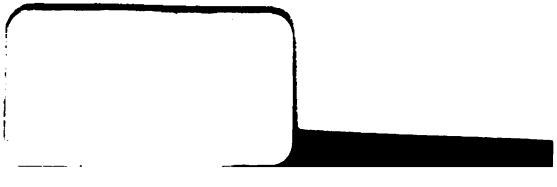

A TREATISE

ON

THE LAW OF COPYHOLDS

AND

CUSTOMARY TENURES OF LAND:

With an Appendix

CONTAINING

THE COPYHOLD ACTS OF 1852, 1858, 1887;

THE PRINCIPAL FORMS USED BY THE BOARD OF AGRICULTURE;

PRECEDENTS OF ASSURANCES, AND FORMS.

SECOND EDITION

REVISED AND ENLARGED

BY

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PREFACE

TO.

THE SECOND EDITION.

It has been found necessary to make considerable additions to the text of this work owing to the statutes and decisions by which the Law of Copyholds has been affected since the appearance of the first edition. The principal outlines of the work have been preserved, although in one or two chapters the arrangement of the argument has been varied, with the object of obtaining greater clearness. The changes in the law introduced by the Copyhold Act, 1887, have made it necessary to re-cast the whole chapter relating to Enfranchisement.

The Appendix will be found to contain the latest instructions and forms relating to inclosures, the exchange and partition of copyholds, and the enfranchisement of land of all tenures from manorial dues and incidents. A few prece-

dents of copyhold assurances and enrolments have been added. In addition to the Copyhold Acts, 1852, 1858, and 1887, extracts have been made from the Copyhold Act, 1841, as well as from those portions of the Wills Act, 1837, and the latest Stamp Act, which seem to be important in relation to copyhold or customary tenure.

Care has been taken to make the Index complete, and to give references to as many reports as possible in the enlarged Table of Cases.

CHARLES I. ELTON.
HERBERT J. H. MACKAY.

33, Chancery Lane,
December, 1892.

PREFACE

TO

THE FIRST EDITION.

THE object of the following chapters is to provide a short and convenient handbook of the Law relating to Copyholds, and to the manorial freeholds with customary incidents, still to be found in so many districts, of which the general resemblance to certain kinds of copyholds has not unfrequently led to disputes and difficulties. It is hoped that the reader will find in this book a succinct statement of those portions of the old law on these subjects which are still necessary to be borne in mind in dealing with customary estates. The writer has endeavoured to shorten the labour of those who are concerned with lands of these kinds, by omitting a great part of what is stated in the old Abridgments, as being rather of historical or archæological value, than of any present practical importance. It has also been thought useful to insert in an Appendix the principal Forms used in dealings with the Copyhold Commissioners, and to print the Copyhold Acts of 1852 and 1858 at the end of the work. It is hoped that there

may be room for a work of this kind, notwithstanding the existence of so many important treatises upon the same subjects, among which the first place must be given to the great work of Serjeant Scriven and the useful manuals of Mr. Rouse and Mr. Cuddon on the subject of the enfranchisement of copyholds.

C. ELTON.

2, New Square, Lincoln's Inn,
May, 1874.

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53 & 54 Vict. c. 5 (Lunacy Act, 1890).....55, 56, 71, 102, 118, 155, 190
c. 29 (Intestates' Estates Act, 1890) 345
c. 69 (Settled Land Act, 1890)..... 37
54 & 55 Vict. c. 10 (Middlesex Registry Act, 1891)..... 95
c. 17 (Charitable Trusts Recovery Act, 1891) 404
c. 39 (Stamp Act, 1891)..75, 101, 312, 313, 346, 369. *And see* App. 572—588
c. 54 (Ranges Act, 1891) 106
c. 64 (Middlesex Registry) 95, 359
c. 65 (Lunacy Act, 1891) 102
55 & 56 Vict. c. 60 (Expiring Laws Continuance Act, 1892) 368, 428

ABBREVIATIONS AND EDITIONS OF TEXT BOOKS CITED.

Bac. Abr.	Bacon's Abridgment of the Law. Seventh edition.
Bracton	Henricus de Bracton, De Legibus Angliæ. Edition 1569.
Black. Comm.	Blackstone's Commentaries on the Laws of England. Twentieth edition. Original pages.
Bro. Abr.	Brooke's La graunde Abridgement. Edition 1576.
Burt. Comp.	Burton's Compendium of the Law of Real Property. First edition.
Cathr. Copyh.	Calthrope's Reading on the relation between a Lord of a Manor and a Copyholder. Second edition.
Cas. & Op.	Cases with Opinions of eminent Counsel in matters of Law, Equity, and Conveyancing.
Co. Copyh.	Lord Coke's Complete Copyholder. Edition 1668.
Co. Litt.	Lord Coke's Commentary upon Littleton's Tenures. Seventeenth edition.
Com. Dig.	Comyn's Digest of the Laws of England. Fourth edition.
Cooke, Inclosures	Cooke on Inclosures. Fourth edition.
Cru. Dig.	Cruise's Digest of the Laws of England. Second edition.
Dart, V. & P.	Dart's Vendors and Purchasers. Sixth edition.
Dav. Conc. Prec. in Conv.	Davidson's Concise Precedents in Conveyancing. Fifteenth edition.
Dav. Conv. Prec.	Davidson's Precedents and Forms in Conveyancing. Fourth edition.
Fitz. Abr.	Fitzherbert's La graunde Abridgement. Edition 1565.
Fitz. Nat. Brev.	Fitzherbert's Natura Brevium. Ninth edition.
Fleta	A Commentary on the Law of England. Second edition.
Gilb. Ten.	Gilbert's Law of Tenures. Fourth Edition.
Hunt, Boundaries	Hunt's Law of Boundaries and Fences. Second edition.

Inst.	Lord Coke's Second, Third and Fourth parts of the Institutes of the Laws of England. Third edition.
Kitch. Jurisd.	Kitchyn on Jurisdictions, or the lawful authority of Courts Leet, Baron, &c. Third edition.
Litt.	Littleton's Tenures. *See* Co. Litt.
Phill. Evid.	Phillipps on the Law of Evidence. Seventh edition.
Rob. Gav.	Robinson on Gavelkind. Third edition.
Rouse, Cop. Enfr. Man.	Rouse's Copyhold Enfranchisement Manual. Third edition.
Scriv. Copyh.	Scriven on Copyholds. Fourth edition.
Scrogg, Courts	Scrogg's Practice of Courts-Leet and Courts-Baron. Third edition.
Vin. Abr.	Viner's Abridgment of Law and Equity. Second edition.
Watk. Copyh.	Watkins on Copyholds. Fourth edition. Original pages.
Watk. Desc.	Watkins on Descents. Third edition.
Woolrych, Commons	Woolrych on the Law of Rights of Commons. First edition.

CORRIGENDA.

Page 118, note (*y*), *for* c. 39, *read* c. 5.

Page 182, line 4, and page 184, note (*u*), *for* Shepherd, *read* Sheppard.

Page 197, note (*a*), *for* Budge, *read* Tudge.

Page 317, line 26, *for* fines, *read* fees.

Page 336, line 8, *dele* of.

Page 338, line 8, *for* Lydiard, *read* Lidiard.

Page 438, line 5, *for* 1812, *read* 1802.

Page 441, line 30, *for* possession, *read* possessions.

A Treatise

ON THE

LAW OF COPYHOLDS.

CHAPTER I.

INTRODUCTORY.

Nature of copyholds.

It is intended in the following chapters to discuss the chief points in the law of copyholds, including in that term all those customary estates the title to which is not only modified but altogether constituted by local custom (*a*).

The following is Littleton's definition:—"Tenant by copy of court-roll is as if a man be seised of a manor, within which manor there is a custom which has been used time out of mind of man that certain tenants have (been) used to have lands and tenements to hold to them and their heirs in fee simple or fee tail, or for life, &c., at the will of the lord according to the custom of the same manor. And such a tenant may not aliene his land by deed, for then the lord may enter as into a thing forfeited unto him. But if he will aliene his land to another, it behoves him after the custom to surrender the tenements in court into the hands of the lord to the use of him that shall have the estate. And these tenants are called tenants by copy of court-roll, because they have no other evidence concerning their tenements but only the copies of court-roll. . . . And although some such tenants have an inheritance according

(*a*) *Brown's Case*, 4 Rep. 21 a; Co. Litt. 113 b; Cru. Dig. tit. 10, c. 1.

to the custom of the manor, yet they have but an estate at the will of the lord according to the common law" (*b*). Copyholds may therefore be compendiously described as estates in some parcel of a manor, founded on the lord's grant and tenant's admittance enrolled in the customary court, amounting in law apart from the custom to mere tenancies at will, but where the custom comes into question having a more permanent character. In the same land the lord has a freehold and the tenant a customary estate. They are mainly distinguished from freeholds by this criterion, that all alienations must be in part at least transacted in the lord's customary court; and hence the proper evidences of title to such estates are copies of the court-rolls, and the tenants are denominated copyholders (*c*). Except under certain special circumstances which will be afterwards mentioned, a copyhold estate cannot be alienated by any common-law conveyance.

Customary freeholds.

Besides copyholds at the will of the lord, there are some customary estates which are held according to the custom of the manor, but not at the will of the lord. These are called customary freeholds, and were at one time considered to be of a freehold nature (*d*); but it is now settled that they are of the nature of copyholds, and that the freehold inheritance is in the lord of the manor (*e*); and there are besides some other varieties of copyholds, which will be afterwards described.

There are also several kinds of freehold tenure, in which the title is modified, though not constituted, by local custom; and these must be carefully distinguished from the customary freeholds mentioned above. It will be convenient to give a short account here of some of the ancient tenures, in order to make clear the distinction

(*b*) Litt. ss. 73—75, 77; Co. Litt. 57 b—60 a.

(*c*) Burt. Comp. ss. 1258—1263.

(*d*) *Gale* v. *Noble*, Carth. 432; and see *Bingham* v. *Woodgate*, 1 R. & M. 32.

(*e*) *Stephenson* v. *Hill*, 3 Burr. 1273; *Thompson* v. *Hardinge*, 1 C. B. 940; *Portland* (*Duke of*) v. *Hill*, L. R. 2 Eq. 765.

between those estates which are wholly supported by custom and those which merely have certain customary qualities and incidents.

The chief division of tenures was based in part upon the certainty or uncertainty of the amount of service due, and in part upon the supposed dignity or baseness of the service. Division of tenures.

In the spiritual tenure of frankalmoigne, or free alms, and in all the military tenures, the services were both free and uncertain; but from all other free tenants a fixed amount of services was due, and their holdings were included under the general name of socage (*f*). This term seems to have been originally applied to fixed services of husbandry. Where these rustic services had not been commuted for a money-rent, the tenure was called villein socage, as distinguished from free and common socage. The term villein socage is also used as an equivalent for privileged villeinage. Frankalmoigne. Tenure in socage.

Where the service was of a base kind, the tenure was at first known as villeinage, of which there were several kinds, some of which developed into copyholds, while the rest have long since become obsolete. Littleton, in defining the term, said:—"Tenure in villeinage is most properly when a villein holdeth 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 his lord villein service; . . . . and some free men hold their tenements according to the custom of certain manors by such services, and their tenure also is called tenure in villeinage; and yet they are not villeins, for no land held in villeinage, or villein land, nor any custom arising out of the land, shall ever make a free man villein" (*g*). Of the various kinds of villeinage, the most important were pure villeinage and privileged villeinage. Tenure in villeinage.

Pure villeinage was where a serf held land of his master

(*f*) Co. Copyh. s. 18. (*g*) Litt. s. 172.

on condition of doing what he was bidden, or where either a free man or a serf held land at the will of the lord according to the custom of the manor by base and uncertain service (*h*). Privileged villeinage was where land was held according to the custom of the manor by services which were base and servile, but certain and expressed by name (*i*). Tenants of the latter class were most usually found in manors belonging to the Crown.

Customary tenants in villeinage.

At some very early time most of the dues and services of all these customary tenants in villeinage were reduced to a certainty, and were recorded in the court-rolls. Customary tenants in villeinage were described in the Dialogue of the Exchequer compiled in the time of Henry II. They are mentioned in the writ called *Extenta Manerii*, printed among the statutes made in 4 Edw. I., in the following terms:—"It is to be inquired also of the customary tenants, how many they are, and how much land each holds: what are the services of each in work or customary payments: what the works and customary services of each are worth yearly: how much rent of assise besides the work and customary dues each pays yearly, and which of them may be taxed at the will of the lord, and which not." As early as 1368 they are called tenants by the roll according to the will of the lord (*k*). In the reign of Henry VI. it was held that a customary tenant ejected by his lord had no remedy but to petition in the lord's court (*l*). But in the reign of Edward IV. it was held that a copyholder, observing the custom and performing his services, might have an action of trespass against the lord who ejected him (*m*). It was soon afterwards acknowledged that the will of the lord was exerciseable only according to the custom of the manor, and the customary tenants

(*h*) Litt. s. 172.
(*i*) Bracton, i. c. 11, fo. 7.
(*k*) Yearb. Mich. 42 Edw. III. fo. 25.
(*l*) Litt. s. 77; Fitzh. Abr. "Subpena," 21.
(*m*) Yearb. Mich. 7 Edw. IV. 19, and Mich. 21 Edw. IV. 80 b; Co. Litt. 61 a.

thus obtained a kind of ownership, which from its liability to arbitrary fines and quit-rents was at first little better than a tenancy at rack-rent.

As other tenures in villeinage disappeared, there remained in the end three kinds of customary tenure which are now all called copyholds, and which differ rather in the history of their origin than in the rules by which they are governed, viz.:—

Division of copyholds.

1. Copyholds proper, which are described as parcel of the manor held at the will of the lord according to the custom of the manor.

2. Customary freeholds, or customaryholds, which are described as parcel of the manor held according to the custom thereof, but not at the will of the lord.

Tenant-right estates.

3. Tenant-right estates, which are the customary freeholds of the northern parts of England, and are found in the north of Yorkshire, in that part of Lancashire called Over-Sands, in the south-west portions of Durham and Northumberland, in Westmoreland, and over the whole of Cumberland (*n*).

The qualities of these tenant-right estates were discussed by Lord Ellenborough in an important judgment, from which the following sentences are extracted:—"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 government. And although these appear to have many qualities and incidents which do not properly and ordinarily belong to villeinage tenure, either pure or privileged (and out of one or other of these species of villeinage all copyhold is derived), and also have some which savour more of military tenure by escuage certain, which was

(*n*) R. P. Comrs. 3 Rep. 20. See Co. Copyh. s. 32. See also as to tenants by border-services and the defence of Tynemouth Castle, according to the custom of husbandry of the manor, who were held to be copyholders, *Brown* v. *Rawlins*, 7 East, 409.

knight-service; and although they 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 also are alienable contrary to the usual mode by which copyholds are aliened, viz., by deed and admittance thereon; 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 fall in effect within the same consideration as copyholds, (so) that the quality of their tenure, in this respect, cannot properly any longer be drawn in question" (*o*).

Local freehold tenures.

The military tenures being abolished in 1660 by the Act 12 Car. II. c. 24, the only freehold tenures now remaining are the ecclesiastical tenure of free alms and the various kinds of socage. Among these are the local tenures of ancient demesne, burgage, and gavelkind, the nature of which it is necessary briefly to discuss. Difficulties have often arisen from an indiscriminate application to copyhold cases of arguments derived from the rules applicable to these freeholds with customary incidents, which must not be confounded with the customary freeholds mentioned above. The same remark applies to those manorial socage-holdings which survive in so many parts of the country, the free tenants of which resemble copyholders in many respects, as in the liability to customary heriots and reliefs, fines upon alienation, and the like (*p*).

Ancient demesne.

Ancient demesne is a tenure confined to socage lands held of the 1,422 manors which were described as *Terra Regis* in Domesday Book (*q*). The Real Property Com-

1901. 1. Ch. 842

(*o*) *Doe* d. *Reay* v. *Huntington*, 4 East, 271. See also *Burrell* v. *Dodd*, 3 B. & P. 378.

(*p*) See *Passingham* v. *Pitty*, 17 C. B. 299; *Damerell* v. *Protheroe*, 10 Q. B. 20; *Warrick* v. *Queen's Coll.*, *Oxford*, L. R. 6 Ch. 716.

(*q*) Bracton, i. c. 11; Britton, c. 66; Fleta, i. c. 8; Co. Copyh. s. 32; 4 Inst. 269; R. P. Comrs. 3 Rep. 12, 13.

missioners stated that there was some confusion in the law books respecting this tenure: "The copyholders of these manors are sometimes called tenants in ancient demesne, and land held on this tenure is said to pass by surrender and admittance. This appears to be inaccurate. It is only the freeholders who are tenants in ancient demesne, and their land passes by common law conveyances without the instrumentality of the lord." They added that the timber and minerals belonged to the tenant, and that the rent, fines, and services were certain.

There are, however, as a rule in manors of ancient demesne customary freeholders, and sometimes copyholders at the will of the lord, as well as free tenants in ancient demesne properly so called. The freeholders have in many instances peculiar customs of descent, dower, courtesy, &c. In some places the freehold descends to the youngest son by a custom of borough-english, or to the youngest instead of the eldest male in each degree, or to the youngest or eldest among the daughters, or to all the males equally as in gavelkind. The tenure has become of small importance since the exceptional privileges of the tenants have been altered by the Act 3 & 4 Will. IV. c. 74 (*r*). Before that time the tenure might be converted to common socage by the joint act of the lord and tenant, or by the act of the tenant alone if the lord failed to bring his writ of deceit.

Burgage tenure prevails only in certain cities and boroughs, which have existed as such from time immemorial. Littleton says: "For the greater part such boroughs have divers customs and usages which be not had in other towns; for some of them have such a custom, that if a man have issue several sons and dieth, the youngest son shall inherit all the tenements which were his father's within the borough, as heir to his father by force of the custom: which is called borough-english. Burgage.

(*r*) Sects. 4, 5, 6, 40.

Also in some boroughs the wife shall have for her dower all the tenements which were her husband's" (*s*). In some other boroughs the widow has a moiety during her widowhood, or some other customary portion. Borough-english was so called in opposition to the law of descent prevailing in the towns under Norman law. Thus Nottingham was, as late as 1713, divided into the English borough and the French borough; in the one, real property descended to the youngest son in *burgh-Engloyes*, or borough-english: in the other, to the eldest by the ordinary law, which they called *burgh-Francoyes* (*t*).

Gavelkind. The tenure of gavelkind, by which most lands in Kent are held, is a very ancient species of socage, the name being derived from the old word "gafol," which signifies rent paid either in money, produce, or the performance of works of husbandry. Its principal incidents are the partibility of the inheritance among the males in each degree, the right of the widow and widower to have half the land for dower or curtesy until a second marriage (the widower taking his customary estate by the curtesy whether issue has been born of the marriage or not), the freedom from escheat for felony, and the infant's right to aliene by feoffment at the age of fifteen years. In many places in Kent the freeholders are subject to customary heriots, fines, and other ancient dues, and are compellable under penalty of distress to come for admittance into their tenancies.

The most remarkable incident of this tenure being the partibility of the land upon descent, the word "gavelkind" has come to be applied to many copyholds which only resemble the freehold tenure in this particular: but this use of the word is improper, and apt to lead to mistakes. There are some few copyholds in the county, which generally follow the customs of gavelkind freeholds.

(*s*) Litt. ss. 162, 163, 165, 166; Co. Litt. 109 a—111 a.

(*t*) Yearb. Pasch. 1 Edw. III. 12, pl. 38; Rob. Gav., App.

If such a copyhold is enfranchised the customs are extinguished (*u*): but nothing less than an Act of Parliament can alter a custom attached to a freehold tenure, which is said, therefore, to "run with the land," or be "inherent in the land" (*x*). There was at one time a practice of disgavelling by royal prerogative, or under royal licence, which soon became obsolete.

A great number of estates in Kent were afterwards disgavelled by Acts of Parliament, which extended, however, only to the custom of partition of descent (*y*). The list of Acts includes the public Act of 31 Hen. VIII. c. 3, and the private Acts of 11 Hen. VII. c. 23; 15 Hen. VIII. c. 19; 2 & 3 Edw. VI. c. 1; 1 Eliz. c. 7; 8 Eliz. c. 10; and 21 Jac. I. c. 36 (*z*).

All lands in this county are presumed to be held in gavelkind, until the contrary is proved. The test lies in proof of the tenure at the time of the Norman conquest, for "the law of gavelkind is unlike other customs; it is not good if it begins just before the reign of Richard the First. This custom existed long before other customs, and almost before any history of England." No land is now gavelkind which can be shown to have originally been held by a tenure higher than socage, such as frankalmoigne, or one of the military tenures. If the manor was originally in the superior tenure, the demesnes, wastes, advowsons, the freehold of the copyholds, and rents and profits arising out of the soil and belonging to the manor, are still held in free alms or in common socage, and not by the customary tenure (*a*).

Nature of manors.

A manor properly consists of demesne lands, jurisdiction in a court-baron, and services of free tenants in fee liable

(*u*) See *post*, c. xi.

(*x*) *Dickson's Case*, Hetl. 64, 65.

(*y*) Co. Litt. 140 b; *Wiseman* v. *Cotton*, 1 Sid. 135; *Doe* d. *Bacon* v. *Brydges*, 6 M. & Gr. 282.

(*z*) For lists of the lands affected, see Rob. Gav., App., and Elton, Ten. of Kent, c. 16.

(*a*) *Lushington* v. *Llandaff* (*Bishop of*), 2 N. R. 491, 506; Rob. Gav. 57, 63; Elton, Ten. of Kent, 183—190.

to escheat and owing attendance at the court (*b*). If the number of such tenants is reduced below two, the court cannot be held, and the manor ceases to exist (*c*), but may survive as a manor by reputation for the purpose of making a title to franchises or for holding copyholders' courts (*d*). If all the demesnes are alienated the manor as such is extinguished and can be no more than a lordship in gross, and a temporary severance of all the demesnes, as by a lease for years (*e*), will cause a suspension of the manor (*f*).

Whether manor divisible.

Generally speaking, a manor is not divisible (*g*), but there appears to be an exception to this rule in the case of a partition among coparceners. In an early case it was agreed that if upon such a partition the demesnes were allotted to one sister, and the tenants' services to another, there would indeed be an absolute extinction; yet, if one died without issue and the other inherited, the manor

(*b*) *Delacherois* v. *Delacherois*, 11 H. L. Cas. 62.

(*c*) *Bradshaw* v. *Lawson*, 4 T. R. 443.

(*d*) *Curzon* v. *Lomax*, 5 Esp. 60; *Soane* v. *Ireland*, 10 East, 259; and see *Doe* d. *Clayton* v. *Williams*, 11 M. & W. 803.

(*e*) *Marsh* v. *Smith*, 1 Leon. 26, 27; *Hartop* v. *Dalby*, Hetl. 14.

(*f*) As to the antiquity and constitution of manors, see *Glover* v. *Lane*, 3 T. R. 445; *Soane* v. *Ireland*, 10 East, 259; Co. Copyh. s. 31; 2 Bro. Abr. "Tenures," 102; 2 Ro. Abr. 120. Some writers have thought that manors might be created at any time before the statute *Quia Emptores*, 18 Edw. I. c. 1, which was extended to tenants *in capite* by the statute *De Prærogativa Regis*, 17 Edw. II. st. 1, c. 6. Manors existed in their present form early in the eleventh century, and in a very similar form they extend to a much more distant antiquity. There seems no reason to suppose that the number of legal manors was ever much increased after the Norman Conquest in the settled parts of England. Although fresh tenures might be created, the right to hold a new court was a matter of royal prerogative, and after a time it was held that even the king could not make a new court, "for matters which depend upon the continuance of time come not within the compass of the king's prerogative": Co. Copyh. s. 31.

(*g*) *Bright* v. *Forth*, Cro. Eliz. 442; *Sir Moyle Finch's Case*, 6 Rep. 63 a; *The Queen* v. *Buccleugh* (*Duchess*), 6 Mod. 150. As to partition of manors by decrees of the Court of Chancery, see *Cattley* v. *Arnold*, 4 K. & J. 595.

would revive, because on the partition they were in by the act of the law, and the demesnes and services were united again by another act of law (*h*).

What a manor may comprise.

To take a fuller definition, a manor may be described as consisting: 1, of the demesnes of which the lord is seised, whether in his own occupation or in that of his lessees for years, which comprise also the waste lands subject to the tenants' rights of common, and also the lands of the copyholders and customary tenants which at law, and apart from the custom, are regarded as a kind of tenancies at will (*i*); 2, of the services, or the rents and duties reserved upon the original grants in fee, made to the freehold tenants before the statute *Quia Emptores*, 18 Edw. I. c. 1, since which no fresh tenures could be created; 3, of the reversion in those parts of the demesnes which have been granted for life or for an estate-tail, to which may be added that kind of possible reversion which consists in the right of escheat on the occasion of a tenant dying intestate and heirless; 4, and there are in general, either annexed or appurtenant to the manor, a variety of franchises, such as the right to have a court-leet, waifs and strays, or treasure-trove, the liberties of holding fairs and markets, of taking tolls, and the like (*k*); and 5, a court-baron for the free-

(*h*) Yearb. Trin. 12 Hen. IV. fo. 25; Yearb. Trin. 26 Hen. VIII. fo. 4, pl. 15; *Thetford* v. *Thetford*, 1 Leon. 204; *Sir Moyle Finch's Case*, 6 Rep. 63 a. In former times there were numerous examples of the severance of manors between co-heiresses at law or co-heirs in gavelkind, and in one instance a dowager's third was treated as a manor by itself: *Bragg's Case*, Godb. 135.

(*i*) *Att.-Gen.* v. *Parsons*, 2 Cr. & J. 279.

(*k*) Franchises are defined to be royal privileges or branches of the king's prerogative, subsisting in a subject by grant from the crown, or under a prescription implying a grant. They are chiefly of two kinds, viz.: 1, those which were parts of the prerogative originally, as the right to wreck, to the goods and chattels of felons, &c.; and, 2, those which could have no existence until their creation by the crown. The first, but not the second class, are merged in the prerogative when the crown acquires the lands to which they are annexed, and will not pass as appurtenant to the land upon any

holders and a customary court for the copyholders (if any) are necessary incidents to every manor. The manor is presumed to be conterminous with the parish (*l*); but it may comprise more than one parish or township, or may consist of a smaller district (*m*). Where the manor is or has been of the same extent as the parish, it will usually have an advowson appendant to the demesnes which will pass with the manor (*n*), but if once severed will be turned into an advowson in gross. When the manor abuts upon the sea, the fore-shore between the high and low watermarks of the average tides may be parcel of its waste land, and this is generally the case when the lord has by grant or prescription the franchise of taking wreck (*o*). Without any of these profits the lord has rights of appointing officers, and of general superintendence, which make the ownership of a seignory more than a mere "feather in the cap," and render it in any case a valuable right susceptible of possession and actual enjoyment (*p*).

Alienation of the demesnes.

Since no new tenure might be created since 18 Edw. I. by any private person on any conveyance in fee simple, upon the alienation of any of the demesnes they cease for ever to be parcel of the manor, and new services cannot be reserved; and even if freehold lands escheat to the lord or are purchased by him, they cannot become parcel of the manor again, and will not pass by a conveyance of "the manor and lands belonging thereto." But all the lands

new grant without express words, either mentioning the franchise which was merged, or at least stating that the new grantee shall hold the land "in as large and ample a manner as the former owner held it": *Abbot of Strata-Mercella's Case*, 9 Rep. 24 a; *Rex* v. *Capper*, 5 Price, 217, 258. For an account of the principal franchises, see *post*, c. vii.

(*l*) Blackst. Comm. i. 113, 114.

(*m*) Bracton, iv. c. 31, fo. 212; Co. Litt. 58 a.

(*n*) *Higgins* v. *Grant*, Cro. Eliz. 18; *Rooper* v. *Harrison*, 2 K. & J. 86; *Att.-Gen.* v. *Sitwell*, 1 Y. & C. Ex. 559.

(*o*) *Sir Henry Constable's Case*, 5 Rep. 106 a, 107 a; *Ex parte Tomline, Re Walton-cum-Trimley Manor*, 21 W. R. 475; *Att.-Gen.* v. *Emerson*, [1891] App. Cas. 649.

(*p*) *Christchurch (Dean and Ch.)* v. *Buckingham (Duke of)*, 17 C. B. N. S. 391.

which originally formed part of the manor, or were held of it, are said to lie within the ambit of the manor, and in some points are subject to the jurisdiction of its courts, and in common parlance are said to be still "within the manor" (*q*).

Devise of manor.

The devise of a manor carries everything appendant or appurtenant at the time of the testator's death, unless a contrary intention appears by the will (*r*).

Conveyance of manor.

The conveyance of a manor will carry the profits, including minerals under the wastes, even if their existence was not known when the contract was made (*s*); and now all usual rights incident or belonging to a manor will pass under its name, unless a contrary intention appears, by virtue of the Conveyancing and Law of Property Act, 1881 (*t*).

It was formerly held, that if the lord granted away the freehold of all the copyhold lands, or several of them, the grantee would have a kind of manor and might hold courts (*u*). But it is now settled that the land is severed, that no courts can be held, and that the customary estates must be dealt with by common law conveyances, although the copyholders are still said to hold by their customary tenure, and to be liable to all such payments and services as are not connected with attendance at a court (*x*).

Subjects of copyhold tenure.

With respect to the subjects of copyhold tenure, Lord Coke says that "all lands and tenements within a manor, and whatever concerns lands or tenements, may be granted by copy" (*y*), and he selects as examples: 1, a customary

(*q*) *Delacherois* v. *Delacherois*, 11 H. L. Cas. 62. This would seem not to apply to escheated copyholds or lands enfranchised under the Copyhold Acts.

(*r*) *Hicks* v. *Sallitt*, 3 De G. M. & G. 782.

(*s*) *Att.-Gen.* v. *Eucelme Hospital*, 17 Beav. 366.

(*t*) Sect. 6.

(*u*) *Melwich* v. *Luter*, 4 Rep. 26 a; *Neale* v. *Jackson*, 4 Rep. 26 b.

(*x*) *Bright* v. *Forth*, Cro. Eliz. 442; *Bell and Langley's Case*, 4 Leon. 230; *Phillips* v. *Ball*, 6 C. B. N. S. 811. *Cf.* Gilb. Ten. 209; *Lemon* v. *Blackwell*, Skin. 191.

(*y*) Co. Litt. 58 b.

manor (*z*); 2, underwood without the soil, or the separate herbage or vesture of land; and 3, a fair appendant to a manor. "Things that lie not in tenure are not grantable by copy, as rents, commons in gross, advowsons in gross, and such like, all which are incorporeal hereditaments and therefore no rent can issue out of them, neither can they be held by any manner of service. But an advowson appendant, a common appendant, or a fair appendant, may pass by copy, by reason of the principal thing to which they are appendant; and generally what things soever are parcel of the manor, and are of perpetuity, may be granted by copy according to the custom, as underwoods, for after they are cut they will grow again; and so of herbage or any other profit of the manor" (*a*); and he shows that there might be a copyhold grant of "twenty loads of hasel or as many of maple, in the disjunctive, to be cut down and taken by the grantee," or of "twenty trees growing upon Blackacre or Whiteacre to be cut down yearly by the lord and delivered to the grantee on such a day," and the like.

The subjects of customary tenure are most usually portions of the demesne lands which have been demised by copy of court-roll from time immemorial as separate copyhold tenements. By special custom, however, but in all cases with the consent of the homage-jury at a customary court, fresh portions of the waste might be granted as copyholds (*b*); and where the sea-shore or a river-bed forms part of a manor there have been similar customs of granting portions for fishing-places, as fresh copyholds (*c*). But no

(*z*) It was resolved in *Neville's Case*, 11 Rep. 17 a, that a manor may be a copyhold, and that the customary lord may hold courts and grant copies; that the copyhold manor will pass by surrender and admittance, and that its lord shall pay fines on descent and alienation. There can be no freeholders of such a copyhold manor or reputed manor. But see *The King* v. *Stanton*, Cro. Jac. 259.

(*a*) *Hoe* v. *Taylor*, 4 Rep. 30 b; Co. Copyh. s. 42.

(*b*) *Arlett* v. *Ellis*, 7 B. & C. 346; *Northwick (Lord)* v. *Stanway*, 3 B. & P. 346.

(*c*) *Lord Berkeley's Case* in Hale,

creation of new customary tenements can now be made except with the consent of the Board of Agriculture as provided by the Copyhold Act, 1887 (*d*), and the grant, if allowed, operates *ipso facto* as an enfranchisement (*e*).

The tenement need not be a separate portion of the demesnes, but may be a "shifting severalty" in an open field or meadow, or a lot-meadow divided into parcels the occupation of which is interchanged in a yearly course of rotation (*f*). On this point Lord Coke says: "Albeit land be the most firm and fixed inheritance, and fee-simple the most absolute estate a man can have: yet may the same at several times be moveable, sometime in one person and *alternis vicibus* in another, nay, sometime in one place and sometime in another. As for example, if there be 80 acres of meadow which have been used time out of mind to be divided among certain persons, and a certain number of acres appertains to each of these persons, as for example, to A 13 acres to be yearly assigned and allotted out, so as sometime the 13 acres lie in one place and sometime in another, and so of the rest: A hath a moveable fee-simple in 13 acres, and it may be parcel of his manor, albeit they have no certain place" (*g*).

Almost any separate product of land, or a fixed share in any of such products, may be held by copy of court-roll, as the sole and several pasturage without the soil, the vesture, herbage, first-crop or "first-share," after-grass, "tonsure of meadows," and the like, another person having the soil and every other beneficial enjoyment thereof as freehold (*h*). Copyholders are often found to be the tenants in common of woods, sometimes called dole-woods, of the

De Jure Maris, c. 6; *Att.-Gen.* v. *Emerson*, [1891] App. Cas. 649, 658; and see Hunter, Hist. Sou. Yorkshire, i. 157.

(*d*) Sect. 6.

(*e*) The powers and duties of the Land Commissioners were transferred to the Board of Agriculture by 52 & 53 Vict. c. 30.

(*f*) *Pratt* v. *Groome*, 15 East, 235.

(*g*) Co. Litt. 4 a.

(*h*) *James* v. *Tutney*, Cro. Car. 497; *Stammers* v. *Dixon*, 7 East, 200.

furze-bushes and underwood on a moor or waste, of the peat in a turbary, and the like; and shares in a common pasture, and the small plots of pasture in the midst of a waste, called "sheep-heaves" in the northern counties, with or without the ownership of the soil, are frequently the subjects of copyhold tenure (*i*). All these must be carefully distinguished from rights of common, since "independently of any question as to the proper mode of conveyance, the one right was vindicated by actions of trespass or ejectment, and the other by action on the case," and because rent may be reserved upon a grant of the undivided share, but not on a grant of common (*k*).

On the question whether tithes could be held by copy of court-roll very contrary opinions have been expressed. But the weight of authority seems to be on the side of those who think that tithes impropriate could not be of copyhold tenure (*l*). Among other reasons in favour of this opinion is the fact that laymen were incapable of holding tithes until the dissolution of the monasteries, so that it was impossible that there could be any customary descent with

(*i*) *Benson* v. *Chester*, 8 T. R. 396; *Rigg* v. *Lonsdale*, 1 H. & N. 923; *Welcome* v. *Upton*, 6 M. & W. 536; *Doe* d. *Kinglake* v. *Beviss*, 7 C. B. 456. The right of each joint-owner is often called a cattle-gate or stint, especially in the Northern counties; a cattle gate is considered equal to the pasture of one cow or five sheep, and three to be equal to the pasture of two horses. Pasture sufficient for a horse is called a horse-leaze in Dorset. Pasture for a sheep is called "a sheep-gate" in the north, and "a sheep-leaze" in Sussex. Other terms of a like import are beast-gate, calf-gate, cows-grass, pasture-gate, and ox-gang.

(*k*) Co. Litt. 4 b; Burt. Comp. s. 1158; Cooke, Inclos. 44.

(*l*) In *Hoe* v. *Taylor*, Cro. Eliz. 413, it was said that tithes may be granted by copy, if the custom permits it; and that it had been so resolved in *Bourn's Case* (there cited) that a grant of tithes by copy was good. In *Sands* v. *Drury*, Cro. Eliz. 814, the majority of the judges thought that tithes could not be parcel of the manor, and therefore could not be copyhold: and see Gilbert, Ten. 331. In *Musgrave* v. *Cave*, Willes, 319, 324, it was said that they might be parcel of a manor, and, if the custom would warrant it, might for the same reason be granted by copy of court-roll.

respect to them. "They could not descend from ancestor to heir, because they could not be in the hands of any private individual" (*m*). By the common law the right to tithes could not be vested in any lay subject (*n*).

It has, however, been contended by writers of eminence, that rents, commons and advowsons in gross, and other incorporeal hereditaments, may be granted as copyholds, if by possibility they can ever have been parcel of the manor (*o*). And the case of *Musgrave* v. *Cave* (*p*) is usually cited as an express authority for the position. In that case the court certainly expressed an opinion, that "common, tithes, and other things of a like kind, may pass by copy of court-roll by themselves without any lands." But it seems probable that too much stress has been laid on the case in this respect. It was an action of trespass, in which the defendant had pleaded that he had the fourth part of a fold-course "or common of pasture" for so many sheep, which was parcel of the manor held by copy of court-roll at the will of the lord according to the custom. The plaintiff demurred, because it was not alleged "that the said fold-course or common of pasture was appendant or appurtenant to the manor, nor did it appear whether it was appendant, appurtenant, or in gross, or what other sort of right of common it was." It came before the court for judgment on the demurrer, and the only question was, "whether this right of common was well pleaded or not." It was held to be common appurtenant, because it evidently was of none of the other kinds, and the court overruled the main objection, that it could not be parcel of the manor and yet be copyhold, because, as soon as it was once severed and granted without land, it must have ceased to be part

(*m*) *Lushington* v. *Llandaff* (*Bishop of*), 2 N. R. 491, deciding that such tithes could not be of the nature of gavelkind. A similar case as to borough-english lands is cited from Hughes' Abridgment in Rob. Gav. 108.

(*n*) Burt. Comp. s. 1205.

(*o*) Gilb. Ten. 331; 1 Ro. Abr. 498; and see Scriv. Copyh. 105.

(*p*) Willes, 319.

of the manor and so could not afterwards be demised as copyhold. But it was held that, if it were once appurtenant, the tenancy at will of the copyholder did not sever it from the manor. "As we are upon a demurrer, if this right of common as pleaded can be good upon any supposition whatsoever, we must take it to be so."

But although the case under discussion is an authority to show that incorporeal hereditaments of this kind may be copyholds, it is only indirectly an authority for the proposition that common appurtenant can be so held, and it does not decide that rents or commons in gross can be the subjects of customary tenure.

Upon the whole it may still be fairly contended, that incorporeal hereditaments cannot properly be the subjects of copyhold tenure, unless they pass as incident to the corporeal copyhold tenement. "No service can be reserved or due upon the grant of incorporeal things, so that no court can be kept by the grantor, no attendance being due from the grantees of incorporeal inheritances: so as to them there is no lord, and consequently they cannot pass by surrender and admittance, and are not grantable by copy" (*q*).

Copyhold customs.

All the incidents of copyhold tenure, and the rules which determine what the tenant should or should not do, are determined by custom, of which there are two classes applicable to copyholds, viz.: (1) the general custom of copyholds extending to every manor, which is warranted by the common law, and may itself be described as part of the common law or general custom of the realm; and (2) special or particular customs, which prevail only in certain districts, and which must be strictly proved and specially pleaded; such particular customs being of two kinds, either disallowing what the general custom allows, or allowing what it disallows (*r*).

(*q*) Gilb. Ten. 332.

(*r*) Co. Copyh. s. 33; Co. Litt. 63 a. "It is the general custom of the realm, that every copyholder may surrender in court and need not allege any custom therefor.

Customs of this kind have been defined as "local common law," local because confined to a particular district, and common law as opposed to statute law (*s*). The rules that customs must be local, certain, reasonable, and continuous, apply rather to evidence of custom; but it may be stated generally that valid customs are confined to particular ancient districts, must have been peaceably used without interruption in the existence of the right, and being in the nature of local common law, must have been continuously used from time immemorial (*t*). By this it is not meant that there must be direct proof that the custom existed in the reign of Richard I., but that there must be modern user from which the immemorial origin may be presumed, and nothing to upset the presumption; except that in a case where a customary claim is made under the Prescription Act, 2 & 3 Will. IV. c. 71, mere proof of modern origin will not prevail against the usage for the statutory period (*u*). It is a rule, also, that every valid custom must be reasonable, *i. e.*, not absurd, immoral, or prejudicial to the interests of the State, nor destructive of the property where the custom is to be exercised, or of the copyholder's estate, but such as can fairly be imagined to have originated in a local law or in an agreement before the commencement of legal memory (*x*).

No usage can be established by way of custom, which within time of memory was allowed by the common law and since disallowed by statute. No custom can be set up against the express provisions of an Act of Parlia-

So if out of court he surrender to the lord himself, he need not allege in pleading any custom. But if he surrender out of court by the hands of two or three copyholders, &c., or out of court by the hand of any other, these customs are particular, and therefore he must plead them." Co. Litt. 59 a.

(*s*) *Per* Jessel, M. R., in *Hammerton* v. *Honey*, 24 W. R. 603.

(*t*) Co. Litt. 110 b, 114 b; Co. Copyh. s. 33; *Case of Tanistry*, Dav. 28 a.

(*u*) Sect. 1; and see *De la Warr (Earl)* v. *Miles*, 17 Ch. Div. 535.

(*x*) *Wilkes* v. *Broadbent*, 1 Wils. 63; *Badger* v. *Ford*, 3 B. & Ald. 153; *Salisbury (Marquis of)* v. *Gladstone*, 9 H. L. Cas. 692.

ment: but a statute merely declaratory of the common law, whether its form be negative or affirmative, will not affect the continuance of a local custom. "A statute made in the affirmative, without any negative expressed or implied, does not take away the common law" or affect the existence of a custom (*y*).

(*y*) Co. Litt. 115 a, n. 8, 9 (Harg.); 2 Inst. 200.

CHAPTER II.

NATURE OF ESTATES IN COPYHOLDS.

BEFORE describing the modes of conveyance which are appropriate to copyholds, it is proposed to treat in this chapter of the different kinds of estate which may subsist in copyhold tenements (*a*). The customary estates of copyholders are in general subject to the same rules as those which relate to freeholds in respect of estates in contingency and expectancy, estates held in undivided shares, and equitable estates. But there are in many places special customs as to reversionary estates in copyholds for lives, which will be noticed later. And as to contingent estates, it should be observed, that inasmuch as the freehold is in the lord and not in the copyholder, a contingent remainder in copyholds was not destroyed (even before the Act 8 & 9 Vict. c. 106) by the forfeiture, surrender, or merger of the particular estate (*b*).

General rules as to estates in copyholds.

Contingent estates.

As to undivided estates, it should be recollected that joint-tenants hold in a kind of partnership with benefit of survivorship, having a joint title to the whole of the land in one right; tenants in common have each a portion of the land, several though undivided, and claim by separate titles or in separate rights; coparceners, on the other hand, claim always by one title of descent, and are of an intermediate nature between joint-tenants and tenants in common, having one title but no benefit of survivor-

Undivided estates.

(*a*) For an analysis of the estates of different kinds which may exist both in freehold and copyhold tenements, see Co. Copyh. s. 47.

(*b*) *Lovell* v. *Lovell*, 3 Atk. 11, 12; *Pickersgill* v. *Grey*, 30 Beav. 352.

ship; it follows, that joint-tenants can release after admittance but cannot convey directly to each other, and that tenants in common cannot release, while coparceners may adopt either method (*c*).

Equitable estates.

Equitable estates in copyholds "possess in general all those incidents of the customary property which directly concern the tenant, but not those which are established merely for the benefit of the lord: it being sufficient for the latter to have the person named in the roll for his tenant, without troubling himself to know that he is a trustee" (*d*). The equitable interest may be modified or subdivided in any way, so long as the custom governing the legal estate is not thereby infringed. But these limits must be observed: as where, for example, the custom of the manor does not permit entails of the legal estate, a limitation of the trust to a man and the heirs of his body will pass a fee conditional and not an equitable estate-tail (*e*).

Trusts.

Copyholds are within the provisions of the Statute of Frauds "that all declarations or creations of trusts or confidences of any lands, tenements, or hereditaments, shall be manifested and proved by some writing signed by the party who is by law enabled to declare such trust, or by his last will in writing, or else they shall be utterly void and of none effect (*f*). But, as in the case of freeholds, there are many constructive trusts of copyhold lands which are not governed by the rule thereby enacted. Such are resulting trusts, terms attendant on the inheritance by implication, and the equities arising from a vendor's lien, a trustee's renewal in his own name, a defective execution of power, the doctrine of election, equitable mortgage, and other equities arising by con-

(*c*) Co. Litt. 188 b; *Bence* v. *Gilpin*, L. R. 3 Ex. 76.

(*d*) Burt. Comp. s. 1395.

(*e*) *Pullen* v. *Middleton* (*Lord*), 9 Mod. 483.

(*f*) 29 Car. II. c. 3, ss. 7, 8; *Withers* v. *Withers*, Amb. 151.

struction and implication. Of these constructive trusts it is not necessary here to give a detailed account.

Resulting trusts.

But the doctrine of resulting trusts is of such importance in some copyhold cases, especially those concerned with copyholds for lives, that it will probably be useful to notice it at greater length. When a copyhold is surrendered to uses which do not exhaust the estate, and there is no evidence of intention to benefit the trustee, a resulting trust will arise in favour of the surrenderor, unless there should be evidence that no such trust was intended, as where the residue of estate is intended to be given up to the lord, or unless by the custom of the manor a surrender without a proper limitation of the uses is construed to give a particular kind of estate. When a copyhold is purchased in the name of one person with the money of another there arises a presumption of the existence of a resulting trust, which can only be upset by showing that an advancement in life was intended for the nominal purchaser, who, being a child or in the place of a child, or wife, or blood-relation of the person who paid the money, is nominated by him to have the legal estate. If the nominated purchaser stands in one of these relations with the person who finds the money, an advancement will be presumed to have been intended, unless there is evidence of facts contemporaneous with, or practically forming part of, the transaction in question, to show that the nominated purchaser was to hold as a trustee. Upon the same principle, when the purchase-money is advanced by two persons unequally, a conveyance to the use of them and their heirs will be held to create a tenancy in common in shares proportionate to the money respectively advanced, and not a joint-tenancy (*g*).

Terms in copyholds.

There may be terms of years in copyholds (*h*) distinct from legal terms, and these may be made to attend the

(*g*) *Dyer* v. *Dyer*, 2 Cox, Ch. Ca. 92.

(*h*) See *Bath* (*Earl of*) v. *Abney*, 1 Burr. 206; *Everingham* v. *Ivatt*, L. R. 7 Q. B. 683, L. R. 8 Q. B. 388.

customary inheritance, either by a declaration of trust to that effect, or by implication, when the same person has the inheritance and the title to the term of years, but the one as a legal and the other as an equitable estate, or when both the interests so vested in one person are equitable estate. These attendant terms are not often found in copyhold titles; and copyholds not being within the provisions of the Satisfied Terms Act, 8 & 9 Vict. c. 112 (*i*), in such cases it may be necessary to trace the title of such terms during the whole period of their existence (*k*).

Uses.

The legal as well as the equitable estate in a copyhold tenement may be limited in ways that were only allowed in the case of freeholds when a conveyance takes effect under the Statute of Uses, although the statute itself does not apply to copyholds, a copyholder being entitled to surrender directly to the use of his wife, or of himself and another. Powers of appointment and springing and shifting uses may be created in the declarations of uses upon copyhold surrenders, as well as in conveyances of freehold estates, so that the estate conveyed may be modified from time to time in any manner, a remainder may be limited after a fee simple, or a fee simple may be made to arise *in futuro* (*l*).

Maximum of estate.

The custom of each manor will determine the maximum degree of property which the copyholders may have in their customary tenements. In most places they have customary estates in fee simple; but in some manors the highest estate known is a customary kind of entail, and elsewhere the copyholds are all held upon lives or for terms of years. It may happen that in the same manor one set of tenements is grantable in fee, and others for lives only, or for years and for no greater estate; and these differences of usage apply as well to customary freeholds as to copyholds in the limited sense of the word. When copy-

(*i*) Sect. 3.

(*k*) Dav. Conc. Prec. in Conv. 26.

(*l*) *Boddington* v. *Abernethy*, 5 B. & C. 776; *Rex* v. *Oundle Manor* (*Lord of*), 1 A. & E. 283.

holds are said to be grantable for some particular estate and in no other way, it is a rule that the lands may still be granted for any estate less than the maximum of interest grantable under the custom. The power to make the greater estate implies the power to make the less, so that a copyhold of inheritance may be aliened for any estate less than a fee simple or than a customary fee tail, as the case may be, and a copyhold held upon lives may in like manner be granted for any estate less in amount than the highest interest authorised by the custom (*m*). Bearing this rule in mind, it will be found convenient to treat separately of the various estates which are found existing in copyholds of inheritance, copyholds for lives, and copyholds for years respectively.

I.—Copyholds of Inheritance.

Estates in copyholds of inheritance.

In copyholds of the first kind the tenant may have a customary fee, or any less estate. As in the case of freeholds the estate in fee may, according to the circumstances, be absolute, conditional, or qualified. "All inheritances are of two sorts, either fee simples or fee tails. Of fee simples some are determinable, some are undeterminable. Determinable, as where land is given to a man and his heirs so long as Paul's steeple shall stand; undeterminable, as where land is given to a man and his heirs without further limitation. Of fee tails, some are general, some are special. General, as where land is given to a man and the heirs of his body, or heirs male or female of his body; special, as where land is given to a man and the heirs, male or female, which he shall beget of such a woman" (*n*). The customs of a great number of manors authorise the creation of estates tail.

A conditional fee is where the estate is given to a man and his heirs, on condition that something shall be done, or to cease when something is done, or unless some act

(*m*) *Grosvenor* v. *Todd*, 4 Rep. 23 a. (*n*) Co. Copyh. s. 47.

shall be done or something happen within a given time. And in manors where entails of copyholds are not allowed a limitation, which otherwise would create an estate tail, will, as when legal entails were unknown, pass an estate similar to a "fee conditional at common law," or in other words, a fee upon condition that the tenant shall have issue. Upon the birth of a child, the estate is at once enlarged into a fee simple absolute. Before such birth, the tenant can only aliene a defeasible estate, subject to the "possibility of reverter" or chance of the estate going back to the donor upon failure of the condition. If, however, the tenant can acquire this "possibility" for his own benefit before the birth of issue, the lesser estate will merge in the greater, and the conditional quality of the fee will at once be discharged (*o*).

A qualified or base fee in copyholds (as in freeholds) is an estate given to a man and his heirs until the happening of some event, or so long as a given state of things shall continue. The commonest example of this estate (to which the name of base fee is especially applied) is where a tenant in tail disposes of the land in fee without the consent of the protector of the settlement. This will pass an estate in fee qualified to last so long as there shall be issue in tail of the disposing tenant in tail.

Customary entails.

Copyholds are not within the statute *De Donis*, 13 Edw. I. c. 1, but may be entailed if there is a custom to warrant it (*p*). The limitation may be either in tail male or tail female, and either in general or special tail; and on the death of one of the parents, who are tenants in tail special, the other will have an estate tail after possibility of issue extinct, as in the case of a freehold. In conformity with the rules respecting freehold estates, and to prevent any estate being inalienable, it was held that the entail might be barred in one of the following ways,

(*o*) Co. Litt. 19 a; *Doe* d. *Spencer* v. *Clark*, 5 B. & Ald. 458.

(*p*) *Roe* d. *Crow* v. *Baldwere*, 5 T. R. 104.

"as a means of unfettering estates and to prevent perpetuities," viz., (1) by a customary recovery (*q*), if suffered in the lord's court prior to January 1st, 1834, this method having been abolished by the Fines and Recoveries Act, 3 & 4 Will. IV. c. 74; (2) by a surrender (*r*), especially if there were no special customary method (*s*); and it should be observed that a custom to bar by surrender might subsist concurrently with a custom to bar by recovery (*t*), and that very slight evidence was held sufficient to prove a custom to bar by surrender (*u*); (3) by the special custom of working a preconcerted forfeiture to the lord, to be followed by a fresh grant of the inheritance (*w*); and (4) by a grant of the freehold to the copyhold tenant in tail (*x*). Before 1834, where there was a special custom upon the matter, the same mode of barring an equitable entail had to be pursued as was required by the custom with respect to an entail of the legal estate (*y*); in other cases, any act expressing the intention to destroy the equitable entail would have had the desired effect. The Act 3 & 4 Will. IV. c. 74, however, abolished fines and recoveries, and provided new methods by which estates tail, and interests expectant thereon, might be barred; and it enabled a tenant in tail to make an effectual alienation by the execution and enrolment of any deed such as that by which a tenant in fee could have conveyed. Bar of entails.

The provisions of the Act relating to estates tail in copyholds are contained in sect. 50 and the four following Fines and Recoveries Act.

(*q*) *Doe* d. *Wightwick* v. *Truby*, 2 W. Bl. 944.

(*r*) *Everall* v. *Smalley*, 1 Wils. 26.

(*s*) *Otway* v. *Hudson*, 2 Vern. 583; *Moore* v. *Moore*, 2 Ves. 596; *Carr* v. *Singer*, *ibid.* 603; *Goold* v. *White*, K. 683.

(*t*) *Everall* v. *Smalley*, 1 Wils. 26; *Doe* d. *Wightwick* v. *Truby*, 2 W. Bl. 944.

(*u*) *Roe* d. *Bennett* v. *Jeffery*, 2 M. & S. 92.

(*w*) *Pilkington* v. *Stanhop*, 1 Sid. 314.

(*x*) *Dunn* v. *Green*, 3 P. Wms. 9; *Challoner* v. *Murhall*, 2 Ves. jun. 524; *Ex parte School Bd. for London*, *In re Hart*, 41 Ch. Div. 547.

(*y*) *Philips* v. *Brydges*, 3 Ves. jun. 120; *Radford* v. *Wilson*, 3 Atk. 815.

sections of the Act (*s*). By sect. 50 it is provided, that all the previous clauses of the Act, so far as circumstances and the difference of tenure will admit, are to 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 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." The surrender or deed has, however, to be enrolled upon the court rolls of the manor within six months.

The consent of the protector of the settlement, if given by deed, is to be produced and enrolled in the same way, together with an endorsement showing that the deed was produced within the six months. If not given by deed, the protector's consent is to be stated in the memorandum of surrender and enrolled therewith, the protector signing such memorandum before enrolment. If the surrender is made in court, an entry of the surrender containing a statement that the consent has been given, is to be made upon the court roll (*a*).

With reference to a disentailing deed affecting an equitable entail of copyholds, it is provided that the equitable tenant in tail shall have full power to dispose by deed of the lands as he could do if they were of freehold tenure, and that the deed shall be entered on the court roll; and for the purposes of such entry it has been held sufficient that the contents of the deed should be proved by affidavit (*b*). And if there shall be a protector to consent to

(*s*) "Estates-tail" as used in the Act, in addition to its usual meaning, includes a base-fee into which an estate tail shall have been converted: "Base-fee" means exclusively that estate in fee simple into which an estate tail is converted where the issue are barred, but persons claiming estates by way of remainder or otherwise are not barred: sect. 1.

(*a*) Sects. 51, 52.

(*b*) Sect. 53; *Crosby* v. *Fortescue*, 5 Dowl. 273.

the disposition, and such protector shall give his consent by a distinct deed, the consent shall be void unless the deed of consent shall be executed on or before the day on which the deed of disposition is made. Such deed of consent is to be entered on the court rolls, and it is imperative on the lord, steward, or deputy (when required so to do) to enter such deed or deeds, "and he shall endorse on each deed so entered a memorandum signed by him, testifying the entry of the same on the court rolls" (*c*). By the same section it is provided, that every deed disposing of a copyhold by an equitable tenant in tail shall be void against any person claiming the land for valuable consideration under any subsequent assurance entered on the court rolls, unless the deed of disposition by the equitable tenant in tail is entered on the court rolls of the manor before the entry of the subsequent assurance. In an application for a mandamus to the steward of a manor to enrol a deed of disposition under this section, it is not necessary to annex a copy of the deed itself to the affidavit, if the contents are sufficiently stated in the affidavit (*d*); and it has been held that this section applies to equitable estates tail in lands which are held by copy of court-roll, and not to customary freeholds passing by deed and admittance. Hence it would appear that an estate tail in customary freeholds must be barred in the same way as in ordinary freeholds, and that whether the estate tail is legal or equitable, there will be no forfeiture for including the lands in the deed of disposition (*e*).

By sect. 54 of the Act it is provided, that in no case, where a disposition of a copyhold by a tenant in tail shall be effected by surrender or 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

(*c*) Sect. 53.

(*d*) *Crosby* v. *Fortescue*, 5 Dowl. 273.

(*e*) *Reg.* v. *Ingleton Manor (Lords of)*, 8 Dowl. 693.

than by entry on the court-rolls. In order that a disentailing assurance may operate upon copyhold lands it must be entered on the court-rolls within six calendar months after it has been executed, by analogy to the time within which it would have to be enrolled in the Central Office of the Supreme Court in order to affect freeholds; and if it is not entered within that period it will be void (*f*). An indorsement on the deed by the steward of a manor at his private residence to the effect that the deed was produced before him at his residence is not a sufficient enrolment within the meaning of the statute (*g*).

The following are the principal provisions of the Act which by sect. 50 are made applicable to copyholds.

Every tenant in tail may dispose of the land in fee or for a less estate, or against all persons claiming under the entail (*h*); and where an estate tail has been converted into a base fee, the person who would otherwise have been tenant in tail may dispose of the land as against all persons claiming estates to take effect after the base fee, so as to enlarge the base fee into an absolute fee (*i*).

Limited dispositions by tenants in tail, as by way of mortgage or the like, are a bar in equity as well as at law, notwithstanding any intention of the parties to the contrary; and it is provided, that if the estate created by such disposition shall be only an estate *pur autre vie* or for years, or only an interest, charge, lien, or incumbrance, "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, charge, lien, or incumbrance, notwithstanding any intention to the contrary may be expressed or implied in the deed by which the disposition may be effected" (*j*).

(*f*) *Honywood* v. *Foster*, 30 Beav. 1; *Gibbons* v. *Snape*, 1 De G. J. & S. 621; *Grein* v. *Paterson*, 32 Ch. Div. 95.

(*g*) *Boyd* v. *Prawle*, 14 W. R. 1009.

(*h*) Sect. 15.

(*i*) Sect. 19.

(*j*) Sect. 21.

Where the tenant in tail is a married woman, the concurrence of her husband and her separate acknowledgment of the deed are necessary in every such disposition, if she was married before the 1st of January, 1883, and her title to the property accrued also before that date (*k*).

The protector (whose office and powers are described in the Act, sect. 22 to sect. 37) is in general the owner of the first estate under a settlement, for life or for years determinable upon a life, prior to the estate tail, excluding tenants in dower and bare trustees. Without his consent the tenant in tail can create or dispose of no higher estate than a base fee (*l*). A married woman who is protector can consent as a *feme sole* (*m*).

Before the passing of the Act an estate tail could not be barred without the consent of the person (if any) who was entitled to the first estate of a freehold nature under the settlement, prior to the estate tail. Such prior estates were frequently acquired by strangers to the settlement by way of purchase or mortgage, sometimes as a mere speculation for the purpose of obtaining money for a consent to the barring of the entail. Now, by sect. 22 of the Act, the original owner of the prior estate continues to be the protector, although the estate may have been charged or incumbered by the owner or settlor or otherwise, and although the whole of the rents and profits are exhausted or required for meeting the incumbrances, and although the estate may have been absolutely disposed of by the owner, or in consequence of his bankruptcy, or by any other act or default of the owner. The protector's power of consent is not a trust as regards the ulterior estates (*n*); and, although his absolute discretion must remain unimpeded, the tenant in tail may purchase the consent (*o*). Any agreement by which the protector may undertake to withhold his consent is void, and his giving consent subse-

(*k*) 3 & 4 Will. IV. c. 74, s. 40; 45 & 46 Vict. c. 75, ss. 2, 5.
(*l*) Sect. 34.
(*m*) Sect. 45.
(*n*) Sect. 36.
(*o*) Sect. 37.

quently to such an agreement will not be regarded as a breach of a contract or trust (*p*).

The period of enrolment for all the deeds required to be enrolled by the Act is six months from the date of execution: and the enrolment, when made, relates back in each case to the date of execution (*q*).

The High Court is not prohibited by the terms of the Fines and Recoveries Act from exercising its ordinary jurisdiction to rectify, on the ground of mistake, a deed of resettlement which has been enrolled as a disentailing assurance under the Act (*r*).

Estates for life in copyholds of inheritance.

Estates for life in copyholds of inheritance are so different from the copyholds for lives to be hereafter described, that it will be convenient to treat of these different kinds of copyhold life-estates separately and without reference to each other.

How created.

Of life-estates in copyholds of inheritance some are created by the act of the party, and some by force of the custom of the manor. Of the first sort some are determinable by death, some by collateral means; by death, as estates lasting during the life of the lord, the tenant, or a stranger (in a case of voluntary grant by the lord), or lasting during the life of the surrenderor, the surrenderee, or a stranger (in a case of conveyance by a copyholder); by collateral means, as estates granted to a widow or widower until marriage, to an office-holder so long as he shall perform the duty of his office, or the like. In the latter cases the tenants will have estates for life, though determinable on certain events, because estates of this kind may be limited either by the actual duration of a life or by any uncertain period, which cannot last longer than a life, and which does not depend on the will of the person next in succession. Of life-estates created by the custom of the manor the most usual examples are the customary

(*p*) Sect. 36.
(*q*) Sects. 41, 74.
(*r*) *Hall-Dare* v. *Hall-Dare*, 31 Ch. Div. 251.

estates of the widows and widowers of copyhold tenants, who generally hold a portion of the tenement as their customary "freebench" until death or a second marriage (*s*).

When a man holds during the life of another person, he is called the tenant *pur autre vie* and the other the *cestui-que-vie*. If the grant should be to one for the lives of several, the estate is in effect to continue during the life of the last survivor of the *cestui-que-vies*: but it may be given for the joint lives of several, and in that case the tenant will have no more than an estate for the life of the *cestui-que-vie* who shall die first. When the gift is to two persons for their own lives, it is understood to be a joint-tenancy extending to the life of the survivor, but each will hold for his own life only if the joint-tenancy should by any means be severed. Estates *pur autre vie.*

When lands in ancient times were given to one man for the life of another, who happened to survive the tenant *pur autre vie*, the estate belonged to the first person who might enter as an "occupant"; and though it was always held that in copyholds there was no "general occupancy," yet in such a case the lord was allowed to hold the land upon a principle somewhat similar to that of general occupancy in freeholds, before that kind of title was abolished (*t*). And in a modern case (*u*) a custom was held good, which extended the principle of occupancy to copyholds by giving the estate to a *cestui-que-vie*, if the grantee for lives died intestate. But since the Wills Act, 1837, the interest of the tenant for the life of another person, who survives, will in every case pass to the executors or administrators of the original tenant, unless he has alienated it in his lifetime (*x*). Occupancy.

But if the copyhold had been given to one and his heirs Special occupancy.

(*s*) See *post*, c. vi.

(*t*) *Zouch* d. *Forse* v. *Forse*, 7 East, 186.

(*u*) *Doe* d. *Nepean* v. *Goddard*, 1 B. & C. 522.

(*x*) Sects. 3, 6. See Appendix, *post*.

for the life of another, or if the tenant had aliened to another person and his heirs during the life of the *cestui-que-vie*, the heirs were always permitted to take by special occupancy, if there had been no alienation *inter vivos* or by means of a devise (*y*); and they were said to inherit a "descendible freehold" or a descendible life-estate. A similar limitation to a man and the heirs of his body for the life of another person is called a quasi-entail, and the special occupant is said to be quasi-tenant-in-tail of the descendible life-estate. But there is no estate-tail in the proper sense of the word: and the estate can be alienated by the tenant without any disentailing assurance. In the same way the executors and administrators of the tenant *pur autre vie* may be nominated to take as special occupants; and when the heirs, executors, and administrators are all named, it is held that the heir should be preferred to the personal representative.

The Wills Act, 1837, extends to all estates *pur autre vie*, whether there are any special occupants or not, and whether the same are of freehold, customary freehold, tenant-right, customary or copyhold or any other tenure (*z*).

Terms of years.

Terms of years in copyholds of inheritance are to be distinguished from copyholds for years, which cannot be granted out for any greater estate than the term warranted by the custom, and which have several peculiar qualities to be hereafter mentioned. The lord may demise a copyhold in hand for a term instead of making a voluntary grant: and "terms of years in copyholds may be created by surrender, and these are true customary estates: but the practice is not usual" (*a*).

Leases under custom.

By the general law, every copyholder may lease his tenement for one year, and by special custom for a longer period, without the licence of the lord (*b*). In some manors,

(*y*) *Doe* d. *Lempriere* v. *Martin*, 2 W. Bl. 1148.

(*z*) Sect. 3. See Appendix, *post*.

(*a*) Burt. Comp. s. 1314, n. See *Bath* (*Earl of*) v. *Abney*, 1 Burr. 206.

(*b*) *Melwich* v. *Luter*, 4 Rep. 26 a; *Jackman* v. *Hoddesden*, Cro. Eliz. 351.

for example, the customary tenants may demise without licence for nine, twelve, or twenty-one years, according to the usage in each case, or for several successive periods of three, seven, or nine years, or the like; elsewhere the tenants may demise without licence for a life and twelve years after, or for long terms, or even for a life and forty years after (*c*).

If a copyholder leases for more than one year without licence, or without a special custom authorising the lease, he renders his estate liable to forfeiture (*d*). A lease for one year, and so on from year to year, or a lease which amounts in law to a lease for two years at least, if not warranted by the custom, will be a cause of forfeiture (*e*); but a lease for a year with a covenant for renewal at the will of the lessor will not operate as a forfeiture (*f*). A custom for copyholders of inheritance to make leases for years without licence, but on condition of the term ceasing on the lessor's death, has been held a good custom (*g*), but all such special customs must be clearly proved (*h*). Notwithstanding the forfeiture created by a lease for years granted without the licence of the lord, or without a custom to support it, the lease will yet be good as between the parties to it, and the lessee will have a good title as against everyone but the lord (*i*); and as against the lord himself the lease is only a ground of forfeiture which he may waive (*k*).

Leases under licence.

By the lord's licence the copyholder may lease for any number of years, and the lessee will have a common-law estate and not a customary interest in the land. The lessee may assign or underlet without any fresh licence, the lord's

(*c*) Kitch. Juriad. 201; Com. Dig. Copyh. (K. 3).

(*d*) *Jackman* v. *Hoddesden*, Cro. Eliz. 351.

(*e*) *Luttrel* v. *Weston*, Cro. Jac. 308.

(*f*) *Lady Montague's Case*, Cro. Jac. 301.

(*g*) *Turner* v. *Hodges*, Hutt. 101.

(*h*) See *Kensy* v. *Richardson*, Cro. Eliz. 728.

(*i*) *Doe* d. *Tresidder* v. *Tresidder*, 1 Q. B. 417.

(*k*) *Doe* d. *Robinson* v. *Bousfield*, 6 Q. B. 492.

interest in the land being discharged, and the lord being considered as having placed himself in a position of a landlord to the lessee (*l*). Where a licence to demise has been granted the lease must not exceed the terms of the licence or it will be void (*m*); but a demise for a less term or interest than is authorised by the licence will be good (*n*); and a subsequent forfeiture by the copyhold tenant of his estate will not affect the lessee's interest (*o*). A copyholder for life cannot lease for any period exceeding his own life, unless by having a right of renewal or a power of nominating his successor he has an estate equivalent to a copyhold of inheritance (*p*). The lord cannot grant a licence on condition, for by the licence the lord gives nothing, but only dispenses with the forfeiture, all the estate or interest under the lease passing from the copyholder (*q*).

Power of lord to grant licence.

The lord's licence will in general last only during the continuance of his own estate, so that if the lord is a tenant for life the licence given by him will come to an end at his death (*r*); unless the licence has been given under a power of dealing with the fee, or under the provisions of the Settled Land Act, 1882, which permit a tenant for life of a settled manor to grant to a tenant of copyhold or customary land a licence to make a lease of the land, for ninety-nine years in the case of a building lease, for sixty years in the case of a mining lease, or for twenty-one years in the case of any other lease; or with the sanction of a judge of the Chancery Division of the High Court for a longer period than ninety-nine years, or in perpetuity in the case of a building lease, on proof either that it is the custom to lease for such longer period or in perpetuity, or that it is difficult to grant building leases except for such longer period, or except in

(*l*) Co. Copyh. s. 51; *Johnson* v. *Smart*, 1 Ro. Abr. 508, pl. 14; *Turner* v. *Hodges*, Hutt. 101.

(*m*) *Jackson* v. *Neal*, Cro. Eliz. 395.

(*n*) *Worledge* v. *Benbury*, Cro. Jac. 436.

(*o*) *Clarke* v. *Arden*, 16 C. B. 227.

(*p*) *Haddon* v. *Arrowsmith*, Cro. Eliz. 461, 462.

(*q*) *Ibid.* For a form of licence, see Appendix, *post*.

(*r*) *Petty* v. *Evans*, 2 Brownl. 40.

perpetuity (*s*). The licence may fix the annual value whereon fines, fees, or other customary payments are to be assessed, or may fix the amount of those fines, fees, or payments, but it must be entered on the court rolls of the manor. A certificate in writing by the steward that the licence has been entered on the rolls is to be sufficient evidence of the entry (*t*).

Chattel interests other than terms of years.

The chattel interests, other than terms of years, which may subsist in copyholds, are not of such importance as to require a detailed description. A copyhold may be held by a tenant at will, as where a mortgagor is left in possession by a mortgagee who has been admitted upon a conditional surrender, or by a tenant at sufferance, where one who came in by right stays in by wrong, after his estate in the tenement has come to an end; and copyholds having been rendered extendible for judgment debts by the Act 1 & 2 Vict. c. 110, may be delivered by the sheriff upon a writ of execution to a creditor holding by *elegit*, a kind of tenancy which is regarded in law as a chattel interest of uncertain duration.

II.—Copyholds for Lives.

Nature of estates.

In many parts of England, and especially in manors belonging to ecclesiastical corporations in the Western Counties, the copyholds are granted for lives and for no greater estate. In some parts it is not unusual to find copyholds of inheritance and copyholds for lives in the same manor. The copyholds for lives are not usually expressed to be held at the will of the lord, but are customary freeholds held according to the custom of the manor. It has been sometimes suggested, that they are probably copyholds in the strict sense of the term, the reference to the lord's will being omitted, because these ecclesiastical manors were usually leased to a lord-farmer, and so there

(*s*) 45 & 46 Vict. c. 38, s. 14 (1), and see ss. 6—10, and 53 & 54 Vict. c. 69, ss. 7—9.

(*t*) 45 & 46 Vict. c. 38, s. 14, subs. 2, 3.

might have been some ambiguity in a statement that the copyholds were held at the will of the lord. But there seems to be not much need of this hypothesis, and in some of these manors copyholders at the will of the lord and customary freeholders for lives are found existing together.

Description of tenure.

The tenure usual in the West of England has been thus described by a competent authority (*u*). "The land is granted to two or three persons for their lives successively, the widow of the person dying in possession being entitled to the whole tenement for her widowhood. The lives are the beneficial owners unless the contrary is expressed: and, uses being unknown, there can be no beneficial ownership apart from the lives, except by virtue of a trust which may or may not appear upon the court rolls. The copyholder has a power of destroying the widow's freebench by surrender, ending his own estate. In some manors the grant is made indiscriminately, either to a man for his own life, or for the lives of others."

The tenure of the copyholds in the ecclesiastical manors in the See of Worcester has been thus described by persons acquainted with the local tenures.

"The tenure, with few exceptions, is for lives by grants by copy of court-roll—under the See of Worcester, by grant for one life in possession, and by grant for three lives in reversion; and under the Dean and Chapter by grant for two lives in possession, and by grant for two in reversion; in the former case the possession-life is admitted, and the lands are stated to be in his actual possession, although such very seldom happens, and in the latter case the eldest possession-life is in like manner admitted. A trust is declared for the beneficial owner, his executors administrators and assigns, so that on intestacy the lands descend to the personal and not to the real representatives of the deceased. If the beneficial owner is the tenant in possession on the rolls, his widow is entitled to freebench

(*u*) R. P. Comrs. 1 Rep, App. 417.

during her widowhood. On the death of the possession-life a heriot becomes payable to the lord, and on the death of the second possession-life the value of half a heriot is payable to the Dean and Chapter. From time immemorial renewals have taken place on the death of any of the lives, on payment of certain fines; in the manors belonging to the See on payment of three-fourths of a year's improved rent, and in the manors belonging to the Dean and Chapter on payment of half a year's improved rent. The lords, upon the deaths of all the lives in possession and reversion, claim the lands as their own, and if all the reversionary lives are dead, there being what is technically called an open reversion, the lords claim the right of filling up the reversion with lives of their own nomination."

In the case of *Watkins* v. *Lea* (*x*), where substantially the same description is given, the lands are said to be granted for two lives in possession and two in reversion upon trust for the persons beneficially entitled, and to be deviseable by such persons, and not to be descendible in case of their intestacy to their heirs, but to be distributable as personal estate: "and on the death of any life and surrender of the other lives then in being, and on payment of the customary fines, the lords have made new grants by copy of court roll for two lives in succession and two in reversion for the benefit of the persons beneficially interested." Under the special circumstances of that case, the copyholds in question passed under a residuary bequest of personalty, and not under a general devise of copyholds contained in the same will.

Varieties of the tenure.

In other places the copyholds are granted for lives successively as to three persons for the term of their lives, and the life of the longest liver of them, to hold successively as they are named, and not otherwise; the person first named in the grant enjoying the tenement to him alone during his life, and so the second and third, and the

(*x*) 6 Ves. jun. 633.

lord being entitled to a heriot of every such person successively dying seised (*y*). And elsewhere the grants are made to persons for their lives jointly. Sometimes, as in the manor of Dawlish in Devonshire (*z*), the grant is to two joint lives in possession and to two joint lives in reversion. And there are many other varieties of the customary tenure, as a grant for one life only, or for one life in possession and other lives in expectancy, and the like.

Most of the tenant-right estates of the Northern Counties are customary freeholds of inheritance; but some are held by a peculiar tenure for lives, being in effect granted for the joint lives of the tenant and of the particular lord who admits him to the tenement (*a*). But in these cases there is generally a tenant-right of renewal in the heirs of the tenant.

Customs of barring lives by first taker.

Where copyholds are granted for the lives of several persons, the first-named life, or "the taker," is generally, though not invariably, the beneficial owner. By the special customs of a great number of manors the first taker has a right to surrender his estate, and thereby to bar the estates of all the rest (*b*). And it is frequently part of the custom, that the life in possession, or the first of the lives in possession, shall have a veto upon any fresh creation of tenancies in remainder without his assent or "goodwill," for the manifesting of which there is frequently a customary ceremony; the object being to preserve to the beneficial owner the power of surrendering to the lord, and taking a new estate for his own benefit. Where the custom exists, it will be construed strictly, and the first life will not be allowed to bar the remainders, except in the precise manner authorised by the custom. Formerly it seems to have been the view that such customs were ex-

(*y*) *Smartle* v. *Penhallow*, 6 Mod. 63.

(*z*) See Watk. Copyh. ii. App. 486.

(*a*) *Somerset* (*Duke of*) v. *France*, 1 Stra. 654.

(*b*) See *Zinzan* v. *Talmadge*, Pollexf. 561.

ceptional. Thus, in *Rundle* v. *Rundle* (*c*), where a copyhold had been granted to three persons for their lives successively, it was held that in the absence of evidence as to a custom enabling the first taker to dispose of the whole estate, and as to the purchase-money having been paid by such first taker, the copyhold estate was to be held in succession, and was not to go to the executor of the first taker; but the modern view seems to regard customs of barring lives as being usual. In *Right* d. *The Dean and Chapter of Wells* v. *Bawden* (*d*), where there had been a grant by copy of court-roll of a reversion to one who had previously a life estate in the premises, to hold to him for the lives of two persons during the life of the longer liver, according to the custom of the manor, under reservation of rent and a heriot, it was held that the grantee alone took the legal estate in the reversion, and not the *cestui-que-vies*, as there was no custom enabling them to take, although they were stated to be admitted tenants in reversion; and in *Jeans* v. *Cooke* (*e*), Sir John Romilly doubted whether a custom that the *cestui-que-vies* should successively be entitled to admission, would be good where there had been a devise by the person who had been admitted tenant to hold to him for the lives of his three sons and the life of the longest liver of them successively.

What estates may be granted.

According to the rule, that he who can grant the greater estate can also grant the less, when copyholds are demiseable by the custom for any number of lives, they may be demised for any estate equivalent or inferior to the amount of interest allowed by the custom (*f*). Thus, if the custom is that copyholds may be granted for three lives, an estate may be granted to three persons for the lives of two, or for one life, or any estate within the custom. So where the custom is to grant for life absolutely, the grant may be for

(*c*) 2 Vern. 264.

(*d*) 3 East, 260.

(*e*) 24 Beav. 513. A form of surrender and re-grant of copyholds for lives will be found in the Appendix, *post*.

(*f*) 1 Ro. Abr. 511.

a qualified life estate, as to a woman during her widowhood. And by a custom which allows a grant to three successively, the grant may be to one for three lives or for the life of himself and two others successively (*g*); and if a grant for life is authorised, a demise for years may be made under the custom (*h*). And on the same principle a copyhold for lives may be given for certain lives to a man and his heirs, or his executors and administrators, as special occupants.

Resulting trusts.

The doctrine of resulting trusts is of particular importance in copyholds for lives. The general rule is, that there will be a resulting trust to the person who finds the money for the admittance-fine, whether the copyhold is taken in the names of the purchaser and others jointly, or in the names of others without that of the purchaser, whether in one name or several, and whether the lives take jointly or successively, unless it should be a case of advancement (*i*). If it appears that the fine is paid by one of the lives named in the copy, he will be the proprietor, whether by custom the first taker has power to bar the other lives or not, and the rest will be trustees for him. And if the first taker under such a custom were to bar the estates of those who have paid the fine, he would thereby constitute himself a trustee for them of whatever estate he acquired or retained in the tenement. A custom that the lives named in succession should have the beneficial ownership, though the first taker paid the fine, would be void; but where the money is contributed equally, there is no reason why the beneficial estate should not go in the order named in the copy (*k*).

Where any such custom as to the lives named in suc-

(*g*) *Smartle* v. *Penhallow*, 1 Salk. 188.

(*h*) *Gravenor* v. *Todd*, 4 Rep. 23 a; *Downs* v. *Hopkins*, Cro. Eliz. 323; and Com. Dig. Copyh. (C. 10), where the cases are collected.

(*i*) *Dyer* v. *Dyer*, 2 Cox, Ch. Cas. 92.

(*k*) *Lewis* v. *Lane*, 2 Myl. & K. 449, overruling *Edwards* v. *Fidel*, 3 Madd. 237.

cession taking beneficially exists, it affects only the legal estate or interest in the copyhold (*l*).

In some manors the copyholders for lives have a tenant-right of renewal. But to support such a custom, the tenant must prove a constant usage of renewal upon payment of a fixed fine. It will not be sufficient to allege it to be on payment of a reasonable fine, on account of the difficulty of ascertaining the *quantum* of such a fine, or to adduce instances that tenants of copyholds have been admitted at various times on payment of a fine which had been ascertained and agreed on between the lord and the tenant. "If a custom be not found to renew on payment of a certain fine, the lord may insist on his own terms: and the only proof that can be given of such a custom is the fact of renewals having taken place according to some certain standard, that is, upon a fine certain" (*m*). Right of renewal.

In some manors the tenants have a right of appointing their successors which resembles a tenant-right of renewal: as by the custom of the manor of Yetminster Prima in Dorsetshire, where the copyholds are granted for one life only, and "any tenant may assign, nominate, or surrender his tenement to his child or any other person" (*n*). Nomination of successor.

Tenants with this power of nomination or with a tenant-right of renewal are called "quasi-copyholders in fee," and are allowed many of the privileges which usually belong to copyholds of inheritance.

Elsewhere the tenants have by various local customs preferential claims to be admitted to neighbouring copyholds on any terms which a stranger will offer, and in Preferential claims to renewal.

(*l*) *Smith* v. *Baker*, 1 Atk. 385.

(*m*) *Grafton* (*Duke of*) v. *Horton*, 2 Bro. P. C. 284; *Wharton* v. *King*, Anst. 659; *Abergavenny* (*Lord*) v. *Thomas*, Anst. 668, n.; *Walker* v. *Abingdon* (*Earl*), 10 L. J. N. S. Ch. 289.

(*n*) See *Allen* v. *Bewsey*, 7 Ch. Div. 453, and Appendix, *post*, as to customs of manors of Yetminster, Yetminster Prima, and Yetminster Secunda; and *Ford* v. *Hoskins*, Cro. Jac. 368, as to custom of manor of Beaminster in Dorset.

some manors the heir or nearest blood relation of a deceased tenant has a similar option in the nature of a tenant-right.

Trustee renewing.

Where there is only a habit of renewal, without a tenant-right, copyholds will come within the general rule of equity, that a trustee renewing for his own benefit will hold the land for his *cestui que trust*, and a life-tenant, or other person with a limited interest in a renewable copyhold, will be considered a trustee for those in remainder. It seems, however, that a trustee or tenant for life might purchase the freehold interest, and so practically destroy all chance of future renewals, and hold it for his own benefit, unless those in remainder could show that he took an advantage from his position as trustee, or as having an interest in the settlement, which a mere stranger would not have enjoyed; but where there are under-tenants who have a covenant that their interest shall be renewed *toties quoties* with every renewal of their lessor's interest, a purchase of the reversion or freehold by the latter will create a trust in favour of the under-tenants (*o*).

III.—Copyholds for Years.

Nature of estates.

Besides the estates for years already described, which may subsist in copyholds of inheritance or copyholds for lives, there are in several districts copyholds for years, which are granted for a term renewable (*p*) or not renewable according to the usage, but for no greater estate. These are found among customary freeholds, as well as in copyholds in the restricted sense of the term.

Of this kind appear to have been the Conventionary Estates in manors belonging to the Duchy of Cornwall (now mostly enfranchised), which were granted for suc-

(*o*) *Dyer* v. *Dyer*, 2 Cox, Ch. Ca. 92.

(*p*) See *Page's Case*, Cro. Jac. 671.

cessive short terms of years with a tenant-right of renewal descending to the heirs (*q*). And elsewhere there are similar estates without a right of renewal.

The same rules, as to resulting trusts and renewals by persons having a limited interest, apply to copyholds for years as are mentioned above as applicable to copyholds for lives.

(*q*) See *Rowe* v. *Brenton*, 8 B. & C. 737, 738.

CHAPTER III.

CONVEYANCES OF COPYHOLDS.

Modes of conveyance.

In this chapter it is intended to discuss the various methods by which estates in copyholds are created and conveyed. The most important of these modes of assurance are voluntary grants, surrender and admittance, and devise of copyholds: there are also certain statutory forms of conveyance appropriate to particular cases, and certain occasions on which interests in copyholds may be transferred by an ordinary deed. All these will now be briefly discussed in the order in which they have been mentioned above.

I.—Voluntary Grant.

Voluntary grant.

Every lord of a manor for the time being may re-grant copyholds which have come into hand, whether by escheat, forfeiture, or any other manner of determination of a former grant, or by his acquiring the copyhold, or by the tenant acquiring the lordship. And the tenement may remain in hand for any length of time and yet be granted as copyhold again, provided that no common-law estate exceeding a tenancy at will has been created in the land by an owner seised in fee (*a*). The act of a limited owner can only suspend the power during the continuance of his estate. Thus, if the tenements which have come into hand are granted to tenants from year to year by the owner in fee of the manor, the demiseable quality of the tenements

(*a*) *French's Case*, 4 Rep. 31 a.

will be gone, and the custom of re-granting them to be held by copy of court-roll will be destroyed, and they will cease to be parcel of the demesnes; but if they are granted for any common-law estate exceeding a tenancy at will by a lord who has not the fee simple of the manor, such a grant will not permanently sever them from the manor as against succeeding lords, and on the determination of the estate which has been created the right of re-granting the tenements as copyholds will be available to the lord for the time being (*b*).

Quantity of lord's interest when making voluntary grants.

The quantity of the lord's interest, so long as it is lawful and in possession, is not material. Thus, Lord Coke says: "In voluntary grants made by the lord himself the law neither respecteth the quality of his person nor the quantity of his estate, for be he an infant, and so through the tenderness of his age insufficient to dispose of any land at the common law, or *non compos mentis*, an idiot, ... notwithstanding these infirmities and disabilities, yet he is capable enough to make a voluntary grant by copy; . . . . and the quantity of the lord's estate is no more respected than the quality of his person, for if his interest be lawful, be his estate never so great or never so little, it is not material; for be it in fee or be it in tail or dower, or as tenant by curtesy, for life, or for years, as guardian, or as tenant by statute, or as tenant by elegit, or at will, the least of these estates is a sufficient warrant to the lord to grant any copyhold escheated unto him for as long time as the custom doth allow, the ancient rents and services being truly reserved" (*c*). And in one case a person who has no legal interest can make such grants, as where a testator directs his executors to grant out copyholds for the payment of his debts (*d*). According to general principles the grant of any person having a temporary or limited

(*b*) *Ex parte Lord Henley, Re The London & S. W. Rail. Co.*, 29 Beav. 311.

(*c*) Co. Copyh. s. 34; *Clarke* v. *Pennifather*, 4 Rep. 23 b.

(*d*) Co. Litt. 58 b.

interest would determine with the determination of that interest, but copyhold grants of a lord who is a limited owner remain valid and effectual after his estate has ceased, for the reason that "a copyholder does not derive his estate out of the lord's estate only, for then the copyholder's estate would cease when the lord's interest determineth, but the life of the copyholder's estate is the custom of the manor; and therefore whatsoever befalleth the lord's interest in his manor, be it determined by the course of time, by death, by forfeiture, or other means, yet if the lord were *legitimus dominus pro tempore*, how small soever his estate was, that is enough" (*e*). But the custom must be strictly observed, and if the custom does not permit of parcelling or dividing the tenements which have come into hand, or of apportioning the rents, a grant by the lord not conforming with the custom in these respects will be void (*f*).

Quality of lord's estate material.

But although the quantity of the lord's estate is immaterial, regard must be had to the quality of his estate; for "if the lord, or he, whosoever he be, that maketh a voluntary grant by copy hath no lawful interest in the manor, but only a usurped title, his grant shall never bind the right owner," but will be void as against him when he has recovered the manor by action or entry (*g*).

Where lords are joint tenants or tenants in common.

The grant of one joint tenant of a manor will bind the other, but tenants in common must join in the grant, because they have separate estates (*h*). The steward or deputy, if properly authorised to do so, may make voluntary grants in the name of the lord, and his authority will not be revoked by the subsequent mental incapacity of the lord. In *Blewitt's Case* (*i*), it appeared that the lord of a manor, who had granted the office of steward to one for life, was afterwards found to be a lunatic, and that his

(*e*) Co. Copyh. s. 34.

(*f*) Co. Copyh. s. 41; *Doe* d. *Rayer* v. *Strickland*, 2 Q. B. 792.

(*g*) Co. Copyh. s. 34; *Clarke* v. *Pennifather*, 4 Rep. 23 b.

(*h*) Co. Copyh. s. 34; Co. Litt. 186 a, 188 b.

(*i*) Ley, 47.

estate had been committed to the care of certain persons. It was held that these committees could not make grants, as they had no estate in the manor, and that the lord, by his steward, might grant; but in the special circumstances it was ordered that the steward should grant none without the privity of the committees.

Copyhold Act, 1841.

By the Copyhold Act, 1841, s. 87, it is made lawful for every lord or steward, or persons acting as such, to grant copyholds at any time or place, the lands being granted only for such estate as the grantor has authority to make.

Effect of grant.

When duly made, the grant will bind the inheritance, even if the estate is reversionary and does not take effect in possession during the estate of the person who made the grant, provided there is a custom in the manor enabling the lord to grant in reversion (*k*).

Who may take a voluntary grant.

Any person may take under a voluntary grant who is capable of purchasing land at law; but a husband could not grant a copyhold to his wife without the intervention of a trustee (*l*); nor can a lord, who is lessee of a manor, grant a copyhold to himself, "for a man cannot be a copyholder of a manor whereof he is lord" (*m*).

What estate may be granted.

With regard to the estate which the lord may grant, the rule is, that where the lord may by the custom grant in fee simple, he may grant for any less estate, though there never had been such a grant of the tenement formerly (*n*). As such copyhold grants derive their force and effect from the custom of the manor and not from the estate of the lord, they will have priority to any charges or incumbrances created by the lord, even though prior in date to the grant (*o*); and it has been held that the lands

(*k*) Co. Copyh. s. 34; *Carew's Case*, Moo. 147; *Gay* v. *Kay*, Cro. Eliz. 661; Gilb. Ten. 204.

(*l*) Co. Copyh. s. 35; *Firebrass* d. *Symes* v. *Pennant*, 2 Wils. 254; but see now 45 & 46 Vict. c. 75, ss. 1 (1), 2, 5.

(*m*) *Christchurch, Oxford* (*Dean and Ch.*) v. *Buckingham* (*Duke of*), 17 C. B. N. S. 391.

(*n*) Co. Litt. 52 b; *Gravenor* v. *Todd*, 4 Rep. 23 a.

(*o*) *Sands* v. *Hempston*, 2 Leon. 109.

included in such grants will be held discharged of dower of the lord's widow (*p*).

Admittance on voluntary grants.

Upon a voluntary grant no particular form of admittance is necessary, though a formal admittance is generally made in practice. It seems that no act of admission is necessary where, as in voluntary grants in remainder, no delivery of possession is practicable at the time of the grant, and that on the death of the particular tenant the tenant in remainder may enter without any further ceremony, the grant giving him a perfect legal title without admittance (*q*).

II.—Surrender and Admittance.

Surrender and admittance.

The tenancy of a copyhold cannot be transferred without the lord's assent, which may be refused when the proposed conveyance is improper in form or prejudicial to his interest. Copyholds of the ordinary kind are conveyed by surrender and admittance, or by some statutory assurance made with the lord's concurrence which is to the same effect. Customary freeholds are frequently alienable by deeds of grant or of bargain and sale, in some cases followed by a regular surrender and admittance, in others merely confirmed by the lord's licence indorsed; and in a few instances the alienation is completed according to the local usage by a mere substitution of the names in the manor roll. But in no case can the tenancy be changed without the lord's consent (*r*), except where the copyhold has been severed from the manor by the conveyance of the freehold apart from the manor itself; in this case the copyholder is allowed to use the assurances proper to freeholds, because his land would otherwise be inalienable (*s*). The rules which apply to the ordinary surrender and admittance

(*p*) *Anon.*, 4 Rep. 24 a; Co. Copyh. s. 34.

(*q*) *Roe* d. *Cosh* v. *Loveless*, 2 B. & Ald. 453.

(*r*) See *Oliver* v. *Taylor*, 1 Atk. 474.

(*s*) *Phillips* v. *Ball*, 6 C. B. N. S. 811.

are also applicable to the other forms of customary conveyance mentioned above, so far as the differences of tenure will permit (*t*).

Usual form.

The following is the usual form of surrender and admittance. The copyholder surrenders his tenement to the lord, or steward, or person acting as such, or to some other person authorised to receive surrenders by the special custom of the manor, as the bailiff, two tenants, or the like (*u*), and the surrender or deed of surrender is accepted and enrolled by the steward: the admittance of the tenant may be made forthwith, or postponed for any period, unless there is a special custom to compel the new tenant to come for admittance. The admission is enrolled when made, and even if it should only have been made by implication it is the duty of the steward to enter it upon the roll as part of the chain of title to the tenement.

Improper forms.

The lord is not compelled to accept a new tenant on prejudicial terms, and may therefore refuse to receive a surrender to the use of a corporation (*x*), or of a person who is not to be impeached for waste, or a surrender declaring any trusts, unless there is a special custom that trusts may be expressed (*y*), or made to the use of a person to be appointed in the future by a deed or will, or made so as to pass a larger estate than the copyholder has power to convey (*z*), as where a copyholder for his own life surrenders for the life of another person, or in any other way calculated improperly to deprive the lord of his fines and profits. He may insist, moreover, on the instrument being made in the proper form, and by the proper person, as by his own steward when there is a custom that all surrenders shall be prepared by that officer for a reasonable fee: and

(*t*) *Doe* d. *Reay* v. *Huntington*, 4 East, 271; *Doe* d. *Carlisle* v. *Towns*, 2 B. & Ad. 585; *Doe* d. *Danson* v. *Parke*, 4 A. & E. 816.

(*u*) See *Turner* v. *Benny*, 1 Mod. 61; Co. Litt. 59 a.

(*x*) *Att.-Gen.* v. *Lewin*, 1 Coop. 51, 54.

(*y*) *Flack* v. *Downing Coll., Camb.*, 13 C. B. 945; *Snook* v. *Mattock*, 5 A. & E. 239.

(*z*) Co. Copyh. s. 34.

that the proper words shall be used, as "surrender," or "bargain sell aliene and convey," or the like, according to the local usage, and that the surrender and admittance shall be made with the usual symbols of giving and taking the seisin, as by delivery of a rod, straw, or the like: and he might have required the new tenant to do fealty in person, though this was unusual in practice (*a*). He may insist upon the surrender containing the description of the tenement by which it is known in the court-rolls, and is not bound to accept a general surrender without a particular description (*b*), even though it refers to the description in a formerly enrolled surrender, nor to accept any surrender so framed as not to be useful in showing the title to the separate tenements upon the roll. And with regard to the admittance, it is a general rule that there must be a separate admittance for each tenement, whether the tenements were originally united or not, so as to keep the history of the titles distinct (*c*). But it will be sufficient if the surrenders or admittances are contained in separate clauses of the same instrument. In some parts, however, and especially in Norfolk Suffolk and Sussex, the lands of different tenures are so intermixed, that it is practically impossible to distinguish freeholds from copyholds, or lands in one manor from those in another; and under these circumstances it may be necessary to employ general surrenders and admittances. If the lord or steward accept a surrender which might be refused by the lord on account of its prejudicing his interest, the admittance must be made in accordance with the surrender, for the lord has no power to change or alter the estate to be transferred, and if he admits otherwise than according to the surrender, the surrender will control the admittance (*d*).

(*a*) See 50 & 51 Vict. c. 73, s. 2, as to admittance by attorney.

(*b*) *Reg.* v. *Bishop's Stoke Manor (Lord of)*, 8 Dowl. 608; *Hayward* v. *Raw*, 6 H. & N. 308.

(*c*) *Reg.* v. *Eton Coll.*, 8 Q. B. 526; *Traherne* v. *Gardner*, 5 E. & B. 913.

(*d*) Co. Copyh. s. 41.

Requisites of surrender.

The essential part of a surrender appears to be the giving up of the customary seisin to the lord, and where this is effectually done the form of relinquishment is not, as it seems, essential, unless the rights of a third person are injured. In an early case concerned with copyholds for lives, where the first taker had the power of barring the other lives by surrender, it was held that his joining with the lord in a fine did not operate as a surrender (*e*). But a surrender to the use of the lord may be made in any form, and it would therefore seem that a copyholder for life wishing the lord to make a new grant for another life or other lives might surrender by any words showing his intention to relinquish the tenement. A copyholder, however, would incur a forfeiture by making a conveyance by any deed applicable to a legal estate in freeholds to any person other than the lord, and such a deed as would not create a forfeiture, if made to a third party, could not operate as a surrender to the lord (*f*). An acceptance by the tenant of a new estate in his land has been said to amount to a surrender by implication (*g*).

Who may surrender

Any person may surrender a copyhold who would be capable of conveying the land, if freehold, by a common assurance (*h*). But the person who surrenders should be "in the customary seisin," as it is said, for a surrender is a giving up of the legal interest which the lord has recognized as existing in him who surrenders (*i*). There is an exception to this rule, however, in the cases of equitable tenants-in-tail, and formerly also of married women, when conveying an estate or surrendering a claim to free-bench (*k*). Among those who cannot convey by surrender may be mentioned expectant heirs, contingent remainder-

(*e*) *Zinzan* v. *Talmash*, Pollexf. 561.

(*f*) *Doe* d. *North* v. *Webber*, 5 Scott, 189.

(*g*) Gilb. Ten. 253, 254, and see cases there cited.

(*h*) Co. Copyh. s. 34.

(*i*) *Doe* d. *Blacksell* v. *Tomkins*, 11 East, 185.

(*k*) 3 & 4 Will. IV. c. 74, ss. 53, 77; 45 & 46 Vict. c. 75.

men, and persons with equitable estates or rights in the land or legal rights to be admitted, rights of entry, contingent, future, and executory interests in copyholds (*l*). As, however, the admittance of the particular tenant is also the admission of the remaindermen (*m*), and as a copyholder who surrenders for a less estate than he possesses continues in his old seisin as reversioner (*n*), remaindermen and reversioners may surrender without being admitted themselves, unless restrained by custom (*o*). The heir of a copyholder may surrender before he is admitted, for his title does not depend upon his admittance, "and the copy made to his ancestor belongs to him," provided only he satisfies the lord for his fine (*p*); and on the same principle, and subject to the same condition, the heir of a remainderman or reversioner may surrender. A surrenderee, however, cannot surrender until he has been admitted, for until admittance he is not in the customary seisin. A person who has entered upon a copyhold by wrong cannot surrender (*q*) until he has gained an estate by force of the Statutes of Limitation. Where joint tenants have been admitted, one of them may either surrender or release to the other or others, but by a surrender the joint tenancy will be severed (*r*).

Persons under disability.

Copyholds are subject to the usual rules affecting the dealings with land by persons under disability. An infant cannot, without a special custom (*s*), surrender so as to bind himself, or his heirs if he should die during minority. But his surrender, if clearly beneficial to him or such as he would be compellable to make if of full age, is only voidable, and may be ratified by his act or acquiescence on

(*l*) *Goodtitle* d. *Faulkner* v. *Morse*, 3 T. R. 365.

(*m*) *Gyppen* v. *Bunney*, Cro. Eliz. 504; *Fitch* v. *Stuckley*, 4 Rep. 23 a.

(*n*) *Podger's Case*, 9 Rep. 104 a, 107 a.

(*o*) *Butler* v. *Lightfoot*, 3 Leon. 239.

(*p*) *Brown's Case*, 4 Rep. 21 a, 22 b.

(*q*) *Keen* v. *Kirby*, 2 Mod. 32.

(*r*) Co. Copyh. s. 35; *Gale* v. *Gale*, 2 Cox, Ch. Ca. 136.

(*s*) *Nayler* v. *Strode*, 2 Ch. Rep. 392.

attaining majority (*t*). Under the Infant Settlements Act, 1855, infants may settle their real estate with the sanction of a judge of the Chancery Division; and in many special cases infants, or their guardians, are authorised by statute to sell land for public purposes, as for public works under the Lands Clauses Act and the Defence Acts, for meeting the expense of inclosing commons under the Inclosure Acts, for redeeming the land-tax, for providing churchyards, sites for churches, schools, and other buildings connected with purposes of charity, art, literature, and public instruction (*u*). By the Settled Land Act, 1882, it is provided that where a person who is, in his own right, seised of or entitled in possession to land, is an infant, the land is settled land for the purposes of that Act, and the infant is to be deemed tenant for life of the land (*x*). The Act also provides that where a tenant for life, or a person having the powers of a tenant for life under the Act, is an infant, or where an infant would, if he were of full age, be a tenant for life or have the powers of a tenant for life, such powers as the Act empowers a tenant for life of full age to exercise may be exercised on behalf of the infant tenant by the trustees of the settlement, and if there are no trustees, then by such person as the Court may order on the application of a testamentary or other guardian or next friend of the infant (*y*). Infants.

A lunatic, idiot, or person of unsound mind, is not bound by his conveyance, except where the vendor, being apparently a person of sound mind, has entered into a contract which is executed before his incapacity is discovered, or where a *bonâ fide* purchaser has dealt with him not knowing of the incapacity (*z*). It is now provided by the Lunacy Act, 1890 (*a*), that the committee of the estate Lunatics.

(*t*) *Zouch* d. *Abbot* v. *Parsons*, 3 Burr. 1794, 1801.
(*u*) See Dart's V. & P. 3, 17, 18.
(*x*) 45 & 46 Vict. c. 38, s. 59.
(*y*) *Ibid.* s. 60.
(*z*) *Moulton* v. *Camroux*, 4 Exch. 17; *Elliot* v. *Ince*, 7 De G. M. & G. 475, 488; and cases collected in Dart's V. & P. 6, n. (*h*).
(*a*) 53 Vict. c. 5.

of a lunatic may, under order of the judge in lunacy, sell, lease, exchange, or convey, in pursuance of a contract, any property belonging to the lunatic, or in which he is interested (*b*). The powers exerciseable by the committee under the order of the judge are enumerated in sect. 120 of the Act, and the four following sections contain various provisions as to the exercise of these powers, and as to carrying the judge's orders into effect.

Married women.

Prior to the 1st of January, 1883, a married woman's estate in copyholds could not be surrendered without her husband's assent, and without her separate examination either by the steward, or under a special usage by two tenants or the like (*c*); and it was held that a custom for a married woman to surrender her copyholds without the assent of her husband was not a reasonable custom (*d*). The husband's consent did not need to be specified in the surrender and admittance unless it was required by the custom (*e*). Under special circumstances the consent of the husband might have been dispensed with, and it was not required where the husband and wife were living apart (*f*). A husband's interest in his wife's copyhold passed, and his interest in a tenement of which they were seised as tenants by entireties, will still pass by a separate surrender. A surrender in fee by the husband alone, however, never operated as a discontinuance of the wife's copyhold estate, and on the death of the husband the wife might enter on the copyhold notwithstanding his surrender in fee (*g*). But now by virtue of the provisions of the Married Women's Property Act, 1882, every married woman, although married before January 1st, 1883, may dispose of all copyholds, her title to which, whether vested

(*b*) 53 Vict. c. 5, ss. 120–124.

(*c*) *Smithson* v. *Cage*, Cro. Jac. 526; *Driver* d. *Berry* v. *Thompson*, 4 Taunt. 294; *Eddleston* v. *Collins*, 3 De G. M. & G. 1.

(*d*) *Stephens* v. *Tyrell*, 2 Wils. 1.

(*e*) *Seamon* v. *Maw*, 3 Bing. 378; *Doe* d. *Shelton* v. *Shelton*, 3 A. & E. 265.

(*f*) *Ex parte Shirley*, 5 Bing. N. C. 226; *Re Rogers*, L. R. 1 C. P. 47.

(*g*) *Bullock* v. *Dibley*, 4 Rep. 23a.

or contingent, and whether in possession reversion or remainder, accrued after that date, as her separate property in the same manner as if she were a *feme sole* (*h*). A woman married after the 1st of January, 1883, is entitled to dispose of all copyhold estates, whether belonging to her at the time of her marriage, or acquired by or devolving on her afterwards, as her separate property, as if she were a *feme sole* (*i*). In the case, therefore, of a woman who was married prior to the 1st of January, 1883, and whose title to copyholds accrued before that date, the old law will still prevail, and her separate examination by the steward and her husband's consent will be required for a valid surrender.

Surrender by attorney.

Where a copyholder is entitled to surrender his estate, by the general custom of copyholds he may surrender by attorney (*k*). But where the surrender has to be performed in a certain mode, as where the custom of the manor is that the copyholder shall surrender to the lord by the hands of two customary tenants, or into the hands of the bailiff or reeve, there a copyholder cannot surrender by attorney without a special custom to warrant it, and such a special custom must be strictly proved (*l*). If the copyholder is an infant, he cannot appoint an attorney to surrender his copyholds by analogy to the rule of the common law in the case of freeholds, but the surrender will be made on his behalf by the persons who are authorised by the provisions of the Settled Land Act, 1882 (*m*), to act on behalf of an infant in his own right seised of or entitled in possession to land. Married women were also unable to surrender by attorney, not being entitled at the common law to appoint such attorney to act for them in respect of freehold estates (*n*); but by the Conveyancing and Law of Pro-

(*h*) 45 & 46 Vict. c. 75, s. 5.
(*i*) *Ibid.* s. 2.
(*k*) *Combes' Case*, 9 Rep. 75 a.
(*l*) Co. Litt. 59 a; Co. Copyh. s. 34.
(*m*) 45 & 46 Vict. c. 38, ss. 59, 60.
(*n*) See *Graham* v. *Jackson*, 6 Q. B. 811.

perty Act, 1881, it was provided that a married woman, whether an infant or not, should, by virtue of the Act, have power, after the 31st of December, 1881, to appoint by deed, as if she were unmarried and of full age, an attorney on her behalf for the purpose of doing any act which she herself could do (*o*); and now under the provisions of the Married Women's Property Act, 1882, any woman, though married prior to the 1st of January, 1883, is capable of disposing of all real estate her title to which accrues after that date, as if she were a *feme sole* (*p*); and every woman married after the last-mentioned date is entitled to deal with all her realty, whether belonging to her at the time of her marriage, or acquired by or devolving on her afterwards, in the same manner as she would have been entitled to do if she had been a *feme sole* (*q*). The vendor should surrender in person, if possible, as the purchaser ought not to be forced to rely on a power of attorney which may have become void by the death of the vendor or the subsequent incapacity of the attorney; and in equity he will not be aided unless he surrenders in person, or gives a good reason for doing it by deputy (*r*); but if the instrument creating the power is executed after the 31st of December, 1882, and is declared to be irrevocable for a fixed time therein specified, not exceeding one year from the date of the instrument, the power will not be deemed, as against the purchaser, to be revoked within that fixed time, either by anything done by the vendor without the concurrence of the attorney, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the vendor (*s*). If the vendor has covenanted to surrender on request, it is no breach to refuse to authorise an attorney to surrender for him (*t*). The attorney must be regularly appointed by deed, and may be an infant, or married woman, or under

(*o*) 44 & 45 Vict. c. 41, s. 40.
(*p*) 45 & 46 Vict. c. 75, s. 5.
(*q*) *Ibid.* s. 2.
(*r*) *Mitchel* v. *Neale*, 2 Ves. 679; *Noel* v. *Weston*, 6 Madd. 50.
(*s*) 45 & 46 Vict. c. 39, s. 9.
(*t*) *Symms* v. *Smith*, Cro. Car. 299.

any disability, if only of sound mind. The attorney should make the surrender in the usual way, by the rod, or otherwise according to the custom, and either in the name of his principal, or in his own name showing the authority (*u*) and stating that the act is done by force of it. If he exceeds his authority, his act will be valid only so far as he was authorised by the principal (*x*). The power of attorney is revoked by the death of the person who gave it, unless there is a custom within the manor to give an authority in the nature of a power which shall be good after the copyholder's death (*y*), or unless the power falls within the provisions of the Conveyancing Act, 1882 (*z*).

Uses of surrender.

The surrender may be in general words, but it should declare what estate the surrenderee is to take, for a surrender without such a limitation might be held to be a relinquishment to the use of the lord, unless the uses were explained by the subsequent admittance, or unless there should be evidence of a resulting trust (*a*). If the limitation of the use is general, as to the use of A., he will have but an estate for life, for the same words are necessary to create an estate in fee simple or in fee tail in copyholds as are required in freeholds, unless there is a special custom to the contrary (*b*). It has been held, however, that a custom that the lord may grant in fee to him to whose use the surrender is made, where the surrender contains no limitation of the estate, is a good custom (*c*). The surrender may be made to the use of anyone who could take under a common-law assurance if the land were freehold, and to some others, as to one who is not capable of taking at the time of surrender, or to an unborn or unascertained person, provided such person is capable of taking at the

(*u*) See 44 & 45 Vict. c. 41, s. 46.

(*x*) *Carter* v. *Carter*, 3 K. & J. 617.

(*y*) See *Roby* v. *Twelves*, Sty. 423.

(*z*) 45 & 46 Vict. c. 39, ss. 8, 9.

(*a*) Co. Copyh. s. 35.

(*b*) *Bunting* v. *Lepingwell*, 4 Rep. 29 a, 29 b; Co. Litt. 59 b; Co. Copyh. s. 49.

(*c*) *Brown* v. *Forster*, Cro. Eliz. 392.

time of admittance, the reason being that "a surrender is a thing executory which is executed by the subsequent admittance, and nothing at all is invested in the grantee before the lord hath admitted him according to the surrender; and therefore, if at the time of the admittance the grantee be *in rerum naturâ*, and able to take, that will serve" (*d*). Even under the old law a married woman might receive a copyhold estate by surrender from her husband "because she cometh in not immediately by him, but by mediate means, viz., by the admittance of the lord according to the surrender" (*e*). For the same reason, a married woman who is a copyholder may surrender to the use of her husband (*f*), and any copyholder may surrender to the use of himself and another person. And the estate may be limited to such uses as a certain person may appoint, or otherwise to springing, shifting, and executory uses: the lord, however, as above mentioned, being at liberty to decline a surrender which might have the effect of shifting the tenancy without his assent (*g*). But it has been held that where a lord accepts a surrender which refers to the trusts of an indenture, and admits a tenant in accordance with the terms of the surrender, he is to be considered as consenting to these trusts, and is bound by them upon the death of the trustee without an heir (*h*). There is no necessity, however, to specify the uses of a surrender on the court rolls. It is sufficient if there is an endorsement of the uses on the surrender by the steward (*i*).

Settlement of copyholds.

When copyholds are included in a settlement, the trusts are in general declared by a separate deed, and limited to follow the uses of the freeholds (if any) which are com-

(*d*) Co. Copyh. s. 35.

(*e*) *Ibid.*

(*f*) *Driver* d. *Berry* v. *Thompson*, 4 Taunt. 294.

(*g*) See *Boddington* v. *Abernethy*, 5 B. & C. 776; *Rex* v. *Oundle Manor (Lord of)*, 1 A. & E. 283; *Cuthbert* v. *Lempriere*, 3 M. & S. 158.

(*h*) *Weaver* v. *Maule*, 2 R. & M. 97.

(*i*) *Car* v. *Ellison*, 3 Atk. 73.

prised in the same settlement, so far as the rules of law and equity (having regard to the differences of tenure) will permit. Where there is no estate vested in trustees, the uses will be specified in the surrender, regard being had to the rule that the lord is not bound to accept a conveyance prejudicial to himself. But in some manors the custom authorises a declaration of trusts in the surrender (*k*). By the Settled Land Act, 1882 (*l*), it is provided that where copyhold or customary land is acquired by purchase, or in exchange, or on partition by the trustees of a settlement, and is to be made subject to the settlement, it is to be conveyed to and vested in the trustees of the settlement on the trusts, and subject to the powers and provisions, which under the settlement are subsisting with respect to the settled land. This direction as to vesting the copyholds in the trustees upon trust is, it is said, to avoid all questions as to the possibility of actually conveying the copyholds to the uses declared of the freeholds; for as copyholds are not within the Statute of Uses, successive legal estates in copyholds can only be raised by surrender to uses, and not by merely declaring the uses upon the conveyance (*m*).

Charitable uses.

If the copyhold is surrendered to charitable uses the trusts will be specified in a separate deed and not noticed in the surrender, unless such notice is allowed by the custom. The deed must be made in the manner prescribed by the Mortmain and Charitable Uses Act, 1888 (*n*), and must be enrolled in the Central Office of the Supreme Court of Judicature within six months after execution (*o*), and if the surrender declares the trusts, it must be enrolled within the same period (*p*).

Construction of surrenders.

A surrender will be construed in the same way as a

(*k*) *Snook* v. *Mattock*, 5 A. & E. 239; *Regina* v. *Corbett*, 1 E. & B. 836.

(*l*) Sect. 24 (1), (3).

(*m*) Hood & Challis, Conveyancing, &c. Acts, 234.

(*n*) 51 & 52 Vict. c. 42, sec. 4, sub-secs. (1)–(6).

(*o*) *Ibid.*, sec. 4 (9).

(*p*) *Ibid.*

deed at common law (*q*), with an exception as to the customs of certain manors, which give special meanings to such phrases as "to him and his," "to him, his sequels and assigns," and the like (*r*). But the construction of surrenders was not always so strict, and in some of the earlier cases a tendency may be observed to give effect to the intention of the parties as in a will, rather than to follow the legal meaning of the terms employed (*s*).

Effect of a surrender.

The general effect of a surrender is, that it binds the lands from its date, so that the surrenderor cannot properly convey to any other person, or make the land subject to any other incumbrance than it was subject to at the time of the surrender (*t*). The copyholder cannot convey more than he has in the land (*u*), and will not be bound by way of estoppel by his subsequent possession of an estate which he may have improperly included in a surrender (*x*). No more of the copyholder's estate will pass than is necessary to effect his intention: thus, if a copyholder in fee surrenders to the use of A. for life, the residue undisposed of continues in him (*y*); and if the conveyance is to particular uses, with the ultimate limitation to his own right heirs, they will take such limitation as of the old estate (*z*). No estate passes to the lord, nor does the land vest in him as a trustee, for he is only an instrument through whom the lands must be conveyed according to the surrender (*a*); and the surrenderee when admitted is in by the surrenderor and not by the lord (*b*);

(*q*) *Sutton* v. *Stone*, 2 Atk. 101; *Idle* v. *Cook*, 1 P. Wms. 70; *Wright* v. *Kemp*, 3 T. R. 470; *Widdowson* v. *Harrington* (*Earl of*), 1 J. & W. 532.

(*r*) *Bunting* v. *Lepingwell*, 4 Rep. 29 a, 29 b.

(*s*) See Co. Copyh. s. 35, and judgments of Gould and Turton, JJ., in *Fisher* v. *Wigg*, 1 P. Wms. 14.

(*t*) Co. Copyh. s. 39; *Doe* d. *Tofield* v. *Tofield*, 11 East, 246.

(*u*) *Doe* d. *Dormer* v. *Wilson*, 4 B. & Ald. 303.

(*x*) *Doe* d. *Blacksell* v. *Tomkins*, 11 East, 185.

(*y*) *Podger's Case*, 9 Rep. 104 a, 107 a.

(*z*) *Roe* d. *Noden* v. *Griffits*, 4 Burr. 1952, 1960.

(*a*) *George* d. *Thornbury* v. *Jew*, Amb. 627.

(*b*) Co. Copyh. s. 41.

but in the case of copyholds for lives there is, it seems, an exception to this rule; for if a copyholder for lives conveys to the use of another to whom the lord grants, the estate vests in the lord, and the grantee is in by him (*c*). The lord cannot vary the estate, or grant to any person other than the surrenderor has appointed (*d*); and, accordingly, if there is any variation between the admittance and the surrender, either in the person, estate, or tenure, or in any other collateral points, the lord only transfers an estate according to the surrender (*e*).

Estate of surrenderee.

A surrenderee has no legal estate until he comes in and is admitted, because there must be the assent of the lord to the surrender of the previous tenant (*f*). Consequently, before admittance is made, the surrenderor remains tenant to the lord, and is liable to all the customary duties and services (*g*).

So far, however, as the interest which the non-admittance of the surrenderee leaves in the surrenderor is for the lord's benefit, it may be waived by him, and so destroyed (*h*). As between the parties to the conveyance, the surrender is the material part of the conveyance, and the surrenderor will hold in trust for the surrenderee (*i*); the heir of the latter will inherit (*k*), and, in equity at least, a right of free-bench or customary curtesy will attach on the estate. The title of the surrenderee, after admittance has been made, is taken back to the time of the surrender (*l*), so that he might lay a demise in an action of ejectment to recover the copyhold at any time after the surrender, but he cannot bring the action before he has been admitted (*m*).

(*c*) *Doe* d. *Dand* v. *Thompson*, 13 Q. B. 670.

(*d*) *Westwick* v. *Wyer*, 4 Rep. 28 a.

(*e*) Co. Copyh. s. 41.

(*f*) *Roe* d. *Cosh* v. *Loveless*, 2 B. & Ald. 453.

(*g*) Co. Copyh. s. 39.

(*h*) *Minton* v. *Kirwood*, L. R. 1 Eq. 449.

(*i*) *Hinton* v. *Hinton*, 2 Ves. 631, 638; *Brown* v. *Raindle*, 3 Ves. jun. 256.

(*k*) *Vaughan* v. *Atkins*, 5 Burr. 2764, 2786.

(*l*) *Benson* v. *Scott*, 1 Salk. 185.

(*m*) *Holdfast* d. *Woollams* v. *Clapham*, 1 T. R. 600.

Before admittance the purchaser cannot surrender, and a subsequent admittance will not make the instrument valid, so that if an unadmitted purchaser surrenders and the surrenderee be admitted, this will not amount to such an admittance by implication, even if made by the lord himself, as will make the transaction legally valid (*n*). As against the surrenderor an unadmitted surrenderee has an estate in equity which he may devise or assign (*o*); but as against the lord an unadmitted surrenderee had no right before the passing of the Wills Act, 1837 (*p*), to devise his right to be admitted, so as to confer a legal estate on the devisee (*q*); and it would seem also that he cannot assign the right in such a way as to entitle his assignee to call upon the lord for admittance (*r*).

Before the Wills Act, 1837, the devisee of an unadmitted devisee could not acquire the legal estate without a surrender from the heir-at-law of the original testator, or an admission followed by a release from the persons having the first title to admittance (*s*). This Act, however, enables every person to devise all the real estate of the nature of customary freehold or tenant-right, customary or copyhold or any other tenure, to which he may be entitled either in law or in equity at the time of his death, and which if not so devised would devolve on his customary heir, or in a case of descent, upon the customary heir of his ancestor, notwithstanding that such person may not have surrendered the same to the use of his will, or that, being entitled as heir devisee or otherwise to be admitted thereto, he may not have taken admittance, or that in consequence of the want of a custom to devise or to surrender to the use of a

(*n*) Co. Copyh. s. 39; *Wilson* v. *Weddell*, Yelv. 144, 145; *Doe* d. *Tofield* v. *Tofield*, 11 East, 246.

(*o*) *Davies* v. *Beversham*, 2 Freem. 157; *The King* v. *Hendon Manor* (*Lord of*), 2 T. R. 484.

(*p*) 1 Vict. c. 26.

(*q*) *Doe* d. *Vernon* v. *Vernon*, 7 East, 8; *Doe* d. *Tofield* v. *Tofield*, 11 East, 246; *Matthew* v. *Osborne*, 13 C. B. 919.

(*r*) See *Matthew* v. *Osborne*, 13 C. B. 919, 941.

(*s*) *Smith* v. *Triggs*, 1 Stra. 487; *Wainewright* v. *Elwell*, 1 Madd. 627.

will he could not, previously to the passing of the Act, have disposed of such real estate by will (*t*). All stamp duties, fees, and sums of money which would have been payable if there had been a surrender to the use of the will in accordance with the custom of the manor, are still to be payable when the will, or an extract thereof, is entered on the court rolls, and no person is entitled to be admitted by virtue of the will of an unadmitted testator, except on payment of such fines, fees, and stamp duties as would have been paid prior to the passing of the Wills Act on the admittance of the testator, and on a surrender to the use of his will (*u*).

Presentment not required.

Surrenders were formerly said to be made upon a tacit condition that they should be presented by the homage for the instruction of the lord and the other tenants, and were made void in certain cases by a neglect of this formality. But the presentment is now unnecessary, except where a surrender has been made out of court by special custom to persons other than the lord or steward; in such cases a formal presentment is useful for bringing the matter before the lord or steward; and it is provided by the Copyhold Act, 1841 (*x*), that every regular surrender, deed of surrender, will, codicil, grant, and admission, entered on the court roll pursuant to the Act, shall be deemed to have been duly presented; and that it shall not be essential to the validity of any admission that a presentment shall be made by the homage of the instrument or fact in pursuance of which admission shall have been granted (*y*). These provisions, however, do not authorise or empower the lord of a manor who is entitled by the custom to grant, with the consent of the homage, any common or waste lands to be held as copyholds, to make such grants without the consent of the homage assembled at a court which has

(*t*) 1 Vict. c. 26, s. 3. See Appendix, *post*.

(*u*) *Ibid.* s. 4.

(*x*) 4 & 5 Vict. c. 35, s. 89.

(*y*) *Ibid.* s. 90.

been duly summoned and held in accordance with the custom of the manor (*z*).

Voluntary conveyances.

A surrender made for valuable consideration cannot be revoked (*a*), and as between the original parties even a voluntary surrender will be binding, though this was formerly doubted (*b*); it has been decided, however, that copyholds are within the statute 27 Eliz. c. 4, which avoids all conveyances of any lands, tenements, or hereditaments made for the intent of defrauding and deceiving persons afterwards purchasing the same, so that purchaser for value will be preferred to any one claiming under a voluntary surrender (*c*). Copyholds were not within the statute 13 Eliz. c. 5, for the protection of creditors, so that a surrender or conveyance of them for an inadequate consideration could not be attacked as fraudulent (*d*), nor were they assets for the debts of a testator further than he charged them (*e*). The Act 3 & 4 Will. IV. c. 104, however, provided that where a testator died seised of copyhold estates which he had not by his last will charged with, or devised subject to, the payment of his debts, such estates should be assets for the payment of both his simple contract and specialty debts (*f*). Before the Act 1 & 2 Vict. c. 110, copyholds could not be taken in execution upon a judgment, because it would have been prejudicial to the lord (*g*); but by the last-mentioned Act all real estates, including lands and tenements of copyhold or customary tenure, of which the person against whom execution issues was seised at the time of entering up the judgment, or at any time afterwards, or over which he alone had a disposing power, may be taken in execution, but the person

(*z*) 4 & 5 Vict. c. 35, s. 91. See 50 & 51 Vict. c. 73, s. 6.

(*a*) Co. Copyh. s. 39; *Payne* v. *Barker*, O. Bridg. 18, 24.

(*b*) See *Pulvertoft* v. *Pulvertoft*, 18 Ves. jun. 84, 92; *Smith* v. *Garland*, 2 Mer. 123; Co. Copyh. s. 39.

(*c*) *Doe* d. *Tunstill* v. *Bottriell*, 5 B. & Ad. 131.

(*d*) *Mathews* v. *Feaver*, 1 Cox, Ch. Cas. 278.

(*e*) *Aldrich* v. *Cooper*, 8 Ves. jun. 382, 393.

(*f*) Sect. 1.

(*g*) See *Cannon* v. *Park*, 2 Eq. Cas. Abr. 226, pl. 6.

to whom the land is delivered in execution is liable to the performance of the services due to the lord (*h*).

Covenant to surrender: when surrender supplied.

Where a copyholder covenants or agrees to surrender, but dies before performing his contract, a court of equity will supply the want of a surrender in favour of a purchaser for value or mortgagee, and will enforce the contract against the heir, widow, devisee, surviving joint-tenant, or "the life" or person taking in succession after the death of the beneficial owner of a copyhold for lives (*i*); and the devisee of a purchaser who dies before the conveyance under a contract can insist on the surrender being made to his use (*k*). But in the case of a voluntary conveyance, the defect in a surrender, or the want of a surrender, will not be supplied against the customary heir, unless he has done something to prevent the contract being fulfilled (*l*).

Surrender on condition.

Copyholds may be surrendered on condition; and this is the usual practice when it is desired to mortgage the copyhold. The condition is generally contained in the surrender itself, and enrolled on the court rolls, but it may be contained in a separate deed. The person to whom a conditional surrender is made does not usually take admittance, but a custom to compel his admittance would be valid (*m*). If the condition is performed, or in the case of a mortgage if the money is repaid before the admittance of the surrenderee, the surrenderee simply acknowledges satisfaction, and authorises the steward to enter the acknowledgment on the court rolls. When this has been done, the surrenderor becomes possessed of his old estate in the copyhold, and does not require to be re-admitted. But if the surrenderee has been admitted, then it would seem that

(*h*) Sect. 11.

(*i*) *Barker* v. *Hill*, 2 Ch. Rep. 218; *Anon.*, 2 Freem. 65; *Hinton* v. *Hinton*, 2 Ves. 631, 638; *Brown* v. *Raindle*, 3 Ves. jun. 256; *Neeve* v. *Keck*, 9 Mod. 106.

(*k*) *Rose* v. *Cunynghame*, 11 Ves. jun. 550, 554; Dart, V. & P. c. 7, s. 6.

(*l*) *Wycherley* v. *Wycherley*, 2 Eden, 175, 177.

(*m*) *Baspole* v. *Long*, Yelv. 1; *King* v. *Dilliston*, 3 Mod. 221; 1 Cas. & Op. 191.

even upon a subsequent performance of the condition, or upon payment of the money, a fresh admittance would have to be taken by the original surrenderor (*n*). If the surrenderee has been admitted in the first instance even before forfeiture of the condition, the surrenderor may release the condition by deed (*o*), and similarly if the condition is broken the surrenderor may release by deed any equity of redemption which he has (*p*); and in neither of these cases will any fine be payable to the lord, for the surrenderee by his admission is already tenant to the lord.

Admittance.

Admittance has been defined as the lord's acceptance of a person into the tenancy (*q*). Such acceptance was usually signified in former times by the surrenderee appearing at the lord's court and applying to be admitted, and by the lord or his steward delivering to him a rod or twig or other customary symbol of possession; the surrenderee might have been required to take an oath of fealty, but in practice this was usually respited. All that was really requisite, however, was that the lord should in some unequivocal way express his consent to the surrenderee becoming his tenant; thus, the lord might admit without holding a court, or he might show his consent to the new tenancy or ratify the change of tenancy by summoning the alienee to sit on the homage jury, or taking a fine or rent from him in respect of the tenement (*r*). But the mere assessment of a fine, or the acceptance of rent which might be due from him in another capacity, is not sufficient evidence of admission (*s*). The steward's acceptance of the presentment, entry of the surrender, or delivery of a copy to the alienee, or all these things together, would not be sufficient; though if the lord in person did these things they would in all probability be considered to amount to

(*n*) See Gilb. Ten. 276; *Fawcet* v. *Lowther*, 2 Ves. 300.

(*o*) *Hull* v. *Sharbrook*, Cro. Jac. 36.

(*p*) *Kite* v. *Queinton*, 4 Rep. 25 a.

(*q*) Watk. Copyh. i. 248.

(*r*) *Froswell* v. *Welche*, Godb. 268.

(*s*) *Brown* v. *Dyer*, 11 Mod. 73; *Doe* d. *Vernon* v. *Vernon*, 7 East, 8.

an admittance. It was formerly thought that the admittance of the alienee of a person who had not been admitted might amount to an implied admission of the latter; but the matter has been decided the other way (*t*).

Effect of admittance.

When the admittance is made, the estate is held by relation to have been in the surrenderee from the date of the surrender (*u*). The operation of the admittance is governed by the limitation of uses in the surrender, the lord or steward having but a bare customary authority to admit according to the surrender. If, therefore, the surrender is made to the use of one person and another is admitted, the transaction will be of no effect: if the right person and another are admitted together, the admission will enure only to the benefit of the person named in the surrender: where the surrender is conditional and the admittance absolute, the admittance is void; but if a conditional admittance be made on an absolute surrender, the admittance will be held good and the condition disregarded (*x*).

Admittance does not of itself constitute a possession (*y*), and where two adverse parties claim title to the same copyhold both may be admitted (*z*). Admittance enures only according to the title in respect of which it is made, no matter in what terms it is made, and it confers no estate or title of itself (*a*). As the lord, in the case of admittance upon surrender, is merely an instrument, the state of the lord's title is immaterial, provided only he is lord *de facto;* and in this respect admittance upon surrender differs from admittance upon a voluntary grant, where the

(*t*) *Wilson* v. *Weddell*, Yelv. 144; *Doe* d. *Tofield* v. *Tofield*, 11 East, 246; but see *Wilson* v. *Allen*, 1 J. & W. 611, 613.

(*u*) *Holdfast* d. *Woollams* v. *Clapham*, 1 T. R. 600; *Smith* v. *Adams*, 18 Beav. 499.

(*x*) *Taverner* v. *Cromwell*, 4 Rep. 27 a; Co. Copyh. s. 41.

(*y*) *Zouch* d. *Forse* v. *Forse*, 7 East, 186.

(*z*) *Rex* v. *Hexham Manor* (*Lord of*), 5 A. & E. 559.

(*a*) *Right* d. *Wells* (*D. and C. of*) v. *Bawden*, 3 East, 260; *Doe* d. *Wheeler* v. *Gibbons*, 7 C. & P. 161.

lord must have the power of granting and therefore of admitting (*b*).

Tenant on admittance to receive notice.

On the admittance or enrolment of any tenant after the 31st of December, 1887, the steward of the manor is bound, without any charge beyond the fee for admission or enrolment, to give the tenant a notice to the effect that if he desires to enfranchise the copyhold and make it freehold, he can do so on payment of compensation to the lord and of the steward's fees, and that such compensation may be fixed either by agreement between the lord and tenant, or by any valuers whom they may appoint, or through the agency of the Board of Agriculture (*c*). If the steward neglects to serve such a notice on the tenant who has been admitted or enrolled, he is not entitled to charge any fee for the admission or enrolment (*d*).

Admittance by attorney.

Admittance may be taken by attorney. The lord formerly could not be compelled to admit by attorney, because he might have claimed fealty which was a personal duty: but in practice the fealty was almost always respited (*e*); but now by the second section of the Copyhold Act, 1887 (*f*), it is provided that after the commencement of that Act (*g*) every person entitled to admission may be admitted by himself or his attorney duly appointed, whether orally or in writing. There are, however, special provisions by statute for the admittance of infants, lunatics, and persons of unsound mind. The Act 11 Geo. IV. and 1 Will. IV. c. 65, provides that when an infant is entitled to be admitted to a copyhold, he or his attorney or guardian is to appear at one of the three next courts (proper notice being given) and shall offer to be admitted, and shall take admittance (*h*); that such attorney may be appointed

(*b*) *Doe* d. *Burgess* v. *Thompson*, 5 A. & E. 532.

(*c*) 50 & 51 Vict. c. 73, s. 1; 52 & 53 Vict. c. 30.

(*d*) 50 & 51 Vict. c. 73, s. 1.

(*e*) See *Combes' Case*, 9 Rep. 75 a; *Blunt* v. *Clark*, 2 Sid. 37, 61; Gilb. Ten. 284.

(*f*) 50 & 51 Vict. c. 73.

(*g*) 16th September, 1887.

(*h*) Sect. 3.

by an infant having no guardian, by writing under his hand and seal (*i*); and that in default of such appointment the lord, after proclamations duly made in three courts, may appoint the attorney and make the admittance (*k*). But an infant does not forfeit his land for his neglect or refusal to go to any of the manorial courts, nor for his omission, denial, or refusal to pay any fine imposed or set upon his admittance; and if the fine is not warranted by the custom of the manor, or is unlawful, he may controvert the legality of the fine in the usual manner (*l*). The Act of 11 Geo. IV. & 1 Will. IV. contained similar provisions with respect to married women and lunatics; but as regards married women, these provisions have been practically rendered unnecessary by the Married Women's Property Act, 1882, which enables a married woman to acquire real property in the same manner as if she were a *feme sole* (*m*). The provisions relating to the admittance of lunatics are now contained in the Lunacy Act, 1890, which consolidates most of the previous enactments respecting lunatics (*n*); and in the case of a lunatic so found by inquisition the committee of his estate may, by virtue of these provisions, offer himself to be admitted tenant in the name and on behalf of the lunatic, and in default the lord or his steward may, after holding the prescribed number of courts and making the necessary proclamations, appoint an attorney for the lunatic for the purpose of admittance only, and by that attorney admit the lunatic tenant of the land (*o*). The expenses of admittance will be defrayed out of the property of the lunatic which the judge in lunacy orders to be applied to that purpose (*p*).

So long as the lord's rights are not infringed by the Admittance

(*i*) Sect. 4. The appointment may now be made orally: 50 & 51 Vict. c. 73, s. 2.
(*k*) Sect. 5.
(*l*) Sects. 9, 10.
(*m*) 45 & 46 Vict. c. 75, ss. 2, 5.
(*n*) 53 Vict. c. 5.
(*o*) *Ibid.* s. 125.
(*p*) *Ibid.* s. 117. See *Ex parte Degge*, and *Ex parte Grimstone*, 4 Bro. C. C. 235, n.

compellable by tenant.

proposed admittance, he is compellable to admit any person having a *primâ facie* title to the copyhold, since the admission of itself gives no title, but only a right to bring an action for recovery (*q*). But where it is plain that the person claiming admission has no title at all, the admittance should not be made (*r*); and where it is clear that under the provisions of the Statutes of Limitation a claimant's title to the copyhold is barred by lapse of time, the Court will not compel his admittance (*s*). The Court of Chancery formerly compelled the lord to admit, but the jurisdiction has fallen into disuse: and since 1772 the practice has been to get a *mandamus*, directed to the lord and steward, to admit (*t*). But a *mandamus* does not lie in the case of Crown manors, and even although the steward is appointed by the Commissioners of Woods and Forests, the proceedings to obtain admittance must be by petition of right or other remedy available against the Crown (*u*).

Whether admittance compellable by lord.

The lord cannot in general compel the surrenderee to come for admittance, since he has already a tenant on the roll to answer for the services; but in some manors there are special customs making surrenders void unless admittance is taken within a certain time, or giving the lord a forfeiture or a power to seize *quousque* and to satisfy himself out of the rents and profits for his fines, costs, and expenses. As these customs, however, are only for the lord's benefit, they may be waived by him (*x*). A covenant to surrender cannot be enforced by the lord so as to entitle him to compel a new admittance (*y*). The estates of

(*q*) *Widdowson* v. *Harrington* (*Earl of*), 1 J. &. W. 532, 543; *Reg.* v. *Dendy*, 1 E. & B. 829.

(*r*) See *Reg.* v. *Garland*, L. R. 5 Q. B. 269; *Garland* v. *Mead*, L. R. 6 Q. B. 441.

(*s*) *Reg.* v. *Agardsley Manor* (*Lord of*), 5 Dowl. 19; *Walters* v. *Webb*, L. R. 5 Ch. 531.

(*t*) *Rex* v. *Hendon Manor* (*Lord of*), 2 T. R. 484; *Rex* v. *Coggan*, 6 East, 431; *Reg.* v. *Witchford Manor* (*Steward of*), 7 Dowl. 709; *S. C.* nom. *Reg.* v. *Evans*, 1 Q. B. 355 n.

(*u*) *Reg.* v. *Powell*, 1 Q. B. 352.

(*x*) *Doe* d. *Warwick* v. *Coombes*, 6 Q. B. 535.

(*y*) *Hall* v. *Bromley*, 35 Ch. Div. 642.

infants are protected from forfeiture by the provisions of the statute 11 Geo. IV. & 1 Will. IV. c. 65, above mentioned.

Admittance of particular tenant.

The admittance of a particular tenant is the admittance of all in remainder (*z*), and the principle on which this rule rests, namely, that the particular estate and the remainder make but one estate, applies equally to the reversioner (*a*); but there may be a custom to compel remaindermen to take admittance (*b*). The admittance of one of several coparceners or joint tenants is the admittance of all (*c*), but tenants in common must be admitted separately (*d*).

Re-admittance.

A copyholder must be re-admitted who acquires a new estate in the tenement (except by way of release), as where he divests himself of his estate by any assurance by which he takes back a particular estate to himself, or when, having taken admittance for a particular estate, he subsequently acquires an estate in remainder (*e*).

Conveyance on sale.

The sale of copyholds is usually effected by means of a covenant to surrender, the same deed containing the covenants for title, as the covenants for title cannot be entered on the court rolls (*f*). The covenant is followed by an actual surrender to the person taking the covenant or his assigns, and the tenancy is afterwards perfected by admittance, the lord not being entitled to take notice of any assignment of the benefit of the contract before surrender (*g*). There should be a declaration in the covenant to surrender that the covenantor will until the surrender hold the land as a trustee for the purchaser; in the absence of such a declaration, the vendor will not be considered to be a trustee, unless the contract has been

(*z*) *Fitch* v. *Stuckley*, 4 Rep. 23 a.

(*a*) *Doe* d. *Winder* v. *Lawes*, 7 A. & E. 195.

(*b*) *Doe* d. *Whitbread* v. *Jenney*, 5 East, 522; *Randfield* v. *Randfield*, 3 De G. F. & J. 766.

(*c*) *Benee* v. *Gilpin*, L. R. 3 Ex. 76.

(*d*) *Traherne* v. *Gardner*, 5 E. & B. 913.

(*e*) *Reg.* v. *Corbett*, 1 E. & B. 836; *Doe* d. *Winder* v. *Lawes*, 7 A. & E. 195.

(*f*) Dav. Prec. in Conv. 4th ed. vol. ii. pt. 1, 205.

(*g*) See *Hall* v. *Bromley*, 35 Ch. Div. 642.

executed, for the covenant to surrender is no more than a mere agreement to convey (*h*); but if the contract has been executed, the vendor will be considered to be a trustee within the meaning of the Trustee Acts, but not otherwise, and if he should refuse to surrender, a vesting order, or an order for some other person to surrender in his stead, may be obtained under the Trustee Acts (*i*). When copyholds and freeholds are sold together, the usual mode of transfer is the most convenient: but the safest plan is to convey by an actual surrender, followed by the deed containing covenants for title and perfected by admittance. It has been doubted whether the benefit of the covenants will run with the land if the deed containing them precedes the surrender: but the point has not been much regarded in practice, and perhaps would not arise when the surrender and the covenants for title are substantially parts of the same transaction (*k*). Copyholds are within the equity of the statute 32 Hen. VIII. c. 34, which gives to assignees of the reversion the benefit of covenants running with the land (*l*). It may be noticed here, that after a surrender the heir of the purchaser may sue upon the covenants for title before admittance (*m*); but this privilege would not be extended to the heir of a copyholder for lives before admittance, even if there should be an inheritable right of renewal (*n*). Though a covenant for value to surrender is binding as between surrenderor and surrenderee, it cannot be enforced by the lord so as to give him any right to compel a new admittance or to a fine in respect thereof (*o*).

(*h*) *Whitbread* v. *Jordan*, 1 Y. & C. Ex. 303; 4 Y. & C. Ex. 566.

(*i*) *Re Collingwood's Trusts*, 6 W. R. 536; *In re Cuming*, L. R. 5 Ch. 72; *In re Crowe's Mortgage*, L. R. 13 Eq. 26.

(*k*) Dav. Prec. Conv. 4th ed. vol. ii. pt. 1, 207.

(*l*) See *Glover* v. *Cope*, 3 Lev. 326; *Riddell* v. *Riddell*, 7 Sim. 529.

(*m*) *Clarke* v. *Pennifather*, 4 Rep. 23 b.

(*n*) *Doe* d. *Dand* v. *Thompson*, 13 Q. B. 670; *Doe* d. *Hamilton* v. *Clift*, 12 A. & E. 566.

(*o*) *Hall* v. *Bromley*, 35 Ch. Div. 642.

Enrolment.

It is unsafe to pay the purchase-money before the surrender is entered on the rolls, as a subsequent purchaser might otherwise get in the legal estate by surrender and admittance, and so gain the advantage of title. On every sale of copyholds the steward is bound, within four months of the surrender, to make out a duly stamped copy of court-roll of the surrender, and have the same ready for delivery to the person entitled thereto, under a penalty of fifty pounds for neglect: but he may refuse to deliver such copy until his fees and the proper duty shall have been paid (*p*).

Searches.

On a sale of copyholds, in addition to the usual searches for incumbrances, the purchaser should search the court-rolls (*q*), and require evidence of the customs of the manor on any point which may affect the property purchased (*r*).

Usual and necessary conditions.

When freeholds and copyholds are intermixed, it is necessary to stipulate in the conditions of sale that the purchaser shall not be entitled to have the boundaries distinguished, and (when required by the circumstances) to provide that the vendor shall not be bound to distinguish the manors of which the different tenements are held, or of which they are parcels respectively; otherwise it seems that the purchaser will be entitled to have the land of each particular tenure pointed out and distinguished by its boundaries (*s*). A purchaser having to pay a certain sum for timber will not be entitled, if these conditions are used, to any abatement of price upon the ground that he is prevented from cutting any of the timber by reason of the confusion of boundaries (*t*).

A condition to relieve the vendor from identifying the parcels will not preclude a purchaser from requiring evi-

(*p*) 54 & 55 Vict. c. 39 (Stamp Act, 1891), ss. 67, 68. See Appendix, *post*.

(*q*) *Pearce* v. *Newlyn*, 3 Madd. 186; but see *Bugden* v. *Bignold*, 2 Y. & C. Ch. 377, as to court-rolls not being constructive notice to purchaser of copyhold of prior incumbrances.

(*r*) Dart, V. & P. 132, 566, 567.

(*s*) *Monro* v. *Taylor*, 8 Hare, 51; Dart, V. & P. 175.

(*t*) *Crosse* v. *Lawrence*, 9 Hare, 462.

dence as to identity, if the descriptions in the abstracted deed should differ among themselves so as to be repugnant to each other, or if the deeds contain no evidence at all as to the identity. "A condition that the purchaser is not to require any further proof of identity than is furnished by the deeds themselves, is insufficient in the absence of proof of identity as to the whole or a part of the property; it is in effect a contract that the deeds shall show identity, and if they do not, a good title is not made" (*u*); and the usual condition relieving the vendor from proof of identity will not of itself, it appears, deprive the purchaser of his right to have the boundaries of the tenures distinguished in the case of intermixed lands (*x*). In the absence of stipulation it is a general rule that the vendor must identify the property sold with that described in the abstract; but in the case of copyholds "he is not bound to show how the description on the court-rolls is to be applied to the present state of the property, if he can prove that it has actually been held under that description for sixty years" (*y*). In the absence of special conditions, the vendor will have to pay the costs of all matters essential to the validity of the conveyance, including the expense of all proceedings which may become necessary by the death of any of the conveying parties; and the purchaser will only be obliged to pay the expenses of his own admittance, and the fees of the steward upon the surrender (*z*). An agreement by the vendor to pay the expenses of the admittance, or to surrender and assure the property at his own cost, will not extend to the payment of the fine on admittance, because the title is perfected by the admittance, and the fine is not due until afterwards (*a*). When it appears on the title that a surrender or admittance has

(*u*) Dart, V. & P. 175. See *Curling* v. *Austin*, 2 Dr. & Sm. 129; *Flower* v. *Hartopp*, 6 Beav. 476.

(*x*) Dart, V. & P. 175; and see *Dawson* v. *Brinckman*, 3 Mac. & G. 53.

(*y*) *Long* v. *Collier*, 4 Russ. 267.

(*z*) *Paramore* v. *Greenslade*, 1 Sm. & G. 541.

(*a*) *Graham* v. *Sime*, 1 East, 632.

been made by attorney, there should be a stipulation that the entry on the court-rolls shall be sufficient evidence of the validity of the power of attorney, otherwise the power would have to be produced, and evidence given of the principal having been alive at the time of its being acted upon, unless it has been made, or rendered irrevocable, in accordance with the provisions of the Conveyancing Act, 1882 (*b*), and has been deposited as directed by sect. 48 of the Conveyancing and Law of Property Act, 1881. Where the title depends upon a grant of the waste, as a new copyhold made before the Copyhold Act, 1887 under a special custom, it should be stipulated that no evidence shall be required of the existence of the custom, or of the consent of the homage having been given (*c*). The vendor must covenant to produce the copies of court-roll over which he has power, or which are in his possession, and must hand them over upon completion of the purchase if they relate only to the property sold, however ancient they may be. In the absence of stipulation the vendor is bound to produce the original of all documents and other instruments necessary to verify the abstract of his title, but as regards copyholds he is only bound to produce the copies of the court-rolls which he has in his power or possession. If the vendor has not any copies, the purchaser is not entitled to a covenant for production, for he may at any time resort to the court rolls and make use of them (*d*); but where the original copies are not produced, a good reason must be given for the omission (*e*). An enquiry may be made upon the purchase whether the vendor's solicitor or the steward know of any manorial custom or matter of tenure which might affect the validity of the proposed conveyance (*f*).

Specific performance.

A purchaser is not bound to accept land of a different

(*b*) Sects. 8, 9.

(*c*) Dart, V. & P. 189, 190.

(*d*) *Cooper* v. *Emery*, 1 Phill. 388; and see *In re Agg-Gardner*, 25 Ch. Div. 600.

(*e*) Dart, V. & P. 159.

(*f*) But see *In re Ford and Hill*, 10 Ch. Div. 365.

tenure to that which he contracted for, because the difference extends to the whole estate, and is therefore not a proper matter for compensation (*g*). He cannot, therefore, except by special conditions, be compelled to take copyhold instead of freehold (*h*), or an estate partly freehold when he has contracted to purchase a copyhold (*i*), or enfranchised copyholds, with an exception of minerals or timber, instead of freehold (*k*). But where an estate was represented to be equal to freehold, it was held that the vendor ought to complete, although it turned out to be altogether freehold, in the absence of a stipulation that the contract should fail if any part were not of copyhold tenure (*l*). An objection to a difference of tenure will give the purchaser a right to compensation if from the circumstances of the contract he should be compelled to complete (*m*). Objections of this kind will be held to be waived if the purchaser, after discovering the facts, should proceed with the treaty for purchase (*n*). On a sale of copyholds it is not necessary to state the peculiar customs of the manor, or to mention that the lands are subject to the payment of heriots, reliefs, and the like; but it is expedient to mention at least the fines, as the value of the property depends a good deal on the fact whether the fines are arbitrary or not. On the sale of freeholds subject to heriots, which are expressly stated to be held of a manor, the heriots, &c., need not be mentioned, but would be matter for compensation. But in all cases it is better to mention liabilities of this kind (*o*).

Dayne surrender.

In the extensive district comprised in the manor of Taunton Deane in Somersetshire there is a peculiar conveyance known as a Dayne Surrender, which is used when

(*g*) *Drewe* v. *Corp*, 9 Ves. jun. 368; *Wright* v. *Howard*, 1 S. & S. 190.

(*h*) *Price* v. *Macaulay*, 2 De G. M. & G. 339.

(*i*) *Ayles* v. *Cox*, 16 Beav. 23.

(*k*) *Upperton* v. *Nickolson*, L. R. 6 Ch. 436.

(*l*) *Twining* v. *Morrice*, 2 Bro. C. C. 326, 331; and see *Daniels* v. *Davison*, 16 Ves. jun. 249.

(*m*) *Fordyce* v. *Ford*, 4 Bro. C. C. 495.

(*n*) *Calcraft* v. *Roebuck*, 1 Ves. jun. 221.

(*o*) Dart, V. & P. 132.

a copyholder alienes his tenement but desires to retain a part for his own life. The purchaser is admitted to the whole of the land, which is called the Dayne Tenement, and pays a fine of one-third of the amount of an ordinary admittance-fine, and further makes himself responsible for the heriot to be paid on the death of the tenant for life. On the death of the surrenderor the whole land belongs to the Dayne tenant (*p*). And by a somewhat similar custom in the manor of Yetminster in Dorset the copyholder for life, with power of nominating the successor, may surrender to the use of another "excepting" a portion to himself; the surrenderee becomes tenant of the whole, but the original tenant remains in possession of the "excepted tenement," and his widow will have it for freebench (*q*). "Excepted tenements."

The mortgage of a copyhold is effected by a covenant to surrender upon condition, the covenants for title being contained in the same deed, followed by a conditional surrender; the surrender is conditioned to be void on payment of principal and interest at a specified date. If the surrenderor neglects or refuses to make the conditional surrender for twenty-eight days after the mortgagee has demanded it, and has tendered to him the engrossment for his signature, the Court will, on the petition of the mortgagee, make a vesting order under section 2 of the Trustee Extension Act, 1852 (*r*), and will treat the mortgagor as a trustee refusing to convey (*s*). The condition of the surrender is considered to be fulfilled by a payment at any time before sale or foreclosure. The admittance is usually postponed, to save the fine, until some default in payment is apprehended, the mortgagor remaining tenant, and on the fulfilment of the condition being in of his old estate (*t*). Mortgage.

(*p*) Shillibeere, Customs of Taunton Deane, 32.

(*q*) For the customs of Yetminster Prima, see Appendix, *post*, and *Devenish* v. *Baines*, Ch. Pr. 3, as to a "copy of exception" supplied by Court of Equity.

(*r*) 15 & 16 Vict. c. 55.

(*s*) *Re Crowe's Mortgage*, L. R. 13 Eq. 26.

(*t*) *Simonds* v. *Lawnd*, Cro. Eliz. 239; *Doe* d. *Shewen* v. *Wroot*, 5 East, 132.

But if the mortgagee shall have been admitted, the mortgagor will require a new admittance; and such admittance will confer a new estate on the mortgagor, and the descent will be altered, so that if the lands have descended to the mortgagor *ex parte maternâ* they will afterwards descend as if he had acquired them by purchase (*u*). Unless there is a special custom within the manor the lord cannot compel the mortgagee to take admittance; but it is said that there may be such a custom, and that such a custom would be upheld, and that the Court will not grant relief against it (*x*). Where the mortgage is of a renewable copyhold for lives, the deed of covenant should contain a provision for procuring the proper renewals (*y*). The money should not be paid until the surrender is made, to prevent a second mortgagee without notice obtaining priority by enrolment. When it is inconvenient to make the surrender at once, the mortgagee should have a power of attorney for himself or his agent to surrender for the mortgagor (*z*). A second mortgage should be enrolled as soon as practicable, to give notice to subsequent incumbrancers. The transfer of a copyhold mortgage may be made in several ways, as by a fresh conditional surrender on the part of the mortgagor, or after the admittance of the mortgagee by his surrender. The equitable interest under a covenant to surrender is transferred by a deed of assignment (*a*).

Remedies of a mortgagee.

It has already been seen that a surrenderee cannot bring an action to recover the land until he has been admitted, but that his admittance relates back to the date of the surrender (*b*). When admitted, he may recover the mesne profits from the date of the surrender (*c*). A mortgagee of copyholds may, however, commence an action of foreclosure

(*u*) *Doe* d. *Harman* v. *Morgan*, 7 T. R. 103.

(*x*) *Baspool* v. *Long*, Cro. Eliz. 879; *King* v. *Dilliston*, 1 Salk. 386; *Tredway* v. *Fotherley*, 2 Vern. 367.

(*y*) Dav. Conv. Prec. 4th ed. vol. ii. pt. 2, p. 117.

(*z*) *Ibid.* p. 113.

(*a*) *Ibid.* pp. 793, 794.

(*b*) *Ante*, p. 63.

(*c*) *Roe* d. *Jefferys* v. *Hicks*, 2 Wils. 13, 15.

before admittance(*d*). Where the mortgage is made by deed executed after the 31st of December, 1881, the mortgagee has, by virtue of the Conveyancing and Law of Property Act, 1881, a power of sale, unless there is a provision to the contrary; and when exercising such power of sale, he is entitled to convey the property by deed for such estate and interest as is the subject of the mortgage; but the Act provides that in the case of copyhold or customary land the legal right to admittance is not to pass by such deed of conveyance, unless the deed is sufficient otherwise by law or by custom for the purpose(*e*). In the absence of a special custom, the lord is not bound to receive a conditional surrender to such uses as the mortgagee may appoint and in default of appointment to the use of him and his heirs(*f*); but if the lord accepts such a surrender, he cannot afterwards refuse to act on it(*g*), and a purchaser from the mortgagee would take as his appointee, and would claim admittance upon the conditional surrender, and thus save the payment of two fines.

Discharge of mortgage.

After payment of the moneys secured, the mortgage is regarded as a revoked surrender; and if, during the continuance of the security, a sale has been effected, the purchaser's estate is treated as having been made absolute by the discharge of the security; but it is perhaps safer for the purchaser to take a release from the mortgagee. The mode of reconveying the copyholds on the mortgage being paid off depends on the estate which the mortgagee has acquired. If he has been admitted on the surrender, he must re-surrender, but if no admittance has been taken, upon the payment the steward receives from the mortgagee or his personal representatives an acknowledgment called a warrant of satisfaction, a minute of which is entered on the court roll; the conditional surrender is thereby vacated,

(*d*) *Sutton* v. *Stone*, 2 Atk. 101.

(*e*) 44 & 45 Vict. c. 41, ss. 19—21.

(*f*) *Flack* v. *Downing Coll., Cambr.* (*Master, &c. of*), 13 C. B. 945.

(*g*) *Eddleston* v. *Collins*, 3 De G. M. & G. 1.

but the mortgagee should give a release with a covenant that he has not incumbered. If, again, the mortgage has rested merely on a covenant to surrender, a deed of release by the mortgagee, containing a covenant that he has not incumbered, will be sufficient to discharge the mortgage (*h*).

Equitable mortgage.

An equitable mortgage of copyholds is made by deposit of the copies of court-roll and other muniments of title (*i*), the mortgagor agreeing to make a conditional surrender if required. As an equitable mortgage may be created by the mere deposit of the copy, it is not sufficient for the protection of a purchaser or mortgagee to search the rolls for incumbrances. "The vendor or mortgagor should be required to furnish an abstract of title and his copy of admission; and if the latter document is not forthcoming, its absence must be reasonably accounted for" (*k*). The same rules apply to equitable mortgages of freeholds and of copyholds, so far as the differences of tenure will permit.

Devises.

As copyhold tenants were not within the provisions of the Statutes of Wills, passed in the reign of Henry VIII. (*l*), which gave the power of devising lands to such persons only as held by socage tenure and had an estate of inheritance in fee simple, copyholds were formerly not deviseable in the sense of passing under a will, in the legal sense of the term. But by the customs of most manors a copyholder was formerly able to devise his lands by means of a surrender into the hands of the lord to such uses as he should by his last will limit or appoint, the will being afterwards made and declaring the uses of the surrender. But there were manors, *e. g.*, Houghton and Easington in Durham (*m*), in which no such custom existed;

(*h*) Dav. Prec. Conv. 4th ed. vol. ii. pt. 2, p. 819.

(*i*) *Ex parte Warner*, 19 Ves. jun. 202; *Tylee* v. *Webb*, 6 Beav. 552; *Pryce* v. *Bury*, 2 Dr. 11.

(*k*) *Whitbread* v. *Jordan*, 1 Y. & C. Ex. 303.

(*l*) 32 Hen. VIII. c. 1, explained by 34 & 35 Hen. VIII. c. 5.

(*m*) See *Nicholson* v. *Nicholson*, 1 Tam. 319.

and there the tenements were formerly not deviseable at all, except as regards the equitable estate. In some of these manors, *e.g.*, in the manors above mentioned, and in Botchardgate in Cumberland (*n*), it was usual to surrender to the use of a trustee upon trust to convey to the devisees, or to make a mortgage for a trifling amount, so that the devisee of the equity of redemption might redeem and so get the legal estate; elsewhere, as in the manor of Taunton Deane in Somerset, there was a custom of making "dormant surrenders," by which the lands were surrendered to a trustee on condition of carrying out the tenant's will, the surrender being revocable, and only valid for a period of seven years (*o*). By the special customs of some other manors the copyholds could only be devised for a limited period; as in the manor of Barton-upon-Humber, where the copyhold tenements were deviseable for eighty years without any surrender to the use of the will (*p*); while under other local customs the tenants could devise in the same way as freeholders (*q*).

Effect of surrender to use of will.

Notwithstanding the surrender to the use of the will, the estate remained in the copyholder, and might afterwards be surrendered by him to the use of a purchaser, or otherwise without a revocation of the first surrender (*r*). On the death of a copyholder after he had surrendered to the use of his will, the estate descended to his heir subject to the right of the devisees to be admitted (*s*). Further, a surrender to the use of a will only operated on the estate

(*n*) See *Nanson* v. *Barnes*, L. R. 7 Eq. 250.

(*o*) See Shillibeer, Customs of Taunton Deane, 36, and *Rex* v. *Southwood*, 5 Man. & Ryl. 414, for a definition of a dormant surrender, and *Gale* v. *Gale*, 2 Cox, Ch. Cas. 136, and *Portman* v. *Seymour*, 9 Mod. 280, as to the effect of a dormant surrender in severing a joint tenancy.

(*p*) Scriv. Copyh. 213.

(*q*) See *Wrot's Case*, Easter 35 Eliz. Com. Banc. Roll. 334, cited Litt. Rep. 26.

(*r*) *Fitch* v. *Hockley*, Cro. Eliz. 442; *Thrustout* d. *Gower* v. *Cunningham*, 2 W. Bl. 1046; *George* d. *Thornbury* v. *Jew*, Amb. 627.

(*s*) *Rex* v. *Wilson*, 10 B. & C. 80.

which the copyholder then had, and accordingly did not pass lands subsequently acquired by him (*t*).

By the Act 55 Geo. III. c. 192, now repealed, the necessity for a formal surrender to the use of a will was removed, and it was provided that in all cases where a copyholder might by will dispose of or appoint his tenement in pursuance of a surrender, every disposition or charge made by his will of any interest in the land should be as valid without the previous surrender as with it (*u*). That Act substituted "what has been well called an ideal surrender" (*x*) for an actual surrender, but it supplied only surrenders which were mere matters of form, so that the will of a married woman was not valid without her previous surrender made after separate examination and with her husband's assent (*y*); and so also, as a joint tenancy of a legal estate in copyholds could only be severed by surrender, a joint tenant could not devise and thereby sever the tenancy unless he had previously surrendered to the use of his will (*z*). In these cases, therefore, surrender to the uses of a will was still required.

The Wills Act, 1837.

But the Wills Act, 1837 (*a*) has repealed the Act of 55 Geo. III. and substituted new provisions. It provides that all "real estate of the nature of customary freehold or tenant-right, or customary or copyhold," may be devised, notwithstanding that the testator may not have surrendered the same to the use of his will, or that, being entitled as heir, devisee, or otherwise to be admitted, he shall not have been admitted thereto, or that the same could not have been devised by reason of the want of a custom to devise or surrender to the use of a will or otherwise, or that there was a custom that a will or sur-

(*t*) *Doe* d. *Ibbot* v. *Cowling*, 6 T. R. 63; *Doe* d. *Blacksell* v. *Tomkins*, 11 East, 185.

(*u*) Sect. 1.

(*x*) *Per* Cockburn, C. J., in *Garland* v. *Mead*, L. R. 6 Q. B. 441, at p. 447.

(*y*) *Doe* d. *Nethercote* v. *Bartle*, 5 B. & Ald. 492.

(*z*) Co. Litt. 59 b; *Porter* v. *Porter*, Cro. Jac. 100.

(*a*) 1 Viet. c. 26.

render to the use of a will should continue in force for a certain time only, or any other custom preventing the free disposition by will. The power of devising is extended to estates *pur autre vie* in copyholds, whether or not there is a special occupant; and also to contingent, executory, and other future interests, to which the testator may be in any way entitled, and to all rights of entry for condition broken and other rights of entry, and estates to which the testator is entitled at the time of his death, notwithstanding that he became entitled to them after the execution of his will (*b*).

Fines, &c., payable by devisees of copyholds.

It is further provided that where the custom would have authorised a surrender to the use of a will, and the testator shall not have made a surrender, the devisee shall not be admitted except on payment of all stamp duties, fees, and sums of money which would have been due in respect of the surrender, and its presentment (now unnecessary), registration, and enrolment; and that, where the testator might have been admitted and have thereupon surrendered to the use of his will, the devisee shall not be admitted under the will without paying the stamp duties, fees, fine, and sums of money which the testator would have had to pay on such admittance, as well as the payments above mentioned due in respect of the omitted surrender, besides the payments due on the devisee's own admittance (*c*).

Enrolment of wills on court-rolls.

The Act further provides that when any copyhold is devised, the lord, steward, or deputy is to enter the will on the court-rolls, or so much of it as contains the disposition of the copyhold: and it is sufficient to state in the entry that the copyhold is subject to the trusts declared by the will, without entering the trusts; but where the copyhold could not have been devised except for the Act, the devisee is to pay the same fine, heriot, dues, duties, and

(*b*) Sect. 3. See Appendix, *post*. (*c*) Sect. 4. See Appendix, *post*.

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services as would have been due from the customary heir in case of a descent (*d*).

Estates *pur autre vie.*

With respect to estates *pur autre vie*, the Act provides (*e*) that in case there is no special occupant of an estate *pur autre vie* of a copyhold it shall go to the executor or administrator of the person who had the estate by virtue of the grant, and if the estate comes to the hands of the personal representatives, either as special occupants or by virtue of the Act, it is to be assets in his hands and distributed as personal estate.

Devises by infants.

Wills made by infants, which were formerly valid as to copyholds in certain cases, are made illegal by the provision that no will made by a person under the age of twenty-one years is to be valid (*f*).

Devise by married woman.

As to wills by married women, the Act provided (*g*) that no will made by any married woman was to be valid unless it was such as would have been valid before the passing of the Act. Accordingly, under the provisions of the Wills Act, 1837, there might still have been occasions, in the case of a married woman, for the supplying or the enlargement of an omitted or defective surrender in aid of creditors, children, or purchasers for value; but such questions are not likely now to arise, for the Married Women's Property Act, 1882, provides that every woman who was married after the 31st of December, 1882, may dispose by will of all real property belonging to her at the time of her marriage, or afterwards acquired by or devolving on her as her separate property in the same manner as if she were a *feme sole* (*h*), and that every woman who was married before the 1st of January, 1883, shall have similar powers of disposal, by will, of all real property, her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, accrued after that date (*i*).

(*d*) Sect. 5. See Appendix, *post*.
(*e*) Sect. 6.
(*f*) Sect. 7.
(*g*) Sect. 8.
(*h*) 45 & 46 Vict. c. 75, s. 2.
(*i*) *Ibid.* s. 5.

The Wills Act, 1837 further provides that a general devise by a testator of his lands, or his lands in a certain place, is to include his copyholds as well as his freeholds as far as the general description extends, unless a contrary intention appears by the will (*k*); and that where a testator devises to a person without any words of limitation, the devise is to be construed as passing the whole estate or interest which the testator had power to dispose of by will (*l*). General devise of lands includes copyholds.

The effect of the Act, and especially of sect. 3, is to enable a copyholder to devise his estate and interest in the land in every case without the necessity of a surrender to the use of his will, whether there was a custom in the manor to surrender for such purpose or not. The Act substituted an ordinary devise for the more cumbrous proceedings of the old law, but it is apparent that it was not intended to affect the relations of lord and tenant any more than by supplying a surrender to the use of the will. Under the old law a devise after a surrender conveyed no title or property to the devisee till he had been admitted; in the Wills Act "there is no intention that the devise should have a greater effect without the surrender than it had before the statute with the surrender: the devise simply passes the right to be admitted; and whereas a surrender and devise formerly had that effect, now the copyholder may make a will and devise this right directly" (*m*). When a testator disposes of his copyhold by his will he does not do more than name the person who should be admitted into the tenancy. The will has not the effect of conveying the estate to the devisee before admittance; the devisee may claim admission, but if he does not the heir is entitled to be admitted because of the immediate legal estate which descends to him on the death of the testator; and the rule as to the right of the heir to admittance is the Effect of the Wills Act.

(*k*) 1 Vict. c. 26, s. 26.
(*l*) *Ibid.* s. 28.
(*m*) *Per* Blackburn, J., in *Garland* v. *Mead*, L. R. 6 Q. B. 441, at p. 449.

same where the testator gives, by his will, a power of sale to trustees without any estate in the lands, for there the estate and the right to admittance descend to the heir until the power is executed and the purchaser is admitted (*n*). "All that the lord can insist on is that he shall never be without either a tenant or the possession of the land, and this is effectually secured to him by his right of seizing *quousque* upon the death of the tenant, unless the heir, or some one claiming under the testator's will, comes in and is admitted" (*o*).

Questions have arisen whether the lord is bound to admit the heir when a will devising the copyhold to a stranger is brought to his notice. In *Garland* v. *Mead* (*p*), Cockburn, C. J., though holding that the lord could not seize *quousque* for want of a tenant when the devisees under a will refused to take admittance but tendered the infant heir, said that it was a very different question whether the lord is bound as a matter of duty to admit the heir when a regularly executed will is brought to his notice, and it is clear that the devisees are entitled and ought to be admitted, and whether, in the event of the lord's refusing to admit, the heir could compel him by mandamus; but he expressed no opinion on the point. In an earlier stage of the same case (*q*), the Court of Queen's Bench refused a mandamus to compel the lord to admit the heir on the grounds that it was a matter of discretion, and that the effect of granting the writ would be to enable the trustees to avoid payment of a double fine and to commit a breach of trust by not acquiring for themselves the legal estate; but in the later case of *Regina* v. *Dudley* (*r*), a Divisional

(*n*) *Holder* d. *Sulyard* v. *Preston*, 2 Wils. 400; *Rex* v. *Wilson*, 10 B. & C. 80; *Glass* v. *Richardson*, 2 De G. M. & G. 658; *Garland* v. *Mead*, L. R. 6 Q. B. 441.

(*o*) *Per* Lord Cranworth, L. J., in *Glass* v. *Richardson*, 2 De G. M. & G. 658, at p. 663.

(*p*) L. R. 6 Q. B. 441.

(*q*) Reported as *Reg.* v. *Garland*, L. R. 5 Q. B. 269.

(*r*) Unreported. Decided in Q. B. Div. June, 1884.

Court of the Queen's Bench ordered the admission of a person claiming as heir, though there was a regularly executed will under which the estate was given to trustees in trust for the same heir for life, subject to defeasance in certain events, with remainders over. It seems clear also that the fact that the lord will be deprived of his fine, or at least of a portion of it, does not affect the question as to the right of the heir to be admitted notwithstanding the devise, for in *Rex* v. *Wilson* (*s*) it was held that the heir was entitled to a mandamus against the lord whether the object of the devisees in presenting him for admittance was made in furtherance of a scheme to defeat the lord's fine or not. If, however, the devisees desire to take admittance themselves as against the heir, they are entitled to compel the lord to admit them, even although he may have already admitted the heir or other adverse claimant (*t*); for, as has been already mentioned, "an admittance to a copyhold does not in itself constitute a possession; it only gives the party the means of possession if he have a good title to it" (*u*).

Power of appointment.

In order to save the expense of a double admittance, it is usual to give to trustees for the sale of copyholds a power of appointment to purchasers, instead of making a direct devise to the trustees (*x*). The purchaser alone will require to be admitted, and a single fine will be due (*y*); and much expense will be saved if the sale can be made before the lord is entitled to seize *quousque* for want of a tenant. If the sale cannot be effected before the three courts have been held, or the customary period for the vacancy of the tenement has expired, it may save expense in many cases to tender the heir for admittance.

(*s*) 10 B. & C. 80.

(*t*) *Rex* v. *Hexham Manor* (*Lord of*), 5 A. & E. 559.

(*u*) *Per* Lord Ellenborough, C.J., in *Zouch* d. *Forse* v. *Forse*, 7 East, 186, 192.

(*x*) *Holder* d. *Sulyard* v. *Preston*, 2 Wils. 400; *Rex* v. *Oundle Manor* (*Lord of*), 1 A. & E. 283; *Glass* v. *Richardson*, 2 De G. M. & G. 658.

(*y*) *Reg.* v. *Wilson*, 3 B. & S. 201.

Provisional admittance.

In some places there is a custom of taking "admittance *quousque*," as in the manor of Thorpe Hall, in Suffolk. In a case relating to this manor (z) it was found to be the custom, when a will contains a power of sale, for the heir or some other person to be admitted provisionally, for the purpose of preventing a seizure. In the case in question it was held that the person admitted *quousque* took an estate for his life to hold for the intents and purposes, and subject to the powers and declarations and trusts, contained in the will. On the execution of the power by the customary conveyance to a purchaser, which was enrolled, the purchaser became entitled to admission; but if the purchaser should be the same person as the provisional tenant, another admittance-fine would be due, as in every case where a tenant acquires a new interest in the tenement. The custom was also worthy of attention as requiring the lord to take notice of trusts, which is very unusual, as has been already noticed.

What estates in copyholds deviseable.

As to the property which may be devised, it will be observed that sect. 3 of the Act of 1837 extends the power of devising to estates *pur autre vie* in copyholds whether there is a special occupant or not, to contingent, executory, and other future interests to which the testator may be in any way entitled, and also to all estates and interests to which the testator is entitled at the time of his death, notwithstanding that he became entitled to the same subsequently to the execution of his will. With regard to equitable estates and interests in copyholds, the rule before the Act of 1837 seems to have been that where the testator had a purely equitable estate or interest in the copyhold, as, for example, the interest of a surrenderee for value who died before admittance, and not merely an imperfect and inchoate legal title, such equitable estate might have been devised without the necessity of a surrender, but where the testator had merely an incomplete legal title, as for ex-

(z) *Reg.* v. *Corbett*, 1 E. & B. 836.

ample, the interest of an unadmitted devisee, such estate could not have been devised (*a*); but since the passing of the Wills Act this distinction has ceased, the Act having expressly given such a power of devising to unadmitted devisees and surrenderees (*b*).

General devise.

The Wills Act expressly provides, as has been mentioned, that a devise of the testator's land in general terms will carry his copyhold land as well as his freehold, unless a contrary intention appears in the will (*c*). A devise of a manor will carry all land which, although originally copyhold, has after the devise and before the testator's death ceased to be copyhold through surrender to the lord's own use (*d*).

Disclaimer by devisees.

If devisees upon trust at once disclaim effectually, nothing will pass to them, and the heir must be admitted (*e*). Disclaimer should be by deed (*f*), but may be made by parol, or shown by conduct unequivocally opposed to acceptance of the trust; but it must be made before the exercise of any act of ownership over the estate, for "a disclaimer to be worth anything must be an act whereby one entitled to an estate immediately and before dealing with it renounces it" (*g*). Where several trustees are appointed, it is better in all cases that all of them except one should disclaim, as if no disclaimer is made in time the lord may treat them all as tenants, and seize until they pay the fines. Thus, in *Bence* v. *Gilpin* (*h*) it was held that a disclaimer and a release by two out of three joint tenants who were surrenderees of certain copyholds, which had been executed before the admittance of the third joint tenant, but after all the three had executed

(*a*) *Davies* v. *Beversham*, 2 Freem. 157; *Wainewright* v. *Elwell*, 1 Madd. 627; Watk. Copyh. i. 125; *King* v. *Turner*, 1 Myl. & K. 456; *Seaman* v. *Woods*, 24 Beav. 372.

(*b*) Sects. 3, 4. See Appendix.

(*c*) Sect. 26.

(*d*) *Hicks* v. *Sallitt*, 3 De G. M. & G. 782.

(*e*) *Rex* v. *Wilson*, 10 B. & C. 80.

(*f*) *Stacey* v. *Elph*, 1 Myl. & K. 195.

(*g*) *Per* Kelly, C. B., in *Bence* v. *Gilpin*, L. R. 3 Ex. 76, at p. 81.

(*h*) L. R. 3 Ex. 76.

various acts of ownership over the estate, was void, and that the lord was entitled to a fine as upon the admittance of all three. If, however, one of the joint tenants offers to be admitted, the lord has no right to refuse him for the purpose of compelling the rest to come in (*i*). In *Wellesley* v. *Withers* (*k*) four persons were entitled under a will as devisees and executors to real estate, including copyholds, and personalty. Three of them took out probate and assumed the character of executors; but as to the copyholds, two of the three renounced them from the time of the death of the testator. They did no act to show that they had taken the copyhold estate, and in due time executed a disclaimer. It was contended that, having assumed the office of executors, they had no right to disclaim. But it was held that they might act as regards the personalty and renounce the real estate, and that they were not bound by the act of the devisee who had accepted, and were not liable to pay a fine. The instrument of disclaimer was a release which was improper if they had taken no estate, as joint tenants in copyholds cannot properly release until they have been admitted, there being no estate on which the release can operate; but the Court held the instrument to be equivalent under the circumstances to a deed of disclaimer.

When copyholds transferable by deed.

In certain circumstances, as already mentioned, a copyhold may be transferred by deed, either under the provisions of an Act of Parliament, or when the lord, by severing the copyhold from the manor, has put it out of the tenant's power to alienate by the customary method.

The subject of statutory conveyances is considered in the next chapter; but in regard to the other cases in which an ordinary deed may be used by a copyholder to transfer his estate, it is to be noticed that when a copyhold is severed from a manor the customary mode of alienation becomes

(*i*) *Reg.* v. *Wanstead Manor* (*Lord of*), 23 L. J. N. S. Q. B. 67.

(*k*) 4 E. & B. 750.

impossible, and the copyhold tenant is then entitled to resort to an ordinary common law conveyance, or his power of alienation would be lost altogether (*l*). Again, as a customary surrender can only be made of a legal estate (except in the case of an equitable tenant in tail, and a wife releasing her claim of freebench), there are many other occasions on which interests in a copyhold will pass by an ordinary conveyance. Thus equitable interests in customary estates pass by assignment or bargain and sale without enrolment, the former being the more usual and the proper mode of conveyance.

Equitable estates.

The equitable interest of a married woman was formerly disposed of by an ordinary deed acknowledged. By 3 & 4 Will. IV. c. 74, s. 77, it was provided that a married woman in every case—except that of her being tenant in tail, for which separate provision was made, as already noticed (*m*)—might dispose by deed of lands of any tenure, or money to be invested in land, and also might dispose of, surrender, release, or extinguish any estate which she alone, or she and her husband in her right, might have in any such lands or money, and release or extinguish any power, as if she were unmarried, but her husband had to concur, and the deed had to be duly acknowledged; but there was a proviso that the Act should not extend to lands held by copy of court-roll of or to which she, or she and her husband in her right, might be seised or entitled for an estate at law, in any case in which any of these objects could before the Act have been effected by her, in concurrence with her husband, by a surrender. This provision applied to cases where a married woman wished to release her claim to freebench to an intending purchaser (*n*), and where a married woman had a power coupled with an interest. But now, by virtue of the Married Women's Property Act, 1882, a woman married after the 31st of

Estate of married woman, how conveyed.

(*l*) *Phillips* v. *Ball*, 6 C. B. N. S. 811.

(*m*) *Ante*, p. 31.

(*n*) *Wood* v. *Lambirth*, 1 Phill. 8.

December, 1882, may dispose of all the real property which belongs to her at the time of her marriage, or afterwards devolves on or is acquired by her as her separate property, in the same manner as if she were a *feme sole* (*o*), and a woman who was married before the 1st of January, 1883, has similar powers of disposing of all her real property, her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, accrued after that date (*p*).

Contingent interests.

Rights of entry, and contingent, future, or executory interests and possibilities, coupled with an interest in copyhold estates, are also conveyed, assigned, and charged by deed (*q*). A deed of release is used to convey any rights in a copyhold to a person who has been admitted tenant. Thus, in *Steele* v. *Walker* (*r*), where a copyhold was devised to trustees who sold, and the purchaser was admitted upon surrender by the heir, it was held that to make a good title the purchaser was entitled to have a release from the trustees of all their right and interest to be admitted. The release of a right to the person in possession, even under a wrongful admittance, is an extinguishment of the right (*s*). One joint-tenant or coparcener may release to the other, "for the first admittance was of them and every of them, and the ability to release arose from the first admittance" (*t*), or at his option he may make a customary surrender to the other's use. A release will be presumed after twenty years have passed during which the person claiming admittance might have asserted his right (*u*).

Lease.

It will be remembered, that a copyholder's lease is a common-law assurance, and should therefore be registered

(*o*) 45 & 46 Vict. c. 75, s. 5.
(*p*) *Ibid.* s. 2.
(*q*) 8 & 9 Vict. c. 106, s. 6.
(*r*) 28 Beav. 466.
(*s*) Co. Copyh. s. 36; *Kite* v. *Quesinton*, 4 Rep. 25 a.
(*t*) *Wase* v. *Petty*, Winch's Rep. 3.
(*u*) See *Doe* d. *Milner* v. *Brightwen*, 10 East, 583, 591, 595.

in cases where the land is situated in a district within the provisions of any local Registry Acts and registration is requisite (*x*).

(*x*) These Acts are, for Middlesex, 7 Anne, c. 20; 25 & 26 Vict. c. 53, s. 104; 54 & 55 Vict. c. 10 and c. 64; for the Bedford Level, 15 Car. II. c. 17; for lands within the North, East, and West Ridings of Yorkshire, including the town or county of Kingston-on-Hull, 47 & 48 Vict. c. 54; 48 Vict. c. 4; and 48 & 49 Vict. c. 26; and for the Duchy of Cornwall, 26 & 27 Vict. c. 49.

CHAPTER IV.

CONVEYANCES OF COPYHOLDS (CONTINUED)— STATUTORY CONVEYANCES.

Statutory conveyances.

THERE are certain statutory methods of conveying copyholds by which the necessity for a surrender, and even in some cases of an admittance, is altogether avoided. In *Regina* v. *The Lords of Weedon Beck Manor* (*a*) a private Act of Parliament, which substituted certain new trustees for the trustees who had been appointed by a testator and had been admitted to the devised copyholds, was held sufficient to empower the substituted trustees to surrender to the use of a purchaser, although it conferred on them merely a power of sale without giving them any estate in the copyholds, and although they had not been admitted.

Trustee Acts.

Under the provisions of the Trustee Acts of 1850 and 1852 (*b*), a judge of the Chancery Division of the High Court of Justice (*c*) in all cases, and a county-court judge in cases where the trust estate or fund to which the action or matter relates does not exceed in amount or value the sum of 500*l.* (*d*), may make an order vesting a copyhold in such persons in such manner and for such estate as the judge shall direct in the cases of trustees or mortgagees who are infants (*e*), or of a trustee who is out of the jurisdiction of the High Court, or who cannot be found (*f*), or in cases when it is uncertain which of several trustees

(*a*) 13 Q. B. 808. See *Grand Junction Canal Co.* v. *Dimes*, 15 Sim. 402.

(*b*) 13 & 14 Vict. c. 60; 15 & 16 Vict. c. 55.

(*c*) See 36 & 37 Vict. c. 66, s. 34 (2).

(*d*) 51 & 52 Vict. c. 43, s. 67 (5).

(*e*) 13 & 14 Vict. c. 60, s. 7; *In re Franklyn's Mortgagees*, W. N. (1888) 217.

(*f*) 13 & 14 Vict. c. 60, s. 9.

was the survivor (*e*), or whether the last surviving trustee is alive or dead (*f*), or when a trustee has died intestate without an heir or without an heir or devisee who is known (*g*), or when lands are subject to contingent rights in persons unborn (*h*), or where a trustee wilfully refuses or neglects to convey or release (*i*). The judge has also power to make a similar vesting order when a mortgagee has died without entering into possession of the land mortgaged or into the receipt of the rents and profits thereof, and the money has been paid to a person entitled to receive it, or if such person consents to an order for the reconveyance of the lands in any of the following cases:—

(1) When the heir or devisee of such mortgagee is out of the jurisdiction, or cannot be found;

(2) When such heir or devisee shall, upon a demand by a person entitled to require a conveyance of such lands or a duly-authorised agent of such person, have stated in writing that he will not convey the land, or shall not convey the same for twenty-eight days after a proper conveyance has been tendered to him;

(3) When it is uncertain which of several devisees of such mortgagee was the survivor;

(4) When it is uncertain as to the survivor of several devisees of such mortgagee, or as to the heir of such mortgagee whether he is living or dead;

(5) When such mortgagee shall have died intestate and without an heir, or shall have died and it shall not be known who is his heir or devisee (*k*).

The order in each case is to have the same effect as if the trustee, mortgagee, heir or devisee, as the case may

(*e*) 13 & 14 Vict. c. 60, s. 13.
(*f*) *Ibid.* s. 14.
(*g*) *Ibid.* s. 15; *In re Godfrey's Trusts*, 23 Ch. Div. 205.
(*h*) 13 & 14 Vict. c. 60, s. 16.
(*i*) 15 & 16 Vict. c. 55, s. 2; *In re Crowe's Mortgage*, L. R. 13 Eq. 26; *In re Mills' Trusts*, 40 Ch. Div. 14 (C. A.).
(*k*) 13 & 14 Vict. c. 60, s. 19.

be, had duly conveyed the lands in the manner appearing in such order. New trustees may also be appointed under the provisions of these Acts, and the estate may be vested by an order in the new and in the continuing trustees, and every such vesting order has the same effect as if the person or persons who before the order were the trustee or trustees, if any, had duly executed all proper conveyances and assignments in the manner appearing in the order (*l*). The judge may, in any case where he may make a vesting order, appoint a person to convey or assign the lands, or to release or dispose of any contingent right, and the conveyance or release of such person, when in conformity with the terms of the order by which he is appointed, has the same effect as a vesting order would have in the particular circumstances of each case (*m*).

Effect of vesting order.

The 28th section of the Trustee Act, 1850, deals specially with the effect of an order vesting copyhold lands, or appointing a person to convey copyhold lands, and it enacts that when an order is made vesting any copyhold or customary lands in any person or persons, with the consent of the lord of the manor, then the lands shall, without any surrender or admittance in respect thereof, vest accordingly; and when an order is made appointing a person to convey such lands, "it shall be lawful for such person to do all acts and execute all instruments for the purpose of completing the assurance of such lands; and all such acts and instruments so done and executed shall have the same effect, and every lord and lady of a manor and every other person shall, subject to the customs of the manor and the usual payments, be equally bound and compellable to make admittance to such lands, and to do all other acts for the purpose of completing the assurance thereof, as if the persons in whose place an appointment shall have been made, being

(*l*) 13 & 14 Vict. c. 60, ss. 32, 34.
(*m*) 13 & 14 Vict. c. 60, s. 20; *Wilks* v. *Groom*, 6 De G. M. & G. 205; *In re Cuming*, L. R. 5 Ch. 72.

free from any disability, had duly done and executed such acts and instruments." The consent of the lord to the vesting order is not, however, always necessary. When the original trustees disclaim before exercising any act of ownership over the estate and are not admitted, so that there is no legal estate in them, it seems that the consent of the lord is not necessary to an order vesting the estate in the new trustees appointed by the order. Thus in a case where the original trustees of a settlement declined to act, the Court directed that the copyholds should vest in new trustees whom it appointed without the necessity of procuring the lord's consent (*n*); and again in *Paterson* v. *Paterson* (*o*), where a trustee of copyholds who had been admitted devised them to a person who was not his customary heir, and such person disclaimed the devise, a petition by the lord of the manor to have an order, which appointed a new trustee, and directed that all the estate which would have vested in the devisee if he had not disclaimed should vest in the new trustee, set aside as being irregular and informal owing to his consent not having been obtained, was dismissed, and it was held that the order had been properly obtained without the lord's consent. But the lord's consent to the vesting order will be necessary where the originally named trustees have been admitted and have obtained the legal estate (*p*). When the lord's consent is required, it is not necessary for him to appear in court, a verified certificate of his consent being sufficient (*q*). The order vesting the lands or appointing a person to convey will be enforced against the lord by mandamus (*r*).

When consent of lord necessary to vesting order.

When a judge of the Chancery Division of the High Court of Justice, or a county-court judge, as the case may

Vesting order on sale of lands.

(*n*) *In re Flitcroft*, 1 Jur. N. S. 418.

(*o*) L. R. 2 Eq. 31.

(*p*) *Re Howard*, 3 W. R. 605; see *Cooper* v. *Jones*, 25 L. J. N. S. Ch. 240.

(*q*) *Ayles* v. *Cox*, *Ex parte Attwood*, 17 Beav. 584.

(*r*) *Re Lane*, 12 W. R. 710.

be, has decreed the sale of any lands, every person bound by the decree or order, who has any estate or right in the land, is deemed to be a trustee within the meaning of the Trustee Act, 1850, so as to give the judge power to vest the land in the purchaser; and the judge may, for the purpose of carrying the sale into effect, make an order vesting the lands, or any part of them, in the purchaser or any other person, and the order is to have the same effect as if the person bound by the order, and having the estate or right in the land, had been free from all disability and had executed all proper and requisite conveyances and assignments of the land (*s*). Where the judge orders any conveyance or assignment of any land, the parties to the action in which the order is made may be declared to be trustees within the meaning of the Trustee Act, 1850, and orders may be made accordingly (*t*).

Appointment of new trustees.

As already mentioned, when new trustees are appointed under the Trustee Acts, an order may be made vesting the lands subject to the trust in such new trustees, as if a formal conveyance had been made, subject, in the case of copyholds, to the special provisions of sect. 28 of the Act of 1850 (*u*); but it is to be noticed that when new trustees are appointed under the powers given by the Conveyancing and Law of Property Act, 1881, and the deed by which the new trustees are appointed contains a declaration by the appointor to the effect that any estate or interest in the land subject to the trust is to vest in the persons who by virtue of the deed become and are the trustees for performing the trust, such declaration does not extend to vesting any legal estate or interest in copyhold or customary land (*x*).

Stamp duty

Every order made under the Trustee Acts, 1850 and

(*s*) 15 & 16 Vict. c. 55, s. 1.
(*t*) 13 & 14 Vict. c. 60, s. 30.
(*u*) *Ibid.* ss. 32, 34.
(*x*) 44 & 45 Vict. c. 41, s. 34 (1) and (3). For a form of an order appointing a new trustee of a copyhold estate and a person to complete the assurance of the estate to such new trustee, see *In re Hey's Will*, 9 Hare, 221.

1852, which has the effect of a conveyance or assignment of any lands, is chargeable with the same amount of stamp duty as it would have been chargeable with if it had been a deed executed by the person or persons seised or possessed of the lands, and every order has to be duly stamped for denoting the payment of the duty (*y*). The duty at present payable is regulated by the Stamp Act, 1891 (*z*), of which an abstract will be found in the Appendix. on vesting orders.

Subsequent statutes have, however, rendered applications under the Trustee Acts unnecessary in some of the cases which have been mentioned. Thus, by the Vendor and Purchaser Act, 1874, it was provided (*a*) that the legal personal representative of a mortgagee of copyholds, to which the mortgagee had been admitted, might, on payment of all sums secured by the mortgage, surrender the copyholds, whether the mortgage was in form an assurance subject to redemption or an assurance upon trust. That enactment was repealed by sect. 30 of the Conveyancing and Law of Property Act, 1881, which provided that the personal representatives of a sole trustee or mortgagee might on his death, notwithstanding any testamentary disposition by him, dispose of, or otherwise deal with, any trust or mortgaged estate in land as if it were a chattel real vested in them (*b*); but by the 45th section of the Copyhold Act, 1887, the provisions of that section of the Conveyancing Act of 1881 have been repealed so far as relates to copyholds (*c*). Accordingly, on the death of a sole trustee or mortgagee of copyholds, the customary legal estate and the legal right to admittance will pass as before to the customary heir (*d*). If such heir is an

(*y*) 15 & 16 Vict. c. 55, s. 13.

(*z*) 54 & 55 Vict. c. 39, s. 54.

(*a*) 37 & 38 Vict. c. 78, s. 4.

(*b*) See *In re Hughes*, W. N. (1884) 53, as to Act applying to copyholds.

(*c*) 50 & 51 Vict. c. 73, s. 45.

(*d*) See *In re Mills' Trusts*, 37 Ch. Div. 312, 40 Ch. Div. 14 (C. A.).

infant it will be still necessary to apply for a vesting order under the Trustee Act, 1850 (*e*).

Lunatic trustee or mortgagee.

Under the Lunacy Act, 1890 (*f*), the judge in lunacy (*g*) may, where a lunatic is a trustee or mortgagee, and as such is solely or jointly seised or possessed of any land or entitled to a contingent right in land, by order vest the land in such person for such estate as he directs, or release the land from the contingent right, and dispose of it to such person as he directs; and the order is to have the same effect as if the trustee or mortgagee had been sane and had executed a deed conveying the lands for the estate named in the order, or releasing and disposing of the contingent right (*h*). Where an order vesting any copyholds in any person is made with the consent of the lord, the land vests in such person without surrender or admittance (*i*). Instead of making an order vesting lands or releasing a contingent right, the judge may appoint a person to convey or release. When such an appointment is made with respect to copyholds, the person appointed may execute all assurances necessary for completing the conveyance, and the lord of the manor is bound, subject to the custom of the manor and the usual payments, to make admittance to the copyhold as if the person in whose place the appointment was made was free from disability and had executed a proper assurance (*k*).

Building, &c. Societies Acts.

When any building society, registered under the provisions of the Building Societies Act, 1874, is entitled in equity to any hereditaments of copyhold or customary tenure by way of mortgage, the lord of the manor is bound from time to time, if required by the society, to admit the persons, not being more than three, whom the society may appoint as trustees on its behalf, provided payment is made of the usual fines, fees, and other duties payable on the

(*e*) See *In re Franklyn's Mortgagees*, W. N. (1888) 217.
(*f*) 53 Vict. c. 5.
(*g*) See sect. 108, and 54 & 55 Vict. c. 65, s. 27.
(*h*) Sect. 135 (1), (2), and (3).
(*i*) Sect. 135 (5).
(*k*) Sect. 135 (4) and (6).

admission of a single tenant, or he may admit the society as tenant on payment of such special fine, or compensation in lieu of fine and fees, as may be agreed upon (*l*). The Act further provides that a receipt under the seal of the society, countersigned by the secretary and indorsed on the mortgage or further charge, is to vacate the mortgage or charge, and is to vest the estate of and in the property therein comprised in the person for the time being entitled to the equity of redemption without any re-surrender; that if the mortgage or further charge has been entered on the court rolls the steward is, on production of the receipt, verified by oath, to make an entry opposite the entry of the mortgage or charge to the effect that it is satisfied, and is to grant a certificate, either on the mortgage or separately, to the like effect, and that the entry is to have the effect of clearing the record of the mortgage (*m*). Similar provisions as to the admittance of friendly and industrial and provident societies entitled either absolutely or by way of mortgage, and as to the discharge of mortgages are contained in the Friendly Societies Act, 1875 (*n*), and in the Industrial and Provident Societies Act, 1876 (*o*).

Settled Land Acts.

Copyholds being within the provisions of the Settled Land Acts, 1882 to 1890, the tenant for life of the settled land is empowered to dispose by lease, sale, or exchange of the settled land, or any part of it, under provisions for protecting the interests of the remaindermen and other persons entitled to come in under the settlement. The powers of leasing include powers to the lords of manors in settlement to give licences to their copyholders to grant leases to the same extent as tenants for life of freehold lands may make under the provisions of the Acts, but the licences have to be entered on the court rolls of the manor (*p*). But if the custom of the

(*l*) 37 & 38 Vict. c. 42, s. 28.
(*m*) Sect. 42.
(*n*) 38 & 39 Vict. c. 60, s. 16.
(*o*) 39 & 40 Vict. c. 45, s. 12.
(*p*) 45 & 46 Vict. c. 38, s. 14.

manor should permit the copyhold land itself to be held in settlement within the meaning of these Acts, and the land should be so settled, the lease to be made by the tenant for life must conform to the custom of the manor (*q*). When the tenant for life has sold any copyhold land or given it in exchange or on partition, or has leased, mortgaged, or charged it in accordance with the provisions of these Acts, he may convey the land or create the lease, mortgage, or charge for the estate or interest which is the subject of the settlement, or for any less estate or interest by a deed in any manner necessary for giving effect to the sale or other disposition of the property; and such deed will effectually pass the land which is conveyed discharged from all the provisions of the settlement, but it has to be entered on the court rolls of the manor; and on production of the deed to the steward, he must, on payment of the customary fines, fees, and other payments, admit any person whose title under the deed requires to be perfected by admittance (*r*). Again, where land or any estate or interest in land is, under or by virtue of any deed, will, covenant to surrender or copy of court roll, subject to a trust or direction for sale and for the application of the money to arise from the sale for the benefit of any person for his life or any other limited period, it is settled land for the purpose of these Acts, and the person who is for the time being beneficially entitled to the income of the land until the sale is, for the purposes of these Acts, the tenant for life, and he may apply to the Court for leave to exercise the powers of sale and other powers which these Acts confer on tenants for life of settled land (*s*). If such tenant for life obtains leave and sells under the Acts before the trustees for sale are admitted, the purchaser is entitled to admittance on payment of one fine only (*t*).

(*q*) See 40 & 41 Vict. c. 18, s. 56.

(*r*) 45 & 46 Vict. c. 38, s. 20 (1), (2), and (3).

(*s*) 45 & 46 Vict. c. 38, s. 63; 47 & 48 Vict. c. 18, s. 7.

(*t*) *In re Naylor and Spendla's Contract*, 34 Ch. Div. 217.

School Sites Acts.

Under the provisions of an Act passed in the year 1841 to afford further facilities for the conveyance and endowment of sites for schools (*u*), any person who is seised of an estate of inheritance in any lands of customary or copyhold tenure and has the beneficial interest therein, or if seised of an estate for life, with the consent of the person next entitled to the remainder, may grant, convey, or enfranchise, by way of gift, sale, or exchange, any quantity, not exceeding one acre, of such land as a site for a school for the education of poor persons, or for the residence of the schoolmaster, or otherwise for the purposes of education of poor persons in religious and useful knowledge (*x*); and all grants, conveyances, and assurances are to be made according to the form given in the Act (*y*). By an amending and explaining Act passed in the year 1849 (*z*), it is provided that where any land of copyhold or customary tenure is granted for the purposes of the Acts, a conveyance by any deed wherein the copyholder shall grant and convey his interest, and the lord shall also grant his interest, is to be deemed valid and sufficient to vest the freehold in the grantee without any surrender or admittance or enrolment in the lord's court (*a*).

Defence Acts, 1842 to 1873.

Under the provisions of the Defence Acts of 1842 (*b*), 1860 (*c*), and 1873 (*d*), whenever the compensation for the absolute purchase or exchange of any land or interest in land, including copyholds, which is required and taken for the purposes of these Acts or for the enfranchisement of copyhold land, amounts to or exceeds the sum of 200*l.* (*e*), and the land or interest therein belongs to any person who is under any disability or incapacity, or has not the absolute interest therein, or belongs to any person who by reason of absence is prevented from treating in respect of

(*u*) 4 & 5 Vict. c. 38.
(*x*) *Ibid.* s. 2. See 15 & 16 Vict. c. 49.
(*y*) 4 & 5 Vict. c. 38, s. 10.
(*z*) 12 & 13 Vict. c. 49.
(*a*) *Ibid.* s. 6.
(*b*) 5 & 6 Vict. c. 94.
(*c*) 23 & 24 Vict. c. 112.
(*d*) 36 & 37 Vict. c. 72.
(*e*) 5 & 6 Vict. c. 94, s. 25.

the lands, or who cannot after diligent inquiry be found, or who refuses to accept such compensation, or neglects or fails to make out a title to the lands to the satisfaction of Her Majesty's principal Secretary of State for the War Department (*f*), or where any compensation is payable for or in respect of any lands taken from or held by any corporation or person who has not, independently of the Acts, power to agree as to the amount of compensation, or to sell and convey the lands, then such compensation must be paid into Court to an account in the matter of these Acts and of the persons claiming to be interested therein. The Paymaster General for and on behalf of the Court of Judicature is thereupon empowered to give a discharge for the amount, and to sign a certificate purporting and signifying that the money has been paid to him in pursuance of these Acts for the use and benefit of the owners or proprietors who are entitled under the Acts, and upon the filing at the Central Office of the Court of such certificate, having the receipt of the payment annexed, the hereditaments in respect of which the consideration has been paid become vested in Her Majesty's Principal Secretary of State for the War Department for the time being. Compensation between 200*l.* and 20*l.* is to be paid into Court or to trustees at the option of the persons then entitled to the rents and profits, and compensation below 20*l.* is to be paid to the persons so entitled (*g*). The person or authority acquiring the land may require that the compensation shall be settled by arbitration and not by reference to a jury, and thereupon the provisions of the Lands Clauses Acts dealing with arbitration will apply to the ascertainment of the compensation (*h*).

Lands Clauses

Copyholds taken or purchased by the promoters of an

(*f*) See 18 & 19 Vict. c. 117, and 23 & 24 Vict. c. 112, s. 20.

(*g*) See 5 & 6 Vict. c. 94, s. 27; 18 & 19 Vict. c. 117, s. 5; 22 & 23 Vict. c. 21, s. 8; 35 & 36 Vict. c. 44, s. 6; 46 & 47 Vict. c. 29, s. 2; and Supreme Court Funds Rules, 1886, rr. 29, 38.

(*h*) 54 & 55 Vict. c. 54, s. 11.

undertaking under the Lands Clauses Consolidation Act, 1845 (*i*), are directed to be conveyed to the company and their assigns by a deed in the form or to the effect mentioned in the Act (*k*). The deed is to be entered on the court rolls on payment of the same fees as on a surrender without admittance, and when enrolled it has the same effect with respect to the copyholds as if the land had been freehold, but until the land is enfranchised in accordance with the provisions of the Act it continues subject to the same fines, rents, heriots, and services as were theretofore payable (*l*). If the copyholder fails to make a good title to the lands to the satisfaction of the promoters, and if the purchase-money agreed upon or awarded in respect of the lands has been duly deposited in bank in accordance with the provisions of the Act, the promoters are empowered, if they think fit, to execute a deed poll under their common seal if they are a corporation, or if not a corporation, under the hands and seals of any two of the promoters, containing a description of the lands in respect of which the owner has failed to make a conveyance, and upon the execution of the deed poll, which must be stamped with the same stamp duty as would have been payable upon a conveyance to the promoters, all the estate and interest in the lands vest absolutely in the promoters (*m*). Upon enrolment of the deed or deed poll the steward is entitled to charge such fees only as would have been payable on a surrender, but is not entitled to additional fees in respect of an admittance (*n*). No fine is payable to the lord upon the execution or enrolment of a conveyance by a copyholder to a company under the provisions above mentioned (*o*); but within three months after the enrolment of the deed, or within one month after the

Consolidation Act.

(*i*) 8 Vict. c. 18.
(*k*) *Ibid.* s. 81.
(*l*) *Ibid.* s. 95.
(*m*) *Ibid.* s. 97.
(*n*) *Cooper* v. *Norfolk Rail. Co.*, 3 Exch. 546.
(*o*) *Eccles. Commrs. for England* v. *L. & S. W. Rail. Co.*, 14 C. B. 743.

promoters of the undertaking have entered upon and made use of the land for the purposes of their works, whichever first happens, or if more than one parcel of copyholds held of the same manor shall have been taken by the promoters, within one month after the last of the parcels has been taken and entered upon, the promoters have to procure the enfranchisement of the whole of the lands held of the manor which have been taken by them, and for that purpose they must apply to the lord for enfranchisement, and must pay to him such sum as compensation for enfranchisement as they and he shall agree upon. If no agreement can be made between them, then the amount has to be ascertained as in other cases of disputed compensation under the Act (*p*), and in estimating the compensation, allowance has to be made for the loss in respect of the fines, heriots, and other services payable on death, descent, or alienation, or any other matters which will be lost by the vesting of the lands in the promoters or by the enfranchisement (*q*). Upon payment or tender of the compensation agreed upon or determined under the provisions of the Act, or on deposit of the amount in bank as provided for by the Act, the lord of the manor of which the copyholds are held has to enfranchise the lands, and upon enfranchisement they are held in free and common socage. If the lord fails to enfranchise or to make a good title to the satisfaction of the promoters, the latter are empowered to execute a deed poll, which has to be duly stamped as before mentioned, and upon its execution the lands in respect whereof the compensation has been deposited are to be deemed as enfranchised, and are to be for ever afterwards held in free and common socage (*r*).

It may be here mentioned that if the copyhold lands are subject to any customary rent, and part only of the lands is taken, the apportionment of such rent may be settled by

(*p*) See 8 Vict. c. 18, ss. 21—23. (*r*) *Ibid.* s. 97.
(*q*) *Ibid.* s. 96.

agreement between the owner of the lands and the lord of the manor on the one part, and the promoters on the other part, and if the apportionment is not settled by agreement, it has to be settled by two justices; but the enfranchisement of any copyhold or customary lands taken by virtue of the Lands Clauses Consolidation Act, or the special Act of the promoters, or the apportionment of any customary rent to which the land is subject, does not affect in other respects any custom by or under which any copyhold or customary lands not taken for such purposes shall be held (*s*). The Act also provides that, if any of the lands required for the purposes of an undertaking are released from any portion of the rents to which they are subject jointly with any other lands, these other lands shall be charged with the remainder only of such rents, and with reference to any apportioned rents, it enacts that the lord of the manor shall have all the same rights and remedies over the lands to which the apportioned rent has been assigned or attributed as he had previously over the whole of the lands for the whole of the rents (*t*). Where the money has been deposited in the bank, on account of its being payable to a person having a partial or qualified interest only in the lands, it may be applied to one or more of the following purposes:—in the purchase or redemption of the land-tax, or the discharge of any debt or incumbrance affecting the land or other land settled therewith to the same or like uses, trusts, or purposes; or in the purchase of other land to be settled in the same way as the lands taken; or, if the money is paid for buildings taken or injured, in removing or replacing such buildings or substituting others, in such manner as the Court may direct; or in payment to any person becoming absolutely entitled to such money (*u*). The power of purchasing other lands includes the power of enfranchising

(*s*) *Ibid.* s. 98.
(*t*) *Ibid.*
(*u*) *Ibid.* s. 69.

copyholds (*x*). It is a general rule that the lands purchased shall be of the same tenure as the lands which were taken: the money arising from copyholds may not be invested in leaseholds (*y*), but purchases of copyholds of inheritance have been allowed when the money arose from freehold (*z*) and leasehold lands (*a*), when it was for the benefit of the persons interested. Where the money was deposited in respect of copyholds enfranchised under the Act, it was held that a tenant for life of the manor was not entitled to any portion of the money as a fine which might have been payable to him if the enfranchisement had been made under the Copyhold Acts, 15 & 16 Vict. c. 51 and 21 & 22 Vict. c. 94 (*b*). Where a private Act only authorised a company to acquire the copyholder's interest by a deed having the effect of a statutory surrender, the rights of the lord in the absence of express provision were held to be entirely unaffected, and the company not being admitted by a trustee were held to have only an equitable estate (*c*).

Bankruptcy Acts.

Under the Bankruptcy Act, 1883 (*d*), the trustee of a bankrupt is not compellable to be admitted to any property which is of copyhold or customary tenure, or which passes by surrender and admittance, or in any similar manner, but may deal with the land in the same way as if the property had been duly surrendered or conveyed to such uses as he should appoint, and his appointee is to be duly admitted accordingly (*e*).

Exchanges of copyholds.

Exchanges of copyholds are made either by two surrenders and admittances, by an order of the Court, or under the authority of Inclosure Acts, 1845 to 1882.

(*x*) *In re Cheshunt College*, 3 W. R. 638.

(*y*) *Ex parte Macaulay, Re Lancashire and Yorks. Rail. Co.*, 23 L. J. N. S. Ch. 815.

(*z*) *In re Cann's Estate*, 19 L. J. N. S. Ch. 376.

(*a*) *In re Liverpool Dock Acts*, 1 Sim. N. S. 202.

(*b*) *Re Wilson*, 3 De G. J. & S. 410.

(*c*) *Dimes* v. *Grand Junction Canal Co.*, 3 H. L. C. 794.

(*d*) 46 & 47 Vict. c. 52.

(*e*) *Ibid.* s. 50 (4).

With regard to the first of these methods it is unnecessary to say anything here; but it should be noticed that in order to facilitate the exchange of lands lying in common fields, persons entitled to copyholds, though for a life estate only, were authorised by the Act 4 & 5 Will. IV. c. 30 (*f*), to convey in exchange, by the form of deed mentioned in the Act (*g*), any lands held by copy of court roll lying intermixed and dispersed in common fields, meadows, or pastures, for other lands either lying therein or being part of the inclosed lands in the same or any adjoining parish, such deed to be produced to the lord of the manor or steward, and to be entered on the court roll, on payment of the fees and charges mentioned in the Act (*h*). And by the Acts 55 Geo. III. c. 147 and 56 Geo. III. c. 52, the incumbents of ecclesiastical benefices, perpetual curacies, and parochial chapelries, are authorised, with the consent of the patron of the benefice and of the bishop of the diocese, to exchange their parsonages or glebe houses or lands for others of greater value and better situated, including copyholds of inheritance or copyholds for lives in any manor belonging to the same benefice (*i*); the exchange is directed to be made by deeds of grant and conveyance, registered as directed by the Acts. By the first of these Acts copyholds in manors belonging to the benefice may be purchased by such incumbent, or annexed to the benefice instead of being regranted as copyhold. All lands so taken in exchange or purchased are to be permanently annexed to the benefice, and from the date of the annexation to be of freehold tenure (*k*).

Exchanges by order of the Court.

As to exchanges made by an order of the Court, it is provided by the Trustee Act, 1850, s. 30, that the parties to any suit for the exchange of any lands may be declared trustees within the meaning of the Act, and that orders may be made accordingly, and that the Court may make

(*f*) Sect. 1.
(*g*) Sect. 7.
(*h*) Sects. 8, 9.
(*i*) 55 Geo. III. c. 147, s. 1.
(*k*) *Ibid.* ss. 4, 5.

declarations concerning the rights of unborn persons who would be interested in the lands exchanged, so as to bring such persons within the operation of the Act.

This jurisdiction may be exercised by a judge of the Chancery Division of the High Court, or by a county-court judge where the trust estate or fund to which the action or matter relates does not exceed in amount or value the sum of 500*l.* (*l*).

Exchanges under the Inclosure Acts.

Exchanges of copyholds may be made under the Inclosure Acts, either by the valuer under the Acts when the lands are the subject of an inclosure, or by the Board of Agriculture in other cases, without reference to inclosure.

By valuer.

In the first case, the valuer may allot and award any land to be inclosed in exchange for any other land in the same or an adjoining parish (*m*). Such exchanges, if made for public purposes, as for recreation grounds or the like, are to be made with the consent of the persons interested in the lands taken, and all other such exchanges with the consents of the persons interested therein respectively (*n*). Wills and settlements are not to be prejudiced by the exchange, and the titles and uses of the exchanged parcels are to be counterchanged (*o*). Each parcel taken in exchange is to be held under the same tenures, rents, customs, and services, as the parcel given in exchange: the land taken in respect of freehold shall be deemed freehold; and the land taken in exchange in respect of copyhold or customary land shall be deemed copyhold or customary land, and shall be held of the lord of the same manor under the same rent and by the same customs and services as the land in respect of which it may have been taken, and shall pass in like manner as the copyhold or customary land in respect whereof such exchange shall be made, and without any new admit-

(*l*) 51 & 52 Vict. c. 43, s. 67 (5).
(*m*) 8 & 9 Vict. c. 118, s. 92.
(*n*) *Ibid.* s. 92.
(*o*) *Ibid.* s. 93.

tance in respect of the lands taken (*p*). But, with the consent of the lord of the manor, and of the persons taking any lands in exchange for copyholds, the Board of Agriculture may declare that the lands shall be held as of freehold tenure on such terms and conditions as may be agreed upon between the parties, and as may be deemed just by the Board; and the land so declared to be freehold will be held as freehold thereafter (*q*).

By Board of Agriculture.

Where the lands are not subject to inclosure under the terms of the Inclosure Acts, 1845 to 1882, or where, though the lands are liable to be inclosed, no proceedings for an inclosure are pending, an exchange may be effected by the Board of Agriculture upon the application in writing of the persons who are interested in the lands, according to the definitions contained in these Acts. On receipt of the application, the Board will cause inquiries to be made whether the proposed exchange will be beneficial to all the parties concerned, and if it appears that the proposed terms are reasonable, and that the exchange will be advantageous, the Board will frame, and will afterwards, on fulfilment of the necessary conditions, confirm an order of exchange having a map or plan of the lands annexed. The order must specify the lands which are given and taken in exchange by each of the persons interested (*r*). The order is not to be confirmed until notice has been given by advertisement in three successive weeks of the proposed exchange, and three calendar months have elapsed from the publication of the last of the advertisements. If within that period, any person who is entitled to any estate in or charge upon the lands proposed to be exchanged gives notice in writing to the Board of his dissent, the Board must withhold their confirmation of

(*p*) 8 & 9 Vict. c. 118, s. 94.

(*q*) 10 & 11 Vict. c. 111, s. 6; 52 & 53 Vict. c. 30.

(*r*) 8 & 9 Vict. c. 118, s. 147; 9 & 10 Vict. c. 70, s. 9. The powers of the commissioners mentioned in these Acts were transferred to the Board of Agriculture by 52 & 53 Vict. c. 30.

the order until the dissent is withdrawn, or they are satisfied that the estate or charge of the person dissenting has ceased (*s*). The consent of the lord of the manor of which the copyholds are held is also necessary before the order can be confirmed (*t*); a declaration in writing by the steward will be sufficient evidence of the lord's consent (*u*). The effect of the order is to counterchange the titles, and also the tenures of the lands exchanged, so that lands taken in exchange will be held on the same uses and trusts and subject to the same conditions as lands given in exchange, and the land taken in exchange in respect of copyhold or customary land shall be deemed copyhold or customary land, and shall be held of the lord of the same manor under the same rent, custom, and services, as the land in respect of which it was taken, without any new admittance, and the land taken in exchange in respect of freehold land shall be of freehold tenure (*x*). A copy of the order when confirmed is delivered to each of the parties on whose application the exchange is made (*y*), and also to the lord of the manor, or his steward, for the purpose of being kept with the manorial court rolls (*z*). When confirmed, the order of exchange is conclusive evidence that the directions of the Inclosure Acts have been obeyed (*a*), and is not liable to be impeached by reason of any defect of title of the person on whose application it was made (*b*).

Persons who may apply.

As to the persons who may apply for an exchange, the rule is, that persons in the actual possession or enjoyment of the land, or in receipt of the rents and profits, are "persons interested" within the meaning of the Inclosure Acts (*c*). But lessees for life or lives, or years, holding at a rent of not less than two-thirds of the clear yearly value

(*s*) 8 & 9 Vict. c. 118, s. 150.
(*t*) 9 & 10 Vict. c. 70, s. 9.
(*u*) *Ibid.* s. 10.
(*x*) 8 & 9 Vict. c. 118, s. 147; 9 & 10 Vict. c. 70, s. 9; and see *Minet* v. *Leman*, 20 Beav. 269.
(*y*) 8 & 9 Vict. c. 118, s. 147; but see 15 & 16 Vict. c. 79, s. 17.
(*z*) 9 & 10 Vict. c. 70, s. 9.
(*a*) 8 & 9 Vict. c. 118, s. 105; 39 & 40 Vict. c. 56, s. 33.
(*b*) 8 & 9 Vict. c. 118, s. 147.
(*c*) *Ibid.* s. 16.

of the land, lessees for a term originally not exceeding fourteen years, tenants from year to year, and tenants at will are not entitled to apply, the persons interested in such cases being those who are entitled in reversion immediately expectant; also in cases where the land is held on lease for a life or lives, or for a term originally exceeding fourteen years, at a rent of less than two-thirds of the clear yearly value of the premises, the lessor and lessee must apply jointly; and where a person is in possession as receiver, or under a writ of execution, the application must be made by him and by the person who, but for his possession, would have been in possession of the land, or in receipt of the rents and profits (*d*). The owner of a term originally exceeding one hundred years is entitled to apply if no rent or acknowledgment has been paid or given for twenty years, or if the reversioner is unknown (*e*); and the Board may also, on the application of persons in possession of lands under any agreement for exchange, proceed with the exchange under the provisions of the Inclosure Acts (*f*).

Where two or more persons are interested jointly, severally, as a class, or in common in any land proposed to be exchanged, the application of two-thirds in value of the persons so interested jointly, severally, as a class, or in common, is to be deemed as the application of all persons interested or having any estate in the land (*g*). Undivided shares in land may also be exchanged under the provisions of the Inclosure Acts upon the application of the persons interested (*h*); and a person who is interested in several parcels of land held under separate titles, or for distinct and separate interests, or subject to separate charges or incumbrances, may effect exchanges of the several parcels

(*d*) *Ibid.* s. 16. And see the Instructions of the Board of Agriculture printed in the Appendix, *post*.

(*e*) 17 & 18 Vict. c. 97, s. 4.

(*f*) *Ibid.* s. 5.

(*g*) 12 & 13 Vict. c. 83, s. 7.

(*h*) 17 & 18 Vict. c. 97, s. 2.

in the same manner as if different persons had been interested therein (*i*).

It may be mentioned, that all the provisions of the earlier Inclosure Acts relating to the inclosure, exchange, &c. of land not subject to be inclosed under these Acts, or of land subject to inclosure but as to which no inclosure proceedings are pending, are now applicable to the case of land subject to inclosure under these Acts while inclosure proceedings are pending (*k*).

"All hereditaments, corporeal and incorporeal, may now," says Mr. Cooke (*l*), "be exchanged as freely and as easily as a piece of merchandise. These very extensive powers of exchange are altogether new to our law, and titles dependent on the Commissioners' (*m*) orders of exchange, division, or partition, were at first looked upon with some hesitation. What appeared especially startling was, that the tenure as well as the title passed over with the property of the land exchanged: that the person exchanging retained his old title, his old incumbrances, and his old tenure, changing nothing but the site of his previous property, and this involved the consequence that a piece of freehold being exchanged for a piece of copyhold, the copyhold immediately becomes a freehold, and the freehold a copyhold. This bold and startling effect was quite necessary to the full accomplishment of the Act . . . but this species of legal metempsychosis was so novel, that it was scarcely recognised as a practical fact until it had been pronounced orthodox legal doctrine by a recorded decision of the Courts." It should be noticed, however, that there are certain incumbrances which still remain charged on the original lands, notwithstanding an exchange under the Inclosure Acts. These charges comprise the land tax, tithe rent-charges, chief rents, or quit rents due

(*i*) 12 & 13 Vict. c. 83, s. 11.
(*k*) 17 & 18 Vict. c. 97, s. 1.
(*l*) Cooke, Inclosures, 117, 118.
(*m*) Now the Board of Agriculture.

from freehold lands, improvement and drainage rent-charges, and rates levied by drainage commissioners. Quit rents due from copyholds will, however, become due and payable from the land which by the exchange is converted into copyhold (*n*).

Exchanges of charity lands.

Exchanges of lands belonging to charities may also be made under the Acts relating to the sale and exchange of charity estates (*o*).

Exchanges by ecclesiastical corporations.

Ecclesiastical corporations, and rectors, vicars, perpetual curates, incumbents of benefices, and prebendaries of prebends, which are not prebends of cathedral or collegiate churches, may make exchanges with the approval of the Church Estate Commissioners. These corporations and persons are empowered to exchange with any lessee under any lease granted by them all or any lands comprised in the lease, or their reversion, estate, and interest in such lands for any other lands, whether of freehold, copyhold, or customary tenure, or for the estate and interest of the lessee in any other lands belonging to them, and upon any such exchange, either to receive or pay any money by way of equality of exchange; but in such cases, the Commissioners have to pay due regard to the first and reasonable claims of the lessees arising from any long-continued practice of renewal (*p*). Provision is made by 17 & 18 Vict. c. 116 (*q*), for ascertaining in such cases whether a copyholder has a right of renewal.

Partition of copyholds.

Partitions of copyholds may be effected by surrenders and admittances with the lord's consent, or by a decree in a partition action, or under the provisions of the Inclosure Acts. There could not be a partition of copyholds without the intervention of the lord, for such an act was an

(*n*) See Instructions of Board of Agriculture, Appendix, *post*.

(*o*) 16 & 17 Vict. c. 137, ss. 24—26, 66; 18 & 19 Vict. c. 124, ss. 29—39; 50 & 51 Vict. c. 49, s. 5.

(*p*) 3 & 4 Vict. c. 113, s. 68; 5 & 6 Vict. c. 26, s. 8; 14 & 15 Vict. c. 104, ss. 1, 11; 21 & 22 Vict. c. 57, ss. 3—6; 24 & 25 Vict. c. 105, s. 3; 25 & 26 Vict. c. 52, s. 2.

(*q*) Sect. 5.

interference with his rights in his absence by dividing his tenements, altering the accustomed rents and services, and forcing upon him a different tenant (*r*). Before the year 1841, the Courts had no jurisdiction to direct the partition of copyholds (*s*); but by sect. 85 of the Copyhold Act, 1841 (*t*), power was given to the Court of Chancery to direct the partition of copyholds in the same manner as it might direct the partition of freeholds. Yet, although the Court of Chancery had no jurisdiction in a mere partition suit to decree partition before the Act of 1841, the Court had decreed the specific performance of an agreement made before the passing of the Act between joint tenants of a copyhold estate to divide the land and hold the respective parts in severalty, and had ordered the parties to make mutual surrenders for that purpose, on the ground that joint tenants might sell to a stranger who could compel them to perform the contract, and they themselves might also compel the lord to accept a surrender from them and admit the purchaser (*u*); and where freeholds and copyholds were held together, a partition had been indirectly effected by an allotment of the whole of the copyholds to one of the coparceners (*x*). In a partition action, if one of the persons entitled to the legal estate is under disability, the Court may declare him to be a trustee, and vest or convey his estate, or direct a conveyance, by an order under the Trustee Act, 1850 (*y*).

Under the Copyhold Acts.

Under the Inclosure Acts.

Partitions of copyholds may also be made under the provisions of the Inclosure Acts, 1845 to 1882, either by the award of a valuer in cases where the land is subject to be inclosed under the terms of these Acts (*z*), or by the order

(*r*) *Oakeley* v. *Smith*, 1 Eden, 261.

(*s*) *Scott* v. *Fawcet*, Dick. 299; *Burrell* v. *Dodd*, 3 B. & P. 378; *Horncastle* v. *Charlesworth*, 11 Sim. 315.

(*t*) 4 & 5 Vict. c. 35.

(*u*) *Bolton* v. *Ward*, 4 Hare, 530.

(*x*) *Dillon* v. *Coppin*, 6 Beav. 217, n.

(*y*) Sect. 30; and see 53 & 54 Vict. c. 39, s. 135, as to vesting orders in case of lunatic trustee.

(*z*) 8 & 9 Vict. c. 118, s. 90. A copy of the instructions issued by

of the Board of Agriculture in cases where the land is not subject to inclosure, or where, though the land is subject to be inclosed, no inclosure proceedings are pending (*a*). The Inclosure Act, 1848, enacts that all the provisions of the Inclosure Acts applicable to exchange are to extend to partitions (*b*), but in regard to the persons interested it should be noted that it is unnecessary for lessees to join in applications for partitions (*c*), and that the provisions as to dissents do not apply to partitions if two-thirds in value of the persons interested apply (*d*). Land in undivided shares held under separate titles, or for distinct and separate interests, or subject to separate charges or incumbrances, by the same person, may be partitioned in the same manner as if different persons had been interested (*e*). The order of partition must specify the land which is allotted in severalty to each person in respect of the undivided part in which he is interested. The land when allotted in severalty enures to the same uses and trusts, and becomes subject to the same conditions, charges, and incumbrances as affected the undivided part in respect of which it was allotted (*f*). The award or order of partition, as the case may be, must be confirmed by the Board of Agriculture on the same terms as those already mentioned with regard to an order of exchange, the confirmation being conclusive evidence in both cases that the provisions of the Acts have been complied with (*g*), and in the case of the order of partition rendering it free from impeachment by reason of any infirmity of estate or defect of title of the persons on whose application it was made (*h*). But an award of partition even when con-

the Board of Agriculture for effecting a partition of land under the Inclosure Acts, and of a form of application for partition will be found in the Appendix, *post*.

(*a*) 11 & 12 Vict. c. 99, s. 13.

(*b*) *Ibid.* s. 14.

(*c*) 22 & 23 Vict. c. 43, s. 10.

(*d*) *Ibid.* s. 11.

(*e*) 15 & 16 Vict. c. 79, s. 31.

(*f*) 11 & 12 Vict. c. 99, s. 13.

(*g*) 8 & 9 Vict. c. 118, s. 105; 39 & 40 Vict. c. 56, s. 33.

(*h*) 8 & 9 Vict. c. 118, s. 147.

firmed is not conclusive as to the title of the allottee (*i*); and when the application for partition is made in cases where there are no inclosure proceedings pending, it seems that the application can only be made by persons having undivided interests extending over the whole land which is to be parted out among the owners of undivided interests (*k*).

Intermixed lands.

When lands are inconveniently intermixed the Board of Agriculture have power to confirm an agreement for division made by the parties interested, and to counterchange the titles of the parcels allotted on the division; and by the Inclosure Act, 1846, the Board are authorised, upon request of the parties, and with the consent of the lord in the case of copyholds, to appoint an Assistant Commissioner to award a re-division of intermixed lands. That Act provides that when any copyhold or customary land shall be intermixed or held or occupied together with land of freehold tenure, or with copyhold or customary land held of another manor, or under other customs or titles, and such copyhold or customary land cannot be identified by the description thereof on the rolls of the manor, and the situation or boundaries of such lands shall be unknown or unascertained, the award is to declare what parts shall be copyhold and freehold respectively, or be held of each such manor or under each of such customs or titles respectively, or is to determine and declare the situations and boundaries (*l*). After the approval of the award the land is to be of such tenures and to be held of such manor, or under such customs and titles as therein declared, and subject to the same services, uses, trusts, and charges as the lands in respect of which they are respec-

(*i*) *Jacomb* v. *Turner*, (1892) 1 Q. B. 47.

(*k*) *Ibid.* 52, 53.

(*l*) 8 & 9 Vict. c. 118, s. 148; 9 & 10 Vict. c. 70, s. 6; 52 & 53 Vict. c. 30. The instructions issued by the Board of Agriculture for effecting a division of intermixed lands under the Inclosure Acts, and a form of application for division of intermixed lands, will be found in the Appendix, *post*.

tively awarded. The provisions of the Inclosure Act of 1845 as to notices and dissents in the case of exchanges are applicable to the award of the kind last described (*m*). In the case of glebe lands and of lands of ecclesiastical and collegiate corporations, the identity of which had been lost, an inexpensive process of ascertaining and setting out the boundaries had been supplied by the Tithe Commutation Acts and the Statute 2 & 3 Will. 4, c. 80. "These sections (of the Act of 1846) extend this benefit to lands held under lay lords of copyhold and customary manors, and to lands held under beneficial leases from lay lessors. In the North of England it is no unusual occurrence to find in the same field land held by freehold, copyhold, and customary tenures, and also land held upon lease both for years and for lives; and in numerous instances no one parcel of these several lands can now be identified. The inconvenience to parties dealing with the titles of such land is obvious" (*n*). The same state of things is frequently found existing on estates in Norfolk and Suffolk, as well as in the West of England. Mr. Cooke also notices a case where arable land was found to have all the incidents of a common field, except that there was no intercommoning after the crop was removed. Such cases are dealt with under the provisions relating to intermixed lands above cited, and are not inclosed as commonable lands (*o*).

What statutes apply to copyholds.

This may be a convenient place for noticing the rules which have been laid down to determine whether Acts of Parliament expressed in general words are applicable to copyholds. It is usual in modern Acts to state expressly that they apply to customary estates, but there was a paucity of expression in some of the early statutes which frequently left the point uncertain. In *Heydon's case* (*p*), it was held that when an Act of Parliament alters the

(*m*) 9 & 10 Vict. c. 70, ss. 7, 8.
(*n*) Cooke, Inclosures, 343.
(*o*) *Ibid.* 144.
(*p*) 3 Rep. 7a.

services, tenure, or interest of the land or other thing, in prejudice of the lord or of the custom of the manor or in prejudice of the tenant, the general words of such an Act do not extend to copyholds; but when a statute is generally made for the public good, and no prejudice accrues by reason of the alteration of any interest, service, tenure, or custom of the manor, then usually copyhold and customary estates are within the purview of such Acts. This judgment was said by Lord Coke to contain "an infallible rule for the exposition of the general words in statutes" (*q*). A general Act will therefore include copyholds, unless it is prejudicial to the lord or tenant, or destructive of the custom. A declaratory Act, whether its form be affirmative or negative, is clearly not intended to introduce any new law or to alter any ancient custom, and will therefore ordinarily apply to copyholds. On these grounds it was settled that the Statute of Westminster the Second *De Donis Conditionalibus* (*r*), protecting entails, did not apply to copyholds, because it would be prejudicial to the lord, as "by this means the tenure is altered; for the donee in tail without any special reservation ought to hold of the donor by the same service that the donor holdeth over . . . yet it is holden that custom with the co-operation of the statute will make an estate tail" (*s*). Nor were copyholds within the provisions of the Statute of Westminster the Second, which gave the *elegit* "because it would be prejudicial to the lord and a breach of the custom that any stranger should have interest in the lands held by copy without the admittance and ordinary allowance of the lord" (*t*); but now, by the express provisions of 1 & 2 Vict. c. 110, copyholds may be delivered in execution by the sheriff under a writ of *elegit*. Formerly, also, copyholds did not fall within the provisions of 13 Eliz. c. 5, for the protection of creditors, because an assignment of

(*q*) Co. Copyh. s. 53.
(*r*) 13 Edw. I. c. 1.
(*s*) Co. Copyh. s. 53; *Rowden v. Maltster*, Cro. Car. 42.
(*t*) Co. Copyh. s. 53.

copyholds could not be said to be in fraud of creditors, inasmuch as it put no available property out of their reach through their not having the writ of *elegit* (*u*); but as copyholds are now extendible for judgment debts under 1 & 2 Vict. c. 110, they have come within the provisions of the Statute of Elizabeth. The Statute of Uses does not apply to copyholds, "because the transmutation of possession by the sole operation of the statute, without allowance of the lord or the agreement of the tenant, would tend to the prejudice both of the lord and of the tenant" (*x*). It was settled, also, that the statute 32 Hen. VIII. c. 28, which confirms leases for twenty-one years or three lives made by tenants in tail, or by the husband and wife of the lands belonging to the wife, did not apply to copyholds, for the statute speaks of "leases made by deed only, so that the intent of the statute is to warrant the leasing of such lands only as are grantable by deed, but such are not copyhold lands, for though they may, by licence of the lord, be demised by indenture, yet in their own name they are demisable only by copy, and therefore out of the general purview of the statute" (*y*). And for the same reason it was formerly held that the statute 32 Hen. VIII. c. 34, which gives an entry to the grantee of a reversion upon the breach of a condition by the particular tenant, did not apply to copyholds (*z*); but in *Glover* v. *Cope* (*a*) it was held that the surrenderee of a copyhold reversion was within the equity of the statute, for "it is a remedial law, and no prejudice can arise to the lord." And it has also been held that the assignee of the reversion of part of the demised premises is within the provisions of the statute (*b*). On the ground of prejudice to the lord, before the Act 9 & 10 Vict. c. 70 the exchange provisions of the

(*u*) *Matheys* v. *Feaver*, 1 Cox, Ch. C. 278.
(*x*) Co. Copyh. s. 54.
(*y*) *Ibid.*
(*z*) Co. Copyh. s. 54.
(*a*) 1 Salk. 185, 4 Mod. 80; *Whitton* v. *Peacock*, 3 Myl. & K. 325.
(*b*) *Twynam* v. *Pickard*, 2 B. & Ald. 105.

General Inclosure Act, 1845 (*c*), were held to be confined to freeholds. So without express provisions, such as are contained in the Lands Clauses Act of 1845, an Act passed for enabling land to be taken for a public undertaking would not be allowed to prejudice the lord (*d*). On the same principle, a penal statute imposing a forfeiture of land will not include customary estates if any part of the forfeiture is taken from the lord, since "an Act is not to be expounded so as to take away the interest of an innocent person" (*e*). The statute 12 Car. II. c. 24, so far as it permits fathers to appoint guardians for their children, seems to apply to copyholds except in those places where the lord has by custom the right of appointing the guardian (*f*).

Acts extended to copyholders.

When an Act will benefit the copyholder and not prejudice the lord, it may, "by a benign interpretation," be extended to copyholds, even if it be in terms suitable to freeholds only, or be merely declaratory of the law. Thus the Statute of Merton, 20 Hen. III. c. 1, giving certain remedies for dower to widows, was extended to give analogous remedies in the manor court to widows claiming their freebench. On the grounds stated in *Heydon's case* (*g*), it has been held that the statute 4 Hen. VII., as to fines being a bar on five years' non-claim, applied where a fine was levied by a disseisor or by a feoffee of a copyholder (*h*). Lord Coke, however, points out (*i*) that it had been doubted whether the statute extended to copyholds, because by its operation the lord would receive great prejudice, inasmuch as he would not only lose the fines upon alienations and descents, and the benefit of forfeiture, but would also be in danger of being barred of his inheritance; but he answers the objection by the remark that if the lord receives any such prejudice it is through his own default

(*c*) 8 & 9 Vict. c. 118.

(*d*) *Dimes* v. *Grand Junction Canal Co.*, 9 Q. B. 469.

(*e*) *York* (*Duke of*) v. *Marsham*, Hard. 432.

(*f*) Watk. Copyh. ii. 103, 195.

(*g*) 3 Rep. 7a.

(*h*) *Podger's case*, 9 Rep. 104 a, 105 a.

(*i*) Co. Copyh. s. 55.

for not making claim, for owing to the privity of estate that is between him and the copyholder he might have made a claim as well as the copyholder himself. But a fine fraudulently levied by a copyholder who pretends no title to the inheritance will not bar the lord, for the Statute of Fines was intended "to avoid strife, and therefore cannot extend to estates by fraud" (*k*). And it has also been held that copyholds are within the seventh section of the Statute of Frauds (*l*), which requires all declarations of trust to be in writing (*m*). And in the same way general statutes made for the public advantage will be extended to copyholders, though only freeholders are named, as the Statute of Merton, 20 Hen. III. c. 4, and 13 Edw. I. c. 46, relating to inclosures of wastes by the owners leaving sufficient for the commoners (*n*).

(*k*) *Fermor's case*, 3 Rep. 77 a.
(*l*) 29 Car. II. c. 3.
(*m*) *Withers* v. *Withers*, Amb. 151.
(*n*) See *Shakespear* v. *Peppin*, 6 T. R. 741; *Grant* v. *Gunner*, 1 Taunt. 435.

CHAPTER V.

THE DESCENT OF COPYHOLDS.

Customary descent.

In the absence of a local custom of descent, and so far as such local custom does not expressly extend, copyhold lands are governed by the ordinary law of inheritance (*a*). Such special customs are strictly construed, so that if the actual words of a custom declare that in certain instances the land shall descend in a particular way, and there stop, if there be no person to answer the literal description, the common law must declare to whom the estate shall descend (*b*). The word "descent" may have a special meaning in a presentment or statement of a particular custom (*c*).

Freeholds may be subject to customs of descent.

Freehold lands as well as copyholds are not unfrequently subject to particular customs of descent, and these are found in various ancient cities and boroughs, as well as in manors of ancient demesne and manors of the ordinary kind; but local customs of this kind can only be claimed for districts of certain kinds. "In a town which is neither city nor borough, the custom of gavelkind or borough-english cannot be alleged: but these are customs which may be in cities or boroughs; also if lands be within a manor, fee or seignory, the same may be of the nature of gavelkind or borough-english" (*d*). And the customary descent in gavelkind extends, as has been already men-

(*a*) *Denn* d. *Goodwin* v. *Spray*, 1 T. R. 466.

(*b*) *In re Smart, Smart* v. *Smart*, 18 Ch. Div. 165.

(*c*) See *Bickley* v. *Bickley*, L. R. 4 Eq. 216.

(*d*) Co. Litt. 110 b.

tioned (*e*), through all lands in Kent which can be presumed to have been originally held in socage. Such customs have been allowed in ancient districts of legal importance such as honours and sokes, which may comprise several manors, hundreds, castleries, and other lordships.

Difference between customs as applying to freeholds and copyholds.

The main difference between the customs extending to freeholds and copyholds respectively, is that, in the first case, the custom will "run with the land" (*f*); and in the case of copyholds, the custom being a part of the copyhold tenure will disappear on enfranchisement or extinguishment of the tenure (*g*). "There are customs," says Watkins, "such as borough-english and gavelkind, which run with the land, so that the land cannot be discharged of them by fine, recovery, enfranchisement, or escheat, or any other means than a positive Act of Parliament" (*h*). He points out that this would be the case where the custom refers solely to the locality of the lands, but that if it be pleaded that all lands held by copy of court roll, or parcel of the manor of B., descend to the youngest son, such lands when enfranchised would of necessity cease to be copyhold. The passage, which the same writer cites from Robinson on Gavelkind as if it had related to copyholds, appears rather to relate to a freehold, subject to a custom running with the land (*i*).

What gavelkind implies.

Another point to be noticed is, that the word "gavelkind" is applied in common parlance to all customs of partible descent both in freeholds and copyholds (*k*); and in the same way the word "borough-english" is used as a general name for every descent to the youngest, although the term in its strict legal sense applies only to the

(*e*) *Ante*, pp. 8, 9.

(*f*) Co. Litt. 110 b.

(*g*) See *post*, c. xi.

(*h*) Watk. Copyh. ii. 65, 66; *Dickson's case*, Hetl. 64, 65.

(*i*) See further as to customs running with the land, Bro. Abr. "Custom," 19, and "Extinguishment," 14, and *Wiseman* v. *Cotton*, 1 Sid. 135.

(*k*) See *Wiseman* v. *Cotton*, 1 Sid. 135.

youngest son, and not to females or collaterals; but the word "gavelkind" in pleading will imply nothing more than partible descent among males, and the word borough-english nothing more than descent to the youngest son, and all other varieties of customary descent must be specially described and proved (*l*).

What borough-english implies.

Varieties of local customs of inheritance.

The chief varieties of these local customs of inheritance seem to be as follows:—

(1.) Descent in Kentish gavelkind, or under similar customs, where the land descends in the same course as the ancient socage lands in Kent, the males in each degree taking as coparceners, and the custom extending to collaterals, subject in each case to the rule of representation (*m*).

Varieties of descent in gavelkind.

(2.) Customs of the same nature as gavelkind, but less extensive; as that the partible descent shall only be for sons and not for males in any other degree, or that females shall never come into the inheritance, as in the manor of Tynemouth (*n*); or more extensive, as that females and males should share together, as is stated to have been the case in Wareham in Dorset (*o*); with other variations in other places, as that the land shall descend to the youngest son if it is under a certain value, but if worth more it is to be parted among all the sons (*p*).

Borough-english.

(3.) Borough-english proper, or the general custom of

(*l*) *Clement* v. *Scudamore*, 6 Mod. 120.

(*m*) As to the prevalence of these customs in ancient times, see Glanv. vii. c. 3; as to the Welsh varieties of gavelkind found at Chester, Usk, Trelleg, Archenfield, and in the Vale of Glamorgan, see Rob. Gav. i. c. 3; Taylor, Gav. c. 2; Elton, Tenures of Kent, c. 4; the statutes 27 Hen. VIII. c. 26; 34 & 35 Hen. VIII. c. 26; as to the Irish variety of gavelkind, the *Case of Tanistry*, Dav. 28 b; as to Exeter, 23 Eliz. c. 12 (Pr.); as to Wareham (Dorset) and the Isle of Portland, Taylor, Gav. 101; as to the Soke of Oswaldbeck (Notts), 32 Hen. VIII. c. 29; as to Stepney and Hackney, 21 Jac. I. c. 6 (Pr.)

(*n*) See *Newton* v. *Shafto*, 1 Sid. 267; *Sympson* v. *Quinley*, 1 Vent. 88.

(*o*) Watk. Copyh. ii. 515, citing Plac. de Jur. et Ass. 16 Edw. I.

(*p*) R. P. Comm. 1 Rep. App. 254.

borough-english, where the youngest son inherits his father's land. This custom occurs both in freeholds and copyholds, and there is no difference in the mode of its application to lands of different tenures, except that in the case of freeholds the custom runs with the land, and is not extinguished by a purchase on the part of the lord (*q*). The rules relating to gavelkind and borough-english lands are the same, except as to the quantity taken by the heir; in gavelkind each son as heir taking an equal part, but in borough-english the youngest taking the whole as heir. Borough-english, though very rare in Kent, is not absolutely unknown in the few copyholds which exist in that county (*r*), but prevails largely in the counties of Sussex and Surrey, and in the manors of Islington and Edmonton, near London (*s*).

Varieties of descent to the youngest.

(4.) There are many special customs analogous to borough-english proper to which that name is applied in common parlance, but which might appropriately be classified under the wider name of "junior right." It has been laid down that, the principal custom being confined to the case of sons, every variation must be specially pleaded and proved. There is an early case which gives a somewhat larger significance in pleading to the term borough-english. There it was said that "the law takes notice of the customs of borough-english and gavelkind, what they are, and the consequences of such customs: and though it be true that borough-english custom *primâ facie* gives only to the youngest son, yet upon that foundation of alleging it to be borough-english land, such an addition or enlargement of it, as to go to the youngest

(*q*) *Reeve* v. *Malster*, Cro. Car. 410.

(*r*) *Preston* v. *Jervis*, 1 Vern. 325; Elton, Ten. of Kent, 170.

(*s*) For an account of the custom and its extent, see Co. Litt. 110 b; R. P. Comm. 1st Rep. App. 254, 286; Corner's Borough-English in Sussex; Chanock, Manorial Customs of Essex; and for lists of principal places where it is found, see Robins. Gav. App.; Elton, Ten. of Kent, 162—176; Elton, Orig. Eng. Hist. c. viii.

brother or nephew, may be made; it being agreeable to the nature of a borough-english custom" (*t*). But the weight of authority is in favour of the rule, that the extension of the custom to collaterals must be specially proved, and will not be implied by pleading that the land is of the nature of borough-english (*u*). Among these varieties of junior rights are special customs in favour of the youngest brother where the tenant has no sons, but several brothers, as in the manors of Dorking, Milton, and Westcott in Surrey, in favour of the youngest male collateral in each degree, as in the manors of Acton, Ealing, and Isleworth in Middlesex. In the manor of Lyddington-cum-Caldecott in Rutland the custom is, that the land descends to the youngest son of the person last seised, if he has more than one, if no son to the daughters as parceners, and if no sons or daughters, then to the youngest brother of the person last seised, and to the youngest son of such youngest brother (*x*). There are also customs which extend the principle of junior right to females as well as males, as in the manors of Fulham, Putney, Sheen, Mortlake, Battersea, Roehampton, Wimbledon, Wandsworth, Down, Barnes, and Richmond in Surrey, in some cases to daughters alone, but in others to sisters, aunts, or collaterals of every degree (*y*).

The principle of "junior right" prevails so generally upon copyhold lands in Sussex that it has often been called the common law of the county; and in the Rape of Lewes the custom is nearly universal. "A comparison of the manorial usages will show the following results. The privilege is usually extended to the heirs in remote degrees: the youngest of the sons, daughters, brothers or sisters, uncles or aunts, or male or female collateral relations,

(*t*) *Payne* v. *Barker*, O. Bridg. 18, 25; *S. C.* as *Pain* v. *Herbert*, cited 2 Keb. 158; *S. C.* as *Fane* v. *Barr*, cited 1 Salk. 243, and 6 Mod. 120.

(*u*) *Clement* v. *Scudamore*, 6 Mod. 120; *Rider* v. *Wood*, 1 K. & J. 644.

(*x*) *Muggleton* v. *Barnett*, 2 H. & N. 653.

(*y*) Elton, Ten. of Kent, 169; Elton, Orig. Eng. Hist. 189.

being entitled to the customary preference. When there are several kinds of tenure, the benefit of the custom is confined to the more ancient. In some places, for example, there are two kinds of copyhold land, the one called 'Bond-land,' and the other 'Soke-land.' In such cases, the custom is confined to the Bond-land (z); and in some manors the privilege of the youngest is lost if his predecessor were the owner of Soke-land at the time of his coming into the Bond-land. 'Some of these customs are very strange,' said a learned writer (a), 'such as that of the manor of Wadhurst, where there are two sorts of copyhold tenures, and the custom is, that if the tenant was first admitted to Soke-land and afterwards to Bond-land, the heir-at-law should inherit both, and if he was first admitted to Bond-land then his youngest son should inherit both, but if he was admitted to both at the same time, then his eldest son should take the whole.' There is a similar usage in the manors of Framfield and Mayfield, where in each case the written collection of customs forms a valuable repository of ancient law. In those districts, and in many others in the neighbourhood, the copyhold lands which have been reclaimed from the forest waste are known as 'Assart-lands.' The distinction between them and the more ancient holdings appears in the following extract: 'If any man or woman be first admitted to any of the Assart-lands, and die seised of Assart-lands and Bond-lands, then the custom is, that the eldest son be admitted for heir to all, and if he or she have no son, then the eldest daughter likewise. And if the said tenant be first admitted to Bond-land, the youngest son or youngest daughter shall be heir to all his customary lands.' At Rotherfield, the custom is still more intricate. There are three kinds of

(z) See *Vaughan* v. *Atkins*, 5 Burr. 2764, for difference in descent between *purpresture* land and *bond* land in Manor of Bitterne, Hants.

(a) Nelson, *Lex Maneriorum*, pref., citing the observations of Anderson, C. J., in *Kempe* v. *Carter*, 1 Leon. 55.

land: assart, farthing-land, and cotman-land. To the first the eldest son is heir, to the second the youngest son, and in default of sons the youngest daughter, and the cotman-lands descend to the youngest son, but failing a son are divided among all the daughters. In Pevensey also there are three different tenures of freehold lands, of which the first goes to the common law heir, and the others to the youngest son, and in other parts of the same county, as in the manor of Plumpton, and on the lands 'between the watch-crosses at Boxgrove,' there are freeholds that are subject to the customary rule" (*b*). The custom of preferring the youngest also prevails in the extensive district in Somerset, which is known as the Manor of Taunton Deane, and is described in the Custumal to be as follows: "If any tenant die seised of any customary lands or tenements of inheritance within the said manor, . . . and if he hath more sons than one, then the youngest son hath used to have and inherit the same as sole heir to his father by the custom of the said manor; and so likewise of daughters, if he hath more than one and die without issue male, the youngest daughter ought and hath used to inherit the same as sole heir to her said father by the custom of the said manor. But if the father hath neither wife nor son nor daughter, then the youngest brother of the whole blood ought and hath used to inherit the same lands; and if he hath no brother of the whole blood, then the youngest sister of the whole blood; and if he hath neither brother nor sister, then this is a rule in the said custom, that the youngest next of kin of the whole and of the worthiest blood ought and hath used to inherit and hold the lands to him and his heirs for ever" (*c*).

Restriction of custom of borough-english to youngest son

(5.) There may be also special customs of a more restricted nature than the general custom of borough-english, of which the most important are those which

(*b*) Elton, Orig. Eng. Hist. 187, 188.

(*c*) Shillibeer, Customs of Taunton Deane, 42, 43.

restrain the custom to the case of a tenant dying seised. In a case (*d*), where the copyhold lands of every tenant dying seised were descendible to the youngest son, a surrender was made to the use of B. and his heirs; but B. died before admittance. It was agreed, that if B. had been admitted, the youngest son after his death would have inherited; but as B. had died before admittance, the question was between the eldest and youngest son of B., and it was adjudged that the eldest son should have the land because of the strictness of the custom, there never having been any seisin in the ancestor. In the much-discussed case of *Muggleton* v. *Barnett* (*e*), it was argued that the Inheritance Act had deprived a custom of this kind of its significance, the person last seised being no longer the root of descent in any case, but the strict interpretation of the custom was upheld. In that case, the custom was shown to be that the land should descend to the youngest son of the person last seised, if he had more than one son, and if no son, to the daughters as parceners; and if no issue, then to the youngest brother of the person last seised, and to the youngest son of such youngest brother. In the case of *Bickley* v. *Bickley* (*f*) it was held that the word "descent" was not confined to its ordinary sense, but applied to each transmission of the estate, whether by devise or inheritance.

of "tenant dying seised."

There may be other varieties of junior right, as that fee simple lands should go to the youngest son and entailed lands to the eldest (*g*), or that the special custom shall only extend to copyholds in a particular district in a manor, as in the manors of Framfield, Mayfield, Taunton Deane, and Wadhurst, already mentioned.

Varieties of junior right.

(6.) Other local customs give a preference, in default of sons, to the youngest daughter, and sometimes to the

Customs of descent among females.

(*d*) *Payne* v. *Barker*, O. Bridg. 18; see note (*t*), *ante*.

(*e*) 2 H. & N. 653; see Williams, Real Prop. App. A.

(*f*) L. R. 4 Eq. 216.

(*g*) *Chapman* v. *Chapman*, March, 54.

eldest (*h*). Traces of this special custom of primogeniture are found in the extensive districts of Castlerigg and Derwentwater in Cumberland, at Kirkby Lonsdale in Westmorland, at Weardale in Durham; in the manors of Bray in Berkshire, Marden in Herefordshire, Casthiobury and St. Stephen's in Hertfordshire, Middleton Cheney in Northamptonshire, and Chertsey, Beaumond, Farnham, Worplesdon, and Pirbright in Surrey. In the same way, the eldest or the youngest daughter may have a customary preference in the claim to a renewal of a copyhold for lives (*i*). In the manor of Tynemouth the descent, in default of sons, is to the eldest daughter for life, and it was stated that then 'the land shall descend to the next heir male deriving his title through males, and if there be none such, the land shall escheat to the lord" (*k*). A custom to exclude female heirs altogether has been held good (*l*); but this would not exclude females claiming by representation to stand in the place of a male heir (*m*). Such customs of female primogeniture may extend to the case of sisters, nieces, aunts, &c., or to the females in every degree. Such customs will be always strictly interpreted. Thus, where there is a custom that land shall descend to the eldest sister, this will not extend to the eldest niece or aunt, &c., for, in the absence of special proof, the custom of the lineal descent will not be extended to the collaterals, nor the usage as to one degree to any other degree of relationship (*n*).

Customs for the widow or widower to inherit.

(7.) There may be a valid custom for the widow or widower to inherit instead of the issue, as in the manor of Taunton Deane, where the heir in borough-english is

(*h*) See Co. Litt. 140 b.

(*i*) See *Doe d. Hamilton* v. *Clift*, 12 A. & E. 566.

(*k*) *Newton* v. *Shafto*, 1 Sid. 267.

(*l*) *Sympson* v. *Quinley*, 1 Vent. 88.

(*m*) *Clement* v. *Scudamore*, 6 Mod. 120; Rob. Gav. 113, 114.

(*n*) *Chapman's Case*, 2 Rolle's Rep. 366; *Ratcliffe* v. *Chaplin*, 4 Leon. 242; *Denn* d. *Goodwin* v. *Spray*, 1 T. R. 466; Rob. Gav. 119; *Re Smart*, *Smart* v. *Smart*, 18 Ch. Div. 165.

excluded in the following cases:—"If any tenant die seised of any customary lands or tenements of inheritance within the said manor, and having a wife at the time of his death, then his wife ought, and hath used time out of mind, to inherit the same lands as next heir unto her husband by the custom of the said manor, and be admitted tenant thereunto, to hold the same unto her and her heirs for ever, according to the custom of the said manor, and in as ample manner as any other customary tenant there holdeth his lands under the rents, fines, heriots, customs, duties, suits, and services for the same due and accustomed" (*o*); and also "In case a woman seised of any customary lands of inheritance, parcel of the said manor, marry a husband, the same husband ought, and by the custom of the said manor hath used, to fine with the lord of the said manor for her and her land at the old precedent fine of the same land, and thereof to make an entry with the clerk of the castle, and to put in pledges at or before the first law-day court after the said marriage, by virtue of which marriage, entry, and pledges, the husband becomes owner of the same land, and is to be admitted tenant thereunto to hold the same to him and his heirs for ever, according to the custom of the said manor" (*p*).

To what estates customs extend.

All these local customs of descent extend to estates-tail as well as to fee-simple inheritances. "If a man dies seised of lands in gavelkind in tail, whether general or special, all the sons will inherit together as heirs of the body; and in like manner if lands in borough-english are given to a man and the heirs of his body, the youngest son will take" (*q*). There has been a question, if gavelkind lands, or lands subject to similar customs, are devised to a man and his wife for their lives, with remainder to the

(*o*) Shillibeer, Customs of Taunton Deane, 42; and see *Locke* v. *Southwood*, 1 Myl. & Cr. 411; *S. C. sub nom. Bush* v. *Locke*, 3 Cl. & F. 721 (H. L.)

(*p*) Shillibeer, Customs of Taunton Deane, 49.

(*q*) Rob. Gav. 119, 120; *Weeks* v. *Carvel*, Noy, 106; Co. Litt. 110 b.

next heir male of their bodies, whether the eldest son should inherit, or whether the land would be partible; but it seems clear that, according to the analogy of similar cases as to lands descendible at common law, there would be an estate tail in the parents, and the co-heirs in gavelkind would be the heir in tail (*r*).

The customary descent will attach not only to estates in fee simple and fee tail, but also to descendible estates *pur autre vie*, where the heir or heir of the body is designated as special occupant to take the descendible freehold. "If lands of the nature of borough-english are let to a man and his heirs during the life of J. S., and the lessee dies, the youngest son shall enjoy it" (*s*). And now the "descent of lands" includes the descent of every possibility, right or title of entry or action, and every other interest capable of being inherited, whether in possession, reversion, remainder, or contingency (*t*).

Alteration of course of descent.

The customary course of descent cannot be altered by words directing that the land shall descend to the heirs at common law. "A man seised of gavelkind lands gives or devises the same to a man and his eldest heirs: he cannot thereby alter the customary inheritance, but, *ut res magis valeat*, the law rejects the adjective 'eldest'" (*u*); and this rule extends to estates tail. So if a copyholder, where the lands go in a customary course of descent, surrenders to the use of himself and his heirs, "according to the course of the common law," the latter words would be treated as surplusage (*x*). A grant or devise to the heir of A. B. would, however, be presumed to be intended for the heir at common law as a *persona designata;* but where the term "heir" is used as a word of limitation, and not as a word of purchase, the customary heir would be preferred (*y*).

(*r*) *May* v. *Milton*, Dyer, 133 b.

(*s*) Co. Litt. 110 b; *Baxter* v. *Dowdswell*, 2 Lev. 138.

(*t*) 3 & 4 Will. IV. c. 106, s. 1.

(*u*) Co. Litt. 27 b; see *Lovelace* v. *Lovelace*, Cro. Eliz. 40.

(*x*) Co. Litt. 10 a, n. 3 (Harg.); *Anon.*, Dyer, 179 b.

(*y*) Co. Litt. 10 a; Rob. Gav. 123, 156.

In *Thorp* v. *Owen* (*s*), it appeared that a testator, seised of certain gavelkind lands in the county of Kent and certain freeholds in the county of Essex, had devised all his real estate, after the death of his wife, to his then male heir and his heirs in strict tail male; and it was held that on the death of the wife all the testator's lands passed to his then heir at common law, and that his heirs in gavelkind were not entitled to the gavelkind lands. In *Polley* v. *Polley* (*a*) there was a devise, after a tenancy for life, of borough-english lands for sale and division of the moneys among all the testator's sons and daughters who might then be living, and to the heir and heirs of those who might have died, share and share alike. It was held that under the gift to heirs the common law heir, and not the heir in borough-english, took.

Descent of rights of entry.

The heir at common law was formerly the only person who could take advantage of a condition broken, the right of entry not descending to the customary heirs, unless the condition was incident to the reversion of the customary land, so that if a man alienated lands of gavelkind or borough-english tenure on condition and then died, the eldest son alone could take advantage of a breach of the condition and enter on the land (*b*). But if the condition was incident to a reversion, the customary heir might take advantage of it (*c*). But now, under the provisions of the Inheritance Act, 1833, every possibility, right or title of entry or action, and any other interest capable of being inherited, descends as "land" (*d*).

Customs of descent extend to manors, &c.

If a manor is subject to a special custom of descent, the advowsons, whether appendant or in gross, and the rents, services, and profits incident to the manor, will go in the same course of descent. The following examples illustrate the mode of descent of profits incident to a manor subject

(*s*) 2 Sm. & G. 90.
(*a*) 31 Beav. 363.
(*b*) See *Earl of Arundel's Case*, Dyer, 342 b, 343 b.
(*c*) *Anon.*, Godb. 2; Rob. Gav. 159.
(*d*) 3 & 4 Will. IV. c. 106, s. 1.

to such a special custom of inheritance. If a fair or market be held on gavelkind lands, or other customary lands, such profits as arise from, or by reason of, the soil will descend in the same manner as the land: but such as are independent of the soil will go to the heir at common law, as may be inferred from what was laid down in the case of *Heddey* v. *Welhouse* (*e*), "that if the king grants a fair or market, with toll certain, to a man and his heirs, to be held within borough-english land, and the grantee dies, the heir at common law will have the fair or market with the tolls, but the younger son will have the pickage and stallage," or payments made in respect of interfering with the soil by poles, as being incident to the soil (*f*).

But not to tithes.

But such customs did not extend to any tithes coming to the Crown by force of the statutes relating to the dissolution of monasteries (*g*).

Customary descent of rents, &c.

The same rules apply to rents which issue from customary lands. A rent-service, which is parcel of a manor, will descend with the manor, whatever be the nature of the lands charged (*h*). But it was long doubted whether a rent, charged upon or reserved out of customary lands, will in other cases descend according to the nature of the land. "A custom," says Lord Coke, "never extends to a thing newly created, and therefore if a rent be granted out of gavelkind lands or borough-english, it shall descend according to the course of the common law" (*i*). But the point was settled by the case of *Randall* v. *Jenkins* (*k*), where the question was whether a rent-charge, granted out of gavelkind lands to a man and his heirs, should go

(*e*) Moo. 474.

(*f*) Rob. Gav. 100, who cites an unreported case of *Rebow* v. *Bickerton*, Trin. 7 Geo. I. Exch., to the same effect.

(*g*) Co. Litt. 159 a; *Lushington* v. *Llandaff* (*Bishop of*), 2 N. R. 491. The Statutes of Monasteries are the Acts 27 Hen. VIII. c. 28 31 Hen. VIII. c. 13; 37 Hen. VIII. c. 4; 1 Edw. VI. c. 14; 1 & 2 Ph. & M. c. 8; 35 Eliz. c. 3.

(*h*) Rob. Gav. 100. See also *Gouge* v. *Woodin* (King's Bench, 1734), of which an account is given in Elton, Ten. of Kent, 189.

(*i*) Co. Copyh. s. 33.

k) 1 Mod. 96.

to the heir at common law, or be partible among all the sons; and "after solemn argument by two Kentish counsel and consideration of all the cases," the Court held that the rent ought to descend to all the sons according to the descent of the land, because the rent was part of the profits of the land and issued out of it; and the decision was followed in *Stokes* v. *Verryer* (*l*) and *Baxter* v. *Dowdswell* (*m*). "If the rent be issuing by one entire grant out of lands of different natures, they who claim under the custom will have no share in the inheritance, but the common law descent will be preferred to the whole as the most worthy." But if rent is reserved out of land of two customary natures, *e.g.*, if a man makes a lease for years of two acres of land, one in gavelkind and the other in borough-english, and has issue two sons, and dies, "the rent will be apportioned, because it is incident to the reversion" (*n*).

Equitable estates.

Where copyholds are made the subject of a trust, "the equitable estate possesses those incidents of the customary property which directly affect the tenant, and therefore the rules of descent are those which the custom prescribes" (*o*). There is, of course, an exception where, as in the cases mentioned above, the customary descent is only applicable to the case of "a tenant" or a tenant "dying seised" (*p*). The customary descent will attach in the case of an equity of redemption, or a resulting trust, or the case of a surrenderee dying before admittance (*q*).

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An executory trust, as distinguished from an executed trust, in favour of the heirs of A., is construed in favour of the heirs at common law, and the Court will direct a conveyance to be made accordingly, the word "heirs"

(*l*) 1 Mod. 112.
(*m*) 2 Lev. 138.
(*n*) *Dumpor's case*, 4 Rep. 119 b, 120 b; Co. Litt. 148 b, 215 a.
(*o*) Burt. Comp. s. 1395; Co. Litt. 13 a, 23 a.
(*p*) *Payne* v. *Barker*, O. Bridg. 18; *Rider* v. *Wood*, 1 K. & J. 644.
(*q*) *Barker* v. *Denham*, Sty. 145; *Fawcet* v. *Lowther*, 2 Ves. 300, 304; *Blunt* v. *Clark*, 2 Sid. 61.

being taken as a word of purchase and not of limitation (*r*).

Money representing land.

In a case where the heirs to certain gavelkind land had concurred in its sale, it was insisted that the money produced by the sale remained impressed with the character of real property, and that a proportional part of it ought to descend to the heirs in gavelkind; but the claim was rejected as fanciful and untenable (*s*).

Who is the youngest customary heir.

A custom of borough-english, or other similar custom, is not strictly confined to the son who is youngest at the death of the father, for a posthumous son will be entitled to the lands, notwithstanding that the son who was youngest at the death of the father has entered (*t*); and so also if the son who was youngest at the father's death has died without lineal issue before the succession devolves on him, and if the custom does not extend to collaterals, the descent will be traced from the father, and the son who is youngest at the time of tracing the descent, or if he is not alive his issue, will be preferred. In the case of *Reeve* v. *Malster* (*u*), which referred to copyholds in the manor of Hoe in Suffolk, descendible by the custom to the youngest son of the tenant "dying seised according to the nature of borough-english," a reversion descended to the youngest of three sons who died before the tenant for life without issue. When the reversion came into possession, the question was whether W., the eldest son of the father and also heir-at-law of C. the youngest son, or G., the middle son, should have the land. There was no special extension of the custom to brothers. It was agreed by all the judges that if C. had survived the tenant for life, and had then died without issue, W. would have had the land as heir to C., "because the custom of borough-

(*r*) *Roberts* v. *Dixwell*, 1 Atk. 607, 610; *Trash* v. *Wood*, 4 Myl. & Cr. 324.

(*s*) *Hougham* v. *Sandys*, 6 L. J. Ch. 67.

(*t*) *Per* Brampston, C. J., and Berkeley, J., in *Reeve* v. *Malster*, Cro. Car. 410.

(*u*) Cro. Car. 410.

english extends not to brothers unless there be a special custom found"; but as the question was one regarding a reversion expectant on an estate for life, and as C. had never been seised of the land in possession, and had died without issue during the tenancy for life, two of the judges, Brampston, C. J., and Berkeley, J., were of opinion that G., the middle son, should have the land as if C. had never lived, "for he shall make title from his father and take by descent from him who had the seisin of the freehold, and not from any mention of him who had but the reversion expectant on an estate for life, for the custom shall be guided by the rule of the common law, and here there was no *possessio fratris*." But Jones and Croke, JJ., held that W. had the better title, for the youngest son being the heir in whom the estate vested by custom at the death of his father, it was an inheritance fixed in him, and the custom had its operation and was satisfied in him, and there was an end of the custom, and none could claim after but his heir: "and the youngest son only, who is *in esse* at the death of his father, shall have it by the custom, and not any other who shall come to be youngest afterwards." But the opinion in favour of the middle son has been sustained in later cases (*x*). The case of *Newton* v. *Shafto* (*y*) illustrates the same principle. There it appeared that the custom of the manor of Tynemouth is that, if a copyholder dies leaving no son but two or more daughters, the eldest daughter shall have it only for her life, and then it shall descend to the next heir male, and that the wife shall have it for her freebench for life. A copyholder died and his widow entered: the elder daughter died in her mother's lifetime, and then the widow died: the Court held the custom good, and that the second daughter should have the land for her life within the custom, for though she was not eldest daughter at the

(*x*) *Kellow* v. *Rowden*, 1 Show. 244, 249; *Clement* v. *Scudamore*, 6 Mod. 120.
(*y*) 1 Lev. 172.

death of her father, yet she was at her mother's death, whose estate was a continuance of the husband's estate till her death.

Statute of Distributions, descended customary estate.

Before leaving this part of the subject, it is necessary to mention that a descended customary estate is not within the provisions of the Statute of Distributions (*z*) as to the exclusion of children who have any land by settlement, or have been advanced by portion from the distribution of the personal estate of an intestate. This was decided in the case of *Lutwyche* v. *Lutwyche* (*a*), where it was held that a youngest son, being heir in borough-english of certain lands, should not be obliged to bring the borough-english lands into hotchpot before claiming his distributive share of the personal estate of his father, who had died intestate.

Effect of Inheritance Act, 1833.

We may now consider the alterations which have been introduced into the customs of special descent by the Inheritance Act, 1833, which applies to all descents and titles to inherit by reason of consanguinity arising after the 1st of January, 1834 (*b*); with an exception as to the effect of assurances made before that date, and the wills of persons dying before that date (*c*).

Before the Act the descent was in all cases to be traced from the person last seised, that is, the person who was in possession by himself or his tenant for years, or in the case of a freehold lease the person who had received the rent, or who had exercised some act of ownership. But now the descent in all cases is to be traced from the purchaser, that is, 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 (*d*); and to prevent unnecessary tracing of pedigrees, the person last entitled is

(*z*) 22 & 23 Car. II. c. 10, s. 5.
(*a*) Cas. *temp.* Talbot (Forrester's Rep.), 276.
(*b*) Sect. 11.
(*c*) Sect. 12.
(*d*) Sect. 1.

taken to be the purchaser in the absence of proof that he inherited, and so with regard to each preceding step of the pedigrees (*e*); and a person is deemed to have been the last entitled, if he had a right to the land, whether or not he obtained the possession or receipt of the rents and profits. If there is a total failure of heirs of the purchaser, or of the ancestor from whom descent is to be traced where property is descendible as if an ancestor had been the purchaser, the descent must be traced from the person last entitled (*f*).

The rule as to descent being traced from the purchaser is not to be taken as altering those special customs of descent which are restricted to the case of a tenant dying seised of the land (*g*).

Descent of reversions, &c.

In the case of a reversion expectant upon a life estate there is no purchaser, unless there has been an alienation of the reversion since its original limitation; and where there has been no such alienation, the rule always was, "that it descends to the heir of the person who created it, and this even though it were created by will, in which case the testator from whom it descends never held it, and the same rule holds where a person having a remainder or reversion by descent makes a lease for life, and thus creates a new reversion, for this will descend to his own heir" (*h*); and the Inheritance Act, 1833, has not altered the rule (*i*).

Issue representing parent.

The rule that descent shall be traced from the purchaser, or in the case of a reversion from the person who created it, has sometimes come into apparent conflict with the rule that in cases of descent the issue shall represent their parent. Thus, if a reversion or remainder of gavelkind lands, while expectant on a life estate, were to descend to several sons of whom one died leaving issue, and if the

(*e*) Sect. 2.

(*f*) 22 & 23 Vict. c. 35, ss. 19, 20.

(*g*) *Muggleton* v. *Barnett*, 2 H. & N. 653.

(*h*) Burt. Comp. s. 306; *Doe* d. *Andrew* v. *Hutton*, 3 B. & P. 643.

(*i*) *Paterson* v. *Mills*, 19 L. J. N. S. Ch. 310.

rule as to tracing descent were taken literally, the issue of the deceased son would have to share with the surviving sons the portion which would have been taken by the deceased son; but in such a case it is held that the rule of representation is to be preferred, and that it is not necessary to trace the descent afresh, but the issue will be taken for every purpose as standing in the place of their parent. "It seems that the meaning of the Act was to leave the law of inheritance, in cases absolutely plain, just as it found them, and only to lay down rules where there was any doubt existing" (*k*).

The rule of representation applies to all customary descents of copyholds, and of freehold lands subject to special customs. Thus where the custom was, that if a man died without male issue, his eldest daughter should have the land, and the tenant had no issue male but several daughters, the eldest of whom died in the lifetime of her father, leaving issue a daughter, it was held that the granddaughter was within the custom, and should have the land by descent upon the death of her grandfather (*l*). Again, where A. had five sons, the youngest of whom died in his lifetime leaving issue a daughter, and afterwards A. purchased borough-english lands, and died seised thereof, and his fourth son entered, it was held that the daughter of the fifth son should inherit by right of representation (*m*). So with gavelkind lands, the issue of a son or a collateral heir will stand in the place of the parent, "nor does the right of representation stop at the children of a brother by analogy to the Statute of Distributions," as was in one case suggested. Where a man died intestate and without issue, seised of gavelkind land, leaving a nephew and two sons of a deceased nephew, it was held that the latter were entitled by right of representation to

(*k*) *Per* Shadwell, V.-C., in *Cooper* v. *France*, 19 L. J. N. S. Ch. 313, 314.

(*l*) *Godfrey* v. *Bullock*, 1 Ro. Abr. 623; see *Locke* v. *Colman*, 1 Myl. & Cr. 423.

(*m*) *Clement* v. *Scudamore*, 6 Mod. 120.

the share which their father, if living, would have taken (*n*). The right of representation is allowed as a general incident of descents to operate in face of the customary preference of the youngest in the same way as it operates on the common law rule of primogeniture. "The same principle must be applied, whether the custom be that of gavelkind or borough-english. You must ascertain what the custom is, and then apply all the rules of descent to the custom so ascertained" (*o*).

Limitation to heirs.

Under the old law of inheritance, a limitation in a deed or will to the heirs, or heirs of the body, of A. B., was construed in favour of the heir at common law, though the land were descendible in another course by custom. "The heir (it was said), to have the benefit of a purchase, must not only be heir to a special intent, but the general and perfect heir, the heir at common law; and therefore if lands of the nature of gavelkind are granted or devised to A. for life, remainder to the heirs of B., who has issue four sons, and dies, and afterwards the tenant for life dies, the eldest son of B. shall have the land" (*p*). But the customary heir was entitled wherever the word "heirs" was a word of limitation, as, to A. B. and his heirs. When it was a word of purchase, as, to the heirs of A. B., the donor was presumed to intend the heir at common law, unless there was something to show the contrary. But if special words are added describing the customary heir, the presumption will fail, and then, though the subject of the gift be common law land, yet the customary heir will be preferred. Accordingly, in *Newcomen* v. *Barkham* (*q*), it was declared by Lord Cowper, L. C., that if one, having borough-english land and also lands at common law, devises the latter to his heir by the custom of borough-english, this would be a sufficient description of the youngest son, though not heir at common law, and though the devise

(*n*) *Hook* v. *Hook*, 1 Hem. & M. 43.

(*o*) *Ibid. per* Page-Wood, V.-C.

(*p*) Co. Litt. 10 a; Rob. Gav. 156.

(*q*) 2 Vern. 729, 732.

was not of the customary land, but of common law land, and that a like devise to gavelkind heirs would entitle all the sons.

But, under the present law, it seems that the customary heir may take the land in some cases where formerly he would have been excluded. When land is devised to the heir, or person who shall be the heir, of a testator, such heir will take as devisee, and not by descent; and when land is limited by an assurance, other than a will executed after the 31st of December, 1833, to the person who conveys the land or his heirs, such person is considered to have acquired the land as a purchaser by virtue of the assurance, and shall not be considered to be entitled thereto as his former estate (*r*). And when any person acquires land by purchase under a limitation to the heir or heirs of the body of his ancestor in an assurance executed after the 31st of December, 1833, or under any limitation to the same effect in a will of a testator dying after the same date, the land will descend, and the descent will be traced as if the ancestor named in such limitation had been the purchaser (*s*).

Immediate inheritance between brothers.

The effect of the custom of borough-english has also, in certain cases, been altered by the abolition of immediate descent between brothers and sisters (*t*), and the admission of lineal ancestors into the line of inheritance (*u*). If a man dies seised of land in borough-english, leaving no issue, with two elder brothers, the younger brother will now inherit as heir to the father; but formerly the elder brother would have inherited immediately, unless there were a special custom extending the peculiar descent to brothers (*x*).

Half-blood.

The exclusion from the inheritance of relations by the half-blood under the old law was formerly considered to be a special inconvenience in lands of the nature of gavelkind

(*r*) 3 & 4 Will. IV. c. 106, s. 3.
(*s*) *Ibid.* s. 4.
(*t*) *Ibid.* s. 5.
(*u*) *Ibid.* s. 6.
(*x*) See *Reeve* v. *Malster*, Cro. Car. 410 (where there was no question of *possessio fratris*), and *Clement* v. *Scudamore*, 6 Mod. 120.

or borough-english, or subject to similar customs. In borough-english lands it was noticed "that if the youngest son by a second wife should take, the eldest son by the former wife would afterwards be excluded from the succession, which seems a great anomaly altogether" (*y*). But now the half-blood is admitted to the succession next after the relation of the whole blood in the same degree where the common ancestor is a male, and next after the common ancestor if a female (*z*).

Inconveniences of descent to youngest.

In the appendix to the First Report of the Real Property Commissioners will be found notices of the following inconveniences which arise from the continuance of the custom of borough-english, many of which are, of course, equally noticeable in the case of lands subject to other special customs of descent:—The youngest son is often a minor when the father dies; during the minority the land is inalienable, and often mismanaged, and in the case of a trust estate of borough-english lands a reference to the Court is often rendered necessary; it is difficult to ascertain the limits of the land covered by the custom, and sometimes difficult to show the nature and extent of the custom clearly enough to satisfy a purchaser; there is considerable ignorance and forgetfulness of the particular lands subject to it, so that in many cases, contrary to the intention, an estate settled as an entire estate has descended to different persons, the freeholds to the eldest son, and the copyholds to the customary heir; and generally, from the greater likelihood of long minorities, additions to the number of trustees and *cestuis que trust* on the same property, uncertainties respecting boundaries and customs, &c., land subject to special customs of descent, whether freehold or copyhold, is often rendered difficult to sell or to manage properly (*a*).

Estate of the

Upon the death of a copyholder intestate the heir

(*y*) R. P. Comm. 1 Rep. App. 351.

(*z*) 3 & 4 Will. IV. c. 106, s. 9.

(*a*) R. P. Comm. 1 Rep. App. 254, 286.

heir before admittance.

immediately becomes the tenant, and may act as owner, as against all the world except the lord, before he has been admitted. "Admittances upon surrender," says Lord Coke, "differ from admittances upon descents in this, that in admittances upon surrender nothing is vested in the grantee before admittance no more than in voluntary admittances; but in admittances upon descents the heir is tenant by copy immediately upon the death of his ancestor, but not to all intents and purposes; for, peradventure, he cannot be sworn of the homage before, nor maintain a plaint in the nature of an assise (*b*) in the lord's court before, because till then he is not complete tenant to the lord, no further than the lord pleases to allow him for his tenant. So that to all intents and purposes the heir, till admittance, is not complete tenant, yet to most intents, especially as to strangers, the law takes notice of him as of a perfect tenant instantly upon the death of his ancestor, for he may enter on the land before admittance, take the profits, punish any trespass done upon the ground, surrender into the hands of the lord to whose use he pleases, satisfying the lord his fine due upon the descent, and by estoppel he may prejudice himself of his inheritance" (*c*).

In no other case, it may be mentioned, can a person who is not in the customary seisin bind his future estates by way of estoppel (*d*), and so a surrender by a mere heir-apparent of a copyholder in the lifetime of his ancestor will not estop the heir of such surrenderor from claiming against the surrenderee (*e*). An heir may devise copyholds descending to him, although he has neither been admitted nor has paid the lord's fine upon the descent (*f*). In cases

(*b*) Abolished by 3 & 4 Will. IV. c. 27, s. 36.

(*c*) Co. Copyh. s. 41; *Brown's Case*, 4 Rep. 21 a, 22 b; *Clarke* v. *Pennifather*, 4 Rep. 23 b.

(*d*) *Doe* d. *Blacksell* v. *Tomkins*, 11 East, 185.

(*e*) *Goodtitle* d. *Faulkner* v. *Morse*, 3 T. R. 365.

(*f*) *Wright* v. *Banks*, 3 B. & Ad. 664; *King* v. *Turner*, 1 Myl. & K. 456; *Doe* d. *Perry* v. *Wilson*, 6 N. & M. 809.

of copyholds of inheritance, the heir of a copyholder may, before admittance, enter upon the land and take the profits, and, as against all persons but the lord, may bring an action to recover the land, or for trespass by a stranger (*g*), and after admittance may bring trespass against the lord for acts done before the admittance (*h*). He may make a customary lease (*i*) for the period warranted by the custom, and generally act as owner, except as against the lord. "All these incidents seem almost necessarily to attach, because the lord might not hold a court for a considerable time after the death of the former tenant, and if the heir could not do these things he would not have the full enjoyment of the estate" (*k*). If the heir dies before admittance his heir may enter and take the profits, and may sue for trespass before his admission (*l*); and in the like case his widow will have her freebench (*m*), and the husband of an heiress dying before admission will have his customary estate by the curtesy (*n*). If the customary estate is not an estate of inheritance, but one to which the tenant is admitted during the joint lives of himself and the lord, with a tenant right of renewal, the heir will have no estate before admittance, even after entry; and so, before admittance, he cannot bring an action to recover the land against a stranger (*o*). "I conclude," says Lord Coke, "that an admittance is principally for the benefit of the lord to entitle him to his fine, and not much necessary for strengthening the heir's title; then will some say, if the benefit which the heir shall receive by the admittance will not countervail the charges of the fine, he will never

(*g*) *Doe* d. *Taylor* v. *Crisp*, 8 A. & E. 779; *Doe* d. *Hamilton* v. *Clift*, 12 A. & E. 566.

(*h*) *Barnett* v. *Guildford* (*Earl of*), 11 Exch. 19.

(*i*) *Bullock* v. *Dibley*, Moo. 596.

(*k*) *Per Cur.* in *Doe* d. *Hamilton* v. *Clift*, 12 A. & E. 566, 572.

(*l*) *Clarke* v. *Pennifather*, 4 Rep. 23 b.

(*m*) Watk. Descents, 49; Gilb. Ten. 288.

(*n*) *Doe* d. *Milner* v. *Brightwen*, 10 East, 583.

(*o*) *Doe* d. *Hamilton* v. *Clift*, 12 A. & E. 566; *Doe* d. *Dand* v. *Thompson*, 13 Q. B. 670.

come in and take up his copyhold in court, and so defeat the lord of his fine. I assure myself, if it were in the election of the heir to be admitted or not, he would be best contented without admittance, but the custom in every manor is compulsory on this point, for, either upon pain of forfeiture of their copyhold or of incurring some great penalty, the heirs of copyholders are forced in every manor to come into court and be admitted, according to the custom, within a short time after notice given of the ancestor's decease" (*p*).

Heir may compel admittance.

Upon the ground that the heir had a good title as against everyone but the lord, the Court of Queen's Bench used to refuse a mandamus against the lord to admit the heir, considering it unnecessary (*q*); but the practice in this respect has changed, and now a mandamus to compel the lord to admit will be granted, because the heir before admittance is at some disadvantage as between himself and the lord, seeing that he cannot, if admittance is refused, sit on the homage at the court, or otherwise act there as one of the tenants, and generally because the heir has a right to insist upon admittance to make himself a complete copyholder (*r*). In the case of *Garbutt* v. *Trevor* (*s*), however, it seems to have been thought that the steward of a manor, where a very exceptional custom prevailed, might have a right to consider all the legal, equitable, and other circumstances before determining to grant admission to the heir of one of the customary tenants.

Admittance of heir, how effected.

The admittance of the heir, as in the case of a surrenderee already mentioned, may be either express and formal, or by implication, as where the lord swears him upon the homage, or does some other unequivocal act of accepting him as a tenant. On this point, Calthrop has some useful remarks: "Admittance may be in three

(*p*) Co. Copyh. s. 41.

(*q*) *Rex* v. *Rennett*, 2 T. R. 197.

(*r*) *Rex* v. *Brewers' Co.* (*Master, &c. of*), 3 B. & C. 172; *Reg.* v. *Dendy*, B. C. C. 111; *Rex* v. *Wilson*, 10 B. & C. 80.

(*s*) 15 C. B. N. S. 550.

manner of ways: (1) an express admission by the words entered on the court rolls '*unde admissus est tenens;*' (2) or by acceptance or implication, as if the lord will accept the rent by the hands of a stranger; (3) by admitting one copyholder, in some cases the lord shall admit another by implication to some purposes (*i. e.*, tenants in remainder); and to these three may be added (4) the entry of the son after the death of his father, and of the tenant in dower (freebench) after the death of her husband, which is lawful without admission till the next court, and then they must pray to be admitted" (*t*). But in regard to the acceptance of rent by the lord, it has been doubted whether such an act does amount to an admittance, because it is of an ambiguous nature (*u*); and it seems that before it could be relied on as an implied admission, the rent would require to be expressly accepted from the heir, or surrenderee, in the character of a copyholder.

As already mentioned with reference to admittance upon a surrender, since the year 1841 it has been lawful for the lord, steward, or deputy, or person filling any of those capacities, whether rightfully or not, to admit at any time or place, within or without the manor, and without holding a court, any person as tenant to any lands parcel to the manor, to be held by copy of court roll, or according to the custom of such manor, to and for which such person shall for the time being be entitled to be admitted. Every admission is forthwith to be entered on the court rolls, and every such entry is to be taken as having been made on a presentment by the homage; the steward or deputy being entitled to the same fees as if the entry had been made after presentment, which is now unnecessary for the validity of the admission (*x*). The admission cannot be postponed in order to compel payment of the fine, which

Who may admit.

(*t*) Calthr. Copyh. 47; see *Wilson* v. *Allen*, 1 J. & W. 611, 613.

(*u*) See *Frosel* v. *Welsh*, Cro. Jac. 403; *Barker* v. *Denham*, Sty. 145; *Doe* d. *Tarrant* v. *Hellier*, 3 T. R. 162; and Gilb. Ten. 282.

(*x*) 4 & 5 Vict. c. 35, ss. 88—90.

does not accrue due to the lord until the tenant has been admitted (*y*).

Heir bound to come.

The heir is bound to come to the lord for admittance within a certain time, usually a year and a day, which is fixed by the custom of the manor. If no particular time is limited by the custom, he must appear upon proclamation made at three successive courts for him to come and take the estates; and if he does not appear, the lord may seize the land *quousque*, and enjoy the rents and profits until the heir comes for admittance (*z*). The seizure *quousque* is rather in the nature of a process for recovering the fine than in the nature of a forfeiture (*a*); but in some manors there are customs that after neglect or refusal to appear within a certain time, the land shall be absolutely forfeited; and these customs have been held reasonable, though proceedings under them will not be allowed without the strictest proof of the existence of such a custom and of all steps towards the forfeiture having been properly taken. "The severity of the law in these as in all other cases of forfeiture warrants the courts in taking care that there is the greatest accuracy in the lord's proceedings.... A general forfeiture of a copyhold estate does not accrue without a custom to warrant it. In such cases, the lord has only a right to enter into possession to satisfy himself of the injury he sustains for want of a tenant; he can only retain the possession *quousque*. And if the lord seizes absolutely, having only a right to seize *quousque*, there is a defect in the seizure which vitiates the whole" (*b*). But although the lord has, after due proclamation, seized *quousque* for want of an heir, he is not entitled to hold the land against the heir on the mere proof of a devise to persons who do not claim admittance,

Seizure *quousque*.

(*y*) *Reg.* v. *Wellesley*, 2 E. & B. 924.

(*z*) *Doe* d. *Twining* v. *Muscott*, 12 M. & W. 832.

(*a*) *Doe* d. *Bover* v. *Trueman*, 1 B. & Ad. 736.

(*b*) *Per* Ld. Kenyon, C. J., in *Doe* d. *Tarrant* v. *Hellier*, 3 T. R. 162, 169.

for seizure *quousque* does not give the lord an adverse title, as he seizes only till the tenant comes in (*c*). When the lord seizes *quousque*, he is not bound to account for the rents of the estate received during his possession (*d*). On a seizure *quousque*, the bailiff should require the occupiers to attorn to the lord; but if they refuse or make any resistance, the lord would have to bring an action against them for recovery of the land (*e*). The proceedings for the seizure *quousque* should take place within a reasonable time after the death, for it seems that the lord's right of entering upon and seizing the lands is an "entry or distress" within the meaning of the Statutes of Limitation (*f*); but it would appear that the mere lapse of the statutory period, without the lord's seizure, will not alter the tenure of the land (*g*), for enfranchisement has never been presumed except in cases where there has been evidence of long enjoyment of the property as freehold (*h*).

The proclamations for an heir may be made in general terms (*i*); and it is not necessary to specify the particular lands of which the former tenant died seised (*k*). The proclamations have to be made at customary courts of the manor; but if a court is held under the provisions of the Copyhold Act, 1841, without the presence of copyhold tenants, the proclamation will not affect the right of any person whose interest may be affected by it, unless notice

Proclamations.

(*c*) *Doe* d. *Le Keux* v. *Harrison*, 6 Q. B. 631.

(*d*) *Underhill* v. *Kelsey*, Cro. Jac. 226.

(*e*) *Lord Salisbury's Case*, 1 Lev. 63; *S. C.* as *Pateson* v. *Danges*, 1 Keb. 287.

(*f*) *Doe* d. *Tarrant* v. *Hellier*, 3 T. R. 162; *In re Lidiard and Jackson's and Broadley's Contract*, 42 Ch. Div. 254, 258; 3 & 4 Will. IV. c. 27, s. 2; 37 & 38 Vict. c. 57.

(*g*) See Scriv. Copyh. 287.

(*h*) See *Roe* d. *Johnson* v. *Ireland*, 11 East, 280; *Turner* v. *West Bromwich Union* (*Guardians of*), 9 W. R. 155; *In re Lidiard and Jackson's and Broadley's Contract*, 42 Ch. Div. 254.

(*i*) *Doe* d. *Whitbread* v. *Jenney*, 5 East, 522. Forms of proclamations and of a precept to seize *quousque* will be found in the Appendix, *post*.

(*k*) *Doe* d. *Tarrant* v. *Hellier*, 3 T. R. 162, 164 n.

that the proclamation has been made, is duly served upon him within one month after the holding of the court (*l*). Until proclamation is made, the heir is not obliged to claim, and there can be no seizure *quousque* before three proclamations have been duly made (*m*). A custom to seize the land as absolutely forfeited is not good as against an heir who is in prison, or beyond seas, at the ancestor's death, or against a person under disability (*n*).

Infant heir.

As has been already mentioned, every one is now entitled to take admittance by attorney (*o*), but an infant heir may also claim the benefit of the provisions of the Act 11 Geo. IV. & 1 Will. IV. c. 65, which enacts that every infant, either by his own appearance, or by his guardian or attorney, shall come to one of the next three courts after any descent entitling him to admittance, and shall take admittance (*p*): and if he is without guardians he is authorised to make an attorney by writing (*q*). In default of such appearance, the lord or steward, after three courts with proclamations, may appoint and admit an attorney for the special purpose, and set a proper fine (*r*); and if such fine be not paid upon a demand in writing within three months, the lord may enter on the copyhold and satisfy himself of his fine, costs and expenses, paying the surplus profits to the person entitled to the land (*s*). The lord is required to deliver up possession when his charges are satisfied (*t*), and the guardians of infants, and their executors and administrators, may enter and reimburse themselves for any fine and other charges so paid to the lord, notwithstanding the death of the copyhold tenant (*u*). The Act contained similar provisions as

(*l*) 4 & 5 Vict. c. 35, s. 86.
(*m*) *Rumney* v. *Eve*, 1 Leon. 100; *Anderson* v. *Heywood*, 4 Leon. 38.
(*n*) *King* v. *Dilliston*, 3 Mod. 221; *Lechford's Case*, 8 Rep. 99 a.
(*o*) 50 & 51 Vict. c. 73, s. 2.
(*p*) 11 Geo. IV. & 1 Will. IV. c. 65, s. 3.
(*q*) *Ibid.* s. 4. See 50 & 51 Vict. c. 73, s. 2.
(*r*) 11 Geo. IV. & 1 Will. IV. c. 65, s. 5.
(*s*) *Ibid.* s. 6.
(*t*) *Ibid.* s. 7.
(*u*) *Ibid.* s. 8.

to married women, and also enacted that no infant or married woman should forfeit any copyhold land for his or her neglect or refusal to go to any court to be kept for the manor, and to take admittance to the land, or for the omission, denial, or refusal of such infant or married woman to pay any fine imposed or set upon his or her admittance to such land (*x*), and it enables the tenants to controvert the legality of the payment of any unwarranted fine (*y*). It will be observed that if the infant comes into court he may be admitted in person. With regard to married women, it will be remembered that the Married Women's Property Act, 1882 (*z*), provides that every woman married after the 1st of January, 1883, is entitled to hold and dispose of all real property belonging to her at the time of the marriage, or afterwards acquired by or devolving on her, as if she were a *feme sole* (*a*); and that every woman who was married before that date may hold and deal with as a *feme sole* all real property her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, accrued to her after that date (*b*). In many cases, therefore, it is presumed a married woman will not require to claim the benefit of the provisions of the Act 11 Geo. IV. & 1 Will. IV. c. 65.

Lunatic heir

The Act last mentioned contained provisions regarding the admittance of lunatics similar to those already mentioned. These provisions have now been embodied in the Lunacy Act, 1890 (*c*), sect. 125 of which provides that where a lunatic so found by inquisition is entitled to be admitted tenant of copyhold land, the committee of his estate may appear at one of the three next courts held for the manor and offer himself to be admitted tenant in the name and on behalf of the lunatic, and in default of his appearance or of his acceptance of admittance, the lord,

(*x*) *Ibid.* s. 9.
(*y*) *Ibid.* s. 10.
(*z*) 45 & 46 Vict. c. 75.
(*a*) *Ibid.* s. 2.
(*b*) *Ibid.* s. 5.
(*c*) 53 Vict. c. 5.

or his steward, may, after three courts duly held and proclamations thereat regularly made, at any subsequent court appoint any fit person to be attorney for the lunatic for that purpose only, and by that attorney may admit the lunatic tenant of the land according to such estate as the lunatic is legally entitled to.

On the admittance or enrolment of an heir as tenant, he is entitled to receive from the steward of the manor a notice as to his right to enfranchise the land (*d*).

Forfeiture for heir's neglect.

In a case which bears strongly upon the question of the heir's forfeiture for neglect of appearance, a copyhold had been devised to six persons upon certain trusts. One of the devisees offered to be admitted and to pay his share of the fine; the other five disclaimed; but the lord would not admit without the whole fine, and seized *quousque*. The Court held that the lord ought to have admitted the devisee who offered himself, and then proceeded to recover the fine which he claimed, and that he had been too hasty in entering for a supposed forfeiture before admittance, for a seizure *quousque* was till somebody comes for admittance, and one had come and offered to be admitted; so that it was clear the lord had no right to seize (*e*).

Seizure *quousque* of undivided shares.

Inasmuch as coparceners make but one heir, the admittance of one is the admittance of all the rest (*f*); and therefore if one appears, the shares of the others cannot be seized *quousque;* and if one of several co-heirs or co-heiresses be under disability, and none of them claim, the lord cannot seize the whole estate, but only the shares of those who are *sui juris;* and it seems in this case that he might seize the shares of the heirs who are *sui juris*, although he can enforce the admittance of the person under disability under his statutory powers (*g*).

(*d*) 50 & 51 Vict. c. 73, s. 1; *ante*, p. 70.

(*e*) *Roe* d. *Ashton* v. *Hutton*, 2 Wils. 162.

(*f*) *Garland* v. *Jekyll*, 2 Bing. 273.

(*g*) See *Doe* d. *Tarrant* v. *Hellier*, 3 T. R. 162.

CHAPTER VI.

INCIDENTS OF COPYHOLD ESTATES.

Incidents of copyholds.

In this chapter it is proposed to treat of the incidents which usually attach to the copyholder's estate, including the widow's freebench and the husband's customary estate by the curtesy, and the manorial dues, such as fines, heriots, reliefs, and the like, to which the lord is usually entitled by custom.

Freebench and curtesy.

There is no general custom in copyholds for the widow of a copyholder to have a provision analogous to dower, or for the widower to have an estate by the curtesy (*a*); but by the customs of most manors the widow has a provision called her freebench or "widow's estate," which in some points resembles dower; and in many places the widower has by custom an estate in his wife's lands analogous to an estate by the curtesy in freeholds, which is called his customary curtesy or "man's freebench."

1. *Freebench.*

Freeholds.

In the case of freehold lands, where dower had not been barred, the widow was entitled to an assignment by the heir for her life of one-third in value of the tenements of which her husband at any time since the marriage was seised, or to which he was entitled as sole tenant of a legal or equitable estate of fee simple or fee tail, which a child born of the marriage might possibly inherit (*b*). By the

(*a*) See *Brown's Case*, 4 Rep. 21 a; *Rivet's Case*, 4 Rep. 22 b; *Doe* d. *Hamilton* v. *Clift*, 12 A. & E. 566, 573.

(*b*) Litt. ss. 36, 53; R. P. Comm. 1 Rep. 16—19; 3 & 4 Will. IV. c. 105.

custom of gavelkind in Kent, the dower amounts to one-half in value, but is lost by the birth of an illegitimate child, or by a second marriage (*c*); and this is the case even if the land has been made descendible to the eldest son by a disgavelling Act (*d*). In lands of burgage tenure the dower may by custom include the whole of the husband's lands, or by other customs be restricted to a third part, or a fourth, or any other fraction, and may continue during her life, or be forfeited upon a second marriage (*e*). In the Forest of Pamber the usage at one time was that the widow of a tenant *in capite* dying without issue should have the whole land for her life, but should forfeit two-thirds upon a second marriage (*f*); and in freehold lands of the tenure of ancient demesne it is not unusual to find similar customs prevailing.

Copyholds.

In the case of copyholds, however, a special custom is necessary to entitle the wife to take any interest in her husband's lands after his death. The Dower Act, 1833 (*g*), does not apply to copyhold lands (*h*) unless they are enfranchised or the manorial rights to which they may be subject are extinguished under the provisions of the Copyhold Acts, in which case the lands become subject to the ordinary law as to dower (*i*). When copyholds have had their services commuted under the Copyhold Act, 1841, though the customary tenure remains, the lands are also subject to the ordinary law as to dower, and cease to be subject to any custom relating to dower or freebench (*k*). Accordingly, in the case of copyholds, where a widow is entitled to an interest in the lands which belonged to her husband, the

(*c*) Rob. Gav. 205, 206; Elton, Ten. of Kent, 42, 86—90.

(*d*) *Wiseman* v. *Cotton*, 1 Sid. 135, 137; Elton, Ten. of Kent, 385.

(*e*) Litt. ss. 37, 166; Co. Litt. 33 b, 111 a; Fitzh. Nat. Brev. 150.

(*f*) *Inquis. p. mortem*, 44 Hen. III. No. 27 b.

(*g*) 3 & 4 Will. IV. c. 105.

(*h*) *Smith* v. *Adams*, 18 Beav. 499.

(*i*) 4 & 5 Vict. c. 35, s. 81; 15 & 16 Vict. c. 51, s. 34.

(*k*) 4 & 5 Vict. c. 35, s. 79.

quantity and duration of that interest and the lands upon which the right attaches are in every case determined by the custom. By the customs of various manors the free-bench can only be claimed on certain conditions and subject to various restrictions, as that the widow must have been the first wife of the copyholder, or that she must have been only once married, or must be the mother of the heir, or must claim within a certain time, as a year and a day, and the like (*l*). As a general rule the widow's estate lasts only during widowhood, being at once determined by a second marriage. In some manors it is also forfeited for unchastity (*m*).

Duration of estate.

As to the quantity of the estate taken by the widow, the customs of those manors where the copyholds are held as in gavelkind will give her the half, and in copyholds for lives she generally takes the whole (*n*): elsewhere the custom gives a third part, or some other fraction, for her widow's estate. In some manors she can claim nothing; in others the marriage makes her tenant by entireties with her husband of all his land with a right of survivorship; and, as already has been noticed, there may be a custom to give the inheritance to the widow in lieu of dower, as in the manor of Taunton Deane (*o*).

Quantity.

Dower at law extends to almost every kind of inheritance, including many incorporeal hereditaments, as advowsons, rents, profits of fairs and markets, franchises, &c. (*p*); and a woman is dowable of a reversion expectant on a term of years, because her husband was seised of the freehold and of the rent as incident to the reversion (*q*). But the widow of a copyholder is in general confined to

In what tenements.

(*l*) See Watk. Copyh. ii. c. 3, and the customs of various manors collected in the Appendix to that work.

(*m*) See *Oland* v. *Burdwick*, Cro. Eliz. 460, and *Wheeler's Case*, 4 Leon. 240.

(*n*) See *Chantrell* v. *Randall*, 1 Lev. 20.

(*o*) See *Locke* v. *Southwood*, 1 Myl. & Cr. 441.

(*p*) Co. Litt. 32 a; *Howard* v. *Cavendish*, Cro. Jac. 621.

(*q*) *Bates* v. *Bates*, 1 Ld. Raym. 326.

the land of which her husband died actually possessed (*r*). If the copyholder makes a lease according to the custom, his widow cannot set it aside (*s*). "It seems to me," says Ch. B. Gilbert, "that she shall not in this case be endowed of the third part of the rent and reversion, because customs ought to be strictly pursued, and that is only to be endowed of land; yet it seems that after the lease is ended she shall be endowed, for the husband died seised, the possession of his lessee being his own possession; but it was agreed in this case (*Fareley's Case*) that by special custom the widow might avoid the lease" (*t*). And there may be a special custom that the widow shall have freebench in the rents, as in the manors of West Sheen, Petersham, and Ham in Middlesex.

Inchoate right of freebench.

In most places the widow's estate is confined to the lands of which the husband died tenant, but in some manors she may claim freebench out of all the copyholds of which her husband was tenant at any time during the marriage, as in the manors of Thornbury in Gloucestershire and Doddington in Shropshire. In these cases the wife's right or inchoate title commences at the marriage, or on the husband's acquisition of the property after the marriage, unless it is conveyed to uses for his benefit similar to the ordinary uses to bar dower. By the custom of the manor of Cheltenham, as settled by a private Act (*u*), the widow of a copyholder is entitled to have for dower one-third part of all the customary lands of which her husband was tenant during the marriage, unless the lands have been aliened during the marriage with the consent of the wife after being duly examined in court according to the custom (*x*); and it has been held that if the lands are aliened by the husband alone, without the wife having been examined in court or

(*r*) *Benson* v. *Scott*, 12 Mod. 49; *Godwin* v. *Winsmore*, 2 Atk. 525.

(*s*) *Fareley's Case*, Cro. Jac. 36.

(*t*) Gilb. Ten. 321; and see *Salisbury* d. *Cooke* v. *Hurd*, Cowp. 481.

(*u*) 1 Car. I. c. 1 (Priv.).

(*x*) See sects. 8 and 9 of the Act, and *Riddell* v. *Jenner*, 10 Bing. 29.

having joined in the surrender, and are at the death of the husband in the possession of several persons, whether by the immediate act of the husband or the act of his alienee, dower must be assigned as to one-third of the lands of every such person in possession (*y*). The rule that "dying seised" is not essential in the case of dower claimed out of gavelkind lands applies to freeholds of that tenure (*z*), and not to copyholds.

Joint tenancies.

Dower does not attach upon lands of which the husband was seised as joint tenant with another (*a*); but by the customs of some manors the widow of a joint tenant for lives may be entitled to hold during her widowhood with the surviving tenant or his widow, and in some cases of the same kind the two widows may hold as joint tenants with benefit of survivorship, as in the manor of Dawlish in Devon.

Tenancies in tail.

The general rule is that the widow of a tenant in tail of a copyholder will be entitled to freebench though there is no special custom as to the freebench of widows of tenants in tail, but only as to the freebench of widows of tenants in fee (*b*).

Tenancies for lives.

Again, the privilege of freebench does not show that the copyhold estate was an estate of inheritance, "for a copyholder for life may have in some instances such an excrescence growing out of his estate" (*c*); and it is not uncommon for the widow of a copyholder for lives to hold his land for her life or widowhood as a continuance of the husband's estate (*d*).

Equitable estate.

There is no freebench of a merely equitable estate (*e*); and the widow of a trustee will not be allowed to claim

(*y*) *Doe* d. *Riddell* v. *Gwinnell*, 1 Q. B. 682.

(*z*) *Davies* v. *Selby*, Cro. Eliz. 825.

(*a*) Litt. s. 45; Co. Litt. 37 b, 185 a.

(*b*) See *Doe* d. *Duke of Norfolk* v. *Sanders*, 3 Dougl. 303.

(*c*) *Mardiner* v. *Elliott*, 2 T. R. 746.

(*d*) *Howard* v. *Bartlet*, Hob. 181.

(*e*) *Chaplin* v. *Chaplin*, 3 P. Wms. 229; overruling *Otway* v. *Hudson*, 2 Vern. 583, 585.

freebench any more than dower in the case of a freehold (*f*).

Effect of subsequent admittance.

The widow of an unadmitted heir or surrenderee may however claim her freebench after the admittance of the new tenant; for the admittance having relation to the time of the surrender, when a copyhold is surrendered to the use of a purchaser who dies before admittance, the admission of the heir will supply such a seisin in the purchaser as will entitle his widow to freebench (*g*).

Assignment of freebench.

The widow does not receive freebench by assignment of the heir, but of the lord, or the jury at a customary court; and she is not tenant to the heir, as in the case of dower, but to the lord (*h*).

Necessity of widow's admittance.

Where the widow is entitled to the whole of her husband's estate she may enter at once, "as the law casts the possession upon her," and she will be owner of the land before admittance, as against all persons except the lord (*i*). But when she is entitled to a portion only, she cannot enter without assignment. Her right of entry does not take away the necessity of admittance and payment of any fine which may be due to the lord by the custom of the manor (*k*). It has been argued that where the widow's freebench is of the whole of the copyhold and is thus a continuance of the estate of her husband, there is no necessity for assignment or admittance (*l*); but it should be recollected that even the estate of the dowager at common law is held to be a continuance of the husband's interest (*m*).

Widow's rights and remedies.

A widow entitled to freebench will have all the remedies and protections, which a tenant in dower would have at

(*f*) *Forder* v. *Wade*, 4 Bro. Ch. Cas. 520, 525.

(*g*) *Vaughan* v. *Atkins*, 5 Burr. 2764, 2785; *Smith* v. *Adams*, 18 Beav. 499.

(*h*) Gilb. Ten. 172, 173; and see *Doe* d. *Nepean* v. *Budden*, 5 B. & Ald. 626.

(*i*) *Howard* v. *Bartlet*, Hob. 181; *Jurden* v. *Stone*, Hutt. 18; *Borneford* v. *Packington*, 1 Leon. 1.

(*k*) Kitch. Jurisd. 242; Co. Copyh. s. 56; *Forder* v. *Wade*, 4 Bro. Ch. Cas. 520, 525; Watk. Copyh. i. 272, 299; Scriv. Copyh. 349.

(*l*) Watk. Copyh. ii. 90.

(*m*) Chitty, Descents, 318.

law, and at equity she may have an account of the rents and profits from the death of her husband (*n*). She might have claimed the assignment of her portion by a plaint in the manor court analogous to the writ of dower (*o*); and, on the principle established by the Statute of Merton (*p*) and by the statute 16 & 17 Car. II. c. 8 (*q*), she may sue for her arrears of freebench or damages in respect thereof. By the Limitation Act, 3 & 4 Will. IV. c. 27 (*r*), the suit can only be for six years' arrears or corresponding damages; and by sect. 2 of the same Act, as amended by the Real Property Limitation Act, 1874 (*s*), after twelve years' delay she will lose her title to the estate. On another principle derived from the same Statute of Merton (*t*), the widow can devise the growing crops on the land held in freebench. As in the case of other tenants for life, if the tenant in freebench sows the land and dies, her executors will have the crops, because the estate was determined by the act of God; but if the freebench is determinable by a second marriage, or the like, and the tenant ends her estate by her own act or fault, it is otherwise (*u*). Under the provisions of the Act 14 & 15 Vict. c. 25, the lessee of a tenant in freebench will be entitled to remain to the end of the current year in lieu of a claim to emblements.

How claim to freebench barred.

The widow's claim to freebench may be barred in various ways. Although at law a jointure or a provision in lieu of dower would not bar the wife against claiming freebench in copyholds, as copyholds are not within the Statute of Uses (*x*), yet in equity a jointure, whether expressed to be in bar of freebench as well as of dower or

(*n*) *Curtis* v. *Curtis*, 2 Bro. Ch. Cas. 620.

(*o*) *Shaw* v. *Thompson*, 4 Rep. 30 b; and see *Scott* v. *Kettlewell*, 19 Ves. jun. 335; *Widdowson* v. *Harrington* (*Earl of*), 1 J. & W. 532. The writ of dower was abolished by 23 & 24 Vict. c. 126, s. 26.

(*p*) 20 Hen. III. c. 1.

(*q*) Sect. 4.

(*r*) Sect. 41.

(*s*) 37 & 38 Vict. c. 57.

(*t*) 20 Hen. III. c. 2.

(*u*) *Oland's Case*, 5 Rep. 116 a; 2 Inst. 81; Rob. Gav. 215.

(*x*) 27 Hen. VIII. c. 10.

not, would operate as a bar, though the provision ought properly to be expressly stated as being in full satisfaction of all dower, freebench, and thirds (*y*). Thus, where a husband by a settlement on his marriage, "in order to make some provision for" his intended wife "in case she should survive him," settled a copyhold estate upon himself for life with remainder to her for life, it was held that the wife's right to freebench out of other copyholds of which the husband died seised was not barred by the settlement (*z*). It would appear from the judgment of Sir John Romilly, M. R., in the case just referred to, that an intention to bar freebench, which attaches only on copyholds of which a husband dies seised, will not be so readily inferred from a provision before marriage by the intended husband, as under the old law an intention was inferred as to barring dower. If the widow were an infant when married, she will have an election between the jointure and her freebench, though it is otherwise in the case of freeholds by virtue of the Statute of Uses (*a*). If the jointure be post-nuptial, she will have her election, as with her dower in a similar case (*b*). Freebench may be barred by jointure even in manors where the widow is entitled in respect of all lands of which the husband was tenant at any time during the marriage (*c*). In the same manors the wife's incipient right of freebench may be destroyed, it is submitted, by a surrender to uses to bar freebench, though the Dower Act does not apply to copyholds. The lord would not be compelled to accept any surrender giving powers of appointment which might deprive him of his future fines, as has already been explained, but if the admittance of the surrenderee in such a case be in fee, the limitation of uses to bar freebench in the surrender

(*y*) *Lacy* v. *Anderson*, cited 1 Swanst. 398 n., 445; *Walker* v. *Walker*, 1 Ves. 54; Co. Litt. 36 b.

(*z*) *Willis* v. *Willis*, 34 Beav. 340.

(*a*) *Buckingham* (*Earl of*) v. *Drury*, 3 Bro. P. C. 492, 497, 502.

(*b*) Co. Litt. 36 b; *Vernon's Case*, 4 Rep. 1 a.

(*c*) *Buckingham* (*Earl of*) v. *Drury*, 3 Bro. P. C. 492; 1 Roper, 476.

will be ineffectual (*d*). In these manors it is necessary for the wife to join in a conveyance of land by the husband, or to surrender after separate examination by the steward to the purchaser either before or after the husband's conveyance, technical reasoning having been somewhat disregarded by the courts when its effect was to prevent property being alienable by reason of a wife's right of freebench (*e*); or after the purchaser's admittance the wife may release her right by deed. Every right of freebench, when it has accrued, may be released to the tenant in possession, or the widow may be admitted and surrender to his use; but by the customs of some manors the wife can defeat her freebench only by surrender (*f*).

In the more usual case, where freebench can only be claimed out of the lands of which the husband died in possession, any alienation made by him during his life will be preferred to the widow's claim, and she will be defeated in equity by his contract to alienate the land (*g*). Thus she will be postponed to a lessee or mortgagee (*h*), and will take subject to all other estates created by the husband (*i*). Any determination of his estate will have the same effect as a conveyance made by him, and the widow's claim will be defeated by his bankruptcy (*k*), or forfeiture (*l*); or by the enfranchisement of his estate or extinguishment of the copyhold tenure, for the land then becomes freehold, and the right to freebench will become a right to dower, and therefore subject to the law as to dower (*m*); but the grant of the freehold of a copyhold by

(*d*) *Powdrell* v. *Jones*, 2 Sm. & G. 407.

(*e*) *Wood* v. *Lambirth*, 1 Ph. 8.

(*f*) See *Powdrell* v. *Jones*, 2 Sm. & G. 407.

(*g*) Co. Litt. 59 b; *Vaughan* v. *Atkins*, 5 Burr. 2764; *Hinton* v. *Hinton*, 2 Ves. 631; *Brown* v. *Raindle*, 3 Ves. jun. 256.

(*h*) *Farcley's Case*, Cro. Jac. 36; *Benson* v. *Scott*, 4 Mod. 251.

(*i*) *Salisbury* d. *Cooke* v. *Hurd*, Cowp. 481.

(*k*) *Parker* v. *Bleeke*, Cro. Car. 568.

(*l*) *Anon.*, 1 Freem. 516.

(*m*) See *Dunn* v. *Green*, 3 P. Wms. 9; *Challoner* v. *Murhall*, 2 Ves. jun. 524.

the lord to a stranger will not destroy the widow's freebench in such land, for it still remains copyhold (*n*).

Freebench barred by devise.

Under the old law, in cases where freebench could be claimed only out of lands of which the husband died in possession, a surrender by the copyholder to the use of his will, followed by a devise, destroyed the widow's right to freebench (*o*). By the Act 55 Geo. III. c. 192, the necessity for a surrender to the use of a will was dispensed with; and by virtue of the provisions of that Act, a devise by itself took effect as if the testator had surrendered, and therefore it destroyed the widow's freebench. The Wills Act, 1837 (*p*) repealed the Act of George III., but re-enacted its provisions in an extended form, and its effect was "to break in upon the customary law of copyholds for the purpose of giving an unlimited power of devise" (*q*). The same effect must, therefore, be given now to a devise of copyholds, as under the law prior to the passing of the Wills Act; and consequently, where a testator, who had married after the Dower Act came into operation, died entitled to certain copyholds which he had purchased, and by his will devised all his real estate upon trusts for sale and conversion, it was held that his widow was not entitled to freebench (*r*).

2. *Customary Curtesy.*

Customary curtesy differs in several respects from an estate by the curtesy in freeholds, where the husband holds for his life the lands of which his wife was actually seised for a legal or equitable estate of inheritance, provided he has had issue by her born alive during the marriage, and capable of inheriting the estate (*s*). The husband has no

(*n*) *Lashmer* v. *Avery*, Cro. Jac. 126.

(*o*) *Forder* v. *Wade*, 4 Bro. Ch. Cas. 520.

(*p*) 1 Vict. c. 26.

(*q*) *Per* Jessel, M. R., in *Lacey* v. *Hill*, L. R. 19 Eq. 346, 351.

(*r*) *Lacey* v. *Hill*, L. R. 19 Eq. 346.

(*s*) Co. Litt. 29 a, 32 a; *Morgan* v. *Morgan*, 5 Madd. 408; *Appleton* v. *Rowley*, L. R. 8 Eq. 139; but see *Moore* v. *Webster*, L. R. 3 Eq. 267.

such estate in his wife's copyholds, except by special custom (*t*); and the custom determines in each case whether he is to hold for his life, or to lose the land upon a second marriage; whether the birth of issue is a necessary condition or not; and whether the right may be claimed in the wife's equitable estate (*u*). But in general the custom is confined to the case of the woman being the legal tenant at the time of her death; though even in this case, if the woman had a legal estate against all the world except the lord being entitled by descent or surrender before admittance, the husband will not be prejudiced by the non-admittance of the wife (*x*). The custom is taken strictly; so that, under a custom that where a man marries a customary tenant he shall have curtesy, it has been held that the woman must be a copyholder at the time of the marriage to entitle the husband to claim (*y*).

Out of what tenements.

The customary curtesy is not necessarily confined to the wife's copyholds of inheritance, the husband being entitled by the customs of a great number of manors to the copyholds for lives held by his wife, as a continuance of her estate.

In copyholds for lives.

The quantity of the husband's estate differs according to the particular custom, being in some places the whole of the wife's land, and elsewhere a moiety, or a third, or some other fraction. When he is to take the whole, his estate (as with freebench under similar circumstances) is perfect without admittance as against everyone but the lord, being a continuance of the wife's estate. Where he is entitled to a portion, it is said that he cannot enter without assignment (*z*); it does not, however, seem to be

Quantity.

(*t*) *Brown's Case*, 4 Rep. 21 a, 22 a; *Rivet's Case*, 4 Rep. 22 b; *Paulter* v. *Cornhill*, Cro. Eliz. 361.

(*u*) Co. Litt. 30 a, 111 a; *Ever* v. *Aston*, Moo. 271; Rob. Gav. 178, 179.

(*x*) *Doe d. Milner* v. *Brightwen*, 10 East, 583.

(*y*) *Savage's Case*, 2 Leon. 109; but see *Clement* v. *Scudamore*, 1 P. Wms. 63, 69, where the authority of this case is denied, and Gilb. Ten. 326.

(*z*) Watk. Copyh. ii. 74; Scriven, Copyh. 80; and see cases and authorities cited in notes (*i*) and (*k*), *ante*, p. 162.

clear why he should not hold, in common with the heir, without any assignment, as has always been usual in the case of customary curtesy of freehold gavelkind lands.

How barred.

The husband's inchoate right may be extinguished by his joining in the wife's conveyance, or by the extinguishment of the copyhold tenure or enfranchisement of the tenement, or by the wife's forfeiture; and in equity his right will be excluded by an express declaration that the land shall be free from his claim (*a*).

Fee simple by custom.

By the custom of Taunton Deane, and formerly by some other customs, the husband, if duly admitted in the wife's lifetime, will inherit the fee simple of the copyholds of which she died actually in possession (*b*).

Claim by adverse possession.

In a case where the husband of a deceased copyholder had a good customary title to hold as tenant by the curtesy, his possession after the wife's death was referred to that title, and his heir was not allowed to set up an adverse title under the Statutes of Limitation, as against the heir of the wife claiming within twenty years after the husband's death, even though the husband was admitted after the wife's death to hold to the uses of a settlement, which gave the estate to the survivor of them in fee (*c*).

Gavelkind lands.

By the custom of Kent, the husband is tenant by the curtesy of a moiety of his wife's gavelkind tenements, whether issue were born or not, and loses his estate by a second marriage (*d*); and in freehold lands of the tenure of burgage and ancient demesne, there are other customary varieties of the husband's tenancy by the curtesy.

Commuted copyholds.

When copyholds have had the services commuted, under the Copyhold Act, 1841, they become liable to the ordinary

(*a*) *Bennett* v. *Davis*, 2 P. Wms. 316.

(*b*) Shillibeer, Customs of Taunton Deane, 49; see *Compton* v. *Collinson*, 1 H. Bl. 334, 343, as to manors in Westmorland.

(*c*) *Doe* d. *Milner* v. *Brightwen*, 10 East, 583.

(*d*) Rob. Gav. 179; Elton, Ten. of Kent, 43, 91, 328.

law of curtesy applicable to freeholds, although the copyhold tenure remains (*e*).

Among the other incidents of a copyhold estate which require consideration are guardianship, fines on admittance and alienation, customary reliefs and heriots, and other payments and services, which will now be mentioned in order.

3. *Guardianship.*

The guardianship of an infant heir of copyholds belongs, in the absence of custom, to the guardian in socage, or nearest of kin to whom the land cannot descend (*f*). Guardianship in socage cannot properly arise unless the infant is entitled by descent to freehold lands; where it arises, it extends not only to the infant's person and socage estates, but also to his copyholds, unless there is a special custom for the lord to appoint a guardian. Where there is no descent of freeholds to the infant, the same person will be guardian by custom (unless the lord has the wardship) as would have been guardian by socage, if the land were freehold (*g*). By the special custom of a manor the lord may be the guardian, and appoint the custody of the estate to his bailiff, or may nominate the guardian, or otherwise dispose of the land according to the custom of the manor (*h*); and where the lord has this privilege, a guardian appointed by the father or mother will not be entitled to deal with the copyholds (*i*).

Who may be guardian.

The guardian himself is not admitted, except as representing the infant, and can do no personal services, as fealty or suit of court, but will manage the land and account for the profits; and he will pay the rents and dues to the lord. His leases will determine at the close of the guardianship, unless ratified by the infant (*k*). This

Powers of guardian.

(*e*) 4 & 5 Vict. c. 35, s. 79.

(*f*) *Egleton's Case*, 2 Ro. Ab. 40, tit. Garde; *Rex* v. *Wilby* (*Inhabs. of*), 2 M. & S. 504, 509.

(*g*) Co. Litt. 88 b, n. 13 (Harg.).

(*h*) Com. Dig. Copyh. K. 5.

(*i*) 12 Car. II. c. 24, ss. 8, 9; *Clench* v. *Cudmore*, Lutw. (Nelson's ed.), 371; 49 & 50 Vict. c. 27, s. 4.

(*k*) *Roe* d. *Parry* v. *Hodgson*, 2 Wils. 129, 135.

species of guardianship ends when the infant attains the age of fourteen years, unless another age is prescribed by the custom (*l*); and at its termination the infant, by custom, may choose another guardian (*m*). By the statute 11 Geo. IV. & 1 Will. IV. c. 65, enacted in place of 9 Geo. I. c. 29, the lord may appoint a guardian for an infant who does not come for admittance, for the purpose of such admittance and the payment of the fine; and the guardian so appointed may reimburse himself his expenses, and the amount of such fines, notwithstanding the infant's death, in the manner provided by the Act (*n*).

Guardianship by custom in freeholds.

Guardianship by custom is found in certain freehold lands, as by the customs of burgage tenements in various cities and boroughs, and by the custom of London (now disused in this respect), giving the guardianship of orphans to the Corporation. Guardianship by custom may also be found in freehold lands of ancient demesne tenure, and in gavelkind lands in Kent, where the infant is in ward until the age of fifteen (*o*). In the case of freehold lands, the customary varieties of guardianship have ceased to be of importance (*p*).

4. *The Lord's Fine.*

Upon the admittance of a new tenant a fine is in general due to the lord as a consideration for the admittance; but in some manors no fine is due for admittances upon descents, or for the admittance of a widow or widower to the land taken as freebench or customary estate by the curtesy. In some manors a small fine is payable upon alienation of any part of the tenement by surrender (*q*), or

(*l*) *Wade* v. *Baker*, 1 Ld. Raym. 130.

(*m*) Kitch. Jurisd. 202.

(*n*) Sects. 5, 8.

(*o*) As to guardianship in gavelkind, see Rob. Gav. 237, 240; Elton's Ten. of Kent, 79—82, 327; and as to guardianship of orphans in London, see 7 Vin. Abr., Customs of London, and Macph. Infants, 48.

(*p*) On the whole subject of guardianship, see Co. Litt. 88 b, notes (Harg.), and as to guardianship by custom, see Simpson, Infants (2nd ed.), 224—236.

(*q*) But see *Holland* v. *Lancaster*, 2 Vent. 134.

under license to demise or alienate, when by the custom the lord is obliged to grant the desired permission.

Classification of fines.

Fines payable to the lord by the copyholder have been divided into three classes (*r*), the first being due upon the death of the lord, the second on the change of the tenant, and the third for license to empower the tenant to alienate, to demise for more than one year, and the like. And so Lord Coke writes: "Of fines due to the lord by the copyholder, some be by the change or alteration of the lord, and some by the change or alteration of the tenant; the change of the lord ought to be by the act of God, otherwise no fine can be due; but by the change of the tenant, either by the act of God, or the act of the party, a fine may be due to the lord" (*s*); and "by special custom copyholders are to pay fines upon licenses granted unto them to demise by indenture, but by general custom they are to pay fines only upon admittance" (*t*). This is not a very convenient classification, the fines due upon a lord's death being in fact due by reason of a change in the tenancy, where the copyhold is held by the custom of tenant-right for the joint lives of the copyholder and of the lord who grants admittance, the copyholder having a tenant-right of renewal and fresh admittance.

As to fines payable on death of admitting lord.

By the custom of many manors in the North, a fine is due on the death of the last-admitting lord, whether he was in possession of the manor at the time of his death or not; and this custom has been held good by the House of Lords (*u*).

In the case of *Somerset* (*Duke of*) v. *France* (*x*), the custom was stated to be for the lord or lady of the manor for the time being to admit the tenants to their respective estates, such admittances giving them a right to hold the estates during the joint lives of such admitting lord or lady; and that in consideration of such admittance they were used to pay a general fine to the next succeeding

(*r*) Watk. Copyh. i. 285.
(*s*) Co. Litt. 59 b.
(*t*) Co. Copyh. s. 56.
(*u*) *Lowther* v. *Rawe*, 2 Bro. P. C. 451.
(*x*) 1 Stra. 654.

lord upon the death of the last-admitting lord which caused a general determination of the estates. The admitting lady having died, her husband, as tenant for life in remainder under a settlement, claimed a general fine, which was refused by the tenants on the ground that he would not be entitled to it under the custom as tenant by the curtesy, and could not be put into a better position by the settlement, because that would be giving the lords a power to oppress the tenants by a multitude of fines, which the law would always prevent. But it was found by verdict (an issue at law having been directed), that the general fine was due, and the tenants were decreed to pay. "It appears," said Lord King, "from the nature of the admittances, that upon the death of the last-admitting lord all the estates of the tenants, which were held under his admittances, are determined; and their estates being so determined, it is necessary for the tenants, before they could have any new estate, to have a re-grant from the succeeding and next admitting lord, to which re-grant they have a right, and that right gives their estate the denomination of tenant-right estates. Hence it appears that the fines which are paid are paid upon account of the admission to the new estate, and therefore that the lord, who has a right to admit, has a right to the fines. The lord grants the tenant a new estate; in consideration of that, a fine becomes due to him from the tenant. The only question, then, seems to be, whether the Duke has a right to admit, and the tenants seem to agree that he has; for they allow that if a particular tenant dies, the Duke upon the admission of his heir is entitled to a 'dropping fine;' how can he be entitled to this 'dropping fine' if he is not the admitting lord? and if he has a power to admit, and has a right to a fine upon the determination of a particular estate upon the death of a particular tenant, why has he not an equal power to admit, and an equal right to his fines upon the determination of the tenant's estates in general, by the death of the last-

admitting lord? It is very extraordinary to allow it in the one case and not in the other. If a particular tenant dies, his estate is determined, and his heir must pay a fine to the lord; yet if the last-admitting lord dies, all the estates of the tenants are determined; and yet it has been objected that this is multiplying the fines of the tenants, and subjecting them to frequent burdens of this kind; but where is the inconvenience to the tenants? they are still to hold during their own lives and the life of the lord who admits them; that is the very tenure of their estates. Nay, if a lessee for years, or any other *dominus pro tempore*, should admit them, their estates would be good according to these admittances, during their own lives and the life of such lord; and the termination of the lord's estate would have no influence upon theirs. Indeed, if there should appear to be any fraud or contrivance in a settlement of this kind, by putting in a number of lives successively, on purpose to multiply the fines of the tenants, the court would undoubtedly interpose in such case and relieve them; but in this case nothing of that kind can be pretended."

Fines on admittance.

Admittance fines are either certain or arbitrary. A fine certain may be fixed by the custom at a particular sum for every admittance, or at so much for every acre, or the like; or it may be ascertained by reference to some other standard, as where the tenant is to pay one year's or two years' value for a fine, or an amount to be fixed by the homage, or the majority of the homage, or by persons appointed to assess the fine in case the lord and tenant disagree (*y*). A fine certain accordingly is a fine whereof the amount is either fixed or is ascertainable independently of the will of the lord, so that it is reducible to a certainty.

Fine certain.

(*y*) *Perkins* v. *Titus*, 3 Mod. 132; *Yetminster Case*, Noy, 2; and see the Customs of Yetminster, Appendix, *post*; *Crabb* v. *Bevis*, cited in *Warne* v. *Sawyer*, 1 Rolle's Rep. 48; *Anon.*, 1 Freem. 494; *Freeman* v. *Phillips*, 4 M. & S. 486; 6 Vin. Abr. Copyhold Z. b, pl. 4; see *Wharton* v. *King*, 3 Anst. 659, as to meaning of fine certain in copyholds for lives.

Fine arbitrary.

An arbitrary fine, on the other hand, is where the amount is dependent on its assessment by the lord or his steward. *Primâ facie* all fines are uncertain, and a custom must be shown to prove them certain. This custom will be shown by the entries on the court-rolls (*z*). If it is shown by the rolls that the fines were in ancient times uncertain, subsequent entries in the court-rolls, though extending for a very long period, will not make the fines certain: but a few contradictory instances will not operate either way (*a*). Where the copyhold is granted for life only, and there is no custom of renewal, the fine will invariably be found to be uncertain, and a renewal of the grant will only be had on the best terms obtainable from the lord; for a custom to compel the lord to renew copyholds for lives can only be supported upon proof that the fine is certain (*b*). But although the amount of an arbitrary fine is uncertain, yet it is not left entirely to the discretion of the lord, except in those cases where the grant is purely voluntary, as where a copyhold has come into the ownership of the lord, or where a copyholder for lives, without right of renewal or power of nominating a successor, surrenders his estate for the purpose of putting in more lives. In all other cases where the fine is arbitrary, it must be assessed and demanded, and be reasonable before it can be recovered (*c*).

Assessment of fine.

The assessment should be made by the lord or his steward, but does not need to be enrolled on the court-rolls (*d*). The lord may assess and demand the fine under the description of the improved annual value for a certain number of years of the tenement, and is not bound to state the precise amount in figures (*e*). Formerly, when the rules as to

(*z*) *Allen* v. *Abraham*, 2 Bulst. 32.

(*a*) *Gerard's* (*Ld.*) *Case*, Godb. 265.

(*b*) *Wharton* v. *King*, 3 Anst. 659; *Abergavenny* (*Lord*) v. *Thomas*, *Ibid.* 668 n.; *Grafton* v. *Horton*, 2 Bro. P. C. 284; and compare *Freeman* v. *Phillips*, 4 M. & S. 486.

(*c*) *Hayward* v. *Raw*, 6 H. & N. 308.

(*d*) *Northwick* (*Lord*) v. *Stanway*, 6 East, 56.

(*e*) *Fraser* v. *Mason*, 11 Q. B. Div. 574 (C. A.).

pleading were more stringent than they are now under the Judicature Acts, the rule seems to have been that, if the lord assessed the fine at a precise amount in figures and sued for that sum, he could not recover the amount if the jury found for a different amount without bringing a fresh action; but even then it was settled that if the lord had assessed the fine at a certain number of years' value, and declared in his action for such amount, although stating the exact sum under a "videlicet," he might recover the amount found by the jury if it did not exceed the sum claimed by him (*f*). One fine cannot be assessed on the admittance to several tenements; there must be a separate assessment for each tenement (*g*).

Demand.

When the fine has been assessed, the steward should demand it from the tenant. The demand does not require to be in writing, but should be personal on the tenant (*h*).

Reasonableness of fine.

In an old case, the Court of Common Pleas held that when once the lord had assessed an arbitrary fine it was not for him to show that it was reasonable, and that it was "on the copyholder's side to make it appear to the Court to be unreasonable, and so put it upon the judgment of the Court, for the fine is due to the lord of common right and it is only in point of excuse to the tenant if it be unreasonable" (*i*); and this decision has been followed in later cases (*k*). But although the fine is said to be due of common right, it has also been settled, after conflicting decisions of the Courts of Common Pleas and Queen's Bench, that a refusal to pay an excessive and unreasonable fine does not operate as a forfeiture of the copyholder's estate (*l*). The question of the reasonableness of the fine

(*f*) *Parkyns* v. *Titus*, Carth. 12; *Grant* v. *Astle*, 2 Doug. 722; *Northwick* (*Lord*) v. *Stanway*, 6 East, 56; *Hayward* v. *Raw*, 6 H. & N. 308; *Fraser* v. *Mason*, 11 Q. B. Div. 574, 581.

(*g*) *Grant* v. *Astle*, 2 Dougl. 722.

(*h*) *Trotter* v. *Blake*, 2 Mod. 229.

(*i*) *Denny* v. *Lemman*, Hob. 135.

(*k*) *Doe* d. *Twining* v. *Muscott*, 12 M. & W. 832; *Hayward* v. *Raw*, 6 H. & N. 308.

(*l*) *Hobart* v. *Hammond*, 4 Rep. 27 b; *Jackman* v. *Hoddesdon*, Cro. Eliz. 351.

is properly one for the consideration of a Court of law, assisted by a jury in cases where any question of fact arises as to the custom or as to the value of the tenements (*m*); and, accordingly, it was formerly held that a single copyholder was not relievable in equity for an excessive fine, because the matter was determinable at law (*n*), though it was admitted that a bill in equity would lie to settle a general fine to be paid by all the copyhold tenants of a manor to prevent a multiplicity of suits (*o*). But "to prove upon a trial the annual improved value of the land, and then to calculate how much of that value should be paid for a fine, was likely to be attended with so much dissatisfaction that recourse would frequently be had to the Court of Chancery, which had always relieved against the forfeiture and taken upon itself without a jury to determine what should be a reasonable fine" (*p*).

What is a reasonable fine.

There was at one time considerable variance between decisions of the Courts as to what would constitute a reasonable fine. In *Willowe's Case* (*q*), the Court of King's Bench held that a fine amounting to two years' value of the tenement was, under the circumstances, unreasonable; and in the cases of *Middleton* v. *Jackson* (*r*) and *Popham* v. *Lancaster* (*s*), Lord Keeper Coventry, when settling the fines to be paid by the tenants of certain manors, decreed one moderate year's value of the lands as the fine payable to the lord; but in the year 1677, Lord Nottingham, in the case of *Morgan* v. *Scudamore* (*t*), held that two years' improved value of the tenement was in ordinary cases a proper limit for a reasonable fine; and this ruling has been followed ever since. The fine must be estimated

(*m*) *Hobart* v. *Hammond*, 4 Rep. 27 b; *Willowe's Case*, 13 Rep. 1; *Wilson* v. *Hoare*, 10 A. & E. 236.

(*n*) *Cowper* v. *Clerk*, 3 P. Wms. 156.

(*o*) See *Middleton* v. *Jackson*, 1 Rep. in Ch. 33; *Popham* v. *Lancaster*, *Ibid.* 96; *Morgan* v. *Scudamore*, 2 Rep. in Ch. 134.

(*p*) *Per* Ld. Loughborough in *Grant* v. *Astle*, 2 Dougl. 722.

(*q*) 13 Rep. 1.

(*r*) 1 Rep. in Ch. 33.

(*s*) *Ibid.* 96.

(*t*) 2 Rep. in Ch. 134.

according to the improved yearly value of the tenement at the time of assessment, deducting the amount of the quit rents (*u*), and estimating what would be required to put the tenement into repair for the purpose of letting it (*x*), but not making any other deduction whether for land tax or other charges (*y*), though in one case it was doubted whether a local drainage rate in a fen district might not properly be deducted (*z*). If the value of the land is increased by buildings, that fact may properly be taken into account in estimating the fine (*a*). The rent reserved on a lease of the copyhold premises is not the proper criterion of the amount of the fine, for the tenant may be able to show that the actual value of the premises demised is less than the rent reserved (*b*).

Customs as to fines.

There have been several cases in which the customs of manors as to the payment of arbitrary fines have been called in question. Thus, a custom that a fine being due on the first purchase, but not on subsequent purchases or descents, as in the manors of Lambeth, Croydon, and Richmond, in Surrey, and of Harrow-on-the-Hill, in Middlesex, the lord might set what fine he pleased upon a purchaser, has been held unreasonable (*c*). In a similar case, however, it has been held that the lord would not be restricted to a fine of two years' value, but, if the custom permitted it, "might take a fine of four, five, or even seven years' value" (*d*), and the same principle would appear to apply in cases where the fine is upon every purchase but not upon descents, the amount of the fine being increased in a due proportion (*e*). In one case it was agreed that the

(*u*) *Halton* v. *Hassel*, 2 Stra. 1042; *Grant* v. *Astle*, 2 Dougl. 722.

(*x*) *Richardson* v. *Kensit*, 5 M. & Gr. 485.

(*y*) *Grant* v. *Astle*, 2 Dougl. 722.

(*z*) *Ely* (*Dean & Ch. of*) v. *Caldecott*, 8 Bing. 439.

(*a*) 1 Cas. & Op. 174.

(*b*) *Verulam* (*Earl*) v. *Howard*, 5 Moo. & P. 148.

(*c*) *Douglas* v. *Dysart* (*Earl of*), 10 C. B. N. S. 688.

(*d*) *King* v. *Dillington*, 1 Freem. 494, 496; *Pinsent's Case*, cited there.

(*e*) Watk. Copyh. i. 309; Scriv. Copyh. 319.

lord might be entitled by the custom to increase the fine against an infant who would not come for admittance (*f*), but this power, even if ever reasonable, has now been superseded by the lord's statutory remedies before mentioned (*g*).

Where there is a custom that persons who are already copyholders of the manor shall pay a small fine certain on the purchase of other copyholds, but if not tenants already shall pay an arbitrary fine not exceeding two years' value, it has been held that the lord must take his chance of a purchaser buying a small copyhold before another of greater extent, in order to save the fine; and even if the larger tenement were purchased first, but admittance is sought to the smaller tenement in order to decrease the fine payable on admittance to the larger, the lord will lose his arbitrary fine, unless he can show that the purchase of the smaller tenement was colourable only and made to defraud him of his fine (*h*). A purchaser may therefore choose the order in which he will be admitted to the copyholds which he has *bonâ fide* acquired; but there may be a custom which restricts a purchaser from compelling the lord to admit him to one of several distinct tenements, acquired under one disposition (whether by a surrender or devise), while, at the same time, he refuses to take admittance to the other tenements (*i*); and so there may be a special custom that the purchaser of several distinct tenements under one disposition must take admittance to all at the same time and pay one general fine in respect of all (*k*). The lord being entitled to no more than two years' clear intrinsic value, a custom to take ten per cent. on the purchase-money cannot be upheld, however long it may have been practised; and if the money were paid under compulsion, as under a refusal to grant admittance unless

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(*f*) *King* v. *Dillington*, 1 Freem. 494.

(*g*) 11 Geo. IV. & 1 Will. IV. c. 65.

(*h*) *Rex* v. *Boughey*, 1 B. & C. 565; *S. C. nom. Rex* v. *Meer and Forton Manor (Lord of)*, 2 D. & R. 824.

(*i*) *Johnstone* v. *Earl Spencer*, 30 Ch. D. 581.

(*k*) *Ibid.*

it were paid, an action will lie to recover the excess above the two years' value. The lord may bind himself to accept a certain sum in the future as being the equivalent of two years' value after allowing for improvements to be made by the copyholder (*l*).

Fines on lives in remainder.

In manors where copyholds are granted for lives successively, it is usual to take two years' value for the first life, half that sum for the second, half of what was paid by the second life for the third, and so on in a descending series, so that the total fine can never amount to as much as four years' improved value. This mode of assessment was referred to in the case of *The Earl of Bath* v. *Abney* (*m*), as prevailing within the manor of Stoke Newington, in Middlesex, but was not the subject of decision. The principle, however, has been upheld as reasonable in the cases of *Taylor* v. *Pembroke* (*n*) and *Wilson* v. *Hoare* (*o*); but both these cases are concerned with the case of joint tenants, as will appear hereafter. It is with reference to this rule, that it has been said that "where a person is admitted to an estate in remainder the fine is usually one-half" (*p*).

Notwithstanding that the lord might in the case of successive tenants for lives charge two years' value for the the first, one year's value for the second, and so on, it is not usual in practice to charge so much; and the lord is generally content with the value of a year and a half for the first life, and so with the other lives in proportion.

Where some of the lives are only trustees for the "first taker" or other owner of the beneficial interest, the whole fine is assessed at once. But where all the lives are to take both legal and equitable estates successively, each will in general pay his fine, according to the rule above given, as it accrues due.

(*l*) See *Curtis* v. *Scales*, 14 M. & W. 444.

(*m*) 1 Burr. 206, 207.

(*n*) King's Bench, Mich. 1815, cited in *Wilson* v. *Hoare*, 2 B. & Ad. 350, 354, 361, and in Scriv. Copyh. 321.

(*o*) 10 A. & E. 236.

(*p*) Cru. Dig. tit. 10, c. 4, s. 36.

Fines on joint tenants.

In some of the older books (*q*) it is said that this mode of assessing fines on copyholds which are granted for lives successively is not applicable to the cases where the lives are admitted as joint tenants or as tenants in common, for joint tenants make but one tenant to the lord, and therefore only one fine not exceeding two years' value would be due from them; and in the case of tenants in common each has severally to be admitted, and a single fine would be apportioned between them, each paying his several share. In the case of joint tenants, it seems to be usual for one tenant only to take admittance, his admission being the admittance of his co-tenants, and when that is the case only one fine would be due, and the joint tenant who paid it could compel the others to contribute their proportions. But where all the joint tenants are admitted, it appears now to be clear that the lord would have a right to demand more than two years' value as a fine, for if one of two joint tenants die, the other will have the copyhold by survivorship without the necessity of a fresh admittance or fine, because each is the owner of the whole; and one joint tenant can release his share to the other without the intervention of the lord. By these incidents of their estate the lord is deprived of his chance of fines, and therefore it has been held that the rule of assessing a fine for joint tenants should be the same as where there are successive estates in a copyhold for lives. This principle was approved in the case of *Taylor* v. *Pembroke* (*r*), where it appeared that three trustees had been admitted as joint tenants of a copyhold tenement in the manor of Sutton Holland, in Lincolnshire, and that the lord had demanded as a fine for the first life two years' improved value, for the second half the sum assessed for the first, and for the third half the sum assessed for the second. The Court of King's Bench expressed a strong opinion that the fine was

(*q*) Watk. Copyh. i. 312; Cru. Dig. tit. 10, c. 4, s. 37.

(*r*) Cited in *Wilson* v. *Hoare*, 2 B. & Ad. 350, 354.

reasonable, as it would never amount to four years' improved value; the case, however, appears on appeal to have been sent back for fresh trial, and the point was thus not expressly decided. But the principle was finally established in the case of *Wilson* v. *Hoare* (*s*), of which the chief circumstances were as follows:—A copyhold was vested in fourteen trustees, and by a decree in Chancery it had been ordered that when the number should be reduced to five the lord should nominate nine others (with the approbation of the Court), to be added to the five, and that a new surrender should be made and the trustees admitted on payment of a reasonable fine. The estate was valued at 1,000*l.* *per annum*. It was held, that a fine of 5,657*l.* 19*s.* on the admission of the fourteen trustees (the number having been filled up) was unreasonable, and that the principle of assessment should be to charge half as much for the second as for the first, half as much for the third as for the second, and so on in a descending series, approaching, but never reaching, a total of four years' value; and it was held that, under the circumstances of the case, a deduction should be made on account of the right to take the new fine on the death of nine out of the fourteen lives instead of at the death of the last survivor. Evidence was given on one of the trials, which is cited by Serjt. Scriven, in his account of the case (*t*), to the effect "that, if copyhold premises be held on a single life of thirty years, the interest in them would last on an average twenty-eight years; that if one life aged thirty would be worth on renewal 2,000*l.*, then two lives of the same age would be worth 2,430*l.*, and three such lives 2,608*l.*, and that the addition of any further number could not exceed 3,000*l.*; that if 2,000*l.* was a reasonable fine on the admission of one life, the admission of fourteen of the several ages of the defendants, to be renewed when reduced to five, would be 2,111*l.*; and that the interest in fourteen

(*s*) 10 A. & E. 236. (*t*) Scriv. Copyh. 328, n. (*q*).

lives, which are to be surrendered and re-admitted when reduced to five, is not so valuable as the interest in nine lives absolute." The decision in *Wilson* v. *Hoare* was followed shortly afterwards by the case of *Shepherd* v. *Woodford* (*u*), where the same principle of assessment was upheld.

Fines on tenants in common.

As regards tenants in common, the rule is that each tenant is admitted separately, and therefore each will pay a separate fine (*x*); and as there is no survivorship between them, on the death of any one his customary heir will be admitted, and pay a fine, if any is due by the custom of the manor, on the descent to him.

Fines due on change of tenants.

As to the persons from whom a fine is due, the general rule is that a fine is to be paid upon every change in the tenancy. If therefore a copyholder in fee dies, a fine is due from the heir, unless there is a custom that no fine is payable on descent to an heir (*y*); and so in the case of the heir of a copyholder with right of renewal, or the successor nominated by custom (*z*); and the death of the heir will not deprive the lord of his right (*a*). If the surrenderee dies before admittance, his heir must pay two fines (*b*). The devisee of an unadmitted testator must in the same way pay the fine which would have been due had the testator been admitted, and had then surrendered to the use of his will and devised (*c*). In the case of *Lord Londesborough* v. *Foster* (*d*), it was held that where a testator died before admittance his devisee had to pay two fines, notwithstanding that the copyhold was held in trust, and that the lord had admitted some of the *cestui-que-trusts*,

(*u*) 5 M. & W. 608.

(*x*) *Fisher* v. *Wigg*, 1 P. Wms. 14, 21.

(*y*) *Doe* d. *Tarrant* v. *Hellier*, 3 T. R. 162.

(*z*) Co. Copyh. s. 41; *Brown's Case*, 4 Rep. 21 a, 22 b; *Doe* d. *Twining* v. *Muscott*, 12 M. & W. 832; 1 Vict. c. 26, s. 4.

(*a*) *Morse* v. *Faulkner*, 1 Anst. 11.

(*b*) *Rex* v. *Coggan*, 6 East, 431; *Morris* v. *Clarkson*, 3 Swan. 558; but see *Garland* v. *Alston*, 3 H. & N. 390, as to the case of a surrenderee of a remainder dying in the lifetime of the tenant for life.

(*c*) 1 Vict. c. 26, s. 4.

(*d*) 3 B. & S. 805.

who had paid customary fines; but it appears by one of the reports of this case that this took place by virtue of a special custom (*e*). On every devise of copyholds the devisee is to pay the same fine as would have been due from the customary heir (*f*). A person who acquires a copyhold as special occupant must pay the same fine as a purchaser (*g*), a due deduction being made in respect of the expectation of life of the *cestui-que-vie* (*h*); and this applies to the representatives of an intestate tenant *pur autre vie* taking his estate under the provisions of the Wills Act(*i*). The executor of a copyholder for years pays a fine upon admittance, because there is a change of the tenant (*k*). Coparceners make but one heir, and are entitled to be admitted on one fine (*l*). But if a coparcener dies, and the other becomes entitled by descent, another fine will be due (*m*). Where every tenant of a manor holds for the joint lives of himself and the admitting lord, on the death of the latter each tenant must pay the general fine for re-admittance, and on admittance after a descent or alienation of a tenement another fine (called a "dropping fine") will be paid, as before mentioned (*n*). If the tenant in possession acquires a new estate, he must be re-admitted and pay a fine, as where a tenant for life becomes tenant in fee by descent or devise (*o*); so where a tenant was admitted provisionally to prevent the lord's seizure, and afterwards became entitled beneficially, a new admittance and fine was required (*p*). And if by a surrender to uses the tenant takes back a particular estate, he must pay a fresh fine (*q*); and so if by any assurance, after the year 1833,

(*e*) 9 Jur. N. S. 1173.
(*f*) 1 Vict. c. 26, s. 5.
(*g*) Co. Copyh. s. 56.
(*h*) Gilb. Ten. 327.
(*i*) Sect. 6.
(*k*) *Bath* (*Earl of*) v. *Abney*, 1 Burr. 206.
(*l*) *Rex* v. *Bonsall Manor* (*Lord of*), 3 B. & C. 173.
(*m*) Co. Copyh. s. 56.
(*n*) *Somerset* (*Duke of*) v. *France*, 1 Stra. 654.
(*o*) *Doe* d. *Winder* v. *Lawes*, 7 A. & E. 195.
(*p*) *Reg.* v. *Corbett*, 1 E. & B. 836.
(*q*) *Roe* d. *Noden* v. *Griffits*, 4 Burr. 1952.

a person conveys to himself or his heirs, such person will be deemed to have purchased a fresh estate (*r*). But if a copyholder in fee surrenders for life, reserving the reversion, and the tenant for life dies, the copyholder shall not be admitted again, nor pay a fine, because the reversion was never out of him (*s*); and if a copyhold is granted upon condition, and the condition is broken, and the grantor enters, he shall not be admitted nor pay a fine, because upon the entry he is to all intents as if no grant had been made (*t*). Where trustees surrender to the use of themselves and other newly-appointed trustees, they must all be admitted and pay a fine assessed for a joint estate upon the principle already mentioned (*u*). Where the condition of a mortgage surrender is broken, a fine will be due on the admission of the mortgagee, and also on a subsequent readmission of the mortgagor (*x*). Where before the Act 1 & 2 Vict. c. 110, copyholds were extendible by custom for judgment debts, the tenant by *elegit* had to be admitted and to pay a fine (*y*); and it is presumed that the necessity applies to judgment creditors to whom copyholds may now be delivered in execution. Under the old law, it was held that the assignees of a bankrupt had to be admitted before they could convey to a purchaser, and a fine was due on their admittance as well as on the admission of the purchaser (*z*); but now it is provided (*a*) that where any part of the property of a bankrupt is of copyhold or customary tenure, the trustee shall not be compellable to take admittance to the property, but may deal with it in the same manner as if it had been duly surrendered to such uses as the trustee may appoint, and any

Trustees.

Mortgagees.

Bankruptcy.

(*r*) 3 & 4 Will. IV. c. 106, s. 3.

(*s*) *Podger's Case*, 9 Rep. 104 a, 107 a.

(*t*) Co. Copyh. s. 56.

(*u*) *Shepherd* v. *Woodford*, 5 M. & W. 608.

(*x*) *Tredway* v. *Fotherley*, 2 Vern. 367; *Faucet* v. *Lowther*, 2 Ves. 300; Coote, Mortgage, 4th ed. 231.

(*y*) Co. Copyh. s. 56.

(*z*) *Drury* v. *Man*, 1 Atk. 95.

(*a*) 46 & 47 Vict. c. 52, s. 50 (4).

appointee of the trustee shall be admitted to the property accordingly.

If a wife by custom has the whole or part of a copyhold for her freebench, upon her admission a fine will be paid; half a fine is commonly taken, but that depends upon the custom; and so in the case of a customary tenant by the curtesy (*b*). But, as has been already mentioned, in a great many manors no fines are paid for admittances to these estates (*c*).

Fines on remaindermen.

The admission of the particular tenant being usually the admission of all in remainder, a person becoming entitled to an estate in remainder under a will, whether vested or contingent, or by way of executory devise, is entitled to the benefit of the admittance of a devisee of the prior estate, inasmuch as he comes in directly under the will when the remainder vests or the contingency happens (*d*). On the same principle, it is held that the heir of one to whose use the tenant in remainder had surrendered during the life of the tenant in possession was entitled to be admitted on payment of a single fine (*e*). Where the heir of a reversioner surrendered during the life of the particular tenant, the surrenderee had to pay the fine in respect of the descent, as well as for his own admittance (*f*). The devisee of a copyhold, having been admitted on payment of a full fine, surrendered to the use of himself for life with remainders over, and paid a small customary fine: it was held that, in the absence of a special custom, no fine was payable on the admission of the tenant in remainder (*g*). But by such a special custom a remainderman may be compelled to be admitted and pay a

(*b*) Kitch. Jurisd. 242; Co. Copyh. s. 56; *Forder* v. *Wade*, 4 Bro. Ch. Cas. 520.

(*c*) *Ante*, pp. 162, 167.

(*d*) *Barnes* v. *Corke*, 3 Lev. 308; *Auncelme* v. *Auncelme*, Cro. Jac. 31; *Kensington* (*Lord*) v. *Mansell*, 13 Ves. jun. 240, 246; *Randfield* v. *Randfield*, 3 De G. F. & J. 766.

(*e*) *Garland* v. *Alston*, 3 H. & N. 390.

(*f*) *Reg.* v. *Dullingham Manor* (*Lady of*), 8 A. & E. 858.

(*g*) *Phypers* v. *Eburn*, 3 Scott, 634.

fine (*h*); "for, though the admittance of the first tenant is an admittance of them in remainder, yet it shall not prejudice the lord for his fine," where such is due by the custom (*i*).

In *Randfield* v. *Randfield* (*k*), it appeared that by the custom of the manor of Dovercourt, in Essex, it was necessary for a copyhold tenant in remainder to be admitted, and pay a fine on becoming entitled in possession, notwithstanding the admittance of the tenant for life; but no instance was shown of a devolution by way of executory devise. Knight Bruce, and Turner, L.JJ., affirming on this point the judgment of Kindersley, V.-C., held that the same rule ought to be applied to an executory devisee who becomes entitled on the defeasance of an estate in fee, although no custom applicable to such a case was established; but the Court differed on the question whether a fresh fine would be payable in a manor where there was no such custom as to remainderman. Knight Bruce, L. J., was of opinion that on the executory devise taking effect a fresh fine would be payable, as a new estate had come into existence. Turner, L. J., on the other hand, held that when the executory devise came into operation the persons entitled under it took the same estate to which admittance had been taken under the prior devise, and that consequently the case was brought within the acknowledged rule that the admission of a tenant for life is the admission of all who take in remainder; and this had also been the effect of the decision in the Court below (*l*).

Apportionment of fines.

The lord may assess the whole fine on the admittance of the particular tenant, or may apportion it between the different estates. "When a tenant for life comes on behalf of himself and all in remainder and reversion, if the lord

(*h*) *Doe* d. *Whitbread* v. *Jenney*, 5 East, 522; *Ely* (*Dean & Ch. of*) v. *Caldecott*, 8 Bing. 439; *Reg.* v. *Woodham Walter Manor* (*Lord of*), 10 B. & S. 439.

(*i*) *Brown's Case*, 4 Rep. 21 a, 22 b; *Fitch* v. *Stuckley*, 4 Rep. 23 a; *Blackburne* v. *Graves*, 1 Mod. 102, 120.

(*k*) 3 De G. F. & J. 766.

(*l*) 1 Dr. & Sm. 310.

does not take the fine, he cannot afterwards insist upon receiving it from those in remainder; he may apportion it, but it is not open to him to say that the tenant for life shall pay nothing, and those in remainder the whole" (*m*). But, when the lord has assessed the whole fine on a tenant for life, its burden will have to be apportioned between the particular tenant and the other persons for whose benefit his admission enures. The appointee under a power is in the position of a tenant in remainder (*n*). A fine is not due from the remainderman before admittance (*o*). It has been said that "the fine on admission to an estate in remainder is usually one half (*p*); but this seems to refer only to those cases of copyhold for lives and joint tenancies which have been already mentioned (*q*).

Separate fines due for separate tenements.

One fine cannot properly be assessed on the admittance to several tenements (*r*); but a question has sometimes arisen, whether the shares of tenants in common are several tenements for this purpose. Joint-tenants or coparceners joining in a conveyance make but one grant, and the surrenderee will pay but one fine, and the case will be the same if the particular tenant and all those in remainder or reversion join in a conveyance to a purchaser (*s*). But if tenants in common of undivided shares join in one conveyance, the purchaser must be admitted, and pay a fine in respect of each share (*t*), although after the re-union of the several undivided shares in one person the copyhold will be treated as one tenement again (*u*); but the re-union

(*m*) *Kensington* (*Lord*) v. *Mansell*, 13 Ves. jun. 240, 246.

(*n*) *Ibid.*

(*o*) *Batmore* v. *Graves*, 1 Ventr. 260; *S. C. nom. Blackburne* v. *Graves*, 1 Mod. 102, 120.

(*p*) Cru. Dig. tit. 10, c. 4, s. 36.

(*q*) *Ante*, p. 179.

(*r*) *Grant* v. *Astle*, 2 Doug. 722.

(*s*) Co. Copyh. s. 56.

(*t*) *Reg.* v. *Eton College*, 8 Q. B. 526; *S. C. nom. Reg.* v. *Everdon Manor* (*Lords of*), 16 L. J. Q. B. N. S. 18; *Evans* v. *Upsher*, 16 M. & W. 675.

(*u*) *Garland* v. *Jekyll*, 2 Bing. 273; *Holloway* v. *Berkeley*, 6 B. & C. 2; overruling *Attree* v. *Scutt*, 6 East, 476.

does not take place until the purchaser has been admitted to the separate shares. If a copyholder conveys his tenement in several parcels to different persons, and some of the parcels devolve upon one person, in the absence of a special custom the owner is not entitled to be admitted by one admittance and one fine (*x*).

Fines due only on admittance.

When several joint-tenants are entitled to admittance, the lord may not refuse to admit one until the others pay their fine (*y*). And it is a general rule that the fine is not due until admittance, and any question as to the amount of the fine is properly to be determined after admittance has taken place (*z*). Where a copyholder devised to two trustees, who would not be admitted, but tendered the heir for admittance, because on their admittance a fine and a-half would be due instead of a single fine, it was held that the lord could not seize for want of a tenant, though the heir was refused admittance, on the ground that there was brought to the knowledge of the lord a will entitling the trustees to be admitted (*a*); but it has since been held that the heir is entitled to admittance notwithstanding the existence of a duly executed will devising the copyholds to trustees (*b*).

Contribution to fine.

When the fine is paid by one person whose admission enures to the benefit of others, he may compel the others to make contribution according to the rules laid down in equity for the case of a tenant for life renewing a lease, without being obliged to do so, and the contribution will be made by each person in proportion to the benefit derived from the renewal (*c*). So a joint-tenant or coparcener may compel the others to contribute to the admittance-

(*x*) *Traherne* v. *Gardner*, 5 E. & B. 913.

(*y*) *Reg.* v. *Wanstead Manor* (*Lord of*), 23 L. J. Q. B. N. S. 67.

(*z*) *Reg.* v. *Wellesley* (*Lord*), 2 E. & B. 924; *Grand Junction Canal Co.* v. *Dimes*, 2 Jur. 886.

(*a*) *Garland* v. *Mead*, L. R. 6 Q. B. 441; *Reg.* v. *Garland*, L. R. 5 Q. B. 269.

(*b*) *Reg.* v. *Dudley* (*Earl of*), unreported; decided Q. B. Div. June, 1884.

(*c*) See *Jones* v. *Jones*, 5 Hare, 440, 463; *Hudleston* v. *Whelpdale*, 9 Hare, 775, 785; *Bradford* v. *Brownjohn*, L. R. 3 Ch. 711.

fine. In *Playters* v. *Abbott* (*d*), it was held that where a testator indicates an intention that fines on the admission to copyholds should from time to time be paid in order to maintain a permanent interest in the property for the benefit of the persons to whom he has successively limited his freehold estates, and has not specified the fund out of which such payment should be made, the tenant for life and those in remainder should bear the burden of such payments in the proportion of the benefits which they actually derive from the admission; and the same principle was followed in *Carter* v. *Sebright* (*e*) with regard to the fines, fees, and expenses of the admission of new trustees to copyholds.

When payable.

Where a fine is certain the tenant is bound to pay it immediately after admittance, but if it is uncertain he will be allowed a reasonable time for meeting the lord's demand (*f*).

Lord's remedies for recovery of fine.

If the copyholder delays or refuses to pay the fine, the lord may bring his action to recover the amount; and under the old practice it was held that both an action of debt and a general *indebitatus assumpsit* lay for a copyhold fine (*g*). If the lord admits a tenant and dies before the fine is paid, his executor may take action to recover the debt, whether the fine is certain or arbitrary (*h*). The lord may recover the fine assessed on admittance, though there is no entry of the assessment on the court rolls, but only a demand of such a sum for a fine after the value of the tenement has been found by the homage (*i*), or although he has demanded the sum under the description only of the improved value for a certain number of years of the tenement (*k*). The lord is not bound to identify

(*d*) 2 Myl. & K. 97.

(*e*) 26 Beav. 374.

(*f*) *Hobart* v. *Hammond*, 4 Rep. 27 b.

(*g*) *Wheeler* v. *Honour*, 1 Sid. 58; *Whitfield* v. *Hunt*, 2 Doug. 727, n.

(*h*) *Shuttleworth* v. *Garnett*, Carth. 90, 92.

(*i*) *Northwick* (*Lord*) v. *Stanway*, 6 East, 56.

(*k*) *Fraser* v. *Mason*, 11 Q. B. Div. 574.

the lands in respect of which the fine is due (*l*); but if he claims quit-rents or heriots, he must show the particular tenements (*m*). The fine is not a charge upon the lands (*n*); and an action to recover it must be brought within six years of the cause of action accruing (*o*). If a copyholder in fee dies, and his heir does not take admittance, the lord cannot bring an action against the heir for the fine, but may in general seize the copyhold (*p*); but if, the heir being an infant, the lord takes proceedings for recovering the fine under 11 Geo. IV. & 1 Will. IV. c. 65, he is restricted to his statutory remedies (*q*). A married woman, entitled to copyholds, will no longer require the benefit of that Act if married since the 1st of January, 1883, or if her title accrued after that date (*r*). The Lunacy Act, 1890 (*s*), regulates the rights and remedies of a lord as to fines due for the estate of a lunatic so found by inquisition.

When fine not due.

A covenant to surrender a copyhold, though presented by the homage, does not entitle the lord to any fine, and the assignee of the benefit of the covenant has a right to be admitted upon payment of a single fine (*t*). A covenant to surrender and to do all acts for perfectly surrendering and assuring the estate to the purchaser is not broken by non-payment of the fine on admission, because it is due only after the purchaser's admittance, as has before been mentioned (*u*). A husband is not obliged to be admitted, or to pay a fine, in respect of his wife's estate in fee or other estate (*x*). On a release by one joint tenant or one

(*l*) *North* v. *Strafford* (*Earl of*), 3 P. Wms. 148, 151.

(*m*) *Basingstoke* (*Mayor of*) v. *Bolton* (*Lord*), 3 Dr. 50.

(*n*) *Fitcham* v. *Finch*, 1 Ro. Abr. 374, Chancery P.

(*o*) 3 & 4 Will. IV. c. 42, s. 3.

(*p*) See *Wheeler* v. *Honour*, 1 Sid. 58; Gilb. Ten. 292.

(*q*) See *Clayton* v. *Cooke*, 2 Atk. 449.

(*r*) 45 & 46 Vict. c. 75, ss. 2, 5.

(*s*) 53 Vict. c. 5, s. 126.

(*t*) *Rex* v. *Hendon Manor* (*Lord of*), 2 T. R. 484.

(*u*) *Graham* v. *Sime*, 1 East, 632; *ante*, p. 76.

(*x*) Co. Copyh. s. 56; and see now 45 & 46 Vict. c. 75.

coparcener to another, or by a person having a right in the land to the tenant in possession, no fine is due (*y*). An entry by the steward in his books of the admission of a surrenderee is a mere memorandum, and does not entitle the lord to a fine (*z*); nor will the acceptance of rent by the steward from a surrenderee, or any other act of admittance, unless he has authority to make the admittance, operate to admit the surrenderee or make him liable to the fine (*a*). The lord cannot claim a fine in respect of any devolution of the equitable title to copyholds where the legal estate remains in the person who has already been admitted tenant on the roll (*b*). Again, if a testator, instead of devising his copyholds to trustees, gives his executors merely a power to sell his copyhold hereditaments, and to convey and assure them to a purchaser, the executors may sell without taking admittance, and the purchaser will be entitled to admission as if there had been an express devise to him in the will, and only one fine will be due on his admittance (*c*). No fine is due from a trustee who has disclaimed before acting in the trusts of a devise of copyholds (*d*). Where a copyholder devised his estate to a devisee in fee subject to a term of years, which he gave to trustees, and the devisee was admitted on payment of a full fine, but the lord seized *quousque* to compel the trustees of the term to come for admittance and pay a fine, it was held that, as by the form of admittance the devisee had been admitted *in præsenti*, and not to an estate in remainder, the lord had a tenant on the roll and had received a full fine, and therefore could not force the trustees to come for admittance (*e*).

(*y*) See Co. Litt. 193 a, 318 a.

(*z*) *Hayward* v. *Raw*, 6 H. & N. 308.

(*a*) *Rawlinson* v. *Green*, Poph. 127; *S. C.* 3 Buls. 237.

(*b*) *Hall* v. *Bromley*, 35 Ch. Div. 642.

(*c*) *Holder* d. *Sulyard* v. *Preston*, 2 Wils. 400; *Glass* v. *Richardson*, 2 De G. M. & G. 658; *Reg.* v. *Wilson*, 3 B. & S. 201.

(*d*) *Wellesley* (*Viscount*) v. *Withers*, 4 E. & B. 750.

(*e*) *Everingham* v. *Ivatt*, L. R. 8 Q. B. 388.

In the case of *Bristow* v. *Booth* (*f*), it appeared that P. P., a copyhold tenant of the manor of Woodford, in Essex, who had been duly admitted, had devised his copyholds to his son on trust. The son was admitted and paid a fine; and by his will he devised all his real and personal estate to his widow, whom he appointed his sole executrix. The widow proved the will, but executed a deed of disclaimer as to the copyholds. The customary heir-at-law of the son being then abroad and out of the jurisdiction, the defendant was, by decree of the Court, appointed a trustee of the will of P. P. in substitution for the son, and the estate in the copyholds was vested in the defendant under the powers of the Trustee Acts. The defendant was then duly admitted as such substituted trustee, but the lords of the manor claimed two fines, contending that, on the execution of the disclaimer by the widow, the copyhold hereditaments descended on and became vested in the customary heir-at-law of the son, and that on such descent a fine was due, and that another was due on the admittance of the defendant as trustee. But the Court of Common Pleas held that the defendant was entitled to be admitted on payment of one fine only, as he did not claim through the customary heir, but took as substituted trustee. The effect of the Settled Land Act, 1882, and of a disposition by a tenant for life under the powers of that Act on the lord's fine was considered in the case of *In re Naylor and Spendla's Contract* (*g*). A copyholder who had been admitted to copyholds for a customary estate in fee simple devised them to trustees upon trust to pay the rents to his widow for life. Shortly after his death, the widow sold the property under the powers of the Settled Land Act, 1882. The trustees had not been admitted, and on the admittance of the purchaser the lord claimed to be paid, in addition to the fine payable on his admittance, the fine which would have been paid if the trustees had been ad-

(*f*) L. R. 5 C. P. 80. (*g*) 34 Ch. Div. 217.

mitted. The Act of 1882 provides that when the tenant for life sells under the provisions of the Act, he may, if the land is copyhold land vested in trustees, convey the same for the estate which is the subject of the settlement by deed, which shall be entered on the court rolls of the manor (*h*), and that upon production of the deed to the steward, and "payment of customary fines, fees, and other dues or payments, any person whose title under the deed requires to be perfected by admittance shall be admitted accordingly" (*i*). It was held by Cotton and Bowen, L.JJ., affirming the decision of Chitty, J., that the lord could claim one fine only; but from this judgment Fry, L.J., dissented. "The question is," said Cotton, L.J., "whether those words 'on payment of customary fines, &c.,' give the lord a right to demand, in addition to the fine payable by the purchaser on admittance, a fine as on the admittance of the trustees. In my opinion the Act was not intended to take away any of the rights of the lord, but was not intended to give him any. The lord would have no right to a fine for the admittance of trustees who never were admitted, and from whom the purchaser's right to be admitted is not derived. If the words 'on payment of customary fines' had not been inserted, it might have been contended that as the statute created a new kind of title to admittance, the lord could not demand a fine on the admittance of the purchaser. The words have a reasonable meaning without construing them to mean such fine as would have been payable if the purchaser had obtained a title to admittance in the way in which he must have obtained it if the Settled Land Act had not been passed." And in this opinion Bowen, L.J., concurred; but Fry, L.J., dissented, remarking that the words of the section were very general, and that the statute did not speak of the customary fines, but simply of customary fines, fees, &c. "It is obvious," he said, "that there are no customary

(*h*) Sect. 20 (1). (*i*) Sect. 20 (3).

fees payable on the new form of deed given by the statute. What, then, are the customary fees and payments referred to? There are two possible answers: either those which would have been payable on or before admittance if the Act had not passed, or those which would have been payable on admittance if the Act had not passed. The former construction leaves the rights of the lord untouched, the latter deprives him of his rights. In my opinion the Act was not intended to interfere with the rights of the lord, and I think that the construction which leaves them untouched is to be preferred."

Fines on conveyances under Lands Clauses Acts.

On the execution of a conveyance under the Lands Clauses Consolidation Act, 1845, by a copyholder to a company empowered to take land, no fine is due, and the lord is not entitled to any fine upon the enrolment of the conveyance, nor to any compensation for the loss of his tenant; but he may be entitled to a fine on the surrender, if such fines are payable in the manor by custom (*k*). The Lands Clauses Act of 1845, however, requires (*l*) the company to procure the enfranchisement of the lands from the fines, heriots, and other services, to which meanwhile the lands continue to be subject notwithstanding the enrolment of the conveyance, and directs that in estimating the amount to be paid to the lord, allowance must be made in respect of the loss of the fines, heriots, and dues payable on death, descent, and alienation caused by the vesting of the lands in the company and by their enfranchisement. In *Lowther* v. *Caledonian Railway Co.* (*m*), it appeared that the defendant company in the year 1873 took possession of certain lands, partly copyhold of the manor of Stainton in Cumberland, where the fines are fixed, and partly copyhold of the manor of West Linton in the same county, where an arbitrary fine of two years' improved value is payable on death of either the lord or

(*k*) *Eccles. Comrs. for England* v. *L. & S. W. Rail. Co.*, 14 C. B. 743.

(*l*) 8 Vict. c. 18, s. 96.

(*m*) (1892), 1 Ch. 73 (C. A.).

the tenant, and erected certain cottages on the lands, and constructed a reservoir for the purposes of their undertaking. No steps to enfranchise were taken till 1887, when the question arose whether the compensation ought to be assessed on the basis of the unimproved value of the land when the company took possession, or on the improved value occasioned by the works subsequently executed. It was held by the Court of Appeal, reversing the decision of Stirling, J. (*n*), that as under the provisions of the Lands Clauses Consolidation Act, 1845 (*o*), an obligation on the company to procure enfranchisement and an obligation on the lord to enfranchise arose at the expiration of one month from the entry by the company, or of three months from the enrolment of the conveyance to the company, whichever event should first happen, the compensation must be assessed as at that period without regard to the subsequent improvements made by the company, but that the lord was entitled to two fines, which had become payable owing to the deaths of two lords after the company had taken possession and before steps had been taken to enfranchise, such fines being assessed according to the improved annual value of the land.

Fines for licence to alienate, &c.

As to the fines due on licences by the lord empowering the copyholder to aliene, or to demise by deed, it may be mentioned that such fines are but rarely due, and they can be demanded only by virtue of a special custom. But if such a fine be due by the custom, an action will lie for its recovery (*p*). These fines, it should be observed, were expressly excepted in the Statute of Charles II. (*q*), which abolished fines due upon the alienation of lands and tenements held of mesne lords. In a case where a copyholder had a licence to demise part of his tenement, and then a second licence to demise the remainder, with a condition that he should improve such remaining portion,

(*n*) (1891), 3 Ch. 443.
(*o*) Sects. 96, 97.
(*p*) *Yaxley* v. *Rainer*, 1 Ld. Raym. 44.
(*q*) 12 Car. II. c. 24, s. 6.

and in consideration of the improvements should on all future admissions pay a fine of "37*l.* for the whole, and a proportionate payment for any less quantity of land," it was held that "the whole" meant the property included in the second licence, and that his representatives were bound to pay on admission not only two years' value of that property (taken at the annual value of 37*l.*), but also two years' improved value of the property first demised (*r*).

Right to fines on sale of manor.

If, after a contract for the purchase of a manor, but before the time fixed for the completion of the purchase, a tenant of the manor dies, the vendor and not the purchaser is entitled to the accruing fine, even though it may be the purchaser's hand that receives it (*s*).

5. *Fealty, and Suit of Court.*

Other services.

Besides the payment of fines upon the proper occasions, every copyholder is bound to do certain services to the lord of the manor in respect of his customary tenement. These services usually include fealty, suit of court, and payment of rent; and by custom the tenant may be liable to the payment of customary heriots and reliefs.

Fealty.

Fealty.—Fealty is generally respited or commuted at a trifling sum. It consists in swearing to be faithful in performing the services of the tenancy, and may be required upon every change of the lord or tenant (*t*). If refused, the lord may seize some property of the tenant, and detain it as a pledge, but cannot sell it as an ordinary distress (*u*). As this service cannot be done by attorney, the lord was formerly not compellable to admit a tenant by attorney, though he might have done so if he respited the fealty (*x*).

(*r*) *Curtis* v. *Scales*, 14 M. & W. 444.

(*s*) *Garrick* v. *Camden* (*Lord*), 2 Cox, Ch. Cas. 231; *Hardwicke* (*Earl*) v. *Sandys* (*Lord*), 12 M. & W. 761; *Cuddon* v. *Tite*, 1 Giff. 395.

(*t*) Co. Copyh. ss. 20, 21.

(*u*) *Hewet* v. *Norberow*, 1 Bula. 52.

(*x*) *Combes' Case*, 9 Rep. 75 a, 76 a; Co. Litt. 68 a; 50 & 51 Vict. c. 73, s. 2.

Suit of Court.—The copyholder is bound to attend the courts, unless the attendance be commuted for a small payment, as sometimes happens, and to sit upon the homage jury, if required. If he is resident within the ambit of the manor, and does not either appear at a court after it has been publicly summoned, or make sufficient essoign or excuse, he may be fined (*y*); and if he has been personally summoned to attend, and he wilfully refuses, his conduct might be held to be such a denial of tenure as to cause the forfeiture of his estate (*z*). By analogy to the case of amercements of freehold tenants, it would seem that the fine imposed on a copyholder for non-attendance must be affeered or assessed by two copyholders at least (*a*). The lord would not be entitled to distrain for such a fine without a special custom (*b*), but would have to bring an action for recovery of the amount. The lord may, however, distrain on his tenant for non-performance of suit of court (*c*), though he cannot sell the distress (*d*). As copyholders are not within the provisions of the Statute of Merton (*e*), a copyholder cannot do suit by another person acting for him (*f*). Before admittance a tenant cannot do suit of court, but in the case of a person entitled by descent, the summoning him to attend and sit upon the jury would be equivalent to an admittance by implication (*g*), though it is otherwise in the case of a surrenderee attending before his formal admittance. In some manors it is not the practice to summon a fresh jury whenever a court is held, but the same tenants are summoned for successive courts, vacancies in the list being filled up from time to time by the steward, or by the permanent foreman

Suit of court.

(*y*) *Belfield* v. *Adams*, 3 Buls. 80.

(*z*) Co. Copyh. s. 57.

(*a*) See *Baldwin* v. *Budge*, 2 Wils. 20; *Chetwode* v. *Crew*, Willes, 614, 619 n.

(*b*) See *Rowleston* v. *Alman*, Cro. Eliz. 748.

(*c*) Litt. s. 226; Co. Litt. 151 a.

(*d*) *Gomersall* v. *Medgate*, Yelv. 194.

(*e*) 20 Hen. III. c. 10.

(*f*) *Sir John Braunch's Case*, 1 Leon. 104.

(*g*) See Co. Copyh. s. 41.

and the steward together. An unmarried woman, or a widow, it was said, might do suit of court, and might sit on the homage in a customary court (*h*), but for a married woman seised of a copyhold suit of court should be done by her husband (*i*); but as a woman married after the 31st of December, 1882, or whose title to a copyhold accrues after that date though she was married previously to that date, may now hold and dispose of her real property as if she were a *feme sole*, it would seem that a married woman will be entitled now to do suit of court herself, if it be required (*k*). One of several joint-tenants or parceners may do suit for the rest (*l*), but tenants in common must severally do suit (*m*). Infants during wardship are excused, but all other copyholders must perform the service in person as already mentioned.

6. *Heriots.*

Copyholders are frequently subject to the payment of heriots upon any change in the tenancy, or upon the death of the tenant only.

There are several kinds of heriots, some of which are due only from freehold tenants. The cases distinguish between heriot-service, suit-heriot, and heriot-custom; for heriots, it is said, may be by tenure, reservation, and custom (*n*).

Heriot-service.

Heriot-service depends on the condition of the original grant of a fee simple tenancy of freehold land made before the statute *Quia Emptores* (18 Edw. I.). It consists in the lord's right to seize the best beast or chattel of a tenant dying seised of an estate of inheritance, and is recoverable by seizure or distress (*o*). The seizure may be made any-

(*h*) Gilb. Ten. 324 n. (*e*), 475.

(*i*) See *Hedd* v. *Chalener*, Cro. Eliz. 149, and Co. Litt. 66 a.

(*k*) 45 & 46 Vict. c. 75, ss. 2, 5.

(*l*) Co. Litt. 67 a, 164 b.

(*m*) *Bruerton's Case*, 6 Rep. 1 a.

(*n*) See Co. Copyh. s. 24; Kitch. Jurisd. tit. Heriot; *Woodlands* v. *Mantel*, Plowd. 94; *Lanyon* v. *Carne*, 2 Wms. Saund. 165.

(*o*) *Peter* v. *Knoll*, Cro. Eliz. 32; Co. Copyh. s. 31.

where, for the property in the heriot vests in the lord immediately on the death of the tenant, and the lord is entitled to take it as his own property (*p*); and it has been held that the lord may seize it in the hand of a purchaser, unless the sale was in market overt (*q*). No beast or chattel, except those which belonged to the deceased tenant, can be thus seized (*r*). A distress for heriot-service can only be made upon the tenant's land within the manor (*s*); and, in this case, the lord might distrain on any beasts and goods liable to distress found upon the land (*t*). If the lord purchase any part of the land in respect of which the heriot-service is due, the heriot-service would become extinct; but if the tenant first sells a part of the land to a stranger, and then sells the residue or a portion of the residue to the lord, the heriot-service would still be due to the lord from the portion held by the stranger (*u*). The question as to the period after which a right to heriot-service will be barred under the provisions of the Limitation Acts of 1833 (*x*) and 1874 (*y*) will be discussed later (*z*).

Suit-heriot, which is often included in the description of heriot-service, is created by contract, being due on some special reservation in a grant or lease of freehold lands made in modern times (*a*). It is little more than an additional rent, and is not necessarily restricted to the taking of the best beast, or to the case of a tenant dying seised in fee of the land. Suit-heriot.

Suit-heriot being considered as a kind of rent, the lord cannot seize, but must either distrain or bring an action

(*p*) *Woodland* v. *Mantel*, Plowd. 94; *Austin* v. *Bennet*, 1 Salk. 356.

(*q*) Kitch. Jurisd. 265, citing Yearb. Mich. 16 Edw. III.

(*r*) *Major* v. *Brandwood*, Cro. Car. 260.

(*s*) *Austin* v. *Bennet*, 1 Salk. 356.

(*t*) See *Major* v. *Brandwood*, Cro. Car. 260; *Osborn* v. *Steward*, 3 Mod. 230.

(*u*) *Chapman* v. *Pendleton*, 2 Brownl. 293; *S. C. nom. Talbot's Case*, 8 Rep. 104 b.

(*x*) 3 & 4 Will. IV. c. 27.

(*y*) 37 & 38 Vict. c. 57.

(*z*) *Post*, p. 212.

(*a*) See *Parker* v. *Gage*, 1 Show. 81; *Lanyon* v. *Carne*, 2 Wms. Saund. 165.

for non-payment (*b*). A separate distress must be made for each suit-heriot reserved (*c*).

Heriot-custom.

Heriot-custom is of a different kind, and is usually an incident of copyholds, though it is also found in freehold manors, where the tenants are subject to customary rules (*d*). It differs from the varieties already described in being no part of the actual tenure, but only its customary incident or fruit, and in not having the qualities which distinguish a payment in the nature of a rent (*e*).

Its nature.

The custom may authorise the lord to take one heriot on the death or alienation of any tenant without respect to the number of his tenements; or, as is more usual, to take a heriot on the death of every tenant for each of his copyhold tenements, and a heriot on every change of the tenancy of each tenement (*f*). The custom is sometimes confined to the case of a tenant dying seised, and being succeeded by the heir; but it is often more extensive, and a heriot of this kind may by custom be payable on the death of any tenant, whether holding an estate of inheritance, or for life or years, or even a tenancy at will (*g*). It differs further from heriot-service and suit-heriot in this respect, that heriot-service and suit-heriot are usually confined to a right of taking the best beast or chattel, but heriot-custom is more varied in its incidents, being entirely regulated by the local usage. It may extend to the best beast, or the second best, or to several, or to animals of a particular kind, as "claw-foot" or "cloven-footed" animals; or it may be confined to "dead goods," excluding animals altogether; or the right may

(*b*) *Edwards* v. *Moseley*, Willes, 192.

(*c*) *Rogers* v. *Birkmire*, 2 Stra. 1040.

(*d*) See *Abington* v. *Lipscombe*, 1 Q. B. 776; *Damerell* v. *Protheroe*, 10 Q. B. 20.

(*e*) *Basingstoke* (*Mayor of*) v. *Bolton* (*Lord*), 1 Dr. 270.

(*f*) See Watk. Copyh. ii. c. 6, and Appendix, for the customs of a large number of manors respecting heriots.

(*g*) See *Hix* v. *Gardiner*, 2 Buls. 195, 196.

have been commuted in ancient times for some small fixed payment; and the custom may extend to some tenements in the manor and not to others, or to a particular class of tenements, there being no general rule in the matter (*k*).

When due.

Where the custom is that every tenant shall be liable to the payment of a heriot on death, it will be due on the death of a tenant in remainder as well as on that of the tenant in possession (*i*), and from the widow or widower upon the determination of his or her tenancy by death, whether the tenancy is of the whole or of a portion only of the estate, unless there is a custom to excuse them (*k*). Where there are joint-tenants or coparceners, no heriot will be due till the death of the last survivor, unless their estate is changed to a tenancy in common or in severalty (*l*); but as tenants in common are severally seised, a heriot will be due on the death of each of them (*m*). It was formerly the rule that where a female copyholder married, her husband and she became seised of the tenement as tenants by entireties, and so if she died in the lifetime of her husband, no heriot was due, because she had no heriotable chattels (*n*), and if her husband died in her lifetime no heriot was due on his death, because there was no change in the tenancy (*o*); but it would appear that as a woman married after the 31st of December, 1882, is now entitled to hold as her separate property all property, whether real or personal, belonging to her at the time of her marriage, or afterwards acquired by her, as if she were a *feme sole*, her separate estate might be held liable after her death to a claim for a heriot in respect of her real estate (*p*). No heriot is payable in respect of any

(*h*) See Kitch. Jurisd. tit. Heriot, and Watk. Copyh. ii. c. 6.

(*i*) *Butler* v. *Archer*, Owen, 152.

(*k*) See Gilb. Ten. 172, 173; *Chapman* v. *Sharpe*, 2 Show. 184.

(*l*) *Padwick* v. *Tyndale*, 1 E. & E. 184.

(*m*) Co. Copyh. s. 56.

(*n*) *Anon.*, 4 Leon. 239.

(*o*) See Co. Litt. 185 b, 351 a.

(*p*) 45 & 46 Vict. c. 75, ss. 2, 5.

equitable estate (*q*). It has been held that by special custom a heriot might be due on the death of the head of a corporation (*r*).

A heriot-custom upon alienation is of the same nature as a fine upon alienation, and may be due by special custom from one of several joint-tenants or coparceners, who alienes his share of the copyhold (*s*).

No heriot of either kind is due from a surrenderee before admittance, but it has been suggested that his heir upon admission would be compellable in equity to make good to the lord the loss that he may have sustained by the neglect of the surrenderee to be admitted (*t*). This does not appear to be warranted by the authorities, which rather show that courts of equity persistently refrained from giving the lord any aid in getting a heriot (*u*).

When the freehold inheritance of a copyhold is granted to a stranger, so that the copyhold is severed from the manor, it has been said that the grantee of the freehold may seize heriots under the custom (*x*), but this seems to be doubtful. In the case of the *Bishop of Gloucester* v. *Wood* (*y*), it appeared that the bishop, who was seised of the manor of D., had demised certain lands to A. and B. during the lives of their three children, subject to the payment of rent, and to the delivery of two best beasts upon the death of every *cestui-que-vie*. Thereafter, the bishop demised all the manor to W., under render of the ancient rent. On the death of the *cestui-que-vies*, it was held that the right to the heriots went with the reversion.

Separate heriots due for separate tenements.

If a copyholder holds several heriotable tenements of the same manor, a heriot will be due for each tenement,

(*q*) *Trin. Coll., Cambr.* v. *Browne*, 1 Vern. 441.

(*r*) Yearb. Mich. 5 Edw. IV. fo. 72 b; and see Fisher, Copyh. 81, n.

(*s*) See Scriv. Copyh. 377.

(*t*) See Watk. Copyh. ii. 147, n., and Scriv. Copyh. 377, n.

(*u*) *Wirty* v. *Pemberton*, 2 Eq. Cas. Abr. 279; *Basingstoke* (*Mayor of*) v. *Bolton* (*Lord*), 3 Dr. 50.

(*x*) *Beale* v. *Langley*, 2 Leon. 209; *S. C.* 4 Leon. 230; *Murrell* v. *Smith*, 4 Rep. 24 b.

(*y*) Winch, 46, 57.

unless there is a custom to the contrary, as in the manors of Framfield and Mayfield, in Sussex, where only one heriot is due by the custom, though the tenant dies seised of several tenements.

Remedies for heriot-custom.

The lord cannot distrain for heriot-custom, except by virtue of a special custom (*s*); but as the property in the heriot vests in him immediately on the tenant's death, he may seize the heriot in any place (*a*). But if he is entitled to the best beast, the property will not vest in him until he has made his selection, and once he has selected, he will be bound, though it should turn out he did not take the best beast (*b*). A *bonâ fide* sale in market overt, by the executors of the deceased tenant, will defeat the lord's title to a particular beast or chattel, which might have been claimed as the best (*c*); but a bequest by the deceased tenant would not have the same effect (*d*). The lord will lose his heriot if the tenant has not any beast at the time of death or alienation (*e*); but if he is deprived of his heriot by the fraud of the tenant, he may bring an action to recover the value of the heriot under the provisions of sections 2 and 3 of 13 Eliz. c. 5 (*f*). If the heriot is eloigned or removed so that the lord cannot seize it, he may bring an action in the nature of trover or detinue against the person detaining it (*g*).

Effect of purchase of the land by the lord

In the case of heriot-custom, if the custom is that on the death of every tenant the lord shall have a heriot, the heriot will still be due, notwithstanding a purchase by the lord of part of the tenement, because the copyholder will

(*s*) *Roger* v. *Birkmire*, Lee, temp. Hardw. 245; *Hungerford* v. *Haviland*, 3 Buls. 323, 325; *Basingstoke* (*Mayor of*) v. *Bolton* (*Lord*), 3 Dr. 50.

(*a*) *Parker* v. *Gage*, 1 Show. 81; Bro. Abr. tit. Heriot, pl. 2, 6, and 7.

(*b*) *Odiham* v. *Smith*, Cro. Eliz. 589; *Abington* v. *Lipscombe*, 1 Q. B. 776.

(*c*) Kitch. Jurisd. 265; and see *Peer* v. *Humphrey*, 2 A. & E. 495.

(*d*) Co. Litt. 185 b.

(*e*) *Shaw* v. *Taylor*, Hob. 176.

(*f*) *Cresswell* v. *Coke*, 2 Leon. 8.

(*g*) Co. Copyh. s. 31; Bro. Abr. tit. Heriot, pl. 6, 9.

still be tenant as to the residue (*e*); and if the tenement escheats to the lord, and he grants it out again, he may reserve a heriot on such fresh grant, and it will not be an objection to such a grant that two heriots are expressed to be reserved, where in former grants only one had been so reserved, if it be by reason of the severance of the heriotable tenement (*f*).

Extinguishment of heriots.

The right to take heriots will be destroyed on enfranchisement of the land, or extinguishment of the copyhold tenure (*g*). And now, under the provisions in the Copyhold Acts, the lord or the tenant or owner of any land liable to any heriot may compel the extinguishment of the heriot (*h*). The question as to the effect of the Limitation Acts in barring the right to heriots will be discussed later (*i*).

When heriots multiplied.

Where a heriot is due by custom for each tenement, the heriot will be multiplied if the tenement should be divided, as if the owner should devise or alienate by parcels (*k*); and it was at one time held that the estates will always be chargeable with the multiplied heriots, although the separate tenements may have afterwards come into the same hands (*l*). But a devise or alienation to joint-tenants or a descent to coparceners can have no such effect, until their estate is severed or altered in quality. Tenants in common will pay the multiplied heriot, whether their shares are separate or undivided; yet if before actual severance the common shares are reunited in the same hands, the tenement is considered not to have been divided, and the heriots will not be multiplied (*m*).

The doctrine of multiplying heriots was established by

(*e*) *Chapman* v. *Pendleton*, 2 Brownl. 293.

(*f*) *Doe* d. *Roberts* v. *Whitaker*, 3 N. & M. 225.

(*g*) See c. xi. *post*.

(*h*) 50 & 51 Vict. c. 73, s. 7.

(*i*) *Post*, p. 212.

(*k*) *Snag* v. *Fox*, Palm. 342.

(*l*) *Attree* v. *Scutt*, 6 East, 476.

(*m*) *Garland* v. *Jekyll*, 2 Bing. 273; *Holloway* v. *Berkeley*, 6 B. & C. 2.

the case of *Attree* v. *Scutt* (*n*), and seems to have been based upon the following statement made by Fitzherbert, apparently founded on some early case which is not reported in the year-books: "If my tenant who holds of me by a heriot alienes part of his land to another, each of them is chargeable to me with a heriot, because it is entire; and if the tenant purchases the land again, yet if I were seised of the heriot by the other man I shall have of him for each portion a heriot" (*o*). The same authority was thus cited by Comyns: "If tenant by heriot-service alienes parcel, the heriot shall be multiplied, and if the lord be seised of a heriot by the alienee it shall continue, though the tenant re-purchase the parcel (*p*). In the case of *Attree* v. *Scutt* (*n*) it was held that, where a copyhold was devised to two persons in common, the owner of each portion was liable to a separate heriot and fine, and that if one surrendered to the use of the other the tenements remained separate; and it was said that if land held by an indivisible service is separated and afterwards united, the services would continue to be payable, not as for one tenement, but for each portion, for they would not again become one tenement in respect of the lord (*q*); and that this doctrine was as applicable to estates held in common as to those in severalty. But in the case of *Garland* v. *Jekyll* (*r*), Best, C. J., entirely denied the authority of the passage from Fitzherbert, observing that there must be some great mistake about it, and that perhaps it was but a decision at Nisi Prius. In this case it appeared that two heriotable tenements held of the manor of Weeks Park Hall, in Essex, had become through various descents divisible into some twenty-two separate estates, which had all become vested and re-united in the person of Sir T. C. Bunbury. The plaintiff, as lord of the manor, claimed that he was

(*n*) 6 East, 476.
(*o*) Fitz. Abr. tit. Heriot, pl. 1.
(*p*) Com. Dig. Copyh. (K. 19).
(*q*) See *Bruerton's Case*, 6 Rep. 1 a; *Talbot's Case*, 8 Rep. 104 b; *Lofield's Case*, 10 Rep. 106 a.
(*r*) 2 Bing. 273.

entitled to twenty-two heriots; and the question for the opinion of the Court was whether he was entitled to more than two heriots, and, if so, to how many. In delivering the judgment of the Court, Best, C. J., pointed out that no custom had been proved requiring the payment of multiplied heriots after there had been a re-union of estates, and that consequently it was unnecessary for the Court to determine whether such a custom would be good or not. The point for their decision had been discussed as a question of law, "and we are to say whether without any custom being found it is the necessary legal consequence that, when an estate has been divided and again re-united, all the heriots are to be paid after the re-union of the several estates that were paid whilst it was divided: we say that there is no such law, and no such doctrine." The Court accordingly held that only two heriots were payable on the death of Sir T. C. Bunbury, notwithstanding the tenancy in common that had intervened in the descent of the tenements down to him.

The case of *Holloway* v. *Berkeley* (*s*), still further broke down the doctrine laid down in *Attree* v. *Scutt*. It was there held that the creation of a tenancy in common, until a severance is made, does not destroy the unity of the tenement, so that the heriots will not in such a case be multiplied. "The authority from Fitzherbert is the case not of the creation of a tenancy in common, but of a severance of the estate into distinct parcels, and the alienation of one of those parcels of the land to others. It does not appear from Fitzherbert whether that was the case of a copyhold or a freehold tenement, but it has been frequently noticed in subsequent cases, and it is a relief to us not to be called upon to impeach it. Whether it be a right or a wrong decision we consider to be a matter still open for discussion."

Effect of alienation in

As regards freeholds held by an ancient tenure, with heriot-service forming part of the rent, it would seem that

(*s*) 6 B. & C. 2.

the heriot would be multiplied upon alienation. If B. holds of A. by such a tenure, and alienes part of his land to C. in fee, C. will no doubt hold of A. by the same services as were due from B. by force of the statute *Quia Emptores* of the 18th year of Edward I.; and the statement of Fitzherbert might well apply to such a case. So if a heriot be reserved upon a modern tenancy of freehold lands, it will be in the nature of a rent issuing out of the tenement; and an actual severance of the tenement might cause a multiplication of the heriot on account of its not being apportionable. But it has been held that as the reservation of a heriot is to be construed strictly the assigns of a tenant *pur autre vie* would not be compelled to pay it without an express declaration in the deed to that effect (*t*). multiplying heriots.

But as regards heriot-custom in copyholds the case appears to be different. For this is not of the nature of a rent at all, but merely a fruit or incident of the tenure. If the lord purchases part of the tenant's land, the custom as to the remainder is not destroyed, because the heriot does not issue out of the whole of the land (*u*); it is difficult therefore to contend, that on an alienation of part the tenant must necessarily have the heriot multiplied on the ground that it is an entire service like rent, but not apportionable. If the multiplication is to be supported, it must be on the express terms of the custom, which in these cases is always construed strictly; for, as above mentioned, it may be the custom in freeholds or in copyholds that but one heriot shall be paid on death for all the tenements of which the tenant died seised, or again that if a man dies tenant of several heriotable tenements he shall pay several heriots, or that on the death of every tenant the lord may seize a heriot for each tenement or parcel of a tenement (*x*). It is true that an ancient tenement when alienated in

(*t*) *Randall* v. *Scory*, Cro. Car. 313; *Ingram* v. *Tothill*, 1 Mod. 216; *S. C.* 2 Mod. 93.

(*u*) *Ante*, p. 203.

(*x*) *Ante*, p. 200.

parcels, or severed among tenants in common, is divided into distinct tenements, both for the purpose of entry under distinct titles on the court-roll, and also for the payment of customary dues (*y*). But there may be a re-union if the land has not been severed, and in such case the custom would not authorise the treating it as if it were made up of distinct heriotable parcels.

It has been a rule of law that the fines and other claims of the lord are not to be carried to such an extent as to make the copyholder's inheritance worthless (*z*); and customs are held unreasonable which profess to give to the lord privileges which cannot be reasonably supposed to have been reserved by him upon his original grant, such as the right to do something which would make the copyhold valueless (*a*). Looking to the original condition of the class of persons who grew from tenants at will into copyholders, it seems improbable that the custom required them in the beginning to forfeit a heriot on death or alienation for every parcel of land. There are sometimes express provisions to meet the case of tenants with several tenements, as in the manor of Hemel Hempstead, Herts, where the custom is that the lord should have the second best chattel on a death, but if any tenant has more than one messuage or cottage, he shall pay for every such messuage 12*d.* and for every such cottage 6*d.* in the name of a heriot (*b*); and by analogy to such cases, it is possible that a custom to take a heriot on every alienation or death of a tenant seised of any severed parcel of an ancient tenement would be held to be unreasonable. In the case of *Holland* v. *Lancaster* (*c*) a customary relief or alienation-fine, similar to a heriot-custom in its nature as not being a rent, but not being so burdensome, was held to be void upon the ground that it was alleged to be due by custom on the

(*y*) *Traherne* v. *Gardner*, 5 E. & B. 913.

(*z*) *Per* Best, C. J., in *Garland* v. *Jekyll*, 2 Bing. 273, 294.

(*a*) *Salisbury* (*Marquis of*) v. *Gladstone*, 9 H. L. Cas. 692.

(*b*) See Watk. Copyh. ii. 495.

(*c*) 2 Ventr. 134.

alienation of any parcel of any lands held of the manor, and to be equal in amount to one and a-half year's quit-rent, "so that if one-twentieth part of an acre be aliened, the fine is to be paid, and that of the whole rent; for every parcel is held at the time of the alienation by the whole rent, and no apportioning thereof can be but subsequent to the alienation, and this the whole Court held to be an unreasonable custom." This was the case of a freehold; but the principle there laid down would seem to be applicable to the case of a heriot-custom claimed in favour of the lord on every alienation of a parcel of a tenement.

Claims to heriots not favoured by Courts, unless right clear.

Courts of equity are not disposed to assist the lord in obtaining a heriot where he has no remedy at law for its recovery; but it would seem that if the lord has clearly a legal remedy, which by accident or through some circumstance beyond his control he is unable to enforce, they will assist him. In *Wirty* v. *Pemberton* (*d*), the Court of Chancery refused to give relief to the lord of a manor who alleged that he was entitled by custom to heriots from his freehold tenants upon every alienation or death and that they made long leases of their tenements, so as to deprive him of his heriots, on the ground that such customs were oppressive, and that equity never interposed in such cases; and in the case of *The Mayor, &c. of Basingstoke* v. *Lord Bolton* (*e*), where it appeared that the lords of a manor claimed certain sums in lieu of customary reliefs and heriots out of thirty-eight distinct freehold tenements, but that by reason of a confusion of boundaries they could not ascertain the particular estates and were therefore unable to distrain, a bill by them in Chancery, praying that the boundaries might be ascertained, was successfully demurred to on the ground that there was no allegation or proof of a custom to distrain. But the Court stated that if the bill had shown a long usage to pay rent, but that by accident or length of time the boundaries had become confused, it

(*d*) 2 Eq. Cas. Abr. 279. (*e*) 1 Dr. 270.

would have given relief to enable the lords to obtain their legal remedy. In a subsequent suit between the same parties (*f*) the lords claimed the same manorial dues as rent, or in the nature of rent, to be paid on the death of each tenant of the thirty-eight tenements by his representatives. It appeared that in some cases the executors of a deceased tenant had paid these customary heriots and reliefs, but it was not shown that the tenant was in possession of all the tenements, and the proportionate payment due from each estate was not known. It was held, under the circumstances, that the lords had no equity against the executors of the deceased tenant, although it appeared that in consequence of the descriptions having been lost the lords would not have any remedy at law (*g*).

7. *Customary Reliefs.*

Their nature.

A copyholder may be bound by custom to pay a small sum, called a relief, upon every inheritance, and in some manors upon every purchase of a tenement; and elsewhere the customary fines on alienation are called reliefs (*h*). They do not appear to be of the nature of a rent, and are not recoverable by distress, except under a special custom,

Lord's remedy.

the lord's remedy being in general by action (*i*). As with the relief due at common law from free tenants in socage, their amount is usually fixed by reference to the amount of the quit rent; but the payment is generally trifling, being fixed at a small sum for every tenant, or at half the year's quit-rent, or the like. It has been held that a relief is not apportionable (*k*), and it cannot be claimed on the death of one of several coparceners or joint tenants (*l*).

(*f*) 3 Dr. 50.

(*g*) See also *Croome* v. *Guise*, 4 Bing. N. C. 148, 160.

(*h*) Co. Litt. 93a, n. 2 (Harg.); Co. Copyh. s. 25; and see *Holland* v. *Lancaster*, 2 Vent. 134.

(*i*) *Hungerford* v. *Havyland*, W. Jon. 132; *Basingstoke* (*Mayor of*) v. *Bolton* (*Lord*), 3 Dr. 50.

(*k*) *Anon.*, 3 Leon. 13.

(*l*) Scriv. Copyh. 369.

Reliefs cease to be payable when the land is enfranchised under the provisions of the Copyhold Acts, or when the copyhold tenure is extinguished (*m*) : and now, under the provisions of the Copyhold Acts of 1852, 1858, and 1887, the lord or the tenant or owner of any land liable to relief may compel the extinguishment of the relief and the release of the land from such payment (*n*). Extinguishment.

8. *Rents.*

The tenant is also liable in most cases to the payment of ancient rents of small amount yearly, which are called rents of assise or quit-rents, the latter term being appropriate when the payment is made in lieu of all other services under some ancient commutation. When the copyhold comes into the hands of the lord, it has been shown that he may re-grant it as copyhold, provided that he has created no common law interest in the land higher than a tenancy at will (*o*). Upon a grant of this kind he may alienate the tenement by parcels, and apportion the rents and services, but he must not alter them in any other way, as he is "custom's instrument" (*p*), and is not permitted to create what would in effect be a new copyhold. "He can neither add to nor diminish the ancient rent, nor make the minutest variation in other respects" (*q*). Where the tenants hold under a corn-rent, or an annual sum of money in lieu thereof, in the absence of a custom to the contrary the election is with the tenant to pay either in money or in corn (*r*).

Hewitt v. Earl of Harrington. 1893 2 Ch. 447.

The lord may distrain for rents of assise (*s*), even though the land is in the hands of a lessee (*t*) ; and, under the statute 4 Geo. II. c. 28, he has the same remedies by Lord's remedies.

(*m*) *Post*, c. xi.
(*n*) 50 & 51 Vict. c. 73, s. 7.
(*o*) *Ante*, p. 46.
(*p*) Co. Copyh. s. 41.
(*q*) See *Doe* d. *Rayer* v. *Strickland*, 2 Q. B. 792.
(*r*) *Blewett* v. *Jenkins*, 12 C. B. N. S. 16.
(*s*) Co. Litt. 150 b.
(*t*) *Rivet* v. *Downe*, 2 Brownl. 279.

distress for rents of assise as may be had in the case of rents reserved upon a lease. The lapse of twelve years will now bar the lord's right to recover (*u*). For any arrears of rent the lord will be entitled to bring an action, and to recover arrears for six years (*x*); but in such action it seems that he must set out the particular lands (*y*).

Extinguishment.

Quit-rents will cease to be payable on extinguishment of the copyhold tenure or enfranchisement of the land (*z*); and they may be compulsorily extinguished by either the lord or the tenant or owner of the land under the provisions of the Copyhold Acts (*a*).

Effect of Limitation Acts on heriots and other casual services.

There has been considerable discussion whether the Limitation Acts of 1833 and 1874 (*b*) apply to proceedings for the recovery of heriots and other casual rights or services due at uncertain intervals, which may extend over a longer time than the periods mentioned in those Acts. It should be observed that the old Statute of Limitation, 32 Hen. VIII. c. 2, did not apply to actions or proceedings for casual rights or services which might not occur within the period of limitation, or which might not occur more than once during the lord's or tenant's life, as heriots, fealty, customary fines and reliefs, or the like (*c*); as to rents and periodical services, including suit of court and personal services in the nature of rent, the time of limitation was fifty years. It seems that when a casual service like a heriot was part of an ancient rent-service, as in the case of heriot-service due by tenure and recoverable by distress, the right to the heriot might be barred by the loss of the rent of which it had formed a portion; but where the heriot or other casual service was not part of the rent, but only an incidental fruit of the tenure, as where it was

(*u*) 3 & 4 Will. IV. c. 27, s. 2; 37 & 38 Vict. c. 57, s. 1.

(*x*) 3 & 4 Will. IV. c. 27, s. 42.

(*y*) See *North* v. *Strafford* (*Earl of*), 3 P. Wms. 148, 151; *Basingstoke* (*Mayor of*) v. *Bolton* (*Lord*), 3 Dr. 50.

(*z*) *Post*, c. xi.

(*a*) 50 & 51 Vict. c. 73, s. 7.

(*b*) 3 & 4 Will. IV. c. 27; 37 & 38 Vict. c. 57.

(*c*) *Bevil's Case*, 4 Rep. 8 a, 10 b.

due by custom and not recoverable by an ordinary distress, then no period of limitation for recovery of the service or the arrears was fixed.

The difficulty arose from the terms of the Act of 1833, by which it is declared that the word "rent," when occurring in that Act, "shall extend to all heriots, and to all other services and suits for which distress may be made," except where the nature of the provision or the context of the Act excludes such construction (*d*). The Act provides that 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 shall have first accrued to the person making or bringing the same (*e*); and it declares that the right to bring an action to recover any rent shall be deemed to have first accrued, if the person claiming, or the person through whom he claims, shall in respect of the estate or interest claimed have been in receipt of such rent and shall while entitled thereto have discontinued such receipt, at the time of the discontinuance of possession, or at the last time at which the rent was so received, and if he claims under a conveyance from the person who was in receipt of the rent and no one shall have been in receipt of the rent under the conveyance, then the right to bring the action shall be deemed to have first accrued when the person claiming, or the person through whom he claims, became entitled to such receipt under the conveyance; and there are other provisions as to grants of estates and interests in expectancy, and titles under a forfeiture or breach of condition (*f*). The Act also provides that on the determination of the period

(*d*) Sect. 1. (*e*) Sect. 2. (*f*) Sect. 3.

limited by the Act, the right of the person to the land or rent, for which the action might have been brought, shall be extinguished when no action has been taken (*g*). The Act does not apply to rents reserved upon leases for years, but only to those which can exist as inheritances distinct from the land (as the copyholders' rents above mentioned), for which before the Act the person claiming might have had an assise or possessory action (*h*). In *Owen* v. *De Beauvoir* (*i*), it was held that the period within which an action for recovery of rent must be brought runs not from the time when the rent becomes due and remains unpaid, but from the last time at which it was paid. In the course of the arguments in that case it had been pointed out that if the Act were construed in that manner, heriots and rents becoming payable at longer intervals than the twenty years allowed by the Act might be extinguished without any default of the lord, if it happened that the intervals at which they became due exceeded twenty years; but in delivering the judgment of the Court of Exchequer, Parke, B., said: "But as to heriots, probably the answer to the objection may be that in a case similar to that now before us the word 'rent' would not include heriots; for though by the interpretation clause it is made to include them, yet that is only where the nature of the provision or the context does not exclude such a construction; and it may be that the injustice pointed out would afford grounds for holding that in the clause now under consideration the word 'rent' does not include heriots. A similar observation may be made upon the case of rents payable at greater intervals than twenty years." The same view of the matter was taken by the Court of Queen's Bench in the later case of *Earl of Chichester* v. *Hall* (*k*). There it appeared that freehold land was held by heriot, relief, and a quit-rent among other services; and the lord's right to

(*g*) Sect. 34.

(*h*) *Grant* v. *Ellis*, 9 M. & W. 113; *Archbold* v. *Scully*, 9 H. L. C. 360.

(*i*) 16 M. & W. 547; *S. C.*, 5 Exch. 166 (Ex. Ch.).

(*k*) 17 L. T. 121.

seizę was upheld under the following circumstances. The last heriot had been seized in 1804. The next tenant died in 1824, but there was no evidence as to seizure on that occasion. The lord became owner of the manor in 1826, and in 1847 seized a heriot on the death of the tenant. No service was proved to have been paid since 1804. The Court was of opinion that as no opportunity of seizing a heriot had occurred since the lord's estate had become an estate in possession in 1826, his right of action was not barred, and that there was no presumption that the services had been released, but they held that the right to recover the quit-rent had been barred. "The second and third sections" (of the Act), said Patteson, J., "cannot be put together, so as to make the last receipt of a heriot, which only falls due at long and irregular intervals, the point of time from which the period of limitation begins to run. The twenty years must, I suppose, run from the time when the right to have the heriot accrued" (*l*). The latest reported case on the point is that of *Lord Zouche* v. *Dalbiac* (*m*); and there the Court of Exchequer expressed great doubt whether, notwithstanding the interpretation of rent in sect. 1 of the Act of 1833, either heriot-service or heriot-custom was within the provisions of the Limitation Acts. The action was one of trespass for seizing and taking two horses, and the defendant justified his proceedings on the ground that he had the right to seize the horses as heriots, one in respect of each of the two tenements held by the plaintiff. On a replication by the plaintiff and a demurrer thereto by the defendant, it was admitted by the parties, for the purpose of the demurrer, that more than twenty years before the heriots in question became due, a heriot in respect of each of the two tenements had become due for which the lord did not seize, although he could have done so. Kelly, C. B., after referring to the terms of sects. 1, 2, 3, and 34 of the Act

(*l*) 17 L. T. at p. 122. (*m*) L. R. 10 Ex. 172.

of 1833 (*n*), said: "When, therefore, we look at the literal words of these sections, it is enough to say that, but for sect. 1, the present case would clearly not be within the statute. The Court of Exchequer seems to have been of this opinion, as appears from the judgment in *Owen* v. *De Beauvoir* (*o*), delivered by Parke, B. No authority or dictum has been cited that heriots are within these sections, though one would have expected the case to arise more than once since 1833, the date of the statute. In considering the spirit of the statute, we must remember the essential difference between the nature of rent and of a heriot. Rent is a noun of multitude, meaning not one single sum due at some one moment which may be recovered by action, and may be lost if not, but meaning a succession of sums of money payable in general yearly, or at shorter intervals during the whole time specified. A heriot is a right to take a single specific chattel, a right arising either upon death or alienation, in a manor. It is not of a continuous nature. To apply to such a subject words in the statute which are applicable only to continuous payments would be to disregard the principle and spirit of the statute; and to apply such words to a case in which no opportunity may occur of enforcing the right for perhaps twenty, thirty, or forty years, would seem to be a total departure from the intention of the legislature"; and after referring to the passage in the judgment of the Court in *Owen* v. *De Beauvoir*, quoted above (*p*), he continued: "It is unnecessary for our present judgment to go so far as to say that no case could arise in which 'rent' in the statute would include heriots. Bearing in mind the qualification imposed in sect. 1 upon the meaning of 'rent,' 'except where the nature of the provision or the context of the Act shall exclude such construction,' it is enough for us to say that upon the facts before us the nature of

(*n*) See *ante*, pp. 213, 214.
(*o*) 16 M. & W. 547.
(*p*) *Ante*, p. 214.

the provision excludes the application of these sections to the taking of the heriots in question. This view receives confirmation from sect. 3, the effect of which, according to *Owen* v. *De Beauvoir* (*q*), is that the time when the right to bring an action to recover rent shall be deemed to have accrued, shall be the last time at which any rent was received. If, therefore, rent in that section includes heriots, the twenty years begin to run not from the time when the heriots became due and the lord failed to enforce the right, but from the time when the last heriot was taken; so that if the last heriot was taken in 1850 and no death occurred till 1873, the lord's title would be barred under sect. 34, though he had no opportunity of exercising his right. The view we take is fortified by the consideration of sect. 42" (which provides that no arrears of rent shall be recovered by action, &c., but within six years next after the same respectively shall have become due). "Now, if 'rent' does anywhere in the statute include heriots, it may be in sect. 42, so that the meaning may be that the heriots, the right to which accrued in 1873, cannot be recovered after six years from the time when they became due"; and Barons Bramwell, Pollock, and Amphlett concurred in the same view. From these cases it would appear to be the rule that when a heriot falls due the lord should enforce his right to the heriot within six years, and if he lets that period elapse without recovering the heriot, his right to that particular heriot will be lost; but his title to future heriots will not thereby be barred, even although the period of twenty years allowed by the Act of 1833, or the period of twelve years allowed by the Act of 1874, should elapse before another heriot falls due. It would also seem to be the better opinion that when the word 'rents' is to be taken as including heriots, it extends to all heriots, whether customary or otherwise, and not

(*q*) 16 M. & W. 547.

only to heriots for which distress may be made (*r*). But the Limitation Acts do not in general apply to services and suits for which no distress can be made; customary reliefs and customary services or dues, such as fealty or suit of court, are not therefore affected by mere neglect and lapse of time.

But what has been said with reference to customary dues which are not subject to the Statutes of Limitation, must be taken subject to the rule that a custom to be valid must be continuous. "Continual usage and practice from time immemorial makes a custom, and if a custom be discontinued, it is gone" (*s*). An interruption would cause it to cease, and its revival, being within time of memory, will be void. This must be understood with regard to an interruption of the right; for an interruption of possession only does not destroy the custom, but only makes it more difficult to prove; but after a discontinuance of the right, even for a day, the custom will be at an end (*t*). And no doubt very long negligence of the lord to enforce his right may be evidence of a release of the customary services, on the ground that a man will naturally enjoy what is his own, and that he will be presumed not to have a right which he claims, if when it would be convenient or necessary to him he has never enjoyed it in fact (*u*).

When the benefits of tenure are so slight, as in the case of trifling quit-rents, that the lord has neglected to assert them, no presumption will arise, in the case of freehold tenants, that the tenure has thereby been changed (*x*). This applies to copyholds when the manorial courts have been held unfrequently, and the lord has had no great

(*r*) See judgment of Amphlett, B., in *Zouche* (*Lord*) v. *Dalbiac*, L. R. 10 Ex. 172, 182; Darby & Bos. on Statutes of Limitation, 208—210, 224, *contra*.

(*s*) *Case of Tanistry*, Dav. 28 b, 32 a, 33 b.

(*t*) Co. Litt. 114 b.

(*u*) See *Hillary* v. *Waller*, 12 Ves. jun. 239, 264; *Baldwin* v. *Peach*, 1 Y. & C. (Ex.) 453.

(*x*) *Chichester* (*Earl of*) v. *Hall*, 17 L. T. 121.

object in claiming the small customary payments. In such a case a copyhold might remain in a customary tenure for a century, and nothing be done on either side by the lord or the tenant; and on a sale of the land as freehold the Court might refuse to compel specific performance of the contract, if the vendor were aware of the dormant copyhold tenure (*y*). If, however, the copyhold has for a long time been treated as freehold, an enfranchisement will be presumed even against the Crown, if it be in any way possible (*z*).

When the lord has entered on a copyhold for an absolute forfeiture, or even for a forfeiture *quousque* to compel the heir to come for admittance, and has held the land for twelve years, the heir's right to be admitted will be barred by the Statutes of Limitation (*a*), subject to the provisions for extending the time in case of disabilities (*b*). The lord neglecting to enter for a forfeiture will be barred of his entry after twelve years (*c*).

It has been suggested that a person who should hold the land without seeking admittance, either refusing or neglecting to fulfil the customary duty, might after the statutory period claim under the same Act to hold the land discharged of all copyhold services. But it seems to be a more correct view that the fealty, suit of court, customary reliefs, and other payments which are not in the nature of rent, are not within the Statutes of Limitation (*d*); and that the land continues to be of copyhold tenure until something is done which can be treated as a positive act of enfranchisement.

(*y*) *Turner* v. *West Bromwich Union* (*Guardians of*), 9 W. R. 155; *S. C.*, 3 L. T. N. S. 662; *Price* v. *Macaulay*, 2 De G. M. & G. 339, 344.

(*z*) *Roe* d. *Johnson* v. *Ireland*, 11 East, 280; *In re Lidiard and Jackson's and Broadley's Contract*, 42 Ch. Div. 254.

(*a*) *Walters* v. *Webb*, L. R. 5 Ch. 531.

(*b*) 3 & 4 Will. IV. c. 27; 37 & 38 Vict. c. 57, s. 5.

(*c*) *Whitton* v. *Peacock*, 3 Myl. & K. 325; *Doe* d. *Tarrant* v. *Hellier*, 3 T. R. 162, 172; and *In re Lidiard and Jackson's and Broadley's Contract*, 42 Ch. Div. 254, 258.

(*d*) See Dart's V. & P. 467.

CHAPTER VII.

INCIDENTS OF COPYHOLDS (*continued*) AND MANORIAL FRANCHISES.

Incidents of tenure.

BESIDES the incidents of tenure already described, copyholds are liable to escheat for want of heirs, to forfeitures in certain cases, and to several other minor incidents.

Escheat.

Nature of lord's right.

If a copyhold tenant dies intestate and without heirs, the lord is entitled to claim the land by escheat, and the tenure will thereby be extinguished, but the land may be granted out again to be held by copy of court roll if the lord has not destroyed its demiseable quality by the creation of a common law estate in it (*a*). It was formerly necessary that there should be a presentment by the homage of the death of the tenant, and that proclamations should be made for the heirs of the tenant, before the lord could enter on the land; but a presentment will now be unnecessary, as customary courts may be held and proclamations made at them without the presence of any copyhold tenants, though such proclamations do not affect the right of any person not present at the court unless notice of the proclamation has been served on him within one month (*b*). Where the lord takes by escheat, he holds the land subject to the freebench, if any, of the widow of the tenant, and to any lease which may have been made

(*a*) Co. Copyh. s. 28; *French's Case*, 4 Rep. 31 a.

(*b*) 4 & 5 Vict. c. 35, s. 86.

by the copyholder with his licence (*c*). A copyhold cannot escheat to the Crown (*d*). As escheat is grounded on the want of a tenant to perform the services due in respect of the tenement (*e*), there could be no escheat of an equitable estate (*f*); and accordingly where the trusts had come to an end, and the trustee was still a tenant on the court rolls, it was held that he had a right to hold as against the lord (*g*). But now it is provided by the Intestates' Estates Act, 1884 (*h*), that where a person dies after the 14th of August, 1884, without an heir, and intestate in respect of any real estate consisting of any equitable estate or interest in any corporeal hereditament, whether devised or not to trustees by the will of such person, the law of escheat shall apply in the same manner as if such estate or interest were a legal estate in a corporeal hereditament (*i*); and for the purposes of that Act intestacy is defined as follows, "Where any beneficial interest in the real estate of any deceased person, whether the estate or interest of such deceased person therein was legal or equitable, is, owing to the failure of the object of the devise or other circumstances happening before or after the death of such person, in whole or in part not effectually disposed of, such person shall be deemed, for the purposes of the Act, to have died intestate in respect of such part of the said beneficial interest as is ineffectually disposed of" (*k*).

Equitable estate.

Intestates' Estates Act, 1884.

On the principle that it was for want of a tenant that the lord might claim by escheat, it was settled that if a trustee who had been admitted without any reference to the trusts appearing on the court rolls, or a mortgagee who had been admitted on a surrender in which no condition was expressed, died intestate and without heirs, the estate

Trust or mortgage estates.

(*c*) *Chantrell* v. *Randall*, 1 Lev. 20; *Turner* v. *Hodges*, Hutt. 101.

(*d*) *Walker* v. *Denne*, 2 Ves. jun. 170, 187.

(*e*) *Att.-Gen.* v. *Sands*, Hardr. 488.

(*f*) *Burgess* v. *Wheate*, 1 W. Bl. 123, 167.

(*g*) *Gallard* v. *Hawkins*, 27 Ch. Div. 298.

(*h*) 47 & 48 Vict. c. 71.

(*i*) *Ibid.* s. 4. (*k*) *Ibid.* s. 7.

would have escheated, and the lord would have been entitled to hold the land freed from the trust or the equity of redemption; but if the lord had assented to the trust or condition being entered on the court roll, he would have taken subject to the trust or condition, for he could not claim against his own act (*l*). But as injustice arose from this rule, it was provided by the Trustee Act, 1850 (*m*), that when any person who was seised of any lands upon any trust or by way of mortgage dies intestate and without an heir, the Court may make a vesting order, which will have the same effect as a conveyance by the heir. If the mortgagor died intestate and without heirs, and the mortgage was not merely for a term of years, the land would not escheat, but the mortgagee will hold the land freed from the equity of redemption, but subject to the debts of the mortgagor (*n*); but if the mortgagee demanded the money from the personal representatives, "the Court would compel the mortgagee to re-convey, not to the lord by escheat, but to the personal representatives" (*o*).

Where the lord takes by escheat, the estate in his hands is liable to the debts of the person whose estate has escheated (*p*). A mere contract to sell by the deceased tenant will not defeat the lord's right to escheat (*q*); but the lord's title to an escheat may be waived by his acceptance of any rent or service in such manner as will amount to a virtual admittance from a person in possession of the copyhold (*r*), and will be lost altogether if his claim is not made within the period fixed by the Limitation Acts (*s*).

(*l*) See *Burgess* v. *Wheate*, 1 W. Bl. 123, 167; *Att.-Gen.* v. *Leeds* (*Duke of*), 2 Myl. & K. 343; *Gallard* v. *Hawkins*, 27 Ch. Div. 298; Lewin, Trusts, 8th ed. 221, 248.

(*m*) 13 & 14 Vict. c. 60, ss. 15, 19.

(*n*) *Beale* v. *Symonds*, 16 Beav. 406; and see *Downe* (*Viscount*) v. *Morris*, 3 Hare, 394; and *Evans* v. *Browne*, 5 Beav. 114.

(*o*) *Per* Sir Thos. Clarke, M.R., in *Burgess* v. *Wheate*, 1 W. Bl. 123, 149.

(*p*) *Hughes* v. *Wells*, 9 Hare, 749.

(*q*) *Stephens* v. *Baily*, Nels. Ch. Rep. 106, 107.

(*r*) *Doe* d. *Tarrant* v. *Hellier*, 3 T. R. 162, 171.

(*s*) 3 & 4 Will. IV. c. 27, s. 1; 37 & 38 Vict. c. 57.

Notwithstanding an enfranchisement of the land made since the 16th of September, 1887, the lord is entitled, in the case of escheat for want of heirs, to the same right and interest in the land as he would have had if there had been no enfranchisement; and accordingly, in making valuations for compensation payable to the lord on any enfranchisement since that date, the valuers are not to take into account the value of escheats (*t*). Enfranchisement.

Forfeiture.

A copyhold may be forfeited by a wrongful act done to the prejudice of the lord, or by anything which amounts to a determination of the tenancy. The forfeiture may be occasioned by waste, or the creation of an unauthorised estate, or by wilful neglect or refusal to perform the customary duties and services. All cases of forfeiture are *strictissimi juris*, and the courts will take care that there is the utmost accuracy in the lord's proceedings, and will remit the penalty if any irregularity is discovered (*u*). When the law gives the lord another remedy, as where the custom imposes a fine for an offence, the forfeiture will not be allowed (*x*). On the same principle courts of equity have frequently relieved against forfeitures, where compensation could be made to the lord, it being possible to regard the penalty as imposed merely *in terrorem*, or as a security for compelling the tenant to perform his duties. Under certain circumstances the Court has given relief even in cases of voluntary waste, or refusal of services, but has sometimes put the tenant upon terms of paying the costs and repairing the damage; but the relief will be refused if the tenant should persist in committing acts of forfeiture (*y*). Cause of forfeiture.

(*t*) 50 & 51 Vict. c. 73, ss. 4, 5.

(*u*) *Doe* d. *Tarrant* v. *Hellier*, 3 T. R. 162, 169.

(*x*) *Paston* v. *Utbert*, Litt. Rep. 264, 267.

(*y*) *Peachy* v. *Somerset* (*Duke of*), 1 Stra. 447; *Nash* v. *Derby* (*Earl*), 2 Vern. 537; *Cox* v. *Higford*, 2 Vern. 664; and generally see Vin. Abr. vi. 152, *et seq.*

The proper person to take advantage of a forfeiture is the lord of the manor for the time being, however small his interest may be (*z*); and the grantee of the freehold inheritance of a copyhold is in the position of the lord of the manor, so far as forfeitures are concerned (*a*).

If the lord dies before any entry or seizure is made for a forfeiture, the reversioner or remainderman cannot take advantage of the forfeiture, except where the act destroys the estate (*b*). The lord may dispense with taking advantage of the forfeiture, either expressly or by implication, as by doing any act which requires the continued tenancy of the offender (*c*). The lord must enter for a forfeiture within the period allowed by the Statutes of Limitation (*d*).

Forfeiture for Felony.

Forfeiture for felony.

Copyholds, until the year 1870, were forfeited to the lord by the conviction and attainder of the tenant (except as regards trust or mortgage estates) for treason or felony (*e*), and by special custom by conviction without attainder (*f*). Before the lord's title could vest in him, the felony was to be presented and seizure made on his behalf (*g*). No forfeiture was allowed before attainder, except by special custom (*h*); but the attainder of an unadmitted devisee or surrenderee did not work a forfeiture (*i*).

(*z*) *Meere* v. *Kidout*, Godb. 175.

(*a*) *East* v. *Harding*, Cro. Eliz. 498.

(*b*) Co. Copyh. s. 60; *Lady Montague's Case*, Cro. Jac. 301; *Doe* d. *Tarrant* v. *Hellier*, 3 T. R. 162, 173; *Doe* d. *Bover* v. *Trueman*, 1 B. & Ad. 736.

(*c*) Co. Copyh. s. 61; *Milfax* v. *Baker*, 1 Lev. 26; *Doe* d. *Tarrant* v. *Hellier*, 3 T. R. 162, 171.

(*d*) *Whitton* v. *Peacock*, 3 Myl. & K. 325.

(*e*) *Rex* v. *Mildmay* (*Lady*), 5 B. & Ad. 254.

(*f*) *Rex* v. *Wilkes*, 3 B. & Ald. 510.

(*g*) *Gittins* v. *Cowper*, 2 Brownl. 217; *Doe* d. *Evans* v. *Evans*, 5 B. & C. 584.

(*h*) *Rex* v. *Wilkes*, 3 B. & Ald. 510.

(*i*) *Roe* d. *Jefferey* v. *Hicks*, 2 Wils. 13; see *Borneford* v. *Packington*, 1 Leon. 1.

Copyholds, however, are not forfeitable for outlawry (*j*). As to trust and mortgage estates, it is provided by the Trustee Act, 1850 (*k*) (practically re-enacting the provisions of the Act 4 & 5 Will. IV. c. 23, s. 3) that no lands vested in any person upon any trust, or by way of mortgage, shall escheat or be forfeited to the lord or lady of a manor by reason of the attainder or conviction for any offence of such trustee or mortgagee, but shall remain in the trustee or mortgagee, or survive to his or her co-trustee, or descend to or vest in his or her representatives, as if no such attainder or conviction had taken place. By an Act passed in 1870, attainders and forfeitures for treason and felony, except forfeitures upon outlawry, were abolished (*l*). The Act, however, is in general terms, copyholds not being mentioned, and it might be a question how far, according to the general rules for interpreting such statutes, it can be extended to take away forfeitures from lords of manors, especially where the custom authorises forfeiture for conviction of felony without attainder (*m*). The Act 54 Geo. III. c. 145, which provides that no attainder for felony (except in cases of treason or murder) shall prejudice the title of any person, other than the title of the felon during his life, has been considered not to be applicable to copyholds (*n*).

Waste.

Forfeiture for waste is incurred by an act or neglect which changes the nature of the tenement granted to the prejudice of the inheritance (*o*). Waste is either voluntary or permissive, the former including all acts which destroy or materially alter the tenement, the latter consisting in the neglect of repairs which the tenant is bound to do.

(*j*) Gilb. Ten. 242, 328; but see Co. Copyh. s. 58.

(*k*) 13 & 14 Vict. c. 60, s. 46.

(*l*) 33 & 34 Vict. c. 23.

(*m*) *Heydon's Case*, 3 Rep. 7 a, 8 a; *ante*, p. 121.

(*n*) Scriv. Copyh. 440, n.

(*o*) *Darcy (Lord)* v. *Askwith*, Hob. 234; *Phillips* v. *Smith*, 14 M. & W. 589.

Courts of equity have usually relieved against forfeitures for merely permissive waste, if it has not been wilful (*p*). As a general rule, the courts of equity have declined to restrain permissive waste, but they have done so under special circumstances. Where a tenant for life had promised to repair a copyhold tenement, and had so induced the tenant in remainder to forego proceedings against him, upon neglect of the promise, an injunction was granted to restrain the tenant from permitting or suffering any further waste (*q*). Where there is no damage there is no waste, and the lord cannot enter for a forfeiture (*r*). The lord may enter for waste committed by a copyholder for life, though there is another copyhold tenant in remainder (*s*).

"If a copyholder," says Lord Coke (*t*), "commits waste, either voluntary or permissive, it is a forfeiture *ipso facto:* voluntary, as if he plucketh down any ancient-built house, or if he buildeth any new house and then pulleth it down again; or if he plougheth meadow, so that thereby the ground is made worse, or loppeth the trees and selleth the loppings, or if he cutteth down fruit trees for fuel, having other wood sufficient, these and the like voluntary wastes are forfeitures: permissive, as if he suffereth his house to decay or fall to the ground for want of necessary reparations, or if he suffereth his meadow for want of mending his banks to be surrounded, so that it becomes rushy or worth nothing, or his arable ground so to be surrounded that it becomes unprofitable, these and the like permissive wastes are forfeitures."

Waste may be done in houses by pulling them down, or suffering them to remain uncovered or to fall into decay; but if the house is uncovered or ruinous when the tenant

(*p*) *Andrews* v. *Hulse*, 4 K. & J. 392.

(*q*) *Caldwall* v. *Baylis*, 2 Mer. 408.

(*r*) *Doe* d. *Grubb* v. *Burlington (Earl of)*, 5 B. & Ad. 507.

(*s*) *Doe* d. *Folkes* v. *Clements*, 2 M. & S. 68.

(*t*) Co. Copyh. s. 57; Co. Litt. 53 b.

receives it, it is not waste to permit it to fall down, though it would be waste to pull it down (*u*). It is waste to build a new house, or if built to pull it down. A tenant, however, may pull down a ruinous house in order to build a better one (*x*).

It is waste to plough up old pasture, to stub up a wood or hedge, to destroy or neglect to repair necessary banks, mounds, or drains, and generally to do anything against the rules of good husbandry which may damage the land (*y*).

Where the copyholder is not entitled to the minerals, it is waste to open a mine or quarry, or to take stone, gravel, sand, &c., for any purpose, except as reasonable estovers for use upon the copyhold tenement (*z*).

And so, if the trees do not belong to the copyholder by custom, he will have only a possessory interest in them, and may only take his reasonable estovers for fuel and purposes of husbandry. It will be waste to fell timber-trees, or any trees which are not intended for renewable underwood, or to do anything which will injure the growth of the trees; and the eradication or the cutting down of a fir-tree or other tree which will not grow again, or any similar act of destruction, will be waste and will occasion a forfeiture (*a*).

An injunction against waste will be granted to the copyholder against his lessee, to a remainderman against a copyholder for life, or to the lord against his tenants (*b*).

(*u*) Co. Litt. 54 b.

(*x*) *Hardy* v. *Reeves*, 4 Ves. jun. 466, 480.

(*y*) See *Darcy* (*Lord*) v. *Askwith*, Hob. 234.

(*z*) *Peachy* v. *Somerset* (*Duke of*), 1 Stra. 447; *Ely* (*Dean and Ch. of*) v. *Warren*, 2 Atk. 189; *Winchester* (*Bishop of*) v. *Knight*, 1 P. Wms. 406.

(*a*) Co. Litt. 53 a; *Swayne's Case*, 8 Rep. 63 a; *Phillips* v. *Smith*, 14 M. & W. 589. As to what are timber trees, see *Honywood* v. *Honywood*, L. R. 18 Eq. 306.

(*b*) *Att.-Gen.* v. *Vincent*, Bunb. 192; *Richards* v. *Noble*, 3 Mer. 673; *Parrott* v. *Palmer*, 3 Myl. & K. 639; *Cuddon* v. *Morley*, 7 Hare, 202; Yool, Waste, 14.

Alteration of boundaries.

A forfeiture may also be incurred by inclosing without authority, or by removing old inclosures, or landmarks, or by wilful confusion of boundaries (*c*). Where the boundaries of a copyhold have become confused by the fault of the tenant, whose duty it is to keep them distinct, the Court of Chancery has issued commissions to distinguish copyholds from freeholds, and one kind of copyholds from another kind, and generally to ascertain the boundaries; "and if they cannot be distinguished, to set out lands of the tenant of equal value with so much of the copyhold lands as cannot be distinguished" (*d*). To sustain a claim of this kind, the plaintiff must establish a clear title to some land in the possession of the defendant, and also a default or neglect of the defendant, or those from whom he claims, and must show that the confusion cannot be remedied without the aid of the Court (*e*). "It is the duty of the tenant to keep the boundaries: the confusion does not infer any negligence on the part of the lord, for the tenant is in possession of the land" (*f*), and the enfranchisement of the land will not relieve the tenant from the consequences of a previous neglect of duty to keep up the boundaries while he was copyhold tenant (*g*). The relief is given not only against the person guilty of the negligence, but also against all claiming under him, either as volunteers or as purchasers with notice (*h*). But before obtaining the aid of the Court in a case of confusion of boundaries, the lord must disclaim taking any advantage of the forfeiture (*i*).

(*c*) See *Paston* v. *Utbert*, Litt. 264.

(*d*) *Clayton* v. *Cookes*, 2 Atk. 449; *Leeds* (*Duke of*) v. *Strafford* (*Earl of*), 4 Ves. jun. 180.

(*e*) *Miller* v. *Warmington*, 1 J. & W. 484.

(*f*) *Per* Lord Loughborough, L. C., in *Leeds* (*Duke of*) v. *Strafford* (*Earl of*), 4 Ves. 180, 185.

(*g*) *Searle* v. *Cooke*, 43 Ch. Div. 519.

(*h*) *Per* Lord Cranworth, L. C., in *Att.-Gen.* v. *Stephens*, 6 De G. M. & G. 111, 134.

(*i*) *Durham* (*Bishop of*) v. *Rippon*, 4 L. J. Ch. 32.

Forfeiture for alienation.

The tenant may incur a forfeiture by alienating the land by a common-law deed, as by making a lease for more than one year, or whatever period the custom of the manor may have fixed for granting leases without licence (*k*). But no forfeiture is incurred by making a lease for the proper period, with a covenant to renew from time to time as the lord's licence shall be obtained (*l*). The principle was very clearly shown in the case of *Peachy* v. *Duke of Somerset* (*m*), where a copyholder prayed to be relieved against a forfeiture caused by his leasing part of the copyhold tenement for eleven years without licence. The Court refused the relief, and said "that a copyholder is considered at law as a tenant at will to all purposes except the continuance of his estate; the will cannot be determined, except where the custom allows it so to be, and in the case of the tenant making a greater estate than he lawfully may, that determines the will; for it is an usurpation upon the right of the lord, and the cases of tenant for life leasing *pur autre vie*, or tenant for a great number of years leasing for life, have been held forfeitures, not from any notion of their intending damage to the inheritance, but as it is a quitting or disclaiming their ancient right, which is thereby determined." But to occasion a forfeiture a common law interest must actually pass from the tenant; thus it will not be occasioned by a covenant to lease for more than the authorised period (*n*), or by a feoffment, which has now no tortious operation (*o*), or by a bargain and sale or lease and release, which could

(*k*) Co. Litt. 59 a; *Jackman* v. *Hoddesdon*, Cro. Eliz. 351.

(*l*) *Lady Montague's Case*, Cro. Jac. 301; *Lenthall* v. *Thomas*, 2 Keb. 267; *Doe* d. *Wood* v. *Morris*, 2 Taunt. 52.

(*m*) 1 Stra. 447; and see Vin. Abr. vi. 112, 114, citing *Shelley* v. *Mason*, where a copyholder was relieved against a similar forfeiture.

(*n*) *Jackson* v. *Neal*, Cro. Eliz. 395.

(*o*) Co. Litt. 59 a; 8 & 9 Vict. c. 106, s. 4.

never pass more than the person conveying had a right to convey (*p*). With regard to leases, however, it is to be noticed that if a copyholder leases for years without licence of the lord, or without a custom to authorise the lease, the lessee has nevertheless a good title against every one but the lord (*q*); and even as against the lord a lease not warranted by the custom may become good for as between the parties to the lease and the lord, the demise against custom is only a ground of forfeiture which the lord may waive (*r*). But the acceptance by the lord of quit-rent from the lessee to whom the lands have been demised without his licence has been held not to prevent the lord from recovering in ejectment against the lessee (*s*). Where the copyholder obtains the lord's licence to demise, the licence operates as a confirmation of any lease which is made in accordance with its terms, and a subsequent forfeiture by the copyholder will not affect the lease, and pending the term created by the lease the lord cannot bring an action to recover the land (*t*). The lord cannot be compelled to grant a licence to demise, for the granting or refusing of a licence is a matter which is wholly within his discretion (*u*).

Neglect of services.

Other forfeitures may be occasioned by the tenant's wilful (*x*) refusal to pay his rent (*y*), fine (*z*), suit of court (*a*), or other services, after sufficient notice; or to be sworn on the homage after receiving a personal notice to attend, or

(*p*) *London's Case*, cited Godb. 269; Watk. Copyh. i. 328.

(*q*) *Downingham's Case*, Owen, 17; *Smith* v. *Packhurst*, 3 Atk. 135, 141; *Doe* d. *Tresidder* v. *Tresidder*, 1 Q. B. 416.

(*r*) *Lady Montague's Case*, 1 Salk. 186; *Doe* d. *Robinson* v. *Bousfield*, 6 Q. B. 492.

(*s*) *Doe* d. *Nunn* v. *Lufkin*, 4 East, 221.

(*t*) *Clarke* v. *Arden*, 16 C. B. 227.

(*u*) *Reg.* v. *Hale*, 9 A. & E. 339.

(*x*) See *Trotter* v. *Blake*, 2 Mod. 229.

(*y*) *Crisp* v. *Fryer*, Cro. Eliz. 505.

(*z*) *Willowes' Case*, 13 Rep. 1.

(*a*) *Belfield* v. *Adams*, 3 Buls. 80.

to make proper presentments after being sworn; or if he formally disclaims his tenure (*b*). But it is no cause of forfeiture to be unprepared to pay a fine at once, the amount of which is in the lord's discretion. "Though a fine assessed be reasonable, yet the lord ought to appoint a certain day and place where it should be paid, because it stands upon a point of forfeiture of the estate, and the copyholder is not bound to carry his fine always with him" (*c*). It has been already mentioned that in certain manors the copyhold is forfeited to the lord if the person entitled to admittance (not being a minor, or otherwise disabled from coming) does not come within a certain period after due proclamations have been made (*d*). The refusal of the customary services is held to be a breach of the condition on which the land was granted; "the consideration failing, the lord resumes his grant" (*e*).

Right of Estovers.

Copyholders, being bound to keep their houses and lands in a proper state of repair and cultivation, are entitled to reasonable allowances of wood for repairs, and stone, sand, &c., for purposes of husbandry, and wood or peat for fuel (*f*). These allowances are called estovers or botes, but the term is sometimes applied only to the allowance of wood. All these rights may be subject to customary restrictions, as that they shall only be taken after view and delivery by the lord or his bailiff, and the like (*g*). The various rights of taking wood may be classified as follows, the general term estovers including 1. house-bote (or "the greater house-bote"), being the liberty of taking timber-trees for repairing houses, or rebuilding

(*b*) Kitch. Jurisd. 176; Co. Copyh. s. 57.

(*c*) *Willowes' Case*, 13 Rep. 1; Gilb. Ten. 219.

(*d*) *Ante*, p. 72.

(*e*) Watk. Copyh. i. 329.

(*f*) *Heydon* v. *Smith*, 13 Rep. 67; *Ashmead* v. *Ranger*, 1 Ld. Raym. 551.

(*g*) See *Heydon* v. *Smith*, 13 Rep. 67.

them after accidental destruction (*h*); 2. fire-bote (or "the lesser house-bote"), being the liberty of taking the underboughs of timber-trees, tops and lops of pollards, cuttings of trees made in a reasonable manner, so as not to injure the growth, deadwood, windfalls, and underwood, for fuel in the house; 3. plough-bote, or the liberty of taking timber or other wood for repairing waggons, carts, ploughs, and implements of husbandry, and 4. hedge-bote (or "hay-bote"), being the liberty of taking sufficient wood for making and repairing the walls, gates, hedges, fences, and enclosures.

Trees and Mines.

In the absence of a special custom the lord is the owner of all trees upon the copyhold land, and of all minerals upon the surface, or in quarries or mines underground; but the tenant has a possessory interest, and will be protected against any invasion on the part of the lord (*i*). The following extract from the judgment of Sir George Jessel, M.R., in the case of *Eardly* v. *Granville* (*j*), contains a clear statement of the law on this point. "The estate of a copyholder in an ordinary copyhold is an estate in the soil throughout, except as regards for this purpose timber-trees and minerals. As regards the trees and minerals the property remains in the lord, but in the absence of custom he cannot get either the one or the other, so that the minerals must remain unworked, and the trees must remain uncut. The possession is in the copyholder; the property is in the lord. If a stranger cuts down the trees, the copyholder can maintain trespass against the stranger, and the lord can maintain trover for the trees. If the lord

(*h*) But see *Blewett* v. *Jenkins*, 12 C. B. N. S. 16.

(*i*) *Player* v. *Roberts*, W. Jon. 243; *Bourne* v. *Taylor*, 10 East, 189; *Grey* v. *Northumberland* (*Duke of*), 13 Ves. jun. 236; *S. C.* 17 Ves. jun. 281; *Whitechurch* v. *Holworthy*, 4 M. & S. 340; *S. C.* 19 Ves. jun. 214; *Hext* v. *Gill*, L. R. 7 Ch. 699; *Eardly* v. *Granville*, 3 Ch. Div. 826.

(*j*) 3 Ch. Div. 826.

cuts down the trees, the copyholder can maintain trespass against the lord; but if the copyholder cuts down the trees, irrespective of the question of forfeiture, the lord can bring his action against the copyholder. So in the case of minerals. If a stranger takes the minerals, the copyholder can bring trespass against the stranger for interfering with his possession, and the lord may bring trover, or whatever the form of action may be now, against the stranger to recover the minerals. The same rule applies to minerals as to trees. If a tree has been cut down, the lord cannot compel the copyholder to plant another. The latter has a right to the soil of the copyhold where the tree stood, including the stratum of air which is now left vacant by reason of the removal of the tree. So if the lord takes away the minerals, the copyholder becomes entitled to the possession of the space where the minerals formerly were, and he is entitled to use it at his will and pleasure." But the course of usage may show that in a particular manor the minerals belong to the lord without any possessory title in the tenant; and in the mining districts of the Northern Counties, where it is usual for the mineral *strata* to belong to separate owners, the presumption as to the owner of the surface having possession of all underground minerals is of much less force than elsewhere (*k*). The lord may prove a right to enter upon the copyhold to dig for minerals, the usage showing what the nature of the original grant to the copyholder had been. But no claim of the lord to a privilege which would have destroyed the value of the original grant can be sustained (*l*). In *Hilton* v. *Granville* (*Earl*) (*m*), it was held that a lord could not set up a custom to dig minerals under the copyholds of the manor so as to let down the surface of the land; and the Court said that "even if a grant could be produced in specie, reserving a right in the lord to deprive

(*k*) See *Barnes* v. *Mawson*, 1 M. & S. 77, 84.

(*l*) *Wilkes* v. *Broadbent*, 1 Wils. 63; *Hilton* v. *Granville* (*Earl*), 5 Q. B. 701; but see *Salisbury* (*Marquis of*) v. *Gladstone*, 9 H. L. Cas. 692, 701, 707.

(*m*) 5 Q. B. 701.

the grantee of the enjoyment of the thing granted, such a clause must be rejected as repugnant and absurd"; but this later dictum has been overruled (*n*), and considerable doubt now exists whether *Hilton* v. *Granville* (*Earl*) is good law (*o*). But even though it is not easy "to define the meaning of the word 'reasonable' when applied to a custom regulating the relation between a lord and his copyholders, as that relation must have had its origin in remote times by agreement between the lord, as absolute owner of the whole manor in fee simple, and those whom he was content to allow to occupy portions of it as his tenants at will" (*p*), it is submitted that any custom alleged by the lord, of which the effect would be to destroy the value of his grant, would be deemed unreasonable, unless it could be clearly shown to have existed from time immemorial, and to have been acquiesced in by the copyholders.

What are minerals.

Every substance which can be got from underneath the substance of the copyhold tenement for the purpose of profit is included in the term "minerals" (*q*); and it has been held that coprolites beneath the surface and china clay are minerals, and that the property in them is in the lord (*r*). Where the lord has the minerals he has a right to make a tramway through the subsoil of the copyhold, provided it is for the purpose of working such minerals, and to carry along such tramway any minerals which he may work and win within the manor, but he is not entitled to drive carriages along this tramway for any other purpose than that of working the minerals within the manor (*s*). As however the copyhold tenant has in the absence of custom a possessory interest in the minerals, his consent must be obtained before the lord can work the

(*n*) *Bowbotham* v. *Wilson*, 8 H. L. Cas. 348.

(*o*) See remarks of Cockburn, C. J., in *Blackett* v. *Bradley*, 8 Jur. N. S. 588, 590; and of Lord Chelmsford in *Buccleugh* (*Duke of*) v. *Wakefield*, L. R. 4 H. L. Cas. 377, 410.

(*p*) *Per* Lord Cranworth in *Salisbury* (*Marquis of*) v. *Gladstone*, 9 H. L. Cas. 692, 701.

(*q*) *Hext* v. *Gill*, L. R. 7 Ch. 699.

(*r*) *Att.-Gen.* v. *Tomline*, 5 Ch. Div. 750; *S. C.* 15 Ch. Div. 150 (C. A.).

(*s*) *Bowser* v. *Maclean*, 2 De G. F. & J. 415.

minerals; and on account of this possessory interest the tenant may maintain trespass against any person who by means of an entry made on the adjoining lands takes away the minerals (*t*). If the lord takes the minerals without obtaining the consent of the tenant he will be liable to him in damages. The measure of damages will be the net return from the sale of the minerals, less such a sum by way of profit as would induce a third person to undertake the working of the minerals. This rule was thus stated by Fry, J., in *Attorney-General* v. *Tomline* (*u*). "The copyholder is in the position of being able to say to the lord of the manor you shall never get the minerals. His consent must, therefore, be purchased from him by the lord if he wishes to get them. Everything, therefore, which arises from the sale of the minerals, and which is not necessary to repay the outlay for the working and to induce a third person to undertake the working, would naturally come to the person who can prevent the minerals from being dug (*x*). He has an absolute veto. The value of that veto appears to me to be the value of the minerals, less so much money as would induce a third person to get them, that is, the measure of damages would be the net returns from the sale of the minerals, less such a sum by way of profit as would induce a third person to undertake the enterprise."

Damages to tenant for wrongful working.

Measure of damages.

By special custom copyholders of inheritance, or those who have an equivalent estate, as tenants for lives with right of renewal or of nominating the successor, may be the absolute owners of the trees upon their lands, or the minerals upon the surface or in quarries and mines, and in such a case they may cut timber for sale, or open mines and quarries (*y*). But such a custom cannot be sustained

Special customs.

(*t*) *Lewis* v. *Branthwaite*, 2 B. & Ad. 437.

(*u*) 5 Ch. Div. 750, 768.

(*x*) The minerals in this case were coprolites.

(*y*) *Rowles* v. *Mason*, 1 Brownl. 132; *S. C.* 2 Brownl. 85, 192; *Blewett* v. *Jenkins*, 12 C. B. N. S. 16.

by copyholders for lives with no right of renewal (*z*). Under customs of this kind, copyholders have been held entitled to take for their own property the copper, coal, brick-earth, sand, and other metalliferous substances, ores and minerals, within their copyhold tenements (*a*). And it has been held, that a custom empowering the tenants to take one sort of mineral might possibly be evidence of their right to take minerals of other kinds (*b*). It is provided by the Prescription Act, 1832 (*c*), that no claim, which can be lawfully made at the common law by custom, prescription, or grant, to any profit in another's land, where such profit shall have been actually taken and enjoyed by any person claiming right thereto without interruption for the full period of 30 years before a suit or action, shall be defeated or destroyed by showing only that such profit was first taken at any time prior to that period, but nevertheless that the claim may be defeated in any other way, by which it might have been defeated at the time of the passing of the Act; and when such profit shall have been so taken for a period of 60 years before the suit or action, the right is to be deemed absolute, unless it appears that the same was taken by some consent or agreement expressly made or given for that purpose by deed or writing. This provision has been held not to apply to the case of copyholders claiming minerals or other profits in their own tenements by custom (*d*). As will appear later (*e*), there is no rule as to the extent of evidence which is required to establish a custom, or from which the presumption or inference of the fact of a custom may be rightly drawn. "It is the province of a jury to draw

(*z*) *Mardiner* v. *Elliott*, 2 T. R. 746.

(*a*) *Hanmer* v. *Chance*, 4 De G. J. & S. 626; *Salisbury* (*Marquis of*) v. *Gladstone*, 9 H. L. Cas. 692; *Wakefield* v. *Buccleugh* (*Duke of*), L. R. 4 H. L. Cas. 377.

(*b*) *Winchester* (*Bishop of*) v. *Knight*, 1 P. Wms. 406; and see *Curtis* v. *Daniel*, 10 East, 273.

(*c*) 2 & 3 Will. IV. c. 71, s. 1.

(*d*) *Hanmer* v. *Chance*, 4 De G. J. & S. 626.

(*e*) *Post*, c. x.

these conclusions of fact. There are several reported cases in which the Courts have refused to disturb the verdicts of juries as to a custom in a manor even when the evidence was very slender" (*f*). But it must be remembered, that the evidence of user will not support the claim by custom, if it can be shown independently that the custom could not have had a legitimate origin, as being unreasonable under the circumstances, or did not in fact exist at some period since the commencement of legal memory (*g*). The absence of any mention of the right in a formal statement of the customs of the manor made under proper authority would upset the claim (*h*). "If a custom existed at a particular time to give the tenants a right to the minerals, it is natural to expect that they would not omit it in an elaborate and minute statement of the customs" (*i*). And in the same case it was said, even though there were instances of surrenders reserving minerals, surrenders of minerals separately, and several instances of working for minerals, that "if there be an agreement or acting by any of the copyholders, under circumstances which render it impossible to believe in the existence of the custom at the time when they so acted and agreed, that acting and agreement must be evidence whereby the jury would conclude (if it be proved to have occurred after legal memory) that the custom did not then exist, that it is not a custom from time immemorial, and that the subsequent usage is referable to usurpation and not to right" (*j*); and in the case of *Portland* (*Duke of*) v. *Hill* (*k*), where there was sufficient evidence to prove a custom of this kind if there

(*f*) *Per* Lord Westbury, L. C., in *Hanmer* v. *Chance*, 4 De G. J. & S. 626, 635; see *Doe* d. *Mason* v. *Mason*, 3 Wils. 63; *Roe* d. *Bennett* v. *Jeffery*, 2 M. & S. 92.

(*g*) See *Tyson* v. *Smith*, 9 A. & E. 406; *Mill* v. *New Forest Commissioner*, 18 C. B. 60.

(*h*) *Anglesey* (*Marquis of*) v. *Hatherton* (*Lord*), 10 M. & W. 218; *Portland* (*Duke of*) v. *Hill*, L. R. 2 Eq. 765.

(*i*) *Per* Lord Abinger, C. B., in *Anglesey* (*Marquis of*) v. *Hatherton* (*Lord*), 10 M. & W. 218, 241.

(*j*) *Per* Alderson, B., *Ibid.* at p. 244.

(*k*) L. R. 2 Eq. 765.

were nothing to the contrary, the existence of a customary of the manor compiled within legal memory was held to be conclusive evidence against the existence of a custom to take minerals which was not mentioned therein.

Manorial Franchises.

It will be convenient to mention here some of the more important franchises and privileges which are not infrequently claimed by lords of manors, either by grant from the Crown, or by prescription through long enjoyment, and which may be exercised by them not only over the wastes but in some cases over the lands which are held or are parcel of the manor.

Free-warren.

Every lord of a manor has, by virtue of his ownership of the soil, the right to sport and shoot over the wastes of the manor, and to kill game there, subject to the provisions of the Game Laws, and by ancient reservation or custom he may have similar rights over the copyholds, which are parcel of his manor; and a compulsory enfranchisement of the copyhold will not deprive him of these rights without his express consent in writing (*l*); he has no right merely as lord, and in the absence of any right of free-warren, to sport over the freehold lands, which are held of the manor or are within its ambit (*m*). Lords of manors, however, frequently possess rights of free-warren, either by virtue of a grant from the Crown, or by prescription implying a grant (*n*). A grant of free-warren confers on the person entitled to it a right to preserve and keep, as his own property, the beasts and fowls of warren within certain limits, and to prevent all other persons from killing or taking them (*o*). According

(*l*) 15 & 16 Vict. c. 51, s. 48.

(*m*) *Keble* v. *Hickringill*, 11 Mod. 74; *Bruce* v. *Hellitwell*, 5 H. & N. 609, 620.

(*n*) *The Case of Monopolies*, 11 Rep. 84 b, 87 b; *Beauchamp (Earl)* v. *Winn*, L. R. 6 H. L. 223, 238.

(*o*) 2 Blackst. Comm. 39.

to Lord Coke, the term beasts of warren include hares, conies, and roe-deer, while among fowls of warren are comprised partridges, quails, rails, pheasants, woodcocks, mallards, and herons (*p*); but in *Barrington's Case* (*q*), it was ruled that the only beasts and fowls of warren are hares, conies, pheasants, and partridges. It has been expressly decided that grouse are not fowls of warren (*r*). A grant of free-warren usually gives the right to the grantee "within all his demesne lands" in the manor. The effect of these words was considered in the case of the *Attorney-General* v. *Parsons* (*s*), and in delivering the judgment of the Court of Exchequer Lord Lyndhurst, C.B., 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*." If the person having the right of free-warren alienes his lands, but reserves the free-warren to himself, such a reservation would be effectual, and the free-warren would then be a warren in gross, but if the lands are conveyed without any reservation or express mention of the right, it will be extinguished (*t*). A conveyance of the manor, "together with the appurtenances," will not carry a right of free-warren (*u*), unless the right of free-warren has actually become appurtenant by prescription (*x*).

Questions as to the existence of rights of free-warren frequently arise in cases where the waste lands of a manor have been inclosed under the provisions of an Inclosure Act, and have been allotted in severalty. It may be said to be the general rule that when a part of a waste is

(*p*) Co. Litt. 233 a.

(*q*) 8 Rep. 136 b, 138 b.

(*r*) *Devonshire (Duke of)* v. *Lodge*, 7 B. & C. 36.

(*s*) 2 Cr. & J. 279, 308.

(*t*) Yearb. Pasch. 35 Hen. VI. fo. 55 b, pl. 1. Bro. Abr. tit. Warren, pl. 3.

(*u*) *Bowlston* v. *Hardy*, Cro. Eliz. 547.

(*x*) See *Morris* v. *Dimes*, 1 A. & E. 654, and 44 & 45 Vict. c. 41, s. 6 (3).

allotted to a person in respect of his former rights of common, and is allotted expressly as freehold, the fact of such allotment gives the allottee *primâ facie* "the right of shooting game upon that freehold as fully as any owner of land in this country has the right of shooting game upon his own land" (*y*). But it frequently happens that the Inclosure Act contains words which seem to indicate that although the allottees were to have freeholds, they were not to have the right of shooting, and that it was intended to reserve the right to the lord. In such cases the question will depend solely upon the construction of the Inclosure Act, but the Act will in all cases be construed most strictly against the lord of the manor, the courts having held that when the lord claims the right of shooting, he must show that the Act reserves the right to him, either in express terms or by necessary implication (*z*). On forfeiture to the Crown, the franchise is not merged in the prerogative (*a*).

Estrays.

The right of estrays is another franchise which the lords of manor may possess, either under a grant from the Crown, or by prescription (*b*). Estrays are defined by Blackstone as "such valuable animals as are found wandering in any manor or lordship, and no man knoweth the owner of them; in which case the law gives them to the King as the general owner and lord paramount of the soil, in recompense for the damage which they may have done therein; and they now most commonly belong to the lord of the manor by special grant from the Crown. But in

(*y*) *Per* Lord Esher, M. R., in *Devonshire* (*Duke of*) v. *O'Connor*, 24 Q. B. Div. 468, 473.

(*z*) *Devonshire* (*Duke of*) v. *O'Connor*, 24 Q. B. Div. 468; *Sowerby* v. *Smith*, L. R. 9 C. P. 524; *Leconfield* (*Lord*) v. *Dixon*, L. R. 3 Ex. 30; *Ewart* v. *Graham*, 7 H. L. Cas. 331; *Robinson* v. *Wray*, L. R. 1 C. P. 490.

(*a*) *Abbot of Strata Mercella's Case*, 9 Rep. 24 a; *Heddy* v. *Wheelhouse*, Cro. Eliz. 591.

(*b*) Co. Litt. 114 b.

order to vest an absolute property in the King or his grantees, they must be proclaimed in the church and two market towns next adjoining to the place where they are found, and then, if no man claims them after proclamation and a year and a day passed, they belong to 'the King or his substitute without redemption, even though the owner were a minor, or under any other legal incapacity" (*c*). As swans and cygnets are royal fowl, they may be taken as estrays (*d*), but no other animals *ferœ naturæ* can be taken as estrays (*e*). If the owner of the estray claims it within the year and day, showing sufficient proof of his property in the animal, and offers a reasonable sum for the expense of feeding it, the lord is bound to deliver up the estray (*f*). During the year and day the lord cannot put the estray to any work (*g*). If the period of a year and a day elapses without any claim being made, the estray becomes the property of the lord, and he may bring an action for its recovery against any one who takes it from him (*h*). On forfeiture to the Crown the franchise becomes extinct (*i*).

Waif.

A lord of a manor may claim to have waifs, either by grant from the Crown, or by prescription. Waifs, *bona waviata*, are goods which are stolen and waived by a thief in his flight, and they are forfeited to the King, or to the owner of the franchise, as a punishment to the owner for not having himself pursued the felon and taken away his goods from him (*k*). But if the person robbed makes

(*c*) Blackst. Comm. i. 297.

(*d*) Yearb. Pasch. 7 Hen. VI. fo. 27 b, pl. 21; *The Case of Swans*, 7 Rep. 15 b.

(*e*) 4 Inst. 280; Blackst. Comm. i. 298.

(*f*) *Taylor* v. *James*, Godb. 150; *Pleydell* v. *Gosmoor*, Hutt. 66.

(*g*) *Bagshawe* v. *Goward*, Cro. Jac. 147; *Oxley* v. *Watts*, 1 T. R. 12.

(*h*) *Burdet* v. *Mathewman*, Clayt. 107.

(*i*) *Abbot of Strata Mercella's Case*, 9 Rep. 24 a; *Heddy* v. *Wheelhouse*, Cro. Eliz. 591.

(*k*) *Foxley's Case*, 5 Rep. 109 a.

fresh suit, that is, immediately follows and apprehends the thief or procures his conviction, the goods are not forfeited (*l*); and if the thief does not take to flight, but is apprehended with the goods, the owner will have them without question (*m*). Goods which are stolen but are left by the thief in his house, or in the custody of some other person, are not strictly waifs, even although the thief should afterwards take to flight, and accordingly may be re-taken by the owner without fresh suit (*n*). The lord of the manor must seize the goods as waifs before they can become his property (*o*). Forfeiture to the Crown extinguishes the franchise (*p*).

Wreck.

The right to have wreck of the sea is often claimed by the lords of manors on the sea coast, either by virtue of a grant from the Crown, or by prescription (*q*). The right to wreck may exist apart from the ownership of the foreshore on which the wreck is taken (*r*). When the right is claimed as belonging to a manor by prescription, "it is a great presumption that the shore is part of the manor," because otherwise he who claims the wrecked goods could not get them (*s*). The grant of a manor on the sea coast by the Crown does not of itself include the right to take wreck, even though the grant expressly includes the shore as parcel of the manor, or although it is shown by evidence of acts of ownership that the shore is parcel of the manor, for the right to take wreck is a prerogative

(*l*) *Dickson's Case*, Hetl. 64; 24 & 25 Vict. c. 96, s. 100.

(*m*) *Davies' Case*, Cro. Eliz. 611.

(*n*) *Foxley's Case*, 5 Rep. 109 a.

(*o*) Blackst. Comm. i. 297.

(*p*) *Abbot of Strata Mercella's Case*, 9 Rep. 24 a. As to the rights of the owner of stolen goods to recover his property notwithstanding a sale by the thief, see 24 & 25 Vict. c. 96, s. 100; *Lee* v. *Bayes*, 18 C. B. 599; and *Wells* v. *Abraham*, L. R. 7 Q. B. 554.

(*q*) *Sir Henry Constable's Case*, 5 Rep. 106 a.

(*r*) *Dickens* v. *Shaw*, reported in Hall, Sea Shore (ed. 1875), App.

(*s*) Hale, *De Jure Maris*, c. vi.

right, and will not pass without express words used for that purpose (*t*). Reputation is not admissible to prove that a lord has a prescriptive right to all wreck within the boundaries of his manor (*u*). If the manor is forfeited to the Crown, the right to take wreck, whether expressly granted along with the manor or appendant by prescription, will be extinguished, and will not pass on a re-grant of the manor without express words (*x*). In order to constitute legal wreck it is necessary that the goods should come to land; and if within a year (formerly a year and a day) the owner of the goods lays claim to them and proves his right of property, they will not be forfeited as wreck (*y*). Formerly it was held that the grantee of a right to take wreck had a special right of property in all goods stranded within his liberty, even before he had taken possession of them, and although the owners might claim them within a year and a day, and accordingly could maintain an action, either of trespass or of trover, against any person who took them away (*z*); but now all proceedings in the case of wreck are governed by the provisions of the Merchant Shipping Acts (*a*). All wrecks are now to be reported to the person who has been appointed by the Board of Trade as receiver of wreck for the district, and he is to take possession of the same, and within forty-eight hours of his taking possession he has to send a description of the wreck and of any marks by which it is distinguished to the lord of the manor within the district who claims to be entitled for his use to unclaimed wreck, and who has already furnished him with particulars of the title under which the claim is made (*b*).

(*t*) See *Scratton* v. *Brown*, 4 B. & C. 485, 497; and Hall, Sea Shore (ed. 1875), 19, 20.

(*u*) *Talbot* v. *Lewis*, 1 C. M. & R. 495.

(*x*) *Abbot of Strata Mercella's Case*, 9 Rep. 24 a, 25 b; *Northumberland* (*Duke of*) v. *Houghton*, L. R. 5 Exch. 127, 130.

(*y*) Blackst. Comm. i. 291.

(*z*) *Dunwich* (*Bailiffs, &c. of*) v. *Sterry*, 1 B. & Ad. 831.

(*a*) 17 & 18 Vict. c. 104; 18 & 19 Vict. c. 91; 25 & 26 Vict. c. 63; 43 & 44 Vict. c. 22.

(*b*) 17 & 18 Vict. c. 104, s. 454.

If no person establishes a claim to the wreck within a year of its coming into the possession of the receiver, the wreck will then be given up to the lord on payment of all expenses, fees, and salvage (*c*).

Fairs and Markets.

Lords of manors may claim the franchise of holding fairs and markets, either by grant from the Crown, or by prescription (*d*). It has been held that uninterrupted user for twenty years gives a *primâ facie* right to hold a fair or market, and furnishes an answer to an indictment for a nuisance to a highway, but will not exempt the person who asserts the right from proceedings for usurpation of the franchise (*e*). If the grant is in general terms, the fair or market may be held at any place within the manor which is most convenient, and the lord as owner may change the site as may be necessary (*f*), provided that he does not thereby interfere with the rights of other persons (*g*). The right to take tolls for the goods which are sold is not necessarily incident to a market or fair, but the owner of the franchise usually has such a right, either by express grant, or by prescription. The dues charged must be reasonable, for it has been held that a grant of tolls which are excessive is void (*h*). If no toll is due, either by grant or prescription, or if the duties granted are held to be unreasonable, the market or fair is accounted a free market or fair, and any person may buy or sell goods therein without paying any toll, and it has been held that the Crown cannot afterwards grant the right to take tolls to the owner of such a market or fair without some proportionable benefit to the subject (*i*); but the

(*c*) 17 & 18 Vict. c. 104, s. 471.
(*d*) 2 Inst. 220; Co. Litt. 114 b; see *Trotter* v. *Harris*, 2 Y. & J. 285.
(*e*) *Rex* v. *Smith*, 4 Esp. 111.
(*f*) *Rex* v. *Cotterill*, 1 B. & Ald. 67.
(*g*) *Ellis* v. *Bridgnorth* (*Mayor, &c. of*), 15 C. B. N. S. 52.
(*h*) *Heddy* v. *Wheelhouse*, Cro. Eliz. 558, 591, 592.
(*i*) 2 Inst. 220, citing *Case*

owner of the franchise may have the right to take pickages and stallages, which are payments in respect of breaking up the ground and exclusively occupying a portion of the soil, and these payments will as a rule be due when the owner of the market is owner of the soil whereon it is held (*k*). The owner of a market may bring an action for disturbance of his franchise, and recover damages against a person erecting a stall on his own ground within the limits of the market and allowing the sale of goods there, even though not taking any toll (*l*), and he may by law have the right to prevent persons selling goods in their private houses, or shops, within the limits of his franchise (*m*). A sale by sample within the market is a disturbance of the right, but not if it is merely near to but without the limits, unless it was done designedly and with the intention of evading payment of the toll (*n*). A custom to erect booths on the wastes of a manor during a fair has been held good (*o*). The franchise of holding a market or fair will be forfeited by mis-user or non-user (*p*); but forfeiture of the manor to the Crown will not extinguish the franchise (*q*).

It may be mentioned that fairs and markets are sometimes established by Acts of Parliament. The provisions usually contained in these Acts are consolidated in the Markets and Fairs Clauses Act, 1847 (*r*). The Fairs Act, 1871 (*s*), enables the Secretary of State for the Home Department, with the previous consent in writing of the

of Northampton Market, adjudged Mich. 39 & 40 Eliz.

(*k*) *Northampton* (*Mayor, &c. of*) v. *Ward*, 2 Stra. 1238; *Great Yarmouth* (*Mayor, &c. of*) v. *Groom*, 1 H. & C. 102.

(*l*) *Mosley* v. *Chadwick*, 7 B. & C. 47, n.; and see *Great Eastern Rail. Co.* v. *Goldsmid*, 25 Ch. Div. 511; *S. C.*, 9 App. Cas. 927.

(*m*) *Mosley* v. *Walker*, 7 B. & C. 40; *Penryn* (*Mayor of*) v. *Best*, 3 Ex. Div. 292.

(*n*) *Brecon* (*Mayor, &c. of*) v. *Edwards*, 1 H. & C. 51.

(*o*) *Tyson* v. *Smith*, 6 A. & E. 745.

(*p*) *Case of Leicester Forest*, Cro. Jac. 155.

(*q*) *Abbot of Strata Mercella's Case*, 9 Rep. 24 a.

(*r*) 10 & 11 Vict. c. 14.

(*s*) 34 & 35 Vict. c. 12.

owner of the fair, or of the tolls or dues, to abolish any fair upon representation duly made to him that it will be for the advantage of the public that the fair should be abolished; and an Act passed in 1873 (*t*), gives the Home Secretary power to change the day on which a fair is held.

Frank-foldage.

In some parts of the country, particularly in the eastern counties, lords of manors claim to have the liberty of frank-foldage. This right may be claimed, either by virtue of a grant from the Crown, or by prescription (*u*); and it entitles the lord, or other person who possesses it, to have all the sheep, within his manor or within a particular district, folded upon his lands at night (*x*).

Fold-course.

The right of frank-foldage is quite distinct from the right of fold-course, which is a right of common of pasture appurtenant to land for the feeding of sheep (*y*). The distinction between these two rights appears in the case of *Sharpe* v. *Bechenowe* (*z*), where the defendant claimed to have the right of depasturing sheep on the land of the plaintiff by virtue of a liberty of foldage and fold-course, which he claimed by prescription. On a motion in arrest of judgment on a verdict for the defendant, it was argued for the plaintiff that the prescription to have foldage could not extend to depasturing the sheep, "because the nature of foldage is only to have the sheep (but not my own) folded on my lands in the night-time," and that the right to fold-course was inconsistent with the liberty of foldage, for foldage "is a liberty to have another man's sheep folded on my land, and a fold-course is to have pasture for a certain number of my own sheep upon another man's

(*t*) 36 & 37 Vict. c. 37.

(*u*) Co. Litt. 114 b.

(*x*) Williams, Commons, 275; Yearb. Hil. 3 Edw. III. fo. 3, pl. 7; Pasch. 8 Edw. III. fo. 37, pl. 48; Pasch. 1 Hen. VII. fo. 24, pl. 17.

(*y*) *Robinson* v. *Duleep Singh*, 11 Ch. Div. 798.

(*z*) Lutw. (Nelson's ed.) 398; and see *Dickman* v. *Allen*, 2 Ventr. 138.

land"; and these arguments prevailing judgment was stayed by the Court. The nature of the right of fold-course has been considered in later cases, and it has been held that it is not a several right to the herbage, but is a right of common of pasture for sheep appurtenant to land (*a*); and that it may be appurtenant to a manor, and in such a case it may be divided, or be annexed to parcel of the manor (*b*).

(*a*) *Robinson* v. *Duleep Singh*, 11 Ch. Div. 798; *Musgrave* v. *Cave*, Willes, 319; see Co. Litt. 6 a.

(*b*) *Spooner* v. *Day*, Cro. Car. 432; *Ivatt* v. *Mann*, 3 M. & Gr. 691.

CHAPTER VIII.

RIGHTS OF COMMON.

In this chapter it is proposed to discuss the various rights and privileges which exist in and may be exercised over the waste lands of a manor, and other commonable lands.

Lord entitled to soil of manorial wastes.

It is a presumption of law that the lord is entitled to all the manorial wastes, and accordingly it is not essential for him to show any acts of ownership over such lands in order to prove his property in the soil (*a*), the existence of a manor only in reputation being sufficient evidence of the title (*b*). But in most manors it will be found that the tenants, both freehold and copyhold, and in some cases even persons having no connection with the manor, being neither owners nor occupiers of any tenement held of it, are entitled to exercise over the wastes various important rights and privileges known by the general name of rights of common. Owing to the nature of these rights, and to the relation in which they stand to the rights of the lord, it is necessary to consider them somewhat in detail.

Rights of copyholders over wastes.

First, as to the rights of copyhold tenants. It is a rule of law that no one can be entitled by custom to take the profits of another man's soil (*c*), and that the taking must be justified under a grant, or by way of prescription (*d*); but there is an exception in the case of copyholders, who are allowed by the necessity of the case to claim by custom

(*a*) *Doe* d. *Dunraven* v. *Williams*, 7 C. & P. 332.

(*b*) *Curzon* v. *Lomax*, 5 Esp. 60.

(*c*) *Blewett* v. *Tregonning*, 3 A. & E. 554; *Att.-Gen.* v. *Mathias*, 4 K. & J. 579.

(*d*) *Mellor* v. *Spateman*, 1 Wms. Saund. 339.

against the lord of the manor (*e*). There are some cases in which it is difficult to distinguish the prescriptive claims of freehold tenants from the customary claims of copyholders, where the freeholders form a homogeneous body of tenants, subject to customary duties to the lord of the manor, and are entitled each by a separate prescription to rights of common upon the waste (*f*).

Copyholders allowed to claim by custom.

The copyholders are allowed to claim against the lord by custom, upon the ground that they could not otherwise establish a right of common at all, being in theory the lord's tenants at will, and that a claim by prescription could not be made by such tenants on the landlord's soil, for this would in effect be a claim by a man to have common on his own land, as the prescription would be laid in his name, and the essence of a right of common is that it should be claimed in the land of another person (*g*).

Except where the soil is outside the manor.

But where copyholders claim a right of common outside the manor, this difficulty does not arise, and they are no longer obliged or permitted to set up a custom, but can prescribe in the name of their lord, alleging that he and they whose estate he has from time immemorial have had the privilege for themselves and their tenants at will (*h*).

Various kinds of common.

By the customs of various manors, rights of the following kinds may be enjoyed by the copyholders:—

1. Common of pasture upon the wastes appurtenant to the copyhold lands for so many cattle as the lands will sustain, or for a fixed number, according to the usage (*i*); and when a number of copyholders hold an open field in undivided shares, each tenant has usually a right at certain seasons of the year to pasture his cattle over the land of

(*e*) *Gateward's Case*, 6 Rep. 59 b; *Foiston* v. *Crachroode*, 4 Rep. 31 b; and see *Austin* v. *Amhurst*, 7 Ch. Div. 689.

(*f*) See *Warrick* v. *Queen's College, Oxford*, L. R. 6 Ch. 716; *Betts* v. *Thompson*, *ibid.* 732.

(*g*) *Foiston* v. *Crachroode*, 4 Rep. 31 b.

(*h*) *Barwick* v. *Matthews*, 5 Taunt. 365.

(*i*) *Morley* v. *Clifford*, 20 Ch. Div. 753.

all the others, which may be viewed as a reciprocal right of pasture appurtenant to each of the undivided tenements.

2. Common of estovers, or rights of taking wood from the waste for use upon the copyhold tenement, similar to the right of estovers possessed by the tenant over the wood growing on his copyhold land, which has already been described (*k*). This kind of common, as well as those which are next to be mentioned, may be limited either by the requirements of the tenant, or by some fixed limit of quantity, according to the usage.

3. Rights of taking underwood and such products as furze, fern, thorns, hay, and rushes, which resemble the common of estovers, and are sometimes included in its definition (*l*).

4. Common of turbary, being the right to take turf or peat fit for fuel, to be used for burning in the copyholder's house (*m*). In some manors there is a customary right of taking coals for fuel, which is similar in its incidents to the common of turbary (*n*).

5. Rights of taking minerals from the waste for use upon the copyhold land, as stone, sand, clay, and ores of various kinds (*o*).

6. Common of piscary, being the right of taking fish for food from the streams and ponds belonging to the lord (*p*). By particular customs the copyholders may also have other rights similar in their nature to those which have been described.

"These several species of common," it has been re-

(*k*) *Ante*, p. 231.

(*l*) *Smith* v. *Brownlow* (*Earl*), L. R. 9 Eq. 241; *Warrick* v. *Queen's College, Oxford*, L. R. 6 Ch. 716; *De la Warr* (*Earl*) v. *Miles*, 17 Ch. Div. 535.

(*m*) *Valentine* v. *Penny*, Noy, 145; *Ely* (*Dean and Ch. of*) v. *Warren*, 2 Atk. 189; *Wilson* v. *Willes*, 7 East, 121.

(*n*) *Portland* (*Duke of*) v. *Hill*, L. R. 2 Eq. 765.

(*o*) *Duberley* v. *Page*, 2 T. R. 391; *Shakespear* v. *Peppin*, 6 T. R. 741.

(*p*) *Tilbury* v. *Silva*, 45 Ch. Div. 98; *Lloyd* v. *Jones*, 6 C. B. 81; *Bland* v. *Lipscombe*, 4 E. & B. 712, n.

marked, "when originally established in our law had all reference no doubt to the same object as common of pasture, viz., the maintenance and carrying on of husbandry, common of piscary being given for the sustenance of the tenant's family, common of turbary for his fuel, and common of estovers for repairing his house, his instruments of tillage, and the necessary fences of his grounds" (*q*).

Common appendant cannot be claimed by copyholders.

Copyholders cannot claim a right of common of pasture appendant, in the proper sense of the word, that being a right given to freehold tenants of ancient arable land by virtue of their original grants (*r*). The land need not be arable at the present time, but if it is arable the right can be claimed without evidence of actual user, and if it is not arable at present the continual usage of the right will be evidence that it was arable originally (*s*). "It is not to be understood that every tenant of a manor has by the common law such a right, but only that certain tenants have such a right, not by prescription, but as a right by common law incident to the grant. . . . This right is not a common right of all tenants, but belongs only to each grantee before the Statute *Quia Emptores* of arable land by virtue of his individual grant, and as an incident thereto; and it is as much a peculiar right of the grantee as one derived by express grant or by prescription, though it differs in its extent, being limited to such cattle as are kept for ploughing or manuring the arable land granted, and as are of a description fit for that purpose; whereas the right by grant or prescription has no such limits, and depends on the will of the grantor" (*t*). In the case of copyholders, the right depends on the extent of

(*q*) Stephen's Comm. 11th ed. vol. i. 625.

(*r*) *Tyrringham's Case*, 4 Rep. 36 b.

(*s*) *Carr* v. *Lambert*, L. R. 1 Ex. 168.

(*t*) *Dunraven* (*Earl of*) v. *Llewellyn*, 15 Q. B. 791, 810. See also *Warrick* v. *Queen's College, Oxford*, L. R. 6 Ch. 716.

the original grant as shown by the usage under the custom.

Common of vicinage.

Common of vicinage is another right which cannot be claimed by copyholders under a custom (*u*). This right exists where the tenants of adjoining manors have from time immemorial intercommoned on a waste or commonable ground lying between them (*x*). It was at one time thought to be not so much a right of common as an excuse for unavoidable trespass (*y*), but it has since been held to be a reciprocal right of common which can be claimed under the Prescription Act, and may be viewed as founded on mutual covenants not to distrain the cattle, implied from long acquiescence on both sides (*z*). It is destroyed by any complete inclosure or division between the neighbouring wastes or commonable grounds (*a*).

Requisites of customary common.

Every custom under which any of these rights are claimed must be certain, reasonable, and limited. If uncertain, it cannot be shown to have existed from time immemorial, for every custom presupposes an ancient grant, which if uncertain would have been originally void. In a leading case (*b*) on this part of the subject, a custom was pleaded for all the tenants having gardens to dig turf on the waste for making grassplots as often and in such quantity as occasion required: and it was held the custom was void, as being uncertain and destructive of the waste. Lord Ellenborough in delivering judgment, said: "A custom, however ancient, must not be indefinite and uncertain; and here it is not defined to what sort of improvement the

1905. 2 Ch. 86.

(*u*) *Jones* v. *Robin*, 10 Q. B. 620.

(*x*) Co. Litt. 122 a.

(*y*) *Wells* v. *Pearcy*, 1 Bing. N. C. 556; *Heath* v. *Elliott*, 4 Bing. N. C. 388.

(*z*) *Prichard* v. *Powell*, 10 Q. B. 589; and see *London* (*Commissioners of Sewers of*) v. *Glasse*, L. R. 19 Eq. 134; *Minet* v. *Morgan*, L. R. 11 Eq. 284; and *Cape* v. *Scott*, L. R. 9 Q. B. 269.

(*a*) *Gullett* v. *Lopes*, 13 East, 348.

(*b*) *Wilson* v. *Willes*, 7 East, 121; and see *Salisbury* (*Marquis of*) v. *Gladstone*, 9 H. L. Cas. 692, 707.

custom extends; it is not stated to be in the way of agriculture or horticulture; it may mean all sorts of fanciful improvements, and every part of the garden may be converted into grass plots, and even mounds of earth raised and covered with turf from the common. There is nothing to restrain the tenants from taking the whole of the turbary of the common and destroying the pasture altogether. A custom of this description ought to have some limit, but here there is no limitation to the custom as laid, but caprice and fancy. Then this privilege is claimed to be exercised "when occasion requires," and it is not even confined to the occasions of the garden. It resolves itself, therefore, into the mere will and pleasure of the tenant, which is inconsistent with the rights of all the other commoners as well as of the lord. The third special plea also is too indefinite: it goes to establish a right to take as much of the turf off the common as any tenant pleases, for making banks and mounds on his estate; it is not even confined to purposes of agriculture. All the customs laid, therefore, are bad, as being too indefinite and uncertain." In a case (*c*) where the plaintiffs, who sued on behalf of themselves and all other owners and occupiers of lands and tenements in a certain parish, claimed by prescription a right of common of pasture as appurtenant to their several lands and tenements within the parish over certain lammas lands lying therein partly freehold and partly copyhold of two manors for their commonable cattle according to the number limited by the homage of one of the manors in proportion to the annual value of the tenements, and during such portion of the season between the removal of the crops in each year and the time of preparing the land for sowing in the next succeeding year as the homage should fix, a demurrer to the claim on the ground that the prescriptive right thereby alleged was uncertain and unreasonable was upheld, the Court saying:

(*c*) *Baylis* v. *Tyssen-Amhurst*, 6 Ch. Div. 500.

"The law requires precision of some kind, although I agree it does not require precision to a day, and that season would do very well if the season had been between the sowing and the removal of the crops, because when a man had sown his land you could not come upon it. . . . I cannot agree that you can have a legal custom to be determined by the people, whose interest it is to make it different from what it is. I think, therefore, if you want to allege a local custom you must have a proper beginning and proper ending. In the next place, I do not think this can be a legal custom, that is, that it could have occurred time out of mind, or from time immemorial. The statement says that the right is in proportion to the annual value of such tenements according to a scale fixed by the homage. Now annual value is, of course, constantly varying, and one can hardly imagine that before legal memory they could have decided the annual value varying from year to year, not according to the actual value but according to what the homage of a particular manor in part of the parish should determine. It does appear to me, I must say, inconsistent with the notion of ancient legal right, and I think it will be found that no such allegation from time immemorial could possibly be maintained as a reasonable thing to attribute to the time before King Richard I., which is the meaning of time immemorial" (*d*).

Further, in order to make a right of common appurtenant to particular lands, it must be shown that there is some connection between the exercise of the right and the possession of the lands. Thus, in the case which has just been mentioned (*e*), Sir George Jessel, M.R., said: "This right of pasturage, as far as I can understand it, over lammas lands is always a right annexed to the ownership of some other lands. I use the term 'annexed' advisedly. That right, of course, must be determined on the ordinary

(*d*) *Ibid.*, 509, *per* Sir Geo. Jessel, M. R.

(*e*) *Baylis* v. *Tyssen-Amhurst*, 6 Ch. Div. 500.

principles of law, and those principles, as I understand them, say that where the right is annexed to other lands the right must have some connection with those other lands to make it what is called appurtenant, that is, there must be some relation of the right and the enjoyment of those other lands. You may have various connections. . . . But in all ways there must be some connection between the occupation of the lands in respect of which the right is enjoyed and the right itself, which connection from its nature must to a certain extent limit the right enjoyed. You might say for every beast used on the land, not exceeding one beast per acre, there might be a right of common. But used in some way on the land I think the beasts must be to make the right appurtenant, otherwise I do not see what the meaning of the word 'appurtenant' is. It is a right of appurtenant to the land" (*f*).

Produce not to be taken for sale.

Copyholders can only take the produce of the waste for their necessary uses on their tenements, and not for sale or profit (*g*). But in some cases of grant or prescription, which do not extend to copyholders, the commoner, who is entitled to a certain amount of pasture, or other profit, may sell or let his right (*h*).

Limitations of right.

The copyholder's rights of common may be restricted in many various ways, besides the limitation of the quantity measured by the necessities of the tenement, or by some other customary measure of quantity. In some manors the freeholders have their pasture upon one part of the waste, and the copyholders on another part (*i*). The copyholder's right of pasture may be stinted to a particular number of cattle, or to certain kinds of cattle, as to commonable cattle in the strict sense of the word, including

(*f*) See Fitz. Abr. Prescription, 51, and *Hoskins* v. *Robbins*, Pollexf. 13, 21.

(*g*) *Valentine* v. *Penny*, Noy, 145; *Hayward* v. *Cannington*, 2 Keb. 290, 311; and see *De la Warr (Earl)* v. *Miles*, 17 Ch. Div. 535.

(*h*) *Daniel* v. *Hanslip*, 2 Lev. 67; *Bunn* v. *Channen*, 5 Taunt. 244; Woolrych, Commons, 92, 93, 192.

(*i*) See *Foiston* v. *Crachroode*, 4 Rep. 31 b.

only the cows, oxen, horses, and sheep, which are used in ploughing and manuring the land (*j*). Where the waste is part of an ancient forest, it is unusual for the privilege to extend to sheep, and hogs, goats, and geese are excluded (*k*). The right may also be limited as to the time of enjoyment, as that the waste or commonable ground shall only be depastured at certain times of the year (*l*), and there is frequently a custom for the homage to make bye-laws for the management and regulation of the common from time to time (*m*), and so with the other rights of common above described, the custom of the manor determining in each case, whether the wood, peat, &c., is to be taken at all times, or at certain seasons, and whether over the whole of the waste where the products are found, or in places to be assigned by the lord, and whether at the commoner's discretion, or after "view and delivery by the bailiff," or the like. It will also be remembered, that the rights of taking estovers, minerals, and the like, do not extend over the whole waste as seems to have been at some time supposed, but are confined to those places where the produce is actually found, and in this respect are unlike common of pasture, "which extends to every spot on which there is food for cattle, and also to every spot across which the cattle may wander in search of food" (*n*).

In most places the customary rights of common are confined to ancient copyhold tenements, the tenants of new copyholds created under a custom being excluded from pasture, and the owners of new houses being excluded from taking turf for fuel, and the like; but a new house built upon an ancient site is regarded as having the

(*j*) *Morley* v. *Clifford*, 20 Ch. Div. 753.

(*k*) Manwood, Laws of the Forest, 3rd ed., 222; Williams, Commons, 232.

(*l*) See *Standred* v. *Shorditch*, Cro. Jac. 580; *Musgrave* v. *Cave*, Willes, 319.

(*m*) See *Fox* v. *Amhurst*, L. R. 20 Eq. 403.

(*n*) *Per* Patteson, J., in *Pearson* v. *Underhill*, 16 Q. B. 120, 125.

privileges of the ancient tenement (*o*). It has been said, however, that a custom for the tenants of houses, whether new or old, to have estovers might be upheld as reasonable (*p*).

Rights of freehold tenants over waste.

In the next place, mention may be made of the rights of common which the free tenants of a manor may have over the waste. There is no doubt that freeholders may have many rights over the waste, besides their common of pasture appendant, similar to those which have been described as belonging by custom to copyholders; but there is a distinction between the nature of their claims. Copyholders, as has been seen, can allege a custom in the manor. "The freeholder, however, stands upon the presumed grant of his freehold, and he prescribes for himself and all those in whose interest he stands to have the use of certain things which for a time beyond legal memory have been attached to the land which he has as freeholder" (*q*).

Common appendant.

Of the rights of common which freehold tenants of a manor may possess, the most important is that kind of common of pasture which is known as common appendant. It is so called because on every original feoffment of arable land to be held of the manor in socage the law without express words presumed a grant of sufficient pasture on the waste appendant or belonging to the land for the commonable beasts levant and couchant thereon. "The reasons for this presumption were that in the scarcity of meadows and enclosed pastures which prevailed in early times, the tenant might otherwise have been without pasture for his cattle when the crops were in the ground, and generally for the advancement of tillage which was much favoured in law; the socage tenants were, moreover, frequently bound by their tenure to assist in cultivating the lord's

(*o*) *Costard* v. *Wingfield*, 2 Leon. 44; *Luttrel's Case*, 4 Rep. 86 a; *Arundel* (*Countess of*) v. *Steere*, Cro. Jac. 25.

(*p*) *Warrick* v. *Queen's College, Oxford*, L. R. 6 Ch. 716, 730.

(*q*) *Per* Lord Hatherley, L. C., in *Warrick* v. *Queen's College, Oxford*, L. R. 6 Ch. 716, 724.

demesnes and to keep cattle for that purpose, which could not be conveniently pastured on their own lands throughout the year" (*r*). Although the right is in fact prescriptive in its nature, the prescription should not be specially pleaded, as it is implied in the legal definition of the term "appendant" (*s*). Further, as has already been indicated, this right of common is only appendant to land which can be taken to have been anciently arable, and not to any land which can be shown to have been approved within time of memory (*t*); and, as the right is held to be an incident of the original tenure, it must be taken to have been already in existence when the creation of new tenures was forbidden (*u*). There is accordingly a double limitation of time implied in the definition of common appendant: "it must not only be an immemorial right which would by the provisions of the Prescription Act be proved by a thirty years' user, and be rendered indefeasible by a user for sixty years, but it must also have existed before the date of *Quia Emptores*. A proof, therefore, that the land in question was first brought into cultivation or was in the full ownership of the lord at any period subsequent to that statute, will necessarily upset a user for sixty years or more. At first sight this appears to contradict the language of the Prescription Act, but it must be remembered that upon such proof it will be evident not only that the right was created within time of memory, which would be unimportant, but that it has never been common appendant during the period of user" (*x*). Freehold tenants may also have by grant or prescription common of pasture appurtenant, whether their lands have been held by the lord within time of legal memory or not, common of estovers, common of turbary, as well as rights of digging sand, gravel, clay, and occa-

(*r*) Elton, Commons, 48; and see *Tyrringham's Case*, 4 Rep. 36 b, 37 a; *Bennett* v. *Reeve*, Willes, 227, 231; *Musgrave* v. *Cave*, *ibid.* 319.

(*s*) Co. Litt. 121 b, 122 a; *Grymes* v. *Peacock*, 1 Buls. 17.

(*t*) *Ante*, p. 251; Yearb. Trin. 26 Hen. VIII. fo. 4, pl. 15.

(*u*) See *Tyrringham's Case*, 4 Rep. 36 b.

(*x*) Elton, Commons, 50.

sionally coal, in the lord's waste, and common of piscary in the lord's streams or ponds (*y*). In general these rights are limited, in the absence of express provision, either by the requirements of the tenant in each case, or by some quantity fixed by usage (*z*). Common of pasture appurtenant is not confined to beasts which plough and manure the land, but may be extended to hogs, goats and geese (*a*); and it may be created at the present day (*b*).

Limit of rights of common belonging to freehold tenants.

In addition to the rights of common already mentioned, there may be other rights of a similar nature existing independently of the enjoyment of any tenement held of the manor (*c*). Such rights are termed rights of common in gross, and may be created either by grant or by long usage and acquiescence implying a grant. They are but rarely claimed by private persons, but corporations have in many instances claimed that they and their predecessors have from time immemorial exercised such rights (*d*). Claims of this kind are not within the provisions of the Prescription Act (*e*), and are therefore liable to be defeated by proof that the right claimed was first taken or enjoyed at any time within legal memory. An exclusive right of pasturage has been established as belonging to a corporation through the immemorial exercise of such right by the predecessors of the corporation, not as a right of common annexed to lands within the borough, but as a right belonging in gross to the corporation and differing from a right of common (*f*). If a single burgess wishes to claim the benefit of a grant of a right of common to a corpora-

Rights of common in gross.

(*y*) Elton, Commons, 62, 83, 98, 105, 109.

(*z*) See Bracton, iv. fos. 222, 228, 231; Fleta, iv. chaps. 19, 25; *Heyward* v. *Cunington*, 1 Sid. 354; *Benson* v. *Chester*, 8 T. R. 396; *Clayton* v. *Corby*, 5 Q. B. 415.

(*a*) Co. Litt. 122 a; *Smith* v. *Feverell*, 2 Mod. 6; *Dunraven* (*Earl*) v. *Llewellyn*, 15 Q. B. 791, 811.

(*b*) *Cowlam* v. *Slack*, 15 East, 108.

(*c*) Elton, Commons, 76, 86, 98, 105.

(*d*) Williams, Commons, 9.

(*e*) *Shuttleworth* v. *Le Fleming*, 19 C. B. N. S. 687.

(*f*) *Johnson* v. *Barnes*, L. R. 8 C. P. 527.

tion, he must prove that the grant was for the benefit of the individual burgesses (*g*); and if a right of common belongs to all freemen inhabiting within an ancient borough, it cannot properly be claimed as belonging to all the freemen inhabiting within the borough if its limits have been extended in modern times by an Act of Parliament (*h*). But although a corporation may prescribe by reason of the immemorial enjoyment of themselves and their predecessors, the inhabitants of a place who are not a corporation cannot prescribe for any profit *à prendre* or right of common as having been enjoyed by them as inhabitants from time immemorial. This was decided as early as the reign of Edward IV. by the *Case of Coventry* (*i*), in which it was held that inhabitants as such cannot claim common. This case was followed and confirmed by *Gateward's Case* (*k*), which is said to be "a landmark of the law on this subject" (*l*), and by subsequent decisions. Thus prescriptions for every inhabitant (*m*), or every householder (*n*), or for poor and indigent householders (*o*), for the tenants and inhabitants (*p*), or for all the dwellers in a parish or manor (*q*), to have rights of common have been adjudged void, because such fluctuating bodies of persons cannot hold to themselves and their successors, and also because they would be unable to release the right when they had obtained it. In *Davies* v. *Williams* (*r*) it was held that a claim to a right of common by prescription in occupiers could not be sustained even after verdict found, for a grant to successive occupiers would pass nothing, except to the first. In the case of *Austin* v. *Amhurst* (*s*) it

(*g*) *Parry* v. *Thomas*, 5 Ex. 37.

(*h*) *Beadsworth* v. *Torkington*, 1 Q. B. 782.

(*i*) Yearb. Trin. 15 Edw. IV. fos. 29, 32 *b*.

(*k*) 6 Rep. 59 b.

(*l*) *Per* Byles, J., in *Att.-Gen.* v. *Matthias*, 4 K. & J. 579, 591.

(*m*) *Mellor* v. *Spateman*, 1 Wms. Saund. 339, 343; *Pitts* v. *Kingsbridge Highw. Bd.*, 19 W. R. 884.

(*n*) *Ordeway* v. *Orme*, 1 Buls. 183.

(*o*) *Selby* v. *Robinson*, 2 T. R. 758.

(*p*) *Grimstead* v. *Marlowe*, 4 T. R. 717.

(*q*) *Allgood* v. *Gibson*, 25 W. R. 60.

(*r*) 16 Q. B. 546.

(*s*) 7 Ch. Div. 689.

appeared that the occupiers of lands under the copyholders of a manor claimed, and by a bye-law of the manorial court were declared to be entitled to, certain rights of common over the waste lands of the manor. Part of the lands had been sold to a railway company, and the occupiers claimed to share in the purchase-money. It was held that the claim could not be sustained, as it could not be made either by custom, grant, or prescription.

A Crown grant to the inhabitants of a parish to take certain profits *à prendre* out of a royal manor is valid, for the effect of such a grant would be to incorporate the inhabitants for the purpose of enabling them to exercise the rights (*t*). But an action to establish such a right is maintainable only by the inhabitants as a corporation so established, and not by an individual inhabitant suing merely on his own behalf (*u*). Such a Crown grant will not be presumed from proof of user by inhabitants if the presumption is inconsistent with what is known as to the past and existing state of the facts, and if there is no trace of such a corporation having actually existed at any time, and such a presumption would not be allowed in a case where at the time when such a corporation was supposed to be in existence and entitled to the rights, the tenants of the manor were themselves exercising an inconsistent right (*x*).

Rights of commoner.

The commoner has no estate in the land, but only a right to enter for the purpose of using his common, and he cannot take any other product of the soil (*y*). "A commoner entitled to common of pasture cannot take wood, hay, or other profit there growing, or cut down bushes, fern, or the like (without a special custom), although they prejudice his common; and a commoner, though he have a right by custom to cut fern, may not scatter the ashes

(*t*) *Willingale* v. *Maitland*, L. R. 3 Eq. 103; *Chilton* v. *Corporation of London*, 7 Ch. Div. 735.

(*u*) *Chilton* v. *Corporation of London*, 7 Ch. Div. 735.

(*x*) *Rivers (Lord)* v. *Adams*, 3 Ex. Div. 361.

(*y*) *Cooper* v. *Marshall*, 1 Burr. 259, 265.

which a stranger has made by cutting or burning it" (z). And it is a general rule that all interferences with the soil, beyond the actual taking of the produce subject to the right of common are unlawful in the absence of a special custom or prescription (a).

Whether commoner can assign his right.

Rights of common are in general exercisable only by the commoner himself; but in certain cases, where the right has been created by grant and the quantity to be taken is certain, the commoner may sever his appurtenant right and grant it to a stranger (b). Thus, where a freeholder has common of pasture appurtenant for a fixed number of cattle, he may allow a stranger to use his right with the same number of cattle, because no alteration is thereby made in quantity of profit to be taken from the waste (c). And so when a commoner by grant has a right to take a certain quantity of wood, turf, or the like, the right may in general be severed from the tenement to which it appertains (d). But this rule does not apply to copyholders, their custom always being to have common on the wastes for their own use in respect of their copyhold tenements (e). A copyholder, therefore, is not allowed to take pasture with the cattle of other persons, even though he should at the time have none of his own, but he may turn on cattle hired for use upon his copyhold land (f); and so a copyholder cannot aliene his right of estovers, turbary, or piscary to a stranger.

Incidental rights.

The right of common includes all the facilities of ingress, egress, &c., which are necessary to its enjoyment, and the commoner has therefore a right "to abate every obstruc-

(z) *Woadson* v. *Nawton*, 2 Stra. 777; and see Com. Dig. tit. Common (H.), and cases collected there.

(a) *Sir Simon de Harecourt's Case*, Yearb. Trin. 12 Hen. VIII. fo. 2, pl. 2.

(b) *Drury* v. *Kent*, Cro. Jac. 14; *Daniel* v. *Hanslip*, 2 Lev. 67; *Lathbury* v. *Arnold*, 1 Bing. 217.

(c) *Bunn* v. *Channen*, 5 Taunt. 244; and see *Jones* v. *Richards*, 6 A. & E. 530.

(d) See Woolrych, Commons, 94n.; and Cooke, Inclosures, 37, 40.

(e) *Ante*, p. 255.

(f) See Fitz. Nat. Brev. 180 B.; and *Rumsey* v. *Rawson*, 2 Keb. 410, 493, 504.

tion to his cattle's grazing the grass which grows upon the spot of ground," as by pulling down gates, hedges, and fences (*g*). But abatement is not a form of remedy which is favoured by the law; "for the abator is judge in his own cause" (*h*); and it appears to be only in cases where the acts of the lord or a stranger are directly contrary to and inconsistent with the nature of the right of common that the law allows the commoner to abate the obstruction. Where the lord places a hedge or fence upon the common so as to prevent the commoner's cattle from going into or over the common, the commoner may abate such hedge or fence, and in such a case he is not restricted to pulling down so much of it as it may be necessary to remove for the purpose of enabling his cattle to enter and feed upon the residue of the common, but he is entitled to consider the whole of the fence so erected upon the common as a nuisance, and to remove it accordingly (*i*). But where the hedge is placed upon other land, and merely surrounds the common, it seems that he will only be entitled to remove so much as is necessary to make a way for his cattle to enter the common (*k*). The commoner has no right to cut down any trees which may have been planted on the common by the owner of the soil (*l*), nor to interfere with the rabbits upon the common (*m*). In such cases the commoner has to bring his action, the burden of proof being upon him to show that the acts of the lord have caused him injury (*n*). A commoner may, however, pull down a house or a building, which has been wrongfully erected upon the common and which prevents his exercising his right as fully as he might

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(*g*) *Cooper* v. *Marshall*, 1 Burr. 259, 265.

(*h*) *Per* Eyre, C. J., in *Kirby* v. *Sadgrove*, 1 B. & P. 13.

(*i*) *Arlett* v. *Ellis*, 7 B. & C. 346, 362.

(*k*) Yearb. Trin. 15 Hen. VII. fo. 10, pl. 18; *Mason* v. *Cæsar*, 2 Mod. 65; and notes to *Mellor* v. *Spateman*, 1 Wms. Saund. 339, 353 a.

(*l*) *Kirby* v. *Sadgrove*, 1 B. & P. 13.

(*m*) *Coney's Case*, Godb. 122; *Cooper* v. *Marshall*, 1 Burr. 259.

(*n*) *Arlett* v. *Ellis*, 7 B. & C. 346, 363.

otherwise do, even although such house or building is actually occupied, provided he gives due notice to the occupier of the house or building, and requests him to remove it, and provided also that he does no unnecessary damage (*o*).

The commoner cannot maintain an action of trespass for damage done to the soil (*p*), but will have an action for damages against anyone who disturbs or impedes the exercise of his right. If he suffers by the way in which the owner uses the soil, he cannot by his own act remedy the injury, as by filling up pits, or the like, but must bring an action (*q*). An action will lie at the instance of the commoner against the lord for any damage or injury to his right of common whether such damage arises from the lord's interference with the soil, or from his surcharging the common, and so obstructing the commoner in the full enjoyment of his right. But when the action is brought against the lord, the particular damage must be shown by the commoner, and he must also prove that there is not sufficiency of common left (*r*). "If the defendant be lord of the manor, or put his cattle upon the common with the lord's licence, the commoner cannot maintain an action unless he has sustained a specific injury. It is not enough to show that the cattle consumed the grass, as in the case of a stranger, but it must appear that there was not a sufficiency of common left, in order to support the action" (*s*). In the case of an action brought against another commoner or a stranger, it is sufficient for the commoner to prove that owing to the act of the other commoner or stranger he could not have his

(*o*) *Davies* v. *Williams*, 16 Q. B. 546.

(*p*) *Sir Simon de Harecourt's Case*, Yearb. Trin. 12 Hen. VIII. fo. 2, pl. 2; *Crogate* v. *Morris*, 2 Brownl. 146.

(*q*) *Sadgrove* v. *Kirby*, 6 T. R. 483, 486; *Mellor* v. *Spateman*, 1 Wms. Saund. 339.

(*r*) *Smith* v. *Feverell*, 2 Mod. 6; *Atkinson* v. *Teasdale*, 3 Wils. 278, 290; *Robertson* v. *Hartopp*, 43 Ch. Div. 484, 502.

(*s*) *Mellor* v. *Spateman*, 1 Wms. Saund. 339, 346 b, n.

common in so beneficial a manner as he had before, for any act which prevents the enjoyment of the common in as ample a manner as before, and lessens the profit of the commoner will be a ground for an action against another commoner or a stranger (*t*). In *Wells* v. *Watling* (*u*) the plaintiff's case was that the defendant, who was not a commoner, had wrongfully turned a number of sheep upon the common, "whereby the plaintiff could not enjoy the benefit of his common in so ample a manner as he could before;" and on the part of the defendant it was contended that the plaintiff could not maintain the action because he had suffered no damage, as it did not appear that he had turned any sheep on the common that year. But De Grey, C. J., said: "The defendant has mistaken the ground of his objection. It is material for the plaintiff and he must show that he could not exercise his right *tam amplo modo*, &c. This has been both laid in the declaration and also proved by consequence; for every unlawful surcharge is *pro tanto* a diminution of the right and profit of every other commoner. It is certainly necessary that the plaintiff receive some actual injury in order to maintain this action, but it is laid down in *Marys's Case* (*x*), that the plaintiff must show the injury to be such *quod non potuit habere*, &c. (that he could not have his common in so beneficial a manner as before). The question is merely upon the nature of the defendant's acts, and the greatness or smallness of it, not on the plaintiff's exercise of his right. It is sufficient if the right be injured, whether it be exercised or not." In the same case, Gould, J., said: "The injury consists in preventing the enjoyment of the common *tam amplo modo*. It appears that an action lies for the damage let it be ever so minute." The same principle was followed in *Hobson* v. *Todd* (*y*), where it was held that one commoner who had surcharged might

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(*t*) *Marys's Case*, 9 Rep. 111 b.
(*u*) 2 W. Bl. 1233.
(*x*) 9 Rep. 111 b.
(*y*) 4 T. R. 71.

nevertheless maintain an action against another for surcharging the common, because his right had been injured by the act of the defendant. The smallest injury will be sufficient: in one case the removal of the manure, which had been dropped on the common by the cattle, was held sufficient to ground an action (*z*), and in another case it was held that one farthing's damage was sufficient to sustain a verdict (*a*). The cases, said Stirling, J., "appear to me to show that any act of a stranger, whereby the commoner is prevented from having the use and enjoyment of the common of pasture in as ample and beneficial a manner as he otherwise would, is a legal injury for which an action will lie, even although no actual damage be proved" (*b*).

Distress.

The commoner may distrain the cattle of a stranger doing damage, but cannot distrain when cattle are put in under a colour of right, as where the owner or another commoner puts in more than the right number of cattle (*c*); and the principle that there can be no distress where the cattle are on the commonable land under colour of right applies to common *pur cause de vicinage* as well as to common appurtenant (*d*).

Representative suits.

In cases of dispute between the owner of the waste and a number of persons having or claiming common there, courts of equity were accustomed to permit general suits to be brought either by one person claiming or defending a right against a number of others, or by a number of persons against the one who impedes their general right, in order to prevent a multiplicity of suits and actions (*e*), and because "all persons having a right in

(*z*) *Pindar* v. *Wadsworth*, 2 East, 154.

(*a*) *Kitchen* v. *Knight*, McClell. 373.

(*b*) *Robertson* v. *Hartopp*, 43 Ch. Div. 484, 500.

(*c*) *Hall* v. *Harding*, 1 W. Bl. 673.

(*d*) *Cape* v. *Scott*, L. R. 9 Q. B. 269.

(*e*) *York* (*Mayor of*) v. *Pilkington*, 1 Atk. 282; *Tenham* (*Lord*) v. *Herbert*, 2 Atk. 483.

common which is invaded by a common enemy, although they may have different rights *inter se*, are entitled to join in attacking the common enemy in defence of their common right" (*f*).

On these principles the Court of Chancery has confirmed the rights of owners making inclosures, leaving a sufficiency of common (*g*), and has held that one freehold tenant of a manor claiming by prescription under a presumed ancient grant can sue on behalf of himself and all the other freehold tenants to protect their rights over the waste against the lord making an inclosure (*h*). So one person who was a copyholder and also a freehold tenant of a manor has been allowed to sue on behalf of himself and all the other freehold and copyhold tenants for the purpose of establishing a right of common over the waste of the manor (*i*): but where a tenant had filed a bill on behalf of himself and all the other copyhold and freehold tenants, he was not allowed to amend his bill by adding the name of an enfranchised copyholder as a co-plaintiff, it having been known at the time of filing the bill that there were many enfranchised copyholders of the manor who might have similar rights over the waste (*k*). It has also been held that an action for the purpose of establishing a right of common on the wastes of a forest may be maintained by an owner and occupier of land within the forest on behalf of themselves and all the other owners and occupiers (*l*).

Extinguishment of common.

The copyholder's right of common may be extinguished in several ways. It is a rule in the case of freeholds that a right of common is destroyed when the commoner purchases an estate in the waste equal in duration, quality,

(*f*) *Per* Lord Hatherley, L. C., in *Warrick* v. *Queen's College, Oxford*, L. R. 6 Ch. 716, 726.

(*g*) *Arthington* v. *Fawkes*, 2 Vern. 356.

(*h*) *Warrick* v. *Queen's College, Oxford*, L. R. 6 Ch. 716; *Betts* v. *Thompson*, L. R. 6 Ch. 732.

(*i*) *Smith* v. *Brownlow* (*Earl*), L. R. 9 Eq. 241.

(*k*) *Peek* v. *Spencer*, L. R. 5 Ch. 548.

(*l*) *London* (*Commrs. of Sewers, &c. of*) v. *Glasse*, L. R. 7 Ch. 456.

and all other circumstances, to the estate which he had in the right of common: and in the case of a common appurtenant this is said to result from such a purchase of any portion of the waste: and any unity of possession will suspend the right of common (*m*). But in the case of a copyhold, the right of common will be capable of reviving, so long as the tenement remains demiseable by copy of court-roll; and a seizure into the hands of the lord will not extinguish the right of common, for "that right is annexed to all customary tenements demised or demiseable by copy of court-roll, and while the estate remains in the lord it continues demiseable. If the lord grants the fee to the copyholder, it never can again become a copyhold estate, for it ceases to be demiseable by copy of court-roll" (*n*). The right of common belonging to a copyholder by custom will not be destroyed, it seems, by his purchase of the manor, or at least will again attach to the land as soon as it becomes copyhold again after the merger of the titles (*o*).

The right is lost by an enfranchisement of the copyhold by deed operating at common law, unless there are special words to continue it. Thus, where a copyholder for life had common by custom and the lord granted to him the freehold inheritance with the appurtenances, it was held that the right was lost, because it had been attached to the customary estate and not to the land, and that the general words "with the appurtenances" were not sufficient to preserve the right of common (*p*). So where a copyholder had common of estovers by custom, and purchased the freehold with all commons appertaining thereto, the right was said to be lost, "but if there had been special words to make a new grant of the like common as he had before, that would have been good" (*q*); but

(*m*) *Tyrringham's Case*, 4 Rep. 36a; *Bradshaw* v. *Eyre*, Cro. Eliz. 570.

(*n*) *Badger* v. *Ford*, 3 B. & Ald. 153.

(*o*) See Watk. Copyh. i. 369, n.

(*p*) *Marsham* v. *Hunter*, Cro. Jac. 253. See *Sacheverill* v. *Porter*, Cro. Car. 482, as to a right of common passing on a feoffment of lands "*cum pertinentiis*."

(*q*) *Fort* v. *Ward*, Moo. 667.

in *Lee* v. *Edwards* (*r*) the Court said that if a copyholder has common in the lord's waste, and the lord enfeoffs him of his copyhold with all commons, the common is not gone. In another case where the lord had granted the freehold, together with all commons belonging or appertaining thereto and after the enfranchisement disputed the tenant's title to common, it was decreed in equity that the tenant should enjoy the same right as he had before, notwithstanding the legal defect in his grant, because the circumstances showed the intention of the grantor that it should survive (*s*). In all such cases the rule seems to be that the words "all commons used or occupied with the said messuage," or any similar expression, but not the words "commons appertaining or belonging thereto," will operate as a grant of a new right of common (*t*). But on an enfranchisement of the copyhold under the Copyhold Acts, all rights of common are preserved (*u*).

When however the copyholder has common on the land of a stranger, not by custom but by prescription in the name of the lord of the manor, the right is considered to appertain to the freehold inheritance, and not to the customary estate, and it will not be lost in any case by enfranchisement (*x*); and it seems also that if the copyholder purchases part of the land over which the right of common was exercised, the right will not be extinguished if the lord would be thereby injured (*y*).

Release and abandonment.

Every right of common may be extinguished by a release to the owner of the soil where it has been exercised, and it seems that a release of part of the land from the right of common would operate as a release of the

(*r*) 1 Brownl. 173.

(*s*) *Styant* v. *Staker*, 2 Vern. 250.

(*t*) *Bradshaw* v. *Eyre*, Cro. Eliz. 570; *Worledg* v. *Kingswel*, *ibid.* 794; *Barlow* v. *Rhodes*, 1 Cr. & Mees. 439, 448.

(*u*) *Post*, chap. xi.

(*x*) *Crowder* v. *Oldfield*, 6 Mod. 19, 20.

(*y*) See *Revell* v. *Joddrell*, 2 T. R. 415, 422, *arg.*; and Woolrych, Commons, 149.

whole (*s*). But if the right, though described as a right of common, is really an exclusive right of pasturage on the land during a certain part of the year, a release of part of the land would not extinguish the right (*a*). A right of common may also be lost by abandonment (*b*). The communication of an intention to abandon the right, if acted upon by the other party, will determine the right, and though the commoner may not have the intention to abandon, it would seem that if he induces the other person to believe that the right is gone, as by doing some act inconsistent with his having the right, the commoner would be precluded from setting up his privilege again. Mere disuse of the privilege will in most cases amount to no more than evidence of an intention to abandon, which may be rebutted by other circumstances, as that the commoner had no occasion to use the privilege (*c*). And even after disuse and a temporary conversion of the tenement to purposes inconsistent with using a right of common, the commoner might disclaim an intention to give it up (*d*). Though a person entitled to a right of common be not in the actual enjoyment of it, yet by non-user only for a time he does not cease to have a vested estate or interest therein (*e*).

Presumed release.

After non-user for a very long period it is said that a release will be presumed, unless some reason be shown for the omission to exercise the right. In the case of *Moore* v. *Rawson* (*f*), which was concerned with an easement, it was said by Littledale, J., that "if the party who has acquired a right by grant ceases for a long time to make

(*s*) Co. Litt. 122 a; *More* v. *Webbe*, 1 Brownl. 180; *S. C.*, 2 Brownl. 297; *Rotherham* v. *Green*, Cro. Eliz. 594; but see *Benson* v. *Chester*, 8 T. R. 396, 401.

(*a*) *Johnson* v. *Barnes*, L. R. 8 C. P. 527, 528.

(*b*) *Moore* v. *Rawson*, 3 B. & C. 332; *Reg.* v. *Chorley*, 12 Q. B. 515.

(*c*) *Ward* v. *Ward*, 7 Exch. 838.

(*d*) See *Carr* v. *Lambert*, L. R. 1 Ex. 168.

(*e*) Co. Litt. 114 b.

(*f*) 3 B. & C. 332.

use of the privilege so granted to him, it may then be presumed that he has released the right. It is said however that, as he can only acquire it by twenty years' enjoyment (in the case of an easement of light), it ought not to be lost without disuse for the same period: and that, as enjoyment for such a length of time is necessary to found the presumption of a grant, there must be a similar non-user to raise a presumption of a release: and this reasoning may perhaps apply to a right of common or way." But a much longer disuse may be explained by the circumstances of the case, so as to raise no presumption of release or of abandonment, and it must after all be always a question of evidence of intention (*g*); and as the express release of a right would destroy it at any moment, "so the cesser of use coupled with any act clearly indicative of an intention to abandon the right would have the same effect as an express release without any reference to time" (*h*).

Destruction or alteration of tenement.

The intention to abandon a right of common may be evinced by a destruction or alteration of the tenement to which the privilege was attached. Thus when pasture-land is converted into building ground and covered with houses and gardens on which cattle cannot be maintained, it is obvious that any customary privileges of husbandry will be extinct. But it has been held that a right of common was not extinguished by a conversion of pasture into an orchard and garden, a building having also been erected on part of the land. "It had land in a state in which it might have been laid down for pasture or been cultivated so as to produce plants and roots for the support of cattle; this is not, therefore, the case of a dominant tenement so changed in character as that cattle might not be fed off its produce"; and a claim of common of pasture under the Prescription Act for so many cattle as the land could support was sustained (*i*). When a right of common is appur-

(*g*) *Ward* v. *Ward*, 7 Exch. 838.
(*h*) *Reg.* v. *Chorley*, 12 Q. B. 515, 519.
(*i*) *Carr* v. *Lambert*, L. R. 1 Ex. 168, 175.

tenant to a house, as where a copyholder has by custom a right of turbary or estovers, it will be lost by a destruction of the house, provided that there was no intention to rebuild (*k*); and similar rights are lost by such alterations of the tenement as are inconsistent with the purposes for which the right of common was given (*l*).

Severance of right of common.

The right of common may also be destroyed by severance from the tenement to which it was annexed, as where the copyholder alienates the tenement and attempts to reserve the privileges which were given for its necessary uses and profitable enjoyment (*m*). It will also come to an end, of course, when the produce of the waste which was to be shared by the commoner has been destroyed or exhausted, as where the peat in a turbary has been used up for fuel, or where particular kinds of minerals or other produce can no longer be found by the commoners (*n*).

Exhaustion of product.

Inclosure of waste.

The copyholder's rights of common are extinguished by an inclosure of the waste, whether such inclosure be made by agreement, encroachment, approvement by the owner of the soil, or under a local custom or Act of Parliament.

Rights of the lord.

Ramsey v. Cuddon 1893. 1Q.B. 228

As to the rights of the lord over the manorial wastes. The lord, being owner of the soil of the wastes of the manor, may as a general rule exercise all acts of ownership over them which do not injure the rights of the commoners. The position of the lord was thus described by Bayley, J., in *Arlett* v. *Ellis* (*o*). "The lord by granting rights of common over his waste does not thereby exclude himself or his tenants from all use of the waste in which the right of common is to be exercised, but merely grants to others, in common with himself and his tenants, certain rights upon that waste. All that the lord has not granted remains in him. He may, therefore, apply the waste to

(*k*) See *Dunstan* v. *Tresider*, 5 T. R. 2; *Stott* v. *Stott*, 16 East, 343.

(*l*) *Luttrel's Case*, 4 Rep. 86 a, 87 a.

(*m*) 1 Ro. Abr. 401.

(*n*) *Ely* (*Dean and Ch. of*) v. *Warren*, 2 Atk. 189; *Peardon* v. *Underhill*, 16 Q. B. 120.

(*o*) 7 B. & C. 346, 362, 365.

any purposes not inconsistent with the rights which he has previously granted to the commoners. . . . I have no difficulty in saying that in my judgment the lord has rights of his own reserved upon the waste. I do not say subservient to but concurrent with the rights of the commoners." The extent of the owner's rights can only be determined by the usage. It has been held that where the question arises which of the two rights is to be subservient to the other, the right of the owner of the soil will in general be deemed superior to that of the commoner, but that if the custom shows the owner's right to be subservient to that of the commoner, the former cannot use the common beyond that extent (*p*). There seems to be hardly any limit to the possible variations of the commoner's privileges, which in one manor may be nearly valueless, and elsewhere almost equivalent to a separate estate in the land. Subject to the invariable rules that the commoners will not be allowed to take the whole of the produce and that the owner of the soil will not be allowed to destroy the common, the usage will determine the nature of the tenant's rights, the greater or less extent of the privileges at the present time being evidence in each case of the nature of the original grant.

Thus, where not restrained by the extent of the copyholders' custom, the lord as owner of the waste has a right to plant trees upon the waste (*q*), to stock it with rabbits and game (*r*), and to sport over it (*s*), to make shafts and pits, to open quarries or dig pits for taking clay, sand, or gravel, or to search for and take other minerals, doing as little damage as possible, the onus of showing that such acts injure the commoners' rights being

(*p*) *Bateson* v. *Green*, 5 T. R. 411; and see *Folkard* v. *Hemmett*, *ibid.* 417, n.; and *Hilton* v. *Granville* (*Earl*), 5 Q. B. 701.

(*q*) *Kirby* v. *Sadgrove*, 1 B. & P. 13.

(*r*) *Cooper* v. *Marshall*, 1 Burr. 259.

(*s*) *Case of Monopolies*, 11 Rep. 84 b, 87 a.

on the commoners (*t*), and the lord has in certain cases the right to erect buildings on the waste and even to inclose part of it, if he can show that he has left a sufficiency of pasture for the commoners (*u*). The lord has likewise a right to turn his own commonable cattle upon the waste. Thus Lord Coke says: "If a man claims by prescription any manner of common in another man's land and that the owner of the land shall be excluded to have pasture, estovers, or the like, this is a prescription or custom against the law to exclude the owner of the soil, for it is against the nature of the word common, and it was implied in the first grant that the owner of the soil should take his reasonable profit there, as it has been adjudged" (*x*). This right is not strictly a right of common, as a man cannot have a right of common in his own land: but it may be described as a quasi right of common; and in cases where wastes and common lands have been inclosed and divided under the provisions of Acts of Parliament containing directions that allotments should be made to the various persons interested in the wastes in satisfaction of their lands, rights of common, and other rights therein, it has been held that the lord of the manor has a right to an allotment in respect of this right of turning on his commonable cattle (*y*). "When land is spoken of as allotted to the lord, it is meant that whereas the lord had previously the right of soil over the whole common, subject to rights of common in the tenants which made that right of little or no value, a certain portion of the land is, on a division being made among all the parties interested, kept by the lord free from common rights, the rest of the land being apportioned among the commoners" (*z*).

(*t*) *Bateson* v. *Green*, 5 T. R. 411; *Hall* v. *Byron*, 4 Ch. Div. 667.

(*u*) *Patrick* v. *Stubbs*, 9 M. & W. 830; *Robinson* v. *Duleep Singh*, 11 Ch. Div. 798.

(*x*) Co. Litt. 122 a; *White* v. *Shirland*, cited there.

(*y*) *Arundel* v. *Falmouth* (*Visct.*), 2 M. & S. 440; *Lloyd* v. *Powis* (*Earlof*), 4 E. & B. 485; *Musgrave* v. *Inclosure Comrs.*, L. R. 9 Q. B. 162.

(*z*) *Per* Lord Cranworth, L. C.,

The commoner cannot cut down trees planted by the lord upon the waste, although there be not a sufficiency of common left (*a*), and where the owner of the waste has stored it with rabbits the commoners have not the right to stop up the burrows (*b*). By the Statute of Westminster the Second, 13 Edw. I. st. 1, c. 46, declaratory of the common law, the owner of the soil of the waste may enlarge his own house or curtilage, or build any wind-mill, sheep-cote, cow-house, or a dwelling-house for any servant employed about the waste, without reference to the sufficiency of common remaining. It has been held that under the provisions of the above Statute, the owner of the soil of a common may erect thereon a house necessary for the habitation of beast-keepers for the care of the cattle of himself and other persons having rights of common there, and that he may also erect a house necessary for the habitation of a woodward to protect the woods and underwoods on the common (*c*). The Statute, however, applies only to common of pasture, and not to common of estovers or turbary; the buildings, therefore, must not interfere with such rights (*d*).

Remedies of lord or owner of waste.

"If the owner has prejudice in the soil where the common is, he will have remedy by action as in his other lands" (*e*). If the cattle of a stranger are there, he may drive them out or impound them, or maintain trespass, and so if he finds the cattle of a stranger, he may drive the cattle of a commoner with them to a pound upon the waste in order to separate them, without alleging any custom (*f*).

in *Hicks* v. *Sallitt*, 3 De G. M. & G. 782, 796.

(*a*) *Kirby* v. *Sadgrove*, 1 B. & P. 13.

(*b*) *Horsey* v. *Hagberton*, Cro. Jac. 229; *Carrill* v. *Baker*, 1 Brownl. 227; *Cooper* v. *Marshall*, 1 Burr. 259.

(*c*) *Patrick* v. *Stubbs*, 9 M. & W. 830.

(*d*) *Duberley* v. *Page*, 2 T. R. 391; *Shakespear* v. *Peppin*, 6 T. R. 741.

(*e*) Com. Dig. tit. Common (K.); *Robert Marys's Case*, 9 Rep. 111 b; and see *Queen's Coll., Oxford* v. *Hallett*, 14 East, 489.

(*f*) *Atkinson* v. *Teasdale*, 2 W. Bl. 817, 818; *Hoskins* v. *Robins*, 2 Wms. Saund. 320, 328; *Thomas* v. *Nichols*, 3 Lev. 40.

He may also drive the cattle of a commoner to see whether the cattle of a stranger are there, or whether the common is surcharged, but not without a custom alleged; and if the common be surcharged, he may detain the cattle till satisfaction for the trespass, without a custom (*g*). If the tenant surcharges the common, or puts in cattle not levant and couchant, where he has a right only for cattle levant and couchant, the lord may either distrain the beasts as *damage feasant*, or bring an action for damages against the tenant (*h*). But while exercising his rights, the commoner is not responsible for damage that may arise from the negligence of others, as where the owner of the waste sets up a stack of corn there which is eaten by the cattle, or the like (*i*).

Approvement of waste.

Again, by the Statute of Merton, 20 Henry III. c. 4, as extended by the Statute of Westminster the Second, 13 Edward I. st. 1, c. 46, and by the Statute 3 & 4 Edward VI. c. 3, the lord of the manor, or other owner of a waste (*k*), may approve or inclose for his own benefit part of the waste as against the commoner, provided only he leaves sufficient pasture for the commoners together with free ingress, egress, and regress from their tenements into the waste; but in this case the duty lies on the person making the inclosure to show that sufficient pasture remains (*l*); and provided this is the case at the time of making the inclosure, the validity of the act will not be affected by the fact that the pasture may afterwards turn out to be not sufficient, and a similar inclosure may be made as often as it happens that more than sufficient remains for the commoners (*m*). The Statute of Merton,

(*g*) *Bromfield* v. *Teigh*, 2 Lev. 87; *Follet* v. *Troake*, 2 Ld. Raym. 1186.

(*h*) *Dixon* v. *James*, 1 Freem. 273; *Ellis* v. *Rowles*, Willes, 638; Woolrych, Commons, 201—203; Williams, Commons, 122; but see *Anon.*, 3 Wils. 126.

(*i*) *Farmor* v. *Hunt*, Cro. Jac. 271.

(*k*) *Glover* v. *Lane*, 3 T. R. 445.

(*l*) *Arlett* v. *Ellis*, 7 B. & C. 346; *Smith* v. *Brownlow* (*Earl*), L. R. 9 Eq. 241; *Betts* v. *Thompson*, L. R. 6 Ch. 732.

(*m*) 2 Inst. 87.

however, has no reference to the case of commoners having rights of turbary, estovers, or the like (*n*). It is clear that many distinct rights of common may exist independently of each other in different parts of the same manorial waste. "A right of turbary may be exerciseable in the fenny and marshy places, or in places where the pared surface of the soil will provide fuel for the commoner; a right of estovers may be used in the portions covered with wood, or where the plants grow, which may be taken for fuel and repairs; a common of piscary may be exercised in the streams and ponds, a common of digging in the quarries, sand-pits, and coal mines; while a common of pasture may very often be taken over the whole waste, not only in places where pasture can be taken by the cattle but also wherever they may range in search of food. The question has therefore arisen on several occasions, whether inclosures can be made against common of pasture under the Statute of Merton in wastes where these other rights exist; and it was decided in the case of *Faweett* v. *Strickland* (*o*) that the owner of the soil may inclose a portion of it for his own use against tenants having rights of pasture, notwithstanding that the same tenants have also appurtenant rights of turbary, piscary, estovers, digging, &c., provided that he satisfied the requirements of the statute by leaving sufficient pasture, and did not injure the minor rights of common" (*p*). Although the lord cannot inclose against such a right of turbary under the Statute of Merton, yet where there are two or more rights of common in the same waste, the right of turbary, &c., will not hinder the owner from inclosing against common of pasture, because they are distinct rights. "Supposing that one man has common of pasture and another a common of turbary in the same waste, he that has common of pasture cannot justify throwing down the lord's inclosures, provided there be

(*n*) *Duberley* v. *Page*, 2 T. R. 391.
(*o*) Willes, 57.
(*p*) Elton, Commons, 218, 219.

sufficient common of pasture left, because another person has common of turbary in the same common. And wherever rights are in their nature perfectly distinct, as common of pasture and common of turbary certainly are, we think it will be just the same, though they happen to concur in one and the same person. If it were otherwise it would just be the same in common of piscary and common of estovers, for Lord Coke says that the statute does not extend to either of them. Yet it would seem to be absurd to say that a lord cannot inclose against common of pasture, because his tenants or some other persons have common of piscary or estovers in the same waste: whereas his inclosure may be no interruption to their enjoyment of their common of piscary or estovers, and very probably their common of estovers may be the better for such an inclosure. If indeed by such inclosure their common of piscary or estovers were affected, or they were interrupted in the enjoyment of either of these rights, they might certainly bring their action, and the lord in such a case could not justify such inclosure in prejudice of these rights" (*q*).

A comparison of the cases relating to inclosures in wastes where there are rights of common other than common of pasture will show that under the Statute of Merton the owner may inclose against appendant and appurtenant rights of pasture, leaving sufficient pasture, although the same persons, or others, have other rights of common in the same waste, as common of turbary, estovers, piscary, digging, &c., whether appurtenant or in gross; but the exercise of these rights must not be impeded by the inclosure; and that, without reference to the statute, the owner may inclose portions of ground wherein other rights of common are exercised, provided he does not thereby infringe the original grant and permission, the

(*q*) *Per* Willes, C. J., in *Fawcett* v. *Strickland*, Willes, 57, 60.

nature of which is shown by the extent of the copyholder's custom (*r*).

Inclosures of common by custom.

A custom has been alleged in some manors for the lord to grant parts of the waste as copyhold, without regard to the consent of the homage (*s*); but any grant so made would be invalid unless the lord could show that he had left sufficient pasture for the commoners, as a custom for the lord to inclose or grant leases of the waste without limit or restriction is bad (*t*). But where such a custom existed and the necessary conditions were fulfilled, the parcels so granted were considered in all respects copyhold tenements, as if they had been so from time immemorial (*u*). By the Copyhold Act, 1887, however, it is now provided that after the 16th of September, 1887, it shall not be lawful for the lord of any manor to make grants of land not previously of copyhold tenure to any person, to hold by copy of court-roll or by tenure of a customary nature, without the previous consent of the Board of Agriculture; and the Board, in giving or withholding their consent, are to have regard to the same considerations as they would take into account in the case of an inclosure of common lands; and whenever any such grant has been lawfully made, the land comprised in it is held by the grantee as in free and common socage. Previously to the passing of the above-mentioned Act, it had been decided that the effect of a licence by a lord to a tenant to inclose a piece of waste land was not to convey a copyhold interest to the tenant, but to give him a common-law holding. The lord in such a case, it

(*r*) *Grant* v. *Gunner*, 1 Taunt. 435; *Duberley* v. *Page*, 2 T. R. 391; *Shakespear* v. *Peppin*, 6 T. R. 741; *Lake* v. *Plaxton*, 10 Ex. 196; *Lascelles* v. *Onslow* (*Lord*), 2 Q. B. Div. 438; *Robinson* v. *Duleep Singh*, 11 Ch. Div. 798; *Robertson* v. *Hartopp*, 43 Ch. Div. 484.

(*s*) See *Northwick* (*Lord*) v. *Stanway*, 3 B. & P. 346; *Badger* v. *Ford*, 3 B. & Ald. 153; *Arlett* v. *Ellis*, 7 B. & C. 346.

(*t*) *Badger* v. *Ford*, 3 B. & Ald. 153; *Arlett* v. *Ellis*, 7 B. & C. 346.

(*u*) *Northwick* (*Lord*) v. *Stanway*, 3 B. & P. 346.

was said, was in the position of a freeholder entitled in reversion expectant upon the tenancy created by the licence, and after twenty years from the inclosure the land would become the lord's free from commonable rights (*x*).

Grants of waste with consent of homage.

The lord has not unfrequently a customary power to grant, with the consent of the homage, parcels of the waste to be held by copy of court-roll (*y*); but under the provisions of the Copyhold Act, 1887, which have just been mentioned, this power will not now be exerciseable without the previous consent of the Board of Agriculture, and the land comprised in the grant will now be held as in free and common socage. It has been suggested that where such a custom as this exists the Statute of Merton would not apply, and that accordingly the lord could not under any circumstances inclose, unless with the consent of the homage (*z*), but it seems to be clear that this power of the lord of a manor to grant parcels of the waste with the consent of the homage is perfectly distinct from the right of approvement leaving sufficient common, which belongs to every owner of waste land. It is intended as an additional benefit to the owner of the manor and not as a restriction upon his common-law right, which is superior to any such custom (*a*). Approvements are made for the owner's private benefit, and the land inclosed thereby is always of freehold tenure; while inclosures under these special customs are for the benefit of a new tenant, the land being formerly held by copy of court-roll (*b*). It seems, indeed, that these two separate rights may be exercised at one time in the same waste. "The first exists at common law, which is called approvement,

(*x*) *Att.-Gen.* v. *Tomline*, 15 Ch. Div. 150 (C. A.).

(*y*) See *Hughes* v. *Games*, Sel. Cas. Ch. temp. King, 62; *Wentworth* (*Lady*) v. *Clay*, Cas. temp. Finch, 263; *Tyssen* v. *Clarke*, 3 Wils. 541; *Folkard* v. *Hemmett*, 5 T. R. 417, n.; *Steel* v. *Prickett*, 2 Stark. 463, 470; *Boulcott* v. *Winmill*, 2 Camp. 261.

(*z*) Williams, Commons, 125.

(*a*) *Duberley* v. *Page*, 2 T. R. 391.

(*b*) *Arlett* v. *Ellis*, 7 B. & C. 346.

Such a grant would be void as of a common who has unfranchised.
Ramsay v. Cuddon 1893. 1. Ch. 220.

and is a right in the lord to inclose any portion of his common provided he leave sufficient to satisfy the rights of common which exist. The second is a special custom, if the lord and homage agree to inclose any portion without reference to rights of common" (*c*).

The general nature of these customs will appear from the following account of a case relating to the manor of Stepney. "The lady of the manor exhibited a bill in Chancery to establish a usage and custom within the manor that the lords of the said manor might upon the presentment of seven of the copyholders determine what waste ground was fit to be set out and inclosed, in order to build upon the same: and such presentment being agreed unto by the major part of the homage at the next court, the same was by the custom set out and inclosed accordingly, without any molestation or disturbance by the tenants." The presentment then sought to be established by a decree was opposed by several of the tenants, who brought actions for the disturbance of their commons of pasture, digging, and estovers, and denied the existence of the custom above described. The Court decreed after an examination of the evidence and inspection of the court-rolls from the reign of Henry VIII., "that this was a reasonable usage and fit to be established, and that the plaintiff had proceeded according to the usage in procuring the ground in dispute to be set out, presented, and allowed by the homage, and inclosed as aforesaid, and so had power to grant leases and estates thereof at her pleasure, to be inclosed and kept in severalty, &c." (*d*).

The custom of the manor of Hackney also was discussed in a trial at bar in the Common Pleas. A custom was proved to exist for the lord, with the assent of a homage jury, to make leases to the tenants for periods up to sixty years in length of portions of the waste but

(*c*) Open Spaces Sel. Comm. (1865), 1 Rep. Qu. 757, 853.

(*d*) *Wentworth* (*Lady*) v. *Clay*, Cas. temp. Finch, 263; Vin. Abr. vi. 181.

never to make grants in fee. The lessee might inclose with the lord's licence and the assent of the customary tenants, so long as no prejudice was done to their rights. It was held that the lord might approve for his own use, if he left sufficient common, but that no person taking land by his grant under the custom could inclose without the assent of the homage (*e*).

These customary modes of inclosure prevail chiefly in the neighbourhood of London, as in the manors of Hampstead, Hackney, Stepney, Wandsworth, West Sheen, and Ham. But they are also to be found in the county of Durham and elsewhere in the northern counties, and in the manor of Taunton Deane, in Somersetshire, there are many parcels of copyhold taken up out of the wastes, with the consent of the tenants, which are held and enjoyed under fine and rent certain in the same way as the other copyhold lands of the manor (*f*).

Similar customs are found in manors within royal forests, the lords being able in certain cases to grant new copyholds with the assent of the homage (*g*): and the Crown, it is said, has made similar grants in Windsor Forest.

How made.

The mode of making these inclosures varies according to the special custom of each manor, the only invariable condition being that the lord shall not by this or any other method destroy the whole common. A custom to inclose at discretion would be void for want of limitation, and even before the passing of the Copyhold Act, 1887 (*h*), an unlimited power of creating copyholds would not have been allowed to any lord of a manor. Where it appeared that the lord had for a hundred and fifty years been accustomed to grant leases of portions of the waste, so that the whole common had gradually been destroyed, it was

(*e*) *Tyssen* v. *Clarke*, 3 Wils. 541.

(*f*) See *Rex* v. *Warblington* (*Inhabts. of*) 1 T. R. 242; and Shillibeer, Customs of Taunton Deane, 27.

(*g*) *Boulcott* v. *Winmill*, 2 Camp. 261; *Smith's Case*, W. Jon. 272; *Schwinge* v. *Dowell*, 2 F. & F. 845.

(*h*) Sect. 6.

decided that such a right could have had no legal commencement, and therefore no lapse of time could make it valid (*i*).

When the lord of a manor had by a deed acknowledged that the consent and confirmation of the homage was necessary for alienations of the waste to new copyhold tenants, he was not allowed to give evidence of having from time to time made such alienations without their consent (*k*).

If the lord claimed to make inclosures without the consent of the homage, he would have to prove that he had left sufficiency of common (*l*); but in cases where the consent of the homage is necessary to the making of the grant, the proof of sufficiency is afforded by their consent, "for being tenants themselves, it is not likely that they will lean unfairly towards the lord, . . . and it may be reasonably presumed that they have consented only when it is clear that the land granted may be taken without interfering with the rights of the commoners" (*m*).

Consent of freeholders to grants of the waste.

The freeholders of the manor may by special custom be summoned to the customary court, where consent to the inclosure is to be given. Thus it is said that the lord of the manor of Wimbledon has liberty to grant parcels of the waste with the consent of the free and customary tenants (*n*); and in the manor of Lewisham, the copyholders having been long enfranchised, only freeholders are summoned to the Court (*o*). The freeholders are also summoned in other manors, as in Littlecott, in Wiltshire (*p*). But it may be noticed that where free tenants are thus summoned there is usually some evidence that

(*i*) *Badger* v. *Ford*, 3 B. & Ald. 153; and see *Benson* v. *Chester*, 8 T. R. 396; *Ivatt* v. *Mann*, 4 Scott, N. S. 342.

(*k*) *Drury* v. *Moore*, 1 Stark. 102.

(*l*) *Arlett* v. *Ellis*, 7 B. & C. 346.

(*m*) *Ibid.* 368, *per* Bayley, J.

(*n*) Open Spaces Sel. Comm. (1865), 1 Rep. Qu. 1664; Watk. Copyh. ii. 554.

(*o*) Open Spaces Sel. Comm. (1865), 2 Rep. Qu. 2958—2971.

(*p*) Watk. Copyh. ii. 497.

the tenants generally are not commoners at all, but joint owners of the herbage of the waste (*q*).

To whom grants of waste may be made.

In most cases the customary grant of waste land may be made to any person willing to take the same, whether previously a tenant of the manor or not. In others, however, the grantee must already be a tenant (*r*).

Rights of grantees of waste.

In order to prevent an undue diminution of the common by an increase of tenants, it is the custom of some manors that the new grantees shall not be entitled to rights of common on the waste. In the absence of such a custom, however, it would seem that where the piece of land is inclosed, and granted as a tenement under a custom, as the custom is from time immemorial, the tenant would have the same privileges as any of the copyholders (*s*); but it is said that "if the lord approves under the Statute of Merton or approves part of the waste as freehold with the consent of the homage, there is no doubt that the land so approved is not only discharged from all rights of common over it, but cannot entitle its owner to place any cattle upon the common" (*t*).

Customary inclosures by tenants.

Besides the customary inclosures by the lords of manors above described, there are in certain parts of the country customs for inclosures to be made on manorial wastes by the tenants themselves. Thus, in the manor of Framfield, in Sussex, where the custom allows the lord to make customary inclosures of new copyholds, there is said to be a custom that the old tenants may cultivate the portions of the waste which adjoin their tenements, and may make small inclosures for special purposes of farming. In other places the customary tenants have the privilege of making temporary inclosures until one or more crops shall have

(*q*) Elton, Commons, 270, 271.

(*r*) See *Tyssen* v. *Clarke*, 3 Wils. 541; *Clarkson* v. *Woodhouse*, 5 T. R. 412, n.; *Boulcott* v. *Winmill*, 2 Camp. 261.

(*s*) *Northwick* (*Lord*) v. *Stanway*, 3 B. & P. 346.

(*t*) Williams, Commons, 132, 133. Cf. Bracton, lib. iv. c. 38, ff. 225 b, 226.

been raised on the new "intakes" or inclosures (*u*). In several parts of Cornwall the tenants are allowed to break up the furze-crofts on the waste of a manor at periodical intervals (*x*), and in the Forest of Sherwood a custom was proved for the commoners in the manors within its precincts to take in temporary inclosures of land, called "breaks," varying in extent from 40 to 250 acres, and to keep them in cultivation for five or six years, after which they are again thrown open. For these inclosures, however, a licence has always been required from the lord of the manor, as well as from the Crown officials in charge of the forest (*y*). And in the common of Kingsmoor, in Somersetshire, the commoners were entitled to elect a jury of twelve to manage the moor, with power to inclose portions for their own use during their year of office (*z*).

Inclosure by encroachment.

The rights of commoners may also be lost by reason of an encroachment, and by neglect to assert the rights (*a*). Commoners are entitled to protect themselves against an encroacher by an action for disturbance of the common, or by pulling down the fences which prevent the enjoyment of their rights (*b*).

Whether encroachments by a copyholder are of copyhold tenure.

In the case of *Attorney-General* v. *Tomline* (*c*) the Court of Appeal doubted whether the doctrine that encroachments made by a lessee enure to the benefit of the landlord was applicable to the case of encroachment by a copyholder, so as to create a copyhold tenure of the land inclosed, but in the particular circumstances of the case they held that the doctrine, being a principle founded on presumption of fact, was excluded by the fact that the inclosure was not an encroachment, having been made by

(*u*) See Elton, Commons, 277, 278.

(*x*) Worgan, Surv. Cornw. 531; Fraser, Surv. Cornw. 56.

(*y*) Lowe, Surv. Notts. 9.

(*z*) See *Smith* v. *Barrett*, 1 Sid. 161, 162; Elton, Commons, 279.

(*a*) See 8 & 9 Vict. c. 118, s. 52; 10 & 11 Vict. c. 111, s. 3; *Lowe* v. *Carpenter*, 6 Exch. 825.

(*b*) *Att.-Gen.* v. *Tomline*, 15 Ch. Div. 150, 159, *per* James, L. J.

(*c*) 15 Ch. Div. 150.

licence from the lord, and that subsequent admittance to the original copyhold tenement did not treat the inclosure as part of that tenement. "I do not say that under any circumstances an encroachment could become copyhold or be held by copyhold title, because, looking at the circumstances under which these questions as to accretions as between landlord and tenant have arisen, it may well be that they rest upon the principle that the lessee, being in a fiduciary position, is not at liberty to dispute his landlord's title to encroachments, the absolute title of the tenant to which might materially depreciate the value of the original premises when given up to the landlord, a principle which could hardly apply to encroachments by a copyholder" (*d*).

Inclosure of wastes by agreement.

The inclosure of waste land and the consequent extinguishment of the rights of common thereon may also be effected by agreement between the owner of the soil and the commoners. This practice was not uncommon before it became usual to obtain local Inclosure Acts, and it seems to have been regarded as the only mode of bringing wastes into cultivation over which there existed rights of common other than common of pasture, to which the Statutes of Merton and Westminster the Second (*e*) alone related. It was formerly thought that inclosures were beneficial not only to the parties directly interested but also to the community generally, and these agreements were favoured accordingly by the law and were enforced by the Court of Exchequer and the Court of Chancery, notwithstanding the dissent of one or two of the commoners or some informality in the making of the agreement. It was doubted after a time whether these decrees would be binding, unless all the parties had agreed; and it was, of course, found to be impossible in many cases to obtain the assent of all the commoners, or to choose a time when they were all capable

(*d*) *Ibid.* 160, 161, *per* Cotton, L. J.

(*e*) 20 Hen. III. c. 4; 13 Edw. I. st. 1, c. 46.

of giving assent; and it accordingly became the practice to have the effect of such agreements confirmed by local Acts of Parliament (*f*). The method provided by these Acts was to appoint commissioners to allot and award the land to be inclosed amongst the owners and the commoners in proportion to their respective interests; it is said that about four thousand of these Acts were passed during the last two centuries (*g*). In the reign of George III. they became so numerous that a statute was passed in 1801 (*h*) for the purpose of consolidating the usual clauses. This statute contained various provisions regulating the proceedings of the commissioners to be appointed by the special local Acts, and protected the lord's seignories, rights, and royalties (*i*). The Act of 1801 has, however, been superseded by the Inclosure Acts, 1845 to 1882 (*k*). By the Inclosure Act, 1845, a body of commissioners was appointed under the style of the Inclosure Commissioners of England and Wales, and with their sanction inclosures have been more expeditiously and more cheaply effected (*l*). The rights and duties of these Commissioners were transferred to and vested in the Board of Agriculture by the Board of Agriculture Act, 1889 (*m*). The lands which are subject to be inclosed under the provisions of the Inclosure Acts, 1845 to 1882, are described in the 11th section of the Act of 1845 as follows: "All lands subject to any rights of common whatsoever, and whether such rights may be exercised or enjoyed at all times, or may be exercised or enjoyed only during limited times, seasons, or periods, or be subject to any suspension or restriction

Inclosure Acts 1845 to 1882.

Lands subject to be inclosed.

(*f*) Elton, Commons, 166 *et seq.*

(*g*) Williams, Commons, 249; Elton, Commons, 150—155, 166.

(*h*) 41 Geo. III. c. 109.

(*i*) *Ibid.* s. 40; and see *Twonley* v. *Gibson*, 2 T. R. 401; and 22 & 23 Vict. c. 43, ss. 1—6.

(*k*) 8 & 9 Vict. c. 118; 9 & 10 Vict. c. 70; 10 & 11 Vict. c. 111; 11 & 12 Vict. c. 99; 12 & 13 Vict. c. 83; 14 & 15 Vict. c. 53; 15 & 16 Vict. c. 79; 17 & 18 Vict. c. 97; 20 & 21 Vict. c. 31; 22 & 23 Vict. c. 43; 31 & 32 Vict. c. 89; 39 & 40 Vict. c. 56; 41 & 42 Vict. c. 56; 42 & 43 Vict. c. 37; 45 Vict. c. 15.

(*l*) 8 & 9 Vict. c. 118, s. 2.

(*m*) 52 & 53 Vict. c. 30.

whatsoever in respect of the time of the enjoyment thereof; all gated and stinted pastures in which the property of the soil or of some part thereof, is in the owners of the cattle-gates or other gates or stints, or any of them; all gated and stinted pastures in which no part of the property of the soil is in the owners of the cattle-gates or stints; all land held, occupied, or used in common, either at all times or during any time or season, or periodically, and either for all purposes or for any limited purpose, and whether the separate parcels of the several owners of the soil shall or shall not be known by metes, or bounds, or otherwise distinguishable; all land in which the property or right of or to the vesture, or herbage, or any part thereof during the whole or any part of the year, or the property or right of or to the wood or underwood growing or to grow thereon, is separated from the property of the soil; and all lot meadows and other lands the occupation or enjoyment of the several lots or parcels of which is subject to interchange among the respective owners in any known course of rotation, or otherwise"; but no waste lands of any manor on which the tenants had rights of common, nor any land subject to rights of common which might be exercised at all times of every year for cattle levant and couchant upon other land, or to any rights of common which may be exercised at all times of every year, and not limited by numbers or stints, were to be inclosed under the provisions of the Act without the previous authority of Parliament (*n*). This sanction is now necessary for every inclosure under the Board (*o*). A town or village green or a recreation ground is not subject to inclosure (*p*), and special provisions are contained in the Inclosure Acts for protecting such greens from encroachments and nuisances, and for fixing and preserving their boundaries (*q*). The Board of Agriculture may require, as a condition of

Authority of Parliament for inclosures.

(*n*) 8 & 9 Vict. c. 118, s. 12.
(*o*) 15 & 16 Vict. c. 79, s. 1.
(*p*) 8 & 9 Vict. c. 118, s. 15.
(*q*) 20 & 21 Vict. c. 31, s. 12; 39 & 40 Vict. c. 56, s. 29.

any inclosure under these Acts, the appropriation of an allotment for the purposes of exercise and recreation for the inhabitants of the neighbourhood (*r*), or the appropriation of an allotment for the labouring poor (*s*). They are also empowered to remedy any defects or omissions in awards made under local Inclosure Acts, or under the Acts for facilitating the inclosure of open and arable lands (*t*). The procedure to be adopted in obtaining the inclosure or regulation of any land which is subject to be inclosed under the Inclosure Acts is now regulated by the Commons Act, 1876. Under the provisions of that Act the Board of Agriculture may entertain an application for a provisional order for the regulation of a common (including in the term "common" any land subject to inclosure), or for the inclosure of a common, or for the regulation of part and the inclosure of the remainder (*u*); but they will not sanction inclosure in severalty as opposed to regulation, unless it can be proved to their satisfaction, and also to the satisfaction of Parliament, that inclosure will be of benefit to the neighbourhood as well as to private interests and to the persons who are legally interested in the common (*x*). The provisional order for the regulation of a common may provide generally or otherwise for the "adjustment of rights" in respect of such common, or for the "improvement of the common" (*y*), which terms are respectively explained in the 4th and 5th sections of the Act. With respect to commons situate wholly or partly in any town or towns, or within six miles thereof, the Act provides that notice of the intended application for a provisional order must be served on the urban sanitary authority (*z*), and for the purposes of the Act a "town" is defined as meaning any municipal borough, or Improvement Act District, or Local Govern-

Commons Act, 1876.

(*r*) 8 & 9 Vict. c. 118, s. 30; and see 39 & 40 Vict. c. 56, s. 34.
(*s*) 8 & 9 Vict. c. 118, s. 31.
(*t*) *Ibid.* s. 152.
(*u*) 39 & 40 Vict. c. 56, s. 2.
(*x*) *Ibid.* preamble.
(*y*) *Ibid.* s. 3.
(*z*) *Ibid.* s. 8.

ment District, having a population of not less than 5,000 inhabitants. A form of directions issued by the Board of Agriculture as to the mode in which applications for the regulation or inclosure of commons under the Inclosure Acts, 1845 to 1882, are to be made, with explanations respecting the law as to the regulation and inclosure of commons, will be found in the Appendix. There can, however, be no inclosure under this Act of any common land such as is described in the Inclosure Act, 1845, which is situate either wholly or partly within the Metropolitan police district, as defined at the passing of the Metropolitan Commons Act, 1866 (*a*). A scheme for the establishment of local management with a view to the expenditure of money on the drainage, levelling, and improvement of any such land and to the making of bye-laws and regulations for the prevention of nuisances and the preservation of order thereon, may be made under the provisions of the Metropolitan Commons Act, 1866, and the Metropolitan Commons Amendment Act, 1869, on a memorial presented to the Board of Agriculture by the lord of the manor, or by any commoners, or by the local authority of the district in which such land is situate (*b*), or by any twelve or more ratepayers, inhabitants of the parish or parishes within which the land lies (*c*).

Metropolitan commons.

It may be mentioned here that in order to provide for the better cultivation, improvement, and regulation of common arable fields and pastures an Act was passed in 1773 (*d*) which was of great use in causing the gradual abandonment of the unprofitable system of agriculture in large open fields. The principal provisions of the Act were that three-fourths in number and value of the occupiers of such open and common field lands in each parish or place cultivating and taking the crops of the same and having the consent of the owners in manner therein men-

Common Fields Inclosures Acts.

(*a*) 29 & 30 Vict. c. 122, s. 5.
(*b*) *Ibid.* s. 6.
(*c*) 32 & 33 Vict. c. 107, s. 3.
(*d*) 13 Geo. III. c. 81.

tioned might at a meeting to be held and summoned as therein directed determine the course of husbandry to be observed during the next six years (*e*); that cottagers having rights of common but no lands in common fields should not be debarred from exercising their rights, but might accept a compensation in lieu thereof, either by an annual payment or other annual advantage, and that if the occupiers of the common fields agreed not to depasture the lands, they might make allotments of them to the cottagers in lieu of their rights of common (*f*); but that nothing in the Act contained should prevent, or extend to prevent, any person from inclosing all or any part of his land to or for his own use or benefit, if he had full power or right so to do, thus preserving the right of a severalty owner in a common field to inclose his portion where such a right exists by custom (*g*). These provisions were amended in several respects by an Act passed in 1836 to facilitate the inclosure of common fields, and commonly known as Lord Worsley's Act (*h*). This latter Act provided that whereas it would tend to the improved cultivation of open and common arable, meadow, and pasture lands and fields, which were intermixed, if the proprietors of such lands were enabled by a general law to divide and inclose the same it should be lawful for the proprietors, with the consent of two-thirds in number and value of the persons interested therein, to inclose all such open fields and meadows, and all untilled slips or balks formerly serving as boundaries between the severalty portions (*i*). The Act did not apply to manorial wastes, or to common fields in the immediate neighbourhood of London and some other large towns (*k*), which are now

(*e*) *Ibid.* ss. 1, 2.

(*f*) *Ibid.* ss. 8, 9.

(*g*) *Ibid.* s. 27; see *Cheesman* v. *Hardham*, 1 B. & Ald. 706, 712.

(*h*) 6 & 7 Will. IV. c. 115.

(*i*) Sect. 1. See 3 & 4 Vict. c. 31, s. 4, extending the provisions of this Act to open and common arable fields having adjacent thereto, but not separated by any fence therefrom, tracts of grass land commonable during part of the year.

(*k*) Sects. 54, 55.

dealt with under the Inclosure Acts and the Metropolitan Commons Acts already mentioned; and in other respects the provisions of Lord Worsley's Act are but seldom used.

Lease of portion of waste for purpose of improving residue.

The Act 13 Geo. III. c. 81, also authorises lords of manors, with the consent of three-fourths of the commoners, to lease not more than one-twelfth part of the waste for four years, and to employ the rent received in draining, fencing, and improving the residue (*l*).

Lands Clauses Consolidation Act, 1845.

Under the provisions of the Lands Clauses Consolidation Act, 1845, waste and other lands subject to rights of common, or lands in the nature of common lands the right to the soil of which belongs to the commoners, may be taken for the purposes of any railway company or other public body, subject to the payment of compensation to the commoners for their rights (*m*). The Act provides that, failing agreement between the promoters of the undertaking and a committee of the commoners appointed in accordance with the terms of the Act, the amount of compensation payable is to be determined as in other cases of disputed compensation under the Act (*n*), and when received by the committee is to be apportioned by them among the several persons interested in it (*o*). If no committee is appointed, the compensation is to be paid into Court, and upon petition the Court will order the amount to be paid either to a committee to be afterwards appointed, or in such manner for the benefit of the persons interested as it thinks fit (*p*). Under these provisions the apportionment will depend upon the nature of the commoners' rights. Thus, where all the resident freemen of a borough were entitled yearly during their residence within the borough to turn on to a common, which had been allotted under a local Inclosure Act to the corporation of the borough as trustees, one head of stock for a period and

(*l*) Sect. 15.
(*m*) 8 Vict. c. 18, ss. 99—107.
(*n*) *Ibid.* s. 105.
(*o*) *Ibid.* s. 104.
(*p*) *Ibid.* s. 107.

subject to a payment which were annually fixed by the corporation, it was held that, until re-investment of the compensation money in land subject to the same trusts as the common, the dividends should be apportioned among the resident freemen at the same time in each year as they had been accustomed to enjoy their rights of common (*q*). Again, where the freehold and copyhold tenants of a manor had rights of common over certain wastes and lammas lands, subject to bye-laws made by the homage, it was held that the compensation for portions of the lands taken compulsorily was divisible among the freeholders and copyholders according to the stint fixed by the bye-laws, it having been found impossible to purchase other land in the neighbourhood (*r*); but although the same bye-laws declared that the occupiers of land under the copyholders were entitled to rights of common over the wastes, it was held that these occupiers were not entitled to share in the compensation money, as their claims to a right of common could not be supported (*s*). The Inclosure Acts of 1852 and 1854 provided that where money had been paid to a committee of commoners under the provisions of the Lands Clauses Act of 1845, and the majority of the committee were of opinion that the provisions of the Act of 1845 for the apportionment of the money could not satisfactorily be carried out, the committee might apply to the Inclosure Commissioners to determine whether the money should be apportioned. Upon receipt of the application, the Commissioners were empowered to call a meeting of the persons interested in the compensation money, and the resolution of the majority in number and interest of these persons was to determine the question whether there should be apportionment or not; but if no resolution was arrived at, or if the Commissioners thought the resolutions unjust or unreasonable, they were empowered to

(*q*) *Nash* v. *Coombs*, L. R. 6 Eq. 403.

(*r*) *Fox* v. *Amhurst*, L. R. 20 Eq. 51.

(*s*) *Austin* v. *Amhurst*, 7 Ch. Div. 689.

order the investment and application of the compensation money as they thought fit (*t*). But these powers were found in practice to be insufficient; and it is now provided by the Commonable Rights Compensation Act, 1882, that when any money is paid by a railway or other public company or corporate body or otherwise under the provisions of the Lands Clauses Act and any Act incorporated therewith, or of any other Act of Parliament, to a committee of commoners as compensation for the extinguishment of commonable or other rights, or for lands being common lands or in the nature thereof the right to the soil of which may belong to the commoners, the committee or a majority in number of them or, after the expiration of twelve months from the payment of the money to the committee, any three persons claiming to be interested in the money may make application to the Commissioners (*u*) to call a meeting of the persons interested in the money to consider as to its application, and the Commissioners are to call a meeting accordingly: and at such meeting the majority in number and the majority in respect of interest of the persons present may decide by resolution that the money shall be applied and laid out in one or more of the following ways, viz.:—in the improvement of the remainder of the common land, in respect of a portion of which the money has been paid; in defraying the expense of any proceedings under the Metropolitan Commons Acts or under the Inclosure Acts with reference to a scheme for the local management, or a Provisional Order for the regulation, of such common land, or of any application to Parliament for a Private Bill or otherwise for the preservation and management of such common land as an open space; in defraying the expense of any legal proceedings for the protection of such common land, or the commoners' rights over the same; in the purchase of addi-

(*t*) 15 & 16 Vict. c. 79, s. 22; 17 & 18 Vict. c. 97, ss. 15—20.

(*u*) Now the Board of Agriculture: 52 & 53 Vict. c. 30.

tional land to be used as common land; in the purchase of land to be used as a recreation ground for the neighbourhood; and the resolution binds the minority and all absent parties (*x*). The Act also contains provisions regarding the conveyance to trustees, to be appointed by the Board of Agriculture pursuant to the resolutions, of land which has been purchased under its provisions for use as common land, and as to the conveyance of land purchased for use as recreation ground to the local authority of the district (*y*). The Act also empowers the Board to direct by order under their seal that any expenses which they may have incurred in relation to the matter shall be paid to them out of the compensation money, and that, subject to such payment, the money shall be applied according to the resolutions (*z*).

If a company takes possession of the land without having complied with the provisions of the Lands Clauses Act of 1845 as to the payment of compensation for the commoners' rights, it will be liable to an action at the instance of any commoner for the disturbance of his rights, notwithstanding that it may have obtained a conveyance from the owner of the soil (*a*).

Where the right to the soil of the common or waste lands is in the lord of the manor, or in some person other than the commoners, the Lands Clauses Act of 1845 provides that upon payment or tender to the lord or such other person of the compensation which has been agreed upon or determined in respect of the right in the soil, or on the deposit thereof in the bank, the lord or other person is to convey the lands to the promoters of the undertaking; and upon default thereof the promoters may execute a deed-

(*x*) Sect. 2 (1).

(*y*) Sect. 2 (2)—(5).

(*z*) Sect. 2 (1). See also 31 & 32 Vict. c. 89, s. 1, as to the right of the Board to take security for the payment of any costs which they may incur in the holding of meetings or the making of inquiries under the Copyhold or Inclosure Acts.

(*a*) *Stoneham* v. *London, Brighton & S. C. Rail. Co.*, L. R. 7 Q. B. 1.

poll in the manner provided by the Act, and the execution of such conveyance or deed-poll vests the lands absolutely in the promoters, but without prejudice to the rights of the commoners (*b*).

Inclosures to promote growth of timber.

There are also certain statutes which provide for temporary inclosures of wastes to promote the growth of timber and the planting of trees. Of these the first to be mentioned is the Act 22 Edw. IV. c. 7, which provided that if any person having wood growing on his own ground within any forest or chase, or purlieu thereof, should fell it with the king's licence, where the forest or chase belonged to the king, he as owner of the ground and the persons to whom he may have sold the wood might immediately after it was felled inclose the ground with hedges sufficient to keep out all manner of beasts and cattle for the purpose of preserving the young spring, and might keep up the hedges for the space of seven years and repair them as often as necessary within that time without further licence. In *Sir Francis Barrington's Case* (*c*) the Court held that this Act did not extend to the wood of a subject in which another person had a right of common, but only to a several wood. The statute 35 Hen. VIII. c. 17, however, enabled the owner of any wood in which others had a right of common to enclose a fourth part of the wood by agreement with "the tenants and inhabitants, being commoners," or by order of the two justices of the peace; but this statute was repealed in the year 1827 (*d*).

By the Act 29 Geo. II. c. 36, owners of wastes, woods, and pastures wherein other persons had rights of common of pasture, were empowered, with the assent of the major part in number and value of the owners and occupiers of the tenements to which the right of common of pasture belonged, to inclose and keep in severalty for the growth and preservation of timber and underwood any part of such

(*b*) 8 Vict. c. 18, s. 100.
(*c*) 8 Rep. 136 b.
(*d*) 7 & 8 Geo. IV. c. 27, s. 1; see *Dibben* v. *Anglesea* (*Marquis of*), 2 Cr. & M. 722.

wastes, woods, and pastures for such time and in such manner, and upon such conditions, as should be agreed upon; and similar powers of inclosure were given to the major part in number or value of the owners and occupiers of the tenements to which the right of common belonged, with the assent of the owners of the wastes, woods, and pastures (*e*). The Act also provided that any recompense which might be agreed to be given to the commoners should be paid to the overseers of the poor of the parish where the wastes lay for the relief of the poor (*f*); but this provision was repealed by an amending Act passed shortly afterwards (*g*), which, after reciting that in many cases the right of common of pasture in the ground inclosed might not belong to all the owners and occupiers of tenements in the parish where the waste lay, directed the recompense to be paid to the persons interested in the right of common in proportion to their respective interests (*h*). The amending Act, however, extended the powers of the Act of 29 Geo. II. to tenants for life or years determinable on lives during the subsistence of their estates (*i*). These statutes were considered in the case of *Nicholls* v. *Mitford* (*k*), where it appeared that the freehold tenants of the manor of Bedham in Sussex were not only entitled to common of pasture, but were also collectively the owners of the bushes and underwoods growing on the wastes of the manor. In 1769 the lord of the manor entered into an agreement under the Act 29 Geo. II. c. 36, with the major part of the tenants for the periodical inclosure of parts of the waste for the growth and preservation of timber and underwood, and this agreement appeared to have been acted upon from the year 1773 until 1880, when two of the freehold tenants of the manor raised an action on behalf of themselves and all other the freehold tenants to restrain the lord from further infringement of their

(*e*) Sect. 1.
(*f*) Sect. 2.
(*g*) 31 Geo. II. c. 41.
(*h*) *Ibid.* s. 1.
(*i*) *Ibid.* ss. 2, 3.
(*k*) 20 Ch. Div. 380.

rights. In a special case setting out the above facts, it was held by Hall, V.-C., that the Act 29 Geo. II. c. 36 applied only to agreements by persons entitled to rights of common of pasture, and not to agreements by persons who were owners of the bushes and underwoods, and that accordingly the agreement of 1739 was inoperative against such owners, and that the lord had no right to inclose as against them. "The Act," said the Vice-Chancellor, "would seem to be an extension of the Statute of Merton, so as to authorize inclosure with the specified assent though there would not be sufficient common left for the commoners, but not to subject to inclosure any land of which the lord was not, subject only to the rights of the commoners, the owner" (*l*).

Other statutory powers of dealing with wastes.

Conveyance for church, churchyard, &c.

There are also various statutes which enable lords of manors to convey portions of the wastes or common lands for different purposes. Thus by the Act 51 Geo. III. c. 115 a lord may by deed enrolled as provided in the statute grant any portion, not exceeding five statute acres, freed and absolutely discharged from all manorial rights, including rights of common, to the minister of any parish and his successors, for the purposes of erecting or enlarging a church or chapel, or for a churchyard or burial ground, or for a glebe to erect a mansion house and other conveniences for the residence of a clergyman (*m*); but it has been held that this does not enable the lord to make grants overriding any rights of the public or customary rights of inhabitants (*n*). Similar powers are also given to the lord to convey a portion of the wastes for the purposes of the Church Building Acts (*o*).

Conveyance for site of school or

Again, by the Act 4 & 5 Vict. c. 38, which re-enacts and extends the provisions of the Act 6 & 7 Will. IV.

(*l*) *Ibid.*, 387.

(*m*) Sect. 2.

(*n*) *Forbes* v. *Eccles. Comrs. for England*, L. R. 15 Eq. 51. For instances of public and customary rights belonging to inhabitants, see *Abbot* v. *Weekly*, 1 Lev. 176; and *Hall* v. *Nottingham*, 1 Ex. Div. 1.

(*o*) 58 Geo. III. c. 45, s. 38; 19 & 20 Vict. c. 104, s. 28.

c. 70 and affords further facilities for the conveyance of sites for schools, provision is made for the gift of any quantity of land, not exceeding one acre, as a site for a school for the education of poor persons, or for a residence for the schoolmaster; and it is enacted that where a lord of a manor gratuitously conveys any portion of waste or commonable land for these purposes, the rights and interests of all persons interested in the land so conveyed are to be barred and divested by the conveyance; but if the land ceases to be used for the purposes of the Act, it is to revert to its former condition (*p*). The lord may also grant any portion of waste or commonable land, not exceeding one acre, as a site for an institution of the nature specified in the Literary and Scientific Institutions Act, 1854 (*q*). Literary, &c. institution.

The guardians of the poor are also empowered, with the consent of the lord of the manor and the major part of the commoners, to inclose any portion, not exceeding fifty acres, of the waste or common lands lying in or near the parish, and to cultivate and improve the land for the use and benefit of the poor of the parish, or to let it to poor and industrious inhabitants of the parish for occupation and cultivation (*r*); and the guardians have similar powers for similar purposes over forest and waste lands belonging to the Crown with the consent of the Treasury (*s*). Inclosures by guardians of the poor.

(*p*) 4 & 5 Vict. c. 38, s. 2; and see 15 & 16 Vict. c. 49.

(*q*) 17 & 18 Vict. c. 112.

(*r*) 1 & 2 Will. IV. c. 42, s. 2; 5 & 6 Will. IV. c. 69, s. 4.

(*s*) 1 & 2 Will. IV. c. 59, s. 1.

CHAPTER IX.

MANORIAL COURTS.

THE holding of manorial courts has become so rare, except where copyholders are concerned, that very little need be said here about their nature and incidents.

Court-baron.

Every legal manor has a court-baron as one of its necessary incidents, in which the free-tenants are the judges and the steward, who is an essential part of the court, is registrar (*a*). The court-baron was anciently held at intervals of three weeks, but is now held but seldom, except in those manors where a body of freeholders have a set of customs relating to fines, heriots, regulation of commons, and the like, resembling the customs of copyhold tenants. In case of necessity, the lord may be compelled to hold a court-baron, or may be restrained from holding it too frequently to the oppression of his tenants (*b*). Though no court has been held for the manor time out of mind, the right to hold the court is not thereby lost, as the court is incident to the manor of common right (*c*). But to constitute a court-baron, it must be held before two free-tenants subject to escheat (*d*); if, therefore, all the tenancies, or all but one, have escheated to the lord or have been purchased by him, the right to hold the court will be gone,

(*a*) Co. Copyh. s. 31; Scroggs, Courts, 3rd ed. 52; *Rex* v. *Stanton*, Cro. Jac. 259; *Holroyd* v. *Breare*, 2 B. & Ald. 473.

(*b*) Fitzh. Nat. Brev. 12 D.; 2 Bac. Abr. 534; see Appendix for an extract from the Close Roll of 18 Hen. III. showing how the period of three weeks was fixed for the manorial courts.

(*c*) Scroggs, Courts, 55.

(*d*) *Chetwode* v. *Crew*, Willes, 614; *Bradshaw* v. *Lawson*, 4 T. R. 443.

and the manor will be extinguished (*e*), although it may still exist as a reputed manor for the purpose of making title to any franchises belonging to the lord (*f*). A court-baron ought to be held within the manor (*g*), but by special custom the court may be held elsewhere (*h*). Such customs are generally found to exist in cases where the lords, being seised of two or three manors, have usually kept at one the courts for all (*i*).

Court-leet.

In a great number of manors the lords have the privilege of holding a court-leet, which, so far as it is useful in the present day, is held for the purpose of presenting small offences in the nature of a common nuisance which require immediate attention and redress. "A court-leet is a court of record, having the same jurisdiction in particular precincts as the sheriff's tourn and leet has in the county; it is not necessarily incident to a manor like a court-baron, but was created by grants from the Crown to certain lords of manors in order that they might administer justice to their tenants at home" (*k*). Without entering on a discussion as to the origin of these courts, it may be remarked that they are in all probability as old as the manorial system itself, but are treated in law as franchises granted by the Crown in each case to the lord of the manor at some time before the beginning of legal memory. To every court-leet is annexed what is called the View of Frank-pledge, now obsolete, which refers to the ancient system by which the householders of every tything were pledges or mutual bail for the good behaviour of each other. The court still retains the style or title of the "Court-leet and View of Frank-pledge of our Lady the Queen, held &c." (*l*). All inhabitants within the district

(*e*) *Delacherois* v. *Delacherois*, 11 H. L. Cas. 62, 106.

(*f*) *Soane* v. *Ireland*, 10 East, 259.

(*g*) *Melwich* v. *Luter*, 4 Rep. 26 a.

(*h*) *Clifton* v. *Molineux*, 4 Rep. 27 a.

(*i*) Co. Litt. 58 a.

(*k*) Cru. Dig. tit. 27, s. 47; and see *Colebrooke* v. *Elliott*, 3 Burr. 1859.

(*l*) Ritson, Courts Leet, introd. p. v.

of the court-leet are bound to attend, under penalty of some trifling fine, if they have no proper excuse for being absent (*m*). In the absence of a special custom to the contrary, it is usual for the steward to order the bailiff to give notice to a number of the principal inhabitants, sufficient to ensure having a jury; the number is usually more than twelve and less than twenty-four, twelve being the number required for the leet-jury. If they do not come upon the summons they may be amerced by the court, and if they appear and refuse to serve they may be fined for contempt of court (*n*). The steward, being the judge (*o*), is not the proper person to impanel the jury, but by custom may have the power of nomination (*p*). The chief function of the jury is to appoint or in some places merely to present the appointment of certain officers, as the bailiff, constable, &c.; and in some places to nominate the mayor and other officers of a borough (*q*); and also to present all such nuisances to the inhabitants as the stopping up of ways, turning of water-courses, and the like, as require immediate attention and redress. It has been held, therefore, that a custom to swear the jury in one court-leet to inquire and return their presentments at the next court would be void (*r*). But the jury has properly nothing to do with inclosures or encroachments upon the wastes of the manor, nor with making bye-laws for the regulations of commons; where such bye-laws are found to have been made at courts-leet, it will generally be found that a court-leet and some other manorial court have been held together without proper distinction of their respective functions (*s*).

(*m*) *Delacherois* v. *Delacherois*, 11 H. L. Cas. 62.

(*n*) Ritson, Courts Leet, 56, 57; Scroggs, Courts, 4, 6, 14; 1 Cas. & Op. 234.

(*o*) Co. Copyh. s. 31.

(*p*) *Rex* v. *Joliffe*, 2 B. & C. 54.

(*q*) *Rex* v. *Rowland*, 3 B. & Ald. 130; *Rex* v. *Banks*, 3 Burr. 1452; *Rex* v. *Hundred of Milverton* (*Lord of*), 3 A. & E. 284.

(*r*) *Davidson* v. *Moscrop*, 2 East, 56; and see *Willcock* v. *Windsor*, 3 B. & Ad. 43.

(*s*) *Exeter* (*Earl of*) v. *Smith*, Carter, 177; *Rex* v. *Dickenson*, 1 Wms. Saund. 135.

It has been already mentioned that there cannot be a court-baron without freeholders; but the name is also given by common usage to the customary court of the copyholders, which concerns the copyholders only and may be held without free tenants; and in the same way the word "homage" is used to denote the jury of copyholders. The following extract from Lord Coke will be found of use in distinguishing between the nature of these courts. "The court-baron must be held on some part of the land within the manor, for if it be held out of the manor it is void: unless a lord, being seised of two or three manors, has usually time out of mind kept at one of his manors courts for all his manors, then by custom such courts are sufficient in law. And it is to be understood that this court is of two natures: the first is by the common law, and is called a court-baron, and of that court the freeholders, being suitors, are judges; the second is a customary court, and that doth concern copyholders, and therein is the lord or his steward the judge. Now as there can be no court-baron without freeholders, so there cannot be this kind of customary court without copyholders or customary-holders. And as there may be a court-baron of freeholders only without copyholders, and then is the steward the registrar, so there may be a customary court of copyholders only without freeholders, and then is the lord or his steward the judge. And when the court-baron is of this double nature, the court-roll contains as well matters appertaining to the customary court as to the court-baron" (*t*). A customary court cannot be held out of the manor unless there should be a custom to warrant it (*u*). Since the 31st of December, 1841, it has been lawful for the lord of any manor, or his steward or deputy steward, to hold a customary court for the manor, notwithstanding that there are not at the time any persons holding lands of the manor by copy of court-

Copyholders' court.

(*t*) Co. Litt. 58 a; *Melwich* v. *Luter*, 4 Rep. 26 a.

(*u*) *Doe* d. *Roberts* v. *Whitaker*, 3 N. & M. 225.

roll; and also notwithstanding the fact that if there are copyhold tenants no copyholder was present at the court; every court so held is to be deemed for all purposes a good and sufficient customary court, subject however to the proviso that no proclamation made at it is to affect the right or title of any person who is not present, unless notice of the making of the proclamation has been duly served on him within one month after the holding of the court (*x*).

Judge, &c. in customary court.

The lord is said to be the judge, and chancellor in cases of equity, when he sits in the customary court (*y*). The steward in the lord's absence sits as judge to punish offences, determine controversies, redress injuries, and the like (*z*); but he is also said to be "a minister and register to enter things into the court-rolls, and in both these to be indifferent between the lord and tenants" (*a*). The freeholders fulfil two parts, to set the amount of amercements, and to return judgments in cases tried in the court-baron, and the copyholders are "to inform of offences committed against the lord within the manor, and to present such things as shall be given in charge by the steward" (*b*). "The bailiff also occupies two parts, that is to say, to execute the process and commandments of the court, and to return into the court the execution of the same process" (*c*). The bailiff's duty consists in the main of distraining for fines and amercements, and where there is the franchise of holding a court-leet of impanelling the jury of the leet (*d*).

Customary courts for inclosures from waste.

The Copyhold Act of 1841 has so much reduced the number of occasions upon which it was necessary to summon a court, that this general outline of the practice will probably be found sufficient. But it has been thought convenient to enter with some minuteness into the practice connected with the special courts at which the consent of

(*x*) 4 & 5 Vict. c. 35, s. 86.
(*y*) Co. Copyh. s. 44.
(*z*) *Ibid.* s. 45.
(*a*) Calthr. Copyh. 54.
(*b*) *Ibid.*, 55.
(*c*) *Ibid.*
(*d*) Watk. Copyh. ii. 28, n.; Scriv. Copyh. 122.

the homage is taken for inclosures out of the waste, because that Act provides that where by the custom of any manor the lord is authorised, with the consent of the homage, to grant any common or waste lands to be held by copy of court-roll, nothing contained in the Act is to operate to authorise or empower the lord to grant any such common or waste lands without the consent of the homage assembled at a customary court held for the manor, and that a court which is held for the manor is not to be deemed a good and sufficient court for the purpose, unless it has been duly summoned and held according to the custom of the manor in such cases used and accustomed before the passing of the Act, and unless there shall be present at such court a sufficient number of persons holding lands of the manor by copy of court-roll to constitute according to such custom a homage assembled at such court (*e*). It will be remembered, however, that fresh grants of the waste as copyhold cannot now be made, except with the consent of the Board of Agriculture, and that on the allowance of the grant the land is held as in common socage (*f*).

Notice required.

The steward usually makes a precept to the bailiff to give notice of the holding of a court: four days' notice has been said to be a reasonable time (*g*), but "it is better," says Kitchin, "to give fifteen days' notice"; and in some manors it is customary, when the homage is to be asked to assent to an inclosure, to give at least three weeks' notice (*h*). Notice is usually fixed on the church-door, or in some other public place, and to enforce attendance it is necessary to summon the copyholders personally. On the assembling of the court, the "style of the court," including time, place, nature of the court, and name of the steward, is entered on the court-roll, and after proclama-

(*e*) 4 & 5 Vict. c. 35, s. 91.
(*f*) 50 & 51 Vict. c. 73, s. 6.
(*g*) *Taverner* v. *Cromwell* (*Lord*), Cro. Eliz. 353.
(*h*) Kitch. Jurisd. 11; Scriv. Copyh. 5.

tion made the suitors are called, and fines for non-attendance imposed, or excuses accepted.

Formation of jury.

There does not appear to be any general rule for the formation of the juries in customary courts. Every copyholder is bound by his tenure to attend and, if required, to be sworn upon the homage jury, which is selected by the steward of the manor (*i*). In some manors it is not usual to impanel a fresh jury on every occasion of holding a court, but to summon the same tenants at each court, vacancies in the number of jurors being filled up either at the lord's discretion, or by his selection from several persons recommended by the remaining jurors (*k*). Occasionally too the steward is aided in his selection by the permanent foreman of the homage jury.

A right has been occasionally claimed for the lord to summon fresh juries, until he can find one which will consent to a customary inclosure; but the better opinion is that such a course would be illegal, and that the verdict of a packed jury might be upset (*l*). There is a great diversity in the number of tenants required for a full jury. In courts-leet the number impanelled is invariably twelve, but a much smaller number may be summoned to a court where none but tenants can be required to serve (*m*). Thus seven, eight, twelve, or more copyholders may form a jury (*n*).

Charge to jurors.

After the jury has been formed, the jurors are sworn and charged by the steward. The charge admonishes them to present suitors who make default, the death of every tenant and who is heir, and what reliefs, heriots, or other profits have accrued, the forfeiture of any tenement by waste or alienation, or other means, the subtraction of

(*i*) Co. Copyh. s. 57.

(*k*) Open Spaces Sel. Comm. (1865), 1 Rep. Qu. 753; *Ibid.* 2 Rep. Qu. 5834.

(*l*) See *Rex* v. *Hemingway*, 1 Barnard. 436.

(*m*) Co. Copyh. s. 31.

(*n*) *Wentworth* (*Lady*) v. *Clay*, Cas. temp. Finch, 263; Calthr. Copyh. 53; Open Spaces Sel. Comm. 2 Rep. Qu. 5837.

any lands or services from the lord, encroachment or trespass in the demesnes or wastes, inclosures, or surcharges of common, and the like (*o*).

Duties of jurors.

As a general rule, the duty of a homage jury is to make presentments of all things done within the manor to the prejudice of the lord or tenants, and to recommend whatever may appear to be advantageous to the lord and not injurious to the tenants. They stand in an intermediate position between the lord and the other tenants, being bound by their oath to consider the interests of both parties. For this reason the rest of the copyholders are bound by the verdict of the jury, when a customary inclosure has been presented as beneficial and allowable (*p*). "The homage may enquire into encroachments on the waste, and may direct inclosures to be thrown down, but they have no jurisdiction to enquire whether the soil belongs to any individual, or whether he has a right of common only" (*q*).

Homage may make bye-laws.

The homage may by custom have the right of making bye-laws for the regulation of the common, and where such a custom exists all the tenants will be bound by the bye-law without personal notice (*r*). Such bye-laws cannot be extended so as to deprive any commoner of his right (*s*); but they may deal with all matters concerning the proper regulation of the common, as the draining and fencing of the land, the appointment of a common-keeper, the maintenance of the pound, stinting the number of the cattle, setting a mark for distinguishing the commoners' cattle from strays, closing the common for a certain time of the year, and the like, according to the usage in each case (*t*).

(*o*) See Kitch. Jurisd. 107; Jacob, Court Keeper, 8th ed. 35.

(*p*) *Arlett* v. *Ellis*, 7 B. & C. 346, 368.

(*q*) *Richards* v. *Bassett*, 10 B. & C. 657, 662, *per* Littledale, J.

(*r*) *James* v. *Tutney*, Cro. Car. 497.

(*s*) *Ibid.*

(*t*) Kitch. Jurisd. 156; Scroggs, Courts, 111, 135; Scriv. Copyh. 625; and see *Fox* v. *Amhurst*, L. R. 20 Eq. 403; *Hall* v. *Byron*, 4 Ch. Div. 667; *Austin* v. *Amhurst*, 7 Ch. Div. 689.

In the same way a manorial bye-law may regulate the amount of wood or other produce of the waste which is to be used by the commoners, as by providing that persons of certain trades shall not be allowed to take more fuel than the other householders, and the like. But such bye-laws do not bind strangers, and in the absence of a custom they cannot have force, except as an agreement made between the tenants who have consented to the rule (*u*).

Whether jurors must be unanimous.

It is said to be the better opinion that in all cases the jury must find an unanimous verdict, as is also the practice in most of the manors where customary inclosures are allowed. There are cases, however, which show that the point is not settled, and the only general rule which can be safely followed is that the special custom of each manor must be strictly observed. Thus in the manor of Stepney it is stated to have been the custom that any seven copyholders might present a proposed inclosure as beneficial, and that their presentment should be confirmed or rejected by the major part of the homage at the next court (*x*). Again, it has been decided that if thirteen copyholders be sworn on the jury in a customary court and twelve agree to a verdict, the thirteenth dissenting, it is a good verdict without his assent; and it was held to be doubtful what would be the effect of a similar dissent of one juror out of twelve, "for it is not a full jury" (*y*).

Appointment of steward.

The steward of a manor may be appointed by parol, and a steward so appointed will hold office until he is discharged (*z*); but the appointment is usually by deed; and a deed will be required if the stewardship is granted for life (*a*). In crown manors it is said that he ought to have his appointment by deed or letters patent (*b*). The

(*u*) *Erbery* v. *Latton*, 1 Leon. 190.

(*x*) *Wentworth* (*Lady*) v. *Clay*, Cas. temp. Finch, 263.

(*y*) Calthr. Copyh. 53; and see *Thirveton* v. *Collier*, Chy. Cas. 48.

(*z*) *Down* v. *Hopkins*, 4 Rep. 29 b; *Lady Halcroft's Case*, 4 Rep. 30 b.

(*a*) *Bartlett* v. *Downes*, 3 B. & C. 616.

(*b*) See *Harris* v. *Jay*, 4 Rep. 30 a.

office is forfeited by neglect or misconduct, or in the words of Lord Coke by abuser, non-user, or refuser; by abuser, when he destroys the court-rolls, takes a bribe, or uses partiality in any case depending before him; by non-user, when he neglects to hold a court, and thereby prejudices the lord; by refuser, when he fails to keep a court after request by the lord, even although the lord is "nothing damnified" by the failure (*c*). "The law," as he also said, "is not very curious in examining the imperfections of the steward's person, nor the unlawfulness of his authority, for be he an infant, or *non compos mentis*, an idiot, or lunatic, &c., yet what things soever he performeth as incident to his place can never be avoided for any such disability, because he performeth them as a judge, or at least as custom's instrument; and for his authority though it prove but counterfeit if it come to an exact trial, yet if in appearance or outward show it seemeth current that is sufficient. As if I grant the stewardship of my manor of Dale by patent, and in the patentee's absence a stranger by my appointment keepeth court, this is authentical. If the grant of a stewardship be made to one and for some fault or defect in the grant it is avoidable, yet courts kept by him before the avoidance shall stand in force, and whatsoever he did as steward is ever unavoidable; as if a corporation retaineth a steward by parol, and he keepeth a court, &c., these acts being judicial shall ever stand for current, though his authority be grounded upon a wrong foundation, for a corporation cannot institute any such office without writing, and so if the King's auditor or receiver retain a steward by parol, he may lawfully execute any judicial act, but things which he performeth as custom's instrument and not as judge, such as voluntary admittances neither in the retainer by the corporation, nor in the retainer by the King's officers, shall any whit bind" (*d*).

How office may be forfeited.

(*c*) Co. Copyh. s. 45. (*d*) *Ibid.*

Appointment of deputy steward.

Where a steward is appointed by deed, he is usually empowered to appoint a deputy, and unless the deed prescribes the form and conditions of the appointment, such deputy may be appointed by deed or parol. Lord Coke mentions a doubt whether a steward can appoint a deputy where his appointment does not give him any such authority and remarks that as the office is one of knowledge, trust, and discretion, the appointment of a deputy could not be made unless in cases of necessity (*e*), but it seems that there may be a custom for the steward to appoint a deputy (*f*); and the better opinion now appears to be that a steward may appoint a deputy unless the terms of his appointment preclude him (*g*). There seems also to be no doubt that where a person is acting *de facto* as steward, all ministerial acts done by him will be deemed sufficient, even although there is a defect in his authority (*h*). Further, the word "steward" as defined in the Copyhold Act, 1841, includes the person or persons for the time being filling the character of steward, or acting in that capacity, whether he shall be rightfully or lawfully entitled to fill such character and to act in such capacity or not, and includes also the clerk of the manor, where such an office exists (*i*); and the word bears a similar interpretation when it is used in the subsequent Copyhold Acts (*k*). In a case relating to the validity of a surrender taken out of court of copyhold lands belonging to a married woman, who had in accordance with the custom to be separately examined, it was held that such a surrender might well be taken by a deputy steward who was an infant, if he was capable of performing the duties of the office (*l*); and it has also been decided that a person who was appointed

(*e*) Co. Copyh. s. 46; see *Eddleston* v. *Collins*, 16 Jur. 790.

(*f*) See *Burgess* v. *Foster*, 1 Leon. 289; *S. C.*, 4 Leon. 215.

(*g*) Watk. Copyh. ii. 28; Scriv. Copyh. 119.

(*h*) *Parker* v. *Kett*, 12 Mod. 467, 470.

(*i*) 4 & 5 Vict. c. 35, s. 102.

(*k*) 15 & 16 Vict. c. 51, s. 52; 50 & 51 Vict. c. 73, s. 49.

(*l*) *Eddleston* v. *Collins*, 16 Jur. 790.

deputy steward for the purpose of taking the admittance of a tenant might as such deputy steward, in the absence of any express provision to the contrary, receive the money which the tenant was bound to pay on admittance (*m*).

Steward represents lord.

As a general rule, the steward represents the lord in all matters affecting the estates of the copyholders; but the steward cannot without express authority do any act affecting the lord's estate in his land. Without such authority, he could not have made a customary inclosure of a new copyhold (*n*). It should, however, be remembered that by the customs of particular manors the stewards were expressly authorised to make such grants. Thus in *Boulcott* v. *Winmill* (*o*) it was stated to be the custom for the lord to grant parcels of the waste with the consent of the homage, by the hands of his steward, to any person willing to take the same, the land to be held of the lord by copy of court-roll at the will of the lord. With regard to enfranchisements under the Copyhold Acts, it is expressly provided that unless and until the lord has given written notice to his tenant and to the Board of Agriculture that he intends to act for himself or that he has appointed the person specified in the notice to act for him, the tenant and the Board of Agriculture may treat his steward as his agent for receipt of notices, making of agreements, and all other matters relating to enfranchisement, and that in all matters of procedure the steward shall be deemed to represent the lord; but a steward has not power to consent on behalf of the lord to dealings with the various rights which are enumerated in section 48 of the Copyhold Act, 1852, as amended by the Copyhold Act, 1887 (*p*).

Duties of steward.

Besides his duty of presiding in the manorial courts and of doing all necessary ministerial acts in respect of the

(*m*) *Bridges* v. *Garrett*, L. R. 5 C. P. 451.

(*n*) See case concerning manor of Hampstead (Midd.), 1 Cas. & Op. 170.

(*o*) 2 Camp. 261.

(*p*) 50 & 51 Vict. c. 73, s. 33.

copyholders' estates, the steward, as already mentioned (*q*), has power, under the Copyhold Act, 1841, to hold courts in the absence of the tenants, to grant copyholds at any time and place for such estates and to such persons as he may be authorised or empowered to grant the same, to admit any person entitled to a copyhold without holding a court, and, when empowered by the lord, to licence tenants to aliene their tenements in parcels (*r*). On every admittance or enrolment of a tenant taking place after the 31st of December, 1887, the steward is bound without any charge beyond the fee for admission or enrolment, to give to the tenant who has been admitted or enrolled a notice informing him that if he desires to enfranchise his land, he is entitled to do so upon paying the lord's compensation and the steward's fees, and that the lord's compensation may be fixed either by agreement between the lord and tenant, or by any valuer appointed by them or through the agency of the Board of Agriculture to whom the tenant may make application, if he thinks fit, to effect the enfranchisement of his land (*s*). It has been held to be a good custom in a manor, that the steward or his deputy should have the right of preparing all the surrenders of copyholds within the manor for a fixed fee (*t*).

Steward bound to make out duly stamped copies of court-roll.

The Stamp Act, 1891, re-enacting and consolidating the provisions contained in earlier enactments relating to stamp duties, provides that the steward of every manor is, within four months from the day on which any surrender or grant is made in court, to make out a duly stamped copy of court-roll of such surrender or grant, and to have the same ready for delivery to the person entitled, and in default of so doing he is liable to a fine of 50*l.* and also to answer for the duty payable in respect of the copy of

(*q*) *Ante*, p. 303.

(*r*) 4 & 5 Vict. c. 35, ss. 86—88, 92.

(*s*) 50 & 51 Vict. c. 73, s. 1. For the form of notice, see the Act in the Appendix.

(*t*) *Rex* v. *Rigge*, 2 B. & Ald. 550; *Reg.* v. *Bishop's Stoke Manor (Lord of)*, 8 Dowl. 608.

court-roll (*u*). The steward is also bound, under a penalty of 50*l.*, to refuse to accept in court any surrender or to make in court any grant until a note has been delivered to him stating all the facts and circumstances affecting the liability to duty of the copy of court-roll of any such surrender or grant, or the amount of duty with which any such copy of court-roll is chargeable; and he is also bound under the like penalty to refuse to enter on the court-rolls, or accept any presentment of, or admit any person to be tenant under or by virtue of, any surrender or grant made out of court or any deed which is not duly stamped (*x*).

Steward should keep minute-book.

It appears to be a proper course for the steward to note proceedings in court in a minute-book, which he should keep to facilitate proof of the transactions, and for such proceedings to be entered at length upon the court-rolls or record-book by a copy of which the tenant is said to hold (*y*). Although the tenant is not obliged to take a copy (*z*), there is no doubt that he can compel the steward to make an entry in regular form (*a*); for it is the duty of the steward of a manor to deliver to the tenants as part of their title copies of the court-rolls (*b*).

As to entries on court-rolls.

The steward's duty is to keep the court-rolls in such a way as to show clearly the title to every copyhold tenement, taking care that the descriptions of the parcels are clear and accurate, and that the admittances, surrenders, and fines, are entered for each tenement separately, and when a tenement becomes parcelled out into different divisions, each parcel during the division is a separate tenement, and must be treated as such until a reunion takes place (*c*). It is not necessary for the steward to specify the uses of a surrender on the court-rolls, it being sufficient if he makes an indorsement of the uses on the

(*u*) 54 & 55 Vict. c. 39, s. 67.
(*x*) *Ibid.* s. 66.
(*y*) Watk. Copyh. ii. 43.
(*z*) *Doe* d. *Bennington* v. *Hall*, 16 East, 208, 209.
(*a*) Watk. Copyh. ii. 44.
(*b*) *Appleton* v. *Braybrook* (*Lord*), 6 M. & S. 34, 38, *per* Holroyd, J.
(*c*) *Traherne* v. *Gardner*, 5 E. & B. 913.

surrender (*d*). The Court will, if necessary, reform an entry on the court-rolls, but in such a case the lord must either be a party to the action or consent to such order as the Court shall think fit to make; and accordingly where the lord consented to the order, the Court decreed that a surrender and admission on the court-rolls, which gave an interest to the wife of a mortgagor in fraud of the mortgagee, should be reformed (*e*).

Custody of court-rolls.

With regard to the custody of the court-rolls, the general rule seems to be that the steward is entitled to the possession of the court-rolls, as he has certain duties to perform which he cannot properly discharge without possession of the rolls (*f*), and for the neglect of which he would be responsible. But as the lord is, in respect of the court-rolls, "a trustee and guardian of the evidence of the tenants' rights" (*g*), it seems that the steward is not entitled to hold the rolls as against the lord, and if there is proof of any improper conduct on the part of the steward, the Courts will order the rolls to be delivered to the lord (*h*), but if there is no suggestion of misconduct, the Courts will not deprive the steward of the custody (*i*).

Inspection of court-rolls.

But although the steward keeps the court-rolls to enable him to perform the duties incumbent on him, he must permit every person interested to inspect so much of them as relates to his estate or interest, whether an action be pending or not (*k*). It is provided by the Rules of the Supreme Court, 1883, that an order upon the lord of a manor to allow the usual limited inspection of the court-rolls may be made on the application of a copyhold tenant supported by an affidavit that he has applied for inspection and that

(*d*) *Carr* v. *Ellison*, 3 Atk. 73.

(*e*) *Elston* v. *Wood*, 2 Myl. & K. 678.

(*f*) *Windham* v. *Giubilei*, 40 L. J. N. S. Ch. 505.

(*g*) *Rex* v. *Tower*, 4 M. & S. 162, 163, *per* Lord Ellenborough, C. J.

(*h*) *Rawes* v. *Rawes*, 7 Sim. 624.

(*i*) *Windham* v. *Giubilei*, 40 L. J. N. S. Ch. 505.

(*k*) *Rex* v. *Lucas*, 10 East, 235; *Rex* v. *Tower*, 4 M. & S. 162; see *Rex* v. *Merchant Tailors' Co.* (*Master, &c. of*), 2 B. & Ad. 115.

it has been refused (*l*). This rule is not strictly confined to cases where the applicant is a copyhold tenant, but will apply if he has a *primâ facie* title to or is otherwise interested in copyhold property; thus inspection of the court-rolls will be allowed to the devisee of a rent out of a copyhold (*m*), or to a person otherwise interested in the inspection, as a freehold tenant claiming rights of common on the waste (*n*), though, perhaps, the freehold tenant should show that some action is depending (*o*). But in the case of *Owen* v. *Wynn* (*p*), where the plaintiffs claimed to be owners in fee simple of certain land, denying that they were tenants of a manor, of which the defendant was lord and of which he alleged them to be freehold tenants having only customary rights over the land in question, it was held that the plaintiffs were not entitled to inspection of the manorial court-rolls and documents, as they did not claim to be tenants of the manor. In a case, however, where a bill was filed to establish a right of common of vicinage, the existence of which was denied, it was held that the plaintiff was entitled to the production of all documents and records relating to the court-baron of the manor, and all accounts and memoranda relating to the taking of gravel, &c. from the waste, with a list of the documents relating to the title of the lord which did not affect the matter of the suit (*q*).

The rules relating to inspection of court-rolls apply equally to the steward's minute-books and other books and records of the manor (*r*).

Inspection after enfranchisement.

An enfranchised copyholder as such has no right to inspect the court-rolls, because by the enfranchisement his tenement becomes severed from the manor; but if the

(*l*) Ord. XXXI. r. 19.

(*m*) *Ex parte Barnes*, 2 Dowl. N. S. 20.

(*n*) *Addington* v. *Clode*, 2 W. Bl. 1030; *Ex parte Hutt*, 7 Dowl. 690.

(*o*) *Rex* v. *Allgood*, 7 T. R. 746; *Warrick* v. *Queen's College, Oxford*, L. R. 3 Eq. 683.

(*p*) 9 Ch. Div. 29.

(*q*) *Minet* v. *Morgan*, L. R. 11 Eq. 284.

(*r*) *Folkard* v. *Hemet*, 2 W. Bl. 1061.

enfranchisement has taken place under the Copyhold Acts, the owner of the enfranchised lands now has access to the court-rolls and may have copies thereof upon payment of a reasonable sum for the same, and a scale of reasonable fees for such inspection and for taking such copies may be fixed by the Board of Agriculture (*s*).

Custody of court-rolls when all lands have been enfranchised.

It may be mentioned here that by the Copyhold Act, 1852, provisions were made enabling the lord of any manor, whereof all the lands had been enfranchised, to hand over, if he thought fit, all the court-rolls of the manor to the Copyhold Commissioners (now represented by the Board of Agriculture), and for securing to the persons seised of or interested in the enfranchised lands access to and inspection of the court-rolls on payment of such reasonable fees as the Commissioners might think proper (*t*). These provisions have, however, been enlarged by sect. 48 of the Copyhold Act, 1887, which empowers the lord, or any other person having custody of the court-rolls and manorial records with consent of the lord, to hand over, if he thinks fit, all or any of the court-rolls and manorial records to the Master of the Rolls, when all the lands which are held of or are parcel of the manor have been enfranchised; and the same section empowers the Master of the Rolls to make from time to time rules respecting the manner in which and the times at which inspection of such court-rolls and manorial records may be made, and office copies or certified extracts therefrom obtained, and as to the amount and mode of payment of such reasonable fees as he may fix for such office copies and certified extracts. The Act of 1887 also enabled the Commissioners to hand over to the Master of the Rolls all or any manorial court-rolls or records of which they might have obtained the custody under the provisions of the earlier Copyhold Acts (*u*).

(*s*) 15 & 16 Vict. c. 51, s. 20.
(*t*) *Ibid.* s. 21.
(*u*) 50 & 51 Vict. c. 73, s. 48.

Steward's fees.

The amount of the steward's fees must in each case be regulated by the custom of the manor, or, in the absence of a custom, either by the amount of work and labour done or by special agreement. Thus where a person was admitted to several copyhold tenements at one time, the steward was held not to be entitled as a matter of general right to full fees on each admission separately, and it was said by the Court that as there was no particular stipulation for the price, the sum due must be determined either by the custom of the manor or on a *quantum meruit*. "In this case there is no custom of the manor in evidence; therefore the plaintiff's right must stand upon a *quantum meruit*" (*x*). The following extracts from the case of *Traherne* v. *Gardner* (*y*) will serve to show the principles on which the Courts have held that stewards' fees should be assessed. A tenant dying seised of four separate copyhold tenements devised them to the plaintiffs as joint-tenants, who claimed to be admitted to all the tenements, at first by a single admission, and afterwards by two admissions, inasmuch as two of the copyholds had been originally part of one tenement held by a former tenant, and the other two had similarly been held as one tenement by another former tenant. The steward refused to make either of these admissions, and required that there should be four separate admissions and the payment of four separate sets of fines on each. He also claimed a fee in respect of the abolition of a surrender to the use of a will. In order to avoid a forfeiture, the plaintiffs took four separate admissions and were admitted. Four full sets of fees with four separate stamps and four sums of six shillings and eight pence, in respect of the admission being of two joint-tenants, were claimed by the steward. These fees were paid under a written protest against the right to more than two admissions, and against the compensation-

(*x*) *Everest* v. *Glyn*, 6 Taunt. 425, 430.

(*y*) 25 L. J. Q. B. N. S. 201; *S. C.*, 5 E. & B. 913.

fee for a surrender to the use of the will, and the fee in respect of the admission of joint-tenants. There was no custom proved in the manor that there should be only one admission on the claim of one person to be admitted to several separate tenements, nor any custom establishing the amount of the steward's fees upon an admission to several tenements or his right to claim a fee in respect of the admission of a joint-tenant.

The points for the decision of the court were (1) the right of the steward of the manor to insist on the general devisee of a deceased copyholder being admitted as many times and paying as many entire sets of court-fees as the number of copyhold tenements or parts of tenements of which the testator died seised; (2) the right of the steward to require payment of as many admission stamps as there were tenements of which the testator died seised; (3) whether (assuming the right to separate admissions to be established) the steward, after a reunion in one person of a tenement which had been previously surrendered to different persons, could insist on a separate admission to each such once distinct portion; (4) assuming the steward to be right in requiring four admissions in the circumstances, to what fees was he entitled; (5) the right of the steward to charge £2 16*s.* 10*d.* as a fee consequent on the abolition of a surrender to the use of a will; (6) the right of the steward to charge 6*s.* 8*d.* for the admission of each joint-tenant beyond the first. It was held that the lord was entitled to require an admittance in respect of each of the tenements, and that four sets of fees and four stamps were payable: but that there was no ground for the claim by the steward of a separate fee in respect of the admission of each joint-tenant. And it was held also that the steward was not entitled to be paid a full set of fees in respect of each tenement, but only a *quantum meruit* for his additional labour, and that the compensation to which he was entitled for the abolition of a surrender to the use of the will was also to be ascertained upon a *quantum*

meruit; and further, that as the payments made to the steward could not be considered as voluntary, the plaintiffs were entitled to recover back the fee in respect of the admission of a joint-tenant and what the Master should find that the steward was not entitled to, upon the question of a *quantum meruit.*

Lord Campbell in giving judgment said that the Court was not to be supposed to sanction the practice which had prevailed in the manor, which appeared to him to be an instance of a manor kept up for the sake of obtaining fees, and that as regarded the quantum of fees, there would be a reference to the Master to settle the amount. "We are now," he said, "to lay down principles by which the rights of the parties must be governed. In so doing, we must take care that no injury is done either to the lord or to the steward on the one hand, or to the tenants on the other. It is important to the tenant that the court-roll should be regularly kept, so as to show a perfect history of the title of each tenement. . . . Now, the first question is whether the action can be maintained as to certain payments which are said to have been voluntarily made, and I am of opinion that the action will lie for every one of the payments which have been exacted and are not warranted by the custom of the manor. It would be strange if the plaintiff, who from the first strenuously resisted the payment of the fees demanded and claimed to be admitted to the property by one admission, should be held to have voluntarily paid the fees exacted and paid, and though in the written protest there are some words which appear to limit it to the payments beyond two admittances, yet the plaintiff verbally protested against the whole, and I think the written protest cannot be considered as doing away with the verbal protest so as to make the other payments voluntary, and that the plaintiff is entitled to recover all that the defendants cannot show that they are entitled to receive. Then the question is, whether the lord was bound to admit the plaintiffs to all the customary

tenements by one admittance and upon payment of one set of fees. I answer that he was not so bound."

"In the absence of a special custom, by the general law of copyhold tenure, there must be a separate admittance to each separate tenement, whether the tenements have always been separate, or having been one tenement have become separate. . . . Whether these admittances are made on the same piece of paper or not is immaterial: they must be made in such manner as to enure as separate admittances, so that the court-roll and the copy also may show the title to each."

"The next question relates to the steward's fees, and upon that I am of opinion that no customary fee has been established in this manor: the fee of 13*s.* 4*d.* is clearly rank: it is impossible to suppose such a fee payable in the time of Richard the First, and in modern times it is clear that the fees in this manor have varied and have risen to an excess which must be repressed. But, there being no customary fee to the steward, the tenant must pay a reasonable fee, the amount of which must be settled by the Master."

"In *Everest* v. *Glyn* (z) the Court held that fees must be governed by what is the proper sum on a *quantum meruit*, and that the steward upon the admission of one person to several tenements was not entitled to charge the same fees upon the second and subsequent admissions as upon the first admission, because the labour is not so great. At the same time there would be clearly more labour imposed upon the steward where the document contained admissions to twenty different tenements than upon an admission to a single tenement; and it would be unreasonable to say he was entitled to the same fee, and the only rule which can be laid down, there being no customary fee proved, is that the steward shall be paid upon a *quantum meruit*. The next question, which relates to compensation to the steward

(z) 6 Taunt. 425.

in consequence of the abolition of surrenders to the use of a will, must be answered upon the same principle. The legislature has carefully preserved existing rights, and the steward is clearly entitled to compensation, which must have reference to the supposed amount of labour which would have fallen upon him if the surrender to the use of a will had not been abolished. There might have been a surrender to the use of the will either in court or out of court and afterwards to be presented in court and enrolled: but it appears to me that the labour would have been almost the same in either case, and the officer of this court will therefore have no difficulty in settling the amount and laying down a uniform rule on the subject. The remaining demand of the steward is for a separate fee upon the admission of each joint-tenant to the same tenement, and I am of opinion that he is not entitled to make that demand. No such claim is made out by the custom, and there is no rule of copyhold law giving him any such right. There is no material addition of labour upon such an admission, and I think the fee demanded and paid in that respect is recoverable in this action."

Reasonable fees.

With reference to the decision that 13*s.* 4*d.* would be an unreasonable amount to claim as a customary fee, it will be remembered that in the case of a marriage-fee of 13*s.* it was held in the case of *Bryant* v. *Foot* (*a*) that the amount was so great as to lead to the irresistible inference that it could not have existed in point of fact in the time of Richard I., and that this inference was in itself sufficient to rebut the presumption, arising from modern usage, that the fee had an immemorial legal existence. A custom that every free tenant should for default of appearance at the leet pay seven shillings to the steward for the use of the lord has also been held to be unreasonable, for "it being in time immemorial, seven shillings is too great a sum to pay for such a default" (*b*).

(*a*) L. R. 2 Q. B. 161; and see *Lawrence* v. *Hitch*, *ibid.* 184, n.

(*b*) *Morgan's Case*, 8 Mod. 296, 302. See, as to reasonable fees of

Fees where estates are undivided.

It will be remembered that coparceners are entitled to be admitted as one heir, and therefore on one set of fees (*c*), and that tenants in common aliening their separate undivided shares, even by a conveyance to one purchaser of the whole, are treated as having separate tenements, and therefore that a purchaser, before the reunion of the undivided shares can take place, must have separate admittances and pay separate sets of fees (*d*).

Fees in case of allotments under several titles.

The following case refers to the fees which a steward may claim upon alienation of a copyhold allotment which has been made in respect of lands held under different titles. A copyholder was owner of sixteen tenements held by as many separate copies of court-roll and by sixteen separate quit-rents: and he had been admitted to these tenements at five different times, and by five distinct titles. By a Local Act which directed commissioners to allot the waste lands among the owners in proportion to their rights and interests it was declared that the allotted lands should continue to be held by the owners under the tenures, rents, customs, and services as the lands in respect of which they were allotted would have been held if the Act had not passed, and that where the lands were held under different titles or for different estates the commissioners should distinguish the lands held for each of such estates and titles and set out the allotments accordingly. The commissioners allotted to the tenant in respect of his sixteen copyhold tenements, five pieces of land amounting to forty-nine acres, but did not distinguish in respect of which of the tenements or of what particular estates the five pieces were allotted. The tenant afterwards surrendered one of the allotments to the use of a purchaser who was duly admitted to the same. By the custom of the manor, where any person was

varying amount, *Shepherd* v. *Payne*, 12 C. B. N. S. 414; and as to a steward's customary fee in a great variety of instances, see Complete Copyholder, ed. 1735, 521, 522; and two opinions in 1 Cas. & Op. 227, 230.

(*c*) *Rex* v. *Bonsall Manor* (*Lord of*), 3 B. & C. 173.

(*d*) *Reg.* v. *Eton College*, 8 Q. B. 526.

admitted in severalty to a part of a copyhold tenement, the steward of the manor was entitled upon such admission to the same amount of fees as if such person had been admitted to the whole of such tenement. In an action by the steward to recover sixteen fees in respect of the admission to the purchased allotment it was held that it must be considered to have been allotted in respect of a portion of each of the sixteen former tenements, and that therefore the steward was entitled to recover sixteen fees (*e*). It may be mentioned, however, that the Board of Agriculture can now amend awards under Local Acts which are defective in distinguishing the several lands in respect of which an allotment is made (*f*).

Fees when copyholds taken under Lands Clauses Consolidation Act, 1845.

When copyholds are taken by a company under the provisions of the Lands Clauses Consolidation Act, 1845 (*g*), the steward of the manor is entitled under the 95th section of that Act only to the fee payable in respect of a surrender, and not to another fee for admittance, even although he may be usually entitled by the custom of the manor to one fee upon surrender and another upon admittance (*h*).

Steward to give notice as to enfranchisement to every tenant on admittance without fee.

The Copyhold Act, 1887, provides (*i*) that upon the admittance or enrolment of any tenant after 31st December, 1887, the steward of the manor is to give, without charge, to the tenant so admitted or enrolled a notice in the form prescribed by the Act, informing him that if he so desires he may enfranchise the land and convert it into freehold upon certain conditions; and if the steward neglects to serve such notice, he is not entitled to any fee for the admittance or enrolment of the tenant.

(*e*) *Evans* v. *Upsher*, 16 M. & W. 675.

(*f*) 8 & 9 Vict. c. 118, s. 152; 52 & 53 Vict. c. 30.

(*g*) 8 Vict. c. 18.

(*h*) *Cooper* v. *Norfolk Rail. Co.*, 3 Ex. 546.

(*i*) 50 & 51 Vict. c. 73, s. 1.

CHAPTER X.

EVIDENCE.

Evidence of copyhold tenure.

In this chapter it is proposed to consider some of the rules of evidence relating to the matters discussed in the earlier chapters. As to what constitutes a copyhold tenure, it will be remembered that the proper criterion of a customary tenure is to ascertain whether its alienation is complete without any interference by the lord (*a*). The land is freehold if no such interference is necessary, even though there may be an obligation on the tenant to be admitted subsequently (*b*). If admittance, entry on a roll, or the like, be necessary for a complete alienation, it will be copyhold, although conveyed by a lease and release or grant or other assurance proper to freeholds (*c*); but if the copyhold has been severed from the manor it will pass by an ordinary assurance (*d*). Sometimes it is difficult to distinguish copyholds of a certain kind from estates at will or tenancies from year to year, as where the names of the tenants are entered in a book or roll, and the steward decides whether he shall admit the alienee or not. In some instances evidence as to the tenure will be afforded by decisions in parliamentary registration cases and similar proceedings when the nature of the tenancy has come into dispute (*e*).

Tenure in free alms.

It is sometimes necessary to ascertain whether lands are

(*a*) *Ante*, c. i.

(*b*) *Passingham* v. *Pitty*, 17 C. B. 299.

(*c*) *Doe* d. *Reay* v. *Huntington*, 4 East, 271; *Doe* d. *Cook* v. *Danvers*, 7 East, 299; *Thompson* v. *Hardinge*, 1 C. B. 940; *Portland (Duke of)* v. *Hill*, L. R. 2 Eq. 765.

(*d*) *Phillips* v. *Ball*, 6 C. B. N. S. 811.

(*e*) *Garbutt* v. *Trevor*, 15 C. B. N. S. 550.

or have been held by a freehold tenure other than common socage. It will be of use to notice that the tenure of frankalmoigne or free alms was free from all temporal service and is inconsistent with the rendering of fealty or rent (*f*). Since the Reformation the uncertain spiritual services due in frankalmoigne have in some cases been changed to fixed religious and charitable services by authority of Parliament, "but the tenure remains as it was before" (*g*). Formerly most of the ancient monasteries and religious houses held many of their lands by this tenure, and at the present day many ecclesiastical and charitable corporations hold by similar services, for the tenure was not affected by the Statute 12 Car. II. c. 24. But since the Statute *Quia Emptores* no one save the Crown could grant lands in frankalmoigne (*h*).

Tenure in ancient demesne.

A tenure in ancient demesne is proved by the mention of the manor, of which the lands are held, in Domesday Book under the title of *Terra Regis* (*i*). This will be shown by an office copy of the entry (*j*). The conversion of the tenure to "frank-fee" or common socage was formerly effected by a fine or recovery transacted in one of the superior courts, but the lord might at any time afterwards bring a writ of deceit and reverse such fine or recovery, upon which the old tenure revived. Until this took place the lands were unmarketable, unless the lord released his rights. It often happened that there was nothing on the abstract of title to show that the land was ancient demesne, and the result was that in many cases by no fault of the owner the land became nearly valueless (*k*).

(*f*) Co. Litt. 94 b, 95 a.

(*g*) Co. Litt. 95 b.

(*h*) Litt. s. 140.

(*i*) See Yearb. Mich. 40 Edw. III. fo. 45 a, pl. 29; *Griffin* v. *Palmer*, 1 Brownl. 43; *Holdage* v. *Hodges*, 1 Lev. 106; *Baker* v. *Wich*, 1 Salk. 56; *Saunders* v. *Welch*, cited *ibid.* 57; *Doe* d. *Rust* v. *Roe*, 2 Burr. 1046.

(*j*) 1 & 2 Vict. c. 94, ss. 12, 13. The old method of consulting Domesday Book is described in a note to Hale's Common Law, c. 5.

(*k*) R. P. Comm. 1 Rep. 28, 29. The writ of deceit was abolished by 3 & 4 Will. IV. c. 27, s. 36, and 3 & 4 Will. IV. c. 74, s. 6.

The difficulty was removed by the Fines and Recoveries Act, 1833 (*l*), which in this case had a retrospective effect: and by the same Act it was provided that the original tenure should be restored in all cases where the tenant should have acknowledged or recognised the tenure within the twenty years preceding January 1st, 1834 (*m*). If a title was stated to be of this tenure, and all fines and recoveries appeared to have been transacted in the manor court, it was never the practice to require the official proof of the tenure (*n*). It should perhaps be noticed that a doubt has been expressed whether lands of this tenure are within the Statute 1 & 2 Vict. c. 110, relating to judgment debts (*o*), but the words of the Statute appear to be wide enough to cover every tenure.

Tenure in burgage.

As to tenure in burgage, which it may be necessary to prove in cases concerned with a descent in borough-english, customary dower, or other customary incidents, it should be remembered that the customs of this tenure cannot be set up outside an ancient borough (*p*), even if the tenure is stated in letters-patent or elsewhere to be "in free burgage" (*q*).

Tenure in gavelkind.

With regard to gavelkind lands, the presumption is that land in Kent is of that local tenure until the contrary is proved (*r*). It may however be shown to have been disgavelled, or never to have been of the nature of gavelkind. The Acts for disgavelling lands in Kent affected the lands of nearly seventy of the principal land-owners, whose names are given in the Acts but without schedules of the lands affected (*s*). To prove that a particular estate was within one of these Acts it is necessary to show that the

(*l*) 3 & 4 Will. c. 74, ss. 4, 5.

(*m*) *Ibid.* s. 6.

(*n*) Coventry, Convey. Evid. 170; *Green* v. *Proude*, 1 Mod. 117.

(*o*) *Per* Shadwell, V.-C., in *Harris* v. *Davison*, 15 Sim. 128, 133.

(*p*) Co. Litt. 110 b.

(*q*) *May* v. *Street*, Cro. Eliz. 120.

(*r*) *Burridge* v. *Sussex* (*Earl of*), 2 Ld. Raym. 1292; *Lushington* v. *Llandaff* (*Bishop of*), 2. N. R. 491.

(*s*) As to the Disgavelling Acts, see Elton, Ten. of Kent, c. 16, and p. 9, *ante*.

land was in the particular ownership at the date of the Act (*t*). This is done by proving the Act, and by producing any records which bear upon the circumstances of the particular case, such as inquisitions *post mortem* or surrenders of monastery lands preserved among the records of the Court of Augmentations, grants of such lands by the Crown to private persons (of which the dates may be found in the Patent Rolls) licences of alienation, pardons for alienations without licence, and many other kinds of official records. The Act 31 Hen. VIII. c. 3 is printed among the general Statutes, but being of a private nature and not affecting the whole county it should be proved by a copy examined with the original on the Parliament Roll, as is necessary in the case of the other Disgavelling Acts which have never been printed (*u*).

Existence of manor.

The existence of a manor properly depends on the fact of there being at least two freeholders holding of the manor in fee and subject to escheat, and not upon the holding of courts (*x*). It is not however necessary in ordinary cases to prove the continuance of a manor, as the title to waste land and to the enjoyment of manorial rights and franchises may be supported by evidence that the manor had formerly a legal existence (*y*). Reputation is also *primâ facie* proof of the existence of a manor (*z*). In an action of ejectment against an encroacher upon the waste by a person who claimed to be devisee of the manor, it was held that parol evidence that the devisor of the manor had held a court many years previously, and that the devisee himself had on several occasions held courts, with proof of the appointments of gamekeepers by deputation

(*t*) Rob. Gav. 97; R. P. Comm. 1 Rep. App. 153, 228, 286, 350; *Wiseman* v. *Cotton*, 1 Sid. 135, 138; Elton, Ten. of Kent, 358—364.

(*u*) See *Doe* d. *Bacon* v. *Brydges*, 6 M. & Gr. 282; and see generally, as to proof of Acts of Parliament, Taylor, Evidence, 8th ed. 1303, and 45 & 46 Vict. c. 9.

(*x*) *Glover* v. *Lane*, 3 T. R. 445, 447.

(*y*) *Curzon* v. *Lomax*, 5 Esp. 60.

(*z*) *Soane* v. *Ireland*, 10 East, 259.

was *primâ facie* evidence both that the manor existed and that the devisee was lord (*a*). It has been said that where a documentary title can be made, very scanty exercise of the rights will support a claim to an allotment in lieu of the soil of the waste (*b*). In one case the existence of a manor was held to be proved by reputation "without the slightest vestige of the existence of any manorial right whatever" (*c*).

Proof of boundaries of manor by act of ownership.

The boundaries of a manor may be proved in certain cases by acts of ownership, which show what has been the meaning of ambiguous expressions in an ancient grant, for all ancient grants may be explained by modern usage to discover what was included in them; thus a series of acts of ownership upon the seashore may show that it was parcel of the manor as granted originally by the Crown (*d*), though in the absence of evidence to the contrary the Crown is presumed to own the shore up to the medium high-tide line between the spring and neap tides (*e*). Where the shore was shown to be parcel of a manor, it was held that the word "waste" was a sufficient description of the soil between high and low water mark (*f*). The right to take wreck upon the shore is accepted as evidence that the Crown granted the shore as parcel of the manor, though it is not conclusive (*g*). So the mines under freehold lands may be shown by acts of ownership to be part of the demesnes of the manor, in opposition to the common presumption in favour of the surface-owner (*h*). And on the same principle it has been seen that copyholders may show by evidence of user, if uncontradicted by evidence of

(*a*) *Doe* d. *Beck* v. *Heakin*, 6 A. & E. 495.

(*b*) Cooke, Inclosures, 93.

(*c*) *Steel* v. *Prickett*, 2 Stark. 463.

(*d*) *Calmady* v. *Rowe*, 6 C. B. 861; *Beaufort* (*Duke of*) v. *Swansea* (*Mayor, &c. of*), 3 Exch. 413; *Att.-Gen.* v. *Jones*, 2 H. & C. 347.

(*e*) *Att.-Gen.* v. *Chambers*, 4 De G. M. & G. 206.

(*f*) *Att.-Gen.* v. *Hanmer*, 27 L. J. N. S. Ch. 837.

(*g*) *Calmady* v. *Rowe*, 6 C. B. 861. As to evidence in support of a claim to wreck, see *Biddulph* v. *Ather*, 2 Wils. 23.

(*h*) *Barnes* v. *Mawson*, 1 M. & S. 77.

the custom having been the other way, that they are entitled to the minerals or timber on their copyholds (*i*). Where usage, though it be not ancient, is admissible and is unopposed by other evidence, it is usually conclusive (*k*). A copyhold tenement described as "meadow" on the court-roll may by usage be shown to include no more than the "first crop" (*l*), and so with similar instances.

By reputation.

Boundaries may also be proved by evidence of reputation where the question relates to matters of general or public interest (*m*). "The term 'interest' here does not mean that which is interesting from gratifying curiosity, or a love of information or amusement, but that in which a class of the community have a pecuniary interest or some interest by which their legal rights or liabilities are affected. The admissibility of the declarations of deceased persons in such cases is sanctioned because these rights and liabilities are generally of ancient and obscure origin, and may be acted upon only at distant intervals of time; because direct proof of their existence therefore ought not to be required; because in local matters in which the community are interested, all persons living in the neighbourhood are likely to be conversant; because, common rights and liabilities being naturally talked of in public, what is dropped in conversation respecting them may be presumed to be true; because conflicting statements would lead to contradiction from others if the statements were false; and thus a trustworthy reputation may arise from the concurrence of many parties unconnected with each other, who are all interested in investigating the subject. But the relaxation has not been and ought not to be extended to questions relating to matters of mere private interest, for respecting these direct proof may be given, and no trustworthy reputation is likely to arise. We must remark,

(*i*) *Ante*, p. 237.
(*k*) *Rex* v. *Hoyte*, 6 T. R. 430.
(*l*) *Stammers* v. *Dixon*, 7 East, 200.
(*m*) *Reg.* v. *Bedfordshire* (*Inhabts. of*), 4 E. & B. 535; *Doe* d. *Molesworth* v. *Sleeman*, 9 Q. B. 298.

however, that although a private interest should be involved with a matter of public interest, the reputation respecting rights and liabilities affecting classes of the community cannot be excluded, or this relaxation of the rule against the admission of hearsay evidence would often be found unavailing" (*n*). In order, however, to make hearsay testimony admissible, it must be shown that the persons making the declaration or statement had a personal and competent knowledge of the subject (*o*); but if it can be fairly assumed from the nature of the evidence that it was derived from persons acquainted with the facts, the Courts will not demand particular evidence of their knowledge (*p*); and it has been said that if the question is one in which all the inhabitants within the manor, or all the tenants of it, or a particular district of it, are interested, reputation from any deceased inhabitant or tenant or even deceased resident in the manor would be admissible, such residents having presumably a knowledge of such local custom (*q*). It is also a further requisite that declarations by deceased persons, when tendered as evidence of reputation, must be shown to have been made *ante litem motam*, or in other words, before any controversy or dispute arose regarding the actual matter to which they relate (*r*); but the mere fact that there was previously a controversy regarding a matter very similar in its nature to the dispute which subsequently arises will not make declarations which have been made during the continuance of the first suit unavailable as evidence in a later action on the ground that they had been made after the controversy arose (*s*). On the principles above stated, evidence

(*n*) *Per Curiam* in *Reg.* v. *Bedfordshire* (*Inhabts. of*), 4 E. & B. 535, 541.

(*o*) *Rogers* v. *Wood*, 2 B. & Ad. 245, 256; *Crease* v. *Barrett*, 1 C. M. & R. 919.

(*p*) *Freeman* v. *Phillipps*, 4 M. & S. 486.

(*q*) *Dunraven* (*Earl of*) v. *Llewellyn*, 15 Q. B. 791, 809.

(*r*) Taylor, Evidence, 8th ed. 554.

(*s*) *Freeman* v. *Phillipps*, 4 M. & S. 486.

of what old persons who were dead had been heard to say concerning the general boundaries of two manors, though not as to particular facts or transactions, was admitted in an action where the question was whether a certain common or waste was in one or other of the manors in question, even although the old persons lived within the manor and claimed rights of common on the waste, which would have been enlarged by their declarations, as it did not appear that there was at the time any dispute or litigation pending regarding the rights of the declarants (*t*). So, also, evidence of reputation has been admitted to prove not only that there was a known distinction within the manor between old and new land, but also to show what the boundaries of the new land were, and what was the general right of the lord over such land (*u*). Again, in an action concerning wreck, an ancient document purporting to be the answers of deceased tenants to commissioners appointed by a former lord was allowed as evidence of the boundary of the manor, but not of the private right to the franchise, as it was not a matter of public concern, or one respecting which the tenants had any peculiar means of knowledge (*x*). But evidence of reputation will not be admissible where the question is as to the boundary between two private estates, or where the evidence goes to establish a particular fact; thus, declarations of old persons deceased as to what was the ancient boundary of a waste were not admitted where the question was whether the waste was parcel of a certain farm (*y*); and so in the case of *Dunraven* (*Earl of*) v. *Llewellyn* (*z*), the declarations of tenants having only rights of common appendant over a waste were held inadmissible to prove that a certain spot

(*t*) *Nicholls* v. *Parker*, 14 East, 331, n.

(*u*) *Barnes* v. *Mawson*, 1 M. & S. 77, 81.

(*x*) *Talbot* v. *Lewis*, 1 C. M. & R. 495.

(*y*) *Clothier* v. *Chapman*, 14 East, 331, n.

(*z*) 15 Q. B. 791, 811, explaining *Weeks* v. *Sparke*, 1 M. & S. 679; and *Prichard* v. *Powell*, 10 Q. B. 589.

was part of the manorial wastes, the Court being of opinion that, as the right of each tenant was a separate and private right and was not of a public character, reputation was inadmissible.

By the verdict of a jury.

The boundary of a manor may also be proved by the verdict of a jury in a former action between third parties, for the verdict, though not reputation, is at least as good as evidence of reputation. Thus, where the question related to the boundary between two manors A. and B., and the plaintiff's contention was that a ridge of mountain was the boundary line, it was held that he might show in support of his case that the boundary between an adjoining manor C. and the manor B. was the ridge of the same line of mountain, and that he might prove the fact by the finding of a jury, who had been summoned under a commission from the Duchy Court of Lancaster for the purpose of determining the boundary between the manors C. and B. on the petition of former owners of C. and B., who had represented that the boundary was uncertain and that suits were likely to grow between them (*a*). But the award of an arbitrator setting out a boundary, as proved before him, cannot be received as evidence of the boundary (*b*).

Not by award of arbitrator.

Terriers, surveys, &c.

Again, ancient records, terriers, presentments at manorial courts, surveys, conveyances, &c., have been admitted as evidence of reputation, or as equivalent thereto; but it must be shown that they come from a proper custody (*c*), and have been made under the proper authority (*d*), and they will then be receivable as public documents, for a document which appears to be no more than a survey taken by a private individual for his own purposes will not be received in evidence as a public document (*e*). But

(*a*) *Brisco* v. *Lomax*, 8 A. & E. 198.

(*b*) *Evans* v. *Rees*, 10 A. & E. 151.

(*c*) *Ibid.*

(*d*) *Evans* v. *Taylor*, 7 A. & E. 617.

(*e*) *Daniel* v. *Wilkin*, 7 Ex. 429; *Phillips* v. *Hudson*, L. R. 2 Ch. 243.

an ancient survey of Crown lands, which came out of a proper custody and appeared to have been properly taken, has been admitted, although the commission could not be found (*f*). Manorial surveys must be signed by the tenants, and presentments made by a jury of survey must be properly signed, and must be made at a court of survey (*g*). Such presentments are not admissible if made *post litem motam*. Thus in a case relating to the title of the soil of a sheep-walk a presentment on the court-rolls was rejected, wherein the jurors recited that they were sworn to view the land in question, and stated upon oath that it was part of a certain waste and not part of the freehold tenement, and it was held that it could not be admitted as a proper presentment, because the homage had no power to decide the question of private right, nor as an award for want of mutual submission, nor as evidence of reputation, because it was made after the commencement of the dispute (*h*).

To prove the extent and rights of a manor, formerly part of the Duchy of Lancaster, a document from the office of the Duchy, purporting to be a survey made by a former deputy-surveyor, founded on the presentments of the tenants at a court of survey, was held to be inadmissible, either as a document made under public authority, or as evidence of reputation, it appearing that the Crown had paid the expenses of the survey; and an argument based on the duties imposed on the surveyor by the Statute '*Extenta Manerii*,' was rejected, because the Statute did not impose the duty of ascertaining the boundaries of manors (*i*). A survey taken under a commission from the Crown, to which at the time the manor belonged, was admitted to show the extent of the demesne-lands at that

(*f*) *Rowe* v. *Brenton*, 8 B. & C. 737, 747.

(*g*) Vin. Abr. xii. 90, pl. 12; Stark. Evid. 473.

(*h*) *Richards* v. *Bassett*, 10 B. & C. 657.

(*i*) *Evans* v. *Taylor*, 7 A. & E. 617; see *Beaufort* (*Duke of*) v. *Smith*, 4 Exch. 450. As to Statute *Extenta Manerii*, see *ante*, p. 4.

time (*j*). And an ancient survey of Crown lands, found in the office of Land Revenue Records and purporting to have been made by a proper authority, was taken as evidence of the title of the Crown to lands therein stated to have been purchased from a subject (*k*). It may be mentioned here that surveys of Church lands and Crown lands were taken in the time of the Commonwealth by commissioners acting under the authority of Acts or Ordinances of the Parliament, the copies of the surveys being deposited in many of the cathedrals, and in some cases in Lambeth Palace Library. "The originals would have been good evidence of the particulars of the surveyed estates; but as they were destroyed at the time of the great fire of London, the copies have been admitted as evidence in the place of the original surveys, provided they have been kept in unsuspected repositories" (*l*). Private surveys and records can only come into evidence as declarations against interest (*m*).

Presentments in court-rolls.

Presentments in a court-roll are not evidence that the lord has acted as the owner of lands in dispute (*n*); nor are presentments of fines, amercements, or the like, evidence that the payments were due, unless the payment is also proved. But in a case where the question was whether the plaintiffs had a prescriptive right of exclusive fishery which they claimed under the lords of the manor, and as appurtenant to the manor, they were allowed to give in evidence entries of licences on the court-rolls of the manor, whereby it appeared that the lords had a several fishery and had granted liberty to fish in consideration of certain rents, without the necessity of proving payment under these licences, as they were of such ancient date that evi-

(*j*) *Dimes* v. *Arden*, 6 N. & M. 494.

(*k*) *Doe* d. *King Will. IV.* v. *Roberts*, 13 M. & W. 520.

(*l*) Phill. Evid. i. 405; *Bullen* v. *Michel*, 2 Price, 399.

(*m*) *Bridgman* v. *Jennings*, 1 Ld. Raym. 734; *Phillips* v. *Hudson*, L. R. 2 Ch. 243.

(*n*) *Irwin* (*Visct.*) v. *Simpson*, 7 Bro. P. C. 306, 317.

dence of payment could not reasonably be expected; but it was said by the Court that to give any weight to these licences it must be shown that in later times payments had been made under licences of a similar kind, or that the lords of the manor had exercised other acts of ownership over the fishery which had been acquiesced in (*o*).

Ancient leases.

Again, ancient leases have been held as properly receivable as evidence of reputation in a question of parish boundary (*p*).

Perambulations.

Perambulations are also evidence of the extent or boundaries of a particular manor (*q*), and if entered on the court-rolls will be receivable as evidence; but an entry on the court-rolls that the perambulation had taken a particular line would not be admissible (*r*).

Maps.

Maps are admissible as evidence of reputation, if coming from a proper custody, and therefore tending to show that they are likely to be authentic (*s*), and if appearing to have been made by or from the relation of persons with a proper knowledge of the locality and to have been generally accepted by such persons as accurate (*t*). But a private map is not usually receivable in evidence either for or against the parties making it; but in certain circumstances it may be received as a declaration against interest (*u*). A tithe-commutation map is not admissible in evidence on questions of ownership as showing the boundary of land in cases of disputed title (*x*); and it has been held that the ordnance map and maps found in the British Museum cannot be received in evidence to prove that a certain piece of waste land is within a certain parish and forms part and parcel of a common (*y*).

(*o*) *Rogers* v. *Allan*, 1 Campb. 309, 311.

(*p*) *Plaxton* v. *Dare*, 10 B. & C. 17.

(*q*) Phill. Evid. i. 249.

(*r*) *Weeks* v. *Sparke*, 1 M. & S. 679; *Taylor* v. *Devey*, 7 A. & E. 409.

(*s*) *Hammond* v. *Bradstreet*, 10 Exch. 390.

(*t*) *Rex* v. *Milton* (*Inhabts. of*), 1 C. & K. 58.

(*u*) See *Doe* d. *Hughes* v. *Lakin*, 7 C. & P. 481.

(*x*) *Wilberforce* v. *Hearfield*, 5 Ch. Div. 709.

(*y*) *Bidder* v. *Bridges*, W. N. (1885) 183; *S. C.*, W. N. (1886) 148 (C. A.).

Manorial franchises.

As to manorial franchises it should be remembered that they may be extinguished by forfeiture for a misuser, or even by disuse. Thus after a long interval it would appear that the franchise of holding a court-leet becomes extinct (*z*), though it is otherwise as to a court-baron, which is a necessary incident of a manor (*a*). To establish a right to free-warren or any similar franchise, it seems it is necessary to prove that of the right has been enjoyed down to the time of making the claim, as "the non-user creates a presumption that the franchise has been surrendered" (*b*), though formerly the doctrine was that franchises which were for the profit or pleasure of the grantee were not lost or forfeited by non-user, but that in the case of liberties wherein the public have an interest for their common profit, non-user was a cause of forfeiture (*c*). Reputation also is admissible evidence of a claim of free-warren by prescription over an entire manor. Thus in an action by the lord of a manor against a copyholder for trespassing on his free-warren, a private Act which was passed for the inclosure of common lands within the manor, and contained a recital relating to the interests of the copyholders, but expressly saved the rights of the lord to free-warren in as ample a manner as he had theretofore enjoyed it, taken with declarations of deceased copyholders as to the existence of the franchise over all the copyholds, was admitted in evidence to prove the right; and in the same action a judgment on a *quo warranto* information brought against a former owner of the manor by the Attorney-General, in which the former owner pleaded, and the Attorney-General confessed, a prescriptive title to the free-warren as appurtenant to the manor, was received as evidence in support of the right, as being the judgment of a competent Court upon

(*z*) See *Darrell* v. *Bridge*, 1 W. Bl. 46.

(*a*) *Rex* v. *Havering-atte-Bower Manor (Steward of)*, 5 B. & Ald. 691.

(*b*) Cru. Dig. tit. 27, s. 97.

(*c*) *Case of Leicester Forest*, Cro. Jac. 155; cf. Bro. Abr. tit. Franchise, pl. 10, 22.

a matter of a public nature concerning the Crown and its subjects (*d*).

Upon the question whether a particular tenement continues to be held of a manor, notwithstanding a great lapse of time without render of services, it may be observed that the tenure will be presumed to continue, in the case of freeholds as well as copyholds, unless something is proved from which a release can be presumed. In the case of *Chichester* (*Earl of*) v. *Hall* (*e*) it appeared that the land was freehold held of the lord of a manor under render of a heriot, relief, quit-rent, &c., but that no service of any kind had been rendered to the lord for forty-five years, although there had been occasions when the services were due and might have been demanded; and it was held that the lapse of time was no ground for presuming that the tenure of the lands had been changed. Again, in a case where it was shown that copyhold property had upwards of a century previously been conveyed for the purpose of a workhouse, and that the lord had not since the date of the conveyance received a small acknowledgment for which he had then commuted the fines and other services due from the property, it was held that in the absence of evidence adverse to the right of the lord the Court would not presume an enfranchisement of the land from mere negligence on the lord's part in exacting the acknowledgment (*f*). But upon proper evidence the enfranchisement of a copyhold may be presumed, even against the Crown. Thus, where certain lands were admitted to have been originally copyhold and to have been subject to an ancient rent of 6*s.* 6*d.*, but had been surrendered in 1636 to churchwardens and their successors without mention of any rent, and it was shown that the churchwardens were charged in a Parliamentary survey made in 1649 with the

Proof of tenancy.

(*d*) *Carnarvon* (*Earl of*) v. *Villebois*, 13 M. & W. 313.

(*e*) 17 L. T. 121.

(*f*) *Turner* v. *West Bromwich Union* (*Guardians of*), 9 W. R. 155.

payment of a sum of 6*d.* under the head of "freehold rents," and that receipts had from time to time been given by the steward as for a freehold rent, these facts were held to be evidence on which the jury might presume an enfranchisement as against the Crown (*g*). It has also been said that where a person would have any advantage from making a claim, his long non-claim may be evidence of a release (*h*). In the case of *Lydiard and Jackson's and Broadley's Contract* (*i*) it appeared that land anciently copyhold had been for upwards of 100 years treated as freehold, without any claim being made on the part of the lord of the manor, and that the only intimation that the land was copyhold consisted of recitals contained in deeds of recent date, together with a covenant to surrender, to which the lord was neither party nor privy: and it was held, as between the vendor and the purchaser of the land, that under the circumstances an enfranchisement must be presumed.

Evidence of custom.

There is no rule as to the extent of evidence which is required to establish a custom, or from which the presumption or inference of the fact of a custom may be rightly drawn (*k*). Although one act, even if undisturbed, does not make a custom, it has been said that it will be evidence of the custom (*l*). One entry on the roll will be sufficient to prove a custom under some circumstances, as in questions as to the custom of descent, dower, or the like (*m*), and an entry of the custom of descent in a manor has been admitted as evidence, though no instance was given of the actual descent (*n*). Old leases also have been held to be

(*g*) *Roe* d. *Johnson* v. *Ireland*, 11 East, 280.

(*h*) *Hillary* v. *Waller*, 12 Ves. jun. 239, 265.

(*i*) 42 Ch. Div. 254.

(*k*) *Per* Lord Westbury, L. C., in *Hanmer* v. *Chance*, 4 De G. J. & S. 626, 635.

(*l*) *Roe* d. *Bennett* v. *Jeffery*, 2 M. & S. 92.

(*m*) *Doe* d. *Mason* v. *Mason*, 3 Wils. 63.

(*n*) *Roe* d. *Beebee* v. *Parker*, 5 T. R. 26.

evidence of a custom to approve (*o*), and this would seem to be so, even if no enjoyment under them were proved (*p*).

A regular series of entries in a court-roll, or a statement of customs signed by the homage or the former tenants, and found in the proper custody, is the best evidence of a custom. In one case an ancient writing handed down with the court-rolls from steward to steward, and purporting to be the customary of the manor was received as evidence of a custom mentioned therein (*q*); and in another case, in order to prove a custom that the lord was entitled to take only one heriot from a tenant, no matter what the number of the tenements were, a paper purporting to be a copy of an old decree of the Court of Chancery in a suit between a copyholder and the lord, which was produced by a witness who had been lord of the manor and had found the document among the papers of a previous lord, was admitted as evidence of the custom on proof of search having been made for the original (*r*).

In the absence of better evidence, and if there is nothing to show that the custom did not exist at any given period within legal memory, evidence of reputation is admitted to prove the existence of a custom, as "tradition and the received opinion are evidence of the *lex loci*" (*s*). But though the general opinion may be evidence of the general right, the tradition of a particular fact said to have been done in the exercise of the right is not evidence (*t*). In the case, however, of a customary right which admits of acts of enjoyment, a foundation ought if possible to be laid, showing its exercise within living memory: "it is

(*o*) *Lascelles* v. *Onslow* (*Lord*), 2 Q. B. Div. 433.

(*p*) *Clarkson* v. *Woodhouse*, 3 Dougl. 189.

(*q*) *Denn* d. *Goodwin* v. *Spray*, 1 T. R. 466.

(*r*) *Price* v. *Woodhouse*, 3 Exch. 616.

(*s*) *Per* Lord Kenyon, C. J., in *Roe* d. *Beebee* v. *Parker*, 5 T. R. 26, 31; *Doe* d. *Forster* v. *Sisson*, 12 East, 62; *Freeman* v. *Phillipps*, 4 M. & S. 486.

(*t*) Phill. Evid. i. 250; Taylor, Evidence, 8th ed., 543.

the exercise of the right that lets in the evidence of reputation" (*u*). In *Hanmer* v. *Chance* (*x*) it was held that a custom for copyholders to dig vitreous sand in their tenements was sufficiently proved by evidence of digging for twenty-seven years, and in *Rex* v. *Joliffe* (*y*), twenty years' regular usage uncontradicted and unexplained was held to be cogent evidence for the jury to presume that the custom was an immemorial one. It has been held that the absence of any mention of a custom in a custumal which has been compiled within legal memory is conclusive evidence against the existence of the custom alleged (*z*): but in a later case it was said that a special custom in a manor that the purchaser of several distinct copyhold tenements under one disposition must take admittance to all at one and the same time, and pay one general fine in respect of all, might be evidenced by a uniform course of practice or usage in the manor for a number of years, although no mention of the custom as alleged appeared either on the court-rolls or in any of the custumals or other records of the manor (*a*).

Requisites of user as evidence of custom.

With regard to the usage which will prove a custom, it must be shown that it has been peaceable and continuous from time immemorial. This does not mean that there must be proof that the usage has existed since the commencement of legal memory in the reign of Richard I., but it is necessary that there should be modern user from which the immemorial origin may be presumed, and nothing to upset the presumption. In other words, there must be proof that there has been actual usage and that there has been no interruption in the right, though there may have been discontinuance in the user or enjoyment of the right (*b*). As custom is a local law, it cannot be got rid of

(*u*) Phill. Evid. i. 249; see *Weeks* v. *Sparke*, 1 M. & S. 679.

(*x*) 4 De G. J. & S. 626.

(*y*) 2 B. & C. 54.

(*z*) *Portland* (*Duke of*) v. *Hill*, L. R. 2 Eq. 765.

(*a*) *Johnstone* v. *Spencer* (*Earl*), 30 Ch. Div. 581.

(*b*) Co. Litt. 110 b, 114 b; Co. Copyh. s. 33; *Case of Tanistry*, Dav. 28 b; Com. Dig. Copyh. (S.).

except by Act of Parliament, but long-continued non-user in modern times will be strong evidence of its never having existed (*c*). It must also be shown that the usage has been reasonable, that is, not absurd immoral or prejudicial to the interests of the State, nor destructive of the property where the custom is to be exercised or of the copyholder's estate, but such as can fairly be imagined to have originated in an agreement before the time of memory. "It is not easy," says Lord Cranworth, "to define the meaning of the word 'reasonable' when applied to a custom regulating the relation between a lord and his copyholders. That relation must have had its origin in remote times by agreement between the lord, as absolute owner of the whole manor in fee simple, and those whom he was content to allow to occupy portions of it as his tenants at will. The rights of these tenants must have depended in their origin entirely on the will of the lord, and it is hard to say how any stipulations regulating such rights can, as between the lord and tenant, be deemed void as being unreasonable. *Cujus est dare ejus est disponere.* Whatever restrictions, therefore, or conditions the lord may have imposed, or whatever rights the tenants may have demanded, all were within the competency of the lord to grant or of the tenants to stipulate for. And if it were possible to show that before the time of legal memory any lawful arrangement had been actually come to between the lord and his tenants as to the terms on which the latter should hold their lands, and that arrangement had been afterwards constantly acted on, I do not see how it could ever be treated as being void because it was unreasonable." . . . "When it is said that a custom is void because it is unreasonable, nothing more is meant than that the unreasonable character of the alleged custom conclusively proves that the usage, even though it may have existed immemorially, must have resulted from accident or

(*c*) *Hammerton* v. *Honey*, 24 W. R. 603.

indulgence and not from any right conferred in ancient times on the party setting up the custom" (*d*). Thus, a custom alleged for the lord of a manor to grant leases of the waste lands without restriction has been held unreasonable, because its effect would be to enable him to destroy the right of common thereon altogether (*e*). Further, it must be shown that the usage has been certain; for a custom depending on any uncertainty, such as the will of a third person, would not be allowed (*f*). It is no objection to a custom that it is against the common law, for it is indeed of the very essence of a custom that it should vary from the common law (*g*). But no usage can be established by way of custom which within time of memory was allowed by the common law but was subsequently disallowed by statute (*h*).

Custom in one manor no evidence of custom in another.

With regard to manorial customs, it is a well-established rule that the evidence of usage in one manor is no proof of the custom in another, because as each manor may have special customs for itself, it would put an end to special customs if evidence of custom in neighbouring manors were admitted in proof (*i*). But to this general rule there are exceptions. Thus, if it be first proved that the manors are closely connected with each other, and that the customs in the two are identical, evidence as to the custom in one will be admissible as evidence regarding the custom in the other. But geographical proximity is not sufficient of itself to admit such evidence, nor even the fact that one manor was a subinfeudation of the other, unless it can be shown that they were separated after the time of legal memory, for if the separation were before the time of legal memory, each manor might have different immemorial

(*d*) *Per* Lord Cranworth, in *Salisbury* (*Marquis of*) v. *Gladstone*, 9 H. L. Cas. 692, 701.

(*e*) *Badger* v. *Ford*, 3 B. & Ald. 153.

(*f*) Fitzh. Abr. tit. Barre, pl. 277; *Rowles* v. *Mason*, 2 Brownl. 85, 86; *Wilson* v. *Willes*, 7 East, 121.

(*g*) *Horton* v. *Beckman*, 6 T. R. 760, 764.

(*h*) *Ante*, p. 19.

(*i*) *Anglesey* (*Marquis of*) v. *Hatherton* (*Lord*), 10 M. & W. 218.

customs (*k*). Also, if there be a doubt as to a particular incident of the general tenure which is proved to be common to two manors, evidence as to the custom regarding the tenure in one manor may be given to show what the custom of the other is (*l*). Evidence as to the custom of one manor in the Border districts, where tenant-right prevails, has been admitted to prove the custom of another manor in the same district as to that tenure, and similarly with manors in the mining-districts of Derbyshire and Cornwall and in the fen-districts of the eastern counties (*m*).

Proof of right of common.

When a copyholder claims a right of common by virtue of a custom prevailing within the manor, he will establish his right by evidence of the same nature as is required for the proof of any other manorial custom; but he may claim the right as appurtenant to his tenement, and may establish his claim by proof of the enjoyment of the right for the periods limited by the Prescription Act, 1832 (*n*). In such a case it is only necessary for him to show that he has actually enjoyed the benefit which he claimed for the requisite period as of right and not by permission, and that the right claimed is one which could have a legal origin by custom or grant (*o*). But if the claim is made under the provisions of the Prescription Act, evidence of the enjoyment of the right for twenty-eight years immediately preceding the action in which it is disputed will not satisfy the statutory requirements as to proof of enjoyment for thirty years, if it appears that there was an interruption of the enjoyment prior to the user for twenty-eight years, even although it is shown that the right had been exercised before the interruption (*p*). The inter-

(*k*) *Ibid.*

(*l*) *Rowe* v. *Brenton*, 8 B. & C. 737, 762.

(*m*) *Somerset* (*Duke of*) v. *France*, 1 Stra. 654; *Lowther* v. *Raw*, 2 Bro. P. C. 451; *Roe* d. *Beebee* v. *Parker*, 5 T. R. 26, 31; *Ely* (*Dean and Ch. of*) v. *Warren*, 2 Atk. 189; Taylor, Evidence, 8th ed. 307.

(*n*) 2 & 3 Will. IV. c. 71.

(*o*) *De la Warr* (*Earl*) v. *Miles*, 17 Ch. Div. 535.

(*p*) *Bailey* v. *Appleyard*, 8 A. & E. 161.

ruption, however, must be an adverse obstruction and not a mere discontinuance of user by the claimant himself, and accordingly a verdict that there had been a continued enjoyment of the right for thirty years was held to be justified, although it appeared that the commoner had not used the common during two years of the thirty through not having any commonable cattle at the time, the right having been exercised both before and after the period of cessation (*q*). There is no objection to a copyholder basing his claim to a right of common either on a general custom prevailing within the manor or in the alternative on actual enjoyment of the right as appurtenant to his tenement for the prescriptive period (*r*).

Nature of copyhold estates.

There will not in general be much difficulty in ascertaining the nature of the estates which the copyholders of a manor may by the custom possess in their respective tenements. It will be remembered that the power to grant the greater estate implies a power to grant the less (*s*). As to copyholds for lives and years, it has been mentioned above that the proper evidence to prove a right of renewal is to show that the fine is certain by entries in the court-rolls (*t*). If a fixed amount has been paid as a fine for a long period, and it appears by the roll to have formerly been uncertain, this will not be deemed a fine certain; but a few instances either way might not be conclusive as to the certainty of a fine, if they could be attributed to the carelessness of a steward (*u*). If a fine certain has been demanded, it is not evidence of uncertainty that the tenant has paid less, because the lord is at liberty to compound his claim (*x*). The Court will presume that a fine is uncertain until the contrary is proved from the rolls (*y*). With respect to copyholds for lives, it should also be

Amount of fine.

(*q*) *Carr* v. *Foster*, 3 Q. B. 581.
(*r*) *De la Warr (Earl)* v. *Miles*, 17 Ch. Div. 535.
(*s*) *Ante*, p. 25.
(*t*) *Wharton* v. *King*, Anst. 659; *ante*, p. 43.
(*u*) *Gerard's (Lord) Case*, Godb. 265.
(*x*) *Allen* v. *Abraham*, 2 Buls. 32.
(*y*) *Trotter* v. *Blake*, 2 Mod. 229, 231.

remembered that those customs are taken very strictly which enable one of the lives to bar the estates of the rest, and that his exercise of the right must be shown to have been effected in accordance with the requirements of the custom (*z*). Customs as to widowhood or freebench do not alter the rights of a copyholder's widow under the Intestates' Estates Act, 1890. It has been shown that a grant to a man and the heirs of his body may, according to the custom of the particular manor, give either an estate-tail or a fee-simple conditional (*a*). It is no evidence of a custom to make a grant in tail that land has been used to be granted to a man and the heirs of his body, unless there has always been a remainder after such estate, or the issue have avoided the alienation of the ancestor (*b*), or unless there has been some other dealing with the estate which is inconsistent with the nature of a conditional fee. On the other hand, the custom of entailing may be disproved by instances of dealing with the land in a way which is only appropriate to an estate in fee-simple conditional, as where the tenant has aliened in fee after the birth of issue without any disentailing assurance, and the issue has failed to recover. Before the passing of the Fines and Recoveries Act, 1833 (*c*) it was held that a single instance of barring an entail by a surrender was sufficient evidence of a custom to bar either by surrender or by a customary recovery; but many instances of barring by recovery would be evidence that a surrender was not the proper method (*d*). Disentailing assurances of copyholds under the Act must be enrolled on the court-rolls within six months after execution (*e*).

Entails.

As to copyhold assurances generally, the proper evidence is a copy of the court-roll signed by the steward (*f*). It

Copyhold assurances.

(*z*) *Ante*, p. 40.
(*a*) *Ante*, p. 26.
(*b*) Co. Litt. 60 b.
(*c*) 3 & 4 Will. IV. c. 74.
(*d*) *Roe* d. *Bennett* v. *Jeffery*, 2 M. & S. 92.
(*e*) Sect. 54; *Honeywood* v. *Foster*, 30 Beav. 1; *Green* v. *Paterson*, 32 Ch. Div. 95.
(*f*) *Snow* v. *Cutler*, 1 Keb. 567.

is the duty of the steward of a manor to deliver to the tenants, as part of their title, copies of the court-rolls; copies accordingly are admitted in evidence upon the same principle as the chirograph of a fine or the enrolment of a deed (*g*). Proof of the steward's signature may be required, unless he is dead and the document is more than thirty years old (*h*). The copy thus authenticated need not be that which was given to the tenant (*i*). The court-rolls themselves are as good evidence as any copies (*k*).

The Stamp Act, 1891, re-enacting and consolidating the provisions of previous Stamp Acts, provides that the copy of court-roll of a surrender or grant made out of court shall not be admitted in evidence unless the grant or surrender, or memorandum thereof, is duly stamped, of which fact the certificate of the steward on the face of the copy shall be sufficient evidence; and that the entry on the roll of a grant or surrender shall not be admitted in evidence, unless the surrender or grant, if made out of court, or the memorandum thereof, or the copy of court-roll of the surrender or grant, if made in court, is duly stamped, of which fact the certificate of the steward in the margin of such entry is proof (*l*). But the provisions of the Stamp Acts are only revenue regulations, and are not intended to vary the rules of evidence, and accordingly examined copies of the entries on the court-rolls, verified in the usual manner, have been accepted as evidence of surrenders and admittances and other assurances (*m*). It has been held that a surrender which was not entered on the roll might be proved, together with its due presentment, by a draft of an entry produced from the muniments of the manor, and the parol testimony of the foreman of the homage-jury who had

(*g*) *Appleton* v. *Braybrook* (*Lord*), 6 M. & S. 34, 38.

(*h*) *Wynne* v. *Tyrwhitt*, 4 B. & Ald. 376.

(*i*) *Breeze* v. *Hawker*, 14 Sim. 350.

(*k*) *Doe* d. *Bennington* v. *Hall*, 16 East, 208; *Doe* d. *Garrod* v. *Olley*, 12 A. & E. 481.

(*l*) 54 & 55 Vict. c. 39, s. 65 (2), (3).

(*m*) *Doe* d. *Cawthorn* v. *Mes*, 4 B. & Ad. 617; *Doe* d. *Burrows* v. *Freeman*, 12 M. & W. 844.

made the presentment (*n*). In one case the steward's rough draft of an admittance was held to be good evidence of the fact (*o*). In regard to this case it has been said that it did not appear whether a proper engrossment had been made and afterwards lost, but the point appears not to be material; "the draft may have been not a copy, but the original from which the roll was afterwards to be made out: the draft itself is more in the nature of an original than the copy, though the latter is more convenient for reference, and therefore is the document which is generally resorted to" (*p*). So, where a surrender to the use of a will was recited in the copy of an admittance in the record book of the manor and no entry had been made on the roll, the records being kept negligently, the entry in the book was taken as good evidence of the surrender (*q*). But it has been held that a copy of mere short notes by the steward "by way of breviat" was not sufficient (*r*).

Entries on court-roll.

"The rolls of a court-baron or of a customary court are evidence between the lord and his copyholders or free tenants. They are the public documents by which the inheritance of every tenant is preserved and the records of the manor-court, which was anciently a court of justice relating to all property within the manor" (*s*). But they are evidence only against the lord or tenants, and are not public records in the strict sense of the term (*t*). And in case of a mistake the entry on the court-rolls can be altered to suit the fact, as where a conditional surrender has been entered as absolute, or where the agreement between the parties has been misstated by inadvertence (*u*).

Proceedings of courts.

Proceedings in a manorial court are proved by the entry or

(*n*) *Doe* d. *Priestley* v. *Calloway*, 6 B. & C. 484.

(*o*) *Anon.*, 1 Ld. Raym. 735, *per* Lord Holt, C. J.

(*p*) *Per* Lord Tenterden, C. J., in *Doe* d. *Priestley* v. *Calloway*, 6 B. & C. 484, 496.

(*q*) *Rex* v. *Thruscross* (*Inhabts. of*), 1 A. & E. 126.

(*r*) *Lee* v. *Boothby*, 1 Keb. 720.

(*s*) Phill. Evid. i. 417.

(*t*) *Att.-Gen.* v. *Hotham* (*Lord*), Turn. & R. 209, 217.

(*u*) *Kite* v. *Queinton*, 4 Rep. 25 a; *Doe* d. *Priestley* v. *Calloway*, 6 B. & C. 484; *Elston* v. *Wood*, 2 M. & K. 678.

memorandum on the roll, or if not entered may be proved by the officer of the court, or any one conversant with the facts. "When the judgment of a court-baron, or of any other court of inferior jurisdiction, is offered in evidence, the proceedings on which it is founded ought to be shown, but as the proceedings are not usually made up in form, the minutes will be admitted, if perfect and if omitting nothing material" (*x*).

(*x*) Phill. Evid. i. 396; see *Fisher* v. *Lane*, 2 W. Bl. 834; *Doe* d. *Evans* v. *Walker*, 15 Q. B. 28.

CHAPTER XI.

EXTINGUISHMENT AND ENFRANCHISEMENT.

Extinguishment.

When a copyhold ceases to be held according to the custom of the manor, the tenure is said to be extinguished. This may happen either by the union in one person of a freehold and a copyhold interest in the same land and in the same right, or by enfranchisement of the copyhold tenure.

An extinguishment results when the lord acquires the copyhold tenement by any means, as by the tenant's surrender, bargain and sale, release, or abandonment of the customary tenancy at will, or by descent, forfeiture, or escheat (*a*). In cases of acquisition by descent, forfeiture, escheat, or the like, where there is no act on the part of the lord showing an intention to destroy the tenure, there will not be an absolute extinguishment but only a suspension of the tenure, so long as the lord does not alter the demiseable nature of the tenement by creating a common-law interest in it other than a tenancy at will, even though the lord keeps the tenement in hand for a period exceeding the statutory period of limitation (*b*). Upon a purchase by the lord of the copyhold there will be an absolute extinguishment, unless there has been a surrender to the use of a trustee for him. If one of several

(*a*) *Blemmerhasset* v. *Humberstone*, Hutt. 65; *Beversham's Case*, 2 Ventr. 345.

(*b*) *French's Case*, 4 Rep. 31 a; see *Pemble* v. *Sterne*, T. Ray. 165; and Watk. Copyh. i. 361, n.

lords of a manor purchases a copyhold tenement and is admitted to it with the concurrence of the other lords, the customary estate in the tenement will be extinguished to the extent of his undivided interest in the manor (*c*). The copyhold interest is also extinguished when a copyholder acquires from the owner of the freehold any common-law interest in the land, as for a term of years, or for an interest in remainder, whether by purchase or descent, "for the estate of the copyholder, being only at will, becomes merged by the accession of any greater estate" (*d*). Thus, if the lord of a manor demises the freehold of a copyhold tenement for a term of years, and the lessee assigns the term to the copyholder, the customary interest will be extinguished; "for both these interests cannot exist in the same person at once, and consequently one of them must be determined, which of necessity must be the customary estate; for the estate derived from the common law cannot merge in that, and when common law and custom come together and one or other must necessarily stand, the common law shall be preferred" (*e*). And so, if a copyholder takes a lease of the manor or becomes possessed of a legal estate therein, his customary estate will come to an end (*f*).

Suspension of the tenure.

When the freehold and copyhold interests are held by the same person in two different rights, the customary tenure is suspended, and not extinguished. Thus, where a copyholder married the lady of the manor, his tenure was suspended, while the estate in right of his wife continued (*g*); but if the marriage has taken place since the 1st of January, 1883, there would be no suspension of the copyhold tenure (*h*). Again, if the wife of a copyholder became lady of the manor, the tenure would have been

(*c*) *Cattley* v. *Arnold*, 4 K. & J. 595.
(*d*) Cru. Dig. tit. 10, c. 6, s. 7.
(*e*) *Lane's Case*, 2 Rep. 16 b, 17 a; Cru. Dig. tit. 10, c. 6, s. 8.
(*f*) *Anon.*, Moo. 185; *Hide* v. *Newport*, cited *ibid.*; *French's Case*, 4 Rep. 31 a.
(*g*) Co. Copyh. s. 62; *Anon.*, Cro. Eliz. 8.
(*h*) 45 & 46 Vict. c. 75, s. 2.

suspended; but if the wife's title to the manor has accrued to her since the 1st of January, 1883, there would be no suspension (*i*). Where the lord of a manor, who was tenant for life only, purchased the fee of certain customary freeholds held of the manor, it was held that the effect of the union was to suspend the seignory during the life of the lord, but that on his death intestate the seignory revived and passed to the remainderman, while the fee of the customary freeholds descended to his heir-at-law (*k*).

Effect of extinguishment.

If the extinguishment takes place, the copyhold will at once become part of the manor, discharged of the customary tenure and of all incidents and privileges belonging thereto (*l*), and subject, of course, to all incumbrances and limitations affecting the residue of the manor (*m*). Thus it was held that a copyhold surrendered to the use of the lord and his heirs would enure to the benefit of a mortgagee under a previous mortgage of the manor, and that the equity of redemption passed under the limitations of an existing settlement of the estate as comprised in the mortgage (*n*); and similarly it has been held that a devise of a manor carried with it copyholds which had been surrendered to the lord subsequently to the making of the devise (*o*). But although a copyhold which is purchased by a lord who is only tenant for life of the manor and is surrendered to him and his heirs will in law become parcel of the manor, and subject to its limitations, yet it would seem the lord would have in equity a charge on the reversion for the amount of his purchase-money, if he can show that the surrender had been taken in such a form by mistake, and that he had the intention of preserving the benefit of the purchase for himself and his heirs (*p*).

(*i*) *Ibid.* s. 5.

(*k*) *Bingham* v. *Woodgate*, 1 R. & M. 32.

(*l*) *Dugworth* v. *Radford*, W. Jon. 462.

(*m*) *St. Paul* v. *Dudley* (*Visct.*), 15 Ves. jun. 167; *King* v. *Moody*, 2 Sim. & S. 579.

(*n*) *Doe* d. *Gibbon* v. *Potts*, 2 Dougl. 710.

(*o*) *Roe* d. *Hale* v. *Wegg*, 6 T. R. 708.

(*p*) Dav. Prec. Conv. 4th ed., vol. ii., pt. 1, 383 n.; see *St. Paul*

Tenure revived.

It will be remembered that the copyhold tenure may be revived after extinguishment, provided that no common-law interest other than a tenancy at will has been created during the merger by an owner seised in fee: but that if such an interest has been created, the land thereby ceases for ever to be demiseable by copy of court-roll (*q*). If, however, a common-law interest exceeding a tenancy at will has been created during the merger of the freehold and copyhold estates by a lord who is merely a limited owner, his act will only suspend the power of re-granting as copyhold during the continuance of his limited estate; and on its determination the land may be re-granted as a copyhold by a succeeding lord (*r*). If the tenure is revived, the copyhold tenant will hold the tenement free from all charges and incumbrances which would have attached if the tenement had become part of the manor (*s*).

Enfranchisement.

The copyhold tenure is also extinguished by enfranchisement, which is a term specially applicable to the conversion of the copyhold estate in the hands of the tenant into an estate of freehold tenure. It results from the lord either conveying to the copyholder the fee simple in the tenement or releasing to him the seignorial rights. The methods by which copyhold lands are enfranchised may be arranged into two classes, namely (1) those which operate at common law, and (2) those which derive their effect from the provisions of the Copyhold Acts.

At common law.

At common law enfranchisement is effected by the conveyance of the freehold to the copyholder, or by a release of all customs and services either by the lord of the manor or by the owner of the freehold of that particular tene-

v. *Dudley* (*Visct.*), 15 Ves. jun. 167; *King* v. *Moody*, 2 Sim. & S. 579.

(*q*) *Ante*, pp. 46, 349.

(*r*) *Ex parte Lord Henley*, *Re London & S. W. Rail. Co.*, 29 Beav. 311.

(*s*) *Swayne's Case*, 8 Rep. 63 a; *Sneyd* v. *Sneyd*, 1 Atk. 442.

ment (*t*). The same effect may follow from a release of part of the services or from any transaction equivalent to a release. Thus it was held that tenant-right copyholds were enfranchised when the lord "ratified and confirmed to the tenant and his heirs all the customary and tenant-right estate, and granted that he should be discharged of the payment of all rents, customs, services, &c., except one penny yearly rent, and except suit of court and all royalties, escheats and forfeitures" (*u*). This was considered to be tantamount to a release of the copyhold services. But it has been held that a grant in fee by the lord of a manor to a copyholder of inheritance of all the woods and underwoods growing and to grow on the copyhold lands, where by the usage the lord had the right to cut the woods and underwoods on all the copyhold tenements, did not operate as such a release (*x*). A deed executed by the lord and purporting to convey a copyhold tenement in fee will pass nothing but the copyhold, even although the parcels contain a description of something which does not actually form part of the customary tenement (*y*).

It must be remembered that the enfranchisement severs the copyhold from the manor, save in regard to the lord's right to escheat for want of heirs in the case of enfranchisements effected after the 16th of September, 1887. The enfranchising lord cannot validly reserve to himself the ancient rents and services, fealty, or suit of court, or create any new tenure of the freehold by reserving any new service to himself, for the owner of the enfranchised tenement must by reason of the Statute *Quia Emptores* hold of the next superior lord in free socage after the enfranchisement (*z*). But it would seem that the enfranchising lord's right to escheat still continues where the tenement

(*t*) *Phillips* v. *Ball*, 6 C. B. N. S. 811.

(*u*) *Doe* d. *Reay* v. *Huntington*, 4 East, 271.

(*x*) *Fawlkner* v. *Fawlkner*, 1 Vern. 21.

(*y*) *Hext* v. *Gill*, 27 L. T. N. S. 291.

(*z*) *Bradshaw* v. *Lawson*, 4 T. R. 443.

has been enfranchised since the 16th of September, 1887; for it is provided by the Copyhold Act, 1887 (*a*), that on any enfranchisement taking place after that date the lord of the manor shall continue to be entitled in case of escheat for want of heirs to the same right and interest in the land as he would have had if it had not been enfranchised. If it is agreed that the consideration for the enfranchisement shall consist of annual or other payments to be made by the tenant after the enfranchisement, such payments will be due from him not as rent-services, but by virtue of the covenants contained in the deed.

Who can enfranchise.

No one can enfranchise a copyhold at common law, who has not an estate in fee in the manor, or at least a power to convey the fee-simple of the land to the copyholder (*b*). The practice of conveyancers, when the lord is seised in fee, is to make the enfranchisement by a grant of the fee, and not simply by a release of the seignorial rights. When the enfranchisement is effected under a power, the terms of the power must be followed. The ordinary power of sale of a settled manor and lands was formerly used for the enfranchisement of the copyholds; but questions sometimes arose whether the power to sell the manor warranted the sale separately from the manor either of the lands held by copy of court-roll or of demesnes or freeholds which might have come into the lord's hands (*c*). It is now provided by the Settled Land Act, 1882 (*d*), that where the settlement comprises a manor the tenant for life may sell the seignory of any freehold land within the manor, or the freehold and inheritance of any copyhold or customary land parcel of the manor, with or without any exception or reservation of all or any mines or minerals or of any rights or powers relative to mining purposes, so as in every case to effect an enfranchisement. If the lands are copyholds for lives, the transaction between the lord and tenant

(*a*) Sect. 4.

(*b*) *Wilson* v. *Allen*, 1 J. & W. 611.

(*c*) Dav. Prec. in Conv. 4th ed. vol. ii, pt. 1, 388, n.

(*d*) Sect. 3 (ii).

will partake of the nature of a sale as well as of an enfranchisement, because it comprises the reversions expectant on the customary estate for lives. Whatever doubts may have formerly existed as to the efficacy of a simple power of enfranchisement in the case of copyholds for lives where there was not also a power of sale, it would appear that under the provisions of the Settled Land Act, 1882, above mentioned, a tenant for life is now capable of making such an enfranchisement.

Who may accept an enfranchisement.

It has been held that the heir of a copyholder may accept an enfranchisement before he is admitted, but it has been doubted whether this rule would apply to a devisee or surrenderee of a copyhold before admittance (*e*). If the person taking the enfranchisement has only an equitable interest, but has been *de facto* admitted, there can be no doubt that the enfranchisement would be effectual (*f*). Where an appointee under a power contained in a settlement was admitted to copyholds and obtained an enfranchisement to himself, it was held that the customary heir of the settlor was not entitled to object, as he had no beneficial interest in the property (*g*). A copyholder with a limited estate may take an enfranchisement, but it will enure to the benefit of the persons entitled in remainder who would have taken the copyhold if there had been no enfranchisement. (*h*). After long enjoyment as freehold, an enfranchisement upon proper evidence will be presumed even against the Crown (*i*).

Presumption of enfranchisement.

Effect of enfranchisement.

Enfranchisement at common law formerly necessitated the investigation of the lord's title to the manor, as the copyholder by accepting an enfranchisement took the manorial title to the freehold, subject to all its rights

(*e*) *Wilson* v. *Allen*, 1 J. & W. 611.

(*f*) *Ibid.* p. 620.

(*g*) *Minton* v. *Kirwood*, L. R. 3 Ch. 614.

(*h*) *Wynne* v. *Cookes*, 1 Bro. C. C. 515.

(*i*) *Roe* d. *Johnson* v. *Ireland*, 11 East, 280; *In re Lidiard and Jackson's and Broadley's Contract*, 42 Ch. Div. 254.

and incumbrances; and this investigation was also required on every subsequent sale of the enfranchised copyhold unless it was guarded against by a special condition; but it is now provided by the Conveyancing and Law of Property Act, 1881 (*k*), that where land of copyhold or customary tenure has been converted into freehold by enfranchisement, and there is a contract to sell and convey the freehold, the purchaser shall not have the right to call for the title to enfranchise; but, if produced, it may be well to guard against producing evidence that since the enfranchisement the manor has been enjoyed in conformity with the earlier title (*l*). Another great inconvenience attending enfranchisements at common law, was the practice of creating a term of years in the copyhold before enfranchisement, if the lord would give licence, in order to protect the land against the incumbrances on the freehold under the lord's title (*m*). Again, on an enfranchisement taking place at common law, the right which every copyholder has to examine the court-rolls is lost, and it is consequently necessary for the copyholder when enfranchising independently of the Copyhold Acts to stipulate for a fresh right as to the production of the rolls and title deeds of the manor, if he desires to preserve his right of inspection. But where the enfranchisement takes place under the provisions of the Copyhold Acts, it is unnecessary to take a covenant from the lord as to title or for production of the manorial deeds and court-rolls, because the enfranchisement is valid independently of the lord's title, and the Copyhold Act, 1852, gives the owner of the enfranchised land a right to inspect the court-rolls and take copies (*n*). Another effect of enfranchisement at common law is that upon a bare enfranchisement any right of common which the copyholder might have in the manorial wastes would be destroyed, even

(*k*) 44 & 45 Vict. c. 41, s. 3 (2); and see *In re Agg-Gardner*, L. R. 25 Ch. Div. 600.

(*l*) Dart, V. & P. 189.

(*m*) Rouse, Copyh. Enfr. 5.

(*n*) 15 & 16 Vict. c. 51, s. 20.

although the conveyance of the copyhold was made "together with all appurtenances," unless there was an actual re-grant of the right of common (*o*); and such a clause of re-grant is in practice usually inserted in the deed of enfranchisement (*p*). It has been seen that even if the right were not expressly re-granted it might subsist in equity (*q*). But where the waste over which the copyholder has the right of common is not parcel of the manor, the right is not extinguished by enfranchisement, since it belongs to the land and not to the estate of the copyholder (*r*); and so if a copyholder has from time immemorial possessed a right of way over another tenement, and he purchases the freehold of his own tenement, the right of way is not lost, for as between the copyholder and a stranger the enfranchisement only affects and alters the tenure (*s*), and the law is the same with respect to any other easement which belongs to the land and not to the copyhold estate. In a recent case it appeared that the practice in a manor (*t*) was for the lords to grant copyholds for three lives and to renew at a fine upon the dropping of any of the lives, but there was no custom binding them to renew. The copyhold grants did not mention a right of fishing, but from time immemorial the copyholders had enjoyed a right of angling in a stream which formed the boundary of the manor, and of passing over the lands of other tenants of the manor for that purpose, but subject to these rights the fishing belonged to the lords. In 1845, the lords enfranchised a copyhold belonging to S. which adjoined the river, and released in very ample terms all rights of fishing and all other rights which they had enjoyed in reference to the enfranchised tenement. After

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(*o*) *Worledg* v. *Kingswell*, Cro. Eliz. 794.

(*p*) Dav. Prec. in Conv. 4th ed. vol. ii. pt. 1, 388, n.

(*q*) *Styant* v. *Staker*, 2 Vern. 250.

(*r*) *Tyrringham's Case*, 4 Rep. 36 b, 38 a; *Grymes* v. *Peacock*, 1 Buls. 18; *Crowder* v. *Oldfield*, 1 Salk. 170, 364.

(*s*) *Emson* v. *Williamson*, 1 Ro. Abr. 933.

(*t*) Chilbolton, Southampton.

this, various other copyholds were enfranchised, and for nearly forty years the copyholders and the enfranchised copyholders exercised the same rights as before of angling and going over the land of S. for that purpose. T. was the owner of several copyhold tenements which had been enfranchised since 1845. In 1885 S. set up a gate and prevented T. from passing over his land to fish. T. acquiesced in the interruption until 1889, when he commenced an action on behalf of himself and all other the owners and occupiers of copyholds and enfranchised copyholds, to establish the right of angling and of passing over the land of S. for that purpose. It was held that by the enfranchisement deed of 1845 the lords gave up all their rights over the lands of S. without the reservation of a power to make to other tenants grants of rights over that land, that such a reservation could not be implied, as there was no obligation on the lords to make such grants, that the rights given up included the reversionary right of the lords to grant rights of fishing on the expiration of the lives for which the copyholds were held, and that the lords had no power to give to T. by his subsequent enfranchisement any rights over the land of S. (*u*). If a tenant in tail in possession of copyhold land takes an enfranchisement from the lord, the effect of the enfranchisement is to bar the entail (*x*). Further, enfranchisement will put an end to all the customary incidents which formerly attached to the land, such as freebench, customary curtesy, and customary guardianship of an infant heir, and the tenant will hold the land free from all liability to fines, heriots, customary reliefs and rents, and forfeitures; but from the terms of section 4 of the Copyhold Act, 1887, already mentioned (*y*), it would seem that the lord will still retain his right of escheat for want of heirs.

(*u*) *Tilbury* v. *Silva*, 45 Ch. Div. 98.

(*x*) *Dunn* v. *Green*, 3 P. Wms. 9; *Challoner* v. *Murhall*, 2 Ves. jun. 524; *Ex parte School Board for London, In re Hart*, 41 Ch. Div. 547.

(*y*) *Ante*, p. 354.

A deed of enfranchisement should be enrolled on the court-rolls if such a course is at all practicable, as evidence of the enfranchisement is thereby conveniently preserved; but if enrolment would occasion much expense, it might be sufficient to enter an abstract or notice of the deed on the rolls. If the lands are situated in a district within the provisions of the Local Registry Acts (*s*), the deed of enfranchisement must be registered (*a*). Enrolment of deed of enfranchisement on court-rolls, &c.

Enfranchisements and commutations of manorial rights are now usually effected under the Copyhold Acts. These Acts are six in number, and are collectively known as the Copyhold Acts, but each of them may be specifically referred to according to the date of its passing, as the Copyhold Act, 1841 (*b*), the Copyhold Act, 1843 (*c*), the Copyhold Act, 1844 (*d*), the Copyhold Act, 1852 (*e*), the Copyhold Act, 1858 (*f*), and the Copyhold Act, 1887 (*g*). The Copyhold Acts.

By the Copyhold Act, 1841, the Tithe Commissioners for England and Wales were appointed commissioners for carrying the Act into execution, under the style of the Copyhold Commissioners, and various powers and duties were entrusted to them. These powers and duties have been continued and increased by the later Copyhold Acts. But it is to be observed that by the Settled Land Act, 1882 (*h*), the three bodies of Inclosure, Tithe, and Copyhold Commissioners became and were thereafter to be styled the Land Commissioners for England, and all Acts of Parliament, judgments, decrees or orders of any Court, awards, deeds and other documents were declared to be read and to have effect as if the Land Commissioners were therein mentioned instead of Inclosure, Tithe, or Copyhold Com- Copyhold Commissioners. Land Commissioners.

(*s*) *Ante*, p. 95.

(*a*) *Reg.* v. *Registrar of Deeds for County of Middlesex*, 21 Q. B. Div. 555 (C. A.); *S. C. nom. Reg.* v. *Lord Truro*, W. N. (1888) 91, 158. The register for Middlesex is now at the Land Registry Office: 54 & 55 Vict. c. 64.

(*b*) 4 & 5 Vict. c. 35.

(*c*) 6 & 7 Vict. c. 23.

(*d*) 7 & 8 Vict. c. 55.

(*e*) 15 & 16 Vict. c. 51.

(*f*) 21 & 22 Vict. c. 94.

(*g*) 50 & 51 Vict. c. 73.

(*h*) 45 & 46 Vict. c. 38, s. 48 (1).

missioners, as the case might be. In the Copyhold Act, 1887, the Land Commissioners are referred to as the Commissioners; but by the Board of Agriculture Act, 1889 (*i*), all the powers and duties of the Copyhold Commissioners or the Land Commissioners for England under any of the Copyhold Acts were transferred to the Board of Agriculture, and it was provided that in the construction and for the purposes of any of the Copyhold Acts, the name of the Board of Agriculture is to be deemed as substituted for the Land Commissioners for England and the Copyhold Commissioners, and anything authorised to be done by, to, or before any assistant commissioner of either of these named bodies of commissioners may be lawfully done by any officer of the Board of Agriculture who shall for the time being be assigned by the Board for that purpose (*k*).

Board of Agriculture.

Commutation of Manorial Rights.

General commutations.

With regard to the commutation of manorial rights and incidents affecting any freehold or copyhold and customary lands held of a manor, it may be mentioned that the Copyhold Act, 1841, contained provisions, which are now repealed, for the general commutation of rights affecting all the lands in a manor by agreement made at a meeting between the lord and tenants. Persons calling such meetings were to be interested, if lords, to the amount of one-fourth of the value of the manor, and if tenants, were to be ten in number, or one-half of the whole number. The agreement was to be made by three-fourths of the tenants, and the lord and tenants so agreeing were to represent three-fourths of the value of the lands concerned (*l*).

Scheduled commutations.

The same Act, as amended by the Copyhold Act, 1843 (*m*), provided that in case a commutation should be

(*i*) 52 & 53 Vict. c. 30.
(*k*) *Ibid.* s. 11 (1).
(*l*) 4 & 5 Vict. c. 35, ss. 13, 14, 16—35, 37—44; 6 & 7 Vict. c. 23, s. 1; 7 & 8 Vict. c. 55, s. 5.
(*m*) 6 & 7 Vict. c. 23, s. 11.

made between the lord and six tenants, being tenants or all the tenants of the manor, by an agreement which did not include an apportionment of the consideration for the commutation, such an apportionment might be made by a schedule to be prepared by the steward and confirmed by the Copyhold Commissioners (*n*). The provisions of the earlier Copyhold Acts authorising these general commutations and commutations by schedule were repealed, however, by the Copyhold Act, 1858 (*o*). But the Copyhold Act, 1841, and the subsequent Copyhold Acts contain various provisions relating to separate commutations, both voluntary and compulsory, which are still in force, and these may be summarised as follows:

(a) *Voluntary Commutation.*

The lord of any manor, and any one or more tenant or tenants of such manor, whatever their interests may be, may, subject to the consent of the Board of Agriculture, enter into an agreement for the commutation of the lord's rights to rents, fines and heriots, or of any of these rights, or any other of the lord's rights affecting the land which is included within the provisions of the agreement. When more tenants than one agree to commute, the agreement may include an apportionment of the rent-charge, or the sum which may be arranged as the consideration for the commutation, or of the costs and expenses attending the commutation, and the agreement may fix the scale of the fees which are to be paid by the tenants to the steward of the manor after the agreement has been confirmed. If, however, the estate of any party to the commutation is less than an estate of fee simple in possession, or corresponding copyhold or customary estate, notice in writing has to be given by or on behalf of such party to the person entitled to the next estate of inheritance in remainder or reversion

(*n*) 4 & 5 Vict. c. 35, s. 52. (*o*) 21 & 22 Vict. c. 94, s. 2.

in the manor or the land affected by the commutation, as the case may be, so that the assent or dissent of such person may be made known in writing to the Board. But the Board may cause further notices to be given, or may direct inquiries to be made, as they think fit, before they confirm the agreement. In every case the commutation may be effected, subject to the consent of the Board, by such conveyance, deed, or assurance as would be sufficient for carrying the commutation into effect if the lord were seised of the manor for an absolute estate of inheritance in fee simple in possession, or by an agreement to be enrolled or entered on the court-rolls of the manor; but a copy of the conveyance or agreement must be delivered to the tenant, as in the ordinary case of admission to copyholds (*p*).

Consideration.

The consideration for the commutation may be (1) a rent-charge and a fine certain not exceeding in any case the sum of five shillings payable on death or alienation. Where the rent-charge exceeds the sum of twenty shillings it may be variable as a tithe commutation rent-charge (*q*). (2) The consideration may also be the payment of a fine on death or alienation. The rent-charge, or the fine payable on death or alienation, may be made subject to a certain increase or diminution, which may be either stated in the agreement or be left for ascertainment by valuers, in any event which may be provided for by the agreement (*r*). (3) In addition to these forms of consideration, it is provided by the Act of 1843 that the consideration may be, wholly or in part, the conveyance of lands, parcel of the same manor and subject to the same uses and trusts as the lands commuted, or any right to mines or minerals in or under such lands, or any right to waste in lands belonging to the manor (*s*). (4) This was extended by

(*p*) 4 & 5 Vict. c. 35, s. 52.
(*q*) *Ibid.*; and see 15 & 16 Vict. c. 51, s. 41.
(*r*) 4 & 5 Vict. c. 35, s. 52.
(*s*) 6 & 7 Vict. c. 23, s. 1.

the Copyhold Act, 1844, to other lands and minerals, provided that the same can be conveniently held with the manor in the opinion of the Board of Agriculture, and are settled to the same uses and trusts as the manor in which the commutation takes place, or as near thereto as the differences of tenure will permit; and by the same section the owners are empowered to convey such lands and minerals for the purposes of the commutation (*t*).

Where the tenant pays any money as consideration for a commutation, he may, with consent of the Board of Agriculture, charge upon the land commuted the sum of money so paid (*u*). In cases where land is conveyed as the consideration for a commutation, and the person conveying the same is absolute owner of the land so conveyed, he may, with the consent of the Board of Agriculture, charge upon the land commuted such reasonable sum as in the judgment of the Board may be equivalent in value to the land so conveyed (*x*).

Commencement of commutation.

The commencement of any commutation may be fixed by the memorandum of confirmation by the Board of Agriculture of the instrument whereby the commutation is effected, but, in default of being so fixed, the commutation takes effect as from the day of confirmation (*y*).

Supplemental commutation.

If the original agreement does not comprise the commutation of all the manorial rights under which the lands are held, the lord and the tenant or tenants for the time being may from time to time enter into additional or supplemental agreements as to commutation. The supplemental commutation may be made in respect of a consideration either the same as, or differing from, the original consideration, and by the supplemental agreement the parties may agree to substitute one form of consideration for another (*z*).

Apportionment of com-

An apportionment of the commutation rents and fines

(*t*) 7 & 8 Vict. c. 55, s. 5.
(*u*) 21 & 22 Vict. c. 94, s. 21.
(*x*) *Ibid.* s. 22.
(*y*) *Ibid.* s. 18.
(*z*) 4 & 5 Vict. c. 35, s. 54.

mutation fines.

may be effected, whenever necessary, by an entry of apportionment entered on the court-rolls by the steward, when required to do so by any warrant or authority in writing under the hands of the lord and tenant which states the terms of the apportionment (*a*).

Commutation rent-charges.

The nature of the commutation rent-charge, and the provisions respecting the payment of the money for its redemption or purchase, will be explained under the heading of Voluntary Enfranchisement.

Remedies of lord.

For the recovery of commutation fines and for enforcing admittances to lands held subject to commutation fines, the lord is entitled, in addition to his remedies for enforcing admittances generally and for the recovery of fines arbitrary, to proceed in the manner provided by the Act 11 Geo. IV. & 1 Will. IV. c. 65, with respect to the admittances of infants and the recovery of fines in such admittances (*b*).

Effect of commutation.

After a commutation the lands continue to be copyhold and to pass by surrender and admittance in all cases in which they shall have previously been so held and conveyed: but the lands are thenceforth to be free from all customary modes of descent and customs relating to free-bench, dower, or curtesy, and in those respects to be subject to the law applicable to freehold lands held in common socage, saving the interests of persons married before the commutation, and saving the custom of gavelkind in Kent (*c*). But the Copyhold Act, 1841, specially provides that commutations are not to affect the rights to fairs, markets, appointments, franchises, escheats, sporting, fishing, mines, minerals, quarries, or any other manorial rights, unless expressly commuted under the Act (*d*). For the purpose of getting these reserved minerals, the tenants may grant to the lord rights of entry and way and other ease-

(*a*) 4 & 5 Vict. c. 35, s. 55; and see 6 & 7 Vict. c. 23, ss. 4, 5, and 6.
(*b*) 4 & 5 Vict. c. 35, ss. 47—49, 53; 50 & 51 Vict. c. 73, s. 16.
(*c*) 4 & 5 Vict. c. 35, ss. 79, 80.
(*d*) *Ibid.* s. 82.

ments, it being sufficient to mention the grant and consideration, if any, in the agreement for commutation (*e*).

Voluntary Enfranchisement.

Of the various methods or "schemes" of enfranchisement deriving effect from the provisions of the Copyhold Acts, the first to be mentioned is voluntary enfranchisement. Various provisions were contained in the Copyhold Act, 1841 (*f*), for facilitating this method of enfranchisement, and although many of them have been repealed or amended by the subsequent Acts which have rendered enfranchisement compulsory at the option of either the lord or the tenant, yet some of the earlier provisions are still in force and may be resorted to when occasion requires. The provisions of the Act of 1841, as amended by the subsequent Acts, may be summarised as follows.

The lord of a manor, whatever may be the amount or nature of his estate or interest therein, may at any time or times enfranchise with the consent of the Board of Agriculture all or any of the lands held of his manor, and any tenant, whatever may be his estate or interest in his holding, may with the like consent accept the enfranchisement. If, however, the nature of the lord's interest is less than an estate of fee simple in possession, notice in writing of the intended enfranchisement must be given by the lord or on his behalf to the person entitled to the next estate of inheritance in remainder or reversion, so that the assent or dissent of such person may be stated in writing to the Board of Agriculture when the deed, by which the enfranchisement is to be carried into effect, is sent to the Board for approval. If the interest of the tenant is less than the copyhold or customary estate corresponding to a fee simple in possession in freeholds, a similar notice has to be given to the person entitled to the next estate in remainder or

(*e*) *Ibid.* s. 84. (*f*) 4 & 5 Vict. c. 35.

reversion (*g*), unless the tenant enfranchising pays the whole price of the enfranchisement, so that no part of the price or of the expenses of the enfranchisement falls upon the land (*h*). If the person entitled to the notice is under any legal disability or is abroad, the notice is to be given to the guardian, trustee, committee of the estate, or attorney of such person as the circumstances of the case may require, but if such person is unknown or not ascertained, then the notice is to be given to a fit person nominated by the Board for the purpose of receiving the notice, and of assenting to or dissenting from the proposal to enfranchise. Whenever there is dissent in writing, the Board are to withhold their consent until satisfied that the proposed enfranchisement is not open to objection (*i*).

For the purposes of the Copyhold Act, 1841, it was declared that any person or persons for the time being filling the character of lord, or acting in such capacity, should be deemed lord of the manor, whether such person or persons were rightly or lawfully entitled to fill such position or to act in such capacity or not (*k*); and now the Copyhold Act, 1887, provides that this interpretation of the term "lord" is to have effect in all the Copyhold Acts, unless the context shows that the word was intended to be used in a different signification (*l*). The Act of 1887, however, further provides that previously to any enfranchisement taking effect under the Copyhold Acts either by award or deed the Board, if they see fit, may require the lord or steward of any manor to make a declaration in such form as they shall direct, stating who are the persons for the time being filling the character or acting in the capacity of lord. The Board are empowered to accept such a declaration for the purposes of enfranchisement, but if they do not consider that the evidence fully and truly discloses all such particulars as are necessary, or

(*g*) 4 & 5 Vict. c. 35, s. 56. For a form of the notice, see Appendix.
(*h*) 6 & 7 Vict. c. 23, s. 13.
(*i*) 4 & 5 Vict. c. 35, s. 56.
(*k*) 4 & 5 Vict. c. 35, s. 102.
(*l*) 50 & 51 Vict. c. 73, s. 49.

if no declaration is made, or if the lord refuses or declines to give such evidence as the Board deem proper and necessary to show a satisfactory *primâ facie* title in the lord, the Board may, if they think that the justice of the case requires it, direct that the compensation for enfranchisement, when a gross sum of money, shall be paid into court in the manner prescribed by the High Court Funds Rules (*m*).

The word "tenant" was defined in the Act of 1841 as comprising all persons holding by copy of court-roll or as customary tenants or holding lands subject to any manorial rights, and whether held to them and their heirs, or granted to two or more to be held in succession or for life or lives or years (*n*). By the Copyhold Act, 1852, a surrenderee by way of mortgage under a surrender entered on the court-rolls in possession or in receipt of the rents and profits of land is declared to be deemed a tenant so as to be entitled to obtain or join in obtaining and effecting an enfranchisement and in redeeming rent charges under the provisions of the Copyhold Acts by and with the approbation of the Board of Agriculture (*o*). When land is held in undivided shares, the person for the time being in receipt of at least two-thirds of the value of the rents and profits of such land is the tenant for all the purposes of the Copyhold Acts (*p*). The Copyhold Act, 1887, enacts that the word "tenant," when occurring in the Copyhold Acts, is to be taken as comprising all persons holding lands subject to any manorial right or incident, unless the context shows that the term is to be used in a different sense (*q*). In manors where the fines are certain and it is the practice for the copyholders in fee to grant derivative interests to persons who are admitted as copyholders of the manor in respect of such interests, under the provisions of the Act of 1887 the person who is admitted or enrolled in

(*m*) 50 & 51 Vict. c. 73, s. 32.
(*n*) 4 & 5 Vict. c. 35, s. 102.
(*o*) 15 & 16 Vict. c. 51, s. 43.
(*p*) 21 & 22 Vict. c. 94, s. 38.
(*q*) 50 & 51 Vict. c. 73, s. 49.

respect of the inheritance will be the tenant for the purpose of enfranchisement (*r*).

The provisions of the Copyhold Act, 1841 (*s*), were declared by the Copyhold Act, 1843 (*t*), to extend to all lands held by copy of court-roll, or by a custom of the manor for life or lives or for years, whether the tenant had or had not a right of renewal; but it is to be noted that the provisions of the Copyhold Acts as to the compulsory enfranchisement do not extend to any copyhold lands held for a life or lives or for years, where the tenant has not a right of renewal (*u*); and that as regards both voluntary and compulsory enfranchisements, these Acts do not apply to any manors belonging either in possession or reversion to any ecclesiastical corporation or to the Ecclesiastical Commissioners for England, in which the tenant has not a right of renewal (*x*). In any other manors belonging to any ecclesiastical corporation, with the exception of Christ Church, Oxford (*y*), or to the Ecclesiastical Commissioners, enfranchisements, whether voluntary or compulsory, may be effected under the provisions of the Copyhold Acts or under the Episcopal and Capitular Estates Act, 1851 (*z*), as amended and continued by subsequent Acts (*a*), in one of which provision is made for ascertaining whether the tenant has a right of renewal (*b*). The subject of enfranchisement in ecclesiastical manors will be dealt with later.

How effected.

A voluntary enfranchisement may be effected, with the consent of the Board of Agriculture, by such an assurance as would have been adopted for effecting an enfranchisement if the lord was seised of the manor for an absolute estate of inheritance in fee simple in possession (*c*); but

(*r*) 50 & 51 Vict. c. 73, s. 47.
(*s*) 4 & 5 Vict. c. 35.
(*t*) 6 & 7 Vict. c. 23, s. 15.
(*u*) 15 & 16 Vict. c. 51, s. 48.
(*x*) 21 & 22 Vict. c. 94, s. 4.
(*y*) *Ibid.* s. 51; see 21 & 22 Vict. c. 44, s. 31.
(*z*) 14 & 15 Vict. c. 104.
(*a*) 17 & 18 Vict. c. 116; 23 & 24 Vict. c. 124; 55 & 56 Vict. c. 60.
(*b*) 17 & 18 Vict. c. 116, s. 5.
(*c*) 4 & 5 Vict. c. 35, s. 57.

the usual practice in cases conducted before the Board now seems to be that the Board frame an award of enfranchisement in such a form as they consider necessary (*d*). The deed or award, as the case may be, will have to be stamped as a "conveyance on sale" in accordance with the provisions of the Stamp Act, 1891 (*e*).

Consideration.

The consideration may be (1) any sum or sums of money payable forthwith or at a future time, and either fixed by the parties themselves in writing or ascertained by a valuer or valuers appointed by them in writing (*f*), or (2) either wholly or partially an annual rent in fee to be thenceforth charged on the lands to be enfranchised, either fixed or varying with the price of corn in the same way as the tithe rent-charge (*g*); (3) the consideration, as in the case of a voluntary commutation, may consist wholly or in part of lands, parcel of the same manor, and subject to the same uses and trusts as the lands enfranchised (*h*), or (4) of any rights to mines and minerals in or under such lands, or of a right to waste in lands belonging to the manor (*i*), or (5) wholly or in part a conveyance of lands or of any right to mines or minerals, although not parcel of nor situate in or under the lands of the same manor as the lands enfranchised, provided they can in the opinion of the Board be held conveniently with the manor, and are settled to the same uses and trusts as the manor, or as near thereto as the differences of tenure will admit, the owners being authorised by the Act to convey such lands and minerals for the purposes of the enfranchisement (*k*).

Provisions as to payment of consideration money, &c.

The payment of moneys due for the consideration or compensation on enfranchisement, or for the sale or redemption of a rent-charge is to be made as follows. Where the lord is seised of the manor for an estate of fee

(*d*) 50 & 51 Vict. c. 73, s. 22.
(*e*) 54 & 55 Vict. c. 39. See Appendix.
(*f*) 4 & 5 Vict. c. 35, s. 56; 50 & 51 Vict. c. 73, s. 3.
(*g*) 6 & 7 Vict. c. 23, s. 1.
(*h*) *Ibid.*
(*i*) *Ibid.*
(*k*) 7 & 8 Vict. c. 55, s. 5

simple in possession, or where he has power, as trustee for sale or otherwise, to give an effectual discharge for such money, the payment is to be made to him or his heirs or assigns (*l*), and his or their receipt will be a sufficient discharge for the amount, and will exonerate the person making payment from all liability as to its application, and from being answerable for its misapplication or non-application (*m*). Where, however, the lord for the time being was entitled to a limited estate or interest only in the manor, or was under any legal disability, it was provided by the Copyhold Act, 1841, as amended by the Copyhold Act, 1843, that any money paid for enfranchisement might at the option of the person or persons for the time being entitled to the manor be paid either into the Bank of England, pursuant to the method prescribed by any Act for the time being in force for regulating moneys paid into the Court of Chancery, or to the trustees acting under the will, conveyance or settlement, under which the lord, having such limited interest, should hold or be entitled to or interested in the manor, or if there were no such trustees, then into the hands of trustees to be nominated under the hands and seal of the Copyhold Commissioners (*n*). It is now, however, provided by the Copyhold Act, 1887, that in every case where land is enfranchised by award of the Board of Agriculture or by deed with their consent, the lord for the time being, although his estate in the manor is only a limited one, shall be able to give a complete discharge for money payable as compensation, so as to relieve the person or persons paying the amount from all responsibility for its application, and in such cases the compensation money shall be paid by the recipient in such manner as the Board having regard to the provisions of the Copyhold Acts shall direct (*o*). The Act of 1887 also provides

(*l*) 4 & 5 Vict. c. 35, s. 73.
(*m*) *Ibid.* s. 78
(*n*) 4 & 5 Vict. c. 35, ss. 73—75; 6 & 7 Vict. c. 23, s. 14.
(*o*) 50 & 51 Vict. c. 73, s. 25.

that in cases of enfranchisement by agreement between the parties or otherwise without reference to the Board of Agriculture, where the compensation does not exceed 500*l.*, the lord for the time being shall be able to give a complete discharge, if he makes a declaration in writing stating the particulars of his estate or interest in the manor, and showing himself to be entitled to receive such money for his own use. If he is not so actually entitled, he is to be deemed as having received such money as a trustee for the persons who are so entitled, and if his declaration is false, he will be liable to the penalties attached to a false statutory delaration (*p*). Accordingly, in cases of enfranchisement by agreement without reference to the Board of Agriculture, where the compensation money exceeds 500*l.*, and the lord's estate in the manor is a limited one, it appears that recourse must still be had to the provisions of the Copyhold Act, 1841, as amended by the Copyhold Act, 1843, by the person paying the compensation money in order to obtain a complete discharge.

Remedies where enfranchisement consideration money paid to lord not having title.

If any enfranchisement consideration money is paid to a lord who is not entitled, under the provisions of the Copyhold Acts, to receive the same, or whose title is afterwards proved to be bad or insufficient, the rightful owner of the manor and his representatives are entitled to recover against such lord or his representatives the amount or value of such consideration money as money had and received to the use of the rightful owner, and interest thereon at the rate of 5*l.* per cent. per annum from the time when the title is proved to be bad or insufficient, and it is provided that if any tenant or person claiming to be tenant is after payment by him of any enfranchisement consideration money evicted by an adverse claimant from the lands enfranchised, he is entitled to claim the repayment of the consideration money against the lands, and the amount will be a charge upon the lands enfranchised,

(*p*) 50 & 51 Vict. c. 73, s. 26.

and will carry interest at the rate of 4*l.* per cent. from the time of eviction (*q*).

Disposal of compensation money when paid into bank, &c.

The manner in which the compensation money may be applied when it has been paid into the bank or to the trustees, whether acting under the will, conveyance or settlement under which the lord having only a limited interest holds the manor, or nominated by the Board of Agriculture, will be mentioned later under the head of compulsory enfranchisement.

When consideration a rent-charge.

When the enfranchisement is made in consideration of a rent-charge, the following provisions are now applicable. If it is agreed that the rent-charge shall vary with the price of corn, it is to be calculated upon the same averages and to be variable in the same manner as a tithe commutation rent-charge (*r*). The rent may be granted to the same uses and trusts as those affecting the manor, and will thereafter be a rent service parcel of the manor, and appendant and appurtenant to it (*s*). By the Copyhold Act, 1858, it was provided that the commencement of any rent-charge might be fixed by the memorandum by which the Copyhold Commissioners confirmed the instrument of enfranchisement, or in default of being so fixed the commencement was to take place on the day of confirmation; and the same Act gave the Commissioners power to fix the day when the half-yearly payments of the rent-charge should commence to be calculated (*t*); but now under the provisions of the Copyhold Act, 1887, after January 1st, 1888, every rent-charge, no matter when created, is payable half-yearly on the 1st day of January, and the 1st day of July in every year; and if any enfranchisement takes place between these half-yearly days of payment in any year, a proportionate payment is to be made on the first of these half-yearly days of payment following the date of the deed of enfranchisement in respect of the

(*q*) 15 & 16 Vict. c. 51, s. 47.
(*r*) 21 & 22 Vict. c. 94, s. 11.
(*s*) 6 & 7 Vict. c. 23, s. 2.
(*t*) 21 & 22 Vict. c. 94, s. 18.

interval which has elapsed since the commencement of the rent-charge (*u*). As the provisions in the Copyhold Acts relating to the recovery, incidence, redemption and apportionment of rent-charges apply equally to voluntary and compulsory enfranchisement, they will be considered later under the head of compulsory enfranchisement.

Consideration charged on land.

The Acts of 1843, 1844, and 1852 contained various provisions relative to the charging of enfranchisement moneys on land, but these provisions were repealed by the Act of 1858 (*x*), which enacts that whenever by the Copyhold Acts power is given or an obligation attaches to any person to pay money as consideration or compensation for enfranchisement or commutation, such person may, with the consent of the Board of Agriculture, charge upon the land enfranchised or commuted the sum of money which has been so paid (*y*). The Act of 1887 has increased this power by providing that the owner of any land enfranchised under the Copyhold Acts may, although his estate is only a limited estate, charge the land enfranchised with the compensation money paid for the enfranchisement and also with the expenses attending the enfranchisement, or with any part of the compensation money or expenses, together with interest not exceeding 5*l.* per cent. per annum, or by way of terminable annuity calculated on the same basis (*z*). These provisions will be considered in detail under the head of compulsory enfranchisement.

If consideration is land.

If the consideration for the enfranchisement consists of land which is subject to any existing lease, the person to whom such lands are conveyed is at once placed in the position of reversioner on such lease and may distrain for the rent and enforce the covenants (*a*).

Effect of enfranchisement.

The effect of an enfranchisement of land under the voluntary clauses of the Copyhold Acts is the same as in a compulsory enfranchisement, and the subject will ac-

(*u*) 50 & 51 Vict. c. 73, s. 15.
(*x*) 21 & 22 Vict. c. 94, s. 2.
(*y*) *Ibid.* s. 21.
(*z*) 50 & 51 Vict. c. 73, s. 23.
(*a*) 6 & 7 Vict. c. 23, s. 9.

cordingly be dealt with later; but in regard to a voluntary enfranchisement, it is to be noted that in order to prevent the necessity of inquiring into the lord's title, it is enacted by the Copyhold Act, 1841, that all lands enfranchised under that Act shall remain under the same title as that under which they were held at the time of enfranchisement, and shall not be subject to any estates, incumbrances, &c., affecting the manor of which they were held (*b*); and all mortgages affecting the land shall become mortgages of the freehold, if the consideration for enfranchisement shall have been paid off, or if it is not so paid off, shall become mortgages of the equity of redemption, subject to the charge of the consideration and interest (*c*).

If at the time when the land is enfranchised it is held by a third person under a lease, the person entitled to the enfranchised land has the reversion on the lease and may distrain for the rent and enforce the covenants (*d*).

Compulsory Extinguishment of Manorial Rights and Incidents affecting Lands of any Tenure.

By the Copyhold Act, 1852, power was given to the lord or tenant of any freehold or customary freehold lands held of a manor and liable to heriots, where a heriot became due on or after the 1st of July, 1853, to require and compel the extinguishment of all claims to heriots and the enfranchisement of the lands which were subject thereto (*e*). The provisions of the Act of 1852 were repealed by the Copyhold Act, 1858, which conferred larger powers (*f*); but these powers are now superseded by the provisions of the Copyhold Act, 1887, which enacts that any lord or tenant or owner (including therein any person entitled to the land for any term of years originally granted for ninety-nine years or upwards) of any land liable to any

(*b*) 4 & 5 Vict. c. 35, s. 64.
(*c*) *Ibid.* s. 81.
(*d*) 6 & 7 Vict. c. 23, s. 10.
(*e*) 15 & 16 Vict. c. 51, s. 27.
(*f*) 21 & 22 Vict. c. 94, ss. 2, 7.

heriot, or to any quit rent, free rent, or other manorial incident whatsoever, may require and compel the extinguishment of such rights or incidents and the release and enfranchisement of the land. The same proceedings are to be taken to effect a compulsory extinguishment of manorial rights and incidents as are taken in the case of compulsory enfranchisement, or as near thereto as the nature of the case will admit (*g*). The subject will, therefore, be considered under the head of compulsory enfranchisement. It may, however, be mentioned here that a compulsory extinguishment of manorial rights and incidents does not affect the estate or rights of the lord or tenant to any mines or minerals under the land, nor any franchises or sporting rights belonging to the lord, unless with the express consent in writing of the lord or tenant, as the case may be (*h*).

Compulsory Enfranchisement.

By the Copyhold Act, 1852 (*i*), enfranchisement was made compulsory at the instance of either the lord or the tenant. At first the compulsory powers were applicable only where the admittance to the copyhold took place on or after the 1st of July, 1853, and the fine or fines and fees consequent on the admittance had been duly paid or tendered (*k*); but by the Copyhold Act, 1858, power was given to both the lord and tenant to compel the enfranchisement of land to which the last admittance had taken place prior to the 1st of July, 1853 (*l*). In this latter case, however, the tenant was not entitled to require enfranchisement until he had paid or tendered such fine, and the value of such heriot, as would have become due and payable in the case of an admittance or enrolment on alienation subsequent to the 1st of July, 1853, and also

(*g*) 50 & 51 Vict. c. 73, ss. 7, 49.
(*h*) *Ibid.* s. 7; 15 & 16 Vict. c. 51, s. 48.
(*i*) 15 & 16 Vict. c. 51.
(*k*) *Ibid.* s. 1.
(*l*) 21 & 22 Vict. c. 94, s. 6.

two-thirds of the sum to which the steward would have been entitled for fees in respect of such admittance or enrolment (*m*). The Acts of 1858 and 1887 have considerably altered the methods for effecting a compulsory enfranchisement provided by the Act of 1852.

The provisions of the Copyhold Acts as to enfranchisements do not extend to any manors belonging either in possession or reversion to any ecclesiastical corporation, or to the Ecclesiastical Commissioners for England, when the tenant has not a right of renewal (*n*), and there are special provisions as to enfranchisements in Crown manors, and manors which are held in joint tenancy with the Crown, which will be mentioned later; but with these exceptions the term "lord," when used in the Copyhold Acts in relation to compulsory enfranchisement, extends to and includes the lord or lords of any manor, whether seised for life or in tail or in fee-simple, and all ecclesiastical lords seised in right of the church or otherwise, and lords-farmers holding under them, and any body politic, corporate or collegiate, and all lords seised of any manor, whether they have or have not an absolute power of selling or disposing of the same (*o*), and also includes any person for the time being filling the character or acting in the capacity of lord, whether rightfully or lawfully entitled to fill or act in such character or not (*p*).

Enfranchisement at the instance of the lord.

In all cases where enfranchisement is required by the lord, the tenant may require the Board of Agriculture to satisfy themselves in such way and by such evidence as they shall see fit of the title of the lord to the manor (*q*); and in any case the Board may, if they think fit, require the lord or steward to make a declaration in such form as they may direct, stating who are the persons for the time being filling the character or acting in the capacity of lord,

(*m*) 21 & 22 Vict. c. 94, s. 6; 50 & 51 Vict. c. 73, s. 9.
(*n*) 21 & 22 Vict. c. 94, s. 4.
(*o*) 15 & 16 Vict. c. 51, s. 52.
(*p*) 50 & 51 Vict. c. 73, s. 49; 4 & 5 Vict. c. 35, s. 102.
(*q*) 15 & 16 Vict. c. 51, s. 23

and the Board may accept such declaration, but if they do not consider it satisfactory, they may order the compensation when a gross sum of money to be paid into Court (*r*).

If the lord is under age, or is a lunatic, his guardian or the committee of his estate has full power to do on his behalf anything which may be done or is required to be done under the provisions of the Copyhold Acts by the infant or lunatic (*s*). If the lord is an infant or a lunatic.

If a married woman is lady of the manor, she is for the purposes of the Copyhold Acts to be deemed a *feme sole* (*t*). If the lady of the manor is a married woman.

Where trustees are lords of a manor, and one or more of them shall be abroad or incapable of acting or shall refuse to act, any proceedings necessary for effecting any enfranchisement under the Copyhold Acts may be done by the other trustee or trustees, as the case may be (*u*). If trustees are lords.

A lord may act on his own behalf, or may appoint any person other than his steward to act for him, but unless and until he gives written notice to the tenant and the Board that he intends to act for himself, or that he has appointed the person specified in the notice to act for him, the tenant and the Board may treat the steward of the manor as the lord's agent for receipt of notices, making of agreements, and all other matters relating to enfranchisement, but without special authority the steward cannot consent on behalf of the lord to dealings with the rights as to mines and minerals mentioned in sect. 48 of the Copyhold Act, 1852 (*x*). Steward represents lord.

If an agent is appointed by the lord, the appointment should be by a power of attorney made in writing under the lord's hand, or in the case of a corporation aggregate being lord under the common seal of such corporation, Appointment of agent by lord.

(*r*) 50 & 51 Vict. c. 73, s. 32. For a form of the declaration, see the Appendix.

(*s*) *Griggs* v. *Gibson*, 14 W. R. 819; 50 & 51 Vict. c. 73, s. 39.

(*t*) 50 & 51 Vict. c. 73, s. 39.

(*u*) *Ibid.* s. 40.

(*x*) *Ibid.* s. 33.

and in the form provided by sect. 39 of the Copyhold Act, 1858. Every agent so appointed has full power in the name and on behalf of his principal to concur in and execute any agreement or application or other document arising out of the execution of the Copyhold Acts, until his power has been revoked by a notice under the hand or the common seal of the lord, as the case may require, delivered to the Board of Agriculture. The power of attorney, or a copy thereof authenticated by the signature of two credible witnesses, should be sent to the office of the Board (*y*). The document is not chargeable with any stamp duty (*z*).

Death of lord. The death of the lord after the commencement of any proceedings for enfranchisement under the Copyhold Acts does not cause an abatement of the proceedings, which will be continued on the same footing as if the enfranchisement had been effected immediately after their commencement, and if any fresh admittance or enrolment is necessary in consequence of the lord's death, it must be made without payment of any fine, relief, or heriot (*a*). It may be stated that all rights which are conferred and all liabilities which are imposed by the Copyhold Acts upon a lord are to be deemed as conferred or imposed upon his successors in title, unless a contrary intention appears (*b*).

Tenant. Before a copyhold tenant can require enfranchisement he should be admitted or be entered as tenant upon the court-roll, and he must have paid or tendered the fine or fines and fees payable in consequence of his admittance or enrolment; but if his admittance or enrolment was prior to the 1st of July, 1853, he cannot compel enfranchisement until he has paid or tendered such a fine, and the value of such a heriot, as would have been payable on admittance or enrolment on alienation subsequent to the 1st of July, 1853, together with two-thirds of the sum to which the

(*y*) 21 & 22 Vict. c. 94, ss. 39, 40.
(*z*) 15 & 16 Vict. c. 51, s. 50.
(*a*) 50 & 51 Vict. c. 73, s. 31.
(*b*) *Ibid.* s. 38.

steward would have been entitled for fees in respect of such admittance or enrolment (*c*). With respect to freehold lands, including lands described as customary freeholds in the Act of 1858, for which heriots may be due by custom, it was provided by sect. 7 of the Act of 1858, that at any time after any such heriot should be due and payable, the tenant might require the extinguishment of the lord's claim to heriots and the enfranchisement of the land which was subject to it in the same way as if the land were copyhold; and by sect. 6 of that Act it was provided that if the last heriot should have become due or payable before the 1st of July, 1853, the tenant could not require enfranchisement until he had paid or tendered the value of such a heriot as would have become due or payable in the event of admittance or enrolment on alienation subsequent to that date, and also two-thirds of the sum to which the steward would have been entitled for fees in respect of such admittance or enrolment. Sect. 7 of the Act of 1858 has been repealed by the Copyhold Act, 1887 (*d*), which now provides (*e*) that any tenant or owner, including any person entitled to the land for any term of years originally granted for 99 years or upwards, of any land liable to any heriot or to any quit rent, free rent, or other manorial incident whatsoever, may require and compel the extinguishment of such rights or incidents, and the release and enfranchisement of the land subject thereto, and the same proceedings shall thereupon be had as are in the Copyhold Acts mentioned with reference to the enfranchisement of copyhold land, or as near thereto as the nature of the case will admit. It would appear, if there has been no admittance or enrolment since the 1st of July, 1853, that the provisions of the Act of 1858 as to the payment of an additional heriot and the fees in respect thereof will still be applicable.

(*c*) 15 & 16 Vict. c. 51, s. 1; 21 & 22 Vict. c. 94, s. 6; 50 & 51 Vict. c. 73, s. 9.

(*d*) Sect. 51.

(*e*) Sect. 7.

Mortgagee in possession may compel enfranchisement.

As already mentioned in connection with voluntary enfranchisement, a surrenderee by way of mortgage under a surrender entered on the court rolls in possession, or in the receipt of the rents and profits, is deemed to be a tenant for certain purposes, and he may require or join in obtaining and effecting an enfranchisement and may redeem an enfranchisement rent-charge, subject to the approbation of the Board of Agriculture, and any money which he pays for any of these purposes may be added to the amount of his mortgage (*f*). But a mortgagee not in possession cannot require enfranchisement (*g*). The statutory provisions as to compulsory enfranchisement do not extend to "any copyhold lands held for a life or lives or for years, where the tenant thereof hath not a right of renewal" (*h*).

Land held in undivided shares.

If land is held in undivided shares the person who is for the time being in receipt of at least two-thirds of the value of the rents and profits is entitled to compel the enfranchisement of the land (*i*).

In manors where the fines are certain and it is the practice for the copyholders in fee to grant derivative interests to persons who are admitted as copyholders of the manor in respect of such interests, the person admitted or enrolled in respect of the inheritance may compel the enfranchisement of the tenement (*k*). The Act of 1887 contains special provisions relating to enfranchisements in these manors which will be mentioned later.

Every tenant after December 31st, 1887, entitled to receive notice of his right to enfranchise.

It is provided by the Copyhold Act, 1887, that on the admittance or enrolment of any tenant after the 31st of December, 1887, the steward of the manor shall be bound, without any further charge, to give to the tenant so admitted or enrolled a notice in the form or to the effect following:—

"Take notice, that if you desire that the copyhold land which you hold of this manor of shall become free-

(*f*) 15 & 16 Vict. c. 51, s. 43.
(*g*) *Ibid.* s. 1.
(*h*) *Ibid.* s. 48.
(*i*) 21 & 22 Vict. c. 94, s. 38.
(*k*) 50 & 51 Vict. c. 73, s. 47.

hold, you are entitled to enfranchise the same upon paying the lord's compensation and the steward's fees. The lord's compensation may be fixed either by agreement between the lord and you or by any valuer appointed by yourselves, or through the agency of the Board of Agriculture, to whom you may make application if you think fit to effect the enfranchisement of your land."

If the steward neglects to serve such notice he will not be entitled to any fee for that admission or enrolment (*l*). The word "tenant," as used in this Act, comprises all persons holding lands subject to any manorial right or incident, and the term is in other respects to be interpreted as in the earlier Copyhold Acts (*m*).

Tenant may appoint agent.

The tenant may appoint an agent to act for him in carrying out any of the provisions of the Copyhold Acts as to enfranchisements or commutations. The appointment should be made by a power of attorney given in writing under the tenant's hand, and made in the form provided by sect. 39 of the Copyhold Act, 1858. It empowers the agent, in the name and on behalf of his principal, to concur in and execute any agreement or application or document arising out of the execution of the Copyhold Acts until the power is revoked by notice, under the tenant's hand, delivered to the Board of Agriculture. In the unlikely case of a corporation aggregate being the tenant, the documents would require to be under its common seal. The power of attorney, or a copy authenticated by the signature of two credible witnesses, must be sent to the office of the Board as soon as possible after it has been given (*n*). The power of attorney is not chargeable with any stamp duty (*o*).

If the tenant is under legal disability.

If the tenant is under age or is a lunatic, or is under any other legal disability, or is beyond the seas, all acts and proceedings required or authorised by the Copyhold

(*l*) Sect. 1.
(*m*) Sect. 49.
(*n*) 21 & 22 Vict. c. 94, ss. 39, 40.
(*o*) 15 & 16 Vict. c. 51, s. 50.

Acts to be done or taken by him in connection with enfranchisement or commutation may be done and undertaken on his behalf by his guardian or the committee of his estate or his duly appointed trustee or attorney, as the case may be, and in default thereof, or in the event of the tenant or other person interested in the property being unknown, the Board will, on application being made to them, nominate a person to act as substitute for him (*p*).

If the tenant is a married woman.

Where a married woman is tenant of any land or right of copyhold or customary tenure, she may act in all matters or proceedings relating to enfranchisements or commutations under the Copyhold Acts as if she were a *feme sole* (*q*).

If the tenant is a trustee.

A tenant who is a trustee is entitled to all the rights which are conferred, and subject to all the liabilities which are imposed, by the Copyhold Acts upon tenants in regard to enfranchisements or commutations, and where trustees are tenants, and one or more of such trustees are abroad or are incapable or refuse to act, any proceedings necessary to be done by such trustees for effecting an enfranchisement under the Acts may be done by the other trustee or trustees as the case may be (*r*).

Death of tenant pending proceedings.

The death of any tenant after the commencement of any proceedings for enfranchisement or commutation under the Copyhold Acts does not cause an abatement of the proceedings, and any fresh admittance or enrolment which may be necessary on account of such death is to be made without the payment of any fine, relief or heriot to the lord, it being provided that the proceedings are to be continued and the compensation ascertained on the same footing as if the enfranchisement or commutation had been effected immediately after the commencement of the proceedings (*s*). And, generally, it may be noted that all

(*p*) 4 & 5 Vict. c. 35, s. 11; 50 & 51 Vict. c. 73, s. 39.

(*q*) 50 & 51 Vict. c. 73, s. 39.

(*r*) *Ibid.* s. 40.

(*s*) 50 & 51 Vict. c. 73, s. 31. This section overrules the decision in *Myers* v. *Hodgson*, 1 C. P. Div. 609, that the lord is entitled under

rights which these Acts confer, and all liabilities which they impose upon a tenant, may be enforced by or against his successors in title, unless a contrary intention appears (*t*).

Notice of desire to enfranchise. How served.

The person, whether lord or tenant, who requires enfranchisement or commutation must give notice to the other of his desire that the land should be enfranchised or that the manorial rights and incidents should be extinguished (*u*). The notice may be in writing or in print, or partly in either, and it is deemed to be sufficiently given if delivered to the person to whom it is addressed, or left at his usual or last known place of abode or business in the United Kingdom. If the notice is sent by post, it must be sent in a registered letter directed to the person who is to be affected by it by name at his place of abode or business as above mentioned, and if the letter is not returned undelivered, service is deemed to have been made at the time at which the registered letter would in the ordinary course have been delivered (*x*). It is also necessary to send a copy of the notice to the Board of Agriculture, with an endorsement thereon setting forth when, how, and upon whom the notice was served. Forms of the notices will be found in the Appendix.

Notice of acceptance of scale of compensation fixed by Board.

Under the provisions of the Copyhold Act, 1887, the Board have to frame and publish such a scale of compensation for the enfranchisement of land from the manorial and other rights and incidents, including heriots, dealt with by the Copyhold Acts, as will in their judgment be fair and just and will facilitate enfranchisement, and it is now necessary for the person requiring enfranchisement to state to the other whether or not he is willing to adopt the Board's scale (*y*). A print of the latest scale issued by the Board will be found in the Appendix.

When the notice of desire to enfranchise is given by the

the second proviso of sect. 1 of 15 & 16 Vict. c. 51 to a fine on such fresh admittance.

(*t*) 50 & 51 Vict. c. 73, s. 38.

(*u*) 21 & 22 Vict. c. 94, s. 8; 50 & 51 Vict. c. 73, s. 7.

(*x*) 50 & 51 Vict. c. 73, s. 36.

(*y*) *Ibid.* s. 30.

lord, it must be signed by himself or his duly appointed agent or attorney, or by the steward of the manor on his behalf, and when the notice is given by the tenant it must be signed by himself or his duly appointed agent or attorney (z).

Compulsory proceedings may be stopped or suspended in certain cases.

It may be mentioned here that notwithstanding the compulsory provisions of the Copyhold Acts, the lord has power in certain cases and under certain conditions to stop enfranchisement proceedings which have been commenced by a tenant. Thus, if he can show to the satisfaction of the Board of Agriculture, that any change in the condition of the land proposed to be enfranchised will prejudicially affect in enjoyment or value his mansion house, park, gardens, or pleasure-grounds, and that such change would be prevented by the incidents or conditions of the tenure of the land if it remained unenfranchised, he may offer in writing to purchase the tenant's interest in the land. If the tenant does not accept such offer within twenty-eight days after notice thereof has been given to him, the land is to remain unenfranchised, unless the Board of Agriculture think fit to impose terms and conditions which in their opinion will be sufficient to protect the interests of the lord on enfranchisement. If the tenant within twenty-eight days after receiving notice of the lord's offer intimates to the Board in writing his acceptance of the offer, then the offer and acceptance are binding upon both lord and tenant. Thereupon the Board will fix a time within which the parties can agree on the value of the rights and interests of the tenant, but failing agreement, the Board may appoint a valuer for the purpose of ascertaining such value, or they may refer the question of value to any valuers who may have been already appointed in the matter of the enfranchisement. When the value has been agreed upon or ascertained, the Board will issue a certificate under their seal specifying the land

(z) 21 & 22 Vict. c. 94, s. 8; 50 & 51 Vict. c. 73, s. 33.

which has been sold to the lord and the amount of the consideration money, and will declare that upon payment of the consideration money within an appointed time the land is to be surrendered or released by the tenant to the lord, and thereupon the land will vest in the lord. But if the consideration money is not paid within the time fixed by the Board, or within any further time allowed by them, and it appears to the Board that the amount remains unpaid through the default of the lord, they may cancel the certificate, and the enfranchisement proceedings will thereupon be proceeded with as if the offer and acceptance had not been made. All the costs, charges, and expenses attending the purchase, including the expenses of any valuation that may be necessary and of the surrender or release by the tenant, together with any costs which the Board may certify to have been incurred by the tenant in consequence of the offer, acceptance, and default, must in any event be paid by the lord (*a*).

The Board of Agriculture have also power to suspend any compulsory proceedings for enfranchisement if there are any peculiar circumstances in the case which, in their opinion, render it impossible to decide on the prospective value of the lands, or if it appears to them that some especial hardship or injustice will unavoidably result from the compulsory enfranchisement, but if the Board exercise this power they must state their reasons for so acting in their general report, and lay the report before Parliament (*b*).

Ascertainment of compensation;

After the notice of desire for enfranchisement has been served the lord and tenant may agree in writing upon the amount of the compensation to be paid (*c*), or they may agree in writing that the Board of Agriculture shall determine the compensation (*d*), or they may appoint in writing a valuer or valuers to ascertain the amount (*e*),

(*a*) 15 & 16 Vict. c. 51, s. 25.
(*b*) *Ibid.* s. 35.
(*c*) 50 & 51 Vict. c. 73, s. 3.
(*d*) *Ibid.* s. 43. For a form of agreement, see the Appendix.
(*e*) 50 & 51 Vict. c. 73, s. 3. For

but, failing any of these methods, the compensation has to be ascertained under the directions of the Board upon a valuation made by valuers appointed in the manner hereinafter mentioned (*f*).

by agreement;

When the amount of the compensation has been fixed by agreement between the parties, the sum so agreed upon is deemed to be the compensation for enfranchisement lawfully ascertained (*g*); and upon receipt of the agreement the Board will, subject to such inquiries concerning the circumstances of the case as they may think necessary, frame an award of enfranchisement in such form as they may provide, and when the requisites to be mentioned later have been complied with they will confirm the award (*h*).

by determination of Board;

When the amount of the compensation is left for the determination of the Board, they will on receipt of the agreement to that effect take such proceedings and make such inquiries as they may think necessary for the purpose, taking into consideration all such matters as valuers appointed under the Copyhold Acts are bound to consider when making a valuation. When the Board have determined the compensation they will communicate the result to the lord and tenant, and will fix a time within which any objection to such determination may be made by either party, and after the expiration of the period so fixed, or after the consideration and disposal of the objections, if any, the Board will make their award of enfranchisement, and afterwards confirm it in the same manner as if the compensation had been ascertained by valuers under the Copyhold Acts (*i*).

by one valuer appointed by parties;

If the parties agree to have the compensation ascertained by a valuer, they may appoint the same person to act for them both (*k*). On receipt of the valuer's decision the

the forms of appointment, see the Appendix.

(*f*) 21 & 22 Vict. c. 94, s. 8.

(*g*) 50 & 51 Vict. c. 73, s. 3.

(*h*) 21 & 22 Vict. c. 94, ss. 10, 12.

(*i*) 50 & 51 Vict. c. 73, s. 43.

(*k*) *Ibid.* s. 10 (a).

Board will proceed to frame an award of enfranchisement in terms of the valuation, and in such form as they may provide (*l*).

by valuers appointed under Copyhold Acts.

If the amount of the compensation is not determined by any of the methods above mentioned, then it must be ascertained under the direction of the Board of Agriculture, and upon a valuation to be made in the following manner:—

(a) Where the manorial rights consist only of heriots, rents, and licences at fixed rates to demise or fell timber, or any of these, or where the land to be enfranchised is not rated to the poor-rates at a greater amount than the net value of 30*l.*, the valuation is to be made by a valuer to be nominated by the justices at the petty sessions holden for the division or place in which the manor or the chief part thereof is situate (*m*); or either party may have the valuation made as in the case of the land being rated to the poor's rate at a greater amount than the net annual value of 30*l.*, as next hereinafter mentioned, but in that case the person desiring such mode of valuation is liable to pay the additional expense caused thereby (*n*).

(b) When the manorial rights to be compensated do not consist only of rents and heriots and such licences as are mentioned above, or when the land to be enfranchised is rated to the poor's rate at a greater amount than the net annual value of 30*l.* (*o*), or where the valuation to be made is of the sum to be paid to the lord in respect of any fine, heriot, or other manorial incident whatsoever (*p*), the valuation is, unless the parties appoint the same person as valuer, to be made by two valuers, one to be appointed by the lord, and the other by the tenant (*q*).

(*l*) 21 & 22 Vict. c. 94, s. 10. For the form of the valuer's decision, see the Appendix.

(*m*) 21 & 22 Vict. c. 94, s. 8.

(*n*) 50 & 51 Vict. c. 73, s. 10 (b).

(*o*) 21 & 22 Vict. c. 94, s. 8; 50 & 51 Vict. c. 73, s. 10.

(*p*) 21 & 22 Vict. c. 94, s. 8; 50 & 51 Vict. c. 73, s. 7.

(*q*) 21 & 22 Vict. c. 94, s. 8; 50 & 51 Vict. c. 73, s. 10.

Before either party applies to the justices to appoint a valuer, he must give due notice of his intention to do so to the other party, and he should send to the Board a copy of the notice and also of the appointment of a valuer by the justices (*r*).

Where the lord and tenant do not together appoint the same valuer, the person who has given notice of desire for enfranchisement should appoint a valuer in writing, and give notice thereof to the other party requiring him by such notice to appoint a valuer (*s*). If within twenty-eight days after the service of this notice the other party neglects or refuses to appoint a valuer on his behalf, the Board may, on application being made to them by either party, appoint a valuer (*t*). The person requiring the enfranchisement should send a copy of his appointment of a valuer to the Board, together with a copy of his notice to appoint served on the other party with an endorsement thereon as to the time and mode of service (*u*).

Appointment of umpire.

The valuers within fourteen days after their appointment, and before they proceed, must appoint an umpire, to whom they, or either of them, may refer the whole matter or any point in dispute, and in the event of their failure to appoint within that time the Board will appoint an umpire on the application of the valuers or either of them (*x*). A copy of the appointment of an umpire by the valuers should be sent to the office of the Board as soon as it is made (*y*).

Time for decision of valuers and reference to umpire.

The valuers must make their decision (which must be in the form after-mentioned) within forty-two days after their appointment (*z*). If they fail to make their decision, and also fail to refer the matter to the umpire within the forty-two days, then the umpire is, if so directed by the Board, to

(*r*) See the minute of the Board of Agriculture, para. 6, in the Appendix.

(*s*) For a form of the notice of appointment, see the Appendix.

(*t*) 21 & 22 Vict. c. 94, s. 8.

(*u*) See the minute of the Board of Agriculture, para. 6, in the Appendix.

(*x*) 21 & 22 Vict. c. 94, s. 8. For the forms, see the Appendix.

(*y*) See the minute of the Board of Agriculture, para. 7, in the Appendix.

(*z*) 21 & 22 Vict. c. 94, s. 8.

act as if he had been duly appointed by the lord and tenant to act as their valuer, and when so acting he must make and deliver his decision to the Board within forty-two days from his being directed by the Board to act as valuer for both parties; but if he fails to deliver his decision within that period, or if the Board do not direct him to act in the manner mentioned, then in either of these cases the Board are to fix the consideration to be paid (*a*).

Extension of time.

The Board, however, have power by order under their seal to extend the time within which the valuers may be appointed, or within which they may appoint an umpire or make their decision (*b*).

If the valuers refer the matter to the umpire, he must make his decision within forty-two days after the reference to him, but the Board have power to extend the time (*c*).

Removal of valuer or umpire.

When a valuer has been appointed by either a lord or a tenant, his appointment cannot afterwards be revoked except by the consent of both lord and tenant; but the Board of Agriculture may at any time, on the complaint of either party, remove any valuer or umpire for misconduct, or for refusal or omission to act (*d*).

Fresh appointment on death, &c., of valuer or umpire.

If any valuer or umpire who has been duly appointed dies, or becomes incapable or refuses to act, or is removed for misconduct, another valuer or umpire may, within a time to be fixed by the Board, be appointed in his stead, in the manner and by the means by which the valuer or umpire whose place he is to fill was appointed. But if appointment is not made within the time fixed by the Board, the appointment will be made by the Board; and the new valuer for the time being may adopt and act upon any valuation and other matters or proceedings which may have been completed or agreed upon by the valuer previously acting (*e*).

(*a*) 50 & 51 Vict. c. 73, s. 10 (c).
(*b*) 21 & 22 Vict. c. 94, s. 9. For a form of the order, see the Appendix.
(*c*) 21 & 22 Vict. c. 94, ss. 8, 9.
(*d*) 15 & 16 Vict. c. 51, s. 3.
(*e*) 50 & 51 Vict. c. 73, s. 12.

Powers and duties of valuers.

Before a valuer or umpire can enter upon his duties, he must make and subscribe in the presence of a justice of the peace a declaration to the effect that he will faithfully and to the best of his ability value, hear and determine the matters referred to him, and the declaration has to be annexed to his decision or valuation when made and forwarded to the Board (*f*). Any valuer or umpire who wilfully acts contrary to the declaration he has made is deemed guilty of misdemeanour (*g*).

Production of documents, &c.

A valuer or an umpire, as the case may be, has power by summons under the seal of the Board of Agriculture to call for the production of any court-rolls or copies of court-roll in the possession or power of any lord or tenant, or of the steward of the manor, at such time and place as the Board may appoint, for any of the purposes of the Copyhold Acts (*h*); and he has also power by summons under seal of the Board to summon and examine any lord or tenant or other person on oath, and to administer the oath necessary for that purpose. If the person who has been duly summoned, and to whom a reasonable sum has been paid or tendered for expenses, neglects or refuses without lawful excuse to attend or produce the documents which have been called for, he is liable to a penalty of 5*l.*, on proof of his neglect or refusal before two justices of the peace for the county wherein the proceedings are being held; and any person wilfully giving false evidence when duly summoned and sworn before a valuer or umpire is liable to punishment as for perjury, but a lord or tenant who is summoned is not bound to answer any questions as to his title (*i*).

Entry on lands.

A valuer or an umpire, as the case may be, and his agents and servants may, upon giving reasonable notice to the occupier, enter upon any of the lands and hereditaments which are proposed to be enfranchised or commuted,

(*f*) 15 & 16 Vict. c. 51, ss. 28, 52.
(*g*) *Ibid.* s. 28.
(*h*) *Ibid.* s. 5.
(*i*) *Ibid.*

and may make all necessary admeasurements, plans, and valuations thereof, without being subject to any action, obstruction or hindrance, but making compensation for all injury, if any, occasioned by the entry on the lands (*k*).

Ascertainment of quantities and boundaries of land.

With regard to the identity and boundaries of lands it is provided that in cases where the identity of the lands cannot be ascertained to the satisfaction of the valuers, the lands are to be dealt with by them as consisting of the quantities mentioned in the court-rolls, if the quantities are therein stated to be in statute measure; but if the quantities are not so specified, then the valuers may determine the quantities at which the lands shall be taken. If the lands are not defined by a plan upon the court-rolls, the valuers may, upon a request in writing by either the lord or the tenant, define the limits or boundaries of the lands by a plan, and when the plan is accepted by the Board it is conclusive; but except by agreement between the lord and tenant no plan is to be made in any case where it appears either by the court-rolls, or otherwise, that the boundaries of the lands have for more than fifty years last past been treated as being intermixed with the boundaries of other lands, and as being incapable of definition. In any case where valuers have been appointed and there is a doubt or difference of opinion as to the identity of the lands, either the lord or the tenant may apply to the Board to define the boundaries of the land for the purpose of enfranchisement, and the Board may proceed to ascertain and define the boundaries in such manner as they may think fit, their decision and determination being final and conclusive (*l*).

Circumstances to be considered by valuers.

In making a valuation for the purpose of ascertaining the compensation payable to the lord upon an enfranchisement under the Copyhold Acts, the valuers must take into account the facilities for improvement, the customs of the manor, the fines, heriots, reliefs, quit rents, forfeitures,

(*k*) 15 & 16 Vict. c. 51, s. 6. (*l*) 50 & 51 Vict. c. 73, s. 42.

and all other incidents whatever of copyhold or customary tenure, and all the other circumstances affecting or relating to the land which are included in the enfranchisement, and all the advantages which arise from it (*m*), but not the value of escheat for want of heirs (*n*). These provisions as to the duties of the valuers in this respect have received judicial interpretation in various cases. Thus, it was held that the lord was entitled, on an enfranchisement of customary lands subject to the provisions of the Cheltenham Manor Act (*o*), to compensation in respect of the advantages accruing to the tenant from the removal of restrictions on leasing or other disabilities attending his customary estate, the amount of the compensation, however, being a question of fact and depending upon the extent to which the value of the particular property is increased by the removal of the restrictions (*p*). But whilst regard must be had to the capability of the land for future improvements, the value of the facilities for improvements must be taken as being diminished by any difficulties which in fact exist in consequence of the state of the title to the land. Thus, in a case where it appeared that the copyholds were used and occupied, partly as a gentleman's private residence with the usual adjuncts and partly as meadow and pasture land, and that the part occupied as a private residence was held by a third person under a lease which was granted with the licence of the lord and which in fact prevented any access to the meadow land from a public road during the term of the lease, and that the whole of the property was the subject of a settlement by the will of the deceased copyhold tenant which precluded the granting of leases for more than twenty-one years, the court held that, although the valuers were not bound in assessing the compensation payable to the lord by the mode in which the property was then enjoyed, but

(*m*) 15 & 16 Vict. c. 51, s. 16.
(*n*) 50 & 51 Vict. c. 73, s. 5.
(*o*) 1 Car. I. c. 1 (Priv.).
(*p*) *Lingwood* v. *Gyde*, L. R. 2 C. P. 72.

might take into consideration its capacity for improvement by applying it to building purposes, yet the lease and the settlement were to be taken into account as obstacles in the way of building: that the lease, which was equally binding on the lord and the copyholder, could not be excluded from consideration, and that accordingly the land could only be dealt with as land which had a capacity for improvement by the copyholder after the expiration of the term; and that the settlement, though not absolutely preventing the land from being applied to building purposes, presented considerable difficulties in the way of its being so applied, and consequently was a circumstance to be taken into account by the valuers as affecting the value of the land (*q*).

In the case of *Brabant* v. *Wilson* (*r*), the land which was the subject of enfranchisement had been formerly waste of the manor but had been granted by the lord, with the consent of the homage, to be held as copyhold, subject to the condition that no buildings should be erected or trees or shrubs planted on it, and with a reservation to the lord and certain copyholders of a power to enter and remove any buildings or trees which might be erected or planted in breach of the condition. In the course of the valuations to determine the compensation the question arose, whether upon the enfranchisement the conditions and restrictions contained in the grant against building and planting would continue in force. On a case stated for the opinion of the Court, it was held by the Court of Queen's Bench that upon enfranchisement the land would become of freehold tenure, discharged from all the conditions and restrictions which affected it as a copyhold, and that consequently the lord was entitled to have the value of the tenement upon the enfranchisement estimated upon the footing of its being applicable without any restraint to building purposes. It

(*q*) *Arden* v. *Wilson*, L. R. 7 C. P. 535.

(*r*) L. R. 1 Q. B. 44.

may be mentioned here, however, that the Board of Agriculture have now power under the Copyhold Act, 1887 (*s*), in any case of enfranchisement effected by award, if they think fit, to continue and give effect to any conditions affecting the user of the land subject to which a tenant may have been admitted, and which may have been imposed or created for the benefit of the public or of the other tenants of the manor, where in the opinion of the Board any especial hardship or injustice would result if the lands were released from such conditions. The lord's right in respect of any timber which may be growing on the land must be taken into account on enfranchisement, and compensation for it must be allowed (*t*).

Decision of valuers.

The value set upon the manorial and other rights and incidents included in the enfranchisement, including the advantages arising from the enfranchisement, is in all cases to be stated as a gross sum of money, and the valuer's decision is to be in such form as the Board of Agriculture may prescribe (*u*). The valuers have in every case to deliver the details of their valuation to the Board. The Board have power to remit the valuation for re-consideration or correction, if they consider it imperfect or erroneous; and if the valuers neglect or decline to amend or alter their decision, the Board may, after giving due notice to the lord and the tenant, and after fully considering all the circumstances which have been brought before them, determine the value at such a sum as they may think just and reasonable (*x*). This power of the Board to send back the valuation for re-consideration or correction is not limited to cases where the details of the valuation show that there has been an error in principle; the Board have power to remit in any case where it appears to them that there has been an error, whether as to the amount of the valuation or as to the principles on

(*s*) Sect. 8.

(*t*) *Reynolds* v. *Woodham Walter Manor* (*Lord of*), L. R. 7 C. P. 639.

(*u*) 50 & 51 Vict. c. 73, s. 11. For a form, see the Appendix.

(*x*) 50 & 51 Vict. c. 73, s. 11.

which the valuers have proceeded, which will do an injustice to the parties or either of them. Even if the valuers amend their valuation, but the conclusion is still unsatisfactory to the Board, it would appear that the Board are not bound by such amended valuation. On this point reference may be made to the remarks by Lord Esher, M.R., as to the powers of the Land Commissioners (now the Board of Agriculture) in the case of *Regina* v. *The Land Commissioners for England* (*y*). "I see nothing in the section to confine the action of the Commissioners to one objection only, so as to bind them by a partial amendment made by the valuers, but not satisfactory to the Commissioners. I do not, however, think that they are obliged to send the valuation back to the valuers a second time, but when it comes back to them after they have once remitted it, they may then deal with it and make their award of the sum they deem just and reasonable. To my mind there is nothing in the Act to make the decision of the valuers binding on the Commissioners. The truth is, the valuers are not arbitrators but assessors and assistants to the Commissioners, and the award is made by the Commissioners under the authority given by the statute."

Questions of law and fact arising in course of valuation to be referred to Board.

If any objection is made or any question arises in the course of the valuations in any enfranchisement to be effected by an award under the Copyhold Acts in relation to any alleged custom, or the evidence thereof, or in relation to any matter of law or fact material to the valuation or arising on the enfranchisement, such objection or question is on the request in writing of either of the parties to be referred to the Board, or to any officer of the Board assigned by them to exercise their powers and discharge their duties under the Copyhold Acts, and the decision of the Board or of such officer after inquiry is to be final. But if any of the parties is dissatisfied with the

(*y*) 23 Q. B. Div. 59, 63, 64.

decision of the Board or their officer on any matter of law, he may, within twenty-eight days after the decision and upon fourteen days' notice in writing to the other parties affected by it, request the Board to direct a case to be stated for the opinion of the High Court of Justice. The decision of the Court on the case submitted to it will be binding on all parties, including the Board (*z*). It will be observed that it is only on a matter of law that an appeal will lie to the Court from the decision of the Board or their officer. Accordingly, in a case where a question arose whether there was a special custom in the manor entitling the lord to claim one-third of the timber on the copyholds, and the Copyhold Commissioners after due inquiry found that there was such a custom and that the lord was entitled to compensation upon enfranchisement in respect of his rights under the custom, the Court of Common Pleas held, on a case stated for their opinion, that the only question as to a special custom which the Court could entertain was whether there was evidence of it. If there was evidence, then it was the exclusive province of the Commissioners to determine, as a question of fact, whether such evidence proved the existence of the custom; and being of opinion that there was evidence of the special custom alleged, the Court declared that the finding of the Commissioners with regard to it could not be disturbed (*a*). The costs of stating the case and of obtaining the decision of the Court are in the discretion of the Court to which the case is submitted, and it may order the costs to be taxed, and execution may issue for them, as if they had been recovered upon a judgment of record (*b*).

Allowance to valuers or umpire.

Under the provisions of the Copyhold Act, 1887, the Board of Agriculture are empowered to print and publish a scale of allowance to valuers or umpires for services

(*z*) 15 & 16 Vict. c. 51, s. 8; 4 & 5 Vict. c. 35, s. 40.

(*a*) *Reynolds* v. *Woodham Walter Manor* (*Lord of*), L. R. 7 C. P. 639, 645.

(*b*) 4 & 5 Vict. c. 35, s. 40.

performed in the execution of the Copyhold Acts (*c*). A print of the latest scale published by the Board will be found in the Appendix hereto, but it is to be observed that the scale is intended to be for guidance only and is not to be taken as binding in any particular case as a matter of law.

Preparation and confirmation of award.

In any case of enfranchisement or extinguishment of manorial rights and incidents conducted before the Board of Agriculture, when the amount of the compensation has been duly ascertained, the Board, after having made such inquiries concerning the circumstances of the case as they think necessary, will prepare an award of enfranchisement on the basis of the compensation and in such form as they may provide, and they may afterwards confirm the award (*d*). A print of the inquiries which the Board require to be answered in every case of enfranchisement or extinguishment of manorial rights and incidents under the Copyhold Acts will be found in the Appendix hereto. But before the Board can confirm the award they must have served a copy of it in the form in which it is proposed to be confirmed upon the steward of the manor (*e*), unless the award in draft has been perused by him (*f*). Where service of the copy of the award is necessary, it must take place fourteen clear days at least before the award is confirmed (*g*). Again, in cases where the consideration is either a gross sum of money immediately payable or land, the Board cannot confirm the award until the receipt of the person entitled to the consideration money has been produced or the conveyance of the land has been confirmed by them (*h*). A copy of the award, sealed or stamped with the seal of the Board, has to be sent by the Board to the lord, who must cause it to be entered on the manorial court-rolls (*i*).

(*c*) 50 & 51 Vict. c. 73, s. 30.
(*d*) *Ibid.* s. 22.
(*e*) 21 & 22 Vict. c. 94, s. 10.
(*f*) 50 & 51 Vict. c. 73, s. 22.
(*g*) 21 & 22 Vict. c. 94, s. 10.
(*h*) *Ibid.* s. 12.
(*i*) 50 & 51 Vict. c. 73, s. 22.

Effect of confirmation of award, &c.

When the Board of Agriculture have confirmed an award of enfranchisement, or have executed any deed or other instrument whereby an enfranchisement or extinguishment of manorial rights is effected, the confirmation or execution, as the case may be, is to be taken as conclusive evidence that all the necessary directions in relation to the enfranchisement or extinguishment have been duly complied with, and the award or deed cannot afterwards be impeached by reason of any omission, mistake, or informality in any of the proceedings, or on account of any want of notices or consents which may be required by any of the Copyhold Acts (*k*). But the Board have power at any time, on the application of any person interested, to correct and supply all errors or omissions arising from inadvertence in an award or deed of enfranchisement, or in any other instrument which the Copyhold Acts authorise them to make or issue. Before making any correction, the Board will give due notice to all persons interested, and they may order all expenses incident to the correction to be paid as they may direct (*l*).

Commencement of enfranchisement.

It was provided by the Copyhold Act, 1858, that the commencement of every enfranchisement, or of every commutation or extinguishment of manorial rights, might be fixed by the memorandum confirming the instrument whereby the enfranchisement or commutation or extinguishment was effected, and that, in default of being so fixed, it was to take place on the day of confirmation (*m*); but now it appears from the provisions of the Copyhold Act, 1887, that compulsory enfranchisements take effect from the date of the notice of desire for enfranchisement or extinguishment (*n*).

Form of compensation.

Where the enfranchisement is effected at the instance of the lord, or when the compensation payable to him amounts to more than one year's improved annual value of the land,

(*k*) 15 & 16 Vict. c. 51, s. 33.
(*l*) 50 & 51 Vict. c. 73, s. 44.
(*m*) 21 & 22 Vict. c, 94, s. 18.
(*n*) See 50 & 51 Vict. c. 73, ss. 14, 31.

and the land can in the opinion of the Board of Agriculture be sufficiently identified, the compensation must, unless the lord and tenant otherwise agree or the tenant gives notice to the Board of his desire to pay the amount in a gross sum of money, consist of an annual rent-charge issuing out of the land enfranchised, equivalent to interest at the rate of 4*l.* per centum per annum on the compensation money. Where the enfranchisement is effected at the instance of the tenant, the compensation will in the absence of agreement be payable in money, unless it amounts to more than one year's improved annual value of the land enfranchised and the land can be sufficiently identified, in which case the tenant can discharge his obligation by the grant of an annual rent-charge calculated in the manner above mentioned. In cases where the enfranchisement is effected by award, and the tenant desires to pay the compensation in a sum of money, he must give notice to the Board of his desire so to pay within ten days after receiving the draft of the proposed award (*o*).

Commencement of rent-charge.

The Copyhold Act, 1887, provides in the case of compulsory enfranchisements that the rent-charge is to be equivalent to interest at the rate of 4*l.* per centum per annum on the amount of the compensation, and is to commence in every case from the date of the notice of desire to enfranchise (*p*).

Date of payment of rent-charges.

All rent-charges created under the provisions of the Copyhold Acts are now payable on the first day of January and the first day of July in each year, and in the case of an enfranchisement taking place between these dates in any year, a proportionate payment will be made for the interval elapsing between the commencement of the rent-charge and the half-yearly day of payment which next follows the date of the award or memorandum or deed of enfranchisement (*q*).

(*o*) 50 & 51 Vict. c. 73, ss. 13, 14.
(*p*) *Ibid.* s. 14.
(*q*) 50 & 51 Vict. c. 73, s. 15.

Recovery of rent-charge.

Every rent-charge under the Copyhold Acts is now recoverable by the remedies described in sect. 44 of the Conveyancing and Law of Property Act, 1881 (*r*). Accordingly, if at any time the amount due or any part of it is unpaid for twenty-one days after either of the half-yearly days of payment, the person entitled to the rent-charge may enter into and distrain on the land charged, and may dispose of any distress found there, so that either thereby or otherwise all arrears of the rent-charge and all costs and expenses occasioned by the non-payment may be fully paid. Again, where any portion of the amount due is in arrear for forty days after either of the half-yearly days of payment, the person entitled to the rent-charge may, without having made any legal demand for payment, either enter into possession of the land charged and take the rents and profits, until either thereby or otherwise all arrears due at the time of his entry or afterwards becoming due during his continuance in possession, and all costs and expenses occasioned by the non-payment of the rent-charge, are fully paid; or he may, whether taking possession or not, by deed demise the land or any part of it to a trustee for a term of years with or without impeachment of waste, on trust by mortgage, sale or demise, or by receipt of the rents and profits, or by any of these means or by any other reasonable means to raise and pay the arrears of the rent-charge due or to become due, together with all costs and expenses occasioned by the non-payment or incurred in compelling or obtaining payment or otherwise in relation thereto, including the costs of preparing and executing the deed of demise and of executing the trusts thereof. When the person entitled to the rent-charge enters into possession of the land under the above provisions, his possession is without impeachment of waste (*s*). In addition to these remedies, an action of debt may be brought against the tenant for arrears of rent-charge (*t*).

(*r*) 50 & 51 Vict. c. 73, s. 16.

(*s*) 44 & 45 Vict. c. 41, s. 44.

(*t*) *Searle* v. *Cooke*, 43 Ch. Div. 519; *Thomas* v. *Sylvester*, L. R. 8 Q. B. 368.

Redemption of rent-charge.

Every rent-charge under the Copyhold Acts may be redeemed on any of the half-yearly days of payment, provided six months' previous notice in writing is given by the person for the time being in the actual possession or receipt of the rents and profits of the land charged to the person for the time being entitled to the rent-charge (*w*). The amount of the redemption money in such a case is declared by the Copyhold Act, 1887, to be twenty-five times the yearly amount of the rent-charge (*x*), but under the provisions of the Copyhold Act, 1852, the Board of Agriculture have power upon the request of any of the owners of the land charged to certify the amount of the consideration for redemption (*y*).

Recovery of redemption money.

If the amount of the redemption money and all arrears (if any) of a rent-charge are not duly paid upon the expiration of the notice for redemption, the person entitled to the rent-charge may exercise over the land for the recovery of the redemption money and the arrears of the rent-charge all the powers and remedies which are given to a mortgagee by the Conveyancing and Law of Property Act, 1881 (*z*). Accordingly, on complying with the statutory requirements, he may lease the land or sell it, or appoint a receiver of the rents and profits as may be necessary (*a*).

Rent-charge a first charge on the land.

A rent-charge under the Copyhold Acts is a first charge on the land, and takes priority over all previous incumbrances excepting tithe rent-charges and any land-drainage charges or rent-charges created by virtue of the Lands Drainage Acts (*b*).

Lord's charge to be appurtenant to the manor.

When a lord having a limited interest is entitled to a rent-charge or to a certificate of charge in respect of enfranchisement money left chargeable upon the land, the rent-charge or certificate of charge will belong and be

(*w*) 50 & 51 Vict. c. 73, s. 17.
(*x*) *Ibid.*
(*y*) 15 & 16 Vict. c. 51, s. 37.
(*z*) 50 & 51 Vict. c. 73, s. 18.
(*a*) 44 & 45 Vict. c. 41, ss. 18—25.
(*b*) 21 & 22 Vict. c. 94, s. 33; 50 & 51 Vict. c. 73, s. 19.

appurtenant to the manor, but not so as to be incapable of being severed therefrom, and it will not be affected by the extinction of the manor (*c*).

Sale of rent-charge by a limited owner.

Any rent-charge under the Copyhold Acts may be sold by a person having a limited estate therein, or by a corporation without a power of sale except under the Copyhold Acts, with the consent of the Board of Agriculture, and in cases of infancy, idiotcy, lunacy, or other legal disability with the consent of the guardian, committee, or trustee of the person who is under disability. But the consideration or the redemption money, as the case may be, must be dealt with as in the case of payment to a limited owner, to be explained later (*d*).

Receipt for compensation money, where lord has limited estate.

Where the compensation for the enfranchisement is a sum of money, the lord for the time being, although only a limited owner, is able in all cases where the land is enfranchised under an award of the Board of Agriculture or by a deed with the consent of the Board, to give a complete discharge for the amount, so as to relieve the person paying the money from all responsibility as to its application. But the money has to be paid by the recipient as the Board, having regard to the provisions of the Copyhold Acts hereinafter mentioned, may direct (*e*). Where the enfranchisement is carried out by agreement between the parties or otherwise without reference to the Board, the lord for the time being is able to give a complete discharge for the compensation money if it does not exceed £500, provided he makes a declaration in writing stating the particulars of his estate or interest in the manor, and showing himself to be entitled to receive the money for his own use. If he is not actually entitled to the money, he is deemed to have received it as a trustee for the persons who are entitled, and if his declaration is false, he is liable to the penalties attached to a false

(*c*) 21 & 22 Vict. c. 94, s. 31.
(*d*) 15 & 16 Vict. c. 51, s. 36.
(*e*) 50 & 51 Vict. c. 73, s. 25.

statutory declaration (*f*). If the lord cannot show himself to be entitled to the compensation money, or if it exceeds the sum of £500, the money must be paid as the Copyhold Acts direct in the case of consideration money payable to owners under disability (*g*).

If lord refuses to receive compensation.

If in any case the lord refuses to receive the enfranchisement money, it has to be dealt with as in the case of consideration money under the Copyhold Acts payable to owners under disability (*h*).

Payment in case of limited owner.

The payment of moneys due for the consideration or compensation on enfranchisement or for the sale or redemption of a rent-charge in the case of a person entitled to such moneys for a limited estate or interest only, or as trustee for sale or otherwise without power to give an effectual discharge, or under disability, or of a corporation entitled only under the Copyhold Acts to sell any such rent-charge, is to be made as follows. The money may at the option of the person for the time being entitled thereto be paid either (1) into Court, being placed in the books at the Paymaster-General's Office to the credit of *Ex parte* the Board of Agriculture and of the particular manor in respect of which it is paid in, or (2) to the trustees acting under the will, conveyance or settlement under which the person having such limited interest derives his title, or to one or more of such trustees as the Board may direct and appoint, or (3) if there are no such trustees, into the hands of trustees to be nominated under the seal of the Board (*i*). The money when paid into Court may be applied by order of the Court, and the money when paid to the trustees may be applied by them with the consent of the Board of Agriculture, in some one or more of the following ways, viz., in the purchase or redemption of the land tax, the discharge of any rent or incumbrance affecting the rent-

(*f*) 50 & 51 Vict. c. 73, s. 26.
(*g*) 15 & 16 Vict. c. 51, s. 39.
(*h*) 21 & 22 Vict. c. 94, s. 13.
(*i*) A form of appointment of trustees by the Board will be found in the Appendix.

charge or manorial rights in respect of which the money shall have been paid, or affecting other hereditaments settled therewith to the same uses, trusts, and purposes, or in the purchase of lands to be settled to the same uses as any rent-charge which the money may represent. Until such application by the Court the money may be invested upon the like order in the purchase of Consols or Reduced Annuities, or in Government or real securities, or other securities in which cash under the control of the Court may be invested, the income being paid (without the necessity of any fresh order) to the person entitled to such consideration or compensation, or to such rent-charge if it had not been redeemed (*k*). The order of the Court for the application of the money paid in may be obtained by the person entitled to the compensation money by summons at the chambers of a judge of the Chancery Division of the High Court, but notice is not to be given to the Board of Agriculture unless the judge directs (*l*). The person obtaining the order will be entitled to his costs out of the fund (*m*), and when the Board of Agriculture appear under the direction of the judge they will be allowed their costs (*n*). Upon any vacancy in the office of any such trustee appointed by the Board, another fit person is to be appointed by them in like manner (*o*).

If manor is held on charitable trust.

In the case of a manor held upon a charitable trust within the provisions of the Charitable Trust Acts, 1853 to 1891 (*p*), by a corporation or other lord not authorised to make an absolute sale except by these Acts or the Copyhold Acts, the money to be paid for redemption or sale of the rent-charge or as compensation for any enfranchisement, may be paid to the official trustees of

(*k*) 15 & 16 Vict. c. 51, s. 39; Supreme Court Funds Rules, 1886, r. 40.

(*l*) R. S. C. Ord. LV. r. 2 (11).

(*m*) *Ex parte Archbp. of Canterbury*, 1 Coll. 154.

(*n*) *Ex parte Queen's College, Cambr.*, 27 L. J. N. S. Ch. 178.

(*o*) 15 & 16 Vict. c. 51, s. 39.

(*p*) 16 & 17 Vict. c. 137; 18 & 19 Vict. c. 124; 23 & 24 Vict. c. 136; 25 & 26 Vict. c. 112; 32 & 33 Vict. c. 110; 50 & 51 Vict. c. 49; 54 & 55 Vict. c. 17.

charitable funds, who will apply the same under the order of the Charity Commissioners in some of the ways before-mentioned, and until such application will expend the income according to the Acts relating to charitable funds paid to the official trustees (*q*).

If a corporation is lord of manor.

Enfranchisement considerations payable to any corporation, being lords of a manor not held upon such charitable trusts, may (if the corporation should so desire) be paid into the hands of trustees to be appointed by the Board of Agriculture, and may be applied to any of the purposes above mentioned (*r*)

If enfranchisement money is payable to the use of a benefice.

Any like moneys payable to the use of any spiritual person, in respect of his benefice or cure, may at his desire be paid to the Governors of Queen Anne's Bounty for the augmentation of his benefice (*s*)

Lord's remedies to recover enfranchisement consideration.

When the enfranchisement is effected by award of the Board of Agriculture, the lord's right to the enfranchisement consideration is sufficiently protected by the provision that the Board are not to confirm the award until the receipt for the consideration or compensation money has been produced to them, or in the case of the consideration being land, until the conveyance of the land has been confirmed by them (*t*). But in other cases where the enfranchisement consideration or the interest thereon is not paid at the time fixed, the lord or other person entitled to the amount may enter into possession of the land and take the rents and profits as if it had remained unenfranchised and had been lawfully seised into his hands for default of a tenant (*u*). And when the lord has entered into possession he may let the land for any period not exceeding seven years in possession at such rent as he can reasonably obtain; and the lease will not be determined by payment of the enfranchisement consideration (*x*). In addition, the lord may exercise over the land the same

(*q*) 21 & 22 Vict. c. 94, s. 15.
(*r*) *Ibid.* s. 16.
(*s*) *Ibid.* s. 17.
(*t*) 21 & 22 Vict. c. 94, s. 12.
(*u*) 15 & 16 Vict. c. 51, s. 17.
(*x*) *Ibid.* s. 18.

rights and remedies as he is entitled to use for the recovery of rent-charges under the provisions of the Copyhold Acts (*y*).

Consideration charged on land.

Whenever by the Copyhold Acts power is given, or an obligation attaches, to any person to pay money as consideration or compensation for enfranchisement or for commutation, the money may, under the provisions of the Copyhold Act, 1858, be charged upon the land with the consent of the Board of Agriculture (*z*); and when any absolute owner conveys land as such consideration, he may charge the reasonable value of the land so conveyed upon the lands enfranchised or commuted, with the like consent (*a*). In such cases the charge may be for a principal sum and interest, or for a periodical series of payments which shall leave the manor or land discharged at the end of the period (*b*). The charge is made by a certificate of the Board, transferable by endorsement (*c*).

Effect of charge.

It will have priority over all incumbrances, except the tithe and drainage rent-charges (*d*). The person entitled to the benefit of the charge may recover any interest or instalments due under it by the same remedies as are exerciseable by the owner of a rent-charge, and it is further provided that until payment of any amount which may be due to him, he is to be deemed a mortgagee in fee of the manor or land which is charged, with all the powers and privileges of a mortgagee of freeholds (*e*). The charge may be taken by any person, and if taken by the lord or tenant, it will not merge in the freehold unless the owner of it shall declare in writing by endorsement on the certificate or otherwise, that he wishes it to merge and be extinguished (*f*).

The Copyhold Act, 1887, has extended these provisions by enacting that the owner of any land enfranchised under

(*y*) 15 & 16 Vict. c. 51, s. 17.
(*z*) 21 & 22 Vict. c. 94, s. 21.
(*a*) *Ibid.* s. 22.
(*b*) *Ibid.* s. 25.
(*c*) *Ibid.* ss. 29, 30, 36, 37.
(*d*) *Ibid.* s. 33.
(*e*) *Ibid.* s. 35.
(*f*) *Ibid.* s. 34.

the provisions of any of the Copyhold Acts, including in the term "owner" every person entitled to the land for any term of years originally granted for ninety-nine years or upwards (*g*), may charge the land with the compensation money and the expenses attending the enfranchisement, with interest on the amount not exceeding £5 per centum per annum or by way of terminable annuity, calculated on the same basis (*h*). Any such charge may be created by a deed by way of mortgage, subject to the provisions of the Conveyancing and Law of Property Act, 1881, and will be a first charge on the land, having the same priority as a charge when made by certificate of the Board as above mentioned (*i*). Notwithstanding the imposition of any of these charges, any money already invested, or previously secured on the land, may be lawfully continued on the security (*k*). To facilitate the carrying out of these provisions, the Copyhold Act, 1887, empowers any company authorised to make advances for works of agricultural improvements to owners of settled and other estates, subject to the provisions of its Act of Parliament, charter, or instrument of settlement, to advance such sums as may be required for the payment of any consideration or compensation for commutation or enfranchisement under the Copyhold Acts, or for the payment of any expenses chargeable upon a manor or land under these Acts or otherwise, and for the repayment of the money to take a charge in accordance with its powers (*l*).

Charge by lord purchasing tenant's interest.

A lord who exercises the power of purchasing the tenants' interest in the land under the provisions of the Copyhold Act, 1852, may with the consent of the Board of Agriculture charge the amount of the purchase-money, together with the expenses incurred about the purchase

(*g*) 50 & 51 Vict. c. 73, s. 49.
(*h*) *Ibid.* s. 23.
(*i*) *Ibid.*
(*k*) 21 & 22 Vict. c. 94, s. 33; 50 & 51 Vict. c. 73, s. 23.
(*l*) 50 & 51 Vict. c. 73, s. 23.

and conveyance, upon the land purchased, or upon the manor, or any land settled therewith to the same uses (*m*).

Transfer of fee-farm rent or charge from manor to freehold lands or Government stocks of adequate value.

If in the course of an enfranchisement under the Copyhold Acts it is found that the manor, or the lord's estate and interest in any land belonging thereto, is subject to the payment of a fee-farm rent or to any other charge, the Board of Agriculture may, on the application of the person for the time being bound to make the payment or defray the charge, by order under their seal direct that the fee-farm rent or other charge shall be a charge either upon any freehold lands, specified in the order, being of adequate value and held under the same title as the manor or land, or upon any adequate amount of Government stocks or funds, to be transferred either into Court by the direction of the Board in the manner prescribed by the High Court Funds Rules, or to trustees appointed by the Board. When the order by the Board has been sealed, the manor and land become freed from the payment or charge; but the fee-farm rent or other charge becomes a charge upon the lands or funds specified in the order, the same remedies for the recovery of the charge being available, so far as the nature of the case will admit, against the lands or funds as might have been had against the manor or land belonging thereto in respect of the original charge (*n*).

Expenses.

With regard to the costs and expenses of proceedings for enfranchisement and commutation, the provisions of the Copyhold Acts are as follows.

In the case of voluntary enfranchisement or commutation, in the absence of any agreement between the parties, the costs and expenses are to be paid by the tenants, or by the tenants and the lords in such proportion as the Board of Agriculture may by order under their seal direct, and if any difference arises as to the amount of such costs, or as to the share payable by any of the parties, the certificate

(*m*) 21 & 22 Vict. c. 94, s. 23. (*n*) 50 & 51 Vict. c. 73, s. 21.

of the Board, or of their officer assigned for the purpose, is conclusive (*o*).

In the case of compulsory enfranchisement or extinguishment of manorial rights and incidents, the Copyhold Act, 1852, provides that the expenses of the proceedings, together with all expenses which the Board of Agriculture may consider to be incidental thereto, whether for proof of title, production of documents, expenses of witnesses, or otherwise, are to be borne by the person requiring enfranchisement; but such expenses are not due or recoverable until they have been certified by the Board or their officer as having been reasonably and properly incurred; and in case of any dispute or difference the certificate of the Board or their officer is final (*p*). That Act also provides that where the lord who requires an enfranchisement is an ecclesiastical corporation, or a corporation sole, not having an absolute power of sale, or has only a limited interest in the manor, or is a trustee of the manor, the expenses for effecting the enfranchisement, together with all expenses which in the judgment of the Board may be incidental to the proceedings (the amount being subject to the approval and certificate of the Board, as already mentioned), are to be paid out of the first moneys to be received for the enfranchisement, where the consideration is a gross sum of money; but where the consideration is not a sum of money the expenses, together with interest thereon not exceeding the rate of £4 per centum per annum, are to be charged on the manor or on other lands settled or held therewith as the Board may think fit (*q*).

If lord is trustee, &c.

Various remedies are given in the Copyhold Acts for the recovery of expenses which have been certified as reasonably and properly incurred (*r*), but by the Copyhold Act, 1887, it is provided that whenever money is declared to

Remedies for recovery of expenses.

(*o*) 4 & 5 Vict. c. 35, s. 65.
(*p*) 15 & 16 Vict. c. 51, s. 30.
(*q*) *Ibid.* s. 31.
(*r*) 4 & 5 Vict. c. 35, ss. 65, 66; 15 & 16 Vict. c. 51, s. 30.

be payable by any person on account of the expenses of proceedings under the Copyhold Acts, the amount may be recovered as a debt due from the party liable to pay to the party entitled to receive, as well as by any other remedy given in any special case; and that if the amount be payable by the lord to the tenant, or by the owner of a rent-charge to the owner of the property charged therewith, it may be set off against any money which at the time is receivable by the lord from the tenant, or by the owner of the rent-charge from the owner of the property charged, and in case of any dispute as to the amount, the Board of Agriculture are entitled to ascertain the sum and to declare it by an order which will bind all the parties concerned (*s*).

Expenses of trustee.

Where the tenant is a trustee, or is not beneficially interested in the lands which are enfranchised or commuted, he is entitled to recover all expenses, costs, and charges which he may have to pay under, or by reason of, any certificate of the Board of Agriculture from the person who is beneficially interested in the lands at the time of the proceedings, or his representatives (*t*).

General expenses may be charged.

Any expenses incurred in proceedings under the Copyhold Acts may be charged upon the manor or the land commuted or enfranchised, or on both, as the obligations to pay may attach: or the lord's expenses may be paid out of the consideration, or be charged upon any rent-charge or any other consideration (*u*), or on lands settled to the same uses as the manor, or on rent-charges arising out of other enfranchisements within the manor (*x*). When a lord or tenant is authorised by the Acts to raise money on a charge, or to purchase or convey land and to charge the principal or purchase-money or value upon any manor or land, his expenses may be charged as part of such principal or purchase-money or value, but as distinct from the

When expenses may be charged as consideration money.

(*s*) 50 & 51 Vict. c. 73, s. 35.
(*t*) 4 & 5 Vict. c. 35, s. 67; 7 & 8 Vict. c. 55, s. 1.
(*u*) 21 & 22 Vict. c. 94, s. 24.
(*x*) 50 & 51 Vict. c. 73, s. 24.

general expenses of commutation or enfranchisement (*y*). All other charges in respect of proceedings under the Acts (except the expense of a purchase by the lord under the provisions relating to compulsory enfranchisements (*z*)), are to be for such period as the parties may agree and the Board approve, not exceeding fifteen years, and at such interest as shall be stated in the certificate of charge (*a*). Every such charge may be made by a certificate of the Board transferable by endorsement (*b*); but in the case of a charge of the lord's expenses on lands settled to the same uses as the manor, or on rent-charges arising out of other enfranchisements within the manor, the Copyhold Act, 1887, provides that the charge is to be by deed by way of mortgage with under and subject to the provisions of the Conveyancing and Law of Property Act, 1881 (*c*).

Effect of charge of general expenses.

A charge of the general expenses incurred in any proceedings under the Copyhold Acts, as apart from the expenses which may be charged as consideration money (*d*), did not under the Act of 1858 have priority over existing incumbrances (*e*), but, as has been already mentioned, a tenant who charges the compensation money paid for an enfranchisement or commutation, may now include all the general expenses attending the proceeding in the amount which he charges (*f*)

Expenses in cases of dispute as to title.

The Board of Agriculture have power in cases where disputes as to title render it difficult for them to determine upon what person the order to pay costs or expenses should be made, to grant to the person whom they deem entitled to receive payment of such costs or expenses a certificate of charge upon the manor or land, as the case may be, in respect of which the costs and expenses have been

(*y*) 21 & 22 Vict. c. 94, s. 26.
(*z*) 15 & 16 Vict. c. 51, s. 25; *ante*, p. 384.
(*a*) 21 & 22 Vict. c. 94, s. 27.
(*b*) *Ibid.* s. 29.
(*c*) 50 & 51 Vict. c. 73, s. 24.
(*d*) *Ante*, p. 410.
(*e*) See 21 & 22 Vict. c. 94, s. 33
(*f*) *Ante*, pp. 406, 407.

incurred (*g*). Such a certificate of charge will have the same effect and priority as a charge of consideration money (*h*).

Expenses of redemption of rent-charge.

Expenses incurred in redeeming a rent-charge are dealt with on the same footing as expenses incurred in redeeming a mortgage (*i*).

Steward's compensation.

With regard to the compensation payable to the steward on commutations and enfranchisements, the Copyhold Acts contain the following provisions. In the case of voluntary commutation it is provided by the Copyhold Act, 1841 (*k*), that the agreement for commutation may fix a scale of fees to be payable to the steward from and after the confirmation by the Board. In regard to voluntary enfranchisement, the same Act provides (*l*) that the deed of enfranchisement must provide compensation for the steward in all cases where the steward holds his office by patent or other instrument for the term of his life, or during good behaviour, or where, in the absence of such patent or other instrument, the usage has been such as in the opinion of the Board to lead to a just expectation that he will hold his office during life or good behaviour. In regard to compulsory enfranchisements, it was provided by the Copyhold Act, 1852 (*m*), that the steward for the time being of the manor should on every such enfranchisement be entitled to receive from the tenant, as compensation for his trouble about the enfranchisement and for the extinguishment of his office with respect to the lands, such a sum as the Copyhold Commissioners might direct, and in the absence of any such direction such a sum as would amount to one set of fees on surrender and admittance for each of the tenements included in the enfranchisement, such fees being calculated according to the reasonable custom or usage prevailing in the manor and in case of difference being ascertained by the Commissioners, and it

(*g*) 21 & 22 Vict. c. 94, s. 28.
(*h*) *Ibid.* s. 33.
(*i*) 50 & 51 Vict. c. 73, s. 20.
(*k*) Sect. 52.
(*l*) Sect. 56.
(*m*) Sect. 19.

was further provided that if more than one set of fees was demanded by the steward, the Commissioners might moderate and tax the amount of the fees to such sum as should appear to them to be just and reasonable. In consideration of the compensation so provided, the steward had to prepare and deliver to the tenant a proper deed of enfranchisement, duly executed by the lord without any further charge save for stamp duty and parchment. By the Copyhold Act, 1858, the same amount of compensation was declared to be payable to the steward, notwithstanding that enfranchisements were thereby directed to be effected by awards prepared by the Copyhold Commissioners (*n*). But it is now provided by the Copyhold Act, 1887, that in every case of enfranchisement by award after the 31st of December, 1887, the tenant shall pay to the steward the compensation which is mentioned in the Schedule to that Act (*o*).

The steward will, however, be also entitled to a reasonable sum for any inspection of the court-rolls of the manor which any tenant of the enfranchised land may afterwards desire to make, and for making any necessary extracts or copies of the rolls (*p*); and if the last admittance to the land is prior to the 1st of July, 1853, and the enfranchisement is at the instance of the tenant, it will be remembered that the steward is entitled to receive from the tenant two-thirds of the sum to which he would have been entitled for fees on an admittance subsequent to the 1st of July, 1853 (*q*).

In the case of *Blaker* v. *Wells* (*r*) the plaintiff, who was the steward of a manor, sued the defendant for solicitor's costs attending the enfranchisement. The defendant had agreed to abide by the valuation of the surveyor named by the steward, and had paid the consideration and the surveyor's fee in accordance with the valuation. It was

(*n*) Sect. 10.
(*o*) Sect. 27.
(*p*) 15 & 16 Vict. c. 51, s. 20.
(*q*) 21 & 22 Vict. c. 94, s. 6.
(*r*) 28 L. T. N. S. 21.

held that as the enfranchisement was voluntary the Copyhold Acts, 1852 and 1858, did not apply, and that the plaintiff was entitled to charge for the enfranchisement deed which the defendant received.

Compensation paid to steward may be charged.

All sums payable to a steward by way of compensation on enfranchisement or commutation may be paid to him or his executors or administrators (*s*), and all sums so paid may, with the consent of the Board of Agriculture, be charged on the land enfranchised (*t*).

The fees and compensation payable to a steward in the case of an enfranchisement under the provisions of the Lands Clauses Consolidation Act, 1845, are mentioned later.

Effect of enfranchisement.

The effect of enfranchisement is to free the land from all customary payments and incidents, and from all customs of descent, dower, curtesy, and other customs, and to render it subject to the laws relating to ordinary freeholds, saving the interest under any custom as to free-bench, dower, or curtesy, of any person who shall have been married before the enfranchisement take effect, and saving the custom of gavelkind in Kent (*u*). But in all enfranchisements effected since the 16th of September, 1887, the lord retains his right in case of escheat for want of heirs as if the land had not been enfranchised (*x*). Although the customary mode of descent is destroyed on enfranchisement, the Judge in Lunacy may, when sanctioning the enfranchisement of copyholds belonging to a lunatic where the customary descent differs from the descent of freeholds, make a declaration that in the event of the lunatic dying intestate as to the enfranchised property, his heir-at-law shall stand seised of it in trust for his customary heirs as if it had not been enfranchised (*y*).

On the sale of land which has been enfranchised under

(*s*) 4 & 5 Vict. c. 35, s. 77.
(*t*) 21 & 22 Vict. c. 94, s. 21.
(*u*) 4 & 5 Vict. c. 35, ss. 80, 81; 15 & 16 Vict. c. 51, s. 34.
(*x*) 50 & 51 Vict. c. 73, s. 4.
(*y*) *In re Ryder*, 20 Ch. Div. 514.

the compulsory provisions of the Copyhold Acts the title of the lord of the manor does not require to be proved (*z*).

Compulsory enfranchisement does not affect the rights or interests of any person in, to or out of the lands enfranchised arising under any will, settlement, mortgage or in any other manner, except in so far as it may postpone such rights and interests to any charges created under the provisions of the Copyhold Acts and declared thereby to be first charges on the land (*a*).

Subsisting leases not affected.

Where the commuted or enfranchised land was immediately before the commutation or enfranchisement subject to any subsisting lease, the freehold into which the estate is converted shall be the immediate reversion with the rents and services annexed, and the covenants and agreements of both parties shall run with the land, and the rights of distress, entry, or action, shall not be prejudiced or affected (*b*).

Protection to occupying tenant.

If any occupying tenant is called upon to pay, and does pay, any money on account of any rent-charge created under the provisions of the Copyhold Acts which, as between him and his landlord, he is not liable to pay, he is entitled to recover the amount from his landlord, or to deduct it from the next rent payable by him (*c*).

Commonable rights.

Commonable rights, to which the tenant is entitled in respect of his lands, are not lost or affected by an enfranchisement under the Copyhold Acts (*d*).

Mines and minerals.

On any voluntary commutation or enfranchisement, the tenants may grant to the lord rights of way, entry, and other easements, to enable him to win and carry away minerals reserved by him under their lands. In the case of a commutation the grant of such easements and the

(*z*) *Kerr* v. *Pawson*, 25 Beav. 394; 44 & 45 Vict. c. 41, s. 3 (2).

(*a*) 15 & 16 Vict. c. 51, s. 46.

(*b*) 6 & 7 Vict. c. 23, s. 10; 15 & 16 Vict. c. 51, s. 44; 50 & 51 Vict. c. 73, s. 41.

(*c*) 15 & 16 Vict. c. 51, s. 42; 50 & 51 Vict. c. 73, s. 16.

(*d*) 4 & 5 Vict. c. 35, s. 81; 15 & 16 Vict. c. 51, s. 45.

consideration (if any) may be stated in the agreement; but on an enfranchisement with a reservation of minerals such easements are to be reserved and granted in the deed of enfranchisement (*e*). Compulsory enfranchisement does not, without the express consent in writing of the lord or tenant, affect the rights of any lord or tenant in or to "any mines, minerals, limestone, lime, clay, stone, gravel, pits, or quarries within or under the lands enfranchised; or within or under any other lands, or any rights of entry, rights of way and search, or other easements of any lord or tenant in, upon, through, over, or under any lands, or any powers which in respect of property in the soil might but for such enfranchisement have been exercised for the purpose of enabling the said lord or tenant, their or his agents, workmen or assigns, more effectually to search for, win, and work any mines, minerals, pits, or quarries, or to remove and carry away any minerals, limestone, lime, stones, clay, gravel, or other substances had or gotten therefrom, or the rights, franchises, royalties, or privileges of any lord in respect of any fairs, markets, rights of chase or warren, piscaries, or other rights of hunting, shooting, fishing, fowling, or otherwise taking game, fish or fowl" (*f*).

Accordingly, where an agreement was made after the passing of the Copyhold Act, 1852, for the sale of a copyhold with the timber and all appurtenances belonging to the tenement, as soon as the same should become freehold, the vendor agreeing to use his best endeavours to procure enfranchisement, and the enfranchisement was duly effected by a deed under that Act, reserving the minerals to the lord, it was held that the contract had reference to the provisions of the Act above-cited, and that notwithstanding the reservation of minerals, the purchaser must complete (*g*).

(*e*) 4 & 5 Vict. c. 35, s. 84.

(*f*) 15 & 16 Vict. c. 51, s. 48.

(*g*) *Kerr* v. *Pawson*, 25 Beav. 394; and see *Pretty* v. *Solly*, 26 Beav. 606.

User of soil of enfranchised lands.

Notwithstanding any reservation of minerals, the owner of lands enfranchised, whether under the voluntary or compulsory enactments, may disturb or remove the soil, so far as may be necessary or convenient for making roads or drains, erecting buildings, or obtaining water, on such lands, but this user of the soil is not to prejudice the lord's rights to minerals reserved by him on a compulsory enfranchisement under the provisions of the Copyhold Act, 1852, quoted above (*h*).

Conditions as to user of the land destroyed, but may be continued.

An enfranchisement has of itself the effect of freeing the land from all conditions and restrictions which may have affected it while it was of copyhold tenure, at least so far as such conditions and restrictions concern the lord of the manor or any one claiming under him (*i*). But, as already mentioned, the Board of Agriculture have power, where the enfranchisement is effected by award, to continue any conditions affecting the user of the land imposed for the benefit of the public or of the other tenants of the manor, if in their opinion especial hardship or injustice would result from the release of the conditions (*k*).

Obligation as to boundaries.

Enfranchisement puts an end to the copyholder's obligation to keep the boundaries of his tenement distinct, but an enfranchised tenant might, of course, still be liable for defaults happening before the enfranchisement took place (*l*).

Inspection of court-rolls.

After any voluntary or compulsory enfranchisement under the Copyhold Acts, all persons seised of or interested in the land are entitled to have access to and inspection of the court-rolls of the manor, and to have copies thereof on payment of a reasonable sum, and a scale of fees may be prepared by the Board of Agriculture if they shall think it necessary or expedient (*m*). When all the lands in a manor are enfranchised, the lord or person having custody

(*h*) 21 & 22 Vict. c. 94, s. 14.

(*i*) *Brabant* v. *Wilson*, L. R. 1 Q. B. 44.

(*k*) 50 & 51 Vict. c. 73, s. 8.

(*l*) *Searle* v. *Cooke*, 43 Ch. Div. 519.

(*m*) 15 & 16 Vict. c. 51, s. 20.

of the court-rolls may give them up to the Master of the Rolls, who is empowered to allow all persons interested to inspect them and obtain office or certified copies of them, on payment of such reasonable fees as he may from time to time fix (*n*).

Enfranchisements under the Lands Clauses Consolidation Act, 1845.

Various provisions are contained in the Lands Clauses Consolidation Act, 1845, for the compulsory enfranchisement of land taken by the promoters of an undertaking within the meaning of that Act; and the land has to be enfranchised under those provisions, and not under the Copyhold Acts (*o*).

Enrolment of conveyance to company.

It has already been mentioned that the conveyance to the promoters of the undertaking must be entered on the court-rolls of the manor by the steward on payment of the same fees as he would receive on a surrender of the lands to a purchaser; and that when enrolled it has the same effect as if the lands had been freehold, but until enfranchisement the lands continue subject to the same fines, heriots, and services, as were formerly due and payable (*p*).

Enfranchisement proceedings.

Within three months after the enrolment of the conveyance, or within one month after the promoters have entered upon the land or, if there are more parcels of land than one taken, within one month after entry upon the last of the parcels, the promoters must apply to the lord for enfranchisement. If the promoters and the lord fail to agree upon the amount of the enfranchisement consideration, it has to be ascertained in one of the ways provided by the Act for the settlement of disputed compensation (*q*).

(*n*) 50 & 51 Vict. c. 73, s. 48; *ante*, p. 316.

(*o*) *In re Salisbury (Marq. of) and London & N. W. Rail. Co.*, (1892) 1 Ch. 75, n.

(*p*) *Ante*, pp. 106, 107.

(*q*) 8 Vict. c. 18, s. 96.

The company have not to pay a fine to the lord before they take steps to enfranchise the lands, and if any fine is so paid it will be applied as part of the compensation payable for the enfranchisement (*r*).

Circumstances to be considered in estimating the compensation.

In estimating the compensation allowance has to be made for the loss in respect of fines, heriots, and other services, payable on death, descent, or alienation, or any other matters which will be lost by the vesting of the lands in the company or by the enfranchisement (*s*).

Compensation assessed as at date of obligation to enfranchise.

The compensation will be determined and assessed as at the period when the obligation to enfranchise arises, and not at the actual time of enfranchisement, if there should be any delay in taking the proceedings, but the lord will, in the meantime, be entitled to any fines becoming payable between the period of the obligation arising and the date of the actual enfranchisement, and such fines will be assessed according to the annual value of the land as improved by any works which may have been executed by the company (*t*).

Enfranchisement, how effected.

When the compensation has been agreed upon or otherwise duly determined, and has been paid or tendered to the lord, or paid into Court where the lord has merely a limited interest or cannot make a title to the manor, the lord has to enfranchise the lands; and in this case the enfranchisement will be effected by such a deed as would be adopted in effecting an enfranchisement at common law. In default of his doing so, or of his making a good title to the satisfaction of the company, they are empowered, if they think fit, to execute a deed poll in the manner mentioned in the Act, and when such deed poll is duly stamped and executed the lands are to be deemed as enfranchised. Upon enfranchisement, the lands are held as in free and common socage (*u*).

(*r*) *In re Wilson's Estate*, 2 J. & H. 619.

(*s*) 8 Vict. c. 18, s. 96.

(*t*) *Lowther* v. *Caledonian Rail. Co.*, (1892) 1 Ch. 73.

(*u*) 8 Vict. c. 18, s. 97.

Compensation to steward.

The Lands Clauses Consolidation Act, 1845, contains no provisions regarding the compensation payable to the steward in respect of the extinguishment of his office in the lands which are taken and enfranchised, and it does not make any provision for the fees to be charged by the steward for his services in effecting the enfranchisement; and neither of these matters falls within the provisions of the Copyhold Acts (*x*). But inasmuch as it appears to be the general intention of the Lands Clauses Act of 1845 to provide against any loss being suffered by persons interested in land owing to the compulsory taking, and to make the promoters of the undertaking generally liable for all costs and expenses relating to their acquisition of the land, it would seem that the steward will be entitled to compensation for any loss he may sustain in respect of the extinguishment of his office (especially if he holds it for life) as regards the lands taken, and for his services in the preparation and delivery of the enfranchisement deed (*y*). This view appears to have been taken by the Court of Exchequer in the case of *Cooper* v. *Norfolk Railway Co.* (*z*), for the judgment indicates that, although the steward is entitled under sect. 95 of the Act on the enrolment of the conveyance to the fees payable as on a surrender only, he would also receive certain fees on the subsequent enfranchisement which the Act requires to be made. The compensation would be properly calculated, it is submitted, if it is ascertained in the manner directed by the Copyhold Act, 1852, as already mentioned (*a*).

Enfranchisements in Manors where derivative Interests are entered upon the Court-rolls.

Special provisions are contained in the Copyhold Act, 1887, with regard to enfranchisements in manors where the fines are certain and it is the practice for the copyholders

(*x*) See 15 & 16 Vict. c. 51, s. 55.
(*y*) See Rouse, Enfr. Man. 61, 65.
(*z*) 3 Exch. 546.
(*a*) *Ante*, p. 412.

in fee to grant derivative interests to persons who take admittance in respect of those interests (*b*). In such cases the person admitted or enrolled in respect of the inheritance is taken to be the tenant for all the purposes of the Copyhold Acts, and with regard to the special provisions of the Act of 1887 he is termed the "tenant-in-fee" (*c*).

In these manors the enfranchisement enures for the benefit of the tenant-in-fee and of every other person having any customary estate or interest in the land without further proceedings; and it confers upon such persons estates and interests in the land when enfranchised corresponding with their customary estates and interests (*d*).

All rent-charges and all sums of money payable by the tenant-in-fee in respect of the enfranchisement, together with interest thereon, are in the absence of agreement between the parties to be borne and paid by the tenant-in-fee and the other persons for whose benefit the enfranchisement enures in proportion to their respective interests in the land (*e*). In the event of any dispute regarding the due apportionment of these payments, the Board of Agriculture is empowered, on the application of any person interested and after due inquiry, to make an order of apportionment which will be binding on all the persons concerned. The expenses incident to the obtaining of such an order must be paid as the Board may direct (*f*).

Local inquiry to ascertain whether enfranchisement is desired throughout the manor.

The Act further provides that on the request of the lord, or of one-fourth in number of the copyholders on the court-roll, the Board of Agriculture may hold a local inquiry for the purpose of ascertaining whether the copyholders of the manor are desirous that enfranchisement shall be effected throughout the manor. The Board may

(*b*) These provisions appear to have been enacted chiefly with reference to the customs and usages as to such derivative interests in copyholds, prevailing in the manors within the Honour of Clitheroe, in Lancashire.

(*c*) 50 & 51 Vict. c. 73, s. 47, subs. a.

(*d*) *Ibid.* s. 47, subs. b.

(*e*) *Ibid.* s. 47, subs. c.

(*f*) *Ibid.* s. 47, subs. d.

require provision to be made for the expenses of the proceedings before they hold the local inquiry (*f*).

Order by Board.

If the Board find that not less than two-thirds in number of the copyholders desire enfranchisement, they will by order declare that all the copyhold tenements shall be enfranchised (*g*).

Ascertainment of compensation.

Upon the making of such order the Board will proceed to ascertain the compensation payable to the lord for the enfranchisement of each tenement held by a tenant-in-fee as above defined, and to enfranchise each tenement as between the lord and the tenant-in-fee (*h*).

Form of compensation.

Unless the lord and the tenant-in-fee arrange otherwise, the compensation must always consist of a gross sum of money (*i*), but the lord and the tenant-in-fee may agree that the compensation shall consist of a rent-charge ascertained as in the case of an ordinary compulsory enfranchisement.

Liability as between the tenant-in-fee and tenants with derivative interests.

When the Board have made an order for the enfranchisement of all the copyholds, all the tenants-in-fee of the manor become liable to contribute to the expenses of the local inquiry in proportion to the amount of the compensation payable by them respectively; but as between the tenant-in-fee of any particular tenement and all the copyholders holding derivative interests under him in the same tenement, each person is liable to contribute rateably, according to the value of his interest in the tenement, to the compensation and to all such expenses attending the enfranchisement as are payable on the part of tenants, including therein the contribution to the expenses of the local inquiry which has been assessed on the tenant-in-fee (*k*).

(*f*) 50 & 51 Vict. c. 73, s. 47, subs. e (1). See 31 & 32 Vict. c. 89, s. 1, as to the right of the Board to take security for the payment of any costs they may incur in making inquiries under the Copyhold Acts.

(*g*) *Ibid.* s. 47, subs. e (2).

(*h*) *Ibid.*

(*i*) *Ibid.*

(*k*) *Ibid.* s. 47, subs. e (3), and s. 47, subs. c.

Power of Board to apportion contributions, &c.

The Board have power to apportion the contributions between the several tenants of each enfranchised tenement, and also between the several tenants-in-fee, and to make orders for the payment of the amounts apportioned or of the expenses; and such orders are conclusive and binding between the parties (*l*).

How enfranchisement is effected.

The enfranchisement is effected by a separate award of the Board for each tenement; but without the consent of the tenant-in-fee the Board are not to make their award until they have apportioned the contributions and expenses payable between him and the persons holding derivative interests under him, and have made orders for payment of the amounts so apportioned, or have otherwise satisfied themselves that the tenant-in-fee has full security for the amounts which such persons are to contribute (*m*).

When the enfranchisement has been effected, it will enure for the benefit of the tenant-in-fee and all the persons holding under him.

Enfranchisements in Crown Manors.

In Crown manors enfranchisements are usually made by the Commissioners of Woods under the provisions of the Crown Lands Acts, 1829 to 1885 (*n*); but any manor vested in the Crown in remainder or reversion expectant on an estate of inheritance, or any lands held of it, may be dealt with under the Copyholds Acts with the consent in writing of any one of the Commissioners of Woods (*o*), subject to the exception that the provisions of the Copyhold Acts as to enfranchisements by award of the Board of Agriculture do not apply to any manors in which the Crown has an estate or interest, whether in possession, reversion or remainder (*p*).

(*l*) *Ibid.* s. 47, subs. e (4).
(*m*) *Ibid.* s. 47, subs. e (5).
(*n*) 10 Geo. IV. c. 50; 2 & 3 Will. IV. c. 1; 5 Vict. c. 1; 8 & 9 Vict. c. 99; 14 & 15 Vict. c. 42; 15 & 16 Vict. c. 62; 16 & 17 Vict. c. 56; 29 & 30 Vict. c. 62; 36 & 37 Vict. c. 36; 48 & 49 Vict. c. 79.
(*o*) 21 & 22 Vict. c. 94, s. 42.
(*p*) *Ibid.* s. 46.

Under the Crown Lands Acts.

Under the Crown Lands Acts the Commissioners of Woods may, subject to the sanction of the Treasury, except in cases where the purchase-money does not exceed £100 (*q*), sell the freehold of any copyhold or customary tenement, or any manorial rights belonging to the Crown over any land, for the purpose of enfranchising the tenement or extinguishing the manorial rights (*r*).

If any difference arises as to the amount of the consideration, the Commissioners of Woods may, on the request of the tenant, refer the matter to the decision of a practical land-surveyor, to be appointed by the Board of Agriculture. In such a case the award of the land-surveyor is conclusive and not subject to revision or appeal; and all the costs and expenses occasioned by the reference are to be treated as costs and expenses incurred in the case of a compulsory enfranchisement at the instance of a tenant (*s*).

If the consideration amounts to £100, it has to be paid into the Bank of England, with a note signed by the Commissioners specifying the amount and that the sum is to be paid to their account. If the consideration does not amount to £100, it may in the option of the tenant be paid either into the Bank or to any agent whom the Commissioners may appoint for the purpose. Upon production of the Bank's receipt or payment to the agent, the Commissioners will execute in favour of the tenant a deed of conveyance and give a receipt for the consideration-money, such deed and receipt being according to the forms provided in the schedule to the Crown Lands Act, 1829 (*t*), or in any other form which the Commissioners may deem more convenient (*u*).

The deed has to be enrolled within six months after its date in the office of the Land Revenue Records (*x*) and in

(*q*) 10 Geo. IV. c. 50, ss. 60—62.
(*r*) *Ibid.* ss. 34, 69.
(*s*) 21 & 22 Vict. c. 94, s. 41.
(*t*) 10 Geo. IV. c. 50, s. 35.
(*u*) *Ibid;* and see 15 & 16 Vict. c. 62, s. 5.
(*x*) 10 Geo. IV. c. 50, s. 63. See 15 & 16 Vict. c. 62, s. 7, as to enrol-

the court-rolls of the manor of which the tenement or the manorial rights shall have been parcel (*y*).

The Crown Lands Act, 1885, provides that whenever the Commissioners of Woods have in pursuance of the Crown Lands Acts sold the freehold of any copyhold or customary tenement held of a Crown manor or any manorial right belonging to the Crown over or in relation to any land to the tenant, whether there has been any conditional surrender or not, the right of any person in or to such copyhold or customary tenement or the lands subject to such manorial right under any will, settlement, mortgage, or otherwise shall continue to attach upon the tenement or land in the same manner as if the freehold had been comprised in and had been devised, conveyed, charged, or otherwise disposed of by the will or other instrument under which he claims (*z*). The Act also provides that the purchasing tenant may mortgage the fee-simple of the tenement or land in order to secure the payment of the purchase-money and the costs of the purchase with interest to any one advancing the amounts. The mortgage may be made although the tenant himself advances the money. It has priority over all other mortgages and incumbrances affecting the land, excepting tithe-commutation or land-drainage rent-charges; but the Act requires the consent of the Board of Agriculture to be given before any mortgage created under the provisions of the Act takes priority over incumbrances affecting the land in existence on the 14th of August, 1885 (*a*).

Under Copyhold Acts.

In cases of enfranchisement under the Copyhold Acts in manors vested in the Crown for an estate in remainder or reversion expectant on some estate of inheritance, where the compensation shall under the provisions of these Acts consist of a gross sum of money, the same is to be paid to two trustees, of whom one is to be nominated by the Com-

ment in the Office of Land Revenue Records by deposit of a duplicate of the deed.

(*y*) 10 Geo. IV. c. 50, s. 69.
(*z*) 48 & 49 Vict. c. 79, s. 4.
(*a*) *Ibid.*

missioners of Woods, and the other by the person entitled to the manor for the time being; but if such person does not agree with the Commissioners for the nomination of trustees, the money is to be paid into Court (*b*). It may be applied by the trustees, or when paid into Court by the Paymaster-General, under the direction of a judge of the Chancery Division, in the purchase or redemption of the land tax affecting the manor or any other land settled to the same uses as the manor, or in the purchase of land of fee simple tenure and convenient to be held with the settled estates. Until it is so applied, it may from time to time be invested by the trustees, or by the Paymaster-General, under an order of the Court, to be obtained upon application (*c*) after notice to the Commissioners of Woods, in the name of the trustees or of the Paymaster-General, in the purchase of Government or real securities, the income of such securities being paid by the trustees or the Paymaster-General, under an order of Court, to the person who is for the time being entitled to the rents and profits of the manor (*d*).

If any land is purchased with the compensation money, or if a rent-charge is granted or awarded as the consideration for the enfranchisement, the land or rent-charge, as the case may be, must be settled subject to the same uses, trusts and provisions as may then affect the manor (*e*).

When the compensation money has been paid in the manner above mentioned, or in the case of the consideration taking the form of a rent-charge either before or at the same time as the grant or the award by the Board of

(*b*) 21 & 22 Vict. c. 94, s. 43. See Supreme Court Funds Rules, 1886, r. 40, as to lodging of money in Court under Copyhold Acts.

(*c*) The Copyhold Act, 1858, s. 43, provides that the order of the Court shall be "made in a summary way upon petition;" but under the provisions of the Rules of the Supreme Court, Ord. LV. r. 2 (11), and the Chancery Funds Amended Orders, 1874, r. 15, applications under the Copyhold Acts respecting any securities or money in Court may be made by summons at Chambers.

(*d*) 21 & 22 Vict. c. 94, s. 44.

(*e*) *Ibid.* s. 45.

Agriculture of the rent-charge, the Commissioners of Woods may concur with the person who is for the time being entitled to the profits of the manor in executing a deed of enfranchisement to the copyholder. If the consideration for the enfranchisement is a sum of money, the deed must state the manner in which the amount has been applied. A memorial of the deed must be enrolled in the office of the Land Revenue Records, and thereupon the deed effectually vests in the copyholder all the estate of the Crown and of all persons under the settlement of the manor in the land enfranchised (*f*).

Manors held in joint tenancy with the Crown.

A manor vested in the Crown together with any subject in joint tenancy or coparcenary, and the lands held of it, may be dealt with under the Copyhold Acts, so far as regards the rights and interests of such subject and of the tenants of the manor; but the share or interest of the Crown in any such manor will be dealt with as in the case of a manor belonging to the Crown in remainder or reversion, as already mentioned (*g*).

Trustee for the Crown to be indemnified.

A trustee nominated to act on behalf of the Crown as regards the receipt and application of the enfranchisement money under the foregoing provisions is entitled to be indemnified out of the rents and profits of the possessions and land revenues of the Crown as to all his costs, charges, and expenses (*h*).

Manors belonging to the Duchy of Lancaster.

In manors belonging to the Duchy of Lancaster, enfranchisements are made under the provisions of the Acts 19 Geo. III. c. 45, and 27 Geo. III. c. 34. If any difference arises between the Chancellor and Council of the Duchy and the tenant as to the amount of the enfranchisement consideration, the matter may be referred by the parties to the Board of Agriculture, who will appoint a land-surveyor to determine the amount (*i*).

Copyholds which are parcel of the Duchy of Cornwall

(*f*) 21 & 22 Vict. c. 94, ss. 46, 47.
(*g*) *Ibid.* s. 50.
(*h*) *Ibid.* s. 48.
(*i*) 21 & 22 Vict. c. 94, s. 41.

Manors belonging to the Duchy of Cornwall.

are enfranchised under the provisions of the Act 7 & 8 Vict. c. 65; and another Act of the same year (*k*) provides for the confirmation and enfranchisement of conventionary tenements in the "assessionable" manors of that Duchy. Every deed or instrument by which an enfranchisement is effected must be enrolled in the office of the Duchy of Cornwall within six calendar months after its date (*l*).

Enfranchisements in Ecclesiastical Manors.

Enfranchisements in manors belonging to an ecclesiastical corporation may be effected either under the provisions of the Episcopal and Capitular Estates Act, 1851 (*m*), as amended and extended by later Acts (*n*), or under the compulsory provisions of the Copyhold Acts, if the tenant has a right of renewal (*o*).

With regard to agreements by ecclesiastical corporations for commutations of manorial rights and enfranchisements, the Copyhold Act, 1841, provided that in every case where any manor or lands were held under any archbishop, bishop, dean, dean and chapter, archdeacon, or any ecclesiastical corporation, or where any such ecclesiastical person or corporation was interested in any manor or lands to the extent of one-third of the value, or where it appeared to the Copyhold Commissioners that the interests of such ecclesiastical person or corporation would be affected by any commutation or enfranchisement to be effected under that Act, the agreement to commute or enfranchise was not to be deemed as duly executed, unless the consent of such ecclesiastical person or corporation was annexed to it (*p*); but the Act did not contain any enabling provisions. The Episcopal and Capitular Estates Act, 1851,

(*k*) 7 & 8 Vict. c. 105; amended by 24 & 25 Vict. c. 62.
(*l*) 7 & 8 Vict. c. 65, s. 30; 11 & 12 Vict. c. 83, s. 14.
(*m*) 14 & 15 Vict. c. 104.
(*n*) 17 & 18 Vict. c. 116; 23 & 24 Vict. c. 124; 55 & 56 Vict. c. 60.
(*o*) 21 & 22 Vict. c. 94, s. 4.
(*p*) 4 & 5 Vict. c. 35, s. 22.

Episcopal and Capitular Estates Acts.

however, empowers any ecclesiastical corporation, sole or aggregate, with the approval in writing of the Church Estates Commissioners, to enfranchise any copyhold or customary land held of a manor belonging to such a corporation (*q*). The term "ecclesiastical corporation" was defined in the Act of 1851 as including "every archbishop, bishop, dean and chapter, dean, archdeacon, canon, prebendary, and other dignitary or officer of any cathedral or collegiate church in England and Wales, and every minor ecclesiastical corporation in any such cathedral or collegiate church," but not the dean and canons of Christ Church, Oxford, or any college or hospital, or any parson, vicar, or perpetual curate or other incumbent of any benefice (*r*); but now the enabling provisions of the Act of 1851 have been extended to rectors, vicars, perpetual curates and incumbents (*s*), and also to the prebendary of any prebend not being a prebend of any cathedral or collegiate church (*t*). It has already been mentioned that there are many manors belonging to ecclesiastical corporations in which the copyholds are granted for lives only and for no greater estate, and that the tenants are not entitled to demand a renewal of their grants, unless they can show a constant usage of renewal on payment of a fixed fine, and that in other manors the copyholds are granted only for a term of years, renewable or not according to the usage (*u*). Provision is made by the Episcopal and Capitular Estates Act, 1854, for ascertaining by the trial of an issue in the High Court of Justice whether the tenant of any land held for a life or lives, or for years, by copy of court-roll under an ecclesiastical corporation, or under the Ecclesiastical Commissioners, has a right to a renewal of his grant, and the decision of the Court is binding on the corporation or the Commissioners (*x*).

(*q*) 14 & 15 Vict. c. 104, s. 1.
(*r*) *Ibid.* s. 11.
(*s*) 24 & 25 Vict. c. 105, s. 3.
(*t*) 25 & 26 Vict. c. 52, s. 2.
(*u*) *Ante*, pp. 37, 44.
(*x*) 17 & 18 Vict. c. 116, s. 5.

How enfranchisement is effected.

When any ecclesiastical corporation agrees to enfranchise any lands, the conveyance or assurance by which the enfranchisement is carried into effect has to be in such form as the Church Estates Commissioners may direct, and it requires to be confirmed by them; when this is done, the tenant is freed from all responsibility as to the propriety of the enfranchisement or the sufficiency of the consideration (*y*).

Receipt and application of enfranchisement moneys belonging to an ecclesiastical corporation.

It is provided by the Episcopal and Capitular Estates Act, 1851, that all moneys received by or becoming payable to or for the benefit of any ecclesiastical corporation on an enfranchisement may either be paid into the Bank of England, to such account as the Church Estates Commissioners shall appoint, or, with their approbation, may remain at interest as a charge by way of mortgage on the land enfranchised at such a rate and for such a period as may, with the consent of the Church Estates Commissioners, be agreed upon by the parties; and in every case the receipt of the Church Estates Commissioners is an effectual discharge for the money expressed to have been received (*z*).

When the money has been paid into the Bank, the Church Estates Commissioners must apportion it so as to set apart for the permanent endowment of the ecclesiastical corporation a sum sufficient to ensure to the corporation a permanent net income equivalent to that which it would have received from the enfranchised property, and pay the remainder of the amount to the common fund of the Ecclesiastical Commissioners (*a*).

To secure such permanent endowment, the Church Estates Commissioners may apply the amount they have apportioned to the corporation in the purchase of other lands, to be conveyed to its use or for its benefit, or they may invest the amount in their names in the purchase

(*y*) 14 & 15 Vict. c. 104, s. 5.
(*z*) *Ibid.* s. 6.
(*a*) 17 & 18 Vict. c. 116, s. 6.

of government stocks, funds, or securities, and pay the interest and dividends thereof to such corporation (*b*).

Ecclesiastical Commissioners Acts.

In manors belonging to the Ecclesiastical Commissioners for England enfranchisements may be effected under the authority of the Ecclesiastical Commissioners Acts (*c*), or under the compulsory provisions of the Copyhold Acts, if the tenant has a right of renewal (*d*). The Ecclesiastical Commissioners have by virtue of their Acts all the same and the like rights and powers of ownership over all lands and hereditaments vested in them as are enjoyed over other lands by absolute owners, and they are entitled to exercise these rights and powers "by proper instruments in writing duly executed according to law" (*e*). All moneys paid to the Ecclesiastical Commissioners are carried by them to a common fund, which is disposed of according to the terms of their Acts (*f*); and the receipt of any two of the Commissioners' treasurers, or of one of such treasurers with the counter-signature of the Commissioners' accountant or assistant-accountant, is a good and sufficient discharge for any money due and payable to the Commissioners, and relieves the person to whom it is given from all responsibility as to the amount and from all liability in regard to its application (*g*).

Trustees, &c. may raise money for enfranchisement.

With regard to enfranchisements in manors belonging either to an ecclesiastical corporation or to the Ecclesiastical Commissioners, it is provided by the Ecclesiastical Commissioners Act, 1860, that where the land is vested in anyone who is a trustee either expressly or by implication of law, or in any other person having merely a power of raising money for the purpose of obtaining a renewal of the grant

(*b*) 14 & 15 Vict. c. 104, s. 6.

(*c*) 6 & 7 Will. IV. c. 77; 3 & 4 Vict. c. 113; 4 & 5 Vict. c. 39; 5 & 6 Vict. c. 26; 6 & 7 Vict. c. 37; 13 & 14 Vict. c. 94; 23 & 24 Vict. c. 124; 29 & 30 Vict. c. 111; 36 & 37 Vict. c. 64; 38 & 39 Vict. c. 71; 48 & 49 Vict. c. 31.

(*d*) 21 & 22 Vict. c. 94, s. 4.

(*e*) 6 & 7 Vict. c. 37, s. 6.

(*f*) 3 & 4 Vict. c. 113, s. 67.

(*g*) 23 & 24 Vict. c. 124, s. 43; 29 & 30 Vict. c. 111, s. 3.

or lease under which the land is held, such trustee or other person may raise money for the purpose of enfranchising the land, and may apply the amount towards the enfranchisement, subject to the same conditions, so far as applicable, as those under which he may raise the money for renewing the grant (*h*).

Enfranchisement money may be raised by charge, &c.

The Ecclesiastical Commissioners Act, 1860, also provides that if the grant or lease made by the ecclesiastical corporation or the Commissioners is held in trust or is settled without power of raising money for renewals, or if the manner prescribed for raising money for renewals is not applicable for raising the money required for enfranchisement, the trustees, whether they are express trustees or are merely trustees by implication of law, or any person who is under the terms of the will or other settlement in the actual possession or in receipt of the rents and profits of the land, may charge the land with the enfranchisement consideration and expenses, and interest not exceeding £5 per centum per annum. The charge when created takes effect not only on the subsisting term or estate under the grant or lease but also on the reversion or interest acquired by the enfranchisement, and is available against the person making the same and all persons claiming through him or for whom he may be a trustee, as also against all persons claiming any estate or interest in the land under the will or settlement (*i*). Trustees are also empowered by the same Act to raise the enfranchisement consideration out of any funds held by them on the same or the like trusts as the lands, with the consent of the *cestui-que-trusts*, or if the *cestui-que-trusts* are under disability or refuse assent, with the sanction of a judge of the Chancery Division (*k*); or the trustees may, with the like sanction, sell or mortgage other lands held by them on trusts similar to those on which the lands enfranchised are

(*h*) 23 & 24 Vict. c. 124, s. 20; see *Hayward* v. *Pile*, L. R. 5 Ch. 214.

(*i*) 23 & 24 Vict. c. 124, s. 35.

(*k*) *Ibid.* s. 36.

held; and trustees who have no power of sale may, under the provisions of the Act, raise the money by a sale of part of the lands comprised in their grant (*l*). The Act of 1860 further enables any owner to enfranchise his lands by means of an exchange with the ecclesiastical corporation or the Commissioners (*m*).

Enfranchisement of part of lands only.

Where part only of the lands held under any grant by an ecclesiastical corporation or by the Ecclesiastical Commissioners is enfranchised, the Church Estates Commissioners are empowered to apportion the rents, fines certain, and heriots due and payable under the grant, and also to authorise the substitution of money payments in lieu of heriots. The apportionment may be made by writing endorsed on the grant; and it must declare what rents, fines certain, and heriots, or money payments in lieu of heriots, are to continue payable; but beyond the apportionment of the rents, fines, and heriots, the enfranchisement of part of the land does not affect any custom by or under which the remainder of the land comprised in the grant is held (*n*).

Enfranchisement under the compulsory provisions of the Copyhold Acts.

If recourse is had to the compulsory provisions of the Copyhold Acts to effect an enfranchisement of land held of a manor belonging either in possession or reversion to an ecclesiastical corporation as above defined (*o*), notice of the proceedings must be given to the Ecclesiastical Commissioners so that they may express their assent or dissent (*p*). In the event of the Commissioners dissenting, the Board of Agriculture will suspend the proceedings until they are satisfied that the proposed enfranchisement is not open to objection (*q*); but otherwise the proceedings will follow the course of ordinary compulsory enfranchisements. If, however, it appears to the Board of Agriculture

(*l*) *Ibid.* ss. 37, 38.
(*m*) *Ibid.* s. 39.
(*n*) 14 & 15 Vict. c. 104, s. 2; 17 & 18 Vict. c. 116, s. 2; 23 & 24 Vict. c. 124, s. 28.
(*o*) *Ante*, p. 429.
(*p*) 21 & 22 Vict. c. 94, s. 19.
(*q*) See 4 & 5 Vict. c. 35, s. 56.

that the enfranchisement is one which might have been made under the Episcopal and Capitular Estates Act, 1851 (and which in that case would have required the consent of the Church Estates Commissioners), the consideration must be paid and applied as if the enfranchisement had been effected under that Act, and the enfranchisement is to be in all other respects as if it had been so made (*r*).

The Copyhold Act, 1858, further provides that, where any ecclesiastical corporation or the Ecclesiastical Commissioners have only a reversionary interest in the manorial rights extinguished by enfranchisement, the consideration for the enfranchisement shall be dealt in the manner directed by sect. 39 of the Copyhold Act, 1852, with respect to consideration money payable to a limited owner (*s*), until the time when the reversionary interest in the manorial rights would have come into possession if it had not been extinguished (*t*). Thereupon the enfranchisement consideration, or the securities in which it may have been invested, will, upon application (*u*) to a judge of the Chancery Division, be paid or transferred to the Church Estates Commissioners, who are to be considered as the parties absolutely entitled to such money, and they are to deal with it as if they had become entitled to it through an enfranchisement effected under the Episcopal and Capitular Estates Act, 1851 (*x*).

Enfranchisements under the Universities and College Estates Acts.

By the Universities and College Estates Acts, 1858 to 1880 (*z*), the universities of Oxford, Cambridge, and

(*r*) 21 & 22 Vict. c. 94, s. 5.

(*s*) *Ante*, p. 403.

(*t*) Sect. 5.

(*u*) The Copyhold Act, 1858, s. 5, provides that the application is to be by petition; but under the R. S. C. Ord. LV. r. 2 (11), and the Supreme Court Funds Rules, 1886, applications under the Copyhold Acts respecting any securities or money in Court may be by summons at chambers.

(*x*) 21 & 22 Vict. c. 94, s. 5.

(*z*) 21 & 22 Vict. c. 44; 23 & 24 Vict. c. 59; 43 & 44 Vict. c. 46.

Durham, and any colleges therein, Christ Church being deemed for this purpose a college of the University of Oxford (*a*), and the colleges of Winchester and Eton are empowered, with the consent of the Board of Agriculture, to enfranchise any copyholds or customary lands held of any manor belonging to them (*b*), whether the manor forms part of the general property of the university or college or is vested in it upon trust or for some special endowment (*c*). But these Acts do not extend to the enfranchisement of land held for a life or lives, or for a term depending on a life or lives, or for a lease at a rack-rent having more than seven years to run, unless the tenant has a right of renewal (*d*).

Before the consent of the Board of Agriculture can be obtained, they must be furnished with a report by the university or college surveyor giving details of the proposed enfranchisement. If this is not sufficient, the Board may require a valuation to be made by an independent surveyor to be named by them, and may call for a plan of the lands (*e*). On being satisfied of the propriety of the enfranchisement, the Board will issue an order in the form provided in the schedule to the Universities and College Estates Act, 1858, authorising the university or college to carry out the transaction (*f*). Where the report of the university or college surveyor contains a valuation of the lands, it has to be stamped as an appraisement before the Board issue their order (*g*).

The enfranchisement will be effected by a deed executed by the university or college, but the Board do not require to be made parties to it, their consent being evidenced by the issue of their order (*h*).

The enfranchisement compensation has to be paid into the Bank of England to an account entitled The Account

(*a*) 21 & 22 Vict. c. 44, s. 31.
(*b*) *Ibid.* s. 1.
(*c*) *Ibid.* s. 29.
(*d*) *Ibid.* s. 1.
(*e*) *Ibid.* s. 2.
(*f*) *Ibid.* s. 3.
(*g*) 31 & 32 Vict. c. 89, s. 2.
(*h*) 21 & 22 Vict. c. 44, s. 2.

of the Board of Agriculture *Ex parte* the particular university or college; and the receipt of the Board for the amount so paid is a complete discharge (*i*).

The Universities and College Estates Act, 1858, provides that the money may be applied in payment of an equality for any exchange made by the university or college, or with the consent of the Board of Agriculture may be laid out in the purchase of other lands in fee simple or of leasehold tenure; but in the case of leaseholds, the term must have 500 years to run from the date of the purchase, the rent must be nominal, and the lands must be contiguous to or convenient to be held with other lands belonging to the university or college (*k*). Under the provisions of the Universities and College Estates Amendment Act, 1880, the money may be applied with the consent of the Board of Agriculture, as evidenced by an order under their seal to the effect set forth in the schedule to that Act, in the repayment of any money borrowed under any of the Universities and College Estates Acts, or to any of the purposes in which money so borrowed may be applied under those Acts (*l*). If the money is applied in repayment of a loan, it must be replaced before or at the expiration of the period when the loan is to be repaid, and upon such terms as the Board may specify in their order (*m*). All moneys not applied for any of the purposes above mentioned have to be invested by and in the name of the Board in the purchase of Government stocks, funds, and securities in trust for the university or college (*n*).

In the case of a manor which has been granted by the university or college on a lease for a life or lives or for a term of years, the university or college and the lessee are jointly the lords for the purposes of enfranchisement (*o*),

(*i*) 21 & 22 Vict. c. 44, s. 1.

(*k*) *Ibid.*

(*l*) 43 & 44 Vict. c. 46, s. 2, sub-s. (1) and (3), and sect. 4. See *Ex parte King's College, Cambridge*, (1891), 1 Ch. 333, 677.

(*m*) 43 & 44 Vict. c. 46, s. 2, sub-s. (2).

(*n*) 21 & 22 Vict. c. 44, s. 1.

(*o*) 23 & 24 Vict. c. 59, s. 4.

the lessee, or his executors or administrators, if entitled in possession at the date of the enfranchisement to the profits of the manor, being however empowered to give a valid receipt for the compensation money (*p*). But the amount has at the option of the lords to be paid either into Court, in accordance with the provisions of sect. 39 of the Copyhold Act, 1852, or to trustees to be appointed by the Board, as provided by sect. 16 of the Copyhold Act, 1858, in either case to be dealt with, after due notice to the university or college, as enfranchisement consideration money payable to a limited owner under the Copyhold Acts (*q*), until the time when the reversionary interest of the university or college in the manorial rights would have come into possession if it had not been extinguished. Thereupon the money will, on application to the Court or to the trustees, be paid to the Board of Agriculture to be applied in the manner provided by the Universities and College Estates Acts (*r*). If the compensation is secured by a rent-charge created under the provisions of the Copyhold Acts, the charge will be in favour of the lessee, and if it is redeemed he will be able to give a receipt for the redemption money, but the amount will have to be paid and applied in the manner already mentioned (*s*).

Other Statutory Enfranchisements.

Land Tax Redemption Acts.

By the Acts for the redemption of the land-tax, limited owners are empowered, with the sanction of a judge of the Chancery Division, to enfranchise copyholds for the purpose of discharging their estates from the tax, and for the same purpose to dispose of any heriots, rents, or other payments due to them out of freehold or copyhold manors or lands (*t*). These Acts also render it lawful for corporations, with the consent of the Treasury (*u*), and for trustees of charities to sell their interest in any copyhold or customary

(*p*) 50 & 51 Vict. c. 73, s. 46.
(*q*) *Ante*, p. 403.
(*r*) 23 & 23 Vict. c. 59, s. 4.
(*s*) 50 & 51 Vict. c. 73, s. 46.
(*t*) 42 Geo. III. c. 116, ss. 60, 71.
(*u*) *Ibid.* s. 76; 1 & 2 Vict. c. 58.

lands or in any manorial rights for the same purpose, and for the purpose of such sale to enfranchise any lands held by copy of court-roll or other customary tenure by a deed indented and enrolled or registered in the manner provided by sect. 119 of the Land Tax Redemption Act, 1812 (*x*).

There are many special provisions in these Acts respecting enfranchisements for the purpose of providing funds for purchase of land-tax, which are too lengthy to be set out here in detail (*y*).

Church Building Acts.

Under the Church Building Acts, 1818 to 1884, all limited owners and bodies corporate and collegiate are enabled to enfranchise and convey to the Ecclesiastical Commissioners any land of copyhold or customary tenure sold or required for the purposes of these Acts (*z*). Upon payment or tender of the compensation agreed upon or assessed, the Ecclesiastical Commissioners may enter upon and take possession of the lands, and the fee simple and inheritance thereof will thereupon vest in them (*a*).

Poor Law Acts.

When a contract has been entered into for a conveyance of land of copyhold or customary tenure for the purposes of the Poor Law Acts (*b*), the Local Government Board may direct the difference in value between the copyhold estate in the land and the fee simple, including therein the value of any fine, heriot, or customary service due in respect of the land, to be ascertained by such means as they think fit. When the amount of the difference has been ascertained and paid or invested to or for the use or benefit of the lord, the land is to be deemed enfranchised and discharged from all customary fines and services (*c*). If the lord is dissatisfied with the sum, he may, within seven days after the Local Government Board have tendered or offered to pay him the amount, intimate to them

(*x*) 42 Geo. III. c. 116, s. 70.

(*y*) See 53 Geo. III. cc. 123, 142; 54 Geo. III. c. 173; 57 Geo. III. c. 100; 1 & 2 Vict. c. 58; 16 & 17 Vict. c. 74.

(*z*) 58 Geo. III. c. 45, ss. 36, 39.

(*a*) *Ibid.* s. 43.

(*b*) 4 & 5 Will. IV. c. 76; 5 & 6 Will. IV. c. 69; 1 Vict. c. 50.

(*c*) 1 Vict. c. 50, s. 2.

his dissent; and the Board may thereupon direct a further valuation to be made by two valuers, one to be appointed by them and the other by the lord. These valuers must appoint a third valuer before entering on their duties, and the decision of the three valuers or of any two of them is to be conclusive (*d*). Thereupon the Board will issue a certificate under their seal setting forth that the valuation has been made and that the enfranchisement has been effected, and will direct the steward to enrol the certificate on the court-rolls and to furnish a copy of the entry on parchment certified by him to be a true copy (*e*).

Literary and Scientific Institutions Act.

The Literary and Scientific Institutions Act, 1854, enables any person seised of copyholds, and having the beneficial interest therein, to enfranchise and convey by way of gift, sale, or exchange any portion of the land not exceeding one acre for the establishment of an institution of the character described in the Act; but if he is seised of an estate for life only, he must have the consent of the person next entitled in remainder in fee simple or fee tail if he is legally competent to join in the grant (*f*). The Act also provides that any deed by which the copyholder and the lord shall grant and convey their respective interests shall be deemed to be valid and sufficient to vest the freehold interest in the grantee without any surrender or admittance in the lord's Court, but that the fees (if any) due by the custom of the manor on enfranchisement must be paid to the steward (*g*).

School Sites Acts.

The provisions of the School Sites Acts as to the enfranchisement of land taken as a site for a school have already been noticed (*h*). By the Consecration of Churchyards Act, 1867, these provisions were extended so as to allow of grants in fee of lands of copyhold or customary tenure for the enlargement of churchyards and burial places (*i*).

(*d*) *Ibid.*
(*e*) *Ibid.* s. 3.
(*f*) 17 & 18 Vict. c. 112, s. 1.
(*g*) *Ibid.* s. 15.
(*h*) *Ante*, p. 105.
(*i*) 30 & 31 Vict. c. 133, s. 4.

Powers of the Board of Agriculture.

The powers of the Board of Agriculture with respect to the proceedings for an enfranchisement or a commutation of manorial rights and for the regulation or inclosure of commons have already been mentioned in some detail, and the Board have various incidental powers under the Copyhold and Inclosure Acts, which it may also be useful to notice.

Board may hear and determine disputes.

If any action is depending or any question or difference arises touching the right to any fines or other manorial payments or incidents, except mines and minerals, or regarding the amount of any fine or other manorial payment, the Board, or any officer whom they may assign for the purpose, may, under the provisions of the Copyhold Act, 1841, appoint a time and place in or near the manor in question, and hold a meeting for the purpose of hearing and determining the matter in dispute. The decision of the Board or their officer binds all persons interested, to whom twenty days' notice of the meeting has been given. The notice may be served personally, or delivered at the last place of abode of the person to be affected by it, or left with the occupying tenant of the land to which the meeting relates. If the tenant does not forthwith send the notice by post or otherwise to the person for whom it was left, he will be liable to a penalty of not less than £5 or more than £20, and to make good all loss occasioned by his default (*k*). Any one having an interest in the land who is dissatisfied with the decision may, if the yearly value of the payment thereby directed to be made or withheld exceeds the sum of £20, within three months after the decision has been notified in writing to the parties interested, bring an action against the person in whose favour the decision has been made, and have the right which is disputed settled by the trial of an issue in the

(*k*) 4 & 5 Vict. c. 35, s. 39.

High Court; but if the decision involves a point of law only, a case may, on the application of the person dissatisfied, be stated by the Board for the opinion of the Court (*l*). So far as any such decision of the Board or their officer either directly or indirectly affects any right to mines or minerals, it is to that extent of no force or effect (*m*).

Before holding any such meeting as is above mentioned, the Board may require security to be given to them for the payment of all costs which they may incur in the matter, including all the expenses of their officer's attendance (*n*).

Reference to arbitration.

The Copyhold Act, 1841, also provides that any pending actions or differences touching the title to or the amount of any fines, heriots, or manorial rights, or relating to the situation or boundary of any manor or lands (*o*), and any difficulties arising to hinder a voluntary enfranchisement, may be referred by the parties interested to the decision of an arbitrator; but in the case of an owner having an estate less an immediate estate of fee-simple or fee-tail, or corresponding copyhold estate, the reference will not bind the persons entitled in remainder, reversion, or expectancy without the consent of the Board of Agriculture; and the Board may, if they think fit, direct any person so entitled to be made a party to the reference. The decision of the arbitrator is final and conclusive, and if he is appointed for the purpose of determining any unknown or disputed boundary of any manor or lands, he is entitled to exercise all the powers of a referee under the Act, 2 and 3 Will. IV. c. 80, for identifying the possession of ecclesiastical and collegiate corporations (*p*).

Vacancy in office of trustee.

If any trustee, who has been nominated by the Board under the provisions of the Copyhold Acts, desires to resign

(*l*) *Ibid.* s. 40.

(*m*) *Ibid.* s. 39.

(*n*) 31 & 32 Vict. c. 89, s. 1.

(*o*) See sect. 42 of the Copyhold Act, 1887, as to the power of the Board to determine the boundaries of any land for the purpose of enfranchisement, *ante*, p. 391.

(*p*) 4 & 5 Vict. c. 35, s. 21.

or becomes incapable of acting, the Board may supply the vacancy thence arising by the appointment of some other suitable person as they may think fit (*q*).

Forms.

The Board are empowered to frame, print, and circulate all such instruments as they may judge necessary for furthering the purposes of the Copyhold Acts (*r*); and they may delegate their powers to any of their officers, excepting the power of confirming agreements or awards or of framing such instruments as may be necessary for carrying out the provisions of the Acts, and excepting the right to do any act which requires to be done under the seal of the Board (*s*).

Delegation of powers.

Costs of the Board on the taxation of enfranchisement expenses.

Where any dispute as to the expenses incidental to an enfranchisement or as to the compensation to be paid to the steward is referred to the Board for their certificate, all costs which the Board may incur in the matter are to be paid to them as they may by order under their seal direct. If any person, liable under the order, delays to make payment of the sum declared to be due by him, the Board may recover the amount with costs in any county-court, their order being conclusive evidence of the debt (*t*).

Production of documents relating to inclosure.

Where an inclosure has been authorised by Parliament and a valuer has been appointed, the Board may at any time by order under their seal require the valuer or any person having the charge or possession of any valuation, plan, report, award, or other document relating to the inclosure, to deliver to them such valuation or other document. On default of delivery they may summon the valuer or other person before the county-court judge within whose district the land, or any part thereof, is situated; and upon production of the Board's order the judge is to enforce it at the expense of the person neglecting in the same manner as he can compel the production of papers and documents before himself (*u*).

(*q*) 7 & 8 Vict. c. 55, s. 6.
(*r*) 4 & 5 Vict. s. 35, s. 20.
(*s*) *Ibid.* s. 10.
(*t*) 31 & 32 Vict. c. 89, s. 3.
(*u*) *Ibid.* s. 4.

Where any such order as is above-mentioned has been made by the Board, or where any valuer has been removed under the provisions of the Inclosure Acts, the Board may, on the application of the valuer or surveyor or his representatives, take such steps as they may think necessary to ascertain the progress which has been made towards the completion of the inclosure, and they may determine and award a sum to be paid to the valuer or surveyor or his representatives. The sum so awarded, together with all costs incurred by the Board in its ascertainment, forms a charge on the landowners and is to be deemed as a part of the expenses of the inclosure to be raised and defrayed in the same manner as the other expenses (*x*). Board may allow proportionate payment to valuer.

The Board are also empowered to prepare from time to time, with the approval of the Treasury, and to publish in the *London Gazette* tables of the fees to be taken by them in respect of the business transacted under the Acts which are administered by them (*y*). Table of fees.

(*x*) *Ibid.* s. 5.

(*y*) *Ibid.* s. 6. A table of the fees authorised to be taken in respect of transactions under the Copyhold and Inclosure Acts will be found in the Appendix.

APPENDICES.

APPENDIX I.

Instructions for effecting Exchanges and Partitions of Land, and Divisions of Intermixed Lands, under the Inclosure Acts. (Issued by the Board of Agriculture.)

1. The Board of Agriculture are empowered by various Acts to effect exchanges and partitions of land, and divisions of intermixed lands in England and Wales.

Object of exchange powers.

The exchange powers in these Acts are to enable landowners, whether limited or absolute owners, to avoid the necessity and expense of investigating the titles of the lands exchanged; the leading principles being that the lands exchanged shall be of equal value, and that the land received in exchange shall be held under the same title, and subject to the same uses, trusts, and liabilities as was the land given in exchange. Upon the confirmation of an order of exchange, therefore, the land received becomes clothed with the title and subject to all the liabilities of the land given up, with certain exceptions referred to below, paragraph 18.

Partition powers.

2. The partition powers are to enable the Board, on the application of the persons owning not less than two-thirds of the interests, to divide lands held in undivided shares amongst the several owners in proportion to their interests.

Division of intermixed lands.

3. The powers relating to the division of intermixed lands are to enable the Board, on the application of all the persons separately interested, to divide or apportion lands, which are so intermixed or divided into inconvenient parcels that they cannot be cultivated or occupied to the best advantage, into convenient parcels amongst the several owners.

Combined exchange and partition.

4. A combined exchange and partition may be effected where persons own the entirety of some of the land, and undivided shares in other land or subject matter of exchange.

Informal exchanges may be legalised.

5. An exchange, partition, or division of intermixed lands agreed to be made but not legally completed, may, where the parties are in possession under the agreement, be legally completed.

What can be exchanged or partitioned.

6. For the purposes of the Acts the word "land" includes incorporeal as well as corporeal hereditaments, and any undivided share thereof. The Acts authorise the exchange or partition of freehold land, of copyhold or customary land, of glebe land, of undivided shares in land, of cattle gates, of land held by the same person under different titles, and also of rights of common, rights of fishing, manorial and other rights, and all easements over land, quit-rents, chief rents, heriots, tithes, and rent-charges; and where land has been allotted under any Inclosure Act or award for any public or parochial purpose, but is no longer convenient or suitable for the purpose for which the allotment was set out, it may be exchanged for other land which is more convenient and suitable for the purpose. Crown lands, and lands belonging to railway and other companies, may also be exchanged.

Mines and minerals, rights of way, and easements may be reserved.

7. Mines and minerals, and also rights of way and other easements, may be reserved.

Exchange of copyhold lands.

8. The consent of the lord of the manor is necessary to the exchange of copyhold and customary land. On the exchange of copyhold or customary land for freehold land the copyhold land becomes freehold, and the freehold land copyhold, without any new admittance; and copyhold lands may, with the consent of the lord of the manor, be declared freehold. The steward of the manor may signify that the lord has consented.

Exchange of glebe lands.

9. The consent of the bishop of the diocese and of the patron of the living are necessary to the exchange of glebe land.

Who can apply for an exchange.

10. As a general rule the persons who can make application for an exchange are those who are in actual possession or receipt of the rents and profits of the lands.

But this rule is subject to the following exceptions:—

(i.) Lessees for lives or years at a rent of two-thirds the clear yearly value or upwards, or lessees for a term not originally exceeding 14 years, or tenants from year to year or at will cannot apply: but the persons entitled in reversion immediately expectant are the persons to apply; and in such cases there will be no shifting over of the interests of the tenants or lessees, who will occupy the same lands after the exchange as before.

(ii.) Where land is held on lease for lives, or for a term of years originally exceeding 14, at a rent of less than two-thirds the clear yearly value, the application must be made by the lessee and lessor jointly, the effect of the exchange being in such cases to shift over both the leasehold interest and the reversionary interest from the lands given up

to the lands received. Where, however, land has been leased for a term originally exceeding 100 years, and no rent or acknowledgment has been paid or given for 20 years, or the reversioner is unknown, the owner of such lease can alone apply for an exchange.

(iii.) Where a person is in possession or receipt under any sequestration, extent, elegit or other writ of execution, or as receiver under an order of the High Court of Justice, then such person, jointly with the person who otherwise would be in possession or receipt, are the persons to apply.

(iv.) Where the person interested is an infant, lunatic, idiot, or married woman, or under any other legal disability, or beyond the seas, the guardian, trustee, committee of the estate, husband, or attorney is the person to apply; but in the case of property belonging to a married woman, the practice is to require the consent of both husband and wife. Where, however, a married woman is to be deemed a *feme sole* within the Married Women's Property Act, 1882, as regards lands belonging to her proposed to be exchanged, she is not under the disability of coverture as regards such lands, but may herself alone apply.

Who can apply for partition or division.

11. The same provisions apply generally to applicants for partition and division, but in a partition lessees need not join and cannot dissent; and where the lands are held under one entire rent, such rent is to be apportioned.

The application.

12. Printed forms of application may be obtained from the office of the Board of Agriculture, No. 3, St. James's Square, London, and in all cases the application should be submitted in draft to the Board prior to its execution by the persons interested, together with the plan and valuation. It should not be executed until approved by the Board and all necessary amendments have been made.

When the lands to be exchanged form part of an estate, it is desirable, for the purposes of identification from the advertisements, that the name of the estate should be given; for the same reason, in the exchange of cottages, gardens, or pieces of land not known by particular names, the occupiers' names should be stated.

When lands are in more than one parish, the lands of each parish must be kept distinct.

Lands held under different titles.

13. Every parcel held under a different title, or for a different estate, or subject to separate charges, as well as the land for which such parcel is to be exchanged, must be sepa-

rately entered in the application, and the respective values of each must in the valuation be shown to be equal. Particular attention is called to this requisition, which is of great importance to the exchanging parties, with reference to future dealings with the land, since, as the titles and incumbrances are shifted by operation of the exchange from the lands given up to those received, unless the lands held under different titles, or subject to separate incumbrances, and the equivalent for them, be kept distinct, a landowner might after an exchange find himself possessed of land to which several titles attached, without being able to distinguish the lands held under each. The subdivision may be made thus in the schedule of the application :—

FIRST SCHEDULE.					SECOND SCHEDULE.			
Description.	Extent.	"Estate."	"Tenure."		Description.	Extent.	"Estate."	"Tenure."
PART 1.	A. R. P.				PART 1.	A. R. P.		
Whiteacre	1 0 0	Tenant for life.	Freehold	In exchange for	Blackacre	1 0 30	Fee simple	Freehold.
PART 2.					PART 2.			
Longlands	2 0 0	Fee simple	Freehold	In exchange for	Hopley	1 2 1	Inheritance.	Copyhold of the manor of ——.

Valuation by a competent valuer necessary.

14. The leading principle of an exchange being that the lands on each side shall be of equal value, it is necessary that they should be valued by a competent valuer.

The name and residence of the valuer proposed to be employed should be submitted to the Board for approval before the valuation is undertaken. The valuer selected must be competent and trustworthy, and not the agent of or connected with either of the parties exchanging, and if he has not acted in a similar capacity in any previous exchange, it will save time if, when submitting his name, the names and addresses be also given of two gentlemen who are competent to testify to his trustworthiness and ability as a valuer.

There is no objection to a joint valuation made by two valuers acting for the two parties, where the applicants so desire.

In exchanges of glebe for other lands it would probably facilitate the obtaining the consent of the bishop if his approval were given to the selection of the valuer.

What the valuation should contain.

15. The Board do not issue a form of valuation, but the valuation should be written on separate paper the same size

as the printed form of application, and, subject to circumstances, as in the case of building land, it must show:—

(i) The annual rentable value of each separate field or other hereditament.
(ii) The fee simple value of the property.
(iii) The number of years' purchase by which such fee simple value is arrived at.
(iv) The nature of the soil and buildings thereon, and state of repair.
(v) The value of the timber, if there be any.
(vi) The outgoings, if any:—see paragraphs 17 and 18.
(vii) The objects of the exchange, and the particular circumstances which render it desirable.
(viii) A certificate to the following effect must also be added:—

> I hereby certify that I am not the agent of or connected with either of the parties to this exchange; and having personally examined on the ground, and valued the lands and hereditaments proposed to be exchanged, I further certify that the map correctly represents the present state of the lands, and that after the best inquiry I can make, I believe the applicants to be respectively in possession or receipt of the rents and profits of the same, and that the proposed exchange is just and reasonable, and will be mutually beneficial to the parties interested.

[This certificate must be signed by the valuer who actually made the valuation, and not by the firm of which he may be a member.]

Reasons for variations in value.

16. In the event of the number of years' purchase or the value per acre of any portion of the lands differing from that of any other portions, or from the number of years' purchase usually adopted in the district in estimating the value of similar property, the reasons for such deviation must be given; and if the land possesses any special or accommodation value to the estate to which it will be attached, the particulars should be stated.

Outgoings.

17. The valuer should ascertain the several charges and outgoings, such as tithe rentcharge, land tax, chief rents, &c., and should specify them in the valuation; and he should also expressly state whether the calculations have been made subject to such charges being paid by the owner or the occupier.

In valuing tithe rentcharge as a deduction, it should not exceed twenty-five years' purchase, which is the rate fixed by the Tithe Acts for compulsory redemption.

When the lands dealt with, or any of them, are not charged

with separate tithe rentcharges, but are liable in common with other lands, the valuer should estimate and state the sum or sums which on an apportionment would be fairly chargeable on the lands dealt with, and he should also say whether the parties desire to have the amounts so stated legally fixed on the lands by means of an altered apportionment. No subdivision of tithe rentcharge in an altered apportionment can be less than 5*s*., but two or more parcels may be braced together to a charge of not less than 5*s*., where they are separately too small to bear that amount [see "Instructions for altered apportionments," issued by the Board of Agriculture (Tithe Department)].

Charges which do not shift over.

18. Special attention is called to the charges which do not shift over on an exchange under the Inclosure Acts, but remain charged upon the same lands as were previously liable, and which therefore require to be stated and deducted; such as land tax, tithe rentcharges, chief or quit rents on freehold lands, drainage or improvement rentcharges, and the rates levied by Drainage Commissioners.

Quitrents on copyhold or customary lands do shift over, and therefore are not to be deducted.

Equality of exchange.

19. Should the value in money of the respective lands or hereditaments given or taken in exchange not be equal, the circumstances and peculiarities must be stated which are assumed to counterbalance such inequality.

There is no power to authorise a payment of money for equality of exchange or partition. The only provision for compensating a deficiency is by the creation of a perpetual rentcharge, to be charged on the land of greater value, or a sufficient part of it, in favour of that of less value, but such a rentcharge can only be created where the deficiency which requires to be compensated does not exceed one-eighth of the value of the lands which are deficient. It is found, however, that such rentcharges are often inconvenient in practice, and the Board recommend that, when possible, equality should be obtained either by adding land on one side or withdrawing a portion on the other.

Valuation of copyhold land.

20. In the exchange of copyhold land for freehold, the effect of which is to shift all the copyhold incidents from the land theretofore copyhold and attach them to the land which by the exchange becomes copyhold, it is obvious that to value one side as copyhold and the other as freehold would not afford a fair basis for comparison of values; both sides must therefore be valued as if they were freehold, and the valuer in such cases must distinctly state that he has done this.

New boundary fences.

21. It should be stated in the valuation by whom new boundary fences, if any, are to be made and maintained.

22. The valuation must bear appraisement stamps of an amount calculated according to the following scale on the fee-simple value of each side of the exchange separately :— Stamp on valuation.

	£	s.	d.		£	s.	d.		£	s.	d.
Not above 5*l.* ..	0	0	3	Not above 40*l.* ..	0	2	0	Not above 200*l.*..	0	10	0
,, 10*l.* ..	0	0	6	,, 50*l.* ..	0	2	6	,, 500*l.*..	0	15	0
,, 20*l.* ..	0	1	0	,, 100*l.* ..	0	5	0	Above 500*l.*..	1	0	0
,, 30*l.* ..	0	1	6								

The total duty may, however, be expressed by one stamp, which must be impressed within fourteen days of the date of the valuation; but as the valuation may require alteration, it is desirable that it should in the first instance be sent to the office as a draft, without date or signature.

23. An exchange will generally be facilitated and expense saved by using, if published, the ordnance map, the sheets of which can be obtained at very small cost. Otherwise the map which accompanies the application should be on tracing cloth, and may be a copy from any good tithe map, or from any other map of sufficient accuracy for estate purposes, of which the Board must be satisfied. When the exchange is of town property the map should be on a sufficiently large scale to show all details clearly. The map must be revised, if necessary, to represent the present state of the lands dealt with, and the names of the owners of the immediately adjacent lands must be written on it. A scale and meridian line must be drawn upon the map, and the lands in the first schedule should be edged with red, those in the second schedule with green. The map.

When the parcels are small or detached, sufficient surrounding details, or other well defined landmarks, must be given on the map to admit of the certain identification on the ground of the lands proposed to be exchanged.

When portions only of fields are to be dealt with, the entire fields should be drawn upon the map, and the new boundaries should be fixed by distances given in figures, from actual measurements taken on the ground from the adjacent angles of the fields or other existing points. The new boundaries should also be marked out upon the ground.

24. On receipt of the application, plan, and valuation, by the Board, they are examined and tested, and any remarks or requisitions which may arise are sent for replies, and when these are satisfactory, and the application and plan are finally settled, the application is sent to be fair-copied and signed by the parties interested. Mode of procedure.

25. The application having been signed and returned to the office is finally approved, and the exchange, partition, or Advertisement.

division, as required by the Inclosure Acts, is advertised in a local newspaper for three successive weeks. The Acts require that three months shall elapse after the last advertisement before the order of exchange, &c., can be issued.

Objections.

26. Any person having an estate in or charge on the land is, during these three months, entitled to dissent from the exchange, partition, or division, and such dissent, until removed, is a bar to further proceedings in the matter.

The order of exchange.

27. When the three months have expired, and if no notice of dissent has been received, the Board prepare a draft of the proposed order of exchange, partition, or division, and the necessary plans, which are sent for the approval of the parties, with a note of the costs incurred. On the return of the draft order and map approved, and payment of costs, the order of exchange, &c., is engrossed and confirmed by the Board. The original order is deposited in the office of the Board of Agriculture, and copies are furnished to the parties to the exchange, partition, or division, or their authorised agents.

Order of exchange conclusive, but errors may be corrected by the Board.

28. An order of exchange, partition, or division operates without any further deed, or any transfer of title deeds, and the order is conclusive evidence that all the directions of the Acts have been complied with. But any fraudulent or other error, or omission, may be corrected by the Board.

Fees and expenses of Board of Agriculture.

29. The fees to be taken on exchanges, partitions, and divisions are on the following scale:—

	£	*s.*	*d.*
On an order of exchange, partition, or division, where the aggregate value of the land or other property dealt with does not exceed 100*l.*	1	0	0
Where the aggregate value exceeds 100*l.* and does not exceed 200*l.*	2	0	0
For every further 100*l.* or fraction of 100*l.* not exceeding 5,000*l.*	0	5	0
For every 100*l.* or fraction of 100*l.* exceeding 5,000*l.*	0	2	6
But in no case shall the fee exceed 50*l.*			
On the amendment of any confirmed order	2	0	0

The expenses incurred by the Board are payable by the parties in addition to the fee, and comprise cost of advertising, of preparing plans to be attached to the order, of engrossing the order, and of Inland Revenue stamps.

Valuer's charges.

30. The valuer's charges are paid by the parties direct, and the Board strongly recommend that an arrangement should be made with the valuer as to his remuneration before his valuation is undertaken.

31. Exchanges, &c., can be carried through by means of correspondence, without the necessity of employing a London agent, and, if proper arrangements are made, at moderate cost. The Board are at all times ready to afford information with a view to facilitating the proceedings.

Board of Agriculture,

3, St. James's Square, London, S.W.

Application for Exchange.

N.B.—Every application for an exchange should, in the first instance, be sent up unsigned, and a map and valuation should accompany it. The only exception to the latter requirement is where there is a doubt whether the exchange can be carried out, in which case the Board will be ready to consider the circumstances before the parties go to the expense of a valuation.

When sending up the draft application for the first time, be good enough to give the dates of any previous correspondence which may have passed with the Board on the subject.

To the Board of Agriculture.

We, the undersigned, ——— of ———, in the county of ———, and ——— of ———, in the county of ———, being the persons interested respectively, under the provisions of the Inclosure Acts, 1845 to 1882, in the lands and hereditaments hereinafter mentioned, with the easements and appurtenances thereunto belonging, and being desirous of effecting an exchange, as hereinafter mentioned, hereby apply to you to direct enquiries whether such proposed exchange would be beneficial to the owners of such respective lands and hereditaments, and in case you should be of opinion that such exchange would be beneficial, and that the terms thereof are just and reasonable, to proceed with the same under the provisions of the said Acts.

LAND and HEREDITAMENTS in which the above-named ——— is interested, situate in the ———(*a*), in the county of ———,

---

(*a*) Parish, or township and parish.

and proposed to be exchanged for the lands and hereditaments hereinafter specified (*b*).

No. on Map annexed.	No. on Tithe Map.	Description.	Extent.			Estate of Person interested; whether in fee simple, fee tail, for life, or how otherwise.	Tenure; whether Freehold, Copyhold, or how otherwise.
			A.	R.	P.		

NOTE.—If the lands to be exchanged form part of an estate, it is desirable, for the sake of identity, that this should be stated; for the same reason, in the exchange of cottages, gardens or pieces of land not known by particular names, the occupiers' names should be given. When lands are in more than one parish, the lands of each parish must be kept distinct.

Every parcel held under a different title, or for a different estate, as well as the land for which such parcel is exchanged, must be separately entered in the application, and the respective values of each must be shown to be equal in the valuation.

Witness our hands to the foregoing application this ——— day of ———, in the year of our Lord one thousand eight hundred and ———.

[The consents of the bishop of the diocese, and the patron of the benefice, being necessary where lands are held in right of any church, chapel, or other ecclesiastical benefice, should be given as follows]

We, the undersigned, ———, lord bishop of the diocese of ———, and ———, of ———, in the county of ———, patron of the benefice hereinbefore mentioned, do hereby consent to the foregoing application.

(Signed)

[The consent of the lord of the manor, being necessary to the exchange of copyhold or customary land, should be given as follows]

I, the undersigned ———, of ———, in the county of ———, lord of the manor of ——— aforesaid, do hereby consent to the foregoing application.

(Signed)

(*b*) There will be two schedules of this description in the application.

Application for Partition.

It is desirable that applications for partition should be perused and approved by the Board before being executed.

When sending up the draft application for the first time, be good enough to give the dates of any previous correspondence which may have passed with the Board on the subject.

To the Board of Agriculture.

I, the undersigned ———, of———, in the county of———, being the person interested under the provisions of the Inclosure Acts, 1845 to 1882, in ——— undivided ——— parts or shares in the lands and hereditaments hereinafter mentioned, and I, the undersigned ———, of ———, being the person interested under the provisions of the said Acts in the remaining ——— undivided ——— part or share in the same lands and hereditaments, and being desirous of effecting a partition, as hereinafter mentioned, hereby apply to you to direct enquiries whether such proposed partition would be beneficial to the respective owners of such undivided parts; and, in case you should be of opinion that such partition would be beneficial, and the terms thereof just and reasonable, to proceed with the same under the provisions of the said Acts.

Lands (*a*) and Hereditaments proposed to be allotted in severalty to the above-named ———, situate in the parish of ———, in the county of ———, in respect of his ——— undivided ——— parts or shares in such lands and hereditaments, and in the lands and hereditaments proposed to be allotted in severalty to the said—

No. on Map annexed.	Tithe Map No. on which Tithes commuted.	Description.	Extent.			Estate of Person interested; whether in fee simple, fee tail, for life, or how otherwise.	Tenure; whether Freehold, Copyhold, or how otherwise.
			A.	R.	P.		

Witness our hands to the foregoing application this ——— day of ———, in the year of our Lord one thousand eight hundred and ———.

(*a*) There will be two schedules of this description in the application.

[The consent of the lord of the manor, being necessary to the partition of copyhold or customary land, should be given as follows]

I, the undersigned ———, of ———, in the county of ———, lord of the manor of ——— aforesaid, do hereby consent to the foregoing application.

(Signed)

Application for Division of Intermixed Lands.

(8 & 9 Vict. c. 118, s. 148.)

To the Board of Agriculture.

We, the undersigned, being separately interested, according to the provisions of the Inclosure Acts, 1845 to 1882, in the parcels of land set opposite our respective names in the first schedule hereunder written ———(*a*) and which are so ———(*b*) into parcels of ——— (*c*) that the same cannot be ———(*d*) to the best advantage, but which form together a tract which may be divided into convenient parcels, and being desirous to have the whole of such tract divided into convenient parcels, to be allotted as mentioned in the second schedule hereunder written, in lieu of the old parcels,

Hereby apply to you to direct an enquiry whether such proposed division and allotment would be beneficial to the owners of such lands, and in case you shall be of opinion that the proposed division and allotment would be beneficial, to proceed with the same under the provisions of the said Acts.

(*a*) Which are not subject to be inclosed under the said Act, *or* which are subject to be inclosed under the said Act, but as to which no proceedings for an inclosure are pending (as the case may be).

(*b*) Intermixed or divided, *or* intermixed and divided (as the case may be).

(*c*) Inconvenient form or inconvenient quantity, *or* inconvenient form and quantity (as the case may be).

(*d*) Cultivated or occupied, *or* cultivated and occupied (as the case may be).

The FIRST SCHEDULE above referred to.

Name, Residence, and Description of Person interested.	No. on Map A. annexed.	No. on Tithe Map.	Names of Parcels.	Extent.			Parish in which situate.	County.	Estate of Person interested; whether in fee simple, fee tail, for life, or how otherwise.	Tenure; whether Freehold, Copyhold, or how otherwise.
				A.	R.	P.				

The SECOND SCHEDULE above referred to.

Name, Residence, and Description of Person interested.	No. on Map B. annexed.	No. on Tithe Map.	Names of Parcels.	Extent.			Parish in which situate.	County.	Estate of Person interested; whether in fee simple, fee tail, for life, or how otherwise.	Tenure; whether Freehold, Copyhold, or how otherwise.
				A.	R.	P.				

Witness our hands to the foregoing application this ——— day of ———, in the year of our Lord one thousand eight hundred and ———.

[The consents of the bishop of the diocese, and patron of the benefice, being necessary where lands are held in right of any church, chapel, or other ecclesiastical benefice, should be given as follows]

We, the undersigned ———, lord bishop of the diocese of ———, and ——— of ———, in the county of ———, patron of the benefice hereinbefore mentioned, do hereby consent to the foregoing application.

(Signed)

[The consent of the lord of the manor, which is necessary in the case of copyhold or customary land should be given as follows]

I, the undersigned ———, of ———, in the county of ———, lord of the manor of ——— aforesaid, do hereby consent to the foregoing application.

(Signed)

APPENDIX II.

Information and directions as to the mode in which Applications for the Regulation or Inclosure of Commons under the Inclosure Acts, 1845 to 1882, are to be made to the Board of Agriculture; with explanations respecting the law relating to the Regulation and Inclosure of Commons.

References to the Commons Act, 1876.

1. Application may be made to the Board of Agriculture for a Provisional Order — Sect. 2.

(1.) For the regulation of a common; or
(2.) For the inclosure of a common; or
(3.) For the regulation of a part of a common, and the inclosure of the remainder: but in this case the application must be dealt with as if the respective parts were separate commons.

N.B.—Inclosure in severalty, as opposed to regulation, will not be sanctioned, unless it can be proved, to the satisfaction of the Board and of Parliament, that inclosure will be of benefit to the neighbourhood as well as to private interests, and to those who are legally interested in the common. — Preamble.

2. The persons making the application must represent at least one-third in value of the interests which are proposed to be affected by the Provisional Order. — Sect. 2.

In the case of a suburban common (see par. 7) the urban sanitary authority may, with the consent of persons representing one-third in value of the interests proposed to be affected, make application for the regulation of such common, with a view to the benefit of their town. — Sect. 8.

3. A Provisional Order for the regulation of a common may provide, generally or otherwise, for the "adjustment of rights," in respect of such common, and for the "improvement" of such common, or for either of such purposes. — Sect. 3.

The adjustment of rights in respect of a common comprises all or any of the following things: — Sect. 4.

(1.) As respects rights of common of pasture in a common, being waste land of a manor,—the determination of the persons by whom, the stock by which, and the times at which such common of pasture is to be exercised;

(2.) As respects rights of common of turbary, or taking of estovers, or taking gravel, stone, or otherwise interfering with the soil of the common, being waste land of a manor,—the determination of the persons by whom and the mode and place or places in which, and the times at which such rights are to be exercised; also, on compensation made to any person aggrieved, either by grant of a right of equal value, or with his consent in writing, in money,—the restriction, modification, or abolition of all or any of such rights which may permanently injure the common;

(3.) As respects rights of common in land which is not waste land of a manor,—the stinting or other determination of such rights, and the persons by whom, and the mode in which, and the times at which such rights are to be exercised; as also, on compensation made to any person aggrieved, either by grant of a right of equal value, or, with his consent in writing, in money,—the restriction, modification, or abolition of all or any of such rights which may be injurious to the general body of the commoners or to the proper cultivation of the land;

(4.) As respects any common, whether it is or is not waste land of a manor,—the determination of the rights and obligations of the lord of the manor, severalty owners, or other person or persons entitled to the soil of such common; as also, on compensation made to any person aggrieved, either by grant of a right of equal value, or, with his consent, in money,—the restriction, modification, or abolition of all or any of such rights; and in particular, in the case of severalty owners, of all or any of such rights which may be injurious to the general body of the severalty owners or to the proper cultivation of the land;

(5.) Generally as respects any common, whether it is or is not waste land of a manor,—the determination of any rights and settlement of any disputes relating to boundaries, rights in the soil or in the produce of the soil, or otherwise, whether arising between the commoners themselves, or between the commoners in relation to the lords of the manors, severalty owners, or other person or persons entitled to the soil of the common, which settlement may be conducive to the interests of all or any class of persons interested in the common.

Sect. 5. The improvement of a common comprises all or any of the following things; that is to say,

(1.) The draining, manuring, or levelling of the common;

(2.) The planting trees on parts of such common, or in any other way improving or adding to the beauty of the common;
(3.) The making or causing to be made bye-laws and regulations for the prevention of or protection from nuisances, or for keeping order on the common;
(4.) The general management of such common;
(5.) The appointment from time to time of conservators of the common for the purposes aforesaid.

4. A Provisional Order may be issued for the inclosure of a common in accordance with the provisions of the Inclosure Acts, 1845 to 1882; but the Commons Act, 1876, requires that special information shall be furnished to the Board as to the advantages the applicants anticipate from the inclosure of the common as compared with its regulation, and also as to the reasons why an inclosure is expedient when viewed in relation to the benefit of the neighbourhood (*a*). Sect. 6. Sect. 10, sub-sect. 4.

5. In any Provisional Order, such of the following terms and conditions for the benefit of the neighbourhood, as are applicable to each case, are required by the Commons Act, 1876, to be inserted; Sect. 7.
(1.) That free access is to be secured to any particular points of view;
(2.) That particular trees or objects of historical interest are to be preserved;
(3.) That there is to be reserved, where a recreation ground is not set out, a privilege of playing games or of enjoying other species of recreation at such times and in such manner and on such parts of the common as may be thought suitable, care being taken to cause the least possible injury to the persons interested in the common;
(4.) That carriage roads, bridle paths, and footpaths over such common are to be set out in such directions as appear most commodious;
(5.) That any other specified thing is to be done which may be thought equitable and expedient, regard being had to the benefit of the neighbourhood.

6. Before an application is made to the Board, the applicants must, in every case, publish, in the form approved by the Board (*b*), an advertisement in the newspaper or newspapers having the largest circulation in the neighbourhood of the common, giving notice of their intention to apply to the Sect. 10, sub-sect. 1.

(*a*) A printed form of the questions to which the Board require answers to be given will be furnished by the Board on request.
(*b*) See p. 464, *post*.

Board for a Provisional Order. In ordinary cases two insertions will be sufficient, with an interval of a week between each.

Sect. 8. 7. In the case of a suburban common, that is to say, any common which is situate wholly or partly in any town or towns, or within six miles of any town or towns, notice of the intended application must be served on the urban sanitary authority or authorities. A "town" means any municipal borough, or improvement act district, or local government district, having a population of not less than 5,000 inhabitants. The population is to be reckoned according to the last published census, and the distance is to be reckoned in a direct line from the town hall, or if there shall be no town hall, then from the cathedral or church, if there be only one church, or, if there be more churches than one, then from the principal market place of such town to the nearest point of the suburban common.

Sect. 10. 8. The application must be on a form supplied by the Board, and be accompanied by a map on tracing cloth, clearly defining the land proposed to be dealt with; also by copies of the newspapers containing the advertisement of the intended application, and, in the case of a suburban common, proof of service of notice on the sanitary authority or authorities.

The names of the owners of the lands adjoining the common should be marked upon the map.

9. When forms of application are applied for, it should be stated whether they are required for "regulation," or for "inclosure," or partly for one and partly for the other.

Sect. 2. 10. In case of an application partly for regulation and partly for inclosure, both forms must be filled up and signed, and the boundaries between the respective parts must be set out on the map.

Sect. 10, sub-sect. 6. 11. On receipt of an application, accompanied by the before-mentioned documents, the Board will take the matter into consideration, and, if satisfied that a *primâ facie* case has been made out, and that, regard being had to the benefit of the neighbourhood as well as to private interests, it is expedient to proceed further, they will order a local inquiry to be held by an Assistant Commissioner. A deposit, on account of the expenses which may be incurred, of such sum as the Board in each case may deem necessary, will be required before the local inquiry is held.

Sect. 11. 12. The Assistant Commissioner will inspect the common, and, after not less than twenty-one days notice, published as directed by the Commons Act, 1876, will hold public meetings

in the locality (one at least of which will be held in the evening, between the hours of 7 and 10 o'clock), for the purpose of hearing all persons desirous of being heard in relation to the subject matter of the inquiry, and of making such other inquiries and gaining such information as may enable him to report fully to the Board thereon.

13. After considering the Assistant Commissioner's report, the Board, if satisfied that the regulation or inclosure is expedient, will frame a draft Provisional Order, setting forth the provisions to be made for the benefit of the neighbourhood and for the protection of private interests, and will deposit a copy of the same in the parish for the consideration of the parties interested, and will give public notice of such deposit. Sect. 12.

14. If the consents required by the Act, that is to say, of persons representing at least two-thirds in value of such interests in the common as will be affected by the Provisional Order, and of the lord of the manor in case of land waste of any manor or to the soil of which the lord is entitled, are given to the draft Provisional Order as originally deposited, and to any modifications thereof, the Provisional Order will be deemed to be final, and the Board will make a report certifying that it is expedient that such Order should be confirmed by Parliament. Sect. 12, sub-sect. 5.

15. When the freemen, burgesses, or inhabitant householders of any city, borough or town are entitled to rights of common, or other interests in the common, the consent of two-thirds in number of such freemen and burgesses so entitled, as may be resident in such city, borough, or town, or within seven miles thereof, or of such inhabitant householders, must be given to the Provisional Order. Sect. 12, sub-sect. 6.

16. If the report of the Board is referred to a committee of either House of Parliament for consideration, and any modifications are recommended, the Board may modify the Provisional Order accordingly, and if such modifications are consented to in the same manner as the Provisional Order originally deposited, the Board will make a special report to that effect. Sect. 12, sub-sect. 11.

17. After the Bill confirming the Provisional Order has received the Royal Assent, the Board will convene a meeting of the parties interested, for the purposes of appointing a valuer to carry out the regulation or inclosure of the common, and of resolving upon instructions to the valuer not inconsistent with the terms of the Provisional Order. But no appointment of a valuer will be valid until it has been confirmed by the Board. Sect. 32.

18. The regulation or inclosure will then proceed as directed by the Inclosure Acts, 1845 to 1882.

19. The Inclosure Acts, 1845 to 1882, are as follows:—
8 & 9 Vict. c. 118 (the Inclosure Act, 1845); 9 & 10 Vict. c. 70 (the Inclosure Act, 1846); 10 & 11 Vict. c. 111 (the Inclosure Act, 1847); 11 & 12 Vict. c. 99 (the Inclosure Act, 1848); 12 & 13 Vict. c. 83 (the Inclosure Act, 1849); 14 & 15 Vict. c. 53 (the Inclosure Commissioners Act, 1851); 15 & 16 Vict. c. 79 (the Inclosure Act, 1852); 17 & 18 Vict. c. 97 (the Inclosure Act, 1854); 20 & 21 Vict. c. 31 (the Inclosure Act, 1857); 22 & 23 Vict. c. 43 (the Inclosure Act, 1859); 31 & 32 Vict. c. 89 (the Inclosure, &c. Expenses Act, 1868); 39 & 40 Vict. c. 56 (the Commons Act, 1876); 41 & 42 Vict. c. 56 (the Commons (Expenses) Act, 1878); 42 & 43 Vict. c. 37 (the Commons Act, 1879); 45 & 46 Vict. c. 15 (the Commonable Rights Compensation Act, 1882).

FORM OF ADVERTISEMENT.

——— *Common.*

Notice is hereby given that application is about to be made to the Board of Agriculture, under the provisions of the Inclosure Acts, 1845 to 1882, for a Provisional Order for the ——— (*a*) of ——— Common, situate in the parish of ———, in the county of ———.

Dated this ——— day of ———, 18 .

(Signature).

(*a*) Here state whether the application is for the regulation or for the inclosure of the common, or for the regulation of part and the inclosure of the remainder.

APPLICATION to the Board of Agriculture for a Provisional Order for the Regulation of a Common under the provisions of the Inclosure Acts, 1845 to 1882.

The land to which this application relates is situated in the ——— (*b*) of ——— in the county (*c*) of ———, and is commonly known as ———.

We, the undersigned, being persons representing at least one-third in value of such interests in the land above mentioned as are to be affected, propose the regulation of such land, under the Inclosure Acts, 1845 to 1882, and submit to the Board of Agriculture the information in respect to such

land and to the proposed regulation, required by the questions (*d*) hereunto annexed, believing such information to be correct: And we hereby apply to the Board, if satisfied that it is desirable, to issue a Provisional Order, and to certify that it is expedient that such Provisional Order should be confirmed by Parliament.

(Signed) ——— (*e*).

(*b*) Parish or township, or several parishes or townships, or extra-parochial place or places, as the case may be.
If the land is in any district not here properly named, insert the proper description.
(*c*) Or counties.
(*d*) A printed form of the questions will, upon request, be sent to the applicants by the Board.
(*e*) N.B.—All signatures under powers of attorney should be written thus—"A. B., by C. D., his attorney," and the powers, or certified copies thereof, must accompany this application.

APPLICATION to the Board of Agriculture for a Provisional Order for the Inclosure of a Common under the provisions of the Inclosure Acts, 1845 to 1882.

The land to which this application relates is situated in the ——— (*a*) of ——— in the county (*b*) of ——— and is commonly known as ———.

We, the undersigned, being persons representing at least one-third in value of such interests in the land above mentioned as are to be affected, propose the inclosure of such land, under the Inclosure Acts, 1845 to 1882, and submit to the Board of Agriculture the information in respect to such land and to the proposed inclosure, required by the questions (*c*) hereunto annexed, believing such information to be correct: And we hereby apply to the Board, if satisfied that it is desirable, to issue a Provisional Order, and to certify that it is expedient that such Provisional Order should be confirmed by Parliament.

(Signed) ——— (*d*).

(*a*) Parish or township, or several parishes or townships, or extra-parochial place or places, as the case may be.
If the land is in any district not here properly named, insert the proper description.
(*b*) Or counties.
(*c*) A printed form of these questions will, upon request, be sent to the applicants by the Board.
(*d*) N.B.—All signatures under powers of attorney should be written thus—"A. B., by C. D., his attorney," and the powers, or certified copies thereof, must accompany this application.

APPENDIX III.

COPYHOLD ENFRANCHISEMENT.

Minute of the Board of Agriculture as to proceedings on compulsory Enfranchisements under the Copyhold Acts, 1852 to 1887, 15 & 16 Vict. c. 51 (1852), 21 & 22 Vict. c. 94 (1858), and 50 & 51 Vict. c. 73 (1887).

Lord or tenant can compel enfranchisement of copyhold.

1. A lord or tenant can compel enfranchisement of any copyhold lands to which the tenant has been admitted, unless the tenant is a mortgagee not in possession, or the lands are held for a life or lives, or for years, where the tenant has not a right of renewal. But when the tenant was admitted before the 1st of July 1853, he cannot avail himself of this power until after payment or tender of such a fine, and, if the lands be heriotable, the value of such a heriot as would be payable on admittance on alienation subsequent to 1st July 1853, and also of two-thirds of such a sum as the steward would have been entitled to for his fees in respect of such admittance.

Lord or tenant can compel enfranchisement of any manorial incident.

2. Any lord or tenant, or owner of any land liable to any heriot, or to any quit rent, free rent, or any other manorial incident whatsoever, may, subject to the provisions of the 48th section of the Copyhold Act, 1852, require and compel the extinguishment of such rights or incidents, and the release and enfranchisement of the lands subject thereto, and the proceedings thereon shall be the same as in the case of enfranchisement of copyhold lands. If the lands be heriotable and no heriot has become due or payable in respect of them since the 30th of June 1853, a tenant or owner cannot avail himself of this power until after payment or tender of the value of such a heriot as would become payable in the event of admittance or enrolment on alienation, and also of two-thirds of such a sum as the steward would have been entitled to for fees in respect of such admittance or enrolment.

Notice of desire to enfranchise.

3. A lord or tenant requiring enfranchisement, or extinguishment of a manorial incident, must give notice thereof the one to the other, and send a copy of the notice to the Board, with an endorsement thereon, stating when and upon whom the notice was served, and how served.

4. The lord and tenant, after notice of the enfranchisement has been delivered, may agree upon the compensation to be paid for enfranchisement, subject to the approbation of the Board. A form, showing the information to be furnished by the steward in such cases, may be obtained on application to the Board (*a*). A memorandum of agreement will be found at the foot of page 4 of the form (*b*). Lord and tenant may agree as to compensation.

5. The lord and tenant may, after notice of the enfranchisement has been delivered, agree in writing that the Board shall determine the compensation to be paid for enfranchisement. A form of agreement, applicable to such cases, may be obtained on application to the Board (*c*). Lord and tenant may agree to refer determination of compensation to the Board.

6. If the enfranchisement terms be not agreed upon between the lord and tenant, or determined by the Board, the consideration to be paid must be decided by a valuer, valuers, or umpire, duly appointed in manner following, that is to say:— Appointment of valuers.

The lord and tenant may, in any case, jointly appoint one valuer. Joint appointment of valuer.

When the manorial rights consist only of heriots, rents, reliefs, and licences at fixed rates to demise or fell timber, or any of these, or where the land to be enfranchised is not rated to the poor's rate at a greater net annual value than 30*l.*, the valuation shall, except as next mentioned, be made by a valuer to be nominated by the justices at a petty sessions holden for the division or place in which the manor or a chief part thereof is situate. Before either party applies to the justices to appoint a valuer, he must give notice of his intention to the other party, and a copy of the notice, as well as of any appointment by the justices, should be forwarded to the Board. Either party may, however, instead of a valuer being appointed by the justices, have the valuation made as set forth in the following paragraph, provided he is willing to pay the additional expense thereby incurred. Appointment of valuer by justices.

In all other cases the person who has given notice of his desire to enfranchise should appoint a valuer in writing, and give notice thereof to the other party requiring him to appoint his valuer. A copy of the valuer's appointment and of the notice should be sent to the Board, with the time and mode of service of the notice endorsed thereon. Appointment of separate valuers by lord and tenant.

When the notice of the appointment of valuer has been received the party on whom it has been served must within 28 days appoint his valuer and send a copy of the appointment both to the opposite party and to the Board.

(*a*) P. 478, *post*. (*b*) P. 480, *post*. (*c*) P. 478, *post*.

Failure by lord or tenant to appoint a valuer.

In any case where, after due notice as aforesaid, either party shall neglect or refuse for 28 days to appoint his valuer, the appointment devolves upon the Board, who, on being requested by either party, will appoint a valuer.

Appointment of umpire.

7. The valuers, within 14 days after their appointment, and before they proceed, shall appoint an umpire, to whom the whole matter, or any point in dispute between them, may be referred. A copy of such appointment should be forwarded to the Board. If the valuers fail to appoint within 14 days, the appointment devolves upon the Board, who, on being requested by the valuers, or one of them, will appoint an umpire.

Declaration of valuers or umpire.

8. Before any valuer or umpire shall enter upon his valuation, he must, in the presence of a justice of the peace, make and subscribe a declaration in the following form, which should be annexed to the decision when forwarded to the Board:—

"I ——— do declare that I will faithfully, to the best of my ability, value, hear, and determine the matters referred to me under the Copyhold Acts.

Made and subscribed in the presence of ———, this ——— day of ———, 18—."

Instructions to be given to valuers.

9. As the decision of the valuers must be delivered within 42 days, each party should, without delay, furnish his valuer with a description of the lands to be enfranchised and all other necessary information; but should either party neglect or refuse to do so, the valuers must proceed upon such information as they can otherwise obtain.

Circumstances to be considered by valuers.

10. The circumstances to be considered by valuers are mentioned in section 16 of the Act of 1852, which is as follows:—

"In making any valuation under this Act the valuers shall take into account the facilities for improvement, customs of the manor, fines, heriots, reliefs, quit rents, chief rents, escheats, forfeitures, and all other incidents whatsoever of copyhold or customary tenure, and all other circumstances affecting or relating to the land which shall be included in such enfranchisement, and all advantages to arise therefrom, and shall make due allowance for the same."

Except that the value of escheat for want of heirs is not to be taken into consideration, as under section 4 of the Copyhold Act, 1887, the lord will continue to be entitled, after the enfranchisement, to the same right and interest in the land in case of escheat for want of heirs as he would have had if the land had not been enfranchised.

Decision of valuers or umpire.

11. The valuers should determine the value of the manorial and other rights and incidents, such value in all cases to be a gross sum of money (*d*). The valuers' decision must be forwarded to the Board within 42 days after their appointment, with the details of the valuation separately given. A copy of the decision should also be sent at the same time to the lord or steward and to the tenant or his attorney. If the valuers are unable from any cause to come to a decision within the 42 days, they, or either of them, must, before the expiration of that period, refer the matter to the umpire, whose duty it will then be to make the decision, and furnish details and copies of the same as before mentioned within 42 days of the reference to him.

Extension of time for appointment of valuers and delivery of decisions.

12. The Board are empowered to extend the time for appointing valuers or an umpire, or the time within which they should respectively deliver their decision, provided application is made to them within the respective periods of 28, 14, and 42 days previously mentioned.

Description of land to be enfranchised.

13. A schedule containing the exact description under which the lands are to be enfranchised should be annexed to every decision. The court-roll description by which the tenant was admitted or enrolled should be given in the schedule. If, however, the parties agree to a more modern description of the lands, in addition to the court-roll description, the same should be signed by the steward of the manor, and by the tenant or his attorney.

Identity of lands.

14. When the identity of the lands cannot be ascertained, they are to be taken at the quantities mentioned, if in statute measure, in the court books or rolls, and if not so specified, the quantities are to be determined by the valuers.

Maps.

When the lands are not defined by a plan on the court-rolls, the valuers, if requested in writing by either lord or tenant, are to define the lands by a plan. The ordnance map, or a tracing from it, will generally be found most convenient for the purpose. Ordnance maps on the $\frac{1}{1\,0\,5\,6\,0}$ and 6-inch scales, and larger scales for town properties, can be obtained from Mr. Stanford, 26 and 27, Cockspur Street, Charing Cross, London, S.W., who will afford full information respecting them.

Except by agreement between the lord and tenant, a plan is not to be required or made in any case in which it shall appear that the lands have been for more than 50 years treated as intermixed with other lands, and with boundaries incapable of definition. When valuers have been appointed, a lord or

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(*d*) See Par. 30 as to the scale on which compensation should be based.

tenant may, in any case of doubt or difference of opinion as to the identity of the lands, apply to the Board to ascertain and define the boundaries thereof.

Minerals and other reserved rights.

15. No enfranchisement can be made to extend to or affect the estate or rights of any lord or tenant in any of the mineral or other rights mentioned in sect. 48 of the Copyhold Act, 1852, without his express consent in writing. Therefore, when the tenant desires and the lord is willing to include and extinguish such rights of the lord, the lord's consent must be sent to the valuers before they enter upon their valuation, in order that they may include the rights in their decision. A form of consent may be obtained from the Board, and the signed consent should be forwarded to them with the decision (*e*).

Board prepare award of enfranchisement.

16. When the amount of compensation has been duly ascertained as above, and approved by the Board, they will prepare the award of enfranchisement.

Board to continue conditions of user for benefit of public or other tenants.

17. The Board have power under sect. 8 of the Act of 1887 to continue any conditions affecting the user of the land subject to which a tenant may have been admitted and created for the benefit of the public or of the other tenants of the manor, where any especial hardship or injustice would result if the lands were released from such conditions.

When compensation to be a rentcharge.

18. When the enfranchisement is effected at the instance of the lord, or when the land can in the opinion of the Board be sufficiently identified, and the compensation to the lord amounts to more than one year's improved annual value of the land enfranchised, the compensation will, unless the tenant otherwise desires, consist of an annual rentcharge of 4*l.* per cent. per annum upon such gross sum, commencing from the date of the notice to enfranchise, and issuing out of the land enfranchised.

The rentcharges are payable on the 1st of January and the 1st of July in each year, but are redeemable by the tenant on payment of 25 times the amount of the rentcharge.

Compensation may be a gross sum at option of tenant.

The tenant has the option in all cases of paying the compensation in a gross sum of money; but in case of enfranchisement by award, he must within 10 days after the receipt of the draft award give notice in writing to the Board of his desire so to pay.

Compensation to be paid prior to confirmation of award.

19. When the compensation for enfranchisement is a gross sum of money, the receipt for the same must be produced to the Board before the enfranchisement award can be confirmed.

Questions of law or fact.

20. If any questions of law or fact arise in the course of the

(*e*) P. 481, *post*.

valuations in any enfranchisement to be effected by an award under the Copyhold Acts, they may be referred to the Board.

Proceedings not to abate in case of death of lord or tenant.

21. If pending any proceedings the lord or tenant shall die, there shall be no abatement of the proceedings, and any fresh admittance or enrolment must be made without the payment of any fine, relief, or heriot, and the compensation must be ascertained as if the enfranchisement had been effected immediately after the commencement of the proceedings.

Who may act for lord.

22. Any lord may act on his own behalf or may appoint an agent other than his steward to act for him, but unless and until he has given written notice to the tenant and the Board respectively that he intends to act for himself or that he has appointed the person specified in the notice to act for him, the tenant and the Board respectively may treat his steward as his agent for receipt of notices, making of agreements, and all other matters relating to enfranchisement; and in all matters of procedure the steward shall be deemed to represent the lord; except that no steward shall without special authority have power to consent on behalf of the lord to dealings with the rights comprised in sect. 48 of the Copyhold Act, 1852.

When lords or tenants are trustees.

23. When either the lords or the tenants are trustees, and one or more such trustees shall be abroad or shall be incapable or refuse to act, any proceedings necessary to be done by such trustees for effecting any enfranchisement under the Copyhold Acts may be done by the other trustee or trustees as the case may be.

Married women.

24. A married woman being the lady of the manor, or tenant of any land or right of copyhold or customary tenure, shall, for the purposes of the Acts, be deemed to be a *feme sole*.

Persons under disability or beyond the seas.

25. Minors, idiots, lunatics, or persons under any other legal disability or beyond the seas, are to be represented by the guardian, trustees, committee of the estate or attorney. In default thereof, or in case the person interested be unknown, then the Board will, upon application, nominate a substitute to act for him.

Appointment of agent by power of attorney.

26. An agent or attorney may be appointed by power of attorney by a lord or tenant, with full power to act as if the principal had himself acted, in the following form:—

"Manor of ———, in the county of ———.

I, A. B., of &c., do hereby appoint C. D., of &c., to be my lawful attorney to act for me in all respects, as if I myself were present and acting in the execution of the Copyhold Acts.

Dated this ——— day of ——— one thousand eight hundred and ———.

(Signed) A. B."

The power of attorney, or a copy authenticated by two witnesses, should be sent to the Board.

Notices, agreements, and appointments to be duly signed.

27. Every notice, agreement, or appointment of valuer, by the lord must be signed by him or his agent or the steward, or if given, or made, by the tenant, must be signed by him, or by an agent duly authorised by power of attorney to act on his behalf.

Service of notices.

28. All notices may be served personally or left at the usual place of abode or business of the person to be served, or sent by post in a registered letter. When a notice is required or authorised to be given to the tenant of any premises it may be given by delivering the same, or a true copy thereof, to some person on the premises, or if there is no person on the premises to whom the same can be delivered, by fixing the notice on some conspicuous part of the premises.

Copies of notice and other documents to be sent to the Board.

29. Copies of all notices and appointments should be sent to the Board immediately they are given or made.

Scales of compensation and allowances to valuers.

30. A scale of compensation for enfranchisement (*f*) and a scale of allowance to valuers (*g*), framed pursuant to sect. 30 of the Copyhold Act, 1887, for guidance, may be obtained on application to the Board.

The scale of compensation will probably facilitate the settlement by agreement of the sum to be paid, especially in fine certain cases, in which the compensation is usually of small amount.

Steward's compensation.

31. The compensation to be paid by a tenant to the steward, in every case of enfranchisement by award, is fixed by the Copyhold Act, 1887, s. 27.

Exemption from stamp duty.

32. Agreements, decisions of valuers, and powers of attorney under the Copyhold Acts, are not chargeable with stamp duty.

Expenses.

33. In case of any question as to the amount of the expenses relating to enfranchisement, the matter may be referred to the Board.

Board of Agriculture (Copyhold Department),
3, St. James' Square, London, S.W.

(*f*) P. 473, *post*. (*g*) P. 476, *post*.

See now 1919 W.N. 72

COPYHOLD ENFRANCHISEMENT.

Scale of Compensation in ordinary cases of Enfranchisement of Copyholds of Inheritance, framed pursuant to section 30 of the Copyhold Act, 1887.

1. In fine arbitrary cases when a fine is payable on alienation by, as well as on the death of, a tenant, the compensation for fines should not exceed the number of years' annual value of the property according to the age of the tenant as set forth in the table hereto annexed. Fine arbitrary cases.

2. The table is calculated on the principle that a fine of two years' annual value is payable on each change of tenancy; therefore, in those manors in which the customary fine on alienation by, or on the death of, a tenant is less than two years' annual value, a proportionate reduction should be made in the amount of the compensation.

3. In estimating the annual value of the property, no deduction should be made for land tax, but the quit rent should be deducted, and, where there are buildings, allowance should be made for keeping the buildings in repair. The gross annual value of the land for the poor rate assessment may be used when applicable, as the basis for ascertaining the annual value.

4. When there are facilities for improvement or the land has present or prospective building value, one twenty-fifth part of the fee simple value may be taken as the annual value.

5. In fine certain cases when a fine is payable on alienation by, as well as on the death of, a tenant, the compensation for fines may be calculated by multiplying the amount of the fine by one half of the number of years' purchase given in the table according to the age of the tenant. Fine certain cases.

6. The amount of compensation for a relief, if payable, to be calculated in like manner as a fine certain. Reliefs.

7. The compensation for a heriot payable on alienation by, as well as on the death of, a tenant, may be calculated by multiplying the value of the heriot by one half of the number of years' purchase given in the table according to the age of the tenant. Heriots.

8. The value of a heriot may generally be ascertained from the average value of the last three heriots taken or paid in respect of the property to be enfranchised. If that information cannot be obtained, or will not apply, the following circumstances should be taken into consideration in fixing the

value of a heriot: namely, the nature of the heriot, the character and value of the property, the condition in life of the tenant, and also whether the heriot can be seized as well without as within the manor.

When fine payable only on one of the events of alienation or death.

9. The table being calculated on the assumption that fines and heriots are payable both on alienation by, and on the death of, a tenant, when a fine, whether arbitrary or certain, or a heriot, is payable only on one of those events, then only one half of the compensation calculated as previously directed should be given.

When fine payable on death of lord.

10. In manors in which fines or heriots are payable on the death of the lord, as well as on alienation by, or on the death of, a tenant, the compensation on enfranchisement should be increased according to the nature and amount of the customary fine or heriot payable in the manor on the death of the lord.

Quit rents and other annual payments.

11. The compensation for quit rents, free rents, and other annual rents, services, or payments, should be calculated at 25 years' purchase.

Timber.

12. Compensation for timber should be ascertained as follows:—When by the custom of the manor the lord can enter upon the land, and cut and carry away the timber without the consent of the tenant, its whole value, after making a sufficient allowance for repairs, should be given to the lord. But if the lord cannot enter and cut without the consent of the tenant, one half only of its value, after making a sufficient allowance for repairs, should be given. If, however, there be any special custom in the manor relating to timber, such custom should be regarded.

Forfeitures, &c.

13. The compensation for forfeitures and all other incidents of copyhold tenure not hereinbefore provided for should not exceed 20 per cent. of the annual value of the property. The gross annual value for the poor rate assessment may be used, when practicable, as the basis for ascertaining the annual value. If the property has facilities for improvement or building, one twenty-fifth part of the fee simple value may be taken as the annual value.

Escheat.

14. The right of escheat being reserved to the lord under the Copyhold Act, 1887, its value is not to be taken into consideration.

Special customs or circumstances.

15. If there be any special customs or circumstances connected with any manor which would affect the compensation payable for enfranchisement, they should be taken into consideration, and due allowance should be made in respect of them.

16. This scale is for guidance only, and is not binding as a matter of law in any particular case; but the party requiring enfranchisement should, in accordance with the Act, state to the other party whether or no he is willing to adopt the scale.

TABLE referred to in the foregoing Scale of Compensation for Enfranchisement.

Age of Tenant.	Number of Years' Purchase.	Age of Tenant.	Number of Years' Purchase.	Age of Tenant.	Number of Years' Purchase.
		37	3·26	70	4·50
5 or under	2·29	38	3·29	71	4·54
6	2·32	39	3·33	72	4·57
7	2·34	40	3·36	73	4·60
8	2·37	41	3·40	74	4·63
9	2·40	42	3·43	75	4·67
10	2·43	43	3·46	76	4·70
11	2·46	44	3·50	77	4·73
12	2·49	45	3·53	78	4·76
13	2·52	46	3·57	79	4·78
14	2·55	47	3·60	80	4·81
15	2·58	48	3·64	81	4·83
16	2·61	49	3·67	82	4·85
17	2·63	50	3·71	83	4·88
18	2·66	51	3·75	84	4·90
19	2·69	52	3·78	85	4·92
20	2·73	53	3·82	86	4·94
21	2·76	54	3·86	87	4·95
22	2·79	55	3·90	88	4·97
23	2·82	56	3·93	89	4·99
24	2·85	57	3·97	90	5·00
25	2·88	58	4·01	91	5·02
26	2·91	59	4·06	92	5·03
27	2·94	60	4·10	93	5·05
28	2·97	61	4·14	94	5·06
29	3·00	62	4·18	95	5·08
30	3·04	63	4·23	96	5·10
31	3·07	64	4·27	97	5·12
32	3·10	65	4·31	98	5·13
33	3·13	66	4·35	99	5·15
34	3·16	67	4·39	100 or upwards	5·16
35	3·20	68	4·43		
36	3·23	69	4·47		

In constructing this table a fine arbitrary on admission has been taken as equivalent to two years' annual value, and whilst the average fine interval has been assumed to be 14 years, regard has been had to the age of the tenant on the rolls.

Board of Agriculture (Copyhold Department),
3, St. James' Square, London, S.W.

COPYHOLD ENFRANCHISEMENT.

Scale of Allowance to Valuers for services performed in respect of Enfranchisements under the Copyhold Acts, framed pursuant to section 30 of the Copyhold Act, 1887.

Allowance in respect of the annual value of the property enfranchised:—

Annual Value.		Allowance.		
	£	£	*s.*	*d.*
Not exceeding	10	2	10	0
,,	25	3	0	0
,,	50	4	0	0
,,	75	5	0	0
,,	100	6	0	0
,,	125	7	0	0
,,	150	8	0	0
,,	200	9	0	0
,,	250	10	0	0

For every 50*l.* above 250*l.* annual value, 1*l.*

In addition to the above, a further allowance in respect of so much of the compensation as is not payable for fines, or based on annual value, of 5 per cent. upon the amount of such compensation up to 50*l.*, and 2½ per cent. upon the amount of such compensation, if any, in excess of 50*l.*

This scale does not include travelling and other expenses out of pocket, and is applicable only to cases of an ordinary character, and in which there are no special circumstances.

Charges for tracings or plans, when necessary, will be allowed; but the ordnance map should be used when available.

When a case is referred to an umpire the valuers will be entitled to an additional allowance of from 2*l.* upwards, having regard to the time occupied for attendance before the umpire.

This scale is for guidance only.

Board of Agriculture (Copyhold Department),
3, St. James' Square, London, S.W.

COPYHOLD ENFRANCHISEMENT.

Notice from Lord or Tenant of desire for Enfranchisement.

Manor of ———, in the county of ———.

I ———, of ———, in the parish of ———, in the county of ———, do hereby, pursuant to the provisions of the Copyhold Acts, give you notice of my desire that the lands, copyhold of the above manor, to which ——— (*a*) admitted on or about the ——— day of ———, 18—, shall be enfranchised under the said Acts.

Dated this ——— day of ———, 18—.

——— (signature, stating whether lord or tenant.)

To ———, of ———,
a tenant of the manor, or lord or steward of the manor.

NOTE.—A copy of this notice should be forwarded to the Board of Agriculture (Copyhold Department), with an endorsement stating when and how served.

(*a*) You were, or, I was.

ENFRANCHISEMENT UNDER THE COPYHOLD ACTS.

Notice from Lord or Tenant or Owner of desire for extinguishment of Manorial Incidents, and Enfranchisement.

Manor of ———, in the county of ———.

I ———, of ———, in the parish of ———, in the county of ———, do hereby, pursuant to the provisions of the Copyhold Acts, give you notice of my desire that the ——— (*a*) and other manorial incidents to which the lands freehold or customary freehold of the above manor, shortly described in the schedule endorsed hereon, are liable, shall be extinguished, and the said lands be released therefrom, and enfranchised under the said Acts.

Dated this ——— day of ———, 18—.

——— (signature, stating whether lord, tenant, or owner.)

To ———, of ———,
tenant or owner of the said lands, or lord or steward of the manor.

THE SCHEDULE.

NOTE.—A copy of this notice should be forwarded to the Board of Agriculture (Copyhold Department), with an endorsement stating when and how served.

(*a*) Insert heriot, quit rents, or free rents, as the case may be.

COPYHOLD ENFRANCHISEMENT.

Agreement between Lord and Tenant or Owner that the Board of Agriculture shall determine the compensation for Enfranchisement.

Manor of ———, in the county of ———.

——— enfranchisement.

We, ———, and ———, do hereby agree that the compensation for the enfranchisement of the lands comprised in the notice of desire for enfranchisement given by the said ———, dated on or about the ——— day of ———, 18—, ———(*a*) the rights reserved by the Copyhold Act, 1852, section 48, shall be determined by the Board of Agriculture pursuant to the Copyhold Act, 1887, section 43.

Dated this ——— day of ———, 18—.

——— lord, or steward (*b*).

——— tenant, or owner.

(*a*) Insert including, or, not including. Reference to reserved rights should be omitted if they do not belong to the lord.

(*b*) Steward may sign for the lord if reserved rights are not included; but if they are included, he cannot sign without special authority.

COPYHOLD ENFRANCHISEMENT.

Information to be furnished to the Board of Agriculture (Copyhold Department), in every case of Enfranchisement under the Copyhold Acts.

Manor of ———, parish of ———, county of ———.

——— enfranchisement.

The lands are described in the schedule hereto.

1. Name in full and address of the lord.

2. Is the lord seised in fee simple, fee tail, for life, or how otherwise; and if not seised in fee, who is entitled to the first vested estate of inheritance in the manor?

3. How is the compensation money proposed to be paid?

To the lord?

To trustees acting under the will or settlement under which the lord holds? If so, give names, addresses, and descriptions.

To trustees to be nominated by the Board of Agriculture if there be no trustees acting under the will or settlement, or if the lords be a corporation?
Into the Bank of England *ex parte* the Board of Agriculture?
To the Church Estates Commissioners?
To the Governors of Queen Anne's Bounty?
Or, to the official trustees of charitable funds?

4. Is the manor incumbered, and if so, state the nature of such incumbrance, and the names and addresses of the persons entitled thereto, also what proportion the aggregate amount of the incumbrances will bear to the value of the manor and also to the value of the lands charged together with the manor, if any, after the proposed enfranchisement shall have taken place?

5. Name in full and address, and profession or calling of the tenant on the roll, or owner in case of freeholds.

6. Date of admittance or enrolment of tenant or owner.

7. Has notice of compulsory enfranchisement been given under the Copyhold Acts?

8. Is the property copyhold of inheritance, or for lives, or freehold, or customary freehold of the manor?

9. Age of the tenant or owner.

10. If for lives, the names and ages of the lives.

11. Has the tenant a right of renewal?

12. Is the land subject to fines certain or reliefs or fines arbitrary; and if arbitrary, whether by custom there is any and what difference in the amount of fine on death and on alienation?

13. The amount of the last fine or relief, and whether paid in consequence of death or alienation.

14. The annual amount of quit or free rents.

15. Is the property subject to heriots, and, if so, state the nature and number of the heriots, the circumstances under which they are payable, and whether seizable as well without as within the manor, and the nature and value of the last three heriots taken?

16. Does the lord claim the timber? and if so, can he enter and cut, and carry away, without the consent of the tenant?

17. Has the tenant power to demise his lands? and if so, for what period?

18. Has the lord granted licences to demise in the manor? and if so, on what terms?

19. Does the lord claim the mines, minerals, and other rights reserved by the Copyhold Act, 1852, sect. 48? and if so, is it proposed to extinguish these rights, and for what consideration?

20. The quantity of land proposed to be enfranchised.

21. The estimated annual value, separately, of the land and of the house property, and also the value of each, after deducting quit rents and for repairs. What is the estimated value of the timber?

22. Are there any circumstances, such as aptitude for building, which will give the property greatly increased value as freehold? and if so, what is the estimated fee simple value of the property?

23. The amount of compensation for the enfranchisement, and the particulars of the calculations by which it has been arrived at.

Dated this ——— day of ———, 18—.

———, steward of the manor,

———, (address.)

SCHEDULE OF THE LANDS TO BE ENFRANCHISED (*a*).

[Form of agreement to be signed by lord or steward (*b*) and tenant or owner, when the compensation is settled by agreement.]

We do hereby agree that the compensation for the enfranchisement of the lands above mentioned ——— (*c*) the rights reserved by the Copyhold Act, 1852, section 48, shall be ——— (*d*).

Dated this ——— day of ———, 18—.

———, lord, or steward.

———, tenant, or owner.

(*a*) The court roll description by which the tenant was admitted or enrolled is to be given in the schedule; and in addition the modern description of the parcels, if such a description be agreed upon and is desired to be inserted in the award or deed of enfranchisement.

(*b*) Steward may sign for lord if reserved rights be not included; but if they are included, he cannot sign without special authority.

(*c*) Including, or, not including. Cross out reference to reserved rights if they do not belong to the lord.

(*d*) A gross sum of £ —— or annual rent charge of £ ——.

COPYHOLD ENFRANCHISEMENT.

Consent of Lord to include Reserved Rights.

Manor of ———, in the county of ———.

——— enfranchisement.

I ———, of ———, the lord of the above manor, do hereby consent that the enfranchisement under the Copyhold Acts of the lands comprised in the notice of desire for enfranchisement given by ———, and dated on or about the ——— day of ———, 18—, shall extend to and include all mines and minerals, and also all other rights and easements reserved by the Copyhold Act, 1852, sect. 48.

Dated this ——— day of ———, 18—.

(Signed) ———

NOTE.—The steward cannot sign this consent for the lord without special authority.

ENFRANCHISEMENT UNDER THE COPYHOLD ACTS.

Joint Appointment of one Valuer by Lord and Tenant or Owner.

Manor of ———, in the county of ———.

——— enfranchisement.

We, ———, of ———, in the county of ———, and ———, of ———, in the county of ———, do, in pursuance of the provisions of the Copyhold Acts, hereby appoint ———, of ———, in the county of ———, to be the valuer, for the purpose of determining the compensation for the enfranchisement of the lands comprised in the notice of desire for enfranchisement given by the said ———, and dated on or about the ——— day of ———, 18—.

Dated this ——— day of ———, 18—.

———, lord of the above manor.

———, tenant or owner.

NOTE.—A copy of the appointment should be sent to the Board of Agriculture (Copyhold Department).

ENFRANCHISEMENT UNDER THE COPYHOLD ACTS.

Appointment of Valuer by Lord or Tenant or Owner.

Manor of ———, in the county of ———.

——— enfranchisement.

I ———, of ———, in the county of ———, do, in pursuance of the provisions of the Copyhold Acts, hereby appoint ———, of ———, my valuer for the purpose of determining the compensation for the enfranchisement of the lands comprised in the notice of desire for enfranchisement given by ———, and dated on or about the ——— day of ———, 18—.

Dated this ——— day of ——— 18—.

——— (signature, stating whether lord, tenant, or owner).

NOTE.—A copy of this appointment should be sent to the Board of Agriculture (Copyhold Department).

ENFRANCHISEMENT UNDER THE COPYHOLD ACTS.

Notice of Appointment of Valuer from Lord or Tenant or Owner, and calling on the other to appoint his Valuer.

Manor of ———, in the county of ———.

——— enfranchisement.

I ———, of ———, in the county of ———, hereby give you notice that I have, in pursuance of the provisions of the Copyhold Acts, appointed ———, of ———, my valuer for the purpose of determining the compensation for the enfranchisement of the lands comprised in the notice of desire for enfranchisement given by ———, and dated on or about the ——— day of ———, 18—; and I hereby call on you to appoint your valuer within twenty-eight days from the giving of this notice, being the time limited by the said Acts.

Dated this ——— day of ———, 18—.

——— (signature, stating whether lord, tenant, or owner).

To ———, of ———, tenant or owner,
or lord or steward of the manor.

NOTE.—A copy of this notice should be sent to the Board of Agriculture (Copyhold Department).

COPYHOLD ENFRANCHISEMENT.

Appointment of Umpire by Valuers.

Manor of ———, in the county of ———.

——— enfranchisement.

We, the undersigned, being the valuers duly appointed in the matter of this enfranchisement, hereby appoint ———, of ———, our umpire.

Dated this ——— day of ———, 18—.

(Signed) ———

NOTE.—A copy of this appointment should be sent to the Board of Agriculture (Copyhold Department); or, if the valuers are unable to agree upon an umpire within 14 days of their appointment, application should at once be made to the Board to appoint an umpire for them.

COPYHOLD ENFRANCHISEMENT.

Extension of Time for Appointment of Valuers or Umpire, and for making decision.

Manor of ———, in the county of ———.

——— enfranchisement.

Whereas application has been made to the Board of Agriculture to extend the time allowed by the Copyhold Acts to the (*a*)

Now therefore the Board of Agriculture having duly considered the grounds of the said application, do, by virtue of the powers vested in them by the Board of Agriculture Act, 1889, and the Copyhold Acts, hereby extend the time within which
to the ——— day of ———, 18—.

In witness whereof the Board of Agriculture have hereunto set their official seal, this ——— day of ———, 18—.

(*a*) Insert purpose of application.

COPYHOLD ENFRANCHISEMENT.

Appointment of Valuer or Umpire by the Board of Agriculture.

Manor of ———, in the county of ———.

——— enfranchisement.

Whereas in the matter of the above enfranchisement under the Copyhold Acts ——— (*a*) failed to appoint ——— within the time allowed by the said Acts.

Now therefore the Board of Agriculture in pursuance of the powers vested in them by the Board of Agriculture Act, 1889, and the Copyhold Acts, do hereby appoint ——— (*b*) to be the ——— (*c*) for the purpose of determining the compensation for the enfranchisement of the lands comprised in the notice of desire for enfranchisement given by ———, and dated on or about the ——— day of ———, 18—.

In witness whereof the Board of Agriculture have hereunto set their official seal this ——— day of ———, 18—.

(*a*) Recite that tenant or lord failed to appoint a valuer, or that valuers failed to appoint an umpire.
(*b*) Insert name and address of person appointed.
(*c*) Insert "valuer" or "umpire," as the case may be.

COPYHOLD ENFRANCHISEMENT.

Declaration as to Lord's Title.

Manor of ———, in the county of ———.

I ———, of ———, in the county of ———, the ——— (*a*) of the said manor, do solemnly declare as follows: that ——— (*b*)

And that the said ——— is now and has for ——— years past been the acting lord of the said manor; and that the name and style of the court baron and customary court of the said manor are "the general court baron and customary court of the manor of ———, in the county of ———," and that the last general court baron and customary court was held in and for the said manor by ———, as steward, in the

name of the said ———, as lord of the said manor, on the ——— day of ———, 18 —.

And that the said manor is subject to (*c*)

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

(Signed) ———

The said ——— declared to the truth of the above declaration at ———, in the said county of ———, the ——— day of ———, 18—.

Before me,

(Signed) ———

NOTE.—This declaration must be impressed with a 2*s.* 6*d.* stamp.

(*a*) Lord or steward.

(*b*) Here describe the nature and extent of the estate and interest of the lord in the manor, and the date and short particulars of the deed, will, or other instrument under which he claims or derives title. If the lord is not seised in fee, give the names, addresses, and descriptions, in full, of the acting trustees of the will or settlement under which the manor is held; or state that there are no such trustees.

(*c*) State here the nature and extent of the incumbrances (if any) which affect the manor, or that there are no incumbrances.

COPYHOLD ENFRANCHISEMENT.

Decision of Valuer or Valuers.

Manor of ———, in the county of ———.

——— enfranchisement.

In the matter of the above enfranchisement under the Copyhold Acts, ——— (*a*), of ———, in the county of ———, and ———, of ———, in the county of ———, having been duly appointed to determine the compensation to be paid for the enfranchisement of the lands in the schedule hereunder written and comprised in the notice of desire for enfranchisement given by ———, dated on or about the ——— day of ———, 18—, do hereby in pursuance of the Copyhold Acts determine and decide as follows; that is to say—

——— (*b*) determine and decide that the compensation to be paid for the enfranchisement of the said lands under the said Acts, is the sum of ——— (*c*), being the value of all the manorial rights and incidents of tenure affecting the said lands, ——— (*d*) the rights reserved by the Copyhold Act, 1852, section 48, ——— (*e*) excepting the value of the right of

escheat for want of heirs reserved by the Copyhold Act, 1887, section 4.

Witness ——— (*f*) this ——— day of ———, one thousand eight hundred and ———.

——— (signature of valuer or valuers).

THE SCHEDULE HEREINBEFORE REFERRED TO.

NOTE.—The court-roll description by which the tenant was admitted or enrolled to be given in the schedule, and, in addition, the modern description of the parcels, if such a description be agreed upon.

The schedule as well as the decision must be signed by the valuer or valuers.

The declaration of each valuer must be annexed, and also the consent of the lord when the rights reserved by the Act of 1852, section 48, are included.

The decision should be forwarded to the Board of Agriculture (Copyhold Department), and a copy should be sent to the steward, and to the tenant or his solicitor, and the Board should be informed that this has been done when the decision is sent in.

(*a*) I, or We. Insert also name and address of valuer or valuers.
(*b*) I, or We.
(*c*) The compensation determined to be a gross sum of money.
(*d*) Excepting, or including.
(*e*) And, or but.
(*f*) My hand, or our hands.

ENFRANCHISEMENT UNDER THE COPYHOLD ACTS.

Decision of Umpire.

Manor of ———, in the county of ———.

——— enfranchisement.

Whereas in the matter of the above enfranchisement under the Copyhold Acts the valuers duly appointed have failed to make their decision:

And whereas I ———, of ———, in the county of ———, have been duly appointed the umpire in the said matter, which has been duly referred to me:

Now therefore, in pursuance of the Copyhold Acts, I do hereby determine and decide that the compensation to be paid for the enfranchisement under the said Acts of the lands in the schedule hereunder written and comprised in the notice of desire for enfranchisement given by ———, dated on or about the ——— day of ———, 18 —, is the sum of ———(*a*) being the value of all the manorial rights and incidents of tenure affecting the said lands, ——— (*b*) the rights reserved by the Copyhold Act, 1852, section 48, ——— (*c*) excepting the value of the right of escheat for want of heirs reserved by the Copyhold Act, 1887, section 4.

Witness my hand this ——— day of ———, one thousand eight hundred and ———.

——— (signature).

THE SCHEDULE HEREINBEFORE REFERRED TO.

NOTE.—The court-roll description by which the tenant was admitted or enrolled to be given in the schedule, and, in addition, the modern description of the parcels, if such a description be agreed upon.

The schedule as well as the decision must be signed by the umpire.

The declaration of the umpire must be annexed, and also the consent of the lord when the rights reserved by the Act of 1852, section 48, are included.

The decision should be forwarded to the Board of Agriculture (Copyhold Department), and a copy should be sent to the steward, and to the tenant or his solicitor, and the Board should be informed that this has been done when the decision is sent in.

(*a*) The compensation determined to be a gross sum of money.
(*b*) Excepting, or including.
(*c*) And, or but.

COPYHOLD ENFRANCHISEMENT.

Determination of the Board of Agriculture.

Manor of ———, in the county of ———.

——— enfranchisement.

Whereas in the matter of the above enfranchisement under the Copyhold Acts (*a*)

Now therefore the Board of Agriculture, &c., do by virtue of the powers vested in them by the Board of Agriculture Act, 1889, and the Copyhold Acts, hereby determine and decide that the compensation to be paid for the enfranchisement of the lands comprised in the notice of desire for enfranchisement given by ———, and dated on or about the ——— day of ———, one thousand eight hundred and ———, and which said lands are described in the schedule hereto, is the sum of ———, being the value of all the manorial and other rights and incidents affecting the said lands, ——— (*b*) the rights reserved by the Copyhold Act, 1852, section 48, ——— (*c*) excepting the value of the right of escheat for want of heirs reserved by the Copyhold Act, 1887, section 4.

In witness whereof the Board of Agriculture have hereunto set their official seal, this ——— day of ———, one thousand eight hundred and ———.

THE SCHEDULE HEREINBEFORE REFERRED TO.

(*a*) State reason showing power of Board to decide.
(*b*) Excepting, or including.
(*c*) And, or but.

COPYHOLD ENFRANCHISEMENT.

Appointment of Trustees.

Manor of ———, in the county of ———.

Whereas it is proposed to effect enfranchisements under the Copyhold Acts of lands held of the above manor, of which ——— is lord. And whereas (*a*)

And whereas it is expedient that fit and proper persons

should be nominated for the purpose of receiving any moneys to be paid for the enfranchisement of lands held of the above manor.

And whereas, having made due inquiry, it appears to the Board of Agriculture that ——— are fit and proper persons to be so nominated.

Now the Board of Agriculture, in pursuance of the powers vested in them by the Board of Agriculture Act, 1889, and the Copyhold Acts, do hereby nominate and appoint the said——— to be trustees for the purpose of receiving any moneys to be paid for the enfranchisement under the Copyhold Acts of lands held of the above manor in trust to be applied by them as directed by the Copyhold Acts.

In witness whereof the Board of Agriculture have hereunto set their official seal this ——— day of ———, one thousand eight hundred and ———.

(*a*) State reasons for appointment.

COPYHOLD ENFRANCHISEMENT.

Receipt for Compensation Money.

Manor of ———, in the county of ———.

——— enfranchisement.

Received on the ——— day of ———, 18—, of and from ———, the sum of ———, being the compensation money for the enfranchisement under the Copyhold Acts of certain lands comprised in the notice of desire for enfranchisement given by ———, and dated on or about the ——— day of ———, 18—.

(Signed) ———

Witness ———.

NOTE.—The receipt must be dated, and the usual receipt stamp must be affixed.

COPYHOLD ENFRANCHISEMENT.

Deed of Enfranchisement of Copyholds.

This indenture, made the ——— day of ———, 18—, between A. B., lord of the manor of ——— of the first part, the Board of Agriculture of the second part, and C. D., of ———, in the county of ———, a tenant of the said manor, of the third part: Whereas on or about the ——— day of ———, the said [*tenant*] was admitted tenant to the copyhold hereditaments parcel of the said manor described in the schedule hereto, upon an absolute surrender passed to his use by ——— [*or* by virtue of a bargain and sale from the executors of ———, *or* by virtue of the last will and testament of ———, *or* as customary heir of ———, *as the case may be*]: And whereas the said [*lord*] has, under the authority of the Copyhold Acts, agreed with the said [*tenant*] for the enfranchisement of the said hereditaments, at the sum of ——— Now this indenture witnesseth that in consideration of the said sum of ——— sterling by the said [*tenant*] to the said ——— now paid, the receipt of which the said ——— hereby acknowledges, he the said ——— in exercise of any power given him by the Copyhold Acts, or any other power whatsoever, and with the consent of the Board of Agriculture in pursuance of the powers vested in them by the Board of Agriculture Act, 1889, and the Copyhold Acts, hereby enfranchises and releases unto the said [*tenant*], his heirs and assigns, all and singular the hereditaments to which the said [*tenant*] was so admitted tenant as herein-before recited, and which are described in the schedule hereto, together with their appurtenances, ——— (*a*) the rights reserved by the Copyhold Act, 1852, section 48, To hold the said hereditaments hereby enfranchised unto and to the use of the said [*tenant*], his heirs and assigns, as freehold henceforth and for ever discharged by these presents from all fines, heriots, quit-rents, and all other incidents whatsoever of copyhold or customary tenure, but so as not to affect such right of escheat for want of heirs as is reserved by the Copyhold Act, 1887, section 4. In witness whereof the said parties of the first and third parts have set their hands and seals, and the Board of Agriculture have hereunto set their official seal.

THE SCHEDULE.

(*a*) Including or excepting.

ENFRANCHISEMENT UNDER THE COPYHOLD ACTS.

Deed of Enfranchisement of Freeholds, &c., liable to heriots, and other manorial incidents.

This indenture, made the ——— day of ———, 18—, between A. B., lord of the manor of ——— of the first part, the Board of Agriculture of the second part, and C. D., of ———, in the county of ———, of the third part: Whereas the hereditaments described in the schedule hereto are freehold or customary freehold of the said manor liable to ——— (*a*) and other manorial incidents, and the said ——— is the tenant or owner of the said hereditaments: And whereas the said [*lord*] has under the authority of the Copyhold Acts agreed with the said [*tenant or owner*] that the said ——— (*a*) and other manorial incidents should be extinguished and the said hereditaments released and enfranchised therefrom at the sum of ———: Now this indenture witnesseth that in consideration of the said sum of ——— sterling by the said [*tenant or owner*] to the said ——— now paid, the receipt of which the said ——— hereby acknowledges, he the said ——— in exercise of any power given him by the Copyhold Acts, or any other power whatsoever, and with the consent of the Board of Agriculture in pursuance of the powers vested in them by the Board of Agriculture Act, 1889, and the Copyhold Acts, hereby extinguishes all the said ——— (*a*) and all other manorial incidents, and releases and enfranchises unto the said [*tenant or owner*], his heirs and assigns, all the said hereditaments described in the schedule hereto, together with their appurtenances, To hold the said hereditaments unto and to the use of the said [*tenant or owner*], his heirs and assigns, as freehold henceforth and for ever discharged by these presents from the said ——— (*a*) and all other manorial incidents whatsoever, but so as not to affect such right of escheat for want of heirs as is reserved by the Copyhold Act, 1887, section 4. In witness whereof the said parties of the first and third parts have set their hands and seals, and the said Board of Agriculture have hereunto set their official seal.

THE SCHEDULE.

(*a*) Insert heriots, quit-rents, or free rents, as the case may be.

ENFRANCHISEMENT UNDER THE COPYHOLD ACTS.

Notice to Person entitled to the first vested estate of inheritance in the manor, to be given if the enfranchisement be under the Copyhold Act, 1841 (*a*).

Manor of ———, in the county of ———.

——— enfranchisement.

I ———, of ———, in the county of ———, lord of the above manor, do hereby, in pursuance of the provisions of the Copyhold Acts, give you notice that it is intended to enfranchise All that ——— to which the said ——— was admitted tenant on or about the ——— day of ———, 18—, and that the compensation for such enfranchisement being the sum of ——— is to be paid to ———, pursuant to the provisions of the said Acts.

And I request that you will state in writing at the foot hereof your ——— (*b*) such enfranchisement, and return the same for delivery to the Board of Agriculture (Copyhold Department) under the said Acts.

Dated this ——— day of ———.

(Signed) ———

To ———, the person entitled to the first vested estate of inheritance in the above manor.

I the said ——— do hereby ——— (*b*) the enfranchisement above proposed.

(Signed) ———

(*a*) If such person be a minor, notice must be given to his guardian.
(*b*) Assent to, or dissent from.

APPENDIX IV.

TABLE OF FEES authorised to be taken by the Board of Agriculture in respect of transactions under the Copyhold and Inclosure Acts.

ENFRANCHISEMENTS AND OTHER TRANSACTIONS UNDER THE COPYHOLD ACTS.

	£	s.	d.
On enfranchisements—			
Where the enfranchisement consideration-money does not exceed the sum of £1	0	5	0
Exceeds £1 and does not exceed 5	0	10	0
,, 5 ,, ,, 10	1	0	0
,, 10 ,, ,, 15	1	10	0
,, 15 ,, ,, 20	2	0	0
,, 20 ,, ,, 25	2	10	0
,, 25 ,, ,, 50	3	0	0
For every additional £25 or part of £25 up to £200, an additional sum of	0	10	0
For every additional sum of £50 or part of £50 above £200 up to £600, an additional sum of	0	10	0
For every additional sum of £100 or part of £100 above £600, an additional sum of	0	10	0
Where the enfranchisement consideration is a rent-charge, the fee will be computed on the value of the rent-charge, calculated at 25 years' purchase.			
Where the enfranchisement consideration is land, the fee will be computed on the fee-simple value of the land.			
Where the enfranchisement terms are fixed by the Board on agreed data at the request of the parties, a fee of	1	0	0
On every certificate of charge on property enfranchised, a fee of	0	10	0
On every certificate fixing the sum of money in consideration of which a rent-charge may be redeemed, a fee of	0	10	0

On enfranchisements—*continued.*	£	s.	d.
On every consent by the Board to the application of enfranchisement money, or the stock in which it may have been invested, to the purchase of land—			
For every £50 and part of £50 expended ..	0	2	6
On every decision of the Board or an Assistant-Commissioner a fee of	2	0	0
On every award defining the boundaries of lands for the purpose of enfranchisement, a fee of ..	5	0	0
On the amendment of any award or deed of enfranchisement, or other instrument confirmed under the Copyhold Acts, a fee of	2	0	0

FEES UNDER THE INCLOSURE ACTS.

Inclosure of Commonable Land.

On the confirmation of an inclosure award.....	10	0	0
And in addition for every acre enclosed not exceeding 100, a further sum of	0	2	0
For every additional acre exceeding 100 up to 500	0	1	6
For every additional acre exceeding 100 up to 2,000	0	1	0
For every additional acre exceeding 2,000 up to 5,000 (which is to be the maximum upon which a fee is to be charged).....	0	0	6

Regulation of Gated or Stinted Pastures.

On the confirmation of an award	10	0	0
And in addition one-half of the above-mentioned acreage fees.			

Settlement of Boundaries.

On an award setting out the boundaries of parishes, townships, manors, &c.	5	0	0
On an award declaring the boundaries of freehold, copyhold, or leasehold lands	5	0	0

Exchanges, Partitions, and Division of Intermixed Lands.
(See p. 452 *ante*.)

On an award of apportionment or other application of money received under the Lands Clauses Consolidation Act—			
For every £100 or part of £100	1	0	0

	£	s.	d.
On an order of apportionment of fee-farm rents, or other rents or certain payments—			
For every £100 or part of £100	1	0	0
On the amendment or completion of any award under local Acts	5	0	0
On the amendment of any award or order confirmed under the Inclosure Acts	2	0	0

METROPOLITAN COMMONS ACTS.

On every application for a scheme to be framed	10	0	0
On every such scheme reported to Parliament ..	5	0	0

THE UNIVERSITIES AND COLLEGE ESTATES ACTS.

On the enfranchisement of copyholds, the same scale of fees as under the Copyhold Acts.			
On the sale or purchase of lands; exchange of lands; purchase of lessee's interest in consideration of a gross sum of money or by an annual charge; raising of moneys by mortgage for certain purposes under sect. 27 of 21 & 22 Vict. c. 44; raising of moneys by mortgage by way of compensation for loss of fines through non-renewal of leases and advances of moneys for any of the above purposes under 43 & 44 Vict. c. 46—			
For every £50 or fractional part of £50	0	2	6

APPENDIX V.

PRECEDENTS OF COURT ROLLS, COPYHOLD ASSURANCES, &c.

(*Style of a Court-Leet and Court-Baron.*)

The manor of X. in the county of Y. } The court-leet, with view of frank-pledge and the court-baron and customary court of A. B., Esq., lord of the said manor, held at ——— within the said manor on the ——— day of ———

Before R. M., steward.

E. F., G. H., &c. } The jury for our sovereign Lady the Queen and the lord of this leet { L. M., N. O., &c.

P. Q., R. S. } Free suitors . { T. U., V. W.

who being sworn and charged upon their oaths touching the articles of the court-leet and the court-baron present and say as follows:—

(*Style of a Court-Baron and Customary Court.*)

The manor of X. in the county of Y. } The court-baron and customary court of A. B., Esq., lord of the said manor, held at ——— within the said manor on the ——— day of ———.

Before R. M., steward.

Homage { E. F., G. H., &c. / L. M., N. O., &c. } sworn.

(*Presentment in a Court-Leet as to Residents absent from the Court.*)

No. 1. The jury present that R. S., T. W., and M. R. reside within the precinct of this leet, and owe suit at this court, but have respectively made default, and are severally amerced by the jury in the sum of 6*d.*

This amercement is affeered at the sum of 3*d.* for each defaulter by us,

E. F., L. M. } Affeerors, sworn.

(*Presentment in a Court-Baron and Customary Court as to tenants who have neglected to perform their suit.*)

No. 2. At this court the homage upon their oaths present that R. S., T. W., and M. E., being 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 amerced.

This amercement is affeered, &c. [*As in Form No.* 1].

(*Presentment of the death of a copyhold tenant.*)

No. 3. At this court the homage present the death of A. B., late one of the customary tenants of this manor: and thereupon proclamation is made for any person or persons claiming title to the copyhold hereditaments parcel of this manor, whereof the said A. B. died seised, to come into court and be admitted.

(*Presentment of a copyholder's will under which admittance is claimed.*)

To Form No. 3 *add:*—

No. 4. And the homage also present that the said A. B. in and by his last will and testament, dated the ——— day of ——— (the probate whereof is now produced in court), gave and devised All, &c. [*stating the terms of the devise*], Unto L. M., his heirs and assigns, &c.

(*Admittance on descent, in court.*)

No. 5. At this court comes E. B., the eldest son and heir according of the custom of this manor of A. B., late of ——— deceased, and prays to be admitted to all and singular the copyhold hereditaments, parcel of this manor, whereof the said A. B. lately died seised, that is to say, All that, &c. [*parcels*] to which said premises the said A. B. was admitted at a court held for this manor (*or*, out of court), on the ——— day of ———; And the lord by the steward grants seisin thereof by the rod to the said E. B., To have and to hold the said hereditaments and premises unto the said E. B. and his heirs by copy of court-roll at the will of the lord, according to the custom of the manor by fealty, suit of court, the ancient rent or rents, a heriot when it shall happen (*a*), and the duties and services therefor due and of right accustomed: And the said E. B. pays to the lord such a fine as was agreed [*or*, a fine certain of £———] for the said admittance; and his fealty is respited.

(*a*) If the tenements are not heriotable, the reference to a heriot should be omitted.

(*Presentment of the death of a copyholder and default recorded upon proclamation for his heir.*)

No. 6. *To Form No. 3 add:*—

But no one comes; therefore let a second proclamation be made at the next court.

(*First proclamation in a statutory court held without the presence of homagers of the death of a customary tenant, and default recorded.*)

No. 7. The Manor of X. in the county of Y.

Whereas A. B., one of the customary tenants of this manor, died on or about the ——— day of ———, wherefore at this court proclamation is made for any person or persons claiming title to the copyhold hereditaments, parcel of this manor, whereof the said A. B. died seised, to take admittance thereto, otherwise the same will be seized into the hands of the lord for want of a tenant [but no one comes; therefore the first default is recorded (*a*)].

(*a*) As no homagers, as such, are present at the court, notice of the proclamation must be served within one month on the person whose right, title, or interest may be affected (4 & 5 Vict. c. 35, s. 86). If the customary heir, or other person claiming title, appears before the court is closed, the words in square brackets will be omitted.

(*Second proclamation of the death of a customary tenant, and second default recorded.*)

No. 8. At this court the second proclamation is made for any person or persons claiming title to the copyhold hereditaments, parcel of this manor, whereof A. B., late of ———, deceased, whose death was recorded at the court held on the ——— day of ———, died seised, to take admittance thereto, otherwise the same will be seized into the hands of the lord for want of a tenant [but no one comes; therefore the second default is recorded (*a*)].

(*a*) This form of proclamation is applicable as well to the case of a court held in the presence of homagers as to the case of a statutory court held without homagers; but in the latter case notice of the proclamation must be given, as mentioned under Form No. 7.

(*Third proclamation of the death of a customary tenant: third default recorded: precept to seize quousque issued.*)

No. 9. At this court the third proclamation is made for any person or persons claiming title to the copyhold hereditaments, parcel of this manor, whereof A. B., late of ———, deceased, whose death was recorded at the courts held for the

manor on the ——— day of ———, and the ——— day of ——— respectively, died seised, to take admittance thereto, otherwise the same will be seized into the hands of the lord for want of a tenant; And because no person claims to be entitled to admittance to the said hereditaments, the third default is recorded, and a precept is awarded and issued under the hand and seal of the said steward to S. T., the bailiff of this manor, to seize the said hereditaments into the hands of the lord for his use and benefit until some person or persons shall establish his or their right to be admitted thereto (*a*).

(*a*) See note to Form No. 7.

(*Surrender in court by a copyholder.*)

No. 10. At this court comes C. D., one of the customary tenants of this manor, and in consideration of the sum of £——— paid to him by E. F. in court surrenders into the hands of the lord, by the acceptance of the steward, according to the custom of the manor, All that, &c. [*parcels*], to which said premises the said C. D. was admitted, &c., To the use of the said E. F., his heirs and assigns, according to the custom of the manor, and by and under the rents, fines, heriots (*a*), suits, and services therefor due and of right accustomed.

(*a*) If the tenements are not heriotable, the word "heriots" should be omitted.

(*Conditional surrender in court by a copyholder.*)

No. 11. *To Form No.* 10 *add*:—

Subject to this condition that upon payment to the said E. F., his executors, administrators, and assigns, of the sum of £———, together with interest for the same in the meantime at the rate of £——— per cent. per annum, on the ——— day of ——— next, without any deduction, this surrender is to be void.

(*Admittance of a purchaser at the court at which the surrender is made to him.*)

No. 12. Now at this court comes the said E. F., and prays to be admitted to all and singular the copyhold hereditaments and premises so surrendered to his use as aforesaid: To whom the lord by the steward grants seisin thereof by the rod, To have and to hold the hereditaments and premises above described, Unto the said E. F. and his heirs, by copy of court-roll at the will of the lord, according to the custom of the manor by fealty, suit of court, &c. [*Continue as in Form No.* 5 *to the end thereof.*]

(*Acknowledgment in court by a mortgagee of the payment and satisfaction of monies secured by a conditional surrender.*)

No 13. At this court comes E. F., and acknowledges to have received of C. D., one of the customary tenants of this manor, the sum of £———, being in full satisfaction of all principal and interest monies due and owing from the said C. D. on a conditional surrender of certain copyhold hereditaments, parcel of this manor, made by the said C. D. to the said E. F., on the ——— day of ———, for securing the principal sum of £———, with interest for the same as in the said surrender is expressed: And the said E. F. requests the steward to enter satisfaction of the said principal and interest monies on the court-rolls of this manor: Whereupon satisfaction is entered by the steward accordingly.

(*Admittance in court of a tenant in tail in possession: surrender by way of disentailing assurance, and admittance thereon*)

No. 14. At this court the homage present [*will of A. B. with limitation to C. D. in tail, and death of A. B.*].

Now at this court comes the said C. D., and prays to be admitted to the copyhold hereditaments so devised to him as aforesaid: that is to say, All that, &c. [*parcels*], to which same hereditaments and premises the said A. B. was admitted, &c.; Whereupon the lord by the steward grants seisin thereof by the rod to the said C. D., To have and to hold the said hereditaments and premises unto the said C. D., and the heirs of his body according to the form and effect of the devise so made to him as aforesaid by copy of court-roll at the will of the lord, according to the custom of this manor by fealty, suit of court, &c. [*Continue as in Form No. 5*].

And afterwards at this court comes the said C. D., and for the purpose of barring and extinguishing his estate-tail in the same hereditaments and premises, and all remainders and reversions expectant thereupon, by virtue and in pursuance of the provisions in this behalf contained in the Fines and Recoveries Act, 1833, in court surrenders into the hands of the lord by the acceptance of the steward, all and singular the hereditaments and premises to which he was admitted as aforesaid, To the use of him the said C. D. his heirs and assigns, according to the custom of the manor, discharged from all estates-tail of the said C. D. and all remainders and reversions expectant thereupon; To whom the lord by the steward grants seisin of the said premises by the rod, To have and to hold the said hereditaments and premises unto the said C. D. and his heirs, by copy of court-roll at the will of the lord, according to the custom of this manor by fealty, suit of court, &c. [*Continue as in Form No. 5*].

(*Surrender in court by a married woman* (*a*) *entitled to an equitable estate-tail, by way of disentailing assurance.*)

No. 15. At this court the homage present that at a court held for this manor on the ——— day of ——— the copyhold hereditaments hereinafter described were surrendered by E. B., since deceased, to the use of K. L. and M. N., their heirs and assigns, according to the custom of this manor, upon the trusts expressed and declared in an indenture bearing date, &c., and expressed to be made between the said E. B. of the first part, A. F. of the second part, and the said K. L. and M. N. of the third part, and inrolled at the said last-mentioned court (being a settlement made in consideration of the marriage then intended, and afterwards solemnised between the said E. B. and the said A. F.), and that at the same court the said K. L. and M. N. were admitted tenants of the said hereditaments upon the trusts of the said settlement. And the homage also present that G., the only child of the said E. B. and A., his wife, by virtue of the trusts of the said settlement became, on the death of the survivor of the said E. B. and A., his wife, equitably entitled in possession to the said hereditaments for an estate in tail male [*or* in tail general] as her separate property, and that the said G. lately intermarried with, and is now the wife of, R. T.

Now at this court comes the said G. T., and for the purpose of barring the equitable estate-tail to which she is entitled as aforesaid of and in the hereditaments hereinafter described, and all remainders and reversions expectant thereupon, by virtue and in pursuance of the Fines and Recoveries Act, 1833, in court surrenders into the hands of the lord, by the acceptance of the steward, All that, &c. [*parcels*], To the use of her the said G. T. as her separate property, and her heirs, according to the custom of this manor.

(*a*) This form assumes that the surrenderor was married subsequently to the 1st of January, 1883, or that her title accrued subsequently to that date.

(*Voluntary grant in court to take effect in reversion, after the death, &c. of the lives in possession.*)

No. 16. At this court E. B., son of A. B., by the assignment of the said A. B. takes of the lord the reversion of All that, &c. [*parcels*], now in the tenure of the said A. B. with the remainder thereof to M. B. and P. B. for the term of their lives successively: To have and to hold the said reversion and all and singular the premises to the said E. B. and F. B. and G. B. for the term of their lives, and the life of the longest liver of them successively, and according to the custom of the manor, as soon and immediately as the said reversion

shall fall in after the death, surrender, or forfeiture of the said A. B., M. B., and P. B., by the rents, customs, suits, and services therefor due and of right accustomed: And for having such estate and interest in the said reversion of the premises the said E. B. gives to the lord for a fine as was agreed: And the said E. B., F. B., and G. B., are admitted tenants in reversion, but their fealty is respited until hereafter.

(*Voluntary grant in court to A. B., and to C. D. and E. F. his nominees, for their lives successively, where the previous estate has fallen in: under special custom* (*a*).)

No. 17. At this court the lord, by his steward, for divers valuable considerations grants unto A. B. All that [*parcels*] (which said hereditaments were held by copy of court-roll, according to the custom of this manor, and lately fell into the hands of the lord upon the death of E. R., late a copyhold tenant of this manor, being the last existing life in the said copy of court-roll) To hold to him the said A. B. for the term of his life, and for the lives of C. D. and E. F., or such other lives as he shall nominate to be estated in the premises, and the life of the longest liver of them successively: And to the said A. B. the lord by the steward grants seisin of the said hereditaments by the rod, To have and to hold the said hereditaments and premises Unto the said A. B. for and during the term of his life and the lives of the said C. D. and E. F., and such other lives as aforesaid, by copy of court-roll at the will of the lord, according to the custom of the manor, by and under the rents, duties, and services therefor due and of right accustomed, and by the best goods or best beast for a heriot, when it shall happen, or £——— at the will and election of the lord and also by scouring the lord's rivers when and as often as it shall be necessary that he should be required thereto: And for the said grant the said A. B. gives to the lord such a fine as was agreed: And his fealty is respited.

(*a*) For these special customs, see *Right* v. *Bawden*, 3 East, 260.

(*Surrender in court by the first life on the death of the second of three lives, in order to fill up the copy, and admittance thereon.*)

No. 18. At this court, upon presentment of the death of C. D., came A. B., a copyhold tenant of this manor, who held to him for his life and the lives of the said C. D. and of E. F. the hereditaments hereinafter described, and in court surrendered into the hands of the lord, by the acceptance of the steward, All that, &c. [*parcels*], To the intent that the lord might re-grant the same to the said A. B. for the term

of his life, and for the lives of the said E. F. and of G. H., And to the said A. B. present in court the lord by his steward granted seisin of the said premises by the rod, To have and to hold the said premises unto the said A. B. for the term of his life, and for the lives of the said E. F. and G. H. successively, by copy of court-roll at the will of the lord, according to the custom of the said manor, by and under the rents, duties, and services therefor due and of right accustomed: And for the said grant the said A. B. gave to the lord for a fine, as appears on the margin hereof: And his fealty was respited.

(*Surrender out of court by a copyholder for lives for the purpose of exchanging the lives.*)

The Manor of X., in the county of Y. No. 19.

Be it remembered that on the ——— day of ——— A. B. of ———, who was on the ——— day of ——— out of court admitted to the copyhold hereditaments hereinafter described, to hold to him and his heirs for the lives of C. D., E. F., and G. H., and the life of the longest liver of them, came before R. M., steward of the said manor, and did out of court surrender into the hands of the lord, by the acceptance of the steward, All that, &c. [*parcels according to the court-roll description*], To the intent that the lord might re-grant the same premises to the said A. B. and his heirs for and during the lives of the said G. H., and of E. B., now aged ——— years or thereabouts, and of G. B., now aged ——— years or thereabouts, and the life of the longest liver of them, according to the custom of the said manor.

A. B.

Taken and accepted the ——— day of ———, by me,
R. M., steward of the said manor.

(*Re-grant on the foregoing surrender.*)

The Manor of X., in the county of Y.

Whereas A. B. on the ——— day of ——— came before R. M., steward of the said manor, and did then out of court surrender into the hands of the lord, by the acceptance of the said steward, the copyhold hereditaments hereinafter described, to which the said A. B. was on the ——— day of ——— out of court admitted to hold to him and his heirs, according to the custom of the manor, for the lives of C. D., E. F., and G. H., and the life of the longest liver of them, to the intent that the lord might re-grant the same premises to the said A. B. and his heirs for and during the No. 20.

lives of the said G. H. and of E. B., now aged ——— years or thereabouts, and of G. B., now aged ——— years or thereabouts, and the life of the longest liver of them, according to the custom of the said manor: Now be it remembered that on the ——— day of ——— the lord of the said manor, by the said R. M., his steward, in consideration of the sum of £———, paid to him by the said A. B., granted seisin by the rod, according to the custom of this manor, unto the said A. B. of All that, &c. [*parcels according to the court-roll description*], To have and to hold the said hereditaments and premises Unto the said A. B. his heirs and assigns for and during the lives of the said G. H., E. B., and G. B., and the life of the longest liver of them, by copy of court-roll at the will of the lord, according to the custom of the manor, and by and under the rents and services therefor due and of right accustomed: And the said A. B. paid to the lord for the said grant for a fine as was agreed: And his fealty was respited.

R. M., steward.

(*Surrender out of court by a copyholder in fee to a purchaser.*)

No. 21. The Manor of X., in the county of Y.

Be it remembered that on the ——— day of ——— A. B., one of the customary tenants of the said manor, came before R. M., steward of the said manor, and in consideration of the sum of £———, paid to him by C. D. (the receipt (*a*) whereof is hereby acknowledged), for the purchase of the hereditaments hereinafter described, did out of court surrender into the hands of the lord, by the acceptance of the said steward, according to the custom of the manor, All that, &c. [*parcels according to the court-roll description*], to which same premises the said A. B. was admitted, &c., To the use of the said C. D. his heirs and assigns, &c. [*As in Form No.* 10.]

A. B.

Taken and accepted, &c.

[*As in Form No.* 19.]

(*a*) This receipt should be indorsed, as sect. 54 of the Conveyancing, &c. Act, 1881, applies to deeds only.

(*Surrender out of court by an equitable tenant in tail in possession, with the consent of the protector of the settlement, for the purpose of barring the entail.*)

No. 22. The Manor of X., in the county of Y.

Whereas, &c. [*Recite assurances and facts which show that A. B. is equitable tenant in tail, and that C. D. is protector of the settlement.*] Now be it remembered that

on the ——— day of ——— the said A. B. came before R. M., steward of the said manor, and for the purpose of barring and extinguishing all estates tail in equity or otherwise of him the said A. B. in the hereditaments hereinafter described, and all remainders and reversions expectant thereon, he did, with the consent of the said C. D., as protector of the settlement of the said hereditaments, testified by his signature hereunder written, out of court surrender into the hands of the lord, by the acceptance of the said steward, according to the custom of the said manor All that, &c. [*parcels according to the court-roll description*], To the use of him the said A. B. his heirs and assigns, according to the custom of the said manor. A. B.

Taken and accepted, &c.

[*As in Form No.* 19.]

I C. D., as protector of the settlement above mentioned, do hereby consent to the foregoing surrender. In witness, &c.

C. D.

Signed by the said C. D.
in the presence of L. T. of ———.

(*Precept to seize quousque after proclamations for heirs of deceased tenant.*)

The Manor of X., in the county of Y. No. 23.

To S. T., bailiff of the said manor.

Whereas public proclamation has been made at three consecutive (*a*) courts, held in and for the said manor on the ——— day of ——— the ——— day of ———, and the ——— day of ——— respectively, for any person or persons claiming title to the copyhold lands and hereditaments, parcel of the said manor of which E. F. lately died seised [*or*, possessed], to take admittance thereto: And because no person has appeared and claimed admittance to the said lands and hereditaments, It is ordered that you, S. T., do seize, and you are hereby authorized and required to seize into the hands and for the use of the lord All and singular the said copyhold lands and hereditaments, parcel of this manor, of which the said E. F. so died seised [until some person or persons shall appear and make good his or their claim to be admitted thereto](*b*). And you are hereby required to make your return to this precept forthwith (*or*, at the next court to be held for the said manor).

Given under my hand and seal this ——— day of ———.

R. M., steward of the said manor.

(*a*) See *Doe* d. *Bover* v. *Trueman*, 1 B. & Ad. 736.

(*b*) If the custom of the manor warrants an absolute seizure, the words in square brackets are to be omitted.

(*Precept to seize quousque, by virtue of special custom, to compel surrenderee to take admittance.*)

No. 24. The Manor of X., in the county of Y.

To S. T., bailiff of the said manor.

Whereas public proclamation has been made at three consecutive courts, held in and for the said manor on the ——— day of ———, the ——— day of ———, and the ——— day of ——— respectively, for G. H. to take admittance by virtue of a certain surrender, made the ——— day of ———, by L. M. of All that, &c. [*parcels as specified in the surrender*]: And because the said G. H. has not taken admittance to the said hereditaments, It is ordered, &c. [*adapting Form No. 23 to suit the circumstances*], Until the said G. H. claims to be admitted thereto, &c. (*As in Form No. 23.*)

(*Return of the bailiff to be indorsed on precept to seize quousque.*)

No. 25. I S. T. bailiff of the manor of ——— do hereby certify that by virtue of the within-written precept I did on the ——— day of ——— in the presence of M. N. and O. P. [two of the ——— (*a*) tenants of the said manor] (*b*), seize the lands and hereditaments within mentioned, into the hands and for the use of the lord until, &c., as ordered by the same precept.

Witness my hand this ——— day of ———.

S. T., bailiff of the said manor (*c*).

(*a*) Freehold or copyhold, as the case may be.

(*b*) The words within square brackets will only be inserted if the seizure is made in the presence of tenants as witnesses.

(*c*) This return should be entered on the court-rolls.

(*Licence to demise.*)

No. 26. The Manor of X., in the county of Y.

Be it remembered that on the ——— day of ——— A. B., lord of the said manor, by R. M., his steward, did out of court grant to C. D., a customary tenant of the said manor, full licence and authority to demise and lease to any person or persons All that, &c. [*parcels according to the court-roll description*], or any part of the said premises, for any term of years not exceeding ——— years, computed from the ——— day of ——— last, to which same premises the said C. D. was admitted, &c.: Saving always to the lord and his successors in title, lords of the said manor for the time being, all and all manner of fines, heriots, rents, customs, and services for the said premises due and of right accustomed: And for this licence the said C. D. paid for a fine the sum of ——— [according to the custom of the manor] (*a*).

R. M., steward of the said manor.

(*a*) If the fine is certain, add the words in square brackets.

APPENDIX VI.

Extract from the Close Rolls of 18 Henry III. as to Manorial Courts.

THE following translation of an extract from the Close Roll of 18 Henry III., mem. 10 dors., concerning the interpretation of a clause contained in Magna Charta, as confirmed in 9 Henry III., will show how the period of three weeks was fixed for the manorial courts.

The King to the sheriff of Lincoln, greeting. Since We have heard, &c., it was asserted and testified by many that in the time of King Henry, our grandfather, as well the Hundred and Wapentake Courts as the Courts of the Magnates of England were wont to be holden from fifteen days to fifteen days, And although it would greatly please Us to provide for the common weal of the whole realm and the safeguard of the poor: nevertheless, because those two tourns are not fully sufficient to preserve the peace of our realm and to correct excesses committed, as well against rich as poor, which things do belong to the Hundred Courts, It is therefore provided by the Common Council of the aforesaid Lord of Canterbury, and of all the aforesaid bishops, earls, barons, and others, that between the aforesaid two tourns, the Hundred and Wapentake Courts and also the Courts of the Magnates shall be holden from three weeks to three weeks, where formerly they were accustomed to be holden from fifteen days to fifteen days, &c. And therefore We command you that hereafter you cause the aforesaid Hundred and Wapentake Courts and Magnates' Courts, as well of Us as of others, to be holden according to what is declared as aforesaid from three weeks to three weeks, except the aforesaid two tourns, which shall hereafter be holden as they were formerly accustomed to be holden. Witness the King, &c.

APPENDIX VII.

The Customs of Yetminster Prima.

Imprimis. The lord of the said manor ought to find a steward to keep two courts there every year at the least, the one about Hocktide and the other about Michaelmas.

Item. All the tenants of the said manor are bound to do their suit and service to the same courts, upon reasonable warning given them by the reeve, upon pain of amerciament.

Item. The reeve is the lord's chief officer to gather up his rents and to levy his fines, heriots and amerciaments, all which he is bound to deliver, and to make his accounts at Sarum after Hocktide and Michaelmas if the lord do require it; and if he be robbed by the way or by his negligence, or waste or consume any part thereof or all of the lord's money in his hands, the tenants are bound to make satisfaction to the lord.

Item The reeve is to be chosen at every Michaelmas court, &c.

Item. Any tenant may assign, nominate, or surrender his tenement to his child, or to any other person when he listeth, at any court before the homage, or out of the court before the reeve and two or more of the tenants, or if it so happen that the reeve or any of the tenants be not present, he may make notwithstanding a good surrender, nomination, or assignment, before sufficient witness, wheresoever he shall be, by delivering a rush or straw, and by saying these words, or the like:—I A. B. do surrender my tenement which I hold of my lord in the manor of Yetminster Prima, into his hand and to the use of C. D., my son, or any other, 'excepting (*as may be excepted*), and leaving enough for rent and repairs adjudged by the homage at the court where the tenant doth claim to be admitted, and if there be not enough, the whole homage shall be charged with the said rent or reparations.'

Item. Whatsoever the husband doth except to himself, having then a wife, the same wife shall enjoy the said 'excepts' in as large a manner during her life only as her husband did or might do.

Item. The same party that doth make such a surrender

shall no more be called a tenant but an exceptor, and enjoy such an 'excepts' by a writing or 'copy of excepts' during his life, without doing suit or service, or paying any rent, and he to whose use the surrender was made shall be the tenant

Item. If any such exceptor will farm his 'excepts,' the tenant to the same tenement shall rent the same, if he list, one penny within any other man's price that without fraud shall offer the same.

Item. [As to assignments out of court.]

Item. If surrender be made to a maid or a widow, and so she become tenant, he who shall marry with her shall be taken tenant in her right for one penny to the steward.

Item. When any tenant is admitted, he or she shall pay unto the steward for every tenement 2*s.*, and for every lot 12*d.*, and for every half-place 6*d.*, and shall give unto the homage a gallon of good ale and a loaf of bread, which is the 'customary-hold,' and there was never any other writing within the manor, saving 'copyes of excepts,' which are before mentioned.

Item. Every tenant must be resident upon his tenement, unless upon good consideration he be licensed by the lord in the face of the court.

Item. No tenant or exceptor can let his tenement, or any part thereof, for longer term than for one year at one time; if he do, he is to be amerced for it.

Item. [As to waste.]

Item. Upon the death or surrender of the tenant, the lord shall have the best quick beast of the said tenant in the name of a heriot, and if he hath no quick goods, then the best goods of his household stuff or apparell, which the reeve by his office shall presently seize and cause to be prized by some of the tenants to the lord's use, and the lord is to choose whether he will have the goods or the price.

Item. [As to free-bench of the whole tenement during widowhood and chastity.]

Item. The widows, during all the time of their widowhood, shall have 18*d.* yearly abated of their rent out of every tenement they hold, and the reeve shall be allowed it in his accompts of the lord.

Item. No tenement can be let for any longer estate than one life.

Item. There can be no reversion granted to any (*a*).

Item. If any tenant die, having no wife, without limiting over his tenement by surrender or assignment as is aforesaid,

(*a*) As to the power of the tenant to dispose of the equitable inheritance by a will giving successive equitable interests, see *Allen* v. *Bewsey*, 7 Ch. Div. 453.

then the lord may lawfully dispose of the same tenement or tenements at his pleasure but for one life, and in such case he may make a choice of his tenant, and may make his own fine without the tenants' assessments.

Item. [As to timber for repairs.]

Item. No customary tenant can sell any timber growing upon his tenement, &c.

Item. [As to stones for repairs.]

Item. The steward shall and ought to choose at the end of every court two of the tenants to be assessors of all the amerciaments.

APPENDIX VIII.

The Customs of the Copyholds of the Honour of Clitheroe, as ascertained by the Jury of Survey within the Forest of Pendle, in the Manor of Ightenhill, A.D. 1666(*a*).

"For ascertaining the customs of the said manor we say that the steward of the said manor ought to keep the hamlet courts of the said manor twice per annum and not above, unless by special order and direction.

II. That a copyholder may surrender his copyhold lands in this manor, viz., by the rod in person, or by a lawful attorney by writing, before the steward in open court, or out of court by the steward, by the greve, or by one or two customary tenants of the same manor, and also by the rod, by words without writing.

III. That a surrender legally made out of court ought to be presented into the court at, or within the third court after, the surrendering thereof, or otherwise it becomes void; and the tenant who received the same, for not presenting thereof, forfeits his copyhold estate, and ought to be so presented and found by the homage.

IV. That if a tenant receive a surrender and within the third court after, and before the presenting thereof, die, so that thereby the same falls into another's keeping; in such case it ought to be delivered upon oath to the homage, and by them presented into the steward's hands in open court: the manner whereof must be expressed in writing, as a parcel of their verdict.

V. That the greve or customary tenant may at or within the prefixed time by the custom of the said manor surrender in open court the lands to them formerly delivered and

(*a*) The customs were stated to be alike in all the other manors within the Honour. The estates and rights of the copyholders within the Honour seem to have been frequently called in question by the Crown at the commencement of the seventeenth century, but were settled by decrees of the Duchy of Lancaster Courts, and were confirmed by the private Acts of Parliament, 7 Jac. I., Nos. 20 & 27, and 14 Car. II. No. 54.

entrusted according to the donor's intent; and the surrenderee may thereof take admittance, paying the accustomed fine, viz., one year's ancient rent of the lands so surrendered and no more.

VI. That if a tenant by copy of court-roll surrender a customary estate, and at the time of such surrender making be not of sound memory, such surrender is void and of no force.

VII. That if the surrenderee die before his admittance, his heir-at-law may receive the same, answering to the lord of the said manor a double fine, viz., two years' ancient rent of the lands whereof admittance is so given.

VIII. That upon the death of every tenant, or alienation of land, a year's rent thereof becomes due to the lord of the said manor in the name of a fine, or relief, according to the custom of the said manor, and no further charge.

IX. That where a husband is seised in fee of a copyhold estate during any time of his intermarriage, his wife after his death is dowable of a fourth part thereof.

X. That the heir-at-law of a copyholder who died seised in fee is to be found and presented by the homage at the next court after, and to be admitted tenant accordingly.

XI. That unto such heir, if under the age of fourteen years, the homage ought also to find a guardian, who must find sufficient pledges for the well governing as well of the body as of the lands of the infant, until the same age, and then a just account thereof to make (necessary expenses to be allowed); after which age of fourteen years such heir may yearly and every year, until his full age of twenty-one years, choose a guardian before the steward, who is to take the like pledges during such election.

XII. That the steward may assign a guardian to the heir under fourteen years of age whose lands are intrusted and instated in feoffees, taking sufficient pledges as before, and taking therefor three shillings and four pence.

XIII. That the husband may hold the lands of his wife by the curtesy of England.

XIV. That the husband may surrender his copyhold lands to the use of his wife; for by that surrender the lands are transferred into the lord's hand to her use from whom she takes her estate, and not immediately from her husband.

XV. That the surrenderee having an estate to him and his assigns for life, lives, or years, may assign over the same either by surrender, by an assignment, last will and testament, or other writing lawfully executed.

XVI. That a copyholder may not let his copyhold lands for longer time than a year and a day, without a surrender.

XVII. That the party to be admitted is after three proclamations, duly made in court, to take the same admittance, but if any forbid the same, then before any admittance the same forbid to be entered, and either granted, or else pledges found to try the same according to custom.

XVIII. That if a forbid be granted in open court, and so entered and inserted in the court-rolls, the grantor thereof, and all persons claiming under him, are excluded and debarred accordingly.

XIX. That a copyholder may not exchange his copyhold lands, unless it be done by surrender, so that thereby the lord may receive a fine, viz., a year's rent of the lands so exchanged.

XX. That copyhold lands may not be entailed without a fine or surrender from one to another, and if any such be, it is void, and the lands shall revert to the right heir; neither can the same be fined for upon condition mentioned in the fine or surrender, for that no use of trust may be contained within the body of a fine or surrender, but a copyholder may make feoffees in trust in his customary lands, and all manner of uses may be expressed in an intent or schedule annexed to the fine or surrender, or indenture or last will in writing.

XXI. That feoffees in trust may not refeoffee [re-infeoff] other persons under a contrary or wrong use, in breach of their trust; neither is there any aversement against copy of court-roll.

XXII. That all real plaints are to be entered and tried in the same court, by a jury of twenty-four tenants, according to the custom there; and after the same be tried, the same shall not be any more tried in the same court, and the plaintiff or defendant against whom the verdict is found (or if the plaintiff be nonsuited) such must pay the whole charge of calling together the jury, which is nineteen shillings and four pence.

XXIII. That a tenant holding by copy, or having been actually possessed thirty years, ought not to be dispossessed by the stewards, but by due course of law.

XXIV. That upon presentment made by the homage for wrongful withholding of lands, the steward may (sitting in the court) grant his warrant for delivery of possession according to the ancient custom and proceedings of the court, unless a traverse with sufficient pledges be tendered for trial thereof at the next court by twelve men; until which court the pledge is to stand charged for the mean profits of lands in question.

XXV. That if the greve be molested in the execution of the

said warrant, the party aggrieved may show cause before the steward, and be admitted accordingly to his traverse, giving sufficient pledges, as in the like case is usual where the warrant is only grounded upon a presentment.

XXVI. That if the greve by virtue of such warrant deliver possession of the lands therein mentioned, according to the tenor thereof, then the execution of the same warrant is effectually perfected; and by custom of the said manor the steward cannot contradict the same, as to dispossess the party so in possession either by traverse, or by colour or pretence of any supersedeas, or otherwise grounded upon the same proceedings.

XXVII. That no writ of certiorari, nor any other writ granted by any superior court, ought to be received by the steward for the removing of any presentment or plaint wherein the title of land is concerned.

XXVIII. That two or three of the homage ought to be sworn . . . . to assess the several amercements upon the presentments, &c.

XXIX. That the homage at every Michaelmas court ought to present and find a greve for the said forest or manor, who is not to enter into his office until the Michaelmas court next after, and that a deputy greve ought to be elected by the major vote of the tenants in open court, for the execution of that office and sworn accordingly.

XXX. That the proceedings of the said court ought to be carefully and exactly enrolled in parchment and true copies thereof made upon request, taking therefor due fees according to the calendar of fees hereunder written.

(*Here follows a list of fees.*)

XXXI (*a*). That the steward of the Honour of Clithero ought to enroll all surrenders that are lawfully presented to him, and that the said rolls or records are to be kept at the Castle of Clithero, under three keys, and the receiver ought to keep one of the said keys, the steward another, and one of the copyholders within the said manor (elected by the major part of the copyholders) ought to keep another key; and that the said receiver, steward, and copyholder, that have the keys in their keeping, ought upon request made to them, by any person that hath occasion to search the said rolls, to bring or send the said keys of the said rolls or records; and all such persons who have their liberty for such search shall pay three shillings, viz., to the receiver one, to the steward another, and to the copyholder another shilling."

(*a*) It is stated that this article does not appear in some of the copies of the customs.

APPENDIX IX.

Extracts from the Wills Act, 1837.

(1 Vict. c. 26.)

An Act for the Amendment of the Laws with respect to Wills. [3rd July, 1837.]

Meaning of certain words in this Act, &c.

1. Be it enacted 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 "will" shall extend to a testament, and to a codicil, and to an appointment by will or by writing in the nature of a will in exercise of a power, and also to a disposition by will and testament or devise of the custody and tuition of any child, by virtue of an Act passed in the twelfth year of the reign of King Charles the Second, intituled "An Act for taking away the Court of Wards and Liveries and Tenures in capite and by Knights' Service and Purveyance, and for settling a Revenue upon his Majesty in lieu thereof," or by virtue of an Act passed in the parliament of Ireland in the fourteenth and fifteenth years of the reign of King Charles the Second, intituled "An Act for taking away the Court of Wards and Liveries and Tenures in capite and by Knights' Service," and to any other testamentary disposition; and the words "real estate" shall extend to manors, advowsons, messuages, lands, tithes, rents, and hereditaments, whether freehold, customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether corporeal, incorporeal, or personal, and to any undivided share thereof, and to any estate, right, or interest (other than a chattel interest) therein; and the words "personal estate" shall extend to leasehold estates and other chattels real, and also to monies, shares of government and other funds, securities for money (not being real estates), debts, choses in action, rights, credits, goods, and all other property whatsoever which by law devolves upon the executor or administrator, and to any share and interest therein; 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.

All property may be disposed of by will, &c.

3. It shall be lawful for every person to devise, bequeath, or dispose of by his will executed in manner hereinafter required all real estate and all personal estate which he shall be entitled to, either at law or in equity, at the time of his death, and which, if not so devised, bequeathed, or disposed of would devolve upon the heir-at-law or customary heir of him, or, if he became entitled by descent, of his ancestor, or upon his executor or administrator; and the power hereby given shall extend to all real estate of the nature of customary freehold or tenant right or customary or copyhold, notwithstanding that the testator may not have surrendered the same to the use of his will, or notwithstanding that, being entitled as heir, devisee, or otherwise, to be admitted thereto, he shall not have been admitted thereto, or notwithstanding that the same, in consequence of the want of a custom to devise or surrender to the use of a will or otherwise could not at law have been disposed of by will if this Act had not been made, or notwithstanding that the same, in consequence of there being a custom that a will or a surrender to the use of a will should continue in force for a limited time only, or any other special custom, could not have been disposed of by will according to the power contained in this Act if this Act had not been made; and also to estates *pur autre vie* whether there shall or shall not be any special occupant thereof, and whether the same shall be freehold, customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether the same shall be a corporeal or an incorporeal hereditament; and also to all contingent, executory, or other future interests in any real or personal estate, whether the testator may or may not be ascertained as the person or one of the persons in whom the same respectively may become vested, and whether he may be entitled thereto under the instrument by which the same respectively were created, or under any disposition thereof, by deed or will; and also to all rights of entry for conditions broken and other rights of entry; and also to such of the same estates, interests, and rights respectively, and other real and personal estate, as the testator may be entitled to at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his will.

As to the effect of a devise of copyholds on the estate of the customary heir, see *Garland* v. *Mead*, L. R. 6 Q. B. 441. As to the effect of a will in barring freebench, see *Lacey* v. *Hill*, L. R. 19 Eq. 346.

4. Provided always, that where any real estate of the nature of customary freehold, or tenant right, or customary or copyhold, might, by the custom of the manor of which the same is holden, have been surrendered to the use of a will, and the testator shall not have surrendered the same to the use of his will, no person entitled or claiming to be entitled thereto by virtue of such will shall be entitled to be admitted, except upon payment of all such stamp duties, fees, and sums of money, as would have been lawfully due and payable in respect of the surrendering of such real estate to the use of the will, or in respect of presenting, registering or enrolling such surrender, if the same real estate had been surrendered to the use of the will of such testator; provided also, that where the testator was entitled to have been admitted to such real estate, and might, if he had been admitted thereto, have surrendered the same to the use of his will, and shall not have been admitted thereto, no person entitled or claiming to be entitled to such real estate in consequence of such will shall be entitled to be admitted to the same real estate by virtue thereof, except on payment of all such stamp duties, fees, fine, and sums of money as would have been lawfully due and payable in respect of the admittance of such testator to such real estate, and also of all such stamp duties, fees, and sums of money, as would have been lawfully due and payable in respect of surrendering such real estate to the use of the will, or of presenting, registering or enrolling such surrender, had the testator been duly admitted to such real estate, and afterwards surrendered the same to the use of his will; all which stamp duties, fees, fine, or sums of money due as aforesaid, shall be paid in addition to the stamp duties, fees, fine, or sums of money due or payable on the admittance of such person so entitled or claiming to be entitled to the same real estate as aforesaid.

As to the fees and fines payable by devisees of customary and copyhold estates.

5. When any real estate of the nature of customary freehold or tenant right, or customary or copyhold, shall be disposed of by will, the lord of the manor or reputed manor of which such real estate is holden, or his steward, or the deputy of such steward, shall cause the will by which such disposition shall be made, or so much thereof as shall contain the disposition of such real estate, to be entered on the court-rolls of such manor or reputed manor; and when any trusts are declared by the will of such real estate it shall not be necessary to enter the declaration of such trusts, but it shall be sufficient to state in the entry on the court-rolls that such real estate is subject to the trusts declared by such will; and when any such real estate could not have been disposed of by will if this Act had not been made, the same fine, heriot, dues, duties and services, shall be paid and rendered by the

Wills or extracts of wills of customary freeholds and copyholds to be entered on the court-rolls, &c.

devisee as would have been due from the customary heir in case of the descent of the same real estate, and the lord shall as against the devisee of such estate have the same remedy for recovering and enforcing such fine, heriot, dues, duties and services as he is now entitled to for recovering and enforcing the same from or against the customary heir in case of a descent.

Estates *pur autre vie.*

6. If no disposition by will shall be made of any estate *pur autre vie* of a freehold nature, the same shall be chargeable in the hands of the heir, if it shall come to him by reason of special occupancy, as assets by descent as in the case of freehold land in fee simple; and in case there shall be no special occupant of any estate *pur autre vie*, whether freehold or customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether a corporeal or incorporeal hereditament, it shall go to the executor or administrator of the party that had the estate thereof by virtue of the grant; and if the same shall come to the executor or administrator, either by reason of a special occupancy or by virtue of this Act, it shall be assets in his hands and shall go and be applied and distributed in the same manner as the personal estate of the testator or intestate.

* * * * *

What a general devise shall include.

26. A devise of the land of the testator, or of the land of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, and any other general devise which would describe a customary, copyhold, or leasehold estate, if the testator had no freehold estate which could be described by it, shall be construed to include the customary, copyhold, and leasehold estates of the testator, or his customary, copyhold, and leasehold estates, or any of them, to which such description shall extend, as the case may be, as well as freehold estates, unless a contrary intention shall appear by the will.

* * * * *

How a devise without words of limitation shall be construed.

28. Where any real estate shall be devised to any person without any words of limitation, such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention shall appear by the will.

APPENDIX X.

Extracts from the Copyhold Act, 1841.

(4 & 5 Vict. c. 35.)

An Act for the commutation of certain manorial rights in respect of lands of copyhold and customary tenure, and in respect of other lands subject to such rights; and for facilitating the enfranchisement of such lands and for the improvement of such tenure.

[21st June, 1841.]

Courts of Equity may decree a partition of lands of copyhold or customary tenure.

85. It shall be lawful for any court of equity in any suit to be hereafter instituted therein for the partition of lands of copyhold or customary tenure, to make the like decree for ascertaining the rights of the respective parties to the suit in such lands, and for the issue of a commission for the partition of the same lands, and the allotment in severalty of the respective shares therein, as according to the practice of such court may now be made with respect to lands of freehold tenure.

Lords of manors or their stewards may after 31st December, 1841, hold customary courts, although no copyhold tenant be present.

86. After the thirty-first day of December one thousand eight hundred and forty-one it shall be lawful for the lord of any manor or his steward, or the deputy of such steward, to hold a customary court for such manor, notwithstanding at the time of holding the same there shall not be any person who shall hold lands of such manor by copy of court-roll, and also notwithstanding, if there shall at the time of holding such court be any person or persons who shall hold lands of such manor by copy of court-roll there shall not be any such person present at such court or there shall not be more than one such person present at such court: and every court so holden shall be deemed and taken for all purposes whatsoever to be a good and sufficient customary court: provided always, that no proclamation made at any court so holden shall affect the right, title, or interest of any person not present at the same, unless notice of such proclamation having been made shall be duly served within one month after such meeting shall have been holden on the persons whose right, title, or interest may be affected by such proclamation.

Lords or their stewards may after 31st December, 1841, make out of the manors and out of court grants of lands to be held by copy of court-roll.

87. After the thirty-first day of December one thousand eight hundred and forty-one it shall be lawful for the lord of any manor or his steward, or the deputy of such steward, to grant at any time and at any place either within or out of such manor, and without holding a court for such manor, any lands parcel of such manor, to be held by copy of court-roll or according to the custom of the said manor, which such lord shall for the time being be authorised or empowered to grant out to be held by copy of court-roll, or according to such custom, so nevertheless that such lands be granted for such estate only, and to such person only, as such lord, steward, or deputy shall for the time being be authorised or empowered to grant the same.

Lords or their stewards may after 31st December, 1841, grant admissions out of manors and out of court.

88. After the thirty-first day of December one thousand eight hundred and forty-one it shall be lawful for the lord of any manor or his steward, or the deputy of such steward, to admit at any time and at any place either within or out of such manor, and without holding a court for such manor, any person as tenant to any lands, parcel of such manor, to be held by copy of court-roll, or according to the custom of such manor, to and for which such person shall for the time being be entitled to be admitted.

After 31st December, 1841, every surrender, &c., delivered to the lord or steward, and every fact proved to the lord or steward at any court whereat a homage shall not be assembled, shall be forthwith entered on the court-rolls.

89. After the thirty-first day of December one thousand eight hundred and forty-one every surrender and deed of surrender which the lord shall be compellable to accept, or shall accept, and also every will and codicil, a copy of which respectively shall be delivered to the lord of the manor of which the lands affected by such surrender, deed of surrender, will, and codicil are parcel, or to his steward, or the deputy of such steward, either at any court holden for such manor at which there shall not be any homage assembled, or out of court, and also every grant and admission by the lord of any manor or his steward, or the deputy of such steward, pursuant to this Act, shall be forthwith entered on the court-rolls of the manor by such lord, or steward, or deputy: and every entry made on the court-rolls of any manor pursuant to this present clause shall for all purposes whatsoever be deemed and taken to be an entry made in pursuance of a presentment made at a court holden for such manor by the homage assembled thereat: and the steward or his deputy shall be entitled to the same fees and other charges for making such entry on the court-rolls as he would have been entitled to in respect of such entry in case the same had been made in pursuance of a presentment made at a court holden for such manor by the homage assembled thereat.

After 31st December, 1841, present-

90. After the thirty-first day of December one thousand eight hundred and forty-one it shall not be essential in any

case to the validity of the admission of any person as tenant of any lands held of any manor by copy of court-roll, or according to the custom of such manor, that a presentment shall be made by the homage assembled at any court held for such manor of the surrender, will, or other instrument or fact, in pursuance or in consequence of which such admission shall have been granted.

ment by the homage shall not be essential to the validity of an admission.

91. Provided always, that where by the custom of any manor, the lord of such manor is authorised, with the consent of the homage of such manor, to grant any common or waste lands of such manor to be holden of the lord by copy of court-roll, nothing in this Act contained shall operate to authorise or empower the lord to grant any such common or waste lands without the consent of the homage assembled at a customary court holden for such manor, nor shall any court holden for such manor be deemed or taken to be a good or sufficient customary court for such purpose, unless the same shall have been duly summoned and holden according to the custom of such manor in such cases used and accustomed before the passing of this Act, and unless there shall be present at such court a sufficient number of persons holding lands of such manor by copy of court-roll to constitute according to such custom a homage assembled at such court.

Lords of manors in certain cases not to grant common or waste lands without consent of the homage of the manor.

92. It shall be lawful for any tenant of any manor, by and with the licence of the lord of the manor, or the steward thereof (which licence such lord is hereby authorised to give, or to empower the steward to give, by any writing under his hand, to be afterwards entered on the rolls of the manor), to dispose of his ancient tenement or any part thereof by devise, sale, exchange, or mortgage in such parcel or parcels as he shall think proper, but subject to the payment of such portion or portions of the yearly customary lord's rent payable for the whole of such ancient tenement as shall be set and apportioned upon such parcel or parcels by the lord of the manor of which such ancient tenement is holden, or his steward, or the deputy of such steward; and such parcel or parcels shall, except so far as the tenure or descent thereof shall be affected by this Act, be held of the lord of the same manor in all respects and shall be from time to time conveyed in such manner as any such original tenement has by custom been held and conveyed.

Power to lords to grant licences to tenants to alienate their ancient tenements in portions where they are now restrained by the custom from so doing.

* * * * *

97. The provisions of this Act enabling tenants to grant rights of way or entry and other easements to the lord of the manor in or upon and through their respective lands for mining purposes; for enabling courts of equity to decree a partition of lands of copyhold or customary tenure; for

Certain provisions of this Act to extend to crown manors and lands.

enabling lords of manors or their stewards to hold customary courts, although no copyhold tenant be present; and for enabling lords or their stewards to make out of the manors and out of court grants of lands to be held by copy of court-roll; for enabling lords or their stewards to grant admissions out of the manors and out of court; and for requiring every surrender, will, and codicil, a copy of which shall be delivered to the lord or steward, and every fact proved to the lord or steward at any court whereat a homage shall not be assembled, to be forthwith entered on the court-rolls, and determining that presentment by the homage shall not be essential to the validity of an admission, shall extend and apply to manors or lands vested in her Majesty in right of her Crown and the Duchy of Lancaster, and to any enfranchisement of lands held of such manors to be effected under the powers given by any existing Act or Acts of Parliament and the stewards and tenants for the time being of such manors.

APPENDIX XI.

The Copyhold Act, 1852.

(15 & 16 Vict. c. 51.)

An Act to extend the provisions of the Acts for the commutation of manorial rights, and for the gradual enfranchisement of lands of copyhold and customary tenure.

[30th June, 1852.]

For effecting enfranchisement after next admittance.

1. At any time after the next admittance to any lands which shall take place on or after the first day of July one thousand eight hundred and fifty-three (*a*), in consequence of any surrender, bargain and sale, or assurance thereof (except upon or under a mortgage in cases where the mortgagee is not in possession), or in consequence of any descent, gift, or devise, and whether such surrender, bargain and sale, or assurance shall have been made, passed, or executed, or such descent shall happen, or such gift or devise shall take effect before or after that day, it shall be lawful for the tenant so admitted or for the lord to require and compel enfranchisement in manner hereinafter mentioned of the lands to which there shall have been such admittance as aforesaid; provided that no such tenant shall be entitled to require such enfranchisement until after payment or tender of the fine or fines and of the fees consequent on such admittance: provided also, that if from any cause such enfranchisement shall not take place until some event shall have happened which may require a second or any subsequent admittance, such second or subsequent admittance shall be made, with all the rights incident thereto, as if this Act had not passed (*b*), and it shall be competent for the lord or tenant to require and compel enfranchisement upon or after such second or subsequent admittance in the manner hereby provided for enfranchisement upon the next admittance.

(*a*) See the Copyhold Act, 1858, sect. 6.
(*b*) See *Myers* v. *Hodgson*, 1 C. P. Div. 609, and the Copyhold Act, 1887, sect. 31.

Mode of effecting enfranchisement.

2. [*Repealed by the Copyhold Act*, 1858, *sect.* 2, *and a new method provided by sect.* 8 *thereof.*]

Appointment of valuer not to be revoked without mutual consent, except that Commissioners may remove for misconduct, &c.

3. The appointment of a valuer by the lord or by the tenant shall not be afterwards revoked except by the mutual consent of the lord and tenant; provided always, that it shall be lawful for the Commissioners (*a*) at any time, on complaint of either party, to remove any valuer or umpire for misconduct, or for refusal or omission to act (*b*).

(*a*) The Commissioners are now represented by the Board of Agriculture: 52 & 53 Vict. c. 30.

(*b*) See also the Copyhold Act, 1887, sect. 12.

In case of death, &c., of valuers, others to be appointed.

4. [*Repealed by the Copyhold Act*, 1887, *sect.* 51. *See sect.* 12 *thereof.*]

Commissioners, &c., may call for and enforce production of books and documents.

5. The Commissioners, assistant commissioners, and valuers may, by summons under the seal of the Commissioners, call for the production for any of the purposes of this Act, at such time and place as the Commissioners shall appoint, of any court-rolls or copies of court-roll in the possession or power of any lord or tenant, or of the steward of any manor, and may by summons under such seal summon and examine any lord or tenant, or other person on oath, and administer the oath necessary for that purpose; and every person who shall have been summoned, and to whom a reasonable sum shall have been paid or tendered for his expenses, and who shall without lawful excuse neglect or refuse to attend or to produce any such documents so called for as aforesaid, shall, being convicted thereof before any two justices of the peace for the county wherein such proceedings were held, forfeit the sum of five pounds; and any person who shall wilfully give false evidence in any proceeding under this Act shall be guilty of perjury; provided always, that no lord or tenant so summoned shall be bound to answer any questions as to his title.

Power of entry for purposes of Act.

6. It shall be lawful for the Commissioners, assistant commissioners, and valuers, and their agents or servants respectively, upon giving reasonable notice to the occupier, to enter upon any of the lands and hereditaments proposed to be dealt with under the provisions of this Act, and to make all necessary admeasurements, plans, and valuations of the same, without being subject to any action, obstruction, or hindrance, making compensation for all injury, if any, occasioned thereby.

Valuers, how to proceed.

7. [*Repealed by the Copyhold Act*, 1887, *sect.* 51. *See sect.* 11 *thereof.*]

Questions of law or fact may be referred to Commissioners.

8. In case any objection shall be made, or question shall arise, *in the course of the valuations in any enfranchisement to be effected by an award under the Copyhold Acts*, in relation to any alleged custom, or the evidence thereof, or any matter of law or fact material to such valuation or arising on any

Appeal to be

enfranchisement, the same shall, on the request in writing and at the option of any one of the parties on either side of the matter in difference, be referred to the Commissioners or assistant commissioner, who shall inquire into and ascertain the same; and the decision of such Commissioners or assistant commissioners shall be final: provided nevertheless, that where any one of the said party or parties dissatisfied with any decision of such Commissioners or assistant commissioner on any matter of law shall be desirous to appeal, then the like proceedings may and shall be had for obtaining the decision of one of the superior Courts of Law at Westminster thereon, and such decision shall be binding in like manner as is provided by the said Act of the session of the fourth and fifth years of her Majesty, chapter thirty-five, where a person is dissatisfied with the decision of such Commissioners or an assistant commissioner which involves a point of law only, and the parties in difference are agreed upon the facts relating thereto: provided always, that no such proceedings as aforesaid shall be had unless a request to the Commissioners to direct a case to be stated as in the said Act mentioned be made within twenty-eight days after the decision in respect of which the appeal is desired.

Bad on matter of law on a case stated.

The words in italics were, by the Copyhold Act, 1887, sect. 29, substituted for the words "upon or prior to any admittance or in the course of such valuations."

The question whether any evidence produced in support of an alleged custom proves such custom is a question of fact to be determined by the Board of Agriculture: *Reynolds* v. *Woodham Walter Manor* (*Lord of*), L. R. 7 C. P. 639.

Award to be confirmed by the Commissioners.

9. [*Repealed by the Copyhold Act*, 1887, *sect.* 51. *See the Copyhold Act*, 1858, *sect.* 10, *and the Copyhold Act*, 1887, *sect.* 22.]

Charge under Act to be a first charge.

10. [*Repealed by the Copyhold Act*, 1858, *sect.* 2. *See sect.* 33 *thereof.*]

Enfranchisements to be according to form in schedule.

11. [*Repealed by the Copyhold Act*, 1858, *sect.* 2. *See the Copyhold Act*, 1858, *sect.* 10, *and the Copyhold Act*, 1887, *sect.* 22.]

Form of charge.

12. [*Repealed by the Copyhold Act*, 1858, *sect.* 2. *See sects.* 29 *and* 36 *thereof.*]

Certificates to be transferable by endorsement.

13. [*Repealed by the Copyhold Act*, 1858, *sect.* 2. *See sects.* 30 *and* 37 *thereof.*]

Stamp on certificates.

14. [*Repealed by the Copyhold Act*, 1858, *sect.* 2. *See sect.* 32 *thereof.*]

Commissioners may correct any error in

15. It shall be lawful for the said Commissioners to correct and supply any manifest error or omission in any award, or in any deed of enfranchisement or charge under this Act, or

award, &c. after notice to parties interested.

any other instrument authorised by this Act to be made or issued by the said Commissioners, after such notice to the parties interested as the said Commissioners shall deem sufficient; provided that no such error or omission shall be corrected or supplied more than five years after the execution of any such award, deed, or instrument.

The provisions of this section have been enlarged by sect. 44 of the Copyhold Act, 1887.

Valuer to take particular circumstances of the cases into consideration.

16. In making any valuation under this Act the valuers shall take into account the facilities for improvement, customs of the manor, fines, heriots, reliefs, quit-rents, chief-rents, escheats (*a*), forfeitures, and all other incidents whatever of copyhold or customary tenure, and all other circumstances affecting or relating to the land which shall be included in such enfranchisement, and all advantages to arise therefrom, and shall make due allowance for the same (*b*).

(*a*) The value of escheats for want of heirs is not now to be taken into consideration: Copyhold Act, 1887, sects. 4 and 5.

(*b*) The capability of the land for future improvement owing to removal of restrictions affecting the customary estate is to be taken into consideration: *Lingwood* v. *Gyde*, L. R. 2 C. P. 72.

As to deductions for impediments standing in way of improvements, see *Arden* v. *Wilson*, L. R. 7 C. P. 535.

As to claim for compensation in respect of lord's right to timber, see *Reynolds* v. *Woodham Walter Manor* (*Lord of*), L. R. 7 C. P. 639.

As to claim for compensation in respect of heriots, see *Padwick* v. *Tyndale*, 1 E. & E. 184.

If consideration not paid, the lord may take possession.

17. In case such enfranchisement consideration, or the interest thereon, shall not be paid at the time stipulated or provided for payment thereof respectively, the lord or other person for the time being entitled to the benefit thereof shall become entitled to the rents and profits of the land in respect of which the same enfranchisement consideration or interest shall be due; and it shall be lawful for such lord or other person to proceed to obtain possession of the said land, or the rents and profits thereof, in like manner as if the land had remained unenfranchised and been lawfully seized into the hands of the lord for some default of a tenant; and all the rights and remedies by the said recited Acts or any of them given for the recovery of rent-charges, sums of money, and other payments, shall be applicable to the sums of money, interest, and payments payable under this Act, in the same manner as if such consideration had been a consideration for an enfranchisement under the said Acts.

See the Copyhold Act, 1841, sects. 47, 48, 49, 61, 70, and the Copyhold Act, 1843, sects. 8, 10, for the rights and remedies referred to in this section.

Land so obtained by lord may be let for not exceeding seven years.

18. Where any lord or other person for the time being entitled to the benefit of any enfranchisement consideration, or the interest thereon shall have obtained possession of the land under the powers and provisions of the said recited Acts or this Act, it shall be lawful for the said lord or other person as aforesaid to let such land, or any portion thereof, for any period not exceeding seven years, in possession, at such rent as can be reasonably obtained for the same; and the restitution of such land, on payment or satisfaction of the money due and of all costs and expenses, shall be subject and without prejudice to any such lease.

Steward's compensation to include preparation of deed of enfranchisement.

19. The steward for the time being of any manor of which any lands enfranchised under this Act shall be parcel shall, on every such enfranchisement, be entitled to receive from the tenant, as a compensation for the trouble of such steward about such enfranchisement, and for the extinguishment of his office with respect to such lands, such a sum as the said Commissioners may direct, and, in the absence of such direction on this subject, such a sum as will amount to one set of fees on surrender and admittance for each of the tenements included in such enfranchisement, such fees to be calculated according to the reasonable custom or usage prevalent in the manor whereof such lands shall be parcel, and in case the parties shall differ about the same, the amount shall be ascertained by the Commissioners; and the steward, in consideration of such compensation, shall prepare and deliver to the tenant a proper deed of enfranchisement, duly executed by the lord, without making any charge for the same, or for completing the enfranchisement, save stamp duty and parchment: provided always, that if more than one set of fees is demanded by the steward, it shall be lawful for the said Commissioners to moderate and tax the amount of such fees to such sum as shall appear to them just and reasonable.

See the Copyhold Act, 1858, sect. 10, and the Copyhold Act, 1887, sect. 27, for further provisions as to the steward's compensation.

Inspection, &c. of court-rolls of the manor.

20. At any time after an enfranchisement effected under the said recited Acts or this Act, it shall be lawful for any persons seised of or interested in the lands which have been so enfranchised to have access to and to inspect the court-rolls of the manor of which the said lands were holden, and to demand and have copies thereof, on payment of a reasonable sum for the same; and the said Commissioners, if they shall think it necessary or expedient, may fix a scale of fees to be payable to the steward or other person having custody of the court-rolls for such inspection of the court-rolls, and for making all necessary extracts or copies thereof.

After enfranchisement, the lord may give up to the Commissioners all the court-rolls. Inspection, &c. thereof.

21. When and as soon as all the lands held of any manor shall be enfranchised, the lord or other person having custody of the court-rolls of such manor may, if he thinks fit, give up and hand over to the said Commissioners all such court-rolls, and from thenceforth all persons seised of or interested in such lands shall have access to and may inspect such court-rolls, and obtain copies thereof on the payment of such reasonable fees as to the said Commissioners may seem fit and proper.

Under the provisions of the Copyhold Act, 1887, sect. 48, the court-rolls may now be delivered to the Master of the Rolls.

Title of lord, to be made for the purpose of enfranchisement.

22. Previous to any enfranchisement under this Act, it shall be lawful for the lord and steward, if they shall see fit, and if there shall be no steward then for the lord alone, to make a solemn declaration, in such form as the said Commissioners shall direct, and to be taken and subscribed as solemn declarations are by an Act made and passed in a session held in the fifth and sixth years of his late Majesty King William the Fourth, chapter sixty-two, directed to be taken and subscribed, stating therein the nature and extent of the estate and interest of the lord in the manor of which he is such lord, and the date and short particulars of the deed, will, or other instrument under which he claims or derives title, and the name and style or other designation or description of the person in whose name the court of any such manor was then last holden, and the date or time of the holding of such court, and the incumbrances, if any, whether by mortgage, judgment, or otherwise, which affect such manor; and it shall be lawful for the said Commissioners and they are hereby directed to approve of such title for the purposes of this Act, which approval shall be testified under their hands and seal, upon such evidence alone, unless they shall be of opinion that further information is necessary in the respects aforesaid; but if the said Commissioners shall consider that such evidence does not fully and truly disclose all such particulars as are necessary, or if no such declaration shall be made, or if the lord shall refuse or decline or fail to give such information and evidence as they shall deem proper and necessary to show a satisfactory *primâ facie* title in the lord, or in persons claiming under or in trust for him, and if the said Commissioners shall consider either that the title of the lord is not satisfactory, or that the incumbrancer should be protected, then, if they think the justice of the case requires it, they may direct that the enfranchisement consideration shall be invested as hereinafter directed in case of lords under disability.

See the Copyhold Act, 1887, sect. 32. There is no obligation on the vendor of land enfranchised under the Copyhold Acts to produce the title of the lord of the manor: *Kerr* v. *Pawson*, 25 Beav. 394.

After an application for enfranchisement, tenant may require Commissioners to inquire into the lord's title.

23. In all cases in which the lord shall apply to the Commissioners to effect an enfranchisement as aforesaid, it shall be lawful for the tenant of the lands so proposed to be enfranchised to require that the said Commissioners shall satisfy themselves, in such way and by such evidence as they shall see fit, of the title of such lord to the manor of which the lands are held.

Identity of lands.

24. [*Repealed by the Copyhold Act*, 1887, *sect.* 51. *See sect.* 42 *thereof.*]

As to purchase by the lord in certain cases.

25. With respect to any land proposed by any tenant to be enfranchised under this Act, in case the lord shall show to the satisfaction of the Commissioners that any change in the condition of such land, which but for this Act would or might have been prevented by the incidents or conditions of the tenure thereof, will prejudicially affect in enjoyment or value the mansion-house, park, gardens, or pleasure grounds of such lord, and in case such lord shall by writing under his hand offer to purchase the tenant's interest in such lands so proposed to be enfranchised, and shall give notice to the tenant of such offer, then, unless the tenant shall accept such offer within twenty-eight days after receiving notice thereof, such land shall remain unenfranchised, unless the Commissioners shall think fit to impose such terms and conditions in case of enfranchisement, as shall in their judgment be sufficient to protect the interests of the lord; and in case the tenant shall within twenty-eight days as aforesaid signify in writing to the Commissioners his acceptance of the said offer, such offer by the lord and acceptance by the tenant shall be binding both upon lord and tenant; and in case the lord and tenant shall not within such time as the Commissioners shall limit agree on the value of the rights and interest of the tenant, it shall be lawful for the Commissioners to appoint a valuer for the purpose of ascertaining such value, or to refer the same to the valuers, if any, then acting in the enfranchisement; and all the costs, charges, and expenses of such valuation and attending such purchase shall be borne by the lord; and when such value shall have been agreed upon or ascertained as aforesaid the Commissioners shall issue a certificate under their hands and seal, which shall state the land which shall have been sold to the lord and the consideration money for the same, and shall declare that upon payment of the consideration money therein mentioned within a time to be therein limited such land shall at the time of such payment be surrendered or released by the tenant (at the expense of the lord) to the lord, and thereupon such land shall vest in such lord accordingly: provided always, that in case such consideration money shall not be paid within the time limited by the Commissioners, or

within such further time as the Commissioners may have granted in that behalf, and it shall appear to the Commissioners that the same shall have remained unpaid by the default of the lord, it shall be lawful for the Commissioners to cancel such certificate, and such enfranchisement may be proceeded with as if such offer and acceptance as aforesaid had not been made, and all costs which the Commissioners shall certify to have been incurred by the tenant in consequence of such offer, acceptance, and default shall be paid by the lord to the tenant.

Power to lord having a limited interest to charge purchase-money on manor, &c.

26. [*Repealed by the Copyhold Act*, 1858, *sect.* 2. *See sect.* 23 *thereof.*]

27. [*This section provided that when a heriot should become due and payable at any time after the* 1*st of July*, 1853, *the lord or tenant might require or compel enfranchisement; but it was repealed by the Copyhold Act*, 1858, *s.* 2. *Fresh provisions were enacted by sect.* 7 *of that Act, but these in turn have been repealed by the Copyhold Act*, 1887, *which now provides* (*sect.* 7) *that the lord or tenant may compel the extinguishment of all manorial incidents.*]

Declaration to be taken by valuers.

28. Before any valuer shall enter upon the valuation under this Act he shall, in the presence of a justice of the peace, make and subscribe the following declaration; (that is to say):—

"I A. B. do declare that I will faithfully, to the best of my ability, value, hear and determine the matters referred to me under the Copyhold Acts. A. B.

"Made and subscribed in the presence of ———."

And such declaration shall be annexed to the schedule of valuation, when made; and if any valuer, having made such declaration shall wilfully act contrary thereto, he shall be guilty of a misdemeanour.

As to recovery of interest in enfranchisement considerations.

29. In case the interest payable in respect of any gross sum of money, pursuant to any award under this Act, or any part of the same, shall be in arrear for thirty days after the same shall become due, it shall be lawful for the person for the time being entitled to receive such interest to levy the same by the same means and remedies and in the same manner in all respects as if the same had been rent in arrear upon a lease for years.

As to expense of proceedings under this Act.

30. The expenses of the proceedings for effecting any enfranchisement under this Act, and all expenses which in the judgment of the said Commissioners may be incidental thereto, whether for the proof of title, the production of documents, expenses of witnesses, or otherwise, shall be borne by the

party, whether lord or tenant, who shall have required the enfranchisement, but no costs or expenses shall be due or recoverable from any person until the same shall have been certified, under the hands and seal of the said Commissioners, or of an assistant Commissioner, to have been reasonably and properly incurred; and in case any dispute or difference shall arise as to the amount of such expenses, the certificate of the Commissioners or assistant Commissioner shall be final, and any person to whom such certificate shall be granted shall have the same means and remedies for the recovery of the sum mentioned therein as are provided by the said recited Acts, or by this Act, for the recovery of the consideration for an enfranchisement under this Act.

See the Copyhold Act, 1887, s. 35, for further provisions as to expenses.

How expenses of enfranchisement to be borne where the lord has but a limited interest in a manor, or is trustee thereof.

31. In every case in which the lord shall require and compel an enfranchisement under this Act, where such lord shall be an ecclesiastical corporation or a corporation sole not having an absolute power of sale, or shall have only a limited interest in the manor or be a trustee thereof, the expenses of the proceedings for effecting such enfranchisement, and all expenses which in the judgment of the said Commissioners may be incidental thereto, whether for the proof of title, the production of documents, expenses of witnesses, or otherwise (the amount of such expenses being subject to the approval and certificate of the said Commissioners as hereinbefore is mentioned), shall be paid out of the first moneys to be received for any enfranchisement to be effected under this Act, when the consideration for such enfranchisement shall be a gross sum of money; [and in cases where such consideration shall not be a gross sum of money, then the said expenses shall be charged, together with interest for the same, at the rate of not exceeding four pounds per centum per annum, on the said manor, or other lands settled or held therewith, in such manner as to the said Commissioners may seem fit and proper].

The provisions as to charging were repealed by the Copyhold Act, 1858, s. 2. See sects. 21—37 of that Act.

How tenants' expenses of enfranchisement are to be borne.

32. [*Repealed by the Copyhold Act*, 1858, *sect.* 2. *See sects.* 21—37 *of that Act, and sect.* 23 *of the Copyhold Act*, 1887.]

Confirmation of award by Commissioners to be proof of prior proceedings being regular.

33. The confirmation under the hands and seal of the Commissioners of any award or the execution by the Commissioners of any deed or instrument whereby any enfranchisement shall be effected under the said Acts or this Act, shall be conclusive evidence that all the directions in relation to the enfranchisement intended to be effected by means of such award, deed, or instrument, which ought respectively to

have been obeyed or performed previously to such confirmation or execution respectively, have been obeyed and performed; and no such award, deed, or instrument shall be impeached by reason of any omission, mistake, or informality therein, or in any proceeding relating thereunto, or on account of any want of any notices or consents required by the said Acts or this Act, or on account of any defects or omissions in any previous proceedings whatever in the matter of such enfranchisement.

After confirmation of apportionment, &c. in cases of enfranchisement, the customary modes of descent to cease, and the lands to descend and to be subject to dower and curtesy in like manner as freehold lands.

34. From and after [the final confirmation of any schedule of apportionment under the said recited Acts and from and after] the final enfranchisement of any lands under this Act or the said recited Acts, the several lands included in any such enfranchisement shall thenceforth cease to be subject to the customs of borough-English or gavelkind, or to any other customary mode of descent, or to any custom relating to dower or freebench or tenancy by the curtesy of England, or to any other custom whatever; and all the laws relating to descents or to estates of dower or estates by the curtesy of England which shall for the time being affect and be applicable to lands held in free and common socage shall thenceforth affect and be applicable to the lands included in every such enfranchisement: provided always, that nothing herein contained as to curtesy or dower or freebench shall extend or be applicable to the case of any person who shall have been married before such enfranchisement shall have been completed: provided always, that nothing in this Act shall affect the custom of gavelkind as the same now exists and prevails in the county of Kent.

The words in brackets were in effect repealed by the Copyhold Act, 1858, sect. 2.

See *In re Ryder*, 20 Ch. Div. 514, as to the power of the Court to make a declaration as to the descent of enfranchised lands belonging to a lunatic.

Commissioners to have power to suspend proceedings.

35. Notwithstanding anything herein contained, it shall be lawful for the Commissioners from time to time to suspend any proceeding under this Act for the enfranchisement of any land, where any peculiar circumstances render it impossible, in the opinion of the said Commissioners, to decide on the prospective value of the lands to be affected by such proposed enfranchisement, or where any especial hardship or injustice would unavoidably result from any compulsory proceeding: provided always, that when the said Commissioners shall so suspend any proposed enfranchisement they shall state the reasons of such suspension in their general report, which shall be laid before Parliament as directed by the first recited Act.

See *Reynolds* v. *Woodham Walter Manor* (*Lord of*), L. R. 7 C. P. 639.

Power to lord to sell rentcharge.

36. In all cases in which the person for the time being entitled to the receipt of any rentcharge under the said recited Acts or this Act shall be entitled thereto for a limited estate or interest only, or shall be a corporation not authorised to make an absolute sale of such rentcharge otherwise than under the provisions of this Act, it shall be lawful for such person, with the consent of the said Commissioners, testified under their hands and seal, or, in the case of coverture, infancy, idiotcy, lunacy, or other incapacity, with the consent of the husband, guardian, committee, or trustee of such person so under disability, to sell and transfer such rentcharge, the payment for which shall be made in manner hereinafter mentioned.

Commissioners to certify the amount of consideration-money for redemption.

37. In every case in which a rentcharge is payable under the provisions of the recited Acts or this Act the Commissioners shall upon the request of the owners of land chargeable with such rentcharge, or any of them, certify under the hands and seal of the Commissioners the sum of money in consideration of which such rentcharge may be redeemed; and when it shall appear to the Commissioners that payment or tender of such consideration money has been duly made, it shall be lawful for the Commissioners to certify that such rentcharge has been redeemed under the provisions of this Act, and such certificate shall be final and conclusive: provided always, that no such redemption shall be effected in the case of rentcharges created before the passing of this Act, under the provisions of the said recited Acts, except with the consent in writing of the person or persons entitled to the receipt of such rentcharge.

See sects. 17 and 18 of the Copyhold Act, 1887, for further provisions as to the redemption of rentcharges and the recovery of the redemption money.

Consideration-money for redemption or sale, how payable.

38. Where the person entitled to a rentcharge redeemable under the provisions of this Act shall be absolutely entitled thereto in fee simple in possession, or shall be enabled to dispose of the fee simple in possession independently of the provisions of this Act, and shall not be a spiritual person entitled in respect of his benefice or cure, or a corporation prevented from aliening such rentcharge otherwise than under the provisions of this Act, a payment or tender to the person so entitled of the sum of money certified by the Commissioners as aforesaid after six months notice to the person entitled to such rentcharge shall be deemed a due payment of the consideration money, and in every other case the payment of the sum of money so certified according to the provisions hereinafter contained shall be deemed a due payment of the consideration money.

Consideration-money in cases of

39. In all cases in which the person for the time being entitled to any rentcharge subject to be redeemed or sold

owners under disability, how payable.

under the provisions of this Act, or entitled to any gross sum payable by way of compensation for enfranchisement, shall be only entitled thereto for a limited estate or interest therein, or as trustees for sale or otherwise, without power to give an effectual discharge for the same, or shall be under any disability, or shall be a corporation not authorised to make an absolute sale of such rentcharge otherwise than under the provisions of this Act, the consideration money to be paid for the redemption or sale of such rentcharge, or as compensation for such enfranchisement, shall be applied in manner hereinafter provided; (that is to say,) shall, at the option of the person for the time being entitled as aforesaid, be paid into the Bank of England in the name and with the privity of the Accountant General of the Court of Chancery, to be placed to his account there ex parte the Copyhold Commissioners, pursuant to the method prescribed by any Act for the time being in force for regulating moneys paid into the said Court; and such moneys shall remain so deposited until the same be applied to some one or more of the following purposes; (that is to say,) in the purchase or redemption of the land tax, or the discharge of any rent or incumbrances affecting the rentcharge in respect of which such money shall have been paid, or the manorial incidents for which the same shall have been substituted, or affecting other hereditaments settled therewith to the same or the like uses, trusts, or purposes or in the purchase of other lands, to be conveyed, limited, and settled upon the like uses, trusts, purposes, and in the same manner, as the rentcharge for the redemption of which such money shall have been paid stood settled, or in payment to any party becoming absolutely entitled to such money; and such money may be so applied as aforesaid upon an order of the Court of Chancery made on the petition of the party who would have been entitled to the receipt of the rentcharge in respect of which such money shall have been deposited; and until the money can be so applied it may, upon the like order, be invested by the said Accountant General in the purchase of three per centum consolidated or three per centum reduced bank annuities, or in government or real securities, and the dividends, interest, or annual income thereof paid to the party who would for the time being have been entitled to the rentcharge in case the same had not been redeemed; or otherwise such consideration money may be paid, at the like option of the person for the time being so entitled, to trustees acting under the will, conveyance, or settlement under which such person having such limited interest shall be entitled to or interested in such rentcharge, or to such one or more of such trustees as the said Commissioners may approve of and direct, or if there are no such trustees, then into the hands of trustees to be nominated

under the hands and seal of the said Commissioners; and the money, when so paid to such trustees, shall be applied by the said trustees, with the consent of the said Commissioners, in the manner hereinbefore directed concerning any money to be paid for redemption or sale into the Bank of England in the name and with the privity of the said Accountant General; and upon every vacancy in the office of any trustee appointed by the said Commissioners some other fit person shall be appointed by them in like manner.

See *In re Allfrey*, W. N. (1889) 40, as to the consideration money paid to trustees passing under a residuary gift in a will.

As to consideration money under 20*l.*

40. When any consideration money so to be paid as last hereinbefore mentioned shall not exceed the sum of twenty pounds for the redemption or sale of all the rentcharge which shall be redeemable under this Act in any one manor, the same shall be paid, if the said Commissioners shall so direct, to the person for the time being entitled to the rentcharge, for his own use and benefit; or in case of coverture, infancy, idiotcy, lunacy, or other incapacity of the person for the time being entitled, then such money shall be paid, for the use of the person so entitled, to the husband, guardian, committee, or trustee of such person.

Power to commute or enfranchise at fixed fines or rentcharges.

41. In any commutation or enfranchisement to be hereafter effected under or by virtue of the said recited Acts it shall not be imperative to make the commutation fines or rentcharge, or enfranchisement rentcharge, variable with the prices of grain, but the same or any of them may, at the option of the parties effecting such commutation or enfranchisement, or at the discretion of the Commissioners, as the case may require, be fixed in money or be made so variable as aforesaid.

Tenants may deduct rentcharges, &c. payable to landlord.

42. Any occupying tenant of any lands to be enfranchised under this Act who shall pay any rentcharge or interest which may become payable under this Act shall be entitled to deduct the amount thereof from the rent payable by him to his landlord, and shall be allowed the same in account with the said landlord.

See also sect. 16 of the Copyhold Act, 1887.

Surrenderee by way of mortgage, &c. to be deemed a tenant for certain purposes.

43. A surrenderee by way of mortgage under a surrender entered on the court-rolls in possession, or in the receipt of the rents and profits of land, shall be deemed a tenant within the meaning of this Act, entitled to obtain or join in obtaining and effecting enfranchisement, and redeeming a rentcharge, under this and the said recited Acts, by and with the approbation of the said Commissioners; and any money paid by any mortgagee for or in respect of the consideration or costs of enfranchisement or redemption of rentcharge under this and the said

recited Acts shall be added to the amount due to him as mortgagee, and the land shall not be redeemable without payment of such money, with interest thereon.

Enfranchisement not to affect previous leases or demises.

44. Where land enfranchised under this or the said recited Acts was immediately before such enfranchisement subject to any subsisting lease or demise at will or for any greater interest, the freehold into which such estate is so converted shall be the reversion immediately expectant upon such lease or demise at will, and the rents and services reserved and made payable upon such lease or demise shall be incident and annexed to such reversion; and the covenants or agreements, whether expressed or implied, on the part of both the lessor and lessee, shall run with the land and with reversion respectively; and such enfranchisement shall not prejudice or affect any right of distress, entry, or action accruing in respect of such lease or demise.

See the Copyhold Act, 1887, sect. 41.

Not to affect commonable rights in respect of lands enfranchised.

45. Nothing herein contained shall operate to deprive any tenant of any commonable right to which he may be entitled in respect of such lands, but such right shall continue attached thereto, notwithstanding the same shall have become freehold.

Enfranchisement not to affect rights under any will, settlement, &c.

46. No enfranchisement under this Act shall, except as herein is mentioned, affect the rights or interests of any person in, to, or out of the lands enfranchised under any will, settlement, mortgage, or otherwise, but the rights of every such person shall continue to attach upon the lands enfranchised, in the same way, as nearly as may be, as if the freehold had been comprised in and had been devised, conveyed, charged, or otherwise disposed of by the will, settlement, mortgage, or other instrument or disposition under which any such person shall claim.

Defective titles of lords and tenants.

47. Provided always, that if any enfranchisement consideration money shall be paid to any lord whose title shall thereafter prove to be bad or insufficient, the rightful owner of the manor or his representatives shall be entitled to recover against such lord or his representatives the amount or value of such consideration money as money had and received to the use of such rightful owner, and interest thereon at the rate of five pounds per centum per annum from the time of such title so proving to be bad or insufficient; and that if any tenant or person claiming to be tenant shall, after payment by him of any enfranchisement consideration money, be evicted from the lands enfranchised, by an adverse claimant, such tenant or person shall be entitled to claim the repayment of such consideration money against the lands enfranchised, and the

amount thereof shall be a charge upon the lands enfranchised, and shall carry interest at the rate of four pounds per centum per annum from the time of such eviction.

Act not to extend to mines or minerals, &c., nor to copyholds for lives where tenants have not a right of renewal.

48. No enfranchisement under this Act shall extend to or affect the estate or rights of any lord or tenant in or to any mines, minerals, limestone, lime, clay, stone, gravel, pits, or quarries within or under the lands enfranchised, or within or under any other lands, or any rights of entry, rights of way and search, or other easements of any lord or tenant in, upon, through, over or under any lands, or any powers which in respect of property in the soil might but for such enfranchisement have been exercised, for the purpose of enabling the said lord or tenant, their or his agents, workmen, or assigns, more effectually to search for, win, and work any mines, minerals, pits, or quarries, or to remove and carry away any minerals, limestone, lime, stones, clay, gravel, or other substances had or gotten therefrom, or the rights, franchises, royalties, or privileges of any lord in respect of any fairs, markets, rights of chase or warren, piscaries, or other rights of hunting, shooting, fishing, fowling, or otherwise taking game, fish, or fowl, unless with the express consent in writing of such lord or tenant; and nothing in this Act shall be held or construed to extend to any copyhold lands held for a life or lives or for years, where the tenant thereof hath not a right of renewal.

A steward cannot, without special authority, consent on behalf of the lord to include these reserved rights in the enfranchisement: see sect. 33 of the Copyhold Act, 1887.

Copies registered at the office of Commissioners to be evidence.

49. Copies of and extracts from every award under this Act which shall be registered under this Act at the office of the Commissioners, purporting to be sealed or stamped with the seal of the Commissioners, shall respectively be received in evidence without any further proof thereof; and a copy entered under this Act on the court-rolls of every such award shall be as available for the purposes of evidence as any entry on the court-rolls, and a copy of or extract from any such enrolled copy shall be as available for the purposes of evidence as a copy of an entry on the court-rolls.

Agreements, &c. to be exempt from stamp duty.

50. No agreement, valuation, schedule, award, or power of attorney under this Act shall be chargeable with stamp duty.

See sect. 32 of the Copyhold Act, 1858, as to awards of enfranchisement by the Board of Agriculture.

Penalty on persons obstructing Commissioner, assistant commissioner, valuer, or umpire.

51. Any person obstructing or hindering any Commissioner, assistant Commissioner, valuer, or umpire acting under the powers granted by the said recited Acts or by this Act, being convicted thereof before two justices of the peace, shall forfeit the sum of five pounds.

Construction of words.

52. In this Act, unless where the context shows that the words hereinafter mentioned are used in a different or more restricted sense, they shall be understood in manner hereinafter mentioned; that is to say, the word "lands" shall extend to and include messuages, tenements, and corporeal or incorporeal hereditaments, subject to any manorial rights, or any undivided part or share therein; the word "valuers" shall apply to and include a single valuer, where authorised to act alone, or any umpire to be appointed as herein mentioned, and also the Commissioners or the Commissioner or assistant Commissioner proceeding upon or with any valuation under this Act in cases where such single valuer, umpire, Commissioner, or assistant Commissioner respectively shall act in any such valuation; the word "manor" shall extend to such portion or portions of a manor as the said Commissioners shall by any order in writing under their hands and seal direct to be considered as a manor for the purpose of effecting any enfranchisement under this Act; the word "lord" shall extend to and include the lord or lords of any manor, whether seised for life or in tail or in fee simple, and all ecclesiastical lords seised in right of the church or otherwise, and lords farmers holding under them, and any body politic, corporate, or collegiate, and all lords seised of any manor, whether they have or have not an absolute power of selling or disposing of the same; and the word "steward" shall extend to and include a deputy steward or clerk acting as such for the time being.

This Act to be deemed part of first-recited Act.

53. This Act shall be taken and construed as part of the first-recited Act, and the Acts amending and explaining the same; and all the enactments therein contained as to enfranchisements effected under the provisions thereof shall be deemed and taken to apply to enfranchisements under this Act, and to the rights of all parties thereto, as if such enactments were here again repeated, except so far as is hereinbefore otherwise provided for; and all enfranchisements which may have taken place under such Acts or any of them, and all matters and things incident thereto, shall be of the same force, validity, and effect as if the provisions of this Act had been contained in the said first-recited Act.

The recited Acts are the Copyhold Acts of 1841, 1843 and 1844.

Titles of Acts.

54. In citing or referring to the said recited Acts and this Act, or any of them, in other Acts or legal instruments, it shall be sufficient to use the expression "The Copyhold Acts," or "The Copyhold Act, 1841," "The Copyhold Act, 1843," "The Copyhold Act, 1844," or "The Copyhold Act, 1852," as the case may be.

55. Provided always, that nothing herein contained shall interfere with or prevent or impede the enfranchisement of any lands whatsoever which may be enfranchised irrespective of this Act, where parties competent to do so shall agree on such enfranchisement, or the exercise of any powers contained in any other Acts of Parliament.

Not to impede enfranchisement irrespective of this Act or powers in other Acts of Parliament.

SCHEDULES.

No. 1.

FORM OF DEED OF ENFRANCHISEMENT.

[*Repealed by sect.* 2 *of the Copyhold Act*, 1858. See the Copyhold Act, 1858, sect. 10, and the Copyhold Act, 1887, sect. 22, as to awards of enfranchisement.]

No. 2.

CERTIFICATE of CHARGE affecting LANDS comprised in an enfranchisement.

[*Repealed by sect.* 2 *of the Copyhold Act*, 1858. See sect. 36 thereof.]

No. 3.

FORM OF ENDORSEMENT OF TRANSFER OF CERTIFICATE.

[As to cases after October 1st, 1858, see the form given in the Copyhold Act, 1858, sect. 37.]

APPENDIX XII.

The Copyhold Act, 1858.

(21 & 22 Vict. c. 94.)

An Act to amend the Copyhold Acts. [2nd August, 1858.]

Commencement of Act.

1. This Act shall come into operation on the first day of October one thousand eight hundred and fifty-eight.

Repeal of Acts and parts of Acts herein named.

2. The following Acts and sections and parts of sections of the Copyhold Acts are hereby repealed; that is to say,

The whole of the Act of the sixteenth and seventeenth of Victoria, chapter fifty-seven, intituled an Act to explain and amend the Copyhold Acts:

So much of the eleventh section of the Copyhold Act, 1841, as follows after the words "substituted in the place of such lord, tenant, or other person":

The whole of the second section of the Copyhold Act, 1852:

The whole of the eleventh section of the Copyhold Act, 1852:

The whole of the twenty-seventh section of the Copyhold Act, 1852(*a*):

All the provisions of the Copyhold Acts which authorise commutations by schedule of apportionment, and also all the provisions which authorise commutations by a schedule to be prepared by the steward, and also all the provisions which authorise enfranchisement by schedule of apportionment, and also all the provisions which authorise the charging of enfranchisement or compensation moneys or the expenses of commutations or enfranchisements upon land, are hereby repealed.

(*a*) See the Statute Law Revision Act, 1892.

Repeal not to affect acts done, rights vested, &c.

3. This repeal shall not affect any commutations or enfranchisements or charges already effected, or any rights or remedies attaching thereto, or any acts done in pursuance of the Act or provisions hereby specifically repealed, or rights or remedies vested by or resulting therefrom.

Acts not to extend to ecclesiastical

4. The Copyhold Acts shall not extend to any manors belonging, either in possession or reversion, to any ecclesias-

tical corporation, or to the Ecclesiastical Commissioners for England, where the tenant hath not a right of renewal.

manors, where tenant has not a right of renewal.

5. Whenever it shall appear to the Copyhold Commissioners (*a*) that an enfranchisement under the Copyhold Acts is one which might have been effected under the provisions of the Act of the fourteenth and fifteenth of her Majesty, chapter one hundred and four, intituled an Act to facilitate the management and improvement of episcopal and capitular estates in England, so long as that Act or any Act for continuing the same shall be in force, the moneys or rent-charges which form the consideration of such enfranchisement shall be paid and applied to the same account and in the same manner as if such enfranchisement had been effected under the said Act of the fourteenth and fifteenth of her Majesty; and all the provisions of the said last-mentioned Act which affect the application of enfranchisement moneys under that Act shall be applicable to such enfranchisements as aforesaid made under the provisions of the Copyhold Acts; and the Church Estates Commissioners and Ecclesiastical Commissioners shall respectively have the same powers over such consideration moneys, or the interest accruing thereon, or upon land, rent-charges, or securities acquired in respect of such enfranchisements, and also over or against any ecclesiastical corporation interested therein, as such Commissioners respectively would have had if such enfranchisement had been effected with the consent of the Church Estates Commissioners, and under the provisions of the said Act of the fourteenth and fifteenth of her Majesty or any Act continuing the same: but where any ecclesiastical corporation within the meaning of the said last-mentioned Act, or the said Ecclesiastical Commissioners have only a reversionary interest in the manorial rights extinguished by enfranchisement, the consideration for such enfranchisement shall be dealt with in the manner directed by the thirty-ninth section of the Copyhold Act, 1852, until the time when the said reversionary interest in the same manorial rights would, if the same had not been extinguished, have come into possession, when the said consideration, or any government securities in which it may have been invested, shall, upon petition to the Court of Chancery, be paid or transferred to the said Church Estates Commissioners, who shall be considered the parties become absolutely entitled to such money, to be dealt with as if they had come into possession thereof in consequence of an enfranchisement effected under the said Act of the fourteenth and fifteenth of her Majesty.

Application of consideration moneys in cases where enfranchisements might have been effected under 14 & 15 Vict. c. 104.

6. Notwithstanding the first section of the Copyhold Act, 1852, it shall be lawful, from and after the passing of this

Tenant or lord of certain

(*a*) These Commissioners are now represented by the Board of Agriculture: 52 & 53 Vict. c. 30.

copyhold land may compel enfranchisement.

Act, for any tenant or lord of any copyhold lands to which the last admittance shall have taken place before the first of July one thousand eight hundred and fifty-three, or any freehold or customary freehold lands in respect of which the last heriot shall have become due or payable before the first of July, one thousand eight hundred and fifty-three, to require and compel enfranchisement of the said lands in the manner herein and in the said Act mentioned: provided always, that no such tenant shall be entitled to require such enfranchisement until after payment or tender (in the case of copyhold lands) of such a fine and of the value of such a heriot, and in the case of freehold and customary freehold lands of the value of such a heriot as would become due or payable in the event of admittance or [death] *enrolment on alienation* subsequent to the first of July, one thousand eight hundred and fifty-three, and also in the case both of copyhold and of freehold or customary freehold lands, of two-thirds of such a sum as the steward would have been entitled to for fees in respect of such admittance or [heriot] *enrolment*.

The words "enrolment on alienation" were substituted for the word "death;" and the final word "enrolment" for the word "heriot," by sect. 9 of the Copyhold Act, 1887.

Lord or tenant may compel extinguishment of claim to heriots.

7. [*Repealed by the Copyhold Act*, 1887, *sect.* 51; *see sect.* 7 *thereof*.]

Mode of effecting compulsory enfranchisements.

8. When any lord or tenant shall, under the provisions of the Copyhold Act, 1852, or of this Act, require the enfranchisement of any land held of a manor, he shall give notice in writing (the lord or his steward to the tenant, or the tenant to the lord or his steward,) of his desire that such land shall be enfranchised; and the consideration to be paid to the lord for such enfranchisement, and also the sum to be paid to the lord in respect of such fine or heriot as mentioned in the last preceding clause, shall, unless the parties agree about the same, be ascertained under the directions of the Copyhold Commissioners, and upon a valuation to be made in the manner following: that is to say,

Where the manorial rights to be compensated shall consist only of heriots, rents, and licences at fixed rates to demise or fell timber, or any of these, or where the land to be enfranchised shall not be rated to the poor's rate, at a greater amount than the net annual value of [twenty] *thirty* pounds, then the valuation shall be made by a valuer to be nominated by the justices at a petty sessions holden for the division or place in which the manor or the chief part thereof is situate; provided that no justice, being lord, either in whole or in part, of such manor, shall take any part in nominating such valuer; subject,

however, to these provisoes: first, that if the parties agree to recommend to the Commissioners any person to be the valuer, such person shall be nominated by the Commissioners; and second, that either party may, upon paying the charges of his own valuer, have the valuation made as next hereinafter provided.

But when the manorial rights to be compensated do not consist only of rents and heriots and such licences as aforesaid, or when the land to be enfranchised is rated to the poor's rate at a greater amount than the net annual value of [twenty] *thirty* pounds, or where the valuation to be made is of the sum to be paid to the lord in respect of such fine or heriot as mentioned in the last preceding clause, then the valuation shall, unless the parties agree to refer it to one valuer, be made by two valuers, one to be appointed by the lord, and the other by the tenant; and such two valuers, before they proceed, shall appoint an umpire, to whom any points in dispute between them shall be referred; and in case the valuer or valuers or umpire, as the case may be, shall not make a decision and deliver the particulars thereof in writing to the lord or the steward and to the tenant, and to the Copyhold Commissioners, within forty-two days after the appointment of such valuers, or reference of the matter to the umpire, as the case may be, then the Commissioners shall fix the consideration to be paid or rendered to the lord; and in any case where, after notice to the lord or to the steward or to the tenant so to do, either party shall neglect or refuse, for twenty-eight days, to appoint his valuer, the Commissioners shall appoint a valuer for him as soon as may be after the expiration of such twenty-eight days; and in any case where any valuers shall, for the space of fourteen days after the appointment, be unable to agree in the appointment of an umpire, the Commissioners shall appoint an umpire.

By sect. 10 of the Copyhold Act, 1887, the word "thirty" was substituted for the word "twenty" in the above section, and certain further modifications were made.

See also sect. 3 of the Copyhold Act, 1887, as to the ascertainment of the compensation.

Extension of time for appointments, &c.

9. The Commissioners may, by an order under seal, extend the time within which this Act directs that any valuer be appointed, or any act to be done by such valuer be performed.

Award of enfranchisement.

10. After the valuation has been made, or upon the receipt of the agreement of the parties, the Commissioners, having made such inquiries concerning the circumstances of the case

as to them shall seem fit, and having duly considered the applications made to them by the parties, may frame an award of enfranchisement in the terms of the valuation, and in such form as they shall provide, and may confirm the same; and such confirmed award shall have the same force and validity for all purposes of enfranchisement or otherwise as a deed of enfranchisement now has under the provisions of the Copyhold Acts, or would have had under any provision of the Copyhold Acts, which is by this Act repealed; and for all purposes of declaring the amount, nature, and particulars of the compensation, and for attaching thereto the remedies provided by the Copyhold Acts, the said confirmed award shall have the same force and validity as an award made by valuers or an umpire under the provisions of the Copyhold Acts: provided nevertheless, that nothing herein contained shall affect the right of the steward for the time being of any manor to receive such sum of money by way of compensation or otherwise as he would have been entitled to if such enfranchisement had been effected by a deed of enfranchisement under the provisions of the Copyhold Acts or any of them: provided also, that the Commissioners shall, fourteen clear days before confirmation of any such award, serve a copy of the same in the form in which it is proposed to be confirmed upon the steward of the manor of which the lands to be enfranchised are held.

See sect. 22 of the Copyhold Act, 1887, as to serving copy of the award on the steward.

Corn rentcharges to be calculated as tithe rentcharges.

11. Whenever a rentcharge hereafter granted under the provisions of the Copyhold Acts shall be a rentcharge varying with the price of corn, such rentcharge shall not be calculated in the manner now directed by the Copyhold Acts, but shall be calculated upon the same averages and variable in the same manner as a tithe commutation rentcharge; but this amendment shall apply only to corn rentcharges hereafter to be imposed, and not to any already existing under the authority of the Copyhold Acts, but these last-named corn rentcharges shall retain their former character and incidents.

See sect. 14 of the Copyhold Act, 1887.

Receipts for consideration money, &c. to be produced.

12. The Commissioners shall not confirm any award of enfranchisement where the consideration is a gross sum of money immediately payable, or land, until the receipt of the person entitled to receive the consideration or compensation money has been produced to them, or the conveyance of the land has been confirmed by them.

In case of refusal by lord.

13. If the lord refuse to receive the enfranchisement money it shall be dealt with as is provided in cases where the lord is only entitled for a limited estate.

Owners of enfranchised lands may use the soil for purposes connected with the enjoyment of the surface.

14. After enfranchisement, whether under the voluntary or compulsory proceedings of the Copyhold Acts, the owner of the lands so enfranchised shall, notwithstanding any reservation of mines and minerals in the said Acts or in any instrument of enfranchisement contained, have full power and right to disturb or remove the soil so far as may be necessary or convenient for the purposes of making roads or drains or erecting buildings or obtaining water upon the said lands: provided always, that this shall not prejudice the rights to any mines or minerals, or to work and carry away the same, which were reserved by section forty-eight of the Copyhold Act, 1852.

Enfranchisement money may be paid to official trustees of charitable funds.

15. In the case of a corporation or other lord of any manor holden upon any charitable trust within the provisions of the Charitable Trust Act, 1853, or Charitable Trust Amendment Act, 1855, not authorised to make an absolute sale otherwise than under the provisions of the said last-mentioned Acts or of the Copyhold Acts, the consideration money to be paid for the redemption or sale of any rentcharge, or as compensation for any enfranchisement, may, at the option of the lord, be paid into the hands of the official trustees of charitable funds acting under the said Charitable Trusts Acts, in trust for the charity to which the manor shall belong; and the principal moneys shall be applied by the trustees, under the order of the Charity Commissioners for England and Wales, for the purposes to which the said money if paid into the Bank of England in the name of the Accountant General of the Court of Chancery would be applicable under the Copyhold Acts, and in the meantime shall be invested, and the dividends of such investments shall be applied, according to the provisions of the said Acts relating to charitable funds paid to such official trustees.

The Charitable Trusts Acts may now be cited as the Charitable Trusts Acts, 1853 to 1891.

Enfranchisement money for the use of a corporation, &c., may, at the option of the lords of the manor, be paid into the hands of trustees.

16. Any consideration or compensation money to be paid to the use of a corporation, lord of a manor, other than of a manor holden for charitable purposes within the meaning of the Charitable Trust Act, 1853, and Charitable Trust Amendment Act, 1855, may, at the option of such lord, be paid into the hands of trustees, to be nominated by the Commissioners by order under seal, in the same manner as in other cases already provided for in the Copyhold Acts, and the money shall be applied by the trustees, with the consent of the Commissioners, to the purposes to which consideration or enfranchisement money paid into the Bank of England in the name of the Accountant General is directed by the Copyhold Acts to be applied; and upon every vacancy in the office of such trustee,

or in case any such trustee should be desirous of resigning, or should become incapable of acting some other person shall be appointed by the Commissioners in like manner.

See note to preceding section.

Enfranchisement money for the use of any spiritual person may be paid to the Governors of Queen Anne's bounty.

17. Any compensation or consideration money paid for the use of any spiritual person in respect of his benefice or cure may, at the option of the lord, be paid to the "Governors of Queen Anne's Bounty for the augmentation of the maintenance of the poor clergy," and when so paid shall be applied and disposed of by the said Governors as money in their hands appropriated for the augmentation of such benefice or cure should by law, and under the rules of the said Governors, be applied and disposed of; and the receipt of the treasurer of the said Governors shall be a sufficient discharge for such money, and the person paying the same to such treasurer shall not be concerned to see to the application or disposal thereof.

Commencement of enfranchisement.

18. The commencement of every commutation or enfranchisement, and of any rentcharge, may be fixed by the memorandum of confirmation of the instrument of commutation or enfranchisement, or, in default of being so fixed, it shall take place on the day of confirmation; but the Commissioners shall have power to fix the day whence the half-yearly payments of the rentcharge shall commence to be calculated, at any period not more than six months posterior to the day fixed for the commencement of the commutation or enfranchisement; and the portion of rentcharge which shall accrue between the day of the commencement of the commutation or enfranchisement and the day fixed by the Commissioners as the day whence the half-yearly payments of the rentcharge shall commence to be calculated shall be paid and recoverable in like manner as any after-accruing half-yearly sum is payable or recoverable.

See sect. 15 of the Copyhold Act, 1887.

Notice to be given to the Ecclesiastical Commissioners in cases wherein they are interested.

19. Where any land proposed to be enfranchised under this Act shall be held of a manor belonging either in possession or reversion to an ecclesiastical corporation within the meaning of the Act of the fourteenth and fifteenth years of her Majesty's reign, chapter one hundred and four, the Ecclesiastical Commissioners for England shall have notice of such proceedings, and shall have the same power of expressing assent to or dissent from such proceedings as is by this Act directed with respect to persons entitled to the next estate of inheritance in reversion or remainder, and the provisions of the Copyhold Acts respecting such notices, and all proceedings thereon (except as otherwise by this Act is provided), shall be applicable to such cases.

Notices, how to be given.

20. Where notice or other writing is required to be given to or served on any designated person or party, it may be given either by sending it by the post in a registered letter to or by leaving it at the office or usual place of abode of such person, and all notices required to be given by the Commissioners or any valuer (the mode of giving which is not particularly directed) may be in the name either of the person giving the notice or of any person authorised by the Commissioners to give notices, and all notices so given shall be deemed sufficient notices to all persons concerning all matters and things to which such respective notices may relate.

See sect. 36 of the Copyhold Act, 1887.

Consideration money, &c. may be charged on land.

21. Whenever by the Copyhold Acts power is given or an obligation attaches to any person to pay money as consideration or compensation for commutation or enfranchisement, it shall be lawful for such person, with the consent of the Commissioners, to charge upon the land commuted or enfranchised the sum of money paid.

See sect. 23 of the Copyhold Act, 1887.

Value of land given as enfranchisement consideration may be charged.

22. Whenever land is conveyed as consideration or compensation for commutation or enfranchisement, and the person conveying the same was absolute owner of the land so conveyed, it shall be lawful for such person, with the consent of the Commissioners, to charge upon the land commuted or enfranchised such reasonable sum as in the judgment of the Commissioners may be equivalent in value to the land so conveyed.

Power to lords to charge the land purchased.

23. Where power is by the Copyhold Acts given to the lord to purchase the tenant's interest in land, he shall have the same right to charge the land purchased, and also the manor and any land settled therewith to the same uses as a tenant has under this Act to charge enfranchisement moneys.

Expenses may be charged.

24. Any expenses incurred in proceedings under the Copyhold Acts may be charged upon the manor or upon the land commuted or enfranchised, or upon both, according as the obligations to pay may attach, or expenses payable by the lord may be paid out of the compensation or consideration money, or be charged upon the rentcharge or other consideration or compensation for commutation or enfranchisement.

See also sect. 24 of the Copyhold Act, 1887, as to charging the lord's expenses.

How consideration moneys, &c. may be charged.

25. Any charge under this Act in respect of consideration or of compensation money, or of purchase-money, or of the value of land conveyed, may, when the parties so agree, and

the Commissioners approve, be made for a principal sum and interest, or for a series of periodical payments, which at the termination thereof at the period specified shall leave the manor or land discharged.

See sect. 23 of the Copyhold Act, 1887.

Certain expenses may be charged as consideration money.

26. Whenever by the provisions of the Copyhold Acts any lord or tenant is authorised to raise money upon charge, or to purchase or convey any land, and to charge the principal or the purchase-money or the value upon a manor or land, then the expenses incurred about the raising of such money upon charge, or incurred about the purchase, or purchase and conveyance, shall (but as distinct from the general expenses of commutation or enfranchisement) be considered for all purposes or effects of charging as part of the principal purchase-money or value to be charged.

Charges for expenses not to exceed fifteen years.

27. All other charges in respect of expenses of proceedings under the Copyhold Acts (except the expenses of a purchase by a lord) shall be for such period as the parties may agree and the Commissioners may approve, not exceeding fifteen years, and at such interest as stated in the certificate of charge.

See sect. 23 of the Copyhold Act, 1887.

Commissioners may in certain cases grant certificate of charge for expenses.

28. If by reason of disputes as to title it shall appear to the Commissioners to be uncertain upon what person the order to pay costs or expenses should be made, the Commissioners may, if they shall so see fit, grant to the person entitled to receive payment of such costs or expenses a certificate of charge upon the manor or land, as the case may be, in respect of which such costs or expenses were incurred, which shall operate in all respects as other certificates of charge under this Act.

Certificate of charge.

29. Every charge under this Act shall be made by a certificate under seal of the Commissioners, and countersigned by the person at whose instance the charge is made, to be called a certificate of charge; and if such charge shall be a series of periodical payments which, at the termination thereof at a period specified, shall leave the manor or land discharged, such series shall be specified in the certificate; but if the charge shall be a principal sum bearing interest, and repayable at or before a certain future date, or after a certain notice, then such certificate shall specify the whole amount of principal money to be charged, and shall contain a proviso declaring that such certificate shall be void on payment of the amount thereby secured, with any arrears of interest due thereon, at a time therein appointed, or at the expiration of an ascertained notice; and such certificate shall state whether

the charge was made in respect of costs or expenses, or in respect of consideration or compensation money, and may specify any place, to be agreed upon between the parties, as the place of payment of the principal money and interest charged by such certificate; and the manor or land charged thereby may be described by reference to the enfranchisement proceedings under the Copyhold Acts, or otherwise, as the Commissioners may see fit.

See sect. 23 of the Copyhold Act, 1887.

Certificate transferable.

30. Every certificate and the charge thereby made shall be transferable by endorsement on such certificate.

Lord's charge to be appurtenant to the manor.

31. Whenever a lord of limited interest shall be entitled to a certificate of charge in respect of enfranchisement money left chargeable upon the land enfranchised, the charge shall remain appendant and appurtenant to the manor (but not so as to be incapable of being severed therefrom, or to be affected by the extinction thereof); and the certificate of charge shall state that the lord to whom such certificate is issued has only a limited interest in such charge, or it may purport to be issued to the lord for the time being of the manor; and either of such statements in such certificate shall be notice to all persons of the limited interest in such charge which may pass by transfer of such certificate.

Stamp duty.

32. Every award of enfranchisement, certificate of charge and transfer thereof, issued or made under this Act, shall be chargeable with the like stamp duties as are chargeable in respect of deeds of enfranchisement, mortgages, and transfers of mortgages.

Priority of charge.

33. Any charge under this Act made in consideration of the value of land conveyed as consideration, or of consideration or compensation money, or of purchase-money, or of the expenses of purchase and conveyances, shall be a first charge on such manor or land, and shall have priority over all mortgages, charges, and incumbrances whatsoever affecting such manor or land, (except tithe commutation rentcharges, and any charges or rentcharges which may have been or shall be charged upon the same land for the drainage thereof, by virtue of any of the statutes in that behalf,) notwithstanding the actual priority in point of date or anterior title of such mortgages, charges, and incumbrances; but any moneys already invested or previously secured or charged thereon may be continued on the security of the same, notwithstanding the imposition of the said charge under this Act.

See also sect. 23 of the Copyhold Act, 1887.

Charge not to merge.

34. Any such certificate of charge may be taken by any person, although he may be the lord or tenant or owner of any manor or land charged thereby; and the same shall not merge in the freehold, unless the owner of such charge shall by endorsement upon the certificate of charge or otherwise, declare in writing that it is his will that such charge shall merge and cease.

Sums charged, how to be recovered.

35. The owner for the time being of a certificate of charge shall, in respect of any payment in the nature of interest or instalment that may become due under the certificate, have the same remedies and be subject to the same conditions in the recovery thereof as are by the Copyhold Acts provided in respect of rentcharges; and for a further and additional remedy in that behalf, and in respect of any payment in the nature of interest, or of a periodical payment, or of an instalment, or of a gross principal sum that may be secured by the certificate, the manor or land shall from the date of the certificate stand charged with the respective sums mentioned in such certificate to be payable, and until such payment the owner for the time being of the certificate shall be deemed to stand seised of the manor or land as a mortgagee in fee thereof; and it shall be lawful for the person so seised from time to time to adopt such means and proceedings as a mortgagee in fee of freehold land is entitled to, for the enforcing payment of principal sums or interest, with the like right to obtain payment of all attendant and incident costs and expenses.

See sects. 23 and 24 of the Copyhold Act, 1887.

36. A certificate of charge may be in the form following:—

Form of certificate of charge.

"We, the Copyhold Commissioners, do hereby certify, that the land mentioned in the schedule to this certificate is charged with the payment to A. B., his executors, administrators, or assigns [*or*, 'to the lord of the manor of ——— for the time being,' *as the case may be*], of the following series of periodical payments; that is to say, the sum of £———, payable on the ——— day of ———, A.D. ———; the further sum of £——— payable on the ——— day of ———, A.D. ———, &c. [*or*, 'with the principal sum of £———, with interest thereon, after the rate of ——— per centum per annum, the principal to be repayable in manner following; that is to say,' *state the terms*]; and we do further certify that this certificate of charge was made in respect of consideration money [*or* in respect of expenses]; and further, that after payment of the series of periodical payments above mentioned [*or* after payment of the principal money hereby charged, and all arrears of interest due thereon], this certificate shall be void. In

witness whereof we have hereunto set our hands and the seal of the said Commissioners, this ——— day of ———, A.D. 18—.

[*The Schedule.*]

"E. F.
"G. H."

Form of transfer of certificate.

37. A transfer of a certificate of charge may be in the form following:—

"I A. B. of ———, hereby transfer the within certificate of charge to C. D. of ———.

"Dated this ——— day of ———, A.D. ———.

A. B."

Owner of two-thirds in undivided shares to be "tenant."

38. When land is held in undivided shares the person for the time being in receipt of at least two-thirds of the value of the rents and profits of such land shall be the "tenant" of such land for all the purposes of the Copyhold Acts.

Agent may be appointed by power of attorney.

39. It shall be lawful for any lord or tenant of a manor, or any other person interested in any proceedings under this Act, by a power of attorney given in writing under his hand, or, in the case of a corporation aggregate, under the common seal of such corporation, from time to time to appoint an agent to act for him in carrying into execution the provisions of this Act; and all things which by this Act are directed or authorized to be done by or in relation to any person may be fully done by or in relation to the agent so duly authorised of such person; and every such agent shall have full power, in the name and on behalf of his principal, to concur in and execute any agreement or application or other document arising out of the execution of this Act; and every person shall be bound by the acts of any such agent, according to the authority committed to him, as fully as if the principal of such agent had so acted; and the power of attorney under which the agent shall have acted, or a copy thereof authenticated by the signature of two credible witnesses, shall be sent to the office of the Commissioners; and any such power of attorney may be in the form following:—

"Manor of ———, in the county of ———.

"I A. B. of, &c., do hereby appoint C. D. of, &c., to be my lawful attorney, to act for me in all respects as if I myself were present and acting in the execution of the Copyhold Act, 1858.

"Dated this ——— day of ———, one thousand eight hundred and ———.

"(Signed) A.B."

See sect. 33 of the Copyhold Act, 1887, as to the steward representing the lord until notice to the contrary.

Revocation of power of attorney.

40. If any person, having made such an appointment as last aforesaid, shall deliver notice in writing or under a common

seal (as the case may require) of the revocation thereof to the Commissioners, no act which shall be done by the person so appointed, after the delivery of such notice, without a fresh appointment, shall bind the principal.

Arbitration in case of difference as to terms of enfranchisement in crown manors.

41. In any case in which the Commissioners of Woods, or either of them, on behalf of her Majesty in right of her Crown, or the Chancellor and Council of the Duchy of Lancaster, on behalf of her Majesty in right of her said Duchy, shall at any time hereafter have proceeded, in exercise of the powers vested in them, to negotiate the terms for the enfranchisement of any hereditaments held of any manor vested in her Majesty in right of her Crown or of her Duchy of Lancaster, either in possession, or in remainder expectant on any estate less than an estate of inheritance, and either solely or in coparcenary with any subject or subjects, and a difference of opinion shall arise between the said Commissioners or either of them, or the said Chancellor and Council, on the one hand, and the tenant of the said hereditaments on the other hand, touching the amount of the consideration money to be paid by the tenant to the said Commissioners or to the Receiver General of the Duchy of Lancaster for such enfranchisement, it shall be lawful for the said Commissioners or either of them, or for the said Chancellor and Council, if they or he respectively shall so think fit, on the request of the tenant, and upon an agreement for the enfranchisement being entered into by them or him with such tenant, to refer it to the Copyhold Commissioners to appoint, as they are hereby authorised to do, some practical land surveyor to determine the amount of the consideration money to be paid to the said Commissioners or to the said Receiver General of the Duchy of Lancaster, for such enfranchisement, and the award of such land surveyor shall be final and conclusive, and shall not be subject to appeal or revision; and the costs and expenses of and incident to any reference to the Copyhold Commissioners, to be made as hereinbefore provided, shall be treated as costs and expenses incurred in the case of a compulsory enfranchisement at the instance of a tenant.

Provision as to enfranchisements in manors belonging to the crown in remainder, &c.

42. Any manor vested in her Majesty in right of her Crown in remainder or reversion expectant on an estate of inheritance, and any hereditaments held of such manor, may, with the consent in writing from time to time of the Commissioners of Woods, or any one of them, be dealt with under the Copyhold Acts.

Provision as to payment of compensation for such

43. In every case of an enfranchisement of land held of any manor so vested in her Majesty in remainder or reversion expectant on an estate of inheritance, where the compensation under the provisions of the Copyhold Acts shall be a gross

sum of money, the same shall be paid to such two persons as trustees as shall be from time to time nominated for the purpose by the Commissioners of Woods, or any one of them, and by the person who shall for the time being be entitled to the receipt of the rents and profits of the manor, one of such trustees being from time to time nominated by the Commissioners or one of them, and the other of such trustees being from time to time nominated by the person so entitled for the time being: provided always, that in any case in which the Commissioners, or one of them, and the person for the time being so entitled, shall not upon the occasion of any enfranchisement agree that the compensation, if payable in a gross sum of money, shall be paid to trustees, the same shall with all convenient speed be paid into the Bank of England in the name and with the privity of the Accountant General of the Court of Chancery, to be placed to his account there *ex parte* the Queen's most excellent Majesty and the person so for the time being entitled, and when so paid in the compensation shall remain to such account as aforesaid until, by order of the court, to be made in a summary way upon petition, after notice to the Commissioners of Woods, by the person who may be entitled to the rents and profits of the manor, it shall be applied in manner by this Act provided. enfranchisements.

44. The compensation money paid for any such enfranchisement shall be applied by any trustees to be from time to time so nominated, or by direction of the Court of Chancery, if the same shall have been paid into the Bank of England to the credit of the Accountant General of the Court, in the purchase or redemption of land tax affecting the manor or any other land settled to the like uses as the manor, or in the purchase of land of fee-simple tenure, and convenient to be held with the settled estates; and until such application of the compensation money, it may, by any such trustees, or by the Accountant General of the Court of Chancery, under order of the Court, to be made upon application thereto, after notice to the Commissioners of Woods, be from time to time invested, in the names or name of such trustees, or of the Accountant General, in the purchase of or upon government or real securities; and in the meantime and until such securities be sold or realised by the trustees, or pursuant to any order of the Court for either of the purposes aforesaid, the income thereof shall be paid by the trustees or by the Accountant General, under order of the Court, to the person who for the time being may be entitled to the rents and profits of the manor. Application of such enfranchisement money.

45. Any land to be purchased with any compensation money to be paid or any rentcharge to be granted or awarded as the Land to be purchased

With enfranchisement money to be settled to same uses as manor may stand limited to.

consideration for any such enfranchisement shall be settled to such uses, upon such trusts, and subject to such powers and provisions as will most nearly correspond with the uses, trusts, powers, and provisions then affecting the manor in which such enfranchisement shall be made, and all such uses, trusts, powers, and provisions shall be valid and have full effect, any law to the contrary notwithstanding.

As to execution of enfranchisement deed.

46. Upon payment of the compensation money as by this Act provided, in any case in which such compensation is made by payment of a gross sum of money, or previously to or contemporaneously with the execution of a deed of grant or of an award by the Copyhold Commissioners of a rentcharge, in any case in which the compensation for an enfranchisement shall be made by way of rentcharge, the Commissioners of Woods, or any one of them, may concur with the person for the time being entitled to the rents and profits of the manor in executing a deed of enfranchisement to the copyholder of the land to be enfranchised, which shall state in what manner the enfranchisement money, if any, has been applied; and such deed of enfranchisement shall, when a memorial thereof is enrolled as by this Act provided, be effectual to vest in the copyholder all the estate, right, and interest of the Queen's Majesty, in right of her Crown, and of all other persons interested therein under the settlement of the manor in the land enfranchised, either absolutely or subject to such reservations as may be agreed upon; but nothing contained in this Act with reference to enfranchisements by awards of the Copyhold Commissioners shall apply to manors in which her Majesty may have any estate or interest in possession, reversion, or remainder.

Record of such enfranchisements to be preserved in office of land revenue records.

47. The Keeper of land revenue Records and Enrolments shall, for the purpose of preserving a record of such enfranchisements as last aforesaid, from time to time provide a book or books, in which shall be entered a memorial of every deed of enfranchisement of land held of any manor, and of every award or grant of any rentcharge, and of every deed of conveyance which shall be executed upon the purchase of land with moneys arising from the enfranchisement of lands within any such manor (such last-mentioned memorial being in every case accompanied by a plan of the land purchased), and every such memorial shall be under the hand of one of the parties to the deed of enfranchisement or conveyance, award, or grant; and no such deed, award, or grant shall have effect until there be written thereon a certificate signed by the keeper of land revenue records and enrolments, that a memorial thereof hath been lodged at the office of land revenue records and enrolments; and in the absence of evidence to the contrary of the fact stated therein, such certificate shall be

admissible in evidence in any court of justice or before any person now or hereafter having by law or by consent of parties authority to hear, receive, or examine evidence, without proof of the signature thereto, or of the fact that the person signing or purporting to sign the same is the keeper of land revenue records and enrolments for the time being; and a copy of the enrolment of the memorial, certified in the manner provided by an Act passed in the sixteenth year of the reign of her present Majesty, chapter sixty-two, section eight, shall be receivable as evidence of the deed or facts referred to in such memorial.

The Commissioners of Woods to indemnify trustee for the Crown.

48. Every trustee so nominated by the Commissioners of Woods, or one of them, shall be absolutely indemnified by the said Commissioners for the time being out of the rents and profits of the possessions and land revenues of the Crown, of and from all such costs, charges, damages, and expenses (if any) as he may in anywise whatsoever incur or be put to in consequence of having been so nominated, and which he may not be able to obtain repayment of out of the trust moneys.

The Treasury to direct what fees shall be taken for enrolment of memorials, &c.

49. The Treasury may direct what reasonable fees shall be from time to time paid in respect of the revision and enrolment, as by this Act provided, of any such deed of enfranchisement or conveyance of any land to be so purchased, and such fees shall be deemed to be part of the expenses of the enfranchisement or purchase, as the case may be, and shall be paid or be recoverable accordingly.

Provision as to manors held in joint tenancy with the crown.

50. Any manor vested in her Majesty in right of her Crown in possession, remainder or reversion, in joint tenancy or coparcenary with any subject, may, so far as regards the rights and interests of such subject and of the tenant of such manor, be dealt with under the Copyhold Acts, and the provision of this Act in regard to enfranchisements in manors vested in her Majesty in right of her Crown in remainder or reversion expectant on an estate of inheritance, shall apply to manors so vested in her Majesty in joint tenancy or coparcenary with any subject, so far as respects the share or interest in any such manor to which her Majesty may be so entitled.

"Ecclesiastical corporation" not to extend to Christ Church, Oxford.

51. In the construction of this Act the words "ecclesiastical corporation" shall not be taken to extend to or include the cathedral or house of Christ Church, Oxford.

See the Universities and College Estates Act, 1858, s. 31, as to Christ Church being deemed a college of Oxford University.

Act to be part of the Copyhold Acts.

52. This Act shall be taken and construed as part of the Copyhold Acts, and may be cited either generally under the term "The Copyhold Acts," or specifically as "The Copyhold Act, 1858."

APPENDIX XIII.

The Copyhold Act, 1887.

(50 & 51 Vict. c. 73.)

An Act to amend the Copyhold Acts, and for the enfranchisement of copyhold and customary lands.

[16th September, 1887.]

Whereas it is expedient to make further provision for the enfranchisement of lands of copyhold and customary tenure, and of lands subject to certain customary and other incidents and rights:—

Be it therefore enacted, &c.

Notice to be given by the steward to the tenant.

1. On the admittance or enrolment of any tenant after the thirty-first day of December one thousand eight hundred and eighty-seven, the steward of the manor shall be bound, without any further charge, to give to the tenant so admitted or enrolled a notice in the form or to the effect following:—

Take notice that, if you desire that the copyhold land which you hold of this manor of ——— shall become freehold, you are entitled to enfranchise the same upon paying the lord's compensation and the steward's fees. The lord's compensation may be fixed either by agreement between the lord and you, or by any valuer appointed by yourselves, or through the agency of the Land Commissioners (*a*), to whom you may make application, if you think fit, to effect the enfranchisement of your land.

If the steward neglects to serve such notice he shall not be entitled to any fee for that admission or enrolment.

(*a*) The Land Commissioners are now represented by the Board of Agriculture: 52 & 53 Vict. c. 30.

All may be admitted by attorney.

2. Every person entitled to admission may hereafter be admitted by himself or by his attorney duly appointed, whether orally or in writing.

Power to agree on compensation or appoint valuer.

3. Any lord and tenant may at any time agree in writing on the amount of compensation for enfranchisement, or may appoint in writing a valuer or valuers to ascertain such compensation, and the sum so agreed upon or ascertained shall be deemed to be the compensation for enfranchisement lawfully ascertained.

Lord to retain his right in case of escheat.

4. On any enfranchisement after the passing of this Act the lord of the manor shall continue to be entitled in case of escheat for want of heirs to the same right and interest in the land as he would have had if it had not been enfranchised.

And corresponding abatements to be made from the lord's compensation.

5. In making valuations for compensation payable to the lord upon an enfranchisement effected after the passing of this Act the valuers shall not take into consideration the value of escheats.

Restraint on the creation of new copyholds.

6. After the passing of this Act it shall not be lawful for the lord of any manor to make grants of land not previously of copyhold tenure to any person to hold by copy of court roll, or by any tenure of a customary nature, without the previous consent of the Land Commissioners, who in giving or withholding their consent shall have regard to the same considerations as are to be taken into account by them on giving or withholding their consent to any inclosure of common lands; and whenever any such grant has been lawfully made the land therein comprised shall cease to be of copyhold tenure, and shall be vested in the grantee thereof to hold for the interest granted as in free and common socage.

Lord or tenant may compel extinguishment of all manorial incidents.

7. Subject to the provisions of the forty-eighth section of the Copyhold Act, 1852, and to the provisions hereinbefore expressed, any lord or tenant or owner of any land liable to any heriot or to any quitrent, free rent, or other manorial incident whatsoever, may require and compel the extinguishment of such rights or incidents, and the release and enfranchisement of the land subject thereto, and the same proceedings shall thereupon be had as are in the Copyhold Acts mentioned with reference to the enfranchisement of copyhold land, or as near thereto as the nature of the case will admit.

Commissioners to have power to continue conditions of user.

8. Notwithstanding anything herein contained, it shall be lawful for the Commissioners, if they see fit, in any enfranchisement effected by award, to continue and give effect to any conditions affecting the user of the land subject to which a tenant may have been admitted, and imposed or created for the benefit of the public or of the other tenants of the manor, where, in the opinion of the Commissioners, any especial hardship or injustice would result if the lands were released from such conditions.

Provisions relating to Compensations, Valuations, the making of Awards, the incidence and redemption of Rentcharges, and the application of Compensation Money.

Amendment of s. 6 of 21 & 22 Vict. c. 94.

9. The sixth section of the Copyhold Act, 1858, shall be amended as follows:—Instead of the words "admittance or death" shall be read the words "admittance or enrolment on alienation;" and instead of the final word "heriot" shall be read the word "enrolment."

Amendment of s. 8 of 21 & 22 Vict. c. 94.

10. Section eight of the Copyhold Act, 1858, shall be read as if the word thirty had been substituted therein for twenty, and subject to the following modifications:—

(a) The lord and tenant in any case may appoint one and the same person as valuer:

(b) Either party may in any case have the valuation made as in cases where the land to be enfranchised is rated to the poor's rate at a greater amount than the net annual value of thirty pounds, but in that case he shall be liable to pay the additional expense caused by such mode of valuation:

(c) Where the valuers fail to make a decision, and also fail to refer the matter to the umpire, the umpire shall, if so directed by the Commissioners, act as if he had been duly appointed by the lord and tenant to act as their valuer, and the umpire so acting shall make and deliver his decision to the Commissioners within forty-two days from his being directed by the Commissioners to act as valuer for both parties; and where he has not been so directed, or where having been so directed he fails to deliver his decision within the time aforesaid, the Commissioners shall fix the consideration to be paid:

(d) The valuers or either of them, if they fail to agree upon the compensation to be paid for the enfranchisement, may refer the whole matter or any point in dispute to the umpire.

As to duties of valuers.

11. The valuers appointed under the provisions of the Copyhold Acts shall determine the value of the manorial and other rights and incidents, such value to be a gross sum of money, and their decision shall be in such form as the Commissioners may prescribe, and they shall in every case deliver the details of the valuation to the Commissioners, and if it shall appear to the Commissioners that the valuation is imperfect or erroneous, they may remit it for reconsideration or correction; and if the valuers neglect or refuse to amend the same, the Commissioners may, after due notice to the lord and to the tenant, and after fully considering all the circumstances brought before them, determine the value of the manorial and other

rights and incidents at such a sum as they may deem just and reasonable.

See *Reg.* v. *The Land Commissioners for England*, 23 Q. B. Div. 59.

In case of death, &c. of valuer, another to be appointed.

12. Upon the death, incapacity, or refusal to act, or removal from time to time, of any valuer appointed under the provisions of the Copyhold Acts, another valuer shall, by a time to be fixed by the Commissioners, be appointed in his stead in the manner and by the means by which the valuer whose place he is to fill was appointed; and if no valuer be appointed within the time fixed by the Commissioners, then the appointment shall be made by the Commissioners, and the new valuer for the time being may adopt and act upon any valuation and other matters or proceedings which shall have been completed or agreed upon by the valuer previously acting.

Payment may be made in gross sum.

13. The tenant may in any case before the completion of any enfranchisement pay the compensation in a gross sum of money, but in case of an enfranchisement by award, he shall, within ten days after the receipt of the draft of the proposed award, give notice in writing to the Commissioners of his desire so to pay.

When compensation to be secured by rentcharge.

14. Subject to the foregoing provision, and unless the parties otherwise agree, such compensation shall, in the following cases, viz.:—

(a) Where the enfranchisement is effected at the instance of the lord;

(b) Where the land can, in the opinion of the Commissioners, be sufficiently identified, and the compensation to the lord amounts to more than one year's improved annual value of the land enfranchised,

consist of an annual rentcharge commencing in every case from the date of the notice to enfranchise, and issuing out of the land enfranchised, equivalent to interest at the rate of four pounds per centum per annum upon the amount of compensation ascertained as aforesaid.

Rentcharges to be payable on the 1st January and 1st July in each year.

15. From and after the first day of January next every rentcharge already created or to be hereafter created under the provisions of the Copyhold Acts shall be payable half-yearly on the first day of January and the first day of July in every year, and a proportionate payment shall be made on the first day of January next in respect of the interval which shall have elapsed since the last preceding day of payment or since the commencement thereof, as the case may be; and on any enfranchisement taking place after the said first day of January a proportionate payment shall in like manner be made on such one of the said half-yearly days of payment as

shall next follow the date of the award or memorandum or deed of enfranchisement.

Recovery and incidence of rentcharge.

16. Every such rentcharge shall be recoverable by such remedies as are given by section forty-four of the Conveyancing and Law of Property Act, 1881. Any occupying tenant who is called upon to pay and does pay any money on account of such rentcharge, which as between him and his landlord he shall not be liable to pay, shall be entitled to recover the same from his landlord or to deduct it from the next rent payable by him.

See *Searle* v. *Cooke*, 43 Ch. Div. 519.

Rentcharge redeemable by tenant.

17. Any such rentcharge may be redeemed upon any half-yearly day of payment upon six months' previous notice in writing at the option of any person for the time being in actual possession or receipt of the rents and profits of the land subject to the rentcharge, by payment to the person for the time being entitled to receive the rentcharge of twenty-five times the yearly amount of the rentcharge created as aforesaid.

Provision when, after notice for redemption, money is not paid.

18. After the expiration of a notice for redemption, if the redemption money and all arrears of the rentcharge are not duly paid, the person entitled to the said rentcharge shall have and may exercise over the property charged therewith all the powers and remedies given to a mortgagee in and by the Conveyancing and Law of Property Act, 1881, for the recovery of the redemption money and all arrears, if any, of the said rentcharge.

Rentcharges to rank as if under Copyhold Acts.

19. Rentcharges created under this Act on enfranchised lands shall, with reference to other charges on and interests in such lands, rank in the same manner as if such rentcharges were created under the Copyhold Acts passed prior to this Act.

Expenses of redemption.

20. The expenses incurred in redeeming such rentcharges shall be dealt with on the same footing as the expenses incurred in redeeming a mortgage.

Transfer of fee-farm rent or charge from manor to freehold lands or Government stocks of adequate value.

21. Where in the course of an enfranchisement under the Copyhold Acts it is found that a manor, or the lord's estate and interest in any land belonging thereto, which may be the subject of enfranchisement is subject to the payment of a fee-farm rent or to any other charge, the Commissioners may, upon the application of the person for the time being bound to make such payment or defray such charge, by order under their seal, direct that the fee-farm rent or charge respectively shall be a charge upon any freehold lands specified in the order, being of adequate value and held under the same title

as the said manor or land, or upon any adequate amount of government stocks or funds to be transferred into court by the direction of the Commissioners in manner prescribed by the High Court Funds Rules, or into the names of trustees appointed by the Commissioners; and upon the sealing of such order the said manor and land shall be freed and for ever discharged from such payment or charge; and such payment or charge shall be and continue a charge upon the land or funds specified in the order of the Commissioners, and, so far as the nature of the case will admit, there shall be and are hereby attached thereto the like remedies for the recovery thereof as against the land or funds subject thereto, as might have been had as against the manor or land belonging thereto in respect of the original charge.

Commissioners may frame award of enfranchisement.

22. In any case conducted before the Commissioners, when the amount of compensation has been duly ascertained, the Commissioners, having made such inquiries as to them shall seem fit, may frame an award of enfranchisement on the basis of such compensation, and in such form as they shall provide, and may confirm the same, and such confirmed award shall have the same force and validity as an award of enfranchisement under the Copyhold Act, 1858. And where the draft award has been perused by the steward, it shall not be necessary to serve a copy thereof upon the steward, as required by the last proviso to the tenth section of the Copyhold Act, 1858. But a copy of the award, sealed or stamped with the seal of the Commissioners, shall be sent by the Commissioners to the lord, who shall cause the same to be entered on the court-rolls of the manor.

Power to charge land enfranchised with compensation money, &c.

23. It shall be lawful for the owner of any land enfranchised under the Copyhold Acts, although his estate may be only a limited estate, to charge the land enfranchised with the compensation money paid for such enfranchisement, and also with the expenses attending such enfranchisement, or with any part thereof respectively, with interest thereon not exceeding five pounds per centum per annum, or by way of terminable annuity calculated on the same basis. Any and every such charge may be by deed by way of mortgage with, under, and subject to the provisions of the Conveyancing and Law of Property Act, 1881, and shall be a first charge on the land, and shall have such priority as by the thirty-third section of the Copyhold Act, 1858, is assigned to the charges there expressed to be first charges; and any moneys already invested or previously secured or charged on such land may be continued on the security of the same, notwithstanding the imposition of the said charges under the Copyhold Acts. Any company now authorised to make advances for works of

agricultural improvement to owners of settled and other estates, may, subject and according to the provisions of their respective Acts of Parliament, charters, deeds, or instruments of settlement, make advances to owners of settled and other estates of such sums as may be required for the payment of any consideration or compensation for commutation or enfranchisement under the existing or any future Copyhold Acts, or of any expenses chargeable upon a manor or land under the same Acts or otherwise, and to take for their repayment a charge for the same in accordance with the provisions of their respective Acts of Parliament.

Lord's expenses may be charged on lands or rentcharges.

24. Any expenses paid by a lord in proceedings under the Copyhold Acts may be charged either on lands settled to the same uses as the manor or on rentcharges arising out of other enfranchisements within the manor, and every such charge shall be by deed by way of mortgage with, under, and subject to the provisions of the Conveyancing and Law of Property Act, 1881.

Receipt for, and disposal of, compensation,—after award, or with consent, of Commissioners,

25. In every case where land is enfranchised under the award of the Commissioners, or by deed with the consent of the Commissioners, the lord for the time being, although his estate in the manor may be only a limited estate, shall be able to give a complete discharge for money payable to the lord for compensation, so as to relieve the person or persons paying the same from all responsibility for the application thereof, and in such cases the compensation money shall be paid by the recipient in such manner as the Commissioners, having regard to the provisions of the Copyholds Acts, shall direct.

—in case of enfranchisement by agreement where compensation under 500*l.*

26. In cases of enfranchisement by agreement between the parties, or otherwise without reference to the Commissioners, where the compensation money does not exceed five hundred pounds, the lord for the time being shall be able to give such complete discharge, if he makes a declaration in writing stating the particulars of his estate or interest in the manor, and showing himself to be entitled to receive such money for his own use. If he is not actually so entitled he shall be deemed to have received such money as a trustee for the persons who are so entitled. If his declaration is false he shall be liable to the penalties attached to a false statutory declaration.

Steward's compensation after 31st December, 1887.

27. In every case of enfranchisement by award after the thirty-first day of December one thousand eight hundred and eighty-seven the tenant shall pay to the steward the compensation mentioned in the schedule to this Act.

Prior to 1st January, 1888.

28. In every case of enfranchisement by award prior to the first day of January one thousand eight hundred and eighty-

eight the expenses of enfranchisement and the steward's compensation shall be dealt with as provided by the Copyhold Acts prior to this Act.

Provisions relating to Procedure and Expenses.

Amendment of 15 & 16 Vict. c. 51, s. 8.

29. From and after the passing of this Act the words "in the course of the valuations in any enfranchisement to be effected by an award under the Copyhold Acts" shall be substituted for the words "upon or prior to any admittance or in the course of such valuations" in section eight of the Copyhold Act, 1852.

Commissioners to publish a scale of compensation.

30. The Land Commissioners shall frame and cause to be printed and published such a scale of compensation for the enfranchisement of land from the manorial and other rights and incidents specified or referred to in the Copyhold Acts, including heriots, as in their judgment will be fair and just and will facilitate enfranchisement, and such scale shall contain all such directions for the guidance of lord, tenant, and valuers as the Commissioners may deem necessary. The said Commissioners shall also print and publish a scale of allowance to valuers for services to be performed in the execution of the Copyhold Acts. The Commissioners may from time to time vary any such scales, which are to be for guidance only, and not to be binding as a matter of law in any particular case, but the party requiring enfranchishment shall state to the other party whether or no he is willing to adopt the scale.

See p. 473, *ante*, for the scale of compensation for the enfranchisement of land, and p. 476 for the scale of allowance to valuers.

In case of death proceedings not to abate.

31. If pending any proceedings commenced after the passing of this Act for enfranchisement under the Copyhold Acts the lord or tenant shall die, there shall be no abatement of the proceedings; any fresh admittance or enrolment consequent on such death and pending such proceedings shall be made without the payment of any fine, relief, or heriot to the lord; and the enfranchisement shall be proceeded with and the compensation shall be ascertained on the same footing as if the enfranchisement had been effected immediately after the commencement of proceedings.

Declaration to be made by lord or steward.

32. Previously to any enfranchisement by award or deed under the Copyhold Acts the Commissioners, if they see fit, may require the lord or steward of any manor to make a declaration in such form as they shall direct, stating who are the persons for the time being filling the character or acting in the capacity of lord, and it shall be lawful for the Commissioners to accept such declaration for the purposes of the Copyhold Acts; but if the Commissioners shall consider that such evidence does not fully and truly disclose all such parti-

culars as are necessary, or if no such declaration shall be made, or if the lord shall refuse or decline to give such evidence as they shall deem proper and necessary to show a satisfactory *primâ facie* title in the lord, then, if they think the justice of the case requires it, they may direct that the compensation for enfranchisement, when a gross sum of money, shall be paid into court in the manner prescribed by the High Court Funds Rules.

Steward as a general rule to represent the lord.

33. Any lord may act on his own behalf, or may appoint an agent other than his steward to act for him; but unless and until he has given written notice to the tenant and the Commissioners respectively that he intends to act for himself, or that he has appointed the person specified in the notice to act for him, the tenant and the Commissioners respectively may treat his steward as his agent for receipt of notices, making of agreements, and all other matters relating to enfranchisement, and in all matters of procedure the steward shall be deemed to represent the lord; except that no steward shall, without special authority, have power to consent on behalf of the lord to dealings with the rights comprised in section forty-eight of the Copyhold Act, 1852, as herein amended.

Award may be withheld until payment of fees.

34. The Commissioners shall have power to require the payment of all office fees and other expenses of the Commissioners as aforesaid, from either lord or tenant requesting any award, deed, or order, before delivery of the same.

General provisions as to expenses.

35. Whenever money is hereby declared to be payable by any person on account of the expenses of proceedings under the Copyhold Acts:—

(a) The amount may be recovered as a debt due from the party liable to pay to the party entitled to receive, as well as by any other remedy given in any special case:

(b) If it be payable by the lord to the tenant, or by the owner of a rentcharge to the owner of the property charged therewith, the amount may be set off against any money which at the time is receivable by the lord from the tenant, or by the owner of the rentcharge from the owner of the property charged:

(c) If there is dispute as to the amount of such expenses, the Commissioners may ascertain it, and may declare it by order which shall be binding on all parties concerned.

Notices.

36. Any notice required or authorised by the Copyhold Acts to be given to any person may be in writing or print, or partly in writing and partly in print, and shall be sufficiently given if delivered to such person himself or left at the usual or last known place of abode or business in the United King-

dom of such person. Any such notice shall also be sufficiently given if it is sent by post in a registered letter addressed to the person to be affected thereby by name at the aforesaid place of abode or business, and if that letter is not returned through the Post Office undelivered, service or delivery shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered. Where a notice is required or authorised to be given to the tenant of any premises it may be given by delivering the same, or a true copy thereof, to some person on the premises, or, if there is no person on the premises to whom the same can be delivered with reasonable diligence, by fixing the notice on some conspicuous part of the premises.

Pending proceedings to be carried out under former Acts.

37. All proceedings for enfranchisement or redemption already commenced under the Copyhold Acts prior to this Act shall be carried out under those Acts as if this Act had not passed.

General and Miscellaneous Provisions.

Succession of rights and liabilities.

38. All rights by this Act conferred and all liabilities imposed upon a lord or tenant shall be held to be conferred or imposed upon the successors in title of such lord or tenant unless a contrary intention appears.

Provision for cases of trustees, infants, lunatics, and married women.

39. Anything by the Copyhold Acts required or authorised to be done by the lord of a manor, or the tenant or owner of any land or right, may be done by such lord or tenant or owner, notwithstanding that he may be a trustee for any person, or that his estate in such manor or land be only a limited estate; and the guardian of an infant lord, tenant, or owner, and the committee of the estate of a lunatic lord, tenant, or owner, shall have full power to do on his behalf anything by the said Acts required or authorised to be done by such infant or lunatic; and a married woman, being lady of the manor, or tenant of any land or right of copyhold or customary tenure, shall for the purposes of the said Acts be deemed to be a *feme sole*.

Where one or more trustees shall be abroad or shall be incapable or refuse to act the other trustees may act.

40. When either the lords or the tenants are trustees, and one or more of such trustees shall be abroad or shall be incapable or refuse to act, any proceedings necessary to be done by such trustees for effecting any enfranchisement under the Copyhold Acts may be done by the other trustee or trustees, as the case may be.

Provision for lands in lease.

41. The provisions of the forty-fourth section of the Copyhold Act, 1852, with reference to lands subject to leases, shall be deemed to apply not only to leases and demises at will, but also to leases and demises for any greater interest, and they shall be applicable to all lands enfranchised under the Copyhold Acts.

Boundaries.

42. In all cases of lands enfranchised under the Copyhold Acts the following rules shall apply as between the lord and the tenant:—

(a) Where the identity of any lands cannot be ascertained to the satisfaction of the valuers, such lands shall be taken at the quantities mentioned in the court books or rolls of the manor, if such quantities are therein stated to be in statute measure, and as to any lands the quantities of which are not so specified, the same shall be taken at such quantities as such valuers may determine:

(b) Where the lands are not defined by a plan upon the court-rolls, the valuers shall, if requested in writing so to do either by the lord or tenant, define the boundaries or limits of the lands by a plan; such plan when accepted by the Commissioners to be conclusive:

(c) When valuers have been appointed it shall be lawful for any lord or tenant, in case of any doubt or difference of opinion as to the identity of any lands, to apply to the Commissioners to define the boundaries thereof for the purpose of any enfranchisement, and the Commissioners shall proceed in such manner as they shall see fit to ascertain and define such boundaries; and such definition of boundaries, when made by the Commissioners, shall be final and conclusive:

(d) Except by agreement between the lord and the tenant, no such plan shall be undertaken in any case where it shall appear by the court-rolls or otherwise that the boundaries of the lands proposed to be enfranchised have been for more than fifty years last past treated as being intermixed with the boundaries of other lands and as being incapable of definition.

Power to refer questions of compensation to Commissioners.

43. Notwithstanding the provisions of the Copyhold Acts, the lord and tenant may at any time after notice of enfranchisement shall have been delivered agree in writing that the Commissioners shall determine the compensation to be paid for enfranchisement. And the Commissioners shall, upon receipt of such agreement, take such proceedings and make such inquiries as they may deem necessary to determine such compensation, taking into consideration all such matters as valuers appointed under the Copyhold Acts are bound to take into consideration in making a valuation; and having determined such compensation, the Commissioners shall communicate the result in writing to the lord and tenant, and shall fix a time within which any objection to such determination may be signified to them in writing by the lord or tenant, and forthwith after the period fixed for such objections to be sig-

nified shall have expired if there be none, or if there be any then forthwith after the Commissioners shall have considered and disposed of such objections and made such alterations, if any, as they shall see fit, they shall make their award of enfranchisement in like manner as if the compensation had been ascertained by valuers under the Copyhold Acts.

Commissioners may correct errors in awards or other instruments.

44. It shall be lawful for the Commissioners, if they see fit, on the application of any person interested, at any time to correct and supply any error or omission arising from inadvertence in any award of enfranchisement, deed of enfranchisement, or charge, already made or issued, or to be made and issued by them, or any other instrument authorised by the said Acts to be made or issued by the Commissioners, after such notice to the parties interested as the Commissioners shall deem proper, and all expenses incident thereto shall be paid by the parties, or either of them, if and as the Commissioners direct.

Trust copyholds of inheritance not to descend as chattels real.

45. The thirtieth section of the Conveyancing and Law of Property Act, 1881, shall not apply to land of copyhold or customary tenure vested in the tenant on the court-rolls of any manor upon any trust or by way of mortgage.

See *In re Mills' Trust*, 37 Ch. Div. 312, 40 Ch. Div. 14 (C. A.).

Provision for case of joint lords under sect. 4 of 23 & 24 Vict. c. 59.

46. In every case where, under the fourth section of the Universities and College Estates Act Extension, 1860, any university or college and any person shall jointly constitute "the lord" of the manor, then any rentcharge to be created under the Copyhold Acts on the enfranchisement of land held of such manor shall be in favour of, and the power to give receipts hereinbefore conferred for compensation or redemption money shall be exerciseable by, the person who at the date of the enfranchisement shall be entitled in possession to the profits of the manor or to the receipt of such rentcharge, and the executors and administrators of such person, but without prejudice to any question as to the further disposal of the moneys secured by such charge.

Provisions for cases where derivative interests are entered upon the rolls.

47. The following provisions shall apply to every manor in which the fines are certain, and in which it is the practice for copyholders in fee to grant derivative interests to persons who are admitted as copyholders of the manor in respect of such interests:—

(a) The tenant for the purposes of the Copyhold Acts shall be the person who is admitted or enrolled in respect of the inheritance, and who is in this section called the tenant-in-fee:

(b) The enfranchisement of the land to such tenant shall enure for the benefit of himself and every other

person having any customary estate or interest subsisting in the same land, without any further enfranchisement, and all such persons shall be entitled to estates and interests in the land enfranchised corresponding with their customary estates and interests existing at the date of the enfranchisement:

(c) All rentcharges payable in respect of such enfranchisement, and all sums of money payable by the tenant-in-fee for compensation or the expenses of enfranchisement, and the interest thereon, shall, if the parties have not otherwise agreed, be borne and paid by the several persons for whose benefit the enfranchisement enures in proportion to their respective interests in the enfranchised land:

(d) If any dispute arises respecting the due apportionment of such charges, the Commissioners may, on the application of any party interested, and after due inquiry, make an order apportioning the same. Such order shall be binding on all parties concerned, and the expenses of and incident to it shall be paid by the parties or any of them as the Commissioners direct:

(e)—(1.) On the request of the lord, or of one-fourth in number of the copyholders for the time being on the court-roll of any such manor, and upon such provision for expenses being made as the Commissioners may require, the Commissioners may make a local inquiry for the purpose of ascertaining whether the copyholders of such manor desire that enfranchisement shall be effected throughout the manor:

(2.) If the Commissioners find that not less than two-thirds in number of such copyholders desire such enfranchisement, they shall by order declare that all copyhold tenements of the manor are to be enfranchised; and thereupon they shall proceed to ascertain the amount of compensation due to the lord upon the enfranchisement of each tenement held by a tenant-in-fee, and to effect such enfranchisements accordingly as between the lord and the tenants-in-fee. The compensation in every case shall consist of a gross sum of money, unless the lord and tenant-in-fee otherwise agree:

(3.) Upon the making of the declaration above mentioned, all the tenants-in-fee of the manor shall be liable to contribute rateably to the expenses of the local inquiry according to the amount of compensation payable by them respectively. The tenant-in-fee and all copyholders holding derivative interests

in the same tenement shall be liable to contribute rateably, according to the value of their respective interests, to the compensation, and to all such expenses attending the enfranchisement as are payable on the part of tenants, including the contribution assessed on tenants-in-fee as last aforesaid:

(4.) The Commissioners shall have power to apportion such contributions between the several tenants of each enfranchised tenement, and also between the several tenants-in-fee, and to make orders for the payment of such contributions and expenses by the persons from whom they are due. Such orders shall be conclusive upon all persons hereby declared liable to contribute:

(5.) Without the consent of the tenant-in-fee the Commissioners shall make no award for the enfranchisement of any tenement unless and until they have apportioned the contributions between such tenant-in-fee and the tenants holding derivative interests in the same tenement, and have made orders for payment of the same, or otherwise have satisfied themselves that the tenant-in-fee has full security for the amounts which the tenants of derivative interests are to contribute.

Custody of court-rolls.

48. When and so soon as all the lands held of or parcel of any manor shall be enfranchised the lord or, with the consent of the lord, any other person having custody of the court-rolls, court-books, and records of such manor may, if he thinks fit, give up and hand over to the Master of the Rolls all or any of such court-rolls, court-books, and records, and the Master of the Rolls shall have power to receive and to undertake the custody thereof, and in case the Commissioners shall have obtained the custody of any such court-rolls, court-books, or records under the Copyhold Act, 1852, or otherwise under the Copyhold Acts, they shall have power to give all or any of them up to the Master of the Rolls, who shall have power to take and keep the same in manner aforesaid; and from thenceforth all persons seised of or interested in any such lands shall have access to and may inspect such court-rolls, court-books, and records handed over as aforesaid, and may inspect the same and obtain office copies or certified extracts therefrom on the payment of such reasonable fees as shall be fixed from time to time under the authority of the Master of the Rolls.

Provided always, that the Master of the Rolls shall have power from time to time to make, and when made revoke, add to, and vary rules respecting the manner in which and the time at which the access to and inspection of such court-

rolls, court-books, and records handed over as aforesaid, shall be had and made, and such office copies and certified extracts shall be obtained, and as to the amount and mode of payment of reasonable fees for or in respect of such office copies and certified extracts as aforesaid.

Provided further, that every such rule shall be laid before both Houses of Parliament within six weeks after it is made, or after the next meeting of Parliament.

Interpretation of terms.

49. In this Act and the Copyhold Acts, unless where the context shows that the words hereinafter mentioned are used in a different sense, that they shall be understood in manner hereinafter mentioned, that is to say, the expression "the Commissioners" shall mean the Land Commissioners for England; the expression "the Copyhold Acts" shall extend to and include this Act; the word "lord" shall be interpreted as the same is interpreted in the Copyhold Act of 1841 (*a*); the word "tenant" shall comprise all persons holding lands subject to any manorial right or incident; the word "rent" shall include all payments or renders in money, produce, kind, or labour, due or payable in respect of any land holden of or parcel of any manor; the word "owner" shall include every person entitled to hereditaments for any term of years originally granted for ninety-nine years or upwards, or for some greater estate; the words "admitting or enrolling," "admittance or enrolment," "admit or enrol" shall include an express admittance or enrolment of a tenant and every licence of any assurance, and every ceremony, act, and assent whereby the tenancy or holding of any such tenant is perfected; and generally words interpreted in the earlier Copyhold Acts shall receive the same interpretation in this Act save where a contrary intention appears.

Commissioners. Copyhold Acts. Lord. Tenant. Rent. Owner. Admittance.

(*a*) See p. 366, *ante*.

Act to be part of Copyhold Acts. Short title.

50. This Act shall be taken and construed as part of the Copyhold Acts, and may be cited either generally under the term the Copyhold Acts, or specifically as the Copyhold Act, 1887, and throughout this Act the expression "Copyhold Acts" shall include this Act.

Repeal.

51. The following portions of the Copyhold Acts are hereby repealed; that is to say,

The twelfth section of the Copyhold Act, 1843:

The fourth, seventh, ninth, and twenty-fourth sections of the Copyhold Act, 1852:

The seventh section of the Copyhold Act, 1858.

SCHEDULE.

Scale of Steward's Compensation.

When the consideration for the enfranchisement does not exceed 1*l.*—five shillings. When the same exceeds 1*l.*, but does not exceed 5*l.*—ten shillings. When the same exceeds 5*l.*, but does not exceed 10*l.*—one pound. When the same exceeds 10*l.*, but does not exceed 15*l.*—two pounds. When the same exceeds 15*l.*, but does not exceed 20*l.*—three pounds. When the compensation exceeds 20*l.* but does not exceed 25*l.*—four pounds. When the same exceeds 25*l.*, but does not exceed 50*l.*—six pounds. When the same exceeds 50*l.*, but does not exceed 100*l.*—seven pounds. And also on every additional 50*l.*, or fractional part of 50*l.* over and above the first 100*l.*—ten shillings. The above compensation is exclusive of stamps and paper or parchment or map or plan which are to be paid for by the tenant.

APPENDIX XIV.

[Extracts from the Stamp Act, 1891.

(54 & 55 VICT. c. 39.)

An Act to consolidate the enactments granting and relating to the stamp duties upon instruments and certain other enactments relating to stamp duties. [21st July, 1891.]

PART I.

REGULATIONS APPLICABLE TO INSTRUMENTS GENERALLY.

Charge of Duty upon Instruments.

Charge of duties in schedule.

1. From and after the commencement of this Act the stamp duties to be charged for the use of her Majesty upon the several instruments specified in the first schedule to this Act shall be the several duties in the said schedule specified, which duties shall be in substitution for the duties theretofore chargeable under the enactments repealed by this Act, and shall be subject to the exemptions contained in this Act and in any other Act for the time being in force.

All duties to be paid according to regulations of Act.

2. All stamp duties for the time being chargeable by law upon any instruments are to be paid and denoted according to the regulations in this Act contained, and except where express provision is made to the contrary are to be denoted by impressed stamps only.

* * * *

Production of Instruments in Evidence.

Terms upon which instruments not duly stamped may be received in evidence.

14.—(1.) Upon the production of an instrument chargeable with any duty as evidence in any court of civil judicature in any part of the United Kingdom, or before any arbitrator or referee, notice shall be taken by the judge, arbitrator, or referee of any omission or insufficiency of the stamp thereon, and if the instrument is one which may legally be stamped after the execution thereof, it may, on payment to the officer of the court whose duty it is to read the instrument, or to the arbitrator or referee, of the amount of the unpaid duty, and the penalty payable on stamping the same, and of a further sum of one pound, be received in evidence, saving all just exceptions on other grounds.

(2.) The officer, or arbitrator, or referee receiving the duty and penalty shall give a receipt for the same, and make an entry in a book kept for that purpose of the payment and of the amount thereof, and shall communicate to the Commissioners the name or title of the proceeding in which, and of the party from whom, he received the duty and penalty, and the date and description of the instrument, and shall pay over to such person as the Commissioners may appoint the money received by him for the duty and penalty.

(3.) On production to the Commissioners of any instrument in respect of which any duty or penalty has been paid, together with the receipt, the payment of the duty and penalty shall be denoted on the instrument.

(4.) Save as aforesaid, an instrument executed in any part of the United Kingdom, or relating, wheresoever executed, to any property situate, or to any matter or thing done or to be done, in any part of the United Kingdom, shall not, except in criminal proceedings, be given in evidence, or be available for any purpose whatever, unless it is duly stamped in accordance with the law in force at the time when it was first executed.

Stamping of Instruments after Execution.

Penalty upon stamping instruments after execution.

15.—(1.) Save where other express provision is in this Act made, any unstamped or insufficiently stamped instrument may be stamped after the execution thereof, on payment of the unpaid duty and a penalty of ten pounds, and also by way of further penalty, where the unpaid duty exceeds ten pounds, of interest on such duty, at the rate of five pounds per centum per annum, from the day upon which the instrument was first executed up to the time when the amount of interest is equal to the unpaid duty.

(2.) In the case of such instruments hereinafter mentioned as are chargeable with ad valorem duty, the following provisions shall have effect:—

(a) The instrument, unless it is written upon duly stamped material, shall be duly stamped with the proper ad valorem duty before the expiration of thirty days after it is first executed, or after it has been first received in the United Kingdom in case it is first executed at any place out of the United Kingdom, unless the opinion of the Commissioners with respect to the amount of duty with which the instrument is chargeable, has, before such expiration, been required under the provisions of this Act:

(b) If the opinion of the Commissioners with respect to any such instrument has been required, the instrument shall be stamped in accordance with the assessment of the Commissioners within fourteen days after notice of the assessment:

(c) If any such instrument executed after the sixteenth day of May one thousand eight hundred and eighty-eight has not been or is not duly stamped in conformity with the foregoing provisions of this sub-section, the person in that behalf hereinafter specified shall incur a fine of ten pounds, and in addition to the penalty payable on stamping the instrument there shall be paid a further penalty equivalent to the stamp duty thereon, unless a reasonable excuse for the delay in stamping, or the omission to stamp, or the insufficiency of stamp, be afforded to the satisfaction of the Commissioners, or of the court, judge, arbitrator, or referee before whom it is produced:

(d) The instruments and persons to which the provisions of this sub-section are to apply are as follows:—

Title of Instrument as described in the First Schedule to this Act.	Person liable to Penalty.
Bond, covenant, or instrument of any kind whatsoever.	The obligee, covenantee, or other person taking the security.
Conveyance on sale - - - -	The vendee or transferee.
Lease or tack - - - - - -	The lessee.
Mortgage, bond, debenture, covenant, and warrant of attorney to confess and enter up judgment.	The mortgagee or obligee; in the case of a transfer or reconveyance, the transferee, assignee, or disponee, or the person redeeming the security.
Settlement - - - - - -	The settlor.

(3.) Provided that save where other express provision is made by this Act in relation to any particular instrument:

(a) Any unstamped or insufficiently stamped instrument which has been first executed at any place out of the United Kingdom, may be stamped, at any time within thirty days after it has been first received in the United Kingdom, on payment of the unpaid duty only: and

(b) The Commissioners may, if they think fit, at any time within three months after the first execution of any instrument, mitigate or remit any penalty payable on stamping.

(4.) The payment of any penalty payable on stamping is to be denoted on the instrument by a particular stamp.

PART II.

Regulations applicable to Particular Instruments.

* * * * *

Conveyances on Sale.

Meaning of "conveyance on sale."

54. For the purposes of this Act the expression "conveyance on sale" includes every instrument, and every decree or

order of any court or of any Commissioners, whereby any property, or any estate or interest in any property, upon the sale thereof is transferred to or vested in a purchaser, or any other person on his behalf or by his direction.

55. [*Relates to the calculation of ad valorem duty on stock and securities.*]

How consideration consisting of periodical payments to be charged.

56.—(1.) Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically for a definite period not exceeding twenty years, so that the total amount to be paid can be previously ascertained, the conveyance is to be charged in respect of that consideration with ad valorem duty on such total amount.

(2.) Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically for a definite period exceeding twenty years or in perpetuity, or for any indefinite period not terminable with life, the conveyance is to be charged in respect of that consideration with ad valorem duty on the total amount which will or may, according to the terms of sale, be payable during the period of twenty years next after the day of the date of the instrument.

(3.) Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically during any life or lives, the conveyance is to be charged in respect of that consideration with ad valorem duty on the amount which will or may, according to the terms of sale, be payable during the period of twelve years next after the day of the date of the instrument.

(4.) Provided that no conveyance on sale chargeable with ad valorem duty in respect of any periodical payments, and containing also provision for securing the payments, is to be charged with any duty in respect of such provision, and no separate instrument made in that case for securing the payments is to be charged with any higher duty than ten shillings.

How conveyance in consideration of a debt, &c. to be charged.

57. Where any property is conveyed to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, the debt, money, or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the conveyance is chargeable with ad valorem duty.

Direction as to duty in certain cases.

58.—(1.) Where property contracted to be sold for one consideration for the whole is conveyed to the purchaser in separate parts or parcels by different instruments, the consideration is to be apportioned in such manner as the parties

think fit, so that a distinct consideration for each separate part or parcel is set forth in the conveyance relating thereto, and such conveyance is to be charged with ad valorem duty in respect of such distinct consideration.

(2.) Where property contracted to be purchased for one consideration for the whole by two or more persons jointly, or by any person for himself and others, or wholly for others, is conveyed in parts or parcels by separate instruments to the persons by or for whom the same was purchased for distinct parts of the consideration, the conveyance of each separate part or parcel is to be charged with ad valorem duty in respect of the distinct part of the consideration therein specified.

(3.) Where there are several instruments of conveyance for completing the purchaser's title to the property sold, the principal instrument of conveyance only is to be charged with ad valorem duty, and the other instruments are to be respectively charged with such other duty as they may be liable to, but the last-mentioned duty shall not exceed the ad valorem duty payable in respect of the principal instrument.

(4.) Where a person having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the same to any other person, and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance is to be charged with ad valorem duty in respect of the consideration moving from the sub-purchaser.

(5.) Where a person having contracted for the purchase of any property but not having obtained a conveyance contracts to sell the whole, or any part or parts thereof, to any other person or persons, and the property is in consequence conveyed by the original seller to different persons in parts or parcels, the conveyance of each part or parcel is to be charged with ad valorem duty in respect only of the consideration moving from the sub-purchaser thereof, without regard to the amount or value of the original consideration.

(6.) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with ad valorem duty in respect of the consideration moving from him, and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property by the original seller shall be chargeable only with such other duty as it may be liable to, but the last-mentioned duty shall not exceed the ad valorem duty.

Certain contracts to be chargeable as conveyances on sale.

59.—(1.) Any contract or agreement made in England or Ireland under seal, or under hand only, or made in Scotland, with or without any clause of registration, for the sale of any equitable estate or interest in any property whatsoever, or for the sale of any estate or interest in any property except lands, tenements, hereditaments, or heritages, or property locally

situate out of the United Kingdom, or goods, wares or merchandise, or stock, or marketable securities, or any ship or vessel, or part interest, share, or property of or in any ship or vessel, shall be charged with the same ad valorem duty, to be paid by the purchaser, as if it were an actual conveyance on sale of the estate, interest, or property contracted or agreed to be sold.

(2.) Where the purchaser has paid the said ad valorem duty and before having obtained a conveyance or transfer of the property, enters into a contract or agreement for the sale of the same, the contract or agreement shall be charged, if the consideration for that sale is in excess of the consideration for the original sale, with the ad valorem duty payable in respect of such excess consideration, and in any other case with the fixed duty of ten shillings or of sixpence, as the case may require.

(3.) Where duty has been duly paid in conformity with the foregoing provisions, the conveyance or transfer made to the purchaser or sub-purchaser, or any other person on his behalf or by his direction, shall not be chargeable with any duty, and the Commissioners, upon application, either shall denote the payment of the ad valorem duty upon the conveyance or transfer, or shall transfer the ad valorem duty thereto upon production of the contract or agreement, or contracts or agreements, duly stamped.

(4.) Provided that where any such contract or agreement is stamped with the fixed duty of ten shillings or of sixpence, as the case may require, the contract or agreement shall be regarded as duly stamped for the mere purpose of proceedings to enforce specific performance or recover damages for the breach thereof.

(5.) Provided also, that where any such contract or agreement is stamped with the said fixed duty, and a conveyance or transfer made in conformity with the contract or agreement is presented to the Commissioners for stamping with the ad valorem duty chargeable thereon within the period of six months after the first execution of the contract or agreement, or within such longer period as the Commissioners may think reasonable in the circumstances of the case, the conveyance or transfer shall be stamped accordingly, and the same, and the said contract or agreement, shall be deemed to be duly stamped. Nothing in this proviso shall alter or affect the provisions as to the stamping of a conveyance or transfer after the execution thereof.

(6.) Provided also, that the ad valorem duty paid upon any such contract or agreement shall be returned by the Commissioners in case the contract or agreement be afterwards rescinded or annulled, or for any other reason be not substan-

tially performed or carried into effect, so as to operate as or be followed by a conveyance or transfer.

As to the sale of an annuity or right not before in existence.

60. Where upon the sale of any annuity or other right not before in existence such annuity or other right is not created by actual grant or conveyance, but is only secured by bond, warrant of attorney, covenant, contract, or otherwise, the bond or other instrument, or some one of such instruments, if there be more than one, is to be charged with the same duty as an actual grant or conveyance, and is for the purposes of this Act to be deemed an instrument of conveyance on sale.

Principal instrument, how to be ascertained.

61.—(1.) In the cases hereinafter specified the principal instrument is to be ascertained in the following manner:—

(a) Where any copyhold or customary estate is conveyed by a deed, no surrender being necessary, the deed is to be deemed the principal instrument:

(b) In other cases of copyhold or customary estates, the surrender or grant, if made out of court, or the memorandum thereof, and the copy of court roll of the surrender or grant, if made in court, is to be deemed the principal instrument:

(c) [*Relates to Scotland.*]

(2.) In any other case the parties may determine for themselves which of several instruments is to be deemed the principal instrument, and may pay the ad valorem duty thereon accordingly.

Conveyances on any Occasion except Sale or Mortgage.

What is to be deemed a conveyance on any occasion, not being a sale or mortgage.

62. Every instrument, and every decree or order of any court or of any commissioners, whereby any property on any occasion, except a sale or mortgage, is transferred to or vested in any person, is to be charged with duty as a conveyance or transfer of property.

Provided that a conveyance or transfer made for effectuating the appointment of a new trustee is not to be charged with any higher duty than ten shillings.

Copyhold and Customary Estates.

Provisions as to payment of duty.

65.—(1.) No instrument is to be charged more than once with duty by reason of relating to several distinct tenements, in respect whereof several fines or fees are due to the lord or steward of the manor.

(2.) The copy of court roll of a surrender or grant made out of court shall not be admissible or available as evidence of the surrender or grant, unless the surrender or grant, or the memorandum thereof, is duly stamped, of which fact the certificate of the steward of the manor on the face of the copy shall be sufficient evidence.

(3.) The entry upon the court rolls of a surrender or grant shall not be admissible or available as evidence of the surrender

or grant unless the surrender or grant, if made out of court, or the memorandum thereof, or the copy of court roll of the surrender or grant, if made in court, is duly stamped, of which fact the certificate of the steward of the manor in the margin of the entry shall be sufficient evidence.

Facts affecting duty to be stated in note.

66.—(1.) All the facts and circumstances affecting the liability to duty of the copy of court roll of any surrender or grant made in court, or the amount of duty with which any such copy of court roll is chargeable, are to be fully and truly stated in a note to be delivered to the steward of the manor before the surrender or grant is made.

(2.) The steward of every manor shall refuse—

(a) To accept in court any surrender, or to make in court any grant, until such a note as is required by this section has been delivered to him; or

(b) To enter on the court rolls, or accept any presentment of, or admit any person to be tenant under or by virtue of, any surrender or grant made out of court, or any deed which is not duly stamped:

And in any case in which he does not so refuse shall incur a fine of fifty pounds.

(3.) If any person with intent to defraud her Majesty,—

(a) Makes in court any surrender before such a note as aforesaid has been delivered to the steward of the manor; or

(b) Being employed or concerned in or about the preparation of any such note as aforesaid, neglects or omits fully and truly to state therein all the above-mentioned facts and circumstances;

he shall incur a fine of fifty pounds.

Steward to make out duly stamped copies.

67. The steward of every manor shall, within four months from the day on which any surrender or grant is made in court, make out a duly stamped copy of court roll of such surrender or grant, and have the same ready for delivery to the person entitled thereto, and in default of so doing shall incur a fine of fifty pounds, and the duty payable in respect of the copy of court roll shall be a debt to her Majesty from the steward, whether he has received it or not, and if he has not received the duty the same shall also be a debt to her Majesty from the person entitled to the copy.

Steward may refuse to proceed except on payment of his fees and duty.

68. The steward of any manor may, before he accepts in court any surrender or makes in court any grant, demand the payment of his lawful fees in relation to the surrender or grant, together with the duty payable on the copy of court roll thereof, and may refuse to proceed in the matter or to deliver the copy of court roll to any person until the fees and duty are paid.

Exchange and Partition or Division.

As to exchange, &c.

73. Where upon the exchange of any real or heritable property for any other real or heritable property, or upon the partition or division of any real or heritable property, any consideration exceeding in amount or value one hundred pounds is paid or given, or agreed to be paid or given, for equality, the principal or only instrument whereby the exchange or partition or division is effected is to be charged with the same ad valorem duty as a conveyance on sale for the consideration, and with that duty only; and where in any such case there are several instruments for completing the title of either party, the principal instrument is to be ascertained, and the other instruments are to be charged with duty in the manner hereinbefore provided in the case of several instruments of conveyance.

Mortgages, &c.

Meaning of "mortgage."

86.—(1.) For the purposes of this Act the expression "mortgage" means a security by way of mortgage 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, or 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;

And includes—

(a) Conditional surrender by way of mortgage, further charge, ... of or affecting any lands, estate, or property, real or personal, heritable or moveable, whatsoever: and

(b) [*Relates to Scotland.*]

(c) Any conveyance of any lands, estate, or property whatsoever in trust to be sold or otherwise converted into money, intended only as a security, and redeemable before the sale or other disposal thereof, either by express stipulation or otherwise, except where the conveyance is made for the benefit of creditors generally, or for the benefit of creditors specified who accept the provision made for payment of their debts in full satisfaction thereof, or who exceed five in number: and

(d) Any defeazance, . . declaration, . . or other deed or writing for defeating or making redeemable or explaining or qualifying any conveyance, transfer, disposition, assignation, or tack of any lands, estate, or property whatsoever, apparently absolute, but intended only as a security: and

(e) Any agreement (other than an agreement chargeable with duty as an equitable mortgage), contract, or

bond accompanied with a deposit of title deeds for making a mortgage, wadset, or any other security or conveyance as aforesaid of any lands, estate, or property comprised in the title deeds, or for pledging or charging the same as a security:

(f) [*Relates to Scotland.*]

(g) [*Deals with mortgages of stocks.*]

(2.) For the purpose of this Act the expression "equitable mortgage" means an agreement or memorandum, under hand only, relating to the deposit of any title deeds or instruments constituting or being evidence of the title to any property whatever (other than stock or marketable security), or creating a charge on such property.

Direction as to duty in certain cases.

87.—(1.) [*Relates to securities for transfer or re-transfer of any stock.*]

(2.) [*Relates to securities for the payment of rentcharges, annuities, &c.*]

(3.) [*Relates to transfers of duly stamped securities.*]

(4.) Where any copyhold or customary lands or hereditaments are mortgaged alone by means of a conditional surrender or grant, the ad valorem duty is to be charged on the surrender or grant, if made out of court, or the memorandum thereof, and on the copy of court roll of the surrender or grant, if made in court.

(5.) Where any copyhold or customary lands or hereditaments are mortgaged, together with other property, for securing the same money or the same stock, the ad valorem duty is to be charged on the instrument relating to the other property, and the surrender or grant, or the memorandum thereof, or the copy of court roll of the surrender or grant, as the case may be, is not to be charged with any higher duty than ten shillings.

(6.) An instrument chargeable with ad valorem duty as a mortgage is not to be charged with any further duty by reason of the equity of redemption in the mortgaged property being thereby conveyed or limited in any other manner than to a purchaser, or in trust for, or according to the direction of, a purchaser.

88. [*Relates to securities for future advances.*]

Exemption from stamp duty in favour of benefit building societies restricted.

89. The exemption from stamp duty conferred by the Act of the session held in the sixth and seventh years of King William the Fourth, chapter thirty-two, for the regulation of benefit building societies, shall not extend to any mortgage made after the thirty-first day of July one thousand eight hundred and sixty-eight, except a mortgage by a member of a benefit building society for securing the repayment to the society of money not exceeding five hundred pounds.

Settlements.

104. [*Deals with the settlement of policies or securities.*]

Settlements, when not to be charged as securities.

105. An instrument chargeable with ad valorem duty as a settlement in respect of any money, stock, or security is not to be charged with any further duty by reason of containing provision for the payment or transfer of the money, stock, or security, or by reason of containing, where the money, stock, or security is in reversion or is not paid or transferred upon the execution of the instrument, provision for the payment, by the person entitled in possession to the interest or dividends of the money, stock, or security, during the continuance of such possession, of any annuity or yearly sum not exceeding interest at the rate of four pounds per centum per annum upon the amount or value of the money, stock, or security.

Where several instruments one only to be charged with ad valorem duty.

106.—(1.) Where several instruments are executed for effecting the settlement of the same property, and the ad valorem duty chargeable in respect of the settlement of the property exceeds ten shillings, one only of the instruments is to be charged with the ad valorem duty.

(2.) Where a settlement is made in pursuance of a previous agreement upon which ad valorem settlement duty exceeding ten shillings has been paid in respect of any property, the settlement is not to be charged with ad valorem duty in respect of the same property.

(3.) In each of the aforesaid cases the instruments not chargeable with ad valorem duty are to be charged with the duty of ten shillings.

Miscellaneous.

Conditions and agreements as to stamp duty void.

117. Every condition of sale framed with the view of precluding objection or requisition upon the ground of absence or insufficiency of stamp upon any instrument executed after the sixteenth day of May one thousand eight hundred and eighty-eight, and every contract, arrangement, or undertaking for assuming the liability on account of absence or insufficiency of stamp upon any such instrument or indemnifying against such liability, absence, or insufficiency, shall be void.

* * * * *

Instruments relating to Crown property.

119. Except where express provision to the contrary is made by this or any other Act, an instrument relating to property belonging to the Crown, or being the private property of the sovereign, is to be charged with the same duty as an instrument of the same kind relating to property belonging to a subject.

As to instruments charged with duty of 35*s*.

120. Any instrument which by any Act passed before the first day of January one thousand eight hundred and seventy-one and not relating to stamp duties, is specifically charged with the duty of thirty-five shillings, shall be chargeable only

with the duty of ten shillings in lieu of the said duty of thirty-five shillings.

Recovery of penalties.

121. All fines imposed by this Act are to be sued for and recovered by information in the High Court in England in the name of the Attorney-General for England. . . . .

Definitions.

122.—(1.) In this Act, unless the context otherwise requires,—

The expression "Commissioners" means Commissioners of Inland Revenue:

The expression "material" includes every sort of material upon which words or figures can be expressed:

The expression "instrument" includes every written document:

The expression "stamp" means as well a stamp impressed by means of a die as an adhesive stamp:

The expression "stamped," with reference to instruments and material, applies as well to instruments and material impressed with stamps by means of a die as to instruments and material having adhesive stamps affixed thereto:

The expressions "executed" and "execution," with reference to instruments not under seal, mean signed and signature:

* * * * *

The expression "steward" of a manor includes deputy-steward.

Commencement.

124. This Act shall come into operation on the first day of January one thousand eight hundred and ninety-two.

The following are among the stamp duties on instruments charged by the First Schedule to the Act:—

	£	s.	d.
AGREEMENT or CONTRACT, accompanied with a deposit. *See* MORTGAGE, &c., and sections 23 and 86.			
APPOINTMENT of a new trustee, and APPOINTMENT in execution of a power of any property, or of any use, share, or interest in any property, by any instrument not being a will .. And *see* section 62.	0	10	0
APPOINTMENT of a gamekeeper. *See* DEPUTATION.			
ASSIGNMENT or ASSIGNATION.			
By way of security, or of any security. *See* MORTGAGE, &c.			
Upon a sale, or otherwise. *See* CONVEYANCE.			

	£	s.	d.
BOND, COVENANT, or INSTRUMENT of any kind whatsoever.			
(1.) Being the only or principal or primary security for any annuity (*except upon the original creation thereof by way of sale or security, and except a superannuation annuity*), or for any sum or sums of money at stated periods, not being interest for any principal sum secured by a duly stamped instrument, nor rent reserved by a lease or tack.			
For a definite and certain period, so that the total amount to be ultimately payable can be ascertained. — The same ad valorem duty as a bond or covenant for such total amount.			
For the term of life or any other indefinite period.			
For every *5l.*, and also for any fractional part of *5l.*, of the annuity or sum periodically payable	0	2	6
(2.) Being a collateral or auxiliary or additional or substituted security for any of the above mentioned purposes where the principal or primary instrument is duly stamped.			
Where the total amount to be ultimately payable can be ascertained. — The same ad valorem duty as a bond or covenant of the same kind for such total amount.			
In any other case:			
For every *5l.*, and also for any fractional part of *5l.*, of the annuity or sum periodically payable	0	0	6
(3.) Being a grant or contract for payment of a superannuation annuity, that is to say a deferred life annuity granted or secured to any person in consideration of annual premiums payable until he attains a specified age and so as to commence on his attaining that age.			
For every *5l.*, and also for any fractional part of *5l.* of the annuity	0	0	6
CONDITIONAL SURRENDER of any copyhold or customary estate by way of mortgage. *See* MORTGAGE, &c., and sections 86 and 87.			
CONVEYANCE or TRANSFER, whether on sale or otherwise,—			
(1.) Of any stock of the Bank of England ..	0	7	9
(2.) Of any stock of the Government of Canada inscribed in books kept in the United			

	£	s.	d.
Kingdom, or of any Colonial stock to which the Colonial Stock Act, 1877, applies—			
For every 100*l.*, and also for any fractional part of 100*l.*, of the nominal amount of stock transferred	0	2	6
And *see* section 62.			
CONVEYANCE or TRANSFER on sale,			
Of any property (*except such stock as aforesaid*),			
Where the amount or value of the consideration for the sale does not exceed 5*l.*	0	0	6
Exceeds 5*l.*, and does not exceed 10*l.* ..	0	1	0
„ 10*l.* „ 15*l.* ..	0	1	6
„ 15*l.* „ 20*l.* ..	0	2	0
„ 20*l.* „ 25*l.* ..	0	2	6
„ 25*l.* „ 50*l.* ..	0	5	0
„ 50*l.* „ 75*l.* ..	0	7	6
„ 75*l.* „ 100*l.* ..	0	10	0
„ 100*l.* „ 125*l.* ..	0	12	6
„ 125*l.* „ 150*l.* ..	0	15	0
„ 150*l.* „ 175*l.* ..	0	17	6
„ 175*l.* „ 200*l.* ..	1	0	0
„ 200*l.* „ 225*l.* ..	1	2	6
„ 225*l.* „ 250*l.* ..	1	5	0
„ 250*l.* „ 275*l.* ..	1	7	6
„ 275*l.* „ 300*l.* ..	1	10	0
„ 300*l.*			
For every 50*l.*, and also for any fractional part of 50*l.*, of such amount or value	0	5	0
And *see* sections 54, 55, 56, 57, 58, 59, 60, and 61.			
COPY or EXTRACT (*attested or in any manner authenticated*) of or from—			
* * * * *			
(6.) The books, rolls, or records of any court.			
In the case of an instrument chargeable with duty not amounting to one shilling	The same duty as such instrument.		
In any other case	0	1	0
COPYHOLD and CUSTOMARY ESTATES—Instruments relating thereto.			
Upon a sale thereof. *See* CONVEYANCE ON SALE.			
Upon a mortgage thereof. *See* MORTGAGE, &c.			
Upon a demise thereof. *See* LEASE.			
Upon any other occasion.			
Surrender or grant made out of court, or the memorandum thereof, and copy of court roll of any surrender or grant made in court	0	10	0
And *see* sections 65, 66, 67, and 68.			

	£	s.	d.
COVENANT. Any separate deed of covenant (*not being an instrument chargeable with ad valorem duty as a conveyance on sale or mortgage*) made on the sale or mortgage of any property, and relating solely to the conveyance or enjoyment of, or the title to, the property sold or mortgaged, or to the production of the muniments of title relating thereto, or to all or any of the matters aforesaid.			
Where the ad valorem duty in respect of the consideration or mortgage money does not exceed 10*s.* ..	A duty equal to the amount of such ad valorem duty.		
In any other case	0	10	0
CUSTOMARY ESTATES. *See* COPYHOLD.			
DECLARATION of any use or trust of or concerning any property by any writing, not being a will, or an instrument chargeable with ad valorem duty as a settlement	0	10	0
DEPUTATION or APPOINTMENT of a gamekeeper	0	10	0
EQUITABLE MORTGAGE. *See* MORTGAGE, &c., and sections 23 and 86.			
EXCHANGE or EXCAMBION—Instruments effecting.			
In the case specified in section 73 *see* that section.			
In any other case	0	10	0
GRANT of copyhold or customary estates. *See* CONVEYANCE—COPYHOLD.			
LEASE. [*See* sections 75—78 of the Act and the scale in the First Schedule.]			
LETTER or POWER OF ATTORNEY.			
* * * * *			
(6.) Of any kind whatsoever not hereinbefore described (powers of attorney in copyhold matters not being so described)	0	10	0
MORTGAGE, BOND, DEBENTURE, COVENANT (except a marketable security otherwise specially charged with duty), and WARRANT OF ATTORNEY to confess and enter up judgment.			
(1.) Being the only or principal or primary security (other than an equitable mortgage) for the payment or repayment of money—			
Not exceeding 10*l.*	0	0	3
Exceeding 10*l.* and not exceeding 25*l.* ..	0	0	8
,, 25*l.* ,, 50*l.* ..	0	1	3

	£	s.	d.
Exceeding 50*l.* and not exceeding 100*l.* ..	0	2	6
„ 100*l.* „ 150*l.* ..	0	3	9
„ 150*l.* „ 200*l.* ..	0	5	0
„ 200*l.* „ 250*l.* ..	0	6	3
„ 250*l.* „ 300*l.* ..	0	7	6
„ 300*l.*			
For every 100*l.*, and also for any fractional part of 100*l.* of the amount secured ..	0	2	6
(2.) Being a collateral, or auxiliary, or additional, or substituted security (other than an equitable mortgage), or by way of further assurance for the above-mentioned purpose where the principal or primary security is duly stamped:			
For every 100*l.*, and also for any fractional part of 100*l.*, of the amount secured ..	0	0	6
(3.) Being an equitable mortgage:			
For every 100*l.*, and any fractional part of 100*l.*, of the amount secured ..	0	1	0
(4.) TRANSFER, ASSIGNMENT, DISPOSITION, or ASSIGNATION of any mortgage, bond, debenture, or covenant (except a marketable security), or of any money or stock secured by any such instrument, or by any warrant of attorney to enter up judgment, or by any judgment:			
For every 100*l.*, and also for any fractional part of 100*l.*, of the amount transferred, assigned, or disponed, exclusive of interest which is not in arrear	0	0	6
And also where any further money is added to the money already secured	The same duty as a principal security for such further money.		
(5.) RECONVEYANCE, RELEASE, DISCHARGE, SURRENDER, RESURRENDER, WARRANT TO VACATE, or RENUNCIATION of any such security as aforesaid, or of the benefit thereof, or of the money thereby secured:			
For every 100*l.*, and also for any fractional part of 100*l.*, of the total amount or value of the money at any time secured	0	0	6
And *see* sections 86, 87, 88, and 89.			
PARTITION or DIVISION—Instruments effecting.			
In the case specified in sect. 73, *see* that section.			
In any other case	0	10	0

	£	s.	d.
RELEASE or RENUNCIATION of any property, or of any right or interest in any property—			
Upon a sale. *See* CONVEYANCE ON SALE.			
By way of security. *See* MORTGAGE, &c.			
In any other case	0	10	0
RENUNCIATION. *See* RECONVEYANCE and RELEASE.			
SETTLEMENT. Any instrument, whether voluntary or upon any good or valuable consideration, other than a bonâ fide pecuniary consideration, whereby any definite and certain principal sum of money (whether charged or chargeable on lands or other hereditaments or heritable subjects, or not, or to be laid out in the purchase of lands or other hereditaments or heritable subjects or not), or any definite and certain amount of stock, or any security, is settled or agreed to be settled in any manner whatsoever:—			
For every 100*l.*, and also for any fractional part of 100*l.*, of the amount or value of the property settled or agreed to be settled ..	0	5	0
Exemption.			
Instrument of appointment relating to any property in favour of persons specially named or described as the objects of a power of appointment, where duty has been duly paid in respect of the same property upon the settlement creating the power, or the grant of representation of any will or testamentary instrument creating the power.			
And *see* sects. 104, 105, and 106.			
SURRENDER.			
Of copyholds. *See* COPYHOLDS.			
Of any other kind whatsoever not chargeable with duty as a conveyance on sale or a mortgage	0	10	0

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Supplement

TO THE SECOND EDITION OF

"A TREATISE ON THE LAW OF COPYHOLDS AND CUSTOMARY TENURES OF LAND"

CONTAINING

THE COPYHOLD ACT, 1894

With Notes on the Sections thereof,

AND

AN ADDENDUM TO THE SAME TREATISE.

BY

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PREFACE.

In 1893, a few months after the appearance of the Second Edition of "A Treatise on the Law of Copyholds and Customary Tenures of Land," a Bill was introduced in the House of Lords by the Lord Chancellor for the purpose of consolidating the six Copyhold Acts passed between 1841 and 1887. The Bill was referred to a Joint Committee of the two Houses, but was not passed into an Act in that Session. In the following year a Bill on the lines settled by the Joint Committee was introduced, and received the Royal Assent on August 25th, 1894. It will be found that this Act closely corresponds with the analysis of the Copyhold Acts contained in Chapter XI. of the Second Edition of the Treatise on the Law of Copyholds and Customary Tenures of Land above referred to. The Act of 1894, however, omitted some of the provisions contained in the earlier Acts which appeared not to have been put in force and were believed to be of no practical value. On one or two points on which some doubt existed, the Act of 1894 contains

provisions which do not appear in any of the previous Copyhold Acts. The differences between the Act of 1894 and the former Acts are mentioned in the notes to the sections of the Act of 1894 in this Supplement.

The Supplement also contains an Addendum to the Treatise in which additional cases and new statutory provisions are noted with references to the paging of the Second Edition of the Treatise. By means of these references the reader will be enabled to see at once what the alterations have been since the appearance of the Second Edition.

An Index to the whole of the Supplement has been added, and care has been taken to make it full and complete; and in the Table of Cases reference is made to as many of the reports as possible.

CHARLES I. ELTON.
HERBERT J. H. MACKAY.

March, 1898.

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THE COPYHOLD ACT, 1894

(57 & 58 Vict. c. 46).

An Act to consolidate the Copyhold Acts.

[25th August, 1894.

Be it enacted, &c., as follows:

Part I.—Compulsory Enfranchisement.

Right to Enfranchise.

Power to enfranchise copyholds.

1. Where there is an admitted tenant of copyhold land the lord or the tenant may, subject to the provisions of this Act, require and compel enfranchisement of the land.

Provided that this section shall not apply where the tenant is admitted in respect of a mortgage and the mortgagee is not in possession.

This section embodies the provisions of sect. 1 of the Copyhold Act, 1852, as amended by sect. 6 of the Copyhold Act, 1858. The right of the tenant to enfranchise is, however, subject to the limitations mentioned in sect. 3 of this Act.

As to what constitutes an "admittance," see sect. 94 of this Act, and *Ecclesiastical Commissioners for England* v. *Parr*, (1894) 2 Q. B. 420.

The expressions "land," "lord," "tenant," and "enfranchisement," are explained in sect. 94, *post*.

—**subject to the provisions of this Act.**—As to the fines, &c., to be paid by the tenant before he can enfranchise compulsorily, see sect. 3; as to the notice of desire to enfranchise, see sect. 4; as to suspending proceedings for compulsory enfranchisement, see sect. 12; and as to the manors and lands which are exempt from the provisions of this Act, see sect. 95, sub-sects. (f), (g), and (h), and sect. 96.

A mortgagee in possession may enfranchise. See sect. 94, "Tenant," (b), and sect. 39.

The subject of compulsory enfranchisement is discussed on pp. 375 *et seq.* of the "Treatise on the Law of Copyholds and Customary Tenures of Land," second edition.

Power to extinguish manorial incidents.

2. A lord or tenant of any land liable to any heriot, quitrent, free rent, or other manorial incident whatsoever, may require and compel the extinguishment of such rights or incidents affecting the land, and the release and enfran-

chisement of the land subject thereto, in like manner as nearly as possible as is provided by this Act with respect to the right to compel the enfranchisement of copyhold land and to the proceedings thereupon, and the provisions of this Act shall apply accordingly.

This section repeats the provisions of sect. 7 of the Copyhold Act, 1887, with the exception of the words "or owner" which occurred after the word "tenant" in the Act of 1887; an "owner," according to the definition in that Act, including "every person entitled to hereditaments for any term of years originally granted for ninety-nine years or upwards, or for some greater estate." As the interpretation of the word "owner" in the Act of 1887 has not been incorporated in this Act, it seems that leaseholders holding under a term granted for ninety-nine years, or some greater estate, have now no special right of extinguishing any manorial incidents. As to the general rights of freeholders and lessees for years, see sect. 94.

—**heriot** includes a money payment in lieu of a heriot. See sect. 94.

Fines, &c. to be paid before enfranchisement.

3. A tenant shall not be entitled to require an enfranchisement of any land under this Act until after payment or tender—

(*a*) in case the land is copyhold and an admittance thereto has not been made since the thirtieth day of June one thousand eight hundred and fifty-three, of such fine and of the value of such heriot (if any) as would become payable in the event of admittance on alienation subsequent to that day, and of two-thirds of such sum as the steward would have been entitled to in respect of the admittance; and

This sub-section embodies the provisions of sect. 1 of the Copyhold Act, 1852, as amended by sect. 6 of the Copyhold Act, 1858.

(*b*) in case the land is freehold (including customary freehold) and subject to heriots and no heriot has become due or payable since the thirtieth day of June one thousand eight hundred and fifty-three, of the value of such heriot, if any, as would become payable in the event of an admittance or enrolment on alienation, subsequent to that day, and of two-thirds of such sum as the steward would have been entitled to for fees in respect of the alienation or admittance or enrolment; and

(*c*) in every other case, of all fines and fees consequent on the last admittance to the land.

Sub-section (*b*) embodies the provisions of sect. 6 of the Copyhold Act, 1858, as amended by sect. 9 of the Copyhold Act, 1887.

—**customary freehold.**—These words are taken from sect. 6 of the Copyhold Act, 1858. It would appear that they refer to freeholds subject to custom, for "customary freeholds," properly so called, are of the nature of copyholds (*Thompson* v. *Hardinge*, 1 C. B. 940; *Portland* (*Duke of*) v. *Hill*, L. R. 2 Eq. 765), though at one time they were considered to be of the nature of freeholds. (See Co. Copyh. s. 32: and *Bingham* v. *Woodgate*, 1 R. & M. 32.)

Sub-section (*c*) in effect repeats the provision contained in sect. 1 of the Copyhold Act, 1852.

Notice of desire to enfranchise.

4. A lord or tenant who requires enfranchisement under this Act must give notice in writing, the lord to the tenant or the tenant to the lord, as the case may be, of his desire to have the land enfranchised.

This section replaces the provision as to notice of desire to enfranchise contained in sect. 8 of the Copyhold Act, 1858. Forms of the notice applicable to the case of enfranchisement of copyhold land and the case of extinguishment of a manorial incident will be found on p. 477 of the Treatise.

Section 57, sub-sect. (1), of this Act provides that notices required or authorised by the Act must be given in writing, but this enactment must be read subject to the provisions of sect. 20 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63), which defines the meaning of the word "writing" in past and future Acts.

Compensation for Enfranchisement.

Proceedings for ascertaining compensation.

5.—(1.) When a notice requiring an enfranchisement has been given under this Act, the compensation for the enfranchisement shall be ascertained in accordance with the provisions of this section.

(2.) The lord and the tenant may—

(*a*) determine the amount of the compensation by agreement in writing; or

(*b*) agree in writing that the Board of Agriculture shall determine the amount; or

(*c*) appoint a valuer or valuers to determine the amount.

Provided that—

(i.) if the compensation is not otherwise determined, it shall be ascertained under the direction of the Board, on a valuation made by a valuer or valuers appointed by the lord and tenant; but

(ii.) if the manorial rights to be compensated consist only of heriots, rents, and licences at fixed rates to demise or to fell timber, or of any of these, or the land to be enfranchised is not rated for the relief of the poor at a greater amount than the net annual value of thirty pounds, the valuation shall be made by a valuer to be

appointed by the justices at petty sessions holden for the division or place in which the manor or the greater part of it is situate, unless either party to the enfranchisement gives notice that he desires the valuation to be made by a valuer or valuers appointed by the lord and tenant, in which case he shall pay the additional expenses caused by that mode of valuation.

These sub-sections embody the provisions in sects. 3 and 43 of the Copyhold Act, 1887, and sect. 8 of the Copyhold Act, 1858.

For a form of agreement between the parties settling the compensation, see p. 480 of the Treatise; for an agreement that the compensation shall be determined by the Board of Agriculture, see p. 478; and for forms of appointment of valuers, see pp. 481, 482.

See sect. 7, sub-sect. (9), *post*, for the steps to be taken by the Board when they determine the amount of the compensation.

(3.) When a valuer is appointed by justices, a justice who is a lord of the manor shall not take any part in the appointment.

This sub-section replaces the provisions contained in sect. 8 of the Copyhold Act, 1858, to the like effect.

For the definition of "lord," see sect. 94, *post*.

(4.) When the valuation is to be by a valuer or valuers appointed by the lord and tenant—

(*a*) The lord and the tenant may each appoint one valuer:

(*b*) They may appoint one and the same person:

(*c*) If either the lord or the tenant does not appoint a valuer within twenty-eight days after notice has been given to him by the other party to do so, or within such further time, if any, as the Board of Agriculture by order allow, the Board shall appoint a valuer for him:

(*d*) The appointment of a valuer by either party cannot be revoked, except with the consent of the other party:

(*e*) Where there are two valuers they shall, before proceeding with the valuation, appoint an umpire:

(*f*) If they do not within fourteen days after their appointment appoint an umpire, the Board of Agriculture shall appoint an umpire for them.

This sub-section repeats the provisions as to the appointment of valuers and umpires contained in sect. 8 of the Copyhold Act, 1858, as amended by sect. 10 of the Copyhold Act, 1887. The provision in clause (c) above as to the power of the Board to extend the time

for the appointment is taken from sect. 9 of the Act of 1858; and the provision in clause (*d*) that the appointment cannot be revoked replaces a like provision in sect. 3 of the Copyhold Act, 1852.

For forms of appointment and notice, see pp. 481—484 of the Treatise.

(5.) The Board of Agriculture may, on the application of either the lord or the tenant, remove a valuer or umpire for misconduct or for refusal or omission to act.

This sub-section repeats the provision to the like effect contained in sect. 3 of the Copyhold Act, 1852.

(6.) If a valuer or umpire dies, or becomes incapable, or refuses to act, or is removed, another valuer or umpire, as the case may be, shall, within a time to be fixed by the Board of Agriculture, be appointed in his place by the person and in the manner provided by this section with regard to the valuer or umpire in whose place he is appointed, and in default by the Board. A valuer or umpire appointed under this provision may adopt and act upon any valuation or proceeding agreed on or completed by the valuer or valuers or umpire previously acting.

The provisions in this sub-section are taken from sect. 12 of the Copyhold Act, 1887, in which reference was made to "valuers" only; but by virtue of sect. 52 of the Copyhold Act, 1852, and sect. 49 of the Copyhold Act, 1887, the term "valuer" at that time included an umpire.

(7.) Before a valuer or umpire enters on his valuation he shall, in the presence of a justice of the peace, make and subscribe a declaration in the form mentioned in that behalf in the first schedule to this Act.

(8.) The declaration made by a valuer or umpire must be annexed to the valuation.

(9.) If a valuer or umpire having made a declaration under this section wilfully acts contrary thereto he shall be guilty of a misdemeanor.

Sub-sects. (7)—(9) replace sect. 28 of the Copyhold Act, 1852.

For the right of a valuer or umpire to call for production of documents, and examine witnesses, see sect. 54, *post;* as to his entry on the land proposed to be dealt with, see sect. 92; and as to the penalty for obstructing a valuer or umpire, see sect. 93.

Circumstances to be considered by valuers.

6.—(1.) In making a valuation for the purpose of ascertaining the compensation for a compulsory enfranchisement under this Act, the valuers shall take into account and make due allowance for the facilities for improvements, customs of the manor, fines, heriots, reliefs,

quit rents, chief rents, forfeitures, and all other incidents whatsoever of copyhold or customary tenure, and all other circumstances affecting or relating to the land included in the enfranchisement, and all advantages to arise therefrom.

Provided that they shall not take into account or allow for the value of escheats.

This sub-section repeats the provisions contained in sect. 16 of the Copyhold Act, 1852, as amended by the provisions of sects. 4 and 5 of the Copyhold Act, 1887, with the exception that in sect. 4 of the Act of 1887 the escheat was expressed to be "escheat for want of heirs." An escheat happens to the lord when a copyhold tenant dies intestate and without heirs. It is doubted whether a copyhold might not escheat for outlawry upon an indictment for a capital felony. The Act 54 Geo. III. c. 145, was not considered to apply to copyholds, and the same reasoning may apply to 33 & 34 Vict. c. 23, ss. 1 and 32.

For decisions under the former Acts as to the circumstances which may be taken into account, see *Lingwood* v. *Gyde*, L. R. 2 C. P. 72; *Arden* v. *Wilson*, L. R. 7 C. P. 535; *Reynolds* v. *Woodham Walter Manor* (*Lord of*), L. R. 7 C. P. 639; *Brabant* v. *Wilson*, L. R. 1 Q. B. 44; and *Padwick* v. *Tyndale*, 1 E. & E. 184.

(2.) The value of the matters to be taken into account in the valuation shall be calculated as at the date of the notice to enfranchise.

This provision is not contained in any of the former Acts, but it makes no alteration, for the practice seems always to have been to value the matters as at the date of the notices.

Duties of valuers.

7.—(1.) Valuers appointed for the purpose of ascertaining the compensation for a compulsory enfranchisement shall determine the value of the matters to be taken into account in the valuation at a gross sum of money.

This provision is taken from sect. 11 of the Copyhold Act, 1887.

(2.) If the valuers do not agree as to the compensation or any point arising in the valuation, the valuers or either of them may refer the whole matter or the point in dispute to the umpire.

This sub-section repeats the provision contained in sub-sect. (*d*) of sect. 10 of the Copyhold Act, 1887.

(3.) The valuers shall give their decision within forty-two days after their appointment, or within such further time, if any, as the Board of Agriculture by order allow.

This sub-section embodies provisions contained in sects. 8 and 9 of the Copyhold Act, 1858.

(4.) If the valuers do not give their decision within the time allowed by or in pursuance of this Act, and do not

refer the matter to the umpire, the Board of Agriculture may direct the umpire to act as valuer.

(5.) The umpire shall give his decision on any matter referred to him within forty-two days after the matter is referred to him.

Sub-sections (4) and (5) repeat certain of the provisions contained in sub-sect. (*c*) of sect. 10 of the Act of 1887.

(6.) The valuers or umpire shall make their decision in such form as the Board of Agriculture direct, and shall deliver the same with the details thereof to the Board, and shall also deliver copies of their decisions to the lord or to the tenant.

The provisions in this sub-section as to the form of the decision and its delivery, with the details thereof, to the Board are taken from sect. 11 of the Act of 1887; the provision as to the delivery of copies to the lord *or* tenant is a modification of a somewhat similar provision contained in sect. 8 of the Act of 1858. For forms of the decision, see pp. 485 and 486 of the Treatise.

(7.) If, in the opinion of the Board, the valuation is imperfect or erroneous, they may remit it to the valuers or umpire, as the case may be, for reconsideration or correction.

This provision is taken from sect. 11 of the Act of 1887.

This power to remit is not confined to cases where the details show that there has been an error in principle, the power being available in any case where there appears to have been an error. (*Regina* v. *The Land Commissioners for England*, 23 Q. B. Div. 59.) The valuers are not arbitrators, but assessors and assistants to the Board. (*Ibid.*)

(8.) If either—

(*a*) the valuers do not give their decision within the time allowed to them by or in pursuance of this Act, and the valuation is not referred to the umpire, either by the valuers or either of them or by the direction of the Board; or

(*b*) the umpire does not give his decision within the time allowed to him by or in pursuance of this Act; or

(*c*) the valuers or the umpire do not, when a decision is remitted to them by the Board for re-consideration or correction, amend it to the satisfaction of the Board,

the compensation shall be determined by the Board after due notice to the lord and tenant.

This sub-section embodies provisions contained in sect. 8 of the Act of 1858, and sect. 11 of the Act of 1887.

(9.) Where the compensation is determined by the Board they shall take such proceedings and make such inquiries as they think necessary for the purpose, and shall take into consideration all matters which valuers are bound to take into consideration on a valuation under this Act, and shall communicate the result in writing to the lord and to the tenant, and shall fix a time within which any objection to their determination may be signified to them in writing by the lord or tenant, and shall consider every objection properly made and if necessary alter their determination accordingly.

These provisions are taken from sect. 43 of the Act of 1887.
For a form of determination by the Board, see p. 488 of the Treatise.

Compensation to be a rentcharge in certain cases.

8.—(1.) In either of the following cases, namely—

(*a*) Where the enfranchisement is at the instance of the lord; or

(*b*) Where the land can, in the opinion of the Board of Agriculture, be sufficiently identified, and the compensation amounts to more than one year's improved value of the land,

unless the parties otherwise agree, or the tenant within ten days after the receipt by him of the draft of the proposed award of enfranchisement gives to the Board notice in writing that he desires to pay the compensation in a gross sum, the compensation shall be an annual rentcharge, commencing from the date of the notice to enfranchise and issuing out of the land enfranchised, equivalent to interest at the rate of four per cent. per annum on the amount of the compensation.

(2.) Except where it is provided by this section that the compensation shall be charged by way of rentcharge, the compensation shall be paid in a gross sum before the completion of the enfranchisement.

This section replaces the provisions of sects. 13 and 14 of the Copyhold Act, 1887.
See sect. 26, sub-s. 3, of this Act for provisions applicable to cases where the title of the lord to whom enfranchisement compensation is paid is afterwards proved to be bad or insufficient.

9. On a compulsory enfranchisement the tenant shall pay to the steward the compensation mentioned in the second schedule to this Act. Steward's compensation.

This section repeats the provisions of sect. 27 of the Copyhold Act, 1887. By virtue of the provisions of sect. 21 of the Copyhold Act, 1858, and of sect. 23 of the Copyhold Act, 1887, the tenant might, with the consent of the Board of Agriculture, charge the land enfranchised with the sum paid to the steward as compensation. Sect. 36 of this Act preserves this right to the tenant, and it would appear that the consent of the Board is no longer necessary.

It may be noted that this Act does not repeat the provisions contained in sect. 56 of the Copyhold Act, 1841, as to the compensation to be paid to a steward on a voluntary enfranchisement, so that on a voluntary enfranchisement the amount to be paid to the steward must be a matter of arrangement between the parties.

For other fees which may be claimed by a steward on, or after, enfranchisement, see sects. 3 and 62 of this Act.

Award of Enfranchisement.

10.—(1.) When the compensation for a compulsory enfranchisement has been ascertained under the provisions of this Act, the Board of Agriculture, having made such inquiries as they think proper, and having considered any applications made to them by the parties, may make in such form as they provide an award of enfranchisement on the basis of the compensation, and may confirm the award. Board to make award of enfranchisement.

In sub-sects. (1), (3), (4) and (5) of this section, the provisions as to awards in the case of compulsory enfranchisements, which were contained in sects. 10 and 12 of the Copyhold Act, 1858, as amended by sect. 22 of the Copyhold Act, 1887, are re-enacted without material alteration. See p. 397 of the Treatise.

—**such inquiries as they think proper.** A print of the inquiries, which the Board require to be answered in every case of enfranchisement, will be found on pp. 478—480 of the Treatise.

(2.) The award shall state whether the compensation is a gross sum or a rentcharge, and the amount thereof, and where it is a rentcharge shall make the land subject thereto and chargeable therewith.

The provision in this sub-section appears to be new, but it does not alter the practice.

(3.) The Board shall fourteen days before confirming the award send to the tenant and to the steward, unless the proposed award has been already perused by them respectively, a copy of the proposed award.

(4.) Where the compensation is a gross sum the award shall not be confirmed until the receipt of the person entitled to receive the compensation has been produced to the Board.

(5.) The Board shall send a copy of the confirmed award sealed or stamped with the seal of the Board to the lord, and the lord shall cause the copy to be entered in the court rolls of the manor.

(6.) The date at which a compulsory enfranchisement shall take effect may be fixed by the confirmation of the award of enfranchisement, and if not so fixed, shall be the date of the confirmation of the award.

This sub-section repeats the provisions to the like effect contained in sect. 18 of the Copyhold Act, 1858, and removes the doubt which was raised by the provisions contained in sects. 14 and 31 of the Copyhold Act, 1887. See the Treatise, p. 398.

Restrictions on Enfranchisement.

Power for lord in certain cases to purchase tenant's interest.

11.—(1.) Where a notice requiring the enfranchisement of any land under this Act is given by the tenant, and the lord shows to the satisfaction of the Board of Agriculture that any change in the condition of the land which but for the enfranchisement would or might be prevented by the incidents or conditions of the tenure of the land, will prejudicially affect the enjoyment or value of the mansion house, park, gardens, or pleasure grounds of the lord, the lord may give to the tenant notice in writing that he offers to purchase the tenant's interest in the land.

(2.) If the tenant accepts the offer he shall do so by sending to the Board, within twenty-eight days after he has received notice of the offer, notice in writing of his acceptance, and thereupon the offer and the acceptance shall be binding on the lord and the tenant.

(3.) If the tenant does not accept the offer the enfranchisement shall not take place unless the Board think fit to impose such terms and conditions as are in their opinion sufficient to protect the interests of the lord.

(4.) Where a purchase is being made under this section, if the consideration for the purchase is not within a time allowed by the Board settled by agreement between the lord and the tenant, the Board may appoint a valuer to ascertain the value of the tenant's interest, or may refer it to the valuers, if any, acting in the enfranchisement.

(5.) When the value of the tenant's interest has been

agreed on or ascertained, the Board shall issue, under their seal, a certificate which shall define the land included in the purchase, and shall state the consideration for the purchase, and fix a time for the payment of the consideration.

(6.) On the payment of the consideration the tenant shall execute a conveyance of his interest in the land to the lord in such form as the Board direct, and on the execution of the conveyance the land shall vest in the lord accordingly.

(7.) If the consideration is not paid within the time fixed by the certificate or such further time as the Board allow, and the Board are of opinion that the nonpayment arises from the default of the lord, they may cancel the certificate, and thereupon the enfranchisement shall be proceeded with (but subject to the provisions of this section as to expenses) as if this section had not been passed.

(8.) Where a purchase is made under this section all the costs of the valuation and all the expenses attending the purchase, including the expenses of the conveyance, shall be paid by the lord.

(9.) Where a purchase is, by the default of the lord, not completed, all expenses which the Board certify to have been incurred by the tenant in consequence of the offer, acceptance, and default shall be paid by the lord to the tenant.

This section repeats the provisions contained in sect. 25 of the Copyhold Act, 1852.

See sect. 36, sub-s. 3, of this Act, as to the power of the lord to charge the land purchased, and the manor and any land settled therewith to the same uses, with the purchase-money and the expenses of the purchase.

Power for Board to suspend enfranchisement in certain cases.

12.—(1.) The Board of Agriculture may suspend any proceedings for a compulsory enfranchisement under this Act where any peculiar circumstances make it impossible, in their opinion, to decide on the prospective value of the land proposed to be enfranchised, or where any special hardship or injustice would unavoidably result from compulsory enfranchisement.

The two sub-sections of this section repeat the provisions of sect. 35 of the Copyhold Act, 1852.

In *Reynolds* v. *The Lord of the Manor of Woodham Walter*, L. R. 7 C. P. 639, it was held by the Court of Common Pleas that the determination of the question whether, in any particular case, there

is or is not any special hardship, is in itself the determination of an inferential fact to be decided by the Board, and that the Court cannot review the decision of the Board.

(2.) Where the Board suspend a proposed enfranchisement under this section they shall state their reasons for doing so in their annual report which is by this Act directed to be laid before Parliament.

See sect. 90, *post*, as to the reports to be made by the Board and laid before both Houses of Parliament.

Power for Board to continue conditions to user.

13. On a compulsory enfranchisement under this Act, in any case where the tenant was admitted subject to any condition affecting the user of the land and imposed for the benefit of the public or of the other tenants of the manor, and in the opinion of the Board of Agriculture some special hardship or injustice would result if the land were released from the condition, the Board may continue and give effect to the condition by the award of enfranchisement.

This section repeats the provisions to the like effect contained in sect. 8 of the Copyhold Act, 1887, which appear to have been enacted in consequence of the decision in *Brabant* v. *Wilson*, L. R. 1 Q. B. 44. See the Treatise, pp. 393, 394.

PART II.—VOLUNTARY ENFRANCHISEMENT.

Power to effect voluntary enfranchisement.

14.—(1.) The lord of any manor may with the consent of the Board of Agriculture enfranchise any land held of the manor, and any tenant may with the consent of the Board accept an enfranchisement of his land.

(2.) The enfranchisement may be on such terms as subject to the provisions of this Act are settled by agreement between the lord and the tenant.

(3.) If the estate of the lord or of the tenant parties to the enfranchisement is less than an estate in fee simple in possession or corresponding copyhold or customary estate, and the tenant has not paid the whole of the cost of enfranchisement, the lord or tenant respectively shall give notice in writing of the proposed enfranchisement to the person entitled to the next estate of inheritance in remainder or reversion in the manor or land to be affected by the enfranchisement.

This section re-enacts the provisions contained in sect. 56 of the Copyhold Act, 1841, as amended by the provision contained in sect. 13 of the Copyhold Act, 1843, which permitted the notice to the person next entitled in remainder or reversion to be dispensed with where the enfranchising tenant paid the whole of the compensation due, and the costs. See the Treatise, pp. 365, 366.

See sect. 45 of this Act for provisions dealing with the case of the person entitled to the notice being under legal disability, or being abroad.

A form of the notice will be found on p. 492 of the Treatise.

Definitions of the terms "lord," "manor," "land," and "tenant," will be found in sect. 94, *post*.

Consideration for voluntary enfranchisement.

15.—(1.) The consideration for a voluntary enfranchisement under this Act may be either—

(*a*) a gross sum payable at once or at any time fixed by the agreement; or

(*b*) a rentcharge charged on and issuing out of the land enfranchised; or

(*c*) a conveyance of land or of a right to mines or minerals; or

(*d*) a conveyance of a right to waste in lands belonging to the manor,

or may be provided partly in one and partly in another or others of those ways.

(2.) Land or a right to mines or minerals, subject to the same or corresponding uses and trusts with the land enfranchised may be conveyed as consideration under this section.

(3.) Where the estate of the lord is less than an estate in fee simple in possession, and land not parcel of the manor, or a right to mines or minerals, not in or under the land enfranchised, is conveyed as consideration under this section, the land or right must be convenient in the opinion of the Board of Agriculture to be held with the manor, and must be settled to uses or on trusts identical with or corresponding to those to or on which the manor is held.

This section re-enacts the provisions to the like effect contained in sect. 56 of the Copyhold Act, 1841, sect. 1 of the Copyhold Act, 1843, and sect. 5 of the Copyhold Act, 1844. See the Treatise, p. 369.

See sect. 17, *post*, for provisions dealing with the case where the enfranchisement consideration is a rent-charge.

Sect. 9 of the Copyhold Act, 1843, provided, that where the consideration for the enfranchisement consisted of land which was subject to any lease, the person to whom the land was conveyed was to be deemed as placed in the position of reversioner on the lease, and might distrain for the rent, and enforce the covenants. That provision has not been repeated in this Act: but it seems to be clear that the land would be conveyed subject to the lease, and that the lord would, as an assign of the lessor, be entitled to enforce payment of the rent, and performance of the covenants contained in the lease having reference to the land, and on the lessee's part to

be observed or performed, under sect. 10 of the Conveyancing, &c. Act, 1881.

Voluntary enfranchisement to be by deed.

16.—(1.) A voluntary enfranchisement under this Act may be effected with the consent of the Board of Agriculture by such a deed as would be proper on an enfranchisement by a lord seised of the manor for an absolute estate in fee simple in possession.

This sub-section re-enacts the corresponding provisions contained in sect. 57 of the Copyhold Act, 1841, as varied by sect. 2 of the Copyhold Act, 1858.

(2.) Where any person is entitled to notice of the proposed enfranchisement, the assent or dissent or acquiescence of that person in respect of the enfranchisement may be stated in writing to the Board of Agriculture when the enfranchisement deed is sent to them for confirmation. If any dissent in writing has been expressed, the Board shall withhold their consent to the deed until they have made further inquiries, and are satisfied that the agreement is not fairly open to objection.

(3.) The Board may in every case cause any such further notices to be given and inquiries to be made as they think proper, before consenting to the enfranchisement deed.

Sub-sections (2) and (3) re-enact provisions to the like effect contained in sect. 56 of the Copyhold Act, 1841.

Provisions for rentcharges under Act.

17. Where any part of the consideration for a voluntary enfranchisement under this Act is a rent-charge—

(1.) The rent-charge may be—

(*a*) a fixed annual sum, or

(*b*) where it exceeds the sum of twenty shillings, an annual sum varying with the price of corn and calculated upon the same averages and variable in like manner as a tithe commutation rent-charge: and

(2.) The rent-charge may be made subject to an increase or diminution to be stated in the enfranchisement agreement, or afterwards fixed by valuers, in any event which is provided for in the agreement: and

(3.) The tenant may grant the rent-charge by deed to the lord and his heirs to the uses on the trusts and subject to the powers and provisions subsisting at the date of the enfranchisement with respect to the manor of which the land enfranchised is held: and

(4.) The rent-charge may be charged on all or any part of the land enfranchised.

This section re-enacts the provisions as to rent-charges contained

in sect. 52 of the Copyhold Act, 1841, and sects. 1 and 2 of the Copyhold Act, 1843, as amended by sect. 41 of the Copyhold Act, 1852 (which enacted that it should not thereafter be necessary to make any enfranchisement rent-charge variable with the prices of grain), and as further amended by sect. 11 of the Copyhold Act, 1858, which directed that if a rent-charge were thereafter granted, to be variable with the price of corn, it should be calculated upon the same averages and variable in the same manner as a tithe commutation rent-charge.

Provisions where land is conveyed as consideration under this Part.

18. Where any part of the consideration for an enfranchisement under this Act is the conveyance of land or of a right to mines or minerals, or of a right to waste, the tenant may convey the land or right to the lord and his heirs to the uses on the trusts and subject to the powers and provisions subsisting at the date of the enfranchisement in respect of the manor of which the land enfranchised is held.

This section repeats the provisions to the like effect contained in sect. 3 of the Copyhold Act, 1843. The provisions contained in sect. 5 of the Copyhold Act, 1844, to the effect that the land, or the right to mines or minerals, to be conveyed as the enfranchisement consideration should be such as in the opinion of the Board could be conveniently held with the manor, are re-enacted as to certain cases by sect. 15, sub-s. (3), of this Act. See the Treatise, p. 369.

Enfranchisement consideration to be a charge on land till paid.

19.—(1.) Where a voluntary enfranchisement is effected under this Act, the land enfranchised shall be charged with every sum payable to the lord in respect of the enfranchisement, with interest thereon from the day fixed by the enfranchisement deed for payment thereof until payment thereof.

(2.) The lord shall be deemed to be seised of the land subject to a charge under this section as mortgagee in fee, and may distrain on the land for any interest due in respect of the charge as if it were rent in arrear.

(3.) A charge under this section shall be a first charge on the land subject thereto, and shall have priority over all incumbrances whatsoever affecting the land (except tithe rent-charge and any charge having priority by statute), notwithstanding that those incumbrances are prior in date.

This section re-enacts the provisions contained in sects. 70 and 71 of the Copyhold Act, 1841, which were expressly repealed by the Statute Law Revision Act, 1874 (No. 2). The necessity for the re-enactment of these provisions is not apparent, for the deed by which a voluntary enfranchisement is effected operates only when the Board have confirmed it (see sect. 20, *post*), and it is understood that in practice the Board never confirmed a deed until it appeared that the consideration had been paid, and thus the lord was pro-

tected, and there was no necessity for giving him a charge over the enfranchised land.

—any charge having priority by statute.—These words did not occur in sect. 71 of the Copyhold Act, 1841. By sect. 33 of the Copyhold Act, 1858, land-drainage charges or rent-charges created by virtue of the Lands Drainage Acts were declared to have priority over rent-charges under the Copyhold Acts. It seems clear that these words "any charge having priority by statute" would only apply to land-drainage charges or rent-charges when such charges or rent-charges were declared to have priority in the Acts under which they were created.

Commencement of enfranchisement.

20. The date at which a voluntary enfranchisement under this Act shall take effect, and the commencement of a rent-charge in consideration of a voluntary enfranchisement under this Act, may be fixed by the memorandum of confirmation of the enfranchisement deed, and if not so fixed shall be the date of the confirmation of the deed by the Board of Agriculture.

This section repeats the provisions to the like effect contained in sect. 18 of the Copyhold Act, 1858.

PART III.—EFFECT OF ENFRANCHISEMENT.

On enfranchisement land to become freehold.

21.—(1.) When an enfranchisement is made under this Act the following provisions shall, from and after the time when the enfranchisement takes effect, apply with respect to the land enfranchised:—

(*a*) The land shall be of freehold tenure;

(*b*) The lord shall be entitled, in case of an escheat for want of heirs, to the same right as he would have had if the land had not been enfranchised;

(*c*) The land shall not be subject to the custom of borough English, or of gavelkind, or to any other customary mode of descent, or to any custom relating to dower or freebench or tenancy by the curtesy, or to any other custom whatsoever, but shall be subject to the same laws relating to descents, and dower, and curtesy as are applicable to land held in free and common socage:

The foregoing clauses (*a*) and (*c*) of this sub-section embody provisions to the like effect contained in sect. 81 of the Copyhold Act, 1841, and sect. 34 of the Copyhold Act, 1852, respectively, clause (*b*) repeating the provisions of sect. 4 of the Act of 1887. See the Treatise, p. 414.

Provided as follows:—

(i.) Nothing in this section shall affect the custom of gavelkind in the county of Kent;

(ii.) Nothing in this section contained with respect to dower, freebench, or curtesy shall apply to any person married before the date at which the enfranchisement takes effect.

This proviso is taken from sects. 79 and 80 of the Copyhold Act, 1841, and sect. 34 of the Copyhold Act, 1852.

(*d*) The land shall be held under the same title as that under which it was held at the date at which the enfranchisement takes effect, and shall not be subject to any estate, right, charge, or interest affecting the manor;

This sub-section repeats the provisions contained in sect. 64 of the Copyhold Act, 1841.

(*e*) Every mortgage of the copyhold estate in the land shall become a mortgage of the freehold for a corresponding estate, but subject to any charge having priority thereof by virtue of this Act.

This sub-section is taken from sect. 81 of the Copyhold Act, 1841.

(2.) An enfranchisement shall not, except as in this Act mentioned, affect the rights or interests of any person in the land enfranchised under a will, settlement, mortgage, or otherwise, but those rights and interests shall continue to attach upon the land enfranchised in the same way as nearly as may be as if the freehold had been comprised in the instrument or disposition under which that person claims.

This sub-section repeats the provisions to the like effect contained in sect. 81 of the Copyhold Act, 1841, and sect. 46 of the Copyhold Act, 1852.

(3.) Where land is, at the date at which the enfranchisement thereof under this Act takes effect, subject to any subsisting lease or demise, the freehold into which the copyhold estate is converted shall be the reversion immediately expectant on the lease or demise, and the rents and services reserved and made payable on, and the conditions in, or in respect of, the lease or demise, shall be incident and annexed to the reversion, and the covenants or agreements, expressed or implied, on the part of the lessor and lessee respectively shall run with the land and with the

reversion respectively, and the enfranchisement shall not affect any right of distress, entry, or action accruing in respect of the lease or demise.

This sub-section embodies the provisions which were contained in sect. 10 of the Copyhold Act, 1843, and sect. 44 of the Copyhold Act, 1852, as extended by sect. 41 of the Copyhold Act, 1887. See the Treatise, p. 415.

Exception for rights of common.

22. An enfranchisement under this Act shall not deprive a tenant of any commonable right to which he is entitled in respect of the land enfranchised, but where any such right exists in respect of any land at the date of the enfranchisement thereof it shall continue attached to the land notwithstanding the land has become freehold.

This section repeats the provisions as to commonable rights contained in sect. 81 of the Copyhold Act, 1841, and sect. 45 of the Copyhold Act, 1852. As to the effect of a custom in a manor for the lord to make grants of portions of the waste to be held by copyhold tenure, where there has been a statutory reservation of rights of common on the enfranchisements of copyholds, see *Ramsey* v. *Cruddas*, (1893) 1 Q. B. 228. As to the effect of enfranchisement at Common Law, see the Treatise, pp. 248, 264.

Exception for mines and other rights.

23.—(1.) An enfranchisement under this Act shall not without the express consent in writing of the lord or tenant respectively affect the estate or right of the lord or tenant in or to any mines, minerals, limestone, lime, clay, stone, gravel, pits, or quarries whether in or under the land enfranchised or not, or any right of entry, right of way and search, or other easement of the lord or tenant in, on, through, over, or under any land, or any powers which in respect of property in the soil might but for the enfranchisement have been exercised for the purpose of enabling the lord or tenant, their or his agents, workmen, or assigns, more effectually to search for, win, and work any mines, minerals, pits, or quarries, or to remove and carry away any minerals, limestone, lime, stones, clay, gravel, or other substances had or gotten therefrom, or the rights, franchises, royalties, or privileges of the lord in respect of any fairs, markets, rights of chase or warren, piscaries, or other rights of hunting, shooting, fishing, fowling, or otherwise taking game, fish, or fowl (*a*).

Provided that the owner of the land so enfranchised shall, notwithstanding any reservation of mines or minerals in this Act or in the instrument of enfranchisement, but without prejudice to the rights to any mines or minerals, have full power to disturb or remove the soil

so far as is necessary or convenient for the purpose of making roads or drains or erecting buildings or obtaining water on the land (*b*).

(*a*) This portion of the sub-section repeats the similar provisions of sect. 48 of the Copyhold Act, 1852. See *Kerr* v. *Pawson*, 25 Beav. 394; and *Pretty* v. *Solly*, 26 Beav. 606.

(*b*) The proviso re-enacts the provisions of sect. 14 of the Copyhold Act, 1858.

(2.) A steward shall not, without special authority, have power to consent on behalf of a lord under this section.

This sub-section repeats the provisions to the like effect contained in sect. 33 of the Copyhold Act, 1887.

As to the right of the steward generally to represent the lord in enfranchisement proceedings, see sect. 47 of this Act: and as to his power to hold customary courts, to make grants of copyhold out of the manor and out of court, and to admit to copyholds, see sects. 82, 83, and 84 of this Act respectively. A steward cannot, however, grant licence to a copyhold tenant to alienate his ancient tenement unless he is authorised in writing by the lord to do so: see sect. 86, *post*.

Power for tenant to grant easements to lord.

24.—(1.) On an enfranchisement under this Act there may be reserved or granted, with the consent of the tenant, to the lord any right of way or other easement in the land enfranchised for more effectually winning and carrying away any mines or minerals under the land.

(2.) The easement must be reserved by the award or granted in the deed of enfranchisement.

This section repeats the provisions of sect. 84 of the Copyhold Act, 1841.

PART IV.—Provisions as to Consideration Money, Expenses, Rentcharges.

Consideration Money.

Power to give receipts.

25. The receipt of any person for any money paid to him in pursuance of this Act shall be a sufficient discharge for the money, and the person paying it shall not be bound to see to the application or be liable for the misapplication or loss thereof.

This section embodies provisions to the like effect contained in sect. 78 of the Copyhold Act, 1841, and sect. 25 of the Copyhold Act, 1887.

For a form of receipt for compensation money, see the Treatise, p. 489.

Payment of enfranchisement money.

26.—(1.) Money payable under this Act as the compensation or consideration for an enfranchisement may, subject to the other provisions of this Act, be paid to the lord for the time being.

Provided that where any money is payable in pursuance of this section to a lord having only a limited estate or interest in the manor, the Board of Agriculture—

(*a*) if the money exceeds the sum of twenty pounds for all the enfranchisements in the manor, shall direct it to be paid into Court or to trustees in manner provided by this Act; and

(*b*) if the money does not exceed the sum of twenty pounds for all the enfranchisements in the manor, may direct it either to be paid in manner aforesaid, or to be retained by the lord for his own use, as in their discretion they think fit.

This sub-section embodies the provisions to the like effect contained in sects. 59, 73, 74, and 75 of the Copyhold Act, 1841, and sects. 39 and 40 of the Copyhold Act, 1852.

Sect. 32, *post*, deals with the payment of money into Court or to trustees.

(2.) If a lord refuses to accept any money payable to him under this section the money shall be paid into Court or to trustees in manner provided by this Act.

This sub-section repeats the provisions of sect. 13 of the Copyhold Act, 1858.

(3.) If any money in respect of the compensation or consideration for an enfranchisement is paid to a lord whose title afterwards proves to be bad or insufficient, the rightful owner of the manor or his representative may recover the amount from the person to whom it was paid, or his representative, with interest at the rate of five pounds per cent. per annum from the time of the title proving to be bad or insufficient.

This sub-section re-enacts the provisions of sect. 47 of the Copyhold Act, 1852.

(4.) If any principal money is paid for enfranchisement to a person who is not entitled to receive it under the provisions of this Act, the land enfranchised shall continue to be charged with the payment of the money in favour of the person entitled:

Provided that the person entitled to the land may

recover the money as against the person who wrongfully received it.

This sub-section repeats the provision of sect. 76 of the Copyhold Act, 1841.

(5.) If any dispute arises as to the proper application, appropriation, or investment under this Act of any money payable in respect of an enfranchisement, the Board of Agriculture may decide the question, and their decision shall be final.

This sub-section repeats the provisions to the like effect contained in sect. 75 of the Copyhold Act, 1841.

Rentcharges.

27. The following provisions shall apply to every rentcharge created under the provisions of this Act:— **Payment of rentcharges under Act.**

(*a*) The rentcharge shall be payable half-yearly on the first day of January and the first day of July in every year:

(*b*) The first payment of a rentcharge shall be made on such one of those half-yearly days of payment as next follows the day fixed for the commencement of the rentcharge, or if no such day is fixed, the date of the award or deed of enfranchisement, and shall be of an amount proportional to the interval between the commencement of the rentcharge and the said day of payment:

(*c*) The rentcharge shall be a first charge on the land charged therewith, and shall have priority over all incumbrances affecting the land except tithe rentcharge and any charge having priority by statute, notwithstanding those incumbrances are prior in date:

(*d*) The rentcharge shall be deemed to be granted to the lord and his heirs, to the uses, on the trusts, and subject to the powers and provisions subsisting, at the date of the enfranchisement in consideration of which the rentcharge arises, in respect of the manor of which the land subject to the rentcharge was held, and shall be appendant and appurtenant to the manor, but not so as to be incapable of being severed therefrom or to be affected by the extinction thereof:

(*e*) The rentcharge whenever created shall be recover-

able by the like remedies as are provided by section forty-four of the Conveyancing and Law of Property Act, 1881, in respect of rentcharges created after the commencement of that Act.

Provided that an occupying tenant, who properly pays on account of a rentcharge any money which as between him and his landlord that tenant is not liable to pay, shall be entitled to recover from the landlord the money paid, or to deduct it from the next rent payable by the tenant; and an intermediate landlord who pays or allows any sum under this provision may in like manner recover it from his superior landlord, or deduct it from his rent.

Sub-sections (*a*) and (*b*) repeat the provisions contained in sect. 15 of the Copyhold Act, 1887. See the Treatise, p. 399.

Sub-section (*c*) embodies provisions to the like effect contained in sect. 7 of the Copyhold Act, 1843, sect. 33 of the Copyhold Act, 1858, and sect. 19 of the Copyhold Act, 1887, but the words "any charge having priority by statute" did not occur in any of the earlier Acts. It was provided by the Act of 1858 that a rentcharge under the Copyhold Acts was to take priority over all previous incumbrances, excepting tithe rentcharges and any land-drainage charges or rentcharges created by virtue of the Land-Drainage Acts.

Sub-section (*d*) re-enacts the provisions contained in sect. 2 of the Copyhold Act, 1843, and sect. 31 of the Copyhold Act of 1858.

Sub-section (*e*) repeats the provisions to the like effect contained in sect. 16 of the Act of 1887. As to the remedies of the owner of a rentcharge, see *Searle* v. *Cooke*, 43 Ch. Div. 519; and *Thomas* v. *Sylvester*, L. R. 8 Q. B. 368.

The proviso re-enacts, with an addition as to intermediate landlords, the provisions to the like effect which were contained in sect. 16 of the Copyhold Act, 1887.

Apportionment of rentcharge.

28. The persons for the time being entitled to a rentcharge under this Act, and to the land subject to the rentcharge respectively, whether in possession or in remainder or reversion expectant on an estate for a term of years, may apportion the rentcharge between the several parts of the land charged therewith.

Provided as follows:—

(*a*) Where the person entitled to the land is not absolutely entitled thereto, the apportionment shall not be made without the consent of the Board of Agriculture; and

(*b*) A person entitled to an undivided share in a rentcharge or land shall not exercise the powers of this section unless the persons entitled to the

other undivided shares concur in the apportionment.

This section incorporates the provisions as to apportionment of rentcharges which were contained in sects. 4, 5, and 6 of the Copyhold Act, 1843.

Protection of lessees from liability to rentcharge.

29. A sub-lessee under a sub-lease shall not, as between him and his lessor, be liable in consequence of the creation or apportionment of a rentcharge under this Act to pay any greater sum of money than he would have been liable to pay if the charge or apportionment had not been made.

This section repeats the provisions of sect. 8 of the Copyhold Act, 1843.

Redemption of rentcharge.

30.—(1.) A rentcharge created under this Act may be redeemed on any half-yearly day of payment by the person for the time being in actual possession or in receipt of the rents and profits of the land subject to the rentcharge, on payment to the person for the time being entitled to receive the rentcharge of the consideration provided by this section.

Provided that where the person entitled to the rentcharge is entitled for a limited estate or interest only, the Board of Agriculture,

(*a*) if the money exceeds the sum of twenty pounds for all the rentcharges under this Act in the manor, shall direct it to be paid into Court or to trustees in manner provided by this Act; and

(*b*) in any other case, may direct it either to be paid in manner aforesaid or to be retained by that person for his own use.

The provision in this sub-section as to the right of redemption was taken from sect. 17 of the Copyhold Act, 1887. The proviso as to the payment of the redemption-money where the person entitled had a limited estate or interest only, repeats the provisions to the like effect contained in sects. 39 and 40 of the Copyhold Act, 1852.

(2) The consideration for the redemption of a rentcharge under this section shall,—

(*a*) where the rentcharge is of fixed amount, be twenty-five times the yearly amount of the rentcharge; and

(*b*) in any other case, be a sum to be fixed by the Board of Agriculture on the request of the person entitled to redeem the rentcharge.

This sub-section incorporates the corresponding provisions con-

tained in sect. 17 of the Copyhold Act, 1887, and sect. 37 of the Copyhold Act, 1852. See the Treatise, p. 401.

(3.) The person intending to redeem shall give to the person for the time being entitled to receive the rentcharge six months' previous notice in writing of his intention.

This provision was contained in sect. 17 of the Copyhold Act, 1887.

(4.) If on the expiration of the notice the redemption money and all arrears of the rentcharge are not paid, the person for the time being entitled to receive the rentcharge shall have for the recovery of the redemption money and all arrears, if any, of the rentcharge the like powers in respect of the land charged as are given by the Conveyancing and Law of Property Act, 1881, to a mortgagee in respect of the mortgaged property for the recovery of the mortgage debt and interest in a case where the mortgage is by deed.

This provision was contained in sect. 18 of the Copyhold Act, 1887. See the Treatise, p. 401.

(5.) When it appears to the Board of Agriculture that payment or tender of the consideration for the redemption of the rentcharge has been duly made, the Board may certify that the rentcharge has been redeemed and the certificate shall be conclusive.

A provision to this effect was contained in sect. 37 of the Copyhold Act, 1852.

(6.) The expenses incurred in redeeming a rentcharge under this section shall be dealt with on the same footing as the expenses incurred in redeeming a mortgage.

This sub-section repeats the provisions of sect. 20 of the Copyhold Act, 1887.

Power to sell rentcharge.

31.—(1.) Where the person for the time being entitled to the receipt of a rentcharge under this Act is entitled thereto for a limited estate or interest only, or is a corporation not authorised to sell the rentcharge except under the provisions of this Act, that person may sell and transfer the rentcharge with the consent of the Board of Agriculture given under their seal.

(2.) When a rentcharge is sold under this section the consideration money for the sale shall be paid into Court or to trustees in manner directed by this Act.

Provided that when the consideration does not exceed

the sum of twenty pounds for all the rentcharges under this Act in the manor the consideration may be paid, if the Board of Agriculture so direct, to the person for the time being entitled to receive the rentcharge for his own use.

These two sub-sections repeat the provisions contained in sect. 36 of the Copyhold Act, 1852. See the Treatise, p. 402, and see sect. 32, *post*, for the provisions as to payment into Court or to trustees. The proviso re-enacts the provisions of sect. 40 of the Act of 1852.

Application of Money to be paid under Act into Court or to Trustees.

Payment of money into Court or to trustees.

32.—(1.) Where money is directed by or in pursuance of this Act to be paid into Court it shall be paid into the High Court in manner provided by rules of Court to an account ex parte the Board of Agriculture.

This provision was taken from sect. 73 of the Copyhold Act, 1841, and sect. 39 of the Copyhold Act, 1852. See the Supreme Court Funds Rules, 1894, r. 40; and see the Treatise, pp. 403, 404.

(2.) Where money is directed by this Act to be paid to trustees it shall be paid—

(*a*) if there are any trustees acting under a settlement under which the lord or owner of the manor or rentcharge in respect of which the money arises derives his estate or interest in the manor or rentcharge, then to those trustees or to such one or more of them as the Board of Agriculture direct; and

(*b*) in any other case to trustees appointed by the Board of Agriculture.

Similar provisions were contained in sect. 14 of the Copyhold Act, 1843, and sect. 39 of the Copyhold Act, 1852. See the Treatise, p. 488, for a form of Appointment of Trustees by the Board of Agriculture; and see sub-sect. (4) hereof, *post*, as to the powers of the Board to appoint trustees.

(3.) Where money may under the provisions of this Act be paid either into Court or to trustees, it may be paid either into Court or to trustees at the option (where the money arises in respect of an enfranchisement) of the lord for the time being, and (where it arises in respect of a rentcharge) of the owner for the time being of the rentcharge.

Similar provisions as to the option of the person entitled to the

money were contained in sect. 74 of the Copyhold Act, 1841, sect. 14 of the Copyhold Act, 1843, and sect. 39 of the Copyhold Act, 1852.

(4.)—(*a*) The Board of Agriculture may appoint fit persons to be trustees for the purposes of this Act.

(*b*) Where any trustee appointed by the Board of Agriculture dies the Board shall appoint a new trustee in his place.

(*c*) Where any trustee appointed by the Board desires to resign, or remains out of the United Kingdom for more than twelve months, or refuses or is unfit to act, or is incapable of acting the Board may if they think fit appoint another trustee in his place.

(*d*) An appointment under this section must be by order under the seal of the Board of Agriculture.

This sub-section incorporates provisions to the like effect contained in sect. 14 of the Copyhold Act, 1843; sect. 6 of the Copyhold Act, 1844; and sect. 39 of the Copyhold Act, 1852.

Investment of money in Court or in hands of trustees.

33.—(1.) Where in pursuance of this Act any money in respect of an enfranchisement or the redemption or sale of a rentcharge is paid into Court or to trustees the money shall when paid into Court be applied under the direction of the Court, and when paid to trustees be applied, subject to the consent of the Board of Agriculture, by the trustees, in one, or partly in one and partly in another or others, of the following modes of application or investment; that is to say,

(*a*) in the purchase or redemption of the land tax or in or towards the discharge of any incumbrance affecting the manor or the rentcharge or other hereditaments settled with the manor or rentcharge to the same or the like uses or trusts; or

(*b*) in the purchase of land; or

(*c*) in investment in two and three quarters per centum consolidated stock or in Government or real securities, or in any of the investments in which trustees are for the time being authorised by law to invest; or

(*d*) in payment to any person who would, if the enfranchisement or redemption or sale had not taken

place, be absolutely entitled to the manor or the rentcharge respectively.

(2.) Land purchased under this section shall be conveyed to the uses, on the trusts, and subject to the powers and provisions which are or would but for the enfranchisement or redemption or sale be subsisting in the manor or rentcharge, as the case may be, or as near thereto as circumstances permit.

(3.) The income of an investment under this section shall be paid to the person who is or would but for the enfranchisement be entitled to the rents and profits of the manor, or would but for the redemption or sale be entitled to the rentcharge, as the case may be.

(4.) An investment or other application of money in Court under this section shall be made on the application of the person who would for the time being be entitled to the income of an investment of the money.

This section incorporates provisions to the like effect contained in sect. 73 of the Copyhold Act, 1841, and sect. 39 of the Copyhold Act, 1852.

Expenses.

34.—(1.) The expenses of a compulsory enfranchisement under this Act shall be borne by the person who requires the enfranchisement. Expenses of dealings under Act, how borne.

(2.) A sum in respect of the expenses of a compulsory enfranchisement shall not be due or recoverable from any person until it has been certified by order of the Board of Agriculture to have been properly incurred.

Provisions to the like effect were contained in sect. 30 of the Copyhold Act, 1852. See the Treatise, p. 409.

(3.) The expenses of a voluntary enfranchisement under this Act shall be borne by the lord and tenant in such proportions as they agree, or in default of agreement as the Board of Agriculture direct.

(4.) All expenses which in the opinion of the Board of Agriculture are incidental to an enfranchisement, whether for proof of title, production of documents, expenses of witnesses or otherwise, shall, for the purposes of this Act, be expenses of the enfranchisement.

(5.) Where there is any dispute as to the amount of the expenses payable by or to any person under this Act the Board of Agriculture may ascertain the amount and declare it by order, and the order shall be conclusive as to

the amount and that it is payable by or to the persons mentioned in that behalf in the order.

These three sub-sections re-enact the similar provisions contained in sects. 58 and 65 of the Copyhold Act, 1841, sect. 30 of the Copyhold Act, 1852, and sect. 35 (c) of the Copyhold Act, 1887.

(6.) If by reason of dispute as to title it appears to the Board of Agriculture to be uncertain on whom an order to pay expenses should be made, the Board may, if they think fit, grant to the person entitled to receive payment of the expenses a certificate of charge on the manor or land, as the case may be, in respect of which the expenses were incurred.

This sub-section re-enacts the provisions of sect. 28 of the Copyhold Act, 1858.

Recovery of expenses.

35.—(1.) When money is declared by this Act to be payable by any person on account of the expenses of proceedings under this Act,—

(*a*) it may be recovered as a debt due from the person liable to pay to the person entitled to receive it;

(*b*) if the expenses are in respect of a compulsory enfranchisement, and the amount is certified by an order of the Board of Agriculture, it may be recovered in any way provided by this Act for the recovery of the consideration for the enfranchisement;

(*c*) if the amount is certified by an order of the Board of Agriculture, and the person liable to pay the amount does not pay it immediately after receiving notice of the order, the person to whom the amount is payable shall be entitled to obtain from a court of summary jurisdiction a warrant of distress against the goods of the person in default;

(*d*) if the money is payable by a lord to a tenant, or by the owner of a rentcharge to the owner of the land charged, it may be set off against any money which at the time is receivable by the lord from the tenant, or by the owner of the rentcharge from the owner of the land charged, as the case may be.

The provisions in clauses (*a*) and (*d*) of this sub-section were taken from sect. 35, sub-sects. (*a*) and (*b*), of the Copyhold Act, 1887. The provisions in clause (*b*) occurred in sect. 30 of the

Copyhold Act, 1852, and provisions similar to those in clause (c) were contained in sect. 65 of the Copyhold Act, 1841.

(2.) If a tenant who is a trustee, or is not beneficially interested in the land of which he is tenant, properly pays any expenses of an enfranchisement under this Act, he may, except as against an unadmitted mortgagee, recover the amount paid from the person who is entitled to the land at the date of the enfranchisement.

This sub-section incorporates the provisions of sect. 67 of the Copyhold Act, 1841, as amended by sects. 1 and 3 of the Copyhold Act, 1844, and makes them applicable not only to the expenses of a voluntary enfranchisement, as was provided by the Acts of 1841 and 1844, but also to the expenses of a compulsory enfranchisement. It would seem that a tenant who is a trustee may also charge the land with the expenses by virtue of sect. 36 (1), *post*. The manner of recovering the expenses of a lord, as well in the case where he is a trustee of the manor as in the case where he is absolute owner, is explained in sect. 37, *post*.

(3.) If an occupier of land properly pays any expenses of an enfranchisement under this Act he may deduct the amount paid from his next rent.

This sub-section re-enacts the provisions to the same effect contained in sect. 45 of the Copyhold Act, 1841.

Charge for Consideration Money and Expenses.

Charge for consideration money and expenses of tenant.

36.—(1.) Where an enfranchisement is effected under this Act, the tenant may charge the land enfranchised with all money paid by him as the compensation or consideration for the enfranchisement, and with his expenses of the enfranchisement, or, with the consent of the lord with any compensation payable, or with any part thereof respectively.

This sub-section incorporates provisions to a similar effect which were contained in sects. 21 and 24 of the Copyhold Act, 1858, but omits the condition as to the consent of the Board of Agriculture. See the Treatise, p. 406.

(2.) Where land is conveyed as the consideration for a voluntary enfranchisement under this Act, and the person conveying the land is absolute owner of the land conveyed, he may charge the land enfranchised with such reasonable sum as the Board of Agriculture consider to be equivalent to the value of the land conveyed and with the expenses of the conveyance.

Section 22 of the Copyhold Act, 1858, contained a provision to the like effect.

(3.) Where a lord purchases under this Act a tenant's interest in land he may charge the land purchased, and the manor and any land settled therewith to the same uses, with the purchase-money and the expenses of the purchase.

This sub-section re-enacts the provisions of sect. 23 of the Copyhold Act, 1858, but omits the references to the consent of the Board of Agriculture contained in the Act of 1858.

(4.) When a charge may be made under this section, the expenses of the charge may be included in the charge.

This sub-section re-enacts the provisions of sect. 26 of the Copyhold Act, 1858.

(5.) A charge under this section may be for a principal sum and interest thereon not exceeding five per cent. per annum, or may be by way of terminable annuity calculated on the same basis.

This sub-section repeats the provisions to the like effect contained in sect. 23 of the Copyhold Act, 1887.

(6.) A charge under this section may be by deed by way of mortgage, or by a certificate of charge under this Act.

This sub-section incorporates the provisions as to the form of the charge contained in sect. 23 of the Copyhold Act, 1887, and sects. 29 and 36 of the Copyhold Act, 1858.

(7.) A charge under this section shall be a first charge on the manor or land subject to the charge, and shall have priority over all incumbrances whatsoever affecting the manor or land, except tithe rentcharges and any charge having priority by statute, notwithstanding that those incumbrances are prior in date.

This sub-section replaces sect. 33 of the Copyhold Act, 1858, and the provisions to the like effect contained in sect. 23 of the Copyhold Act, 1887. By both of these sections, however, the exception was confined to tithe rentcharges and "charges on the land for the drainage thereof by virtue of any of the statutes in that behalf."

(8.) Any money secured on land may be continued on the security thereof notwithstanding a charge under this section.

This sub-section re-enacts a provision to the like effect contained in sect. 33 of the Copyhold Act, 1858, and repeated in sect. 23 of the Copyhold Act, 1887.

Charge for lord's expenses.

37.—(1.) Expenses incurred by a lord in proceedings under this Act may—

(*a*) be paid out of any consideration or compensation

money (where it is a gross sum) arising in respect of the proceedings; or

(*b*) be charged, together with the expenses of the charge, on the manor or on land settled to the same uses as the manor or on any rentcharge arising in respect of the proceedings or in respect of any enfranchisement made under this Act within the manor.

The provisions in clause (*a*) of this sub-section were taken from sect. 58 of the Copyhold Act, 1841, and sect. 31 of the Copyhold Act, 1852, as amended by sect. 24 of the Copyhold Act, 1858. See the Treatise, pp. 409, 410.

The provisions in clause (*b*) were taken from sect. 24 of the Copyhold Act, 1887.

The provisions in both clauses would seem to apply as well to the case where the lord has but a limited interest in the manor or is trustee, as to the case where he is absolute owner.

(2.) A charge under this section shall be by deed by way of mortgage, or by a certificate of charge under this Act.

This sub-section incorporates the provisions as to the form of the charge contained in sect. 24 of the Copyhold Act, 1887, and in sects. 29 and 36 of the Copyhold Act, 1858.

(3.) This section does not apply to the expenses of a purchase by the lord of a tenant's interest under this Act.

This sub-section replaces a provision in sect. 27 of the Copyhold Act, 1858, which distinguished the expenses of a purchase by the lord from other expenses. Sect. 11 (8), and sect. 36 (3), *ante*, provide for the expenses of a purchase by the lord.

Charge for consideration money where tenant's title proves bad.

38. If a tenant or person claiming to be tenant pays any money in respect of the compensation or consideration for an enfranchisement under this Act, and is afterwards evicted from the land enfranchised, he may claim against the land enfranchised the amount of the money or so much of it as is not charged on the land under the other provisions of this Act, and that amount shall be a charge on the land with interest thereon at the rate of four per cent. per annum from the date of the eviction.

A provision to this effect was contained in sect. 47 of the Copyhold Act, 1852.

Charge for money paid by mortgagee.

39. If a mortgagee pays under this Act any compensation or consideration money or expenses in respect of an enfranchisement of or redemption of a rentcharge on the mortgaged property the amount so paid shall be added to

his mortgage, and the mortgaged property shall not be redeemable without payment of that amount and interest thereon.

A provision to this effect was contained in sect. 43 of the Copyhold Act, 1852.

Power to advance sums required for purposes of Act.

40. Any company authorised to make advances for works of agricultural improvement to owners of settled and other estates, may, subject and according to the provisions of its Act of Parliament, charter, deed, or instrument of settlement, make advances to owners of settled and other estates of such sums as may be required for the payment of any compensation or consideration for enfranchisement under this Act, or of any expenses chargeable on a manor or land under this Act or otherwise, and take for their repayment a charge for the same in accordance with those provisions respectively.

This section re-enacts the provisions contained in the last part of sect. 23 of the Copyhold Act, 1887.

Certificates of charge.

41.—(1.) A certificate of charge under this Act shall be under the seal of the Board of Agriculture, and shall be countersigned by the person at whose instance the charge is made.

(2.) If the charge is by way of terminable annuity the certificate shall state the amount of the annuity and the term during which it is payable.

(3.) If the charge is for a principal sum and interest the certificate shall state the amount of the principal sum and the rate of interest, and shall contain a proviso declaring that the certificate shall be void on payment of the principal with any arrears of interest due thereon at a time specified in the certificate or at the expiration of an ascertained notice.

(4.) The manor or land charged by the certificate may be described by reference to the proceedings under this Act in respect of which the charge is made, or otherwise as the Board of Agriculture see fit.

These four sub-sections re-enact the provisions of sect. 29 of the Copyhold Act, 1858.

(5.) The certificate and the charge made thereby shall be transferable by indorsement on the certificate.

This sub-section re-enacts sect. 30 of the Copyhold Act, 1858.

(6.) A certificate of charge taken by the lord of any

manor or by the tenant or owner of any land shall not merge in the freehold or other estate in the manor or land unless the owner of the charge, by endorsement on the certificate or otherwise, declares in writing his intention that the charge shall merge.

This subsection repeats the provisions of sect. 34 of the Copyhold Act, 1858.

(7.) The owner for the time being of a certificate of charge shall have for the recovery of any sum in the nature of interest or periodical payment becoming due under the certificate the like remedies as the owner of a rentcharge under this Act has in respect of his rentcharge, and shall also have, in respect of every sum whether in the nature of interest or periodical payment or principal sum secured by the certificate, the like remedies as a mortgagee in fee simple of freehold land has in respect of the principal sum and interest secured by his mortgage.

This subsection replaces sect. 35 of the Copyhold Act, 1858.

(8.) A certificate of charge and a transfer thereof may be in the forms contained in that behalf respectively in the First Schedule to this Act, or in forms to the like effect.

This subsection and the forms contained in the First Schedule to this Act re-enact sects. 36 and 37 of the Copyhold Act, 1858, with a variation, however, in the form of the certificate of charge which was provided by sect. 36 of the Copyhold Act, 1858.

Part V.—Administrative Provisions.

Notice of Right to Enfranchise.

Notice of right to enfranchise to be given by steward.

42.—(1.) On the admittance or enrolment of any tenant, the steward of the manor shall, without charge, give to the tenant admitted or enrolled, a notice of his right to obtain enfranchisement.

(2.) The notice shall be in the form contained in that behalf in the First Schedule to this Act, or in a form to the like effect.

(3.) If a steward neglects on any admittance or enrolment to give the notice required by this section, he shall not be entitled to any fee for that admittance or enrolment.

This section, together with the form contained in the Schedule, re-enact the provisions of sect. 1 of the Copyhold Act, 1887. See the Treatise, p. 70.

Parties to Proceedings under Act.

Limited owners.

43. Anything by this Act required or authorised to be done by a lord or by a tenant may be done by him notwithstanding that his estate in the manor or land is a limited estate only.

A provision to this effect was contained in sect. 39 of the Copyhold Act, 1887.

Trustees.

44.—(1.) Anything by this Act required or authorised to be done by a lord or by a tenant may be done by him notwithstanding that he is a trustee.

(2.) Where the lords or the tenants are trustees and one or more of the trustees is abroad or is incapable or refuses to act, any proceedings necessary to be done by the trustees for effecting an enfranchisement under this Act may be done by the other trustee or trustees.

Section 39 of the Copyhold Act, 1887, contained a provision similar to that in sub-sect. (1) above.

Sub-section (2) re-enacts sect. 40 of the Act of 1887. See the Treatise, pp. 377, 382.

Representation of infants, lunatics, &c.

45. When a lord or a tenant or any person interested in an enfranchisement or redemption or sale or otherwise under this Act is an infant or a lunatic, or is abroad or is unknown or not ascertained, anything by this Act required or authorised to be done by or in respect of him shall be done on his behalf, if he is an infant and has a guardian, by his guardian, and if he is a lunatic and there is a committee of his estate, by the committee, and if he is abroad and has an attorney authorised in that behalf, by his attorney, and in every other case by some fit person appointed by the Board of Agriculture to represent him for the purposes of this Act.

Provisions to the like effect were contained in sects. 11 and 56 of the Copyhold Act, 1841, and sect. 39 of the Copyhold Act, 1887.

Married woman for purposes of Act to be feme sole.

46. A married woman being lady of a manor or tenant shall, for the purposes of this Act, be deemed to be a feme sole.

This section re-enacts a provision to the like effect contained in sect. 39 of the Copyhold Act, 1887.

Steward in general to represent lord.

47.—(1.) A lord for the purposes of this Act may act either on his own behalf, or by his steward, or may appoint an agent other than his steward to act for him.

(2.) Unless and until a lord has given to a tenant and

to the Board of Agriculture notice in writing that he intends to act on his own behalf, or has appointed an agent (to be named in the notice) other than his steward to act for him, the steward shall for the purposes of this Act represent the lord in all matters of procedure, and the tenant and the Board may treat the steward as the agent of the lord for the purpose of giving and receiving notices, and (except where this Act expressly requires a special authority from the lord) of making agreements, and of all other matters relating to enfranchisement.

This section replaces sect. 33 of the Copyhold Act, 1887. See the Treatise, p. 311, as to the matters in which the steward, as a general rule, represents the lord.

For a definition of "steward" as used in this Act, see sect. 94, *post*.

—except where this Act expressly requires a special authority. —See sect. 23 (2) and sect. 86 (5) of this Act.

Appointment of agent by power of attorney.

48.—(1.) A lord or tenant or other person interested in any proceedings under this Act may by power of attorney appoint an agent to act for him in the execution of this Act.

(2.) The power of attorney must be in writing, and must be signed by the person giving it, or, if it is given by a corporation aggregate, be sealed or stamped with the seal of the corporation.

(3.) The power of attorney, or a copy thereof authenticated by the signature of two witnesses, must be sent to the Board of Agriculture.

(4.) The appointment of an agent under this section may be revoked by the person who gave it sending to the Board notice in writing, signed or sealed as the case requires, of the revocation.

(5.) When an agent has been appointed under this section, and the agency is subsisting—

(*a*) everything which is by this Act directed or authorised to be done by or in relation to the principal, may be done by or in relation to the agent; and

(*b*) the agent may concur in and execute any agreement or application or document arising out of the execution of this Act; and

(*c*) every person shall be bound by the acts of the agent acting within his authority, as if they were the acts of the principal.

(6.) A power of attorney under this section may be in the form mentioned in that behalf in the First Schedule to this Act, or in a form to the like effect.

This section incorporates and re-enacts the provisions of sects. 39 and 40 of the Copyhold Act, 1858. See the Treatise, pp. 377, 378, and 381.

Death pending proceedings.

49.—(1.) The proceedings for or in relation to an enfranchisement under this Act shall not abate by the death of the lord or tenant pending the proceedings.

A provision to this effect was originally contained in sect. 41 of the Copyhold Act, 1841, and it was repeated in sect. 31 of the Copyhold Act, 1887. See the Treatise, pp. 378 and 382.

(2.) Where an admittance or enrolment is necessary in consequence of the death, the admittance or enrolment shall be made, but no fine, relief, or heriot shall be payable to the lord in consequence of a death or any admittance or enrolment on a death occurring between the date of a notice to enfranchise or a completed agreement for enfranchisement under this Act, and the enfranchisement in pursuance of that notice or agreement, and the compensation shall be ascertained on the same footing as if the enfranchisement had been effected immediately after the commencement of the proceedings.

This sub-section re-enacts the provisions to the same effect contained in sect. 31 of the Copyhold Act, 1887, which over-ruled the decision in *Myers* v. *Hodyson*, 1 C. P. Div. 609, that the lord was entitled, under the provisions of sect. 1 of the Copyhold Act, 1852, to a fine on the new admittance.

Succession of rights and liabilities.

50. All rights conferred and all liabilities imposed by this Act on a lord or on a tenant shall be held to be conferred and imposed respectively on the successors in title of the lord and tenant unless a contrary intention appears.

This section re-enacts the provisions of sect. 38 of the Copyhold Act, 1887.

Power to require declaration as to lord's title.

51.—(1.) Before any enfranchisement under this Act the Board of Agriculture may if they think fit require the lord or his steward to make a statutory declaration in such form as the Board direct, stating who are the persons for the time being filling the character or acting in the capacity of lord, the nature and extent of the estate and interest of the lord in the manor, and the date and short particulars of the deed, will, or other instrument under which he claims or derives the title, and the name and style of the

person in whose name the court of the manor was last holden, and the date of the holding of that court, and the incumbrances, if any, affecting the manor, and the Board may accept a declaration made under this section for the purposes of this Act.

(2.) If the lord or his steward does not make a declaration which he is required to make in pursuance of this section, or if in the opinion of the Board the declaration does not fully and truly disclose all the necessary particulars, or if the lord refuses to give any evidence which the Board think proper and necessary to show a satisfactory *primâ facie* title in the lord, or if the Board think that the incumbrancers should be protected, the Board may, if they think the justice of the case requires it, direct the compensation or consideration where it is a gross sum to be paid into Court or to trustees in manner directed by this Act.

(3.) Where the lord applies to the Board to effect an enfranchisement under this Act, the Board shall, if the tenant of the land proposed to be enfranchised so requires, satisfy themselves of the title of the lord.

Sub-sections (1) and (2) of this section incorporate and re-enact the provisions contained in sect. 22 of the Copyhold Act, 1852, and sect. 32 of the Act of 1887; and sub-section (3) repeats the provisions of sect. 23 of the Act of 1852. See the Treatise, pp. 366, 376, 377.

Questions arising in Proceedings under Act.

52. On an enfranchisement under this Act— **Boundaries.**

(1.) Where the identity of any land cannot be ascertained to the satisfaction of the valuers, if the quantity of the land is mentioned in the court rolls of the manor, and is therein stated to be in statute measure, the land shall be taken to be of that quantity, and in every other case the quantity shall be determined by the valuers:

(2.) Where the land is not defined by a plan on the court rolls the valuers shall, if requested in writing by the lord or the tenant, define the boundaries of the land by a plan:

Provided that a plan shall not be made except by agreement between the lord and tenant where it appears by the court rolls or otherwise that the

boundaries of the land have been for more than fifty years last past treated as being intermixed:

(3.) Where, after the appointment of valuers, there is any doubt or difference of opinion as to the identity of any land, the lord or tenant may apply to the Board of Agriculture to define the boundaries of the land for the purposes of the enfranchisement, and the Board shall ascertain and define the boundaries in such manner as they think proper:

(4.) A plan made under this section and approved by the Board, and a definition of boundaries by the Board under this section, shall be conclusive as between the lord and the tenant.

This section re-enacts the provisions of sect. 42 of the Copyhold Act, 1887. See the Treatise, p. 391.

Power for Board to decide questions arising in enfranchisements.

53.—(1.) If any objection is made or question arises in the course of the valuation in a compulsory enfranchisement under this Act in relation to any alleged custom, or the evidence thereof, or any matter of law or fact material to the valuation or arising on the enfranchisement, the lord or tenant may require, in writing, that the question be referred to the Board of Agriculture, and the Board shall inquire into and decide the question, and their decision shall, subject to the appeal provided by this section, be final.

This sub-section repeats the provisions to the like effect contained in sect. 8 of the Copyhold Act, 1852, as amended by sect. 29 of the Copyhold Act, 1887.

(2.) Either party may appeal to the High Court by way of special case from a decision of the Board on a matter of law, subject to the following provisions, that is to say:—

(*a*) an application to state a case must be made to the Board within twenty-eight days after the decision appealed from:

(*b*) the person applying for the case must give to the other party to the inquiry not less than fourteen days' previous notice in writing of the intended application:

(*c*) the case shall, if the parties differ, be settled by the Board:

(*d*) the judgment of the Court on a special case shall

be final and binding on the parties and on the Board.

This sub-section repeats the provisions of sect. 8 of the Copyhold Act, 1852, which incorporated certain of the provisions contained in sect. 40 of the Copyhold Act, 1841, as to appeals from the decisions of the Copyhold Commissioners (now represented by the Board of Agriculture). See the Treatise, pp. 395, 396.

Power to call for production of documents and examine witnesses.

54.—(1.) The Board of Agriculture, or a valuer, may, for the purposes of this Act, by summons under the seal of the Board—

(*a*) call for the production, at such time and place as the Board appoint, of any court rolls or copies of court roll, or any books, deeds, plans, documents or writings relating to any matter before them, in the possession or power of any lord or tenant or steward; and

(*b*) summon to attend as witness any lord or tenant or other person.

(2.) The Board or a valuer may examine any witness on oath and may administer the oath necessary for that purpose.

(3.) A lord or tenant summoned under this section shall not be bound to answer any question as to his title.

(4.) If any person summoned under this section, to whom a reasonable sum has been paid or tendered for his expenses, without lawful excuse neglects or refuses to attend, or to give evidence, or to produce a document in pursuance of the summons, he shall be liable on summary conviction to a fine not exceeding five pounds.

(5.) If any person wilfully gives false evidence in any proceeding under this Act he shall be guilty of perjury.

(6.) If any person wilfully destroys or alters any document of which the production is required under this section he shall be guilty of a misdemeanour.

This section re-enacts the provisions of sect. 5 of the Copyhold Act, 1852.

Expenses of inquiries before Board.

55. The Board of Agriculture may, if they think fit, order that the expenses of any inquiry by the Board under this Act, including the expenses of witnesses and of the production of documents, be paid by the parties to the inquiry, and to such person, and in such proportions, as the Board think proper.

This section re-enacts the provisions contained in sect. 44 of the

Copyhold Act, 1841. Under 31 & 32 Vict. c. 89, s. 1, the Board have power to take security for the payment of any costs they may incur in making inquiries under the Copyhold Acts. See the Treatise, p. 422, *n.*

Power to transfer charges on manor to other land or stock.

56.—(1.) Where, in the course of an enfranchisement under this Act, it is found that a manor or the lord's estate and interest in any land belonging thereto, which may be the subject of enfranchisement, is subject to the payment of a fee-farm rent or to any other charge, the Board of Agriculture may, on the application of the person for the time being bound to make the payment or defray the charge, by order under their seal, direct that the rent or charge shall be a charge on any freehold land specified in the order of adequate value, and held under the same title as the manor or land respectively, or on an adequate amount of Government stocks or funds to be transferred into Court by the direction of the Board, or into the names of trustees appointed by the Board.

(2.) From and after the sealing of the order the manor and land shall be discharged from the rent or charge, and the rent or charge shall be a charge on the land or the funds specified in that behalf in the order.

(3.) There shall, by virtue of this Act, be attached, so far as the nature of the case will admit, to every charge under this section the like remedies, as against the land or funds made subject thereto, for the recovery of the amount charged as might have been had as against the manor or land in respect of the original charge.

This section re-enacts the provisions of sect. 21 of the Copyhold Act, 1887.

Notices, Instruments, and Forms.

Notices.

57.—(1.) A notice required or authorised by this Act to be given to any person must be given in writing, and may be given—

(*a*) by leaving it at his usual or last known place of abode or business in the United Kingdom, or

(*b*) by sending it by post in a registered letter addressed to him at that place, or

(*c*) where he is a tenant of any premises, by delivering the notice or a true copy of it to some person on the premises, or if there is no person on the premises to whom it can be delivered with reasonable

diligence, by fixing it on some conspicuous part of the premises.

(2.) Where a notice is required by this Act to be given by the Board of Agriculture or a valuer and no other mode of giving the notice is directed, the notice may be either in the name of the Board or valuer, as the case may be, or on their behalf respectively in the name of any person authorised by the Board to give notices.

This section incorporates and re-enacts the provisions of sect. 20 of the Copyhold Act, 1858, and sect. 36 of the Copyhold Act, 1887.
—**a notice in writing.**—See the Interpretation Act, 1889, s. 20, as to the meaning of "writing" in Acts of Parliament.
—**sending by post.**—See the Interpretation Act, 1889, s. 26, as to the meaning of the words "sending by post," when occurring in Acts of Parliament.

Stamp duty.

58.—(1.) An agreement, valuation, or power of attorney under this Act shall not be chargeable with stamp duty.

(2.) An enfranchisement award shall be chargeable with the like stamp duty as is chargeable in respect of an enfranchisement deed.

(3.) A certificate of charge under this Act and a transfer thereof shall be chargeable with the like stamp duty as is chargeable in respect of a mortgage and a transfer of a mortgage respectively.

This section incorporates and re-enacts the provisions of sect. 93 of the Copyhold Act, 1841; sect. 50 of the Copyhold Act, 1852; and sect. 32 of the Copyhold Act, 1858.

An enfranchisement deed is stamped as a "conveyance on sale" as defined by the Stamp Act, 1891. See the Treatise, pp. 369 and 574 *et seq.*

Payment of office fees.

59. The Board of Agriculture may require the payment of all office fees and other expenses of the Board from either lord or tenant requesting the delivery of any award, deed, or order under this Act, before delivering it.

This section re-enacts sect. 34 of the Copyhold Act, 1887.

A table of fees authorised to be taken by the Board of Agriculture in respect of transactions under the Copyhold Act will be found at p. 493 of the Treatise.

Power for Board to correct errors in instruments.

60.—(1.) The Board of Agriculture may at any time if they think fit, on the application of any person interested in an award or deed of enfranchisement or charge or other instrument made or issued or having effect under the provisions of this Act, correct or supply any error or omission arising from inadvertence in that instrument.

(2.) Before making an alteration under this section the Board shall give such notice as they think proper to the persons affected by the alteration.

(3.) An alteration shall not be made in an instrument relating to a voluntary enfranchisement without the consent in writing of the persons affected by the alteration.

(4.) The expenses of and incidental to an application under this section shall be paid by the persons interested in the application or some of them if and as the Board direct.

Sub-sections (1) and (2) incorporate and re-enact the provisions of sect. 15 of the Copyhold Act, 1852, and sect. 44 of the Copyhold Act, 1887.

Sub-section (3) is founded on the provisions of sect. 35 of the Copyhold Act, 1841, and it re-enacts a provision which seems to have been altered, if not repealed, by sect. 44 of the Copyhold Act, 1887.

Sub-section (4) re-enacts a provision to the like effect contained in sect. 44 of the Copyhold Act, 1887.

Execution of enfranchisement instrument to be conclusive of regularity of proceedings.

61.—(1.) The confirmation under the seal of the Board of Agriculture of an award of enfranchisement, and the execution by the Board of a deed of enfranchisement respectively, shall be conclusive evidence of compliance with all the requirements of this Act with respect to proceedings to be taken before the confirmation or execution.

(2.) An award or deed of enfranchisement shall not be impeached by reason of any omission, mistake, or informality therein or in any proceeding relating thereto, or of any want of any notice or consent required by this Act, or of any defect or omission in any previous proceedings in the matter of the enfranchisement.

This section re-enacts the provisions of sect. 33 of the Copyhold Act, 1852. See the Treatise, p. 398.

Inspection of court rolls after enfranchisement.

62.—(1.) Any person interested in any land enfranchised under this Act may at any time inspect and obtain copies of the court rolls of the manor of which the land was held on payment of a reasonable sum for the inspection or copies.

(2.) The Board of Agriculture may, if they think fit, fix a scale of fees to be paid to the steward or person having custody of the court rolls for the inspection and for making extracts or copies.

This section re-enacts the provisions contained in sect. 20 of the Copyhold Act, 1852. See the Treatise, p. 417.

As to the inspection of court rolls of a manor by copyholders and persons having a *primâ facie* title to copyhold property within the manor, see the Treatise, pp. 314—316.

Evidence from instruments under repealed Acts. 4 & 5 Vict. c. 35.

63.—(1.) Any person interested in any land included in any enfranchisement or commutation made by apportionment under the Copyhold Act, 1841, may inspect and obtain copies of or extracts from any instrument relating to the enfranchisement or commutation deposited with a clerk of the peace or steward of a manor under that Act.

(2.) A person requiring under this section inspection of or a copy of or extract from any instrument shall give reasonable notice to the person having the custody of the instrument, and shall pay to him for every inspection a fee of two shillings and sixpence, and for every copy and extract a fee at the rate of twopence for every seventy-two words in the copy or extract.

(3.) Every recital or statement in, or agreement, schedule, map, plan, document, or writing annexed to a confirmed apportionment made under the said Act shall be sufficient evidence of the matters recited or stated, and of the accuracy of the map or plan respectively.

Enfranchisements and commutations of manorial incidents by schedules of apportionment were authorised by the Copyhold Act, 1841, but were abolished by the Copyhold Act, 1858, sect. 2, with a saving, however, in sect. 3 of that Act as to enfranchisements and commutations then effected. See the Treatise, pp. 360 and 361. This section keeps alive the rights conferred by sect. 33 of the Act of 1841 on persons whose lands had been enfranchised or commuted in that manner.

Custody of court rolls after enfranchisement.

64.—(1.) When all the lands held of a manor have been enfranchised, the lord, or with the consent of the lord, any person having custody of the court rolls and records of the manor, may hand over all or any of the court rolls and records to the Board of Agriculture or to the Master of the Rolls.

(2.) Where any court rolls or other records are in the custody of the Board of Agriculture, the Board may hand over all or any of them to the Master of the Rolls.

(3.) Any person interested in any enfranchised land may inspect and obtain copies of and extracts from any court rolls or records in the custody of the Board, or of the Master of the Rolls, relating to the manor of which that land was held or was parcel, on payment of such

reasonable fees as are fixed from time to time by the Board or the Master of the Rolls respectively.

(4.) The Master of the Rolls may undertake the custody of court rolls and records handed over to him under this section, and may make rules respecting the manner in which, and the time at which inspection may be made and copies and extracts may be obtained of and from the court rolls and records in his custody, and as to the amount and mode of payment of the fees for the inspection, copies, and extracts respectively.

(5.) Every rule made under this section shall be laid, as soon as may be, before both Houses of Parliament.

This section repeats the provisions of sect. 21 of the Copyhold Act, 1852, as enlarged by sect. 48 of the Copyhold Act, 1887. See the Treatise, p. 316 and pp. 417-8.

Board to frame and circulate forms.

65. The Board of Agriculture shall frame and cause to be printed forms of notices and agreements and such other instruments as in their judgment will further the purposes of this Act, and shall supply any such form to any person who requires it, or to whom the Board think fit to send it, for the use of any lord or tenant desirous of putting this Act into execution.

This section re-enacts the provisions to the like effect contained in sect. 20 of the Copyhold Act, 1841. This power to frame forms cannot be delegated by the Board, see sect. 91, *post*. Copies of the forms issued by the Board will be found in Appendix III. to the Treatise, pp. 477-492.

Board to publish a scale of compensation.

66.—(1.) The Board of Agriculture shall frame, and cause to be printed and published—

(*a*) such a scale of compensation for the enfranchisement of land from the several rights and incidents, including heriots, specified or referred to in this Act, as in their judgment will be fair and just and will facilitate enfranchisement, together with such directions for the lord, tenant, and valuers as the Board think necessary, and

(*b*) a scale of allowance to valuers for their services in the execution of this Act.

(2.) The Board may vary any such scale.

(3.) The scales published by the Board under this section shall be for guidance only, and shall not be binding as a matter of law in any particular case.

(4.) The person requiring an enfranchisement shall state

any such corporation would be affected by the enfranchisement,

unless the agreement is made with the consent in writing of that corporation or person.

(2.) A consent under this section must, in the case of a corporation aggregate, be under the seal of the corporation, and in other cases be signed by the person giving it, and must in every case be annexed to the agreement to which it relates.

This section re-enacts the provisions of sect. 22 of the Copyhold Act, 1841. See the Treatise, p. 428.

"Ecclesiastical corporation" is defined in sect. 94, *post*, by reference to Episcopal and Capitular Estates Act, 1851, and the Acts amending the same. See the Treatise, p. 429, for the definition as contained in the Episcopal, &c. Estates Acts.

Notice to ecclesiastical commissioners in certain cases.

73. Where land proposed to be enfranchised under the provisions of this Act with respect to compulsory enfranchisement is held of a manor belonging either in possession or reversion to an ecclesiastical corporation, the Ecclesiastical Commissioners shall have notice of the proceedings, and shall have the like power of expressing assent to or dissent from the proceedings as is provided by this Act with respect to a person entitled in reversion or remainder, and the provisions of this Act with respect to the notice, and the proceedings thereon, shall apply accordingly.

This section replaces sect. 19 of the Copyhold Act, 1858. See the Treatise, p. 433.

—as is provided by this Act with respect to a person entitled in reversion, &c.—See sect. 14 (3), and sect. 16 (2), *ante*.

See sect. 75, *post*, for the procedure to be adopted if it appears to the Board of Agriculture that the enfranchisement should be effected under the Episcopal, &c. Estates Acts.

Enfranchisement money for use of spiritual person may be paid to Queen Anne's Bounty.

74.—(1.) Any compensation or consideration money to be paid under this Act for the use of any spiritual person in respect of his benefice or cure may at the option of the lord be paid to Queen Anne's Bounty, and the receipt of the treasurer shall be a sufficient discharge.

(2.) Money paid under this section shall be applied by the Bounty as money in their hands appropriated for the augmentation of the benefice or cure, as the case may be.

This section replaces sect. 17 of the Copyhold Act, 1858. See the Treatise, p. 405.

Application of

75. Where on an enfranchisement under this Act it

enfranchisement money where enfranchisement might have been under 14 & 15 Vict. c. 104.

appears to the Board of Agriculture that the enfranchisement might have been effected under the Episcopal and Capitular Estates Act, 1851, or any Act amending the same—

(*a*) the consideration for the enfranchisement shall be paid and applied in like manner as if an enfranchisement had been effected under the said Episcopal and Capitular Estates Act and the Acts amending the same; and

(*b*) the Church Estates Commissioners and Ecclesiastical Commissioners respectively shall have the same powers over the consideration money and the interest thereon, and over any land, rentcharges, or securities acquired in respect of the enfranchisement, and over or against any ecclesiastical corporation interested therein respectively, as they would have had if the enfranchisement had been effected with the consent of the Church Estates Commissioners under the said Acts:

Provided that where an ecclesiastical corporation or the Ecclesiastical Commissioners have only a reversionary interest in the manorial rights extinguished by the enfranchisement, the consideration, if it is a gross sum, shall be paid into Court or to trustees, and applied under this Act accordingly until the time when the reversionary interest would if it were not extinguished have come into possession, and the consideration money and the investments thereof shall then be paid or transferred to the Church Estates Commissioners as persons absolutely entitled thereto.

This section re-enacts the provisions of sect. 5 of the Copyhold Act, 1858. See the Treatise, pp. 433, 434.

Enfranchisement money may be paid to official trustees of charitable funds on behalf of charity.

76.—(1.) Where a corporation, or any person, lord of a manor held on a charitable trust within the provisions of the Charitable Trusts Acts, 1853 to 1891, is not authorised to make an absolute sale otherwise than under those Acts, or this Act, the compensation or consideration payable to the lord for an enfranchisement or for the redemption or sale of a rentcharge under this Act may at the option of the lord be paid to the Official Trustees of Charitable Funds in trust for the charity.

(2.) Any principal money paid to the official trustees under this section shall be applied by them under the order of the Charity Commissioners for the like purposes as if it

had been paid into Court under this Act, and in the meantime the money shall be invested, and the income of the investments applied, under the provisions of the said Charitable Trusts Acts with respect to charitable funds paid to the Official Trustees.

This section re-enacts the provisions of sect. 15 of the Copyhold Act, 1858. See the Treatise, pp. 404, 405.

Enfranchisement money for use of corporation may be paid to trustees.

77. Any compensation or consideration money to be paid under this Act to the use of a corporation, lord of a manor other than a manor held for charitable purposes within the meaning of the Charitable Trusts Act, 1853, and the Charitable Trusts Amendment Act, 1855, may at the option of the lord be paid to trustees appointed by the Board of Agriculture for the purposes of this Act.

This section replaces sect. 16 of the Copyhold Act, 1858. See the Treatise, p. 405.

Provision for case of joint lords of manors belonging to universities and colleges.

78. Where any manor belonging to any of the Universities of Oxford, Cambridge, and Durham, or any college therein, or to either of the colleges of St. Mary at Winchester, near Winchester, or King Henry the Sixth at Eton, is held by any person on a lease for a life or lives, or for a term of years granted by any such university or college, that university or college and lessee shall jointly constitute the lord of the manor within the meaning of this Act, and any rentcharge created under this Act on the enfranchisement of land held of that manor shall be in favour of, and the compensation for the enfranchisement may be paid to, the person who at the date of the enfranchisement is entitled in possession to the profits of the manor, his executors and administrators, but without prejudice to any question as to the further disposal of any money paid in respect of the rentcharge or other compensation respectively. Provided that on the determination of such lease as aforesaid any money so paid, or any securities in which the same may have been invested, shall be paid or applied as enfranchisement money is directed to be paid and applied by section one of the Universities and College Estates Act, 1858. 21 & 22 Vict. c. 44.

This section re-enacts the provisions contained in sect. 46 of the Copyhold Act, 1887, and by the proviso incorporates therewith the provisions of sect. 4 of the Universities and College Estates Act, 1860 (23 & 24 Vict. c. 59). See the Treatise, pp. 434—437.

Provisions

79. The following provisions shall apply to every manor

where derivative interests are entered on rolls.

in which the fines are certain, and in which it is the practice for copyholders in fee to grant derivative interests to persons who are admitted as copyholders of the manor in respect of those interests:—

(1.) In the application of this Act to any such manor the tenant shall be the person who is admitted or enrolled in respect of the inheritance, and that person is in this section called the tenant-in-fee.

(2.) The enfranchisement of land to a tenant-in-fee shall enure for the benefit of every person having any customary estate or interest in the land at the date of the enfranchisement, and every such person shall become entitled to an estate or interest in the land corresponding with his customary estate or interest.

(3.) All rentcharges payable in respect of the enfranchisement, and all sums of money payable by a tenant-in-fee for compensation or the expenses of enfranchisement, and the interest thereon, shall, if the parties do not otherwise agree, be borne and paid by the several persons for whose benefit the enfranchisement enures in proportion to their respective interests in the enfranchised land.

(4.) If a dispute arises respecting the apportionment of any such charge or payment, the Board of Agriculture may, on the application of any person interested, after due inquiry, make an order apportioning the same.

(5.)—

(*a*) On the request of the lord, or of one-fourth in number of the copyholders for the time being on the court roll of the manor, and on such provision being made for expenses as the Board require, the Board may make a local inquiry for the purpose of ascertaining whether the copyholders of the manor desire that an enfranchisement be effected throughout the manor:

(*b*) If the Board find that not less than two-thirds in number of the copyholders desire the enfranchisement, they shall make an order declaring that enfranchisement of all copyhold

tenements of the manor shall take place, and they shall thereupon proceed to ascertain the compensation payable to the lord on the enfranchisement of each tenement held by a tenant-in-fee, and to effect the enfranchisement of that tenement accordingly. The compensation in every case shall consist of a gross sum of money, unless the lord and tenant-in-fee otherwise agree:

(*c*) When an order declaring enfranchisement as aforesaid has been made—

(i.) all the tenants-in-fee shall contribute rateably to the expenses of the inquiry according to the amount of compensation payable by them respectively;

(ii.) the tenant-in-fee and all copyholders holding derivative interests in the same tenement shall contribute rateably, according to the value of their respective interests, to the compensation, and to all expenses attending the enfranchisement payable by the tenants, including the contribution of the tenant-in-fee to the expenses of the inquiry;

(iii.) the Board may apportion the contributions between the several tenants-in-fee, and also between the several tenants of each tenement, and may make orders for the payment of the contributions and expenses by the persons from whom they are due;

(iv.) the Board shall not without the consent of the tenant-in-fee make an award for the enfranchisement of any tenement, until they have apportioned the contributions between the tenant-in-fee and the tenants holding derivative interests in the tenement, and have made orders for payment of, or have satisfied themselves that the tenant-in-fee has full security for, the amounts which the tenants of derivative interests are to contribute:

(6.) Every order of apportionment made by the Board shall be binding on all persons interested in the apportionment, and the expenses of and incident

to the apportionment shall be paid by those persons, or any of them, as the Board direct.

This section re-enacts the provisions of sect. 47 of the Copyhold Act, 1887. See the Treatise, pp. 420—423.

Application of Act to part of manor.

80.—(1.) The Board of Agriculture may by order under their seal direct that a part of a manor specified in the order shall be considered as a manor for the purpose of effecting an enfranchisement under this Act, and all the provisions of this Act shall apply accordingly.

(2.) An order shall not be made under this section for the purposes of a voluntary enfranchisement without the consent of the lord in writing under his hand and seal.

This section incorporates and re-enacts the provisions to a similar effect which were contained in sect. 102 of the Copyhold Act, 1841, and sect. 52 of the Copyhold Act, 1852.

PART VII.—GENERAL LAW OF COPYHOLDS.

Restraint on creation of new copyholds.

81.—(1.) It shall not be lawful for the lord of any manor to make grants of land not previously of copyhold tenure to any person to hold by copy of court roll, or by any customary tenure, without the previous consent of the Board of Agriculture.

(2.) The Board of Agriculture in giving or withholding their consent to a grant under this section shall have regard to the same considerations as are to be taken into account by them in giving or withholding their consent to an inclosure of common lands.

(3.) When a grant has been lawfully made under this section the land therein comprised shall cease to be of copyhold tenure, and shall be vested in the grantee thereof to hold for the interest granted as in free and common socage.

This section re-enacts the provisions of sect. 6 of the Copyhold Act, 1887. For a statement of the law as existing prior to the passing of the Copyhold Act, 1887, see the Treatise, pp. 279—283; and *Ramsey* v. *Cruddas*, (1893) 1 Q. B. 228 (C. A.).

Power to hold customary court though no copyholder present.

82.—(1.) A customary court may be held for a manor—

(*a*) although there is no copyhold tenant of the manor; and

(*b*) although there is no copyhold tenant or only one copyhold tenant present at the court; and

(*c*) either by the lord or steward or deputy steward.

(2.) A court held under the authority of this section

shall be a good and sufficient customary court for all purposes:

Provided as follows:—

(*a*) A proclamation made at the court shall not affect the right or interest of any person not present at the court unless notice of the proclamation is duly served on him within one month after the holding of the court: and

(*b*) This section shall not apply to a court held for the purpose of receiving the consent of the homage to a grant of common or waste land to hold by copy of court roll.

This section, with the exception of the proviso contained in clause (*b*) of sub-sect. (2), repeats the provisions of sect. 86 of the Copyhold Act, 1841. The proviso in clause (*b*) of sub-sect. (2) re-enacts the provisions to the like effect contained in sect. 91 of the Copyhold Act, 1841. See the Treatise, pp. 303—305.

Power to make grants out of manor and out of court.

83. Where a lord may grant land to hold by copy of court roll or by any customary tenure the grant may be made—

(*a*) out of the manor; and

(*b*) without holding a court; and

(*c*) either by the lord or steward or deputy steward:

Provided that where by the custom of a manor the lord is authorised with the consent of the homage to grant any common or waste lands to hold by copy of court roll, this section shall not authorise the lord to make the grant without the consent of the homage assembled at a customary court.

This section appears to be intended to re-enact such of the provisions to the like effect contained in sect. 87 of the Copyhold Act, 1841, as were not in effect repealed by the provisions of sect. 6 of the Copyhold Act, 1887 (now replaced by sect. 81 of this Act). The provisions of sect. 87 of the Act of 1841, however, applied to the case of voluntary grants or re-grants of copyholds, which had escheated or been forfeited to the lord, and that section contained a proviso to the effect that the lands so granted or re-granted were to be granted only for such estate as the grantor had authority to make. This proviso has not been re-enacted; but it is believed that notwithstanding the terms of the present section, the rules as to the quantity and quality of the lord's estate and interest, when making voluntary re-grants, stated on pp. 46—48 of the Treatise, still hold good.

Manner of making admittance.

84.—(1.) A valid admittance to land of copyhold or customary tenure may be made—

(*a*) out of the manor; and

(*b*) without holding a court; and

(*c*) without a presentment by the homage of the surrender, instrument, or fact in pursuance of which the admittance is made; and

(*d*) either by the lord or steward or deputy steward.

(2.) Any person entitled to admittance may be admitted by his attorney duly appointed whether orally or in writing.

Sub-section (1) incorporates and re-enacts the provisions of sects. 88 and 90 of the Copyhold Act, 1841. See the Treatise, p. 65.

Sub-section (2) re-enacts the provisions of sect. (2) of the Copyhold Act, 1887. See the Treatise, p. 70.

Surrenders, &c. out of court to be entered on court rolls.

85.—(1.) Every surrender and deed of surrender which a lord is compellable to accept or accepts, and every will a copy of which is delivered to him either at a court at which there is not a homage assembled or out of court, and every grant or admittance made in pursuance of this Act shall be entered on the court rolls.

(2.) An entry made in pursuance of this section shall be as valid for all purposes as an entry made in pursuance of a presentment by the homage.

(3.) The steward shall be entitled to the same fees and charges for an entry under this section as for an entry made in pursuance of a presentment by the homage.

This section re-enacts the provisions of sect. 89 of the Copyhold Act, 1841. See the Treatise, p. 65.

Power to alienate ancient tenements in portions with licence of lord.

86.—(1.) A lord may, notwithstanding any custom to the contrary, grant a licence to a tenant to alienate his ancient tenement or any part thereof by devise, sale, exchange, or mortgage, and either together or in parcels.

(2.) On the alienation under this section of a part of a tenement, or of a tenement in parcels, the lord may apportion the yearly customary rent payable for the whole tenement.

(3.) A parcel alienated under this section shall be subject to its apportioned part of the customary rent, and shall be held of the lord of the manor in all respects and be conveyed in like manner as the original tenement.

(4.) A licence under this section must be in writing and must be entered on the court rolls.

(5.) A steward may give a licence under this section if authorised in writing by the lord, but not otherwise.

This section re-enacts the provisions of sect. 92 of the Copyhold

Act, 1841. As to the effect of alienating a tenement by parcels on heriots, the fine, and the rents and services, see the Treatise, pp. 206, 209, and 211.

87. In an action for the partition of land of copyhold or customary tenure the like order may be made as may be made with respect to land of freehold tenure. Partition of copyhold land.

This section replaces sect. 85 of the Copyhold Act, 1841. See the Treatise, p. 118.

88. Section thirty of the Conveyancing and Law of Property Act, 1881, shall not apply to land of copyhold or customary tenure vested in the tenant on the court rolls on trust or by way of mortgage. Descent of trust and mortgage estates in copyholds.

This section repeats the provisions of sect. 45 of the Copyhold Act, 1887. See the Treatise, p. 101.

89.—(1.) Where an agreement for enfranchisement is made independently of this Act, and the consideration for the enfranchisement is a gross sum and does not exceed five hundred pounds, the lord may make a statutory declaration stating the particulars of his estate and interest in the manor. Receipt for consideration where under 500*l.* for enfranchisement not under Act.

(2.) If the declaration shows that the lord is entitled to make the enfranchisement, and to receive the consideration money for his own use, an enfranchisement by the lord shall be valid, and the lord's receipt for the consideration money shall effectually discharge the person paying it from being bound to see to the application or being answerable for any loss or misapplication thereof.

(3.) Where a lord receives as the consideration for an enfranchisement within this section any money to which he is not in fact entitled for his own use, he shall be deemed to have received the money as trustee for the persons who are entitled thereto.

This section re-enacts the provisions to the like effect which were contained in sect. 26 of the Copyhold Act, 1887. The section of the Act of 1887 was expressed to apply "in cases of enfranchisement between the parties or otherwise without reference to the" Board of Agriculture, "where the compensation money does not exceed 500*l.*" See the Treatise, p. 402.

Part VIII.—Authority for Execution of Act.

90. The Board of Agriculture shall in every year make a general report of their proceedings in the execution of Board of Agriculture

to make annual report.

this Act, and the report shall be laid before both Houses of Parliament as soon as may be after it is made.

This section repeats the provision to the same effect contained in sect. 3 of the Copyhold Act, 1841. See sect. 12 of this Act for an instance of an occasion on which the Board must state the reasons for their action.

Delegation of powers of Board.

91.—(1.) The Board of Agriculture may delegate to any officer of the Board any of their powers under this Act except the power to confirm agreements or awards, or to frame forms, or to do any act required by this Act to be done under the seal of the Board.

(2.) The powers so delegated shall be exercised under such regulations as the Board direct.

(3.) The Board may recall or alter any power delegated under this section, and may, notwithstanding the delegation, act as if no delegation had been made.

(4.) All acts done by an officer of the Board lawfully authorised in pursuance of this section, shall be obeyed by all persons as if they proceeded from the Board, and the non-observance thereof shall be punishable in like manner.

This section re-enacts the provisions to the like effect contained in sect. 10 of the Copyhold Act, 1841. See the Treatise, p. 442.

Power of entry for purposes of Act.

92.—(1.) A member or officer of the Board of Agriculture and a valuer or umpire appointed under this Act, and their agents and servants respectively, may enter on any land proposed to be dealt with under this Act, and may make all necessary measurements, plans, and valuations of the land.

(2.) A person before entering on land under this section must give reasonable notice of his intention to the occupier of the land.

(3.) If a person does any injury in the execution of the powers of this section he shall make compensation therefor.

This section repeats the provisions of sect. 6 of the Copyhold Act, 1852. See the Treatise, pp. 390, 391.

Penalty for obstructing persons administering Act.

93. If any person obstructs or hinders a member or officer of the Board of Agriculture or a valuer or umpire acting under the powers of this Act, he shall be liable on summary conviction to a fine not exceeding five pounds.

This section replaces sect. 51 of the Copyhold Act, 1852.

PART IX.—DEFINITIONS, SAVINGS, AND REPEAL.

94. In this Act unless the context otherwise requires: Interpretation.

The expressions "admittance" and "enrolment" include every licence of any assurance, and every ceremony, act, and assent whereby the tenancy or holding of a tenant is perfected, and the expressions "admit" and "enrol" have corresponding meanings:

Similar definitions were contained in sect. 49 of the Copyhold Act, 1887.

The expression "ecclesiastical corporation" means an ecclesiastical corporation within the meaning of the Episcopal and Capitular Estates Act, 1851, and the Acts amending the same.

This definition is taken from the provisions of sect. 19 of the Copyhold Act, 1858. See the Treatise, p. 429, for the terms of the Episcopal, &c. Estates Act. The Cathedral or House of Christ Church, Oxford, is to be considered, for the purpose of enfranchisement of its lands, as a College of the University of Oxford. See 21 & 22 Vict. c. 44, s. 31.

The expression "enfranchisement" includes the discharge of freehold lands from heriots and other manorial rights:

This definition is taken from sect. 102 of the Copyhold Act, 1841. See, also, sect. 2 of this Act.

The expression "heriot" includes a money payment in lieu of a heriot:

This definition is taken from sect. 102 of the Copyhold Act, 1841.

The expression "land" includes an undivided share in land:

A similar definition was contained in sect. 15 of the Copyhold Act, 1843, and sect. 52 of the Copyhold Act, 1852.

The expression "lord" means a lord of a manor whether seised for life or in tail or in fee simple and whether having power to sell the manor or not, or the person for the time being filling the character of or acting as lord whether lawfully entitled or not, and includes all ecclesiastical lords seised in right of the church or otherwise, and lords farmers holding under them, and bodies corporate or collegiate:

This definition replaces the definition contained in sect. 102 of the Copyhold Act, 1841, as enlarged by sect. 52 of the Copyhold Act, 1852, and as confirmed by sect. 49 of the Copyhold Act, 1887.

The expression "manor" includes a reputed manor:

This definition is taken from sect. 102 of the Copyhold Act, 1841. See sect. 80 of this Act for a further definition of the expression.

The expression "rent" includes reliefs and services (not being services at the lord's court), and every payment or render in money, produce, kind, or labour due or payable in respect of any land held of or parcel of a manor:

This definition is taken from sect. 102 of the Copyhold Act, 1841, and sect. 49 of the Copyhold Act, 1887.

The expression "steward" includes a deputy steward and a clerk of a manor and any person for the time being filling the character of or acting as steward whether lawfully entitled or not:

This definition is taken from sect. 102 of the Copyhold Act, 1841, and sect. 52 of the Copyhold Act, 1852.

The expression "tenant"—

(*a*) includes all persons holding by copy of court roll or as customary tenants or holding land subject to any manorial right or incident, and whether the land is held to them and their heirs or to two or more in succession or for life or lives or years, and whether the land is held of a manor or not: and

This portion of the definition is taken from sect. 102 of the Copyhold Act, 1841, the words "and whether the land is held of a manor or not" being added.

(*b*) includes a surrenderee by way of mortgage under a surrender entered on the court rolls in possession or in receipt of the rents and profits of the land; and

This portion of the definition is taken from sect. 43 of the Copyhold Act, 1852. See sect. 1 of this Act, where it is provided that the power of enfranchising compulsorily cannot be exercised by a mortgagee who is not in possession, although he may have been admitted in respect of the mortgage.

(*c*) where land is held in undivided shares, means the person for the time being in receipt of at least two-thirds of the value of the rents and profits of the land.

This portion of the definition is taken from sect. 38 of the Copyhold Act, 1858.

The expression "valuer" includes an umpire.

This definition is taken from sect. 52 of the Copyhold Act, 1852.

95. Nothing in this Act— General savings.

(*a*) shall affect the custom of gavelkind in the county of Kent: or

A similar provision was contained in sect. 80 of the Copyhold Act, 1841, and in sect. 34 of the Copyhold Act, 1852. Sect. 21 of this Act also contains a provision to the same effect.

(*b*) shall authorise a lord to enclose any common or waste land: or

A similar provision was contained in sect. 82 of the Copyhold Act, 1841.

(*c*) shall revive any right to fines or other manorial claims which are at any time barred by any statute of limitations: or

This provision was contained in sect. 83 of the Copyhold Act, 1841.

(*d*) shall interfere with any enfranchisement which may be made independently of this Act: or

Sect. 83 of the Copyhold Act, 1841, and sect. 55 of the Copyhold Act, 1852, contained a similar provision.

(*e*) shall interfere with the exercise of any powers contained in any other Act of Parliament: or

This provision was contained in sect. 55 of the Copyhold Act, 1852.

(*f*) shall, except as in this Act expressly provided, apply to manors or land vested in her Majesty in right of the Crown or of the Duchy of Lancaster: or

This sub-section re-enacts the provisions of sect. 98 of the Copyhold Act, 1841.

—except as in this Act expressly provided.—See sects. 68, 69, 70, and 71 hereof.

(*g*) shall extend to or prejudice the estate, right, title, privilege, or authority of her Majesty in right of the Duchy of Cornwall, or the possessions thereof, or of the Duke of Cornwall for the time being: or

This sub-section replaces sect. 99 of the Copyhold Act, 1841.

(*h*) shall extend to manors belonging either in possession or reversion to any ecclesiastical corporation

or to the Ecclesiastical Commissioners where the tenant has not a right of renewal.

This sub-section re-enacts the provisions of sect. 4 of the Copyhold Act, 1858. See the Treatise, pp. 368 and 376.

Savings as to compulsory enfranchisement.

96. The provisions of this Act with respect to a compulsory enfranchisement shall not apply—

(*a*) to any copyhold land held for a life or lives or for years where the tenant has not a right of renewal: nor

A similar provision was contained in sect. 48 of the Copyhold Act, 1852. See the Treatise, pp. 368, 380.

(*b*) to manors in which her Majesty has any estate or interest in possession, reversion, or remainder.

A provision to this effect was contained in sect. 46 of the Copyhold Act, 1858.

Saving as to land registry. 25 & 26 Vict. c. 53. 38 & 39 Vict. c. 87.

97. Nothing in this Act shall affect any right acquired in pursuance of registration under the Land Registry Act, 1862, or the Land Transfer Act, 1875, except to such extent as may be recorded by registration in pursuance of those Acts.

This section is new, no similar provision having been contained in any of the Copyhold Acts, 1841 to 1887.

By sect. 3 of the Land Registry Act, 1862, it was provided, that "the registry shall be confined to estates of freehold tenure, and leasehold estates in freehold lands"; and by sect. 2 of the Land Transfer Act, 1875, it is enacted that "land shall not be registered under this Act unless it is of freehold tenure, or is leasehold held under a lease which is either immediately or mediately derived out of land of freehold tenure." As to the exclusion of copyholds from the provisions of the Land Transfer Act, 1897, see sects. 1 (4) and 24 thereof.

Application of Act to Crown.

98.—(1.) The provisions of this Act relating to—

(*a*) the grant of easements to a lord of a manor for mining purposes;

(*b*) the holding of customary courts although a copyhold tenant is not present;

(*c*) The making of grants or admittances out of the manor and out of court;

(*d*) the making of admittances without a presentment by the homage;

(*e*) the entry of surrenders and wills on the court rolls; and

(*f*) the partition of lands of copyhold or customary tenure,

shall extend to manors and lands vested in her Majesty in right of the Crown or of the Duchy of Lancaster.

This sub-section re-enacts the provisions of sect. 97 of the Copyhold Act, 1841. As to the grant of easements for mining purposes, see sect. 24 of the Act: as to the holding of customary courts without a copyhold tenant, see sect. 82: as to the making of grants or admittances out of the manor, and out of court, see sect. 83: as to the making of admittances without presentment, see sect. 84: as to the entry of surrenders, &c., see sect. 85: and as to partition, see sect. 87.

(2.) The said provision relating to the grant of easements shall extend to an enfranchisement of land held of a manor vested in her Majesty effected under the provisions of any existing Act of Parliament.

This sub-section appears to be intended to re-enact a somewhat similar provision contained in sect. 97 of the Copyhold Act, 1841.

99. This Act shall not extend to Scotland or Ireland. Extent of Act.

100. The enactments described in the Third Schedule to this Act are hereby repealed to the extent appearing in the third column of the said schedule. Repeal.

Provided that all awards, deeds, orders, certificates, scales, instruments, charges, and rentcharges made, executed, granted, created, or having effect under any enactment repealed by this Act shall have effect as if this Act had not passed.

101. This Act may be cited as the Copyhold Act, 1894. Short title.

SCHEDULES.

FIRST SCHEDULE.

FORMS.

1. DECLARATION TO BE MADE BY VALUERS AND UMPIRES. Sect. 5.

I, *A.B.*, declare that I will faithfully, to the best of my ability, value, hear, and determine the matters referred to me under the Copyhold Act, 1894.

A.B.

Made and subscribed in the presence of this day of 189 .

This form follows the form provided in sect. 28 of the Copyhold Act, 1852.

Sect. 41.

2. CERTIFICATE OF CHARGE.

The Board of Agriculture hereby certify that the land mentioned in the schedule to this certificate is charged with the payment to *A.B.*, his executors, administrators, or assigns, [*or* to the lord of the manor of for the time being] of the following series of periodical payments; that is to say, the sum of pounds payable on the day of , the further sum of pounds payable on the day of &c. [*or* with the principal sum of pounds with interest thereon after the rate of per cent. per annum, the principal to be repayable in manner following, that is to say [*state the terms*]]; and the Board further certify that after payment of the series of periodical payments above mentioned [*or* after payment of the principal money hereby charged and all arrears of interest due thereon] this certificate shall be void. In witness whereof the Board of Agriculture have hereunto set their official seal this day of 189 .

The Schedule.

E.F.
G.H.

This form is taken from the form provided in sect. 36 of the Copyhold Act, 1858; but in the form provided by the Act of 1858 the Board certified whether the charge was made in respect of consideration money or of expenses.

Sect. 41.

3. TRANSFER OF CERTIFICATE OF CHARGE.

I, *A.B.*, of hereby transfer the within certificate of charge to *C.D.* of .
Dated this day of 189 .

A.B.

This form was provided by sect. 37 of the Copyhold Act, 1858.

Sect. 42.

4. NOTICE OF RIGHT TO ENFRANCHISE.

Take notice that if you desire that the copyhold land which you hold of this manor of shall become freehold you are entitled to enfranchise the same on paying the lord's compensation and the steward's fees. The lord's compensation may be fixed either by agreement between the lord and you, or by a valuer appointed by the lord and you or through the agency of the Board of Agriculture, to whom you may make application, if you think fit, to effect the enfranchisement.

This form was provided by sect. 1 of the Copyhold Act, 1887.

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5. Power of Attorney. Sect. 48.

Manor of in the county of .

I, *A.B.*, of , hereby appoint *C.D.*, of to be my lawful attorney to act for me in all respects as if I myself were present and acting in the execution of the Copyhold Act, 1894.

Dated this day of 189 .

(Signed) *A.B.*

This form is taken from the form provided by sect. 39 of the Copyhold Act, 1858.

SECOND SCHEDULE.

Scale of Steward's Compensation.

When the consideration for the enfranchisement— Sect. 9.

	£	s.	d.
Does not exceed 1*l.*	0	5	0
Exceeds 1*l.* but does not exceed 5*l.*.....	0	10	0
„ 5*l.* „ „ 10*l.*.....	1	0	0
„ 10*l.* „ „ 15*l.*.....	2	0	0
„ 15*l.* „ „ 20*l.*.....	3	0	0
„ 20*l.* „ „ 25*l.*.....	4	0	0
„ 25*l.* „ „ 50*l.*.....	6	0	0
„ 50*l.* „ „ 100*l.*.....	7	0	0
For every additional 50*l.*, or fractional part of 50*l.*, over and above the first 100*l.*	0	10	0

The compensation to be exclusive of stamps and paper or parchment or map or plan which are to be paid for by the tenant.

This scale was provided in a Schedule to the Copyhold Act, 1887.

THIRD SCHEDULE.

Enactments Repealed. Sect. 100.

Session and Chapter.	Short Title.	Extent of Repeal.
4 & 5 Vict. c. 35 ..	The Copyhold Act, 1841	The whole Act.
6 & 7 Vict. c. 23 ..	The Copyhold Act, 1843	The whole Act.
7 & 8 Vict. c. 55 ..	The Copyhold Act, 1844	The whole Act.
15 & 16 Vict. c. 51..	The Copyhold Act, 1852	The whole Act.
21 & 22 Vict. c. 94..	The Copyhold Act, 1858	The whole Act.
23 & 24 Vict. c. 59..	The Universities and College Estates Act Extension Act, 1860.	Section four.
50 & 51 Vict. c. 73..	The Copyhold Act, 1887	The whole Act.

ADDENDA

TO THE

TREATISE ON THE LAW OF COPYHOLDS AND CUSTOMARY TENURES OF LAND: 2ND EDIT. 1893.

Page 7, lines 22, 23. The Act 3 & 4 Will. IV. c. 74 may now be cited as the Fines and Recoveries Act, 1833 (Short Titles Act, 1896).

Page 13, note (*q*). The Copyhold Acts were repealed, and are now replaced by the Copyhold Act, 1894 (57 & 58 Vict. c. 46).

Page 15, line 3, and note (*d*). Sect. 6 of the Copyhold Act, 1887, is now replaced by sect. 81 of the Copyhold Act, 1894.

Page 19, lines 15, 16. The Act 2 & 3 Will. IV. c. 71 may now be cited as the Prescription Act, 1832.

Page 21, line 14. The Act 8 & 9 Vict. c. 106 may now be cited as the Real Property Act, 1845.

Page 27, lines 4, 5, 20. The Act 3 & 4 Will. IV. c. 74 may now be cited as the Fines and Recoveries Act, 1833.

Page 33, line 20. The case of *Doe* v. *Scott* (4 B. & C. 706) may be cited as an authority for the statement that there was no "general occupancy" in copyholds.

Page 36, line 15. A steward cannot grant a licence to demise merely by virtue of his office, a special custom within the manor, or an authority from the lord, being necessary. Scroggs, Courts, 61; and see *Doe* d. *Leach* v. *Whitaker*, 5 B. & Ad. 409, 436.

Page 41, line 9. The cases of *Roe* v. *Summerset* (2 W. Bl. 692), *Swift* v. *Davis* (8 East, 354 n.), *Doe* v. *Scott* (4 B. & C. 706), and *Phillips* v. *Ball* (6 C. B. N. S. 811), may be cited as instances in which customs of barring lives were regarded as being reasonable.

Page 43. In the manor of Wellington, Somersetshire, the tenant's right of renewal is expressed thus in the words of the custom: "No man shall buy over our heads." (Soms. Archæol. Soc. Proceed., 1892, Vol. XVIII. p. 270.)

Page 45, line 2. The following extracts from the parliamentary survey of the manor of Penkneth in 1650, shows the nature of the estate held by the customary or conventionary tenants of manors forming parcel of the Duchy of Cornwall. The customs of the manor of Penkneth were stated to be as follows:—

"1. There is usually kept from seven years to seven years an assessionable court for the said manor as for others the manors of the Dukedom of Cornwall, known by the name of the Ancient Duchy;

also two law-courts every year; and a court-baron every three weeks, where, in any cause amongst the tenants, ought not to sue one the other out of the said courts of the manor.

"2. The customary tenants of the said manor hold to them and their heirs for ever, from seven years to seven years, according to the custom of the manor, paying and doing their usual rents, duties, and services accustomed for the same.

"3. If a customary tenant in possession of a customary tenement die, the widow of the said tenant hath the same during her life by the custom of the manor, and so is admitted to take the same. But she cannot surrender the said tenement in her widow's estate or second marriage, but only to the next heir of her deceased husband (if he be male); and in case that females be heirs, it cometh to the eldest of them, and is not divided by coparcenary: the use of taking hath time out of mind run in this manor.

* * * * * *

"5. No tenant can let his tenement for any longer time than for seven years to seven years, for he that is present tenant must, at the assession, be in present possession of that tenement which he taketh.

"6. The said customary tenant, not having any other estate of freehold without the said manor, cannot be returned in juries at the assizes or sessions, nor be called either without or within the manor before the clerk of the market or Judge of the Admiralty. . . ."

Page 47, line 10. A lord having only a limited estate or interest in the manor cannot grant licences to the tenants to make leases which shall last longer than his estate or interest, unless he does so under a power springing from the fee in the manor, or under the provisions of an Act of Parliament; and, accordingly, a lease made under the licence of a lord who is only a limited owner will determine with the lord's interest. *Petty* v. *Evans*, 2 Brownl. 40; *S. C.*, *sub nom.*, *Pettis* v. *Debbans*, 6 Vin. Abr. 161; Gilbert, Tenures, 299.

Page 49. The provisions of sect. 87 of the Copyhold Act, 1841, are now replaced by sect. 83 of the Copyhold Act, 1894. The power of making grants out of the manor and out of court may be exercised also in the case of manors or lands vested in her Majesty in right of the Crown or of the Duchy of Lancaster. Copyhold Act, 1894, s. 98, sub-s. (1) (c).

Page 51, line 3. By the customs of various manors the lords were formerly restrained from granting licences to their tenants to alienate their tenements otherwise than by entireties; but sect. 92 of the Copyhold Act, 1841, empowered lords to grant licences to their tenants to alienate any ancient customary tenement, or any part thereof, by devise, sale, exchange or mortgage; and the same section of the Act of 1841 also empowered the lord by a writing under his hand, which was to be entered on the court rolls of the manor, to grant authority to the steward to give such licences. These provisions are re-enacted by sect. 86 of the Copyhold Act, 1894.

Page 52, note (*a*). The provisions of the Copyhold Act, 1887, as to admittance by attorney, are now contained in sect. 84 (2) of the Copyhold Act, 1894.

Page 65, lines 17—28, and notes (*x*) and (*y*). The provisions of the Copyhold Act, 1841, s. 89, requiring surrenders and other assurances

made or accepted out of court to be entered on the court rolls, and declaring that entries made on the court rolls in pursuance of the provisions of the Act should be as valid for all purposes as entries made in pursuance of a presentment by the homage, are now contained in sect. 85 of the Copyhold Act, 1894; and sect. 84, sub-s. (1) (c), of the Act of 1894 replaces sect. 90 of the Act of 1841 in providing that a valid admittance to land of copyhold or customary tenure may be made without a presentment by the homage of the surrender, instrument, or fact in pursuance of which the admittance was made. The provisions of the Act of 1894 relating to the making of admittances without a presentment by the homage, and the entry of surrenders and wills on the court rolls, extend to manors and lands vested in her Majesty in right of the Crown or of the Duchy of Lancaster. Copyhold Act, 1894, s. 98, sub-s. (1) (d) and (e).

Page 66, note (*z*). For the reference to the Copyhold Act, 1841, substitute a reference to the Copyhold Act, 1894, s. 83; and for the reference to the Copyhold Act, 1887, substitute a reference to the Act of 1894, s. 81, and see also the Law of Commons Amendment Act, 1893 (56 & 57 Vict. c. 57).

Ibid. Voluntary conveyances. It is to be noted with respect to voluntary conveyances that the Voluntary Conveyances Act, 1893 (56 & 57 Vict. c. 21), provided, with a saving as to transactions completed before the passing of the Act on the 29th of June, 1893, that no voluntary conveyance, whether made before or after the passing of the Act, if in fact made *bonâ fide* and without any fraudulent intent, should thereafter be deemed fraudulent or covinous within the meaning of the Act 27 Eliz. c. 4, by reason of any subsequent purchase for value, or be defeated under any of the provisions of the said Act by a conveyance made upon any such purchase, any rule of law notwithstanding.

Pages 68, 69. With respect to implied admittance, it should be noted that the subject is mentioned again at pp. 150, 151 of the Treatise in connection with the admittance of customary heirs. In addition to the remarks on pp. 150, 151 of the Treatise, it may be pointed out that in the case of *The Ecclesiastical Commissioners for England* v. *Parr*, (1894) 2 Q. B. 420, it was held by the Court of Appeal that the acceptance of quit-rents in respect of copyholds by the lord of a manor, or his steward, from a person paying them as heir or surrenderee amounts to, or implies, an admittance of the person as tenant of the copyholds, if the lord or steward knows that the quit-rents are paid by him as heir or surrenderee. With respect to the manner of making admittance, it may be mentioned that the Copyhold Act, 1894, repeating the provisions contained in the Copyhold Act, 1841, enacts, in sect. 84, sub-sect. (1), that a valid admittance to land of copyhold or customary tenure may be made out of the manor, and without holding a Court, and without a presentment by the homage of the surrender, instrument, or fact, in pursuance of which the admittance is made, and either by the lord or his steward or deputy-steward. These provisions as to the making of admittances out of the manor and out of Court, and without a presentment by the homage, extend to manors and lands vested in her Majesty in right of the Crown, or of the Duchy of Lancaster. Copyhold Act, 1894, s. 98, sub-s. (1) (c) and (d).

Page 70. Tenant on admittance to receive notice. Notes (*c*) and (*d*). For the references to the Copyhold Act, 1887, substitute references to the

Copyhold Act, 1894, s. 42. A form of the notice is given in Form 4 of the First Schedule to the Act of 1894.

Page 70. Admittance by attorney. Sect. 84, sub-sect. (2), of the Copyhold Act, 1894, repeats the provisions of the Copyhold Act, 1887, as to admittance by attorney.

Page 71, note (*i*). The authority for the statement that the appointment may now be made orally is 57 & 58 Vict. c. 46 (Copyhold Act, 1894), s. 84 (2).

Page 79. Mortgage. Sect. 2 of the Trustee Extension Act, 1852, was repealed by the Trustee Act, 1893. The vesting order mentioned on this page of the Treatise will now be made under sect. 26 (vi.) of the Trustee Act, 1893. For the reference in note (*r*), substitute the reference 56 & 57 Vict. c. 53, s. 26.

Page 89. With respect to powers of appointment, it may be mentioned that if a copyholder by his will gives to anyone a power of appointing the land to a purchaser, the person in whose favour the appointment is made is the person to be admitted, and he takes the land as if it had been devised to him directly by the will. *Beal* v. *Shepherd*, Cro. Jac. 199.

Page 93. Estate of married woman. A declaration of trust of a copyhold by a married woman, who is tenant on the rolls of the manor, by a deed acknowledged under the Fines and Recoveries Act, 1833, is a disposition within the meaning of sect. 77 of that Act, and it will effectually bind the copyhold as against the customary heir. (*Carter* v. *Carter*, (1896) 1 Ch. 62.) It seems that such a declaration as that mentioned will not fall within the proviso to sect. 77, for the object of the declaration will, in general, be to effect a disposition of the equitable interest without disturbing the legal title, and that object could not be effected by a surrender of that interest into the hands of the lord of the manor. (*Carter* v. *Carter*, *supra*, pp. 69, 70.)

Pages 96—100. The sections of the Trustee Acts of 1850 and 1852 which are cited in these pages were repealed by the Trustee Act, 1893, but their provisions are, in effect, re-enacted by that Act, and will now be found, for the most part, in sects. 26—34 thereof.

Page 96, note (*b*). Insert 56 & 57 Vict. c. 53.

Ibid., note (*e*). Insert 56 & 57 Vict. c. 53, ss. 26, 28.

Ibid., note (*f*). Insert 56 & 57 Vict. c. 53, ss. 22, 29.

Page 97, notes (*e*), (*f*), and (*g*). Insert 56 & 57 Vict. c. 53, s. 26.

Ibid., note (*h*). Insert 56 & 57 Vict. c. 53, s. 27.

Ibid., note (*i*). Insert 56 & 57 Vict. c. 53, s. 26.

Ibid., note (*k*). Insert 56 & 57 Vict. c. 53, s. 29.

Page 98, note (*l*). Insert 56 & 57 Vict. c. 53, ss. 25, 26, 32.

Ibid., note (*m*). Insert 56 & 57 Vict. c. 53, s. 33.

Ibid. Effect of vesting order. The 28th section of the Trustee Act, 1850, is now replaced by sect. 34 of the Trustee Act, 1893.

Page 100, notes (*s*) and (*t*). The references will now be 56 & 57 Vict. c. 53, ss. 30 and 31 respectively.

Ibid., note (*u*). The reference will now be 56 & 57 Vict. c. 53, ss. 25, 26, and 32.

Ibid., line 22. Read: sect. 34 of the Trustee Act, 1893.

Ibid., lines 24, 25, and note (*x*). The sections of the Conveyancing and Law of Property Act, 1881, referred to were repealed by the Trustee Act, 1893, but their provisions were re-enacted in sect. 12 thereof.

Page 101, note (*y*). The provisions of sect. 13 of 15 & 16 Vict. c. 55 do not appear to have been expressly repealed by, or repeated in, the Trustee Act, 1893.

Ibid., lines 25, 26. Sect. 45 of the Copyhold Act, 1887, is now replaced by sect. 88 of the Copyhold Act, 1894.

Page 103, lines 20, 21. The Friendly Societies Act, 1875, is now replaced by the Friendly Societies Act, 1896. The reference in note (*n*) will now be 59 & 60 Vict. c. 25, s. 48.

Ibid., lines 21, 22. The Industrial, &c. Societies Act, 1876, is now replaced by the Industrial and Provident Societies Act, 1893; and the reference in note (*o*) will now be: 56 & 57 Vict. c. 39, ss. 37 and 43 (2).

Page 104, note (*q*). To the reference given, add *Easton* v. *Penny*, 67 L. T. 290: 41 W. R. 72.

Page 111. Sect. 30 of the Trustee Act, 1850, is now replaced by sect. 31 of the Trustee Act, 1893.

Page 118. The provisions of the Copyhold Act, 1841, as to the partition of copyholds are now contained in sect. 87 of the Copyhold Act, 1894, and they extend to manors and lands vested in her Majesty in right of the Crown or of the Duchy of Lancaster. Copyhold Act, 1894, s. 98 (1) (*f*).

Ibid., note (*y*). The first reference will now be 56 & 57 Vict. c. 53, s. 31.

Page 151. The subject of implied admittance has already been mentioned in this supplement. *Ante*, p. 69. Reference may be made to the case of *The Ecclesiastical Commissioners for England* v. *Parr* ((1894) 2 Q. B. 420), as confirming the view in regard to the acceptance of rent constituting an admittance by implication.

Ibid., note (*x*). The reference is now 57 & 58 Vict. c. 46, ss. 84, 85.

Page 153, lines 8—10. The statement that proceedings for seizure *quousque* should be taken within a reasonable time after the death of the last tenant, because the lord's right of entering upon and seizing the lands appeared to be an "entry or distress" within the meaning of the statute, does not now, in view of the judgments delivered in the Court of Appeal in the case of *The Ecclesiastical Commissioners for England* v. *Parr*, accurately summarize the law on this point. The statement in the text was founded on an opinion expressed by Mr. Justice Kay, in the case of *In re Lidiard and Jackson's and Broadley's Contract* (42 Ch. Div. 254); but in the case of *The Ecclesiastical Commissioners for England* v. *Parr*, above mentioned, the same learned judge stated that, on reconsidering the matter, he had come to a different conclusion. From the judgments delivered in the last-mentioned case, it conclusively appears that the Statutes of Limitation apply to proceedings for a seizure *quousque* by the

lord, but that the period fixed by these statutes begins to run only from the time at which, after the necessary proclamations have been made and the necessary statutory notice (see Copyhold Act, 1894, s. 82, sub-s. 2 (a)) has been given, the heir has failed to take admittance.

Page 154, note (*b*). The reference will now be 57 & 58 Vict. c. 46, s. 82, sub-s. 2 (a).

Page 156, note (*d*). The reference will now be 57 & 58 Vict. c. 46, s. 42.

Page 158, lines 23—25. The provisions of the Copyhold Act, 1841, as to the commutation of certain of the copyhold services and incidents, are not repeated in the Copyhold Act, 1894. The effect of enfranchisement, whether voluntary or compulsory, is to change the tenure from copyhold into freehold. Copyhold Act, 1894, s. 21.

Page 198, lines 25—27. The explanation here given of heriot-service is confirmed by the judgments of Lord Esher, M. R., and Rigby, L. J., in the Court of Appeal in the case of *Western* v. *Bailey*, (1897) 1 Q. B. 86. In the Court below, Wills, J., had held that heriot-service might be an incident of copyholds as well as of freeholds (*Western* v. *Bailey*, (1896) 2 Q. B. 234); but in the Court of Appeal the judges above referred to dissented from that view, and held that the heriot, which was found to be due in that case, was due by virtue of the custom of the manor.

Page 203. Remedies for heriot custom. In the case of *Western* v. *Bailey*, (1897) 1 Q. B. 86, the Court of Appeal held that a lord who is entitled to a heriot by virtue of a custom within his manor may seize a beast or chattel belonging to the tenant as the heriot, though it never had been within, or in any way connected with, the manor.

Page 204, line 11. The words "or owner" must now be struck out, as the Copyhold Act, 1894, does not re-enact the provisions of the Copyhold Act, 1887, whereby an "owner" of land, as therein defined, was empowered to compel the extinguishment of a heriot or other manorial incident.

Ibid., note (*h*). The reference will now be 57 & 58 Vict. c. 46, s. 2.

Page 211, lines 4 and 5. The Copyhold Acts of 1852, 1858, and 1887, are now replaced by the Copyhold Act, 1894, which, however, does not contain the provisions of the Act of 1887 enabling an "owner" of land, as therein defined, to compel the extinguishment of the relief to which the land is liable.

Ibid., note (*n*). The reference will now be 57 & 58 Vict. c. 46, s. 2.

Page 212, note (*u*). Add to the authorities cited, *Howitt* v. *Earl of Harrington*, (1893) 2 Ch. 497.

Page 212, line 10. Delete the words "or owner." In note (*a*) the reference will now be 57 & 58 Vict. c. 46, s. 2.

Page 219. It may be noted that the Copyhold Act, 1894, provides that no enfranchisement under the Act, nor any provision in the Act, is to revive any right to fines or other manorial claims which are at any time barred by any Statute of Limitations. Act of 1894, s. 95 (c). It has been held that the Statutes of Limitations do not run as against a lord of a manor so as to deprive him of his quit rents, or to make the copyhold hereditaments freehold, until after the three usual proclamations, or such

a neglect of the copyhold tenant to come in after an express notice, as amounts in fact to a refusal. *Beighton* v. *Beighton*, 43 W. R. 658.

Page 220, note (*b*). The reference will now be 57 & 58 Vict. c. 46, s. 82.

Page 222, note (*m*). The provisions of the Trustee Act, 1850, here referred to, are now replaced by sects. 26, 29 and 32 of the Trustee Act, 1893.

Page 223, Enfranchisement, and note (*t*). The provisions of the Copyhold Act, 1887, are now contained in sect. 6, sub-s. (1), of the Copyhold Act, 1894.

Page 225, line 3, and note (*k*). The provisions of the Trustee Act, 1850, here referred to are now contained in sect. 48 of the Trustee Act, 1893.

Page 238, note (*l*). The reference will now be 57 & 58 Vict. c. 46, s. 23 (1).

Pages 243, 244, notes (*a*), (*b*) and (*c*). The Merchant Shipping Acts are now consolidated by the Merchant Shipping Act, 1894, sects. 524—526 of which deal with the rights of lords of manors to wreck.

Page 246, line 2. Under the terms of the Local Government Act, 1894 (56 & 57 Vict. c. 73, s. 27), the representation is to be made to the Home Secretary by the district council of the district within which the fair is held.

Page 269, note (*t*). To the authorities cited add *Baring* v. *Abingdon*, (1892) 2 Ch. 374.

Page 275, line 21. Under the provisions of the Law of Commons Amendment Act, 1893 (56 & 57 Vict. c. 57), no inclosure or approvement of any part of a common, purporting to be made under the Statute of Merton and the Statute of Westminster the Second, or under either of these statutes, is to be valid, unless it is made with the consent of the Board of Agriculture, who, in giving or withholding their consent, are to have regard to the same conditions, and are to hold the same inquiries, if necessary, as are directed by the Commons Act, 1876, to be taken into consideration and held by the Board, when they are forming an opinion whether an application under the Inclosure Acts, 1845 to 1882, shall be acceded to or not.

Page 276. The power of the lord of the manor to approve part of the waste is now subject to the provisions of the Law of Commons Amendment Act, 1893, hereinbefore mentioned.

Pages 279, 280. The provisions of the Copyhold Act, 1887, preventing grants of the waste by the lord, with consent of the homage or by custom, to be held as copyholds, will now be found in sect. 81 of the Copyhold Act, 1894.

It may be noted that the provisions of the Copyhold Act, 1894, enabling a lord to enfranchise the copyholds of his manor and the freeholds held of him, do not authorise him to inclose any common or waste land. Act of 1894, s. 95.

Page 280. In the case of *Ramsey* v. *Cruddas*, (1893) 1 Q. B. 228, it was held that a custom in a manor for the lord, with the consent of the homage, to make grants of portions of the waste to be held by copy of

court roll, was a good custom, although a sufficiency of common was not left after the making of any grant.

Page 302, line 3. An owner of a court leet may be entitled by custom or prescription to have an annual payment made to him on the leet day by the inhabitants within the jurisdiction of his Court. This annual payment is in some cases called cert money, *certum letæ*, *capitagium*, and leet silver, and in other places it is known as the common fine or head money. See *Bullen's Case*, 6 Rep. 77 b. But the lord cannot distrain for this payment, because it is against common right, unless he can prove a prescriptive right to enforce the payment by distress. *Godfrey's Case*, 11 Rep. 42 a, 44 b.

Page 302, line 14. A steward of a court-leet cannot impose a fine upon a person who is not present at the Court, but may have him amerced; and the amercement must be affeered, or assessed at a moderate sum, by "the lawful men of the vicinage." *Fletcher* v. *Ingram*, 5 Mod. 127, 130. An amercement imposed at a court-leet and duly affeered, may be recovered either by an action of debt or by distress, and it is not necessary to prove a prescriptive right to distrain in such a case; but it is otherwise in the case of an amercement in a court-baron. *Jenyx* v. *Applefourth*, 1 Brownl. 182, 183. A fine imposed in a court-leet or in a court-baron may be recovered by an action of debt. *Lincoln* (*Earl of*) v. *Fyster*, Cro. Eliz. 581; but see Co. Litt. 295 a.; and *Att.-Gen.* v. *White*, Comyn's Rep. 433, 435, as to a difference, formerly, in the cases of the imposition of a fine in these courts where the person died before the fine was recovered.

Page 304, note (*x*). The reference will now be 57 & 58 Vict. c. 46, s. 82.

Page 305, note (*e*). The reference will now be 57 & 58 Vict. c. 46, ss. 82, 83. These provisions extend to manors and lands vested in her Majesty in right of the Crown or of the Duchy of Lancaster.

Ibid., note (*f*). The reference will now be 57 & 58 Vict. c. 46, s. 81.

Page 307, note (*p*). Add, *Ramsey* v. *Cruddas*, (1893) 1 Q. B. 228.

Page 308. As to whether jurors must be unanimous, the case of *Ramsey* v. *Cruddas*, *supra*, is an authority to the effect that the finding of a majority of the homage will bind the other tenants and commoners.

Page 310. The interpretation of the word "steward" as used in the Copyhold Act, 1894, is contained in sect. 94 thereof. For the references in notes (*i*) and (*k*) respectively, substitute the reference 57 & 58 Vict. c. 46, s. 94.

Page 311. Sect. 47 of the Copyhold Act, 1894, contains the provision that the steward is, in general, to represent the lord in all enfranchisement proceedings. The matters in which the steward is not entitled to deal on behalf of the lord are set out in sects. 23 (2) and 86 (5) of the Act of 1894. For the reference in note (*p*) substitute the reference 57 & 58 Vict. c. 46, ss. 23 (2), 47, 86 (5).

Page 312. The power of the steward to hold customary courts in the absence of copyhold tenants is declared by sect. 82 of the Copyhold Act, 1894; and sect. 42 thereof contains the provision that the steward is to give the tenant on admittance, or on enrolment on alienation, notice of his right to enfranchise the land, and to extinguish any manorial inci-

dent affecting it. For the references in note (*r*) substitute the references 57 & 58 Vict. c. 46, ss. 82, 83, 84, 86 (5).

Page 316. Inspection of the court rolls after enfranchisement is now provided for by sect. 62 of the Copyhold Act, 1894; and the provisions of the former Copyhold Acts as to the custody of the court rolls of a manor when all the lands have been enfranchised are now contained in sect. 64 of the Act of 1894.

Page 323. The provisions of the Copyhold Act, 1887, as to the giving of notice by the steward to the tenant of the right to enfranchise, are now contained in sect. 42 of the Act of 1894.

Page 352. When a lord has a right to grant land to be held by copy of court roll, or by any customary tenure, he may make the grant out of the manor, and without holding a court; and the steward or deputy steward may act on his behalf in the making of the grant. Copyhold Act, 1894, s. 83.

Pages 353, 354. From the terms of sect. 6, sub-sect. (1), and sect. 21, sub-sect. (1) (b), of the Copyhold Act, 1894, it clearly appears now that the lord's right to escheat for want of heirs is saved only in cases of either compulsory or voluntary enfranchisements effected under the provisions of the Act of 1894. The terms of sect. 4 of the Copyhold Act, 1887, were so wide as to leave the matter open to doubt whether, in the case of an enfranchisement effected after September 16th, 1887, and operating at common law, and independently of the Copyhold Acts, the enfranchising lord's right to escheat did not still continue; but the terms of the sections above mentioned of the Copyhold Act, 1894, leave the matter no longer in doubt, and on an enfranchisement operating at common law the lord is not entitled to a right of escheat for want of heirs.

Page 355. With respect to enfranchisements effected independently of the Copyhold Act, 1894, it is to be noted that that Act provides (sect. 89) that where there is an agreement for enfranchisement, and the consideration is a gross sum, not exceeding 500*l.*, the lord may make a declaration stating the particulars of his estate and interest in the manor. If this declaration shows that the lord is entitled to make the enfranchisement, and to receive the consideration-money for his own use, the lord's enfranchisement will be valid, and his receipt for the consideration-money will effectually discharge the person paying it from being bound to see to the application of the money, or being answerable for any loss or misapplication thereof. If it is afterwards shown that the lord was not in fact entitled to receive the consideration-money for his own use, the lord is to be deemed as having received the amount as trustee for the persons who are properly entitled to the money.

Page 356. The right of the owner of the enfranchised land to inspect the court rolls, and to take copies thereof is now declared by sect. 62, sub-sect. (1), of the Copyhold Act, 1894.

Page 358, lines 30—33. It has already been pointed out (see above, pp. 353, 354) that, in the case of enfranchisement by deed operating at common law, the lord will not retain his right to escheat for want of heirs.

Page 359. All the Copyhold Acts mentioned on this page were repealed, and are now replaced by the Copyhold Act, 1894.

Pages 361–365. The provisions of the Copyhold Act, 1841, and of the subsequent Copyhold Acts relating to separate commutations of certain manorial rights in respect of lands of copyhold and customary tenure, are not repeated in the Copyhold Act, 1894. The Copyhold Act, 1894, following the scheme of the Copyhold Act, 1852, as modified by the provisions of the Copyhold Acts, 1858 and 1887, enables either the lord of the manor or the admitted tenant of any copyhold land to obtain the enfranchisement of such land, and the lord of a manor whereof freehold land is held subject to any heriots, quit-rent, or other manorial incident, or the tenant of such land, to extinguish the manorial incidents, and to release the land therefrom. The terms of sect. 27 of the Act of 1852 and of sect. 7 of the Act of 1858 clearly showed that the Legislature intended that the right to obtain extinguishment was meant to be exercised in respect of freehold land: but by sect. 7 of the Copyhold Act, 1887, it was provided that the lord or tenant of *any* land subject to any heriot, or to any quit-rent, free rent, or other manorial incident might require and compel the extinguishment of such rights or incidents, and that provision is repeated in sect. 2 of the Act of 1894. Although it may appear at first sight that this provision would enable either the lord of the manor or the tenant of copyhold land to obtain the extinguishment of any right to a heriot or any other manorial incident separately and apart from an entire enfranchisement of the copyhold land, yet it is believed that where the land is of copyhold tenure, the proceedings to be taken either by the lord or by the tenant must be for the entire enfranchisement of the land and not for the separate extinguishment of any one manorial incident affecting it.

Voluntary Enfranchisement.

In addition to the summary contained on pp. 365—374 of the Treatise, it may be useful to mention the following points:—

Page 365. Although the Copyhold Act, 1841, has been repealed by the Copyhold Act, 1894, as from and after the 29th of August, 1894, it is provided by sect. 10 of the Act of 1894 that all awards, deeds, orders, certificates, instruments, charges, and rentcharges made, executed, granted, created, or having effect under the repealed Act are to have effect as if the Act of 1894 had not been passed.

The power to effect a voluntary enfranchisement is now declared by sect. 14 of the Act of 1894; and the enfranchisement may be on such terms as, subject to the provisions of the Act, are settled by agreement between the lord and the tenant. The agreement is not chargeable with stamp duty. Sect. 58 (1). The lord of a reputed manor may enfranchise. Sect. 94. If the land is held in undivided shares, the person who is for the time being in receipt of at least two-thirds of the value of the rents and profits of the land, is tenant of the land for the purpose of enfranchising. Sect. 94. If the tenant pays the whole of the cost of the enfranchisement, notice of the proposed enfranchisement need not be given either by the lord or by the tenant to the person entitled to the next estate of inheritance in remainder or reversion in the manor or land to be affected by the enfranchisement, sect. 14 (3).

Page 368. The provision that, as regards both compulsory and voluntary enfranchisements, the Copyhold Act, 1894, is not to apply to any manor belonging, either in possession or reversion, to any ecclesiastical corpora-

tion or to the Ecclesiastical Commissioners, in which the tenant has not a right of renewal, will be found in sect. 95, sub-sect. (h), of the Act of 1894.

Pages 368, 369. In accordance with the provisions of sect. 16, sub-sect. (1), of the Act of 1894, a voluntary enfranchisement is generally effected by a deed of the nature mentioned. A form of such deed will be found on p. 490 of the Treatise, but the reference therein contained to sect. 48 of the Copyhold Act, 1852, will now be replaced by a reference to sect. 23, sub-sect. (1), of the Act of 1894.

Page 369. The provisions as to the form which the consideration for a voluntary enfranchisement may take, will be found in sects. 15 and 17 of the Act of 1894.

Pages 369—371. Sects. 25 and 26 of the Act of 1894 contain the provisions as to the manner in which the enfranchisement consideration money may be paid, and as to the power to give receipts therefor. The provisions of sect. 26 of the Copyhold Act, 1887, which are set out at the top of p. 371, are now, by sect. 89 of the Act of 1894, declared to apply to cases of enfranchisement where an agreement therefor is made independently of the Copyhold Act, 1894.

Page 371. The remedies which a person has who pays the enfranchisement consideration money to a lord not having title thereto are now declared by sect. 26, sub-sects. (3) and (4) of the Act of 1894. With respect to the lord's remedy where the enfranchisement consideration money is not paid, it is to be noted that the Act of 1894 re-enacts, by sect. 19, most of the provisions contained in sects. 70 and 71 of the Copyhold Act, 1841, which were expressly repealed by the Statute Law Revision Act, 1874 (No. 2). By virtue of the provisions of sect. 19 of the Act of 1894, the land becomes, after the enfranchisement is effected, charged with every sum payable to the lord in respect of the enfranchisement, with interest thereon from the day fixed by the enfranchisement deed for payment thereof until payment. Further, by virtue of the provisions of the same section, the lord will be deemed to be seised of the land, subject to the charge above mentioned, as a mortgagee in fee, and may distrain on the land for any interest due in respect of the charge, as if it were rent in arrear; and the charge is to be deemed a first charge on the land subject thereto, and is to have priority over all incumbrances whatsoever affecting the land, except tithe rentcharges and any charges having priority by statute, notwithstanding that these incumbrances are prior in date to the enfranchisement.

Page 372. The provisions applicable to the case where the enfranchisement consideration is a rentcharge are contained in sect. 17 of the Act of 1894. Sect. 20 of the Act of 1894 provides that the date at which a voluntary enfranchisement is to take effect, and the commencement of a rentcharge in consideration of a voluntary enfranchisement, may be fixed by the memorandum of confirmation of the enfranchisement deed, and, if not so fixed, is to be the date of the confirmation of the deed by the Board of Agriculture; and sect. 27 deals with the dates of payment, the incidence, and the recovery of rentcharges.

Page 373. The circumstances in which, and the terms upon which, the enfranchised land may be charged with the enfranchisement consideration money and expenses are now set out in sect. 36 of the Act of 1894.

Sect. 18 of the Act of 1894 contains the provisions which apply to the case where land is conveyed as the consideration for a voluntary enfranchisement, but the provisions of sect. 9 of the Copyhold Act, 1843 (which entitle the person to whom any land, subject to an existing lease, is conveyed, to act as the person entitled to the reversion upon such lease, and to distrain for the rents and enforce the covenants) do not appear to be re-enacted in the Act of 1894.

Pages 373, 374. The effect of enfranchisement is dealt with in Part III. of the Act of 1894, comprising sects. 21, 22, 23 and 24.

By sect. 80 of the Copyhold Act, 1894, the Board of Agriculture are empowered, by order under their seal, to direct that a part of the manor specified in the order is to be considered as a manor for the purpose of effecting an enfranchisement under the Act, and thereupon all the provisions of the Act are to apply accordingly; but an order is not to be made under the section for the purposes of a voluntary enfranchisement unless the lord of the manor consents in writing under his hand and seal.

Compulsory Extinguishment of Manorial Rights and Incidents affecting Lands of any Tenure.

The provisions of the Act of 1894 on this point are contained in sect. 2 and sect. 3, sub-sect. (b). These provisions follow, in the main, the provisions of the previous Copyhold Acts, but it may be noted that the Act of 1894 does not expressly repeat the provision contained in sect. 7 of the Copyhold Act, 1887, whereby an "owner," or person entitled to the land for any term of years originally granted for ninety-nine years or upwards, was entitled to compel the extinguishment of any manorial incident. See sect. 94 of the Act of 1894 for the interpretation of the word "tenant" as used in the Act. By the same section "rent" is expressed as comprising "reliefs and services (not being services at the lord's court), and every payment or render in money, produce, kind or labour due or payable in respect of any land held of or parcel of a manor."

Compulsory Enfranchisement.

Page 375. The right to enfranchise copyholds compulsorily is now declared by sect. 1 of the Act of 1894. It will be observed that it is a condition precedent to compulsory enfranchisement at the instance of either the lord or the tenant that there should be "an admitted tenant." The terms "admittance" and "admit" are defined in sect. 94 of the Act as including "every licence of any assurance, and every ceremony, act and assent whereby the tenancy or holding of a tenant is perfected." The definition is wide enough to include the case of "implied admittance" (as to which, see the case of *The Ecclesiastical Commissioners for England* v. *Parr*, (1894) 2 Q. B. 420); and accordingly it will be sufficient if "the admittance alleged is one by necessary legal implication by reason of acts done within the manor." *Per* Lord Esher, M. R., in *The Ecclesiastical Commissioners for England* v. *Parr*, *supra*, at p. 427. Sect. 3, sub-sects. (a) and (c), set out the further conditions as to payment of fines and fees which must be performed by the tenant, if the enfranchisement is at his instance.

Page 376. Sect. 95, sub-sect. (k), of the Act of 1894 repeats the former provisions of the Copyhold Acts, excluding the operation of these Acts from manors belonging either in possession or reversion to any ecclesiastical corporation, or to the Ecclesiastical Commissioners, where the tenant has not a right of renewal; and sects. 68 to 71 of the Act of 1894 contain the special provisions of the former Copyhold Acts as to enfranchisements in Crown manors and manors held in joint tenancy with the Crown. The definition of the term "lord" will now be found in sect. 94 of the Act of 1894.

Pages 376, 377. The power of the Board of Agriculture and of the tenant of the copyhold land to require a declaration from the lord, or his steward, of the lord's title is set out in sect. 51 of the Act of 1894.

Page 377. Sect. 45 of the Act of 1894 provides for the case of the lord being an infant or a lunatic, or being abroad, or unknown, or not ascertained; sect. 46 deals with the case of the lady of the manor being a married woman; and sect. 44, sub-sects. (1) and (2), with the case of the lords being trustees. The provision that the steward is, in general, to act for the lord in all enfranchisement proceedings will be found in sect. 47 of the Act. The occasions in which the Act of 1894 expressly requires a special authority from the lord to the steward to enable him to act on the lord's behalf are set out in sect. 23, sub-sects. (1) and (2), and in sect. 86, sub-sects. (1) and (5).

Pages 377, 378. The provisions dealing with the appointment of an agent by the lord are contained in sect. 48 of the Act of 1894, and a form in which the appointment may be made is given in Form No. 5 of the First Schedule to the Act.

Page 378. The provisions of the former Acts as to the death of the lord while the enfranchisement proceedings are pending, and as to the succession of his rights and liabilities, are contained in sects. 49 and 50 of the Act of 1894.

Pages 378, 379. "Tenant" is defined in sect. 94 of the Act of 1894, and sect. 1 and sect. 3, sub-sects. (a) and (c), set out the conditions which must be fulfilled before the tenant can compulsorily enfranchise his copyhold land. The conditions which must be performed by the tenant where his land is freehold, or is land which the Act of 1894, borrowing from the language of sect. 6 of the Copyhold Act, 1858, describes as "customary freehold," are declared by sect. 3, sub-sect. (b). The words in sect. 7 of the Copyhold Act, 1887, enabling "an owner of land" (including any person entitled to the land for any term of years originally granted for ninety-nine years or upwards) are not expressly repeated in the Act of 1894, in the definition of "tenant."

Page 380. The right of a mortgagee in possession to require, or to join in obtaining and effecting, an enfranchisement is declared by sects. 1, 39, 94 ("tenant" (b)) of the Act of 1894; and sect. 96 (a) contains the enactment that the provisions of the Act as to compulsory enfranchisement are not to apply to any copyhold land held for a life or lives or for years, where the tenant has not a right of renewal. The provision applicable to cases where the land is held in undivided shares, is contained in sect. 94, "Tenant" (c).

Sect. 79 of the Act of 1894 deals with the case of enfranchisement in

manors, where the fines are certain, and derivative interests are entered on the court rolls.

Pages 380, 381. The right of a tenant, on his admittance or enrolment, to receive notice of his right to enfranchise, is declared by sect. 42, sub-sects. (1) and (2), and a form of the notice is contained in the First Schedule to the Act, form No. 4. The consequence of the steward's neglect to serve such notice is stated in sect. 42, sub-sect. (3). The definition of the word "tenant" is contained in sect. 94.

Page 381. The provisions applicable to the case where the tenant appoints an agent to act for him, are set out in sect. 48 of the Act of 1894. The exemption of the power of attorney from stamp duty is declared by sect. 58, sub-sect. (1).

Pages 381, 382. Sect. 45 of the Act of 1894 contains the provisions which apply where the tenant is under legal disability; sect. 46 where the tenant is a married woman; sect. 44 where the tenant is a trustee; and sect. 43 provides, generally, that anything which is required or authorised by the Act to be done by a tenant, may be done by him, notwithstanding that his estate in the land is a limited estate only. Sect. 49 deals with the case of the death of a tenant pending enfranchisement proceedings; and sect. 50 provides for the succession of the tenant's rights and liabilities.

Page 383. Sect. 57 of the Act of 1894, provides for the service of the notice of desire to enfranchise. Although the section requires the notice to be in writing, that provision must be read in conjunction with the provisions of sect. 20 of the Interpretation Act, 1889, which provides that in that Act and in every other Act, whether passed before or after the commencement of the Interpretation Act, 1889, expressions referring to writing are, unless a contrary intention appears, to be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form.

The duty of the Board of Agriculture to frame and publish a scale of compensation, and the duty of the person requiring enfranchisement to state to the other whether or not he is willing to adopt the Board's scale, are declared by sect. 66 of the Act of 1894.

Pages 384, 385. The circumstances in which, and the conditions under which, the lord has power to stop enfranchisement proceedings which have been commenced by a tenant, are set out in sect. 11 of the Act of 1894; and sect. 12 of the same Act declares and regulates the power of the Board of Agriculture to suspend enfranchisement proceedings.

Pages 385—387. The different modes in which the compensation for enfranchisement may be ascertained are enumerated in sect. 5, sub-sects. (1) and (2) of the Act of 1894. If the amount is fixed by agreement between the parties, the agreement is not liable to stamp duty. Sect. 58 (1).

Sect. 7, sub-sect. (9), of the Act of 1894 provides what steps are to be taken by the Board when the amount of the compensation is left to be determined by the Board.

Page 387. Where a valuer is appointed by justices to determine the amount of the compensation, the lord of the manor cannot take any part in such appointment if he himself is a justice. Act of 1894, sect. 5, sub-sect. (3).

Page 388. Sub-sects. (4) (a), (b), and (c) of sect. 5 of the Act of 1894 deal with the procedure to be followed when the lord and tenant appoint a valuer or valuers; and sub-sects. (4), (e) and (f) of the same section relate to the appointment of an umpire.

Pages 388, 389. The times for the decision of the valuers, the reference to the umpire, and the making of his decision, and the power of the Board to extend these times, are set out in sub-sects. (3)—(5), and (8) of sect. 7 of the Act of 1894.

Page 389. The provisions dealing with the removal and the fresh appointment of valuers or an umpire are contained in sub-sects. (4) (d), (5) and (6) of sect. 5 of the Act of 1894.

Page 390. Sub-sects. (7)—(9) of sect. 5 of the Act of 1894 contain the provisions as to the duty of a valuer or umpire to make and subscribe a declaration before entering on his duties. A form of the declaration will be found in the First Schedule to the Act. The powers of a valuer to require the production of documents and the attendance of witnesses are declared by sect. 54, sub-sects. (1)—(5), of the same Act; and sub-sect. (6) provides that if any person wilfully destroys or alters any document, of which the production is required, he shall be guilty of a misdemeanour. Sect. 92 of the Act deals with the valuer's or umpire's right to enter on the land to be enfranchised.

Page 391. Sect. 52 of the Act of 1894 repeats the provisions of the earlier Acts as to the ascertainment of quantities and boundaries of land. The circumstances to be considered by the valuers are declared by sect. 6, sub-sect. (1), of the Act of 1894; and sub-sect. (2) of the same section provides that the value of the matters to be taken into account shall be calculated as at the date of the notice to enfranchise.

Page 394. Sect. 13 of the Act of 1894 enables the Board of Agriculture to continue any conditions as to the user of the land.

Sect. 7 of the same Act enumerates the duties of the valuers, sub-sect. (3) thereof providing that the valuers are to give their decisions within forty-two days after their appointment, or within such further time as the Board by order may allow.

The valuers have to deliver copies of their decisions to the lord or tenant, and the umpire is under the same obligation. Act of 1894, s. 7 (6). The power of the Board to return the valuation to the valuers or umpire for reconsideration or correction is declared by sub-sect. (7) of sect. 7 of the Act of 1894. If the correction or amendment is not satisfactory to the Board, the compensation may be determined by the Board after notice to the lord and tenant. Sect. 7, sub-sect. (8). A valuation is not liable to stamp duty. Act of 1894, s. 58 (1).

Page 395. The power of the Board to decide questions of law and fact arising in the course of a valuation is now declared by sect. 53, sub-sect. (1), of the Act of 1894; and sub-sect. (2) of the same section provides for the appeal from a decision of the Board on any question of law. The provisions of sect. 40 of the Copyhold Act, 1841, as to the costs of the special case by which the appeal is taken are not repeated in the Act of 1894, but the matter of costs is regulated by the Rules of the Supreme Court.

Pages 396, 397. The provisions of the Copyhold Act, 1887, as to the framing and publishing by the Board of scales of allowances to valuers or umpires for their services are now repeated in sect. 66 of the Act of 1894.

Page 397. The provisions of the earlier Acts as to the preparation and confirmation of the award of enfranchisement by the Board are now contained in sect. 10 of the Act of 1894. It should be noticed, however, that sub-sect. (2) of sect. 10 requires that the award shall state whether the compensation is a gross sum or a rentcharge, and the amount thereof, and, where it is a rentcharge, shall make the land subject thereto and chargeable therewith. It is also to be observed that the consideration for a compulsory enfranchisement must, except in the cases provided for by sect. 8 (1) of the Act of 1894, be paid in a gross sum of money. Act of 1894, sect. 8, sub-sect. (2). Sect. 58, sub-sect. (2), of the Act of 1894, provides for the amount of stamp duty payable on an enfranchisement award.

Page 398. The effect of the confirmation by the Board of an award of enfranchisement, and of the execution by the Board of a deed of enfranchisement, is dealt with in sect. 61 of the Act of 1894. Sect. 60 contains, in sub-sects. (1), (2), and (4), the provisions of the previous Copyhold Acts as to the power of the Board to correct errors in instruments having effect under the provisions of these Acts, and it further provides, in sub-sect. (3), that an alteration shall not be made in an instrument relating to a voluntary enfranchisement without the consent in writing of the persons affected by the alteration.

It may be noticed here that sect. 59 of the Act of 1894 provides that the Board of Agriculture may require the payment of all office fees and other expenses of the Board from either lord or tenant requesting the delivery of any award, deed, or order under the Act, before delivering it.

Sub-sect. (6) of sect. 10 of the Act of 1894 repeats the provisions of the Copyhold Act, 1858, as to the date at which a compulsory enfranchisement shall take effect.

Pages 398, 399. *Form of Compensation.*—Sect. 8, sub-sect. (1), of the Act of 1894 repeats the provisions of the Act of 1887 as to the cases in which the compensation for a compulsory enfranchisement may be a rentcharge. Sub-sect. (2) of the same section provides that, except where provision is made by that section for the compensation being charged by way of rentcharge, the compensation is to be paid in a gross sum before the completion of the enfranchisement.

It may be noticed here that sect. 26 of the Act of 1894 contains various provisions regarding the payment of money, payable under the Act as the consideration for an enfranchisement, to a lord who either refuses to accept the money, or has only a limited estate or interest in the manor.

Page 399. As to the commencement of a rentcharge in the case of a compulsory enfranchisement, see now sect. 8, sub-sect. (1), of the Act of 1894; and as to the date of payment of all rentcharges created under the provisions of the Act, see sect. 27, sub-sects. (a) and (b).

Page 400. *Recovery of Rentcharge.*—Sect. 27, sub-sect. (e), of the Act of 1894 repeats the provisions of the Act of 1887, that rentcharges are to be recovered by the like remedies as are provided by sect. 44 of the Conveyancing and Law of Property Act, 1881, and that any occupying tenant,

who properly pays on account of a rentcharge any money which, as between him and his landlord, he is not liable to pay, is to be entitled to recover from the landlord the money paid, or to deduct it from the next rent payable by him; and the same sub-section contains a further provision that an intermediate landlord, who pays or allows any sum under the foregoing provisions, may in like manner recover it from his superior landlord or deduct it from his rent.

With regard to the apportionment of rentcharges, sect. 28 of the Act of 1894 provides that the persons who are for the time being entitled to a rentcharge under the Act and to the land subject to the rentcharge respectively, whether in possession, or in remainder or reversion expectant on an estate for a term of years, may apportion the rentcharge between the several parts of the land charged therewith, provided (a) that if the person entitled to the land is not absolutely entitled, the apportionment is not to be made without the consent of the Board of Agriculture, and (b) that a person who is entitled to an undivided share in a rentcharge, or in land, is not to exercise the power of apportionment which the section confers, unless the persons entitled to the other undivided shares concur.

Page 401. *Redemption of rentcharge.*—Sect. 30, sub-sect. (1), of the Act of 1894 repeats the provisions of the Copyhold Act, 1887, as to the right to redeem rentcharges, with the proviso that, where the estate or interest of the person entitled to the rentcharge is limited, the Board of Agriculture is, in cases where the amount of the redemption money exceeds 20*l.* for all the rentcharges under the Act in the manor, to direct the amount either to be paid into Court, or to trustees, in the manner provided by the Act, and in any other case to direct the amount either to be paid into Court, or to trustees, as aforesaid, or to be retained by the person entitled for his own use.

As to the amount of the redemption money, sub-sect. (2) of the same section provides that in cases where the rentcharge is of fixed amount, the sum shall be twenty-five times the yearly amount of the rentcharge, and in any other case the sum shall be the amount fixed by the Board of Agriculture on the request of the person entitled to redeem the rentcharge.

The provision as to the giving of six months' notice of intention to redeem is contained in sub-sect. (3) of sect. 30.

Sub-sect. (4) of the same section repeats the provisions of the Act of 1887 as to the manner of recovering the amount of the redemption money; sub-sect. (5) provides that, when it appears to the Board of Agriculture that payment or tender of the consideration-money has been duly made, the Board may certify that the rentcharge has been redeemed, and that the certificate is to be conclusive; and sub-sect. (6) contains the further provision that the expenses incurred in redeeming a rentcharge are to be dealt with on the same footing as the expenses incurred in redeeming a mortgage.

Rentcharge a first charge on the land.—See sect. 27, sub-sect. (c), of the Act of 1894.

Lord's charge to be appurtenant to the manor.—See sect. 27, sub-sect. (d).

Page 402. *Sale of rentcharge by a limited owner.*—Sect. 31 of the Act of 1894 repeats the provisions of the earlier Acts, with the proviso that, when the consideration-money does not exceed the sum of 20*l.* for all the rentcharges in the manor, the amount may be paid, if the Board so directs,

to the person for the time being entitled to receive the rentcharge for his own use.

Receipt for compensation money.—Sect. 25 of the Act of 1894 re-enacts the provision that the receipt of any person for money paid to him in pursuance of the Act, is to be a sufficient discharge for the amount so paid; and sect. 26 deals with the subject of payment of consideration-money to a lord who either has only a limited estate in the manor, or has an insufficient or bad title, or who refuses to receive the money. With respect to these points it may be noted that if the lord has only a limited estate or interest and the amount does not exceed 20*l.* for all the enfranchisements in the manor, the Board may direct the sum either to be paid into Court, or to trustees in the manner provided by the Act, or to be retained by the lord for his own use. Sect. 26, sub-sect. (1) (b). If the title of a lord, to whom compensation has been paid, is afterwards proved to be bad or insufficient, the rightful owner of the manor, or his representative, may recover the amount from the person to whom it was paid, or his representative, with interest at the rate of 5*l.* per centum, per annum, from the time of the title being proved bad or insufficient. Sect. 26, sub-sect. (3). If any principal money is paid for enfranchisement to a person who is not entitled to receive it under the provisions of the Act, the land enfranchised is to continue charged with the payment of the money in favour of the person entitled; but the person entitled to the land may recover the money as against the person who wrongfully received it. Sect. 26, sub-sect. (4). The Board of Agriculture may settle any question which arises as to the proper application, appropriation, or investment under the Act of any money payable in respect of an enfranchisement, its decision being final. Sect. 26, sub-sect. (5).

Sect. 89 of the Act of 1894 re-enacts the provisions of the Act of 1887, as to the power of the lord to give a complete discharge for compensation-money paid to him not exceeding 500*l.* in cases of enfranchisement by agreement or otherwise, without reference to the Board of Agriculture. The terms of the section of the Act of 1894 show that the section is intended to apply to cases of agreements for enfranchisement made independently of the Act.

Page 403. *Lord's refusal to receive compensation.*—The provisions of the Act of 1858 are repeated in sect. 26, sub-sect. (2), of the Act of 1894.

Payment of enfranchisement compensation or of redemption-money in case of a limited owner.—Sect. 32 of the Act of 1894 deals with the cases of payment into Court or to trustees, and repeats the provisions of the former Acts as to the appointment of trustees by the Board of Agriculture. The investment and application of the money so paid into Court, or to trustees, are dealt with by sect. 33.

Pages 404, 405. *If manor is held on charitable trust.*—The provisions of the Act of 1858 are now contained in sect. 76 of the Act of 1894.

Page 405. *If a corporation is lord of a manor.*—The provision as to the payment of enfranchisement-money, for the use of a corporation, to trustees to be appointed by the Board of Agriculture, is repeated in sect. 77 of the Act of 1894.

The provisions as to the payment of enfranchisement-money for the use of a spiritual person in respect of his benefice or cure are contained in sect. 74 of the Act of 1894.

Lord's remedies to recover enfranchisement consideration.—Sect. 10, subsect. (4), of the Act of 1894 re-enacts the provision that the award of enfranchisement is not to be confirmed by the Board until production of the receipt for the consideration-money; but the provisions of the Act of 1858, as to the confirmation of the conveyance of land, and the provisions of the Act of 1852, as to the lord's entering upon the land and letting it, are not repeated.

Pages 406, 407. *Consideration charged on land: effect of charge, &c.*—Sect. 36 of the Act of 1894 contains the provisions of the earlier Acts as to the cases in which the consideration-money for an enfranchisement may be charged on the land enfranchised, as to the form in which the charge may be made, and as to the effect of the charge; and sect. 41 summarises the provisions of the former Acts relating to certificates of charge. The provisions of the Act of 1887, enabling certain companies to advance moneys required for the purposes of the Copyhold Acts, are repeated in sect. 40 of the Act of 1894.

Page 407. *Charge by lord purchasing tenant's interest.*—Sect. 36, subsect. (3), of the Act of 1894 contains the provision as to the charge by the lord of the amount of his purchase-money and expenses, but from the terms of the section it would seem that the consent of the Board of Agriculture is no longer necessary.

It may be usefully mentioned here that sect. 38 of the Act of 1894 provides that if a tenant, or person claiming to be a tenant, pays any money in respect of enfranchisement compensation, or consideration, and is afterwards evicted from the land enfranchised, he may claim against the land enfranchised the amount of the money, or so much of it as is not charged on the land under the other provisions of the Act, and that the amount is to be a charge on the land, with interest thereon at the rate of 4*l.* per centum, per annum, from the date of the eviction. With respect to money paid by a mortgagee as compensation, or consideration, or expenses, in respect of an enfranchisement, or redemption of a rentcharge on the mortgaged property, the 39th section of the Act of 1894 provides that any sums so paid shall be added to the mortgage, and the mortgaged property shall not be redeemable without payment of the amount with interest.

Page 408. *Transfer of fee-farm rent or charge from manor to freehold lands or Government stocks of adequate value.*—See sect. 56 of the Act of 1894.

Pages 408, 409. *Expenses.*—Sect. 34 of the Act of 1894 provides for the manner in which the expenses of dealings under the Act are to be borne.

If lord is trustee, &c.—The Act of 1894 does not repeat the provisions of the Act of 1852 as to the expenses of a lord who has only a limited interest in the manor or is a trustee, but, in lieu thereof, it provides, in sect. 37 (1), that expenses incurred by a lord in proceedings under the Act may (a) be paid out of any consideration or compensation-money (where it is a gross sum) arising in respect of the proceedings, or (b) be charged together with the expenses of the charge on the manor, or on land settled to the same uses as the manor, or on any rentcharge arising in respect of the proceedings or in respect of any enfranchisement under the Act within the manor; and (2) that any charge so made may be either by deed by way of mortgage, or by a certificate of charge under the Act; but these provisions do not apply to the expenses of a purchase by a lord under the

terms of the Act of a tenant's interest in the land (sub-sect. (3)), such expenses being dealt with by sect. 36 (3).

Pages 409, 410. *Remedies for recovery of expenses.*—Sect. 35 of the Act of 1894 provides for the recovery of expenses. In addition to the methods mentioned on pp. 409, 410 of the Treatise, the section enacts, in sub-sect. (1) thereof, as follows:—"(b) If the expenses are in respect of a compulsory enfranchisement, and the amount is certified by an order of the Board of Agriculture, it may be recovered in any way provided by this Act for the recovery of the consideration for the enfranchisement." Sect. 19 of the Act appears to be the only section providing for the recovery of enfranchisement consideration. Sect. 35 also provides—

"(c) If the amount is certified by an order of the Board of Agriculture, and the person liable to pay the amount does not pay it immediately after receiving notice of the order, the person to whom the amount is payable shall be entitled to obtain from a court of summary jurisdiction a warrant of distress against the goods of the person in default."

Expenses of trustee.—The provisions as to the expenses of a tenant who is trustee are now contained in sect. 35, sub-sect. (2), of the Act of 1894. An occupier of land properly paying any expenses of an enfranchisement under the Act may deduct the amount paid from his next rent. Sect. 35, sub-sect. (3).

Pages 410, 411. *General expenses may be charged.*—The provisions of the earlier Acts as to charging the general expenses of an enfranchisement on the land enfranchised, or on the manor, or any land settled to the same uses, are for the most part repeated in sect. 36 of the Act of 1894; but the distinction taken in the former Acts between expenses incurred in charging the land and the general expenses of an enfranchisement is not maintained. The form of a charge for expenses, or consideration-money and expenses, is given in sect. 36, sub-sect. (6), sect. 41, and the First Schedule to the Act, form 2.

Effect of charge of expenses.—See sect. 36, sub-sect. (7), of the Act of 1894.

Expenses in case of dispute as to title.—See sect. 34, sub-sect. (6), of the Act of 1894.

Page 412. *Expenses of redemption of rentcharge.*—See now sect. 30, sub-sect. (6), of the Act of 1894.

With regard to the expenses of inquiries by the Board of Agriculture under the Act of 1894, it may be mentioned that it is provided by sect. 55 that the Board may, if they think fit, order that the expenses of any inquiry held by them under the Act, including the expenses of witnesses and of the production of documents, shall be paid by the parties to the inquiry, and to such person and in such proportions as the Board think proper.

Pages 412, 413. *Steward's compensation.*—The provisions of the Copyhold Act, 1841, as to the compensation which should be made to the steward of a manor in the case of voluntary commutation or enfranchisement, are not repeated in the Act of 1894, nor are the provisions of the Acts of 1852 and 1858, dealing with the steward's right to compensation in the case of compulsory enfranchisement. The provisions of the Act of 1887, regarding the compensation which must be paid by the tenant to the steward on a compulsory enfranchisement, are repeated in

sect. 9 of the Act of 1894. The term "steward" is defined in sect. 94 of that Act.

The provisions of the Act of 1852, entitling the steward to a reasonable sum for any inspection of the court rolls of the manor which any person interested in the enfranchised land for the time being may desire to make, or for any extracts from the court rolls, are re-enacted in sect. 62 of the Act of 1894; and the provisions of the Act of 1858, requiring a tenant of lands to which the last admittance had been taken prior to the 1st of July, 1853, or in respect of which no heriot had become due or payable since the 30th of June, 1853, to pay to the steward two-thirds of the sum to which he would have been entitled in respect of an admittance, or enrolment on an alienation made since these dates, will now be found in sect. 3 of the Act of 1894.

Page 414. *Compensation paid to steward may be charged.*—The former provisions on this head appear to be included in sect. 36 of the Act of 1894.

Pages 414, 415. *Effect of enfranchisement—Subsisting leases not affected.*—See now sect. 21 of the Act of 1894.

Page 415. *Protection to occupying tenant.*—See now sect. 27 of the Act of 1894.

Commonable rights.—See now sect. 22 of the Act of 1894.

Pages 415, 416. *Mines and minerals.*—As to grants of rights of way and easements, see sect. 24; and as to the exception of minerals and franchises, see sect. 23, sub-sect. (1), of the Act of 1894.

Page 417. *User of soil of enfranchised lands.*—See sect. 23, sub-sect. (1), of the Act of 1894.

Conditions as to user of land destroyed, but may be continued.—See sect. 13 of the Act of 1894.

Inspection of court rolls.—See sects. 62 and 64 of the Act of 1894.

Enfranchisements under the Lands Clauses Consolidation Act, 1845.

Pages 418—420. It may be mentioned that it is provided by sect. 95 of the Copyhold Act, 1894, that nothing contained in the Act is to interfere with any enfranchisement which may be made independently of that Act, or with the exercise of any powers contained in any other Act of Parliament.

Enfranchisements in Manors where Derivative Interests are entered upon the Court Rolls.

Pages 420—423. The special provisions of the Copyhold Act, 1887, with regard to enfranchisements in manors where the fines are certain, and it is the practice for the copyholders in fee to grant derivative interests to persons who take admittance in respect of these interests, will now be found in sect. 79 of the Act of 1894 and its various sub-sections.

Enfranchisements in Crown Manors.

Page 423. For the reference in note (*o*) on this page substitute a reference to the Copyhold Act, 1894, s. 69 (1); and for the reference in note (*p*) substitute a reference to the same Act, sect. 96 (b).

Page 424. For the reference in note (*s*) on this page substitute a reference to the Copyhold Act, 1894, s. 68.

Pages 425—427. The provisions of the former Copyhold Acts relating to enfranchisements in manors vested in the Crown for an estate in remainder or reversion expectant on an estate of inheritance, will be found re-enacted in sect. 69 of the Act of 1894, sect. 71 of that Act dealing with the inrolment of the instruments of enfranchisements in Crown manors.

Page 427. *Manors held in joint tenancy with the Crown.*—See now sect. 70 of the Act of 1894.

Trustee for the Crown to be indemnified.—See sect. 69, sub-sect. (9), of the Act of 1894.

Manors belonging to the Duchy of Lancaster.—For the reference in note (*i*) on this page substitute a reference to the Copyhold Act, 1894, ss. 68 and 95 (f).

Page 428. *Manors belonging to the Duchy of Cornwall*—See sect. 95 (g) of the Copyhold Act, 1894, providing that nothing in the Act is to extend to or prejudice the estate, right, title, privilege or authority of her Majesty in right of the Duchy of Cornwall or the possessions thereof, or of the Duke of Cornwall for the time being.

Enfranchisements in Ecclesiastical Manors.

Page 428. For the reference in note (*o*) on this page substitute references to the Copyhold Act, 1894, ss. 75 and 95 (h); and for the reference in note (*p*) substitute a reference to sect. 72 of the same Act.

Page 433. For the reference in note (*p*) on this page substitute a reference to the Copyhold Act, 1894, s. 73. The term "ecclesiastical corporation" is defined in sect. 94 of the Act of 1894.

Page 434. For the references in notes (*r*), (*t*) and (*x*) on this page, substitute references to the Copyhold Act, 1894, s. 75. The provisions of sect. 39 of the Copyhold Act, 1852, referred to on line 14 of this page, are replaced by the provisions of sects. 32 and 33 of the Act of 1894.

Enfranchisements under the Universities and College Estates Acts.

Pages 436, 437. The provisions of the Copyhold Act, 1887, dealing with the case of joint lords under sect. 4 of the Universities and College Estates Act Extension Act, 1860, are re-enacted in sect. 78 of the Copyhold Act, 1894, with a slight variation. The section of the Act of 1894, after providing that, when a manor has been granted by the university or

college on a lease for a life or lives or for a term of years, the university or college and the lessee are jointly to constitute the lord of the manor within the meaning of the Act of 1894, continues thus: "And any rentcharge created under this Act on the enfranchisement of land held of that manor shall be in favour of, and the compensation for the enfranchisement may be paid to, the person who, at the date of the enfranchisement, is entitled in possession to the profits of the manor, his executors and administrators, but without prejudice to any question as to the further disposal of any money paid in respect of the rentcharge or other compensation respectively; provided that on the determination of such lease as aforesaid, any money so paid or any securities in which the same may have been invested shall be paid or applied as enfranchisement money is directed to be paid and applied by section one of the Universities and College Estates Act, 1858."

The provisions of sect. 1 of the Universities, &c. Act, 1858, are summarized on pp. 435, 436 of the foregoing Treatise.

Other Statutory Enfranchisements.

Page 438. Note (*x*). Sect. 70 of 42 Geo. III. c. 116 has been repealed by 59 & 60 Vict. c. 28, s. 40. See sects. 31—35 of 59 & 60 Vict. c. 28 for new provisions as to the redemption of land tax.

Ibid., note (*y*). The Act 16 & 17 Vict. c. 74 has been repealed by 59 & 60 Vict. c. 28.

Powers of Board of Agriculture.

Pages 440, 441. *Board may hear and determine disputes.*—The provisions of sects. 39 and 40 of the Copyhold Act, 1841, have not been re-enacted in the Copyhold Act, 1894.

Page 441. *Reference to arbitration.*—Sect. 21 of the Copyhold Act, 1841, has not been re-enacted in the Copyhold Act, 1894.

Page 442. Note (*q*). For the reference to the Copyhold Act, 1844, substitute a reference to the Copyhold Act, 1894, s. 32, sub-s. (4) (c).

Ibid., note (*r*). For the reference to the Copyhold Act, 1841, substitute a reference to the Act of 1894, s. 65.

Ibid., note (*s*). For the reference to the Copyhold Act, 1841, substitute a reference to the Act of 1894, s. 91.

It may be usefully mentioned here that it is provided by sect. 92 of the Copyhold Act, 1894, that a member or officer of the Board of Agriculture, and a valuer or umpire appointed under the Act, and their agents and servants respectively, may enter on any land proposed to be dealt with under the Act, and may make all necessary measurements, plans, and valuations of the land, provided that reasonable notice of the intention to enter on the land is given to the occupier; but if anyone does any injury in the execution of the powers conferred by the section, he has to make compensation therefor. The Act of 1894 also provides (sect. 93) that if any person obstructs or hinders a member or officer of the Board of Agriculture, or a valuer or umpire acting under the provisions of the Act, he shall be liable, on summary conviction, to a fine not exceeding 5*l*. An order or proceeding under the Act by, or before, or under the authority

of the Board of Agriculture, or a conviction under the Act, is not to be quashed for want of form, and is not to be removed by *certiorari* or otherwise into the High Court or any other Court. Copyhold Act, 1894, s. 67.

The Board of Agriculture are empowered to direct, by order under their seal, that a part of a manor specified in the order shall be considered as a manor for the purpose of effecting an enfranchisement under the Act of 1894, and when such an order has been made, all the provisions of the Act are to apply to the part so specified. Copyhold Act, 1894, s. 80.

The Board must, in every year, make a general report of their proceedings in the execution of the Copyhold Act, 1894, and the report must be laid before both Houses of Parliament as soon as may be after it is made. Copyhold Act, 1894, s. 90.

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