day of —, now next ensuing, the clock in the forenoon, at the usual and accustomed place &c., to answer the within mentioned plaint of *A.*

W. Y., Bailiff of the said manor.

Summoners of the said C. { S. R. } Copyholders of the said
 { W. T. }

[E. 2.]

(The Bailiff's Return to be indorsed.)

By virtue of the within precept to me directed, I have summoned by good summoners, to wit, *S. R.* and *W. T.*, good and lawful copyhold tenants of the manor of —, the within named he be at the place and time within mentioned, to answer the the within named *A.*, as by the same precept I was commanded

W. Y., ba

[E. 3.]

(Grand Cape) (a).

OR

(Second Precept, on default of the Tenant's appearance)

The manor of — } To W. Y., bailiff of the said manor
 in the county of — } ing:—

Because *C.*, after being duly summoned, appears not at the court to be holden this day for the said manor, to answer to the plaint of *A.* of plea of land, in the manor aforesaid, to wit, — messuage, — tofts, — barns, — out-houses, — orchards, — gardens, — acres of land, — acres of meadow, and — acres of pasture, with the appurtenances, in the parish of —, which the said *A.* claims as his right and inheritance, according to the custom of the said manor; therefore I command you to take the same in the hands of the lord of the said manor, by the view of good and lawful men, copyhold tenants of the same manor, the aforesaid tenants and their hereditaments, and premises, with the appurtenances, and

(a) See both as to GRAND CAPE and PETIT CAPE, *ante*, p. (66).

and the day thereof, make known to me; and that you summon good summoners, the said *C.*, to be and appear at the next baron or customary court of *A. Z.*, lord of the said manor, to be there for the said manor, on —, the — day of —, at the usual and accustomed place, being, &c. to answer to the said plaint, and to show wherefore he did not appear, &c.; and have you there the names of those by whose view you shall have done this, and the sum of the said view, and this precept. Given at the court baron or customary of the said manor, under my hand and seal, this — day of —, in the year, &c.

J. S. steward of the said manor.

(Notice and Summons pursuant to the above precept.) (a).

Manor of — }
County of — } To *C.*

In virtue of the precept of the steward of the said manor directed to *W. Y.* bailiff of the same manor, a copy whereof is within written, in pursuance, after being duly summoned, you appeared not at a court baron on the — day of — now last past, to answer to the plaintiff's plea of land, in the manor aforesaid, to wit, — messuages, — tofts, — barns, — out-houses, — orchards, — gardens, — acres of land, — acres of meadow, and — acres of pasture, with the appurtenances, in the parish of —, which the said *A.* claims as his right and inheritance, according to the custom of the said manor, therefore I the said *W. Y.* do hereby give you notice, that by the view of *S. R.* and *W. T.*, good and lawful copyhold tenants of the said manor, I have taken into the hands of the said *W. Y.* bailiff of the same manor, the said messuages, lands, tenements, and appurtenances, with the appurtenances (*b*): And we *S. R.* and *W. T.* do hereby summon you to be and appear, at the next court baron, or customary court, to be holden for the said manor on —, the — day of — now next ensuing, at ten o'clock in the forenoon of the same day, at the usual and accustomed place, being, &c. to answer to the said *A.*, as well of the said manor as of your default aforesaid.

W. Y., Bailiff of the said manor.

Copyholders of the said *C.* { *S. R.* } Copyholders of the said manor.
 { *W. T.* }

This summons should be served in the same way as the first, *ante*, p. (14).

(*b*) *Ante*, pp. (18), n. c, (66). n. (a).

(Bailiff's Return.)

By virtue of the within precept to me directed, I have, on the day of —, in the year, &c. by the view of *S. R.* and *W. T.* and lawful men, copyhold tenants of the within mentioned taken into the hands of the lord of the same manor, the within mentioned messuages, lands, tenements, and hereditaments, with the tenancies; and I have also summoned, by good summoners, to the said *S. R.* and *W. T.*, the within named *C.*, that he be at the said time within mentioned, to answer the plaint of the within named *A.*, and for his default, as by the same precept I was commanded.

W. Y.,

[E. 4.]

(Precept to summon the Tenant, in Plaint of Customary.)

The manor of — }
 in the county of — } To *W. Y.*, bailiff of the said manor, gre

Because *C. B.* of &c., who (as she alleges) was formerly the widow of *A. B.* deceased, late one of the customary copyhold tenants of the said manor, complains against *E. D.* the man, of a plea of land, to wit, of the third part of — messuage with the appurtenances, situate, lying, and being in the parish of — in the county of —, within the said manor, and the jurisdiction of this court, of which said premises the said *A. B.* died seised, the third part whereof the said *C. B.* (as she alleges) is intitled to in life as her freebench, according to the custom of the said manor, therefore I command you that, according to the custom of the said manor, you summon the said *C. D.* by good summoners, to appear at the next court baron or customary court, to be holden at the said manor, on —, the — day of —, at the usual accustomed place, being &c., to answer to the said plaint; and hereafter there the summoners and this precept. Given at the court baron or customary court of the said manor, under my hand and seal, the day of —, in the year, &c.

J. S. steward of the said manor

[F. 1.]

Plaint in nature of an Assise of Novel Disseisin, and Prayer of Process.)

this court comes *A.* of &c., in his own proper person, and comes against *B.*, of &c., of a plea of land, to wit, of — messuages, tofts, — barns, — out-houses, — orchards, — gardens, — acres of land, — acres of meadow, and — acres of pasture, the appurtenances, situate and being in the parish of —, in county of —, within this manor, and the jurisdiction of this manor, and of which the said *B.*, unjustly and without judgment, hath disseised the said *A.*, within thirty years last past: And the said *A.* doth protestation to prosecute his suit, in form and nature of a writ of Assise of Novel Disseisin, at common law, according to the custom of this manor, and finds pledges to prosecute the same at aforesaid in this court, to wit, *John Doe* and *Richard Roe*: And the said *A.* prays process thereupon, to be made to him against the said *B.*, according to the custom of this manor. Therefore, according to the custom of this manor, a precept is awarded and issued to *W. Y.*, bailiff of this manor, that, &c. [*Ante.* p. (40).]

At the next court the above Plaint may be continued thus.)

this court *W. Y.*, bailiff of this manor, returns, that in pursuance of the precept to him issued at the last general court holden for this manor, he did duly summon *B.* to appear at this court, to answer to the complaint of *A.*, entered at the last general court, as by the said precept is commanded.

Verdict. And thereupon the said *A.*, in his own proper person, comes and pleads against the said *B.*, the tenements aforesaid, to wit, — messuages, &c., with the appurtenances, which the said *A.* claims to be his right and inheritance, according to the custom of this manor, of him and his ancestors, and saith that he himself was seised of the tenements aforesaid, with the appurtenances, in his demesne, as of fee and right, by force of court roll, at the will of the lord, according to the custom of this manor, in time of peace, in the time of our late Sovereign Lord, King George the Third, to wit, within 30 years last past, by taking

the esplees thereof, to the value, &c. ; and that such is his right offers, &c., and therefore prosecutes his plaint, &c.

[F. 2.]

(*Plaint in nature of an Assize of Mort d'Ancestor (a) ; and of Process.*) (b).

A. B. complains against *C. D.* and *E.*, his wife, of a plea of writ, of — messuages, — acres of land, &c. with the appurtenances in *F.* within this manor and the jurisdiction of this court, and protestation to prosecute his suit in form and nature of a writ of *mort d'ancestor*, at common law : And the said *A. B.* prays according to the custom of this manor, to be directed to the lord of this court, commanding him, according to the custom of this manor, to summon, by good summoners, twelve good and lawful men of the homage of this manor, that they be before the lord or steward of this manor, at the next court to be held in and for this manor, to inquire upon their oaths whether *B. B.*, father of the said *A. B.*, on the day of his death, was seised in his demesne as of fee, by copy of court roll, of the will of the lord, according to the custom of this manor, of — messuages, and — acres of land, with the appurtenances, &c. within the jurisdiction of this court ; and if the said *B. B.* was seised within 50 years now last past ; and if the aforesaid *A. B.* is next heir according to the custom of this manor, to the said *B. B.*, and to mean time to view the lands and tenements (c), and to summon, by good summoners, the aforesaid *C. D.* and *E.*, who now hold the said lands and tenements, and that they be there to hear the record, and the said *A. B.* finds pledges to prosecute his plaint aforesaid against *John Doe* and *Richard Roe*. And process is accordingly given to the said *A. B.* and the same day is given to the said *A. B.*

(a) See F. N. B. 195.

(b) It has been doubted whether such a plaint ever lay, *ante*, pt. 1, p. 570. n.

(c). See *Mise* joined on this form of plaint, Post. [G 2].

(c) Booth 212, says, "3rdly, That

the jurors, the recognitors of the land or other thing whereof the disseisin is complained, this must be done by *seven* at the jury, per Fleta."

[F. 3.]

Plaint in nature of a Formedon in the Remainder, and Prayer of Process.)

A. B. complains against *C. D.* of a plea of land, to wit, of ———
 suages, and ——— acres of land, &c. with the appurtenances, in *E.*,
 in this manor, and the jurisdiction of this court, and makes prote-
 station to prosecute his suit in form and nature of a writ of *formedon* in
 remainder, at common law, according to the custom of this manor ;
 and finds pledges to prosecute his suit aforesaid, to wit, *John Doe* and
Richard Roe. And the said *A. B.* prays process thereupon to be
 made to him against the said *C. D.*, according to the custom of this
 manor.

Therefore, according to the custom of this manor, a precept is
 awarded and issued to *W. Y.*, bailiff of this manor, that, &c. [*Ante*,
 (40).]

(At the next court the plaint may be continued thus :)

At this court came as well the said *A. B.* as the said *C. D.*, by
G., his attorney, and the said *W. Y.*, bailiff of this manor, returns,
 that he, by virtue of the precept to him directed in that behalf, hath
 summoned the aforesaid *C. D.* by good summoners, to wit, *H. I.* and
L., to be at this court to answer the said *A. B.* in his plea aforesaid,
 by the said precept he was commanded.

Count. And thereupon the said *A. B.* demands against the said
D. the tenements aforesaid, with their appurtenances, as his right
 and inheritance, and saith that *B. B.* was seised of the tenements
 aforesaid, with their appurtenances, in his demesne as of fee and right,
 by copy of court roll, at the will of the lord, according to the custom
 of this manor, in time of peace, in the time of our late Sovereign Lord
 King George the Third, by taking the esplees thereof to the value, &c.
 and being so seised, did, at a general court held for this manor, on the
 — day of —, &c., surrender into the hands of the lord of this
 manor, according to the custom of this manor, the tenements aforesaid,
 with their appurtenances, to the use of *M.*, the then wife of the
 said *B. B.*, to hold for the term of her life, and after the decease of

the said *M.*, to the use of *C. B.*, (eldest son of *D. B.*, brother said *B. B.*), and the heirs of his body lawfully begotten, and in default of such issue of the said *C. B.*, to the use of *F. B.*, (youngest son of the aforesaid *D. B.*), to hold to him and the heirs of his body lawfully begotten, and in default of such issue, to the use of the right heirs of the said *B. B.* for ever; by virtue of which surrender the aforesaid *M.* was seised of the tenements aforesaid, with their appurtenances, in her demesne as of free tenements, at the will of the lord, according to the custom of this manor, in time of peace, in the reign of &c., by taking the profits or esplees thereof to the value of the said tenements, and that the right came by virtue of the surrender aforesaid, to the said *C. B.*, after the death of the said *M.*, by which the said *C. B.* was seised of the tenements aforesaid, with their appurtenances, in her demesne as of fee-tail, at the will of the lord, according to the custom of this manor, in time of peace, in the reign, &c., by taking the profits or esplees thereof to the value, &c., and that from the said *C. B.* the right came by the death of the said *M.*, (the said *C. B.* dying without issue of his body lawfully begotten,) the right cometh by virtue of the surrender, according to the custom of this manor, to the said *A. B.* who now demandeth, to wit, as eldest son and heir of the body of the said *F. B.*, youngest son of the said *D. B.*; and therefore the said *A. B.* brings this suit.

[F. 4.]

(Plaint in Customary Dower, and Prayer of Process.)

At this court comes *C. B.*, of, &c., formerly the wife, and now widow of *A. B.*, deceased, late one of the customary or copyholders of this manor, in her own proper person, and complains against the said *A. B.*, gentleman, of a plea of land, to wit, of the third part of — suages, — barns, — stables, — cow-houses, — orchards, — — gardens, — acres of land, — acres of meadow, and — acres of pasture, with the appurtenances, situate, lying, and being in the parish of —, in the county of —, within this manor, and within the jurisdiction of this court, of which said premises the said *A. B.* died seised, holding the same by copy of court-roll, at the will of the lord, according to the custom of this manor; and to a third part of which said premises the said *C. B.* is intitled for her life, as he

h, according to the custom of this manor: And the said *C. B.* makes protestation to prosecute her plaint in this court, in the form and nature of a writ of our said lord the king, of dower at common law, according to the custom of this manor, and finds pledges to prosecute her said plaint in this court, to wit, *John Doe* and *Richard Roe*; and the said *C. B.* prays process thereupon to be made to her against the said *E. D.*, according to the custom of this manor. Therefore, according to the custom of this manor, a precept is made and issued to *W. Y.*, bailiff of this manor, that, &c. [*Ante*, (110), (110).]

[F. 5.]

Plaint in nature of a Writ of Entry in the post; and Prayer of process.) [*This will serve, with little variation, for a Plaint in the post per and cui.*]

In this court comes *A. B.*, in his own proper person, and complains against *C. D.*, of a plea of land, to wit, of — messuages, — cottages, — yards, — gardens, — outhouses, and — acres of land, — the appurtenances, in the parish of —, within this manor, and in the jurisdiction of this court, and held of the lord of this manor, according to the custom of court-roll, at the will of the lord, according to the custom of this manor; and the said *A. B.* makes protestation to prosecute his plaint, in the nature of a writ of our lord the king, of entry *sur disseisin*, in the post, at common law, and saith, that the said tene-ments, with the appurtenances, are the right and inheritance, according to the custom of this manor, of him the said *A. B.*, and into which the said *C. D.* hath not entry, unless after the disseisin which *H. H.* made, of unjustly and without judgment made, within 50 years now last past, against the said *B. B.*, the father of the said *A. B.*, and whose heir he is, according to the custom of this manor; and the said *A. B.* finds pledges to prosecute his plaint aforesaid in this court, to wit, *John Doe* and *Richard Roe*, and prays process thereupon to be made to him the said *A. B.*, against the said *C. D.*, according to the custom of this manor. Therefore, according to the custom of this manor, a precept is made and issued to *W. Y.*, bailiff of this manor, that, &c. [*Ante*, (110), (110).]

[G. 1.]

(Form of General Mise.)

And at this court comes the said *C. D.*, by *E. F.*, his attorney, denies the right of the said *A. B.*, the demandant, and the said *B. B.*, from whom, &c., and the whole, &c., and chiefly of the tenements aforesaid, with the appurtenances, and he puts himself to the homage, according to the custom of this manor, and prays that cognition may be made, whether he, the said *C. D.*, hath a greater right to hold the tenements aforesaid, with the appurtenances, as the said *A. B.*, the demandant, to hold the same, or the said *A. B.*, the demandant, to hold the tenements, with the appurtenances, as he hath demanded the same.

And the said *A. B.* doth the like.

[G. 2.]

(Mise on Plaint of Assise of Mort d'Ancestor.)

And at this court come the said *C. D.* and *E.* his wife, in proper persons, and the said *C. D.* saith that the aforesaid *B. B.* of the said *A. B.*, was not at the day of his death, seised of the same, meane as of fee, by copy of court-roll, at the will of the lord, according to the custom of this manor, of the tenements aforesaid, with the appurtenances, in manner and form as the said *A. B.* hath by him alleged; and the said *C. D.* and *E.* pray that it may be inquired by the homage, according to the custom of this manor.

And the said *A. B.* doth the like.

[G. 3.]

(Mise on plaint of Formedon in the remainder [denying title of the settlor.]

And at this court the said *C. D.* comes and defends his right, &c., and saith that the said *B. B.* [*the supposed settlor*], great uncle of the said *A. B.*, was not seised of the said tenements

premises, with the appurtenances, in manner and form as the said
 by his plaint and declaration hath alleged: And of this he puts
 self upon the homage, according to the custom of this manor.
 and the said *A. B.* doth the like.

[H. 1.]

Precept of Recognition in a Customary Writ of Right.)

manor of ———, }
 county of ——— } To *W. Y.*, bailiff of the said manor.

cause *A.* complains against *C.* in a plea of land, and makes protes-
 to prosecute his plaint in the court of the said manor, in the nature
 writ of our lord the king, of right patent: therefore I command
 that you forthwith summon, by good summoners, twelve good and
 men, copyhold tenants of the said manor, that they be and ap-
 at the customary court baron, to be holden for the said manor, on
 —, the — day of ———, at the hour of — in the forenoon,
 usual and accustomed place, being, &c., [or, (when by consent
 parties, the question is to be tried immediately upon issue being
 l.) that they be before me at the court here now holden,] ready
 their oaths to make recognition, whether the said *C.* hath a greater
 to hold — messuages, — tofts, — barns, — orchards,
 gardens, — acres of land, — acres of meadow, and —
 of pasture, with the appurtenances, situate and being in the
 of ———, in the county aforesaid, within the jurisdiction of
 court, as he now holds the same, or the said *A.*, the demandant,
 old the same tenements, with the appurtenances, as he hath de-
 ed the same: and have you there the summoners and this precept.
 under my hand and seal, this — day of ———, in the year
 Lord ———.

J. S., steward of the said manor.

*Summons to be served on the Jurors pursuant to the above
 Precept of Recognition.)*

manor of ——— }
 county of ——— } To ——— ——— ———.

you are hereby required to appear in your proper person, at the gene-
 customary court baron of *A. Z.*, lord of the manor of ——— afore-

said, on ———, the — day of —, by — of the clock
forenoon of the same day, to testify the truth according to your
pledge, in a certain plaint depending in the same court, betwixt
demandant, and C., tenant, of a plea of land; and hereof to
as you shall answer the contrary at your peril. Given under my
this — day of —, 18 .

W. Y.,

[H. 2.]

(*Precept of Recognition in a Plaint of Assize of Mort
d'Ancestor.*)

The manor of ——— } To W. Y., bailiff of the said manor
in the county of — } ing.

Because A. B. complains against C. D. and E. his wife, in
land, in the manor aforesaid, and makes protestation to prosecute
plaint in the court of the said manor, in the nature of a writ of
mort d'ancestor at common law; therefore I command you,
forthwith summon, by good summoners, twelve good and lawful
copyhold tenants of the said manor, that they be and appear at
customary court baron, to be holden for the said manor, on —
the — day of ———, at the hour of — in the forenoon
usual and accustomed place, being, &c., ready by their oaths
recognition, if B. B., father of the said A. B., on the day of his
was seised in his demesne as of fee, by copy of court-roll, at
of the lord, according to the custom of the said manor, of —
suages, and — acres of land, with the appurtenances, situated
within the jurisdiction of this court; and if the said B. B. died
50 years now last past; and if the said A. B. is next heir, according
to the custom of the said manor, to the said B. B.: and in that
time let them view the aforesaid tenements. And do you summon
good summoners, the said C. D. and E., who now hold the said
tenements, that they be there to hear the recognition; and have you
the summoners and this precept. Given at the court baron of
any court of the said manor, under my hand and seal, this —
——, in the year of our Lord —.

J. S., steward of the said manor

[I.]

(The Juror's Oath, in a Customary Writ of Right.)

You shall say the truth, whether *C.* hath more mere right to hold tenements which *A.* demandeth against him, by his plaint, in pursuance of a writ of right, or the said *A.* to have them as he demandeth, and on no account to say but the truth: So help you God."

[K.]

(Oath of the Witnesses.)

The evidence you shall give before this court, touching the matter whereon the cause is joined, between *A.*, demandant, and *C.*, tenant, shall be the truth, the whole truth, and nothing but the truth: So help you God."

[L.]

(Affeeror's Oath.)

You and each of you shall well and truly affeer and affirm the several amercements here made, and now to you remembered; you shall spare no one through fear, favour, or affection, nor enhance any one from hatred or malice, but shall impartially act herein: So help you God."



PRECEDENTS OF DEPUTATIONS, POWERS
TORNEY, COPYHOLD ASSURANCES, &

(*Appointment to the Stewardship of a Customary
Baron.*) (a).

Know all men by these presents, that I, *A. Z.*, lord of the
——, in the county of ——, have made, ordained, constituted,
appointed, and by these presents do make, ordain, constitute, and
J. S., of, &c., to be steward of the aforesaid manor of ——
members thereof, with full power and authority from time to time
hold courts baron and customary courts for the same manor and
members, and to do all acts usual and customary to be done by
wards, in relation thereunto, accounting to me from time to time
such fines, heriots, reliefs, forfeitures, amercements, and other
rial profits, as shall be received by him or by his deputy or
and I do hereby more especially authorise and empower the said
from time to time, as there may be occasion, to make any
grants of all or any customary or copyhold lands within the said
and to give and execute to the tenants thereof, any licenses
or otherwise, as he, the said *J. S.*, shall deem expedient, either
in or out of court, as fully as I myself could or might do (c);
also to appoint any deputy steward or deputy stewards
for the said manor of ——, and its members, with full power
hold all or any such courts as aforesaid, and to do such other acts
he the said *J. S.* could or might do as chief steward of the said
manor; and also to depute any person or persons to act under
sub-deputy steward or stewards of the said manor, as occasions
require (d). And I do hereby ratify and confirm all and whatsoever
the said *J. S.*, or such his deputy or deputies, sub-deputy
deputies shall lawfully do or cause to be done by virtue of these
presents, hereby declaring that this appointment shall continue
during my will and pleasure only. In witness whereof, I have
unto set my hand and seal, this —— day of ——, in the
our Lord ——.

Scaled, &c.

(a) *Ante*, pt. 1. p. 135, et seq.

(c) *Ante*, pt. 1, p. 145, et

(b) *Ante*, pt. 1, pp. 139, 140, 546.

(d) *Ante*, pt. 1, p. 146.

(A general appointment of an Under Steward.)

Now all men by these presents, that I, *J. S.*, steward of the manor —, in the county of —, by virtue of the power or authority given in this behalf, by *A. Z.*, lord of the said manor, have made, made, constituted, and appointed, and by these presents do make, make, constitute, and appoint *A. B.*, of, &c., to be my deputy steward of the aforesaid manor of —, and the members thereof, with power and authority, from time to time, to hold courts baron and manorial courts for the same manor and its members, and to do all acts in the performance and execution of the duties of the said manor as I myself could or might do, being personally present; and with full liberty and authority to depute any person or persons to act in and for him as sub-deputy steward or stewards of the said manor, as the law may require, he, the said *A. B.*, accounting to me from time to time for such fines, heriots, reliefs, amercements, and profits of court, and all fees and perquisites whatsoever, arising from the said office, upon demand required thereunto; and I do hereby declare that this appointment shall continue in force during my will and pleasure. In witness whereof, &c.

(Appointment of an Under-Steward to hold a Special Court.)

Now all men by these presents, that I, *J. S.*, steward of the manor —, in the county of —, by virtue of the power or authority given in this behalf, by *A. Z.*, lord of the said manor, have made, made, constituted, and appointed, and by these presents do make, make, constitute, and appoint *A. B.*, of, &c., to be my deputy-steward of the aforesaid manor of —, and the members thereof, for the special purpose and turn only of holding a customary court baron for the said manor, and then and there [*here state the particular object of the parties calling the court, for instance,*] (to accept and take a lease from *C. D.*, one of the customary tenants of the said manor, of the rod, of All, &c., to the use of *E. F.*, of, &c., and his heirs, according to the custom of the said manor; and afterwards to admit the said *E. F.* tenant thereof accordingly, and to grant to him, the said *E. F.*, a license to demise the same premises to any person or persons, for any term or number of years not exceeding twenty-one years, ac-

ording to the usage of the said manor). And further, to do, and perform all such acts, matters, and things, in and about mises, as fully and effectually, to all intents and purposes, as could or might do being personally present; the said *A. B.* counting to me for such fines, fees, and perquisites of court, sums of money, as shall be received by him, by virtue of this ment, upon being thereunto required. In witness, &c.

(Deputation to take a surrender out of court from C. D. wife, of lands belonging to the wife.)

Know all men by these presents, that I, *J. S.*, steward of the of —, in the county of —, have made, ordained, constituted, appointed, and by these presents do make, ordain, constitute, point *A. B.*, of, &c., my deputy steward of and for the said manor, to the special purpose and turn only of taking and accepting surrender already prepared, and bearing even date herewith, of *C. H.*, of, &c., and *D.* his wife, by the rod, according to the custom of the said manor, of All, &c., and to which same premises *D. H.* was admitted at a general court held for the said manor, on the — day of —; and of all the estate and interest of the said *C. H.* and *D.* his wife, respectively, therein or to the use of *I. L.*, of, &c., his heirs and assigns, for ever, according to the custom of the said manor, pursuant to a contract by *C. H.* and *D.* his wife, for the sale of the same premises to *I. L.* And I do hereby authorise and empower the said *A. B.* my deputy steward, to examine the said *D. H.* separately and apart from her said husband, as to her free and voluntary consent to the surrender, and generally to do and perform all acts, matters, and things, for the purposes aforesaid, as fully and effectually, to all intents and purposes, as I myself could or might do, being personally present, the said *A. B.* duly accounting to me for such fees, sum and money, as shall be received by him for my use, by virtue of this pointment, upon being thereunto required. In witness, &c.

(License to demise.)

The manor of — } Be it remembered, that on the —
in the county of — } of —, in the year of our Lord

Z., lord of the said manor, by J. S., the steward thereof, did, out of court, give and grant to C. D., one of the customary tenants of the said manor, full license, power, and authority, to demise and lease to any person or persons, willing to take the same, as lessee or lessees, to the said C. D., but not by way of mortgage, his or their executors, administrators and assigns, All, &c., with the appurtenances, (to which premises the said C. D. was admitted tenant at a court held for the said manor on the — day of —,) to hold for any term or number of years, not exceeding — years, to be computed from the day of — last; saving always to the lord of the said manor, to all and every lord and lady, lords and ladies of the said manor, at the time being, all and all manner of fines, heriots, rents, customs, services therefore due, and of right accustomed. And for this use the said C. D. hath paid, for a fine, the sum of £— — —, and there is a settled fine, add, “according to the custom of the manor”].

(License to fell timber.)

manor of — — } Be it remembered, that on the — day
 of the county of — — } of, &c., A. Z., lord of the said manor, by
 J., the steward thereof, did, out of court, give and grant to C. D.,
 one of the customary tenants of the said manor, full license to fell,
 in — calendar months from the day above mentioned, — oak
 standing and growing in a certain close called —, part of the
 old tenements of the said C. D., within the said manor, and already
 reserved for that purpose by the woodward of the said A. Z.; and the
 same to sell and dispose of, or convert to his own use, at his free will
 and pleasure, without rendering any account for the same [(or,) the
 same to be used and employed by the said C. D. in the repairs and im-
 provement of his aforesaid tenement, (as the case may be)]. And
 for this license the said C. D. hath paid, by way of fine, the sum of
 — —

(Letter of attorney to surrender to a purchaser, the purchaser having been previously paid.)

Know all men by these presents, that I, *A. B.*, of, &c., or customary or copyhold tenants of the manor of ———, in the county of ———, have made, ordained, constituted, and appointed, and by these presents do make, ordain, constitute, and appoint *C. D.*, of, &c., my true and lawful attorney for me, and in my name, to appear at the next or any subsequent general, or any special, court baron or court leet, to be holden for the said manor; and then and there to deliver into the hands of the lord or lady, lords or ladies, of the said manor for the time being, by the hands and acceptance of the lord or deputy steward, there then presiding, by the rod, according to the custom of the said manor, All, &c., with the appurtenances, (and as the same premises I was admitted tenant, at a court held for the said manor on the ——— day of ———); and the reversion and reversions, remainders and remainders thereof; and all my estate and interest therein or therein contained, to the use of *E. F.*, of, &c., his heirs and assigns for ever, according to the custom of the said manor. And further, for me, the said *A. B.*, and in my name, to do and execute all and every such acts, deeds, and things, as shall be needful or expedient for making such use as is aforesaid; and for procuring the said *E. F.*, his heirs or assigns, to be admitted tenant to the said copyhold premises, and as to do the same effectually, to all intents and purposes, as I myself could or might have done being personally present, hereby agreeing to ratify and confirm whatsoever the said *C. D.* shall lawfully do, or cause to be done, in the virtue of these presents. In witness, &c.

(General Power of Attorney to sell copyholds, and surrender to a purchaser.)

Know all men by these presents, that I, *A. B.* of, &c., or customary or copyhold tenants of the manor of, &c., have made, ordained, constituted, and appointed, and by these presents do make, ordain, constitute, and appoint *C. D.*, of, &c., and *E. F.*, of, &c., jointly and severally, and the survivor of them, my true and lawful attorneys and agents and agent for me, in my name, and on my behalf, to sell the said premises, or any part thereof, in the best manner and for the best purpose of, either by public auction or private contract, and for

ice or prices that can in their or his judgment be had or gotten for the same, all or any part of the customary or copyhold hereditaments hereinafter described, respectively lying within and holden of the manor of —, in the county of —, and the customary fee-simple and inheritance thereof, that is to say, All, &c., with their appurtenances, (to which same premises I was admitted to hold to me and my heirs, forever, according to the custom of the said manor, at a general court and the — day of —). And also to make and enter into any contract or contracts in writing, with any person or persons whomsoever, in relation to such sale or sales respectively, as to my said attorney or attorney, agents or agent, shall seem meet. And further, for me, in my name, and on my behalf, either at some general or special court baron or customary court to be holden for the manor of —, aforesaid, or out of court at any time or times after such sale or sales respectively, to surrender into the hands of the lord or lady, lords or ladies, of the said manor for the time being, and according to the custom of the same manor, the said customary or copyhold — hereditaments and premises, so as to be sold, or any of them; and the reversion and reversions, remainder and remainders thereof; and all my estate and interest therein or thereto, to the use of the person or persons purchasing the same premises respectively, as aforesaid, and of his, her, or their heirs and assigns for ever, or as he, she, or they shall direct or require, and according to the custom of the manor of — aforesaid. And moreover, for me, and in my name, and as my act and deed, to sign, seal, execute, and deliver the deed or deeds to be prepared by and on the part of all or any such purchasers as aforesaid, pursuant to such contract or contracts for sale respectively, containing all reasonable and proper covenants, on the part of me the said *A. B.*, my heirs, executors, and administrators, for the maintenance, title, possession, and further assurance of the hereditaments and premises respectively so to be sold as aforesaid; and for the production of my deeds, instruments, or writings, constituting my title to the same respective premises, which, according to the usage and practice in the said cases, are to remain in my custody or power; and for the delivery of attested or other copies thereof, from time to time thereafter, at the request, costs and charges of such purchaser or purchasers respectively, or her, or their appointees, heirs, or assigns; and generally for me, and in my behalf, to do, perform, and execute, all or any such other things, deeds, assurances, matters, and things, as shall be necessary or expedient in and about the premises, and as fully and effectually, to all intents and purposes, as I myself could or might do, being personally

present. And I do hereby expressly declare and agree, that the
 and receipts which shall be given by my said attorneys or
 either of them, for all or any part of the monies to arise from
 sale or sales as aforesaid, shall be a good and sufficient discharge
 good and sufficient discharges, to the purchaser or purchasers,
 person or persons paying the same monies respectively, for all or
 and such part thereof, as shall be in such receipt or receipts res-
 expressed or acknowledged to be received; and that such pur-
 purchasers, or other person or persons, shall not afterwards be
 see to the application of the same monies, or be responsible for
 misapplication, or non-application thereof, or any part thereof.
 direct, that the same monies, when so received, shall be paid
 into the hands of Messrs. — — —, bankers, in — — —, to my
 and for my use, or to such other person or persons, and in such
 manner as I may from time to time require by any note or writing
 my hand: Provided nevertheless, and I do hereby fully authorise
 said attorneys, or agents, respectively, to retain and deduct out of
 said trust monies, all costs, charges, and expenses, which they res-
 shall sustain or incur in the execution of the power or trust here-
 posed in them. And I declare and direct, that they shall be
 responsible the one for the other of them, nor for any loss which
 happen by depositing the trust monies aforesaid with any person
 persons whomsoever, for safe custody, or any wise without their re-
 wilful neglect or default. And I do hereby agree to ratify and
 all and whatsoever my said attorneys or attorney, agents or agents
 lawfully do or cause to be done, by virtue of these presents.
 ness, &c.

*(Power of Attorney to procure admittance in tail, and afterwards
 surrender the estate, and do all necessary acts in order to
 the fee-simple.)*

Know all men by these presents, that I, *A. B.* of, &c., have made, de-
 dained, constituted, and appointed, and by these presents do
 ordain, constitute, and appoint *C. D.* of, &c., my true and lawful attorney
 for me, in my name, and on my behalf to appear at the next, or
 subsequent general. or at a special, court baron or customary court
 be holden for the manor of — — —, in the county of — — —; and to do
 there to pray, and receive and take admittance of and from the

, lords or ladies of the same manor, for the time being, by the and according to the custom of the aforesaid manor, to All, &c., the appurtenances, to the use of me, the said *A. B.*, and the heirs my body lawfully issuing, according to the limitations expressed and ared in and by, &c. [here briefly refer to the will or surrender creating estate tail]. And I do hereby further authorise and empower and at the said *C. D.*, for me, in my name, and on my behalf, immediately after such admittance as aforesaid, to surrender into the hands the lord or lady, lords or ladies, of the manor of — aforesaid, for time being, by the rod, and according to the custom of the same or, All and singular the said customary or copyhold — — — — — herements and premises, with their appurtenances; and the reversion reversions, remainder and remainders thereof; and all the estate interest of me the said *A. B.*, therein or thereto, from and after such admittance as aforesaid, to the use of me the said *A. B.* my heirs assigns for ever; and generally to do, perform, and execute, or join concur with all or any other person or persons whomsoever in any concerned therein, in doing, performing, and executing all such acts, matters, and things, as, according to the custom of the or of — aforesaid, shall be necessary or expedient for barring the said estate tail, and all other estates tail, and all remainders and reversions thereupon expectant or depending, of and concerning the said herements and premises; and for surrendering, limiting, and assuring same premises, with their appurtenances, to the use of me the said or, my heirs and assigns for ever, according to the custom of the said or, and for procuring admittance under and by virtue of such last oned surrender, and as fully and effectually, to all intents and uses, as I myself might or could do being personally present. And hereby agree to ratify and confirm all and whatsoever my said they shall lawfully do, or cause to be done, in the premises, by of these presents. In witness, &c.

Surrender out of court by A. B. to C. D., a purchaser, in fee.) (a).

manor of — } Be it remembered that on the — day of
 the county of — } —, in the year of our Lord —, *A. B.* of, &c.,
 before *J. S.*, steward of the said manor, and for carrying into

^{a)} See presentment of and admittance under this surrender, *ante*, p. (59).

effect a contract made and entered into by the said *A. B.* with *C. D.*, of, &c., for the sale to him of the copyhold hereditaments hereinafter described, and the customary fee simple and inheritance thereof, in consideration of the sum of £—— of lawful money of the United Kingdom of Great Britain and Ireland, current in England, unto the said *A. B.* in hand paid by the said *C. D.* at the time of making the same, the said *C. D.* did out of court surrender into the hands of the lord of the said manor, by the hands and acceptance of the said steward of the said manor, according to the custom of the said manor, All, &c., the appurtenances to the same premises belonging or in anywise appertaining, (to which said premises the said *A. B.* was admitted and qualified as copyholder for the said manor on the —— day of ——;) and the said *C. D.* did give, assign, release, and convey, with warranty and reversions, remainder and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, benefit, power, privilege, and demand whatsoever of the said *A. B.*, in, to, or out of the said manor, hereditaments and premises, and every part thereof, to the use and behoof of the said *C. D.*, his heirs and assigns, for ever, according to the tenor of the said indenture, bearing date the —— day of ——, in the —— year of the said manor.

Taken and accepted this —— day of ——,
 in the year of our Lord ——, by me,
J. S., steward of the said manor.

(Surrender out of court by A. B. and his wife, pursuant to a covenant in their marriage settlement, to the use of the trustees of the settlement.) (a).

The manor of —— } Whereas by an indenture bearing date the —— day of ——, in the county of —— } and made between *A. B.*, of, &c., of the first part, *C. D.*, of, &c., spinster, of the second part, and *E. F.*, of the third part, and *G. H.*, of, &c., of the third part, Reciting that a marriage was agreed upon and was intended shortly thereafter to be had and solemnized between the said *A. B.* and *C. D.*; And reciting that the said *A. B.* was seised of the freehold hereditaments thereinafter described, and intended to be thereby granted and released, for an estate of inheritance in fee simple in possession; and that the said *C. D.* was seised of the copyhold hereditaments thereinafter described, and intended to be surrendered, for an estate of inheritance in fee simple in possession, according to the custom of the said manor: And

(a) See presentment of, and admittance under this surrender, *ante*, p. ——.

ing that upon the treaty for the said marriage it was proposed and ed that the said freehold hereditaments should be conveyed and red to, for, and upon the uses, trusts, intents, and purposes there- er limited, expressed, declared; and contained, of and concerning same; and that the said copyhold hereditaments should be sur- rered to the use of the said *E. F.* and *G. H.*, and their heirs, upon for the trusts, intents, and purposes, and in manner mentioned in covenant or agreement in that behalf thereafter contained,—It witnessed, that in consideration of the said then intended marriage, for the nominal consideration therein expressed, the said *A. B.* did t, bargain, sell, alien, and release unto the said *E. F.* and *G. H.*, their actual possession then being by virtue of the bargain and sale year therein referred unto,) and to their heirs and assigns, All and ular the freehold — — and hereditaments therein particularly ribed, with their appurtenances, to hold the same unto the said *E. F.* and *G. H.*, their heirs and assigns, to, for, and upon the uses, s, intents, and purposes, and under and subject to the powers, pro- s, declarations, and agreements in the said indenture of release and ement limited, expressed, declared, and contained, of and concern- the same freehold hereditaments. And by the said indenture of se and settlement it was covenanted and agreed, that the said *A. B.* *C. D.*, his then intended wife, should and would, either before or all convenient speed after the solemnization of the said then ded marriage, duly surrender, according to the custom of the said or, the customary or copyhold hereditaments therein and hereinafter ribed, with their appurtenances, to the use of the said *E. F.* and *H.*, their heirs and assigns, for ever, upon and for such trusts, ts, and purposes as would best and nearest correspond with the trusts, and limitations thereinbefore expressed, declared, and con- ed, of and concerning the said freehold hereditaments thereinbefore eyed and assured. And whereas a marriage was duly had and nnized between the said *A. B.* and *C. D.* soon after the date and ution of the hereinbefore in part recited indenture of release and ement,—

ow be it remembered, that on the ——— day of ———, the said *B.*, and *C.* his wife, came before *J. S.*, esquire, steward of the said or, and, in pursuance of the said covenant or agreement in this elf mentioned, and contained in the said indenture of release and ement, and the said *C. B.* being first examined by the steward rately and apart from her said husband, and freely and voluntarily

consenting thereunto, did out of court surrender into the hands of the lord of the said manor, by the hands and acceptance of the said lord, by the rod, according to the custom of the said manor, All, the appurtenances to the same premises belonging or in anywise pertaining, (and to which same hereditaments and premises the said *E. F.* (then *C. D.*) was admitted at a court held for the said manor on the ——— day of ———;) and the reversion and reversions, and remainders, rents, issues, and profits thereof; and all that right, title, interest, benefit, power, claim, and demand whatsoever the said *A. B.* and *C.* his wife, respectively in, to, or out of the said hereditaments and premises and every or any part thereof, of the said *E. F.* and *G. H.*, their heirs and assigns, for ever, to the custom of the said manor, but nevertheless upon any trusts, intents and purposes expressed and declared or referred to and concerning the same customary or copyhold hereditaments and premises, in and by the said in part recited indenture of reversion and settlement.

Taken and accepted this ——— day of ———,
(the said *C. B.* being first examined by me
separately and apart from her said husband,
and freely and voluntarily consenting thereto,) by me,

J. S., steward of the said manor.

(Conditional surrender, out of court, of copyhold lands of the said manor, into the hands of a deputy steward.)

The manor of ——— } Be it remembered that on the ———
in the county of — } &c., *E. F.* of, &c., one of the customary
copyhold tenants of the said manor, came before *C. D.*, gentleman
steward of *J. S.* esquire, chief steward of the said manor, and, in
satisfaction of the sum of £———, of lawful money, &c., to the said
hand well and truly paid, by *G. H.*, of, &c., did out of court
surrender into the hands of the lord of the said manor, by the hands and
acceptance of the said deputy steward, by the rod, according to the
custom of the said manor, All, &c., with the appurtenances, (and to which
same premises the said *E. F.* was admitted at a special
court held for the aforesaid manor, on the ——— day of ———);
and the reversion and reversions, remainder and remainders, rents, issues,

its thereof; and all the estate, right, title, interest, benefit, property, power, claim, and demand whatsoever, of the said *E. F.* to, or out of the same premises, and every part thereof, *To the* of the said *G. H.*, his heirs and assigns for ever, according to the custom of the said manor, subject nevertheless to and upon this express condition, that if the said *E. F.*, his heirs, executors, or administrators, do and shall well and truly pay, or cause to be paid, unto the said *G. H.*, his executors, administrators, or assigns, the sum of — —, of lawful money aforesaid, on the — — day of — — next, whether with interest for the same, after the rate of *£5. per cent. per annum*, computed from the date of this surrender, clear of all taxes and deductions whatsoever, (and being the same principal and interest as are mentioned to be secured to the said *G. H.* by the indenture of the said *E. F.*, contained in a certain indenture bearing date herewith,) then this surrender is to be void, and of no effect, otherwise it is to remain in full force and virtue.

Taken, &c., by me,
D., deputy steward.

E. F.

Surrender, out of court, of copyholds of inheritance, into the hands of two tenants, to the use of a trustee, by way of security.)

manor of — — } Be it remembered that on the — — day of,
 the county of — } &c., *A. B.* of, &c., one of the customary or copy-
 tenants of the said manor, came before us, *C. D.* of, &c., and *E. F.*
 &c., two other customary or copyhold tenants of the said manor, at
 house of — —, situate within the same manor, and, in consider-
 of the sum of *£— —*, of lawful money, &c. to the said *A. B.*
 and well and truly paid by *G. H.* of, &c., and at the request, and
 the direction of the said *G. H.*, testified by his subscribing his
 at the foot of this surrender, did out of court surrender into the
 hands of the lord of the said manor, by the hands and acceptance of
 the said *C. D.* and *E. F.*, by the rod, according to the custom of the
 said manor, All, &c., with the appurtenances, (to which same premises
 the said *A. B.* was admitted at a general court held for the said
 manor, on the — — day of — —); and the reversion, &c., and all
 the estate, &c., to the use of *J. K.* of, &c., his heirs and assigns, for
 ever, according to the custom of the said manor, upon the trusts never-
 theless hereinafter expressed, that is to say, upon trust that the said

J. K., his heirs or assigns, in case the said *A. B.*, his heirs, ex-
or administrators, shall pay, or cause to be paid, unto the said
his executors, administrators, or assigns, the full sum of £—
lawful money aforesaid, with lawful interest for the same, clear of
taxes and deductions, on the — day of —, according
purport and true meaning of the covenant of the said *A. B.* in
in a certain indenture bearing even date herewith, do and shall
time thereafter, upon the request, and at the costs and charges
the said *A. B.*, his heirs or assigns, re-surrender all and single
aforesaid customary or copyhold hereditaments and premises,
appurtenances, to the use of the said *A. B.*, his heirs and assigns
ever, according to the custom of the said manor of —, and
mean time and until the said — day of —, and also the
and until the said premises shall be re-surrendered in the manor
inbefore mentioned (the said principal and interest monies
well and truly paid as aforesaid,) do and shall stand seised or
of the said customary or copyhold hereditaments and premises,
for the said *A. B.*, his heirs and assigns. But in case default
made in payment of the same principal and interest monies, or
thereof, respectively, in manner aforesaid, then do and shall
seised or possessed of the said hereditaments and premises, with
appurtenances, upon trust forthwith, or at any time after such
upon being required thereunto by the said *G. H.*, his executors,
nistrators, or assigns, to make sale and absolutely dispose of
customary or copyhold hereditaments and premises, or any part
either by public auction or private contract, and together or in
for the best price or prices that in the judgment of the said *J.*
heirs or assigns, can or may be gotten for the same, and to sell
the premises so to be sold unto the purchaser or purchasers thereof
her, or their heirs and assigns for ever, according to the custom
said manor, or as he, she, or they shall direct or require; and
further trust, by, with, and out of the monies to arise from such
sales, and of the rents and profits of the said hereditaments and
from and after any such default, and in the mean time, and until
sale or sales, in the first place, to pay and discharge all such
charges, and expenses, as the said *J. K.*, his heirs or assigns,
or sustain, in procuring admittance by virtue of or under this statute
or otherwise in the execution of the trusts hereby in him and
posed, and in the next place, do and shall, out of the trusts
aforesaid, pay, satisfy, and discharge the said principal and

monies intended to be secured to the said *G. H.*, his executors, administrators, and assigns, in and by this surrender, and the aforesaid covenant of the said *A. B.*, or so much and such part thereof as shall remain due and owing, and shall and do pay the residue and surplusses of the trust monies aforesaid, unto the said *A. B.*, his executors, administrators, or assigns; and it is hereby agreed and declared, that the receipt and receipts of the said *J. K.*, his heirs or assigns, shall be a good and sufficient discharge, and good and sufficient discharges, to the purchaser or purchasers of the aforesaid hereditaments and premises, for all or such part of his, her, or their purchase monies, as shall be herein acknowledged or expressed to be received, and that such purchaser or purchasers, his, her, or their heirs, executors, administrators, or assigns, shall not be bound to see to the application of such purchase monies, or be responsible for the loss, misapplication, or non-application thereof, or any part thereof; and also that the said *J. K.*, his heirs or assigns, shall not be chargeable with or accountable for any monies, other than such as he or they shall actually receive by virtue of the trusts hereby in him and them reposed, nor with or for any loss or damage which may happen, by placing the trust monies aforesaid in any bank or banker's hands, or elsewhere, for safe custody, or any wise manner, or about the execution of the aforesaid trusts, without his or their neglect or default.

Taken, &c., by us.

A. B.

G. H.

C. D. } Customary or copyhold tenants
E. F. } of the aforesaid manor.

Surrender, out of court, by A. B., holding a grant to him and his heirs for three lives, to a purchaser.)

of the manor of — } Be it remembered, that on the — day of
the county of — } —, in the — year of the reign, &c., and
the year of our Lord —, *A. B.* of, &c., who, at a court holden
at the said manor, on the — day of —, was admitted to the
said customary or copyhold hereditaments hereinafter described, to hold to
the said *A. B.*, and his heirs, for the lives of *C. D.*, *E. F.*, and
H., and the life of the longest liver of them, came before *J. S.*,
ward of the said manor, and in consideration of the sum of £ — — —,
lawful money, &c., to him the said *A. B.* in hand well and truly paid

by *I. K.* of, &c., did out of court surrender into the hands of of the said manor, by the hands and acceptance of the said st the rod, according to the custom of the said manor, All, &c. appurtenances to the same premises belonging or appertaining the estate, right, title, interest, benefit, power, claim, and whatsoever of the said *A. B.* in, to, or out of the same premises every part thereof; to the use of the said *I. K.* and his heirs during the lives of the said *C. D.*, *E. F.*, and *G. H.*, and the longest liver of them, according to the custom of the said

Taken and accepted, the day
and year first above writ-
ten, by me,

J. S., steward of the said manor.

(Warrant to enter satisfaction on a conditional surrender)

The manor of — } *I, C. D.*, of, &c., do hereby acknow-
in the county of — } have received of and from *A. B.* of
principal and interest monies due and owing to me, upon or
of a conditional surrender made and executed by the said
certain customary or copyhold hereditaments, lying within a
of the said manor, and bearing date the — day of — ;
hereby direct and require the steward of the said manor,
satisfaction thereof, on the court rolls of the same manor, a
doing this shall be his sufficient warrant and authority.

*(Surrender out of court by tenant in tail in remainder, with
sent of the tenant for life, (the protector under the pro-
3rd and 4th W. 4. c. 74,) for the purpose of acquiring
sionary estate in fee simple.) (b).*

The manor of —, } Whereas, under and by virtue of t
in the county of —. } tions contained in [state whether a

(a) It is usual and proper to put this admittance of the tenant for
warrant upon the stamp required for a admittance of the persons in
power of attorney. remainder. If by the custom

(b) This form assumes that *C. D.* men are compellable to be ad
was in the seisin, under the rule that the add a recital, that at a court

y of settlement or a will,] the customary or copyhold hereditaments hereinafter described, were and do now stand limited to the use of *B.*, of, &c., for the term of his life, with remainder to *C. D.*, of, and the heirs of his body lawfully issuing, with several remainders and at a court held for the said manor on the — day of —, and *A. B.* was admitted tenant of the same hereditaments for the term of his life, according to the form and effect of the said, [state whether by surrender or will.]

It is remembered that on the — day of —, in the year of our Lord —, the said *C. D.* came before *W. B.*, deputy steward of the said manor, for that purpose and turn only of *J. S.*, chief steward of the said manor, and for the purpose of barring and extinguishing the said estate and interest which he, the said *C. D.*, is so intitled as aforesaid, of and in the hereditaments hereinafter described, and all remainders and reversionary expectant thereupon, and of vesting the same hereditaments in and to the said *C. D.* and his heirs absolutely, in remainder from and after the death of the said *A. B.*, according to the custom of the said manor, and with the consent of the said *A. B.*, signified by his signature to a memorandum of surrender, in compliance with the direction in that behalf contained in an Act of Parliament passed in the 3rd and 4th years of the reign of his present Majesty King William the Fourth, for the abolition of fines and recoveries, and for the substitution of more effectual modes of assurance, did out of court surrender into the hands of the said *W. B.* of the said manor, by the hands and acceptance of the said *W. B.*, steward, by the rod, according to the custom of the said manor, together with the appurtenances to the same premises belonging or appertaining; and the reversion and reversions, remainder and remainders, issues, and profits thereof; and all the estate, right, title, interest, benefit, power, claim, and demand whatsoever of the said *C. D.*, in and out of the same premises and every part thereof, to the use of the said *C. D.*, his heirs and assigns for ever, in remainder expected to take effect in possession on the decease of the said *A. B.*, and according to the custom of the said manor. (a).

and accepted the — day of —,	}	<i>C. D.</i>
ne - - - - -		<i>A. B.</i>

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W. B., deputy steward.

C. D. was duly admitted to the hereditaments to hold to him and the heirs of his body, in remainder, expected to take effect in possession on the decease of the said *A. B.*, according to the true intent and meaning of the said [surrender or will].
 (a) See presentment of and admittance under this surrender, *ante*, pp. (53 and 54.)

(*Surrender out of court by tenant in tail in remainder, in acquire a base fee.*) (a).

The manor of ——— } Whereas, under and by virtue of t
in the county of ——— } tions contained in [state whether a sur
way of settlement or a will] the customary or copyhold ———
hereditaments hereinafter described, were, and do now stand
the use of *A. B.*, of, &c., for the term of his life, with remain
D., of, &c., and the heirs male of his body lawfully issuing, wi
remainders over; and at a court held for the said manor on th
day of ———, the said *A. B.* was admitted tenant of the s
ditaments for the term of his life, according to the form an
the said [state whether a surrender or will.] (b).

Now be it remembered, that on the ——— day of ———, in
of our Lord ———, the said *C. D.*, came before *J. S.*, stew
said manor, and for the purpose of acquiring a base customary
said hereditaments, by virtue and in pursuance of the provi
tained in an Act of Parliament passed in the 3rd and 4th years o
of his present Majesty King William the Fourth, for the aboli
and recoveries, and for the substitution of more simple moder
ance, did out of court surrender into the hands of the lord o
manor, by the hands and acceptance of the said steward, by the r
ing to the custom of the said manor, All, &c., with the appurt
the same premises belonging or appertaining; and the reversion
sions, remainder and remainders, rents, issues, and profits th
all the estate, right, title, interest, benefit, power, claim, an
whatsoever of the said *C. D.*, in, to, or out of the same pre
every part thereof, to the use of him the said *C. D.*, his heir
signs for ever, in remainder, expectant and to take effect in
on the decease of the said *A. B.*, and according to the cust
said manor.

Taken and accepted the ——— day of ———,
by me,

J. S., steward of the said manor.

(a) See presentment of and admittance lar tenant, is the admittance
under this surrender, *ante*, pp. (55-6). sons intitled in remainder.

(b) I have assumed that the admit- were admitted to the remain
tance of *C. D.* to the estate tail in re- the fact should be recited in
mainder is rendered unnecessary by the surrender.
rule, that the admittance of the particu-

surrender out of court by a feme covert tenant in tail, and her husband, in order to acquire an absolute customary fee.) (a).

Manor of —, } Whereas *A. B.* late of, &c., deceased, one of
 the county of —. } the customary or copyhold tenants of the said
 manor, in and by his last will and testament in writing, bearing date, &c.
 and devised all his copyhold estates lying within and holden of the
 manor, unto his daughter *C. B.*, and the heirs of her body, with
 reversions over, and afterwards departed this life without revoking or
 altering his said will, which was duly proved by the executors therein
 named in the prerogative court of Canterbury, on or about the —
 of —. And whereas the said *C. B.* was at a court holden for the
 manor on the — day of —, admitted tenant of the customary
 copyhold — — and hereditaments hereinafter described, accord-
 ing to the form and effect of the devise so made to her by her said late
 husband as aforesaid. And whereas the said *C. B.* hath lately inter-
 married with *E. F.*, of, &c. Now be it remembered that on the —
 of —, the said *E. F.* and *C.* his wife, came before *J. S.*, steward
 of the said manor, and, for the purpose of barring and extinguishing the
 estate tail, of and in the — —, and hereditaments hereinafter
 described to which the said *C. F.* is so intitled as aforesaid, and all re-
 versions and reversions expectant thereupon, and of vesting the same
 hereditaments in the said *C. F.*, and her heirs absolutely, according to
 the custom of the said manor, the said *C. F.* being first examined by the
 said steward, separately and apart from her said husband, and freely
 voluntarily consenting thereto, did by virtue, and in pursuance of
 the provisions contained in an Act of Parliament passed in the 3rd and
 4th years of the reign of his present Majesty King William the Fourth,
 for the abolition of fines and recoveries, and for the substitution of more
 simple modes of assurance (*b*), surrender into the hands of the lord of
 the said manor, by the hands and acceptance of the said steward, by the
 said *C. F.*, according to the custom of the said manor, All, &c., with the ap-
 penances to the same premises belonging or appertaining; and the
 reversions and reversions, remainder and remainders, rents, issues and
 profits thereof; and all the estate, right, title, interest, benefit, power,

(a) See presentment of and admittance
 under this surrender, *ante*, pp. (56-7.)

(b) The estate of the wife being an
 estate *at law*, a surrender is the only

proper mode of barring the entail, see §.
 77 of the above act. *Vide also ante*,
 pp. (7). n. (*b*), (12).

claim and demand whatsoever, of the said *E. F.* and *C.* his wife, respectively, in, to or out of the same premises, and every part thereof, for the use of the said *C. F.*, her heirs and assigns for ever, according to the custom of the said manor.

Taken and accepted the — day of —, (the said *C. F.* being first examined by me separately and apart from her said husband, and freely and voluntarily consenting thereunto,) by me,
J. S., steward of the said

(Surrender out of court by a feme covert equitably in remainder in fee, and her husband, to a purchaser.)

The Manor of —, } Whereas *A. B.* late of, &c. deceased
 in the county of —. } by his last will and testament in writing
 date, &c., gave and devised all his copyhold estates lying within the manor holden of the said manor, by the description of, &c., unto *C. D.* Esquire, and *E. F.*, of, &c., gentleman, and their heirs, in trust for the rents and profits thereof, unto *H. B.*, the wife of the said *A. B.* (she should happen to survive him,) for the term of her natural life for her separate use and benefit in the manner therein mentioned, and after the decease of the said *H. B.* to stand possessed of the thereby devised copyhold estates, in trust, for *J. B.* spinster, the child of the said *A. B.* and *H.* his wife, her heirs and assigns. And whereas the said *A. B.* afterwards departed this life, leaving the said *H. B.* his wife him surviving, and without having revocably in anywise altered his said in part recited will, which was proved by the executors therein named in the prerogative court of Canterbury on the — day of —. And whereas, at a court holden for the said manor on the — day of —, the said *C. D.* and *E. F.* were admitted to the customary or copyhold hereditaments hereinafter described, and for the trusts, intents and purposes expressed concerning the same in the said will of the said *A. B.* deceased. And whereas the said *H. B.* the widow of the said *A. B.* is still living. And whereas the said *J. B.* who sometime since attained the age of twenty-one years, has since intermarried with, and is now the wife of *L. M.* of, &c. Now being remembered that on the — day of — the said *L. M.* and *J.* his wife were presented before *J. S.*, steward of the said manor, and for carrying into

(a) See presentment of this surrender, *ante*, p. (57).

tract or agreement for sale, lately made and entered into by
 m with *N. O.* of, &c. and in consideration of the sum of £ —, of
 ful money of the united kingdom of Great Britain and Ireland,
 rent in England, unto the said *L. M.* and *J.* his wife, in hand, well,
 truly paid by the said *N. O.* at the time of making this surrender,
 the said *J. M.* being first examined by the said steward, separately
 apart from her said husband, and freely and voluntarily consenting
 reto, did by virtue and in pursuance of the provisions contained in
 Act of Parliament, passed in the 3rd and 4th years of the reign of
 present Majesty King William the Fourth, for the abolition of
 s and recoveries, and for the substitution of more simple modes of
 urance (a), surrender into the hands of the lord of the said manor,
 the hands and acceptance of the said steward, by the rod, according
 the custom of the said manor, All, &c., with the appurtenances to
 same premises, belonging or appertaining; and the reversion and
 ersions, remainder and remainders, rents, issues and profits thereof;
 all the estate, right, title, interest, benefit, power, claim and de-
 nd whatsoever, of the said *L. M.* and *J.* his wife respectively, in to or
 of the same premises, and every part thereof, to the use of the said
O., his heirs and assigns for ever, in remainder from and after the
 ease of the said *H. B.*, and according to the custom of the said
 nor.

ken and accepted the — day of —, (the
 said *J. M.* being first examined by me, sepa-
 rately and apart from her said husband, and
 freely and voluntarily consenting thereunto,)
 by me,

L. M.

J. M.

J. S. steward of the said manor.

*eed of consent by the immediate tenant for life, of copyholds, to a
 disposition by the first tenant in tail, for the purpose of acquiring
 an estate in remainder in fee simple.)*

To all to whom these presents shall come I *A. B.* of, &c. send greet-
 . Whereas under and by virtue of the limitations contained in [state
 ether a surrender by way of settlement or a will], certain customary
 copyhold — — and hereditaments, lying within and holden of
 manor of, &c., were and do now stand limited to the use of me the

(a) See §. 90. *Vide also ante*, pp. (7), n. (b), (52).

said *A. B.*, and my assigns, for the term of my life, and from my decease to the use of my eldest son *C. B.*, [or of *C. D.* of, & case may be], and the heirs of his body lawfully issuing, and held for the said manor on the — day of —, I the said *A. B.* admitted tenant of the same hereditaments, for the term of my recording to the form and effect of the said surrender [or will] whereas the said *C. B.* [or *C. D.*] is desirous of acquiring an estate of inheritance in fee simple, in remainder, according to the will of the manor of — aforesaid, expectant and to take effect at my decease of and in the said customary or copyhold — hereditaments and premises, with their appurtenances, I have caused and applied to me to give my consent thereto, in compliance with the provisions of an Act of Parliament, passed in the 3rd and 4th years of the reign of his present Majesty King William the Fourth, for the abolition of entails and recoveries, and for the substitution of more simple modes of conveyance. Now I the said *A. B.*, in my character of protector, under the powers contained in the aforesaid Act of Parliament, of the limitation of entails by the surrender [or will], hereinbefore referred unto, do hereby give and declare my consent that the said *C. B.* [or *C. D.*] shall have and enjoy by any such surrender or surrenders, conveyances, acts and assurances as may be by him, or his counsel or solicitor, deemed necessary and proper in that behalf, limit, convey, and assure All and singular the hereditaments and premises, with their appurtenances, subject and without prejudice to the rights and interest therein for the term of my life, to the use of his son *C. B.* [or *C. D.*] his heirs and assigns for ever, according to the will of the said manor of —, or to, for and upon any such uses, intents and purposes, as shall in and by any such surrender or surrenders, conveyances and assurances as last aforesaid, be expressed, declared, and contained of and concerning the same hereditaments and premises.

(Deed of disposition by an equitable tenant in tail of copyhold land to a purchaser.) (a).

This indenture made the — day of —, in the year of our Lord 18—, between *A. B.*, of, &c., of the one part, and *C. D.*, of the other part. Whereas the said *A. B.*, by virtue of [statute]

(a) This deed must be entered on the court-rolls of the manor; but is not required to be inrolled in the Court of Chancery. See § 53 & 54, 4th W. 4th, c. 74.

er a surrender, deed, or will], is equitably intitled to the copyhold
 editaments hereinafter described, for an estate to him and the heirs
 his body, according to the custom of the manor of ———, in the
 ty of — (a). And whereas the said *A. B.* hath contracted and
 deed with the said *C. D.* for the sale to him of the same heredita-
 ts, with their appurtenances, for an equitable customary estate of
 eritance in fee simple in possession, at or for the price or sum
 £———. Now this indenture witnesseth, that, for the pur-
 e of barring and extinguishing the said estate tail to which the
C. D. is now equitably intitled as aforesaid, and all remainders
 reversions expectant thereupon, and in consideration of the sum
 £—— of lawful money of the united kingdom of Great Britain
 Ireland, current in England, unto the said *A. B.* in hand well
 truly paid by the said *C. D.*, at or immediately before the
 ing and delivery of these presents, the receipt of which said sum
 £—— the said *A. B.* doth hereby acknowledge, and of and
 the same and every part thereof doth acquit, release, exonerate,
 discharge, the said *C. D.*, his heirs, executors, administrators, and
 gns, and every of them for ever, by these presents. He, the said
B., by virtue and in pursuance of the provisions in this behalf
 tioned and contained in an act of parliament passed in the third
 fourth years of the reign of his present Majesty King William the
 uth, intituled “An Act for the abolition of fines and recoveries,
 d for the substitution of more simple modes of assurance,” hath
 ted, and bargained and sold, and assigned, and by these presents
 a grant, and bargain and sell, and assign, unto the said *C. D.*, his
 s and assigns, All, &c. with the appurtenances to the same pre-
 s belonging, or in anywise appertaining; and the reversion and
 rsions, remainder and remainders, rents, issues, and profits thereof;
 all the equitable estate, right, title, interest, benefit, power, claim
 demand whatsoever of the said *A. B.*, in, to, or out of the same
 ditaments and premises, and every part thereof, *to have and*
hold the said — —, and all and singular other the here-
 ments and premises hereinbefore granted, and bargained and
 , and assigned, or intended so to be, with their appurtenances,

) It would not be necessary to re-
 the surrender, deed, or will, nor the
 ts under which *A. B.* derived his
 table title, but the steward would of
 se feel it to be his duty to have those

circumstances of title embodied in any
 future surrender to be made by the te-
 nant on the rolls, to the purchaser of
 the equitable fee simple.

unto and to the use of the said *C. D.*, his heirs and assigns for ever, according to the custom of the aforesaid manor. And the said *A. B.* doth promise, and agree with and to the said *C. D.*, his heirs and assigns, by these presents, in manner following; that is to say, that he doth give, sell, and assign, and doth warrant, confirm, and confirmeth, by these presents, unto and to the said *C. D.*, his heirs and assigns, all and singular the said customary or copyhold hereditaments and premises hereinbefore granted, and bargained and sold, and assigned, or intended so to be, for an equitable estate to the heirs of his body, in possession, according to the custom of the manor of — aforesaid, without any manner of condition, covenant, or other restraint, cause, matter, or thing whatsoever, to alter, defeat, revoke, impeach, make void, or determine the same. And he doth also that the said *A. B.* now hath in himself good right and full power, and authority to grant, and bargain and sell, assign, convey, and give, and doth warrant, confirm, and confirmeth, unto and to the said *C. D.*, his heirs and assigns for ever, in manner aforesaid, and according to the true intent and meaning of these presents. And he doth warrant, confirm, and confirmeth, that it shall and may be lawful to and for the said *C. D.*, his heirs and assigns, from time to time, and at all times for ever hereafter, lawfully and quietly to have, hold, possess, and enjoy, the equity, simple and inheritance, of and in all and singular the said customary or copyhold hereditaments and premises hereinbefore described, with their appurtenances, and to receive the rents, issues, and profits, and of every part thereof, to and for his and their own use and behoof, and to call for a surrender and assurance of the legal custody, simple and inheritance of the same hereditaments and premises, without any lawful let, suit, trouble, molestation, interruption, or disturbance whatsoever, of, from or by the said *A. B.*, or his heirs, or assigns, or any person or persons whomsoever; and that free and clear, and discharged, and acquitted, and absolutely acquitted, exonerated, and discharged, or otherwise, by the said *A. B.*, his heirs, executors, and administrators, and doth effectually saved, defended, kept harmless and indemnified, and against all and all manner of former and other gifts, grants, bargains, sales, leases, mortgages, settlements, free-bench, annuities, trusts, wills, intails, forfeitures, escheats, and all and singular other estates, titles, troubles, charges, and incumbrances whatsoever, and except the customary rents, fines, heriots, duties and

able and to be performed to the lord or lady, lords or ladies of the
 or of ——— aforesaid for the time being, for and in respect
 the same customary or copyhold hereditaments and premises or
 part thereof). And further that he, the said *A. B.*, and his heirs,
 all and every other persons and person having or lawfully or
 ably claiming or to claim any estate, right, title, trust, or interest,
 to, or out of the said hereditaments and premises hereby granted,
 bargained and sold, and assigned, or intended so to be, or any
 thereof, (except in respect of the estates and interests herein-
 re excepted,) shall and will from time to time, and at all times
 after, upon the reasonable request, and at the proper costs and
 charges in the law, of the said *C. D.*, his heirs or assigns, make, do,
 execute, or cause and procure to be made, done, and executed, all
 every such further and other acts, deeds, surrenders, and assurances
 the law whatsoever, for the further, better, more perfect, and
 ute conveying, assuring and confirming all and singular the
 customary or copyhold ——— ——— hereditaments and
 premises hereby granted, and bargained and sold, and assigned, or in-
 tended to be, with their appurtenances, unto and to the use of the said
C. D., his heirs and assigns for ever, according to the custom of the
 manor of ———, as by the said *C. D.*, his heirs or assigns, or
 their counsel learned in the law, shall be lawfully and reasonably
 done, or advised and required. In witness, &c.

*Gain and Sale of copyholds to a Purchaser, by one of the Com-
 missioners acting in execution of a fiat of bankruptcy under 1
 and 2 W. 4, c. 56 (a); with an authority to the bankrupt to
 make the surrender for the purpose of the purchaser's admit-
 tance (b); and release and confirmation by the assignees and
 the bankrupt.) (c).*

This indenture made the — day of —, in the — year, &c.,
 in the year of our Lord —, between *A. B.*, esquire, (one of

This deed is required by the 68th
 of 6 Geo. 4, c. 16., to be in-
 in one of His Majesty's courts of
 . *Ante*, pt. 1, pp. 172, 370, 371-
 and as to copyhold lands vested in
 rupt for an estate tail, see *ante*,
), et seq.

is better to give the authority to the
 bankrupt, in order the more effectually
 to divest him of the legal customary es-
 tate, in case of any question as to the va-
 lidity of the fiat, or the regularity of
 the proceedings under it.

See 6 Geo. 4, c. 16. §. 68. It

(c) See presentment of this deed, *ante*,
 p. (78).

the commissioners named in a fiat of bankruptcy hereinafter made to have been lately issued against *C. D.* of, &c.,) of the first part, *E. F.* of, &c., and *G. H.* of, &c., (assignees chosen as hereinafter mentioned of the estate and effects of the said *C. D.*) of the second part, the said *C. D.* of the third part, and *I. K.* of, &c., of the fourth part. Whereas at a customary court baron holden for the manor of ——— the county of ———, on the ——— day of ———, in the year of our Lord ———, the said *C. D.* was admitted on the surrender of *L. M.* [or as the customary heir of, &c., as the case may be,] to assign and regular the copyhold hereditaments hereinafter described, with the appurtenances, to hold to him the said *C. D.* and his heirs, according to the custom of the said manor of ———. And whereas a fiat of bankruptcy was on the ——— day of ———, issued against the said *C. D.* directed to the said *A. B.*, and other the commissioners of the said bankruptcy, established by an Act of Parliament, passed in the 22nd and 23rd years of the reign of his present Majesty King William the Fourth, intituled “an act to establish a court in bankruptcy,” under which fiat the said *C. D.* was adjudged to have become bankrupt. And whereas the said *E. F.* and *G. H.* were sometime since duly chosen and appointed by the said commissioners to be the assignees of his estate and effects as aforesaid. And whereas the said *A. B.* pursuant to the powers created by an Act of Parliament passed in the sixth year of the reign of the late Majesty King George the Fourth, (a) and the Act of the said Parliament hereinbefore referred unto, or one of them, caused the said copyhold hereditaments hereinafter described, and the customary fee and inheritance thereof, in possession, to be put up to sale by public auction at ———, on the ——— day of ———, and at such sale the said copyhold hereditaments were sold to the said *E. F.* and *G. H.* who were then present and attended, and was declared to be the highest bidder for, and the price of the same copyhold hereditaments, at or for the price of ——— £ ———. Now this indenture witnesseth, that for carrying into effect the recited sale and purchase into effect, and for and in consideration of the sum of £ ———, of lawful money of the united Kingdom of Great Britain and Ireland, current in England, unto the said *E. F.* and *G. H.* assignees as aforesaid, with the privity and approbation of the said *A. B.* and also of the said *C. D.*, (testified by their severally being made parties to, and sealing and delivering these presents,) in hand, well

(a) N.B. The power of sale given to the commissioners by the 68th sect. of that act, is exercisable as to copyhold lands by any one of the commissioners under the fiat, the 26th sect. of 1st act vesting the bankrupt's real property in the assignees, not being applicable to copyhold property. *Ante*, pt. 1

d by the said *I. K.* at the time of the execution hereof, the receipt
 ereof the said *E. F.* and *G. H.* do hereby acknowledge, and thereof
 from the same and every part thereof, do respectively acquit, release,
 merate, and discharge the said *I. K.*, his heirs, executors, adminis-
 ors and assigns, and every of them for ever, by these presents; and
 , in consideration of the sum of 10s. a piece of lawful money afore-
 l, unto the said *A. B.* and the said *C. D.*, in hand paid by the said
K., at or before the execution hereof, the receipt whereof is hereby
 nnowledged: The said *A. B.*, in further pursuance and execution of
 powers vested in him as aforesaid, and as far as he lawfully can
 may, Hath bargained and sold, limited and appointed, conveyed
 assured, and by these presents Doth bargain and sell, limit and
 oint, convey and assure: And the said *E. F.* and *G. H.*, and also
 said *C. D.*, Have and each and every of them Hath bar-
 ned and sold, remised, released, and confirmed, and by these presents
 and each and every of them Doth bargain and sell, remise, release,
 confirm unto the said *I. K.*, his heirs and assigns, All, &c. together
 a all ways, &c. and appurtenances whatsoever to the said heredita-
 ts and premises belonging, or in anywise appertaining; and the
 ersion and reversions, remainder and remainders, rents, issues, and
 its thereof; *to have and to hold* the said customary or copyhold —
 hereditaments and premises mentioned or intended to be hereby
 gained and sold, limited and appointed, or otherwise assured, with
 appurtenances thereof, unto and to the use of the said *I. K.*, his
 s and assigns for ever, but nevertheless, according to the custom of
 manor of ——— aforesaid, and subject to the rents, customs, suits,
 services payable and to be performed in respect of the same pre-
 es, to the lord or lady, lords or ladies of the aforesaid manor for the
 e being. And the said *A. B.*, in further pursuance and execution
 the powers given to him by the said fiat and the said statutes
 ectively, or one of them, Doth hereby entitle and authorise the
C. D., on behalf of him the said *A. B.*, to surrender all and sin-
 ar the customary or copyhold — — hereditaments and premises
 einbefore described, with their appurtenances, according to the
 tom of the manor of ——— aforesaid, so and in such manner and
 the intent and purpose that the said *I. K.* may be admitted thereto,
 such purchaser thereof, as aforesaid, the said *I. K.* previously agree-
 and compounding with the lord or lady, lords or ladies of the same
 nor, for the fines, dues, and other services payable and performable
 the custom thereof. And the said *A. B.*, for himself, his heirs,

executors, and administrators, doth hereby covenant and declare and to the said *I. K.*, his heirs and assigns, that he the said *A.* not at any time heretofore made, done, committed, executed, or lawfully suffered or consented unto any act, deed, matter, or thing whatsoever, whereby or by means whereof the said customary or hereditaments and premises hereby bargained and sold, limited, appointed, or otherwise assured, or intended so to be, or any part thereof, are, is, can, or may be sold or conveyed, or charged, impaired, affected, or incumbered in title, estate, or otherwise howsoever, the said *C. D.*, for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said *I. K.* and his heirs and assigns, that he the said *C. D.* and his heirs, executors, and administrators, will, at any time or times hereafter, upon the request and at the charges of the said *I. K.*, his heirs or assigns, make, do, execute, or join and concur in making, doing, and executing, and in performing such further and other acts, deeds, and assurances whatsoever, as shall be further, better, and more effectually conveying, and assuring, and singular the said customary or copyhold hereditaments and premises hereinbefore bargained and sold, limited and appointed, or otherwise assured, or intended so to be, with their appurtenances, and use of the said *I. K.*, his heirs and assigns for ever, according to the custom of the aforesaid manor, as by the said *I. K.*, his heirs or assigns, or his or their counsel learned in the law, shall be devised, advised, or required. In witness, &c.

(Surrender by a bankrupt (pursuant to the authority contained in the bargain and sale from one of the commissioners), to the assignee.) (a).

The Manor of —, } Whereas, by an indenture of bargain and sale in the County of —, } bearing date the — day of — between *A. B.* esquire, (one of the commissioners named in the said indenture of bargain and sale, and in the said bankruptcy, thereafter mentioned to have been then lately made against *C. D.* of, &c.), of the first part, *E. F.* of, &c., and *G. H.* of, &c. (assignees chosen as thereafter mentioned, of the estate and premises of the said *C. D.*), of the second part, the said *C. D.*, of the third part, and *I. K.* of, &c. of the fourth part. Reciting that at a certain

(a) See presentment of and admission under this surrender, *ante*, pp. (79), (80).

part baron, holden for the said manor of ———, on the ——— day of ———, the said *C. D.* was admitted on the surrender of *L. M.* of, &c. as the customary heir of, &c., as the case may be], to all and singular copyhold hereditaments thereafter described, with their appurtenances to hold to him the said *C. D.* and his heirs, according to the custom of the said manor. And reciting that a fiat of bankruptcy was made the ——— day of ———, issued against the said *C. D.*, directed to the said *A. B.* and other the commissioners of the court of bankruptcy, established by an Act of Parliament, passed in the 1st and 2nd years of the reign of his present Majesty King William the Fourth, intituled "an act to establish a court in bankruptcy," under which the said *C. D.* was adjudged to have become bankrupt. And also reciting that the said *F.* and *G. H.* were sometime since duly chosen and appointed by the creditors of the said *C. D.*, to be the assignees of his estate and effects. And after further reciting that the said *A. B.* pursuant to the powers created by and under an Act of Parliament, passed in the sixth year of the reign of his late Majesty King George the Fourth, and the 1st of Parliament thereinbefore referred unto, or one of them, caused the said copyhold hereditaments thereafter described, and the customary fee simple and inheritance thereof, in possession, to be put up to public sale by public auction, at ———, on the ——— day of ———, and that at such sale the said *I. K.* attended, and was declared to be the highest bidder for, and purchaser of the same hereditaments, at or for the price or value of £———. It was witnessed that for carrying the said sale and purchase into effect, and in consideration of the sum of £——— of lawful money of the united kingdom of Great Britain and Ireland, current in England, unto the said *E. F.* and *G. H.*, assignees as aforesaid, with the privity and approbation of the said *A. B.*, and also of the said *C. D.* (certified as therein mentioned) in hand paid by the said *I. K.* at the time of the execution thereof; and for the nominal consideration therein expressed, the said *A. B.*, in further pursuance and execution of the powers vested in him as aforesaid, did, as far as he lawfully could or might, bargain and sell, limit and appoint, convey and assure: and the said *F.* and *G. H.*, and also the said *C. D.* did respectively bargain and sell, remise, release, and confirm, unto the said *I. K.*, his heirs and assigns, All, &c., together with all ways, &c., and appurtenances whatsoever, to the said hereditaments and premises belonging, or in any way appertaining; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; to hold the said customary copyhold ——— hereditaments and premises mentioned or in-

tended to be thereby bargained and sold, limited and appurtenances thereof, unto and otherwise assured, with the appurtenances thereof, unto and to the heirs and assigns, for ever, but nevertheless according to the custom of the manor of ——— aforesaid, as to the rents, customs, suits, and services, payable and to be paid in respect of the same premises, to the lord or lady, lords or ladies of the aforesaid manor for the time being. And the said *A. B.*, in pursuance and execution of the powers given to him by the said statutes respectively, or one of them, did thereunto consent and authorise the said *C. D.*, on behalf of him the said *A. B.*, to have and enjoy all and singular the customary or copyhold hereditaments and premises thereinbefore described, with their appurtenances, according to the custom of the aforesaid manor, so and in such manner, and to the intent and purpose that the said *I. K.* might be admitted thereunto as purchaser thereof as aforesaid, he, the said *I. K.*, previously to the said bargain and compounding with the lord or lady, lords or ladies, of the aforesaid manor, for the fines, dues, and other services payable and to be paid by the custom thereof.

Now be it remembered, that on the ——— day of ——— the said *C. D.* came before me *J. S.* esquire, steward of the said manor, pursuant to and in compliance with the said authority and power thereinbefore mentioned and contained in the said recited indenture of bargain and sale, and for the purpose of dispossessing him the said *I. K.* of his customary right, title, or interest, now vested in him the said *I. K.* in or to the said copyhold hereditaments and premises, and to the effect and considerations expressed in the same indenture of bargain and sale, he did of court surrender into the hands of the lord of the said manor, the said *C. D.* in hands and acceptance of the said steward, by the rod, according to the custom of the same manor, All and singular the said customary or copyhold ——— hereditaments and premises comprised in the said recited indenture of bargain and sale, and hereinbefore described, with their appurtenances; and the reversion and reversions, remainders, rents, issues, and profits thereof; and all the right, title, interest, benefit, power, claim, and demand whatsoever in or to the said *C. D.* in to or out of the same hereditaments and premises, he did give and part thereof, to the use of the said *I. K.*, his heirs and assigns, according to the custom of the said manor.

Taken and accepted this ——— day of, &c., by me,

J. S., steward of the said manor.

Surrender of the copyhold lands of an insolvent debtor, by the assignee appointed by the court, to a purchaser.) (a).

the manor of ——— } Whereas at a court holden for the said ma-
 the county of ——— } nor, on the ——— day of ———, *A. B.*, of,
 was admitted upon the surrender of *L. M.*, of, &c., [or as the cus-
 tary heir of, &c., as the case may be,] to the customary or copyhold
 titaments hereinafter described, to hold to him the said *A. B.*, and
 heirs for ever, according to the custom of the same manor. And
 whereas by an indenture, bearing date the ——— day of ———, and
 between *C. D.*, (therein described provisional assignee of the es-
 tate and effects of insolvent debtors in England,) of the one part, and
E. F., of, &c., of the other part, [the recital to be taken from the form
 of conveyance in the schedule to the act of 1 W. 4, c. 38.] And
 whereas the above recited conveyance and assignment from the said pro-
 visional assignee to the said *E. F.*, hath been entered on the court-rolls
 of the said manor of ———, pursuant to the provision and direction in that
 behalf mentioned, and contained in an Act of Parliament, passed in the
 year of the reign of his late Majesty, King George the Fourth,
 intituled “an act to amend and consolidate the laws for the relief of
 insolvent debtors in England.” And whereas the said *E. F.* in
 obedience of, and obedience to an order of the said court, for relief of
 insolvent debtors, caused the said customary or copyhold ——— and
 hereditaments, to be put up to sale at, &c., on the ——— day of ———
 and at such sale *G. H.* of, &c., was declared to be the highest
 bidder for, and purchaser of the same hereditaments, and the customary
 and copyhold simple and inheritance thereof, at or for the price or sum of
 ———. Now be it remembered that on the ——— day of ———,
 the said *E. F.* came before *J. S.*, esquire, steward of the said manor,
 and by virtue and in execution of the trust or power reposed in him in
 that behalf, by and under the said Act of Parliament passed in the 7th
 year of the reign of his said late Majesty, and in further pursuance of
 and obedience to the said order of the said court, for relief of insolvent
 debtors, and, for and in consideration of the sum of £ ——— of
 lawful money of the united Kingdom of Great Britain and Ireland,
 did give and grant in full satisfaction, and in full discharge, and
 satisfaction in England, to him the said *E. F.*, as such assignee as aforesaid,

See presentment of and admit- (80), (81).
 under this surrender, *ante*, pp.

in hand well and truly paid by the said *G. H.* at the time of this surrender, the receipt whereof, the said *E. F.* doth hereby ledge, did out of court surrender into the hands of the lord of the manor, by the hands and acceptance of the said steward, by according to the custom of the same manor, All, &c., with the tenances to the same premises belonging or appertaining; and reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, trust, interest, benefit, claim and demand whatsoever, of the said *E. F.*, in, to, or out of the said hereditaments and premises, and every part thereof, to the said *G. H.* his heirs and assigns for ever, according to the custom of the said manor.

Taken and accepted this — day of, &c.,
by me,

J. S., steward of the said manor.

(Deed of covenant to surrender copyholds of inheritance to the purchaser.)

This indenture, made the — day of, &c., between *A. B.*, of the one part, and *C. D.*, of, &c., of the other part. Whereas the said *A. B.* hath contracted and agreed with the said *C. D.* for the surrender to him of the customary or copyhold hereditaments hereinafter described, and covenanted to be surrendered, with their appurtenances, to the said *C. D.* in fee simple in possession, according to the custom of the manor of —, in the county of —, free from all services and exactions as hereinafter mentioned, at or for the price or sum of £——. And whereas the several deeds, evidences, and writings specified in the schedule hereunder written, relate as well to the said customary or copyhold hereditaments hereinafter described, as to other hereditaments, the estate and inheritance of the said *A. B.*, of much value, and it hath therefore been agreed, that the same deeds, evidences, and writings, shall remain in the custody of the said *A. B.*, that he shall enter into the covenant for production and satisfaction thereof, hereinafter contained (a). Now this indenture witnesseth that for and in consideration of the sum of £——, of lawful

(a) *Ante*, pt. 1, p. 586, et seq.

into the said *A. B.*, in hand well and truly paid by the said *C. D.*, before the sealing and delivery of these presents, the receipt of the said *A. B.* doth hereby acknowledge; and thereof, and the same and every part thereof, doth acquit, release, exonerate, discharge the said *C. D.*, his heirs, executors, administrators, and every of them for ever, by these presents, (the *ad valorem* in respect of which said purchase money is intended to be affixed in surrender of the said hereditaments, according to the provisions of an act of parliament imposing such duty,) he, the said *A. B.*, for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said *C. D.*, his heirs and assigns, that the said *A. B.* or his heirs, and all other necessary persons, shall and will, at the next or some subsequent general, or at any special court baron, or customary court, to be holden for the manor or lands aforesaid, or out of court, upon the request, and at the charges and expences of the said *C. D.*, his heirs or assigns, duly surrender into the hands of the lord or lady, lords or ladies of the said manor, for the said manor, according to the custom of the same manor, All, &c., with and to the said *C. D.*, his heirs and assigns, and every of their appurtenances; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and all and singular the same right, title, interest, property, claim, and demand whatsoever of the said *A. B.*, in, to, or out of the same hereditaments and premises, and every part thereof, to the use of the said *C. D.*, his heirs and assigns, for ever, as he or they shall direct or require, and according to the custom of the said manor; and that in the mean time, until such surrender shall be so made as aforesaid, and the said *C. D.*, his heirs or assigns, shall procure admittance by virtue thereof, the said *A. B.*, and his heirs, shall and will stand seised and possessed of all and singular the same customary or copyhold hereditaments and premises, in trust only for the said *C. D.*, his heirs and assigns.

And the said *A. B.*, for himself, his heirs, executors, and administrators, doth further covenant, promise, grant, and agree with and to the said *C. D.*, his heirs and assigns, by these presents, in manning, following, that is to say, that (for and notwithstanding any act, matter, or thing whatsoever, by him the said *A. B.*, or any of his heirs, executors, or administrators, at any time heretofore, made, done, committed, executed, or suffered to the contrary) he, the said *A. B.*, now, at the time of sealing and delivery of these presents, is and standeth lawfully and rightfully seised of the said customary or copyhold lands,

hereditaments, and premises, hereinbefore covenanted to be rendered, with their appurtenances, for a good, sure, perfect, lawful, absolute, and indefeasible estate of inheritance in fee simple in possession according to the custom of the manor of ——— aforesaid, with all manner of condition, trust, or other restraint, cause, matter, or thing whatsoever, to alter, change, defeat, revoke, impeach, make void, or to determine the same:—And also that he, the said *A. B.*, (for himself, his heirs, assigns, and assigns forever) notwithstanding any such act, deed, matter, or thing as aforesaid, doth stand in himself good right, full power, and lawful and absolute authority, to surrender, convey, and assure all and singular the said customary copyhold lands, hereditaments, and premises hereinbefore covenanted to be surrendered, with their appurtenances, in manner expressed, and according to the true intent and meaning of the covenants hereinbefore contained:—And moreover that it shall and lawfully may be lawful to and for the said *C. D.*, his heirs and assigns, from time to time, and at all times, for ever hereafter, peaceably and quietly to enter into and upon, have, hold, occupy, possess, and enjoy all and singular the same customary or copyhold hereditaments and premises, with their appurtenances, and to receive and take the rents, issues, and profits thereof, to and for his and their own use and benefit, without any lawful let, suit, trouble, molestation, eviction, ejection, disturbance, or disturbance whatsoever, of, from, or by the said *A. B.*, his heirs, or of, from, or by any other person or persons whomsoever, lawfully or equitably and rightfully claiming, or to claim, by, from, or in trust for him or them, or by, from, or under any of his heirs, assigns, or assigns forever, and that free and clear, and freed and clearly and absolutely and lawfully exonerated, and discharged or otherwise, by the said *A. B.*, his executors and administrators, well and effectually saved, defended, harmless, and indemnified of, from, and against all and all manner of former and other surrenders, gifts, bargains, sales, leases, jointures, settlements, dowers, free-bench, annuities, trustees, entails, forfeitures, escheats, and all and singular other estates, troubles, charges, and incumbrances whatsoever, had, made, committed, executed, occasioned, or suffered by him the said *A. B.*, his ancestors, or by any person or persons whomsoever lawfully or equitably claiming, by, from, under, or in trust for him, the said *C. D.*, or of them, or by, with, or under his, their, or any of their ancestors, default, privity, consent, or procurement, (except only the rents, fines, duties, and services payable and to be performed of the same hereditaments and premises, to the lord or lady

of the manor of ——— aforesaid, for the time being):—And that he the said *A. B.*, and his heirs, and all and every other and person having, or lawfully or equitably claiming or to any estate, right, title, or interest in, to, or out of the said copyhold hereditaments and premises, or any part thereof, in, under, or in trust for him or them, or any of his ancestors, shall and will from time to time, and at all times for ever hereafter, upon the reasonable request, and at the proper costs and charges in and out of the said *C. D.*, his heirs or assigns, make, do, and execute, and procure to be made, done, and executed, all and every other and other acts, deeds, surrenders, conveyances, and assignments in the law whatsoever, for the further, better, more perfect, and absolute surrendering, conveying, assuring, and confirming all and every part of the said customary or copyhold lands, hereditaments, and premises hereinbefore covenanted to be surrendered, with their appurtenances to the use of the said *C. D.*, his heirs and assigns for ever, or for such term of years as they shall direct or appoint, and according to the custom of the manor of ——— aforesaid, as by the said *C. D.*, his heirs or assigns, or his or their counsel learned in the law, shall be lawfully and reasonably devised or advised and required:—And lastly, that he the said *A. B.*, his heirs, executors, administrators, or assigns, shall and will from time to time, and at all times hereafter, upon reasonable request, and at the request, costs, and charges of the said *C. D.*, his heirs or assigns, (unless prevented by fire or other inevitable accident) shall produce and show forth, or cause and procure to be produced and shown forth unto the said *C. D.*, his heirs and assigns, or his or their counsel, attornies, solicitors, or agents, or in any court or courts of law, or equity, or upon any motion, petition, examination, commission, or hearing, or otherwise, as occasion shall require, all and every copy of any of the said deeds, evidences, and writings mentioned and contained in the schedule hereunder written, for the manifesting, evidencing, maintaining, defending, and proving the title, estate, right, interest, property, and possession of the said *C. D.*, his heirs and assigns, in and to the said customary or copyhold hereditaments and premises hereinbefore covenanted to be surrendered; and also shall and will upon the like request, costs, and charges of the said *C. D.*, his heirs or assigns, make and deliver, or cause to be made and delivered, unto him or them, true and attested or other copies, or extracts, of any of the said deeds, evidences, and writings, and shall and will keep and preserve the same respective deeds, evidences, and

writings, whole, uncanceled, and unobliterated, (casualties and
only excepted.) In witness, &c.

(The schedule above referred unto).

*(Release of freeholds, and covenant to surrender copyhold
purchaser.)*

This indenture, made, &c., between *A. B.*, of, &c., of the
and *C. D.*, of, &c., of the other part: Whereas the said *A. B.*
lately contracted and agreed with the said *C. D.*, for the sale
the freehold messuages, lands, and hereditaments hereinafter
and intended to be hereby granted and released, with the
tenances, for an estate of inheritance in fee simple in possession
also of the customary or copyhold lands and hereditaments
also described and covenanted to be surrendered, with the
tenances, for a like estate of inheritance, according to the custom
manor of ———, in the county of ———, and respectively
incumbrances as hereinafter mentioned, at or for the price of
£——: And whereas for the purpose of complying with the
visions of the act of parliament imposing an *ad valorem* duty
conveyances of estates, it has been agreed that the sum of £——
shall be considered as the consideration money for the purchase of
said freehold hereditaments, and the sum of £—— as the
ation money for the purchase of the said customary or copyhold
ditaments, and that the *ad valorem* stamp in respect of the
mentioned hereditaments, shall be affixed to the surrender.
Now this indenture witnesseth, that in pursuance and performance
the said recited contract and agreement, and for and in consideration
of the sum of £——, of lawful money, &c. unto the said
hand well and truly paid by the said *C. D.*, in the proper
manner aforesaid, at or before the sealing and delivery of these presents,
the receipt whereof the said *A. B.* doth hereby acknowledge, the said
of and from the same and every part thereof doth acquit, discharge,
exonerate, and discharge the said *C. D.*, his heirs, executors,
administrators, and assigns, and every of them for ever, by these presents,
the said *A. B.* hath granted, bargained, sold, aliened, released, and
confirmed, and by these presents doth grant, bargain, sell, release,
release, and confirm unto the said *C. D.* (in his actual possession
being, by virtue of a bargain and sale to him thereof made by

B., in consideration of *5s.* by indenture bearing date the day next before the day of the date of these presents, for the term of one whole year, commencing from the day next before the day of the date of the said indenture of bargain and sale, and by force of the statute made for transferring uses into possession,) and to his heirs and assigns, All, together with all houses, &c., and appurtenances whatsoever, to the said freehold hereditaments and premises belonging or in any wise pertaining, or therewith usually held, occupied, or enjoyed, or accustomed, reputed, deemed, taken, or known as part, parcel, or member thereof; and the reversion and reversions, remainder and remainders, rents and other rents, issues, and profits of all and singular the said messuages, lands, hereditaments and premises mentioned or intended to be hereby granted and released; and all the estate, right, title, interest, inheritance, use, trust, property, power, claim, and demand whatsoever, both at law and in equity, of the said *A. B.* in, to, or out of the same premises, and every part thereof; and all deeds, evidences, writings in any wise relating to the same hereditaments and premises, now in the custody or power of the said *A. B.*, or which he can recover without suit at law or in equity, *to have and to hold* the said messuages, lands, hereditaments, and all and singular other the premises aforesaid before granted and released, or intended so to be, with their appurtenances, unto the said *C. D.*, his heirs and assigns, to the only use and behoof of the said *C. D.*, his heirs and assigns, for ever, to him, to or for no other use, end, intent, or purpose whatsoever. And the said indenture also witnesseth, and for the considerations aforesaid, the said *A. B.*, for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said *C. D.*, his heirs and assigns, that he the said *A. B.*, and all other necessary parties, shall and will, at the next or some subsequent general, or at special court baron or customary court, to be holden for the manor of — aforesaid, or out of court, upon the request and at the costs and charges of the said *C. D.*, his heirs or assigns, duly surrender into the hands of the lord or lady, lords or ladies of the said manor for the time being, and according to the custom thereof, All, &c., with all and singular the appurtenances to the same premises belonging or appertaining; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, power, claim, and demand whatsoever of the said *A. B.* in, to, or out of the same customary or copyhold hereditaments and premises, and every part thereof, to the use of the said *C. D.*, his heirs and

assigns for ever, or as he or they shall direct or require, and according to the custom of the manor of ——— aforesaid; and that in the time and until such surrender or surrenders shall be so made as aforesaid, and the said *C. D.*, his heirs or assigns, shall obtain admission by virtue thereof, he the said *A. B.*, and his heirs, shall and lawfully and be seised or possessed of the same customary or copyhold hereditaments and premises, in trust only for the said *C. D.*, his heirs and assigns. And the said *A. B.*, for himself, his heirs, executors, administrators, doth further covenant, promise, grant, and agree, and to the said *C. D.*, his heirs and assigns, by these presents in manner following, that is to say, that he the said *A. B.*, now at the time of the sealing and delivery of these presents, is and standeth lawfully and rightfully seised of the said freehold messuages, lands, hereditaments and premises hereby granted and released, or intended so to be, in every part thereof, with their appurtenances, for a good, sure, lawful, absolute, and indefeasible estate of inheritance in fee simple possession; and of the said customary or copyhold lands, hereditaments and premises hereinbefore covenanted to be surrendered, for a good estate of inheritance, according to the custom of the manor of ——— aforesaid, without any manner of condition, trust, power of reversion, limitation of use or uses, or any other restraint, cause, matter, or thing whatsoever, to alter, change, defeat, revoke, impeach, make void, or to determine the same:—And also that he the said *A. B.* now hath in himself, good right, full power, and lawful and absolute authority to bargain, sell, release, surrender, convey, and assure all and singular the said freehold and customary or copyhold hereditaments and premises hereby granted and released, or intended so to be, and hereditaments covenanted to be surrendered, with their appurtenances, to the said *C. D.*, his heirs and assigns for ever, in manner and form aforesaid, and according to the true intent and meaning of these presents, and of the parties hereunto:—And moreover that it shall and may be lawful for the said *C. D.*, his heirs and assigns, from time to time, and at several times for ever hereafter, peaceably and quietly to enter into and to have, hold, occupy, possess, and enjoy all and singular the said freehold and customary or copyhold hereditaments and premises with their appurtenances, and to receive and take the rents, issues, and profits thereof, and of every part thereof respectively, to and for themselves and their own use and benefit, without any lawful let, suit, hindrance, molestation, eviction, ejection, interruption, or disturbance whatsoever, of, from, or by the said *A. B.*, or his heirs, or any other person.

ons whomsoever, lawfully or equitably and rightfully claiming or to
 aim any estate, right, title, trust, or interest in, to, or out of the same
 premises, or any part thereof respectively, and that free and clear, and
 freed, and clearly and absolutely acquitted, exonerated, and discharged,
 and otherwise, by the said *A. B.*, his heirs, executors, and administrators,
 well and effectually saved, defended, kept harmless, and indemnified of,
 and against all and all manner of former and other gifts, grants,
 bargains, sales, leases, mortgages, jointures, settlements, dower, free-
 rents, annuities, uses, trusts, wills, intails, statutes, recognizances,
 judgments, extents, executions, forfeitures, escheats, and all and singular
 other estates, titles, troubles, charges, and incumbrances whatsoever,
 (save and except the customary rents, fines, heriots, duties, and
 services payable and to be performed to the lord or lady, lords or ladies
 of the manor of — aforesaid, for the time being, for and in respect
 of the same customary or copyhold hereditaments and premises, or any
 part thereof) :—And further, that he the said *A. B.*, and his heirs, and
 every other persons and person having, or lawfully or equitably
 claiming, or to claim any estate, right, title, trust, or interest in, to, or
 out of the said hereditaments and premises hereby granted and released,
 intended so to be, and hereinbefore covenanted to be surrendered, or
 any part thereof respectively, (except in respect of the estates and
 interests hereinbefore excepted,) shall and will, from time to time,
 and at all times hereafter, upon the request and at the proper
 costs and charges in the law of the said *C. D.*, his heirs or assigns,
 make, do, and execute, or cause and procure to be made, done, and
 executed, all and every such further and other acts, deeds, convey-
 ances, surrenders, and assurances in the law whatsoever, for the further,
 better, more perfect, and absolute granting, releasing, conveying, sur-
 rendering, assuring, and confirming all and singular the said freehold
 and customary or copyhold messuages, lands, hereditaments and pre-
 mises hereby granted and released, or intended so to be, and hereinbefore
 covenanted to be surrendered, with their appurtenances, to the use of
 the said *C. D.*, his heirs and assigns for ever, as by the said *C. D.*, his
 heirs or assigns, or his or their counsel learned in the law shall be law-
 fully and reasonably devised or advised and required. [When the
 freehold and copyhold lands lie intermixed, it may be proper to insert
 the following clause, though not absolutely necessary, as a conveyance
 of copyholds by deeds of lease and release is not a cause of forfeiture (a).]
 provided always, and it is hereby agreed and declared by and between

(a) *Ante*, pt. 1, pp. 182, 531.

all the said parties hereto, that neither the description of estate said, nor any other matter or thing in these presents contained, deemed, construed, or adjudged to include all or any of the copyhold hereditaments and premises so contracted to be sold to the said *C. D.* as aforesaid, in the grant and release intended to be hereby made of the freehold messuages, lands, hereditaments, and premises so contracted to be sold to the said *C. D.*, but that such grant and release shall be confined expressly to freehold hereditaments only, to the effect that no forfeiture may be committed of the said copyhold hereditaments and premises, or any part thereof, by the execution of these presents. In witness, &c.

(Qualified covenants for title as to the freehold part, and covenants as to the copyhold part, in a deed similar to the foregoing.)

And the said *A. B.* for himself, his heirs, executors, and administrators doth further covenant, promise, grant, and agree with and to the said *C. D.*, his heirs and assigns, by these presents in manner following (that is to say,) that (for and notwithstanding any act, deed, matter or thing, whatsoever, by him the said *A. B.*, or by ———, his late deceased, at any time heretofore made, done, committed, executed, or wittingly suffered to the contrary,) he the said *A. B.*, now at the time of the sealing and delivery of these presents, is and standeth lawfully and rightfully seised of the said freehold messuages, lands, hereditaments, and premises, hereby granted and released, or intended so to be, and of every part thereof, with their appurtenances, for a good and perfect, lawful, absolute, and indefeasible estate of inheritance in fee-simple, in possession, without any manner of condition, trust, proviso, revocation, limitation of use or uses, or any other restraint, cause, or thing whatsoever to alter, change, defeat, revoke, impeach, void, lessen, or determine the same:—And that (for and notwithstanding any act, deed, matter, or thing whatsoever by him the said *A. B.*, or any other person or persons whomsoever, at any time heretofore made, done, committed, executed, or wittingly suffered to the contrary,) the said *A. B.* now at the time of the execution of these presents is seised or well intitled to the said customary or copyhold lands, hereditaments, and premises, hereinbefore covenanted to be surrendered, for a good and perfect estate of inheritance in fee-simple, in possession, according to the custom of the manor of ——— aforesaid, without any manner of condition

wer, or other restraint, cause, matter, or thing whatsoever, to alter,
 take or determine the same :—And also that he the said *A. B.* (for
 notwithstanding any such act, deed, matter, or thing respectively
 aforesaid,) now hath in himself, at the time of the sealing and delivery
 of these presents, good right, full power, and lawful and absolute autho-
 rity to grant, bargain, sell, release, surrender, convey, and assure all and
 singular the said freehold and customary or copyhold hereditaments and
 premises, hereby granted and released, or intended so to be, and here-
 before covenanted to be surrendered, with their appurtenances, to the
 use of the said *C. D.*, his heirs and assigns for ever, in manner aforesaid,
 according to the true intent and meaning of these presents and the
 conditions hereunto :—And moreover, that it shall and may be lawful to and
 for the said *C. D.*, his heirs and assigns, from time to time, and at all
 times, for ever hereafter, peaceably and quietly to enter into and upon,
 to hold, occupy, possess and enjoy all and singular the same free-
 hold and customary or copyhold hereditaments and premises, with their
 appurtenances, and to receive and take the rents, issues, and profits
 thereof, and of every part thereof respectively, to and for his and their
 use and benefit, without any lawful let, suit, trouble, molestation,
 interruption, ejection, interruption or disturbance whatsoever, of, from, or
 against the said *A. B.*, or his heirs, or of, from, or by any other person or
 persons whomsoever, lawfully or equitably and rightfully claiming or to
 claim any estate, right, title, or interest, in, to, or out of the said free-
 hold premises, by, from, under, or in trust for him or them, or by, from,
 or under the said — —, his late father deceased, or any estate,
 or title, trust, or interest in, to, or out of the said copyhold premises,
 from, or under him, the said *A. B.*, or any other person or persons
 whomsoever : and that free and clear, and freed, and clearly and abso-
 lutely acquitted, exonerated, and discharged, or otherwise by the said
A. B., his heirs, executors, and administrators, well, and effectually
 defended, kept harmless, and indemnified, of, from, and against
 all and manner of former, and other gifts, grants, surrenders, bar-
 gains, sales, leases, mortgages, jointures, settlements, dower, free-bench,
 and other liberties, uses, trusts, wills, intails, statutes, recognizances, judgments,
 and other suits, executions, forfeitures, escheats, and all and singular other
 claims, titles, troubles, charges, and incumbrances whatsoever, had, made,
 or committed, executed, or wittingly permitted or suffered, of the
 said freehold premises, by him the said *A. B.*, or by the said — —,
 or by his late father deceased, or by any person or persons whomsoever, claiming
 or to claim the same, from, under, or in trust, for them, or either of them, or by, with, or

under, their, or either of their acts, means, default, privity, contract, procurement, or had, made, done, committed, executed, or performed, or suffered of the said customary or copyhold premises, or of the said *A. B.*, or any other person or persons whomsoever, (save and except the customary rents, fines, heriots, duties, and services, payable to be performed to the lord or lady, lords or ladies of the ——— aforesaid, for the time being) :—And further that the said *A. B.* and his heirs, and all and every persons and person having, or claiming, or equitably claiming, or to claim any estate, right, title, or interest, in, to, or out of the said freehold hereditaments and premises, or any part thereof, by, from, under, or in trust for him, or them, or the said *A. B.* or his late father deceased, or claiming, or to claim any estate, right, title, or interest, at law or in equity, in, to, or out of the said customary or copyhold premises, by, or under the said *A. B.*, or any other person or persons whomsoever, (except in respect of the estates or interests therein before excepted,) shall and will, from time to time, and from henceforth hereafter, upon the request, and at the proper costs and charges, in the law, of the said *C. D.*, his heirs or assigns, make, execute, or cause and procure to be made, done, and executed every such further and other acts, deeds, conveyances, surrenders, and assurances in the law whatsoever, for the further, better, more certain, and absolute granting, releasing, surrendering, conveying, and confirming, all and singular the said freehold messuages, tenements, hereditaments and premises, hereby granted and released, or to be, with their appurtenances, to the use of the said *C. D.*, his heirs and assigns for ever, and all and singular the said customary or copyhold lands, hereditaments and premises, hereinbefore covenanted and surrendered, with their appurtenances, to the use of the said *C. D.*, his heirs and assigns for ever, according to the custom of the ——— aforesaid; as by the said *C. D.*, his heirs or assigns, their counsel, learned in the law, shall be lawfully and reasonably advised, or advised and required.

(Deed of covenants to accompany a conditional surrender of copyholds.)

This indenture made the ——— day of ———, in the ——— year of the reign, &c., and in the year of our Lord ———. Between the said *A. B.* of the one part, and *C. D.* of, &c. of the other part. Whereby the said *A. B.* having occasion for the loan of the sum of £——

ely apply to the said *C. D.* to lend and advance him the same, which accordingly consented and agreed to do on having the repayment thereof, with lawful interest for the same, secured to him the said *C. D.* by a mortgage of the copyhold hereditaments, hereinafter described, as hereinafter mentioned, and also collaterally secured by the covenant of the said *A. B.* hereinafter contained. And whereas the said *A. B.* in consideration of the sum of £ ——— of lawful money of the united Kingdom of Great Britain and Ireland, current in England, advanced and lent to him by the said *C. D.*, hath at a court holden for the manor of ———, in the county of ———, on the day of the date of these presents, duly surrendered into the hands of the lord of the said manor, ———, according to the custom of the same manor, All, &c., together with the appurtenances to the said hereditaments and premises belonging or appertaining, to the use of the said *C. D.*, his heirs and assigns forever, subject nevertheless to a proviso or condition contained in the said surrender, for making the same void, on payment by the said *A. B.*, his heirs, executors, administrators or assigns, unto the said *C. D.*, his heirs, executors, administrators or assigns, of the sum of £ ———, of lawful money of the said manor, with interest for the same, after the rate of £5 per cent. per annum, on the ——— day of ——— next ensuing, clear of all taxes and deductions whatsoever. Now this indenture witnesseth, that in consideration of the said sum of £ ——— so lent and advanced to the said *A. B.*, by the said *C. D.* as aforesaid, the receipt of which same sum, the said *A. B.* hereby acknowledge, and of and from the same sum and every part thereof, doth acquit, release, exonerate and discharge the said *C. D.*, his heirs, executors, administrators and assigns, and every of them for ever, by these presents, he the said *A. B.* for himself, his heirs, executors and administrators, doth covenant, promise and agree with and to the said *C. D.*, his heirs, executors, administrators and assigns, by these presents, in the manner following, (that is to say,) that he the said *A. B.*, his heirs, executors or administrators, shall and will well and truly pay, or cause to be paid unto the said *C. D.*, his executors, administrators or assigns, the said sum of £ ——— with interest for the same, after the rate, on the ——— day, and in manner mentioned and appointed in that behalf, in the condition of the said recited surrender, without any deduction or abatement whatsoever, and according to the purport, true intent and meaning of the same condition, and of the parties hereto:—And also that he the said *A. B.* at the time of making the said recited surrender, was lawfully and rightfully seised of, or well intitled to the said ——— and hereditaments hereinbefore described, with their appurtenances, for a good,

sure, perfect, lawful, absolute and indefeasible estate of inheritance fee-simple, in possession, according to the custom of the manor of aforesaid, without any manner of condition, trust or other restraint in any manner, matter, or thing whatsoever, to alter, change, defeat, revoke, or to make void, lessen or determine the same:—And that he the said *A. B.* at the time of making the before recited surrender, had in him full and right, full power, and lawful and absolute authority to surrender the said hereditaments and premises, with their appurtenances, to the use of the said *C. D.* his heirs and assigns for ever, in manner aforesaid, and according to the true intent and meaning of the same surrender, and of the parties hereto:—And moreover that it shall and may be lawful for the said *C. D.*, his heirs and assigns, from time to time, and at several times, from and after default shall happen to be made in paying of the said principal sum of £ ———, or any part thereof, or the interest thereof, or any part thereof, contrary to the true intent and meaning of the proviso or condition contained in the said recited surrender, peaceably and quietly to enter into and upon, have, hold, occupy, possess, and enjoy all and singular the said customary and copyhold ——— hereditaments and premises, with their appurtenances, and to receive, and to take the rents, issues and profits thereof, and of every part thereof, to and for his and their own use and benefit, without any law, suit, trouble, eviction, ejection, interruption or disturbance of, or by the said *A. B.*, or his heirs, or of from or by any other person or persons whomsoever, and that free and clear, and freed and cleared, and absolutely acquitted, exonerated and discharged, or otherwise, by the said *A. B.*, his heirs, executors and administrators, well and effectually saved, defended, kept harmless, and indemnified of, from and against all and all manner of former and other gifts, grants, bargains, sales, leases, mortgages, settlements, dower or freebench annuities, jointures, uses, trusts, wills, intails, forfeitures, escheats, and all and singular estates, titles, troubles, charges and incumbrances whatsoever, and only the customary fines, rents, suits and services thenceforth payable, and to be performed in respect of the aforesaid copyhold hereditaments and premises, to the lord or lady, lords or ladies of the said manor of ———, for the time being):—And further that he the said *A. B.* and his heirs, and all and every other persons and person, have, hold, lawfully or equitably and rightfully claiming or to claim any right, title, trust or interest in, to, or out of the said hereditaments and premises so surrendered as aforesaid, with their appurtenances, shall

will from time to time, and at all times, from and after default shall
 happen to be made in payment of the said principal sum of £ ———,
 or any part thereof, or the interest thereof, or any part thereof, contrary
 to the true intent and meaning of the proviso or condition contained in
 the said recited surrender, and of the parties hereto, upon the request
 of the said *C. D.*, his heirs, executors, administrators or assigns, but
 without the proper costs and charges in the law of the said *A. B.*, his heirs,
 executors or administrators, make, do and execute, or cause and procure
 to be made, done and executed, all or any such further and other acts,
 deeds, surrenders and assurances in the law whatsoever, for the further,
 better, more perfect and absolute surrendering, assuring and confirming
 and singular the said customary or copyhold ——— heredita-
 ments and premises hereinbefore described, with their appurtenances,
 to the use of the said *C. D.*, his heirs and assigns for ever, according to
 the custom of the manor of ——— aforesaid, freed and absolutely
 discharged from the proviso or condition for redemption contained
 in the said recited surrender, and of and from all right and equity of re-
 demption whatsoever, as by the said *C. D.*, his heirs or assigns, or his
 counsel learned in the law, shall be lawfully and reasonably,
 advised, or advised and required:—And moreover that he the said
A. B., his heirs, executors, administrators or assigns, shall and
 will, so long as the said principal and interest monies intended to
 be hereby secured, or any part thereof respectively, shall remain due
 and owing to the said *C. D.*, his executors, administrators or assigns,
 insure, and keep insured all and every the messuages, erections,
 and buildings hereinbefore described in some responsible insurance
 office or offices, to the full value of so much thereof as can be
 destroyed by fire, and deposit the policy or policies whereby such
 insurance or insurances shall be effected, with the said *C. D.*, his ex-
 ecutors, administrators, or assigns; and shall and will lay out and
 expend the monies to be received under the policy or policies,
 whereby the same buildings shall be so insured, forthwith after receipt
 thereof, in re-building the same, or in repairing such damage as may
 happen thereto by fire, and that in case the said *A. B.*, his heirs,
 executors, administrators, and assigns, shall neglect so to insure,
 or keep insured, the same buildings, or any of them, then it shall
 be lawful to and for the said *C. D.*, his heirs, executors,
 administrators, or assigns, to insure, and keep the same insured, in
 the manner aforesaid, in his or their own name or names; and that he
 the said *A. B.*, his heirs, executors, administrators, or assigns, shall

and will well and truly pay, or cause to be paid unto the said his executors, administrators, or assigns, as well all and every sum and sums of money as he the said *C. D.*, his heirs, executors, administrators, or assigns, shall or may advance or pay in, or be bound of any such insurance or insurances as last aforesaid, as also every such sum or sums of money as he or they shall or may advance, by way of fine, fees of court, or otherwise, upon or in relation to any admittance of him the said *C. D.*, his heirs or assigns, at any time hereafter, to all or any part of the said copyhold hereditaments and premises, under and by virtue of the said recited surrender. And that all and singular the said customary or copyhold hereditaments and premises, with their appurtenances, shall stand with and be subject to the payment not only of the principal and interest monies aforesaid, but also of all and every such sum or sums of money as the said *C. D.*, his heirs, executors, administrators, or assigns, shall advance pay and expend, in making and continuing the said insurance and insurances, or upon or by reason of any such admittance of the said *C. D.*, his heirs or assigns, to the said copyhold hereditaments and premises as aforesaid, together with interest for the same at the rate aforesaid, to be computed from the time or respectively when the same sum or sums respectively shall be so advanced and paid. And that the said customary or copyhold hereditaments and premises, or any part thereof respectively, shall not be redeemed or redeemed either at law or in equity, until all and every such last-mentioned sum or sums of money and interest, as the aforesaid principal and interest monies, shall be fully paid and satisfied unto the said *C. D.*, his heirs, executors, administrators, or assigns, according to the true intent and meaning of the said recited surrender and these presents. Provided nevertheless, and it is hereby declared and agreed between and among the said parties to these presents, that in the mean time, in default shall happen to be made in payment of the said principal sum of £ ———, or some part thereof, or the interest thereon, or some part thereof, contrary to the true intent and meaning of the said proviso or condition contained in the said recited surrender, then, notwithstanding the parties hereto, it shall and may be lawful to and for the said *C. D.*, his heirs and assigns, peaceably and quietly, to have, hold, possess and enjoy, all and singular the said customary or copyhold hereditaments and premises hereinbefore described, with their appurtenances, and to receive and take the rents, issues, and profits thereof, and of every part thereof, to and for his and their own use and

without any let, suit, trouble, molestation, eviction, ejection, interruption, or disturbance whatsoever, of, from, or by the said *C. D.*, his heirs, executors, or administrators, or any person or persons, lawfully or equitably claiming, or to claim, by, from, or under him, them, or any of them. In witness, &c.

(Conveyance of freeholds, and covenant to surrender copyholds, by way of mortgage.)

This indenture, made the — day of —, in the — year of the reign, &c., and in the year of our Lord —; between *A. B.*, of, &c., of the one part, and *C. D.*, of, &c., of the other part. Whereas the said *A. B.* is seized of and well intitled to the freehold messuages, lands, and hereditaments hereinafter described, and intended to be hereby granted and released, with their appurtenances, for an estate of inheritance in fee simple in possession. And whereas the said *A. B.* is seized or well intitled, for an estate of inheritance in fee simple in possession, according to the custom of the manor of —, in the county of —, of or to the customary or copyhold lands and hereditaments hereinafter described, and covenanted to be surrendered, with their appurtenances. And whereas the said *A. B.*, having occasion for the loan of the sum of £ —, hath applied to and requested the said *C. D.* to lend and advance him the same, which he the said *C. D.* hath consented and agreed to do, on having the repayment thereof, with lawful interest, secured to him upon the said freehold and customary or copyhold hereditaments, in the manner hereinafter mentioned; and also collaterally secured by the covenant of the said *A. B.*, hereinafter contained (*a*).

Now this indenture witnesseth, that in consideration of the sum of £ —, of lawful money, &c. advanced and lent by the said *C. D.* unto the said *A. B.*, at or before the sealing and delivery of these presents, the receipt of which said sum of £ — the said *A. B.* doth hereby acknowledge, and of and from the same and every part thereof, doth acquit, release, exonerate, and discharge the said *C. D.*, his heirs, executors, administrators and assigns, and every of them forever, by these presents: He the said *A. B.* hath granted, bargained, sold, aliened, released, and confirmed, and by these presents doth grant, bargain, sell, alien, release, and confirm unto the said *C. D.*, (in

(*a*) As a covenant attaches upon de- 47, a bond is unnecessary.
vised estates under the 1st W. 4., c.

his actual possession now being, by virtue of a bargain and sale thereof made by the said *A. B.*, in consideration of 5*s.*, by instrument bearing date the day next before the day of the date of these presents for the term of one whole year, commencing from the day next before the day of the date of the said indenture of bargain and sale, in full force of the statute made for transferring uses into possession, to the said *A. B.*, his heirs and assigns, All, &c. ; together with all houses, &c., and appurtenances whatsoever, to the said freehold messuages, lands, tenements, and premises belonging, or in anywise appertaining, or to be had with, or with any part or parcel thereof, held, used, occupied, or enjoyed, or accepted, reputed, deemed, taken, or known as part or member thereof; and the reversion and reversions, remainders, yearlies, and other rents, issues, and profits thereon, and all the estate, right, title, interest, use, trust, property, power, and demand whatsoever, at law or in equity, of the said *A. B.*, in or out of the same premises, and every or any part thereof, *to hold* unto the said *C. D.*, his heirs and assigns, *to hold* the said freehold messuages, lands, hereditaments, and premises, and every singular other the premises hereby granted and released, or intended to be, with their appurtenances, unto the said *C. D.*, his heirs and assigns, to the use and behoof of the said *C. D.*, his heirs and assigns, for ever, subject nevertheless to the proviso or condition for redemption of the said premises hereinafter contained, (that is to say,) that the said *C. D.*, his heirs and assigns, shall always, and these presents are upon this express condition, according to the true intent and meaning of the parties hereunto; and the said *A. B.*, his heirs and assigns, do covenant and agree with and to the said *A. B.*, his heirs and assigns, that if the said *A. B.*, his heirs, executors, administrators, or assigns, shall do, and shall well and truly pay, or cause to be paid, unto the said *C. D.*, his executors, administrators, or assigns, the sum of £ — of lawful money aforesaid, on the — day of — now next coming, with interest for the same, after the rate of £5 for every sum of £100 for a year, to be computed from the day of the date of these presents, without making any deduction or abatement whatsoever thereon, by reason of any taxes, charges, assessments, payments, or impositions whatsoever, already, or to be at any time or times hereafter made, charged, assessed, or imposed upon the said freehold hereditaments, messuages, lands, premises, or any part thereof, or upon the said principal sum or the interest thereof, or anywise for or in respect thereof, by authority of parliament, or otherwise howsoever; then and in such case the said *C. D.*, his heirs or assigns, shall and will at any time or times at

yment being made as aforesaid, upon the request and at the costs
 d charges of the said *A. B.*, his heirs or assigns, reconvey, and reas-
 e all and singular the said freehold messuages, lands, hereditaments
 d premises, hereby granted and released, or intended so to be, with
 ir appurtenances, unto and to the use of the said *A. B.*, his heirs
 d assigns for ever, or to such person or persons, and to, for, and
 on such estate and estates, uses, trusts, intents, and purposes, as he
 they shall direct or appoint, free from all incumbrances whatsoever,
 be had, made, done, or committed in the mean time by him the said
D., his heirs, executors, or administrators, or by any person or
 sons whomsoever, lawfully or equitably claiming, or to claim by,
 n, or under him, them, or any of them. And this indenture also
 messeth, and for the consideration aforesaid, the said *A. B.*, for
 self, his heirs, executors, administrators and assigns, doth hereby
 enant, promise, and agree with and to the said *C. D.*, his heirs,
 utors, administrators and assigns, that he the said *A. B.*, or his
 s, and all other proper and necessary parties, shall and will, at his
 heir own proper costs and charges, at the next or some subsequent
 eral or special court baron, to be holden for the manor of ——
 esaid, or out of court, upon the request of the said *C. D.*, his
 s, executors, administrators or assigns, well and effectually surren-
 into the hands of the lord or lady, lords or ladies, for the time
 g, of the said manor of ——, and according to the custom of
 same manor, All, &c., with the appurtenances to the same premises
 ng or appertaining; and the reversion and reversions, remainder
 remainders thereof; and all his and their right, title, estate, and
 est in, to, or out of the same customary or copyhold hereditaments
 premises, to the use of the said *C. D.*, his heirs and assigns for
 according to the custom of the manor of —— aforesaid, sub-
 nevertheless to a proviso or condition to be contained in the said
 nder, for making void the same, on payment by the said *A. B.*,
 heirs, executors, administrators or assigns, unto the said *C. D.*,
 executors, administrators or assigns, of the said sum of £——,
 interest for the same, after the rate, at the time and in man-
 hereinbefore mentioned and appointed for payment thereof, clear
 l taxes and deductions whatsoever. And the said *A. B.*, for
 self, his heirs, executors and administrators doth hereby covenant,
 ise and agree with and to the said *C. D.*, his executors, admini-
 ors and assigns, that he the said *A. B.*, his heirs, executors, and ad-
 rators shall and will well and truly pay, or cause to be paid, unto

the said *C. D.*, his executors, administrators or assigns, sum of £——, with interest for the same, after the rate, on and in manner hereinbefore mentioned, without any deduction or abatement whatsoever, according to the purport, true intent and meaning of these presents, and of the parties hereunto. that he the said *A. B.*, his heirs, executors, administrators or assigns, shall and will repay unto the said *C. D.*, his executors, administrators or assigns, on demand, all and every such sum or sums of money as he or they shall or may pay and advance by way of fine, fees or otherwise upon or in relation to any admittance of him or her the said *C. D.*, his heirs or assigns, at any time hereafter, to all or any of the said copyhold hereditaments and premises, under and by virtue of the surrender to be made thereof, pursuant to the covenants hereinbefore contained, with lawful interest for the time of the mentioned sum or sums of money, from the time or times when the same shall be so advanced. And the said *A. B.*, for himself, his heirs, executors, administrators and assigns, doth covenant, promise and agree with and to the said *C. D.*, his heirs and assigns, by these presents, in manner following, (that is to say,) that he the said *A. B.* now, at the time of the sealing and delivery of these presents, doth standeth lawfully and rightfully seised of and well intitled to the said freehold messuages, lands, hereditaments and premises, herebefore granted and released, or intended so to be, and every part thereof, with their appurtenances, for a good, sure, perfect, lawful, absolute, and reasonable fee-simple estate of inheritance in fee-simple in possession, and the said customary or copyhold lands, hereditaments and premises hereinbefore covenanted to be surrendered, with their appurtenances, for a like estate of inheritance in fee-simple in possession, according to the custom of the manor of —— aforesaid, without any condition, trust, power of revocation, limitation of use or use, or any other restraint, cause, matter, or thing whatsoever, to alter, diminish, defeat, revoke, make void, lessen, or determine the same. And he the said *A. B.* also that he the said *A. B.* now hath in himself, at the time of the sealing and delivery of these presents, good right, full power, lawful and absolute authority to grant, release, surrender, assign, and convey all and singular the said freehold and customary or copyhold lands, hereditaments and premises, hereinbefore granted and released, and covenanted to be surrendered, with their appurtenances, unto and to the use of the said *C. D.*, his heirs and assigns for ever, in manner and form according to the purport, true intent, and meaning of these presents.

and moreover that it shall and may be lawful to and for the said *C. D.*, his heirs and assigns, from time to time, and at all times from and after default shall happen to be made in payment of the said principal sum of £—, or any part thereof, or the interest thereof, or any part thereof, contrary to the true intent and meaning of these presents, and the parties hereunto peaceably and quietly to enter into and upon, have, hold, occupy, possess, and enjoy all and singular the said freehold and customary or copyhold hereditaments and premises hereinbefore granted and released, and covenanted to be surrendered, with their appurtenances, and to receive and take the rents, issues, and profits thereof, and of every part thereof, to and for his own use and benefit, without any lawful let, suit, trouble, molestation, eviction, ejection, interruption, or disturbance whatsoever, of, from, or by the said *A. B.*, his heirs or assigns, or of, from, or by any other person or persons whomsoever; and that free and clear, and freed, and absolutely acquitted, exonerated, and discharged, and otherwise by the said *A. B.*, his heirs, executors and administrators, and effectually saved, defended, kept harmless, and indemnified from, and against all, and all manner of former and other gifts, bargains, sales, leases, mortgages, settlements, jointures, dower, reversions, rents, annuities, uses, trusts, wills, intails, statutes, judgments, recognizances, forfeitures, escheats, extents, executions, and of, and against all and singular other estates, titles, charges, and incumbrances whatsoever:—And further that he the said *A. B.*, and his heirs, and all and every other persons and person having, or lawfully, or equitably claiming, or to claim any estate, right, title, trust, or interest in, to, or out of the said freehold, and customary or copyhold hereditaments and premises, hereby granted and released, and covenanted to be surrendered, shall and will, from time to time and at all times, from and after default shall happen to be made in payment of the said principal sum of £—, or any part thereof, or the interest thereof, or any part thereof, contrary to the true intent and meaning of these presents, and the parties hereunto, upon the request of the said *C. D.*, his heirs, executors, administrators or assigns, but without proper costs and charges in the law of the said *A. B.*, his heirs, executors, administrators or assigns, make, do, and execute, or cause to be made, done, and executed, all and every such further and other lawful and reasonable acts, conveyances, surrenders, and proceedings in the law whatsoever, for the further, better, more perfect and absolute granting, conveying, surrendering and assuring all and singular the same freehold and customary or copyhold hereditaments

and premises, with their appurtenances, unto and to the use of the said *C. D.*, his heirs and assigns for ever, freed and absolute, discharged from the proviso or condition for redemption hereinbefore contained, and intended to be contained in the surrender so to be made of the said customary or copyhold hereditaments and premises aforesaid, and of and from all right, power, and equity of redemption whatsoever, but nevertheless as to the said customary or copyhold premises subject and according to the custom of the manor of the aforesaid, as by the said *C. D.*, his heirs, executors, administrators, or assigns, or his or their counsel, learned in the law, shall be advised or required. Provided nevertheless, and it is hereby expressly and lastly agreed and declared by and between the said parties aforesaid in these presents, that in the mean time, and until default shall have been made in payment of the said principal sum of £—, or some part thereof, or the interest thereof, or some part thereof, contrary to the true intent and meaning of these presents, and the covenants hereunto, it shall and may be lawful to and for the said *C. D.*, his heirs and assigns, peaceably and quietly to have, hold, use, possess and enjoy all and singular the said freehold and customary or copyhold hereditaments and premises, hereinbefore granted, demised, leased, and covenanted to be surrendered, with their appurtenances, and to receive and take the rents, issues, and profits thereof, and every part thereof respectively, to and for his and their own use and benefit, without any let, suit, trouble, molestation, eviction, interruption, or disturbance whatsoever, of, from, or by the said *C. D.*, his heirs, executors or administrators, or any person or persons claiming or to claim in law or in equity, lawfully or equitably, and rightfully claiming or to claim in law or in equity, from, or under him, them, or any of them. In witness, &c.

(Covenant in a Marriage Settlement to surrender copyhold premises to trustees, upon trusts to correspond with the uses prescribed in the limited of freehold estates.)

And this indenture also witnesseth, that in pursuance and performance of the said recited proposals and agreements, made and entered into on the treaty for the said intended marriage, and in consideration of the considerations aforesaid, the said *A. B.*, for himself, his heirs, executors, administrators, doth hereby covenant, promise, and agree with the said *C. D.* and *E. F.*, their heirs and assigns, that he, she, or *A. B.*, or his heirs, and all other necessary and proper parties, shall and lawfully do, at the costs and charges of him the said *A. B.*, his

Executors, or administrators, at the next or any subsequent general, or at some special court baron, or customary court, to be held for the respective manors, whereof the customary or copyhold hereditaments hereinbefore described are holden, or out of court, upon the request of the said *C. D.* and *E. F.*, their heirs or assigns, well and effectually surrender into the hands of the lord or lady, lords or ladies of the afore-said manors respectively, for the time being, and according to the custom of the same respective manors, All, &c., with the appurtenances to the same premises belonging or appertaining; and all his and their right, title, estate, and interest therein or thereto, to the use of the said *C. D.* and *E. F.*, their heirs and assigns for ever, according to the custom of the said several and respective manors; but nevertheless upon such trusts, for such intents and purposes, and under and subject to such powers, provisoes, declarations and agreements, as will best and nearest correspond with the uses, trusts, limitations, powers, provisoes, declarations and agreements hereinbefore limited, expressed, declared, and contained, of and concerning the freehold hereditaments and premises mentioned or intended to be hereby granted and released, so far as the different nature and tenure of the same estates respectively, and the rules of law and equity, will permit.

Appointment of Copyholds by a feme covert, in exercise of a power, to uses directed by a purchaser; and covenants by the husband to join with his wife in a surrender, by way of further assurance, and for the title.)

This indenture made the — day of —, in the — year, &c. in the year of our Lord —. Between *A. B.* of, &c., and *M.* his wife heretofore the wife, and afterwards the widow of *C. D.* of, &c. deceased), of the one part, and *E. F.* of, &c., and *H.* his wife, of the other part. Whereas, at a general court baron, held for the manor of —, in the county of —, on the — day of —, All and singular the customary or copyhold hereditaments hereinbefore described, with their appurtenances, were duly surrendered by the said *C. D.* and *M. D.*, then his wife, (now *M. B.*) to the use of the said *C. D.* and his assigns for his life, with remainder to the use of the said *M.*, then the wife of the said *C. D.*, (now *M. B.*) and her assigns for her life, with remainder to such uses as the said *C. D.* and *M.* then his wife, (now *M. B.*) by their deed or deeds to be executed and attested as therein mentioned,

should jointly limit or appoint, and for want of any such appointment to such uses as the survivor of them the said *C. D.* and the said *C. D.* then his wife, (now *M. B.*) by any deed or deeds under his or her hand and seal, to be attested by two or more credible witnesses, or by her last will and testament, in writing, to be executed and attested therein mentioned, should limit or appoint; and in default of such direction or appointment, to the use of the said *M. D.*, (now *M. B.*) her heirs and assigns for ever, according to the custom of the manor of ———: And at the same court the said *C. D.* was admitted to the said customary or copyhold hereditaments and premises for the term of his life. And whereas the said *C. D.* some time since departed this world without having joined with the said *M. D.* his wife, (now *M. B.*) in the said appointment, by virtue of the joint power so given or reserved to her by or under the said recited surrender as aforesaid. And whereas the said special court baron held for the said manor of ———, on the 25th day of ——— of ———, the said *M. D.*, (now *M. B.*) was admitted to the said customary or copyhold hereditaments, to hold to her and her assigns for the term of her life; and she the said *M. D.* hath since intermarried with, and is now the wife of the said *A. B.* And whereas the said *A. B.* and *M.* his wife have contracted and agreed with the said *E. F.* in the said sale to him of the said hereditaments hereinafter described, with the appurtenances, for an estate of inheritance in fee-simple in part, according to the custom of the manor of ——— aforesaid, and free from all incumbrances, (except as hereinafter is mentioned,) at or for the sum of £ ———. And whereas the said *E. F.* hath requested that the said customary or copyhold hereditaments, so contracted to be purchased by him as aforesaid, may be conveyed and assured to the said *A. B.* and *M.* his wife, and in manner hereinafter mentioned. Now this indenture witnesseth, that in pursuance, and part performance of the said contract or agreement, and for and in consideration of the sum of £ ——— of lawful money, &c., unto the said *A. B.* and *M.* his wife, hand well and truly paid by the said *E. F.*, at or before the said delivery of these presents, the receipt whereof the said *A. B.* and *M.* his wife, do hereby acknowledge, and of and from the same, a part thereof, do acquit, release, exonerate, and discharge the said *E. F.* his heirs, executors, administrators and assigns, and every of them for ever, by these presents, (the *ad valorem* stamp, in respect of the said purchase money, is, in compliance with the provisions of the said act of parliament imposing such duty, intended to be affixed to the said indenture hereinafter covenanted to be made by the said *A. B.* and *M.* his wife.)

by the said *M. B.* by force and virtue, and in exercise and execution of the said power or authority in this behalf given or reserved to her, by and under the said recited surrender made on the — day of —, and of all and every other powers and authorities, power and authority, in anywise enabling her hereunto, and at the request and by the direction of the said *E. F.*, (testified by his being a party to and sealing and delivering these presents,) hath limited and appointed, and by this deed or instrument in writing, by her the said *M. B.* signed, sealed, and delivered in the presence of and attested by the two credible persons, whose names are intended to be hereon indorsed as witnesses to the signing, sealing, and delivering hereof, by her the said *M. D.*, doth limit and appoint, All and singular the messuages or tenements, lands, and hereditaments hereinafter described, with the appurtenances thereof, to the several uses hereinafter expressed concerning the same, and to or for no other use, intent, or purpose whatsoever. And this indenture also witnesseth, that in further pursuance and performance of the said recited contract or agreement, and for the consideration aforesaid, the said *A. B.* for himself and for the said *M. B.* his wife, and his and her heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said *E. F.*, his heirs and assigns, that he the said *A. B.* and the said *M. B.* his wife, or her heirs, and all other necessary parties shall and will, at the next or any subsequent general, or at some special court baron or customary court, to be holden for the manor of — aforesaid, or out of court, upon the request, and at the costs and charges of the said *E. F.*, his heirs or assigns, duly surrender into the hands of the lord or lady, lords or ladies of the same manor for the time being, and according to the custom thereof, All, &c., with the appurtenances to the same premises belonging or appertaining; and all claims, her, and their estate, right, title, interest, claim, and demand whatsoever in, to, or out of the same customary or copyhold hereditaments and premises, and every part thereof, to the use of the said *E. F.* and his assigns for the term of his natural life, with liberty of committing waste so far as the same may be permitted by the custom of the aforesaid manor, or by license or otherwise, and from and after the decease of the said *E. F.*, to the use of the said *H.* the wife of the said *E. F.*, and her assigns for the term of her natural life (*a*), with such liberty of committing waste as aforesaid, but no further or otherwise, and from and

(*a*) When a husband is desirous of securing to his wife a life or any greater interest in copyhold property, care should

be taken to avoid any limitation of a contingent nature, as there are no means of conveying a contingent right in lands

after the decease of the survivor of them the said *E. F.* and *H.* h
to the use of the heirs and assigns of the said *E. F.* for ever, acc
to the custom of the manor of ——— aforesaid, and to or for n
use, intent or purpose whatsoever. And the said *A. B.* for h
and the said *M. B.* his wife, and his and her heirs, executor
administrators doth further covenant, promise, grant, and agre
and to the said *E. F.*, his heirs and assigns, by these presents, i
ner following, (that is to say,) that the said power of appoint
created by the said recited surrender bearing date the —
——, is now at the time of the sealing and delivery of these p
a valid and subsisting power, and in no wise exercised, released,
or extinguished, either by the said *C. D.* and the said *M. D.*
wife, (now *M. B.*) during their joint lives, or by the said *M. D.*
M. B.), since the decease of the said *C. D.*:—And also that t
A. B. and *M.* his wife, or one of them, have or hath in them
himself or herself, good right, full power, and lawful and absol
thority to limit and appoint, surrender, convey and assure
singular the said customary or copyhold messuages or tenements
hereditaments and premises herereinbefore limited and appoint
covenanted to be surrendered, with their appurtenances, in
aforesaid, and according to the true intent and meaning of these pr
—And moreover, that all and singular the same customary or co
messuages or tenements, lands, hereditaments, and premises, with
appurtenances, shall henceforth and at all times for ever he
remain, continue, and be to and for the uses, intents and purpose
inbefore limited, expressed, and contained of and concerning th
and be peaceably and quietly held, used, occupied and enjoyed, s
rents, issues, and profits thereof, be had, received, and taken accor
without any lawful let, suit, trouble, molestation, eviction, e
interruption or disturbance whatsoever of, from, or by the said

of that tenure, and the doctrine of *estop-
pel* does not apply to copyholds. *Ante*,
pt. 1, p. 168.

The form of limitation here given
would clearly create *vested* interests, so
that the life estate of the wife, in re-
mainder, might be conveyed by a sur-
render, under the customary private
examination as to her voluntary consent.
And it has been held that a limitation to

the husband and wife for their l
the life of the survivor of them, s
the decease of the survivor of
the heirs of the survivor, create
interests in the husband and w
only for their joint lives, but for
of the survivor. *Doe d. Do
Wilson*, 4 Barn. & Ald. 303.
pt. 1, pp. 164, 165.

and *M.* his wife, or either of them, their, or either of their heirs, or of
from, or by any other person or persons whomsoever; and that free and
clear, and freed and absolutely acquitted, exonerated and discharged,
or otherwise by the said *A. B.* and *M.* his wife respectively, their respec-
tive heirs, executors, and administrators, well and effectually saved,
defended, kept harmless, and indemnified of, from, and against all, and
in all manner of former and other gifts, grants, bargains, sales, leases,
mortgages, jointures, settlements, customary dower or freebench, an-
nuities, uses, trusts, wills, intails, forfeitures, escheats, titles, troubles,
charges, and incumbrances whatsoever, (save and except an indenture
of lease hereinbefore granted of the said premises to *L. N.* of, &c., for a
term whereof ——— years were unexpired at ——— last, at and under
the yearly rent of £ — — —; and except also the customary rents,
duties, and services payable and to be performed in respect of the said
hereditaments and premises to the lord or lady, lords or ladies of the
manor of ———, aforesaid, for the time being):—And further, that
the said *A. B.* and *M. B.* his wife, and his and her heirs, and all and
every other persons and person having, or lawfully or equitably claiming,
to claim any estate, right, title, trust, or interest in, to, or out of the said
customary or copyhold hereditaments and premises, or any of them, or
any part thereof, (except in respect of the estates or interests hereinbefore
excepted,) shall and will from time to time and at all times hereafter,
upon the request and at the proper costs and charges in the law of the
said *E. F.*, or the person or persons for the time being intitled in pos-
session to the same hereditaments and premises, by virtue of the uses
hereinbefore expressed and contained, make, do, and execute, or cause
to be made, done and executed, all and every such further
and other lawful and reasonable acts, deeds, surrenders, conveyances,
and assurances in the law, whatsoever, for the further, better, more per-
fect, and absolute surrendering, conveying, assuring, and confirming all
and singular the said customary or copyhold messuages or tenements,
messuages, hereditaments and premises hereinbefore limited and appointed,
and covenanted to be surrendered, with their appurtenances, to the uses
hereinbefore expressed and contained of and concerning the same, as by
the said *E. F.*, or other the person or persons intitled in possession as
aforesaid, or his, her or their counsel learned in the law, shall be devised
and advised and required. In witness, &c.

*(Bargain and Sale of Copyholds to a Purchaser, under
given to Executors.)*

This indenture made the — day of —, in the — y
and in the year of our Lord — ; between *A. B.* of &c., and
of &c., (executors named in and appointed by the last will a
ment of *E. F.* late of, &c., deceased,) of the one part, and
&c., of the other part. Whereas at two several courts baron
tomary courts holden for the manor of —, in the county of
on the — day of —, and the — day of —, the
F. was admitted on the surrender of *S. M.* of, &c., and *R. S.*
respectively, to certain customary or copyhold hereditaments lying
and holden of the same manor, and including the messuages, la
hereditaments hereinafter described, and intended to be her
gained and sold, limited and appointed or otherwise assured, w
appurtenances, to hold to him the said *E. F.* and his heirs, a
to the custom of the said manor of — ; and the said *E.*
such respective admittances, duly surrendered all and singular
customary or copyhold hereditaments, to the uses of his will (a
whereas the said *E. F.*, in and by his last will and testament in
bearing date the — day of —, gave and devised unto
A. B. and *C. D.*, and their heirs, all and singular his freehold
messuages, farms, lands, and hereditaments, with their appur
upon trust, that they the said *A. B.* and *C. D.*, or the sur
them, or the heirs of such survivor, should and did, as soo
veniently might be after his decease, sell and dispose of the sa
hold estates, by public auction or private contract, for the mo
that in their or his judgment could be had or gotten for th
And the said testator did thereby authorise and empower the sa
and *C. D.*, and the survivor of them, at any time after his de
like manner as thereinbefore mentioned, to make sale and dispo
customary or copyhold hereditaments therein mentioned to ha
surrendered by him to the uses of his will as aforesaid, (inclu
messuages, lands, and hereditaments hereinafter described, and
to be hereby bargained and sold, limited and appointed or c
assured,) with their appurtenances. And he the said test
thereby declare, that the receipt or receipts of the said *A. B.*
D., or the survivor of them, should be a good and sufficient d

(a) A surrender to will in such a case is advisable, if not indispensable.
pt. 1. p. 309.

and good and sufficient discharges, to the purchaser or purchasers of his said freehold and customary or copyhold hereditaments, for all or so much of his, her, or their respective purchase monies, as should in such receipt or receipts be acknowledged or expressed to be received, and that such purchaser or purchasers, his, her, or their heirs, executors, administrators, or assigns, should not afterwards be bound to see to the application of the same purchase monies, or be accountable for any loss, misapplication or nonapplication thereof, or any part thereof. And the said testator by his said will appointed the said *A. B.* and *C. D.* executors thereof. And whereas the said *E. F.* afterwards departed this life, without revoking or in anywise altering his said in part recited will, as far as relates to his real estates so thereby devised, and authorised, and directed to be sold as aforesaid, and the same will was duly proved by the said *A. B.* and *C. D.* in the Prerogative Court of Canterbury, on or about the — day of ——. And whereas the said *A. B.* and *C. D.*, by virtue of the said power or authority in that behalf, mentioned and contained in the above in part recited will of the said *E. F.* deceased, did lately contract and agree with the said *G. H.* for the sale to him of the messuages, lands, and hereditaments hereafter described, and the customary fee-simple and inheritance thereof, together with the possession, free from incumbrances, (except such fines, rents, customs, and services as are payable, and to be performed to the lord or lords, or ladies of the manor of — aforesaid, for the time being, for or in respect of the same premises respectively,) at or for the price or sum of £——. Now this indenture witnesseth, that for the better carrying into effect the said recited contract, and for and in consideration of the sum of £——, of lawful money of the United Kingdom of Great Britain and Ireland current in England, unto the said *A. B.* and *C. D.*, in hand well and truly paid by the said *G. H.*, at or before the sealing and delivery of these presents, the receipt whereof the said *A. B.* and *C. D.* do hereby acknowledge, and thereof and from the same and every part thereof, do acquit, release, exonerate and discharge the said *G. H.*, his heirs, executors, administrators and assigns, and every of them for ever by these presents: They the said *A. B.* and *C. D.* in further pursuance and exercise of the said power or authority in that behalf given to them by the said in part recited will of the said *E. F.* deceased, and of all and every other powers and authorities, powers and authority in anywise enabling them hereunto, have and each of them hath bargained and sold, limited, appointed, conveyed and assured, and by these presents do, and each of them doth bargain and

sell, limit, appoint, convey and assure, unto the said *G. H.* his heirs and assigns, All, &c.; together with all erections, &c., and appurtenances whatsoever, to the said hereditaments and premises belonging or in anywise appertaining: and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, *to have and to hold* all and singular the said customary or copyhold messuages, lands, hereditaments and premises, mentioned or intended to be hereby bargained and sold, limited and appointed or otherwise assured, with the appurtenances thereof, unto and to the use of the said *G. H.*, his heirs and assigns for ever; but nevertheless, according to the custom of the said manor of ———, and subject to the rents, fines, customs, and services payable and to be performed to the lord or lady, lords or ladies of the same manor for the time being, for or in respect of the same premises, or any part thereof. And the said *A. B.* and *C. D.*, for themselves respectively, and their respective heirs, executors, and administrators, but not jointly, or the one for the other of them, or the heirs, executors, administrators, acts or deeds of the other of them, do hereby covenant and declare with and to the said *G. H.*, his heirs and assigns, that they the said *A. B.* and *C. D.* have not, nor hath either of them, at any time heretofore, made, done, committed, executed, or wittingly suffered or consented unto any act, deed, matter or thing whatsoever, whereby or by means whereof the said customary or copyhold messuages, lands, hereditaments and premises, hereby bargained and sold, limited and appointed, or otherwise assured, or intended so to be, or any part thereof respectively, are, is, can or may be charged, impeached, affected, or incumbered, in title, estate, or otherwise howsoever. In witness, &c.

(Release of Right by a person supposed to be intitled to admittance as customary heir of a surviving trustee.)

To all persons to whom these presents shall come, *A. B.*, of, &c., sendeth greeting: whereas at a court baron or customary court holden for the manor of ———, in the county of ———, on the ——— day of ———, *C. D.*, of, &c., was admitted tenant of the copyhold hereditaments hereinafter described, under and by virtue of the last will and testament of *E. F.*, then late of, &c., deceased, bearing date the ——— day of ———, and of a surrender made by the said *E. F.* to the use of his said will, to hold to him the said *C. D.* and his heirs, by copy of court roll, at the will of the lord, according to the custom of the said

manor. And whereas it is apprehended that the said *A. B.* is now lawfully intitled to be admitted to the said copyhold hereditaments hereinafter described, as the customary heir of *G. H.*, formerly of, &c., deceased, who was the surviving trustee named in a certain surrender made of the same hereditaments by *J. K.*, of, &c., deceased, at a court holden for the aforesaid manor, on the ——— day of ———. And whereas the said *A. B.*, upon the application and request of the said *C. D.*, hath consented and agreed to release and extinguish all such right, title, and interest in and to the said copyhold hereditaments as may be now vested in him the said *A. B.*, as the customary heir of the said *G. H.* deceased, in such manner as is hereinafter mentioned. Now know ye, and these presents witness, that in pursuance and performance of the said recited agreement in this behalf, and in consideration of the sum of 10s. of lawful money, &c., paid to the said *A. B.* by the said *C. D.*, at or before the execution hereof, the receipt whereof is hereby acknowledged, he the said *A. B.* hath remised, released, and for ever relinquished claim, and by these presents doth remise, release, and for ever quit claim unto the said *C. D.*, his heirs and assigns, All the right, title, interest, trust, power, claim, and demand whatsoever (if any) of and from the said *A. B.*, as the customary heir of the said *G. H.*, deceased, in, to, or out of All, &c., and in, to, or out of all erections, buildings, messuages, &c., and appurtenances whatsoever, to the said copyhold hereditaments and premises belonging, or in anywise appertaining, to the end and intent that all such right, title, interest, claim, or demand as aforesaid, of him the said *A. B.*, may for ever hereafter cease, determine, and be merged and extinguished; and that the said *C. D.*, his heirs and assigns, may henceforth be deemed and considered as the legal and lawful tenant and tenants of the said copyhold hereditaments and premises to the lord or lady, lords or ladies for the time being of the manor of ——— aforesaid, to all intents and purposes whatsoever. In witness whereof the said *A. B.* hath hereunto set his hand and seal, this ——— day of ———, in the year of our Lord ———.

Release of right to copyholds by customary heirs in gavelkind, and by the cestuy que trust, to a purchaser who had been previously admitted under a surrender by devisees of real estates in trust for sale; and covenants for the title.)

This indenture, of three parts, made the ——— day of ———, in the ——— year, &c., and in the year of our Lord ———, between *C. D.* and

E. D., both of, &c., (the two only brothers and heirs, according to the custom of the manor of ———, in the county of ———, of *F. D.*, late of, &c., deceased,) of the first part; *I. H.*, of, &c., (nephew of the said *F. D.*, deceased, and cestuy que trust under his last will and testament, of the monies arising from the sale thereby directed to be made of his real estates,) of the second part; *L. M.*, of, &c., and *N. O.*, of, &c., (devisees in trust of the real estates of the said *F. D.*, deceased,) of the third part; and *P. R.*, of, &c., of the fourth part. Whereas the said *F. D.*, being seised in fee-simple of certain freehold hereditaments, and being seised in fee-simple according to the custom of the manor of ——— aforesaid, of the copyhold hereditaments hereinafter described, with their appurtenances, but not having surrendered the same copyhold hereditaments to the uses of his will (*a*), in and by his last will and testament in writing, bearing date the ——— day of ———, after bequeathing several specific legacies, gave, devised, and bequeathed unto and to the use of the said *L. M.* and *N. O.* their heirs and assigns, All his real estates whatsoever, and wheresoever, upon trust to sell and dispose of the same by public auction or private contract, and in such manner as therein is mentioned. And the said testator did thereby direct and declare that the receipt and receipts of his said trustees, or the survivor of them, his heirs or assigns, should be a good and sufficient discharge to the respective purchasers of his said real estates, for all or any part of their respective purchase monies; and did further direct that the said trustees and the survivor of them, his executors and administrators, should stand possessed of the monies arising from such sales respectively, upon trust thereout to pay and discharge the aforesaid several legacies, and to pay the surplus of the same trust monies unto the testator's nephew the said *I. H.* for his absolute use and benefit. And whereas the said testator, *F. D.*, afterwards departed this life, without revoking or altering his said will, which was duly proved in the ——— court of ———, on or about the ——— day of ———. And whereas at a special court baron or customary court holden for the said manor of ———, on the ——— day of ———, the said *L. M.* and *N. O.* were admitted to the copyhold hereditaments hereinafter described, to hold to them and their heirs, according to the custom of the said manor of ———, subject nevertheless to and upon the trusts of the said in part recited will of the said *F. D.* deceased. And whereas all the legacies bequeathed by the same will as aforesaid, have been fully paid and discharged. And whereas the said *L. M.* and *N. O.* as such

(*a*) *Ante*, pt. 1, p. 302, et seq.

devisees in trust as aforesaid, did lately contract and agree with the said *P. R.* for the sale to him of the copyhold hereditaments hereinafter described, and the customary fee-simple and inheritance thereof, in possession, free from incumbrances, at or for the price or sum of £ — : and at a court baron or customary court held this day, for the manor of — aforesaid, the said *L. M.* and *N. O.*, in consideration of the sum of £ —, of lawful money, &c. paid to them by the said *P. R.* have surrendered into the hands of the lord of the said manor of —, according to the custom of the same manor, All, &c., with the appurtenances to the same premises belonging or appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, trust and interest in the said *L. M.* and *N. O.* respectively, in, to, or out of the same premises, and every part thereof, to the use of the said *P. R.* his heirs and assigns for ever, according to the custom of the said manor of — : And the said *P. R.* hath at the same court been duly admitted, under and by virtue of the said last mentioned surrender, to hold and singular the said copyhold hereditaments and premises, with the appurtenances, to hold to him the said *P. R.* and his heirs, according to the custom of the manor of — aforesaid. And whereas upon the treaty for the sale of the said copyhold hereditaments and premises, to the said *P. R.* as aforesaid, it was stipulated and agreed that the said *C. D.* and *E. D.* as the customary heirs of the said *F. D.* deceased, and also the said *I. H.* should and would execute a confirmatory assurance of the same premises (a); and that the said *I. H.* should and would enter into such covenants for the title hereof, as are hereinafter mentioned and contained. Now this indenture witnesseth, that in pursuance and performance of the said recited proposal and agreement in this behalf, and in consideration of the sum so made by the said *P. R.*, of the sum of £ —, unto the said *L. M.* and *N. O.* as aforesaid; and also in consideration of the sum of 10s. a-piece, of lawful money aforesaid, unto the said *C. D.* and *E. D.*, and the said *I. H.* in hand paid by the said *P. R.*, at and before the execution hereof, the receipt whereof is hereby acknowledged; they the said *C. D.* and *E. D.*, at the request of the said *I. H.* (testified by his being a party to and sealing and delivering these covenants,) and also the said *I. H.* have, and each and every of them have, remised, released, and for ever quitted claim, and by these

(a) See the last note.

presents do, and each and every of them doth remise, release, and for ever quit claim unto the said *P. R.*, his heirs and assigns, All the right, title, estate, interest, claim and demand whatsoever, of them the said *C. D.*, *E. D.*, and *I. H.*, and each and every of them, in, and to the said copyhold messuages, hereditaments, and premises hereinbefore described, and every part thereof, to the end and intent to confirm and strengthen the title of the said *P. R.* in and to the same premises respectively. And the said *L. M.* and *N. O.*, and also the said *C. D.* and *E. D.* do hereby for themselves severally and respectively, and their several and respective heirs, executors, and administrators, but not jointly, or the one for the others or other of them, or the heirs, executors, administrators, acts or deeds of the others or other of them, covenant and declare with and to the said *P. R.*, his heirs and assigns, that they the said *L. M.*, *N. O.*, *C. D.* and *E. D.* have not, nor have nor hath any or either of them, at any time heretofore, made, done, committed, executed, or wittingly suffered or consented unto any act, deed, matter, or thing whatsoever, whereby or by means whereof, the said copyhold hereditaments and premises hereinbefore described, and so surrendered to the use of the said *P. R.*, his heirs and assigns, as aforesaid, or any of them, or any part thereof, are, is, can, or may be charged, impeached, or incumbered in title, estate, or otherwise howsoever. And the said *I. H.* for himself, his heirs, executors, and administrators doth covenant, promise, grant, and agree with and to the said *P. R.*, his heirs and assigns, by these presents, in manner following, that is to say, that (for and notwithstanding any act, deed, matter, or thing whatsoever, by the said *L. M.* and *N. O.*, or the said *C. D.*, *E. D.* and *I. H.*, any or either of them, or by the said *F. D.* deceased, at any time heretofore made, done, committed, executed, or wittingly suffered to the contrary) the said *L. M.* and *N. O.* or one of them, had good right, full power, and lawful and absolute authority to surrender, and assure all and singular the aforesaid copyhold messuages, hereditaments, and premises, with their appurtenances, to the use of the said *P. R.*, his heirs and assigns, in manner aforesaid, and according to the true intent and meaning of the surrender so made thereof by them the said *L. M.* and *N. O.*, as aforesaid, and of the parties to these presents: And moreover, that it shall and may be lawful to and for the said *P. R.*, his heirs and assigns, from time to time, and at all times for ever hereafter, peaceably and quietly to enter into and upon, have, hold, occupy, possess, and enjoy all and singular, the said copyhold messuages, hereditaments, and premises hereinbefore

bed, and so surrendered, and hereby released, as aforesaid, with appurtenances; and to receive and take the rents, issues, and profits of, to and for his and their own use and benefit, without any let, suit, trouble, molestation, eviction, ejection, interruption, or chance whatsoever of, from, or by the said *L. M.* and *N. O.* or the said *C. D.*, *E. D.*, and *I. H.*, any or either of them, their, any or either of their heirs, or of, from, or by any other person or persons whatsoever lawfully, or equitably and rightfully, claiming or to claim, or through, or under them, any or either of them, or the said *F. D.* deceased; and that free and clear, and freed and absolutely discharged, exonerated, and discharged, or otherwise by the said *I. H.*, his heirs, executors, and administrators, well and effectually saved, kept harmless and indemnified, of, from, and against all former and to come, whether gifts, grants, bargains, sales, leases, mortgages, settlements, or freebench, rents, annuities, uses, trusts, wills, intails, forfeitures, and all and singular other estates, titles, charges, and incumbrances whatsoever, had, made, done, committed, executed, or wittingly consented or consented unto, by the said *F. D.* deceased, or the said *N. O.*, *C. D.*, *E. D.*, and *I. H.*, any or either of them, or any other person or persons, claiming by, from, through, or under them, any or either of them, or by or with their, any, or either of their privity, consent, or procurement, (save and except the customary fines, rents, suits, and services, payable and to be performed in respect of the same hereunto, and premises, to the lord or lady, lords or ladies of the manor of ———, aforesaid, for the time being):—And further, that the said *P. R.* and *E. D.* and the said *I. H.* respectively, and their respective heirs, executors, and administrators, and all and every other persons and person, having, or lawfully, or lawfully claiming or to claim any estate, right, title, or interest, in, or out of the said customary or copyhold hereditaments and premises, or any part thereof, by, from, through, under, or in respect of, or for him the said *I. H.*, or the said *F. D.* deceased, shall and will, from time to time, and at all times hereafter, upon the request, and at the costs and charges in the law, of the said *P. R.*, his heirs or assigns, do, and execute, or cause and procure to be made, done, and performed, all and every such further and other acts, deeds, surveys, conveyances, and assurances in the law whatsoever, for the purpose, better, more perfect, and absolute surrendering, conveying, giving, and confirming all and singular the said copyhold messuages, tenements, and premises hereinbefore described, and so surrendered and hereby released, as aforesaid, with their appurtenances, to the use of

the said *P. R.* his heirs and assigns for ever, or as he or they shall direct or appoint, and according to the custom of the manor of ———, aforesaid; as by the said *P. R.*, his heirs or assigns, or his or their counsel, learned in the law, shall be lawfully and reasonably devised or advised and required. In witness, &c.

(Declaration of trust, of Copyholds for lives, by the nominees of a Purchaser.)

This indenture, made the — day of ———, in the year of our Lord ———, between *I. K.* of, &c., and *L. M.* of, &c. of the one part, and *G. H.* of, &c., of the other part. Whereas at a court baron or customary court, holden for the manor of ———, on the — day of ———, the said *G. H.*, and at his request *C. D.* of, &c. and *E. F.* of, &c., who then held the customary or copyhold hereditaments hereinafter described, for the term of their lives, and the life of the longest liver of them successively, duly surrendered into the hands of *A. Z.*, esquire, lord of the aforesaid manor, All, &c., with their appurtenances, to the intent that the lord might regrant the same premises to the said *G. H.*, and the said *I. K.* and *L. M.* for the lives of them the said *G. H.*, *I. K.* and *L. M.* and the life of the longest liver of them successively, according to the custom of the said manor; and accordingly at the same court the said *A. Z.* granted seisin of the same premises, unto the said *G. H.*, *I. K.*, and *L. M.*, by the rod, according to the custom of the said manor, to hold the same, with the appurtenances, to the said *G. H.*, *I. K.*, and *L. M.*, for the term of their lives, and the life of the longest liver of them successively, by copy of court roll, at the will of the lord, according to the custom of the said manor; and the said *G. H.* was at the same court admitted tenant accordingly, and paid to the lord for a fine, on such regrant and admittance, the sum of £——. And whereas the said *G. H.* was the sole purchaser of the aforesaid customary or copyhold hereditaments and premises, and the names of the said *I. K.* and *L. M.* were used in the aforesaid surrender and regrant, in trust only for the said *G. H.*, his executors, administrators, and assigns, as they the said *I. K.* and *L. M.* respectively do hereby admit and acknowledge. Now this indenture witnesseth, and in consideration of the premises, the said *I. K.* and *L. M.*, for themselves respectively, their respective heirs, executors, and administrators, but not jointly, or the one for the other of them, or the heirs, executors,

or administrators of the other of them, do hereby covenant, promise, and declare, with and to the said *G. H.*, his executors, administrators, and assigns, that they the said *I. K.* and *L. M.* respectively, and all and every persons and person, claiming or to claim, by, from, through, or under them, or either of them, shall and will at any time or times hereafter, upon the request and at the costs and charges of the said *G. H.*, his executors, administrators, or assigns, apply for and receive and take admittance, according to the custom of the aforesaid manor, to all and singular, the said customary or copyhold hereditaments and premises, hereinbefore described, with their appurtenances, for the estate, term, and interest therein, to which they respectively may be intitled, by virtue of the said recited surrender and regrant; and at the like request, costs and charges, duly surrender the same premises, to the use of such person or persons, and in such manner, as the said *G. H.*, his executors, administrators, or assigns, shall direct or require; and in the mean time, and until such last mentioned surrender or surrenders respectively shall be made, and admittance or regrant be had and obtained by virtue thereof, shall and will stand possessed of the same customary or copyhold hereditaments and premises, with their appurtenances, for all such term, estate and interest therein, as he or they respectively may be intitled to as aforesaid, in trust only for the said *G. H.*, his executors, administrators, and assigns; and shall and will pay, apply, and dispose of the rents, issues, and profits thereof accordingly. And the said *G. H.* for himself, his heirs, executors, and administrators, do hereby covenant, promise, and agree, with and to the said *I. K.* and *L. M.* respectively, their respective heirs, executors, and administrators, that he the said *G. H.*, his heirs, executors, and administrators, shall and will, at all times hereafter, well and effectually save, defend, keep harmless and indemnified, the said *I. K.* and *L. M.* respectively, their respective executors and administrators, and their and every of their lands and tenements, goods and chattels, of, from, and against the payment of any fines, quit rents, sum or sums of money, and the rendering of any heriot or heriots, which shall at any time or times hereafter accrue to the lord or lady, lords or ladies, for the time being, of the manor of ———, aforesaid; and of, from, and against all actions, suits, losses, costs, charges, damages, and expenses whatsoever, which can, shall, or may, or could or might be commenced or prosecuted against, or be incurred or sustained by the said *I. K.* and *L. M.* respectively, their respective executors or administrators, by reason or means of their names being so used as

cestui que vies, in the said in part recited surrender and regrant, as aforesaid, or anywise in relation thereunto. Provided always, and it is hereby agreed and declared, by and between all the said parties hereto, that the said *I. K.* and *L. M.* respectively, their respective executors and administrators, shall not be responsible the one for the other or others of them, or the receipts, payments, acts, deeds, or wilful defaults of the other or others of them; and that they respectively shall not be charged or chargeable with, or accountable for any monies, other than such as they respectively shall actually receive, nor with or for any loss or damage which may happen, by placing all or any part of the monies to be received by them, or either of them, as such trustees respectively, as aforesaid, in any bank or banker's hands, or elsewhere, for safe custody, or otherwise in relation to the trusts aforesaid, so that the same happen without his or their respective wilful neglect or default. In witness, &c.

(Grant of an annuity by a copyholder seized for an estate for life, carved out of the inheritance.)

This indenture, made the — day of, &c., between *A. B.* of, &c., of the first part, *C. D.* of, &c., of the second part, and *E. F.* of, &c., of the third part. Whereas the said *A. B.* is seized of the lands and hereditaments hereinafter described, for an estate for the term of his life, according to the custom of the manor of —, in the county of —. And whereas the said *A. B.* hath contracted and agreed with the said *C. D.* for the sale to him of an annuity, or clear yearly sum of £ —, of lawful money, &c. to be paid to the said *C. D.*, his executors, administrators, and assigns, for and during the natural life of the said *A. B.*, and up to the day of his decease, at or for the price or sum of £ —; the said annuity to be secured upon and out of the said customary or copyhold lands and hereditaments in such manner as hereinafter is mentioned, and to be further secured by the covenant of the said *A. B.* hereinafter contained, and by the warrant of attorney of the said *A. B.* hereinafter recited, and a judgment to be thereupon entered up as hereinafter mentioned. And whereas, upon the treaty for the sale of the said annuity, it was stipulated that the same should be repurchaseable upon the terms hereinafter expressed, and that the costs and expenses attending the examination of the title to the said estate, and of preparing and perfecting the securities for the same annuity, and of preparing and

inrolling a memorial or memorials thereof, should be borne and paid by the said *A. B.* And whereas the said *A. B.*, in pursuance of the said agreement in that behalf, hath executed a certain deed poll or warrant of attorney, bearing even date with these presents, authorising *G. H.* and *I. K.*, attorneys of his Majesty's Court of King's Bench at Westminster, jointly and severally, or any other attorney of the same court, as of — term now last past, — term next ensuing, or any subsequent term, to appear for him the said *A. B.* in the said court, in an action of debt for the sum of £——, for money borrowed, at the suit of the said *A. B.*, and thereupon to confess judgment by *nihil dicit* or otherwise, for that sum, together with costs of suit. Now this indenture witnesseth, that in pursuance and further performance of the said recited contract or agreement, and for and in consideration of the sum of £—— of lawful money aforesaid, unto the said *A. B.* in hand well and truly paid by the said *C. D.*, in notes of the governor and company of the bank of England, payable to bearer on demand, the receipt of which said sum of £——, the said *A. B.* doth hereby acknowledge, and thereof and from the same and every part thereof, doth acquit, release, and discharge the said *C. D.*, his heirs, executors, administrators, and assigns for ever by these presents :—He the said *A. B.* for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said *C. D.*, his executors, administrators, and assigns, that he the said *A. B.* shall and will well and truly pay, or cause to be paid, unto the said *C. D.*, his executors, administrators, or assigns, for and during the natural life of the said *A. B.*, an annuity or yearly sum of £——, of lawful money aforesaid, by four equal quarterly payments, on the several days following, that is to say, the — day of —, the — day of —, the — day of —, and the — day of — ; the said annuity to be paid at the entrance of the common dining hall of the Inner Temple, London, between the hours of 10 and 11 in the forenoon, free and clear of and from all taxes and deductions whatsoever, parliamentary or otherwise, and the first quarterly payment thereof to be made on the — day of —, now next ensuing :—And also that the heirs, executors, or administrators of the said *A. B.* shall and will, within one calendar month next after his decease, well and truly pay or cause to be paid to the said *C. D.*, his executors, administrators, or assigns, a proportional part of the said annuity, from the quarterly day of payment next preceding the decease of the said *A. B.*, or from the day of the date of these presents, if he shall happen to die before the first quarterly payment shall become due, up

to, and until the day of his death. And this indenture also witnesseth, that in further pursuance and performance of the said recited contract or agreement, and for the consideration hereinbefore mentioned, and also in consideration of the sum of 10*s.* of lawful money aforesaid, unto the said *A. B.* in hand paid by the said *E. F.* at or before the execution hereof, the receipt whereof is hereby acknowledged:—He the said *A. B.* for himself, his heirs, executors, and administrators, at the request and by the direction of the said *C. D.* (testified by his sealing and delivering these presents) doth hereby covenant, promise, and agree with and to the said *E. F.*, his heirs and assigns, that he the said *A. B.* shall and will, at his own costs and charges, at the next or some subsequent general, or some special, court baron or customary court, to be holden for the manor of ——— aforesaid, at any time hereafter out of court, upon the request of the said *C. D.*, his executors, administrators or assigns, or of the said *E. F.*, his heirs or assigns, well and effectually surrender or cause to be surrendered into the hands of the lord or lady, lords or ladies of the said manor for the time being, and according to the custom of the same manor, All, &c., with their appurtenances; and the reversion, &c.; and all the estate, &c., to the use of the said *E. F.*, his heirs and assigns, during the life of the said *A. B.*, according to the custom of the said manor of ———, upon and for the trusts, intents, and purposes hereinafter expressed and declared concerning the same premises, that is to say, upon trust that the said *E. F.*, his heirs and assigns, do and shall pay the rents, issues, and profits of the said customary or copyhold hereditaments and premises, unto the said *A. B.* and his assigns, or otherwise permit and suffer him and them to receive and take the same, in the mean time and until some default shall be made in payment of the said annuity or yearly sum of £——, hereby intended to be secured, or some part thereof, at or on the days or times and in the manner hereinbefore limited and appointed for payment of the same:—And upon further trust, that in case the said annuity or yearly sum, or any part thereof, shall happen to be behind and unpaid by the space of twenty-one days, next over or after any of the said days whereon the same is so appointed and ought to be paid as aforesaid, (being lawfully demanded,) then and so often the said *E. F.*, his heirs or assigns, shall from time to time by and out of the rents and profits of the aforesaid hereditaments and premises, and, if necessary, by making distresses upon, or bringing actions against, all or any of the tenants or occupiers of the same premises, for recovery of the same rents and profits, or by demise,

mortgage, or absolute sale, (such sale or sales to be either by public auction or private contract,) of all or any part or parts of the said lands, hereditaments and premises, for all or any part of the estate for life therein of the said *A. B.*, or by such other ways and means as to the said *E. F.*, his heirs and assigns, shall seem meet, raise and levy such sum and sums of money as will be sufficient to pay and satisfy the said annuity or yearly sum of £—, or so much thereof as shall from time to time be in arrear and unpaid, and also all such costs, charges, and expenses as the said *C. D.*, his executors, administrators or assigns, or the said *E. F.*, his heirs or assigns, shall pay, sustain, or be put unto, by reason of the non-payment of the said annuity or yearly sum, at or on the days and in the manner hereinbefore appointed for payment thereof, or the performance of the trusts hereby created; and do and shall pay and apply the monies so to be levied and raised, in or towards payment or satisfaction of the said annuity, and all such costs, charges and expenses as aforesaid accordingly; and shall and do pay the residue and surplus of the monies so to be levied or raised, and of the rents and profits of the said hereditaments and premises, after full payment and satisfaction of the said annuity or yearly sum of £—, and all arrears thereof, and all such costs, charges and expenses as aforesaid, unto the said *A. B.* and his assigns, for his or their own use and benefit:—And it is hereby agreed and declared between the parties hereto, that the receipt and receipts of the said *E. F.*, his heirs or assigns, shall be a good and sufficient discharge, and good and sufficient discharges, to the tenants and occupiers of the said hereditaments and premises, for the rents, issues, and profits thereof, and to any such mortgagee or mortgagees, purchaser or purchasers, of all or any part of the same premises as aforesaid, for his, her, or their purchase or mortgage monies, or for so much thereof respectively as shall in such receipt or receipts be acknowledged or expressed to be received, and that the person or persons paying the same monies, and taking such receipt or receipts for the same as aforesaid, shall not afterwards be bound to see to the application thereof, or be responsible for the loss, misapplication or non-application thereof, or any part thereof. Provided also that the said *E. F.*, his heirs or assigns, shall not be charged or chargeable with or responsible for any monies, other than such as he or they shall actually receive by virtue of the trusts hereby in him and them reposed, nor with or for any loss or damage which may happen by placing all or any part of the same trust monies in any bank or bankers' hands, or elsewhere, for safe

custody, or anywise in or about the execution of the aforesaid trusts without his or their wilful neglect or default. And the said *A. B.*, for himself, his heirs, executors and administrators, doth covenant, promise and agree with and to the said *C. D.*, his executors, administrators, and assigns, and also with and to the said *E. F.*, his heirs and assigns, (separately and apart from the said *A. B.*, his executors, administrators and assigns, and so far as relates to the title, possession, and further assurance of the said customary or copyhold hereditaments and premises,) by these presents, in manner following, that is to say, that he the said *A. B.* is and standeth lawfully and rightfully seised of the said lands, hereditaments and premises, for an estate for the term of his life, according to the custom of the manor of ——— aforesaid, without any condition, restraint, or other cause, matter or thing whatsoever, to change, alter, revoke, make void, lessen or determine the same:—And also that he the said *A. B.* hath good right to surrender and assure the same lands, hereditaments and premises to the use of the said *E. F.*, his heirs and assigns, upon the trusts and in manner aforesaid, and according to the true intent and meaning of the covenant in that behalf hereinbefore contained:—And moreover, that the said *E. F.*, his heirs and assigns, shall and may henceforth, for and during the life of the said *A. B.*, peaceably and quietly enter into and upon, have, hold, occupy and enjoy all and singular the same customary or copyhold hereditaments and premises, with their appurtenances, and receive and take the rents and profits thereof, upon the trusts aforesaid, free and clear of and from all former and other gifts, grants, surrenders, mortgages, leases, rents, annuities, and all other titles, troubles, charges, and incumbrances whatsoever:—And further, that he the said *A. B.*, and all and every persons and person having, or lawfully or equitably claiming or to claim any estate, right, title, trust, or interest in, to, or out of the said hereditaments and premises, or any part thereof, shall and will, upon every reasonable request of the said *C. D.*, his executors, administrators or assigns, or of the said *E. F.*, his heirs or assigns, but at the costs and charges of the said *A. B.*, make, do, and execute, or cause and procure to be made, done, and executed, all and every such further and other acts, assurances, matters and things whatsoever, for the better and more effectually charging the said customary or copyhold lands, hereditaments and premises, with the payment of the said annuity or yearly sum of £ ——— ; and for the further and more effectual limiting and assuring the same premises, to the use of the said *E. F.*, his heirs

and assigns, upon the trusts aforesaid, and according to the true intent and meaning of these presents, as by the said *C. D.*, his executors, administrators, or assigns, or the said *E. F.*, his heirs or assigns, or his, their, or any of their counsel learned in the law, shall be lawfully and reasonably devised, or advised and required:—And moreover, that he the said *A. B.*, shall not nor will, at any time or times hereafter, depart from or leave the kingdom on military service or otherwise, without first giving to the said *C. D.*, his executors, administrators, or assigns, one calendar month's notice thereof in writing, under the hand of him the said *A. B.*: And that the said *A. B.*, shall and will, from time to time, and at all times during his life, at the request of the said *C. D.*, his executors, administrators, or assigns, appear in person, as often as there shall be occasion, upon having reasonable notice, at any office or place of insurance, or send to such office notice of the place of abode of him the said *A. B.*, and if necessary, vouchers or certificates of the state of his health, in order that the said *C. D.*, his executors, administrators, and assigns, may be enabled to insure his and their interest in the life of the said *A. B.*, in such manner as he or they may think advisable. [*When the estate is large, it may here be desirable to insert the ordinary form of an appointment of a receiver of the rents.*] And this indenture further witnesseth, and it is hereby declared and agreed, by and between the said parties to these presents, that the judgment to be entered up against the said *A. B.*, as aforesaid, upon the said recited warrant of attorney, is intended and agreed to be a further security to the said *C. D.*, his executors, administrators, and assigns, for the said annuity or yearly sum of £——, and such proportionate part thereof as aforesaid, but that no execution or executions shall be issued or taken upon such judgment, unless and until the said annuity, or yearly sum, or some part thereof, or such proportionate part thereof, shall be in arrear for the space of thirty-one days, next after the same shall become due and payable: And that in case the said annuity or yearly sum of £——, or any part thereof, or such proportionate part thereof, shall be behind and unpaid by the space of thirty-one days, then and in such case, and so often as the same shall happen, it shall and may be lawful to and for the said *C. D.*, his executors, administrators, or assigns, to sue out such execution or executions, upon or by virtue of the said judgment, as he or they shall think fit, for the recovery of the arrears of the said annuity, and all costs and expenses which he or they shall bear, pay, or sustain, for or by reason of the nonpayment thereof. And it is hereby further declared and agreed, that the said *C. D.*, his executors, administra-

tors, or assigns, shall, by and with, and out of the money to be recovered or raised by the ways and means last mentioned, pay and satisfy himself and themselves all arrears of the said annuity or yearly sum of £——, and all costs, charges, and expenses occasioned by nonpayment thereof, and shall pay the residue and surplus of the monies so to be recovered or raised, to the said *A. B.*, his executors, administrators, or assigns, for his and their own use and benefit. Provided always, and it is hereby agreed and declared, by and between the said parties to these presents, that it shall not be necessary for the said *C. D.*, his executors, administrators, or assigns, to revive, or cause to be revived, the said judgment, or do any act, matter, or thing, to keep the same on foot, notwithstanding the same judgment shall have been entered of record, for the space of one year or upwards; and that the said *A. B.*, his heirs, executors or administrators, shall not, nor will have or take, or attempt by any ways or means whatsoever, to have or take any advantage of the want of reviving or keeping the said judgment on foot; and that if he or they shall attempt so to do, by action or other proceeding or proceedings whatsoever, this present agreement shall or may be pleaded or shown in bar thereto, any rule or practice of the court of King's Bench to the contrary thereof, in anywise notwithstanding. Provided nevertheless, that after the decease of the said *A. B.*, and full payment to the said *C. D.*, his executors, administrators and assigns, of the said annuity or yearly sum of £——, and all arrears thereof, up to the day of the decease of the said *A. B.*, and of all such costs, charges and expenses, as aforesaid, the said *C. D.*, his executors, administrators or assigns, shall and will, at the request, costs and charges of the heirs, executors or administrators of the said *A. B.*, acknowledge satisfaction upon the record of the said judgment, in due form of law, or do any further or other reasonable act or acts, matters or things, that may then be required in regard thereto, so that for the doing thereof, the said *C. D.*, his executors, administrators or assigns, be not compellable to travel from his or their usual place or places of abode. Provided always, and it is hereby declared and agreed, by and between the said *C. D.* and the said *A. B.*, that in case the said *A. B.* shall, at any time after the expiration of two years, to be computed from the day of the date of these presents, be desirous of re-purchasing the said annuity or yearly sum of £——, and shall give to the said *C. D.*, his executors, administrators or assigns, three calendar months' notice in writing of such desire; and upon the expiration of the said notice, or at any time afterwards, and on giving such notice as aforesaid, shall well and truly pay, or cause to be paid, to

the said *C. D.*, his executors, administrators or assigns, the full sum of £—, being the consideration money for the purchase of the said annuity; and do and shall also well and truly pay or cause to be paid, to the said *C. D.*, his executors, administrators or assigns, all sums of money, that shall then be due to him or them, for or on account of the said annuity of £—, and also a proportionate part of the same annuity, up to and inclusive of the day of re-purchasing the same, and shall also well and truly pay, or cause to be paid, to the said *E. F.*, his heirs or assigns, all sums of money which shall then be due to him or them, for or on account of such costs, charges and expenses as shall have been advanced, paid or incurred by him or them, in the execution of the trusts aforesaid; then and in that case the said *C. D.*, his executors, administrators or assigns, shall and will accept and take the said sum of £—, as and for the price of re-purchase, and in satisfaction and full discharge of the said annuity of £—; and upon the request, and at the costs and charges of the said *A. B.*, his heirs, executors or administrators, the said *C. D.*, his executors, administrators or assigns, shall and will acknowledge satisfaction upon the record of the said judgment; and then, and in such case, the said annuity of £—, and the several covenants and agreements, powers and remedies, hereinbefore contained, for payment and security of the said annuity, shall cease and be void, to all intents and purposes whatsoever; and then, also, the said *E. F.*, his heirs or assigns, shall and will, at the request, costs and charges of the said *A. B.*, re-surrender and re-assure all and singular the said customary or copyhold hereditaments and premises, with their appurtenances, to the use of the said *A. B.* and his assigns, for his life, subject nevertheless, and without prejudice, to any such sales, mortgages, or demises, which may be made at any time hereafter, under and by virtue of the trusts hereinbefore contained; and then also the said *C. D.*, his executors, administrators or assigns, shall and will, at the like request, costs and charges of the said *A. B.*, assign and transfer to him, the said *A. B.*, his executors, administrators or assigns, for his and their own use and benefit, any policy or policies of insurance, which may have been effected by the said *C. D.*, upon the life of the said *A. B.*, in connection with this present security. In witness, &c. (a)

(a) It would be necessary to register a memorial of the above deed, in the form given in the act of 53 G. 3. c. 141,

and by which the act of 17 G. 3. c. 26, is repealed.

As the clause in the latter act, re-

(Power to enable successive tenants for life of a manor, to grant licences to demise to copyholders.) (b).

Provided always, and it is hereby further declared and agreed, by and between all the said parties to these presents, that it shall and may be lawful, to and for the said *A. B.* and *C. D.* respectively, when, and as they respectively shall be in the actual possession of the aforesaid manor of ———, by virtue of and under the limitations hereinbefore contained, to grant to all or any of the customary or copyhold tenants of the same manor, any license or licenses to demise or lease all or any part of the lands, tenements or hereditaments, holden by them respectively, by copy of court roll of the said manor, so, nevertheless, that such license or licenses respectively, shall not exceed the term of — years, from the time of granting the same; and that the said *A. B.* and *C. D.* respectively, do take only the usual and accustomed fines, and do conform in all other respects to the custom of the said manor, in relation to the like grants or licenses.

(Proviso in a will, authorising trustees to grant leases of copyholds, under similar restrictions to those previously imposed with respect to freeholds.)

Provided always, and my will is, that it shall be lawful for the said *A. B.* and *C. D.*, and the survivor of them, his heirs and assigns, by and with the consent of the lord or lady, lords or ladies, of the said

quiring the consideration for the annuity, and the name of the person by whom, or on whose behalf it is advanced, to be stated in every instrument forming part of the security, is not repeated in the act of 53 G. 3., it would be sufficient to state, in the surrender, that the same was made by *A. B.*, in consideration of £——, paid to him by *C. D.*, and upon the trusts of a certain deed, made between, &c., by which an annuity was granted by *A. B.*, to *C. D.*, for the life of the said *A. B.* If, however, *C. D.*

acted as a trustee only for another person, it would then be necessary to state the name, &c. of such person in the surrender, and also in the warrant of attorney, otherwise the instrument is rendered void, by the 4th sect. of the act of 53 G. 3.

The *ad valorem* duty, I apprehend, is to be affixed to the surrender, as that is declared by the acts of 48 G. 3. c. 149. and 55 G. 3. c. 184. (*post.*) to be the principal instrument.

(b) *Ante*, pt. 1. p. 546.

manor of ———, for the time being, by indenture or indentures, to demise and lease all or any part of the said customary or copyhold lands, hereditaments, and premises hereinbefore devised, for such and the like term or terms of years, in possession, and not in reversion, or by way of future interest, and under and subject to the like restrictions and conditions, as I have hereinbefore directed and provided, with respect to the freehold estates, adjoining or contiguous to the same customary or copyhold hereditaments respectively; *provided nevertheless*, that the person or persons beneficially intitled to the rents and profits of the said customary or copyhold hereditaments, in possession, for the time being, if he, she, or they, shall have attained the age of 21 years, shall signify his, her, or their consent and approbation to every such lease, so to be granted as aforesaid, by some writing or writings under his, her, or their hand and seal, or hands and seals, to be attested by two or more credible witnesses.

(Lease by trustees and the cestui que trusts, to commit a forfeiture of copyholds, in order to bar an equitable estate tail.) (a)

This indenture, made the ——— day of ———, &c. between *R. S.* of, &c., and *T. W.* of &c. [*the trustees*,] of the first part, *I. K.* of &c. [*equitable tenant for life*,] of the second part, *I. L.* of &c. and *E. L.* [*the equitable tenant in tail in remainder*,] the wife of the said *I. L.* of the third part, and *Y. Z.* of &c., of the fourth part; witnesseth, that to the intent that a voluntary forfeiture may be committed, and a seizure made of the messuages, lands, and hereditaments, hereinafter described, with their appurtenances, according to the custom of the manor of ———, in the county of ———, in order to dock,

(a) See *Ante*, pt. 1. p. 71, et seq.

It is usual in these cases for the homage to present the lease creating the forfeiture, in the terms of the subjoined precept, and to enter on the Court Rolls such presentment, and also a presentment of the precept and the bailiff's return, and that proclamation was thereupon made for the late tenant, or other person who could show title, to come into court and pay a fine, who should be

heard: but that no person appeared, "*wherefore default is recorded*:" and the copy of these presentments is called the *inquisition* of the homage. The lands are afterwards regranted according to the desire of the parties.

[But see the provisions of the act of 3rd and 4th W. 4. c. 74, for effecting a bar of equitable estates tail of copyholds, *ante*, pp. (12.) n. a. (52.) (140.) Vide also extracts from that stat. post.]

bar, and extinguish the estate in tail general, to which the said *E. L.* is now equitably intitled, of and in the same hereditaments, and all remainders and reversions thereupon expectant or depending, and that an estate by copy of court roll, according to the custom of the said manor, may be re-granted to and vested in the said *R. S.* and *T. W.*, and their heirs, upon and for the trusts, intents, and purposes hereinafter expressed, and in consideration of the sum of 10*s.* a piece of lawful money, &c., to the said *R. S.*, *T. W.*, *I. K.*, and *I. L.*, and *E. L.* his wife, in hand paid by the said *Y. Z.*, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and also for and in consideration of the rent and reservations hereinafter contained, and for divers other good causes and considerations, the said *R. S.*, *T. W.*, *I. K.*, and *I. L.*, and *E. L.* his wife, hereunto especially moving, they the said *R. S.* and *T. W.*, and the said *I. K.* and *I. L.*, and *E. L.* his wife (she the said *E. L.*, being first examined separately and apart from her said husband, by *J. S.* esquire, chief steward of the said manor, and freely and voluntarily consenting thereto,) have and each and every of them hath demised, leased, granted, and to farm letten, and by these presents do, and each and every of them doth, demise, lease, grant, and to farm let, unto the said *Y. Z.* his executors, administrators, and assigns, All &c., with their and every of their appurtenances, to have and to hold the said messuages, lands, and all and singular other the hereditaments and premises hereinbefore described, and hereby demised and leased, or intended so to be, with their appurtenances, unto the said *Y. Z.* his executors, administrators, and assigns, from the day next before the day of the date of these presents, for and during, and until the full end and term of seven years thence next ensuing, and fully to be complete and ended: Yielding and Paying therefore yearly and every year during all the said term unto the said *R. S.* and *T. W.*, their heirs and assigns, the yearly rent or sum of five shillings, on the feast day of the birth of our Lord Christ, clear of all taxes and deductions whatsoever. And it is hereby declared and agreed, that the forfeiture intended to be committed by this present demise or lease, is for the purpose, and to the intent, to bar such the equitable estate tail of the said *E. L.* as aforesaid, and all remainders and reversions thereupon expectant or depending, of and in the aforesaid customary or copyhold messuages, lands, hereditaments, and premises, and that the same premises may be re-granted to and vested in the said *R. S.* and *T. W.*, their heirs and assigns, upon the trusts, intents, and purposes ex-

pressed and declared in an indenture bearing date &c., and made between &c., (other than the trust for the benefit of the said *E. L.*, and the heirs of her body, and the subsequent trusts therein contained,) and subject thereto, upon and for the trusts, intents, and purposes expressed and declared concerning the same premises, in and by an indenture bearing date &c., and made between &c. (being the settlement executed previous to and in contemplation of the marriage then intended and since had and solemnized between the said *I. L.*, and the said *E. L.* now his wife.) In witness, &c.

(Precept of seizure by reason of the above forfeiture.)

The manor of — }
in the county of — } To *W. Y.* bailiff of the said manor.

Whereas at a general court baron or customary court, held this day for the said manor of —, it is found and presented by the homage, that *R. S.* and *T. W.*, *I. K.* and *I. L.*, and *E.* his wife, by their indenture of demise and lease duly executed, bearing date &c., and in consideration of the sum of 10*s.* a piece, in hand paid by *Y. Z.* of &c. and for other the considerations in the same indenture expressed, did demise, lease, grant, and to farm let unto the said *Y. Z.* All &c., with their appurtenances, to hold unto the said *Y. Z.*, his executors, administrators, and assigns, from the day next before the day of the date of the same indenture of lease, for and during and unto the full end and term of seven years, thence next ensuing, and fully to be complete and ended; by reason whereof all and singular the said messuages, lands, hereditaments, and premises, being respectively customary or copyhold hereditaments, lying within and holden of the said manor, have become forfeited to the lord of the same manor, and ought to be seized to his use.

These are, therefore, to command you, the said *W. Y.*, that you forthwith take with you two customary or copyhold tenants of the said manor, and enter into and upon the aforesaid messuages, lands, hereditaments, and premises, or some part thereof, in the name of the whole, and seize the same into the hands of the lord of the said manor, according to the custom and usage thereof, and that you thereupon make return to me of this precept, together with the names of the tenants in whose presence you make such seizure, and the clear yearly value of the premises. Given under my hand and seal this — day of —, in the year of our Lord —,

J. S. steward. (L. s.)

(The bailiff's return indorsed.)

By virtue of the within written precept to me directed, I have, in the presence of *C. D.* and *E. F.*, two customary or copyhold tenants of the within mentioned manor of ———, seized all and singular the within described messuages, lands, and hereditaments into the hands of the lord of the same manor, according to the custom and usage thereof, as commanded by the same precept. And I do hereby certify, that the aforesaid premises are of the yearly value of £———, or thereabouts.

W. Y. bailiff.

(Deed of Enfranchisement.)

This indenture made the —— day of &c., between *A. Z.* of &c. lord of the manor of ——, in the county of ——, of the one part and *C. D.* of &c., one of the copyhold tenants of the aforesaid manor, of the other part. Whereas the said *A. Z.* is seised of and well intitled to the said manor of ——, for an estate of inheritance in fee-simple, in possession, free from all incumbrances. And whereas the said *C. D.*, at a court baron or customary court holden for the aforesaid manor, on the —— day of ——, was admitted, on the surrender of *E. F.* of &c., to all and singular the copyhold messuages, lands, and hereditaments hereinafter described, and intended to be hereby granted, released, and enfranchised, with their appurtenances, to hold the same unto him the said *C. D.*, and his heirs, by copy of court roll, at the will of the lord, according to the custom of the manor of —— aforesaid, [by and under the payment of the ancient yearly rent of £——, and the performance of all other the duties and services due and of right accustomed for and in respect of the same copyhold hereditaments and premises.] And whereas the said *C. D.* hath contracted and agreed with the said *A. Z.*, for the enfranchisement of the said copyhold messuages, lands, and hereditaments hereinafter described, [subject as hereinafter mentioned,] at or for the price or sum of £———. Now this indenture witnesseth, that in pursuance and performance of the said recited contract or agreement, and for and in consideration of the sum of £———, of lawful money of the united kingdom of Great Britain and Ireland, current in England, unto the said *A. Z.*, in hand well and truly paid by the said *C. D.*, at

or before the sealing and delivery of these presents, the receipt whereof the said *A. Z.* doth hereby acknowledge, and of and from the same, and every part thereof, doth acquit, release, exonerate, and discharge the said *C. D.*, his heirs, executors, administrators, and assigns, and every of them for ever by these presents: he the said *A. Z.*, hath granted, bargained, sold, aliened, released, enfranchised, and confirmed, and by these presents, doth grant, bargain, sell, alien, release, enfranchise, and confirm unto the said *C. D.*, (in his actual possession now being, by virtue of a bargain and sale to him thereof made by the said *A. Z.*, in consideration of 5*s.* by indenture bearing date the day next before the day of the date of these presents, for the term of one whole year, commencing from the day next before the day of the date of the same indenture of bargain and sale, and by force of the statute made for transferring uses into possession)^(a), and to his heirs and assigns, All &c.; together with all out-houses, ways, &c., to the said messuages, lands, hereditaments and premises belonging, or in anywise appertaining, or therewith used, occupied, or enjoyed, or accepted, reputed, deemed, taken, or known as part, parcel, or member thereof or any part thereof; and the reversion and reversions, remainder, and remainders, yearly, and other rents, issues, and profits thereof; and all the estate, right, title, interest, freehold, inheritance, use, trust, benefit, property, power, claim, and demand whatsoever, of the said *A. Z.*, in, to, or out of the same premises, and every part thereof: [save and except and reserving unto the said *A. Z.*, his heirs and assigns, out of this present grant, release, and assurance, the aforesaid yearly rent of £——, the same to be for ever hereafter paid to the said *A. Z.*, his heirs and assigns, as a free rent, and to be issuing and payable out of the said hereditaments and premises and every part thereof, at such times and in such manner as the same is now due and accustomed to be paid: and save and except, and reserving in like manner as aforesaid, all coal mines, veins, and seams of coal, and all other mines, metals and minerals whatsoever, and all quarries of stone, with full liberty and power for the said *A. Z.*, his heirs and assigns, and his and their workmen, servants, and agents, at his and their free will and pleasure, to search for, dig, work, and carry away the same, and for the better working the same mines and quarries

(a) It is usual and more correct to effect an enfranchisement by the ordinary mode of conveying freehold property, but some are of opinion that a re-

lease by the lord to the copyholder, of all seigniorial rights, will alone be sufficient. *Ante*, pt. I. pp. 653-4.

to erect furnaces, engines, smelting houses, and other requisite buildings, and to make, lay down, and continue any rail-way, and to make drains, sluices, and cuts, and do every other act necessary or expedient for raising and carrying away all such coals, metals, minerals, and stone, doing as little injury as may be to the soil of the said copyhold premises, and making a reasonable compensation for the damage which may be sustained by the owners or occupiers of the same premises, by reason of the exercise of the privilege hereby excepted and reserved; and save and except also and reserving in like manner as aforesaid, such free liberty of hunting, fishing, and fowling, and all such deodands, waifs, estrays, and other royalties, privileges, liberties, franchises, and seigniorial rights and immunities, not hereby expressly granted, released and extinguished, as have been at any time heretofore exercised or enjoyed by the said *A. Z.*, or any of his ancestors or predecessors, lords of the aforesaid manor, and as fully to all intents and purposes, as the said *A. Z.*, his heirs or assigns could or might have used, exercised, or enjoyed the same, if these presents had not been made or executed,] *to have and to hold* the said messuages, lands, and all and singular other the hereditaments and premises mentioned or intended to be hereby granted, released, and enfranchised, with their and every of their appurtenances, [except as hereinbefore is excepted] unto the said *C. D.*, his heirs and assigns, to the use and behoof of the said *C. D.*, his heirs and assigns for ever; freed and absolutely acquitted, exonerated, and discharged, henceforth and for ever hereafter, of and from all and all manner of customary fines, heriots, rents, [except as is hereinbefore mentioned,] fealty, suit of court, amercements, forfeitures and other customary payments, duties, services, and penalties whatsoever, which by or according to the custom of the manor of ——— aforesaid, the said messuages, lands, hereditaments, and premises hereinbefore described, or any of them, are, or is, or have, or hath been subject, or liable to, or charged with, or which would otherwise be payable, or to be done and performed to the lord or lady, lords or ladies, for the time being, of the said manor of ———, for or in respect of the same hereditaments and premises, as copyhold holden of the aforesaid manor. [Yielding, paying, and rendering, nevertheless, unto the said *A. Z.*, his heirs and assigns for ever, the said yearly quit or chief rent of £ ———, (heretofore payable in respect of the said hereditaments and premises as copyhold, held of the aforesaid manor,) at or upon the feast day of St. Michael the Archangel, in every year,

clear of all taxes and deductions whatsoever, the first payment to begin and be made on the feast day of St. Michael the Archangel, now next ensuing: and yielding, rendering and performing such and the like suit of court, at the court baron of the said *A. Z.*, his heirs and assigns, to be holden from time to time for the said manor of —, and other services, as other the freehold tenants are subject and liable to do and perform, in respect of their estates lying within and holden of the same manor. And the said *C. D.* for himself, his heirs, executors, administrators and assigns, doth hereby grant, covenant, promise, and agree with and to the said *A. Z.*, his heirs and assigns, that in case the said yearly rent hereby reserved, shall at any time or times hereafter be in arrear and unpaid, either in part or in the whole, or in case the said *C. D.*, his heirs or assigns, shall neglect or refuse to do and perform such suit and services as are hereinbefore also reserved, or intended so to be, then, and in any or either of the said cases, it shall be lawful for the said *A. Z.*, his heirs and assigns, from time to time, to exercise and pursue such remedies by amercement, distress, action or suit, at law or in equity, or otherwise howsoever, for compelling payment and performance of the same rent, suit, and services respectively, as the said *A. Z.*, his heirs or assigns, is, or may be authorised, or intitled to exercise and pursue, by reason of any neglect or refusal, by or on the part of other the freehold tenants of the said manor, to pay the rents, or perform the suits, or services, which they respectively are subject and liable to pay and perform, in respect of their estates lying within and holden of the aforesaid manor] (*a*). Provided always, and it is hereby declared to be the true intent and meaning of the said parties hereto, that nothing in these presents contained is meant to extend to the enfranchisement of, or shall be deemed, construed, or adjudged to enfranchise, any part or parts of the copyhold hereditaments lying within and holden by the said *C. D.* of the said manor of —, (other than and except the messuages, lands, hereditaments and premises hereinbefore described,) or to acquit, release, or discharge the same premises, (other than and except as aforesaid,) from any fines, heriots, rents, fealty, suit of court, amercements, forfeitures, payments, duties, services, or penalties which, by or according to

(*a*) By omitting the clauses between the brackets, here and in pp. (198), (199), and (200), (by which mines, &c. are excepted out of the grant, and rent and

suit of court are reserved to the lord,) this precedent will serve for a more ordinary deed of enfranchisement.

the custom of the aforesaid manor, the same premises have at any time heretofore been subject or liable to, or charged with, or which have been or ought to have been paid, done, or performed, for or in respect of the same premises, as copyhold, holden of the manor of — aforesaid. And this indenture also witnesseth, that for the considerations aforesaid, and in order to preserve to the said *C. D.*, his heirs and assigns, all such rights of common in, upon, and over the waste lands of the manor of — aforesaid, as he the said *C. D.*, or any of his ancestors or predecessors, hath or have heretofore used and enjoyed, as belonging or appurtenant to the messuages, lands, and hereditaments, hereinbefore described, notwithstanding the enfranchisement of the same respective hereditaments (*a*), he the said *A. Z.*, hath granted and confirmed, and by these presents doth grant and confirm unto the said *C. D.*, his heirs and assigns for ever, all such commonage and right or title to common, of what nature or kind soever, in, upon, and over all or any of the wastes, commons, and commonable lands, of or belonging to the manor of — aforesaid, as he the said *C. D.* immediately previous to the execution of these presents, or as any of his ancestors or predecessors, held, possessed or enjoyed, in respect of, and as appurtenant or belonging to all or any part of the messuages, lands, hereditaments and premises, mentioned or intended to be hereby enfranchised, and the freehold and inheritance of all such commonable rights as aforesaid, in as large, ample, and beneficial manner, to all intents and purposes, as he the said *C. D.*, or any of his ancestors or predecessors hath or have heretofore used and exercised, all or any of the said rights or privileges, or as he, or his customary heirs, could or might have used and exercised the same, if the aforesaid messuages, lands, hereditaments and premises had not been enfranchised. And the said *A. Z.* for himself, his heirs, executors, and administrators, doth covenant, promise, grant, and agree, with and to the said *C. D.*, his heirs and assigns, by these presents, in manner following, (that is to say,) that (for and notwithstanding any act, deed, matter, or thing whatsoever by the said *A. Z.*, or any of his ancestors, at any time heretofore made, done, committed, executed, or wittingly suffered to the contrary,) he the said *A. Z.*, now at the time of the sealing and delivery of these presents, is and standeth lawfully and rightfully seised of the aforesaid manor of

(*a*) *Ante*, pt. 1, p. 659.

—, for an estate of inheritance in fee-simple, in possession, and hath in himself good right, full power, and absolute authority to grant, release, and enfranchise all and singular the said messuages, lands, hereditaments and premises hereinbefore granted, released, and enfranchised, or intended so to be, with their appurtenances, in manner aforesaid, and according to the true intent and meaning of these presents:—And moreover, that it shall and may be lawful to and for the said *C. D.*, his heirs and assigns, from time to time, and at all times for ever hereafter, peaceably and quietly to have, hold, and enjoy the freehold and inheritance of all and singular the said messuages, lands, hereditaments and premises, mentioned or intended to be hereby granted, released, and enfranchised, with their appurtenances, for his and their own proper use and benefit, without any lawful let, suit, trouble, molestation, eviction, ejection, interruption, or disturbance whatsoever, of, from, or by the said *A. Z.*, or his heirs, or any person or persons lawfully or equitably and rightfully claiming, or to claim, by, from, under, or in trust for him, or any of his ancestors; and that free and clear, and freed and absolutely acquitted, exonerated and discharged, or otherwise by the said *A. Z.*, his heirs, executors and administrators, well and effectually saved, defended, kept harmless and indemnified, of, from, and against all former and other gifts, grants, bargains, sales, leases, mortgages, rents, jointures, dowers, settlements, uses, trusts, wills, entails, statutes, recognizances, judgments, extents, executions, and all other estates, titles, troubles, charges, and incumbrances whatsoever, had, made, done, committed, executed, or wittingly suffered or consented unto by the said *A. Z.*, or any of his ancestors, or any person or persons claiming by, from, through, under, or in trust for him, them or any of them, or by, or through his, their, or any of their acts, means, default, privity, consent, or procurement:—And further, that the said *A. Z.*, and his heirs, and all and every persons and person whomsoever, having or lawfully or equitably claiming or to claim any estate, right, title, trust, or interest, in, to, or out of the aforesaid manor of —, by, from, through, under, or in trust for him, or any of his ancestors, shall and will from time to time, and at all times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said *C. D.*, his heirs or assigns, make, do, and execute, or cause and procure to be made, done, and executed, all and every such further and other acts, deeds, conveyances,

and assurances in the law whatsoever, for the further, better and more perfectly and absolutely enfranchising all and singular the said messuages, lands, hereditaments and premises hereinbefore granted, released and enfranchised, or intended so to be, with their appurtenances, as by the said *C. D.*, his heirs or assigns, or his or their counsel learned in the law, shall be lawfully and reasonably devised or advised and required, so as such further assurances contain in them no further or other covenant or warranty, than against the person or persons making and executing the same, and his or their own heirs' and ancestors' acts and deeds respectively, and so as the party or parties required to make and execute such further assurance or assurances, be not compelled or compellable, for the purpose thereof, to go or travel from his or their usual place or places of abode:—And lastly, that he the said *A. Z.*, his heirs or assigns, shall and will, from time to time and at all times hereafter, upon reasonable notice, and at the request, costs, and charges of the said *C. D.*, his heirs or assigns, (unless prevented by fire or other inevitable accident,) produce and show forth, or cause and procure to be produced and shown forth, unto him or them, or to his or their counsel, attornies, solicitors, or agents, or in any court or courts of law or equity, or upon any motion, petition, examination, commission, trial, or hearing, or otherwise as occasion shall require, all or any of the deeds, evidences and writings specified in the schedule hereunder written, for the manifesting, evidencing, maintaining, defending, and proving the title, estate, right, interest, property and possession of the said *C. D.*, his heirs and assigns, in and to the freehold and inheritance of the said messuages, lands, hereditaments and premises mentioned or intended to be hereby granted, released, and enfranchised, or any of them. In witness, &c.

(The schedule above referred unto.)

(Deed of Enfranchisement, under a power in a marriage settlement.)

This indenture of three parts, made the — day of &c., between *A. B.* of &c., and *C. D.* of &c. [*the trustees for sale and enfranchisement,*] of the first part, *E. F.* of &c., [*the tenant for life in posses-*

tion,] and *G.* his wife, of the second part, and *H. H. of &c.* [*the copyholder,*] of the third part. Whereas by virtue of indentures of lease and release, bearing date, &c., and made between the said *E. F.* of the first part, the said *G. F.*, now the wife of the said *E. F.*, (by her then name and description of *G. G.*, of &c. spinster,) of the second part, the said *A. B.* and *C. D.* of the third part, and *I. K.* and *L. M.* [*trustees of a term of years for securing portions, &c.*] of the fourth part, (being the settlement made previous to and in contemplation of the marriage then intended, and which was soon afterwards duly had and solemnized between the said *E. F.* and *G. F.* his wife,) the manor of — in the county of —, with its rights, members, and appurtenances, was (together with other manors and hereditaments) limited, settled, and assured, (from and after the solemnization of the said marriage between the said *E. F.* and *G. F.* his wife,) to the use of the said *E. F.* and his assigns, for the term of his natural life, without impeachment of waste, with remainder to the use of the said *A. B.* and *C. D.*, and their heirs, during the life of the said *E. F.* in trust to preserve contingent remainders, with remainder to the use and intent to secure to the said *G. F.* and her assigns, for her life, the jointure annuity therein mentioned, and in such manner as therein is expressed, and subject thereto, to and for the several uses, intents and purposes, upon the several trusts, and with, under, and subject to the several powers, privisoes, limitations, declarations, and agreements in the said indenture of release, limited, declared, expressed, and contained, of and concerning the same estates respectively, and with the ultimate limitation or reversion, to the use of the right heirs of the said *E. F.* for ever. And in which same indenture of release was contained, (among other powers or privisoes,) the usual powers of leasing, and of sale and exchange; and also a power or proviso, whereby it was agreed and declared, by and between all the parties thereto, that it should and might be lawful to and for the said *A. B.* and *C. D.*, and the survivor of them, or his heirs, at any time or times thereafter, during the life of the said *E. F.*, with the consent and approbation of the said *E. F.* and *G.* his wife, or of the said *E. F.* alone, if he survived his said wife, (to be testified by some writing, under their or his hands and seals, or hand and seal, and to be attested by two or more credible witnesses,) to enfranchise, and for that purpose to grant, bargain, sell, release, and confirm all or any of the messuages, &c., holden by copy of

court roll of all or any of the manors mentioned or intended to be thereby granted and released, for such price or prices in money as should be thought reasonable ; and upon payment of the money to arise by any such enfranchisement or enfranchisements, to sign and give a proper receipt, or proper receipts, for the consideration money of such enfranchisement or enfranchisements, which receipt or receipts, respectively, should be a sufficient discharge to any person or persons to whom such enfranchisement or enfranchisements, respectively, should be made, for so much money as should be therein expressed or acknowledged to be received ; and that the person or persons paying the consideration money for any such enfranchisement, his, her, or their heirs, executors, administrators, or assigns, should not afterwards be bound to see to the application of the same monies, or be responsible for the loss, misapplication or non-application thereof, or any part thereof. And it was by the reciting indenture of release and settlement further agreed and declared, that when any of the said premises should be enfranchised, and such proper receipt be given for the consideration money of such enfranchisement, the freehold of all and every the messuages, farms, lands, tenements, and hereditaments so enfranchised, should be and remain for ever from thenceforth freed and absolutely discharged, of and from all and every the uses, trusts, limitations, powers, provisoes, declarations and agreements in and by the said indenture of release and settlement, limited, declared, or expressed, and then, and from thenceforth, the same indenture, and the grant and release thereinbefore contained, should be and enure, as to and concerning the hereditaments and premises so to be enfranchised, to the only use and behoof of the person or persons to whom such enfranchisement or enfranchisements should be respectively made, and of his, her, and their heirs and assigns for ever : And it was thereby further agreed and declared, that upon every such enfranchisement as aforesaid, it should be lawful for the said *A. B.* and *C. D.*, and the survivor of them, and his heirs, with such consent and approbation, and so testified as aforesaid, to grant, limit, and appoint unto and to the use of the person or persons to whom any such enfranchisement should be made, and to his, her, or their heirs and assigns, all such right of common in and over the wastes of the manor or respective manors, whereof such copyhold hereditaments should be respectively holden, as belonged to or was held and enjoyed by the person or persons so enfranchising, immediately previous to the

execution of the deed or deeds whereby such enfranchisement should be made, or as any of his, her, or their ancestors or predecessors held, possessed, or enjoyed, in respect of, or as appurtenant and belonging to the hereditaments to be enfranchised as aforesaid; and the freehold and inheritance of all such commonable rights, to the intent to preserve or restore and confirm the same rights, notwithstanding the union of the freehold with the copyhold interest of and in the same hereditaments respectively (a). And whereas, at a court holden for the manor of ——— aforesaid, on the ——— day of ———, all and singular the lands and hereditaments hereinafter described, with their appurtenances, were surrendered into the hands of the lord of the same manor, according to the custom thereof, to the use of the said *H. H.*, his heirs and assigns for ever; and at the same court seisin was granted by the lord to the said *H. H.* of the same customary or copyhold hereditaments, to hold to him the said *H. H.* and his heirs, by copy of court roll, at the will of the lord, according to the custom of the said manor of ———. And whereas the said *A. B.* and *C. D.* with the consent and approbation of the said *E. F.* and *G.* his wife, (testified by this deed or instrument in writing, sealed and delivered by them in the presence of and attested by the two credible persons whose names are hereon indorsed, as witnesses to the sealing and delivery hereof, by them the said *E. F.* and *G.* his wife,) did lately contract and agree with the said *H. H.* for the enfranchisement of the said customary or copyhold lands and hereditaments hereinafter described, at or for the price or sum of £ ———. Now this indenture witnesseth, that in pursuance and performance of the said recited contract, and for and in consideration of the sum of £ ———, of lawful money, &c., to the said *A. B.* and *C. D.*, in hand well and truly paid by the said *H. H.* at or before the sealing and delivery of these presents, the receipt whereof the said *A. B.* and *C. D.* do hereby acknowledge and of and from the same, and every part thereof, do acquit, release, and discharge the said *H. H.*, his heirs, executors, administrators, and assigns, and every of them, for ever, by these presents: They the said *A. B.* and *C. D.*, by virtue and in exercise of the said power or authority, in this behalf mentioned and contained in the said recited indenture of release and settlement, and by and with the consent and approbation of the said *E. F.* and *G.* his wife, (testified as aforesaid,) and by force of all and every other powers and authorities, power and authority,

(a) *Ante*, pt. 1. p. 652.

to the said *A. B.* and *C. D.* belonging, or in anywise enabling them hereunto, have enfranchised, limited, and appointed, and by these presents do enfranchise, limit, and appoint : And the said *E. F.* for the consideration aforesaid, and also in consideration of the sum of 10*s.* of lawful money aforesaid, to him in hand paid by the said *H. H.* at or before the execution hereof, the receipt whereof is hereby acknowledged, and according to the estate and interest of him the said *E. F.*, hath granted, bargained, sold, released, enfranchised, and confirmed, and by these presents doth grant, bargain, sell, release, enfranchise, and confirm unto the said *H. H.* his heirs, and assigns, All &c., together with all ways, &c. ; and the freehold and inheritance of the same premises ; and the reversion, &c. ; and all the estate, &c. of the said *E. F.*, in, to, or out of the same premises and every part thereof, *to have and to hold* the said lands, hereditaments, and all other the premises mentioned or intended to be hereby enfranchised, limited, and appointed, granted, released or otherwise assured, with their appurtenances, unto and to the use of the said *H. H.* his heirs and assigns for ever, freed and absolutely acquitted, exonerated, and discharged, henceforth and for ever hereafter, of and from all and all manner of customary fines, heriots, rents, fealty, suit of court, amerancements, forfeitures, and all other customary payments, duties, services, and penalties whatsoever, which, by or according to the custom of the manor of ——— aforesaid, the said lands, hereditaments, and premises hereinbefore described, or any of them, are or is, or have or hath been subject or liable to, or charged with, or which would otherwise be payable, or to be done and performed to the lord or lady, lords or ladies, for the time being, of the said manor of ———, for or in respect of the same hereditaments and premises, as copyhold holden of the aforesaid manor (*a*). And this indenture further witnesseth, that for the considerations aforesaid, and in order to preserve to the said *H. H.*, his heirs and assigns, all such right of common in and over the wastes of the manor of ——— aforesaid, as he the said *H. H.*, or any of his ancestors or predecessors, hath or have heretofore used and enjoyed, as belonging or appurtenant to the lands and hereditaments hereinbefore described, notwithstanding the enfranchisement of the same respective hereditaments ; they the said *A. B.* and *C. D.*, by force and virtue, and in exercise of the

(*a*) If *H. H.* should continue a copyholder of the manor in respect of other lands, it will be proper to add a proviso or agreement similar to that in p. (201), *ante*.

power or authority in this behalf mentioned and contained in the said recited indenture of release and settlement, and of all and every other powers and authorities, power and authority, enabling them hereunto, and with the like consent and approbation of the said *E. F.* and *G.* his wife, (testified as aforesaid,) and also the said *E. F.*, according to his estate and interest, have and every of them hath, granted, limited, and appointed and confirmed, and by these presents do, and every of them doth, grant, limit, appoint, and confirm, unto the said *H. H.*, his heirs and assigns for ever, all such commonage and right or title to common, of what nature or kind soever, in, upon, and over all or any of the wastes, commons, and commonable lands of or belonging to the manor of ——— aforesaid, as he the said *H. H.* immediately previous to the execution of these presents, or as any of his ancestors or predecessors, held, possessed or enjoyed, in respect of, or as appurtenant and belonging to, the lands, hereditaments, and premises mentioned or intended to be hereby enfranchised; and the freehold and inheritance of all such commonable rights as aforesaid, in as large, ample, and beneficial manner, to all intents and purposes, as he the said *H. H.*, or any of his ancestors or predecessors, hath or have heretofore used and exercised all or any of the said rights or privileges, or as he, or his customary heirs, could or might have used and exercised the same, if the aforesaid lands, hereditaments, and premises had not been enfranchised. And the said *A. B.* and *C. D.*, for themselves respectively, their respective heirs, executors, and administrators, but not jointly, or the one for the other of them, or the heirs, executors, administrators, acts, or deeds of the other of them, do hereby covenant and declare, with and to the said *H. H.*, his heirs and assigns, that they the said *A. B.* and *C. D.*, have not, nor hath either of them, at any time heretofore, made, done, committed, executed, or wittingly suffered, or consented unto any act, deed, matter, or thing whatsoever, whereby or by means whereof, they the said *A. B.* and *C. D.* can or may be prevented or hindered from exercising the said recited power of enfranchisement, mentioned and contained in the said indenture of release and settlement, of the ——— day of ———, in the manner aforesaid, and according to the true intent and meaning of these presents. And the said *E. F.*, for himself, his heirs, executors, and administrators, doth covenant, promise, and agree, with and to the said *H. H.* his heirs and assigns, by these presents, in manner following, (that is to say,) that it shall and may be lawful to and for the said *H. H.*, his heirs and assigns, from time to time and at all times

for ever hereafter, peaceably and quietly to have, hold, and enjoy the freehold and inheritance of all and singular the said lands, hereditaments and premises, mentioned or intended to be hereby enfranchised, limited, and appointed, granted, released, or otherwise assured, with their appurtenances, for his and their own proper use and benefit, without any lawful let, suit, trouble, molestation, eviction, ejection, interruption, or disturbance whatsoever, of, from, or by the said *E. F.*, or his heirs, or any person or persons lawfully or equitably, and rightfully claiming or to claim by, from, under, or in trust for him or them; and that free and clear, and freed and absolutely acquitted, exonerated, and discharged, or otherwise by the said *E. F.*, his heirs, executors, and administrators, well and effectually saved, defended, kept harmless and indemnified of, from, and against all former and other gifts, grants, bargains, sales, leases, mortgages, rents, jointure, dowers, settlements, uses, trusts, wills, intails, statutes, recognizances, judgments, extents, executions, and all other estates, titles, troubles, charges, and incumbrances whatsoever, had, made, done, committed, executed, or wittingly suffered or consented unto by the said *E. F.*, or any person or persons claiming by, from, through, under, or in trust for him, or by or through his or their acts, means, default, privity, consent, or procurement:—And further that the said *E. F.*, and his heirs, and all and every persons and person having or lawfully or equitably claiming or to claim any estate, right, title, trust, or interest in, to, or out of the aforesaid manor of ———, by, from, through, under, or in trust for him or them, shall and will from time to time and at all times hereafter, upon the reasonable request, and at the proper costs and charges in the law of the said *H. H.*, his heirs or assigns, make, do, and execute, or cause and procure to be made, done, and executed, all and every such further and other acts, deeds, conveyances, and assurances in the law whatsoever, for the further, better, and more perfectly and absolutely enfranchising all and singular the said lands, hereditaments and premises hereinbefore enfranchised, limited, and appointed, granted, released, or otherwise assured, or intended so to be, with their appurtenances, as by the said *H. H.*, his heirs or assigns, or his or their counsel learned in the law, shall be lawfully and reasonably devised or advised and required:—And lastly, that he the said *E. F.*, his heirs or assigns, shall and will from time to time, and at all times hereafter, upon reasonable notice, and at the request, costs, and charges of the said *H. H.*, his heirs or assigns, (unless prevented by fire or other

inevitable accident,) produce and show forth, or cause and procure to be produced and shown forth, unto him or them, or to his or their counsel, attornies, solicitors, or agents, or in any court or courts of law or equity, or upon any motion, petition, examination, commission, trial, or hearing, or otherwise, as occasion shall require, all or any of the deeds, evidences, and writings specified in the schedule hereunder written, for the manifesting, evidencing, maintaining, defending and proving the title, estate, right, interest, property, and possession of the said *H. H.*, his heirs and assigns, in and to the freehold and inheritance of the said lands, hereditaments and premises hereinbefore described, and mentioned or intended to be hereby enfranchised, limited, and appointed, granted, released, or otherwise assured, or any of them: Provided always, and it is hereby agreed and declared by and between the said *H. H.*, and the said *E. F.*, that in case the said *E. F.*, his heirs, executors, or administrators, shall at his or their costs and charges, at any time hereafter, procure the person or persons for the time being intitled to the custody of the aforesaid deeds, evidences, and writings, to enter into a deed of covenant with the said *H. H.*, his heirs and assigns, of the like tenor and import as the covenant last hereinbefore contained, and shall deliver over the same deed of covenant unto him the said *H. H.*, his heirs or assigns, then and in such case the said last hereinbefore mentioned covenant shall cease, determine, and be void, to all intents and purposes whatsoever. In witness, &c.

(The Schedule above referred unto.)

EXTRACTS FROM VARIOUS ACTS OF PARLIAMENT
RELATING TO COPYHOLDS.

1 R. III. c. 4. (a).

“Of what credit and estate those Jurors must be which shall be impanelled in the Sheriff’s Turn.”

This statute, after noticing that great inconveniences and perjuries daily happened, “by untrue verdicts given in inquisitions and inquiries before sheriffs in their turns;” enacted, that no bailiff nor other officer should from thenceforth return or impanel any such person, in any shire of England, to be taken or put in or upon any such inquiry in any of the said turns, but such as were of good name and fame, and had lands and tenements of freehold, within the same shires, to the yearly value of 20s. at the least, or else lands and tenements holden by custom of manor, commonly called copyhold, within the said shires, to the yearly value of 26s. 8d. over all charges, at the least.

1 ED. VI. c. 14.

“The act for Chantries Collegiate.”

This stat. gives to the King all colleges, chantries, &c., *in esse* within five years before the first day of the then present parliament, and not then in the King’s possession, nor within the exception of the same statute, or of the act of 37 H. 8. c. 4.: and all manors, &c. belonging thereto, and all manors, &c. appointed to the finding of any priest to have continuance for ever.

§. 39. “Provided always, that this act, nor any thing therein contained, shall in anywise extend to any lands, tenements, possessions or hereditaments whatsoever, that any master, dean, prebendary, warden or chantry, or any stipendiary priest of any college, chantry, prebend, fraternity, guild, or any other corporations, have or held of any person or persons *by copy of court roll, or at will, according to the custom of any manor or manors*, nor give or grant any copyhold lands to the King’s Highness.”

(a) See Co. Cop. s. 52. Tr. 129.

§. 40. "And also provided that the King's Highness, his heirs or successors, shall not in anywise have, hold, enjoy or take by virtue of this act or any article therein contained, any manner of *copyhold lands, tenements, possessions, or hereditaments*, whatsoever they be; but that all and every the said persons and incumbents shall have, hold, and enjoy the same during their lives, towards their pension and yearly living, paying their rents and doing their customs and services thereof due and accustomed; any thing in this act to the contrary notwithstanding."

2d & 3d ED. VI. c. 8.

"*An Act for finding of Offices before Escheators.*"

"Where many and divers persons holding, or that have holden lands, tenements, or hereditaments, some for term of years, and some *by copy of court roll*, have been expelled, and put out of their terms and holds, by reason of inquisitions or offices founden before escheators, commissioners, and others, *containing tenures of the King in capite* (a), intituling the King to the wardship or custody of such lands or tenements, and sometime intituling the King to the same upon attainders of treason, felony, or otherwise, by reason that such leases for term of years or *interest by copy of court roll* of such persons, have not been found in such inquisitions or offices: after which expulsion, or putting out, the said persons have been without remedy for the obtaining of the said *fermes* and holds during the King's possession therein; and can have no traverse, *monstrans de droit*, nor other remedy for the same, because their said interest is but a chattel in the law, or a *customary hold*, and no estate of freehold."

§. 2. "And also where any person or persons hath any rent, common office, fee, or other profit *apprendre*, of an estate of freehold, or for years, or otherwise, out of such lands or tenements specified in such offices or inquisitions, the said rent, common office, fee or profit *apprendre*, not found in the same office or offices, such persons are in like manner without remedy to obtain, or have the said rent, common, office, fee, or profit *apprendre*, by any traverse or other speedy mean, without great and excessive charges, during the King's interest therein by force of such inquisition or office."

(a) See 12 Car. 2. c. 24. reducing all tenures to free and common socage, except only tenure by copy of court roll, and otherwise as mentioned, *ante*, pt. 2, p. 673, pt. 3, p. 729, et seq.

§. 3. "For remedy whereof, be it enacted, by authority of this present parliament, that where any such office or inquisition is or shall be founden, omitting such titles, interests, or matters as aforesaid, that in all such cases every lessee, tenant for term of years, or *copyholder*, and every such person or persons that have or shall have any interest to any rent, common, or profit *apprendre*, for term of years, life or otherwise, out of any of the lands, tenements or hereditaments, contained in such office or inquisition, where the King, his heirs or successors, is or shall be intituled, as is aforesaid, to any such lands, tenements or hereditaments, shall have, hold, enjoy, and perceive all and every their leases and interests for term of years, or *by copy of court roll*, rents, commons, offices, fees and profit *apprendre*, in such manner, form, state and condition, as they and every of them should or might have done, in case there had been no such office or inquisition founden, and as they should or lawfully might, or ought to have done, in case such lease, *interest by copy of court roll*, rent, common, office, fee or profit *apprendre*, had been found in such office or inquisition; any law, custom, or usage to the contrary, heretofore used in such cases, in anywise notwithstanding."

5 ELIZ. c. 14.

"An Act against Forgers of False Deeds and Writings."

SECT. II. Be it enacted, &c. "That if any person or persons whatsoever, after the first day of June now next coming, upon his or their own head and imagination, or by false conspiracy and fraud with others, shall wittingly, subtilly and falsely forge or make, or subtilly cause or wittingly assent to be forged or made, any false deed, charter or writing, sealed, *court roll*, or the will of any person or persons in writing, to the intent that the estate of freehold or inheritance of any person or persons, of, in, or to any lands, tenements, or hereditaments, freehold or copyhold, or the right, title, or interest of any person or persons, of, in or to the same, or any of them, shall or may be molested, troubled, defeated, recovered, or charged; or after the said first day of June shall pronounce, publish or shew forth in evidence, any such false and forged deed, charter, writing, *court roll*, or will, as true, knowing the same to be false and forged as is aforesaid, to the intent above remembered, and shall be thereof convicted, either upon action or actions of forger of false deeds, to be founded upon this statute, at

the suit of the party grieved, or otherwise, according to the order and due course of the laws of this realm, or upon bill or information to be exhibited into the court of the star chamber, according to the order and use of that court, shall pay unto the party grieved his double costs and damages, to be found or assessed in that court, where such conviction shall be, and also shall be set upon the pillory in some open market town, or other open place, and there to have both his ears cut off, and also his nostrils to be slit and cut, and seared with a hot iron, so as they may remain for a perpetual note or mark of his falsehood, and shall forfeit to the Queen our sovereign lady, her heirs and successors, the whole issues and profits of his lands and tenements during his life, and also shall suffer and have perpetual imprisonment during his life; the said damages and costs to be recovered at the suit of the party grieved as is aforesaid, to be first paid and levied of the goods and chattels of the offender, and of the issues and profits of the said lands, tenements and hereditaments of such party convicted, or of one or both of them; the said title of our said sovereign lady the Queen, her heirs, or successors, to the same notwithstanding."

§. 3. "And be it further enacted by the authority aforesaid, that if any person or persons after the said first day of June, upon his or their own head or imagination, or by false conspiracy or fraud had with any other, shall wittingly, subtilly and falsely forge or make, or wittingly, subtilly, and falsely cause or assent to be made and forged, any false charter, deed or writing, to the intent that any person or persons shall or may have or claim any estate or interest for term of years, of, in, or to any manors, lands, tenements, or hereditaments *not being copyhold*, or any annuity in fee simple, fee tail, or for term of life, lives or years; or after the said day shall, as is aforesaid, forge, make, or cause or assent to be made or forged, any obligation or bill obligatory, or any acquittance, release, or other discharge of any debt, accmpt, action, suit, demand, or other things personal; or if any person or persons, after the said 1st day of June, shall pronounce, publish, or give in evidence, any such false and forged charter, deed, writing, obligation, bill obligatory, acquittance, release, or discharge, as true, knowing the same to be false and forged, and shall be thereof convicted by any the ways or means aforesaid, that then he shall pay unto the party grieved his double costs and damages, to be found and assessed in such court where the said conviction shall be had, and shall be also set upon the pillory in some open market town, or other open place,

and there to have one of his ears cut off, and shall also have and suffer imprisonment by the space of one whole year, without bail or mainprise."

§. 4. "And be it further enacted, by the authority aforesaid, that the party and parties grieved by reason of any the offences aforesaid, shall and may, at his and their pleasure, have and sue his action of forger of false deeds upon this statute, against any the offenders in the same, by original writ out of the Queen's Highness Court of Chancery, and shall and may have like process upon the same, as in cases of trespass at the common law; or may at his pleasure take his suit against any such offenders in any the premises, by bill before the Queen's Highness, her heirs and successors, in her Court, commonly called the King's Bench, or in the Court of Exchequer; in which suits no essoign, injunction, or protection shall be allowed for the party defendant."

§. 5. "And be it further enacted by the authority aforesaid, that if the party defendant shall be convicted for any the offences aforesaid, according to the order and form above limited, and shall have received thereupon punishment corporal according to this act; that then he shall not eftsoons be impeached for the same offence."

§. 6. "And be it further enacted by the authority aforesaid, that although the party or parties plaintiff in any such action or bill to be sued, as is aforesaid, shall after verdict passed against the defendant or defendants, happen to release or discharge the judgment or execution upon the same, or otherwise suffer the same to be discontinued; that yet, nevertheless, the same release, discharge or discontinuance, shall extend only to discharge such costs and damages as the same plaintiff should have had against the defendant; and that the judges before whom the said action or suit shall be taken, shall and may proceed to judgment of and upon the residue of the said penalties and forfeitures, and to command execution upon the same; the said release, discontinuance, or other discharge had, made, done, or suffered by the party plaintiff, in anywise notwithstanding; this act or any thing therein contained to the contrary in anywise notwithstanding."

§. 7. "And be it further enacted by the authority aforesaid, that if any person or persons, being hereafter convicted or condemned of any the offences aforesaid, by any the ways or means above limited, shall after any such his or their conviction or condemnation eftsoons commit, or perpetrate any of the said offences in form aforesaid; that

then every such second offence or offences shall be adjudged felony ; and the parties being thereof convicted or attainted according to the laws of this realm, shall suffer such pains of death, loss and forfeiture of their goods, chattels, land and tenements, as in cases of felony, by the common laws of this realm, ought to be lost or forfeited, without having any advantage or benefit of clergy or sanctuary : saving to every person and persons, bodies politic and corporate, their heirs and successors, other than the said offenders, and such as claim to their uses, all such rights, titles, interests, possessions, liberties of distresses, leases, rents, reversions, offices, and other profits and advantages, which they or any of them shall have at the time of such conviction or attainder, of, in, or to any the lands, tenements, or hereditaments of any such person so as is aforesaid convicted or attainted, or at any time before, in as large and as ample manner, to all intents and purposes, as if this act had never been had nor made."

§. 8. "Provided always, and be it enacted by the authority aforesaid, that any such conviction or attainder of felony, as is aforesaid, or any forfeiture by reason of the same, shall not in anywise extend to take away the dower of the wife of any such person attainted, nor to the corruption of blood, or disherison of any the heir or heirs of any such person or persons so attainted ; this act or any thing therein contained, or any other statute, law, usage, custom or thing heretofore used to the contrary in anywise notwithstanding."

27 ELIZ. c. 4.

"An Act against covinous and fraudulent conveyances." (a)

'For as much as not only the Queen's most excellent Majesty, 'but also divers of her Highness' good and loving subjects, and 'bodies politic and corporate, after conveyances obtained or to be 'obtained, and purchases made or to be made, of lands, tenements, 'leases, estates and hereditaments, for money or other good con- 'siderations, may have, incur and receive great loss and prejudice 'by reason of fraudulent and covinous conveyances, estates, gifts, 'grants, charges and limitations of uses heretofore made or hereafter 'to be made, of, in or out of lands, tenements or hereditaments so

(a) *Ante*, pt. 1. p. 101. And see Adolp. 131. 2 Nev. & Mann. 64. *Doe d. Tunstall v. Bottrill*, 5 Barn. &

‘ purchased or to be purchased ; which said gifts, grants, charges, estates, uses and conveyances were, or hereafter shall be, meant and intended by the parties that so make the same to be fraudulent and covinous, of purpose and intent to deceive such as have purchased or shall purchase the same ; or else by the secret intent of the parties the same to be to their own proper use, and at their free disposition, coloured nevertheless by a fained countenance and shew of words and sentences, as though the same were made *bond fide*, for good causes, and upon just and lawful considerations :’—

§. 2. “ For remedy of which inconveniences, and for the avoiding of such fraudulent, fained and covinous conveyances, gifts, grants, charges, uses and estates, and for the maintenance of upright and just dealing in the purchasing of lands, tenements, and hereditaments ; Be it ordained and enacted by the authority of this present parliament, that all and every conveyance, grant, charge, lease, estate, incumbrance and limitation of use or uses, of, in or out of any lands, tenements, or other hereditaments whatsoever, had or made any time heretofore sithence the beginning of the Queen’s Majesty’s reign that now is, or at any time hereafter to be had or made, for the intent and of purpose to defraud and deceive such person or persons, bodies politic or corporate, as have purchased or shall afterwards purchase in fee-simple, fee-tail, for life, lives or years, the same lands, tenements and hereditaments, or any part or parcel thereof, so formerly conveyed, granted, leased, charged, incumbered or limited in use, or to defraud and deceive such as have or shall purchase any rent, profit or commodity in or out of the same, or any part thereof, shall be deemed and taken only as against that person and persons, bodies politic and corporate, his and their heirs, successors, executors, administrators and assigns, and against all and every other person and persons lawfully having or claiming by, from or under them, or any of them, which have purchased or shall hereafter so purchase for money or other good consideration, the same lands, tenements or hereditaments, or any part or parcel thereof, or any rent, profit or commodity in or out of the same, to be utterly void, frustrate and of none effect ; any pretence, colour, fained consideration, or expressing of any use or uses to the contrary notwithstanding.”

§. 3. “ And be it further enacted by the authority aforesaid, that all and every the parties to such fained, covinous and fraudulent gifts, grants, leases, charges or conveyances before expressed, or

being privy and knowing of the same or any of them, which after the twentieth day of April next coming shall wittingly and willingly put in ure, avow, maintain, justify or defend the same, or any of them, as true, simple, and done, had or made, *bonâ fide*, or upon good consideration, to the disturbance or hindrance of the said purchaser or purchasers, lessees or grantees, or of or to the disturbance or hindrance of their heirs, successors, executors, administrators or assigns, or such as have or shall lawfully claim anything by from or under them or any of them, shall incur the penalty and forfeiture of one year's value of the said lands, tenements and hereditaments, so purchased or charged; the one moiety whereof to be to the Queen's Majesty, her heirs and successors, and the other moiety to the party or parties grieved by such fained and fraudulent gift, grant, lease, conveyance, incumbrance, or limitation of use, to be recovered in any of the Queen's courts of record, by action of debt, bill, plaint or information, wherein no essoin, protection or wager of law shall be admitted for the defendant or defendants; and also being thereof lawfully convicted, shall suffer imprisonment for one half year without bail or mainprise."

§. 4. " Provided also, and be it enacted by the authority aforesaid, that this act or any thing therein contained shall not extend or be construed to impeach, defeat, make void or frustrate any conveyance, assignment of lease, assurance, grant, charge, lease, estate, interest or limitation of use or uses, of, in, to or out of any lands, tenements or hereditaments heretofore at any time had or made, or hereafter to be had or made, upon or for good consideration and *bonâ fide* to any person or persons, bodies politic or corporate; any thing before mentioned to the contrary hereof notwithstanding."

§. 5. " And be it further enacted by the authority aforesaid, that if any person or persons have heretofore sithence the beginning of the Queen's Majesty's reign that now is, made or hereafter shall make any conveyance, gift, grant, demise, charge, limitation of use or uses, or assurance of, in or out of any lands, tenements or hereditaments, with any clause, provision, article or condition of revocation, determination or alteration, at his or their will or pleasure, of such conveyance, assurance, grants, limitations of uses or estates of, in or out of the said lands, tenements or hereditaments, or of, in or out of any part or parcel of them, contained or mentioned in any writing, deed or indenture, of such assurance, conveyance, grant or gift; and after such conveyance, grant, gift, demise, charge, limitation of uses or assurance

so made or had, shall or do bargain, sell, demise, grant, convey or charge, the same lands, tenements or hereditaments, or any part or parcel thereof, to any person or persons, bodies politic and corporate, for money or other good consideration paid or given, (the said first conveyance, assurance, gift, grant, demise, charge or limitation, not by him or them revoked, made void or altered, according to the power and authority reserved or expressed unto him or them in and by the said secret conveyance, assurance, gift or grant,) that then the said former conveyance, assurance, gift, demise and grant, as touching the said lands, tenements, and hereditaments, so after bargained, sold, conveyed, demised or charged against the said bargainees, vendees, lessees, grantees, and every of them, their heirs, successors, executors, administrators and assigns, and against all and every person and persons which have, shall or may lawfully claim any thing, by from or under them or any of them, shall be deemed taken and adjudged to be void, frustrate, and of none effect, by virtue and force of this present act."

§. 6. "Provided nevertheless, that no lawful mortgage made or to be made *bonâ fide*, and without fraud or covin, upon good consideration, shall be impeached or impaired by force of this act, but shall stand in the like force and effect as the same should have done if this act had never been had nor made; any thing in this act to the contrary in anywise notwithstanding."

[*Vide* 35 Eliz. c. 2. being an act to restrain Popish Recusants to some certain places of abode. The 5th section, which relates to the forfeiture of copyholds by recusant convicts, is extracted, *ante* pt. I. p. 108. n. (a). See also Co. Cop. s. 52. Tr. 121.]

[*Vide* 7 Jac. 1. c. 21. An act for confirmation of decrees thereafter to be made in the Exchequer Chamber, and Duchy Court, concerning customary or copyhold lands and tenements. A full extract from it is given in a note to *Brown & Rawlins*, 7 East, 431.]

21 JAC. 1. c. 15.

“An Act to enable Judges and Justices of the Peace to give restitution of possession in certain cases.” [See 15 R. 2. c. 2. 8 Hen. 6. c. 9. 31 Eliz. c. 11.]

“Be it enacted by the authority of this present parliament, that such judges, justices, or justice of the peace, as by reason of any act or acts of parliament now in force are authorised and enabled, upon inquiry, to give restitution of possession unto tenants of any estate of freehold, or of their lands or tenements, which shall be entered upon with force, or from them withholden by force, shall by reason of this present act have the like and the same authority and ability from henceforth (upon indictment of such forcible entries, or forcible withholdings before them duly found) to give like restitution of possession unto tenants for term of years, *tenants by copy of court roll*, guardians by knight service, tenants by elegit, statute merchant and staple, of lands or tenements by them so holden, which shall be entered upon by force, or holden from them by force.” (a)

19 CAR. II. c. 6.

“An Act for the redress of inconveniences by want of proof of the deceases of persons beyond the seas, or absenting themselves, upon whose lives estates do depend.” [See also 6 Anne, c. 18.]

§. 1. “Whereas divers lords of manors and others have used to grant estates by copy of court-roll, for one, two, or more life or lives, according to the custom of their several manors; and have also granted estates by lease for one or more life or lives; or else for years, determinable upon one or more life or lives, and it hath often happened that such person or persons, for whose life or lives such estates have been granted, have gone beyond the seas, or so absented themselves for many years, that the lessors and reversioners cannot find out whether such person or persons be alive or dead, by reason

(a) *Ante*, pt. 1. p. 565. n. (e).

whereof such lessors and reversioners have been held out of possession, of their tenements for many years, after all the lives upon which such estates depended are dead, in regard that the lessors and reversioners when they have brought actions for the recovery of their tenements, have been put upon it to prove the death of their tenants, when it is almost impossible for them to discover the same."

§. 2. "For remedy of which mischief, so frequently happening to such lessors or reversioners, be it enacted by, &c., that if such person or persons, for whose life or lives such estates have been or shall be granted as aforesaid, shall remain beyond the seas, or elsewhere absent themselves in this realm, by the space of seven years together, and no sufficient and evident proof be made of the lives of such person or persons respectively, in any action commenced for recovery of such tenements by the lessors or reversioners; in every such case the person or persons upon whose life or lives such estate depended, shall be accounted as naturally dead; and in every action brought for the recovery of the said tenements by the lessors or reversioners their heirs or assigns, the judges before whom such action shall be brought, shall direct the jury to give their verdict as if the person so so remaining beyond the seas, or otherwise absenting himself, were dead."

§. 3. "And be it further enacted, that in any such action wherein the life or death of any such person or persons shall come in question between the lessor or reversioner and tenant in possession, it shall and may be lawful for the lessor or reversioner to take exception to any of the jurors returned for the trial of that cause, that the greatest part of the real estate of any of such jurors is held by lease or copy for lives, who upon proof thereof shall be set aside, as in case of other legal challenges."

§. 5. "Provided always, and be it enacted, That if any person or persons shall be evicted out of any lands or tenements by virtue of this act, and afterwards, if such persons or persons, upon whose life or lives such estate or estates depend, shall return again from beyond seas, or shall, on proof in any action to be brought for recovery of the same, be made to appear to be living, or to have been living at the time of the eviction; that then and from thenceforth, the tenant or lessee who was ousted of the same, his or their executors, administrators, or assigns, shall or may re-enter, re-possess, have, hold, and enjoy the said lands or tenements in his or their former estate, for and during the life or lives, or so long term as the said person or persons,

upon whose life or lives the said estate or estates depend, shall be living; and also shall, upon action or actions to be brought by him or them against the lessors, reversioners, or tenants in possession, or other persons respectively, which since the time of the said eviction received the profits of the said lands or tenements, recover for damages the full profits of the said lands or tenements respectively, with lawful interest for and from the time that he or they were ousted of the same lands or tenements, and kept and held out of the same by the said lessors, reversioners, tenants, or other persons who after the said eviction received the profits of the said lands or tenements, or any of them respectively, as well in the case when the said person or persons, upon whose life or lives such estate or estates depend, are or shall be dead at the time of bringing of the said action or actions, as if the said person or persons were then living."

7 ANNE, c. 10.

"An Act for rendering more effectual the laws concerning Commissioners of Sewers."

§. 1. "Whereas by the laws now in force concerning commissioners of sewers, it is provided, that if any person or persons, being assessed or taxed to any lot or charge, for any lands, tenements, or hereditaments, within the limits of any such commission, do not pay the said lot and charge, according to the order and assignment of the commissioners, having power of the execution of the said commission, that then the said commissioners, for lack of payment of such lot and charge, may decree and ordain the said lands and tenements from the owner or owners thereof, and their heirs, and the heirs of every of them, to any person or persons, for term of years, term of life, fee simple, or fee tail, for payment of the same lot and charge, the said decrees and ordinances to be executed in such manner, as by the said laws now in force it is directed and appointed: And it is thereby provided, that the same decrees and ordinances shall bind all and every person and persons, that at the making of the same decree had any interest in such lands, tenements, and hereditaments, in use, possession, reversion, or remainder, their heirs and feoffees, and every of them, and shall also bind as well the lands, tenements, and hereditaments of the King of England, as all and every other person and persons, and their heirs, and such their interest, as they shall fortune to have in any lands, tenements, and hereditaments, or other casual

profit, advantage, or commodity, whatsoever they be, whereunto the said laws, ordinances, and decrees, shall in any wise extend, according to the true purport, meaning, and intent of the said laws; but the said laws of sewers now in force have been found defective, in that sufficient power and authority is not thereby given to commissioners of sewers to make sale of *copyhold or customary* lands within the limits of their commission, for the causes aforesaid. For remedy whereof, be it enacted by &c., that from and after the 25th day of March, 1709, it shall and may be lawful, to and for the commissioners authorised by commission from her Majesty, her heirs, and successors, or any six or more of them, to put in execution the laws now in force concerning sewers, for non-payment of any lot or charge, assessed or charged upon any copyhold or customary lands within the limits of their commission, and by the power and authority of the said commission of sewers, to decree and ordain the said *copyhold or customary* lands so charged, from the owner or owners, and their heirs and the heirs of every of them, to any person or persons, for such estate and interest therein, as the said owner or owners thereof, or any claiming in remainder under them at the time of such decree made, had in the same copyhold lands, tenements; and hereditaments: the said decrees to be made and executed, as decrees concerning freehold lands are, by the said laws now in force, to be made and executed."

§. 2. " Provided always, that all and every person and persons, to whom any such sale of *copyhold or customary* lands or tenements shall be made, shall, before such time as they or any of them shall enter or take any profit of the same lands or tenements, agree and compound with the lords of the manors, of whom the same shall be holden, for such fines or incomes as heretofore hath been most usual and accustomed to be yielded or paid therefore; and that upon every such agreement or composition, the said lord for the time being, at the next court to be holden at or for the said manors, shall not only grant to such vendee or vendees, upon request, the same copyhold or customary lands or tenements, by copy of court roll of the said manors, for such estate or interest as to them shall be so decreed or sold, and reserving the ancient rents, customs, and services; but also shall, in the same court, admit them tenants of the same copyhold or customary lands, as other copyholders of the same manors have been wont to be admitted, and to receive their fealty accordingly."

9 GEO. II. c. 36. (a)

“ An Act to restrain the disposition of lands, whereby the same become unalienable.”

“ Whereas gifts or alienations of lands, tenements, or hereditaments, in mortmain, are prohibited or restrained by *Magna Charta*, and divers other wholesome laws (*b*), as prejudicial to, and against the common utility; nevertheless this public mischief has of late greatly increased by many large and improvident alienations or dispositions made by languishing or dying persons, or by other persons, to uses called *charitable uses*, to take place after their deaths, to the disherison of their lawful heirs: For remedy whereof, be it enacted by, &c., that from and after the twenty-fourth day of June, which shall be in the year of our Lord one thousand seven hundred and thirty-six, no manors, lands, tenements, rents, advowsons, or other hereditaments, corporeal or incorporeal whatsoever, nor any sum or sums of money, goods, chattels, stocks in the public funds, securities for money, or any other personal estate whatsoever, to be laid out or disposed of in the purchase of any lands, tenements, or hereditaments, shall be given, granted, aliened, limited, released, transferred, assigned or appointed, or any ways conveyed or settled to or upon any person or persons, bodies politic or corporate, or otherwise, for any estate or interest whatsoever, or any ways charged or incumbered by any person or persons whatsoever, in trust, or for the benefit of any charitable uses whatsoever; unless such gift, conveyance, appointment, or settlement of any such lands, tenements, or hereditaments, sum or sums of money, or personal estate, (other than stocks in the public funds,) be and be made by deed indented, sealed, and delivered in the presence of two or more credible witnesses, twelve calendar months at least before the death of such donor or grantor, (including the days of the execution and death,) and be inrolled in his Majesty’s High Court of Chancery, within six calendar months next after the execution thereof; and unless such stocks be transferred in the public books usually kept for the transfer of stocks, six calendar months at least before the death of such donor or grantor, (including the days of the transfer and death,)

(a) See this statute and the exposition thereof in Duke’s Ch. Uses by Bridgman, pp. 197, 213, &c. And see *ante*, pt. 1. p. 244.

(b) *Ante*, pt. 1. p. 248.

and unless the same be made to take effect in possession for the charitable use intended, immediately from the making thereof, and be without any power of revocation, reservation, trust, condition, limitation, clause, or agreement whatsoever, for the benefit of the donor or grantor, or of any person or persons claiming under him."

[§. 2. Provides that the above restrictions shall not extend to any purchases for valuable consideration.]

[§. 3. Enacts that gifts, &c. otherwise made, shall be absolutely null and void.]

[§. 4. Excepts out of the above provisions any dispositions to, or in trust for either of the two Universities in England, or any of the colleges, or houses of learning, within either of them, or to or in trust for the colleges of Eton, Winchester, or Westminster, for the better support of the scholars only on the foundations.]

9 GEO. IV. c. 85.

"An Act for remedying a defect in the titles of lands purchased for charitable purposes."

"Whereas by an act passed in the ninth year of the reign of his late Majesty King George the Second, and intituled *An Act to restrain the disposition of lands whereby the same become unalienable*, it was amongst other things enacted, that after the twenty-fourth day of June, one thousand seven hundred and thirty-six, no manors, lands, tenements, rents, advowsons, or other hereditaments, corporeal or incorporeal, whatsoever, should be given, granted, aliened, limited, released, transferred, assigned, or appointed, or anyways conveyed or settled to or upon any person or persons, bodies politic or corporate, or otherwise, for any estate or interest whatsoever, or anyways charged or incumbered by any person or persons whatsoever, in trust for the benefit of any charitable uses whatsoever, unless such gift, conveyance, appointment, or settlement of any such lands, tenements, or hereditaments were made by deed indented, sealed and delivered in the presence of two or more credible witnesses, twelve calendar months at the least before the death of such donor or grantor, (including the days of the execution and death,) and were enrolled in his Majesty's High Court of Chancery within six calendar months next after the execution thereof, and unless the same were made to take effect in possession, for the charitable use intended, immediately from the making thereof,

and were without any power of revocation, reservation, trust, condition, limitation, clause, or agreement whatsoever, for the benefit of the donor or grantor, or of any person or persons claiming under him ; but it was thereby provided, that nothing thereinbefore mentioned, *relating to the sealing and delivery of any deed or deeds twelve calendar months at least before the death of the grantor*, should extend or be construed to extend to any purchase of any estate or interest in lands, tenements, or hereditaments, to be made really and *bonâ fide* for a full and valuable consideration actually paid at or before the making such conveyance, without fraud or collusion ; and it was thereby enacted, that all gifts, grants, appointments, assurances, transfers, and settlements whatsoever, of any lands, tenements, or other hereditaments, or of any estate or interest therein, or of any charge or incumbrance affecting or to affect any lands, tenements, or hereditaments, to or in trust for any charitable uses whatsoever, which should at any time after the said twenty-fourth day of June, one thousand seven hundred and thirty-six, be made in any other manner or form than by the said act was directed and appointed, should be absolutely and to all intents and purposes null and void : And whereas the said provision contained in the said recited act, in relation to the purchase of any estate or interest in lands, tenements, or hereditaments, for a full and valuable consideration, was only intended to prevent such purchases from being avoided by reason of the death of the grantor, within twelve calendar months after the sealing and delivery of the deed or deeds relating thereto :—And whereas it has notwithstanding been generally apprehended that the said last mentioned provision was intended wholly to exempt such purchases from the operation of the said act, and in consequence thereof the formalities by the said act prescribed, in relation to the conveyance of hereditaments to charitable uses, have in divers instances been omitted on purchases for a full and valuable consideration, and by reason of such omission the title to such hereditaments may be considered defective :—And whereas it is expedient that provision should be made for remedying such defect in manner hereinafter mentioned :—May it therefore, &c., and be it enacted by, &c., that where any lands, tenements, or hereditaments, or any estate or interest therein, have or has been purchased for a full and valuable consideration, in trust or for the benefit of any charitable uses whatsoever, and such full and valuable consideration has been actually paid for the same, every deed or other assurance already made for the purpose of conveying or assuring such lands, tenements, or he-

reditaments, estate or interest as aforesaid, in trust or for the benefit of such charitable uses, (if made to take effect in possession, for the charitable use intended, immediately from the making thereof, and without any power of revocation, reservation, trust, condition, limitation, clause, or agreement whatsoever, for the benefit of the grantor, or of any person or persons claiming under him,) shall be as good and valid, and of the same effect, both for establishing derivative titles, and in all other respects, as if the several formalities by the said act prescribed had been duly observed and performed."

§. 2. " Provided always, and be it further enacted, that nothing in this act contained shall extend to give effect to any deed or other assurance heretofore made, so far as the same has been already avoided by suit at law or in equity, or by any other legal or equitable means whatsoever, or to affect or prejudice any suit at law or in equity actually commenced for avoiding any such deed or other assurance, or for defeating the charitable uses in trust or for the benefit of which such deed or other assurance may have been made."

§. 3. " Provided also, and be it further enacted, that nothing herein contained shall be construed to dispense with any of the said several formalities prescribed by the said recited act, in relation to any deed or other assurance which shall be made after the passing of this present act."

52 GEO. III. c. 102.

" An Act for the registering and securing of charitable donations." (a)

" Whereas charitable donations have been given for the benefit of the poor and other persons in England and Wales to a very considerable amount, and many of the aforesaid donations appear to have been lost, and others, from the neglect of payment and the inattention of those persons who ought to superintend them, are in danger of being lost, or rendered very difficult to be preserved : Be it therefore enacted by," &c. " That a memorial or statement of the real and personal estate, and of the gross annual income, investment, and the

(a) Vide Stat. 43 Eliz. c. 4, of charitable uses, intituled, " An Act to redress the misemployment of lands, goods, and stocks of money heretofore given to certain charitable uses." Duke's Ch. Uses, by Bridgman, p. 1; and the

expositions of that stat., by Sir F. Moore, *ib.* p. 122.

Vide also 52 Geo. 3. c. 101, " An Act to provide a summary remedy in cases of abuses of trusts created for charitable purposes."

general and particular objects of all and every charity and charities, and charitable donations, for the benefit of any poor or other persons in any place in England and Wales, which shall have been founded, established, made, benefited, increased or secured, together with the names of the respective founders of or benefactors thereto, where known, and also of the person or persons in whose custody, possession, or control, the deeds, wills, and other instruments whereby such charities or charitable donations shall have been founded, established, made, benefited, increased, or secured, may be, and also of the names of the then trustee or trustees, feoffee or feoffees, possessor or possessors of such real or personal estate, shall, from and after six calendar months after the passing of this act, be registered by such person or persons who shall then be the trustee or trustees, feoffee or feoffees, possessor or possessors thereof, or some or one of such persons, in manner and in the form contained in the schedule to this act annexed, in the office of the Clerk of the Peace of the county, or city, or town, being a county of itself, within which such poor or other persons shall be ; and such memorial or statement shall be signed by such person or persons causing the same to be registered and left in the said office of such Clerk of the Peace, who shall forthwith transmit a duplicate or copy of the same unto the enrolment office of the High Court of Chancery."

§. 2. "And be it further enacted, that wherever any such charity or charitable donations shall be founded, established, made, or benefited, increased or secured by any deed, will, or other instrument hereafter to be made or executed by any person or persons, that then a like memorial or statement, according to the directions hereinbefore contained, shall be registered, and left and transmitted as aforesaid, by such person or persons as are hereinbefore mentioned, within twelve months after the decease of such person or persons by whom any such will, deed, or deeds, or other instrument shall have been made or executed."

[§. 5. Provides that if any charitable donation shall not be duly registered under that Act, any two or more persons interested in the donation may complain thereof, by petition to the Courts of Chancery or Exchequer, who shall hear and determine the same ; and the order therein to be conclusive.]

[§. 9. Gives the Court of Quarter Sessions power to extend the period for registering charitable donations, not exceeding six calendar months.]

[§. 10. Provides that the act shall not extend to charitable dona-

tions not issuing out of or secured upon lands, tenements, or hereditaments, or directed to be secured thereon, or to be permanently invested in government or any public stocks or funds, nor to donations which may be wholly or in part expended in the charitable purposes designed, at the discretion of the trustees, &c.]

[§§. 11, 12, 13. Provide that the act shall not extend to any hospital, school, or other charitable institution, founded, improved, or regulated by or under the authority of the King, or any of his predecessors, or of any special act of Parliament thereunto particularly relating; nor to any charitable donation under the superintendance of any such hospital, school, or institution; nor the governors of the corporation of the charity for the relief of poor widows and children of clergymen; nor to any friendly society, the rules whereof shall have been confirmed according to the provisions of the act or acts for the encouragement and relief of friendly societies; nor to either of the Universities of Oxford or Cambridge, nor to any college or hall thereto belonging, nor to any charitable bequest, devise, gift or foundation belonging thereto, or under the control, direction, superintendance or management of the said universities, or either of them, or any college or hall therein respectively; nor to the Radcliffe Infirmary within the University of Oxford; nor to the colleges of Westminster, Eton or Winchester; nor to any cathedral or collegiate church, within England and Wales; nor to the Charter-house; nor to the corporation of the Trinity-house of Deptford Stroud; nor to any funds applicable to charitable purposes for the benefit of any persons of the Jewish nation: nor to any charitable foundation or donation given to and for the benefit of any person or persons of the society or people called Quakers, and which shall be under the superintendance and control of persons of that persuasion; nor to any charity or charitable donation or foundation, the accounts of the income and expenditure whereof shall have been directed to be annually passed in the High Court of Chancery, nor to any charity or charitable donation or foundation, the annual gross income whereof did not exceed forty shillings, and of which the trustee or trustees, feoffee or feoffees, possessor or possessors, some or one of them, might within six months after the passing of the act, deposit in the hands of the minister of the parish wherein any of the objects of such charity, charitable donation or foundation should be, a written memorial or statement in like form as in the schedule thereunto annexed is contained, and which by such minister should be forthwith deposited in the parish chest.]

§. 14. "And be it further enacted, That where any body corporate, guild, or fraternity, shall be entrusted with the possession or distribution of divers charities or charitable donations or foundations, or of the rents and profits thereof, that in such cases all such charities, charitable donations and foundations, may be registered and stated in one and the same memorial."

[Schedule to which the above act refers:]

"A memorial or statement in pursuance of an Act for the registering and securing of charitable donations, whereby it is declared by the undersigned [*state the name or names of the persons who sign the memorial or statement*] that the real or personal estate [*state this as the case may be*] of the [*state the title or appellation of the charity or charitable donation*] consists of [*state this as the case may be; and if real estate, whether it be in lands, tenements or hereditaments, and of what tenure, and where the same are situate, or whether of any charge or incumbrance on any lands, tenements or hereditaments, and where situate: and if personal estate, describe the nature of it, and how secured,*] and the gross annual income arising therefrom amounts to [*state the sum*], and the objects of which charity or charitable foundation are [*state the general or particular objects of the charity*], and which charity or charitable foundation was, according to the best of my [*or, our, as the case may be*] knowledge and belief, founded by [*state by whom; and if benefited, increased or secured by any other person, state the same and by whom*], and the deeds, wills, and other instruments [*state this as the case may be; and if no deeds, wills, or other instruments exist, state the same*] are, to the best of my [*or, our, as the case may be*] knowledge and belief, in the custody, possession or control [*state this as the case may be*] of [*state the name of the body corporate or natural person*] and the trustees, feoffees or possessors [*state this as the case may be*] of the said real and personal estate [*state this as the case may be*] are, to the best of my [*or, our, as the case may be*] knowledge and belief [*state the name of the body corporate or natural person, as the case may be.*]

(Signed)

A. B.

C. D.

E. F.

Trustee or trustees, feoffees, possessor or possessors, of the real or personal estate [*as the case may be*] of the charity or charitable donation hereby memorialised and registered."

31 GEO. II., c. 14.

“ An Act for further explaining the laws touching the electors of knights of the shire to serve in Parliament for that part of Great Britain called England.”

“ Whereas by an act made in the eighteenth year of the reign of his present Majesty, intituled *An act to explain and amend the laws touching the election of knights of the shire to serve in parliament for that part of Great Britain and Ireland called England*; it is enacted, that no person shall vote at the election of any knight or knights of a shire within that part of Great Britain called *England*, or principality of *Wales*, without having a freehold estate in the county for which he votes, of the clear yearly value of forty shillings, over and above all rents and charges payable out of or in respect of the same: And whereas, notwithstanding the said act, certain persons who hold their estates by copy or [of] court roll, pretend to have a right to vote, and have at certain times, taken upon them to vote at such elections; Be it therefore enacted, by, &c., “ that from and after the 24th day of June, 1758, no person, who holds his estate by copy of court roll (a) shall be intituled thereby to vote at the election of any knight or knights of a shire within that part of Great Britain called *England* or principality of *Wales*: And if any person shall vote in any such election, contrary to the true intent and meaning hereof, every such vote shall be void to all intents and purposes whatsoever; and every person so voting shall forfeit to any candidate for whom such vote shall not have been given, and who shall first sue for the same, the sum of fifty pounds, to be recovered by him or them, his, her, or their executors and administrators, together with full costs of suit, by action of debt in any of his Majesty's courts of record at Westminster, wherein no essoign, protection, wager of law, privilege or imparlance shall be admitted or allowed; and in every such action the proof shall lie on the person against whom such action shall be brought.”

[The act contains other clauses regulating the mode of bringing the action, and limiting it to nine calendar months after the fact is committed.]

(a) But now see 2 W. 4. c. 45. §. 19, referred to *ante*, pt. 1. p. 661. n. (b); pt. 2. p. 665. n. (a).

N. B. A copyholder has been allowed to vote in respect of an allotment of common. *Ante* pt. 1. pp. 660, 661.

39 & 40 GEO. III., c. 88.

“ An Act concerning the disposition of certain real and personal property of his Majesty, his heirs and successors; and also of the real and personal property of her Majesty, and of the Queen Consort for the time being.”

§. 12. ‘ And whereas divers lands, tenements, and hereditaments have become, and may hereafter become vested in his Majesty, his heirs and successors, by escheat or otherwise, in right of the crown, which in the hands of any of his Majesty’s subjects would be chargeable with certain trusts, or applicable to certain purposes, and his Majesty, his heirs or successors, may be desirous that the same should be applied accordingly, notwithstanding any right which he or they may have to hold the same discharged from such trusts, or without applying the same to such purposes; but by reason of the provisions contained in the acts of the first year of her said late Majesty Queen Anne, and the thirty-fourth year of his Majesty’s reign, doubts may be raised whether his Majesty, his heirs or successors, can direct such application thereof: And whereas divers lands, tenements, and hereditaments, as well freehold as *copyhold*, have escheated and may escheat to his Majesty, his heirs or successors, for want of heirs of the persons last seised thereof or entitled thereto, or by reason of some forfeiture, or otherwise, although not forfeited for treason or felony; and it is expedient to enable his Majesty to direct the execution of any such trusts or purposes as aforesaid, and to make any grants of any such manors, lands, tenements, or hereditaments as aforesaid, notwithstanding the provisions contained in the said recited acts;’ “ be it enacted, that it shall be lawful for his Majesty, his heirs and successors, by warrant under his or their sign manual, to direct the execution of any trusts or purposes to which any manors, messuages, lands, tenements, or hereditaments, which have escheated or shall escheat to his Majesty, his heirs or successors, shall have been liable at the time the same so escheated respectively, or would have been liable in the hands of any of his Majesty’s subjects, and to make any grants of such manors, lands, tenements, and hereditaments respectively, to any trustee or trustees, or otherwise, for the execution of any such trusts, and to make any grants of any lands, tenements, or hereditaments which have escheated or shall escheat as aforesaid, to any person or persons,

either for the purpose of restoring the same to any of the family of the person or persons whose estates the same had been, or of rewarding any persons or person making discovery of any such escheat, as to his Majesty, his heirs or successors respectively, shall seem fit; any thing in the said acts, or any of them, to the contrary notwithstanding."

59 GEO. III., c. 94.

"An Act to explain and amend two acts passed in the thirty-ninth and fortieth and forty-seventh years of his present Majesty, concerning the disposition of certain real and personal property of his Majesty, his heirs and successors." (a)

Be it enacted, &c., "That in all cases in which his Majesty, his heirs or successors, hath or shall, in right of his crown, or of his duchy of Lancaster, become entitled to any freehold or *copyhold* manors, messuages, lands, tenements, or hereditaments, either by escheat for want of heirs, or by reason of any forfeiture, or by reason that the same have been or shall be purchased by or for the use of or in trust for any alien or aliens, it shall be lawful for his Majesty, his heirs and successors, by warrant under his or their sign manual, or under the seal of the duchy or county palatine of Lancaster, according to the nature of the title to such manors, messuages, lands, tenements or hereditaments, respectively, to direct the executions of any trusts or purposes to which the same may have been directed to be applied, and to make grants of such manors, messuages, lands, tenements or hereditaments, or any parts thereof, or of any rents or profits then due and in arrear to his Majesty in respect thereof respectively, to any trustee or trustees or otherwise, for the execution of any such trusts or purposes, or to any person or persons, for the purpose of restoring the same to any of the family of the person or persons whose estates the same had been,

(a) And see 6 Geo. 4. c. 17. for extending the provisions of this act, whereby an authority is given to his Majesty, his heirs and successors, to direct the executions of grants of *lease-*

hold manors, &c. to which the crown may become intitled by reason of any forfeiture, or by having been purchased by or in trust for an alien.

or of carrying into effect any intended grant, conveyance or devise of any such person or persons in relation thereto, or of rewarding any person or persons, or his, her or their family, making discovery of any such escheat, or of his Majesty's right and title thereto, as to his Majesty, his heirs or successors, shall seem fit, or to make any grant or grants of such manors, messuages, lands, tenements or hereditaments, or any part or parts thereof, to any person or persons, or his, her or their family, making such discovery as aforesaid, or being of the family or considered or adopted as part of the family of any alien or aliens, or to any person or persons whose estate or property the same hereditaments have been, or being of the family or considered or adopted as part of the family of any such last-mentioned person or persons, and his or their heirs and assigns, unconditionally, or in consideration of money to be paid either at or before the execution of such grant or grants, or at any time or times subsequent thereto, and to such person or persons as his Majesty, his heirs or successors, shall be pleased to direct, and such money, if not paid at the execution of such grant or grants, to be a charge upon the manors, messuages, lands, tenements or hereditaments, which shall be so granted, and to be secured by way of mortgage or trust, or in any other manner, as his Majesty, his heirs or successors, shall think proper or be advised, and such money to be applied for any of the purposes of this act; or to make any grant or grants of such manors, messuages, lands, tenements or hereditaments, or any of them, unto any trustee or trustees, his or their heirs and assigns, in trust to be sold in such manner as his Majesty, his heirs or successors, shall be pleased to direct; and that it shall be lawful for his Majesty, his heirs or successors, to direct the rents and profits of any such manors, messuages, lands, tenements and hereditaments, and the money to arise by any sale or sales, or to be produced by any of the means aforesaid, to be applied in payment of any costs, charges and expenses incident to any commission or commissions for finding the title of his Majesty, and to the making of any such grant, and for carrying the same or any trusts or provisions thereof into execution, or in rewarding any person or persons, or the family of any person or persons, making a discovery of any such escheat, forfeiture or purchase by an alien, or of his Majesty's right and title thereto, or in discharging the whole or any part of any debt or debts due from any alien, or any person or persons whose estate or property any such manors, messuages, lands, tene-

ments or hereditaments, have been, or for the use and benefit, in whole or in part, of any such alien, or of his or her family, or any part thereof, or of any person or persons adopted or considered by such alien as part of his or her family, or of any person or persons whose estate or property any such manors, messuages, lands, tenements or hereditaments, have been, or his or their family, or any part thereof, or of any person or persons adopted or considered by such person or persons as part of his or her family, or for all or any of the purposes aforesaid, as to his Majesty, his heirs or successors, respectively, shall seem fit; and all grants heretofore made by his Majesty, which would under the provisions of this act, be good, valid, and effectual, shall be and are hereby confirmed, and are hereby declared to be as good, valid and effectual, to all intents and purposes, as if the same had been made under the powers, provisions and authorities of this act, and as if such powers, provisions and authorities had been in full force and effect at the time of making such grants; any thing in the said recited acts, or any other act heretofore made, to the contrary notwithstanding."

§. 2. "And be it further enacted, that the purchaser or purchasers of any manors, lands, tenements or hereditaments, sold under the authority of this act, or any person or persons paying any sum or sums of money under the authority of the same, or in pursuance of any grants to be made by virtue thereof, shall not be bound to see to the application or be answerable for the misapplication or nonapplication of the monies paid by them respectively."

§. 3. "Provided always, and be it further enacted, that in every case where any surplus shall remain of any monies which may arise from any such sale or sales, or which shall be paid under the authority of this act, by any person or persons, after satisfying all such purposes as shall have been ordered and directed by his Majesty, his heirs or successors, under the provisions of this act, shall be paid to the commissioners of the land revenue for the time being, to be applied by them in the same way and manner as the money arising from the sale of any manors, messuages, lands, tenements, or hereditaments, of or belonging to his Majesty, his heirs or successors, is by the several acts now in force for the management and improvement of the land revenue of the crown, or any of them, directed to be applied and disposed of."

39 & 40 GEO. III. c. 98.

“An Act to restrain all trusts and directions in deeds or wills whereby the profits or produce of real or personal estate shall be accumulated, and the beneficial enjoyment thereof postponed beyond the time therein limited.” (a)

§. 1. ‘Whereas it is expedient that all dispositions of real or personal estates whereby the profits and produce thereof are directed to be accumulated, and the beneficial enjoyment thereof is postponed, should be made subject to the restrictions hereinafter contained:’ May it therefore please, &c. and be it enacted, by, &c., “that no person or persons shall, after the passing of this act, by any deed or deeds, *surrender or surrenders*, will, codicil, or otherwise howsoever, settle or dispose of any real or personal property, so and in such manner that the rents, issues, profits, or produce thereof, shall be wholly or partially accumulated, for any longer term than the life or lives of any such grantor or grantors, settler or settlers, or the term of 21 years from the death of any such grantor, settler, deviser, or testator (b); or during the minority or respective minorities of any person or persons who shall be living or in *ventre sa mère*, at the time of the death of such grantor, deviser, or testator; or during the minority or respective minorities only of any person or persons, who under the uses or trusts of the deed, surrender, will, or other assurances directing such accumulations, would for the time being, if of full age, be intitled unto the rents, issues, and profits, or the interest, dividends, or annual produce so directed to be accumulated: And in every case where any accumulation shall be directed otherwise than as aforesaid, such direction shall be null and void, and the rents, issues, profits, and produce of such property so directed to be accumulated, shall, so long as the same shall be directed to be accumulated contrary to the provisions of this act, go to and be received by such person or persons as would have been intitled thereto if such accumulation had not been directed.”

(a) See *The Husson v. Woodford*, 4 Ves. 227.

dends during the life of A., contrary to the statute, is good for 21 years. *Grif-*

(b) It has been decided that a trust by will for the accumulation of divi-

fits v. Vere, 9 Ves. 127.

§. 2. " Provided always, and be it enacted, that nothing in this act contained shall extend to any provision for payment of debts of any grantor, settler, or devisor, or other person or persons, or to any provision for raising portions for any child or children of any grantor, settler, or devisor, or any child or children of any person taking any interest under any such conveyance, settlement, or devise, or to any direction touching the produce of timber or wood upon any lands or tenements; but that all such provisions and directions shall and may be made and given as if this act had not passed."

§. 3. [Act not to extend to any disposition of hereditary property in Scotland.]

§. 4. [The restrictions to take effect as to wills made before the act, only where the testator shall be living and of sound mind after the expiration of 12 calendar months from the passing of the act.]

42 GEO. III. c. 116.

(" An Act for consolidating the provisions of the several Acts passed for the redemption and sale of the land-tax, into one act, and for making further provision for the redemption and sale thereof; and for removing doubts respecting the right of persons claiming to vote at elections for knights of the shire, and other members to serve in parliament, in respect of messuages, lands, or tenements, the land tax upon which shall have been redeemed or purchased.")

§. 51. " And be it further enacted, that for the purpose of redeeming any land-tax charged on any manors, messuages, lands, tenements, or hereditaments, belonging to any person or persons, (not being respectively bodies politic or corporate, or companies, or feoffees, or trustees for charitable or other public purposes,) whether such manors, messuages, lands, tenements, or hereditaments shall be respectively situate in the same, or in any other division or place in the same county, riding, shire, or stewardry, or in any other county, riding, shire, or stewardry, and whether such land-tax shall have been or shall be contracted for, either before or on the said twenty-fourth day of June, one thousand eight hundred and two, by virtue of the said recited acts, or any of them, or at any time thereafter, by virtue of this act, it shall be lawful for all and every such person and

persons who are, is, or shall for the time being be seised or possessed, or intitled beneficially in possession to the rents and profits of, but who shall not have the absolute estate or interest in, any manors, messuages, lands, tenements, or hereditaments, or any *heriots, services, emoluments, or advantages*, issuing or payable from or in respect of any freehold, or *copyhold, or customary* messuages, lands, tenements, or hereditaments, or incident thereto, or accruing therefrom, (other than and except tenants at rack rent for any terms of years, or from year to year, or at will, and tenants holding under the crown any lands or tenements within the survey and receipt of the exchequer, or the Duchy of Lancaster, or under the Duke of Cornwall, any lands or tenements belonging to, and parcel of, the Duchy of Cornwall,) but nevertheless under the restrictions and regulations hereinafter mentioned, absolutely to sell, and dispose of, by public sale or private contract, and by *deed indented and inrolled, or registered in the manner prescribed by this act*, to convey (either at one time for the purpose of making good the whole of the consideration for the redemption of any such land-tax, or at various times for the purpose of making good the respective instalments thereof, as the same shall respectively become due, or any number of instalments at once, as shall be most expedient) any such manors, messuages, lands, tenements, or hereditaments, or any such *heriots, services, emoluments, or advantages*, whereof such person or persons shall be in the actual possession, or intitled beneficially to the rents and profits, as shall be eligible and necessary, whether of freehold, or of *copyhold, or customary tenure*, or holden for any term or terms of years, (other than for any term or terms of years at a rack-rent,) and whether the manors, messuages, lands, tenements, or hereditaments, *heriots, services, emoluments, or advantages* so sold shall be charged or not charged with, or shall be exempt from the payment of land-tax, and if the same shall be charged with any land-tax, then freed and discharged from such land-tax; and it shall also be lawful for all and every such persons and person who are or is, or shall for the time being be in the actual receipt or perception of, and beneficially intitled to the rents and services reserved, or due and payable in respect and out of any manors, messuages, lands, tenements, or hereditaments which shall have been or shall be granted by him, her, or them, or any former owner or owners thereof, for any beneficial lease or leases, or by any copy or copies of the court-roll, or demised according to the custom of any manor for life or

lives, or years absolute, or years determinable on any life or lives, absolutely to sell and dispose of, by public sale or private contract, and, *in like manner*, to convey (either at one time or various times as aforesaid) the fee simple and inheritance of any such manors, messuages, lands, tenements, or hereditaments which shall have been or shall be so granted or demised for any beneficial lease or leases, *or by any copy or copies of court-roll, or by any other grant, according to the custom of any manor*, for life or lives, or years absolute, or years determinable upon any life or lives, and also the rents and services, and other profits reserved or payable upon or in respect of such leasehold or *copyhold* tenements or hereditaments, subject to the subsisting interests of the respective lessees, *copyholders or other customary tenants*, whether such last-mentioned manors, messuages, lands, tenements, or hereditaments, shall be charged or not charged with, or shall be exempt from the payment of land-tax, or whether the land-tax charged thereon shall have been redeemed by the respective lessees or *copyholders, or customary tenants* thereof, or not, and if the same shall be charged with any tax, then freed and discharged from such land-tax; and it shall be lawful for all and every such persons and person by deed indented, and also enrolled or registered as herein is directed, and under the restrictions and regulations hereinafter mentioned, to convey or demise any of such freehold, *copyhold*, or leasehold manors, messuages, lands, tenements, or hereditaments whereof they shall be in the actual possession, or beneficially intitled to the rents and profits as aforesaid, freed and discharged from land-tax, in case any land-tax shall be charged thereon, to any person or persons by way of mortgage, either in fee-simple or for any term or terms of years, (*where the same shall not be of copyhold or customary tenure,*) for securing such sum or sums of money as shall be sufficient to redeem the land-tax which hath been or shall be so contracted for, by such person or persons as aforesaid, or to grant any rent-charge to be issuing out of and chargeable upon any such manors, messuages, lands, tenements, or hereditaments as aforesaid, not exceeding the amount of the land-tax so contracted for as aforesaid: Provided always, that no sale, mortgage, or grant of or out of any manors, messuages, lands, tenements, or hereditaments, shall be made by any such person or persons by virtue of this act, other than for the purpose of redeeming land-tax charged thereon, (in cases where the same shall be charged with any land-tax,) and also on other manors, messuages, lands, tenements, or hereditaments,

which stand limited or settled, and subject to or for the same uses, trusts, intents, or purposes, or in the same order or course of limitation as the manors, messuages, lands, tenements, or hereditaments, which shall be so sold, mortgaged, or charged as aforesaid, save and except as to such variations as may necessarily be occasioned by the difference in the nature of the tenure of freehold and *copyhold* estates.

[§. 52. Authorises tenants in tail of any manors or hereditaments in England, to convey such part thereof, as shall be deemed eligible and necessary to be sold, for the purpose of redeeming the land-tax charged on such manors and hereditaments, by deed indented and inrolled or registered in the manner prescribed by that act; and provides that such deed shall as effectually bar all estates tail and other estates in remainder, &c., as if such tenant in tail had levied a fine, or suffered a common recovery.]

§. 53. " Provided always and be it further enacted, that for the purposes aforesaid, it shall be lawful for all committees and curators of lunatics or idiots, and guardians or tutors of infants, and all executors and administrators, curators or trustees whatsoever, seised or possessed of any manors, messuages, lands, tenements, or hereditaments in trust, and having authority to act for infants, minors, issue unborn, femes covert, or other persons incapable by law or deed to act for themselves, on the behalf of such incapacitated persons respectively, and under the restrictions and regulations herein contained, to sell or mortgage, and convey or grant any rent-charge out of any manors, messuages, lands, tenements, or hereditaments, belonging to or limited or settled to the use, or for the benefit of any such lunatics or idiots, infants or minors, issue unborn, femes covert, or other incapacitated persons, which such lunatics or idiots, infants or minors, issue unborn (if *in esse*), femes covert, or other incapacitated persons, could or might have sold, mortgaged, or charged with any rent-charge for the purpose of redeeming any land-tax in respect of their estate or interest therein, either by virtue of this act or otherwise, if they respectively had not been under any such incapacity as aforesaid, and in the same manner in all respects as they respectively could or might have sold, or mortgaged, and conveyed or charged the same."

§. 54. " And be it further enacted, that all sales, mortgages, or grants in relation to estates in England, which shall be made by virtue of this act by any person or persons (other than bodies politic or cor-

porate, or companies, or feoffees or trustees for charitable or other public purposes, and other than such person or persons holding under any grant from the crown, or any act of Parliament, as hereinafter mentioned) shall be made under the authority, and with the consent and approbation of the commissioners for the time being, acting in the execution of this act, by virtue of his Majesty's warrant under the royal sign manual, for the county, riding, or place, in which the manors, messuages, lands, tenements, or hereditaments, which shall be so sold, mortgaged, or charged, shall be situate; and no such sale, mortgage, or grant shall be valid or effectual, unless two at least of such commissioners shall certify their consent thereto, and approbation thereof, by signing and sealing the deed of sale, mortgage, or grant, as parties thereto."

[§. 55. Provides that no manors, &c. in England, shall be so sold, mortgaged, &c., without one calendar month's previous notice in writing being given to the said commissioners, by the person or persons desirous of making such sale, &c., nor unless such person or persons shall previously to such sale, &c. produce to the said commissioners a schedule in writing, declaring the quantity or duration of his, her, or their estate or interest in the manors, &c., whereon the land-tax proposed to be redeemed shall be charged, and (if the same shall not be an estate of inheritance,) then the name or names of the bodies politic, &c. or other person or persons next intitled to any beneficial interest in such manors, &c. and of the person or persons having any mortgage, charge, lien or incumbrance thereon, and the amount thereof, and (if more than one) the priorities of the respective incumbrances.]

§. 57. "Provided also and be it further enacted, that nothing herein contained shall be construed to extend to enable any tenant for lives, or for years determinable on lives, or for years absolute, though not at rack-rent, to sell any part of the tenement demised, in case of a demise, for which any fine or premium was paid, without the consent of the bodies politic or corporate, or companies, or other person or persons intitled to the immediate estate in reversion upon such demise."

[§. 59. Provides that when any such sale as aforesaid shall be by public auction, the commissioners shall cause ten days' previous notice, at the least, of such intended sale, to be published in some newspaper usually circulated in the county, riding, stewardry, or place wherein such manors, &c. shall be situate, and that when any such sale shall be by private contract, such commissioners shall not certify their consent thereto, without having an estimate in writing,

verified upon oath or solemn affirmation (which any one of them may administer) of the value of such part of the estate as shall be proposed to be sold, nor without being satisfied that the sale thereof will not materially injure the residue of the estate, and that the part proposed to be sold is proper under all circumstances for the purposes of the act.]

§. 60. "And be it further enacted, that it shall be lawful for any person or persons, (not being respectively bodies politic or corporate, or companies, or feoffees or trustees for charitable or other public purposes, and not holding under any grant from the crown, or any act of Parliament as hereinafter is mentioned,) who are or shall be seised of, or beneficially intitled to, any manors in England, of which any *copyhold or customary estates* shall be holden, with the approbation of the Court of Chancery, to be signified by order upon a petition to be preferred in a summary way, to enfranchise any such copyhold or customary estates."

[§. 68. Enacts that where the monies to be paid as the consideration for any sale, mortgage, or grant to be made by any person or persons (other than bodies politic or corporate, or companies, or feoffees or trustees for charitable or other public purposes) shall not exceed the sum of one thousand pounds, the deed of sale, mortgage, or grant, or the inrolment thereof, *and in cases of copyhold or customary estates*, the deeds of sale, or of grant, or the admittance to such copyhold or customary estates, or any copy of the entry upon the court rolls of such deed of sale, or grant or admittance, shall not be liable to any stamp duty whatever; and that every deed of sale, or mortgage, and every surrender, grant, and admittance of or to any messuages, &c. sold by virtue of the therein recited acts for a consideration not exceeding one thousand pounds, and all copies of the entry upon the court rolls of any such surrenders, grants, or admittances, shall be valid, although no stamp duty may have been paid for the same.]

[§. 69. Authorises all bodies politic or corporate, and companies, and feoffees or trustees for charitable or other public purposes, (notwithstanding any restraint by any private statute, bye-law, &c.) but under the restrictions and regulations thereinafter mentioned for the purpose of redeeming any land-tax charged on any manors, &c. belonging to such bodies politic, &c. to sell by public sale or private contract, and by deed indented, and inrolled or registered in the manner required by the act, to convey any manors, &c. whereof they may be in the actual possession or intitled beneficially, whether of freehold, or *copyhold or customary* tenure, or holden for a term or terms of years

otherwise than at rack rent, and whether charged with or exempt from land-tax, and if so charged, then freed from such land-tax; and in like manner to convey the fee-simple and inheritance of any manors, &c. which shall have been granted and demised by them for any beneficial lease or leases, or by copy or copies of court-roll, or by any other grant according to the custom of any manor, for life or lives, or years absolute, or years determinable upon any life or lives, and also the rents and services, and other profits reserved or payable upon or in respect of such leasehold or *copyhold* tenements, or hereditaments, (subject to the subsisting interests of the respective lessees, *copyholders* or *customary tenants*,) and whether charged or exempt from land-tax, and although the land-tax may have been redeemed by such lessees, &c. and if so charged, then discharged from such land-tax; and by the like deed to convey or demise any parts of such freehold, *copyhold* or *customary*, or leasehold manors, &c. to any person or persons by way of mortgage, either in fee, or for a term or terms of years, (where the same may not be of *copyhold* or *customary* tenure,) for securing such sum of money as shall be sufficient to redeem the land-tax to be contracted for; or to grant any rent charge out of such manors, &c. not exceeding the land-tax contracted for: But no such sale, &c. to be made other than for the purpose of redeeming the land tax charged on such manors, &c. (when charged with any land-tax) and on other manors limited to the same uses, &c. except as to such variations as may necessarily be occasioned by the difference in the tenure of freehold and *copyhold* estates.]

§. 70. "And be it further enacted, that for the purpose of redeeming any such land-tax as aforesaid, it shall be lawful for all such bodies politic and corporate, and companies, and feoffees or trustees for charitable or other public purposes, by deed indented, and inrolled or registered as aforesaid, to enfranchise any messuages, lands, tenements or hereditaments, *which are or shall be holden by copy of court roll or other customary tenure*, of any manor belonging to any such bodies politic or corporate, or companies, or feoffees or trustees for charitable or other public purposes, whether such manor be subject to any lease or not; and also to sell and dispose of any heriots or fee farm rents, chief rents, or quit rents, or other emoluments or advantages issuing or payable from or in respect of any freehold or *copyhold* or *customary* manors, messuages, lands, tenements, or hereditaments, or incident thereto and accruing therefrom."

§. 71. "And be it further enacted, that where any person or per-

sons, holding under any grant from the crown, or under any act of Parliament, any manors, messuages, lands, tenements, or hereditaments, wherein his Majesty, his heirs or successors, hath or shall have any estate, right, or interest, in remainder, reversion, or expectancy, (other than persons holding under the crown any manors, messuages, lands, tenements, or hereditaments, within the survey and receipt of the Exchequer, or the Duchy of Lancaster, or holding under the Duke of Cornwall, any manors, messuages, lands, tenements, or hereditaments, belonging to and parcel of the Duchy of Cornwall, by virtue of any demise or grant *by copy of court roll* or otherwise, for life or lives, or for years determinable on any life or lives, or for any term of years absolute, or from year to year, or during pleasure,) have contracted or shall hereafter contract for the redemption of the land-tax charged on any of such manors, messuages, lands, tenements, or hereditaments, it shall be lawful for such person or persons, (being in the actual possession or intitled beneficially to the rents and profits of such manors, messuages, lands, tenements, or hereditaments,) for the purpose of raising money to complete the redemption of the land-tax so contracted for, (but nevertheless under the restrictions and regulations hereinafter mentioned,) to sell and dispose of by public sale or private contract, and by deed indented, and inrolled or registered as herein is prescribed, to convey either at one time or at various times, as hereinbefore is mentioned, any of such manors, messuages, lands, tenements, or hereditaments, whether the same shall be charged or not charged with land-tax, and if charged with any land-tax, then freed and discharged from such land-tax : and it shall also be lawful for such person or persons, for such purpose, and under such restrictions and regulations as aforesaid, to enfranchise any messuages, lands, tenements, or hereditaments, which are or shall be holden *by copy of court roll or other customary tenure*, of any such manors so holden by such person or persons as aforesaid, and also to sell and dispose of any heriots, fee-farm rents, chief rents, or quit rents, or other emoluments or advantages issuing or payable from or in respect of any manors, lands, tenements, or hereditaments, or incident thereto, or arising therefrom, any thing herein contained to the contrary thereof notwithstanding : Provided always that the manors, messuages, lands, tenements, or hereditaments of which the land-tax shall be so redeemed, shall stand and be limited to and for the same uses, trusts, intents, and purposes as the manors, messuages, lands, tenements, or hereditaments, heriots, rents, emoluments, or advantages, which shall be sold,

or the manors, of which any such *copyhold or customary* estates shall be enfranchised, stood and were limited at the time of such sale or enfranchisement.”

§. 76. “ And be it further enacted, that every sale, enfranchisement, mortgage, or grant of any rent charge which shall be made of or out of any manors, messuages, lands, tenements, or hereditaments, by virtue of this act, by any bodies politic or corporate, or companies, or any feoffees or trustees for charitable or other public purposes, or by any such person or persons holding under any grant from the crown, or under any act of Parliament as aforesaid, shall be so made by, with, and under the consent, sanction, control, direction, and authority of the said last mentioned commissioners (a), and no further or other consent, authority, approbation, or confirmation whatever shall be required to enable any such sales, enfranchisements, mortgages, or grants as aforesaid: Provided always, that no such sale, mortgage, enfranchisement, or grant, shall be valid and effectual unless two at least of the said commissioners shall certify their consent thereto and approbation thereof, by signing and sealing the deed of sale, enfranchisement, mortgage, or grant, as parties thereto.”

[§. 81. Exempts from stamp duty all deeds or instruments whereby any sale, enfranchisement, mortgage, or grant shall be made under the authority of the last-mentioned commissioners.]

§. 89. “ And be it further enacted, that where any land-tax chargeable on any manors, messuages, lands, tenements, or hereditaments, *which are or shall be holden by copy of court roll or other customary tenure*, of any manor or manors belonging to any body politic or corporate, or company, or any feoffees or trustees for charitable or other public purposes as aforesaid, by virtue of any lease or leases, shall have been or shall be redeemed by any such body politic or corporate, or company, or feoffees or trustees for charitable or other public purposes, under the powers contained in any of the said recited acts, or this act, the amount of the land-tax so redeemed or purchased, shall be considered as rent reserved to such body politic or corporate, or company, or such feoffees or trustees for charitable or other public purposes as aforesaid, out of such *copyhold or customary* manors, mes-

(a) Viz. Special commissioners to be appointed by his Majesty for regulating and approving sales, contracts, &c. by bodies politic or corporate and companies, and feoffees or trustees for charita-

ble and other public purposes, and sales, &c. of manors wherein the crown has any interest in remainder, &c. And see 54 Geo. 3. c. 173. s. 1 & 2. and 57 Geo. 3. c. 100. s. 22.

suages, lands, tenements, or hereditaments, and be payable on the same days as such land-tax was payable before the redemption thereof; and the same powers shall be had, used, and enjoyed for the recovery thereof, as for the recovery of rent in arrear."

§. 98. "And be it further enacted, that where the fee-simple and inheritance of any manors, messuages, lands, tenements, or hereditaments, holden under any beneficial lease or leases or *by copy of court roll*, as hereinbefore is mentioned, shall be proposed to be sold by virtue of this act, two calendar months' notice of such intended sale shall be given by the body politic or corporate, or company, or other person or persons proposing to sell the same, to the person or persons, for the time being, beneficially interested therein, under the subsisting lease or leases, or *copy or copies of court roll thereof*, or to his, her, or their committee or committees in cases of lunacy, or guardian or guardians in cases of infancy, or in any other cases of incapacity to the trustee or trustees, or other person or persons having authority to act for such person and persons incapable of acting for themselves; during which period of two months the person and persons so beneficially interested, or his, her, or their committee or committees, guardian or guardians, trustee or trustees, or other person or persons, having authority to act for him, her, or them, on his, her, or their behalf, shall be intitled to contract for the purchase thereof, in preference to any other person or persons; and any one coparcener, or joint tenant, or tenant in common, beneficially interested as aforesaid, shall have the like privilege of pre-emption, in respect to the whole of the estate comprised in any such lease, or *grant by copy of court roll*, on the refusal of any other coparcener, joint-tenant, or tenant in common, to contract for the purchase of their respective shares; and such manors, messuages, lands, tenements, or hereditaments, shall not be sold to any other person or persons till after the expiration of such notice, unless the person or persons having the privilege of pre-emption on behalf of themselves or others, shall by writing under his, her, or their hand or hands, wave the same, in which case such fee-simple and inheritance may be sold to any other person or persons, at any time before the expiration of such notice: Provided always that when any price shall have been offered for the purchase of any such manors, messuages, lands, tenements, or hereditaments, by any person or persons having such privilege of pre-emption as aforesaid, which shall not be accepted by the body politic or corporate, or company, or

other person or persons proposing to sell the same, such manors, messuages, lands, tenements, or hereditaments, shall not at any time afterwards be sold to any other person or persons for a less price than the price so offered by the person or persons having such privilege of pre-emption as aforesaid, till after the expiration of two calendar months' further notice given to such last mentioned person or persons, of the sale proposed to be made at such reduced price; (and which further notice is hereby required to be given in every such case,) during which further period such person or persons shall have the like privilege of pre-emption as aforesaid, of such manors, messuages, lands, tenements, or hereditaments, at such reduced price: Provided also, that if such person or persons shall wave such privilege of pre-emption in manner aforesaid, such manors, messuages, lands, tenements, or hereditaments may be sold to any other person or persons at such reduced price, at any time before the expiration of such period: Provided also, that every such notice to any committee of any lunatic, or any guardian of any infant, or any other person having authority to act for any incapacitated person, shall be as valid and effectual to enable the sale of such manors, messuages, lands, tenements, or hereditaments, to any person or persons not having any interest in the subsisting lease or grant thereof, after the expiration of such notice, (or sooner in case of the waiver of the privilege of pre-emption by any such committee, guardian, or other person or persons having authority to act as aforesaid,) as if such notice or waiver had been given or made to or by any person or persons of capacity by law to act for themselves."

§. 94. "And be it further enacted, that no sale or mortgage of any *copyhold or customary* messuages, lands, tenements, or hereditaments, by virtue of this act, shall extend or be construed to extend in anywise to prejudice or affect the right of any lord or lords, lady or ladies, of any manor of which the same may be holden, to such fine or fines as shall have been usual and accustomed, and of right ought to be yielded and paid to such lord or lords, lady or ladies, upon any alienation of, and admittance to such *copyhold or customary* messuages, lands, tenements, or hereditaments, nor to authorise any purchaser or mortgagee of any such *copyhold or customary* messuages, lands, tenements, or hereditaments, to enter and take any rents or profits thereof by virtue of this act, until such fine or fines shall have been duly paid: Provided always, that upon the production of the deed of sale or mortgage, and upon the payment or tender

of such fine or fines as aforesaid, the lord or lords, lady or ladies, for the time being, of any such manor, shall, at the next or some subsequent court to be holden for such manor, upon request of the purchaser or mortgagee of any such *copyhold or customary* messuages, lands, tenements, or hereditaments, not only grant the same to him, her, or them, by copy of court-roll, for such estate or interest as shall be sold or conveyed, reserving the usual and accustomed rents, customs, and services, but shall also at the same court admit him, her, or them, tenant or tenants of the same *copyhold or customary* lands or tenements, as other copyholders of the same manors have been wont to be admitted, and to receive his, her, or their fealty accordingly."

§. 118. "And be it further enacted, that in all cases where the land-tax charged upon any manors, messuages, lands, tenements, or hereditaments, belonging to any bodies politic or corporate, (other than bishops, or other ecclesiastical corporations,) or to any companies, or other person or persons, and granted out upon any beneficial lease or leases, or *by any copy or copies of court-roll, or other grant, according to the custom of any manor*, for life or lives, or years absolute, or years determinable upon any life or lives, shall be redeemed by the monies arising from the sale or sales of the fee-simple and inheritance of any part of such manors, messuages, lands, tenements, or hereditaments, then and in such case the respective manors, messuages, lands, tenements, and hereditaments, remaining unsold, shall, immediately after the redemption of such land-tax, be and become charged and chargeable, for the benefit of such bodies politic or corporate, or companies, or other person or persons, with such yearly sum or sums respectively, by way of rent-charge, as shall be equal in amount to the land-tax charged thereon at the times of such redemption, which shall be applicable in their hands to the same uses and purposes, and in the same manner as the several yearly rents and profits of such manors, messuages, lands, tenements, or hereditaments, shall from time to time be applicable."

§. 119. "And be it further enacted, that every deed whereby any sale, mortgage, or grant, of any rent-charge shall be made by virtue of this act, in relation to estates in England, shall be inrolled within six calendar months after the execution thereof (a), in one of his

(a) See 54 Geo. 3. c. 173. s. 11, ex- 3. c. 100. s. 24.
tending this period. *Vide* also 57 Geo.

Majesty's courts of record at Westminster, or in the courts of the counties Palatine of Chester, Lancashire, or Durham, or in the courts of Great Sessions in Wales, as the case shall require, or be registered in the counties of Middlesex and York, in the manner required by law for conveyances of real estates, situated in those counties respectively; and all deeds and conveyances in relation to estates in Scotland, shall be executed and registered in the manner required by the law of Scotland, in respect of sales or charges of real estates: Provided always, that where the consideration expressed in any such deed, shall not exceed two hundred pounds, the registry thereof, with the proper officer appointed or to be appointed for the registry of contracts for the redemption of land-tax, shall be as valid and effectual as if the same were inrolled or registered in the manner hereinbefore directed, and such officer is hereby required to register the same gratis; and after the payment of the purchase or mortgage money into the Bank of England, or to the Receiver-General, or his deputy in England, or to the collectors in Scotland, (in cases where the same is by this act authorised to be paid to any Receiver-General, or his deputy, or collector,) in the manner hereinbefore directed, and after such inrolment or registry as aforesaid, every such deed of sale, mortgage, or grant, made by virtue of this act, shall be good, valid, and effectual in the law to all intents and purposes whatsoever," &c.

53 GEO. III., c. 123.

"An Act to amend and render more effectual several acts passed for the Redemption and Sale of the Land-tax."

[§. 2. Enacts that the provisions in the act of 42 Geo. 3. (see §. 21 & 61., vide also §. 93, ante p. (247), under which bodies politic, and other persons in possession, were permitted to contract for the redemption of land-tax, in preference to persons in remainder, &c., should cease; and that all bodies politic or corporate, or companies and persons aforesaid, might thereafter contract for and redeem such land-tax without preference to any of them otherwise than by priority of contract.

[§. 31. Enacts that in order to provide for the purchase of any land-tax under the provisions of the act of 42 Geo. 3. by bodies politic or corporate, or companies, or feoffees or trustees for charitable or other

public purposes, it should be lawful for such bodies politic, &c. to sell any lands, tenements, or hereditaments belonging to them, or to mortgage the same, or to grant any rent charge out of the same, or to enfranchise any messuages, &c. holden by copy of court-roll, or other customary tenure of any manor belonging to such bodies politic, &c. and to sell and dispose of any heriots or fee-farm rents, chief rents, or quit rents, or other emoluments or advantages issuing or payable from or in respect of any freehold, or copyhold or customary manors, or other hereditaments, or incident thereto or arising therefrom, under the same regulations as are mentioned in the act of 42 Geo. 3.]

53 GEO. III. c. 142.

“ An Act to explain and amend several acts relative to the Land-tax.” (a)

§. 9. “ And whereas by the said first recited act, passed in the thirty-eighth year of the reign of his present Majesty, the commissioners for putting in execution that act are empowered to seize and secure, and to sell and dispose of the copyhold estates of collectors under that act neglecting to pay sums of money by them received; but no provision is made by the said act for the manner of sale or transfer of the said copyhold estate, or for the admission of the purchasers thereof: Be it therefore enacted, that the commissioners for putting in execution the several acts relating to the land-tax shall, from and after the passing of this act, make conveyance of all such copyhold estates to the respective purchasers thereof, by deed indented, between any two or more of the said commissioners and the said purchasers respectively, and such sale shall be effectual to all intents and purposes, in like manner as the sale of copyhold estates of bankrupts, under and by virtue of statutes relating to bankrupts or any of them, by deed indented and inrolled: Provided always, that such person or persons to whom any such sale of copyhold lands, shall be made, shall, in like manner as the purchaser of the copyhold estates of bankrupts, before such time as he, or they, or any of them shall enter or take any profit of the said lands or tenements, agree and compound with the lords of

(a) *Vide* also 3 Geo. 4, c. 88, “ to amend the law relating to the land and assessed taxes, and to regulate the appointment of receivers-general in England and Wales.”

the manors of whom the same shall be holden, for such fines or incomes as heretofore hath been most usual and accustomed to be yielded or paid therefore; and that upon every such agreement or composition, the said lords, for the time being, at the next court to be holden at or for the said manors, shall not only grant to the said vendee or vendees, upon request, the same copyhold or customary lands or tenements, by copy of court roll of the same manors, for such estate or interest as to them shall be so sold, and reserving the ancient rents, customs and services, but also in the same court admit them tenants of the same copyhold or customary lands, as other copyholders of the same manors have been wont to be admitted, and to receive their fealty, suit or service, according to the custom of the court of such manor." (a)

STAMP ACT, 48 GEO. III. c. 149.—[2nd July, 1808.]

§. 22. "And be it further enacted, that from and after the 10th day of October, 1808, in all cases of the sale of any lands, tenements, rents, annuities, or other property, real or personal, heritable or moveable, or of any right, title, interest, or claim, in, to, out of, or upon any lands, tenements, rents, annuities, or other property, where a duty is imposed on the conveyance thereof in the schedule hereunto annexed, in proportion to the amount of the purchase or consideration money, therein or thereupon expressed, the full purchase or consideration money which shall be directly or indirectly paid, or secured, or agreed to be paid for the same, shall be truly expressed and set forth in words at length, in or upon the principal or only deed or instrument whereby the land or other thing sold shall be granted, assigned, transferred, released, renounced, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his, her, or their direction; and also where, upon the sale of any annuity, easement, servitude, or other right, not before in existence, the same shall not be created by actual grant or conveyance, but shall only be secured by bond, warrant or attorney, covenant, contract, or other security, the full purchase or consideration money, which shall be directly or indirectly paid, or secured, or agreed to be paid for the same, shall be truly expressed and set forth in words at length, in or upon the bond or other instrument or instruments by which the same

(a) And see similar provisions §. 3 & 4 of the act of 3 Geo. 4, c. 88.

shall be secured," [and in default of so setting forth the consideration, the purchaser and seller are subjected to a penalty of fifty pounds, and to the payment of five times the amount of the excess of duty which would have been payable in respect of the full purchase money, beyond the amount of the duty actually paid.]

§. 30. "And be it further enacted, that from and after the 10th day of October, 1808, where any *copyhold or customary* lands or hereditaments, shall be proposed to be surrendered in court, the person or persons proposing to surrender the same shall deliver to the steward of the manor or honour, whereof such lands or hereditaments shall be holden, a note in writing, stating whether the surrender proposed is upon a sale, or not upon a sale, and in the former case specifying the amount of the purchase or consideration money agreed upon for such lands or hereditaments, to the intent that the same may be inserted and set forth, in words at length, in or upon the copy of court roll, to be afterwards made out of such surrender, pursuant to the directions of this act; and until such note in writing shall be delivered, the lord or lady, or steward, of the manor or honour, shall not accept or take the proposed surrender, on pain of forfeiting for every such offence, the sum of fifty pounds; and where the proposed surrender shall be upon a sale, if the steward shall neglect to insert the said purchase or consideration money, in or upon the copy of court roll, to be afterwards made out of such surrender, in words at length, he shall for every such offence forfeit the sum of fifty pounds; and if upon the sale of any such lands or hereditaments, any person or persons shall in the note so to be delivered as aforesaid, state the proposed surrender to be not upon a sale, he, she, or they shall, for every such offence, forfeit the sum of one hundred pounds."

§. 31. "And be it further enacted, that from and after the said 10th day of October, where any *copyhold or customary* lands or hereditaments shall be intended to be conveyed to any person or persons (either upon the sale or mortgage thereof, or otherwise) by means of a surrender made out of court, or by a deed of bargain and sale, or other deed, by commissioners named in a commission of bankrupt, or by executors or others, by virtue of a power given by will or by act of parliament, the lord or lady, or steward of the manor or honour, whereof such lands or hereditaments shall be parcel or be holden, shall not inrol any such surrender or deed, or accept any presentment thereof, or admit any persons to be tenant of such lands or hereditaments, under or by virtue of the same respectively, unless

such deed or surrender, or the memorandum of such surrender, shall be duly stamped with the duty hereby charged thereon respectively, on pain of forfeiting, for every such offence, the sum of fifty pounds."

§. 32. "And be it further enacted, that if any lord or lady, or steward of any manor or honour, shall, after the said tenth day of October, accept or take any surrender, or admit any person tenant of any *copyhold or customary* lands or hereditaments, out of court, or make any voluntary grant of any such lands or hereditaments, out of court, or grant any license to demise any such lands or hereditaments, out of court, without causing the same, or some memorandum thereof respectively, to be put in writing on vellum, parchment, or paper, duly stamped with the proper duty hereby charged thereon respectively, then, and in every such case, he or she shall, for every such offence, forfeit the sum of fifty pounds."

§. 33. "And be it further enacted, that in all cases of surrenders, admittances, and voluntary grants of or to any *copyhold or customary* lands or hereditaments, and in all cases of licenses to demise any such lands or hereditaments, which shall be taken, made or granted in court, after the tenth day of October, 1808, the steward of the manor or honour, whereof such lands or hereditaments shall be parcel or be holden, shall make out a copy of court roll of every such surrender, admittance, voluntary grant, and license to demise, on vellum, parchment, or paper, duly stamped according to the directions of this act, within four calendar months next after the surrender, admittance, voluntary grant, or license, shall be made or granted, and shall deliver the same to the party or parties entitled thereto, or any other person authorised to receive the same, whenever the same shall be called for, after the expiration of such four calendar months; and if the same shall not be called for, then the steward shall deliver the same to the bailiff of the manor or honour, or to the crier of the court, or to some copyhold or customary tenant of the manor or honour, for the use of the party or parties entitled thereto, at the next general court to be holden for the said manor or honour; and if any such steward shall neglect to make out and deliver such copy or copies of court roll, in the manner and within the time aforesaid, he shall forfeit the sum of fifty pounds for every such surrender, admittance, voluntary grant and license to demise, of which he shall neglect to make out and deliver a copy of court roll, in the manner and within the time aforesaid; and the stamp duty, payable in respect of every such copy of court roll, shall be a debt to his Majesty, his heirs and

successors, of the steward so neglecting to make out and deliver the same, whether he shall have received the duty or not; and if he shall not have received the duty, the same shall also be a debt to his Majesty, his heirs and successors, of the party or parties entitled to such copy of court roll; and the said steward shall also be bound to make out and deliver such copy of court roll to the party or parties entitled thereto, whenever afterwards the same shall be demanded, without being paid any fees for the same; and if any fees shall have been previously paid to him for the same, such fees shall be deemed to have been paid without consideration, and the party or parties, who paid such fees, his, her, or their executors or administrators, shall be entitled to recover back the same, in an action for money had and received to his, her, or their use, with full costs of suit."

§. 34. "And be it further enacted, that it shall be lawful for the steward of any manor or honour, previously to the acceptance of any surrender, or the granting or making of any admittance, voluntary grant, or license to demise, in court, from and after the tenth day of October, 1808, to demand and insist on the payment of his lawful fees for the same, and for the copy of court roll to be made out thereof, together with the stamp duty payable on such copy of court roll; and in case of non-payment of such fees and stamp duty, it shall be lawful for the lord or lady, or steward of the manor, to refuse to accept the surrender, or to grant the admittance or license, or to make the voluntary grant, which shall be proposed or have been contracted for, until such fees and stamp duties shall be paid."

[N. B. The schedule annexed to this act is repealed by the following act.]

STAMP ACT, 55 GEO. III. c. 184.—[11th July, 1815.]

[§. 1. Directs that the duties imposed on deeds, &c. by the last act should cease from the 31st August, 1815.]

[§. 2. Substitutes the duties in the schedule annexed to the present act, from and after the 31st August, 1815.]

[§. 8. Enacts that the powers, provisions, penalties, &c. in former acts shall extend to this act.]

[§. 30. Exempts from the *ad valorem* duty, all conveyances made after the 31st August, 1815, of property contracted to be sold before the 12th April, 1808, which under the provisions of the act of 48th

Geo. 3. should have been exempted from the *ad valorem* duty thereby granted.]

[§. 31. Also exempts the conveyances of annuities or rent charges, on the re-purchase thereof.]

“ S C H E D U L E .

Part the first.

CONVEYANCE, whether grant, disposition, lease, assignment, transfer, release, renunciation, or of any other kind or description whatsoever, *upon the sale* of any lands, tenements, rents, annuities or other property, real or personal, heritable or moveable, or of any right, title, interest or claim in, to, out of or upon any lands, tenements, rents, annuities, or other property; that is to say, for and in respect of *the principal or only deed, instrument or writing*, whereby the lands or other things sold shall be granted, leased, assigned, transferred, released, renounced or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his, her, or their direction.

Where the purchase or consideration money therein or thereupon expressed shall not amount to 20 <i>l.</i>	0 10 0
And where the same shall amount to 20 <i>l.</i> and not amount to 50 <i>l.</i>	1 0 0
And where the same shall amount to 50 <i>l.</i> and not amount to 150 <i>l.</i>	1 10 0
And where the same shall amount to 150 <i>l.</i> and not amount to 300 <i>l.</i>	2 0 0
And where the same shall amount to 300 <i>l.</i> and not amount to 500 <i>l.</i>	3 0 0
And where the same shall amount to 500 <i>l.</i> and not amount to 750 <i>l.</i>	6 0 0
And where the same shall amount to 750 <i>l.</i> and not amount to 1,000 <i>l.</i>	9 0 0
And where the same shall amount to 1,000 <i>l.</i> and not amount to 2,000 <i>l.</i>	12 0 0
And where the same shall amount to 2,000 <i>l.</i> and not amount to 3,000 <i>l.</i>	25 0 0
And where the same shall amount to 3,000 <i>l.</i> and not amount to 4,000 <i>l.</i>	35 0 0

And where the same shall amount to 4,000 <i>l.</i> and not amount to 5,000 <i>l.</i>	45 0 0
And where the same shall amount to 5,000 <i>l.</i> and not amount to 6,000 <i>l.</i>	55 0 0
And where the same shall amount to 6,000 <i>l.</i> and not amount to 7,000 <i>l.</i>	65 0 0
And where the same shall amount to 7,000 <i>l.</i> and not amount to 8,000 <i>l.</i>	75 0 0
And where the same shall amount to 8,000 <i>l.</i> and not amount to 9,000 <i>l.</i>	85 0 0
And where the same shall amount to 9,000 <i>l.</i> and not amount to 10,000 <i>l.</i>	95 0 0
And where the same shall amount to 10,000 <i>l.</i> and not amount to 12,500 <i>l.</i>	110 0 0
And where the same shall amount to 12,500 <i>l.</i> and not amount to 15,000 <i>l.</i>	130 0 0
And where the same shall amount to 15,000 <i>l.</i> and not amount to 20,000 <i>l.</i>	170 0 0
And where the same shall amount to 20,000 <i>l.</i> and not amount to 30,000 <i>l.</i>	240 0 0
And where the same shall amount to 30,000 <i>l.</i> and not amount to 40,000 <i>l.</i>	350 0 0
And where the same shall amount to 40,000 <i>l.</i> and not amount to 50,000 <i>l.</i>	450 0 0
And where the same shall amount to 50,000 <i>l.</i> and not amount to 60,000 <i>l.</i>	550 0 0
And where the same shall amount to 60,000 <i>l.</i> and not amount to 80,000 <i>l.</i>	650 0 0
And where the same shall amount to 80,000 <i>l.</i> and not amount to 100,000 <i>l.</i>	800 0 0
And where the same shall amount to 100,000 <i>l.</i> or upwards (a),	1,000 0 0

And where any freehold lands or hereditaments in *England* shall be conveyed by a deed of feoffment, with or without any letter or letters of attorney therein contained to deliver or receive seisin, or by a deed of *bargain and sale inrolled*; such deed of feoffment or bar-

(a) As the act specifies only definite *gross* sums, a conveyance in consideration of an annuity would seem to be a *casus omissus*, and not to require an *ad valorem* duty.

gain and sale, unless accompanied with a lease and release shall be charged with a *further* duty as follows :

If the purchase or consideration money therein or thereupon expressed, shall be under 20 <i>l.</i>	0 10 0
If it shall amount to 20 <i>l.</i> and not amount to 50 <i>l.</i>	0 15 0
If it shall amount to 50 <i>l.</i> and not amount to 150 <i>l.</i>	1 0 0
If it shall amount to 150 <i>l.</i> or upwards	1 15 0

But if there shall be both a feoffment and a bargain and sale inrolled, then the said further duty shall not attach on either.

Note.—The purchase or consideration money is to be truly expressed and set forth in words at length, in or upon every such principal or only deed or instrument of conveyance.

And where any lands or other property, of *different tenures or holdings*, or held under *different titles*, contracted to be sold at one entire price for the whole, shall be conveyed to the purchaser in separate parts or parcels, by different deeds or instruments, the purchase or consideration money shall be divided and apportioned in such manner as the parties shall think fit, so that a distinct price or consideration for each separate part or parcel may be set forth in or upon the principal or only deed or instrument of conveyance relating thereto; which shall be charged with the said *ad valorem* duty in respect of the price or consideration money therein set forth.

And where any lands or other property, contracted to be purchased by two or more persons jointly, or by any person for himself and others, or wholly for others, at one entire price for the whole, shall be conveyed, in parts or parcels, by separate deeds or instruments, to the persons for whom the same shall be purchased, for distinct parts or shares of the purchase money; the principal or only deed or instrument of conveyance, of each separate part or parcel, shall be charged with the said *ad valorem* duty, in respect of the sum of money therein specified as the consideration for the same. But if separate parts or parcels of such lands or other property shall be conveyed to or to the use of or in trust for different persons, in and by one and the same deed or instrument, then such deed or instrument shall be charged with the said *ad valorem* duty, in respect of the aggregate amount of the purchase or consideration monies therein mentioned to be paid or agreed to be paid, for the lands or property thereby conveyed.

And where any person, having contracted for the purchase of any lands or other property, but not having obtained a conveyance there-

of, shall contract to sell to any other person, and the same shall in consequence be conveyed immediately to the sub-purchaser; the principal or only deed or instrument of conveyance shall be charged with the said *ad valorem* duty, in respect of the purchase or consideration money therein mentioned to be paid, or agreed to be paid, by the sub-purchaser.

And where any person, having contracted for the purchase of any lands or other property, but not having obtained a conveyance thereof, shall contract to sell the whole or any part or parts thereof, to any other person or persons, and the same shall in consequence be conveyed, by the original seller, to different persons, in parts or parcels; the principal or only deed or instrument of conveyance, of each part or parcel thereof, shall be charged with the said *ad valorem* duty, in respect only of the purchase or consideration money which shall be therein mentioned to be paid or agreed to be paid for the same, by the person or persons to whom or to whose use, or in trust for whom the conveyance shall be made, without regard to the amount of the original purchase money.

And in all cases of such sub-sales as aforesaid, the sub-purchasers, and the persons immediately selling to them, shall be deemed and taken to be the purchasers and sellers, within the intent and meaning of the provisions and regulations of the aforesaid act of the forty-eighth year of his Majesty's reign, relating to the *ad valorem* duties on conveyances on the sale of property thereby imposed, and which are to be observed and enforced with regard to the said *ad valorem* duties hereby granted.

But where any sub-purchaser shall take an actual conveyance of the interest of the person immediately selling to him, which shall be chargeable with the said *ad valorem* duty, in respect of the purchase or consideration money paid, or agreed to be paid by him, and shall be duly stamped accordingly; any deed or instrument of conveyance to be afterwards made to him, of the property in question, by the original seller, shall be exempted from the said *ad valorem* duty, and be charged only with the duty on deeds or instruments of the same kind not upon a sale.

And where any lands or other property separately contracted to be purchased of different persons, at separate and distinct prices, shall be conveyed to the purchaser, or as he shall direct, in and by one and the same deed or instrument; such deed or instrument shall be charged with the said *ad valorem* duty, in respect of the aggregate

amount of the purchase or consideration monies, therein mentioned to be paid or agreed to be paid for the same.

And where any lands, or other property shall be sold and conveyed, in consideration, wholly or in part, of any sum of money charged thereon by way of mortgage, wadset or otherwise, and then due and owing to the purchaser, or shall be sold and conveyed, subject to any mortgage, wadset, bond, or other debt, or to any gross or entire sum of money, to be afterwards paid by the purchaser, such sum of money or debt shall be deemed the purchase or consideration money, or part of the purchase or consideration money, as the case may be, in respect whereof the said *ad valorem* duty is to be paid.

And to prevent doubts respecting what shall be deemed the principal deed or instrument of conveyance, in certain cases, it is hereby declared :

That where any lands or hereditaments, in England, shall be conveyed by bargain and sale inrolled, and also by lease and release, or feoffment with or without any such letter or letters of attorney therein contained as aforesaid ; the release or feoffment shall be deemed the principal deed ; and the bargain and sale shall be charged only with the duty hereby imposed on deeds in general ; (See *Deed.*)—But the same shall not be inrolled or be available, unless also stamped for testifying the payment of the *ad valorem* duty on the release or feoffment.

And where any lands or hereditaments shall be conveyed by lease and release, and also by feoffment, with or without any such letter or letters of attorney therein contained as aforesaid ; the release shall be deemed the principal deed ; and the feoffment shall be charged only with the duty hereby imposed on deeds in general. (See *Deed.*) But the same shall not be available, unless also stamped for testifying the payment of the *ad valorem* duty on the release.

And where any *copyhold or customary* estate shall be conveyed, by a deed of bargain and sale, by the commissioners named in a commission of bankrupt, or by executors or others, by virtue of a power given by will, or by act of parliament, or otherwise, where a surrender shall not be necessary, the deed of bargain and sale shall be deemed the principal instrument.

And in other cases of copyhold or customary estates, the surrender or voluntary grant, or the memorandum thereof respectively, if made out of court, or the copy of court roll of the surrender or voluntary grant, if made in court, shall be deemed the principal instrument.

And copies of court roll, made after the 31st day of August, 1815, of surrenders and voluntary grants made in court before or upon that day, and subsequent to the 10th day of October, 1808, shall be charged with the said *ad valorem* duties. But copies of court roll, of surrenders, and voluntary grants made before or upon the 10th day of October, 1808, shall not be liable thereto.

And grants, and copies of court roll of grants, of copyhold or customary estates for a life or lives, are to be charged, as well as those for any greater interest.

And where in Scotland there shall be a disposition or assignation, executed by the seller, and any other instrument or instruments, writing or writings, to complete the title, the disposition or assignation shall be deemed the principal instrument.

And where, upon the sale of any annuity or other right not before in existence, the same shall not be created by actual grant or conveyance, but shall only be secured by bond, warrant of attorney, covenant, contract, or otherwise; the bond or other instrument, by which the same shall be secured, or some one of such instruments, if there be more than one, shall be deemed and taken to be liable to the same duty as an actual grant or conveyance.

And in the case of leases or tacks, where a yearly rent of £20 or upwards shall be reserved, as part of the consideration for the same, there shall be charged a further duty; for which see title, *Lease*.

And where the principal or only deed or instrument of conveyance, together with any schedule, receipt, or other matter, put or indorsed thereon, or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further *progressive* duty of I 0 0

And where there shall be several deeds, instruments, or writings for completing the title to the property sold; such of them as are not liable to the said *ad valorem* duty shall be charged with the duty, to which the same may be liable, under any general or particular description of such deeds, instruments, or writings contained in this schedule.

And where, *in any case not hereby expressly provided for*, of several deeds, instruments, or writings, a doubt shall arise which is the principal, it shall be lawful for the parties to determine for themselves which shall be so deemed, and to pay the said *ad valorem* duty thereon accordingly; and, if necessary, the other deeds, instru-

ments, or writings, on which the doubt shall have arisen, shall be stamped with a particular stamp for denoting or testifying the payment of the *ad valorem* duty; upon all the deeds or instruments being produced, and appearing to be duly stamped in other respects.

And where there shall be duplicates of any deed or instrument, chargeable with the said *ad valorem* duty, exceeding 2*l.* one of them only shall be charged therewith, and the other or others shall be charged with the ordinary duty on deeds or instruments of the same kind not upon a sale; and on the whole being produced, duly stamped as hereby required, the latter shall also be stamped with a particular stamp for denoting or testifying the payment of the said *ad valorem* duty.

And where any deed or instrument, operating as a conveyance on the sale of any property, shall operate also as a conveyance of any other than the property sold by way of settlement, or for any other purpose, or shall also contain any other matter or thing besides what shall be incident to the sale and conveyance of the property sold, or relate to the title thereto; every such deed or instrument shall be charged, in addition to the duty to which it shall be liable as a conveyance on the sale of property, and to any progressive duty to which it may also be liable, with such further stamp-duty as any separate deed, containing the other matter, would have been chargeable with, exclusive of the progressive duty.

Exemptions from the preceding duties on conveyances upon the sale of lands, &c.

All surrenders and other instruments, relating only to copyhold or customary estates, whose clear yearly value shall not exceed twenty shillings; but which are hereinafter otherwise charged.

All transfers of shares in the stock and funds of the governor and company of the Bank of England, and of the South Sea and East India Companies; but which are hereinafter otherwise charged.

All leases and tacks in consideration of a fine or grassum, for a life or lives not exceeding three, or for a term of years determinable with a life or lives, not exceeding three, by whomsoever granted.

All leases in consideration of a fine for a term absolute, not exceeding twenty-one years, granted by ecclesiastical corporations, aggregate or sole.

And all voluntary grants made by the lord or lady of any manor of any copyhold, or customary lands or hereditaments for a life or lives, for a pecuniary consideration, and the copies of court roll of such voluntary grants.

All which leases, tacks, grants, and copies are hereinafter charged with ordinary duty."

[The act exempts from the preceding and all other stamp duties, except the duty on the receipt for the consideration money, conveyances of rents purchased under the Act 34 Geo. 3. c. 75. s. 14. for the better management of the land revenue of the crown, and for the sale of fee farm rents, &c. on subsequent sales thereof to the owners of the lands charged therewith, where the consideration money does not exceed 10*l*.]

"COPYHOLD estates; and *customary* estates, passing by surrender and admittance, or by admittance only, and not by deed; instruments relating thereto, not otherwise charged under the head of mortgage, or of conveyance upon the sale of lands; viz.

Any surrender made out of court, or the memorandum thereof; where the clear yearly value of the estate shall exceed twenty shillings

1 0 0

And where the same shall not exceed twenty shillings

0 5 0

See also *Conveyance* upon the sale of lands, &c. and *Mortgage*.

Any admittance out of court, or the memorandum thereof; where the clear yearly value of the estate shall exceed twenty shillings

1 0 0

Any where the same shall not exceed twenty shillings

0 5 0

And where both a surrender and admittance, or more than one surrender or admittance, or the memorandum thereof, shall be contained in the same piece of vellum, parchment, or paper, whether upon a sale, mortgage, or other occasion, the proper duty shall be paid, in respect to each surrender and each admittance (*a*).

(*a*) It has been doubted whether this clause does not require a distinct stamp for each separate copyhold included in one surrender or admittance, but I submit that the only object of it was to impose a separate stamp on each surrender and each admittance, without any distinction between the case of a surrender of,

or, an admittance to one entire copyhold, and that of a surrender of, or an admittance to an estate held by two or more distinct copies.

This construction is favoured by the qualification in the 38 Geo. 3. c. 85. of the provisions of the act of 37 Geo. 3. c. 90., in respect to the multiplication of

And where any surrender or admittance, or the memorandum thereof, together with any schedule, receipt, or other matter, put or indorsed thereon, or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further progressive duty of 1 0 0

The copy of court roll of any surrender made in court, where the clear yearly value of the estate shall exceed twenty shillings 1 0 0

And where the same shall not exceed twenty shillings 0 5 0

See also *conveyance* upon the sale of lands, &c. and *mortgage*.

The copy of court roll of any admittance in court, where the clear yearly value of the estate shall exceed twenty shillings . 1 0 0

And where the same shall not exceed twenty shillings . 0 5 0

And where copies of both a surrender and admittance, or of more than one surrender or admittance, shall be contained in the same piece of vellum, parchment or paper, whether upon a sale, mortgage or other occasion, the proper duty shall be paid, in respect of each surrender and each admittance, except in the case of a recovery hereinafter provided for (a).

And where the copy of any such surrender or admittance, together with any schedule, receipt or other matter, put or indorsed thereon,

stamps on surrenders of and admittances to copyhold estates; and by the total repeal of both those acts by the stat. 44 Geo. 3. c. 98.

N. B. By the 11th sect. of the act of 37 Geo. 3. it was provided that for and in respect of each and every copyhold tenement of the value of 20s. *per annum* or upwards, mentioned in any surrender, admittance, or copy of court roll, of any honour or manor, and each and every custom-right or tenant-right tenement, not being copyhold (of the like value,) mentioned in any surrender, admittance, or instrument of admittance, *whereupon a several fine should be payable to the lord, or a several fee payable to the steward*, a distinct and several stamp duty should be charged.

And by the 1st sect. of the act of 38th Geo. 3. it was provided that dis-

ting and several stamp duties should not be required, except in those cases where the tenements mentioned in the same surrender, admittance, copy or instrument of admittance, should, before the passing of the said act, [37 Geo. 3.,] have been surrendered, granted or conveyed, in and by different surrenders, admittances, copies or instruments of admittance, in which cases a several and distinct stamp duty should be charged, in respect of each and every such tenement of the value of 20s. *per annum* or upwards, which at any time thereafter should be added to any other tenement or mentioned therewith, to be surrendered, granted, or conveyed in or by the same surrender, admittance, copy or instrument of admittance.

(a) See the last note.

or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words, contained therein, over and above the first 1,080 words, a further *progressive* duty of 1 0 0

The copy of court roll of the several surrenders, admittances and other acts, which shall take place in court, for the purpose of perfecting a *common recovery* of any entailed copyhold or customary estate or estates, tenement or tenements, from the surrender to make a tenant of the *præcipe*, down to the admittance of the tenant in tail, in fee, or to the admittance for life of the former tenant for life, with remainder to the tenant in tail, in fee, upon the surrender of the demandant, both inclusive; or from the surrender to make a tenant to the *præcipe*, inclusive, to the admittance of the tenant in tail, or tenant for life, otherwise than as aforesaid, or to the admittance of any other person, upon the surrender of the demandant, exclusive; where the clear yearly value of the estate shall exceed twenty shillings,

Five times 1 0 0

And where the same shall not exceed twenty shillings,

Five times 0 5 0

And if the copy of court roll of any other admittance or surrender, admittances or surrenders, shall be contained in the same piece of vellum, parchment or paper, with the copy of court roll of the several surrenders, admittances, and other acts for the purpose aforesaid; the same shall be charged with such and the same duty or duties, as if the same had been written upon a separate piece of vellum, parchment or paper, over and above the said duties hereby imposed on the copy of court roll of the recovery.

Any *voluntary grant*, by the lord or lady, or steward of any manor, made out of court, or the memorandum thereof, with or without admittance thereon; where the clear yearly value of the estate shall exceed twenty shillings Twice 1 0 0

And where the same shall not exceed twenty shillings,

Twice 0 5 0

See also *conveyance* upon the sale of lands, &c. and *mortgage*.

The *copy of court roll* of any voluntary grant made in court, by the lord or lady, or steward of any manor, with or without admittance thereon;—where the clear yearly value of the estate shall exceed twenty shillings Twice 1 0 0

And where the same shall not exceed twenty shillings,

Twice 0 5 0

See also *conveyance* upon the sale of lands, &c. and *mortgage*.

And where any voluntary grant, or the memorandum, or copy of court roll thereof, together with any schedule, receipt, or other matter put or indorsed thereon, or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further *pro-gressive* duty of 1 0 0

Any *license* to demise, or the memorandum thereof, if granted out of court; and the *copy of court-roll* of any license to demise, if granted in court; where the clear yearly value of the estate shall exceed twenty shillings 1 0 0

And where the same shall not exceed twenty shillings 0 5 0

Exemptions from the preceding and all other stamp duties.

Original surrenders out of court, and copies of court-roll of surrenders in court, to the uses of a will, or to a trustee for the uses or purposes of a will.

The court-rolls or books of any manor, wherein the proceedings relating thereto shall be entered or minuted.

See also the general exemptions at the end of this part of the schedule.

EXCHANGE.—Any deed whereby any lands or other hereditaments, or heritable subjects in England or Scotland shall be conveyed, or any *copyhold* or *customary* lands or hereditaments in England shall be covenanted to be surrendered, in *exchange* for other lands, or hereditaments, or heritable subjects;

If no sum of money, or only a sum under 300*l.* shall be paid or agreed to be paid for equality of exchange; the ordinary duty of 1 15 0

And if a sum of 300*l.* or upwards shall be paid or agreed to be paid for equality of exchange

{ The same *ad valorem* duty as for a conveyance on the sale of lands for a sum of money equal to the sum so paid or agreed to be paid.

And where any such deed of exchange, together with any schedule,

receipt, or other matter put or indorsed thereon, or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1080 words, a further *progressive* duty of,

If the deed be liable in the first instance to a duty of *l. 15s.*

1 5 0

Or if liable to a higher duty in the first instance . . . 1 0 0

And any duplicate of any such deed of exchange shall be charged with the same duty or duties ; and if the exchange shall be effected or secured by separate conveyances or covenants, by distinct deeds, each deed shall be charged with the same duty or duties.

And in case there shall be more than one deed for completing the title to the lands or other hereditaments, or heritable subjects conveyed by either party, the principal deed only shall be charged under this head of exchange ; and any subordinate or collateral deed shall be charged with the duty to which it may be liable under any other description in this schedule.

MEMORIAL to be registered pursuant to any act of Parliament, made or to be made for the public registering of deeds and conveyances in England 0 10 0

And for every piece of vellum, parchment, or paper, upon which any such memorial shall be written, after the first, a further *progressive* duty of 0 10 0

MEMORIAL to be registered or inrolled pursuant to act of Parliament, of any deed or instrument, deeds or instruments, whereby any annuity shall be granted or secured in England . . 1 0 0

And for every piece of vellum, parchment, or paper, upon which any such memorial shall be written, after the first, a further *progressive* duty of 1 0 0

MORTGAGE, conditional surrender by way of mortgage, further charge, wadset and heritable bond, disposition, assignation, or tack, in security ; and eik to a reversion ; of or affecting any lands, estate or property, real or personal, heritable or moveable whatsoever ;

Also any deed containing an obligation to infest any person in an annual rent, or in lands or other heritable subjects, in Scotland, under a clause of reversion, but without any personal bond or obligation

therein contained, for payment of the money or stock intended to be secured ;

Also any conveyance of any lands, estate, or property whatsoever, in trust, to be sold or otherwise converted into money, which shall be intended only as a security, and shall be redeemable before the sale or other disposal thereof, either by express stipulation or otherwise ; except where such conveyance shall be made for the benefit of creditors generally, or for the benefit of creditors specified, who shall accept the provision made for payment of their debts in full satisfaction thereof, or who shall exceed five in number ;

Also any defeazance, letter of reversion, back bond, declaration, or other deed or writing for defeating or making redeemable, or explaining or qualifying any conveyance, disposition, assignation or tack, of any lands, estate or property whatsoever, which shall be apparently absolute, but intended only as a security ;

Also any agreement, contract, or bond, accompanied with a deposit of title deeds for making a mortgage, wadset, or any such other security or conveyance as aforesaid, of any lands, estate, or property, comprised in such title deeds, or for pledging or charging the same as a security ;

And also any deed, whereby a real burthen shall be declared or created on lands or heritable subjects in Scotland ;

Where the same respectively shall be made, as a security for the payment of any definite and certain sum of money, advanced or lent at the time, or previously due and owing, or forborne to be paid, being payable,

Not exceeding 50 <i>l</i>.	. . . . .	1	0	0
Exceeding 50 <i>l</i> . and not exceeding 100 <i>l</i>.	. . . . .	1	10	0
Exceeding 100 <i>l</i> . and not exceeding 200 <i>l</i>.	. . . . .	2	0	0
Exceeding 200 <i>l</i> . and not exceeding 300 <i>l</i>.	. . . . .	3	0	0
Exceeding 300 <i>l</i> . and not exceeding 500 <i>l</i>.	. . . . .	4	0	0
Exceeding 500 <i>l</i> . and not exceeding 1,000 <i>l</i>.	. . . . .	5	0	0
Exceeding 1,000 <i>l</i> . and not exceeding 2,000 <i>l</i>.	. . . . .	6	0	0
Exceeding 2,000 <i>l</i> . and not exceeding 3,000 <i>l</i>.	. . . . .	7	0	0
Exceeding 3,000 <i>l</i> . and not exceeding 4,000 <i>l</i>.	. . . . .	8	0	0
Exceeding 4,000 <i>l</i> . and not exceeding 5,000 <i>l</i>.	. . . . .	9	0	0
Exceeding 5,000 <i>l</i> . and not exceeding 10,000 <i>l</i>.	. . . . .	12	0	0
Exceeding 10,000 <i>l</i> . and not exceeding 15,000 <i>l</i>.	. . . . .	15	0	0
Exceeding 15,000 <i>l</i> . and not exceeding 20,000 <i>l</i>.	. . . . .	20	0	0
Exceeding 20,000 <i>l</i>.	. . . . .	25	0	0

And where the same respectively shall be made as a security for the repayment of money, to be thereafter lent, advanced, or paid, or which may become due upon an account current, together with any sum already advanced or due, or without, as the case may be; other than and except any sum or sums of money to be advanced for the insurance of any property comprised in such mortgage or security against damage by fire, or to be advanced for the insurance of any life or lives, pursuant to any agreement in any deed, whereby any annuity shall be granted or secured for such life or lives;

If the total amount of the money secured, or to be ultimately recoverable thereupon, shall be uncertain and without any limit,

25 0 0

But if the total amount of the money secured, or to be ultimately recoverable thereon, shall be limited not to exceed a given sum. [*The same duty as on a mortgage or wadset for such limited sum.*]

And where the same respectively shall be made, as a security for the transfer or retransfer of any share, in any of the government or parliamentary stocks or funds, or in the stock and funds of the Governor and Company of the Bank of England, or of the East India Company, or the South Sea Company, in consideration of stock or money advanced or lent at the time, or previously due and owing, or forborne to be paid, being payable. [*The same duty as on a mortgage or wadset for a sum of money, equal to the value of the stock or fund secured, according to the average price thereof on the day of the date of the mortgage or other instrument aforesaid, or on either of the ten days preceding.*]

And where the same respectively shall be made, as a security for the payment of a sum of money, and also for the transfer or retransfer of a share in any of the said stocks or funds, the said *ad valorem* duty shall be charged in respect of each.

And in case the same respectively shall be made, as a security for the payment or transfer, to different persons, of separate and distinct sums of money, or shares in any of the said stocks or funds; the said *ad valorem* duty shall be charged for and in respect of each separate and distinct sum of money, or share in any of the said stocks or funds therein specified and secured, and not upon the aggregate amount thereof.

And where any such mortgage or wadset, or other instrument hereby charged with the same duty as a mortgage or wadset, together with any schedule, receipt, or other matter, put or indorsed

thereon, or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further *progressive* duty of, 1 0 0

MORTGAGE, &c.—Any transfer or assignment, disposition or assignation, of any mortgage or wadset, or of any such other security as aforesaid, or of the benefit thereof, and of the money or stock thereby secured, in all cases where the person entitled to the right of redemption or reversion shall not be made a party to such transfer or assignment, disposition or assignation; and also where the person who originally made the mortgage, wadset or other security, shall continue entitled to the right of redemption or reversion, and shall be made a party to such transfer or assignment, disposition or assignation; provided no further sum of money or stock be added to the principal money or stock already secured 1 15 0

And in all other cases such transfer or assignment, disposition or assignation, shall be charged with *the same duty or duties as an original mortgage, wadset or other security.*

And where any such transfer or assignment, disposition or assignation, hereby charged with a duty of 1*l.* 15*s.* together with any schedule, receipt, or other matter put or indorsed thereon, or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further and *progressive* duty of 1 5 0

Provided always, that where several distinct deeds or instruments, falling within the description of any of the instruments hereby charged with the said *ad valorem* duty on mortgages and wadsets, shall be made *at the same time*, for securing the payment or transfer of one and the same sum of money; or one and the same share of any of the stocks or funds before mentioned; the said *ad valorem* duty, if exceeding 2*l.* shall be charged only on one of such deeds or instruments; and all the rest shall be charged with the duty to which the same may be liable, under any more general description of such deeds or instruments contained in this schedule; and if required for the sake of evidence, all the rest of such deeds or instruments shall be also stamped with some particular stamp, for denoting or testifying the payment of the said *ad valorem* duty, on all the said deeds or instruments being produced duly stamped with the duties hereby charged thereon.

And where any copyhold or customary lands or hereditaments shall be mortgaged, by means of a conditional surrender or grant; the said *ad valorem* duty shall be charged on the surrender or grant, or the memorandum thereof, if made out of court; or on the copy of court roll of the surrender or grant, if made in court. And copies of court roll, made after the 31st day of August, 1815, of surrenders and grants made in court before or upon that day, and subsequent to the 10th day of October, 1808, shall be charged with the said *ad valorem* duties. But copies of court roll, of surrenders, and grants made before or upon the 10th day of October, 1808, shall not be liable thereto.

And where any copyhold or customary lands or hereditaments shall be mortgaged or charged, together with other property, for securing one and the same sum of money, or one and the same share of any of the stocks or funds before mentioned; the said *ad valorem* duty shall be charged on the deed or instrument relating to the other property.

And where there shall be duplicates of any deed or instrument, chargeable with the said *ad valorem* duty on mortgages and wadsets, exceeding 2l. one of them only shall be charged therewith, and the other or others shall be charged with the duty to which the same may be liable, under any more general description in this schedule; and on the whole being produced duly stamped as hereby required, the latter shall also be stamped with a particular stamp for denoting or testifying the payment of the said *ad valorem* duty:

Exemptions from the said ad valorem duty on mortgages, &c. but not from any other duty to which the same may be liable.

Any deed or other instrument made in pursuance of and conformable to any agreement, contract or bond, charged with, and which shall actually have paid the said *ad valorem* duty, or the *ad valorem* duty on mortgages granted by the act of the 48th year of his Majesty's reign before mentioned, [c. 149].

Any deed or other instrument, made for the further assurance only, of any estate or property, already mortgaged, pledged or charged as a security, by any deed or instrument, which shall have paid the said *ad valorem* duty hereby charged, or the *ad valorem* duty on mortgages or heritable bonds, imposed by the act of the 44th or the act of the 48th year of his Majesty's reign before mentioned.

Any deed or other instrument, made as an additional or further security for any sum or sums of money, or any share or shares of any

of the stocks or funds before mentioned, already secured by any deed or instrument, which shall have paid the said *ad valorem* duty hereby charged, or the *ad valorem* duty on mortgages or heritable bonds, charged by the said act of the 44th [c. 98.] or the said act of the 48th year of his Majesty's reign, to be exempt from the said *ad valorem* duty hereby charged, so far as regards such sum or sums of money, or such share or shares of any of the said stocks or funds, before secured, in case such additional or further security shall be made by the same person or persons who made the original security; but if any further sum of money or stock shall be added to the principal money or stock already secured, or shall be thereby secured to any other person, the said *ad valorem* duty shall be charged in respect of such further sum of money or stock.

And if necessary, for the sake of evidence, the deeds and instruments hereby exempted from the said *ad valorem* duty, shall be stamped with a particular stamp, for denoting or testifying the payment of the *ad valorem* duty, upon all the deeds and instruments relating to the particular transaction being produced, and appearing to be duly stamped with the duties to which they were liable.

For general exemptions from the preceding and all other stamp duties, see the end of this part of the schedule.

MORTGAGE, wadset, &c. with a conveyance of the equity or right of redemption or reversion, or other matter *in the same deed*; viz.

Where any deed or writing shall operate as a mortgage or other instrument hereby charged with the *ad valorem* duty on mortgages, and also as a conveyance of the equity or right of redemption or reversion of any lands, estate or property therein comprised, to, or in trust for, or according to the direction of a purchaser, such deed or writing shall be charged not only with the said *ad valorem* duty on mortgages, but also with the *ad valorem* duty hereinbefore charged on a conveyance upon the sale of any property; but where the equity or right of redemption or reversion shall be thereby conveyed, or limited in any other manner, such deed or writing shall be charged only as a mortgage;

And in all other cases where a mortgage or other instrument, hereby charged with the *ad valorem* duty on mortgages, shall be contained in one and the same deed or writing with any other matter or

thing, (*except what shall be incident to such mortgage or other instrument,*) such deed or writing shall be charged with the same duties, (*except the progressive duty,*) as such mortgage or other instrument and such other matter or thing would have been separately charged with, if contained in separate deeds or writings.

And where any such deed or writing, as is mentioned in the two preceding clauses, together with any schedule, receipt, or other matter, put or indorsed thereon, or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further *progressive* duty of 1 0 0

PARTITION.—Any deed whereby any lands or other hereditaments, or heritable subjects, in England or Scotland, shall be conveyed, or any *copyhold or customary* lands or hereditaments, in England, shall be covenanted to be surrendered, in order to effect a *partition or division* thereof, among coparceners, joint tenants, or tenants in common, heirs, portioners, conjux fiars, or joint proprietors of any sort ;

If no sum of money or only a sum under 300*l.* shall be paid, or agreed to be paid, for equality of partition or division, the ordinary duty of 1 15 0

And if any sum or sums of money, amounting to 300*l.* or upwards, shall be paid, or agreed to be paid, for equality

The same *ad valorem* duty as for a conveyance on the sale of lands for a sum of money equal to the amount of the sum or sums so paid or agreed to be paid.

And where any such deed of partition or division, together with any schedule, receipt, or other matter, put or indorsed thereon, or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further *progressive* duty of,

If the deed is liable, in the first instance, to a duty of 1*l.* 15*s.* 1 5 0

Or if liable to a higher duty in the first instance, . . . 1 0 0

And any duplicate of any such deed of partition or division shall be charged with the same duty or duties.

And in case there shall be no more than one deed, for completing the title to the estate or interest conveyed by either party, the principal deed only shall be charged under this head of partition: and any subordinate or collateral deed shall be charged with the duty to which it may be liable, under any other description in this schedule."

53 GEO. III. c. 141.

"An Act to repeal an act of the 17th year of the reign of his present Majesty, intituled, 'An Act for registering the grants of life annuities, and for the better protection of infants against such grants;' and to substitute other provisions in lieu thereof."

'Whereas it is expedient that an act passed in the seventeenth year of his present Majesty intituled an act,' &c. 'should be repealed, and other provisions substituted in lieu thereof.' May it therefore please, &c., and be it enacted by, &c. "That the said recited act shall be and the same is hereby repealed, save and except so far as regards any annuities or rent-charges, which have been granted before the passing of this act."

§. 2. "And be it further enacted, that within thirty days after the execution of every deed, bond, instrument or other assurance, whereby any annuity or rent charge shall, from and after the passing of this act, be granted, for one or more life or lives, or for any term of years or greater estate determinable on one or more life or lives, a memorial of the date of every such deed, bond, instrument, or other assurance, of the names of all parties and of all the witnesses thereto, and of the person or persons for whose life or lives such annuity or rent charge shall be granted, and of the person or persons by whom the same is to be beneficially received, the pecuniary consideration or considerations for granting the same, and the annual sum or sums to be paid, shall be inrolled in the high Court of Chancery, in the form or to the effect following, with such alterations therein as the nature and circumstance of any particular case may reasonably require:—

Date of instrument.	Nature of instrument.	Names of parties.	Names of witnesses.	Name or names of person or persons by whom annuity or rent-charge to be beneficially received.	Person or persons for whose life or lives the annuity or rent-charge is granted.	Consideration, and how paid.	Amount of annuity or rent charge.
10 Aug. 1813.	Indentures of lease and release.	A. B. of one part, C. D. of the other part.	E. F. of G. H. of	C. D.	A. B.	100 <i>l.</i> paid in money, 500 <i>l.</i> paid in notes of the governor and company of the bank of England, or other notes or bills of exchange, as the case may be.	100 <i>l.</i> a-year.
Same date.	Bond in penalty of 1200 <i>l.</i>	A. B. to C. D.	E. F. G. H.	} For securing the same annuity or rent-charge.			
Same date.	Warrant of attorney to confess judgment on the same bond.	A. B. to I. K. and L. M. attorneys of Court of King's Bench.	E. F. G. H.				

otherwise every such deed, bond, instrument or other assurance, shall be null and void, to all intents and purposes.”

§. 3. “ Provided always, and be it further enacted, that if any such annuity shall be granted by, or to, or for the benefit of any company exceeding in number ten persons, which company shall be formed for the purpose of granting or purchasing annuities, it shall be sufficient in any such memorial to describe such company by the usual firm or name of trade.”

§. 4. “ And be it further enacted, that in every deed, bond, instrument or other assurance, whereby any annuity or rent charge shall from and after the passing of this act, be granted or attempted to be granted, for one or more life or lives, or for any term of years or greater estate determinable on one or more life or lives, where the person or persons to whom such annuity shall be granted or secured to be paid, shall not be intitled thereto beneficially, the name or names of the person or persons who is or are intended to take the annuity benefi-

cially, shall be described in such or the like manner as is hereinbefore required in the inrolment; otherwise every such deed, instrument or other assurance, shall be null and void."

§. 6. "And be it further enacted, that if any part of the consideration for the purchase of any such annuity or rent charge shall be returned to the person advancing the same, or in case such consideration, or any part of it shall be paid in notes, if any of the notes, with the privity and consent of the person advancing the same, shall not be paid when due, or shall be cancelled or destroyed without being first paid; or if such consideration is expressed to be paid in money, but the same or any part of it shall be paid in goods; or if the consideration or any part of it shall be retained on pretence of answering the future payments of the annuity or rent charge, or any other pretence; in all and every the aforesaid cases, it shall be lawful for the person by whom the annuity or rent charge is made payable, or whose property is liable to be charged or affected thereby, to apply to the court in which any action shall be brought for payment of the annuity or rent charge, or judgment entered by motion, to stay proceedings on the action or judgment, and if it shall appear to the court that such practices as aforesaid, or any of them, have been used, it shall and may be lawful for the court to order every deed, bond, instrument or other assurance, whereby the annuity or rent charge is secured, to be cancelled, and the judgment, if any has been entered, to be vacated."

[§. 8. Declares all contracts for the purchase of any annuity or rent charge with any person under the age of twenty-one years, to be utterly void, notwithstanding any attempt to confirm the same after such person attains twenty-one; and makes it a misdemeanor to prevail on an infant to grant or bind himself, when of age, to grant an annuity or rent charge, or to forego the plea of infancy, or to ratify the annuity when of age.]

§. 10. "And be it further enacted, that this act shall not extend to Scotland or Ireland, nor to any annuity or rent charge given by will or marriage settlement, or for the advancement of a child, nor to any annuity or rent charge secured upon freehold or *copyhold* or *customary* lands in Great Britain or Ireland, or in any of his Majesty's possessions beyond the seas, of equal or greater annual value than the said annuity, over and above any other annuity, and the interest of any principal sum charged or secured thereon, of which the grantee had notice at the time of the grant, whereof the grantor is seised in fee simple or fee tail in possession, or the fee simple whereof in pos-

session the grantor is enabled to charge at the time of the grant, or secured by the actual transfer of stock in any of the public funds, the dividends whereof are of equal or greater annual value than the said annuity; nor to any *voluntary* annuity or rent charge granted without regard to pecuniary consideration or *money's worth*; nor to any annuity or rent charge granted by any body corporate, or under any authority or trust created by act of Parliament."

55 GEO. III. c. 192.

"An Act to remove certain difficulties in the disposition of copyhold estates by will."

"Whereas by the customs of certain manors, copyhold estates of such manors pass by the last will and testament of the copyhold tenants thereof, declaring the uses of surrenders made for that purpose: And whereas much inconvenience has arisen, from the necessity of making such surrenders: For remedy whereof, may," &c. "and be it enacted" by, &c. "that in all cases where by the custom of any manor in England or Ireland any *copyhold tenant* (a) of such manor may by his or her last will and testament dispose of or appoint his or her copyhold tenements, the same having been surrendered to such uses as should be declared by such last will and testament, every disposition or charge made or to be made by any such last will and testament, by any person who shall die after the passing of this act, of any such copyhold tenements, or of any right, title, or interest in or to the same, shall be as valid and effectual to all intents and purposes, although no surrender shall have been made to the use of the last will and testament of such person, as the same would have been if a surrender had been made to the use of such will."

§. 2. "Provided also, and it is hereby further enacted, that no person entitled, or claiming to be entitled, to copyhold lands, tenements, or hereditaments, in consequence of any testamentary disposition, shall be entitled to be admitted to the same by virtue of any thing in this act contained, except upon payment of all such stamp

(a) An unadmitted customary heir pt. 1. p. 331. And see 1 Myl. and is within the meaning of the act. *Ante*, Keene 456.

duties (a), fees, and sums of money as would have been lawfully due and payable in respect of the surrendering of such copyhold lands, tenements, or hereditaments, to the use of such will, or in respect of the presenting, registering or inrolling such surrender, had the same lands, tenements and hereditaments been surrendered to the use of the will of the person so disposing of the same; all such stamp duties, fees, or sums of money as aforesaid, to be paid in addition to the stamp duties, fees or sums of money due or payable on the admission of such person so entitled or claiming to be entitled to the same copyhold lands, tenements, or hereditaments, and the stamp duties to be affixed to the copy of the admission."

§. 3. "Provided always, and it is hereby enacted and declared, that nothing in this act contained shall be construed, deemed, or taken, at law or in equity, to render invalid or ineffectual any devise or disposition of any copyhold lands, tenements or hereditaments, or of any right, title, or interest in or to copyhold lands, tenements or hereditaments, which would be valid or effectual if this act had not been made; or to render valid and effectual any devise or disposition of any copyhold lands, tenements, or hereditaments, or of any right, title or interest in or to any copyhold lands, tenements or hereditaments, which would be invalid or ineffectual if a surrender had been made to the use of the last will and testament of the person attempting to dispose of the same by will; any thing hereinbefore contained to the contrary notwithstanding."

55 GEO. III. c. 147.

"An Act for enabling spiritual persons to exchange the Parsonage or Glebe Houses or Glebe Lands, belonging to their Benefices, for others of greater value, or more conveniently situated for their residence and occupation; and for annexing such houses and lands, so taken in exchange, to such benefices as parsonage or glebe houses and glebe lands, and for purchasing and annexing lands to become glebe in certain cases; and for other purposes."

"Whereas in divers ecclesiastical benefices, perpetual curacies and parochial chapelries, the glebe lands, or some part or parts thereof, lie at a distance from and are inconvenient to be occupied with the par-

(a) *Ante*, pt. 1. p. 263 n. (a).

sonage or glebe houses ; and the parsonage or glebe houses of divers benefices, perpetual curacies and parochial chapelries, are mean and inconvenient ; and it would often tend much to the comfort and accommodation, and thereby also to promote the residence of the incumbents of such benefices, perpetual curacies and parochial chapelries, if the glebe lands and parsonage or glebe houses thereof could be by law exchanged for other lands of greater value, or more conveniently situated, and for other and more convenient houses: And whereas there are also divers lands and tenements which have been accustomed to be granted or demised by the incumbent for the time being of certain ecclesiastical benefices, perpetual curacies or parochial chapelries, for one, two or three lives, or for a term or terms of years absolutely or determinable on a life or lives, *as being holden by copy of court roll or otherwise, under some manor or lordship belonging to such benefices, perpetual curacies or parochial chapelries,* and it would therefore be advantageous to the said benefices if the same lands and tenements, or some of them, or some part thereof, were annexed as glebe to the living or benefice to which they belong ; May it therefore please," &c. " that from and after the passing of this act, it shall be lawful for the parson, vicar, or other incumbent for the time being, of any ecclesiastical benefice, perpetual curacy or parochial chapelry, by deed indented, and to be registered in manner hereinafter mentioned, and with the consent of the patron of such benefice, perpetual curacy or parochial chapelry, and of the bishop of the diocese wherein the same is locally situate, (to be signified as hereinafter is mentioned,) to grant and convey to any person or persons, and to his, her or their heirs and assigns, or otherwise, as he or they shall direct or appoint, or to any corporation, sole or aggregate, and his or their successors, the parsonage or glebe house, and the outbuildings, yards, gardens, and appurtenances thereof, and the glebe lands, and any pastures, feedings or rights of common or way appendant, appurtenant or in gross, or any or either of such house, outbuildings, yards, gardens and glebe lands, pastures, feedings, or rights of common or way, or any part or parts thereof, belonging to any such benefice, perpetual curacy, or parochial chapelry, in lieu of and in exchange for any house, outbuildings, yards, gardens and appurtenances, and any lands, or any or either of them, whether lying within the local limits of such benefice, perpetual curacy or parochial chapelry or not, but so as that the same be situate conveniently for actual residence or occupation by the incumbent thereof, the same also being of greater value, or more

conveniently situated than the premises so to be given in exchange, and being of freehold tenure, *or being copyhold of inheritance, or for life or lives, holden of any manor belonging to the same benefice*, and also for the parson, vicar, or incumbent for the time being, of the same benefice, perpetual curacy or parochial chapelry, by the same or a like deed, and with the like consent, and testified as aforesaid, to accept and take in exchange to him and his successors for ever, from any person or persons, or corporation sole or aggregate, any other house, outbuildings, yards, gardens, easements and appurtenances, and any other lands, or any or either of such house, outbuildings, yards, gardens, lands, easements and appurtenances, the same respectively being of freehold tenure, *or being copyhold of inheritance, or for life or lives, holden of any manor belonging to the same benefice*, and being of greater value or more conveniently situated, in lieu of and in exchange for such parsonage or glebe house, outbuildings, yards, gardens, glebe lands and appurtenances, and such pastures, feedings and rights of common or way, or any or either of them, so to be granted and conveyed, and which said house, outbuildings, yards, gardens, lands, and appurtenances so to be accepted and taken in exchange, by any parson, vicar, or other incumbent, shall for ever, from and after such grant and conveyance thereof, be the parsonage and glebe house, and glebe lands and premises of the said benefice, perpetual curacy or parochial chapelry, to all intents and purposes whatsoever, and shall become annexed to the said benefice, perpetual curacy or parochial chapelry, to all intents and purposes whatsoever, and be holden and enjoyed by such incumbent and his successors accordingly, without any license or writ of *ad quod damnum*; and that *the whole, or any part or parts of the said house, outbuildings, lands, and premises so to be annexed, which before such annexation were of copyhold tenure, shall for ever, from and after such annexation, become and be of freehold tenure*, the statute of mortmain, or any other statute or law to the contrary notwithstanding: Provided always, that nothing in this act contained shall extend, or be construed to authorise the granting or conveying in exchange by any parson, vicar or other incumbent, either at one and the same time, and by one and the same incumbent, or at different times, and by several incumbents, and in several portions, any greater quantity in the whole than thirty statute acres of the glebe lands of any benefice, perpetual curacy or parochial chapelry: Provided also, that in all cases when such exchange shall be made by any owner or owners having any less estate or interest than in *fee*

simple of or in the messuage, buildings, lands and premises so to be by him, her or them granted or conveyed in exchange, or being any corporation aggregate or sole, or person or persons under any legal disability, the parsonage house, outbuildings, and glebe lands respectively, to be so taken in exchange as aforesaid, shall at the time of making such exchange be of equal value with, or not of less value than the said messuage, buildings, lands and premises respectively, so to be granted and conveyed in exchange to such parson, vicar, or other incumbent."

§. 4. "And be it further enacted, that from and after the passing of this act, it shall and may be lawful to and for the parson, vicar, or other incumbent of any ecclesiastical benefice, perpetual curacy or parochial chapelry, of or to which benefice, perpetual curacy or parochial chapelry, any manor or lordship is parcel or appurtenant, and as parcel of or belonging to which manor or lordship any lands or tenements are or have been usually granted or demised, or grantable or demisable *by copy of court roll*, or otherwise, for any life or lives, or for any term or number of years absolutely, or determinable on any life or lives, by deed indented, (and to be registered as hereinafter mentioned,) with the consent of the patron and bishop, (to be testified as hereinafter mentioned,) to annex to the said benefice, perpetual curacy or parochial chapelry, as and for glebe land, or parsonage or glebe house or houses and buildings thereof, all or any part or parts of such lands or tenements, whether lying within the local limits of such benefice, perpetual curacy or parochial chapelry, or not, and that from and after such annexation, the said lands and tenements so annexed, shall cease to be thereafter grantable or demisable by any incumbent of the said benefice, perpetual curacy or parochial chapelry, (otherwise than as glebe lands are or shall be by law grantable or demisable,) but shall from thenceforth be and become, and be deemed and taken to be the glebe lands and parsonage or glebe house or houses of and annexed to such benefice, perpetual curacy or parochial chapelry, for ever, to all intents and purposes whatsoever, without any license or writ of *ad quod damnum*; the statute of mortmain, or any other statute or law to the contrary notwithstanding: Provided always, that no such annexation shall in any wise annul, determine, or affect any grant or demise then previously made and actually existing of the said lands and tenements so to be annexed as last aforesaid.

§. 6. "And whereas an act was passed in the seventeenth year of the reign of his present Majesty, intituled, an act to promote the residence

of the parochial clergy, by making provision for the more speedy and effectual building, rebuilding, repairing, or purchasing houses, and other necessary buildings and tenements, for the use of their benefices: And whereas one other act was passed in the twenty-first year of the reign of his present Majesty, intituled, an act to explain and amend an act made in the seventeenth year of the reign of his present Majesty, intituled, an act to promote the residence of the parochial clergy, by making provision for the more speedy and effectual building, rebuilding, repairing, or purchasing houses, and other necessary buildings and tenements, for the use of their benefices: And whereas there are many ecclesiastical benefices, perpetual curacies and parochial chapelries, to which no glebe land, or only a small portion of glebe land is belonging; and it is therefore expedient to enable the making provision by purchase, for the annexation of glebe land to such benefices, perpetual curacies, and parochial chapelries; Be it therefore further enacted, that, from and after the passing of this act, it shall be lawful for the parson, vicar, or other incumbent for the time being, of any ecclesiastical benefice, perpetual curacy or parochial chapelry, the existing glebe whereof shall not exceed five statute acres, with the consent of the patron and bishop, to be signified as hereinafter mentioned, to purchase any lands not exceeding in the whole twenty statute acres, with the necessary outbuildings thereon, whether being within the local limits of the said benefice, perpetual curacy or parochial chapelry, or not, but so as that the same be situate conveniently for building a parsonage or a glebe house, and outbuildings, and for gardens and glebe thereof, or for any of the said purposes, and for actual residence and occupation by the incumbent thereof, such land being of freehold tenure, *or being copyhold of inheritance, or for life or lives, holden of any manor or lordship belonging to the same benefice, perpetual curacy or parochial chapelry*; and which lands so purchased shall for ever, from and after the grant and conveyance thereof, be and become annexed to and glebe of such benefice, perpetual curacy or parochial chapelry, to all intents and purposes whatsoever, and be holden and enjoyed by such incumbent, and his successors accordingly, without any license or writ of *ad quod damnum*; and *the whole or any part or parts of the said lands, which before such annexation, were or was of copyhold tenure, shall for ever, from and after such annexation, become and be of freehold tenure*; the statute of mortmain or any other statute or law to the contrary notwithstanding."

[§. 7. Authorises such parson, vicar, or other incumbent, with the consent of the patron and bishop, to borrow (beyond the monies authorised to be borrowed by the said act of the 17th Geo. 3.) such sum as should be certified as therein mentioned to be the value of the said lands at the time of the purchase thereof, not exceeding two years' clear income and produce of such benefice, &c., after deducting all taxes and other outgoings (except the salary to the assistant curate, if any); and to mortgage the tithes and other profits of such benefice, &c. in the manner therein prescribed, for securing the repayment of the money so to be borrowed, with interest.]

[§. 12. Empowers owners, whether corporations sole or aggregate, tenants in fee simple, fee tail or for life, &c. to convey in lieu and in exchange for any parsonage house, &c., or to sell and convey to such parson, &c., any lands not exceeding twenty statute acres, with the necessary outbuildings thereon, for such sum as should be certified as thereafter mentioned to be the value thereof, and directs the payment into the bank of the purchase monies for estates sold by any corporation, infants or other incapacitated persons.]

[§. 13. Restrains corporations, tenants in tail, &c. from selling or conveying (except by way of exchange) any lands or grounds exceeding five statute acres.]

[§. 14, 15, and 16. Require a certain notice to be given of the intention to make such exchanges or purchases; and plans and valuations to be made of the lands, &c. purchased, or agreed to be given and taken in exchange, to enable the bishop to judge of the expediency of such sales or exchanges; and also that a commission of inquiry be issued by the bishop, on receiving such plans, to not less than six persons, three to be beneficed clergymen, resident in the neighbourhood of the lands, &c. exchanged or purchased, and one a barrister of at least three years' standing, to be named by the senior judge in the last preceding commission of *Nisi Prius* for the particular county, &c.]

56 GEO. III. c. 52.

“ An Act to amend and render more effectual an act passed in the last session of Parliament for enabling Spiritual Persons to exchange their Parsonage Houses or glebe lands, and for other purposes therein mentioned.”

“Whereas an act was passed in the last Session of Parliament, intituled, an act,” &c. [sets forth the title of the last mentioned act.]

“ And whereas it is expedient to authorize the incumbents of benefices, perpetual curacies and parochial chapelries to apply the monies arising from the sale of any timber cut from the glebe or other lands of their respective benefices, perpetual curacies or parochial chapelries, towards the purposes of the said recited act: May it therefore please your Majesty that it may be enacted; and be it enacted,” &c. “ that it shall and may be lawful for the incumbent of any benefice, perpetual curacy or parochial chapelry, with the consent of the patron of such benefice, perpetual curacy or parochial chapelry, and of the bishop of the diocese wherein the same is locally situate, or of the archbishop or bishop to whom the peculiars, wherein such benefice, perpetual curacy or parochial chapelry is situate, shall belong, (such consent to be signified in manner as in the said recited act is mentioned,) to pay and apply the monies to arise by sale of any timber cut and sold from the glebe lands of such benefice, perpetual curacy or parochial chapelry, or from any other land, *whether copyhold holden under any manor of such benefice, perpetual curacy, or parochial chapelry, or otherwise*, the timber whereof belongs to such benefice, perpetual curacy or parochial chapelry, either for equality of exchange, or towards and in part of equality of exchange, or for the price or purchase money, or towards and in part of the price or purchase money of any house, outbuildings, yards, gardens and appurtenances, or any lands, or any or either of them, by the said recited act authorised to be taken in exchange or to be purchased, and from and after such exchange or purchase to be annexed to, and to be and become the parsonage and glebe house and glebe lands and premises of such benefice, perpetual curacy or parochial chapelry, as in the said recited act is mentioned.”

§. 2. “ And whereas it is by the said recited act enacted, that the bishop shall, in cases of exchange and purchase under the said act, issue a commission of enquiry for the purposes therein mentioned, to be directed to such persons as are therein described, and of whom one shall be a barrister of three years' standing at the least, to be named by the senior judge of *Nisi Prius* for the county in which the benefice, perpetual curacy, or parochial chapelry, whereto it shall be proposed to annex any buildings or land by exchange or purchase under the said act, shall be situate; but inasmuch as the nomination of such barrister by a judge of *Nisi Prius* is not applicable to the county palatine of Chester, nor to the principality of Wales; Be it therefore enacted, that where any exchange or purchase shall be made or be proposed to be made under the authority of the said act

in any benefice, perpetual curacy, or parochial chapelry, situate within the said county palatine of Chester, or within the said principality of Wales, such barrister shall be named by the chief justice for the time being of the said county palatine of Chester, or by the justice, or, in case of his absence, the other justice of the great sessions for those counties within the said principality of Wales, within which said county palatine or repective counties of the said principality of Wales, the said benefice, perpetual curacy, or parochial chapelry, shall be situate."

6 GEO. IV., c. 8.

"An Act to amend and render more effectual an act passed in the 55th year of the reign of his late Majesty, for enabling spiritual persons to exchange their parsonage houses or glebe lands; and for other purposes therein mentioned." (a)

'Whereas an act was passed in the 55th year of the reign of his late Majesty King George the Third, intituled An Act,' &c., [ante p. (278).] 'And whereas it is by the said recited act enacted, That the bishop shall, in cases of exchange and purchase, under the said act, issue a commission of enquiry, for the purposes therein mentioned, to be directed to such persons as are therein described, and of whom one shall be a barrister of three years' standing at the least, to be named by the senior judge of *Nisi Prius* for the county in which the benefice, perpetual curacy, or parochial chapelry, whereto it shall be proposed to annex any buildings or land by exchange or purchase under the said act shall be situate; but inasmuch as the nomination of such barrister by a judge of *Nisi Prius* is not applicable to the counties palatine of Lancaster and Durham; Be it therefore enacted, &c., "That where any exchange or purchase shall be made, or proposed to be made, under the authority of the said act, in any benefice, perpetual curacy, or parochial chapelry, situate within the said counties palatine of Lancaster or Durham,

(a) And see 7 Geo. 4. c. 66. 'to render more effectual the several acts now in force to promote the residence of the parochial clergy, by making provision for purchasing houses and other necessary buildings for the use of their benefices,' by which (after reciting, among

other acts of parliament, the above acts of 55 G. 3. c. 147, 56 G. 3. c. 52. and 6 G. 4. c. 8.) corporations and persons under disability or incapacity are authorised to sell messuages, lands, &c. for the purposes of the therein recited acts.

such barrister shall be named by the chief justice or senior judge for the time being of the Court of Common Pleas for the said counties palatine respectively."

§. 2. ' And whereas it is expedient that the incumbents of benefices, perpetual curacies, and parochial chapelries, should be enabled to exchange the glebe lands belonging to their benefices, perpetual curacies, or parochial chapelries, to a greater amount than thirty statute acres;' " Be it therefore enacted, That from and after the passing of this act, the power to exchange glebe lands for others of equal value, which is given to parsons, vicars, and other incumbents, by the above recited act, passed in the fifty-fifth year of the reign of his late Majesty King George the Third, be extended to any number of statute acres, but subject to all the provisions, conditions and restrictions contained in the above-recited act, and also to those in another act passed in the fifty-sixth year of his late Majesty's reign, intituled An Act," &c. [ante p. (283).]

§. 3. ' And whereas by the said recited act of the fifty-fifth year of the reign of his late Majesty King George the Third, the powers of exchange thereby given are limited to such houses, outbuildings, yards, gardens and appurtenances and lands, to be accepted and taken in exchange by the spiritual persons therein named, as are of freehold tenure, or *copyhold* of inheritance, or for life or lives, holden of any manor belonging to the benefice in respect of which any such exchange is intended to be made: And whereas it may happen that such exchanges may sometimes be beneficially made where the lands or tenements so to be accepted and taken in exchange are *copyhold* of inheritance holden of some manor not belonging to the benefice in respect of which such exchange is intended, and without injury to the lord or lords, lady or ladies of such manor;' " Be it therefore enacted, that from and after the passing of this act, it shall and may be lawful for the parson, vicar or other incumbent for the time being of any ecclesiastical benefice, perpetual curacy, or parochial chapelry, to grant and convey, in the manner, and by and under the several powers, provisions, conditions and restrictions contained in the said act, and in the said act of the fifty-sixth year of the reign of his said Majesty, and in this act, to any such person or persons, or corporation, as in the said first mentioned act are described, any such lands or tenements as are described in the same act, belonging to his benefice, in lieu of and in exchange for any lands or tenements of the description mentioned in the said first mentioned act, as those which are thereby authorised to

be accepted and taken in exchange by any such parson, vicar or other incumbent, although such last mentioned lands or tenements may be copyhold of inheritance holden of a manor not belonging to such ecclesiastical benefice, perpetual curacy, or parochial chapelry: Provided always, that no such exchange be made without the consent of the lord of the manor of which the lands to be taken in exchange are holden: Provided always that from and immediately after such conveyance, the lands or tenements accepted and taken in exchange, by any such parson, vicar or other incumbent, shall become and be of freehold tenure, and the lands or tenements by him granted and conveyed, and which before such conveyance belonged to his benefice, perpetual curacy or parochial chapelry, shall become copyhold of the same manor, and subject to the same rents, fines, services, customs and manorial rights and properties to all intents and purposes, as the lands or tenements so to be accepted and taken in exchange were subject to before the making of such exchange: Provided always, that from and after the passing of this act, three calendar months' notice shall be sufficient for the purpose of any exchange or purchase, instead of six calendar months, as by the said act of the fifty-fifth year of the reign of his said late Majesty is required."

[*Vide* 1 & 2 Geo. IV. c. 92, intituled "An act to authorise the exchange of lands, tenements or hereditaments, subject to trusts for charitable purposes, for other lands, tenements, or hereditaments."]

1 & 2 GEORGE IV. c. 93.

"An Act for vesting all Estates and Property, occupied by or for the Naval Service of this kingdom, in the Principal Officers of his Majesty's Navy, and for granting certain powers to the said Principal Officers and Commissioners."

"Whereas divers manors, messuages, lands, tenements and hereditaments, have been at various times purchased for the use of the several departments, of or belonging to the naval service of this kingdom, and conveyed to several different persons in trust for his Majesty and his royal predecessors, and his and their heirs and successors, and the same have been placed under the charge of the said several departments respectively: And whereas it may be expedient that such parts of the said manors, messuages, lands, tenements, and hereditaments,

as may not be wanted for the use of the said service, should from time to time be sold and disposed of: And whereas for effectuating such sales, it is necessary that all and every the said manors, messuages, lands, tenements and hereditaments, so already purchased, or used and occupied by or for the said service, and all other messuages, lands, tenements, and hereditaments that may be hereafter purchased, or in any manner used and occupied by or for the said service, should be vested in the principal officers and commissioners of his Majesty's navy for the time being; Be it therefore enacted," &c., "that immediately from and after the passing of this act, all manors, messuages, lands, tenements and hereditaments, which have been heretofore purchased, or taken by or in the name of any person or persons, in trust for his Majesty or his royal predecessors, and his or their heirs and successors, for the use of all or any of the several departments of or belonging to the naval service of this kingdom, by whatever mode of conveyance the same shall have been so purchased or taken, either in fee or for any life or lives, or any term or terms of years, or any other or lesser interest, and all erections and buildings which now are or which shall or may be hereafter erected and built thereon, together with the rights, members, easements and appurtenances to the same respectively belonging (*other than and except such messuages, lands, tenements and hereditaments as may be of copyhold tenure,*) shall be and become and remain and continue vested in the principal officers and commissioners of his Majesty's navy for the time being, and their successors in the said office, according to the respective nature and quality of the said manors, messuages, lands, tenements and hereditaments, and the several estates and interests of and in the same hereditaments respectively, in trust for his Majesty, his heirs and successors, for the service of the said several departments of the said naval service, or for such other public service or services as his said Majesty, his heirs or successors, shall from time to time by any order in council be pleased to direct."

§. 4. "And be it further enacted, that it shall and may be lawful for the said principal officers and commissioners of his Majesty's navy for the time being, or any three or more of them, by and under the authority of the said Lord High Admiral or commissioners for executing the said office of Lord High Admiral for the time being, or any three or more of them, to sell, exchange or in any manner dispose of, or let or demise, as well any of the freehold and leasehold manors, messuages, lands, tenements or hereditaments respectively, which shall

be vested in them, under and by virtue of this present act, with their respective appurtenances, as also any of the *copyhold* messuages, lands, tenements and hereditaments, which shall have been surrendered to and vested in any person or persons, and his, her or their heirs and assigns, in trust for his said Majesty or any of his predecessors, his or their heirs and successors, for the use of the said several departments of the said naval service or any of them, either by public auction or private contract ; and as to the said freehold and leasehold manors, messuages, lands, tenements and hereditaments, that it shall and may be lawful to and for the said principal officers and commissioners or any three or more of them, and as to the said *copyhold* messuages, lands, tenements, and hereditaments, that it shall and may be lawful to and for the said person or persons, in whom the same shall be so vested as aforesaid, in due form of law, to convey, surrender, assign or make over, or to grant or demise the same respectively, as the case may require, to any person or persons who shall be willing to purchase or take the same respectively ; and also to do any other act, matter, or thing in relation to any such manors, messuages, lands, tenements and hereditaments which shall by the said Lord High Admiral, or the commissioners for executing the office of Lord High Admiral, or by the said principal officers and commissioners of his Majesty's navy, be deemed beneficial for the public service in relation thereto, or for the better management thereof, which might be done by any person or persons having a like interest in any such like manors, messuages, lands, tenements or hereditaments."

§. 5. " And be it further enacted, that the monies to arise and be produced by the sale or exchange of any of the said manors, messuages, lands, tenements or hereditaments, which shall be sold or exchanged under the provisions of this present act, shall be paid by the respective purchaser or purchasers thereof, or the person or persons making such exchange, unto the treasurer of his Majesty's navy for the time being, or to such other person or persons as the said principal officers and commissioners of his Majesty's navy for the time being, or any three or more of them, shall direct or appoint to receive the same, for the use of his Majesty, his heirs and successors ; and that the receipt of the said principal officers and commissioners or of any three or more of them, or of the said treasurer for such monies, (such receipt to be indorsed on every such conveyance, surrender or assignment as aforesaid,) shall effectually discharge the purchaser or purchasers, or person or persons by whom or on whose account the same shall be paid."

§. 6. " And be it further enacted, that immediately from and after

the payment of such purchase money, and the execution of every such conveyance, *surrender* and assignment as aforesaid, the purchaser or purchasers therein named, shall be deemed and adjudged to stand seised and possessed of the manors, messuages, lands, tenements and hereditaments which shall be so purchased by and conveyed, *surrendered*, assigned, or made over to him, her or them respectively, freed and absolutely discharged of and from all, and all manner of prior estates, leases, rights, titles, interests, charges, incumbrances, and demands whatsoever, which can or may be had, made or set up in, to, out of, or upon or in respect of the same manors, messuages, lands, tenements, or hereditaments, by any person or persons whomsoever, on any account whatsoever (save and except such estates, leases, rights, titles, interests, charges, incumbrances, claims, and demands, as in any such conveyance, surrender or assignment shall be excepted)."

§. 7. " Provided always, and be it further enacted, that in case any person or persons shall have any just and legal or equitable right to any of the manors, messuages, lands, tenements and hereditaments, which shall be so sold and conveyed as aforesaid, or to any part or parts thereof, or to any charge, incumbrance or demand affecting the same, and (not being under any of the disabilities hereinafter mentioned) shall *within five years* next after every such right or claim shall by law or equity accrue to, or become vested in him, her, or them respectively, or being *femes covert*, (except *femes covert* whose estates have been or may be sold under the authority of this or any other act of Parliament for that purpose,) persons within the age of twenty-one years, in prison or out of this kingdom, or not of whole mind at the time of such sale and conveyance as aforesaid, shall, within five years next after they shall respectively come and be discoverd, at their full age of twenty-one years, out of prison, within this land, or of whole mind, make out and establish such right or claim to the satisfaction of the principal officers and commissioners of his Majesty's navy for the time being, then and in such case the said principal officers and commissioners shall make or cause to be made a fair and reasonable compensation or satisfaction for every such right and claim so made out and established as aforesaid; but such compensation or satisfaction shall not in any case exceed the amount of the purchase-money or purchase-mones which shall have been paid to and received by the said principal officers and commissioners, or the said treasurer, for the manors, messuages, lands, tenements and hereditaments in respect whereof such right or claim shall be so made out as aforesaid, or a proportional part thereof, exclusive of

the value of any buildings or improvements which shall have been erected or made thereon, for the use of any of the departments of the said naval service."

§. 10. "And be it further enacted, that it shall be lawful for all bodies politic or corporate, ecclesiastical or civil, and all feoffees or trustees for charitable or other purposes, and for all tenants for life and tenants in tail, and for the husbands, guardians, trustees, committees, curators, or attornies of such of the owners or proprietors of, or persons interested in any manors, messuages, lands, tenements or hereditaments which have been or may be hereafter agreed to be taken or purchased for the use of the several departments of the said naval service, or any of them, as shall be *femes covert*, infants, lunatics, idiots, or persons beyond the seas, or otherwise incapable of acting for themselves, to contract and agree with the said principal officers and commissioners of his Majesty's navy for the time being, either *for the absolute sale or exchange of any* such freehold or *copyhold* manors, messuages, lands, tenements or hereditaments, or *for the enfranchisement of any copyhold* messuages, lands or hereditaments, or sale of any reversion after any estate or estates for lives or years, or for the grant of any lease either for life or lives, or for any term of years certain herein, or for such period as the exigency of the public service shall require, and to convey, *surrender*, demise or grant the same accordingly; and all contracts, sales, conveyances, enfranchisements, surrenders, leases and agreements, which shall be made in pursuance hereof, shall be valid and effectual in law to all intents and purposes whatsoever, and shall be a complete bar to all dower and claims of dower, estates tail, and other estates, rights, titles, trusts, and interests whatsoever."

6 GEO. IV. c. 16.

"An Act to amend the laws relating to Bankrupts."

[The first sect. repeals the act of 5 Geo. 4. c. 98, and all prior statutes relating to bankrupts.—The second sect. explains what persons are and are not to be deemed traders within the meaning of the act.—The third sect. is explanatory of the deeds and matters by which traders shall be deemed to have committed an act of bankruptcy.—See also §. 8.—And note that by the fifth sect. lying in prison for twenty-one days, or escaping out of prison, are declared to be acts of bankruptcy.]

§. 4. "And be it enacted that where any such trader shall, after this act shall have come into effect, execute any conveyance or assignment,

by deed, to a trustee or trustees, of all his estate and effects, for the benefit of all the creditors of such trader, the execution of such deed shall not be deemed an act of bankruptcy, unless a commission issue against such trader within six calendar months from the execution thereof by such trader: Provided that such deed shall be executed by every such trustee within fifteen days after the execution thereof by the said trader, and that the execution by such trader and by every such trustee be attested by an attorney or solicitor; and that notice be given within two months after the execution thereof by such trader, in case such trader reside in London or within forty miles thereof, in the London Gazette, and also in two London daily newspapers; and in case such trader does not reside within forty miles of London, then in the London Gazette, and also in one London daily newspaper, and one provincial newspaper published near to such trader's residence; and such notice shall contain the date and execution of such deed, and the name and place of abode respectively of every such trustee and of such attorney or solicitor."

§. 6. "And be it enacted that if any such trader shall file in the office of the Lord Chancellor's secretary of bankrupts a declaration in writing signed by such trader, and attested by an attorney or solicitor, that he is insolvent or unable to meet his engagements, the said secretary of bankrupts or his deputy shall sign a memorandum that such declaration hath been filed, which memorandum shall be authority for the printer of the London Gazette to insert an advertisement of such declaration therein; and every such declaration shall after such advertisement inserted as aforesaid, be an act of bankruptcy committed by such trader at the time when such declaration was filed; but no commission shall issue thereupon unless it be sued out within two calendar months next after the insertion of such advertisement, and unless such advertisement shall have been inserted in the London Gazette within eight days after such declaration was filed; and no docket shall be struck upon such act of bankruptcy before the expiration of four days next after insertion of such advertisement in case such commission is to be executed in London, or before the expiration of eight days next after such insertion, in case such commission is to be executed in the country; and the Gazette containing such advertisement shall be evidence to be received of such declaration having been filed."

§. 64. "And be it enacted, that the commissioners shall, by deed indented and enrolled in any of his Majesty's courts of record, convey to the said assignees, for the benefit of the creditors as aforesaid, all lands,

tenements and hereditaments, *except copy or customaryhold* in England, Scotland, Ireland, or in any part of the Dominions, Plantations, or Colonies belonging to his Majesty, to which any bankrupt is entitled, and all interest to which such bankrupt is entitled in any of such lands, tenements or hereditaments, and of which he might according to the laws of the several countries, dominions, plantations, or colonies have disposed, and all such lands, tenements and hereditaments, as he shall purchase or shall descend, be devised, revert to, or come to such bankrupt before he shall have obtained his certificate, and all deeds, papers and writings respecting the same, and every such deed shall be valid against the bankrupt, and against all persons claiming under him: Provided, that where according to the laws of any such plantation or colony such deed would require registration, enrolment, or recording, the same shall be so registered, enrolled or recorded, according to the laws of such plantation or colony, and no such deed shall invalidate the title of any purchaser for valuable consideration prior to such registration, enrolment or recording, without notice that the commission has issued."

§. 65. " And be it enacted, that the commissioners shall by deed, indented and enrolled as aforesaid, make sale for the benefit of the creditors as aforesaid of any lands tenements and hereditaments, situate either in England or Ireland, whereof the bankrupt is seised of any estate tail in possession, reversion or remainder, and whereof no reversion or remainder is in the Crown, the gift or provision of the Crown, and every such deed shall be good against the said bankrupt and the issue of his body, and against all persons claiming under him after he became bankrupt, and against all persons whom the said bankrupt by fine, common recovery or any other means, might cut off or debar from any remainder, reversion or other interest, in or out of any of the said lands, tenements and hereditaments." (a)

§. 66. " And be it enacted, that the Lord Chancellor may, upon petition, order any conveyance or assignment either of the real or personal estate of the bankrupt, made either to assignees appointed by the commissioners or chosen by the creditors, and any enrolment thereof, to be vacated, provided that no title of any purchaser under any conveyance prior to such order be thereby affected, and that no estate previously barred be thereby revived; and the Lord Chancellor may order the commissioners to execute a new assignment or assignments of the debts and effects unreceived and not disposed of by the then assignee or

(a) N. B. This clause is repealed by 3 or fiat issued on or before the 31st & 4 W. 4. c. 74. except the commission Dec. 1833.

assignees to any other person or persons to be chosen by the creditors as aforesaid, or to execute a new conveyance of the real estate unsold or not conveyed to such person or persons, and in such manner as the Lord Chancellor shall direct; and if such new assignment shall be ordered, the debts and personal estate of the bankrupt shall be thereby vested in such new assignees, and it shall be lawful for them to sue for the same, and to discharge any action or suit, or to give any acquittance for such debts, as effectually as the former assignees might have done; and the commissioners shall, in the two London Gazettes next after the removal of such assignee or assignees, and such new appointment as aforesaid, cause advertisements to be inserted giving notice of such removal and appointment, and directing persons indebted to the bankrupt's estate not to pay any debt to the assignee or assignees so removed; and if such new conveyance as aforesaid shall be ordered as aforesaid, it shall be valid without any conveyance from any former assignee or assignees, or his or their heirs or assigns: Provided that the order so made for vacating any bargain and sale be enrolled; and any bargain and sale to be executed in pursuance thereof shall be enrolled in the same court as the first bargain and sale of the same estate was enrolled."

§. 68. "And be it enacted that the commissioners shall have power, by deed indented and inrolled in any of his Majesty's Courts of Record, to make sale for the benefit of the creditors, of any *copyhold* or *customary hold* lands, or of any interest to which any bankrupt is entitled therein, and thereby to entitle or authorise any person or persons on their behalf to surrender the same for the purpose of any purchaser or purchasers being admitted thereto."

§. 69. "And be it enacted, that every person to whom any sale of copyhold or customary lands or tenements shall be made by the commissioners, shall, before he enter into or take any profit of the same, agree and compound with the lords of the manors of whom the same shall be holden, for fines dues and other services as theretofore have been usually paid for the same, and thereupon the said lords shall at the next or any subsequent court to be holden for the said manors, grant unto such vendee, upon request, the said copy or customary lands or tenements for such estate or interest as shall have been so sold to him as aforesaid, reserving the ancient rents, customs and services, and shall admit him tenant of the same."

[The 73rd sect. enacts that all conveyances by a bankrupt being at the time insolvent (except on the marriage of his children or for valuable consideration) shall be void against any sale by the commissioners.]

§. 77. "And be it enacted, that all powers vested in any bankrupt which he might legally execute for his own benefit, (except the right of nomination to any vacant ecclesiastical benefice,) may be executed by the assignees for the benefit of the creditors, in such manner as the bankrupt might have executed the same."

§. 78. "And be it enacted, that it shall be lawful for the Lord Chancellor upon the petition of the assignees or of any purchaser from them, of any part of the bankrupt's estate, if such bankrupt shall not try the validity of the commission, or if there shall have been a verdict at law establishing its validity, to order the bankrupt to join in any conveyance of such estate, or any part thereof; and if he shall not execute such conveyance within the time directed by the order, such bankrupt and all persons claiming under him shall be stopped from objecting to the validity of such conveyance; and all estate, right or title, which such bankrupt had therein, shall be as effectually barred by such order as if such conveyance had been executed by him."

§. 79. [Authorises the Lord Chancellor where a trustee of real or personal estate becomes bankrupt, to order a conveyance or assignment to be made by the assignees, &c., to other trustees.]

§. 81. "And be it enacted, that all conveyances by, and all contracts and other dealings and transactions by and with any bankrupt *bonâ fide* made and entered into more than two calendar months before the date and issuing of the commission against him, and all executions and attachments against the lands and tenements or goods and chattels of such bankrupt, *bonâ fide* executed or levied more than two calendar months before the issuing of such commission, shall be valid notwithstanding any prior act of bankruptcy by him committed: Provided the person or persons so dealing with such bankrupt, or at whose suit or on whose account such execution or attachment shall have issued, had not at the time of such conveyance, contract, dealing or transaction, or at the time of executing or levying such execution or attachment, notice of any prior act of bankruptcy by him committed (a): Provided also, that where a commission has been superseded, if any other commission shall issue against any person or persons comprised in such first commission, within two calendar months next after it shall have been superseded, no such conveyance, contract, dealing or

(a) In *Read v. Ward*, 2 Eq. Abr. 119, 7 Vin. 119, 123, notice of the act of bankruptcy was held to take away the benefit of the then existing statutes. And see *ex parte Mountford, Re Ponten*, 1 Mont. Ca. in Bankruptcy 81.

transaction, execution or attachment, shall be valid, unless made, entered into, executed or levied more than two calendar months before the issuing the first commission."

[The 82d sect. enacts that all payments by and to a bankrupt before the date of the commission shall be deemed valid, if the party had not notice of the act of bankruptcy.]

§. 83. "And be it enacted, that the issuing of a commission shall be deemed notice of a prior act of bankruptcy, (if an act of bankruptcy had been actually committed before the issuing the commission,) if the adjudication of the person or persons against whom such commission has issued shall have been notified in the London Gazette, and the person or persons to be affected by such notice may reasonably be presumed to have seen the same."

[By the 85th sect. bodies corporate and public companies shall be deemed to have notice through any accredited agent.]

§. 86. "And be it enacted, that no purchase from any bankrupt *bonâ fide* and for valuable consideration, where the purchaser had notice at the time of such purchase of an act of bankruptcy by such bankrupt committed, shall be impeached by reason thereof, unless the commission against such bankrupt shall have been sued out within twelve calendar months after such act of bankruptcy." (a)

§. 87. And be it enacted, that no title to any real or personal estate old under any commission, or under any order in bankruptcy, shall be impeached by the bankrupt, or any person claiming under him, in respect of any defect in the suing out of the commission, or in any of the proceedings under the same, unless the bankrupt shall have commenced proceedings to supersede the said commission, and duly prosecuted the same within twelve calendar months from the issuing thereof."

1 & 2 W. IV. c. 56.

"An Act to establish a Court in Bankruptcy." (b)

[20th Oct. 1831].

§. 26. "That where any person shall have been adjudged a bankrupt, all such present and future *real estate* of such bankrupt, whether

(a) See the last note.

(b) See observations on this act, *ante*, pt. I. p. 371. et seq. And see 3 & 4 W. 4. c. 47. & to authorise his Majesty

to give further powers to the Judges of the Court of Bankruptcy, and to direct the times of sitting of the Judges and Commissioners of the said court.'

in the United Kingdom of Great Britain and Ireland, or in any of the dominions, plantations, or colonies belonging to his Majesty, *as by the said recited act (a) is directed to be conveyed by the commissioners to the assignees*, shall vest in such bankrupt's assignee or assignees for the time being, *by virtue of his or their appointment*, without any deed of conveyance for that purpose; and as often as any such assignee or assignees shall die, or be lawfully removed or displaced, and a new assignee or assignees shall be duly appointed, such of the aforesaid real estate as shall remain unsold or unconveyed, shall by virtue of such appointment vest in the new assignee or assignees, either alone or jointly with the existing assignees, as the case may require, without any conveyance for that purpose."

7 GEO. IV. c. 57.

"An Act to amend and consolidate the laws for the relief of insolvent Debtors in England."

§. 11. "And be it further enacted, that such prisoner shall, at the time of subscribing the said petition, duly execute a conveyance and assignment to the provisional assignee of the said court, in such form as is to this act annexed, of all the estate, right, title, interest and trust of such prisoner, in and to all the real and personal estate and effects of such prisoner, both within this realm and abroad, except the wearing apparel, bedding and other such necessaries of such person, and his or her family, and the working tools and implements of such prisoner, not exceeding in the whole the value of twenty pounds, and of all future estate, right, title, interest and trust of such prisoner, in or to any real and personal estate and effects within this realm or abroad which such prisoner may purchase, or which may revert, descend, be devised or bequeathed, or come to him or her, before he or she shall become entitled to his or her final discharge in pursuance of this act, according to the adjudication made in that behalf; or in case such prisoner shall obtain his or her discharge from custody without any adjudication being made in the matter of his or her petition, then before such prisoner shall be at large and out of custody, and of all debts due or growing due to such prisoner, or to be due to him or her before such discharge as aforesaid; which conveyance and assignment, so executed as aforesaid, in form aforesaid, shall vest all the real and personal estate and effects of such prisoner, and all such future real and per-

(a) The act of 6 Geo. 4. c. 16.

sonal estate and effects as aforesaid, of every nature and kind whatsoever, and all such debts as aforesaid, in the said provisional assignee; and the same shall be made subject to a proviso, that in case the petition of any such prisoner shall be dismissed by the said court, such conveyance and assignment shall, from and after such dismissal, be null and void to all intents and purposes; and the said court is hereby empowered to dismiss any such petition in the matter whereof a final adjudication shall not have been made in pursuance of this act, at any time when it shall seem fit to the said court to dismiss the same: Provided always, that where in any case, by leave of the said court, any amendment shall be made in any such petition, or an amended petition shall be filed as of the date of the original petition, which the said court is hereby empowered to do and authorize without dismissing such original petition, the assignment and conveyance executed in such case shall not thereby be affected, but shall stand good to all intents and purposes, notwithstanding such amendment or amended petition so filed as aforesaid."

§. 13. "And be it further enacted, that the filing of the petition of every person in actual custody, who shall be subject to the laws concerning bankrupts, and who shall apply by petition to the said court for his or her discharge from custody, according to this act, shall be accounted and adjudged an act of bankruptcy from the time of filing such petition; and that any commission issuing against such person and under which he or she shall be declared bankrupt before the time appointed by the said court, and advertised in the London Gazette, for hearing the matters of such petition, or at any time within two calendar months from the time of filing such petition, shall have effect to avoid any conveyance and assignment of the estate and effects of such person, which shall have been made in pursuance of the provisions of this act: Provided always, that the filing of such petition shall not be deemed an act of bankruptcy, unless such person be so declared bankrupt before the time so advertised as aforesaid, or within such two calendar months as aforesaid; but that every such conveyance and assignment shall be good and valid, notwithstanding any commission of bankrupt under which such person shall be declared bankrupt after the time so advertised as aforesaid, and after the expiration of such two calendar months as aforesaid." (a)

(a) As to the debts which would be deemed sufficient to support a fiat of bankruptcy against an insolvent trader, see *Jellis v. Mountford*, 5 Barn. & Ald. 256. *Ex parte Shuttleworth*, *Re Pacey*, 3 Glyn and Jameson, 68.

§. 19. " And be it further enacted, that it shall and may be lawful for the said court, at any time after the filing of the petition of any such prisoner as aforesaid, as to the said court shall seem expedient, to appoint a proper person or persons, being a creditor or creditors of such prisoner, to be assignee or assignees of the estate and effects of such prisoner, for the purposes of this act; and when such assignee or assignees shall have signified to the said court his or their acceptance of the said appointment, the estate, effects, rights and powers of such prisoner, vested in such provisional assignee as aforesaid, shall immediately be conveyed and assigned by such provisional assignee to the said assignee or assignees, in trust for the benefit of such assignee or assignees and the rest of the creditors of such prisoner, in respect of or in proportion to their respective debts, according to the provisions of this act; and after such conveyance and assignment by such provisional assignee, all the estate and effects of such prisoner shall be to all intents and purposes as effectually and legally vested by relation in such assignee or assignees as if the said conveyance and assignment had been made by such prisoner to him or them. Provided nevertheless, that no act done under or by virtue of such first conveyance and assignment shall be thereby rendered void or defeated, but shall remain as valid as if no such relation had taken place; and that every such conveyance and assignment as aforesaid to such provisional assignee, and a counterpart of every such conveyance and assignment by such provisional assignee to such other assignee or assignees, shall be filed of record in the said court; and a copy of any such record, made upon parchment, and purporting to have the certificate of the provisional assignee of the said court, or his deputy appointed for that purpose, endorsed thereon, and to be sealed with the seal of the said court, shall be recognised and received as sufficient evidence of such conveyance and assignment, and of the title of the provisional and other assignee or assignees under the same, in all courts, and before commissioners of bankrupt and justices of the peace, to all intents and purposes, without any proof whatever given of the same, or of any other proceeding in the said court, in the matter of such prisoner's petition."

§. 20. " And be it further enacted, that the assignee or assignees of the estate and effects of any such prisoner shall, with all convenient speed after his or their accepting such conveyance and assignment as aforesaid, use his or their best endeavours to receive and get in the estate and effects of such prisoner, and shall, with all convenient speed, make sale of all such estate and effects; and if such prisoner shall be

interested in or entitled to any real estate, either in possession, reversion or expectancy, such real estate within the space of six months after the conveyance and assignment made to such assignee or assignees in that behalf, or within such other time as the said court shall direct, shall be sold by public auction, in such manner and at such place or places as shall thirty days before any such sale be approved, in writing under their hands, by the major part in value of the creditors of such prisoner entitled to the benefit thereof, who shall meet together on notice of such meeting published fourteen days previous thereto in the London Gazette, and also in some daily newspaper printed and published in London or within the bills of mortality, if the prisoner before his or her going to prison resided in London or within the bills of mortality, and if such prisoner resided elsewhere within the United Kingdom, then in some printed newspaper which shall be generally circulated in or near the place where such prisoner resided at the time aforesaid; and in case such prisoner shall be entitled to any *copyhold or customary estate*, the conveyance and assignment by such provisional assignee to such assignee or assignees as aforesaid, shall be entered on the Court Rolls of the manor of which such copyhold or customary estate shall be holden; and thereupon it shall be lawful for such assignee or assignees to surrender or convey such copyhold or customary estate, to any purchaser or purchasers of the same from such assignee or assignees, as the said court shall direct; and the rents and profits thereof shall be in the mean time received by such assignee or assignees for the benefit of the creditors of such prisoner, without prejudice, nevertheless, to the lord or lords of the manor of which any such copyhold or customary estate shall be holden.”

§. 22. ‘ And whereas many persons who may petition the said court for relief under this act may be seised and possessed of lands, tenements and hereditaments, to hold for the term of their natural lives, with power of granting leases and taking fines, reserving small rents on such estate, for one two or three lives in possession or reversion, or for some number of years determinable upon lives, or have power, over such real or personal estate which such persons could execute for their own advantage, and which said powers ought on such persons petitioning the said court for relief under this act to be executed for the benefit of the creditors of such persons;’ “ Be it therefore enacted, that in every such case all and every the powers of leasing such lands, tenements and hereditaments, and all other such powers as aforesaid, over such real or personal estates, which are or shall be vested in any prisoner who shall

petition the said court for relief under this act, and all trusts or powers whatever vested in such prisoner, or created for his or her use or benefit, which such prisoner might legally execute for his or her own benefit, (except the right of nomination to any vacant ecclesiastical benefice,) shall be and are hereby vested in the assignee or assignees of the real and personal estate of such prisoner, by virtue of this act, so far as such prisoner could by law vest such power in any person to whom he or she might lawfully have conveyed such property, to be by such assignee or assignees executed for the benefit of all and every the creditors of such prisoner under this act."

11 GEO. IV. & 1 W. IV. c. 38.

"An Act to continue and amend the laws for the relief of Insolvent Debtors in England." (a)

§. 5. 'And whereas it may often happen that some interest in lands and tenements may become vested in the provisional assignee of the said court, which appears to be of no value to creditors, but nevertheless it may be reasonable and expedient that the said provisional assignee should make or join in making some conveyance or assignment of the same, and that the same should be done without the expence attending advertisements and meetings of creditors as prescribed by the said first mentioned act in certain cases;' "be it therefore enacted, that it shall and may be lawful for the said court, at any time after the day gazetted for the hearing of the matters of the petition of any insolvent debtor, if no creditor shall have become assignee of his or her estate and effects, and if it shall appear fit, upon such notice given by advertisement or otherwise to the creditors or any of them as the said court shall in any case direct, to order the said provisional assignee to make or join in making any conveyance or assignment of any such interest as to the said court may appear just and reasonable, without observing the provisions of the said first mentioned act as to the sale of real property, by the provisional or other assignees of the estates of insolvent debtors."

§. 6. "And it is further declared and enacted, that all assignments and conveyances heretofore made or to be made by such provisional

(a) N. B. The act of 7 Geo. 4. c. 57, and this act, are continued by the 2 W. 4. c. 44. until 1st June, 1835, and thence until the end of the then next session of parliament.

assignee in any such cases, by order of the said court, shall be and the same are hereby declared to be good and valid to all intents and purposes; any thing in the said first mentioned act or in any other act to the contrary notwithstanding."

§. 7. 'And whereas it is expedient to prescribe a form of conveyance and assignment from the provisional assignee to any other assignee or assignees when appointed by the said court, and also to remove any doubts as to the validity or effect of any conveyances or assignments at any time heretofore made and executed by the said provisional assignee, by virtue of any order of the said court;' "be it therefore declared and enacted, that every conveyance and assignment hereafter to be made and executed by the provisional assignee for the time being, to any other assignee or assignees, by virtue of any order of the said court, shall be in such form as is to this act annexed; and that every such conveyance and assignment, and also every conveyance and assignment at any time heretofore made and executed by the provisional assignee for the time being, in obedience to any order of the court for relief of insolvent debtors, shall be deemed and taken to be valid and effectual to all intents and purposes whatever, and fully and effectually to vest and to have vested all and every estate and estates, real and personal, and all and every right, title, interest, and trust in and to the same, of what nature or kind soever, to which the insolvent debtor in each case respectively shall or may be or shall or may have been entitled in any manner or by any means whatsoever, or which such insolvent debtor shall or may be or shall or may have been required by law to convey and assign in trust for his or her creditors."

10 GEO. IV. c. 50.

"An Act to consolidate and amend the laws relating to the management and improvement of his Majesty's Woods, Forests, Parks, and Chases; of the Land Revenue of the Crown within the survey of the Exchequer in England; and of the Land Revenue of the Crown in Ireland; and for extending certain provisions relating to the same to the Isles of Man and Alderney." (a)

§. 34. "And be it further enacted, that it shall be lawful for the said commissioners for the time being of his Majesty's woods, forests,

(a) See reference to the 14th sect. of stewards of manors, &c. being part of this act providing for the appointment of the possessions and land revenues of the

and land revenues, and they are hereby authorized and empowered, from time to time to contract and agree with any person or persons, or body or bodies politic, corporate, or collegiate, for the sale of, and absolutely to make sale and dispose of, for such sum or sums of money as to them shall appear a sufficient consideration for the same, any part or parts of the said possessions and land revenues of the crown to which this act relates, not being part or parcel of any of the royal forests, parks or chases in *England*."

§. 35. "And be it further enacted, that whenever the commissioners for the time being of his Majesty's woods, forests, and land revenues shall have contracted or agreed with any person or persons, body or bodies politic, corporate, or collegiate, under the authority of this act, for the sale to him, her, or them of any part or parts of the said possessions and land revenues of the crown to which this act relates, (not being any subsisting lease which may have been purchased or taken as hereinafter mentioned,) the purchaser or purchasers, in case the purchase money shall amount to the sum of one hundred pounds, shall cause the same to be paid into the Bank of *England*, or if the hereditaments purchased shall be situated in *Ireland*, then either into the Bank of *England* or the Bank of *Ireland*, at his or their option; and the cashiers of the Bank of *England* or Bank of *Ireland*, as the case may be, or one of such cashiers, shall, upon the production of any note signed by the said commissioners, specifying the sum to be so paid, and that it is to be so paid to their account, accept and receive the same, and carry the same to the account of the said commissioners of his Majesty's woods, forests, and land revenues, and give a receipt for the same without fee or reward; but if such purchase money shall not amount to the sum of one hundred pounds, it shall not be necessary for the purchaser or purchasers to pay the same into the Bank of *England* or Bank of *Ireland*, but he or they may, at his or their option, either pay the same into the Bank of *England* or Bank of *Ireland* as aforesaid, (in which case the cashiers, or one of them, of the Bank of *England* or Bank of *Ireland*, as the case may be, shall accept and give a receipt for the same as aforesaid,) or to the said commissioners for the time being of his Majesty's woods, forests, and land

crown, *ante*, pt. 1. p. 134. And see "sioners of his Majesty's Woods,
2nd W. 4. c. 1. "for uniting the office "Forests, and Land Revenues; and
"of the Surveyor General of his "for other purposes relating to the Land
"Majesty's Works and Public Build- "Revenues."
"ings with the office of the Commis-

revenues, or any one of their receivers, or any agent to be appointed by them for that purpose; and the said commissioners for the time being of his Majesty's woods, forests, and land revenues shall, on the production of the receipt of the cashiers or of one of the cashiers of the Bank of *England* or Bank of *Ireland*, for such purchase money, or in case the same shall not amount to one hundred pounds, then either on the production of such receipt or on the payment to them, their receiver or agent, of such purchase money, execute to the purchaser or purchasers a conveyance under their hands and seals, of the premises agreed to be sold, and give a receipt for the purchase money under their hands; and every such conveyance and receipt may be according to the forms for those purposes respectively set forth in the schedule to this act annexed, or in any other forms which may be deemed more convenient; and every such conveyance and receipt shall be attested, as to the execution and signing thereof by the said commissioner, by at least one witness; and every such conveyance shall be valid and sufficient to pass all the estate, right, and interest of his Majesty, his heirs or successors, in and to the part or parts of the said possessions or land revenues of the crown to which the same shall relate, to the person or persons, or body or bodies politic, corporate, or collegiate, therein named as the grantee or grantees, for such estate or estates, to such uses, and upon and for such trusts, intents and purposes, (if any,) as shall in and by such conveyance, or by reference therein to any other instrument or instruments or deed or deeds, be expressed or declared of or concerning the same."

§. 43. [Authorises the commissioners to convey lands held in perpetuity for lands held for a particular estate, or for any term of years, or to give any lease taken or purchased under the act in exchange for lands held in perpetuity, or a particular estate or for any term of years.]

§. 52. "And be it further enacted, That it shall be lawful for the said commissioners for the time being of his Majesty's woods, forests, and land revenues, from time to time to contract for and purchase, for and on behalf of his Majesty, his heirs or successors, any manors, lordships, messuages, lands, tenements, or hereditaments, in fee simple, or any *copyhold* lands or hereditaments, the freehold of which shall be in the crown, or any rents, pensions, annuities, fuel-rights, rights of common, or other charges or rights, whether in fee-simple or not, which shall be issuing out of or charged upon or extend over any of the possessions and land revenues of the crown to which

this act relates, which shall in their judgment be desirable to be purchased for and on behalf of his Majesty, his heirs or successors; and all such manors, lordships, messuages, lands, tenements, and hereditaments, rents, pensions, annuities or other charges, so to be purchased, shall be conveyed or surrendered to his Majesty, his heirs and successors, and such conveyances may be either according to the form set forth in the schedule hereto annexed for the conveyance to his Majesty of lands, tenements, and hereditaments received in exchange, or in any other form which to the said commissioners for the time being of his Majesty's woods, forests, and land revenues shall seem more proper; and all manors, lordships, messuages, lands, tenements, and hereditaments which shall be so purchased, and shall not become extinct by the conveyance or surrender thereof, shall, on the completion of the respective purchases thereof, become part of the possessions and land revenues of his Majesty, his heirs and successors, in right of the crown, and subject to the same provisions, powers, and authorities in every respect, including the powers and provisions in this act contained, as the other possessions and land revenues of the crown to which this act relates."

§. 69. " Provided always, and be it further enacted, that whenever, under the powers of sale hereinbefore given, the freehold of any *copyhold* or *customary* tenement, parcel of or holden of any manor belonging to the crown shall be sold by the commissioners of his Majesty's woods, forests, and land revenues, for the purpose of enfranchising such copyhold or customary tenement (a), or any manorial rights, parcel of any manor, belonging to the crown, shall be sold by the said commissioners, the deed or instrument by which such sale shall be effected shall not only be enrolled in the court-rolls of the manor of or to which such copyhold or customary tenement, or such manorial rights shall have been parcel or appurtenant, by the steward of such manor, or his lawful deputy, who is hereby required forthwith to enrol such deed or instrument, upon the production thereof to him; and such steward or deputy stewards, having enrolled the said certificate and receipt, or other instrument as aforesaid, shall attest the same under his hand, and return the same to the purchaser or purchasers."

§. 94. [Provides for the settling by arbitration of any disputes as to the boundaries of the lands to which the act relates.]

(a) See *ante*, pt. 1. p. 655; and in n. stat. (10 Geo. 4. c. 50).

(a) for 48 Geo. 3. c. 73, substitute this

[VIDE the act of 19 Geo. 3, c. 45, to enable the Chancellor and Council of the DUCHY OF LANCASTER to sell and dispose of certain fee-farm rents, and other rents, and to enfranchise copyhold and customary tenements, within their survey, and to encourage the growth of timber on lands held of the said Duchy.]

2 Wm. IV. c. 25.

“ An Act to extend and render more effectual two acts of the first and second and third years of his late Majesty King George the Fourth, respecting the estates thereby vested in the principal officers of the ordnance, and to facilitate the public business of the ordnance department.”

‘ Whereas an act was passed in the first and second years of the
 ‘ reign of His late Majesty King George the Fourth, intituled an act
 ‘ for vesting all estates and property occupied for the ordnance service
 ‘ in the principal officers of the ordnance, and for granting certain
 ‘ powers to the said principal officers : And whereas another act was
 ‘ passed in the third year of the reign of His said late Majesty intituled
 ‘ an act for vesting all estates and property occupied for the barrack
 ‘ service in any part of the United Kingdom in the principal officers
 ‘ of His Majesty’s ordnance, and for granting certain powers to the
 ‘ said principal officers in relation thereto : And whereas divers mes-
 ‘ suages, lands, tenements, and hereditaments, of *copyhold, customary* or
 ‘ *ancient demesne* tenure, are now held, and may hereafter be pur-
 ‘ chased and taken for the service of the said ordnance department, and
 ‘ much inconvenience has arisen and may arise by reason of copyhold
 ‘ estates and hereditaments having been excepted out of the provisions
 ‘ and operation of the said recited acts, and also by reason of the said
 ‘ acts not extending to lands, and hereditaments which have been or
 ‘ may be taken or limited by way of mortgage, or for securing money,
 ‘ or by way of indemnity for the use of the ordnance service, or objects
 ‘ connected therewith : And whereas the covenants and contracts made
 ‘ by and with the said principal officers, as well with respect to their
 ‘ estates as with respect to other matters and things relating to the
 ‘ service of the ordnance department, are numerous and important :
 ‘ And whereas many of such covenants and contracts cannot be en-
 ‘ forced by law by the officers for the time being, who were not or may
 ‘ not be parties thereto, and it is expedient that the power to sue upon

' all manner of such covenants and contracts, as well ' as upon other
' causes of action relating to the said service, should be vested in the
' officers of His Majesty's ordnance for the time being : And whereas
' His Majesty has been pleased to reduce the number of the principal
' officers of the ordnance, and it is expedient that two or more of such
' officers should be enabled to exercise and execute the respective powers,
' authorities and duties, and to perform and execute all such contracts,
' conveyances, leases, and other deeds and instruments relating to the
' public service of the said department, and to do and execute all such
' deeds, matters and things as by any act or acts, or otherwise, might or
' ought to be exercised, performed, done, or executed by three or more
' of such principal officers ;' " Be it therefore enacted," &c., " that im-
mediately from and after the passing of this act all messuages, build-
ings, lands, tenements, and hereditaments, in Great Britain or Ireland,
of *copyhold or customary or ancient demesne tenure*, which have
been heretofore purchased or taken by or in the name of any person or
persons in trust for His Majesty, or his royal predecessors, and his and
their heirs and successors, for the use or service of the said ordnance
department, or for the use and service of the said barrack department,
either in fee or for any life or lives, or otherwise howsoever, and the ap-
purtenances to the same respectively belonging, shall be and become
and continue vested in the principal officers of His Majesty's ordnance
for the time being, and their successors in the said office, according to
the nature and quality of and in the respective estates and interests in
such hereditaments and premises, for the use and service of the said
ordnance department, and upon and for such trusts, intents, or pur-
poses as are, in and by the said recited act of the first and second
years of the reign of His late Majesty, expressed and declared or re-
ferred unto of and concerning the estates and property thereby vested
in the said principal officers and their successors in the said office."

§. 2. " And be it further enacted, that all other messuages, build-
ings, lands, tenements, and hereditaments, in Great Britain or Ireland,
of *copyhold or customary or ancient demesne tenure*, which shall at
any time or times hereafter be purchased or taken by the principal of-
ficers of His Majesty's ordnance for the time being, or by any other per-
son or persons by their order, or for the service of the said ordnance de-
partment, and the appurtenances to the same respectively belonging,
shall be granted, surrendered, conveyed, and assured unto, and shall
thereupon, and upon the admittance of the secretary or other person
hereinafter directed to be admitted, be and become and continue vested

in the principal officers of His Majesty's ordnance for the time being, and their successors in the said office, according to the nature and quality of and the respective estates and interests in such hereditaments and premises, and without any words of limitation whatsoever, for the use and service of the said ordnance department, and upon and for such trusts, intents and purposes as aforesaid."

§. 3. "And be it further enacted, that all messuages, buildings, lands, tenements, and hereditaments of every description, and whether in Great Britain, or Ireland, which before the passing of this act shall have been taken or conveyed or surrendered and are now held by way of mortgage, or for securing any sum or sums of money for the use of the ordnance service or barrack service, shall from and after the passing of this act be and become and continue, and all messuages, buildings, lands, tenements, and hereditaments of every description, and whether in Great Britain or Ireland, which shall hereafter be taken or limited by way of mortgage, or for securing any sum or sums of money, or by way of indemnity, or for any other purpose or purposes, for the use of the ordnance service or any objects connected therewith, shall be taken and conveyed and surrendered, and shall thereupon and when any admittance is necessary, upon any such admittance as hereinafter mentioned, shall be and become and continue vested in the principal officers of His Majesty's ordnance for the time being, and their successors in the said office, according to the nature and quality of and the respective estates and interests in such hereditaments and premises respectively, and without any words of limitation whatsoever, upon and for the trusts, intents, and purposes, to which the same are or shall be subject or made liable."

§. 5. "Provided always, and be it further enacted, that when and as the person, or, in those cases where there shall be more than one, the survivor of the persons, in whom any messuages, buildings, lands, tenements, and hereditaments of *copyhold, customary, or ancient demesne tenure*, heretofore purchased or taken as aforesaid, are now respectively vested, shall die, and when any messuages, buildings, lands, tenements, and hereditaments of any such tenure, shall hereafter be purchased, or taken as aforesaid, the secretary for the time being of the principal officers of his Majesty's ordnance, or any other officer of the ordnance department, or other person whom the said principal officers, or any two or more of them, shall from time to time appoint, shall be admitted to such hereditaments and premises, except that in the case of any mortgage or security such admittance shall be at

the option of the said principal officers ; and that on the death of any person filling or who shall have filled the office of such secretary or the office of such officer as shall be so appointed, and who shall have been admitted, or of the person who shall have been admitted to any such hereditaments and premises, the secretary for the time being of the said principal officers who shall succeed or then be in office, or any other officer of the ordnance department, or other person who shall be from time to time appointed as aforesaid, (as the case may be,) shall be admitted to such hereditaments and premises ; and that on the respective deaths of the person or persons in whom the hereditaments and premises hereinbefore in that behalf mentioned are now vested, and on whose death or deaths a heriot, fine, or any other sum or due would be due or payable, and on the death of the secretary or other officer or other person who shall be admitted as aforesaid, the lords and ladies of the manor of which the said premises are respectively holden, and their stewards, shall be entitled (in case no alienation shall have previously taken place) to such heriots, fines, and fees, and sums of money and other dues, as shall be due and payable and of right accustomed upon the death of a tenant and the admission of a new tenant, and as they would have been entitled to in case this act had not been passed ; but nevertheless that such person or persons shall only continue tenant or tenants, and such secretary or officer or other person as aforesaid shall only be admitted, for the purpose of ascertaining and preserving to the lord or lady of the manor the right of escheat and all other rights, and for the purpose of performing such services (if any) as ought to be performed, and of determining when the heriots, fines, fees, and sums of money and dues, due or payable on the death of a tenant and the admission of a new tenant, shall become due and payable ; and the said hereditaments and premises, as regards the legal estate, and for all purposes of alienation and all other purposes, save as aforesaid, shall be and become and continue vested in the said principal officers for the time being."

§. 6. " And be it further enacted, that all the powers and authorities of selling, exchanging, letting, conveying, and *surrendering*, bringing and defending actions and suits, and distraining, and all other powers and authorities whatsoever given to the said principal officers for the time being, or any three or more of them, by the said recited act of the first and second years of the reign of his late Majesty with respect to the estates and property thereby respectively vested in them respectively, shall apply to the hereditaments and premises which shall be

or become vested in the said principal officers by virtue of this act, except so far as the same may be inapplicable to any hereditaments vested in them by way of mortgage or security, while the same shall continue to be so held; and all the powers and authorities of the said last mentioned act given to bodies politic or corporate, and others, of contracting, and of conveying and *surrendering* lands and hereditaments, and otherwise, shall apply to messuages, lands, tenements, and hereditaments of *copyhold*, *customary*, and *ancient demesne tenure*, and to the purchase monies for the same; and all powers and authorities by the same act given to the barons or judges of his Majesty's Court of Exchequer relating to the purchase monies therein mentioned, and all other clauses, matters, and things whatsoever therein contained relating thereto, whether arising from the sale or purchase of lands or hereditaments or otherwise howsoever, shall apply to the monies which shall arise or become payable under this act; and all other clauses, matters, and things in the said recited acts or either of them contained, as far as the same shall be applicable to and not inconsistent with this act, shall apply to this act as fully and effectually to all intents and purposes as if all such powers, authorities, clauses, matters, and things, were respectively, severally, and separately repeated and re-enacted in and made part of this act."

§. 10. "And be it further enacted, That in all contracts of every description, and in all conveyances, *surrenders*, leases, and other deeds and instruments whatsoever relating to the public service, which from and after the passing of this act shall or may be made or entered into by, to, or with the principal officers of the ordnance for the time being, or any two or more of them, or whereunto they or any two or more of them shall or may be parties, it shall be sufficient to call or describe the said principal officers by the style or title of "the principal officers of His Majesty's ordnance," without naming them or any of them; and that all such contracts, conveyances, *surrenders*, leases, and other deeds and instruments wherein the said principal officers shall be called or described by their style or title as aforesaid, and the execution thereof respectively by the said principal officers, or any two or more of them, shall be as valid and effectual, and shall have the like force and operation, to all intents and purposes whatsoever, as if the said principal officers, or any two or more of them, had been particularly named and described therein."

2 GEO. IV. & 1 W. IV. c. 60.

“ *An Act for amending the laws respecting conveyances and transfers of estates and funds vested in trustees and mortgagees; and for enabling courts of equity to give effect to their decrees and orders in certain cases.*”
 [23d July, 1830.]

[The first sect. repeals the 6th Geo. IV. c. 74, and other acts relating to conveyances of estates vested in trustees, being infants, idiots, &c., but so that the acts repealed by the 6th Geo. IV. should not be revived.]

[The second sect. contains certain rules for the interpretation of the act, the first being that the provisions therein relating to *land* shall extend to and include any manor, messuage, tenement, hereditament, or real property, *of whatever tenure.*]

[The third sect. enacts that where any trustee or mortgagee of land shall be lunatic, the Lord Chancellor may direct the committee to convey such land, in such manner as he shall think proper.]

[The fifth sect. extends that power to the case of a person being lunatic, but who shall not have been found such by inquisition.]

§. 6. “ And be it further enacted, that where any person seised or possessed of any land upon any trust, or by way of mortgage, shall be under the age of twenty-one years, it shall be lawful for such infant, by the direction of the Court of Chancery, to convey the same to such person and in such manner as the said court shall think proper; and every such conveyance shall be as effectual as if the infant trustee or mortgagee had been, at the time of making or executing the same, of the age of twenty-one years.”

§. 7. “ And be it further enacted, that where any person seised or possessed upon any trust or by way of mortgage of any land situated within the duchy of *Lancaster*, or the counties palatine of *Chester*, *Lancaster*, and *Durham* respectively, or the principality of *Wales*, shall be under the age of twenty-one years, it shall be lawful for such infant, by the direction of the court of the Duchy Chamber of *Lancaster*, the Court of Exchequer in the county palatine of *Chester*, the Court of Chancery in the county palatine of *Lancaster*, the Court of Chancery in the county palatine of *Durham*, and the several courts of Great Session in *Wales* respectively, as to premises within the jurisdiction of

the same courts respectively, to convey such lands to such person and in such manner as the said courts respectively shall think proper, in like manner as such infant is hereinbefore empowered to convey the same by the direction of the Court of Chancery."

§. 8. "And be it further enacted, that where any person seised of any land upon any trust shall be out of the jurisdiction of or not amenable to the process of the Court of Chancery, or it shall be uncertain, where there were several trustees, which of them was the survivor, or it shall be uncertain whether the trustee last known to have been seised as aforesaid, be living or dead, or, if known to be dead, it shall not be known who is his heir; or if any trustee seised as aforesaid, or the heir of any such trustee, shall neglect or refuse to convey such land for the space of twenty-eight days next after a proper deed for making such conveyance shall have been tendered for his execution by, or by any agent duly authorised by any person entitled to require the same; then and in every or any such case it shall be lawful for the said Court of Chancery to direct any person whom such court may think proper to appoint for that purpose, in the place of the trustee or heir, to convey such land to such person and in such manner as the said court shall think proper; and every such conveyance shall be as effectual as if the trustee seised as aforesaid, or his heir, had made and executed the same."

§. 11. "And it be it further enacted, that every direction or order to be made in pursuance of this act by the Lord Chancellor, intrusted as aforesaid, or by the Court of Chancery, or by any other court hereinbefore mentioned, shall be signified by an order to be made in any cause depending in such court respectively, or upon petition in the lunacy or matter; and such person as hereinafter is mentioned shall be the petitioner, whether such person be or be not under any legal disability; (that is to say,) if the same shall relate to a conveyance, transfer, receipt, or payment to or in such manner as may be directed by any person beneficially entitled, then upon the petition of the person or some or one of the persons beneficially entitled to the land, stock, or dividends to be conveyed, transferred, received or paid; and if the same shall relate to a conveyance in order to vest any land or stock in a new trustee duly appointed by virtue of some power or authority, in some instrument creating or declaring the trusts of such land or stock, or by the Court of Chancery, either alone or together with any continuing trustee, then upon the petition either of the trustee or some or one of the trustees in whom the same shall be proposed to be vested, or of any person having an interest therein; and if the same shall relate to the conveyance of an estate in

mortgage, then upon the petition of the person or some or one of the persons entitled to the equity of redemption thereof, or of the person or some or one of the persons entitled to the monies thereby secured, or the guardian or committee or some or one of the guardians or committees of the person entitled to such monies, if an infant or lunatic."

§. 12. "Provided always nevertheless, and be it further enacted, that where, on account of the length of time which shall have elapsed since the creation or last declaration of trust, the title of the person claiming a conveyance or transfer may appear to require deliberate investigation in the presence of all parties interested, in order to prevent the vesting of the legal estate in a person who may not really be entitled to the benefit thereof; or if under other circumstances it shall appear to the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, or any other court hereinbefore mentioned, not proper to make an order upon petition; it shall be lawful for such Lord Chancellor or any such court to direct a bill to be filed to establish the right of the party seeking the conveyance or transfer, and upon the establishment by a decree of such right, by the same decree, or any order in the cause or in the lunacy, or both, to direct a conveyance or transfer to be made according to the intent of this act."

§. 13. "And be it further enacted, that any committee, infant, or other person directed by virtue of this act to make or join in making any conveyance, or transfer, or receipt, or payment, shall and may be compelled by the order to be obtained as hereinbefore is mentioned, to make and execute the same in like manner as trustees of full age, and of sane mind, memory, and understanding, are compellable to convey, transfer, or receive and pay over the trust estates or funds vested in them respectively."

[The 14th section provides for the payment of mortgage money belonging to infants, into the Bank of England.]

§. 15. "And be it further enacted, that every person, being in other respects within the meaning of this act, shall be and be deemed to be a trustee within the meaning of this act, notwithstanding he may have some beneficial estate or interest in the same subject, or may have some duty as trustee to perform; but in every such case, and in every case of a mortgagee, (not being a naked trustee,) it shall be in the discretion of the said Lord Chancellor, intrusted as aforesaid, or the said Court of Chancery, if under the circumstances it shall seem requisite, to direct a bill to be filed to establish the right of the party seeking the conveyance or transfer, and not to make the order for such conveyance or transfer

unless by the decree to be made in such cause, or until after such decree shall have been made."

§. 16. "And be it further enacted, That where any land shall have been contracted to be sold, and the vendor or any of the vendors shall have departed this life, either having received the purchase money for the same or some part thereof, or not having received any part thereof, and a specific performance of such contract, either wholly or as far as the same remains to be executed, or as far as the same by reason of the infancy can be executed, shall have been decreed by the Court of Chancery in the life time of such vendor or after his decease, and where one person shall have purchased an estate in the name of another, but the nominal purchaser shall, on the face of the conveyance, appear to be the real purchaser, and there shall be no declaration of trust from him, and a decree of the said court, either before or after the death of such nominal purchaser, shall have declared such nominal purchaser to be a trustee for the real purchaser, then and in every such case the heir of such vendor, or such nominal purchaser or his heir, in whom the premises shall be vested, shall be and be deemed to be a trustee for the purchaser within the meaning of this act."

§. 17. "And be it further enacted, That where any land shall have been contracted to be sold, and the vendor or any of the vendors shall have departed this life, having devised the same in settlement so as to be vested in any person for life or other limited interest, with any remainder, limitation, or gift over which may not be vested, or may be vested in some person from whom a conveyance of the same cannot be obtained, or by way of executory devise, and a specific performance of such contract, either wholly or so far as the same remained to be executed, shall have been decreed by the court of chancery, it shall be lawful for the court by whom such decree shall be made, by the same or any other decree, or any decretal order, or upon petition in the cause, to direct any such tenant for life, or other person having a limited interest, or the first executory devisee thereof, to convey the fee simple or other the whole estate contracted to be sold to the purchaser, or in such manner as the said court shall think proper; and every such conveyance shall be as effectual as if the person who shall make the same were seised of the fee simple or other the whole estate contracted to be sold."

§. 18. "And be it further enacted, That the several provisions hereinbefore contained shall extend to every other case of a constructive trust, or trust arising or resulting by implication of law; but in every

such case where the alleged trustee has or claims a beneficial interest adversely to the party seeking a conveyance or transfer, no order shall be made for the execution of a conveyance or transfer by such alleged trustee, until after it has been declared by the Court of Chancery, in a suit regularly instituted in such court, that such person is a trustee for the person so seeking a conveyance or transfer; but this act shall not extend to cases upon partition, or cases arising out of the doctrine of election in equity, or to a vendor, except in any case hereinbefore expressly provided for."

[The 19th sect. provides that husbands of female trustees shall be deemed trustees within the act.]

[The 20th sect. enacts that the provisions for obtaining conveyances from any person being lunatic shall extend to persons who by force of any law for payment of debts out of real estate, would be compellable to convey if of sound mind.]

[The 21st sect. extends the provisions of the act to petitions in cases of charity and friendly societies.]

§ 22. ' And whereas cases may occur, upon applications by petition under this act for a conveyance or transfer, where the recent creation or declaration of the trust, or other circumstances, may render it safe and expedient for the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, (as the case may require,) to direct, by an order upon such petition, a conveyance or transfer to be made to a new trustee or trustees, without compelling the parties seeking such appointment to file a bill for that purpose, although there is no power in any deed or instrument creating or declaring the trusts of such land or stock to appoint new trustees; ' be it therefore further enacted, that in any such case it shall be lawful for the Lord Chancellor, intrusted as aforesaid, or the said Court of Chancery, to appoint any person to be a new trustee, by an order to be made on a petition to be presented for a conveyance or transfer under this act, after hearing all such parties as the said court shall think necessary; and thereupon a conveyance or transfer shall and may be made and executed, according to the provisions hereinbefore contained, to or so as to vest such land or stock in such new trustee, either alone or jointly with any surviving or continuing trustee, as effectually, and in the same manner, as if such new trustee had been appointed under a power in any instrument creating or declaring the trusts of such land or stock, or in a suit regularly instituted."

[The 25th section empowers the Court of Chancery to order the costs of petitions, conveyances, &c. to be paid and raised out of the land, or the rents, or in any other manner.]

[By the 30th section, the powers given to the Court of Chancery may be exercised by the Court of Exchequer.]

2 GEO. IV. & 1 W. IV. c. 65.

“ An Act for consolidating and amending the laws relating to property belonging to Infants, Femes Covert, Idiots, Lunatics, and persons of unsound mind.” [23rd July, 1830.]

[By the 1st section, the act of 9th Geo. I. c. 29, to enable lords of manors more easily to recover their fines, and to exempt infants and femes covert from forfeiture of their copyhold estate in particular cases; and 43 Geo. III. c. 75, to authorise the sale or mortgage of the estates of persons found lunatic by inquisition, &c.; and 59th Geo. III. c. 80, to explain the last mentioned act, &c.; and 9th Geo. IV. c. 78, for extending the two last mentioned acts, &c., are (with other acts referred to in the preamble) repealed.]

[The 2nd section contains certain rules for the interpretation of the act, and enacts that the provisions relating to *land* shall extend to and include any manor, messuage, tenement, hereditament, or real property, of *whatsoever tenure*.]

§. 3. And be it further enacted, that from and after the passing of this act, where any person being under the age of twenty-one years, or being a feme covert or lunatic, is or shall be entitled by descent, or surrender to the use of a last will, or *otherwise*, to be admitted tenant of any copyhold lands, such person, in his or her own proper person, or being a feme covert by her attorney, or being an infant by his guardian or attorney, as the case may require, or being a lunatic by the committee of his estate, shall come to and appear at one of the three next courts which shall be kept (for the keeping whereof the usual notice shall be given) for the manor whereof such land shall be parcel, and shall there offer himself or herself to the lord or his steward to be admitted tenant to the said land; to make which appearance and to take which admittance in behalf of such infant or lunatic or feme covert, such guardian, committee, or attorney shall be and is hereby respectively authorised and required.”

§. 4. " And be it further enacted, That it shall be lawful for any feme covert, and for any infant who shall have no guardian, and she and he is hereby empowered, by writing under her or his hand and seal respectively, to appoint an attorney or attorneys on her or his behalf, for the purpose of appearing and taking such admittance as aforesaid."

§. 5. " And be it further enacted, That in default of such appearance of any infant, feme covert, or lunatic, in his or her own person, or by his or her guardian, committee, or attorney in that behalf, and of acceptance of such admittance as aforesaid, it shall be lawful for the lord of every such manor, or his steward, after such three several courts have been duly holden for such manor, and proclamations in such several courts been regularly made, to appoint, at any subsequent court to be holden for such manor, any fit person to be attorney for every such infant, feme covert, or lunatic to the said land, according to such estate as such infant, feme covert, or lunatic shall be legally entitled to therein, and upon every such admittance to impose and set such fine as might have been legally imposed and set if such infant had been of full age, or if such feme covert had been sole and unmarried, and if such lunatic had been of sane mind."

§. 6. " And be it further enacted, That upon every such admittance of any infant, feme covert, or lunatic as aforesaid, the fine imposed and set thereupon shall and may be demanded by the bailiff or agent of the lord of such manor, by a note in writing, signed by the lord of such manor or by his steward, to be left with the guardian of such infant, or such infant if he have no guardian, or with such feme covert or her husband, or with the committee of the estate of such lunatic, or with the tenant or occupier of the land to which such infant, feme covert, or lunatic shall have been admitted as aforesaid; and if the fine so imposed and set be not paid or tendered to such lord or his steward within three months after such demand made, then it shall be lawful for the lord of such manor to enter into and upon the copyhold land to which any such infant, feme covert, or lunatic shall be so admitted, and to hold and enjoy the same, and to receive the rents, issues and profits thereof, but without liberty to fell any timber standing thereon, for so long time only and until by such rents, issues, and profits such lord shall be fully paid and satisfied such fine, together with all reasonable costs and charges which such lord shall have been put unto in levying and raising the same, and in obtaining the possession of such copyhold land, although such infant, feme covert, or lunatic shall

happen to die before such fine and fines, and the costs and charges aforesaid, shall be raised and collected; of all which rents, issues, and profits so to be received by such lord of such manor, or his steward, bailiff, or servant, upon the occasion aforesaid, such lord shall yearly and every year, upon demand to be made by the person who shall be entitled to the surplus of the said rents and profits, over and above what will pay and satisfy such fine and costs and charges, or by the person who shall be then entitled to such copyhold land, give and render a just and true account, and shall pay the same surplus, if any, to such person as shall be intitled to the same."

§. 7. "And be it further enacted, That as soon as such fine, and the costs, charges, and expenses aforesaid, shall be fully paid and satisfied, or if, after such seizure and entry of and upon such copyhold land for the purposes aforesaid, such fine, and the costs and charges aforesaid, shall be lawfully tendered and offered to be paid and satisfied to the lord of such manor, then and in any of the said cases, it shall be lawful for such infant, feme covert, lunatic or other person entitled thereto, or the guardian of such infant, the husband of such feme covert, or the committee of such lunatic, to enter upon and take possession of and hold the said copyhold land according to the estate or interest such infant, feme covert, or lunatic, shall be lawfully entitled to therein, and the lord of such manor shall and is hereby required in any of the said cases to deliver possession thereof accordingly; and if such lord, after such fine, and the costs and charges aforesaid, shall be fully paid and satisfied, or after the same shall have been tendered or offered to be paid as aforesaid, shall refuse to deliver the possession of the said copyhold land as aforesaid, he or they shall be liable to, and shall make satisfaction to the person or persons so kept out of possession, for all the damages that he or she shall thereby sustain, and all the costs and charges that he or she shall be put unto for the recovery thereof."

§. 8. "And be it further enacted, that where any infant, feme covert, or lunatic shall be admitted to any copyhold land, if the guardian of such infant, or husband of such feme covert, or committee of such lunatic, shall pay to the lord of any manor the fine legally imposed and set upon such admittance, and the costs and charges which such lord of such manor shall have been put unto as aforesaid, then it shall be lawful for every guardian of such infant, or husband of such feme covert, or committee of such lunatic, his executors and administrators, to enter into and to hold and enjoy the said land to which such infant, feme covert or lunatic shall have been so admitted, and receive and take the rents,

issues and profits thereof, to his and their own use, until thereby such guardian of such infant, or husband of such feme covert, or committee of such lunatic, his executors and administrators, shall be fully satisfied and paid all and every such sum and sums of money as he shall respectively pay and disburse upon the account aforesaid, notwithstanding the death of such infants, femes covert, or lunatic, shall happen before such sum or sums of money so expended shall or may be so raised and reimbursed."

§. 9. " Provided always, and be it further enacted, That from and after the passing of this act no infant, feme covert, or lunatic shall forfeit any copyhold land for his or her neglect or refusal to come to any court to be kept for any manor whereof such land is parcel, and to be admitted thereto, nor for the omission, denial, or refusal of any such infant, feme covert, or lunatic to pay any fine imposed or set upon his or her admittance to any such land."

§. 10. " Provided nevertheless, and be it further enacted, That if the fine imposed in any of the cases hereinbefore mentioned shall not be warranted by the custom of the manor, or shall be unlawful, then such infant, feme covert, or lunatic shall be at liberty to controvert the legality of such fine, in such manner as he or she might have done if this act had not been made."

[N. B. The act empowers the Court of Chancery to order and direct the renewal of leases to which infants, femes covert, or lunatics may be entitled; and the renewal of leases by infants, &c.; and the execution of powers by leasing given to persons being lunatic, by the committees; and the grant of leases by the committees of lunatics seised in fee or in tail, &c.; and the execution of agreements for leases by the guardians of infants, and the committees of lunatics; and the conveyance of land by the committees of lunatics in performance of contracts; and the sale or mortgage of the estates of lunatics for raising money for the payment of debts and incumbrances.

The 35th sect. empowers the Court of Chancery to order the costs of petitions, conveyances, &c. to be paid and raised out of the lands or the rents, as the court may think proper.

By the 37th sect. the powers given to the Court of Chancery may be exercised by the Court of Exchequer.]

2 & 3 W. IV. c. 71.

“ An Act for shortening the time of prescription in certain cases.”
 [1st August, 1832.]

Whereas the expression ‘time immemorial, or time whereof the memory of man runneth not to the contrary,’ is now by the law of England in many cases considered to include and denote the whole period of time from the reign of King Richard the First, whereby the title to matters that have been long enjoyed is sometimes defeated by showing the commencement of such enjoyment, which is in many cases productive of inconvenience and injustice, for remedy thereof be it enacted by, &c., “that no claim which may be lawfully made at the common law, by custom, prescription, or grant, to any right of common or other profit or benefit to be taken and enjoyed from or upon any land of our Sovereign Lord the King, his heirs or successors, or any land being parcel of the Duchy of Lancaster or of the Duchy of Cornwall, or of any ecclesiastical or lay person, or body corporate, except such matters and things as are herein specially provided for, and except tithes, rent, and services, shall, where such right, profit, or benefit shall have been actually taken and enjoyed by any person claiming right thereto without interruption for the full period of thirty years, be defeated or destroyed by shewing only that such right, profit, or benefit was first taken or enjoyed at any time prior to such period of thirty years, but nevertheless such claim may be defeated in any other way by which the same is now liable to be defeated; and when such right, profit, or benefit shall have been so taken and enjoyed as aforesaid, for the full period of sixty years, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was taken and enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing.”

§. 2. “And be it further enacted, that no claim which may be lawfully made at the common law, by custom, prescription, or grant, to any way or other easement, or to any watercourse, or the use of any water, to be enjoyed or derived upon, over, or from any land or water of our said Lord the King, his heirs or successors, or being parcel of the Duchy of Lancaster or of the Duchy of Cornwall, or being the property of any ecclesiastical or lay person, or body corporate, when such way or other matter as herein last before mentioned shall have been actually enjoyed

by any person claiming right thereto without interruption for the full period of twenty years, shall be defeated or destroyed by shewing only that such way or other matter was first enjoyed at any time prior to such period of twenty years, but nevertheless such claim may be defeated in any other way by which the same is now liable to be defeated; and where such way or other matter as herein last before mentioned shall have been so enjoyed as aforesaid for the full period of forty years, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing."

§. 3. "And be it further enacted, that when the access and use of light to and for any dwelling house, workshop, or other building shall have been actually enjoyed therewith for the full period of twenty years without interruption, the right thereto shall be deemed absolute and indefeasible, any local usage or custom to the contrary notwithstanding, unless it shall appear that the same was enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing."

§. 4. "And be it further enacted, that each of the respective periods of years hereinbefore mentioned shall be deemed and taken to be the period next before some suit or action wherein the claim or matter to which such period may relate shall have been or shall be brought into question, and that no act or other matter shall be deemed to be an interruption, within the meaning of this statute, unless the same shall have been or shall be submitted to or acquiesced in for one year after the party interrupted shall have had or shall have notice thereof, and of the person making or authorizing the same to be made."

§. 5. "And be it further enacted, that in all actions upon the case and other pleadings, wherein the party claiming may now by law allege his right generally, without averring the existence of such right from time immemorial, such general allegation shall still be deemed sufficient, and if the same shall be denied, all and every the matters in this act mentioned and provided, which shall be applicable to the case, shall be admissible in evidence to sustain or rebut such allegation; and that in all pleadings to actions of trespass, and in all other pleadings wherein before the passing of this act it would have been necessary to allege the right to have existed from time immemorial, it shall be sufficient to allege the enjoyment thereof as of right by the occupiers of the tenement in respect whereof the same is claimed for and during such of the periods mentioned in this act as may be applicable to the case, and without

claiming in the name or right of the owner of the fee, as is now usually done; and if the other party shall intend to rely on any proviso, exception, incapacity, disability, contract, agreement, or other matter hereinbefore mentioned, or on any cause or matter of fact or of law not inconsistent with the simple fact of enjoyment, the same shall be specially alleged and set forth in answer to the allegation of the party claiming, and shall not be received in evidence on any general traverse or denial of such allegation."

§. 6. "And be it further enacted, that in the several cases mentioned in and provided for by this act, no presumption shall be allowed or made in favour or support of any claim, upon proof of the exercise or enjoyment of the right or matter claimed for any less period of time or number of years than for such period or number mentioned in this act as may be applicable to the case and to the nature of the claim."

§. 7. "Provided also, that the time during which any person otherwise capable of resisting any claim to any of the matters before mentioned shall have been or shall be an infant, idiot, non compos mentis, feme covert, or tenant for life, or during which any action or suit shall have been pending, and which shall have been diligently prosecuted, until abated by the death of any party or parties thereto, shall be excluded in the computation of the periods hereinbefore mentioned, except only in cases where the right or claim is hereby declared to be absolute and indefeasible."

§. 8. "Provided always, and be it further enacted, that when any land or water upon, over, or from which any such way or other convenient watercourse or use of water shall have been or shall be enjoyed or derived hath been or shall be held under or by virtue of any term of life, or any term of years exceeding three years from the granting thereof, the time of the enjoyment of any such way or other matter as herein last before mentioned, during the continuance of such term, shall be excluded in the computation of the said period of forty years, in case the claim shall within three years next after the end or sooner determination of such term be resisted by any person entitled to any reversion expectant on the determination thereof."

[The 9th sect. excludes Scotland and Ireland from the provisions of the act.]

§. 10. "And be it further enacted, that this act shall commence and take effect on the first day of Michaelmas Term now next ensuing."

§. 11. "And be it further enacted, that this act may be amended, altered, or repealed during this present session of parliament."

2 & 3 W. IV. c. 80.

“ An Act to authorize the identifying of Lands and other Possessions of certain Ecclesiastical and Collegiate Corporations.”

[3d August, 1832.]

Whereas the archbishops and bishops of the several dioceses, and the deans, and deans and chapters, archdeacons, prebendaries, and canons, and other dignitaries and officers of the several cathedral and collegiate churches and chapels, and the masters or other heads, and fellows and scholars or other societies of the several colleges and halls in the universities of *Oxford* and *Cambridge*, and of the colleges of *Winchester* and *Eton*, are proprietors of divers manors, messuages, lands, tenements, tithes, and hereditaments, and in many cases the boundaries or quantities and the identity of lands within such manors, and of such messuages, lands, tenements, and hereditaments, and of lands subject to any such tithes, or some part or parts thereof, are unknown or disputed, and it would be a great benefit, as well to such proprietors respectively, as to their lessees, copyhold or customary tenants, sub-lessees, or under-tenants, their, his, or her heirs, executors, administrators, or assigns, if the said manors, messuages, lands, tenements, tithes, and hereditaments were identified, and the boundaries and quantities thereof ascertained and finally settled: be it enacted by, &c. “ That from and after the passing of this Act it shall and may be lawful to and for any archbishop, bishop, dean, dean and chapter, or other corporation aggregate or sole herein-before mentioned, to enter into an agreement of reference or deed of submission with his or their lessee or lessees, copyhold or customary tenant or tenants, sub-lessee or sub-lessees, under-tenant or under-tenants, his, her, or their heirs, executors, administrators, or assigns, or with the owner or owners of any other hereditaments adjoining to or intermixed with the said manors, messuages, lands, tenements, tithes, or hereditaments, whereby it shall be agreed that any unknown or disputed boundaries or quantities of such manors, messuages, lands, tenements, tithes, or hereditaments, or any part thereof, shall be referred to the adjudication of such person or persons as may be agreed upon and named by the said archbishop, bishop, dean, dean and chapter, or other corporation aggregate or sole, and by his or their lessee or lessees, copyhold or customary tenant or tenants, sub-lessee or sub-lessees, under-tenant or under-tenants, his,

her, or their heirs, executors, administrators, or assigns, or by such owner or owners of any other hereditaments situate as aforesaid; and that such referee or referees shall be fully authorized to make or cause to be made surveys, maps, and admeasurements of the said manors, messuages, lands, tenements, tithes, and hereditaments, or any part thereof, and to summon any persons as witnesses, and examine them on oath (which oath he or they are hereby authorized to administer) touching or concerning any of the matters or things so referred as aforesaid, or in any way relating thereto; and also to call for the production of all surveys, maps, deeds, books, papers, and writings in the custody or power of any of the parties to the said reference, or of any other person or persons, of or concerning the matters in question; and the said referee or referees, having well and sufficiently investigated and considered the same, and all matters to him or them referred, shall and may make his or their award or awards in writing, under his or their hand and seal or hands and seals, with a map or maps drawn thereupon or thereunto annexed, and which said award or awards and map or maps shall be upon parchment or vellum, and shall award and determine, identify, delineate, and describe the boundaries, quantities, particulars, and situations of the said manors, messuages, lands, tenements, tithes, and hereditaments so referred to him or them as aforesaid; and the said award or awards and map or maps shall be laid before all the parties to any such agreement of reference or deed of submission, including the party or parties whose consent is required by this act, whose approbation thereof shall be written upon the said award or awards, and shall be signed and sealed by them, and thereupon the said award or awards and map or maps shall be for ever afterwards binding upon all parties, and final and conclusive as to all matters therein contained or thereby referred to."

§. 2. " Provided always, and be it further enacted, that in every case in which any of the powers herein-before contained shall be exercised by any bishop, dean, archdeacon, prebendary, or other ecclesiastical corporation sole, the deed of submission or agreement of reference, and also the approbation of the award, shall, in the case of a bishop, be executed by the archbishop of the province testifying his consent thereto; or in case of a dean, the same shall be executed by the dean and chapter testifying their consent thereto; or in the case of an archdeacon, prebendary, or other ecclesiastical corporation sole, the same shall be executed by the archbishop or bishop of the diocese testifying his consent thereto."

§. 3. " And be it further enacted, that from and after the passing of this act it shall and may be lawful to and for the said lessee or lessees, copyhold or customary tenant or tenants, sub-lessee or sub-lessees, under-tenant or under-tenants, and such other owner or owners as herein-before named, his, her, or their heirs, executors, administrators, or assigns, who at the time of making any reference authorized by this act shall be tenant or tenants in fee tail, general or special, or for life or lives, and for the guardians, husbands, committees, or attornies of or acting for any such lessee or lessees, copyhold or customary tenant or tenants, sub-lessee or sub-lessees, under-tenant or under-tenants, and such other owner or owners as hereinbefore named, his, her, or their heirs, executors, administrators, or assigns, who at the time of making any such reference shall be respectively an infant or infants, feme covert or femes covert, or of unsound mind, or beyond the seas, or under any other legal disability, or otherwise disabled to act for themselves, himself, or herself, to sign, seal, and deliver any agreement of reference or deed of submission or approbation of any award or awards and map or maps authorized by this act to be made, as fully and effectually to all intents and purposes as if such lessee or lessees, copyhold or customary tenant or tenants, sub-lessee or sub-lessees, under-tenant or under-tenants, and such other owner or owners as hereinbefore named, his, her, or their heirs, executors, administrators, or assigns, had been tenant or tenants in fee simple, and of full age, sole, of sound mind, or within the realm of *England*, and not under any other legal disability."

§. 4. " And be it further enacted, That immediately after the execution by the parties of the instrument shewing their approbation of any award to be made by virtue of this act, the agreement of reference or deed of submission, and also the award or awards and map or maps, authorised to be made by this act, and a copy of the minutes of evidence whereupon the same is made, shall be deposited, in the case of any reference by any archbishop or bishop, in the office of their own registrar; and in case of any reference by any dean, dean and chapter, archdeacon, prebendary, canon, and other dignitary and officer of a cathedral or collegiate church or chapel, in the office of the registrar of the dean and chapter thereof; and in case of any reference by any masters or other heads, or by any fellows and scholars, or other societies hereinbefore named, in the office of the steward or other proper officer of their said colleges and halls; and every such registrar, steward, or other officer, or some person or persons on his behalf, shall

produce the documents and papers so deposited with him, or any of them, at all proper and usual hours of business, to every person interested in the subject matter of such award, or to his or her agent duly authorised, who shall make application to inspect the same or any of them, and shall furnish a copy or copies of the same or any of them to every such person or agent who shall make application for such copy or copies; and every such registrar, steward, or other officer shall in every case be entitled to the sum of five shillings and no more for receiving and preserving the agreement of reference or deed of submission, award or awards, map or maps, and copy of the minutes of evidence as aforesaid; and the sum of one shilling and no more for every production of the same or any of them to be inspected; and the sum of sixpence and no more for every folio containing seventy-two words of every copy; and the sum of ten shillings and no more for every copy of a map so made as aforesaid."

§. 5. "And be it further enacted, That the expenses attending every reference which shall be made under the authority of this act, and all the proceedings hereby required relating to the same, shall be paid and borne by the parties thereto in such manner, shares, and proportions as they shall agree; and in case the said parties shall not make any agreement relating to such expenses, then all such expenses, or so much thereof as shall not be provided for by such agreement, shall be paid and borne by the said parties in equal moieties."

§. 6. "Provided also, and be it further enacted, That this act shall extend only to that part of the United Kingdom called *England* and *Wales*."

3 & 4 W. IV. c. 27.

"An Act for the Limitation of Actions and Suits relating to Real Property, and for simplifying the Remedies for trying the Rights thereto."
[24th July, 1833.]

Be it enacted, by, &c., "That the words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this act, except where the nature of the provision or the context of the act shall exclude such construction, be interpreted as follows; (that is to say,) the word "land" shall extend to manors, messuages, and all other corporeal hereditaments what-

soever, and also to tithes, (other than tithes belonging to a spiritual or eleemosynary corporation sole,) and also to any share, estate, or interest in them or any of them, whether the same shall be a freehold or chattel interest, and whether freehold or copyhold, or held according to any other tenure; and the word "rent" shall extend to all heriots, and to all services and suits for which a distress may be made, and to all annuities and periodical sums of money charged upon or payable out of any land (except moduses or compositions belonging to a spiritual or eleemosynary corporation sole); and the person through whom another person is said to claim shall mean any person by, through, or under, or by the act of whom, the person so claiming became entitled to the estate or interest claimed, as heir, issue in tail, tenant by the curtesy of *England*, tenant in dower, successor, special or general occupant, executor, administrator, legatee, husband, assignee, appointee, devisee, or otherwise, and also any person who was entitled to an estate or interest to which the person so claiming, or some person through whom he claims, became entitled as lord by escheat; and the word "person" shall extend to a body politic, corporate, or collegiate, and to a class of creditors or other persons, as well as an individual; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing; and every word importing the masculine gender only shall extend and be applied to a female as well as a male."

§. 2. "And be it further enacted, that after the thirty-first day of December one thousand eight hundred and thirty-three no person shall make an entry or distress or bring an action to recover any land or rent but within twenty years next after the time at which the right to make such entry or distress or to bring such action shall have first accrued to some person through whom he claims; or if such right shall not have accrued to any person through whom he claims, then within twenty years next after the time at which the right to make such entry or distress or to bring such action shall have first accrued to the person making or bringing the same."

§. 3. "And be it further enacted, That in the construction of this act the right to make an entry or distress or bring an action to recover any land or rent shall be deemed to have first accrued at such time as hereinafter is mentioned; (that is to say,) when the person claiming such land or rent, or some person through whom he claims, shall, in respect of the estate or interest claimed, have been in possession or in receipt of the profits of such land, or in receipt of such rent, and shall

while entitled thereto have been dispossessed, or have discontinued such possession or receipt, then such right shall be deemed to have first accrued at the time of such disposition or discontinuance of possession, or at the last time at which any such profits or rent were or was so received; and when the person claiming such land or rent shall claim the estate or interest of some deceased person who shall have continued in such possession or receipt in respect of the same estate or interest until the time of his death, and shall have been the last person entitled to such estate or interest who shall have been in such possession or receipt, then such right shall be deemed to have first accrued at the time of such death; and when the person claiming such land or rent shall claim in respect of an estate or interest in possession granted, appointed, or otherwise assured by any instrument (other than a will) to him, or some person through whom he claims, by a person being in respect of the same estate or interest in the possession or receipt of the profits of the land, or in the receipt of the rent, and no person entitled under such instrument shall have been in such possession or receipt, then such right shall be deemed to have first accrued at the time at which the person claiming as aforesaid, or the person through whom he claims, became entitled to such possession or receipt by virtue of such instrument; and when the estate or interest claimed shall have been an estate or interest in reversion or remainder, or other future estate or interest, and no person shall have obtained the possession or receipt of the profits of such land or the receipt of such rent in respect of such estate or interest, then such right shall be deemed to have first accrued at the time at which such estate or interest became an estate or interest in possession; and when the person claiming such land or rent, or the person through whom he claims, shall have become entitled by reason of any forfeiture or breach of condition, then such right shall be deemed to have first accrued when such forfeiture was incurred or such condition was broken."

§. 4. "Provided always, that when any right to make an entry or distress or to bring an action to recover any land or rent by reason of any forfeiture or breach of condition shall have first accrued in respect of any estate or interest in reversion or remainder, and the land or rent shall not have been recovered by virtue of such right, the right to make an entry or distress or bring an action to recover such land or rent shall be deemed to have first accrued in respect of such estate or interest at the time when the same shall have become an estate or interest in possession, as if no such forfeiture or breach of condition had happened."

§. 5. " Provided also, that a right to make an entry or distress or to bring an action to recover any land or rent shall be deemed to have first accrued, in respect of an estate or interest in reversion, at the time at which the same shall have become an estate or interest in possession by the determination of any estate or estates in respect of which such land shall have been held, or the profits thereof or such rent shall have been received, notwithstanding the person claiming such land, or some person through whom he claims, shall, at any time previously to the creation of the estate or estates which shall have determined, have been in possession or receipt of the profits of such land, or in receipt of such rent."

§. 6. " And be it further enacted, that for the purposes of this act an administrator claiming the estate or interest of the deceased person of whose chattels he shall be appointed administrator, shall be deemed to claim as if there had been no interval of time between the death of such deceased person and the grant of the letters of administration."

§. 7. " And be it further enacted, that when any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent, as tenant at will, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress or bring an action to recover such land or rent shall be deemed to have first accrued either at the determination of such tenancy, or at the expiration of one year next after the commencement of such tenancy, at which time such tenancy shall be deemed to have determined: Provided always, that no mortgagor or cestui que trust shall be deemed to be a tenant at will, within the meaning of this clause, to his mortgagee or trustee."

§. 8. " And be it further enacted, that when any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent, as tenant from year to year or other period, without any lease in writing, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress or to bring an action to recover such land or rent, shall be deemed to have first accrued at the determination of the first of such years or other periods, or at the last time when any rent payable in respect of such tenancy shall have been received (which shall last happen)."

§. 9. " And be it further enacted, that when any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent, by virtue of a lease in writing, by which a rent amounting to the yearly sum of twenty shillings or upwards shall be reserved, and

the rent reserved by such lease shall have been received by some person wrongfully claiming to be entitled to such land or rent in reversion immediately expectant on the determination of such lease, and no payment in respect of the rent reserved by such lease shall afterwards have been made to the person rightfully entitled thereto, the right of the person entitled to such land or rent, subject to such lease, or of the person through whom he claims, to make an entry or distress or to bring an action after the determination of such lease, shall be deemed to have first accrued at the time at which the rent reserved by such lease was first so received by the person wrongfully claiming as aforesaid; and no such right shall be deemed to have first accrued upon the determination of such lease to the person rightfully entitled."

§. 10. "And be it further enacted, that no person shall be deemed to have been in possession of any land within the meaning of this act merely by reason of having made an entry thereon."

§. 11. "And be it further enacted, that no continual or other claim upon or near any land shall preserve any right of making an entry or distress or of bringing an action."

§. 12. "And be it further enacted, that when any one or more of several persons entitled to any land or rent as coparceners, joint tenants, or tenants in common, shall have been in possession or receipt of the entirety, or more than his or their undivided share or shares of such land or of the profits thereof, or of such rent, for his or their own benefit, or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the same land or rent, such possession or receipt shall not be deemed to have been the possession or receipt of or by such last mentioned person or persons or any of them."

§. 13. "And be it further enacted, that when a younger brother or other relation of the person entitled as heir to the possession or receipt of the profits of any land, or to the receipt of any rent, shall enter into the possession or receipt thereof, such possession or receipt shall not be deemed to be the possession or receipt of or by the person entitled as heir."

§. 14. "Provided always, and be it further enacted, that when any acknowledgment of the title of the person entitled to any land or rent shall have been given to him or his agent in writing signed by the person in possession or in receipt of the profits of such land, or in receipt of such rent, then such possession or receipt of or by the person by whom such acknowledgment shall have been given shall be deemed,

according to the meaning of this act, to have been the possession or receipt of or by the person to whom or to whose agent such acknowledgment shall have been given at the time of giving the same, and the right of such last mentioned person, or any person claiming through him, to make an entry or distress or bring an action to recover such land or rent shall be deemed to have first accrued at and not before the time at which such acknowledgment, or the last of such acknowledgments if more than one, was given."

§. 15. " Provided also, and be it further enacted, that when no such acknowledgment as aforesaid shall have been given before the passing of this act, and the possession or receipt of the profits of the land, or the receipt of the rent, shall not at the time of the passing of this act have been adverse to the right or title of the person claiming to be entitled thereto, then such person, or the person claiming through him, may, notwithstanding the period of twenty years herein-before limited shall have expired, make an entry or distress or bring an action to recover such land or interest at any time within five years next after the passing of this act."

§. 16. " Provided always, and be it further enacted, that if at the time at which the right of any person to make an entry or distress or bring an action to recover any land or rent shall have first accrued as aforesaid such person shall have been under any of the disabilities herein-after mentioned, (that is to say,) infancy, coverture, idiotcy, lunacy, unsoundness of mind, or absence beyond seas, then such person, or the person claiming through him, may, notwithstanding the period of twenty years herein-before limited shall have expired, make an entry or distress or bring an action to recover such land or rent at any time within ten years next after the time at which the person to whom such right shall first have accrued as aforesaid shall have ceased to be under any such disability, or shall have died (which shall have first happened)."

§. 17. " Provided nevertheless, and be it further enacted, that no entry, distress, or action shall be made or brought by any person who, at the time at which his right to make an entry or distress or to bring an action to recover any land or rent shall have first accrued, shall be under any of the disabilities herein-before mentioned, or by any person claiming through him, but within forty years next after the time at which such right shall have first accrued, although the person under disability at such time may have remained under one or more of such disabilities during the whole of such forty years, or although the term

of ten years from the time at which he shall have ceased to be under any such disability, or have died, shall not have expired."

§. 18. " Provided always, and be it further enacted, that when any person shall be under any of the disabilities herein-before mentioned at the time at which his right to make an entry or distress or to bring an action to recover any land or rent shall have first accrued, and shall depart this life without having ceased to be under any such disability, no time to make an entry or distress or to bring an action to recover such land or rent beyond the said period of twenty years next after the right of such person to make an entry or distress or to bring an action to recover such land or rent shall have first accrued, or the said period of ten years next after the time at which such person shall have died, shall be allowed by reason of any disability of any other person."

§. 19. " And be it further enacted, that no part of the United Kingdom of Great Britain and Ireland, nor the islands of Man, Guernsey, Jersey, Alderney, or Sark, nor any island adjacent to any of them (being part of the dominions of His Majesty), shall be deemed to be beyond seas within the meaning of this act."

§. 20. " And be it further enacted, that when the right of any person to make an entry or distress or bring an action to recover any land or rent to which he may have been entitled for an estate or interest in possession shall have been barred by the determination of the period herein-before limited, which shall be applicable in such case, and such person shall at any time during the said period have been entitled to any other estate, interest, right, or possibility, in reversion, remainder, or otherwise, in or to the same land or rent, no entry, distress, or action shall be made or brought by such person, or any person claiming through him, to recover such land or rent, in respect of such other estate, interest, right, or possibility, unless in the meantime such land or rent shall have been recovered by some person entitled to an estate, interest, or right which shall have been limited or taken effect after or in defeasance of such estate or interest in possession."

§. 21. " And be it further enacted, that when the right of a tenant in tail of any land or rent to make an entry or distress or to bring an action to recover the same shall have been barred by reason of the same not having been made or brought within the period herein-before limited, which shall be applicable in such case, no such entry, distress, or action shall be made or brought by any person claiming any estate, interest, or right which such tenant in tail might lawfully have barred."

§. 22. " And be it further enacted, that when a tenant in tail of any land or rent, entitled to recover the same, shall have died before the expiration of the period herein-before limited, which shall be applicable in such case, for making an entry or distress or bringing an action to recover such land or rent, no person claiming any estate, interest, or right which such tenant in tail might lawfully have barred shall make an entry or distress or bring an action to recover such land or rent but within the period during which, if such tenant in tail had so long continued to live, he might have made such entry or distress or brought such action."

§. 23. " And be it further enacted, that when a tenant in tail of any land or rent shall have made an assurance thereof, which shall not operate to bar an estate or estates to take effect after or in defeasance of his estate tail, and any person shall by virtue of such assurance, at the time of the execution thereof, or at any time afterwards, be in possession or receipt of the profits of such land, or in the receipt of such rent, and the same person, or any other person whatsoever (other than some person entitled to such possession or receipt in respect of an estate which shall have taken effect after or in defeasance of the estate tail), shall continue or be in such possession or receipt for the period of twenty years next after the commencement of the time at which such assurance, if it had then been executed by such tenant in tail or the person who would have been entitled to his estate tail if such assurance had not been executed, would, without the consent of any other person, have operated to bar such estate or estates as aforesaid, then at the expiration of such period of twenty years such assurance shall be and be deemed to have been effectual as against any person claiming any estate, interest, or right to take effect after or in defeasance of such estate tail."

§. 24. " And be it further enacted, that after the said thirty-first day of December one thousand eight hundred and thirty-three no person claiming any land or rent in equity shall bring any suit to recover the same but within the period during which by virtue of the provisions herein-before contained he might have made an entry or distress or brought an action to recover the same respectively if he had been entitled at law to such estate, interest, or right in or to the same as he shall claim therein in equity."

§. 25. " Provided always, and be it further enacted, that when any land or rent shall be vested in a trustee upon any express trust, the right of the cestui que trust, or any person claiming through him, to bring a suit against the trustee or any person claiming through him, to

recover such land or rent, shall be deemed to have first accrued, according to the meaning of this act, at and not before the time at which such land or rent shall have been conveyed to a purchaser for a valuable consideration, and shall then be deemed to have accrued only as against such purchaser and any person claiming through him."

§. 26. "And be it further enacted, that in every case of a concealed fraud the right of any person to bring a suit in equity for the recovery of any land or rent of which he, or any person through whom he claims, may have been deprived by such fraud, shall be deemed to have first accrued at and not before the time at which such fraud shall or with reasonable diligence might have been first known or discovered; provided that nothing in this clause contained shall enable any owner of lands or rents to have a suit in equity for the recovery of such lands or rents, or for setting aside any conveyance of such lands or rents, on account of fraud, against any *bonâ fide* purchaser for valuable consideration who has not assisted in the commission of such fraud, and who at the time that he made the purchase did not know and had no reason to believe that any such fraud had been committed."

§. 27. "Provided always, and be it further enacted, that nothing in this act contained shall be deemed to interfere with any rule or jurisdiction of courts of equity in refusing relief on the ground of acquiescence or otherwise to any person whose right to bring a suit may not be barred by virtue of this act."

§. 28. "And be it further enacted, that when a mortgagee shall have obtained the possession or receipt of the profits of any land, or the receipt of any rent, comprised in his mortgage, the mortgagor or any person claiming through him shall not bring a suit to redeem the mortgage but within twenty years next after the time at which the mortgagee obtained such possession or receipt, unless in the meantime an acknowledgment of the title of the mortgagor or of his right of redemption shall have been given to the mortgagor, or some person claiming his estate, or to the agent of such mortgagor or person, in writing signed by the mortgagee or the person claiming through him; and in such case no such suit shall be brought but within twenty years next after the time at which such acknowledgment, or the last of such acknowledgments if more than one, was given; and when there shall be more than one mortgagor, or more than one person claiming through the mortgagor or mortgagors, such acknowledgment, if given to any of such mortgagors or persons, or his or their agent, shall be as effectual

as if the same had been given to all such mortgagors or persons ; but where there shall be more than one mortgagee, or more than one person claiming the estate or interest of the mortgagee or mortgagees, such acknowledgment, signed by one or more of such mortgagees or persons, shall be effectual only as against the party or parties signing as aforesaid, and the person or persons claiming any part of the mortgage money or land or rent by, from, or under him or them, and any person or persons entitled to any estate or estates, interest or interests, to take effect after or in defeasance of his or their estate or estates, interest or interests, and shall not operate to give to the mortgagor or mortgagors a right to redeem the mortgage as against the person or persons entitled to any other undivided or divided part of the money or land or rent ; and where such of the mortgagees or persons aforesaid as shall have given such acknowledgment shall be entitled to a divided part of the land or rent comprised in the mortgage, or some estate or interest therein, and not to any ascertained part of the mortgage money, the mortgagor or mortgagors shall be entitled to redeem the same divided part of the land or rent on payment, with interest, of the part of the mortgage money which shall bear the same proportion to the whole of the mortgage money as the value of such divided part of the land or rent shall bear to the value of the whole of the land or rent comprised in the mortgage."

§. 29. " Provided always, and be it further enacted, that it shall be lawful for any archbishop, bishop, dean, prebendary, parson, vicar, master of hospital, or other spiritual or eleemosynary corporation sole, to make an entry or distress or to bring an action or suit to recover any land or rent within such period as herein-after is mentioned next after the time at which the right of such corporation sole, or of his predecessor, to make such entry or distress or bring such action or suit shall first have accrued ; (that is to say,) the period during which two persons in succession shall have held the office or benefice in respect whereof such land or rent shall be claimed, and six years after a third person shall have been appointed thereto, if the times of such two incumbencies and such term of six years taken together shall amount to the full period of sixty years ; and if such times taken together shall not amount to the full period of sixty years, then during such further number of years in addition to such six years as will, with the time of the holding of such two persons and such six years, make up the full period of sixty years ; and after the said thirty-first day of *December* one thousand eight hundred and thirty-three no such entry, distress,

action, or suit shall be made or brought at any time beyond the determination of such period."

§. 30. " And be it further enacted, that after the said thirty-first day of *December* one thousand eight hundred and thirty-three no person shall bring any quare impedit or other action or any suit to enforce a right to present to or bestow any church, vicarage, or other ecclesiastical benefice, as the patron thereof, after the expiration of such period as herein-after is mentioned; (that is to say,) the period during which three clerks in succession shall have held the same, all of whom shall have obtained possession thereof adversely to the right of presentation or gift of such person, or of some person through whom he claims, if the times of such incumbencies taken together shall amount to the full period of sixty years; and if the times of such incumbencies shall not together amount to the full period of sixty years, then after the expiration of such further time as with the times of such incumbencies will make up the full period of sixty years."

§. 31. " Provided always, and be it further enacted, that when on the avoidance, after a clerk shall have obtained possession of an ecclesiastical benefice adversely to the right of presentation or gift of the patron thereof, a clerk shall be presented or collated thereto by his Majesty or the Ordinary by reason of a lapse, such last mentioned clerk shall be deemed to have obtained possession adversely to the right of presentation or gift of such patron as aforesaid; but when a clerk shall have been presented by his Majesty upon the avoidance of a benefice in consequence of the incumbent thereof having been made a bishop, the incumbency of such clerk shall, for the purposes of this act, be deemed a continuation of the incumbency of the clerk so made bishop."

§. 32. " And be it further enacted, that in the construction of this act every person claiming a right to present to or bestow any ecclesiastical benefice, as patron thereof, by virtue of any estate, interest, or right which the owner of an estate tail in the advowson might have barred, shall be deemed to be a person claiming through the person entitled to such estate tail, and the right to bring any quare impedit, action, or suit shall be limited accordingly."

§. 33. " Provided always, and be it further enacted, that after the said thirty-first day of *December* one thousand eight hundred and thirty-three no person shall bring any quare impedit or other action or any suit to enforce a right to present to or bestow any ecclesiastical benefice, as the patron thereof, after the expiration of one hundred

years from the time at which a clerk shall have obtained possession of such benefice adversely to the right of presentation or gift of such person, or of some person through whom he claims, or of some person entitled to some preceding estate or interest, or undivided share, or alternate right of presentation or gift, held or derived under the same title, unless a clerk shall subsequently have obtained possession of such benefice on the presentation or gift of the person so claiming, or of some person through whom he claims, or of some other person entitled in respect of an estate, share, or right held or derived under the same title."

§. 34. "And be it further enacted, that at the determination of the period limited by this act to any person for making an entry or distress, or bringing any writ of quare impedit or other action or suit, the right and title of such person to the land, rent or advowson for the recovery whereof such entry, distress, action, or suit respectively might have been made or brought within such period, shall be extinguished."

§. 35. "And be it further enacted, that the receipt of the rent payable by any tenant from year to year, or other lessee, shall, as against such lessee or any person claiming under him (but subject to the lease), be deemed to be the receipt of the profits of the land for the purposes of this act."

§. 36. "And be it further enacted, that no writ of right patent, writ of right quia dominus remisit curiam, writ of right in capite, writ of right in *London*, writ of right close, writ of right de rationabili parte, writ of right of advowson, writ of right upon disclaimer, writ de rationabilibus divisis, writ of right of ward, writ de consuetudinibus et servitiis, writ of cessavit, writ of escheat, writ of quo jure, writ of secta ad molendinum, writ de essendo quietum de theolonio, writ of ne injuste vexes, writ of mesne, writ of quod permittat, writ of formedon in descender, in remainder, or in reverter, writ of assize of novel disseisin, nuisance, darrein-presentment, juris utrum, or mort d'ancestor, writ of entry sur disseisin, in the quibus, in the per, in the per and cui, or in the post, writ of entry sur intrusion, writ of entry sur alienation dum fuit non compos mentis, dum fuit infra ætatem, dum fuit in prisona, ad communem legem, in casu proviso, in consimili casu, cui in vita, sur cui in vita, cui ante divortium, or sur cui ante divortium, writ of entry sur abatement, writ of entry quare ejecit infra terminum, or ad terminum qui præteriit, or causa matrimonii prælocuti, writ of aiel, besaiel, tresaiel, cosinage, or nuper obiit, writ of waste, writ of partition, writ of disceit, writ of quod ei deforceat, writ of covenant

real, writ of warrantia chartæ, writ of curia claudenda, or writ per quæ servitia, and no other action real or mixed (except a writ of right of dower, or writ of dower unde nihil habet, or a quare impedit, or an ejectment,) and no plaint in the nature of any such writ or action, (except a plaint for freebench or dower,) shall be brought after the thirty-first day of December, one thousand eight hundred and thirty-four."

§. 37. " Provided always, and be it further enacted, That when, on the said thirty-first day of December, one thousand eight hundred and thirty-four, any person who shall not have a right of entry to any land shall be entitled to maintain any such writ or action as aforesaid in respect of such land, such writ or action may be brought at any time before the first day of June, one thousand eight hundred and thirty-five, in case the same might have been brought if this act had not been made, notwithstanding the period of twenty years hereinbefore limited shall have expired."

§. 38. " Provided also, and be it further enacted, That when, on the said first day of June, one thousand eight hundred and thirty-five, any person whose right of entry to any land shall have been taken away by any descent cast, discontinuance, or warranty, might maintain any such writ or action as aforesaid in respect of such land, such writ or action may be brought after the said first day of June, one thousand eight hundred and thirty-five, but only within the period during which by virtue of the provisions of this act an entry might have been made upon the same land by the person bringing such writ or action if his right of entry had not been so taken away."

§. 39. " And be it further enacted, That no descent cast, discontinuance, or warranty which may happen or be made after the said thirty-first day of December, one thousand eight hundred and thirty-three, shall toll or defeat any right of entry or action for the recovery of land."

§. 40. " And be it further enacted, That after the said thirty-first day of December, one thousand eight hundred and thirty-three, no action or suit or other proceeding shall be brought, to recover any sum of money secured by any mortgage, judgment, or lien, or otherwise charged upon or payable out of any land or rent, at law or in equity, or any legacy, but within twenty years next after a present right to receive the same shall have accrued to some person capable of giving a discharge for or release of the same, unless in the meantime some part of the principal money, or some interest thereon, shall have been

paid, or some acknowledgment of the right thereto shall have been given in writing signed by the person by whom the same shall be payable, or his agent, to the person entitled thereto or his agent; and in such case no such action or suit or proceeding shall be brought but within twenty years after such payment or acknowledgment, or the last of such payments or acknowledgments if more than one, was given."

§. 41. "And be it further enacted, That after the said thirty-first day of December, one thousand eight hundred and thirty-three, no arrears of dower, nor any damages on account of such arrears, shall be recovered or obtained by any action or suit for a longer period than six years next before the commencement of such action or suit."

§. 42. "And be it further enacted, That after the said thirty-first day of December, one thousand eight hundred and thirty-three, no arrears of rent or of interest in respect of any sum of money charged upon or payable out of any land or rent, or in respect of any legacy, or any damages in respect of such arrears of rent or interest, shall be recovered by any distress, action, or suit but within six years next after the same respectively shall have become due, or next after an acknowledgement of the same in writing shall have been given to the person entitled thereto, or his agent, signed by the person by whom the same was payable, or his agent: provided nevertheless, that where any prior mortgagee or other incumbrancer shall have been in possession of any land, or in the receipt of the profits thereof, within one year next before an action or suit shall be brought by any person entitled to a subsequent mortgage or other incumbrance on the same land, the person entitled to such subsequent mortgage or incumbrance may recover in such action or suit the arrears of interest which shall have become due during the whole time that such prior mortgagee or incumbrancer was in such possession or receipt as aforesaid, although such time may have exceeded the said term of six years."

§. 43. "And be it further enacted, That after the said thirty-first day of December, one thousand eight hundred and thirty-three, no person claiming any tithes, legacy, or other property for the recovery of which he might bring an action or suit at law or in equity, shall bring a suit or other proceeding in any spiritual court to recover the same but within the period during which he might bring such action or suit at law or in equity."

§. 44. "Provided always, and be it further enacted, That this act shall not extend to *Scotland*; and it shall not, so far as it relates to

any right to permit to or bestow any church, vicarage, or other ecclesiastical benefice, extend to *Ireland*.”

§. 45. “ And be it further enacted, That this act may be amended, altered, or repealed during this present session of parliament.”

3 & 4 W. IV. c. 74.

“ *An Act for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance.*”

[28th August, 1833.]

Be it enacted by. &c., “ that in the construction of this act the word ‘lands’ shall extend to manors, advowsons, rectories, messuages, lands, tenements, tithes, rents, and hereditaments of any tenure (except copy of court roll), and whether corporeal or incorporeal, and any undivided share thereof, but when accompanied by some expression including or denoting the tenure by copy of court roll, shall extend to manors, messuages, lands, tenements, and hereditaments of that tenure, and any undivided share thereof; and the word ‘estate’ shall extend to an estate in equity as well as at law, and shall also extend to any interest, charge, lien, or incumbrance in, upon, or affecting lands, either at law or in equity, and shall also extend to any interest, charge, lien, or incumbrance in, upon, or affecting money subject to be invested in the purchase of lands; and the expression ‘base fee’ shall mean exclusively that estate in fee simple into which an estate tail is converted where the issue in tail are barred, but persons claiming estates by way of remainder or otherwise are not barred; and the expression ‘estate tail,’ in addition to its usual meaning, shall mean a base fee into which an estate tail shall have been converted; and the expression ‘actual tenant in tail’ shall mean exclusively the tenant of an estate tail which shall not have been barred, and such tenant shall be deemed an actual tenant in tail, although the estate tail may have been divested or turned to a right; and the expression ‘tenant in tail’ shall mean not only an actual tenant in tail, but also a person who, where an estate tail shall have been barred and converted into a base fee, would have been tenant of such estate tail if the same had not been barred; and the expression ‘tenant in tail entitled to a base fee’ shall mean a person entitled to a base fee, or to the ultimate beneficial interest in a base fee, and who, if the base fee had not been created, would have been actual tenant in tail; and the ex-

pression 'money subject to be invested in the purchase of lands' shall include money, whether raised or to be raised, and whether the amount thereof be or be not ascertained, and shall extend to stocks and funds, and real and other securities, the produce of which is directed to be invested in the purchase of lands, and the lands to be purchased with such money or produce shall extend to lands held by copy of court roll, and also to lands of any tenure, in Ireland, or elsewhere out of England, where such lands or any of them are within the scope or meaning of the trust or power directing or authorizing the purchase; and the word 'person' shall extend to a body politic, corporate, or collegiate, as well as an individual; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing; and every word importing the plural number shall extend and be applied to one person or thing as well as several persons or things; and every word importing the masculine gender only shall extend and be applied to a female as well as a male; and every assurance already made or hereafter to be made, whether by deed, will, private act of Parliament, or otherwise, by which lands are or shall be entailed, or agreed or directed to be entailed, shall be deemed a settlement; and every appointment made in exercise of any power contained in any settlement, or of any other power arising out of the power contained in any settlement, shall be considered as part of such settlement, and the estate created by such appointment shall be considered as having been created by such settlement; and where any such settlement is or shall be made by will, the time of the death of the testator shall be considered the time when such settlement was made: Provided always, that those words and expressions occurring in this clause, to which more than one meaning is to be attached, shall not have the different meanings given to them by this clause in those cases in which there is any thing in the subject or context repugnant to such construction."

§. 2. "And be it further enacted, that after the thirty-first day of December, one thousand eight hundred and thirty-three, no fine shall be levied or common recovery suffered of lands of any tenure, except where parties intending to levy a fine or suffer a common recovery shall, on or before the thirty first day of December, one thousand eight hundred and thirty-three, have sued out a writ of dedimus, or any other writ, in the regular proceedings of such fine or recovery; and any fine or common recovery which shall be levied or suffered contrary to this provision shall be absolutely void."

§. 3. "And be it further enacted, that in case any person shall,

after the thirty-first day of *December* one thousand eight hundred and thirty-three, be liable to levy a fine or suffer a common recovery of lands of any tenure, or to procure some other person to levy a fine or suffer a common recovery of lands of any tenure, under a covenant or agreement already entered into or hereafter to be entered into, before the first day of *January* one thousand eight hundred and thirty-four, then and in such case, if all the purposes intended to be effected by such fine or recovery can be effected by a disposition under this act, the person liable to levy such fine or suffer such recovery, or to procure some other person to levy such fine or suffer such recovery, shall, after the thirty-first day of *December* one thousand eight hundred and thirty-three, be subject and liable under such covenant or agreement to make or to procure to be made such a disposition under this act as will effect all the purposes intended to be effected by such fine or recovery ; but if some only of the purposes intended to be effected by such fine or recovery can be effected by a disposition under this act, then the person so liable to levy such fine or suffer such recovery, or to procure some other person to levy such fine or suffer such recovery as aforesaid, shall, after the thirty-first day of *December* one thousand eight hundred and thirty-three, be subject and liable under such covenant or agreement to make or procure to be made such a disposition under this act as will effect such of the purposes intended to be effected by such fine or recovery as can be effected by a disposition under this act ; and in those cases where the purposes intended to be effected by such fine or recovery or any of them cannot be effected by any disposition under this act, then the person so liable to levy such fine or suffer such recovery, or to procure some other person to levy such fine or suffer such recovery as aforesaid, shall, after the thirty-first day of *December* one thousand eight hundred and thirty-three, be liable under such covenant or agreement to execute or to procure to be executed some deed whereby the person intended to levy such fine or suffer such recovery shall declare his desire that such deed shall have the same operation and effect as such fine or recovery would have had if the same had been actually levied or suffered ; and the deed by which such declaration shall be made shall, if none of the purposes intended to be effected by such fine or recovery can be effected by a disposition under this act, have the same operation and effect in every respect as such fine or recovery would have had if the same had been actually levied or suffered ; but if some only of the purposes intended to be effected by such fine or

recovery can be effected by a disposition under this act, then the deed by which such declaration shall be made shall, so far as the purposes intended to be effected by such fine or recovery cannot be effected by a disposition under this act, have the same operation and effect in every respect as such fine or recovery would have had if the same had been actually levied or suffered."

§. 4. "And be it further enacted, that no fine already levied in a superior court of lands of the tenure of ancient demesne which hath not been reversed, and no fine hereafter to be levied of lands of that tenure, shall, upon a writ of deceit already brought by the lord of the manor of which the lands were parcel, the proceedings in which are now pending, or upon a writ of deceit which at any time after the passing of this act may be brought by the lord of the said manor, be reversed as to any person except the lord of the said manor; and the court shall order such fine to be vacated only as to the lord of the said manor; and every such fine which may be reversed as to the lord of the said manor upon such writ of deceit as aforesaid shall still remain as good and valid against and as binding upon the conusors thereof, and all persons claiming under them, as such fine would have been if the same had not been reversed by such writ of deceit as aforesaid; and no common recovery already suffered in a superior court of lands of the tenure of ancient demesne which hath not been reversed, and no common recovery hereafter to be suffered of lands of that tenure, shall, upon a writ of deceit already brought by the lord of the manor of which the lands were parcel, the proceedings in which are now pending, or upon a writ of deceit which at any time after the passing of this act may be brought by the lord of the said manor, be reversed as to any person except the lord of the said manor; and the court shall order such recovery to be vacated only as to the lord of the said manor; and every such recovery which may be reversed as to the lord of the said manor upon such writ of deceit as aforesaid shall still remain as good and valid against and as binding upon the vouchees therein, and all persons claiming under them, as such recovery would have been if the same had not been reversed by such writ of deceit as aforesaid."

§. 5. "And be it further enacted, that if at any time before or after the passing of this act a fine or common recovery shall have been levied or suffered, or shall be levied or suffered in a superior court, of lands of the tenure of ancient demesne, and subsequently to the levying or suffering thereof a fine or common recovery shall have been or

shall be levied or suffered of the same lands in the court of the lord of the manor of which the lands had been previously parcel, and the fine or common recovery levied or suffered in such superior court shall not have been reversed previously to the levying of the fine or the suffering of the common recovery in the lord's court, then and in every such case the fine or common recovery levied or suffered in the lord's court shall, notwithstanding the alteration or change of the tenure by the fine or common recovery previously levied or suffered in the superior court, be as good, valid, and binding as the same would have been if the tenure had not been altered or changed; and that in every other case where any fine or common recovery shall at any time before the passing of this act have been levied or suffered in a court whose jurisdiction does not extend to the lands of which such fine or recovery shall have been levied or suffered, such fine or recovery shall not be invalid in consequence of its having been levied or suffered in such court, and such court shall be deemed a court of sufficient jurisdiction for all the purposes of such fine or recovery; and in every other case where persons shall have assumed to hold courts in which fines or common recoveries have been levied or suffered, and such courts shall be unlawful or held without due authority, the fines or common recoveries which at any time before the passing of this act may have been levied or suffered in such unlawful or unauthorized courts shall not be invalid in consequence of their having been levied or suffered therein, and such courts shall be deemed courts of sufficient jurisdiction for all the purposes of such fines or recoveries."

§. 6. "And be it further enacted, that in every case in which at any time, either before or after the passing of this act, the tenure of ancient demesne has been or shall be suspended or destroyed by the levying of a fine, or the suffering of a common recovery of lands of that tenure in a superior court, and the lord of the manor of which the lands at the time of levying such fine or suffering such recovery were parcel shall not reverse the same before the first day of January, one thousand eight hundred and thirty-four, and shall not by any law in force on the first day of this session of parliament be barred of his right to reverse the same, such lands, provided within the last twenty years immediately preceding the first day of January, one thousand eight hundred and thirty-four, the rights of the lord of the manor of which they shall have been parcel shall in any manner have been acknowledged or recognized as to the same lands, shall, from the said first day of January, one thousand eight hundred and thirty-four,

again become parcel of the said manor, and be subject to the same heriots, rents, and services as they would have been subject to if such fine or recovery had not been levied or suffered; and no writ of deceit for the reversal of any fine or common recovery shall be brought after the thirty-first day of December, one thousand eight hundred and thirty-three."

§. 7. "And be it further enacted, that if it shall be apparent, from the deed declaring the uses of any fine already levied or hereafter to be levied, that there is in the indentures, record, or any of the proceedings of such fine any error in the name of the conusor or conusee of such fine, or any misdescription or omission of lands intended to have been passed by such fine, then and in every such case the fine, without any amendment of the indentures, record, or proceedings in which such error, misdescription, or omission shall have occurred, shall be as good and valid as the same would have been, and shall be held to have passed all the lands intended to have been passed thereby, in the same manner as it would have done if there had been no such error, misdescription, or omission."

§. 8. "And be it further enacted, that if it shall be apparent, from the deed making the tenant to the writ of entry or other writ for suffering a common recovery already suffered or hereafter to be suffered, that there is in the exemplification, record, or any of the proceedings of such recovery any error in the name of the tenant, demandant, or vouchee in such recovery, or any misdescription or omission of lands intended to have been passed by such recovery, then and in every such case the recovery, without any amendment of the exemplification, record, or proceedings in which such error, misdescription, or omission shall have occurred, shall be as good and valid as the same would have been, and shall be held to have passed all the lands intended to have been passed thereby, in the same manner as it would have done if there had been no such error, misdescription, or omission."

§. 9. "Provided always, and be it further enacted, that nothing in this act contained shall lessen or take away the jurisdiction of any court to amend any fine or common recovery, or any proceeding therein, in cases not provided for by this act."

§. 10. "And be it further enacted, that no common recovery already suffered or hereafter to be suffered shall be invalid in consequence of the neglect to inrol in due time a bargain and sale purporting to make the tenant to the writ of entry or other writ for suffering

such recovery, provided such recovery would have been valid if the bargain and sale purporting to make the tenant to the writ had been duly inrolled."

§. 11. "And be it further enacted, that no common recovery already suffered or hereafter to be suffered shall be invalid in consequence of any person in whom an estate at law was outstanding having omitted to make the tenant to the writ of entry or other writ for suffering such recovery, provided the person who was the owner of or had power to dispose of an estate in possession, not being less than an estate for a life or lives in the whole of the rents and profits of the lands in which such estate at law was outstanding, or the ultimate surplus of such rents and profits after payment of any charges thereout, and whether any surplus after payment of such charges shall actually remain or not, shall, within the time limited for making the tenant to the writ for suffering such recovery, have conveyed or disposed of such estate in possession to the tenant to such writ; and an estate shall be deemed to be an estate in possession, notwithstanding there shall be subsisting prior thereto any lease for lives or years, absolute or determinable, upon which a rent is reserved, or any term of years upon which no rent is reserved."

§. 12. "Provided always, and be it further enacted, that where any fine or common recovery shall before the passing of this act have been wholly reversed, such fine or recovery shall not be rendered valid by this act; and where any fine or common recovery shall before the passing of this act have been reversed as to some only of the parties thereto, or as to some only of the lands therein comprised, such fine or recovery shall not be rendered valid by this act so far as the same shall have been reversed; and where any person who would have been barred by any fine or common recovery if valid shall before the passing of this act have had any dealings with the lands comprised in such fine or recovery on the faith of the same being invalid, such fine or recovery shall not be rendered valid by this act; and this act shall not render valid any fine or common recovery as to lands of which any person shall at the time of the passing of this act be in possession in respect of any estate which the fine or common recovery, if valid, would have barred, nor any fine or common recovery which, before the passing of this act, any court of competent jurisdiction shall have refused to amend; nor shall this act prejudice or affect any proceedings at law or in equity, pending at the time of the passing of this act, in which the validity

of such fine or recovery shall be in question between the party claiming under such fine or recovery and the party claiming adversely thereto; and such fine or recovery, if the result of such proceedings shall be to invalidate the same, shall not be rendered valid by this act; and if such proceedings shall abate or become defective in consequence of the death of the party claiming under or adversely to such fine or recovery, any person who but for this act would have a right of action or suit by reason of the invalidity of such fine or recovery shall retain such right, so that he commence proceedings within six calendar months after the death of such party."

§. 13. "And be it further enacted, that after the thirty-first day of December, one thousand eight hundred and thirty-three, the records of all fines and common recoveries levied and suffered in his Majesty's Court of Common Pleas, at Westminster, and all the proceedings thereof, shall be deposited in such places and kept by such persons as the said Court of Common Pleas shall from time to time order or direct; and the records of all fines and common recoveries levied and suffered in his Majesty's Court of Common Pleas at Lancaster, and all the proceedings thereof, shall be deposited in such places and kept by such persons as his Majesty's justices of assize for the county palatine of Lancaster for the time being shall from time to time order or direct; and the records of all fines and common recoveries levied and suffered in the Court of Pleas of the county palatine of Durham, and all the proceedings thereof, shall be deposited in such places and kept by such persons as the said Court of Pleas shall from time to time order or direct; and in the meantime the said records and proceedings shall remain in the same places respectively where they are now deposited, and be kept by the respective persons who would have continued entitled to the custody thereof if this act had not been passed; and while the said records and proceedings respectively shall be kept by such persons respectively, searches may be made and extracts and copies obtained as heretofore, and on paying the accustomed fees; and when any of the records and proceedings shall, by the order of the court or justices having the control over the same, be kept by any other person, then, so far as relates to the records and proceedings in the custody of such other person, searches may be made and extracts or copies obtained at such times and on paying such fees as shall from time to time be ordered by the court of justices having the control over the same; and the extracts or copies so obtained shall be as available in evidence as they would have been if obtained from

the person whose duty it would have been to have made and delivered out the same if this act had not been passed."

§. 14. "And be it further enacted, that all warranties of lands which after the thirty-first day of December, one thousand eight hundred and thirty-three, shall be made or entered into by any tenant in tail thereof shall be absolutely void against the issue in tail, and all persons whose estates are to take effect after the determination or in defeasance of the estate tail."

§. 15. "And be it further enacted, that after the thirty-first day of December, one thousand eight hundred and thirty-three, every actual tenant in tail, whether in possession, remainder, contingency, or otherwise, shall have full power to dispose of for an estate in fee simple absolute, or for any less estate, the lands entailed, as against all persons claiming the lands entailed by force of any estate tail which shall be vested in or might be claimed by, or which but for some previous act would have been vested in or might have been claimed by, the person making the disposition, at the time of his making the same, and also as against all persons, including the King's most excellent Majesty, his heirs and successors, whose estates are to take effect after the determination or in defeasance of any such estate tail; saving always the rights of all persons in respect of estates prior to the estate tail in respect of which such disposition shall be made, and the rights of all other persons, except those against whom such disposition is by this act authorized to be made."

§. 16. "Provided always, and be it further enacted, that where, under any settlement made before the passing of this act, any woman shall be tenant in tail of lands within the provisions of an act passed in the eleventh year of the reign of his Majesty King Henry the Seventh, intituled *certain alienations made by the wife of the lands of her deceased husband shall be void*, the power of disposition hereinbefore contained as to such lands shall not be exercised by her except with such assent as, if this act had not been passed, would, under the provisions of the said act of King Henry the Seventh, have rendered valid a fine or common recovery levied or suffered by her of such lands."

§. 17. "Provided always, and be it further enacted, that, except as to lands comprised in any settlement made before the passing of this act, the said act of the eleventh year of the reign of his Majesty King Henry the Seventh shall be and the same is hereby repealed."

§. 18. "Provided always, and be it further enacted, that the power

of disposition hereinbefore contained shall not extend to tenants of estates tail who, by an act passed in the thirty-fourth and thirty-fifth years of the reign of his Majesty King Henry the Eighth, intituled *an act to embar feigned recovery of lands wherein the king is in reversion*, or by any other act, are restrained from barring their estates tail, or to tenants in tail after possibility of issue extinct."

§. 19. "And be it further enacted, that after the thirty-first day of December one thousand eight hundred and thirty-three, in every case in which an estate tail in any lands shall have been barred and converted into a base fee, either before or on or after that day, the person who, if such estate tail had not been barred, would have been actual tenant in tail of the same lands, shall have full power to dispose of such lands as against all persons, including the King's most excellent Majesty, his heirs and successors, whose estates are to take effect after the determination or in defeasance of the base fee into which the estate tail shall have been converted, so as to enlarge the base fee into a fee simple absolute; saving always the rights of all persons in respect of estates prior to the estate tail which shall have been converted into a base fee, and the rights of all other persons, except those against whom such disposition is by this act authorized to be made."

§. 20. "Provided always, and be it further enacted, that nothing in this act contained shall enable any person to dispose of any lands entailed in respect of any expectant interest which he may have as issue inheritable to any estate tail therein."

§. 21. "Provided always, and be it further enacted, that if a tenant in tail of lands shall make a disposition of the same, under this act, by way of mortgage, or for any other limited purpose, then and in such case such disposition shall, to the extent of the estate thereby created, be an absolute bar in equity as well as at law to all persons as against whom such disposition is by this act authorised to be made, notwithstanding any intention to the contrary may be expressed or implied in the deed by which the disposition may be effected: Provided always, that if the estate created by such disposition shall be only an estate pour autre vie, or for years absolute or determinable, or if, by a disposition under this act by a tenant in tail of lands, an interest, charge, lien, or incumbrance shall be created without a term of years absolute or determinable, or any greater estate, for securing or raising the same, then such disposition shall in equity be a bar only so far as may be necessary to give full effect to the mortgage, or to such other limited purpose, or to such interest,

lien, charge, or incumbrance, notwithstanding any intention to the contrary may be expressed or implied in the deed by which the disposition may be effected."

§. 22. "And be it further enacted, that if at the time when there shall be a tenant in tail of lands under a settlement, there shall be subsisting in the same lands or any of them, under the same settlement, any estate for years determinable on the dropping of a life or lives, or any greater estate, (not being an estate for years,) prior to the estate tail, then the person who shall be the owner of the prior estate, or the first of such prior estates if more than one, then subsisting under the same settlement, or who would have been so if no absolute disposition thereof had been made, (the first of such prior estates, if more than one, being for all the purposes of this act deemed the prior estate,) shall be the protector of the settlement so far as regards the lands in which such prior estate shall be subsisting, and shall for all the purposes of this act be deemed the owner of such prior estate, although the same may have been charged or incumbered either by the owner thereof or by the settlor, or otherwise howsoever, and although the whole of the rents and profits be exhausted or required for the payment of the charges and incumbrances on such prior estate, and although such prior estate may have been absolutely disposed of by the owner thereof, or by or in consequence of the bankruptcy or insolvency of such owner, or by any other act or default of such owner; and that an estate by the curtesy, in respect of the estate tail, or of any prior estate created by the same settlement, shall be deemed a prior estate under the same settlement within the meaning of this clause; and that an estate by way of resulting use or trust to or for the settlor shall be deemed an estate under the same settlement within the meaning of this clause."

§. 23. "Provided always, and be it further enacted, that where two or more persons shall be owners, under a settlement within the meaning of this act, of a prior estate, the sole owner of which estate, if there had been only one, would in respect thereof have been the protector of such settlement, each of such persons, in respect of such undivided share as he could dispose of, shall for all the purposes of this act be deemed the owner of a prior estate, and shall, in exclusion of the other or others of them, be the sole protector of such settlement to the extent of such undivided share."

§. 24. "Provided always, and be it further enacted, that where a married woman would, if single, be the protector of a settlement in

respect of a prior estate, which is not thereby settled, or agreed or directed to be settled, to her separate use, she and her husband together shall in respect of such estate be the protector of such settlement, and shall be deemed one owner; but if such prior estate shall by such settlement have been settled, or agreed or directed to be settled, to her separate use, then and in such case she alone shall in respect of such estate be the protector of such settlement."

§. 25. "Provided always, and be it further enacted, that, except in the case of a lease hereinafter provided for, where an estate shall be limited by a settlement by way of confirmation, or where the settlement shall merely have the effect of restoring an estate, in either of those cases such estate shall for the purposes of this act, so far as regards the protector of the settlement, be deemed an estate subsisting under such settlement."

§. 26. "Provided always, and be it further enacted, that where a lease at a rent shall be created or confirmed by a settlement, the person in whose favour such lease shall be created or confirmed shall not in respect thereof be the protector of such settlement."

§. 27. "Provided always, and be it further enacted, that no woman in respect of her dower, and (except in the case hereinafter provided for of a bare trustee under a settlement made on or before the thirty-first day of December one thousand eight hundred and thirty-three) no bare trustee, heir, executor, administrator, or assign, in respect of any estate taken by him as such bare trustee, heir, executor, administrator, or assign, shall be the protector of a settlement."

§. 28. "Provided always, and be it further enacted, that where under any settlement there shall be more than one estate prior to an estate tail, and the person who shall be the owner within the meaning of this act of any such prior estate, in respect of which but for the two last preceding clauses, or either of them, he would have been the protector of the settlement, shall by virtue of such clauses, or either of them, be excluded from being the protector, then and in such case the person (if any) who, if such estate did not exist, would be the protector of the settlement, shall be such protector."

§. 29. "Provided always, and be it further enacted, that where already, or on or before the thirty-first day of December one thousand eight hundred and thirty-three, an estate under a settlement shall have been disposed of either absolutely or otherwise, and either for valuable consideration or not, the person who in respect of such estate would, if this act had not been passed, have been the proper

person to have made the tenant to the writ of entry or other writ for suffering a common recovery of the lands entailed by such settlement, shall, during the continuance of the estate which conferred the right to make the tenant to such writ of entry or other writ, be the protector of such settlement."

§. 30. "Provided always, and be it further enacted, that where any person having either already, or on or before the thirty-first day of December one thousand eight hundred and thirty-three, either for valuable consideration or not, disposed of, either absolutely or otherwise, a remainder or reversion in fee in any lands, or created any estate out of such remainder or reversion, would under this act, if this clause had not been inserted, have been the protector of the settlement by which the lands were entailed in which such remainder or reversion may be subsisting, and thereby be enabled to concur in the barring of such remainder or reversion, which he could not have done if he had not become such protector, then and in every such case the person who, if this act had not been passed, would have been the proper person to have made the tenant to the writ of entry or other writ for suffering a common recovery of such lands, shall, during the continuance of the estate which conferred the right to make the tenant to such writ of entry or other writ, be the protector of such settlement."

§. 31. "Provided always, and be it further enacted, that where, under any settlement of lands made before the passing of this act, the person who, if this act had not been passed, would have been the proper person to make the tenant to the writ of entry or other writ for suffering a common recovery of such lands for the purpose of barring any estate tail or other estate under such settlement, shall be a bare trustee, such trustee shall, during the continuance of the estate conferring on him the right to make the tenant to such writ of entry or other writ, be the protector of such settlement."

§. 32. "Provided always, and be it further enacted, that it shall be lawful for any settlor entailing lands to appoint, by the settlement by which the lands shall be entailed, any number of persons in esse, not exceeding three, and not being aliens, to be protector of the settlement in lieu of the person who would have been the protector if this clause had not been inserted, and either for the whole or any part of the period for which such person might have continued protector, and by means of a power to be inserted in such settlement to perpetuate during the whole or any part of such period the protectorship

of the settlement in any one person or number of persons in case, and not being an alien or aliens, whom the donee of the power shall think proper by deed to appoint protector of the settlement in the place of any one person or number of persons who shall die or shall by deed relinquish his or their office of protector; and the person or persons so appointed shall, in case of there being no other person then protector of the settlement, be the protector, and shall, in case of there being any other person then protector of the settlement, be protector jointly with such other person: Provided nevertheless, that by virtue or means of any such appointment the number of the persons to compose the protector shall never exceed three: Provided further nevertheless, that every deed by which a protector shall be appointed under a power in a settlement, and every deed by which a protector shall relinquish his office, shall be void unless enrolled in his Majesty's High Court of Chancery within six calendar months after the execution thereof: Provided further nevertheless, that the person who but for this clause would have been sole protector of the settlement may be one of the persons to be appointed protector under this clause, if the settlor shall think fit, and shall, unless otherwise directed by the settlor, act as sole protector if the other persons constituting the protector shall have ceased to be so by death or relinquishment of the office by deed, and no other person shall have been appointed in their place."

§. 38. "Provided always, and be it further enacted, that if any person, protector of a settlement, shall be lunatic, idiot, or of unsound mind, and whether he shall have been found such by inquisition or not, then the Lord High Chancellor of *Great Britain*, or the lord keeper or the lords commissioners for the custody of the great seal of *Great Britain*, for the time being, or other the person or persons for the time being intrusted by the king's sign manual with the care and commitment of the custody of the persons and estates of persons found lunatic, idiot, and of unsound mind, shall be the protector of such settlement in lieu of the person who shall be such lunatic or idiot or of unsound mind as aforesaid; or if any person, protector of a settlement, shall be convicted of treason or felony, or if any person, not being the owner of a prior estate under a settlement, shall be protector of such settlement, and shall be an infant, or if it shall be uncertain whether such last mentioned person be living or dead, then his Majesty's High Court of Chancery shall be the protector of

such settlement in lieu of the person who shall be an infant, or whose existence cannot be ascertained as aforesaid; or if any settlor entailing lands shall in the settlement by which the lands shall be entailed declare that the person who as owner of a prior estate under such settlement would be entitled to be protector of the settlement shall not be such protector, and shall not appoint any person to be protector in his stead, then the said Court of Chancery shall, as to the lands in which such prior estate shall be subsisting, be the protector of the settlement during the continuance of such estate; or if in any other case where there shall be subsisting under a settlement an estate prior to an estate tail under the same settlement, and such prior estate shall be sufficient to qualify the owner thereof to be protector of the settlement, and there shall happen at any time to be no protector of the settlement as to the lands in which the prior estate shall be subsisting, the said Court of Chancery shall, while there shall be no such protector, and the prior estate shall be subsisting, be the protector of the settlement as to such lands."

§. 34. "Provided always, and be it further enacted, that if at the time when any person, actual tenant in tail of lands under a settlement, but not entitled to the remainder or reversion in fee immediately expectant on the determination of his estate tail, shall be desirous of making under this act a disposition of the lands entailed, there shall be a protector of such settlement, then and in every such case the consent of such protector shall be requisite to enable such actual tenant in tail to dispose of the lands entailed to the full extent to which he is herein-before authorized to dispose of the same; but such actual tenant in tail may, without such consent, make a disposition under this act of the lands entailed, which shall be good against all persons who, by force of any estate tail which shall be vested in or might be claimed by, or which but for some previous act or default would have been vested in or might have been claimed by, the person making the disposition at the time of his making the same, shall claim the lands entailed."

§. 35. "Provided always, and be it further enacted, that where an estate tail shall have been converted into a base fee, in such case, so long as there shall be a protector of the settlement by which the estate tail was created, the consent of such protector shall be requisite to enable the person who would have been tenant of the estate tail if the same had not been barred to exercise, as to the lands in respect

of which there shall be such protector, the power of disposition herein-before contained."

§. 36. "And be it further enacted, that any device, shift, or contrivance by which it shall be attempted to control the protector of a settlement in giving his consent, or to prevent him in any way from using his absolute discretion in regard to his consent, and also any agreement entered into by the protector of a settlement to withhold his consent, shall be void; and that the protector of a settlement shall not be deemed to be a trustee in respect of his power of consent; and a court of equity shall not control or interfere to restrain the exercise of his power of consent nor treat his giving consent as a breach of trust."

§. 37. "Provided always, and be it further enacted, that the rules of equity in relation to dealings and transactions between the donee of a power and any object of the power in whose favour the same may be exercised, shall not be held to apply to dealings and transactions between the protector of a settlement and a tenant in tail under the same settlement, upon the occasion of the protector giving his consent to a disposition by a tenant in tail under this act."

§. 38. "Provided always, and be it further enacted, that when a tenant in tail of lands under a settlement shall have already created or shall hereafter create in such lands, or any of them, a voidable estate in favour of a purchaser for valuable consideration, and shall afterwards under this act, by any assurance other than a lease not requiring enrolment, make a disposition of the lands in which such voidable estate shall be created, or any of them, such disposition, whatever its object may be, and whatever may be the extent of the estate intended to be thereby created, shall, if made by the tenant in tail with the consent of the protector (if any) of the settlement, or by the tenant in tail alone, if there shall be no such protector, have the effect of confirming such voidable estate in the lands thereby disposed of to its full extent as against all persons except those whose rights are saved by this act; but if at the time of making the disposition there shall be a protector of the settlement, and such protector shall not consent to the disposition, and the tenant in tail shall not without such consent be capable under this act of confirming the voidable estate to its full extent, then and in such case such disposition shall have the effect of confirming such voidable estate so far as such tenant in tail would then be capable under this act of confirming the

same without such consent: Provided always, that if such disposition shall be made to a purchaser for valuable consideration, who shall not have express notice of the voidable estate, then and in such case the voidable estate shall not be confirmed as against such purchaser and the persons claiming under him."

§. 39. "And be it further enacted, that if a base fee in any lands, and the remainder or reversion in fee in the same lands, shall at the time of the passing of this act, or at any time afterwards, be united in the same person, and at any time after the passing of this act there shall be no intermediate estate between the base fee and the remainder or reversion, then and in such case the base fee shall not merge, but shall be *ipso facto* enlarged into as large an estate as the tenant in tail, with the consent of the protector, if any, might have created by any disposition under this act if such remainder or reversion had been vested in any other person."

§. 40. "And be it further enacted, that every disposition of lands under this act by a tenant in tail thereof shall be effected by some one of the assurances (not being a will) by which such tenant in tail could have made the disposition if his estate were an estate at law in fee simple absolute: provided nevertheless, that no disposition by a tenant in tail shall be of any force either at law or in equity, under this act, unless made or evidenced by deed; and that no disposition by a tenant in tail resting only in contract, either express or implied, or otherwise, and whether supported by a valuable or meritorious consideration or not, shall be of any force at law or in equity under this act, notwithstanding such disposition shall be made or evidenced by deed; and if the tenant in tail making the disposition shall be a married woman, the concurrence of her husband shall be necessary to give effect to the same; and any deed which may be executed by her for effecting the disposition shall be acknowledged by her as hereinafter directed."

§. 41. "Provided always, and be it further enacted, that no assurance by which any disposition of lands shall be effected under this act by a tenant in tail thereof, (except a lease for any term not exceeding twenty-one years, to commence from the date of such lease, or from any time not exceeding twelve calendar months from the date of such lease, where a rent shall be thereby reserved, which, at the time of granting such lease, shall be a rack rent, or not less than five sixths parts of a rack rent,) shall have any operation under this act

unless it be inrolled in His Majesty's High Court of Chancery within six calendar months after the execution thereof; and if the assurance by which any disposition of lands shall be effected under this act shall be a bargain and sale, such assurance, although not inrolled within the time prescribed by the act passed in the twenty-seventh year of the reign of His Majesty King Henry the Eighth, intituled *for inrollment of bargains and sales*, shall, if inrolled in the said Court of Chancery within the time prescribed by this clause, be as good and valid as the same would have been if the same had been inrolled in the said court within the time prescribed by the said act of Henry the Eighth."

§. 42. "And be it further enacted, that the consent of the protector of a settlement to the disposition under this act of a tenant in tail shall be given either by the same assurance by which the disposition shall be effected, or by a deed distinct from the assurance, and to be executed either on or at any time before the day on which the assurance shall be made, otherwise the consent shall be void."

§. 43. "And be it further enacted, that if the protector of a settlement shall, by a distinct deed, give his consent to the disposition of a tenant in tail, it shall be considered that such protector has given an absolute and unqualified consent, unless in such deed he shall refer to the particular assurance by which the disposition shall be effected, and shall confine his consent to the disposition thereby made."

§. 44. "And be it further enacted, that it shall not be lawful for the protector of a settlement who, under this act, shall have given his consent to the disposition of a tenant in tail, to revoke such consent."

§. 45. "And be it further enacted, that any married woman, being either alone or jointly with her husband protector of a settlement, may under this act, in the same manner as if she were a ~~female~~ sole, give her consent to the disposition of a tenant in tail."

§. 46. "Provided always, and be it further enacted, that the consent of a protector to the disposition of a tenant in tail shall, if given by a deed distinct from the assurance by which the disposition shall be effected by the tenant in tail, be void, unless such deed be inrolled in His Majesty's High Court of Chancery, either at or before the time when the assurance shall be inrolled."

§. 47. "And be it further enacted, that in cases of dispositions of lands under this act by tenants in tail thereof, and also in cases of consents by protectors of settlements to dispositions of lands under this act by tenants in tail thereof, the jurisdiction of Courts of Equity

shall be altogether excluded, either on the behalf of a person claiming for a valuable or meritorious consideration, or not, in regard to the specific performance of contracts, and the supplying of defects in the execution either of the powers of disposition given by this act to tenants in tail, or of the powers of consent given by this act to protectors of settlements, and the supplying under any circumstances of the want of execution of such powers of disposition and consent respectively, and in regard to giving effect in any other manner to any act or deed by a tenant in tail or protector of a settlement which in a court of law would not be an effectual disposition or consent under this act; and that no disposition of lands under this act by a tenant in tail thereof in Equity, and no consent by a protector of a settlement to a disposition of lands under this act by a tenant in tail thereof in Equity, shall be of any force unless such disposition or consent would in case of an estate tail at law be an effectual disposition or consent under this act in a court of law."

§. 48. "Provided always, and be it further enacted, that in every case in which the lord high chancellor, lord keeper or lords commissioners for the custody of the great seal, or other the person or persons intrusted with the care and commitment of the custody of the persons and estates of persons found lunatic, idiot, and of unsound mind, or His Majesty's High Court of Chancery, shall be the protector of a settlement, such lord high chancellor, lord keeper, or lords commissioners, or person or persons so intrusted as aforesaid, or the said Court of Chancery (as the case may be), while protector of such settlement, shall, on the motion or petition in a summary way by a tenant in tail under such settlement, have full power to consent to a disposition under this act by such tenant in tail, and the disposition to be made by such tenant in tail upon such motion or petition as aforesaid shall be such as shall be approved of by such lord high chancellor, lord keeper, or lords commissioners, or person or persons so intrusted as aforesaid, or the said Court of Chancery (as the case may be); and it shall be lawful for such lord high chancellor, lord keeper, or lords commissioners, or person or persons so intrusted as aforesaid, or the said Court of Chancery (as the case may be), to make such orders in the matter as shall be thought necessary; and if such lord high chancellor, lord keeper, or lords commissioners, or person or persons so intrusted as aforesaid, or the said Court of Chancery (as the case may be), shall, in lieu of any such person as aforesaid, be the protector of a settlement, and there shall be any other person pro-

tector of the same settlement jointly with such person as aforesaid, then and in every such case the disposition by the tenant in tail, though approved of as aforesaid, shall not be valid, unless such other person being protector as aforesaid shall consent thereto in the manner in which the consent of the protector is by this act required to be given."

§. 49. " Provided always, and be it further enacted, That in every case in which the Lord High Chancellor, Lord Keeper or Lords Commissioners for the custody of the Great Seal, or other the person or persons intrusted with the care and commitment of the custody of the persons and estates of persons found lunatic, idiot, and of unsound mind, or his Majesty's high court of chancery, shall be the protector of a settlement, no document or instrument, as evidence of the consent of such protector to the disposition of a tenant in tail under such settlement, shall be requisite beyond the order in obedience to which the disposition shall have been made."

§. 50. " And be it further enacted, That all the previous clauses in this act, so far as circumstances and the different tenures will admit, shall apply to lands held by copy of court roll, except that a disposition of any such lands under this act by a tenant in tail thereof, whose estate shall be an estate at law, shall be made by surrender, and except that a disposition of any such lands under this act by a tenant in tail thereof, whose estate shall be merely an estate in equity, may be made either by surrender or by a deed as hereinafter provided, and except so far as such clauses are otherwise altered or varied by the clauses herein after contained."

§. 51. " Provided always, and be it further enacted, that if the consent of the protector of a settlement to the disposition of lands held by copy of court roll by a tenant in tail thereof shall be given by deed, such deed shall, either at or before the time when the surrender shall be made by which the disposition shall be effected, be executed by such protector, and produced to the lord of the manor of which the lands are parcel, or to his steward, or to the deputy of such steward; and the consent of such protector shall be void unless such deed shall be so executed and produced; and on the production of the deed the lord, or steward or deputy steward, shall by writing under his hand, to be indorsed on the deed, acknowledge that the same was produced within the time limited, and shall cause such deed, with the indorsement thereon, to be entered on the court rolls of the manor; and the indorsement, purporting to be so signed,

shall of itself be *prima facie* evidence that the deed was produced within the time limited, and that the person who signed the indorsement was the lord of the manor, or his steward, or the deputy of such steward; and after such deed shall have been so entered the lord of the manor, or his steward, or the deputy of such steward, shall indorse thereon a memorandum signed by him, testifying the entry of the same on the court rolls."

§. 52. "Provided always, and be it further enacted, That if the consent of the protector of a settlement to the disposition of lands held by copy of court roll by a tenant in tail thereof shall not be given by deed, then and in such case the consent shall be given by the protector to the person taking the surrender by which the disposition shall be effected; and if the surrender shall be made out of court, it shall be expressly stated in the memorandum of such surrender that such consent had been given, and such memorandum shall be signed by the protector; and the lord of the manor of which the lands are parcel, or his steward, or the deputy of such steward, shall cause the memorandum, with such statement therein as to the consent, to be entered on the court rolls of the manor; and such memorandum shall be good evidence of the consent and of the surrender therein stated to be made; and the entry of the memorandum on the court rolls, or a copy of such entry, shall be as available for the purposes of evidence as any other entry on the court rolls, or a copy thereof; but if the surrender shall be made in court, the lord of the manor, or his steward, or the deputy of such steward, shall cause an entry of such surrender, containing a statement that such consent had been given, to be made on the court rolls; and the entry of such surrender on the court rolls, or a copy of such entry, shall be as available for the purposes of evidence as any other entry on the court rolls, or a copy thereof."

§. 53. "Provided always, and be it further enacted, That a tenant in tail of lands held by copy of court roll, whose estate shall be merely an estate in equity, shall have full power by deed to dispose of such lands under this act in the same manner in every respect as he could have done if they had been of freehold tenure; and all the previous clauses in this act shall, so far as circumstances will admit, apply to the lands in respect of which any such equitable tenant in tail shall avail himself of this present clause; and the deed by which the disposition shall be effected shall be entered on the court rolls of the manor of which the lands thereby disposed of may be parcel; and if

there shall be a protector to consent to the disposition, and such protector shall give his consent by a distinct deed, the consent shall be void unless the deed of consent be executed by the protector either on or at any time before the day on which the deed of disposition shall be executed by the equitable tenant in tail; and such deed of consent shall be entered on the court rolls; and it shall be imperative on the lord of the manor, or his steward, or the deputy of such steward, when required so to do, to enter such deed or deeds on the court rolls, and he shall indorse on each deed so entered a memorandum, signed by him, testifying the entry of the same on the court rolls: Provided always, that every deed by which lands held by copy of court roll shall be disposed of under this clause, by an equitable tenant in tail thereof, shall be void against any person claiming such lands, or any of them, for valuable consideration under any subsequent assurance duly entered on the court rolls of the manor of which the lands may be parcel, unless the deed of disposition by the equitable tenant in tail be entered on the court rolls of such manor before the subsequent assurance shall have been entered."

§. 54. "Provided always, and be it further enacted, That in no case where any disposition under this act of lands held by copy of court roll, by a tenant in tail thereof, shall be effected by surrender or by deed, shall the surrender or the memorandum, or a copy thereof, or the deed of disposition, or the deed, if any, by which the protector shall consent to the disposition, require enrolment otherwise than by entry on the court rolls."

§. 55. "And be it further enacted, That after the thirty-first day of December one thousand eight hundred and thirty-three, so much of an act passed in the sixth year of the reign of his late Majesty King George the Fourth, intituled *an act to amend the laws relating to bankrupts*, as empowers the commissioners named in any commission of bankrupt issued against a tenant in tail to make sale of any lands, tenements, and hereditaments, situate either in England or Ireland, whereof such bankrupt shall be seised of any estate tail in possession, reversion, or remainder, and whereof no reversion, or remainder is in the crown, the gift or provision of the crown, shall be and the same is hereby repealed: Provided always, that such repeal shall not extend to the lands, whatever the tenure may be, of any person adjudged a bankrupt under any commission of bankrupt, or under any fiat which, in pursuance of the said act of the sixth year of the reign of King George the Fourth, or of any former act

concerning bankrupts, or of an act passed in the first and second years of the reign of his Majesty King William the Fourth, intituled *an act to establish a court of bankruptcy*, hath been or shall be issued on or before the thirty-first day of December one thousand eight hundred and thirty-three: Provided also, that such repeal shall not have the effect of reviving in any respect the acts repealed by the said act of the sixth year of the reign of King George the Fourth, or any of them."

§. 56. "And be it further enacted, That any commissioner acting in the execution of any fiat which after the thirty-first day of December one thousand eight hundred and thirty-three shall be issued in pursuance of the said act passed in the first and second years of the reign of King William the Fourth, under which any person shall be adjudged a bankrupt who at the time of issuing such fiat, or at any time afterwards, before he shall have obtained his certificate, shall be an actual tenant in tail of lands of any tenure, shall by deed dispose of such lands to a purchaser for valuable consideration, for the benefit of the creditors of such actual tenant in tail, and shall create by any such disposition as large an estate in the lands disposed of as the actual tenant in tail, if he had not become bankrupt, could have done under this act at the time of such disposition: Provided always, that if at the time of the disposition of such lands, or any of them, by such commissioner as aforesaid, there shall be a protector of the settlement by which the estate of such actual tenant in tail in the lands disposed of by such commissioner was created, and the consent of such protector would have been requisite to have enabled the actual tenant in tail, if he had not become bankrupt, to have disposed of such lands to the full extent to which, if there had been no such protector, he could under this act have disposed of the same, and such protector shall not consent to the disposition, then and in such case the estate created in such lands, or any of them, by the disposition of such commissioner, shall be as large an estate as the actual tenant in tail, if he had not become bankrupt, could at the time of such disposition have created under this act in such lands without the consent of the protector."

§. 57. "And be it further enacted, That any commissioner acting in the execution of any such fiat as aforesaid under which any person shall be adjudged a bankrupt who at the time of issuing such fiat, or at any time afterwards before he shall have obtained his certificate, shall be a tenant in tail entitled to a base fee in lands of any

tenure; shall by deed dispose of such lands to a purchaser for valuable consideration, for the benefit of the creditors of the person so entitled as aforesaid, provided at the time of the disposition there be no protector of the settlement by which the estate tail converted into the base fee was created; and by such disposition the base fee shall be enlarged into as large an estate as the same could at the time of such disposition have been enlarged into under this act by the person so entitled if he had not become bankrupt."

§. 58. "And be it further enacted, That the commissioner acting in the execution of any such fiat as aforesaid under which a person being, or before obtaining his certificate becoming, an actual tenant in tail of lands of any tenure, or a tenant in tail entitled to a base fee in lands of any tenure, shall be adjudged a bankrupt, shall, if there shall be a protector of the settlement by which the estate tail of such actual tenant in tail, or the estate tail converted into a base fee, (as the case may be,) was created, stand in the place of such actual tenant in tail, or tenant in tail so entitled as aforesaid, so far as regards the consent of such protector; and the disposition of such lands, or any of them, by such commissioner as aforesaid, if made with the consent of such protector, shall, whether such commissioner may have made under this act a prior disposition of the same lands without the consent of such protector or not, or whether a prior sale or conveyance of the same lands shall have been made or not, under the said acts of the sixth year of King George the Fourth and the first and second years of King William the Fourth, or either of them, or any acts hereafter to be passed concerning bankrupts, have the same effect as such disposition would have had if such actual tenant in tail, or tenant in tail so entitled as aforesaid, had not become bankrupt, and such disposition had been made by him under this act, with the consent of such protector; and all the previous clauses of this act, in regard to the consent of the protector to the disposition of a tenant in tail of lands not held by copy of court roll, and in regard to the time and manner of giving such consent, and in regard to the inrolment of the deed of consent, where such deed shall be distinct from the assurance by which the disposition of the commissioner shall be effected, shall, except so far as the same may be varied by the clause next herein-after contained, apply to every consent that may be given by virtue of this present clause."

§. 59. "And be it further enacted, That every deed by which any commissioner acting in the execution of any such fiat as aforesaid

shall, under this act, dispose of lands not held by copy of court-roll, shall be void unless inrolled in his Majesty's high court of chancery within six calendar months after the execution thereof; and every deed by which any commissioner acting in the execution of any such fiat as aforesaid shall, under this act, dispose of lands held by copy of court-roll, shall be entered on the court-rolls of the manor of which the lands may be parcel; and if there shall be a protector who shall consent to the disposition of such lands held by copy of court-roll, and he shall give his consent by a distinct deed, the consent shall be void unless the deed of consent be executed by the protector either on or at any time before the day on which the deed of disposition shall be executed by the commissioner: and such deed of consent shall be entered on the court-rolls; and it shall be imperative on the lord of every manor of which any lands disposed of under this act by any such commissioner as aforesaid may be parcel, or the steward of such lord, or the deputy of such steward, to enter on the court-rolls of the manor every deed required by this present clause to be entered on the court-rolls, and he shall indorse on every deed so entered a memorandum, signed by him, testifying the entry of the same on the court-rolls."

§. 60. " And be it further enacted, That if any Commissioner acting in the execution of any such fiat as aforesaid shall, under this act, dispose of any lands of any tenure of which the bankrupt shall be actual tenant in tail, and in consequence of their being a protector of the settlement by which the estate of such actual tenant in tail was created, and of his not giving his consent, only a base fee shall by such disposition be created in such lands, and if at any time afterwards during the continuance of the base fee there shall cease to be a protector of such settlement, then and in such case, and immediately thereupon, such base fee shall be enlarged into the same estate into which the same could have been enlarged under this act if at the time of the disposition by such commissioner as aforesaid there had been no such protector."

§. 61. " And be it further enacted, That if a tenant in tail entitled to a base fee in lands of any tenure shall be adjudged a bankrupt at the time when there shall be a protector of the settlement by which the estate tail converted into the base fee was created, and if such lands shall be sold or conveyed under the said acts of the sixth year of King George the Fourth and the first and second years of King William the Fourth, or either of them, or any other acts hereafter to

be passed concerning bankrupts, and if at any time afterwards during the continuance of the base fee in such lands there shall cease to be a protector of such settlement, then and in such case, and immediately thereupon, the base fee in such lands shall be enlarged into the same estate into which the same could have been enlarged under this act if at the time of the adjudication of such bankruptcy there had been no such protector, and the commissioner acting in the execution of the fiat under which the tenant in tail so entitled shall have been adjudged a bankrupt had disposed of such lands under this act."

§. 62. " Provided always, and be it further enacted, That where an actual tenant in tail of lands of any tenure, or a tenant in tail entitled to a base fee in lands of any tenure, shall have already created or shall hereafter create in such lands, or any of them, a voidable estate in favour of a purchaser for valuable consideration, and such actual tenant in tail, or tenant in tail so entitled as aforesaid, shall be adjudged a bankrupt under any such fiat as aforesaid, and the commissioner acting in the execution of such fiat shall make any disposition under this act of the lands in which such voidable estate shall be created, or any of them, then and in such case, if there shall be no protector of the settlement by which the estate tail of the actual tenant in tail, or the estate tail converted into a base fee, as the case may be, was created, or being such protector he shall consent to the disposition by such commissioner as aforesaid, whether such commissioner may have made under this act a previous disposition of such lands or not, or whether a prior sale or conveyance of the same lands shall have been made or not under the said acts of the sixth year of King George the Fourth and the first and second years of King William the Fourth, or either of them, or any other acts hereafter to be passed concerning bankrupts, the disposition by such commissioner shall have the effect of confirming such voidable estate in the lands thereby disposed of to its full extent as against all persons except those whose rights are saved by this act; and if at the time of the disposition by such commissioner, in the case of an actual tenant in tail, there shall be a protector, and such protector shall not consent to the disposition by such commissioner, and such actual tenant in tail, if he had not been adjudged a bankrupt, would not without such consent have been capable under this act of confirming the voidable estate to its full extent, then and in such case such disposition shall have the effect of confirming such voidable estate

so far as such actual tenant in tail, if he had not been adjudged a bankrupt, could at the time of such disposition have been capable under this act of confirming the same without such consent; and if at any time after the disposition of such lands by such commissioner, and while only a base fee shall be subsisting in such lands, there shall cease to be a protector of such settlement, and such protector shall not have consented to the disposition by such commissioner, then and in such case such voidable estate, so far as the same may not have been previously confirmed, shall be confirmed to its full extent as against all persons except those whose rights are saved by this act: provided always, that if the disposition by any such commissioner as aforesaid shall be made to a purchaser for valuable consideration, who shall not have express notice of the voidable estate, then and in such case the voidable estate shall not be confirmed against such purchaser and the persons claiming under him."

§. 63. "And be it further enacted, that all acts and deeds done and executed by a tenant in tail of lands of any tenure, who shall be adjudged a bankrupt under any such fiat as aforesaid, and which shall affect such lands or any of them, and which, if he had been seised of or entitled to such lands in fee simple absolute, would have been void against the assignees of the bankrupt's estate, and all persons claiming under them, shall be void against any disposition which may be made of such lands under this act by such commissioner as aforesaid."

§. 64. "Provided always, and be it further enacted, that, subject and without prejudice to the powers of disposition given by this act to the commissioner acting in the execution of any such fiat as aforesaid under which a person being, or before obtaining his certificate becoming, an actual tenant in tail of lands of any tenure, or a tenant in tail entitled to a base fee in lands of any tenure, shall be adjudged a bankrupt, and also subject and without prejudice to the estate in such lands which may be vested in the assignees of the bankrupt's estate, and also subject and without prejudice to the rights of all persons claiming under the said assignees in respect of such lands or any of them, such actual tenant in tail, or tenant in tail so entitled as aforesaid, shall have the same powers of disposition under this act in regard to such lands as he would have had if he had not become bankrupt."

§. 65. "And be it further enacted, that any disposition under this act of lands of any tenure by any commissioner acting in the execution of any such fiat as aforesaid under which a person being, or before

obtaining his certificate becoming, an actual tenant in tail of such lands, or a tenant in tail entitled to a base fee in such lands shall be adjudged a bankrupt, shall, although the bankrupt be dead at the time of the disposition (a), be in the following cases as valid and effectual as the same would have been, and have the same operation under this act, as the same would have had, if the bankrupt were alive; (that is to say,) in case at the time of the bankrupt's decease there shall be no protector of the settlement by which the estate tail of the actual tenant in tail, or the estate tail converted into a base fee, as the case may be, was created; or in case the bankrupt had been an actual tenant in tail of such lands, and there shall at the time of the disposition be any issue inheritable to the estate tail of the bankrupt in such lands, and either no protector of the settlement by which the estate tail was created, or a protector of such settlement who, in the manner required by this act, shall consent to the disposition, or a protector of such settlement who shall not consent to the disposition; or in case the bankrupt had been a tenant in tail entitled to a base fee in such lands, and there shall at the time of the disposition be any issue who if the base fee had not been created would have been actual tenant in tail of such lands, and either no protector of the settlement by which the estate tail converted into a base fee was created, or a protector of such settlement who, in the manner required by this act, shall consent to the disposition."

§. 66. And be it further enacted, that every disposition which under this act may be made by any commissioner acting in the execution of any such fiat as aforesaid of lands held by copy of court roll shall, in every case in which the estate of the bankrupt in such lands shall not be merely an estate in equity, operate in the same manner as if such lands had, for the same estate which shall have been acquired by the disposition by such commissioner as aforesaid, been duly surrendered into the hands of the lord of the manor of which they may be parcel, to the use of the person to whom the same shall have been disposed of by such commissioner; and the person to whom the lands shall have been so disposed of by such commissioner may claim to be admitted tenant of such lands, to hold the same by the ancient rents, customs, and services, in the same manner as if such lands had been duly surrendered

(a) N. B. In *Doe d. Spencer v. Clarke*, 5 Barn. & Ald. 458, the power given by 1 Jac. 1. c. 15. §. 17, to proceed in the distribution of the lands, &c. of a bankrupt, after his death, was held to extend

to a fee simple conditional. Note also that the 1 Jac. 1. c. 15, was repealed by the 6 Geo. 4. c. 16. *Ante*, pt. 1. pp. 68, 69, 101.

to his use into the hands of the lord of the manor of which such lands may be parcel, and shall, upon being admitted tenant of such lands, to hold the same as aforesaid, pay the fines, fees, and other dues which could have been lawfully demanded upon such admittance if such lands had, for the same estate which shall have been acquired by the disposition by such commissioner as aforesaid, passed by surrender into the hands of the lord, to the use of the person so admitted."

§. 67. "And be it further enacted, that the rents and profits of any lands of which any commissioner acting in the execution of any such fiat as aforesaid hath power to make disposition under this act shall in the meantime and until such disposition shall be made, or until it shall be ascertained that such disposition shall not be required for the benefit of the creditors of the person adjudged bankrupt under the fiat, be received by the assignees of the estate of the bankrupt, for the benefit of his creditors; and the assignees may proceed by action of debt for the recovery of such rents and profits, or may distrain for the same upon the lands subject to the payment thereof, and in case any action of trespass shall be brought for taking any such distress may plead thereto the general issue, and give this act or other special matter in evidence, and also, in case any such distress shall be replevied, shall have power to avow or make cognizance generally in such manner and form as any landlord may now do by virtue of the statute made in the eleventh year of the reign of his Majesty King George the Second, intituled *an act for the more effectual securing the payment of rents and preventing frauds by tenants*, or by any other law or statute now in force or hereafter to be made for the more effectually recovering of rent in arrear; and such assignees, and their bailiffs, agents, and servants, shall also have all such and the same remedies, powers, privileges, and advantages of pleading, avowing, and making cognizance, and be entitled to the same costs and damages, and the same remedies for the recovery thereof, as landlords, their bailiffs, agents, and servants, are now or hereafter may be by law entitled to have when rent is in arrear; and such assignees shall also have the same power and authority of enforcing the observance of all covenants, conditions, and agreements in respect of the lands of which such commissioner as aforesaid hath the power of disposition under this act, and in respect of the rents and profits thereof, and of entry into and upon the same lands for the nonobservance of any such covenant, condition, and agreement, and of expelling and amoving therefrom the tenants or other occupiers thereof, and thereby deter-

mining and putting an end to the estate of the persons who shall not have observed such covenants, conditions, and agreements, as the bankrupt would have had in case he had not been adjudged a bankrupt: provided always, that this clause shall apply to all lands held by copy of court roll, but shall only apply to those lands of any other tenure which any commissioner acting in the execution of any such fiat as aforesaid may have power to dispose of under this act after the bankrupt's decease."

§. 68. "And be it further enacted, that all the provisions in this act contained for the benefit of the creditors of persons who under such fiats as aforesaid shall be adjudged bankrupts after the thirty-first day of *December* one thousand eight hundred and thirty-three, and for the confirmation in consequence of bankruptcy of voidable estates created by them, shall extend and apply to the lands of any tenure in *Ireland* of such persons as fully and effectually as if this act had throughout extended to lands of any tenure in *Ireland*; saving always the rights of the King's most excellent Majesty, his heirs and successors, to any reversion or remainder in the crown in lands in *Ireland*."

§. 69. "Provided always, and be it further enacted, that in all cases of bankruptcy, every deed of disposition under this act of lands in *Ireland* by any commissioner acting in the execution of any such fiat as aforesaid, and also every deed by which the protector of a settlement of lands in *Ireland* shall consent, shall be inrolled in his Majesty's High Court of Chancery in *Ireland* within six calendar months after the execution thereof, and not in his Majesty's High Court of Chancery in *England*."

§. 70. "And be it further enacted, that after the thirty-first day of *December* one thousand eight hundred and thirty-three an act passed in the seventh year of the reign of his late Majesty King George the Fourth, intituled *an act for repealing an act passed in the thirty-ninth and fortieth years of the reign of his late Majesty King George the Third, intituled 'an act for the relief of persons entitled to entailed estates to be purchased with trust monies,' and for making further provision in lieu thereof (a)*, shall be and the same is hereby repealed, except as to such proceedings under the act hereby

(a) By the act of 7 Geo. 4. where money was subject to be invested in freehold or copyhold land to be settled in tail, the same instead of being so in-

vested might, upon petition to a court of equity, be paid to the person who would have been tenant in tail of the land, if purchased.

repealed as shall have been commenced before the first day of *January* one thousand eight hundred and thirty-four, and which may be continued under the authority and according to the provisions of the act hereby repealed: provided always, that the act repealed by the said act of the seventh year of the reign of his late Majesty King George the Fourth shall not be revived."

§. 71. "And be it further enacted, that lands to be sold, whether freehold or leasehold, or of any other tenure, where the money arising from the sale thereof shall be subject to be invested in the purchase of lands to be settled, so that any person, if the lands were purchased, would have an estate tail therein, and also money subject to be invested in the purchase of lands to be settled, so that any person, if the lands were purchased, would have an estate tail therein, shall for all the purposes of this act be treated as the lands to be purchased, and be considered subject to the same estates as the lands to be purchased would, if purchased, have been actually subject to; and all the previous clauses in this act, so far as circumstances will admit, shall, in the case of the lands to be sold as aforesaid being either freehold or leasehold, or of any other tenure, except copy of court roll, apply to such lands in the same manner as if the lands to be purchased with the money to arise from the sale thereof were directed to be freehold, and were actually purchased and settled; and shall, in the case of the lands to be sold as aforesaid being held by copy of court roll, apply to such lands in the same manner as if the lands to be purchased with the money to arise from the sale thereof were directed to be copyhold, and were actually purchased and settled; and shall, in the case of money subject to be invested in the purchase of lands to be so settled as aforesaid, apply to such money in the same manner as if such money were directed to be laid out in the purchase of freehold lands, and such lands were actually purchased and settled; save and except that in every case where under this clause a disposition shall be to be made of leasehold lands for years absolute or determinable, so circumstanced as aforesaid, or of money so circumstanced as aforesaid, such leasehold lands or money shall, as to the person in whose favour or for whose benefit the disposition is to be made, be treated as personal estate, and, except in case of bankruptcy, the assurance by which the disposition of such leasehold lands or money shall be effected shall be an assignment by deed, which shall have no operation under this act unless inrolled in his Majesty's High Court of Chancery within six calendar months after

missioner, and completed by inrolment in the same manner as herein-before required in regard to lands not held by copy of court roll.”

§. 72. “ And be it further enacted, that so far as regards any person adjudged a bankrupt under any such fiat as aforesaid, the provisions of the clause lastly herein-before contained shall, for the benefit of the creditors of the bankrupt, apply to lands in Ireland to be sold, whether freehold or leasehold, or of any other tenure, where the money arising from the sale thereof shall be subject to be invested in the purchase of lands to be settled so that the bankrupt, if the lands were purchased, would have an estate tail therein, and also to money under the control of any court of equity in Ireland, or of or to which any individuals as trustees may be possessed or entitled in Ireland, and which shall be subject to be invested in the purchase of lands to be settled so that the bankrupt, if the lands were purchased, would have an estate tail therein, as fully and effectually as if this act had throughout extended to Ireland: Provided always, that every deed to be executed by any commissioner or protector, in pursuance of this clause, in regard to lands in Ireland to be so sold as aforesaid, shall be inrolled in his Majesty’s High Court of Chancery in Ireland within six calendar months after the execution thereof; but every deed to be executed by any commissioner or protector, in pursuance of this clause, in regard to money subject to be invested in the purchase of lands to be so settled as aforesaid, shall be inrolled in his Majesty’s High Court of Chancery in England within six calendar months after the execution thereof, and not in his Majesty’s High Court of Chancery in Ireland; saving always the rights of the King’s most excellent Majesty, his heirs and successors, to any reversion or remainder in the crown in lands in Ireland to be sold.”

§. 73. “ And be it further enacted, that any rule or practice requiring deeds to be acknowledged before inrolment shall not apply to any deed by this act required to be inrolled in his Majesty’s High Court of Chancery in England or Ireland.”

§. 74. ‘ And be it further enacted, that every deed required to be inrolled in his Majesty’s High Court of Chancery in England or Ireland, by which lands, or money subject to be invested in the purchase of lands, shall be disposed of under this act, shall, when inrolled as required by this act, operate and take effect in the same manner as it

would have done if the inrolment thereof had not been required, except that every such deed shall be void against any person claiming the lands or money thereby disposed of, or any part thereof, for valuable consideration, under any subsequent deed duly inrolled under this act, if such subsequent deed shall be first inrolled."

§. 75. "And be it further enacted, that it shall be lawful for his Majesty's High Court of Chancery in England, as to deeds to be inrolled in England under this act, and for his Majesty's High Court of Chancery in Ireland, as to deeds to be inrolled in Ireland under this act, from time to time to make such orders as the court shall think fit touching the amount of the fees and charges to be paid for the inrolment of such deeds, and to be paid for searches for such deeds in the office of inrolments, and to be paid for copies of the inrolments of deeds under this act, where such copies are examined with the inrolments, and signed by the proper officer having the custody of such inrolments."

§. 76. "And be it further enacted, that it shall be lawful for his Majesty's Court of Common Pleas at Westminster from time to time to make such orders as the court shall think fit touching the amount of the fees and charges to be paid for the entries of deeds by this act required to be entered on the court rolls of manors, and for the indorsements thereon, and for taking the consents of the protectors of settlements of lands held by copy of court roll, where such consents shall not be given by deed, and for taking surrenders by which dispositions shall be made under this act by tenants in tail of lands held by copy of court roll, and for entries of such surrenders or the memorandums thereof on the court rolls." (a)

§. 77. "And be it further enacted, that after the thirty-first day of December one thousand eight hundred and thirty-three it shall be lawful for every married woman, in every case except that of being tenant in tail, for which provision is already made by this act, by deed to dispose of lands of any tenure, and money subject to be invested in the purchase of lands, and also to dispose of, release, surrender, or extinguish any estate which she alone, or she and her husband in her right, may have in any lands of any tenure, or in any such money as aforesaid, and also to release or extinguish any power which may be vested in or limited or reserved to her in regard to any lands of any tenure, or any such money as aforesaid, or in

(a) See the rules and table of costs, post. p. (384).

feme sole; save and except that no such disposition, release, surrender, or extinguishment shall be valid and effectual unless the husband concur in the deed by which the same shall be effected, nor unless the deed be acknowledged by her as hereinafter directed: Provided always, that this act shall not extend to lands held by copy of court roll of or to which a married woman, or she and her husband in her right, may be seised or entitled for an estate at law, in any case in which any of the objects to be effected by this clause could before the passing of this act have been effected by her, in concurrence with her husband, by surrender into the hands of the lord of the manor of which the lands may be parcel."

§. 78. "Provided always, and be it further enacted, that the powers of disposition given to a married woman by this act shall not interfere with any power which, independently of this act, may be vested in or limited or reserved to her, so as to prevent her from exercising such power in any case, except so far as by any disposition made by her under this act she may be prevented from so doing in consequence of such power having been suspended or extinguished by such disposition."

§. 79. "And be it further enacted, that every deed to be executed by a married woman for any of the purposes of this act, except such as may be executed by her in the character of protector for the sole purpose of giving her consent to the disposition of a tenant in tail, shall, upon her executing the same, or afterwards, be produced and acknowledged by her as her act and deed before a judge of one of the superior courts at Westminster, or a master in Chancery, or before two of the perpetual commissioners, or two special commissioners, to be respectively appointed as hereinafter provided."

§. 80. "And be it further enacted, that such judge, master in chancery, or commissioners as aforesaid, before he or they shall receive the acknowledgment by any married woman of any deed by which any disposition, release, surrender, or extinguishment shall be made by her under this act, shall examine her, apart from her husband, touching her knowledge of such deed, and shall ascertain whether she freely and voluntarily consents to such deed, and unless she freely and voluntarily consent to such deed shall not permit her to acknowledge the same; and in such case such deed shall, so far as relates to the execution thereof by such married woman, be void."

§. 81. "And be it further enacted, that for the purpose of providing convenient means of taking acknowledgments by married women of the deeds to be executed by them as aforesaid, the lord chief justice of the Court of Common Pleas at Westminster shall from time to time appoint such proper persons as he shall think fit, for every county, riding, division, soke, or place for which there may be a clerk of the peace, to be perpetual commissioners for taking such acknowledgments, and such commissioners shall be removable by and at the pleasure of the said lord chief justice; and lists of the names of such commissioners for the time being, with the names of their places of residence, and the counties, ridings, divisions, sokes, or places for which they shall be respectively appointed to act, shall from time to time be made out and be kept by the officer of the Court of Common Pleas at Westminster with whom the certificates of the acknowledgments by married women are to be lodged as herein-after mentioned; and such officer shall from time to time transmit, without fee or reward, to the clerk of the peace for each county, riding, division, soke, or place, or his deputy, a copy of the list to be so from time to time made out for that county, riding, division, soke, or place, and such officer shall deliver a copy, signed by him, of the list for the time being for any county, riding, division, soke, or place, to any person applying for the same; and the clerk of the peace for each county, riding, division, soke, or place, or his deputy, shall deliver a copy, signed by him, of the list last transmitted to him as aforesaid to any person applying for the same."

§. 82. "Provided always, and be it further enacted, that any person appointed commissioner for any particular county, riding, division, soke, or place, shall be competent to take the acknowledgment of any married woman wheresoever she may reside, and wheresoever the lands or money in respect of which the acknowledgment is to be taken may be."

§. 83. "And be it further enacted, that in those cases where, by reason of residence beyond seas, or ill-health, or any other sufficient cause, any married woman shall be prevented from making the acknowledgment required by this act before a judge or a master in chancery, or any of the perpetual commissioners to be appointed as aforesaid, it shall be lawful for the Court of Common Pleas at Westminster, or any judge of that court, to issue a commission specially appointing any persons therein named to be commissioners to take the acknowledgment by any married woman to be therein named of

‘ acknowledgment of any deed by the wife
 ‘ of] appeared personally the wife
 ‘ of and produced a certain indenture, marked [*here*
 ‘ *add the mark*], bearing date the day of
 ‘ and made between [*insert the names of the parties*], and acknowledged
 ‘ the same to be her act and deed: And I [*or we*] do hereby certify,
 ‘ that the said was, at the time of her acknowledging
 ‘ the said deed, of full age and competent understanding, and that she
 ‘ was examined by me [*or us*], apart from her husband, touching her
 ‘ knowledge of the contents of the said deed, and that she freely and
 ‘ voluntarily consented to the same.’ ”

§. 85. “ And be it further enacted, that every such certificate as aforesaid of the taking of an acknowledgment by a married woman of any such deed as aforesaid, together with an affidavit by some person verifying the same, and the signature thereof by the party by whom the same shall purport to be signed, shall be lodged with some officer of the Court of Common Pleas at *Westminster*, to be appointed as hereinafter mentioned; and such officer shall examine the certificate, and see that it is duly signed, either by some judge or master in chancery, or by two commissioners appointed pursuant to this act, and duly verified by affidavit as aforesaid, and shall also see that it contains such statement of particulars as to the consent of the married woman as shall from time to time be required in that behalf; and if all the requisites in this act in regard to the certificate shall have been complied with, then such officer shall cause the said certificate and the affidavit to be filed of record in the said Court of Common Pleas.”

§. 86. “ And be it further enacted, that when the certificate of the acknowledgment of a deed by a married woman shall be so filed of record as aforesaid, the deed so acknowledged shall, so far as regards the disposition, release, surrender, or extinguishment thereby made by any married woman whose acknowledgment shall be so certified concerning any lands or money comprised in such deed, take effect from the time of its being acknowledged, and the subsequent filing of such certificate as aforesaid shall have relation to such acknowledgment.”

§. 87. “ And be it further enacted, that the officer of the court of Common Pleas with whom such certificates as aforesaid shall be lodged shall make and keep an index of the same, and such index shall contain the names of the married women and their husbands alphabetically arranged, and the dates of such certificates and of

shall be entered in the index as soon as may be after such certificate shall have been filed."

§. 88. "And be it further enacted, that after the filing of any such certificate as aforesaid the officer with whom the certificate shall be lodged shall at any time deliver a copy, signed by him, of any such certificate to any person applying for such copy; and every such copy shall be received as evidence of the acknowledgment of the deed to which such certificate shall refer."

§. 89. "And be it further enacted, that the Lord Chief Justice of the Court of Common Pleas at Westminster shall from time to time appoint the person who shall be the officer with whom such certificates as aforesaid shall for the time being be lodged, and may remove him at pleasure; and the Court of Common Pleas at Westminster shall also from time to time make such orders and regulations as the court shall think fit touching the mode of examination to be pursued by the commissioners to be appointed under this act, and touching the particular matters to be mentioned in such memorandums and certificates as aforesaid, and the affidavits verifying the certificates, and the time within which any of the aforesaid proceedings shall take place, and touching the amount of the fees or charges to be paid for the copies to be delivered by the clerks of the peace or their deputies, or by the officer of the said court, as herein-before directed, and also of the fees or charges to be paid for taking acknowledgments of deeds and for examining married women, and for the proceedings, matters, and things required by this act to be had, done, and executed for completing and giving effect to such acknowledgments and examinations."

§. 90. "And be it further enacted, that in every case in which a husband and wife shall, either in or out of court, surrender into the hands of the lord of a manor any lands held by copy of court roll, parcel of the manor, and in which she alone, or she and her husband in her right, may have an equitable estate, the wife shall, upon such surrender being made, be separately examined by the person taking the surrender in the same manner as she would have been if the estate to which she alone, or she and her husband in her right, may be entitled in such lands were an estate at law instead of a mere estate in equity; and every such surrender, when such examination shall be taken, shall be binding on the married woman and all persons

claiming under her; and all surrenders heretofore made of lands similarly circumstanced, where the wife shall have been separately examined by the person taking the surrender, are hereby declared to be good and valid."

§. 91. " Provided always, and be it further enacted, that if a husband shall in consequence of being a lunatic, idiot, or of unsound mind, and whether he shall have been found such by inquisition or not, or shall from any other cause be incapable of executing a deed, or of making a surrender of lands held by copy of court roll, or if his residence shall not be known, or he shall be in prison, or shall be living apart from his wife, either by mutual consent or by sentence of divorce, or in consequence of his being transported beyond the seas, or from any other cause whatsoever, it shall be lawful for the Court of Common Pleas at Westminster, by an order to be made in a summary way upon the application of the wife; and upon such evidence as to the said court shall seem meet, to dispense with the concurrence of the husband in any case in which his concurrence is required by this act or otherwise; and all acts, deeds, or surrenders to be done, executed, or made by the wife in pursuance of such order, in regard to lands of any tenure, or in regard to money subject to be invested in the purchase of lands, shall be done, executed, or made by her in the same manner as if she were a feme sole, and when done, executed, or made by her shall (but without prejudice to the rights of the husband as then existing independently of this act) be as good and valid as they would have been if the husband had concurred: provided always, that this clause shall not extend to the case of a married woman where under this act the lord high chancellor, lord keeper, or lords commissioners for the custody of the great seal, or other the person or persons intrusted with the care and commitment of the custody of the persons and estates of persons found lunatic, idiot, and of unsound mind, or his Majesty's high court of chancery, shall be the protector of a settlement in lieu of her husband."

§. 92. " And be it further enacted, that this act shall not extend to Ireland, except where the same is expressly mentioned."

§. 93. " And be it further enacted, that this act or any part thereof, may be altered, varied, or repealed by any act or acts to be passed in the present session of parliament."

“An Act to render freehold and copyhold estates assets for the payment of simple and contract debts.”

‘Whereas it is expedient that the payment of the debts of all persons should be secured more effectually than is done by the laws now ‘in force;’ “be it therefore enacted by,” &c. “that from and after the passing of this act, when any person shall die seised of or entitled to any estate or interest in lands, tenements, or hereditaments, corporeal or incorporeal, or other real estate whether freehold, customaryhold, or copyhold, which he shall not by his last will have charged with or devised subject to the payment of his debts, the same shall be assets to be administered in courts of equity for the payment of the just debts of such persons, as well debts due on simple contract as on specialty; and that the heir or heirs at law, customary heir or heirs, devisee or devisees of such debtor, shall be liable to all the same suits in equity at the suit of any of the creditors of such debtor, whether creditors by simple contract or by specialty, as the heir or heirs at law, devisee or devisees of any person or persons who died seised of freehold estates was or were before the passing of this act liable to in respect of such freehold estates at the suit of creditors by specialty in which the heirs were bound: provided always, that in the administration of assets by courts of equity under and by virtue of this act, all creditors by specialty in which the heirs are bound, shall be paid the full amount of the debts due to them before any of the creditors by simple contract or by specialty in which the heirs are not bound, shall be paid any part of their demands.”

3 & 4 WILL. IV. c. 106.

“An Act for the Amendment of the Law of Inheritance.”

[29th August, 1833.]

Be it enacted by, &c. “that the words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this act, except where the

nature of the provision or the context of the act shall exclude such construction, be interpreted as follows; (that is to say,) the word 'land' shall extend to manors, advowsons, messuages, and all other hereditaments, whether corporeal or incorporeal, and whether freehold or copyhold, or of any other tenure, and whether descendible according to the common law, or according to the custom of Gavelkind or Borough-English, or any other custom, and to money to be laid out in the purchase of land, and to chattels and other personal property transmissible to heirs, and also to any share of the same hereditaments and properties or any of them, and to any estate of inheritance, or estate for any life or lives, or other estate transmissible to heirs, and to any possibility, right, or title of entry or action, and any other interest capable of being inherited, and whether the same estates, possibilities, rights, titles, and interests, or any of them, shall be in possession, reversion, remainder, or contingency; and the words 'the purchaser' shall mean the person who last acquired the land otherwise than by descent, or than by any escheat, partition, or inclosure, by the effect of which the land shall have become part of or descendible in the same manner as other land acquired by descent; and the word 'descent' shall mean the title to inherit land by reason of consanguinity, as well where the heir shall be an ancestor or collateral relation, as where he shall be a child or other issue; and the expression 'descendants' of any ancestors shall extend to all persons who must trace their descent through such ancestor; and the expression 'the person last entitled to land' shall extend to the last person who had a right thereto, whether he did or did not obtain the possession or the receipt of the rents and profits thereof; and the word 'assurance' shall mean any deed or instrument (other than a will) by which any land shall be conveyed or transferred at law or in equity; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing; and every word importing the masculine gender only shall extend and be applied to a female as well as a male."

§. 2. "And be it further enacted, that in every case descent shall be traced from the purchaser; and to the intent that the pedigree may never be carried further back than the circumstances of the case and the nature of the title shall require, the person last entitled to the land shall, for the purposes of this act, be considered to have been the purchaser thereof unless it shall be proved that he inherited the same, in which case the person from whom he inherited the same

proved that he inherited the same; and in like manner the last person from whom the land shall be proved to have been inherited, shall in every case be considered to have been the purchaser, unless it shall be proved that he inherited the same."

§. 3. " And be it further enacted, that when any land shall have been devised, by any testator who shall die after the thirty-first day of December one thousand eight hundred and thirty-three, to the heir or to the person who shall be the heir of such testator, such heir shall be considered to have acquired the land as a devisee, and not by descent; and when any land shall have been limited, by any assurance executed after the said thirty-first day of December one thousand eight hundred and thirty-three, to the person or to the heirs of the person who shall thereby have conveyed the same land, such person shall be considered to have acquired the same as a purchaser by virtue of such assurance, and shall not be considered to be entitled thereto as his former estate or part thereof."

§. 4. " And be it further enacted, that when any person shall have acquired any land by purchase under a limitation to the heirs or to the heirs of the body of any of his ancestors, contained in an assurance executed after the said thirty-first day of December one thousand eight hundred and thirty three, or under a limitation to the heirs or to the heirs of the body of any of his ancestors, or under any limitation having the same effect, contained in a will of any testator who shall depart this life after the said thirty-first day of December one thousand eight hundred and thirty-three, then, and in any of such cases such land shall descend, and the descent thereof shall be traced as if the ancestor named in such limitation had been the purchaser of such land."

§. 5. " And be it further enacted, that no brother or sister shall be considered to inherit immediately from his or her brother or sister, but every descent from a brother or sister shall be traced through the parent."

§. 6. " And be it further enacted, that every lineal ancestor shall be capable of being heir to any of his issue; and in every case where there shall be no issue of the purchaser, his nearest lineal ancestor shall be his heir in preference to any person who would have been entitled to inherit, either by tracing his descent through such lineal ancestor, or in consequence of there being no descendant of such lineal ancestor, so that the father shall be preferred to a brother or

sister, and a more remote lineal ancestor to any of his issue, other than a nearer lineal ancestor or his issue."

§. 7. "And be it further enacted and declared, that none of the maternal ancestors of the person from whom the descent is to be traced, nor any of their descendants, shall be capable of inheriting until all his paternal ancestors and their descendants shall have failed; and also that no female paternal ancestor of such person, nor any of her descendants, shall be capable of inheriting until all his male paternal ancestors and their descendants shall have failed; and that no female maternal ancestor of such person, nor any of her descendants, shall be capable of inheriting until all his male maternal ancestors and their descendants shall have failed."

§. 8. "And be it further enacted and declared, that where there shall be a failure of male paternal ancestors of the person from whom the descent is to be traced, and their descendants, the mother of his more remote male paternal ancestor, or her descendants, shall be the heir or heirs of such person, in preference to the mother of a less remote male paternal ancestor, or her descendants; and where there shall be a failure of male maternal ancestors of such person, and their descendants, the mother of his more remote male maternal ancestor, and her descendants, shall be the heir or heirs of such person, in preference to the mother of a less remote male maternal ancestor, and her descendants."

§. 9. "And be it further enacted, that any person related to the person from whom the descent is to be traced by the half blood shall be capable of being his heir; and the place in which any such relation by the half blood shall stand in the order of inheritance, so as to be entitled to inherit, shall be next after any relation in the same degree of the whole blood, and his issue, where the common ancestor shall be a male, and next after the common ancestor where such common ancestor shall be a female, so that the brother of the half blood on the part of the father shall inherit next after the sisters of the whole blood on the part of the father and their issue, and the brother of the half blood on the part of the mother shall inherit next after the mother."

§. 10. "And be it further enacted, that when the person from whom the descent of any land is to be traced shall have had any relation who, having been attainted, shall have died before such descent shall have taken place, then such attainder shall not prevent any person from inheriting such land who would have been capable of

he had not been attainted, unless such land shall have escheated in consequence of such attainder before the first day of January one thousand eight hundred and thirty-four."

§. 11. " And be it further enacted, that this act shall not extend to any descent which shall take place on the death of any person who shall die before the said first day of January one thousand eight hundred and thirty-four."

§. 12. " And be it further enacted, that where any assurance executed before the said first day of January one thousand eight hundred and thirty-four, or the will of any person who shall die before the same first day of January one thousand eight hundred and thirty-four shall contain any limitation or gift to the heir or heirs of any person, under which the person or persons answering the description of heir shall be entitled to an estate by purchase, then the person or persons who would have answered such description of heir if this act had not been made shall become entitled by virtue of such limitation or gift, whether the person named as ancestor shall or shall not be living on or after the said first day of January one thousand eight hundred and thirty-four."

N. B. Copyholds are excepted out of the REGISTER ACTS of 2nd & 3d Anne, c. 4. for the West Riding of Yorkshire; the 6th Anne, c. 35. for the East Riding of Yorkshire, and the town and county of the town of Kingston-upon-Hull; the 8th Geo. 2. c. 6. for the North Riding of Yorkshire; and also the 7th Anne, c. 20. for Middlesex (a).

(a) It has been very properly suggested that as the interest of a lessee of *copyholds* is a common law interest, (see *ante*, pt. 1. p. 548,) it is advisable to

register "such leases of copyhold estates as, if the estate were freehold, would require registry." *Sugd. Vend. & Purch.* [9th Ed.] vol. 2. p. 217.

COMMON PLEAS.

*Rules and Table of Costs, under the Act of 3d and 4th W. IV.
c. 74, for the abolition of Fines and Recoveries.*

“ *Hilary Term, 1834.*”

Whereas it has been found expedient to make alterations in the general rules made in Michaelmas Term last by this court, for the purpose of carrying into effect the statute passed in the 3d and 4th years of the reign of his present Majesty, cap. 74, intituled “ An Act for the Abolition of Fines and Recoveries, and for the substitution of more simple modes of Assurance.”

And whereas it is necessary to make orders touching the amount of the reasonable fees and charges to be taken by the several persons appointed to carry the powers of the said Act into execution ; and it will be convenient that all the orders and regulations made by the Court under the said Act should be contained in the same rule :—

Now it is hereby ordered, that the said general rules be and the same are hereby revoked : provided that this present rule shall not be construed in any respect to invalidate any proceedings which before the first day of March next ensuing, shall have been taken pursuant to the direction of the said rules of Michaelmas Term last.

And it is hereby further ordered, that where any acknowledgment shall be made by any married woman of any deed under and by virtue of the said Act, before Commissioners appointed under the said Act, one at least of the said Commissioners shall be a person who is not in any manner interested in the transaction giving occasion for such acknowledgment or concerned therein, as attorney, solicitor, or agent, or as clerk to any attorney, solicitor, or agent so interested or concerned.

And it is further ordered, that before the commissioners shall receive such acknowledgment, they or in case one of them shall be interested or concerned as aforesaid, then such one of them as shall not be so interested or concerned do inquire of every married woman separately and apart from her husband, and from the attorney or solicitor concerned in the transaction, whether she intends to give up her interest in the estate to be passed by such deed, without having any provision made for her in lieu of, or in return for, or in consequence of her so giving

out any provision, and the said commissioners shall have no reason to doubt the truth of such declaration and shall verily believe the same to be true, then they shall proceed to receive the said acknowledgment ; but if it shall appear to them or to such one of them as aforesaid, that it is intended that provision is to be made for any such married woman, then the commissioners shall not take her acknowledgment until they are satisfied that such provision has been actually made by some deed or writing produced to them, or if such provision shall not have been actually made before, then the commissioners shall require the terms of such intended provision to be shortly reduced into writing, and shall verify the same by their signatures in the margin, at the foot, or at the back thereof.

And it is hereby further ordered, that the affidavit verifying the certificate to be made pursuant to the said act, and which certificate shall be in the form contained in the said act shall (except in such cases where the acknowledgment shall be taken elsewhere than in England, Wales or Berwick-upon-Tweed) be made by some practising attorney or solicitor of one of the courts at Westminster, or of one of the counties palatine of Lancaster or Durham, and that in all cases it shall be deposed in addition to the verification of the said certificate, that the deponent, (or if more than one person join in the affidavit, that one or more of the deponents,) knew the person or persons making such acknowledgment : and that at the time of making such acknowledgment, the person or persons making the same was or were of full age and competent understanding : and that one at least of the commissioners taking such acknowledgment, to the best of his deponent's knowledge and belief, is not in any manner interested in the transaction giving occasion for the taking of such acknowledgment, or concerned therein, as attorney, solicitor or agent, or as clerk to any attorney, solicitor or agent so interested or concerned ; and that the names and residences of the said commissioners, and also the place or places where such acknowledgment or acknowledgments shall be taken, shall be set forth in such affidavit : and that previously to such acknowledgment being taken, the deponent had inquired of such married woman, (or if more than one of each of such married women,) whether she intended to give up her interest in the estate to be passed, and also the answer given thereto ; and where any such married woman in answer to such inquiry shall declare that she intends to give up her interest without any

provision, the deponent shall state that he has no reason to doubt the truth of such declaration, and he verily believes the same to be true. And where any provision has been agreed to be made, the deponent shall state that the same has been made by deed or writing, or if not actually made before, that the terms of the intended provision have been reduced into writing, which deed or writing he verily believes has been produced to the said (judge,) (master, or) commissioners.

And it is hereby further ordered, that the affidavit shall state the parish or several parishes, or place or several places, and the county or counties in which the several premises wherein any such married woman shall appear to be interested shall by deed be described to be situate.

And it is hereby further ordered, that the affidavit shall be in the form hereunto annexed, subject to such variations as the circumstances of the case shall render necessary, or such affidavit may be made where it is found convenient by one of the said commissioners, with such variation in the form thereof as shall be necessary in that behalf.

And it is hereby further ordered, that the certificates and affidavits verifying the same shall, within one month from the making the acknowledgment, be delivered to the proper officer appointed under the said act; and that the officer shall not after that time receive the same without the direction of the court or a judge.

And it is hereby further ordered, that the fees or charges to be paid for the copies to be delivered by the clerks of the peace, or their deputies, or by the officer of the said court, and for taking acknowledgments of deeds, and for examining married women, and for the proceedings, matters and things required by the said act to be had, done and executed, for completing and giving effect to such acknowledgments and examinations, shall be as follows:

£. s. d.

To a judge or master for taking the acknowledgment of every married woman, of which 7s. 6d. will be paid in the case of a judge, to his clerk, and the residue thereof will be paid over to the treasury; and in the case of a master, the whole will be paid over to the treasury, or the fee fund account of the Court of Chancery	1	6	8
To the two perpetual commissioners for taking the acknowledgment of every married woman, when not required to go further than a mile from their residence, being 13s. 4d. for each commissioner	1	6	8

reasonable travelling expenses	1	1	0
To each commissioner, where the distance required shall exceed three miles, besides his reasonable travelling expenses	2	2	0
To the clerk of the peace, or his deputy, for every search	0	1	0
To the same, for every copy of a list of commissioners, provided such list shall not exceed the number of 100 names	0	5	0
To the same, for every further complete number of 50 names, an additional	0	2	6
To the officer, for every search	0	1	0
To the same, for every official copy of the certificate	0	2	6
To the same, for every official copy of a list of commissioners, provided such list shall not exceed the number of 100 names	0	5	0
To the same, for every further complete number of 50 names additional	0	2	6
To the same, for preparing every special commission, including a fee of 5s. to the clerk of the chief justice or other judge for the fiat	0	15	0
To the same, for examining the certificate and affidavit, and filing and indexing the same, as required by the said act of the 3rd and 4th William 4, cap. 74	0	5	0

And it is hereby further ordered, that the fees and charges to be paid for the entries of deeds, required by the said act to be entered on the court rolls of manors, and for the indorsements thereon, and for taking the consents of the protectors of settlements of land held by copy of court roll, where such consents shall not be given by deed, and for taking surrenders, by which dispositions shall be made under the said act, by tenants in tail of lands held by copy of court roll, and for entries of such surrenders, or the memorandums thereof, on the court rolls, shall be as follows:—

£. s. d.

For the indorsements on the deed of the memorandum of production, and memorandum of entry on court rolls, to be signed by the lord steward or deputy steward, each indorsement of memorandum, 5s. together	0	10	0
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For the entries on the court rolls of deeds, and the in-
 dorsements thereon, at per folio of 72 words . . . 0 0 6
 For taking the consent of each protector of settlement
 of lands 0 13 4
 For taking the surrender by each tenant in tail of lands 0 13 4
 For entries of such surrenders, or the memorandums
 thereof, on the court rolls, at per folio of 72 words 0 0 6

N. C. TINDAL.
 J. A. PARK.
 J. B. BOSANQUET.
 E. H. ALDERSON.

FORM OF AFFIDAVIT verifying the Certificate of Acknowledgment taken in pursuance of the act of parliament to be made by some practising ATTORNEY or SOLICITOR, and to be sworn before a Judge of the COURT OF COMMON PLEAS, or a Commissioner appointed for taking affidavits in the said court.

IN THE COMMON PLEAS—

A. B. of in the
 of Gentleman, one of the Attornies [or Soli-
 citors] of the Court of maketh oath and saith
 that he knows the wife of
 in the Certificate hereunto annexed mentioned, and that the acknow-
 ledgment therein mentioned was made by the said
 and the Certificate signed by the Judge or Master, or by A. B. of,
 &c. and C. D. of, &c. the Commissioners in the said Certificate men-
 tioned, on the day and year therein mentioned, at
 in the of in the presence of this
 Deponent, and that at the time of making such acknowledgment the
 said was of full age and competent understand-
 ing, and that the said knew the said acknow-
 ledgment was intended to pass her estate in the premises, respecting
 which such acknowledgment was made. [*And this Deponent further
 saith, that to the best of this Deponent's knowledge and belief, neither
 of the said Commissioners is (or the said A. B. or the said C. D. one
 of the said Commissioners is not) in any manner interested in the trans-
 action giving occasion for such acknowledgment, or concerned therein as
 Attorney, Solicitor, or Agent, or as clerk to any Attorney, Solicitor, or
 Agent, so interested or concerned.*] And this Deponent further saith,
 that previous to the said

This is to be omitted when acknowledgment taken by a Judge or Master.

[the married woman] making the said acknow-

ledgment, he this Deponent inquired of the said
 [the married woman] or if more than one, of each of them the said
 and [the married women]
 whether she intended to give up her interest in the estates, in respect
 of which such acknowledgment was taken without having any pro-
 vision made for her in lieu of or in return for, or in consequence of
 her so giving up her interest in such estates, and that in answer to such
 inquiry the said [the married woman] declared
 that she did intend to give up her interest in the said estates without
 having any provision made for her in lieu of, or in return for, or in
 consequence of her so giving up such her interest; of which declara-
 tion of the said [the married woman] this Deponent
 has no reason to doubt the truth, and verily believes the same to be
 true, or declared that a provision was to be made for her in conse-
 quence of her giving up such her interest in the said estates. And
 this Deponent lastly saith, that before her acknowledgment was so
 taken, he was satisfied, and does now verily believe that such provi-
 sion has been made by deed or writing, or that the terms thereof have
 been reduced into writing, and that such deed or writing has been
 produced to the said Judge, Master, or Commissioners. And lastly
 this Deponent saith, that it appears by the deed acknowledged by the
 said [the married woman] that the premises wherein
 she is stated to be interested are described to be in the parish or
 place of or parishes or places of and
 in the County of or Counties of
 [as the case may be].

SWORN, &c.

N. B. When the whole of the facts cannot be spoken to by one Deponent,
 variations may be made to enable more than one Deponent to state their respective
 parts of the Affidavit."

COPIES AND NOTES OF JUDGMENTS,
 IN SEVERAL RECENT *COPYHOLD* CASES.

Doe d. Hickman v. Hickman & others (a).

[*B. R. Michaelmas Term, 1832.*]

EJECTMENT for lands in Staffordshire, tried at the spring assizes, 1832, when a verdict was found for the lessor of the plaintiff, subject to the opinion of the court on the following case:—

On the 16th of July, 1806, at a court baron holden for the manor of Sedgley, in the county of Stafford, Edward Cox of Sedgley, gentleman, and Mary his wife, surrendered into the hands of the lord of the said manor, all that cottage or dwelling house (therein particularly described) in the occupation of John Hickman, together with the use of taking water from a well in the adjoining premises, as then used and enjoyed by the said John Hickman, to the use of him John Hickman, for and during the term of his natural life; and after his decease to the use of such person or persons, and for such estate and estates, ends, intents and purposes, as the said John Hickman should by any other surrender or by his last will and testament in writing, such will to be by him duly executed in the presence of and attested by three or more credible witnesses surrender, devise, limit, direct or appoint; and in default of such surrender, &c. to the use of the heirs and assigns of the said John Hickman for ever, at the will of the lord according to the custom of the said manor. At the same court John Hickman was duly admitted upon the said surrender. This ejectment was brought to recover possession of the surrendered premises. Thomas Hickman the lessor of the plaintiff, is the eldest son and heir at law, and heir according to the custom of the said manor of John Hickman the surrenderee.

On the 19th of December, 1806, the said John Hickman made his will in writing, in the presence of and attested by two witnesses only,

(a) 4 Barn. & Adolp. 56.

tain charges. The testator's wife died in his lifetime

John Hickman the testator died on the 17th of August, 1806, having made any surrender of the premises, or any will than that before mentioned. The question for the court was, whether Thomas Hickman, the lessor of the premises, was entitled to recover possession of the premises? This was decided in Trinity Term, 1832.

PARKE, J., in the Michaelmas Term following, delivered the judgment of the court.

"It was admitted in this case, on the part of the defendant, that the will of *John Hickman* was not a good execution of the will to him by the surrender of the 16th of July, 1806, inasmuch as it had not been executed in the presence of, and in the presence of, two witnesses; but it was contended, that it might operate in fee which was vested in him in default of appointment, without a surrender to the use of his will was cured by the Statute 55 G. 3. c. 192. It is clear that if there had been a surrender previously made by *John Hickman* to the use of his will, he would have conveyed his interest, notwithstanding it was not witnessed by two witnesses, for copyholds are neither within the Statute nor the statute of frauds. And where a man has both a copyhold interest, and an instrument, if it be sufficient for the purpose, as a conveyance of the interest, although it be defective in the execution of the power. It was argued for the lessor of the premises that this was not a case within the statute 55 Geo. 3. c. 192. There was no reason for saying so. That statute enacts, that in all cases of custom, any copyhold tenement, the same having been surrendered to the use of the last will, every disposition to be made by any such last will, by any person who has the power of the passing of that act, of any such copyhold tenement, shall be as valid in right, title, or interest in or to the same, shall be as valid in all intents and purposes, although no surrender shall have been made to the use of the last will and testament of such person, if the same would have been if a surrender had been made to the use of the last will. Here *John Hickman* died after the passing of the Statute, therefore, the disposition by his will was as valid as if a surrender had been made to the use of it.

“We think, therefore, that judgment must be entered for the defendants.

“Judgment for the defendants.”

Doe d. Cawthorn v. Mee.

[*B. R. Easter Term, 1833.*] (a).

At the trial of the cause it was objected on the part of the defendant, that copies of the entries upon the court rolls of a surrender made out of court, and the subsequent presentment of and admittance under the surrender, examined and stamped, were not evidence, even assuming that a copy of a surrender in court was so. On the motion to enter a non-suit, made by leave reserved, the objection taken at the trial was re-urged, especially as to the non-production of the original surrender, for that if the surrender could be proved without production of the original, a title might be established without showing any stamped document, and so the revenue might be defrauded. The stamp act 48 Geo. III. c. 149 (§. 92 & 93) was cited. And reliance was put on 2 Watk. p. 38, n. [4th edit.,] that “copies of court roll are but secondary evidence of the copyholder’s title,” and that “in ejectment the rolls themselves must be produced.” *Littledale, J.* said there would be great inconvenience in requiring the production of the original rolls. And *Patteson, J.* asked if there were any authority for such a proposition, and referred to Bull. N. P. 247, as *contra*.

LITTLEDALE, J. “I think the statute makes no difference as to the admissibility of the evidence. The object of the clauses which have been cited was to establish a mode of getting at the payment of revenue in the case of transfers of copyhold, since it was not practicable to regulate the *ad valorem* duty on conveyances of this, in the same way as of other kinds of property; but there was no intention to vary the rules of evidence. There is no doubt that copies of the court rolls are admissible in all cases.”

PARKE and PATTESON, Js. concurred.—Rule refused.

(a) 4 Barn. & Adolp. 617. S.C. (*Hawthorn v. Mee.*) 3 Nev. & Mann. 424.

Note. By the custom of the manor (*Kettering*) a surrender may be taken

out of court by one of two persons styled deciners, and it is presented by the deciners at the following court, inrolled and left with the steward.

King v. Turner (a).

[In Canc. May 22, 1833.]

The following is a copy of the report of Lord Chancellor *Brougham's* judgment upon the appeal against the Vice Chancellor's decision (*b*).

THE LORD CHANCELLOR.—

There is some difficulty in discovering how a question could ever have been raised upon this point, considering that the principles are clear, and the course of decisions, as well as the *dicta*, have been uniform regarding those principles. As against all the world, but the lord, the copyhold heir has a good title without admittance; and upon this ground the Court of King's Bench used, until very lately, to go so far as to refuse a mandamus to admit him, considering it to be unnecessary: *The King v. Rennett*. (2 T. R. 197.) That the heir before admittance can surrender to a purchaser so as he does not thereby prejudice the lord of his fine, and that he is tenant by copy of court roll, his ancestor's copy belonging to him, is incontestable. It is, in fact, the third resolution in *Brown's* case (4 Co. 22 b). The distinction between heir and purchaser is plain; and it is recognized in all the cases; the law casting the possession of the ancestor upon the heir, while the purchaser before admittance has nothing. Thus in *Wilson v. Weddell*, (Yelv. 144.,) it is said to have been adjudged in *Alderman Dixie's* case "that the heir may surrender before admittance; and well, because in by course of law; for the custom which makes him heir to the estate casts the possession upon him from his ancestor." But in *Doe v. Tofield*, (11 East 246.,) a case twice argued and in which all the bearings of the subject were thoroughly considered and fully gone into by the court, that distinction is throughout taken; it is reasoned upon, made the ground of decision, and used as the means of reconciling cases apparently in conflict. Thus their lordships say, *Colchin v. Colchin*, (Cro. Eliz. 662.,) was the case of an heir who surrendered before admittance, not of a surrenderee; and all the authorities agree that an heir is in before admittance and may surrender." *Doe v. Tofield* itself was the case of a surrenderee having

(a) Vide 2 Simons, 545. See also (b) 1 Mylne & Keene, 460.
ante, pt. 1. p. 331.

surrendered out of court to the use of his will ; and the surrender was held void on the express ground that the case of the surrenderee differs from that of the heir.

There is, therefore, no reason whatever for holding that any law was laid down for the first time, or any new view taken of legal principles, in *Right v. Banks* (3 Barn. & Adolp. 664). That case was determined, after much consideration, by the court of King's Bench during the interval between the decision of the present question below, and the argument upon the appeal. That consideration was the more careful on account of certain *dicta* both in this court and the courts of law, which, when carefully examined, will be found not at all to affect the principles upon which the point seems clearly to be settled, but which appear to have raised the doubt that has given rise to the present question. *Smith v. Triggs*, (1 Str. 487,) is the case to which this doubt may be mainly traced. But there is in that case nothing like a decision upon the question. The court there said " that the defendant had no title in him for want of an admittance of the devisor, and also for want of a surrender to the use of her will." But the latter defect was quite sufficient before the late statute ; and, whether *Jane Day* were admitted or not, was quite immaterial ; and whether admittance was necessary or not, was equally immaterial, if she had never surrendered to the use of her will. I think we may easily understand how the few words " for want of an admittance," on which the doubt rests, found their way into the resolution. The devisor was both devisee and heir at law of her mother ; and, indeed, the question in the cause, and the only one determined, was, whether she took by purchase or descent : and before disposing of that question, and therefore before ascertaining the character in which she took, the observation occurs respecting her not having been admitted, which would have been material had she been a devisee merely ; for then it is allowed on all hands that she could have passed no estate by her will before admittance. All therefore, that the court meant may have been that, *quâcunque viâ datâ*, whether she was in of her higher or of her inferior title, the devise by her was ineffectual ; if of her higher, because there was no surrender ; if of her lower, because there was neither admittance nor surrender. Then it is to be considered, that this part of the resolution, if, indeed, it is to be regarded as part of the resolution, is wholly immaterial to the question, both because the want of surrender makes the want of admittance of no consequence whatever, and because the lessor of the plaintiff is

upon the plaintiff's title; and he being heir *ex parte paternâ*, was held to have no right to succeed to *Jane Day* (the devisor) if she took as heir to her mother, the first purchaser. And accordingly, in another report of the case, (8 Mod. 23,) the point of the two wills is alone mentioned, and no allusion whatever is made to the observation upon admittance so much commented on.

That observation, however, was made the ground of another, as little essential to the decision of the question before the court, in *Wainewright v. Elwell* (1 Mad. 632.)—That was the case of a devise by the devisee of a copyhold, and not by the heir; and it was decided most correctly, according to all the principles and all the authorities. But the *dictum*, proceeding upon the *dictum* in *Smith v. Triggs*, was wholly beside the question; and it must be observed, that the reference to *Smith v. Triggs*, in 1 Mad. p. 636, is not accurate, any more than the reference to the case then before the court in the same passage, the expression “the will in favour of *Elix. Elwell*” having no intelligible meaning, so that there may be some error in the report; and this may possibly be classed among those *obiter dicta* of which Lord C. J. *Willes* says, in *Ellis v. Smith*, (1 Ves. jun. 13,) that he had frequently found them to be *nunquam dicta*.

The only other *dictum* (for it is no more) which could raise this doubt is that in *The King v. Brewers' Company*, (3 Barn. & Cress. 172,) and to which I observe no reference is made by the Court of King's Bench in deciding *Right v. Banks*, although, unquestionably, it is just as strong as any of the observations in the Court of Chancery to which the judgment of the King's Bench refers. The practice of refusing a mandamus to admit the heir at law, which the court had always acted upon, and distinctly recognized in *The King v. Rennett*, was here departed from, and apparently on good grounds; and the next case, *The King v. Bonsall*, (3 Barn. & Cress. 173,) shows that the court considered itself to have thus overruled *The King v. Rennett*. But in overruling that case, the ground on which it rested is left unshaken, viz. that the heir before admittance has a good title against all but the lord,—indeed, that is quite uncontested; and the court goes upon this other view, which seems also perfectly sound, that the heir may wish to be a complete copyholder, which, till admittance, he is not; and in giving examples of those things which he may wish to be enabled to do, such as being put on the homage, and named for

render to the use of his will," which, by all the cases, he plainly could do, whether admitted or not.

From those *dicta*, more or less irrelevant to the subject of the particular decisions, some question had arisen, and that is now set at rest by the discussion which the matter underwent in *Right v. Banks*. I am not of opinion that the decision below in this case could have been sustained, even if *Right v. Banks* had not since occurred. It rests only upon the *dicta* to which I have adverted; and although the strongest, because the one least gratuitous, and most bearing upon the matter in hand, is also the most recent,—I mean the reason given (if, indeed, it was given) for the mandamus against the *Brewers' Company*, yet that case seems also to have been much less considered than the others.

The decision of the Vice-Chancellor, therefore, so far as it impeaches the validity of the devise by the copyhold heir, must be over-ruled.

Doe d. Roberts & others, v. Whitaker (a).

[*B. R. Tr. Term, 1833.*]

The judgment given in this case has not yet been reported, but by the kind aid which has been afforded to me by Mr. Barnewall throughout the publication of this work, I am enabled to state that the judgment was as follows:—

The question to be considered is, whether the verdict can be sustained in the last count of the declaration, which is on the demise of William Henry Leach and James Whalley Wickham, who were admitted as customary tenants of the premises in question on the 2d May, 1825.

Several objections, in the whole four in number, were made to their title, but three of these have been abandoned.

The 4th objection resolves itself into four branches.

1st. That the grant of the 2nd of May 1825 was void.

First, because it was made on the surrender of John Francis, the surviving life in the copy of the 15th of October 1812, and the grantee in reversion, and it was not shown that John Francis was admitted

(a) *Ante*, pt. 1. p. 125, n. (b).

the grant of the 15th of October 1812.

2dly. Because the grant was voluntary, and no authority was shown in the steward of the manor to make such a grant.

3rdly. Because the court was held out of the manor, though expressly alleged in the grant to be held within it.

4thly. Because two rents are reserved, without distinguishing the particular tenements liable thereto respectively, and because a heriot for each tenement was reserved by the grants of the 30th October 1771, 15th October 1812, and 24th July 1824.

As to the first of these objections, that John Francis, the surviving life in the copy of the 15th of October 1812, is not shown to have been admitted the lord's tenant, although his admission was reserved by the grant of the 15th October 1812, we are of opinion that there was no necessity for a formal entry of the admission of John Francis.

The case of *Roe* on the demise of *Cosh v. Loveless*, (2 Barn. and Ald. 453,) is not exactly in point as to this question, yet the principles there laid down will be found applicable to this question. It was an ejectment for copyhold premises. The plaintiff in support of his case produced a copy of the court rolls of the manor dated the 18th of June 1789, by which it appeared that Richard Kiddle and Sarah his wife took of the lord the reversion or remainder of and in the premises in question, therein described as being then in the tenure of them the said Richard Kiddle and Sarah Kiddle his wife, to have and to hold to James Cork aged 19 years for the term of his natural life, at the will of the lord, according to the custom of the said manor, immediately after the death, surrender or forfeiture of the said Richard Kiddle and Sarah Kiddle his wife, by yearly rent, &c. and the said Richard Kiddle and Sarah Kiddle gave to the lord for a fine, 37*l.* 12*s.*, and it is granted in form aforesaid; the plaintiff then proved the death of Richard Kiddle and his wife. It was objected on the part of the defendant that the admission of Cosh ought to have been proved to give him the legal title. The judge directed the jury to find for the plaintiff, reserving liberty to the defendant to move to enter a nonsuit. In giving judgment upon this case, Lord Chief Justice *Abbott* says that, by the general law of copyholds, the lord has a right to insist that the tenant shall come in to be admitted, and do fealty and homage, and, after some other observations, he goes on, but where the lord makes an original grant, no admittance

sary, except in cases analogous to those where livery of seisin would be requisite in the grant of a freehold.

And without more particularly noticing the opinions of the other judges, we think the principles upon which that case was determined warrant us in saying, that there was no necessity for John Francis to be admitted.

As to the objection that two rents are secured, without distinguishing how much is payable for each tenement, we think that no ground of objection: the rents are the same as reserved in the year 1771, and no distinct objection is stated to the rents being so reserved, and we cannot intend but that they may always have been so.

Then with regard to the heriots; a heriot for each tenement is reserved when it shall happen, if the circumstances do not occur that a heriot is demandable for each tenement, the claim cannot be enforced, but it does not make the grant void.

The principal objection is that the grant of the premises in question, was made at a court held by the steward out of the manor. And it is contended that any court held out of the manor is a void court, and all the proceedings in it are void also, and even if it were not a void court, or if the lord himself could grant out of the manor independent of the court, still the steward could not do so.

The first question then is, whether a copyhold court can be held out of the manor. It seems to be quite clear that a court baron of freeholders cannot be held out of the manor. In Co. Litt. 58. a. it is said "if a court baron be held out of the manor it is void," and he afterwards states what he means by the court baron. The court baron must be holden in some part of that which is within the manor, for if it be holden out of the manor it is void, unless a lord being seised of two or more manors, hath usually time out of mind kept at one of his manors, courts for all his said manors. By custom such courts are sufficient in law, albeit they be not holden within the several manors. And it is to be understood this court is of two natures. The first is by the common law and is called a court baron, and then he goes on to explain more about it. The second is a customary court which doth concern copyholders and that also he further explains.

In *Clifton & Molineux's case* (4 Co. 27. a.) it was resolved "that if a court be held by the steward of a manor out of it, and divers grants and admittances there made, the court, and all grants and

with the resolution of the fourth point before in *Melwich's* case. But it was resolved that by custom the court may be held out of the manor, and grants and admittances made there good enough, as divers abbots, priors, &c. used to hold courts at one manor for divers several manors, and good by custom.

The case of *Melwich* is reported in Cro. Eliz. 182, and the matter seems to have been compounded; and it is again mentioned in *Bright & Forth*, Cro. Eliz. 442, and is there mentioned as a strange judgment, but the case in Cro. Eliz. appears rather to have been upon the freehold of the copyholds being divided from the rest of the manor, and of the effect which that would have upon the copyholds. In *Sands v. Drury*, (Cro. Eliz. 814,) in giving judgment it was said, that it was adjudged in the time of Queen Mary, in the case of the Duke of *Suffolk*, that where one had two manors, and granted a copyhold of the one manor at the court of the other manor, it was a void grant; for it cannot be a copyhold according to the custom of a manor whereof it is not parcel. But *Gawdy* doubted thereof, and considered it would have been well enough if it had been so used from time whereof, &c., but that was not found, and therefore no title in the defendant. But in Lord *Dacre's* case, (1 Leon. 289,) it was held that a customary court may be held out of the precincts of the manor, for no pleas are holden, which was agreed *per totam curiam*. But this was not the point in discussion, which was as to the appointment of a steward. The reason also there given does not seem to be a good one, for the holding of pleas is not the only reason why it should be held within the manor. And in fact the court does hold pleas of land, as fines levied, and recoveries suffered, in the copyholder's court.

It would be attended with the greatest inconvenience if suitors are compelled to go a great distance to attend the court, and if proclamations were made affecting the copyhold tenants, they would not necessarily know of them, if they were made off the manor.

We do not enter into any consideration of the cases where the freehold of the copyholds have been severed from the manor; a good deal of uncertainty seems to prevail as to them, and whether courts may be held off the manor for the admittance of the copyhold tenants, they stand upon their own particular circumstances.

This question has engaged the attention of Chief Baron *Gilbert*.

‘ a grant or admittance of a copyhold out of a manor at what place
‘ he pleases ; but the steward cannot, at a court held off the manor,
‘ make any grants or admittances, and in *Coke*, 1st Inst. 58. a. he
‘ says, that a court cannot be held off the manor, unless the lord hath
‘ two or three manors, and hath always kept court at one for all,
‘ which plainly shows that a lord cannot make admittances or grants
‘ at a court held off the manor, no more than the steward. For *Coke*
‘ says, that if the court baron be held off the manor, it is void ; and
‘ he there speaks of a court baron as including the copyholder’s
‘ court, where the steward is judge :—but as hath been said before,
‘ a lord may make admittances or grants out of the manor, at what
‘ place he pleases, which are *Coke’s* words, and must be understood
‘ not at a court, but at some other time, or else he contradicts him-
‘ self. It is held, that if the inheritance of copyholds be granted to
‘ one, he may hold courts where he will ; for it is no longer a court
‘ baron ; and that the lord or his steward may grant copies out of
‘ court as well as in court : and as the case is reported by *Croke*, the
‘ grant was at a court held at another manor. But as *Coke* reports
‘ it, though the grant be at another place, yet it is not said to be
‘ done at a court ; so *quære*, whether a steward may make grants by
‘ copy out of court, but if a steward can, an under steward cannot.’
And in page 319 he says, ‘ My Lord *Coke* says, that the lord may
‘ make admittances and grants by copy at what place he pleases ;
‘ but the steward of the manor at any court held off the manor,
‘ (for out of the court, it is said by him in another place he may make
‘ admittances or grants by copy,) cannot make any admittances or
‘ grants by copy. This seems to imply that the lord may make by copy
‘ grants and admittances at a court held off the manor ; or else where
‘ is the difference between the case of the lord and steward ? And in
‘ the next case but one, it is resolved that if the steward at a court
‘ held off the manor, make any grants or admittances, they are all
‘ void ; but he says nothing of the lord. In his comment upon *Lit-
‘ tleton*, he says, “ the court baron must be held upon the manor, else
‘ it will be void.” As *Melwich’s* case is reported by *Croke*, it is there
‘ said, that if the lord grant away the freehold of his copyholds, the
‘ grantee may hold courts where he will, to make admittances and
‘ grants. If then a grant by copy or admittance should be made at a
‘ court held off the manor, though it be a court baron, why should it
‘ be void ? Since a court baron contains in it two courts, one for the

‘there is no reason that because the court baron is void, that therefore
‘the admittance should be void; for they are as two distinct courts;
‘and the admittance had been good, had the court been only the
‘copyholder’s court. And if we look back to the reason of the thing,
‘if an admittance may be made at a place off the manor, why not at
‘a court held off the manor? for it is no judicial act; if it were,
‘surely it must of necessity be done in court; and therefore it was
‘held *per tot. cur.*, that a court to do these things might be held off
‘the manor. It is not distinguished in this case between the grant of
‘the lord or steward: But *Coke* is express that grants by stewards at
‘courts held off the manor are void. *Ideo quære de hoc.*’

Taking the whole of these authorities into consideration, though there is some want of clearness amongst them, we think that a customary court cannot be held out of the manor unless there be a custom to warrant it, and if one be held, all that is done at it is void. But though the court be a void court, that only affects such things as are required to be done at a court, as presentments by the homage, imposing fines and amercements, levying fines, and suffering recoveries, and other things. But as to many other things, though they are correctly done at a court, it is not essential they should be so. And amongst these things it has been held, that the lord may grant to or admit a copyhold tenant, not only out of court, but also out of the manor (the 4th resolution in *Melwick’s case*, 4 Co. 26. b.)

It was therefore competent for the lord himself to have admitted, or to make a grant to these persons, out of the manor, without any consideration of a court, and if he had gone alone to this house, and these persons had come there, he might have made out a grant to and admitted them, and have delivered seisin by the rod, and thus have completed two of the ingredients towards making them tenants by copy of court roll. But supposing instead of that, either by mistake as to the house not being within the manor, or under other circumstances, twenty or thirty persons had assembled there, one of whom called himself the crier, some others bailiffs, beadles or officers, and some homagers, and the crier had made proclamation to open a court, and had sworn persons to be of the homage, and the lord had given a charge to those persons as the homage, and they had made presentments, and had imposed fines and amercements, and that fines had been levied and recoveries suffered, all which would have been void:—And then these

lord had made and signed a grant, and admitted them, and had delivered seisin by the rod; the question is, whether all this machinery of a void court, would have invalidated the grant, or whether it would have been made surplusage, and the grant and seisin remain valid, and we are of opinion that, as there are effectual words of grant, and an actual seisin delivered, all this statement about the court is only to be considered as surplusage, and that the grant and seisin would be effectual. Thus therefore it would be if the lord himself had made the grant. But the grant itself or admittance not being made by the lord in person, it is necessary to consider, whether it was made by an authorised person. And the first question upon that is, whether the steward of a manor can admit out of the manor: It should seem that he may take a surrender out of the manor, *Howsego v. Wild*, (1 Roll Abr. 500.) And so it would appear by *Dudfeild v. Andrews*, (1 Salk. 184.) It is so taken in *Tukeley v. Hawkins*, (1 Lord Raym. 76); and the court say that a custom to the contrary would be void. That is perhaps going a good way, for in *Dudfeild v. Andrews* it is only by reasoning and queries that it is thought proper the steward should have such a power. But as to an admittance out of the manor *Tukeley v. Hawkins*, (1 Lord Raym. 76.) is express that the steward cannot admit out of the manor. And the fourth resolution in *Melwich's case* (4 Co. 26 b.), and *Clifton v. Molineux*, (4 Co. 27. a.) are to the same effect, though in these cases it is said that the steward cannot admit at a court held out of the manor. Watkins in his treatise on copyholds, vol. 1. p. 253, seems to incline to the opinion, that a steward may admit out of a manor, but it is only by putting queries and reasoning, that he supports that opinion. But we are of opinion that a steward cannot, in his mere character of steward, admit out of the manor. But in the present case, Leake, who made the grant, derived his authority from the deed of the 25th of September, 1823, by which the lessees of the lord of the manor appoint him steward of the manor, and, besides giving him the usual powers and authorities to hold courts, and to do all acts usual and customary to be done by stewards, they more especially authorised and empowered him from time to time to make any voluntary grant or grants of all or any customary or copyhold lands or tenements within or holden or parcel of the said manor, and to give a license or licenses to demise or otherwise, as he the said Charles Leake should think fit, and either in or out of court, as fully as they might or could do. And though, from

one part of the instrument, it seems doubtful whether the powers conferred upon him are not merely an enlarged explanation of what his duties are as mere steward, yet upon the whole of the instrument we think it amounts to putting Leake in the capacity of attorney to represent the lord as to surrenders, grants and admittances, and that, whatever the lord might do, Leake might do also, and that he therefore might take the surrender, and make the grant in question off the manor. But it may be said that Leake, in the document, does not profess to act as the general attorney of the lord, but only as steward, and that as steward alone he could not make the grant; but as to that he had the authority, and as, in common parlance, he would be called steward, who is generally taken to represent the lord as to copyhold matters, we think the calling himself steward is sufficient, and that it was not necessary to say that he acted as the general attorney of the lord.

But besides making the grant or admittance, and delivery of seisin, it is necessary, in order to make the person tenant by copy of court roll, that the admission should be notified for the information of the tenants at the next court, or some other court, according as the custom of the manor may be, and an entry of it should be made, either by a certificate of the lord, or the steward, or presentment by the homage. None of these have been done, but then the proceedings at this supposed court are entered by the steward in the court rolls, as if done at a court, and therefore at the following court after the admittance, the tenants have information of what has been done through an incorrect medium, but we think it sufficient (a).

An objection may be made that nothing done at this supposed court, should be allowed to have any effect, as it has a tendency to create a custom to hold a court out of the manor, but if such were adopted again, it is probable the tenants would object to it: this supposed court could be no evidence of such a custom, because if the court rolls were pro-

(a) It is observable that it was urged on the part of the defendant in support of the rule for entering a nonsuit, that even if the grant could be sustained as an act done out of court, yet that the plaintiff had no *legal* title for want of the production at the trial of an instrument of grant, and evidence of the presentment and inrolment of such a grant

at a court legally holden, so as to constitute the grantee tenant by copy of court roll, and the defendant's counsel, as to this point, drew the attention of the court to the fact, that no court had been held, subsequently to that which was considered to be a void court, not having been held within the precincts of the manor.

Besides if it had a tendency to introduce a custom, we do not think that it could affect the validity of the admittance, if it were otherwise sufficient.

Upon the whole of this case, though this irregular proceeding has brought the parties into considerable difficulties, we think they may be got over, and that the lessors of the plaintiff in the last count of the declaration are entitled to judgment.

The King v. Lady Jane St. John Mildmay (a).

[*B. R. Trinity Term, 1833.*]

Dampier, in support of the mandamus, contended that the lord cannot take advantage of a forfeiture between the surrender and an admittance, and relied on the rule, that if a copyholder surrender to the use of his will, and die without heirs, the lord is bound to admit the appointee under the will; and that the argument which would be urged that the doctrine of relation applied only as between the parties, or those claiming under them, (*Holdfast & Clapham*, 1 T. R. 630,) was not tenable; and that the authority of *Roe & Hicks*, (2 Wils. 13.) (b), in favour of the argument that, as the lord is not benefited by the surrenderee's escheat, he must be benefited by the surrenderor's, else he would have no *forfeiting* tenant, received a sufficient answer in the observations of the Master of the Rolls in *Burgess & Wheate*, (1 W. Bl. 144); and that the reciprocity was not to have a *forfeiting* tenant, but a tenant to do the service. He further urged that the case of *Pawlett v. The Attorney General* (Hardr. 465.) merely showed that the surrenderor or mortgagor might redeem against the lord, who takes on escheat of the admitted surrenderee, but that it proved also that, where a perfect tenant forfeits, the lord shall not retain (c). And that the surrenderor,

(a) 5 Barn. & Adolp. 254. *Ante*, pt. 1. pp. 482—3 (n). And see the report of this case, 2 Nev. & Mann. 776.

(b) The question in that case arose on a surrender to will, and a devise by the surrenderor to one who was convicted of felony and hanged, not having been admitted, and it was held that the

lands were not forfeited to the lord, but descended to the heir of the surrenderor.

(c) It may be a question whether an unadmitted mortgagee would not be allowed in a court of equity to enforce his inrolled security, as against the lord by escheat or forfeiture.

And he referred in support of his argument to the case of a surrender by one of two joint-tenants to the use of his will, and a devise by him to a stranger, and the presentment of such surrender after the death of the surrenderor, in which case the devisee ought to be admitted to the moiety 'the state of the land being by relation bound by the surrender,' (Co. Lit. 59 b.,) and to several other instances of relation in a note to *Grantham v. Copley* (2 Saund. 422 c. n. 2); and to the decision that a surrenderee may lay his demise in ejectment on any day between the surrender and his admittance (*Holdfast & Clapham*, 1 T. R. 600); and to the observation of *Holroyd J.* in *Rex v. Boughhey*, (1 Barn. and Cress. 573,) that 'until admittance the estate is not completely taken out of the surrenderor.' And he relied also, in the absence of precedents as to copyholds, on analogous cases as to freeholds, and more particularly on the rule, that a devise, though it takes effect after the testator's death, will prevent an escheat (Co. Lit. 236 a. n. (1), 3 Cru. Dig. 456.) And that a sale under a power given by will to executors will prevent an escheat (*Goodcheap's case*, 49 E.3. 16. Bro. Abr. Devise pl. 10.) And also that possibilities and contingencies bind freehold estates in the hands of the lord claiming by escheat (*Nichols v. Nichols*, Plow. 481, 486-7. Co. Lit. 218 a).

P. Williams, contra, relied principally on the argument that the doctrine of relation applies only as between the parties to the surrender, and that the surrenderor continues tenant until admission of the surrenderee, according to numerous authorities, (*Berry v. Greene*, Cro. Eliz. 349. *Fitch v. Hockley*, Ib. 442. 4 Co. 23 a. *Smith v. Triggs*, Str. 487. *Barker v. Denham*, Sty. 145. Vin. Abr. Cop. B. b. 5. P. a. 2. Sho. 87. *Fisher v. Wigg*, 1 P. W. 17. Gilb. Ten. 273. *Roe & Hicks*, 2 Wils. 13. Com. Dig. Cop. G. 3. Ib. F. 14. *Kenebel v. Scrafton*, 8 Ves. 30. *Hurst v. Morgan*, Serjt. Hill's MS. *George d. Thornbury v. Jew*, Amb. 628-9. *Doe & Wroot*, 5 East 132.) He further relied on the observation of Lord *Macclesfield* in *Peachy v. The Duke of Somerset*, 1 Sho. 451, [454,] that "the lord must always have such a tenant upon his lands as may be sufficient to answer all demands, and capable of committing forfeitures"; and urged that the lord is expressly excepted in the dictum of *Ashhurst J.* in *Holdfast v. Clapham*, 1 T. R. 600.

Dampier, in reply, insisted that by a surrender the surrenderor's estate at will passes to the surrenderee, and that he has a new resulting estate

that if the surrender and admittance be two conveyances, then the first has taken the estate from the surrenderee, and if one conveyance, then there must be relation, else there will be a division of what is one and entire.

Littledale J., delivered the judgment of the court, and, after stating the mandamus and return, his lordship proceeded as follows: the question is, whether if a copyhold tenant surrender his estate to the use of another, and afterwards commits and is convicted of felony before admittance of the surrenderee, the estate is by the custom forfeited to the lord?

The case was argued before us very elaborately, and all the authorities were fully entered into. The court did not at the time feel greatly pressed by the weight of those authorities; but as they were numerous, and the argument was chiefly from analogy, we wished to look into them. After a careful examination of them, we are of opinion that the estate is by the custom forfeited to the lord, and that a peremptory mandamus ought not to issue. It is conceded that as between the surrenderor and surrenderee, the latter cannot be prejudiced by any act done by the former subsequent to the surrender, but is intitled to be admitted to the estate free from all mesne incumbrances. It is conceded also, that the surrenderor, until the admittance of the surrenderee, continues tenant to the lord for all purposes of service. The estate, therefore, does not by the surrender vest in the lord. It is conceded also, that the surrenderee before admittance takes nothing, but that on admittance he is in by relation from the time of the surrender, as between him and the surrenderor, yet he has not been tenant in the mean time; for it is distinctly held, in *Roe d. Jefferies v. Hicks*, (2 Wils. 13,) that if he be attainted in the meantime, the lord will not take by forfeiture.

If then, no act of the surrenderee before admittance will work a forfeiture, and if it were held that the surrenderor after surrender, although he be tenant, cannot by any act of his work a forfeiture, it follow that a considerable time might elapse, during which the lord's right of escheat is suspended, and that not by any act of his own, but by the acts of others, which he cannot prevent; for he can neither refuse to accept a surrender, nor compel a surrenderee to come in and be admitted. We do not find any authority for such a proposition. On the contrary, it is laid down by Lord Chancellor *Macclesfield*, in *Peachy v. Duke of Somerset*, (1 Str. 454,) that the lord must always

There are many authorities relating to freehold estates, and some relating to copyholds, which show that the tenant shall forfeit only that which he has ; and therefore in *Pawlett v. The Attorney General*, (Hardr. 465,) (which was a case of freehold,) it was held that a mortgagor had a right to redeem against the crown, where the mortgagee in possession had been attainted ; but it is plain that, in that case, Lord C. B. *Hale*, sitting in equity, treated the mortgagee's interest in the land as a mere pledge and security for money. It is no authority whatever for saying, that the estate was not forfeited to the lord at law.

It was argued that the court, in cases of mandamus to admit to copyhold estates, frequently looks to equitable interests ; but, without at all denying that this may be so in some instances, it seems clear that this court cannot, in such a case as the present, enter into a question of trust, or adjust the equitable rights of the parties.

Upon the whole, without minutely examining all the cases cited by the learned counsel for the surrenderee, we are of opinion, that as the surrenderor is conceded to be tenant for all purposes of service until the admittance of the surrenderee, so he is also tenant for the purpose of forfeiting.

One point more remains, Mr. Dampier argued, that the custom here stated could not apply to such a case as the present, because the custom, to be valid, must have existed before time of legal memory, at which remote period, the surrender and admittance were not one conveyance as now, but by the surrender the estate vested in the lord, and was re-granted by him at the time of admittance ; so that, in the interval between surrender and admittance, there was then no tenant at all, but the estate was in the lord. But this argument proves too much ; for it shews, that whenever there was a tenant, such tenant might by the custom commit a forfeiture, and as soon as ever a surrenderor before admittance came to be considered as tenant, and the estate was no longer held to vest in the lord, the custom as to forfeiture immediately attached on such tenant. If it did not, neither would any other of the customs, and the lord would, at this day, have no tenant at all between surrender and admittance. It was conceded, however, that he has a tenant for the purpose of services, why not also for the purpose of forfeiture ? The consequence is that this rule must be discharged.

Rule discharged.

[C. B. Trinity Term, 1833.]

A case sent from the Court of Chancery stated, that in the year 1617, the customs of the manor of *Cheltenham*, in the county of *Gloster*, were duly found returned and presented by a jury there summoned for the purpose of ascertaining such customs, to be, amongst other things, as follows : first, the tenants in base tenure of this manor do respectively hold, and are seised of their tenements of an estate of inheritance customarily, viz. *sibi et hæredibus suis* descendible to their youngest sons, and in default thereof to their youngest daughters, and in default thereof to their youngest brothers, and in default thereof to their youngest sisters, &c. according to the custom of the said manor. Also if any customary tenant aforesaid make his fine for his admittance and die, leaving a wife, she is to have the land or tenement whereunto her said husband was so admitted, for her life and twelve years, if she shall dispose of it : and if the wife shall marry again, and her husband that she shall so marry, shall agree with the lord, and make his fine, then shall he gain and have the land or tenement to him and his heirs, of an estate of inheritance descendible to his youngest son, or in default thereof to his youngest daughter, according to the custom of the manor ; and if he outlive his wife and die without issue of his body, his customary tenements shall go to the youngest issue male of the body of the said first husband, by whom the land did move ; and for default of such issue male, then shall go to the youngest issue female of such first husband ; and if such first husband be dead without such issue of his body, then doth it go to the kindred of every last husband, in order, so long as any can be found, being heirs by descent, or takers in marriage by purchase ; that is to say, if he be a taker, then only to the issue of his body in manner as aforesaid ; and if he be heir, then in full course of descent according to the custom of the manor.

That such customs continued to be the customs of the said manor, until after the passing of the act of parliament next after mentioned : and after the passing of such act of parliament such customs remained, except in so far as such customs were altered or varied by such act of parliament.

of the copyhold estates, and customs of the tenants in base tenure of the manor of *Cheltenham*," after reciting that within the said manor of *Cheltenham*, the copyholders in base tenure having customary estates of inheritance to them and their heirs, in their several customary messuages and lands, many questions and doubts had been of late made touching their customs, many of them being so uncertain, unreasonable, and inconvenient, that it had caused many suits in law, at great expenses in money and much loss and trouble, insomuch that in many years past the manor had yielded but little profits either to lords or tenants; for remedy thereof and for avoiding of suits, and for the quieting and establishing of the estates of tenants and their posterity within the said manors, enacts, section 1,—that the descent of the said customary lands shall be from thenceforth in fee simple according to the rules of common law: section 3,—saving only that if any copyholders shall die without issue male, having daughters, the eldest daughter shall inherit solely, as the eldest son ought to do by the course of the common law; and that if any of the said customary lands or tenements shall or ought, according to the course of the common law, to descend to any sisters, aunts, or female cousins, that then and in every such case the eldest sister, aunt or female cousin, shall inherit the same lands and tenements solely and alone: section 5,—power to the copyholders to grant jointure of their lands to their wives for life: section 8,—that the wives of the copyholders shall from thenceforth have for dower during their lives, the third part only of their husband's customary lands; the said third part to be set forth and assigned to them by the homage of the court wherein the presentment of the death of the husband shall be presented, or within such time next after the same court, as shall be limited by the stewards in that behalf: but such wives as shall thereafter accept and take a jointure of their husband's customary lands within the said manors, by grant, limitation, or assignment, before marriage, or shall accept of such a jointure after marriage, and agree thereunto after the death of the husband, shall be concluded and barred to demand any dower of those or any customary lands of such husband, within the said manor: provided always that women then living theretofore wives of any copyholders of the said manor dying tenants, and also the then wives of any of the copyholders of the said manors, or either of them, shall enjoy the customary lands of their then or late husbands, dying tenants, for their lives or twelve years after, as if that act had never been made: section 9,—that the wives of the copy-

of any of the customary messuages or lands, being first solely and secretly examined in court according to the custom there, shall be concluded and barred afterwards to claim any right, title, or estate whatsoever, of or in those lands so surrendered and granted as aforesaid : section 10,—no husband surviving his wife shall, by fining with the lord, keep his wife's lands from the heir of the wife : section 11,—all customs of enjoying lands by widows of customary tenants, or by after taken husbands of such widows, or by the heirs of such widow or after taken husband, are declared to be void ; and all other lawful customs and usages within the manor, not repugnant and contrary to the meaning of the act, are to remain good and effectual.

The case then stated, that John Riddell late of Cheltenham, who died in the month of December 1825, was, during the time of his marriage with the plaintiff, seised of divers copyhold tenements situate within the said manor, which he held according to the custom of the said manor, and to which he had been duly admitted ; and that as to one of such copyhold tenements, being a messuage or dwelling house, situate No. 8, Stills Lane, and the appurtenances thereunto belonging, the said John Riddell, on the 4th of March 1805, at a court then holden for the said manor, surrendered into the hands of the lord of the said manor, the said messuage or tenement, and appurtenances, to the use of *Edward Jenner* of Cheltenham aforesaid, doctor of medicine, since deceased, and his heirs. That the said plaintiff did not join in the said surrender of the said copyhold tenement to the said *Edward Jenner*, nor had since joined in making, nor had made, any surrender thereof.

The case further stated, that, according to the custom of the said manor, unless the wives of the copyholders of the said manor join in the surrenders made by their respective husbands during their lifetimes, such wives are entitled, upon the death of their husbands, to dower out of the copyhold tenements so surrendered.

The defendants, who claimed under *Dr. Jenner*, insisted that the plaintiff was not entitled to dower out of such copyhold premises, inasmuch as they alleged that the widow of a customary tenant was not entitled to dower of any of the copyhold tenements aliened by her husband in his lifetime, but of those only of which her husband died seised.

The question for the opinion of the court was, whether, according to the custom of the manor of *Cheltenham*, the widow of a copyholder was entitled to dower out of customary lands of which her husband was

lands having been aliened during the coverture by the husband alone, without the wife having been solely and secretly examined in court, or having joined in the surrender thereof.

It was contended for the plaintiff that she was intitled to dower under the act of 1 Car. 1, the avowed object of that act being to substitute known rules of common law for the uncertain customs of the manor. The learned counsel relied more particularly on the 5th, 8th and 9th sections, and urged in support of his construction of the act, that where a statute contains the word 'felony,' all incidents of felony are attached; and so in misdemeanor; and that wherever the legislature adopts a term known to the law, it must be taken in its usual sense.

For the defendant it was contended, that the dower meant by the legislature in the above statute, was the dower appropriate to copyholds, that is customary dower, and which is defeated by sale or mortgage of the husband. That the act, according to its title, was for settling and confirming existing customs, and not for the destruction of them. That the plaintiff could only have the dower which could be presented by the homage under the 8th section, and in order to that, the husband ought to have been tenant of the land at his death, otherwise no presentment could be made. And that in copyhold tenure dower and freebench are synonymous, the term dower, and not freebench, being used in all legal proceedings. (Kitch. 200, 242. *Wade v. Wade*, Amb. 299.) On the immediate question, *Parker v. Bleeke*, (Cro. Car. 568,) was also cited.

The following certificate was afterwards sent to the court of Chancery:—

We have heard this case argued, and considered it, and we are of opinion that, according to the custom of the manor of *Cheltenham*, within the county of *Gloucester*, and the provisions of the statute 1 Car. 1., set forth in the case, the widow of a copyholder is entitled to dower out of customary lands of which her husband was tenant during the coverture, but of which he did not die tenant; such lands having been aliened during the coverture by the husband alone without the wife having been solely and separately examined in court, or having joined in the surrender thereof.

N. C. TINDAL.

J. A. PARK.

S. GAZELEE.

J. B. BOSANQUET.

This case was argued in Trinity Term 1833, and in Michaelmas Term following,---

LITTLEDALE, J., delivered the judgment of the court, as follows.

This was an ejectment for ten messuages in the manor of *Princes Risborough* in the county of *Bucks* which was, after a former trial, again tried before my brother Gazelee and a special jury at the Summer Assizes 1832, for the county of *Bucks*.

The lessor of the plaintiff was lord of the manor of *Risborough*, and the defendant was a copyhold tenant of that manor, and the premises for which the ejectment was brought were in the occupation of a tenant: On the 31st May 1819, Charles Currie was admitted tenant of the premises, in trust for lord George Henry Cavendish (now the earl of *Burlington*) the defendant. The premises as described in the admission were a messuage or farm house, with all outhouses, edifices, buildings, barns, stables, yards, gardens, orchards and backsides thereto belonging; and also certain lands therein particularly mentioned and described. There were two barns on the premises, one of them was in a ruinous state, and was pulled down by the tenant. Leave was asked of the steward to take it down, but it was refused; the barn was some time afterwards rebuilt by the defendant. The ejectment was brought for alleged waste in having taken down and removed the barn without license.

Upon the evidence given on the trial, the judge left three questions to the jury.

1st. Whether at the time when the barn was pulled down, the defendant had an intention to rebuild it, for that if he had, there was no ground of forfeiture.

2dly. Whether any damage was occasioned to the estate by the pulling down and rebuilding the barn, stating, that if they found there was not, he would reserve for the opinion of the court whether this was an answer to the action.

3dly. As to the existence of the custom, and particularly whether it authorised the pulling down all buildings generally, or only those additional ones which the tenant himself had erected?

(a) The author is also indebted to Mr. Barnewall for this judgment, which has not yet been reported.

ing the barn; that the estate would have sustained no damage if the barn had not been rebuilt; that by the custom a man may pull down what he has built, but not generally.

A verdict was entered for the plaintiff, with liberty for the defendant to move to enter a nonsuit, if upon the finding respecting damage, the court think him entitled so to do.

By the general custom of copyholds, if a copyholder commits waste it is a forfeiture, Com. Dig. Copyhold M. 3. for which he cites 1st R. 508. B. J. Mo. 392, and Ow. 17, in which last case it is said that waste done by a copyholder is a forfeiture.

In the quotation from Roll. Abr. the language is if a copyholder commits waste *against the custom of the manor*, this is a forfeiture and for that he cites *Clifton v. Molineux*, (4 Co. 27,) where the quotation is stated that it must be *waste according to the custom of the manor*.

But without considering whether the custom of the manor need be taken into consideration or not, the custom here found is that the copyholder may pull down what he has built, but not generally.

Then a question arises, is the pulling down a barn waste?

The instances and cases where waste has been considered as applicable to buildings, are almost all as to houses or mills, but there are some where waste has been assigned as to outbuildings. In Brook's abridgment, waste pl. 67, waste was assigned (among other things) in a stable.

In Dyer 108 it was assigned in a stable. In *Rastal v. Turner*, (Cr. Eliz. 598,) which was a case of forfeiture of copyholds for waste in burning an outhouse, no doubt was made as to its being a forfeiture by the person who did it, but the case was decided on its being done in collusion for some purposes as to the estate, or the person connected with the copyhold.

In Townsend's and Cornwall's tables of pleading there are several precedents referred to of waste being assigned in various sorts of outbuildings. And in the statute of Marlbridge 52 Hen. 3. c. 23. it is enacted, that farmers during their terms shall not make waste (*a*), nor of house, woods, and men, nor of any thing belonging to the tenements that they have to farm. And though waste be by the common

(a) Note in Ruffhead's Ed. of the statutes the word 'Sale' follows the word 'Waste,' but there is a note in the

margin 'not in the original,' and there is no word in the latin to denote *sale*.

in which waste may be committed. On the words "nor of any thing belonging to the tenements which they have to farm," Lord *Coke* in 2nd Institute 146, says "these were before particularly named *de domibus boscis et hominibus*," and these other words of "any thing belonging to the tenements that they have to farm," comprehend lands and meadows belonging to the farm.

Lord *Coke* therefore must be supposed to consider that the word 'houses' includes all outbuildings: if not, the general words here used would certainly extend to them.

We are therefore of opinion, that the pulling down a barn, taken absolutely, is such waste as subjects the copyhold tenant to a forfeiture. But there is another principle applicable to waste, that is, the smallness of the value, and there are a great number of old authorities to say, that if the value be very small, the consequences of waste do not attach.

They will be found collected in 2 Roll. Abr. 824. Com. Dig. Tit. Copyhold M. 3. Viner's Abr. tit. Copyhold [K. c.] and 2 Saund. 259, *Greene v. Cole*. See also the keepers and governors of *Harrow school v. Alderton* (2 Bos. and Pul. 86). Some of these authorities are not directly in point, for they are decided upon the statute of Gloucester, and in actions of waste, and between landlord and tenant. And it is laid down in *Dench v. Bampton*, 4 Ves. Jun. 700, that an action of waste will not lie between a lord of a manor and a copyholder. But they are illustrations of the principle, that where there are no damages, there can be no waste (a), and to this effect is the case of *Barret v. Barret*, (Hetl. 35,) where Ch. J. *Richardson* said "The law will not allow that to be waste which is noways prejudicial to the inheritance." Upon the whole there is no authority for saying that any act can be waste which is not injurious to the inheritance, either, 1st, by diminishing the value of the estate, or 2dly, by increasing the burthen upon it, or, 3dly, by impairing the evidence of title. And this law is distinctly laid down by C. J. *Richardson* in *Barret v. Barret* cited at the bar from Hetley's Reports (35). This case is entirely clear of the two former grounds; and as the jury have found that the defendant did no damage to the estate, it follows that there was no waste, and no forfeiture. The rule must therefore be made absolute.

Rule absolute.

(a) Vide Com. Dig. Waste (E 1.)

[B. R. Easter Term, 1834.]

(Notes of the Judgment) (a).

Lord DENMAN, C. J. In the case of the King against the lord of the manor of Oundle, which arose upon the return to a writ of mandamus issued at the instance of John Pruday, to compel his admission to certain copyhold hereditaments. The writ set forth that one Richard Ragsdale is seised of them in fee, and surrendered them to such uses as one Thomas Dawson should by deed direct and appoint, and in default of and until such direction and appointment to the use of Dawson in fee; and that Dawson did afterwards by deed direct and appoint that such premises should remain to the use of Pruday, who thereupon became intitled to be admitted. The return introduced no additional facts, but stated by way of observation, that Dawson had never been admitted, nor had he nor Ragsdale ever surrendered the premises to the use of Pruday;—and whether such admissions and surrender were necessary was the question argued before us. Pruday claiming to be admitted as the person to whose use the surrender of the property enured by virtue of the deed of appointment executed by Dawson, while the lord contended that as Dawson took not only the power of appointing, but also an interest in the mean time under the surrender by Ragsdale, he ought to have paid his fine before he could by deed appoint to Pruday.

Now the application of the general doctrine as to copyhold property, that the appointee under a power takes by an instrument creating the power, and not under that by which his power is executed, was not disputed, nor was it denied that trustees with a mere authority to sell, are not compellable to come in as tenants in conformity with the case of *Beal v. Shepherd*, Cro. Jac. 199, and *Holder v. Preston*, 2 Wils. 400;—but the distinction between those cases and the present was strongly insisted upon,—for here Dawson was not a mere trustee to sell, but was surrenderee in fee for his own benefit, until and unless he should make an appointment; that event might never have hap-

(a) These notes have been kindly lett of Great James Street, Bedford transmitted to the author by Mr. Hew. Row.

ferred to Pruday ; but it appears to me that these premises may be correct, without leading to a conclusion. The lord never is, nor can be for one moment deprived of a tenant, for the estate must always be in some person.

In the two cases above cited, the trustees might sell without an interest, the estate was not in abeyance till the sale, but remained in the heir of the devisor, which heir the lord might have compelled to be admitted, if the sale was not made in a reasonable time, but when such sale was made, the purchaser was intitled to be admitted under this surrender to the uses of the will, just as if he had been the devisee named in it. So here, Ragsdale remains tenant to the lord until some person be admitted under his surrender ;—no doubt Dawson might have declined to execute any deed of appointment, and if he had declined he must have been admitted before he could have passed his interest to another, for he could not have done so without a surrender ; but as he has chosen to execute a deed of appointment under the power, his appointee takes nothing of him, but becomes the surrenderee of Ragsdale, just as if he had been named in the grant. It follows that he is intitled to be admitted, without Dawson's being admitted, and that a peremptory mandamus must issue.

What the effect of Dawson's being admitted might have been, that is whether he could or could not have afterwards parted with his interest by making an appointment under the power, is a question which we are not required to determine.

APPENDIX

TO THE

TREATISE ON COURTS BARON AND COURTS LEE'

Rules to be observed in holding a Court Leet and Court Baron

CALLING THE COURT.

THE first preparatory step is for the steward to issue his precept to the bailiff of the manor to give the accustomed notice of the day appointed for the court. The following would appear to be the most usual form: (a)

(Precept to summon a Court Leet and Court Baron.)

*The Manor of ——— } To W. Y., bailiff of the said manor, greet-
in the County of ——— } ing—*

THESE are to require you to give notice within the said manor that the court leet or law day and view of frankpledge, with the court baron of A. Z., esquire, lord of the said manor, will be holden at the hour of ———, at ———, within the said manor, on ———, the ——— day of ——— next, at the hour of ——— in the forenoon; and to warn all the residents and freehold tenants of the said manor, personally to be and appear at the place and time aforesaid, to do and perform their suit and service, and pay their quit rents, fines, and other duties, as of right they ought to perform and render at such courts respectively: And also to warn all constables, tything-men, and other public officers of the aforesaid leet and manor, then and there to attend and make and return their several presentments: And you are hereby required to summon twelve

(a) When a court baron is held distinct from a court leet, the form of precept and notice, *ante*, p. (104) will serve, by omitting the word 'customary.'

aforesaid place and time, to inquire as well for our sovereign lord the king as the lord of the said leet, of all such matters as to the said court do appertain; and be you there personally with the names of the persons you shall have so summoned, bringing with you also this precept. Given under my hand and seal this — day of —, in the year of our Lord —.

J. S. steward.

On receiving the precept, the bailiff is to affix a written notice of the day and hour appointed for the court, to the door of the parish church, or cause such notice to be publicly read in church, or otherwise, as the usage may be; and it is proper to give this notice at least fifteen days before the court (a). The form of it may be thus:—

The Manor of ——— } Notice is hereby given, that a court leet or
in the County of ——— } law day, and view of frank-pledge, and a court
baron of *A. Z.*, esquire, will be holden for the said manor on —, the
— day of — next, at — o'clock in the forenoon, at the usual and
accustomed place, being the house of —, at —, in the said
county of —, when and where all the resiants and freehold tenants of
the said manor, and all public officers of the said leet and manor, and others
concerned in the business of such courts respectively, are required to
attend. Dated this — day of —, &c.

W. Y., bailiff.

THE COURT DAY.

(Records of the Court Leet, Manor Rolls, &c.)

IT behoves the steward to be prepared with the records of the court leet, and the manor rolls, for such references as may be necessary to his guidance as the judge of the court leet, and as assessor and register of the court baron, in which the suitors are the judges (b); and also with a minute book for the entry of the proceedings of the particular court, having the style of the court already written in it.

And should it be the first court which the steward has holden for the particular manor, he will do well to read his appointment to the stewardship, to the tenants and resiants assembled, previously to his entering on the business of the day.

(a) But a shorter period is sufficient,
ante, pt. 3. pp. 822—3.

(b) *Ante*, pt. 3. p. 721.

The bailiff is then to open the court by an audible proclamation, which (i. e. the O Yes) is to be repeated three times (a), thus—

O Yes, O Yes, O Yes; All manner of persons who owe suit and service to *the court leet, and law day*, and the court baron of *A. Z.*, esquire, now to be holden, or who have been summoned to appear at this time and place, draw near and give your attendance, every man answering to his name when called, and thereby saving his amercement: *God save the king and the lord of this leet.* [If it should be a court baron only, the words in italics are to be omitted.]

(Resiant Roll, Suit Roll, Jury List.)

The bailiff is now to be called upon to make a return of the precept, which he is to do by putting the resiant roll, suit roll, and jury list into the hands of the steward; who should first call over the names of the resiants, marking against such as appear, ‘*app.*,’ and against such as are essoigned, ‘*ess.*’. (b).

Then the suit roll is to be called over, and the mark ‘*app.*’ placed against the names of those who answer.

This being done, the steward will read the list of jurors, entering the names of those who appear in his minute book (c), and then proceed to administer the oath to them, in this manner:

(Oath of the Foreman.)

A. B., you, as foreman of this jury, with the rest of your fellows, shall inquire and true presentment make of all such things as shall be given you in charge, and of all such other matters as shall come to your knowledge, presentable at this court: The king’s counsel, your own, and your fellows’, you shall well and truly keep: You shall present nothing out of hatred or malice, nor conceal any thing through fear, favour, or

(a) In a court leet three proclamations are required to be made, but only one is necessary in a court baron. Kitch. 11, 12, cites 21 Ed. 4. 37.

(b) *Ante*, pt. 3. p. 825.

(c) There must be twelve jurors; and if a sufficient number do not attend, the steward may compel any strangers to be sworn. *Ante*, pt. 3. p. 847.

according to the best of your understanding: *So help you God.*

Then swear the rest of the jury, by three or four at a time, thus :

The like oath, which *A. B.* your foreman hath taken on his part, you and every of you shall well and truly observe and keep on your respective parts: *So help you God.*

And after the bailiff shall have signified the desire of the court for all men to keep silence, the steward will deliver his—

CHARGE to the Jury of the Court Leet,

to the following purport:—

THAT it is the steward's province to remind the jury that the court leet (frequently called a law day) is a court of record of great antiquity, and accounted the king's court, to which all persons resident within the jurisdiction of it, of the age of twelve years or upwards, with the exception of peers and prelates (*a*), and tenants in ancient demesne (*b*), owe suit and service, and that it is their duty to present and amerce such as make default.

THAT they are to present the names of such proper officers as either by the common law or by the particular usage of the manor, &c., for which the court is held, are generally chosen and sworn at the leet, such as constables, tithing-men, aleconners, &c.; and to inquire of and present any neglect in the duties of the several public officers within the precincts of the leet.

THAT if any offence was presented at the last court by way of admonition, and the party has not obeyed the terms which were enjoined, it is their duty to certify the default to the court, in order that the amercement set for it may be levied; but that the jurisdiction of the leet jury, like that of the grand jury, is confined to things done or neglected to be done since the last court, and to things happening immediately before their being sworn, and during their sitting (*c*).

THAT it is their province to inquire of and present all acts of petty treason, and the crimes of murder, and manslaughter, (as felony,) rape,

(*a*) See as to exceptions, *ante*, pt. 3. p. 824.

(*b*) *Ante*, pt. 2. p. 692; pt. 3. p. 824. n. (*c*).

(*c*) *Ante* pt. 3. pp. 870, 876. And note that by custom an adjournment of a court leet is good. *Ante*, pt. 3. p. 873—5.

offences (though not punishable in leet) may be certified to the justices according to the rules prescribed by law: and that they likewise to inquire what lands and tenements, goods and chattels, felon had at the time the felony was committed.

THAT it is also their province to inquire of and present all assa and batteries with bloodshed; all railers, common scolds, eves-dipers, and sowers of discord: all conspiracies and combinations of tuallers, labourers, and artificers; the several offences of exacting cessive tolls; neglecting to pursue hue and cry lawfully raised; of grancy and noctigavancy; and the receivers of any such evil charters; of buying and selling by false weights and measures; and violating any assize; of forestallers, ingrossers, and regraters; and of offences directed to be inquired of in leets by particular acts of parliament, as, for instance, the act of 1 Eliz. c. 17, intituled, "An Act for Preservation of Spawn and Fry of Fish." (b)

AND LASTLY, that it is the duty of the jury to inquire of and present all obstructions of public bridges, ways, and paths, the stoppage or diversion of all public watercourses, the removal or destruction landmarks, and any pound breaches, the neglect of cleansing pools or of enclosing stone, marl, and other the like pits, or of the repair of bridges and causeways, the laying of dung, soil or other offensive thing in any public highway; and also every other act which may tend to the injury or nuisance of any of the king's liege subjects (c).

When the jury are so sworn and charged, the bailiff is to make further proclamation thus:

O Yes, O Yes, O Yes.

If any person or persons can inform this court or inquest of any treason, felonies, bloodshed, or any other offence, matter, or thing now given in charge, let them come in, and they shall be heard.

(a) *Ante*, pt. 3. p. 881, et seq.

(b) See this stat. towards the end of the appendix; and also the extract from it, *ante*, pt. 3. p. 833-4.

(c) I have not enumerated deodands, estrays, waifs, treasure trove, and the like, among the presentments to be made by the jury of a court leet, as those franchises are not necessarily in-

cident to a leet, even when it is appended to a hundred or manor, though they may, it should seem, be claimed by the lord of a leet, *by prescription*, and then of course they should be inquired of as in the court baron. See *Br. Estray*, pl. 15. *Ib.* Incidents 38. *Ib.* Leet 43.

then the evidence is to go to the jury.

(The Oath of a person offering to give Evidence of Treason, &c.)

The evidence you shall give to the inquest now sworn, shall be the truth, the whole truth, and nothing but the truth : *So help you God.*

The steward will then administer the following oath to the several freehold tenants, constituting the homage of the court baron.

(Oath of the Foreman.)

You, as foreman of this homage, with the rest of your fellows, shall inquire and true presentment make, of all such things as shall be given to you in charge ; and of all such other matters as shall come to your knowledge, presentable at this court : you shall present nothing out of hatred or malice, nor conceal any thing through fear, favour, or affection, but in all things shall true and just presentment make, according to the best of your understanding : *So help you God.*

Then swear the rest of the homage, by three or four at a time, thus :

The like oath which *A. B.*, your foreman, hath taken on his part, you, and each of you, shall well and truly observe and keep on your respective parts : *So help you God.*

And then the steward will deliver his

Charge to the Homage,

to the following purport :

THAT the court baron is not a court of record, and is altogether different in its character from the court leet.

THAT in the latter (which is deemed the King's court) the steward presides as judge, but that in the court baron, which is the lord's court, the homage are the judges ; and that the steward (though a constituent part of the court) sits there as register and assessor only.

THAT it is their duty, as the homage of the court baron, and pos-

subsequently to the then last court, bearing in recollection that such seigniorial rights as are referrible to land of customary or copyhold tenure, are not within the jurisdiction of the court baron, but are to be inquired of only in the court denominated the customary court.

THAT the attention of the homage is especially to be directed to any possible advantages to the lord, by reason of any reliefs payable by the custom of the manor, on death or otherwise (a); or by reason of any escheats occasioned by the death of any of the freehold tenants, without leaving heirs inheritable to their lands (b); or in consequence of the forfeiture of freehold lands by any felonious act; or of any deodands, estrays, waifs, treasure trove, or other manorial franchises (c).

THAT it is also the duty of the homage to inquire whether any boundary stones, or landmarks, between the particular manor and any other manor, or between the lands of any of the free tenants, may have been removed; and whether any encroachments may have been made upon the wastes of the lord, or upon the commonable rights of such tenants; and of any breach of the lord's pound: And whether the several persons who owe suit and service to that court, have duly attended to render and perform the same, or wherein and by whom any default may have been made, and to set a reasonable amercement on any such defaulters (d); and generally to inquire of all rights, and of all offences, both of commission and omission, as between the lord and the freehold tenants of the manor, and as between tenant and tenant, with reference particularly to any existing by-law, established by the custom of the manor (e); and to make their presentments and orders accordingly (f).

(a) *Ante*, pt. 3. p. 738, et seq.

(b) *Ante*, pt. 3. p. 757, et seq.

(c) *Ante*, pt. 3. pp. 773, 777, 781, 787.

(d) *Ante*, pt. 3. pp. 736, 742, et seq.

(e) *Ante*, pt. 3. p. 747 et seq.

(f) N. B. The steward is not bound to receive any presentments whereby the rights of the lord may be prejudiced. 1 Vol. Ca. & Opin. 172.

It is the better opinion that all the freehold tenants present at a court baron may claim to be put upon the homage.

In *Arlett v. Ellis*, 7 Barn. & Cress. 368, *Bayley J.* said 'The homage are persons associated together at the lord's court (at which all the tenants of the manor may attend) to act as between the lord and his tenants.' But it should seem that if the homage obstinately refuse to make such presentments as the nature of their oath requires of them, the steward would be justified in dissolving the court, or in discharging the homage and swearing another, and the latter would be the more desirable

the steward may proceed in the business of the court baron. [100]
PRECEDENT of rolls of court baron, *post.* (p. 428).]

On receiving the presentments from the homage, the steward will administer the following oaths to the Affeerors and the Hayward.

(*Affeeror's Oath.*)

You shall well and truly affeer and assess the several ameracements now to you remembered, and therein spare no one through fear, favour,

course, see 1 Vol. Ca. & Opin. 172-3.

The case of *The King & Hemingway*, 1 Barnardiston K. B. 436, may, I submit, be properly introduced in this note:—it is thus reported. “On rule to shew cause why an information should not be granted against the defendant, as under steward to the Archbishop of York of his manor of Otley in that county, for soliciting a jury at a court baron and customary court holded there to present the dying seised of such a one twenty-three years ago of certain copyhold lands, and then discharging that jury because they would not find this, and swearing another for this particular purpose; who accordingly did find such dying seised; though oath was made upon the former motion, that such finding was false; for the party himself did not die but seventeen years ago; Mr. *Faxakerley* now said, that he hoped the rule should be discharged. He submitted it, that by law a steward may swear a second jury, when the first jury refuses to find such things, which their oath obliges them to inquire into. But in this case there were two particular reasons for doing it; one, because the foreman in the first jury was a party interested in the question, the other, because the jury, charged with this presentment, consisted of freeholders, as

well as copyholders; whereas the law requires that copyholders only shall present the death of copyholders. And this is the peculiar business of the customary court; whereas the freeholders only are the persons concerned in matters relating to the court-baron. And therefore he insisted, that as there were distinct courts kept at this time; there ought to have been distinct juries. The Chief Justice said, he did believe indeed, that according to the antient law, there were always separate juries in these cases; but of late years the practice has been so universal to join them together, that the freeholders must be intended to speak to such things as relate to the court-baron, and the copyholders to such things, as relate to the customary court. Then as to the foreman's being a party interested, he said, there was a now [enough] of the jury without him, and therefore that reason could not be sufficient for changing the jury. However in general, he said, he took it, that it would be a thing of dangerous consequence to allow a steward to solicit a jury to find any thing against their consciences; and upon their refusal to do it, to swear a new jury. Accordingly the court made the rule absolute for granting the information.”

(*Hayward's Oath (a).*)

You shall well and truly execute the office of Hayward for this manor, until you be thereof discharged according to due course of law. You shall from time to time present all pound breaches, estrays, waifs, and all other matters and things falling within the duties of your office, justly, and without favour or affection: *So help you God.*

I have shown that it is seldom necessary or desirable to administer the oath of fealty to a newly admitted tenant (b). When it is deemed expedient, the following form will serve.

(*Oath of Fealty.*)

You swear to become a true and faithful tenant to A. Z. esq. lord of this manor, for the estate to which you have made your acknowledgment of tenure at this court; you shall from time to time bear, pay, and perform all such rents, duties, services, and customs in respect of the same estate as are due and of right accustomed: you shall from time to time be ordered and justified in all things at the lord's court, to be holden in and for this manor, as other the tenants of this manor are, shall, or ought to be; and you shall in all things demean yourself as a faithful tenant ought to do: *So help you God.*

When the leet jury have agreed on their presentments, they are to re-enter the court. And the steward will ask;—

Gentlemen,—Have you agreed on your presentments? to which they will reply, yes; and the presentments are then to be handed over by the foreman to the steward, who will say, Gentlemen, do you desire and consent that I should alter any matters of form in your presentments, not altering matters of substance? to which the jury reply, *yes.*

(a) I have placed the Hayward's oath under the head of court baron, as the office appears to be more immediately connected with that court than with a court leet, but the Hayward is frequently sworn at the leet.

(b) *Ante*, pt. 1. p. 429; pt. 3. p. 735.

swear the officers presented by the jury (a), and proceed to the afferment of the several ameracements, and to the general business of the court leet, according to the tenor of the presentments. [See Precedent of roll of court leet, *post*, p. (449).]

(The Bedell or Bailiff's Oath.)

You shall well and truly serve our sovereign lord the king and the lord of this leet, in the office of bailiff for the year ensuing, or until you shall be thereof discharged according to due course of law: you shall duly execute all process to be directed unto you from the steward of this court; and diligently and faithfully collect and account for all rents, profits, and revenues, and in all things demean yourself as a true and faithful bailiff ought to do: *So help you God.*

(The Constable's [or Tithing-man's] Oath.)

You shall well and truly serve our sovereign lord the king, and the lord of this leet, in the office of constable for the parish [tithing or hamlet] of —, for the term of one whole year next ensuing, or until you be thereof discharged according to due course of law: you shall execute all lawful process sent to you, and by hue and cry, or otherwise, use your utmost endeavours to apprehend and secure all felons, riotous, disorderly, and idle persons, and others guilty of a violation of the laws of this realm, and shall in all things faithfully and diligently demean yourself in the aforesaid office: *So help you God.*

(The Aleconner's Oath.)

You shall well and truly serve our sovereign lord the king, and the lord of this leet, in the office of aleconner or assizer for the parish [tithing or hamlet] of —, for the term of one whole year next ensuing, or until you be thereof discharged according to due course of law: you shall present all offences cognizable by this court which may come to your knowledge, without fear, favour, or affection, and in all

(a) *Ante*, p. (420).

(The Affeeror's Oath.)

[See this form as applicable to courts baron, ante, p. (424).]

(Adjournment of the Court.)

[If it should be found necessary, the court may be adjourned by a proclamation to be made by the bailiff thus :

O Yes, O Yes, O Yes.

All manner of persons who have any thing more to do at this court have leave to depart, giving their attendance here again at _____ o'clock of this day.

On the reassembling of the court, the bailiff is to make the following proclamation :

O Yes, O Yes, O Yes.

All manner of persons who were adjourned over to this time and place draw near and answer to your names, each person as he shall be called.

Then the steward should call over the jury list of the leet.]

The above proceedings are to be entered by the steward in his minute book, ending thus :

It is further agreed and ordered, that the steward of this court may alter matters of form in these presentments, not altering matters of substance ; and then he will subjoin these words :

' We present this as our verdict,'

to which the jury and homage will subscribe their names,

A. B.	}	Jurymen.	|	A. B.	}	Homagers.
C. D.				C. D.		
&c.				&c.		

When the bailiff will discharge the court by the following proclamation :

O Yes, O Yes, O Yes.

All manner of persons who have appeared this day at the court leet and court baron of, &c., may now depart, keeping their day and hour on a new summons.

God save the king, &c.

(ROLLS OF COURT BARON.)

The Manor of ——— }
in the County of ——— } The Court Baron of A. Z. esquire, lord
of the said manor, holden in and for the
said manor, on ——— the ——— day of ———, in the ——— year of
the reign of our sovereign lord William the Fourth, by the
grace of God, of the United Kingdom of Great Britain and
Ireland, king, defender of the faith, and in the year of our
Lord ———. Before (a),

Homage	{	A. B. Foreman. C. D. E. F. &c.	}	Sworn.	{	P. Q. R. S. T. W. &c.
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respectively suitors of the said court.

PRESENT ALSO, J. S. steward.

W. Y. bailiff.

(Presentment of tenants neglecting to perform their suit.)

At this court the homage being sworn and charged by the steward upon the articles of the court baron, do upon their oaths present, that *G. H. I. K., L. M., N. O., &c.* respectively freehold tenants of this manor, have neglected to appear and to perform the suit and service which they owe at this court, and they are respectively in mercy (b).

This amercement is affeered at the sum of 5s. for each defaulter, by us,

Afferors	{	A. B.)	} Sworn.
	{	C. D.)	

(a) By prescription a court baron may be held before the steward. *Ante*, pt. 3. p. 721.

(b) It is the more usual way for the homage to adjudge the party to be amerced in general terms, according to this form, though sometimes they amerce in a particular sum, which would seem to be good without afferment; but it is

not unusual when the latter practice prevails, to submit the reasonableness of the amercement to afferors. *Ante*, pt. 3. p. 744 et seq.

But it is to be recollected that the lord may distrain for subtraction of suit, as well as for neglect of fealty. *Ante*, pt. 3. p. 736. Post. pp. (456), (457).

(*Presentment of the death of a freeholder, and proclamation for the heir to take up his estate.*)

At this court, the homage also present that *T. B.*, who held to him and his heirs, freely, of the lord of this manor, a messuage or tenement, and about — acres of land, situate at —, with the appurtenances, by fealty, suit of court, heriot, relief, and the yearly rent of 6*d.*, died seised thereof since the last court, and that *G. B.* is the only son and heir of the said *T. B.* wherefore proclamation is made for the said *G. B.* to come in his own proper person at the next court to be holden for this manor, and take up the aforesaid premises.

(*Presentment of the death of a freeholder, and general Proclamation.*)

At this court, the homage also present that *C. M.* who held to him and his heirs, freely, of the lord of this manor about — acres of land, situate at —, with the appurtenances, by fealty, suit of court, heriot, relief, and the yearly rent of 4*d.*, died seised thereof since the last court, and thereupon proclamation is made for any person or persons claiming title to the aforesaid freehold land, with the appurtenances, by descent, devise, or otherwise, to appear at the next court to be holden for this manor, and to take up the same.

(*Acknowledgment of tenure by the heir of a freeholder, after proclamation at a former court.*)

At this court came *J. L.*, the only son and heir of *B. L.*, whose death was presented at the last court holden for this manor, and acknowledged to hold, freely, of the lord of this manor a messuage or tenement, and about — acres of land, situate at —, by fealty, suit of court, heriot, relief, and the yearly rent of 8*d.*, and whereof the said *B. L.* was seised to him and his heirs at the time of his decease; and the said *J. L.* paid the lord for a relief the sum of —, and his fealty is respited.

(*Presentment of the death of a freeholder, and acknowledgment of tenure by his devisee.*)

At this court the homage present that *M. R.*, who held to him and his heirs, freely, of the lord of this manor a certain messuage, situate

and the yearly rent of 3*d.*, died seised thereof since the last court, whereupon a heriot accrued to the lord of this manor; and afterwards at this court came *F. N.* and produced to the homage the last will and testament of the said *M. R.*, bearing date, &c. whereby he devised the aforesaid estate unto the said *F. N.* and his heirs for ever; and thereupon the said *F. N.* acknowledged himself to be the lord's tenant of the aforesaid messuage with the appurtenances, by and under the services aforesaid, and paid the lord for a relief the sum of —, and his fealty is respited.

(Presentment of sale by a freeholder, and acknowledgment of tenure by the purchaser.)

At this court the homage present that *B. M.*, since the last court, sold to *G. D.* certain closes, containing about — acres, situate at —, and holden, freely, by him the said *B. M.* of the lord of this manor, by fealty, suit of court, heriot, relief, and the yearly rent of 5*d.* (a), and afterwards at this court came the said *G. D.* and acknowledged himself to be the lord's tenant of the foresaid closes, with the appurtenances, and his fealty is respited (b).

(Presentment of advantages accrued to the lord by escheat, &c.)

At this court the homage present that *A. B.*, late of —, yeoman, deceased, who held to him and his heirs, freely, of the lord of this manor, certain lands and hereditaments situate, &c., formerly in the occupation of —, and now and for some time past in the occupation of —, with the appurtenances thereof, by fealty, suit of court, and the yearly rent of 15*s.* and who was born illegitimate, died seised thereof since the last court held for this manor, without leaving any heir at law; and thereupon proclamation is made for any person or persons claiming title to the aforesaid freehold lands and hereditaments by or under any conveyance or testamentary disposition made by the said *A. B.* to come into court, and take up the

(a) In some manors the lord is intitled to a heriot on alienation, *ante*, pt. 1. pp. 444-5, 459; and when that is the case, the advantage thus accruing to the lord

should be stated in the presentment.

(b) Sometimes also a relief is payable on alienation, *ante*, pt. 3. p. 742, n. (c).

At this court the homage present (b) that *A. B.* who held t and his heirs (c), freely, of the lord of this manor a certain close si &c., containing, &c., and called Black-acre, with the appurtenances of, by fealty, suit of court, and the yearly rent of 10*s.* was at th Lent assizes held for the county of —, convicted of felony and adju to be hanged, but was afterwards allowed the benefit of a conditi pardon of the royal mercy, and ordered to be transported to — or some one or other of the islands adjacent thereunto, for the ten his natural life:—By virtue of which said attainder the said hold land and hereditaments have become forfeited to the lord of manor (d).

(a) The second and third proclamation should be made at the two succeeding courts baron, and if no person establishes a claim to the estate under any disposition by *A. B.*, by will or otherwise, a precept of seisure should be awarded at the third court, to the bailiff of the manor, in analogy to the practice in copyhold cases. *Ante*, pp. (6), (58), (69), (106), (107).

And with reference to the rule that there should be distinct writs of escheat for lands held by distinct services, *ante*, pt. 3. p. 765, the proclamations, if *A. B.* died seised of lands held by distinct rents and services, should be framed so as to show the distinct tenures.

(b) But as to the necessity of any presentment of such an act of forfeiture, see *ante*, pt. 1. p. 535 et seq.

(c) *N. B.* By the 54 Geo. 4. c. 145, corruption of blood is taken away except in treason and murder. *Ante*, pt. 3. p. 758, n. (a).

(d) The following form of precept would be proper on such an occasion :

The Manor of, &c. :—To *W. Y.* bailiff of the said manor.

Whereas at a court baron of *A. Z.*

lord of the said manor held for the manor this — day of — in year 18—, it was presented by homage that a certain close situate, containing, &c. and called Black : with the appurtenances thereof, by *A. B.* to him and his heirs, fre of the lord of the said manor, fealty, suit of court, and the ye rent of 10*s.* had become forfeited the lord of the said manor by the tainder of the said *A. B.* for a cap felony. These are therefore to co mand and require you the said *W.* forthwith to enter into and upon the aforesaid freehold close and hereditaments, or some part thereof in the name of the whole, and seise the same in the hands of the lord of the said manor ; and that you make return of this precept at the next court baron to the holden for the said manor. Given under my hand and seal the said — day of — in the year 18 —.

J. S. (L. s.)

Steward of the said manor.

(The bailiff's return to be indorsed on the above precept.)

By virtue of the within written precept to me directed I have seised the

a black colt strayed into this lordship, and that it is now in the possession of *A. B.* [Here may follow the presentment of any goods waved, and of any deodands, &c.]

(Presentment of encroachments, &c.)

At this court the homage present that *A. B.*, since the last court, hath dug up and inclosed part of the waste grounds of the lord of this manor, situate at _____.

And they also present that *C. D.* hath encroached upon the rights of the lord of this manor, by inclosing a certain part of the waste lands adjoining the estate of *S. R.*, in the occupation of *E. G.* (*a*).

At this court the homage present that *T. W.* hath, since the last court, broken up and inclosed part of the commonable lands of this manor, contrary to the tenor of the order or by-law made at the last court, and hath thereby incurred the penalty thereof (*b*).

At this court the homage present that *S. L.* hath, since the last court, dug and carried away the turf of part of the commonable lands of this manor, contrary to the tenor of an order or by-law made at a court, held the _____ day of _____, and confirmed at the last court, and hath thereby incurred the penalty of such order or by-law.

(By-laws and Orders.)

At this court, (pursuant to an immemorial custom in this behalf) the following orders or by-laws are made by the homage.

IT IS ORDERED that the Hayward shall impound any cattle, horses, asses, sheep or pigs, which the proprietors or occupiers of inclosed

within described freehold close and hereditaments into the hands of the lord of the within-mentioned manor, as by the same precept I was commanded.

W. Y., Bailiff.

_____ 18_____

(*a*) These acts, which create a private injury only to the lord, are not the

subject of amercement, though they ought to be presented for the lord's information. *Ante*, pt. 3. p. 745.

(*b*) No further afferment can be made of this penalty. Indeed no afferment of a penalty under a by-law is necessary, unless the sum be discretionary. *Ante*, pt. 3. pp. 745, 749.

the following sums shall be paid to the Hayward by way of Pinlock, on the release of such cattle and other animals, namely, 6*d.* for each horse or cow, 3*d.* for each ass or pig, and 2*d.* for each sheep, and the homage amerce every person refusing or neglecting to make such payments in the after-mentioned sums, viz. the sum of 7*s.* for each horse or cow, 1*s.* 6*d.* for each ass or pig, and 6*d.* for each sheep (a).

*These ameracements are affeered (b) at 5*s.* for each horse or cow, 1*s.* for each ass or pig, and 4*d.* for each sheep, by us,*

Affeerors { G. H. } Sworn.
 { I. K. }

IT IS ORDERED that there shall be a clover hitching sown in ——— furlong from ——— to ———, in the ensuing spring, by the respective occupiers of land in the open fields of this manor, in proportion to the acreage of the lands they so occupy, and that such clover hitching shall be mounded off by Old St. Andrew's day next ensuing; and also that a vetch hitching shall be sown in the ensuing spring in ——— furlong, by the respective occupiers of open field lands within this manor, in proportion to the acreage of the lands they so occupy, and that such

*This amercement is affeered at 25*s.* by us,*

Affeerors { L. M. } Sworn.
 { N. O. }

vetches shall be mounded off by the 25th day of March ———. And the homage amerce every person guilty of a breach of these orders, in the sum of 30*s.* for each offence.

IT IS ORDERED, that if any occupier of lands within this manor shall turn more than two horses upon the commons in respect of each yardland he shall so occupy, he shall pay to the fieldsman the sum of 10*s.*

*This amercement is affeered at 20*s.* by us,*

Affeerors { R. S. } Sworn.
 { T. W. }

for each horse exceeding the above stated number, and the homage amerce every person guilty of a breach of this order in the sum of 25*s.* for every offence.

At this court the homage ratify and confirm all orders and by-laws made or confirmed at the last court, and not revoked or altered at this court.

(a) The above order is framed on the supposition, that an inclosure award has intitled the proprietors of land to the herbage of the roads and lanes within

the manor.

(b) Unless the custom establishes the penalty, it is proper to affeer it. *Ante*, pt. 3. p. 745. *Ante*, p. (432) n. b.

The bailiff is to make further proclamation, thus :—" If any persons
" will enter any plaints at this court, let them come forth and they shall
" be heard."

Should any persons appear, the steward will enter their plaints after
the following manner, leaving a sufficient space to insert appearances,
defaults, &c.

A. B. complains of *C. D.* of a plea of debt, 39s. 11*d.*

E. F. complains of *G. H.* of a plea of trespass on the case to his
damage of 38s. 10*d.*

G. H. complains of *I. K.* of a plea of detinue of goods and chattels,
to the value of 28s. (*a*).

Then call the plaintiff three times, thus :

' *A. B.* appear or you lose your plaint.'

If the plaintiff appear by his attorney, enter the warrant of attorney,
viz. place the name of the attorney over the name of the plaintiff.

Then call the defendant three times, thus :

' *C. D.* appear and answer to *A. B.* in an action of debt, [or trespass,
&c.];' and if the defendant has been summoned, and his goods
attached for neglect, add ' or you forfeit your goods distrained (*b*),
and further process will be awarded against you.'

If the defendant appear, enter such appearance, after the plaint, viz.
C. D. appears.

NOTE; The plaintiff hath time to declare until the next court day

(*a*) See as to what actions do and do
not lie in court baron, *ante*, pt. 3. pp.
717, 718.

(*b*) *Ante*, pt. 3. p. 751. I have there
shown that the defendant's appearance

is to be compelled by distress infinite;
and that sometimes by custom a *condi-*
tioni exponas is awarded, after the third
attachment for sale of goods distrained
on non-appearance.

If, after the first process of summons is executed, the defendant appear, and the next court day after give a rule to declare, and the plaintiff do not file his declaration within the time, then upon such default the plaintiff is non-suited, and the defendant may have his costs to be taxed by the steward, for which taxing there is nothing due to the steward, but he receives 2s. for entering the judgment, and 2s. more for the execution (b).

If the action is not brought to issue, the plaintiff must enter a continuance, so as to continue the suit from court day to court day, or the defendant may take advantage of it (c).

And the court may give a further day to the plaintiff, to declare, or to the defendant to plead, which is usually till the next court day, or fourteen days beyond.

When the defendant has pleaded, if the plaintiff join issue thereupon, they may proceed to trial the next court day, should they not proceed further by replication, rejoinder, sur-rejoinder, rebutter, sur-rebutter.

If the parties be at issue, the steward will send out a *venire facias* to the bailiff, to summon a jury (d).

(a) It might be considered quite a waste of time to enter fully into the rules of pleading in a work of this nature, especially as in every case of difficulty, the practitioner would feel it to be his duty to consult the able treatises of Wentworth, Tidd, Lawes, Stephen, Chitty, and other eminent special pleaders. I purpose therefore only to offer a few ordinary precedents of declarations, &c. in a suit in the court baron.

[*Vide* the rules of court on practice and pleading, Hil. Term 1834. Wordsworth's Notes, p. 33.]

(b) Scroggs 204-5. Who says, "In every case where the plaintiff may have costs against the defendant, there if the plaintiff be nonsuit, or a verdict pass against him, the defendant shall have

his costs, as in debt, trespass, covenant by specialty or upon contract, actions upon the case or upon the statute for personal wrongs. But executors or administrators shall not pay costs, either upon nonsuit or verdict, because their actions are not founded upon debts or contracts made to themselves: But if they bring actions for things done to themselves, as for taking away of goods from them, &c. and they be nonsuit, or verdict be against them, in such case they shall pay costs."

(c) *Vide* the new rules of court on practice and pleading as above.

(d) But the trial by jury in matters of a personal nature, requires the consent of the parties, or a prescription. *Ante*, pt. 3. p. 750.

Jurors between *A. B. plaintiff*, and *C. D. defendant*, in a plea of debt [or trespass &c.]

And when the jury attend at the bar, bid the bailiff make proclamation thus :

‘ You good men who are here impanelled to try the issue between *A. B. plaintiff*, and *C. D. defendant*, answer to your names, every man as he is called, upon the pain and peril that shall fall thereon.’ (a)

If twelve appear, then swear them one by one in this manner :

‘ You shall well and truly try the issue joined between the parties [or between *A. B. plaintiff*, and *C. D. defendant*], and a true verdict give according to the evidence.’ *So help you God*. And enter by every man’s name, as he is sworn, *sw.*; and being all sworn, bid them stand together and hear the evidence.

Then call the witnesses, and as they appear to give evidence, administer the following oath :

‘ The evidence you shall give to this inquest, touching the matter in variance, shall be the truth, the whole truth, and nothing but the truth.’ *So help you God*.

After all the evidence is given, let the jury withdraw to agree upon their verdict; and when they return into court, the bailiff is to call them over, every man answering to his name.

The steward will then ask if they are agreed on their verdict, to which they reply by their foreman—Yes.

Then call the plaintiff three times, thus :

‘ *A. B.* appear, or you lose your plaint.’

And upon the plaintiff’s appearance, say to the jury :

‘ Do you find for the plaintiff, and in what damages, or for the defendant?’

(a) Challenges are allowed to the jurors as in the courts at Westminster. See Scroggs 242. Kitch. 178.

images 30s., and costs of suit, 12s.; and so you say an.

The jury reply—Yes. Then bid the plaintiff pay the jury, and so enter the verdict.

[NOTE. If the verdict find matter incertainly, it is insufficient, and no judgment ought to be given thereupon; as if an executor pleads *plene administravit*, and issue is joined thereupon; and the jury find that the defendant hath goods in his hands to be administered, but do not find of what value.

So a verdict that finds part of the issue, and finds nothing for the residue, is insufficient for the whole, because they have not tried the whole issue wherewith they stood charged; but if the jury give a verdict of the whole issue, and of more, that which is more, is surplusage only, and shall not stay judgment.]

The whole business of the court being concluded, command the bailiff to make proclamation thereof (see *ante*, p. 427); [or, in case a day is already fixed on for the succeeding court, let him say,]

‘ O Yes, O Yes, O Yes.

‘ All manner of persons who have more to do at this court, come forth, and you shall be heard; otherwise all persons may depart hence, keeping their hour here, viz. — of the clock of the forenoon, on the — day of — next.’

N. B. After the court is ended, the defendant being condemned by verdict, and judgment entered as aforesaid, a *feri facias* shall be awarded to levy the debt, costs, and damages on the defendant's goods, which are to be taken by virtue thereof, and may be appraised and sold (*a*), to satisfy the plaintiff. And if the defendant hath not any goods whereupon levy may be made, the plaintiff is without remedy in this court, it being no court of record, and no *capias* lying therein (*b*): but the plaintiff might bring an action of debt at common law, and declare upon the judgment recovered in the court baron.

(*a*) Scroggs 200. But it would seem pt. 3. p. 751.

to be by custom only that the goods (*b*) *Ante*, pt. 3. pp. 717, 752.
could be sold, see the authorities, *ante*,

(Warrant of Attorney to appear.)

I, *C. D.* do hereby desire and authorise you to appear for me in the court baron of *A. Z.*, esquire, lord of the manor of ———, in the county of ———, on ———, the ——— day of ———, in an action of debt for, &c. [or detinue, &c.] at the suit of *A. B.*: And for your so doing, this shall be your sufficient warrant. In witness, &c.

(Condition of Bond for the Defendant's appearance.)

The condition, &c. is, that if the above-bounden *C. D.* do appear at the next court, to be holden at, &c., to answer to *A. B.* in an action of debt, &c., and do also stand to such order as the court in that behalf shall adjudge according to law, then this present obligation to be void, &c.

(Summons to appear.)

Manor of ———, *J. S.* steward, to *W. Y.* bailiff of the aforesaid manor, greeting: I command you to summon *C. D.*, so that he be at the next court to be held at ———, on ———, the ——— day of ——— next, to answer *A. B.* of a plea of debt [or of detinue, &c.] and this, &c. Dated, &c.

(Distringas.)

The Manor of, &c. *J. S.* steward, to *W. Y.* bailiff of, &c.

Because *A. B.* complains against *C. D.* of a plea of debt [or of detinue, &c.] and has found pledges to prosecute, &c. I command you to distrain the said *C. D.*, by all his goods and chattels, to answer to the said *A. B.* in the plea aforesaid, at the next court there to be held, on the ——— day of ———, and have you there this precept, and in what manner, &c. Dated, &c.

The Manor of, &c. *J. S.* steward, to *W. Y.* bailiff of, &c.

I command you to bring to the next court to be held in and for the said manor, on the — day of —, all the goods and chattels of *C. D.*, which you distrained by virtue of the precept to you in that behalf heretofore directed, at the suit of *A. B.*, in a plea of debt [or of detinue, &c.]; and that you further distrain the aforesaid *C. D.*, by other his goods and chattels, so that he be at the said court, to be held, &c., to answer the aforesaid *A. B.*, in his aforesaid plea of debt [or detinue, &c.]; and have there this precept. Dated, &c.

(*Supersedeas to a Distringas on Appearance.*)

The Manor of ——— *J. S.* steward, to *W. Y.* bailiff of, &c.

Whereas I lately commanded you to distrain *C. D.* by all his goods and chattels, so that he should be at this court, to be held, &c., to answer *A. B.*, in a plea of debt of 39s. Now because the said *C. D.* hath appeared by *G. H.* his attorney, to answer the said *A. B.*, I do therefore command you that you altogether forbear executing the said precept; and if you have taken or distrained any of the goods and chattels of the aforesaid *C. D.*, then without delay that you cause the same to be redelivered to the said *C. D.* Dated, &c.

(*Replevin Bond.*)

The manor of ——— *J. S.* steward, to *W. Y.* bailiff of, &c.

For as much as *C. D.* hath found me sufficient security, as well for prosecuting his suit which is for his cattle, to wit, — cows, which *A. B.* took and unjustly detains, as it is alleged; as also to make return, if return be adjudged; therefore in behalf of the lord of the manor aforesaid, I command you to replevy and cause to be redelivered to the said *C. D.* the cattle aforesaid; and that you summon the said *A. B.*, by good and safe pledges to be before me at the next court to be held at — the — day of —, to answer the aforesaid *C. D.* in a plea of taking and unjustly detaining his cattle aforesaid. And the like, &c., to me at the next court certify, or, &c.: this omit not at your peril. Dated, &c.

United Kingdom of Great Britain and Ireland, King, defender of the faith, at — aforesaid, within the jurisdiction of this court, was indebted to the said *A. B.* in the sum of 39*s.* of lawful money of Great Britain, for so much money of the said *A. B.* at the special instance and request of the said *C. D.*, by him the said *A. B.* to the aforesaid *C. D.*, before that time advanced and lent: And also, in other 39*s.* of like lawful money of Great Britain, for so much money of the said *A. B.*, at the like special instance and request of the said *C. D.*, by him the said *A. B.*, for the said *C. D.*, before that time expended, laid out, and paid. And being so thereof indebted, the said *C. D.*, in consideration thereof, afterwards, to wit, the same day and year, at — aforesaid, within the jurisdiction of this court as aforesaid, assumed upon himself, and then and there faithfully promised the said *A. B.*, to pay him the aforesaid two several sums of money, when he should be thereto afterwards required: and whereas also, the aforesaid *C. D.*, afterwards, to wit, the same — day of —, in the — year, &c. aforesaid, in — aforesaid, within the jurisdiction aforesaid, was indebted to the aforesaid *A. B.*, in other 39*s.* of like lawful money of Great Britain, for so much money of the said *A. B.*, by the aforesaid *C. D.*, for the use of the said *A. B.*, before that time had and received: and being so thereof indebted, the aforesaid *C. D.*, afterwards, to wit, the same — day of — in the — year aforesaid, at — aforesaid, in the jurisdiction aforesaid, in consideration aforesaid, assumed upon himself, and then and there faithfully promised, that he the said *C. D.*, would well and truly pay and satisfy unto him the said *A. B.* the aforesaid sum of money last mentioned, when he should be thereto afterwards requested. And whereas also, &c. [here you may lay other counts, proceeding as in the former]. Yet the aforesaid *C. D.*, not at all regarding his several promises and assumptions aforesaid, but contriving and fraudulently intending the said *A. B.* in this behalf craftily and subtilly to deceive and defraud, the aforesaid several sums of money, or one penny thereof to the said *A. B.* hath not paid, or anywise for the same contented, although the aforesaid *C. D.*, afterwards, to wit, the same day and year last above said, at — aforesaid, in the jurisdiction aforesaid, was required so to do; but hath hitherto altogether refused, and still doth refuse to pay or anywise content him the said *A. B.*, for the same, whereupon the said *A. B.* saith he is worse,

(General Issue.)

The Manor of _____ }
 in the County of _____ } In a plea of trespass upon the case.

C. D. } And the said C. D., by G. H. his attorney, comes and defends
 ats. } the wrong and injury, when, &c. and says, that he is not guilty
 A. B. } of the said supposed grievances above laid to his charge, in
 manner and form as the said A. B. hath above thereof com-
 plained against him. And of this, he the said C. D. puts
 himself upon the country.

In Debt.—And the said C. D., by G. H. his attorney, comes and
 defends the wrong and injury, when, &c. and saith that he, the said
 C. D., did not undertake or promise, in manner and form as the said
 A. B. hath above thereof complained against him, and of this he puts
 himself upon the country, &c.

In Detinue.—And the said C. D., by G. H. his attorney, comes and
 defends the wrong and injury, when, &c. and saith that he doth not
 detain the said goods and chattels in the said declaration specified, or
 any part thereof, in manner and form as the said A. B. hath above
 thereof complained against him, and of this he the said C. D. puts
 himself upon the country, &c.

(Plea in bar to a Declaration.)

The Manor of _____ } C. D.
 in the County of _____ } ats.
 } A. B.

And the said C. D., by G. H. his attorney, comes and defends the
 force, injury and damages, and whatever else he ought to defend, when
 and where the court will take the same into consideration ; and saith
 that the said A. B. ought not to maintain his said action thereon,
 against him, because he saith that the said declaration, and the subject
 matter therein contained, are insufficient in law for him the said A. B.
 to maintain his said action against the said C. D., to which said decla-

for want of a sufficient declaration in this case, the said *C. D.* prays judgment of the said declaration, and that the said *A. B.* may be precluded from having his said action thereon against him, &c.

(Demurrer to Plea in Bar.)

And the said *A. B.* saith, that (notwithstanding any thing above alleged by the said *C. D.* in his plea) he, the said *A. B.*, ought not to be precluded from having his said action thereon against the aforesaid *C. D.* because he saith that the said plea, in such manner and form as the same is pleaded by the said *C. D.*, and the subject matter therein contained, are insufficient in law to preclude him the said *A. B.* from having his said action against the said *C. D.*, to which said plea the said *A. B.* is under no necessity, nor in anywise bound by the law of the land to answer, and this he is ready to verify: wherefore, by the defect of a sufficient plea in this case, he the said *A. B.* prays judgment, and that his damages occasioned by the premises may be awarded to him, &c.

(Replication.)

And the said *A. B.* saith that he ought not to be precluded from his said action against the said *C. D.*, because he saith that the said *C. D.* hath not paid to the said *A. B.* the sum of 39*s.* in full satisfaction and discharge of all the several sums of money due from the said *C. D.* to the said *A. B.*, in such manner and form as the said *C. D.* hath above alleged in his plea; and this he prays may be enquired of by the country; and the said *C. D.* prays likewise the same (a).

(Foreign Plea.)

And the said *C.*, in his proper person, comes and says that this court ought not to have further cognizance of the plea aforesaid, because he says the cause of action, (if any accrued to the said *A.*) accrued to him the said *A.*, out of the jurisdiction of this court; to wit, at *T.*, in the county of *N.*, and not at —, in the said declaration named, or else-

(a) See further as to pleadings in suits in court baron, Scroggs, 281, *et seq.*

ready to verify: wherefore he prays judgment, if this court can or will have further cognizance of this plea, &c. [1 Wentw. 51.]

(Venire Facias.)

The Manor of ——— } *J. S. steward to W. Y. bailiff of the said*
in the County of ——— } *manor, greeting:*

I command you that you cause to come twelve good and lawful men of your bailiwick, that they be and appear at the next court to be held for the manor aforesaid, at &c., on &c., at ——— o'clock of the forenoon, to try such matters between parties and parties as shall then and there be put in issue [or to try the issue joined between *A. B.* plaintiff and *C. D.* defendant, of a plea of debt, &c.]; and this omit not at your peril. Dated, &c.

(Subpoena for Witnesses.)

The Manor of, &c.—J. S. steward to, &c. [name the witnesses]
greeting:

I command you and every of you, that (laying aside all manner of excuses and delays whatsoever) you be in your proper persons at the next court to be held at, &c., on &c., to testify and declare the truth in a certain suit depending in the aforesaid court, between *A. B.* plaintiff, and *C. D.* defendant, in a plea of debt [or detinue, &c.]; and herein fail not at your peril. Dated, &c.

(Levari Facias.)

The Manor of, &c.—J. S. steward to W. Y. bailiff of, &c.

Because *A. B.* hath recovered against *C. D.* 30s. in a plea of debt [or detinue, &c.], and 15s. for his costs and charges, of which the aforesaid *C. D.* is convicted by judgment of the said court; I command you to levy according to custom the aforesaid 30s. adjudged to the said *A. B.* in the said court, and the said 15s. for his costs; and have you that money at the next court there to be held, on the ——— day of ———, to render to the said *A. B.* for his aforesaid damages, and have there this precept, and in what manner, &c. Dated, &c.

The Manor of, &c.—*J. S.* steward to *W. Y.* bailiff of, &c.

I command you that of the *goods* and *chattels* of *C. D.* you cause to be made as well a certain debt of 39s. which *A. B.* has recovered in the said court against him, as 13s. 4d. which were adjudged to the said *A. B.* in the same court for his costs and charges by him, about his suit, in that behalf expended; and have that money at the next court to be held on —, the — day of —, to render to the said *A. B.* for the debt and damages aforesaid, whereof the said *C. D.* is convicted; and this, &c. Dated, &c.

(*Fieri Facias in Case.*)

That of the goods, &c. which in the said court, before the suitors of the same court, were adjudged to *A. B.* for his damages, which he had by occasion of a certain trespass on the case, done to the said plaintiff by the said defendant, at &c.; and have that money, &c.

(*Fieri Facias in Assumpsit.*)

Which in the said court, before the suitors of the same court, were adjudged to *A. B.* for his damages, which he had by occasion of certain promises and undertakings made to the said plaintiff by the said defendant, at &c.; and have that money, &c.

(*Fieri Facias upon Verdict for the Defendant.*)

The Manor of, &c.—*J. S.* steward to *W. Y.* bailiff of, &c.

I command you, that of the *goods* and *chattels* of *A. B.* you cause to be made 32s. which were adjudged to *C. D.* in the said court, before the suitors of the same court, for his damage, according to the form of the statute, which he sustained, by occasion that the said *A. B.* unjustly prosecuted a certain plaint in a plea of trespass upon the case against the said *C. D.*, as is lately found by a certain jury of the country; and have that money at the next court there to be held, on the —

(*Fieri Facias upon Nonsuit.*)

That of the goods and chattels of *A. B.* you cause to be made sixteen shillings, which were adjudged to *C. D.* in the said court, before the suitors of the same court, according to the form of the statute in that case made and provided, for his damages, for that the said *A. B.* did not prosecute his plaint lately levied in the said court against the said *C. D.* in a plea of trespass on the case; and have that money at the next court, before the suitors of the said court, to be held there on the — day, &c. to satisfy the said *C.* for his costs and charges aforesaid, whereof the said *A.* is convicted; and this, &c.

(*Forms of Writs in a real Action, commenced in Court Baron*) (a).

(*Writ of Right Patent*) (b).

WILLIAM the Fourth, by the grace of God of the United Kingdom of Great Britain and Ireland, King, defender of the faith; To *W.* Earl of *A.* greeting: We command you, that without delay, you hold full right to *W. K.* Esq. of one messuage and twenty acres of land, with the appurtenances in *D.*, which he claims to hold of you by the free service of one penny yearly in lieu of all services, of which *R. A.* deforces him. And unless you so do, let the sheriff of Oxfordshire do it, that we no longer hear complaint thereof for defect of right. Witness ourself at Westminster, the — day of —, in the — year of our reign.

Pledges of prosecution, { John Doe.
Richard Roe.

(a) Vide these forms, 3 Bl. Com. Appendix.

(b) *Ante*, pt. 3. p. 753. But note the writ of right is abolished from 31st

December, 1834, by the act of 3 & 4 W. 4. c. 27. *Ante*, pt. 3. p. 753.

Ante, p. (337-8).

C. M., esquire, sheriff of Oxfordshire, to J. L., bailiff errant of our Lord the King and of myself, greeting: Because by the complaint of W. K., esquire, personally present at my county court, to wit, on —, the — day of —, in the — year of our Sovereign Lord William the Fourth, by the grace of God, of the united kingdom of Great Britain and Ireland, King, defender of the faith, at Oxford, in the shire-house there holden, I am informed, that although he himself the writ of our said lord the king of right patent directed to W. earl of A., for this that he should hold full right to the said W. K. of one messuage and twenty acres of land, with the appurtenances in D., within my said county, of which R. A. deforces him, hath brought to the said W. earl of A.; yet, for that the said W. earl of A. favoureth the said R. A. in this part, and hath hitherto delayed to do full right according to the exigence of the said writ, I command you, on the part of our said lord the king, firmly enjoining, that in your proper person you go to the court baron of the said W. earl of A., at D. aforesaid, and take away the plaint which there is between the said W. K. and R. A., by the said writ, into my county court to be next holden; and summon by good summoners the said R. A., that he be at my county court on —, the — day of — next coming, at Oxford, in the shire-house there to be holden, to answer to the said W. K. thereof. And have you there then the said plaint, the summoners, and this precept. Given in my county court at Oxford, in the shire-house, the — day of —, in the year aforesaid.

(Writ of Pone to remove the action into the Court of Common Pleas.)

William the Fourth, by the grace of God, of the united kingdom of Great Britain and Ireland, king, defender of the faith, to the sheriff of Oxfordshire, greeting. Put at the request of W. K., before our justices at Westminster, on the morrow of All Souls, the plaint which is in your county court by our writ of right, between the said W. K. demandant, and R. A., tenant, of one messuage and twenty acres of land, with the appurtenances in D., and summon by good summoners the said R. A., that he be then there, to answer to the said W. K. thereof. And have you there the summoners and this writ. Witness myself, at Westminster, the — day of —, in the — year of our reign.

William the Fourth, by the grace of God, of the united kingdom of Great Britain and Ireland, king, defender of the faith, to the sheriff of Oxfordshire, greeting. Command *R. A.*——, that he justly and without delay, render unto *W. K.* one messuage and twenty acres of land, with the appurtenances in *D.* ——, which he claims to be his right and inheritance, and whereupon he complains that the aforesaid *R.* unjustly deforces him. And unless he shall so do, and if the said *W.* shall give you security of prosecuting his claim, then summon by good summoners the said *R.*, that he appear before our justices at Westminster, on the morrow of All Souls, to shew wherefore he hath not done it. And have you there the summoners and this writ. Witness ourself at Westminster, the —— day of ——, in the —— year of our reign. Because *W.* earl of *A.*, the chief lord of that fee, hath thereupon remised unto us his court.

Pledges of
Prosecution. } John Doe,
Rich. Roe.

Summoners of
the within named
Richard. } John Den,
Rich. Fen. } Sheriff's return.

—

The Manor of ——— } The court leet, with view of frank-pledge,
in the County of ——— } and the court baron of *A. Z.*, esquire, lord of
the said manor, held at ———, within the said manor, on
——, the —— day of ——, in the —— year of the reign of
our sovereign lord William the Fourth, by the grace of God,
of the united kingdom of Great Britain and Ireland, king, de-
fender of the faith, and in the year of our lord—— [Before *J. S.*,
esquire, steward.] (*a*).

A. B. }
C. D. } The jury for our sovereign lord { G. H.
E. F. } the king and the lord of this { I. K.
&c. } leet. { L. M.
{ &c.

R. W. }
W. C. } Free suitors. { J. C.
{ R. A.

Who being sworn and charged upon their oaths, touching articles of the court leet as well as the court baron, present and say as follows :

(Presentment of absent Resiants.)

The jury present that *W. C.*, *C. B.*, *W. K.*, *R. S.*, and *M. E.* are
This amercement is affeered resiants within the precinct of this leet,
at the sum of 6d. for each and owe suit and service at this court,
defaulter, by us, but have respectively made default and
are therefore severally in mercy.

Affecors {
A. B. } Sworn.
C. D. }

(*a*) We have seen that a court baron may, by prescription, be held before the steward, and as that custom prevails in most manors where a leet jurisdiction is appended, I have chosen this form :
But when no such custom exists, it

would be better to omit the words between brackets, and to substitute the following entry :—

Present at this court,
J. S. steward. W. Y. bailiff.

(*Presentment of Officers.*)

The jury also present *E. S.* and *J. B.* to be Constables for ———, who being present at this court, are sworn to perform the duties of their said office.

The jury also present *J. W.* to be Third-borough for ——— aforesaid, who being also present, is sworn to perform the duties of that office.

The jury also present *R. B.* to be Head-borough for ———, who being also present at this court, is sworn to perform the duties of that office.

The jury also present *C. D.* to be Tithing-man for the hamlet of ———, who also being present, is sworn to perform the duties of that office.

The jury also present *W. T.* and *R. C.* to be Aleconners within the jurisdiction of this leet, who being present, are sworn to the due execution of their said office.

The jury also present *T. R.* and *C. J.* to be Leather-sealers within the jurisdiction of this leet, who being present, are sworn to the due execution of their office.

The jury also present *B. G.* and *C. W.* to be Street-drivers within the jurisdiction of this leet, who being present, are sworn to the due execution of their office.

(*Presentment of Nuisances, &c.*)

The jury present *J. B.* for an encroachment made by placing a fence in a certain lane called ———, within the jurisdiction of this leet, to the common nuisance of all the king's liege subjects, and amerce him in the sum of £5.

This amercement is affeered at the sum of £5 by us,

Affeerors { *A. B.* } Sworn.
{ *C. D.* } (a)

(a) This will serve to show the manner of affeering the several other amerce-

of 40s.

The jury also present that *J. W.* hath obstructed the free passage of the street called —, within the jurisdiction of this leet, and amerce him in the sum of 20s.

The jury also present that *A. B.* hath neglected the repairs of a certain footpath, leading from — to the church of —, and amerce him in the sum of 10s.

The jury also present *W. L.* for stopping a certain common sewer or watercourse, leading from — to —, and amerce him in the sum of 10s.

The jury also present *B. M.* and *S. H.* for resisting the execution of the duties of *S. K.* and *L. M.* the aleconners appointed at the last court held for this manor, and amerce them each in the sum of 5s.

The jury also present that *J. B.*, who was elected Constable at the last court held for this manor, is not here at this court to present that which to his office belongs:—Therefore they amerce the said *J. B.* in the sum of 5s.

The jury also present that *G. L.*, who was elected Aleconner at the last court held for this manor, is not here at this court to present that which to his office belongs:—Therefore they amerce the said *G. L.* in the sum of 3s.

(*Presentment of Felonies, &c.*)

Petty Treason (as Felony) (a).—The jury also present that *W. T.*, of, &c., at —, within the jurisdiction of this court, coined and fabricated twenty pieces of gold money called sovereigns, and twenty pieces of silver money called shillings, falsely and feloniously, (the king's letters patent not being previously obtained,) against the peace of our sovereign Lord the King, his crown and dignity, and against the form of the statute in that case made and provided. [Kitch. 98.]

(a) *Ante*, pt. 3. p. 895.

the — day of —, at *L.*, within the jurisdiction of this court, about the hour of —, in the night of the same day, feloniously broke and entered the dwelling-house of one, &c., with the intent to rob the aforesaid —; and six silver spoons of the goods and chattels of the aforesaid —, of the value of —, then and there being feloniously took and carried away, against the peace of our Lord the King, his crown and dignity. [Kitch. 98-9.]

Highway Robbery.—The jury also present that *J. D.*, of, &c., labourer, on the — day of —, at *S.*, within the jurisdiction of this court, with force and arms, and against the peace, &c., in the king's highway, there made assault upon *G. M.*, and him the aforesaid *G. M.* then and there robbed, and 16s. of the goods and chattels of the aforesaid *G. M.*, from the person of him the said *G. M.* feloniously took and carried away, against the peace, &c. [Kitch. 99.]

Hue and Cry.—The jury also present that the aforesaid *G. M.* being so robbed, raised hue and cry, and the said *J. D.* as a felon, on the same day and year, from the place where he was so robbed, did freshly pursue to the town of, &c., and that none of the inhabitants there, upon the hue and cry aforesaid, the said *J. D.* did follow, and so the aforesaid felon escaped, in contempt of our sovereign Lord the King, and contrary to the form of the statute in such case made and provided; and therefore the said town of, &c. in mercy, &c.

Rape (a).—The jury also present that *D. L.*, of, &c., yeoman, on the — day of, &c., at —, within the jurisdiction of this court, the close and house of, &c., broke and entered, and upon one *M.*, &c. the daughter, &c., being in the peace of God and of our sovereign Lord the King, made an assault, and then and there against her will did ravish her the said *M.*, and did carnally know her, against the peace, &c. [Kitch. 98.]

Arson.—The jury also present that one *T. B.*, of, &c., yeoman, on the — day of, &c., at *I.*, within the jurisdiction of this court, with force and arms, &c., wilfully and feloniously (of his malice aforethought) did burn and with fire destroy the dwelling-house of one *C.*, against the peace, &c.; therefore the bailiff of this manor is com-

(a) *Ante*, pt. 3. p. 892-3.

Larceny.—The jury also present that *P. J.*, of &c., on the — day of, &c., the close of one, &c. at — aforesaid, broke and entered, and one table cloth, of the value of 9*d.* of the goods and chattels of the aforesaid, &c. then and there found, feloniously took and carried away; therefore the bailiff of this manor is commanded to seise all the goods and chattels of the said *P. J.* into the hands of the lord of this manor. [Kitch. 100.]

Stealing Fish.—The jury also present that one *J. L.*, of, &c., yeoman, on the — day of, &c., at *I.* aforesaid, within the jurisdiction of this court, about the hour of eleven in the night of the same day, a certain trunk of, &c. broke and entered, and ten fishes called pike, of the value, &c., of the goods and chattels of the aforesaid, &c., from and out of his said trunk, &c. then and there feloniously took and carried away, contrary to the peace, &c.; therefore, &c. [Kitch. 100.]

Accessory.—The jury also present that *W. S.*, of *I.* aforesaid, yeoman, on the — day, &c., at *I.* aforesaid, within the jurisdiction of this court, did counsel, procure, encourage, aid, and abet one *L. M.*, of &c. feloniously to steal, take, and lead away one black cow, of the chattels of, &c., of the value, &c. then and there found, and by means of which counselling, procuring, encouraging, aiding, and abetting, the said *L. M.* on the said — day, &c. feloniously stole, took, and drove away, &c. [Kitch. 98.]

Assault with Bloodshed.—The jury also present that *T. F.*, of &c., labourer, on the — day of, &c. at *I.*, within the jurisdiction of this leet, committed an assault with bloodshed on *A. B.*, of, &c., yeoman.

Rescue.—The jury also present that one *B. R.*, of *I.* aforesaid, yeoman, was taken and arrested upon suspicion of felony, committed within the jurisdiction of this leet, and set in the stocks of this manor, and that one *I. F.* of *I.* aforesaid, labourer, on the — day of, &c. at *I.* aforesaid, the aforesaid stocks with force and arms feloniously did break, and the said *B. R.* then and there did suffer to escape and go at large,

Further Rescue.—The jury also present that *T. L.*, of, &c. yeoman, on the — day, &c., at *I.*, within the jurisdiction of this court, one calf, of the value, &c., of the goods and chattels of one *J. B.* then and there found, feloniously took and carried away; and that *W. Y.*, bailiff of the aforesaid manor, on the — day, &c., at *I.* aforesaid, the aforesaid *T. L.* arrested upon suspicion of the said felony; and that *W. F.*, of *I.* aforesaid, labourer, with force and arms, &c. at *I.* aforesaid, on the said day and year, upon the aforesaid *W. Y.*, in the peace of God and our sovereign lord the king being, did make an assault; and the aforesaid *T. L.*, being in the custody of the said *W. Y.*, then and there feloniously took away, rescued, and suffered to go at large, contrary to the peace, &c.; therefore the bailiff is commanded, &c. [Kitch. 100.]

Common Scold.—The jury also present that *C. F.* of the parish of — in the said county, the wife of *D. F.* of the aforesaid parish of —, labourer, is a common scold at the parish aforesaid, in the county aforesaid, within the jurisdiction of this court, as well with her neighbours, as with other the liege people of our lord the king, whereby they are much molested, disquieted, and grieved, and against the peace, &c.

FORMS OF WARRANTS, &c. IN CONNECTION WITH
THE COURT BARON (a).

(Warrant to distrain for Amercements.)

The Manor of _____ }
in the county of _____ } To *W. Y.*, bailiff of the said manor, greeting:—

ESTREAT of Amercements at a court baron of *A. Z.*, Esquire,
lord of the said manor, held in and for the said manor, this
_____ day of _____, &c.

A. B., a freehold tenant, for neglecting to appear at the said court,
there to perform his suit and service, being duly summoned to at-
tend, 5*s.* (affeer'd at) 5*s.*

C. D., a freehold tenant, for breach of a by-law made at a court holden
for the said manor, on the _____ day of _____, directing that, &c.
20*s.* (affeer'd at) 15*s.*

You are hereby commanded to levy, by distress of the goods and
chattels of the several above-named defaulters, the several sums of
money set opposite to their respective names:—And you are to answer
the same when thereunto required. Given under my hand and seal
this _____ day of _____, 18—.

J. S. (L.S.)

Steward of the said manor.

(Warrant to distrain for arrears of Quit Rents.)

The Manor of _____ }
in the county of _____ } To *W. Y.*, bailiff of the said manor.

Arrears of Quit Rents due at _____ last, to *A. Z.*, Esquire,
lord of the said manor, from the under-named tenant, in
respect of the under-mentioned freehold estates, viz.

(a) See form of precept to seise on forfeiture of freehold lands, *ante*, p. (431).

Tenant's name.	Description of Property.	Quit Rents.	Number of years in arrear.	Total amount due.
A. B.	Messuage and lands called —	£. s. d. — — —	—	£. s. d. (*)
Same	Lands called —	— — —	—	— — — (†)

You are hereby commanded to levy, by distress of the goods and chattels of the above-named *A. B.*, the above-mentioned respective sums of £— — — (*), and £— — — (†): — And you are to answer the same when thereunto required. Given under my hand and seal this — day of —, 18—.

J. S. (L.S.)
Steward of the said manor.

(Warrant to distrain the heir of a deceased freeholder to perform his fealty) (a).

The Manor of — }
in the County of — } *J. S.* steward of the said manor; to *W. Y.*,
bailiff.

Whereas at a court baron of *A. Z.*, esquire, lord of the said manor, held in and for the said manor on — the — day of — in the year of our lord —, the homage did present that *A. B.* who held freely of the lord of the said manor a certain close situate, &c., called, &c., at the yearly rent of 3s., heriot when it should happen, fealty, suit of court, and other services, died since the then last court held for the said manor, whereupon a heriot, to wit the best living animal of the said *A. B.* became due to the lord of the said manor; and that on the death of the said *A. B.* the said close descended to *B. B.* of, &c., as his only son and heir. And whereas due notice was given by the said *W. Y.*, bailiff of the said manor, that a court baron would be holden this day for the said manor at the usual and accustomed place, being, &c., at the hour of ten o'clock in the forenoon,

(a) *Anle*, pt. 3. p. 736.

court were commanded to attend (a). And whereas the said B. B. did not attend the said court held this day for the aforesaid manor, to take up the said estate which so descended to him as aforesaid, and to do his fealty, and perform his suit and service, for and in respect of the same.

You are therefore by me the said steward hereby authorised and commanded of the goods and chattels of the said B. B. to distrain him for his default, and to do his fealty for and in respect of the aforesaid close and hereditaments, at the next court baron to be holden for the said manor. Given under my hand and seal this — day of — 18—.

Warrant to distrain a freeholder for neglect of suit of court (b).

The Manor of — }
in the County of — } J. S., steward of the said manor; to W. Y., bailiff.

Whereas at a court baron held for the said manor on — the — day of —, C. D. of, &c. attended and took up a certain homestead, farm, lands and hereditaments called — held freely of the lord of the said manor by the yearly rent of £1. 2s. 6d. and then lately sold and conveyed to the said C. D. by E. F. of, &c.; and the said C. D. at the said court acknowledged fealty and performed the suit and service due in respect of the said freehold hereditaments. And whereas due notice was given by the said W. Y., bailiff of the said manor, that a court baron would be holden this day for the said manor at the usual and accustomed place, being, &c., at the hour of ten o'clock in the forenoon, when and where all persons who owed suit and service at the same court were commanded to attend (c). And whereas the said C. D. did not attend the said court held this day for the aforesaid manor, to perform his suit and service for and in respect of the said freehold hereditaments.

You are therefore by me the said steward hereby authorised and commanded of the goods and chattels of the said C. D. to distrain him for his default, and to do and perform his suit and service for and in

(a) It would be proper, though not absolutely necessary, to serve B. B. personally with notice of the court.

(b) Ante, pt. 3, p. 736.

(c) It is here assumed that there had

been intermediate courts which C. D. neglected to attend.

It would be proper, though not absolutely necessary, to serve C. D. personally with notice of the court.

the next court baron to be holden for the said manor. Given under my hand and seal this — day of ——— 18 —.

(Warrant to the bailiff to assign timber for repairs) (a).

The Manor of ——— } *J.S.* steward of the said manor; to *W. Y.*,
in the county of ——— } bailiff.

Take notice that *A. B.*, a copyhold tenant of the said manor, is allowed three oak trees for and towards the repairing of his tenement lying within and holden of the said manor, now in the occupation of ———, but for no other purpose, and the same trees to be had and taken by your assignment from and out of, &c. Given under my hand this ——— day of, &c.

(Consent of the freehold and copyhold tenants to a grant by the lord of part of the waste land, over which the tenants have a right of common) (b).

The Manor of ——— } We do hereby signify our willingness and con-
in the county of ——— } sent that a grant may be made by the lord of
the said manor to *T. W.* of, &c. labourer, of a piece or parcel of land part of the wastes of the same manor called ——— common, containing about ———, as the same is now staked out, to be held by the said *T. W.* and his heirs for ever, freely, of the lord of the said manor, at and under the yearly rent of —s. —d., fealty and suit of court; as other the respective freehold tenants of the said manor now hold their respective estates; freed and discharged of and from all such commonable rights as are now exerciseable by us over and upon the wastes of the aforesaid manor. Witness our hands this ——— day of ——— 18——.

Freehold Tenants.

A. B.

C. D.

Copyhold Tenants.

E. F.

G. H.

(a) This form would be more properly placed *ante*, p. (119).

(b) If by the custom of the manor such grants may be made with the consent of the homage, (*ante*, pt. 1. pp. 21 et seq., 615 et seq.) the entry on the court rolls may be as follows:—

“At this court the homage testify by their signatures to the minutes of their verdict, their willingness and consent that a grant may, &c.” [the entry may be continued in nearly the same language as in the above form of consent out of court.]

FORMS OF WARRANTS, &c. IN CONNECTION WITH THE
COURT LEET.

(*Warrant to distrain for Amercements.*)

The Manor of ——— } To *W. Y.*, bailiff of the said manor, greet-
in the County of ——— } ing:

ESTREAT of Amercements at a certain court leet, with view of frankpledge, and court baron of *A. Z.* esquire, lord of the said manor, held in and for the said manor, this — day of, &c.

J. B., constable, who neglected to appear at the said court, and present that which to his office belongs, amerced in } 3*s.*
5*s.* (affeer'd at) }

G. L., aleconner, who neglected to appear at the said court and present that which to his office belongs, amerced in } 2*s.*
3*s.*, (affeer'd at) }

You are hereby commanded to levy by distress of the goods and chattels of the several above-named defaulters, the several and respective sums of money set opposite to their respective names; and you are to answer the same when thereunto required.

J. S. (L. s).

Steward of the said manor.

(*Order for a Constable who did not appear at the Court, to be sworn into his Office by a Justice of the Peace.*)

The Manor of ——— } To *A. B.*
in the County of ——— }

Forasmuch as at the court leet holden this present day, in and for the said manor, you are elected constable for the year ensuing: these are therefore to will and require you, upon receipt hereof, to take upon you the said office; and forthwith to repair to one of his Majesty's jus-

the due execution of your said office: hereof fail not at your peril.
Given under my hand and seal, the — day of —.

J. S. steward. (L. s.)

*(Warrant to bring an Offender against a particular Statute before
the Steward of a Court Leet.)*

The Manor of ——— } J. S. steward of the court leet of the afore-
in the County of ——— } said manor, to the constables of ———,
to wit. } greeting:

Whereas complaint hath been made to me that *J. W.* hath, &c. [set forth the facts] contrary to the statute in this case made and provided: these are therefore in his Majesty's name to will and require that you, some or one of you do bring the said *T. W.* before me to answer the premises, and further to do and receive as by the said statute in that behalf made is appointed: hereof fail not at your peril. Given under my hand and seal the — day of —.

J. S. steward (L. s.)

(A Mittimus upon the preceding Warrant.)

The Manor of, &c. } J. S. steward, &c., to the constables, &c.
to wit. } and to every of them, and to the keeper of his
Majesty's gaol for the said county of —, at —, in the same
county.

Forasmuch as it hath been duly proved before me that *T. W.*, &c. [set forth the facts] contrary to the statute in that case made and provided: These are therefore in his Majesty's name to require that you, the aforesaid constables, some or one of you, do convey the said *T. W.* to his Majesty's gaol aforesaid, and him there deliver to the keeper of the same, with this precept. And that you the said keeper do receive the said *T. W.* into the said gaol, and him there safely keep until he hath paid, &c. and shall be thence discharged by due course of law: hereof fail not, &c. Given, &c.

J. S. steward. (L. s.)

(A Precept to bring a Scold to be tried at a Court Leet.)

The Manor of ——— } *J. S.* steward of the court leet of the said
in the County of ——— } manor: to the constables of ———, greeting:

Forasmuch as *C. F.*, of the parish of ———, in the said county, the wife of *D. F.*, of the aforesaid parish of ———, labourer, was at the court leet of the said manor, holden before me this ——— day of ———, by the oaths of twelve honest and lawful men of the manor aforesaid, presented for her being a common scold at the parish aforesaid, in the county aforesaid, within the jurisdiction of the said court, as well with her neighbours, as with other the liege people of our lord the king, whereby they are much molested, disquieted, and grieved, and against the peace of his Majesty, his crown and dignity: these are therefore to command you to cause the said *C. F.* to appear at the next court leet to be holden in and for the said manor, at ——— aforesaid, in the county aforesaid, to answer the premises; and further to do and receive as the same court shall consider of her in that behalf; and have you there this precept. Given under my hand and seal, the ——— day of ———, in the ——— year of the reign, &c. and in the year of our Lord ———.

J. S. steward (l. s.)

Relating to the Jurisdiction of Courts Baron and Courts Leet.

STAT. MARLEBRIDGE (52 H. III. c. 9.)

“ *Who shall do Suit of Court : Suit of Court by Coparceners.*”

§. 1. “ For doing suits unto courts of great lords, or of meaner persons, from henceforth this order shall be observed, that none that is infeoffed by deed, from henceforth shall be distrained to do such suit to the court of his lord, without he be specially bound thereto by the form of his deed :—these only except whose ancestors, or they themselves, have used to do such suit before the first voyage of the said King Henry into Britain, sithence which nine and thirty years and an half are passed, unto the time that these statutes were enacted. Likewise from henceforth none that is infeoffed without deed, from the time of the Conquest, or any other ancient feoffment, shall be distrained to do such suits, unless that he or his ancestors used to do it before the said voyage. And they that are infeoffed by deed to do a certain service, as, for service of so many shillings by year, to be acquitted of all service, from henceforth shall not be bounden to such suits, or other like, contrary unto the form of their feoffment. And if any inheritance whereof but one suit is due, descend unto many heirs, *as unto parceners*, whoso hath the eldest part of the inheritance, shall do that one suit for himself and his fellows, and the other coheirs shall be contributaries, according to their portion, for doing such suit. And if many feoffees be seized of an inheritance, whereof but one suit is due, the lord of the fee shall have but that one suit ; and shall not exact of the said inheritance but that one suit, as hath been used to be done before. And if those feoffees have no warrant or mean which ought to acquit them, then all the feoffees, according to their portion, shall be contributaries for doing the suit for them. And if it chance that the lords of the fee do distrain their tenants for such suits, contrary to this act, then at the complaint of the tenants, the lords shall be attached to appear in the King’s Court at a short

tresses taken by this occasion, shall be delivered to the plaintiff, and so shall remain, until the plea betwixt them be determined." [The lord's attendance compellable by further attachment, and in case of further default, then by distress of their goods and chattels.]

13 EDW. I. stat. 2. c. 6. [*View of Arms, &c.*]

" And that view of armor be made every year two times. And in every hundred and franchise two constables shall be chosen to make the view of armor. And the constables aforesaid shall present before justices assigned such defaults as they do see in the country about armor, and of the suits of towns, and of highways, and also shall present all such as do lodge strangers in uplandish towns, for whom they will not answer; and the justices assigned shall present at every parliament unto the king such defaults as they shall find, and the king shall provide remedy therein. And from henceforth let sheriffs take good heed, and bailiffs, within their franchises and without, be they higher or lower, that have any bailiwick or forestry in fee, or otherwise, that they shall follow the cry with the country, and after, as they are bounden, to keep horses and armor, or so to do; and if there be any that do not, the defaults shall be presented by the constables to the justices assigned, and after, by them to the king, and the king will provide a remedy as afore is said. And the king commandeth and forbiddeth, that from henceforth, neither fairs nor marketes be kept in churchyards, for the honour of the church."

1 & 2 PH. & MARY, c. 12.

" An Act for the impounding of Distresses."

§. 1. " For the avoiding of grievous vexations, exactions, troubles and disorder in taking of distresses, and impounding of cattle: be it enacted by the authority of this present parliament, that from and after the first day of April next coming, no distress of cattle shall be driven out of the hundred, rape, wapentake, or lathe where such distress is or shall be taken, except that it be to a pound overt within the same shire, not above three miles distant from the place where the

taken by way of distress for any manner of cause at one time, shall be impounded in several places, whereby the owner or owners of such distress shall be constrained to sue several replevies for the delivery of the said distress so taken at one time; upon pain every person offending contrary to this act, shall forfeit to the party grieved, for every such offence, an hundred shillings, and treble damages."

§. 2. "And be it further enacted by the authority aforesaid, that after the said first day of April, no person or persons shall take for keeping in pound, impounding or poundage of any manner of distress, above the sum of four-pence for any one whole distress that shall be so impounded; and where less hath been used, there to take less; upon the pain of five pounds, to be paid to the party grieved over and beside such money as he shall take above the sum of four-pence; any usage or prescription to the contrary in anywise notwithstanding."

1 [2] JAC. I., c. 5.

"An Act to prevent the overcharge of the people by Stewards of Court Leets and Court Barons."

"Whereas the King's most excellent Majesty, the Lords spiritual and temporal, and other his Highness's subjects of this realm of England and Wales, have in divers places of the same many franchises, jurisdictions, privileges and liberties to keep court leets, or court barons, for the true administration of justice, and to the punishing and suppressing of offences; the profits and perquisites of which courts have heretofore been used to be levied and collected by the bailiff or other minister of such court, and by him accounted for to his Highness's progenitors, or other lords or ladies of such courts and manors, and as of right it ought so to be: But now by reason of the great increase of people, the said profits and perquisites of courts are grown to be of a better yearly value, than in ancient time it hath been, divers that are now stewards of such courts have heretofore in their own names, or in the names of some other to their use, obtained and gotten divers grants of all the profits and perquisites of such courts whereof they are stewards, whereby many of his Majesty's subjects are unjustly vexed, and by grievous fines and americiaments unduly punished, greatly to the wronging and impoverishing of the

to themselves: It is therefore, by the authority of this present parliament established and enacted, that no steward, deputy steward, or other under steward of any of the courts aforesaid, shall directly or indirectly, in his own name or in the name of any other, from and after the expiration of one year next after the end of this session of this present parliament, take, receive, or make benefit to his own use, in money, goods, or any other thing, to the value of twelve pence or more, by virtue or colour of any demise or grant hereafter to be made of any of the profits or perquisites, or amerciaments of any such courts whereof they are steward, which rightfully shall belong to the lords of the same, upon pain that every steward offending contrary to the tenor of this present act of parliament, shall for every such his offence forfeit the sum of forty pounds, and to be disabled ever after to be steward of such court, or of any other; the one half of the forfeiture to be to our Sovereign Lord the King's Majesty, his heirs and successors; the other half to any of his Majesty's subjects that shall complain in any one of his Highness's courts of record, by action of debt, bill, plaint, or information, in which suit no essoin, protection, wager of law, or other dilatory plea shall be allowed."

[VIDE stat. Westm. 1, c. 33, against Maintenance].

4 ED. IV., c. 1. (a).

[The Length and Breadth of Cloths made to be sold. No Cloths wrought beyond Sea shall be brought into England.]

§. 6. That every justice of peace [&c. &c.], and every steward keeping or holding wapentake or leet of any person out of city, borough, or town, where no mayor, master, bailiff or bailiffs, or port-reves is or be, shall have power or authority, by this ordinance, to hear and determine the complaints of every such clothmaker and labourer, as well for nonpayment of the said labourer's wages as of the said forfeiture and damages, by due examination of the parties in this behalf; and thereupon for nonpayment of the said duties and forfeitures, and for the said damages, to commit the said offenders in

(a) See the reference to this stat. or ordinances, *ante*, pt. 3. p. 830. n. ordinance and the 13 following statutes

till the said duties, forfeitures, and damages be fully paid to the said labourer or clothmaker; and also that every [of the said justices of peace, &c.] steward of wapentake and leet, upon information or complaint of any other person which is not grieved in this behalf, shall have power by the said authority within his jurisdiction, to cause the party to come before him, against whom such information or complaint shall be made, for offending this ordinance, and to examine him in and upon the matter contained in the same information or complaint; and if the party by examination or other due proofs, be found guilty or defective, that then the same party, as often and for every time that he is so found guilty or defective, shall forfeit to the king, or to such person or persons who is or be entitled to have fines or americiaments for offences done within their jurisdiction, three shillings and fourpence. And that every of the said justices of peace and other officers aforesaid, within his jurisdiction, upon every of the said informations or complaints, shall have full power to make like process against the party, upon whom any such information or complaint, as before is rehearsed, shall be made, to make him personally to appear before him, thereupon to be examined, as justices of peace have upon information or complaint made to them for surety of peace, without any fee or reward to be taken or had by any of the said justices, or any other officer, for the execution of their offices in this behalf.]

14 & 15 HEN. VIII., c. 10.

[The Penalty for unlawful hunting the Hare.

Be it enacted, &c., that no person from henceforth race, destroy, and kill any hare in the snow with any dog, bitch, bow, nor otherwise. And that the justices of peace within every shire, of every sessions of the peace, and stewards of leets, shall have full authority and power to enquire of such offenders; and after such inquisitions found, the said justices of peace and stewards of leets, for every hare so killed, shall cess upon every such offender six shillings and eightpence, to be forfeited to the King, when found by such justices of the peace, and the forfeiture found in every leet, to be to the lord of the leet.]

[*The bill for the Breed of Horses.*]

§. 2. That no commoner within any forest, chase, moor, marsh, heath, common, or waste ground, nor officer of the said forests or chases, nor any other person after, &c. shall have or put to pasture into or upon any such forest, &c. any stoned horse, being above the age of two years, and not being of the height of fifteen handfuls, to be measured from the lowest part of the hoof of the fore foot, unto the highest part of the wither, and every handful to contain four inches of the standard, to pasture, feed, or be in or upon any of the said forests &c. within any of the shires and territories of Norfolk, Suffolk, Cambridge, Buckingham, Huntingdon, Essex, Kent, South Hampshire, North Wiltshire, Oxford, Berkshire, Worcester, Gloucester, Somerset, North Wales, South Wales, Bedford, Warwick, Northampton, Yorkshire, Cheshire, Staffordshire, the county of the city of York, the town and liberties of Gloucester, the county of the town of Kingston upon Hull, the county palatine of Lancaster, the counties of Salop, Leicester, Hereford, and Lincoln; nor shall put to feed or pasture any stoned horse being above the said age of two years, and not being of the height of fourteen handfuls, to be measured as abovesaid, within or upon any like ground lying or being within any other shire of this realm, upon pain of forfeiture of the said horse or horses which shall be so found in or upon any such ground, forest, &c. (By 8 Eliz. c. 8. s. 2 & 3. such horses in the Isle of Ely, and the counties of Cambridge, Huntingdon, Northampton, Lincoln, Norfolk, and Suffolk, need only be of the height of thirteen handfuls.)

§. 8. That the justices of peace, &c., and all stewards of leets and law-days, in the same leets and law-days shall have authority by this act to inquire of all defaults, contempts, omissions, and offences contrary to the effects above written; and all presentments thereof to be found in any of the said leets or law-days, shall be certified by the steward or deputy steward, or court-holder of the same leet or law-day, in the next general sessions of the peace to be holden, &c., or unto the custos rotulorum of the same shire, within forty days next after that presentment made, which justices of the peace shall have power to hear and determine, &c.; and if any such steward, deputy

or do not certify the same as is afore-written, every of them so offending shall forfeit and lose for every such offence forty shillings (half to the king, and half to the person suing, &c.)

§. 9. That no person after, &c. shall have or put to pasture any horse, gelding, or mare, infect with scab or mange in, to, or upon any of the said forests, &c. upon pain to forfeit for every horse, &c. ten shillings, which offence shall be inquirable and presentable before the steward in every leet, as other common annoyances be; and the forfeiture thereof to be to the lord of the leet.]

33 HEN. VIII. c. 6.

[The Bill for Cross Bows and Hand Guns.]

That it shall be lawful to all stewards and bailiffs in their several leets and law-days, to inquire, hear, and determine every such offence, to be committed and done contrary to the tenor of this act; so that always no less fine than ten pounds be assessed upon every such presentment and conviction, the one moiety of such fine to be to the king, and the other moiety, the one half to the owner of the leet, and the other to the party that will sue for the same.]

33 HEN. VIII. c. 9.

[The Bill for the maintaining Artillery, and the debarring of unlawful Games.]

§. 10. Aliens not to use long bows without the king's license; and that justices of assise, &c. and of the peace, and stewards of franchises, leets and lawdays, have power to enquire of all the premises in their sessions, leets and law-days, and hear and determine the same; and also by their discretion examine all persons lacking, and not having bows, shafts, and arrows according to the form therein aforesaid.

§. 18. That where any such forfeitures shall happen to be found within the precinct of any franchise, leet or law-day, then the lord of the same franchise, leet or law day, to have the one moiety thereof, the other moiety to the person suing for the same.]

2 & 3 ED. VI. c. 15.
[*The Bill for true making of Malt.*]

§. 4. That justices of peace in their sessions, and the steward in every leet, shall have full power and authority to enquire, hear, and determine, as well by presentment of twelve men, as by accusation or information of two honest witnesses, of, for, and upon all the offences and forfeitures aforesaid, as well for the king as for the party that shall sue, procure, or cause the same to be presented.]

2 & 3 ED. VI. c. 15.

[*The Bill of Conspiracies of Victuallers and Craftsmen.*]

§. 3. That all justices of assise, justices of peace, mayors, bailiffs, and stewards of leets, at all and every their sessions, leets, and courts, shall have full power and authority to enquire, hear, and determine all offences committed against this statute, and to punish or cause to be punished the offender, according to the tenor of this statute.]

7 ED. VI. c. 5.

[*The Act to avoid the excessive prices of Wine.*]

§. 6. That justices of peace in their several sessions, and the steward in every leet, and the sheriff in his tourn, and every escheator, shall have full power and authority to enquire, by the oaths of twelve lawful men, of all offences perpetrated or done contrary to the form of this act.]

2 & 3 P. & M. c. 8.

[*The Statute for the Mending of Highways.*]

§. 2. That the steward of every leet or law-day shall therein have full power and authority to inquire, by the oaths of the suitors, of all the offences that shall be committed within the leet or law-day,

sonable fines and ameraciements for the same, as shall be thought meet by the said steward. And the steward of every leet and law-day shall make estreats (for which by §. 4. his fee to be 12*d.*) indented of all the fines, forfeitures, and ameraciements, for the defaults presented before him; and shall deliver the one part thereof, sealed and signed by him, to the bailiff and high constable of every hundred, rape, lathe, or wapentake, wherein the defaults shall be presented, and the other part to the constable and churchwardens of the parish wherein the defaults were made, the same to be yearly delivered within six weeks after the feast of saint Michael the archangel.]

4 & 5 P. & M., c. 8.

[An Act for the taking of Musters.

That all stewards of leets, law-days, and liberties, at their leets and law-days, shall inquire, hear, and determine every of the offences committed or done contrary to this act, within the precincts of their leet or liberty.]

18 ELIZ., c. 10.

[An Act of addition unto the former Acts for amending and repairing of Highways.

That stewards of leets and law-days, in their leets and law-days, shall hear and determine every offence, matter, and cause, that shall grow, come, or arise, by reason of this statute.]

28 ELIZ., c. 10.

[An Act for the Preservation of Pheasants and Partridges.

§. 5. That justices of assize in their circuits, justices of the peace in their sessions, and stewards of leets, liberties, and law-days, within their several jurisdictions, shall and may, by virtue hereof, hear, enquire, and determine, of all offences which shall be committed within the precinct of their liberties, jurisdictions, or franchises, against the tenor of this act.]

[An Act concerning Tanners, Curriers, Shoemakers, &c.]

§. 32, 34-5. Mayors, bailiffs, &c., and lords of liberties out of the circuit of three miles of the city of London (a), to appoint leather-sealers, and triers of tanned leather, under a penalty.

§. 50. That all justices of assize and gaol delivery, justices of peace, and stewards of franchises, leets and law-days, within their several precincts, jurisdictions, and liberties, mayors, &c., shall enquire of all the premises in their sessions, leet or law-day, and hear or determine the same, and also by their discretions examine all persons suspected to offend this act.

§. 51. The steward of any manor, liberty, or franchise, immediately belonging to the King, shall have the like authorities, and bear the like penalties as the lords of liberties.] (b).

21 JAC. I., c. 21.

[An Act concerning Hostlers and Innholders.]

§. 2. No hostler or innholder shall make horse-bread in his hostrey, nor without, but bakers shall make it, and the assize shall be kept, and that the weight be reasonable after the price of the corn and grain in the markets adjoining; and the hostlers or innholders shall sell their horse-bread, and their hay, oats, beans, peas, provender, and also all kind of victual both for man and beast, for reasonable gain, having respect to the prices for which they shall be sold in the markets adjoining, without taking any thing for litter.

§. 3. It shall be lawful for every hostler and innkeeper, dwelling in any town or village, being a thoroughfare, or a common passage, and being no city, town corporate, or market town, wherein any common baker exercising the occupation of baking, and that hath been apprentice at the said occupation by the space of seven years, is

(a) See 1 Burr. 497-8.

sequent statutes; but repealed by 48

(b) Continued and amended by sub-

Geo. 3. c. 60.

of due assize, according as the price of grain and corn shall be.

§. 4. If the horse-bread which any of the said hostlers or innholders shall make, be not sufficient, lawful, and of due assize, according to the price of grain and corn as aforesaid; or if any of them shall offend in any thing contrary to this act; then the justices of assize, &c., justices of the peace, sheriffs in their tourns, and stewards in their leets and law-days, shall have full power and authority to enquire, hear, and determine the said defaults and offences of the said hostlers and innholders. And the hostler or innholder for the first offence shall be fined according to the quantity of the offence; and if, being once convicted, he shall again offend, for the second offence he shall be imprisoned for the space of one month; and if he shall a third time offend, being thereof convicted, he shall stand upon the pillory: and if he shall offend after the judgment of the pillory given, he shall be forejudged for keeping an inn again. (And see 32 H. 8. c. 41, repealed by this act.) (a)]

(a) N.B. The powers of the above acts are expressly confined to the steward, as far as respects the jurisdiction given to the court leet.

But by the act of 31 Eliz. c. 7. "Against the erecting and maintaining of cottages," it is enacted [s. 6.] that after the feast of All Saints then next coming, there should not be any inmate or more families or household than one, dwelling or inhabiting in any one cottage, upon pain that every owner or occupier of any such cottage, should forfeit to the lord of the leet, within which such cottage should be, the sum of 10s. for every month, that any such inmate or other family than one should dwell or inhabit in any one cottage as aforesaid: "And that all and every lord and lords of leet and leets, and their stewards, within the precinct of his and their leet and leets, shall have full power and authority within their several leets to enquire, and to take present-

ment by the oath of jurors, of all and every offence and offences in this behalf; and upon such presentment had or made, to levy by distress to the use of the lord of the leet, all such sums of money as so shall be forfeited: And moreover, that it shall be lawful for the lord of every such leet, where such presentment shall be made, to recover to his own use any such forfeiture, by action of debt, in any of the Queen's Majesty's courts of record, wherein no essoin, protection or wager of law shall be allowed." And see s. 3. of the same act, against erecting cottages on waste, by which *lords of leet* are authorised to inquire of the offence.

[*Vide* also s. 8, of the 1 Eliz. c. 17, post. p. (475), which authorises the lord of every leet to inquire of the offences mentioned in that statute, according to the usual course of ameracements or other things inquirable in the court leet.] (*ante*, pt. 3. p. 833-4.)

“ An Act for Preservation of Spawn and Fry of Fish.”

“ For the preservation hereafter of spawn, fry, and young breed of eels, salmons, pikes, and of all other fish, which heretofore hath been much destroyed in rivers and streams, salt and fresh, within this realm, insomuch that in divers places they feed swine and dogs with the fry and spawn of fish, and otherwise, lamentable and horrible to be reported, destroy the same, to the great hindrance and decay of the commonwealth: Be it therefore enacted by,” &c., “ That no person or persons of what estate, degree, or condition soever he or they be, from and after the first day of June next coming, with any manner of net, weele, but, taining kepper line, crele, raw, fagnet, trolnet, trimenet, trimboat, stalboat, webblister, seur, lammets, or with any device or engine made of hair, wool, line or canvas; or shall use any helingnet or trimboat, or by any other device, engine, cawtel, ways or means whatsoever heretofore made or devised, or hereafter to be made or devised, shall take and kill any young brood, spawn, or fry of eels, salmon, pike, or pikerel, or of any other fish, in any flood-gate, pipe, at the tail of any mill, wear, or in any straits, streams, brooks, rivers, fresh or salt, within this realm of England, Wales, Berwick, or the marches thereof; nor shall from and after the first day of June next coming, by any of the ways and means aforesaid, or otherwise in any river or place above specified, take and kill any salmons or trouts not being in season, being kepper-salmons or kepper-trouts, shedder-salmons or shedder-trouts.”

§. 2. “ And be it further enacted by the authority aforesaid, That no person or persons, of what estate, degree or condition he or they shall be of, from and after the said first day of June, by any of the means aforesaid, in any of the rivers or places above named, shall take and kill any pike or pikerel, not being in length ten inches or more; nor any salmon not being in length sixteen inches or more; nor any trout not being in length eight inches or more; nor any barbel not being in length twelve inches or more.”

§. 3. “ And to the intent the said young fry, brood, or spawn, may be preserved according to the true meaning hereof, be it further enacted by the authority aforesaid, That no manner of person or per-

take fish with any manner of net, trammel, kepe, wore, hivre, crele, or by any other engine, device, ways or means whatsoever, in any river or other place above mentioned, but only with net or trammel, whereof every mesh or mask shall be two inches and a half broad; angling excepted."

§. 4. " Provided nevertheless, and be it enacted by authority aforesaid, That in all such places where smelts, loches, minnies, bulheads, gudgions, or eels, have been used to be taken and killed, that in all such places it shall be lawful only for the taking of smelts, loches, minnies, gudgions and eels, to use such nets, lepes and other engines, devices, ways and means, as heretofore have been used for the taking of the same; so that such person or persons using or occupying such nets or other engines as is last aforementioned, do not take, kill or destroy any other fish with the said nets or engines, contrary to the tenor and form above in this statute contained."

§. 5. " And be it further enacted, That if any person or persons, after the aforesaid day limited in this present act, offend in any of the points before rehearsed, contrary to the tenor, form, and purport of any part of the same, that then every such person and persons so offending shall lose and forfeit for every time of his or their offence, the sum of twenty shillings, and the fish so taken contrary to the tenor hereof, and also the unlawful nets, engines, devices and instruments, whatsoever they be, wherewith or whereby such offence shall fortune to be made, committed or done."

§. 6. " And to the intent that a perfect execution may be had of this present act, be it further ordained by authority aforesaid, That the Lord Admiral of England, and the Mayor of the City of London, for the time being, and all and every other person and persons, bodies politick and corporate, which by grant or other lawful ways or means, lawfully have or ought to have any conservation or preservation of any rivers, streams or water, or punishments and corrections of offences committed in any of them, shall have full power and authority by virtue of this act to enquire of all the offences to be committed and done contrary to the effect and true meaning of this act, within his or their such lawful rule, government, jurisdiction, and conservancy, by the oaths of twelve men or more, and to hear and determine all and every the same offences committed within his or their such jurisdiction, conservancy, rule and government."

§. 7. " And that all such pains, and forfeitures as shall rise and

no body politick or corporate, nor head of any body politick or corporate, before whom such conviction, as is aforesaid, shall be had, and to the use of every such body politick and corporate as heretofore have lawfully had any fines, forfeitures and amerciaments for any offence unlawfully committed or done in any such their jurisdiction or conservancies, upon conviction had before the head of any such body politick or corporate.”

§. 8. “And that also the lord of every leet within this realm of England and Wales, or the dominions of the same, shall have full power and authority to enquire of all the offences contrary to the purport, tenor and form of this estatute, within the precinct of their said leet: such enquiry to be had in manner and form, and after such sort, as common amerciaments, or other things inquirable in their court leet, have been lawfully used and accustomed to be had and made.”

§. 9. “And that upon every such presentment had in any court or leet, by the oath of twelve men, or more, as is aforesaid, of any offence or offences made contrary to the tenor of this estatute: that then all such forfeiture above in this estatute limited and appointed for such offence, shall be unto the lord of the said leet for the time being, to his own use for ever, and shall be levied in such manner and form, as amerciaments for affrays committed within the precinct of such leet have been used and accustomed to be levied.”

§. 10. “And if any leet after the said first day of June be kept within this realm of England or Wales, or the dominions thereof, and the steward of the said leet for the time being, or other for him, do not charge the jury sworn in such leet, to enquire of all the offences done within the precinct of the said leet, contrary to the tenor and form of this estatute; that then the steward of the said leet to lose and forfeit forty shillings; the one moiety of which forfeitures shall be to the Queen’s Majesty, her heirs and successors, and the other moiety to him that will sue for the same. And if any jury, sworn in any leet, and being charged to enquire of the offences committed within the precinct of that leet, do wilfully and willingly conceal and make default in presentment, or do not present the offence and offenders; that then it shall be lawful to the steward or bailiff of the leet, or his or their deputy for the time being, to impanel one other jury within the said leet, and to enquire of such concealment, default or non-presentment; and that upon such concealment, default or non-presentment,

found and presented, every of the said jurors which so did conca, make default or not present, shall lose and forfeit for every such offence twenty-shillings to the lord of the said leet, the same to be levied in manner and form as is above said for the other offences limited and expressed."

§. 11. "And it is further enacted by authority aforesaid, that if the offences above-mentioned touching the taking, killing or destroying of fish, or fry and spawn, be not presented at the leet where they shall be committed, within one year next after the offence committed, that the justices of peace in their sessions, justices of oyer and determiner, and justices of assise in their several circuits, shall have full power and authority to enquire thereof, and to hear and determine all the offences committed contrary to the tenor of this estatute."

§. 12. "Saving always to all and every person or persons, bodies politick and corporate, and every of them, all such right, title, interest, claim, privilege, 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 to have and enjoy by any manner of means; any thing in this act to the contrary notwithstanding. This act to endure to the end of the next parliament."

§. 13. "Provided always, that this act, nor any thing therein contained, shall not extend unto the fishing of the river or water of Tweed; nor to any river or water whereof the Queen's Majesty is answered of any yearly rent or profit; nor to the owners, farmers and occupiers of the rivers Uske or Wye in the county of Monmouth: for any fish hereafter to be taken in any the rivers or waters before mentioned and expressed; but that it shall be lawful at all seasonable time and times hereafter, for such as have or shall have any manner of interest therein, to take and fish the said rivers and waters, in such manner and form as heretofore hath been used and accustomed, not using any net or engine, to the intent willingly to take, kill, and destroy the spawn, breed or fry, breeding any kind of fish within the said several rivers or waters; this act, or any thing therein mentioned or contained to the contrary notwithstanding." [Continued by 2 Jac. 1. c. 15: made perpetual, except as to the last sect. by 3 Car. 1. c. 4.]

“ Holding Pleas of the Crown.”

“ No sheriff, constable, escheator, coroner, nor any other *our* bailiffs, shall hold pleas of our crown.”

1 ED. IV. c. 2.

“ Justices of Peace may award Process upon Indictments taken in Sheriff’s tourns.”

“ Also whereas many of the King’s faithful leige people, as well spiritual as temporal, by the inordinate and infinite indictments and presentments, as well of felony, trespasses, and offences, as of other things, which of long time have been had and used within the counties of this realm, and taken before sheriffs for the time being in their counties severally, under sheriffs, their clerks, bailiffs, and ministers, at their tourns or law-days, holden before them severally in the counties, which indictments and presentments be oftentimes affirmed by jurors having no conscience, nor any freehold, and little goods, and often by the said sheriff’s menial servants and bailiffs, and their under sheriffs, by which indictments and presentments the said lawful leige people be attached and arrested by their bodies, and put in prison, by the said sheriffs, under sheriffs, their clerks, bailiffs, and ministers, to the great loss of their goods; and they so being in prison by the said sheriffs, under sheriffs, their clerks, bailiffs, and their ministers are constrained to make grievous fines and ransoms, and levy of them great fines and amerciaments for the said indictments and presentments, in great hindrance and utter undoing of the said liege people; after which fines, ransoms, and amerciaments, so rated and levied by the said sheriffs, under sheriffs, clerks, bailiffs, and their ministers, the people aforesaid be enlarged out of prison, and the said indictments and presentments be imbezelled and withdrawn: Our said Lord the King considering the premises by the advice, &c., hath ordained and established, that all manner of indictments and presentments that shall be taken hereafter before any of his said sheriffs of his counties for the time being, their under sheriffs, clerks, bailiffs, or ministers, at their tourns or law-days before

attach, arrest, or put in prison, or to levy any fines or americiaments of any person or persons so indicted or presented, by reason or colour of any such indictment or presentment taken or to be taken before them or any of them, nor to make or take of any such person or persons so indicted or presented, any fine or ransom, but that the said sheriffs, and their under sheriffs, clerks, or bailiffs, and their ministers, shall bring, present, and deliver all such indictments and presentments taken before them, or any of them, in their tourns or law-days aforesaid, to the justices of peace, at their next sessions of the peace that shall be holden in the county or counties where such indictments or presentments shall be taken before the said justices of such county or counties for the time being: And if any of the said sheriffs, under sheriffs, clerks, bailiffs, and their ministers, do not bring, deliver, and present all such indictments or presentments so taken before them and every of them in their tourns or law-days, as before is recited, at such sessions of the peace, before the said justices of peace, that then all such sheriffs, under sheriffs, clerks, bailiffs, and their ministers, and every of them that so shall fail in bringing, delivering, and presenting of such indictments or presentments, shall forfeit to the King forty pounds at every time that they or any of them doth the contrary: And that the said justices of peace shall have power and authority to award process upon all such indictments and presentments, as the law doth require, and in like form, as if the said indictments and presentments were taken before the said justices of peace in the said county or counties, and also to arraign and deliver all such person or persons so indicted and presented before the said sheriffs, under sheriffs, their clerks, bailiffs and their ministers, or any of them in their tourns or law-days: And all such persons or person which be indicted or presented of trespass, shall make such a fine as shall seem lawful by their discretions: And the estreats of the said fines and americiaments shall be inrolled, and by indenture be delivered to the said sheriffs, under sheriffs, their clerks, bailiffs, or ministers, or some of them to the use and profit of him that was sheriff in the said counties or county, at the time of such indictments or presentments taken. And if any of the said sheriffs, their under sheriffs, clerks, bailiffs, or ministers, do arrest, attach, or put in prison, or cause any fine or ransom to be taken, or levy any americiament of any person or persons so indicted or presented, by reason or colour of any such indictment or present-

estreats delivered out of the said indictments or presentments so brought, delivered, and presented to them, that then the sheriffs which so do, shall forfeit an hundred pounds, the one half thereof to be employed to the expences of the King's House, and the other half to the party or parties which be or is indamaged, and he or they shall have therefore an action of debt at the common law, and like process as in an action of debt at the common law. And that the defendant or defendants in such suits or actions of debt, shall not be essoined, nor wage their law, and if he or they, or any of them against whom this action shall be taken, do offer or cast any protection, or other impediment, in retardation of the said suits or actions, that shall not be allowed unto him."

§. 2. " Provided always, that this present ordinance do not extend, nor in any wise be prejudicial to the sheriffs of the city of London, now being, or which at any time hereafter shall be, concerning any indictments or presentments to be taken within the said city of London."

§. 3. " Provided also that this act extend not, nor be prejudicial to any person or persons which hath grants of any fines or amerciaments by any letters patents of our said Sovereign Lord the King, or of any of his progenitors or predecessors, bearing date before the 10th day of December next after the beginning of this Parliament; and that this Act and ordinance do not extend, nor be prejudicial, to any person or persons having any liberties or franchises by any of the said letters patents, or in any other manner by prescription. And that this ordinance be in his force, and begin to take effect at the fortieth day next after the sixth day of May next, after the beginning of this present Parliament, upon the which sixth day the said Parliament was dissolved."

13 & 14 CAR. II. c. 12.

" An Act for the better relief of the Poor of this Kingdom."

§. 15. " And whereas the laws and statutes for the apprehending of rogues and vagabonds, have not been duly executed, sometimes for want of officers, *by reason lords of manors do not keep court leets every year for the making of them*: be it therefore enacted by the

man shall die or go out of the parish, any two justices of the peace may make and swear a *new constable, headborough or tithing-man, until the said lord shall hold a court, or until next quarter sessions, who shall approve of the said officers so made and sworn as aforesaid, or appoint others as they shall think fit: and if any officer shall continue above a year in his or their office, that then in such case the justices of peace in their quarter sessions may discharge such officers, and may put another fit person in his or their place until the lord of the said manor shall hold a court as aforesaid.*"

11 GEO. I. c. 4.

" An Act for preventing the inconveniencies arising for want of elections of mayors or other chief magistrates of boroughs or corporations, &c."

§. 3. " And whereas in certain boroughs and towns corporate within that part of Great Britain called England, Wales, and Berwick upon Tweed, the mayor, bailiff or bailiffs, or other chief officer or officers, is or are to be nominated, elected or sworn at a *court leet or view of frank-pledge, or some other court, and by reason of the contrivance or default of the lord or his steward, or such other officer by or before whom such court ought to be held, in not holding the same, or by some accident, it hath happened and may hereafter happen, that no due nomination, election, or swearing of such mayor, bailiff or bailiffs, or other chief officer or officers, hath been or shall be had or made: be it further enacted by the authority aforesaid, that in every such case it shall and may be lawful to and for his Majesty's Court of King's Bench, upon motion to be made in the said court, to award a writ of mandamus, requiring the lord or his steward or other officer, by or before whom such court ought to be held, to hold or cause to be holden such court leet or other court, and to do every other act necessary to be done by him in order to such nomination, election, or swearing, at such day and time as shall be for that purpose judged proper by the said court of King's Bench, and shall be appointed in such writ, or to signify to the said court good cause to the contrary, and thereupon to cause such proceedings to be had and made, as in other cases of writs of mandamus granted by the said court, for holding of any court, and of the day and time appointed in and by any*

whenever such, by such person as the said court or judge shall appoint, be affixed in the market place, or some other publick place within such borough, or town corporate, by the space of six days before the day so appointed: and where a nomination of persons in order to the election of any such mayor, bailiff or bailiffs, or other chief officer or officers, is to be made at such *court leet*, or other court, in every such case, after such nomination made, all and every other act and acts necessary to be done in order to such election, shall be had, made and done at such assembly, and in such manner and form as the same ought to have been had, made and done, in case such election had been made upon the day next after the expiration of the time prescribed for such election by the charter or usage of such borough or corporation, according to the directions hereinbefore mentioned."

§. 4. " And be it further enacted by the authority aforesaid, that the mayor, bailiff or bailiffs, or other chief officer or officers, who shall be elected pursuant to the directions of this act, shall take the oath or oaths by law required at the time of his admission into such office, before such officer as shall preside at such election, in pursuance of this act, who is hereby authorised and required to administer such oath or oaths; and shall have the same privileges, precedence, powers and authorities in all respects, as any mayor, bailiff or bailiffs, or other chief officer or officers of the same city, borough, or corporation, elected on the days or times fixed by charter or usage for that purpose, ought to have or enjoy."

§. 5. " Provided always, that no such election, nor any act done in order thereunto, shall be valid, unless as great a number of persons, having right to be present at and vote therein, shall be present at the assembly holden for such purpose, and concur therein, as would respectively have been necessary to be present, and concur in such election or act, in case the same had been made or done upon the day or within the time appointed for that purpose by the charter or usage of such city, borough, or corporation, saving only, that the presence of the mayor, bailiff or bailiffs, or other chief officer or officers who ought to preside, shall not be necessary."

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[N.B. in the very recent case of *Williams*

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commissioners of sewers"	(223)	
9 Geo. 2. c. 36. "An act to restrain the disposition of lands whereby the same become unalienable"	(225)	
9 Geo. 4. c. 85. "An act for remedying a defect in the titles of lands purchased for charitable purposes.	(226)	
52 Geo. 3. c. 102. "An act for the registering and securing of charitable donations"	(228)	
[Reference to 43 Eliz. c. 4. of charitable uses; and 52 Geo. 3. c. 101. providing a summary remedy on abuses of charitable trusts]	ib. n.	
31 G. 2. c. 14. "An act for further explaining the laws touching the electors of knights of the shire to serve in parliament for that part of Great Britain called England"	(232)	
39 & 40 Geo. 3. c. 88. "An act concerning the disposition of certain real and personal property of his Majesty, his heirs and successors; and also of the real and personal property of her Majesty, and of the Queen consort for the time being"	(233)	
59 Geo. 3. c. 94. "An act to explain and amend two acts passed in the 39th & 40th, and 47th years of his present Majesty, concerning the disposition of certain real and personal property of his Majesty, his heirs and successors"	(234)	
[Reference to 6 Geo. 4. c. 17. for extending the provisions of the last-mentioned act, and authorising the King to direct the execution of grants of LEASEHOLD manors, &c., to which the Crown may become intitled by forfeiture, &c.]	ib. n.	
39 & 40 Geo. 3. c. 98. "An act to restrain all trusts and directions in deeds or wills whereby the profits or produce of real or personal estate shall be accumulated, and the beneficial enjoyment thereof postponed beyond the time therein limited." (<i>Thellusson v. Woodford</i> , 4 Ves. 227)	(237)	
[N. B. A trust by will for the accumulation of dividends during the life of A, contrary to the stat., is good for 21 years. <i>Griffiths v. Vere</i> , 9 Ves. 127.]	ib. n.	
42 Geo. 3. c. 116. "An act for consolidating the provisions of the several acts passed for the redemption and sale of the land tax, into one act, and for making further provision for the redemption and sale thereof; and for removing doubts respecting the right of persons claiming to vote at		elections for knights of the shire, and other members to serve in parliament, in respect of messuages, lands, or tenements, the land tax upon which shall have been redeemed or purchased"
		(238)
		53 Geo. 3. c. 123. "An act to amend and render more effectual several acts passed for the redemption and sale of the land tax"
		(250)
		53 Geo. 3. c. 142. "An act to explain and amend several acts relative to the land tax"
		(251)
		[Reference to 3 Geo. 4. c. 88, to amend the law relating to the land and assessed taxes, and to regulate the appointment of receivers-general in England and Wales.]
		ib. n.
		Stamp act 48 Geo. 3. c. 149.
		(252)
		Stamp act 55 Geo. 3. c. 184.
		(255)
		[Observations on the clauses in the several stamp acts creating a doubt as to the necessity of distinct stamps for each separate copyhold, where more than one is included in the same surrender or admittance]
		(263) n.
		53 Geo. 3. c. 141. "An act to repeal an act of the 17th year of the reign of his present Majesty, intituled, 'An act for registering the grants of life annuities, and for the better protection of infants against such grants,' and to substitute other provisions in lieu thereof"
		(274)
		[Vide also 3 Geo. 4. c. 92. 7 Geo. 4. c. 75.]
		55 Geo. 3. c. 192. "An act to remove certain difficulties in the disposition of copyhold estates by will"
		(277)
		55 Geo. 3. c. 147. "An act for enabling spiritual persons to exchange the parsonage or glebe houses or glebe lands belonging to their benefices, for others of greater value, or more conveniently situated for their residence and occupation; and for annexing such houses and lands, so taken in exchange, to such benefices as parsonage or glebe houses and glebe lands, and for purchasing and annexing lands to become glebe in certain cases, and for other purposes"
		(278)
		56 Geo. 3. c. 52. "An act to amend and render more effectual an act passed in the last session of parliament for enabling spiritual persons to exchange their parsonage houses or glebe lands, and for other purposes therein mentioned"
		(283)
		6 Geo. 4. c. 8. "An act to amend and render more effectual an act passed

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<p>in the 55th year of the reign of his late Majesty, for enabling spiritual persons to exchange their parsonage houses or glebe lands; and for other purposes therein mentioned" (285)</p> <p>[Reference to 7 Geo. 4. c. 66, to render more effectual the several acts to promote the residence of the parochial clergy, by making provision for purchasing houses, &c.] ib. n.</p> <p>[Reference to 1 & 2 Geo. 4. c. 92, to authorise the exchange of lands, &c. subject to trusts for charitable purposes, for other lands, &c.] (287)</p> <p>1 & 2 Geo. 4. c. 93. "An act for vesting all estates and property occupied by or for the naval service of this kingdom in the principal officers of his Majesty's navy, and for granting certain powers to the said principal officers and commissioners" (287)</p> <p>6 Geo. 4. c. 16. "An act to amend the laws relating to bankrupts" (291)</p> <p>[Reference to the cases of READ & WARD, and <i>Ex parte MOUNTFORD, Re PONTEN, as to the effect of notice of the act of bankruptcy</i>] (295) n.</p> <p>1 & 2 W. 4. c. 56. "An act to establish a court in bankruptcy" (296)</p> <p>[Reference to 3 & 4 W. 4. c. 47. to authorise his Majesty to give further powers to the judges of the court of bankruptcy, &c.] ib. n.</p> <p>7 Geo. 4. c. 57. "An act to amend and consolidate the laws for the relief of insolvent debtors in England" (297)</p> <p>[Reference to the cases of JELLIS & MOUNTFORD, and <i>Ex parte SHUTTLEWORTH, Re PACY, as to the debts which will support a fiat of bankruptcy against an insolvent trader</i>] (298) n.</p> <p>1 W. 4. c. 38. "An act to continue and amend the laws for the relief of insolvent debtors in England" (301)</p> <p>[Reference to 2 W. 4. c. 44, continuing the two last-mentioned acts] ib. n.</p> <p>10 Geo. 4. c. 50. "An act to consolidate and amend the laws relating to the management and improvement of his Majesty's woods, forests, parks, and chases; of the land revenue of the crown within the survey of the exchequer in England; and of the land revenue of the Crown in Ireland; and for extending certain provisions relating to the same to the Isles of Man and Alderney" (302)</p> <p>[Reference to 2 W. 4. c. 1, for uniting the office of the surveyor general of his Majesty's works and public buildings with the office of the commissioners of his Majesty's woods, forests, and land revenues, &c.] (303) n.</p>	<p>[Reference to 19 Geo. 3. c. 45, to enable the Chancellor and Council of the DUCHY OF LANCASTER, to sell certain fee-farm and other rents, and to enfranchise copyhold and customary tenements, &c.] (306)</p> <p>2 W. 4. c. 25. "An act to extend and render more effectual two acts of the 1st & 2nd and 3d years of his late Majesty King George the fourth, respecting the estates thereby vested in the principal officers of the ordnance, and to facilitate the public business of the ordnance department" ib.</p> <p>1 W. 4. c. 60. "An act for amending the laws respecting conveyances and transfers of estates and funds vested in trustees and mortgagees; and for enabling courts of equity to give effect to their decrees and orders in certain cases" (311)</p> <p>1 W. 4. c. 65. "An act for consolidating and amending the laws relating to property belonging to infants, femes covert, idiots, lunatics, and persons of unsound mind" (316)</p> <p>2 & 3 W. 4. c. 71. "An act for shortening the time of prescription in certain cases" (320)</p> <p>2. & 3 W. 4. c. 80. "An act to authorise the identifying of lands and other possessions of certain Ecclesiastical and Collegiate Corporations" (523)</p> <p>3 & 4 W. 4. c. 27. "An act for the limitation of actions and suits relating to real property, and for simplifying the remedies for trying the rights thereto" (326)</p> <p>3 & 4 W. 4. c. 74. "An act for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance" (340)</p> <p>[Reference to 7 Geo. 4., repealing 39 & 40 Geo. 3. c. 56 for the relief of persons intitled to entailed estates to be purchased with trust monies, and enacting that where money was subject to be invested in freehold or copyhold land to be settled in tail, it might on petition to a court of equity be paid to the person who would have been tenant in tail of the land, if purchased. But <i>NOTE, the act of 7 Geo. 4. was repealed by the above act of 3 & 4 W. 4. c. 74. §. 70.</i>] (369) n.</p> <p>3 & 4 W. 4. c. 104. "An act to render freehold and copyhold estates assets for the payment of simple and contract debts" (379)</p> <p>3 & 4 W. 4. c. 106. "An act for the amendment of the law of Inheritance" ib.</p> <p>[Suggestion that although copyholds are</p>

<p><i>excepted out of the REGISTER ACTS for Yorkshire and Middlesex, yet as a lessee of copyholds has a common law interest, it is advisable to register such</i></p>	<p>Page</p>	<p><i>leases of copyhold estates as, if the estate were freehold, would require registry</i>..... (383) n.</p>	<p>Page</p>
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RULES AND TABLE OF COSTS

Established by the Court of Common Pleas, pursuant to the act of 3 & 4 W. 4. c. 74, for the abolition of fines and recoveries (384), &c.

COPIES AND NOTES OF JUDGMENTS IN SEVERAL RECENT COPYHOLD CASES; viz.

<p><i>Doe d. Hickman v. Hickman & others</i>, [B. R. Mich. T. 1832.] (390)</p> <p><i>Doe d. Cawthorn v. Mee (or Hawthorn v. Mee)</i>, [B. R. Easter T. 1833.].. (392)</p> <p><i>King v. Turner</i>, [in Canc. May 22, 1833.] (393)</p> <p><i>Doe d. Leach v. Whitaker</i>, [B. R. Tr. T. 1833.] (396)</p>	<p><i>The King v. Lady Jane St. John Midmay</i>, [B. R. Tr. T. 1833.] (404)</p> <p><i>Riddell, widow, v. Jenner & others</i> [C. B. Tr. T. 1833.]..... (408)</p> <p><i>Doe d. Grubb v. The Earl of Burlington</i>, [B. R. 1833.] (413)</p> <p><i>The King v. The lord of the manor of Oundle</i>, [B. R. Easter T. 1834.].. (415)</p>
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THIRD PART (OR TREATISE ON COURTS BARON AND COURTS LEET).

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[Rolls of Court Baron.]

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Presentment of the death of a freeholder, and acknowledgment of tenure by his devisee	ib.	Precept to the bailiff to seise lands forfeited by attainder; and the bailiff's return to be indorsed	(431) n.
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to distrain a freeholder for			

Forms of Warrants, &c. in connection with the Court Leet.

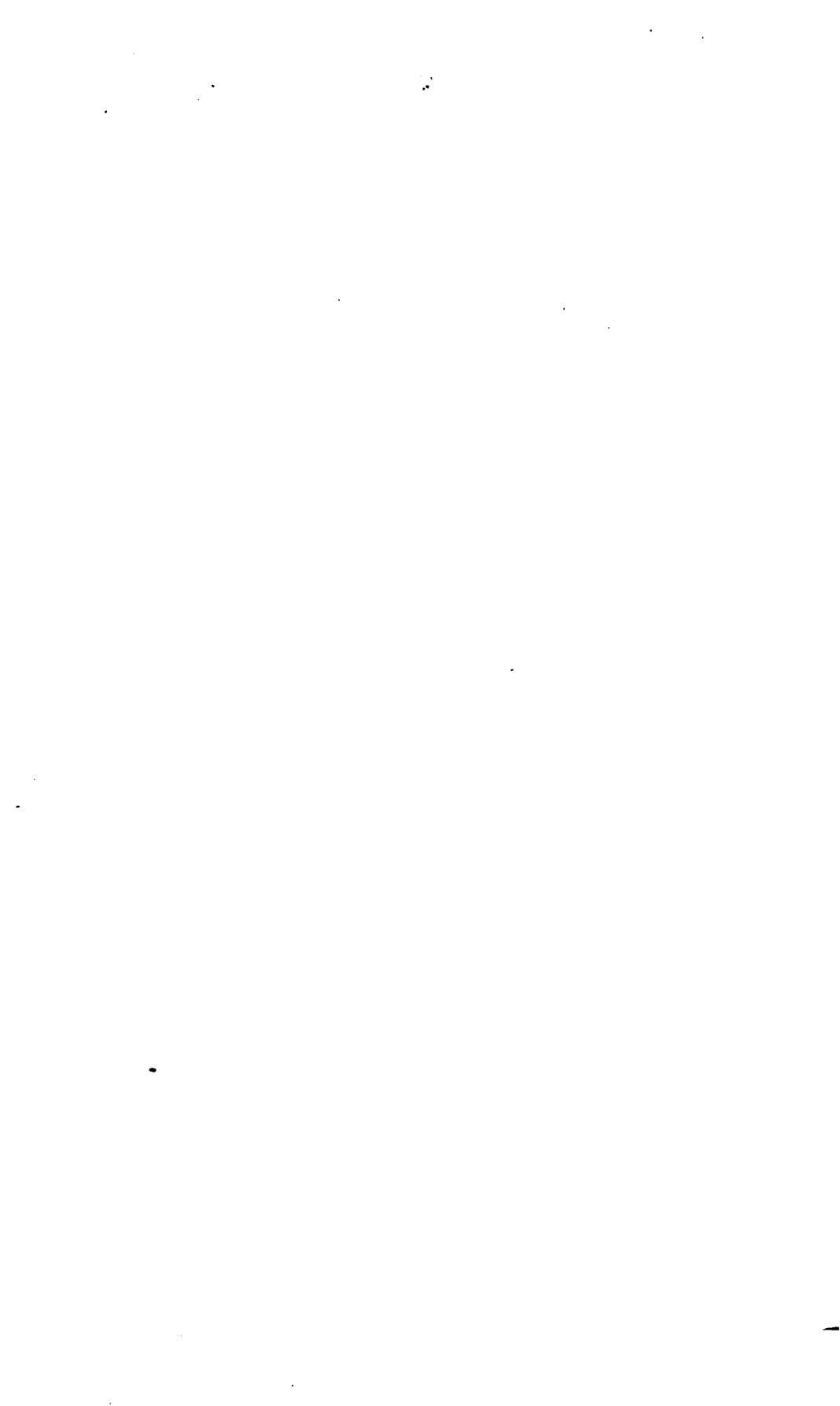
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Warrant to distrain for amerancements (459)	(459)	particular statute before the steward of court leet	(460)
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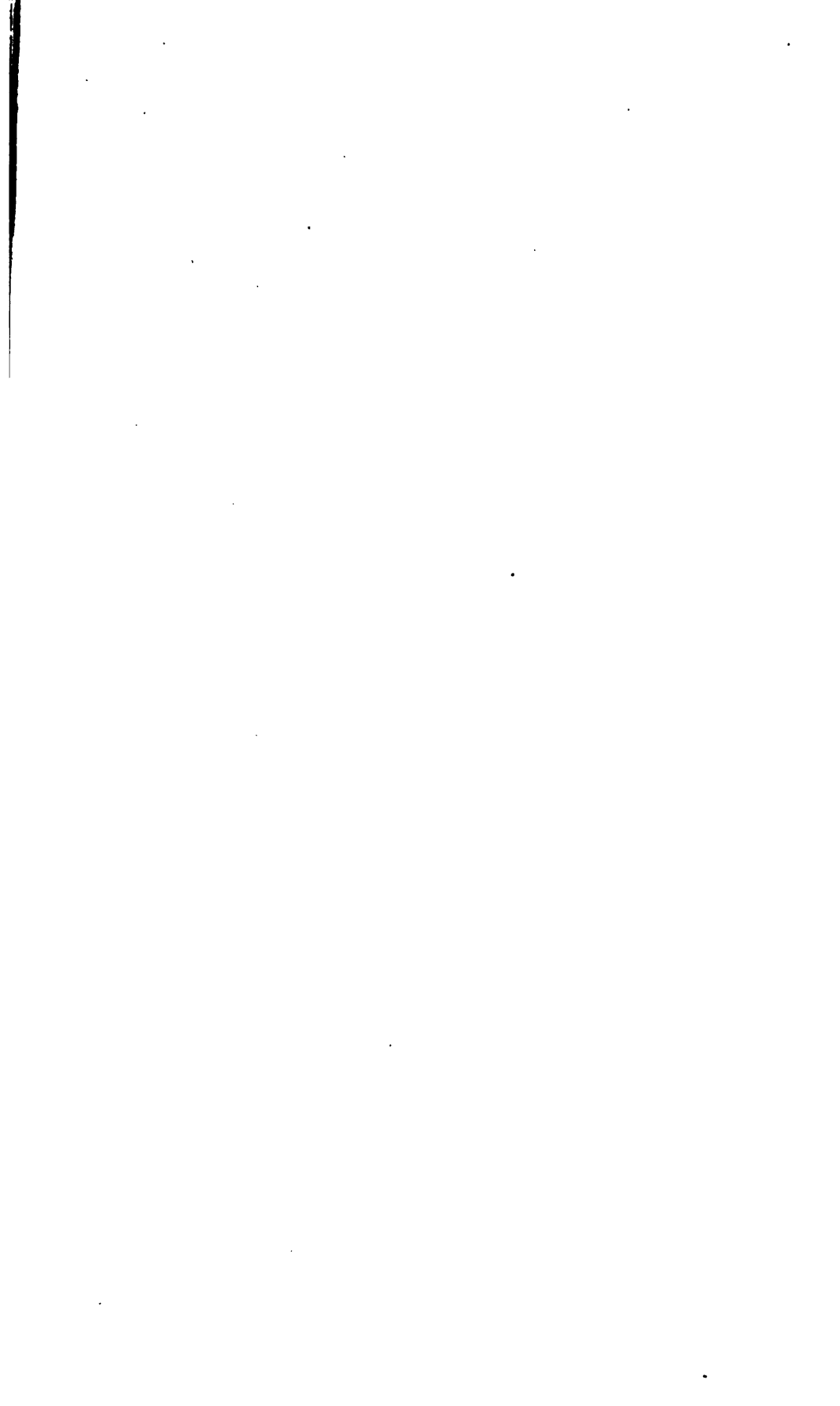
EXTRACTS FROM ACTS OF PARLIAMENT,

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13 Edw. 1. stat. 2. c. 6. [View of Arms, &c.]	(463)	4 & 5 P. & M. c. 3. [An act for the taking of musters]	(470)
1 & 2 Ph. & Mary c. 12. "An act for the impounding of distresses"	ib.	18 Eliz. c. 10. [An act of addition unto the former acts for amending and repairing of highways]	ib.
1 [2] Jac. 1. c. 5. "An act to prevent the overcharge of the people by stewards of court leets and court barons"	(464)	23 Eliz. c. 10. [An act for the preservation of pheasants and partridges]..	ib.
[Reference to Westm. 1. c. 33, against maintenance. (Vide also Westm. 2. c. 36. Ante pt. 3. p. 750 n.)]	(465)	1 [2] Jac. 1. c. 22. [An act concerning tanners, curriers, shoemakers, &c.] (See 48 Geo. 3. c. 60.)	(471)
4 Ed. 4. c. 1. [The length and breadth of cloths made to be sold: no cloths wrought beyond sea shall be brought into England]	ib.	21 Jac. 1. c. 21. [An act concerning hostlers and innholders].	ib.
14 & 15 Hen. 8. c. 10. [The penalty for unlawful hunting the hare]	(466)	[Reference to 31 Eliz. c. 7, 'against the erecting and maintaining of colleges']	(472) n.
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33 Hen. 8. c. 9. [The bill for the maintaining artillery and the debarring of unlawful games]	ib.	1 Ed. 4. c. 2. "Justices of peace may award process upon indictments taken in sheriff's tourns"	ib.
2 & 3 Ed. 6. c. 10. [The bill for true making of malt]	(469)	13 & 14 Car. 2. c. 12. "An act for the better relief of the poor of this kingdom"	(479)
2 & 3 Ed. 6. c. 15. [The bill of conspiracies of victuallers and craftsmen]..	ib.	11 Geo. 1. c. 4. "An act for preventing the inconveniences arising for want of elections of mayors or other chief magistrates of boroughs or corporations," &c.	(480)
7 Ed. 6. c. 5. [The act to avoid the excessive prices of wine]	ib.		

THE END.





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