

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

Chap. 1.

Fee simple.

Sect. 1.

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

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

which was the first time of limitation set downe by any act of parliament, and so from the reiguo 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 maxime of the law, viz. that whatsoever was at the common law, and is not ousted or taken away by any statute, remaineth still.

(Ante 110. b.
Post 344. a.)

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

(Prof. to 8th
Co.)

The common law has no controler in any part of it, but the high court of parliament; and if it be not abrogated or altered by parliament, it remaines 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 originall writs, in judiciall records, and in our bookes of termes and yeares. Acts of parliament appeare in the rolls of parliament, and for the most part are in print. Particular customes are to be proved.

Sect. 171.

ALSO, every borough is a townes (chescun burgh est un ville), but not à converso. More shall be sayd of custome in the Tenure of Villenage.

(2 Inst. 669.)
Vid. Llnwood,
verbo Vicus.
Bract lib. 5. fol.
434. & lib. 2.
fol. 211. For-
tescune, cap. 29.
7 E. 6. Fines
levie de terre.
Br. 91.
34 E. 1. Quare
imp. 187.
Fortescune, cap.
29.

"TOWNE (villa)," *villa, quasi vehilla, quod in eam convehantur fructus.* And it is called *vicus*, because it is *prope viam*. *Villa est ex pluribus mansionibus vicinata & collata ex pluribus vicinis.* If a town be decayed so as no houses remaine, yet it is a townes in law. And so if a borough be decayed, yet shall it send burgesses to the parliament, as Old *Salisbury* and others doe. It cannot be a townes in law, unlesse it hath, or in time past hath had, a church, and celebration of divine service, sacraments and burials. What alteration hath beene made in townes, heare what a great lawyer saith. *In Anglid villula tam parva inveniri non poterit, in quâ non est miles, armiger, vel paterfamilias, &c. magnis ditatus possessionibus, necnon liberi tenentes alii & valecti plurimi, suis patrimoniiis sufficientes, &c.* And it appeareth by *Littleton*, that a townes is the *genus*, and a borough is the *species*; for hee saith that every borough is a townes, but every townes is not a borough. *Et sub appellatione villarum continentur burgi & civitates.*

Fortescune, cap.
24.

Domesday,
Glouc.

Berevica, or berewit, in Domesday signifieth a [116.] townes. Ha berevica pertinent ad Berchley. (Et sic [a] recitat plus quàm viginti villas.)

There be in *England* and *Wales* eight thousand