

CHAPTER V. OF THE ANCIENT ENGLISH TENURES.

1. *Why are the terms tenement, tenant, and tenure, so generally used?*—59.

Almost all the real property of England is, by the policy of her laws, supposed to be granted by, dependent upon, or holden of, some superior lord. The thing holden is styled a tenement, the possessors thereof tenants, and the manner of their possession a tenure.

2. *Who is the lord paramount, or above all?*—60.
The King is so styled.

3. *Who were tenants paravail?*—60.

Such tenants as held under the king immediately, when they granted out portions of their lands to inferior persons, became also lords with respect to those inferior persons, as they were still tenants with respect to the king; and, thus partaking of a middle nature, were called *mesne*, or middle lords. The lowest tenant, he who was supposed to make avail or profit of the land, was called tenant *paravail*.

4. *Who were called tenants in capite?*—60.
Those who held their lands immediately under the king.

5. *What were the natures of the several services, or renders, that were due to the lords from their tenants?*—60.

In respect of quality, they were either free or base services; in respect of their quantity and the time of exacting them, they were either certain or uncertain.

6. *What were free services?*—60.

Such as were not unbecoming the character of a soldier or a freeman to perform; as, to serve under his lord in the wars, to pay a sum of money and the like.

7. *What were base services?*—61.

Such as were fit only for peasants, or persons of a servile rank; as, to plow the lord's land, to make his hedges, to carry out his dung, or other mean employments.

8. *What were certain services?*—61.

The certain services, whether free or base, were such as were stinted in quantity, and could not be exceeded on any pretence; as to pay a stated annual rent, or to plow such a field for three days.

9. *What were the uncertain services?*—61.

They depended upon unknown contingencies; as to do military service in person, or pay an assessment in lieu of it, when called upon; or to wind a horn whenever the Scots invaded the realm; which are free services: or to do whatever the lord should command, which is a base or villein service.

10. *What, according to Bracton, were the four principal kinds of lay tenure?*—61, 62.

First, tenure in chivalry per *servitium militare*, or by knight-service. Second, *liberum socagium*, or free socage, where the service was not only free, but also certain, as by fealty, &c. Third, *purum villenagium*, absolute or pure villenage, where the service was base in its nature, and uncertain as to time and quantity. Fourth, *villenagium privilegiatum*, or privileged villenage; where the service was base in its nature, but reduced to a certainty.

11. *What constituted tenure by knight-service?*—62.

It differed in very few points from a pure and proper feud, being entirely military, and the genuine effects of the feudal establishment in England: to make a tenure by knight-service a determinate quantity of land was necessary, which was called a knight's fee, *feodum militare*.

12. *What was the redditus of the tenant by knight-service?*—62.

He was bound to attend his lord to the wars, for forty days in every year, if called upon, as his *redditus*, rent, or service, for the land he claimed to hold.

13. *What were the incidents to knight-service?*—63.

Knight-service drew after it these seven fruits and consequences, as inseparably incident to the title in chivalry; viz., aids, reliefs, primer seizin, wardship, marriage, fines for alienation, and escheat: all these are of feudal original.

14. *What were the aids granted by the tenant?*—63.

They were principally three; First, to ransom the lord's person, if taken prisoner; secondly, to make the lord's eldest son a knight; thirdly, to marry the lord's eldest daughter, by giving her a suitable portion.

15. *What were reliefs?*—65.

Relief, *relevium*, was incident to every feudal tenure, by way of fine or composition with the lord for taking up the estate which was lapsed, or fallen in, by the death of the last tenant.

16. *What was primer seizin?*—66.

It was a feudal burden, only incident to the king's tenants *in capite*, and not to those who held of inferior or *mesne* lords. It was a right which the king had, when any of his tenants *in capite* died seized of a knight's fee, to receive of the heir (provided he were of full age) one whole year's profits of the lands, if they were in immediate possession; and half a year's profits, if the lands were in reversion expectant on an estate for life.

17. *What was wardship?*—67.

If the heir was under the age of twenty-one, being a male, or fourteen, being a female, the lord was entitled to the wardship of the heir, and was called the guardian in chivalry. It consisted in having the custody of the body and lands of such heir, without any account of the profits, till the age of twenty-one in males, and sixteen in females.

18. *When the heir came of full age was he obliged to receive knighthood?*—69.

Yes; provided he held a knight's fee *in capite*, he was compellable to take knighthood, or else pay a fine to the king.

19. *What were fines upon alienation?*—71.

They were fines due to the lord for every alienation, whenever the tenant had occasion to make over his land to another.

20. *What was attornment?*—72.

The lord could not alienate his seignory without the consent of the tenant, which consent was called an attornment.

21. *What was an escheat?*—72.

The last consequence of tenure in chivalry was escheat, which is the determination of the tenure, or dissolution of the mutual bond between the lord and tenant, from the extinction of the blood of the latter by either natural or civil means. In such cases the land *escheated*, or fell back to the lord of the fee; that is, the tenure was determined by breach of the original condition expressed or implied in the feudal donation.

22. *What was tenure by grand serjeanty, per magnum servitium?*—73.

That whereby the tenant was bound, instead of serving the king generally in his wars, to do some special honorary service to the king in person; as to carry his banner, his sword, or the like; or to be his butler, champion, or other officer, at his coronation.

23. *What was tenure by cornage?*—74.

It was to wind a horn when the Scots or other enemies entered the land, in order to warn the king's subjects. It was a species of grand serjeanty.

24. *What was escuage?*—74.

Personal attendance in knight-service growing troublesome, the tenants found means of compounding for it, by making a pecuniary satisfaction in lieu of it. This satisfaction at last came to be levied by assessments, at so much for every knight's fee; and, therefore, this kind of tenure was called *scutagium* and also *escuage*.

25. *What does magna charta say of escuage?*—74.

That no scutage should be imposed without consent of parliament.

26. *By what means were the advantages of the feudal constitution destroyed?*—75.

By the degenerating of knight-service, or personal military duty, into escuage, or pecuniary assessments.

27. *What became of military tenures?*—77.

They were destroyed, at one blow, by the statute 12 Car II., c. 24; and all sorts of tenures, held of the king or others, were thereby turned into free and common *socage*; save only tenures in *frankalmoign*, copyholds, and the honorary services of grand serjeanty.

28. *What is said of this statute?*—77.

That it was a greater acquisition to the civil property of the kingdom than even *magna charta* itself.

CHAPTER VI.

OF THE MODERN ENGLISH TENURES.

1. *What is socage tenure?*—79.

Socage, in its most general and extensive signification, seems to denote a tenure by any certain and determinate service.

2. *Does it still subsist?*—79.

Yes; it not only subsists to this day, but has in a manner absorbed and swallowed up, since the statute of Charles the Second, almost every other species of tenure.

3. *Of what sorts is socage?*—79.

Free and villein: free socage, where the services are not only certain but honorable; and villein socage, where the services, though certain, are of a baser nature.

4. *What is the etymology of the word?*—80, 81.

It is derived from the Saxon appellation *soc*, which signifies liberty or privilege, and, being joined to a usual termination, is

called socage, in Latin *socagium*, signifying thereby a free or privileged tenure.

5. *What is the origin of socage tenure?*—81-83.

It seems probable that the socage tenures were the relics of Saxon liberty. Gavelkind, which prevails in Kent, is generally acknowledged to be a species of socage tenure, the preservation whereof is a fact universally known.

6. *Since the certainty of its services is the criterion of socage, what does this species of tenure include?*—81.

It includes under it all other methods of holding free lands, by certain and invariable rents and duties, and in particular, *petit serjeanty*, tenure in burgage, and gavelkind.

7. *What is petit serjeanty?*—82.

As defined by Littleton, it consists in holding lands of the king, by the service of rendering to him annually some small implement of war, as a bow, a sword, a lance, an arrow, or the like. It bears a great resemblance to *grand serjeanty*; for as the one is a personal service, so the other is a rent or render, both tending to some purpose relative to the king's person.

8. *What is tenure in burgage?*—82.

It is a kind of town socage, where houses, or lands which were formerly the sites of houses in an ancient borough, are held of some lord, in common socage, by a certain established rent.

9. *What is the custom of Borough English?*—83.

That the youngest son, and not the eldest, succeeds to the burgage tenement on the death of his father.

10. *What are the distinguishing properties of gavelkind?*—84, 85.

1. The tenant is of age sufficient to alien his estate by feoffment at the age of fifteen. 2. The estate does not escheat in case of an attainder and execution for felony. 3. In most places the tenant had the power of devising lands, by will, before the statute for that purpose was made. 4. The lands descend to all the sons together.

11. *Was socage tenure of feudal origin?*—86.

Yes; as appears from a comparison of the incidents and consequences of socage tenure with those of tenure in chivalry.

12. *What species of our modern tenures has arisen from pure villenage?*—90.

Copyhold tenures, or tenure by copy of court roll at the will of the lord.

13. *What were villeins?*—92-94.

Sir William Temple says, there were a sort of people in a condition of downright servitude, under the Saxon government, used and employed in the most servile works, and belonging, both they, and their children, and effects, to the lord of the soil, like the rest of the cattle or stock upon it. They were either villeins regardant, or else they were in gross, or at large, that is, annexed to the person of the lord, and transferable by deed from one owner to another. The villein could acquire no property in land or goods. His children were also in the same state of bondage.

14. *What was the origin of copyhold?*—95, 96.

Copyholders are no other but villeins who, by a long series of immemorial encroachments on the lord, have at last established a customary right to those estates, which before were held absolutely at the lord's will.

15. *Did these encroachments grow to be general?*—96.

Yes; they grew to be so universal, that when tenure in villenage was virtually abolished, though copyholds were reserved, by the statute of Charles II., there was hardly a pure villein left in the nation.

16. *What was privileged villenage, or villein socage?*—99.

Such, according to Bracton, as has been held of the kings of England, from the conquest downwards. Tenants in villein socage could not aliene or transfer their tenements by grant, or feoffment, any more than pure villeins could. This tenure is no other than an exalted species of copyhold subsisting at this day, viz., the tenure in ancient demesne.

17. *Of what does ancient demesne consist?*—99.

Ancient demesne consists of those lands or manors, which, though now perhaps granted out to private subjects, were actually in the hands of the crown in the time of Edward the Confessor, or William the Conqueror; and so appear to have been by Domesday Book.

18. *What is tenure in frankalmoigne?*—101.

That whereby a religious corporation, aggregate or sole, holdeth lands of the donor to them and their successors forever.

CHAPTER VII.

OF FREEHOLD ESTATES OF INHERITANCE.

1. *What does an estate in lands, tenements, and hereditaments, signify?*—103.

Such interest as the tenant hath therein: so that if a man grants all his estate in Dale to A, and his heirs, everything that he can possibly grant shall pass thereby.

2. *In what view may estates be considered?*—103.

First, with regard to the quantity of interest which the tenant has in the tenement; secondly, with regard to the time at which that quantity of interest is to be enjoyed; and thirdly, with regard to the number and connections of the tenants.

3. *What is the primary division of estates, with regard to the quantity of interest?*—103.

It is measured by its duration and extent. Thus, either his right of possession is to subsist an uncertain period, during his own life, or the life of another man; to determine at his own decease, or to remain to his descendants after him; or it is circumscribed within a certain number of years, months, or days; or, lastly, it is infinite and unlimited, being vested in him and his representatives forever. And this occasions the primary

division of estates into such as are freehold, and such as are less than freehold.

4. *What is an estate of freehold?*—104.

A freehold, *liberum tenementum*, or frank tenement, is such an estate in lands as is conveyed by livery of seizin, or, in tenements of an incorporeal nature, by what is equivalent thereto. Britton defines it to be "the possession of the soil by a freeman." Such an estate, therefore, and no other, as requires actual possession of the land, is, legally speaking, freehold.

5. *What is the division of estates of freehold (thus understood)?*—104.

Into estates of inheritance, and estates not of inheritance.

6. *How are estates of inheritance divided?*—104.

Into inheritances absolute, or fee-simple; and inheritances limited, one species of which we usually call fee-tail.

7. *Who is tenant in fee-simple, or tenant in fee?*—104.

He that hath lands, tenements, or hereditaments, to hold to him and his heirs forever, generally, absolutely, and simply; without mentioning what heirs, but referring that to his own pleasure, or the disposition of the law.

8. *What is the true meaning of the word fee?*—104, 105.

The true meaning of the word fee (*feodum*) is the same with that of feud or fief, and, in its original sense, is taken in contradistinction to *allodium*.

9. *What word is necessary in the grant, in order to make a fee, or inheritance?*—107, 108.

The word "heirs;" for if land be given to a man forever, or to him and his assigns forever, this vests in him but an estate for life. But this rule is now softened by many exceptions.

10. *What are these exceptions?*—108.

It does not extend to devises by will; or to fines and recoveries, considered as a species of conveyance; or to creations of nobility by writ, for the peer so created hath an inheritance in

his title, without expressing the word "heirs," for heirship is implied in the creation, but in creation of peers by patent the word "heirs" must be inserted; or in grants of land to sole corporations and their successors; or in case of the king, for a fee-simple will vest in him without the word "heirs" or "successors" in the grant.

11. *How are limited fees divided?*—109.

Limited fees are of two sorts: 1. Qualified or base fees; and, 2, fees conditional, so called at the common law; and afterward fees-tail, in consequence of the statute *de donis*.

12. *What is a base or qualified fee?*—109.

It is such a one as has a qualification subjoined thereto, and which must be determined whenever the qualification annexed to it is at an end.

13. *What was a conditional fee at the common law?*—110.

It was a fee restrained to some particular heirs, exclusive of others; and was called a conditional fee, by reason of the condition, expressed or implied in the donation of it, if the donee died without such particular heirs, the land should revert to the donor.

14. *Whence is the origin of fee-tail and reversion?*—112.

From the construction given to the statute *de donis*. The judges determined that the donee had no longer a conditional fee-simple, which became absolute, and at his own disposal, the instant any issue was born; but they divided the estate into two parts, leaving in the donee a new kind of particular estate, which they denominated a fee-tail, and vesting in the donor the ultimate fee-simple of the land, expectant on the failure of issue; which expectant estate is what we now call a reversion.

15. *What estates may, and may not, be entailed by the statute de donis?*—113.

Tenements is the only word used in the statute; and this Sir Edward Coke expounds to comprehend all corporeal hereditaments whatsoever; and also all incorporeal hereditaments, which savor of the realty, that is, which issue out of corporeal ones,

or which concern, or are annexed to, or may be exercised within, the same, as rents, estovers, commons, and the like. Also offices and dignities which concern lands, or have relation to fixed and certain places, may be entailed; but mere personal chattels, which savor not at all of the realty, cannot be entailed. Neither can an office which merely relates to such personal chattels, nor an annuity, which charges only the person, and not the lands of the grantor be entailed under the statute.

16. *What are the several species of estates tail?*—113.

Estates tail are either general or special.

17. *What is tail-general?*—113.

Tail-general is where lands and tenements are given to one, and the heirs of his body begotten.

18. *What is tail-special?*—113, 114.

Tenancy in tail-special is where the gift is restrained to certain heirs of the donee's body, and does not go to all of them in general.

19. *By what distinction are estates in general, and special tail, further diversified?*—114.

By the distinction of sexes in such entails; for both of them may either be in tail-male, or tail-female.

20. *What word is necessary in order to make a fee-tail?*—114, 115.

The word body, or some other word of procreation, to ascertain to what heirs in particular the fee is limited.

21. *How was the statute de donis evaded?*—116.

By the application of common recoveries in the twelfth year of Edward IV., which were then openly declared by the judges to be a sufficient bar of an estate tail.

22. *What is the present state of estates tail?*—119.

They are now reduced again to almost the same state, even before issue born, as conditional fees were in, at common law, after the condition was performed by the birth of issue.

CHAPTER VIII.

OF FREEHOLDS, NOT OF INHERITANCE.

1. *Of what sorts are estates of freehold, not of inheritance, but for life?*—120.

Some are conventional, or expressly created by the acts of the parties; others, merely legal, or created by construction and operation of law.

2. *In what ways may the first be created?*—120.

By deed, or by grant.

3. *Who is a tenant pur autre vie?*—120.

He who holds an estate by the life of another.

4. *Against whom does the law say that all grants are to be taken most strongly?*—121.

Against the grantor, unless in the case of the king.

5. *Are there not some estates for life which may determine upon future contingencies, before the life for which they are created expires?*—121.

Yes; as if an estate be granted to a woman during her widowhood, or to a man until he be promoted to a benefice; in these and similar cases, whenever the contingency happens, when the widow marries, or when the grantee obtains a benefice, the respective estates are absolutely determined and gone. Yet, while they subsist, they are reckoned estates for life.

6. *Why, in conveyances of estates for life, is the grant usually made for the term of a man's natural life?*—121.

In case an estate be granted to a man for his life, generally, it may also determine by his civil death, as if he enters into a monastery, whereby he is dead in law: for which reason, in such conveyances, the grant is usually made "for the term of a man's natural life," which can only determine by his natural death.