END OF INDEX TO NOTES

The customary division of personality on a death, in restraint of the testamentary power, prevailed in the province of York, 176. b. n. 5. § 7. 6.

Yard-land,
66. a. n. 2.
Year and day,
250. b. n. 1.

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

Chap. I. Fee simple. Sect. I.

TENANT in fee simple is he which hath lands or tenements to hold to him and his heirs for ever. And it is called in a Latin, feudum simplex, for feudum is the same that inheritance is (1), and simplex is as much as to say, lawfull or pure. And so feudum simplex signifies a lawfull or pure inheritance. Quia feudum idem est quo hereditas, et simplex idem est quo legitimum vel purum. Et sic feudum simplex idem est quo hereditas legitima, vel hereditas pura. For if a man would purchase lands or tenements in fee simple, it behoves

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

which was the first time of limitation set down by any act of parliament, and so from the reign of R. 1. &c. But this prescription of time out of memory of man was (as Littleton here saith) at the common law, and limited to no time. Also here is implied a maxim of the law, viz. that whatsoever was at the common law, and is not ousted or taken away by any statute, remaineth still.

"Common law." The law of England is divided, as hath beene said before, into three parts; 1. the common law, which is the most general and ancient law of the realm, of part whereof Littleton wrote; 2. statutes or acts of parliament; and 3. particular customs (whereof Littleton also maketh some mention.) I say particular, for if it be the generall custom of the realm, it is part of the common law.

The common law has no controller in any part of it, but the high court of parliament; and if it be not abrogated or altered by parliament, it remaineth still, as Littleton here saith. The common law appeareth in the statute of Magna Charta and other ancient statutes (which for the most part are affirmations of the common law) in the original writs, in judicial records, and in our books of terms and years. Acts of parliament appear in the rolls of parliament, and for the most part are in print. Particular customs are to be proved.

Sect. 171.

ALSO, every borough is a towns (chesun burgh est un ville), but not a converso. More shall be sayd of customs in the Tenure of Villenage.

TOWN (ville), villas, quasi villa, quod in eam conveniant fructus. And it is called vicus, because it is a place. Villa est ex pluribus mancipiis viciniac et collatia ex pluribus viciniac. If a town be decayed so as no houses remaine, yet it is a town in law. And so if a borough be decayed, yet shall it send burgesses to the parliament, as Old Safford and others do. It cannot be a town in law, unless it hath, or in time past hath had, a church, and celebration of divine service, sacraments and burialia. What alteration hath beene made in towns, hears what a great lawyer saith. In Anglia villula tam parva in viribus non potest, in quod non est miles, agrarius, colui et patriciiessae, &c. magna et iuxta possessionem, ne non liber liber tenentes alii et calcei plurum, uti patrimonii suifficientes, &c. And it appeareth by Littleton, that in such is a town, and a borough is the species; for he saith that every borough is a town, but every town is not a borough. Et sub applicatione villarumominantium burgi de viis.

Deberencor, or berenecor, in Domneasy signifieh a [116. a.] towns. His berenecor pertinens ad Berckley. (Et sic recitent plures vicini villat.) There he is Eadred, and eighteenth.


[116. a.]


TENURE in villenage is most properly, when a villein holds of his lord, to whom he is a villein, certain lands or tenements according to the custom of the manor, or otherwise at the will of his lord, and to do to his lord villeine service, as to carry and recarry the dung of his lord out of the city, or out of his lord's manor unto his lord's land, and to spread the same upon the land, and such like; hors del city, ou del manor (2), son seignior, jaques a le terre, ou son seignior; en gisant esso (3) sur le terre, et huymosodi. And some free men hold their tenements according to the custom of certain months, by such services. And their tenure also is called tenure in villenage, and yet they are not villeins; for no land holden in villenage, or villain land, nor anyCustom arising out of the land, should ever make a freeman villein. But a villein may make free land to bee villeine land to his lord. As where a villein purchased lands in fee simple, or in fee tail, the lord of the villein may enter into the land, and oust the villeine and his heirs for ever; and after the lord (if hee will) may let the same land to the villein, to hold in villenage.

"TENURE in villenage." Villeine is from the French word villeine, and that a ville, quia adscripsit adscripsit; for they which are now called villani, of ancient times were called adscrip- tissi. And in the common law he is called nativos; quia pro seremo parte natius est servus: and this is hee which the villains call servus. In They are in the Saxon tonge is liber, and there servus. The old sometimes written theame corruptly is an old Saxon word, and signifieth potentatem habitatur in natura sine villano, cum eorum sequentia, terrae, bosii et casus. But tame sometimes theame, is of another signification; for it is an old Saxon word, and signifieth, where a man can.

(1) We do not observe that there is any thing in the statute of Charles the second for taking away military tenures, which in the least varies the tenure by burbage. For further information about burbage and borowges, see Brad, on Bor. Mad. Firm. Burg. Squire's Anglia Sax. Gov. 1st. ed. tit. Buroughs in the index, and Wright's Ten. 205. — [Note 150.]

(2) In L. and M. and Rob. the words are del cite (which seems used in the