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COPYHOLD

AND OTHER

LAND TENURES

OF

ENGLAND.

BY

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OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW

(Author of a handbook on the "Law of Landlord and Tenant").

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SWEET & MAXWELL, LTD.,
3, CHANCERY LANE, W.C.

1907.

LONDON :

PRINTED AT THE OFFICE OF THE

"ESTATES GAZETTE," LTD., 34-35, KIRBY STREET,

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PREFACE.

THIS book is written with a twofold object---First, to give a simple statement of the law relating to Copyholds and their Enfranchisement; secondly, to give a short outline of the nature and history of English Land Tenure, so that Copyhold Tenure may be more easily understood.

The book also contains an Introduction dealing with property and its ownership, and the interests that may be held in property.

The portion of the work which refers to Copyhold Tenure has been dealt with in greater detail than the rest. By the courtesy of the Board of Agriculture and Fisheries the forms relating to Copyhold Enfranchisement have been incorporated; the Copyhold Act, 1894, is set out, and the Author has made reference to the most recent cases upon the subject.

Every Englishman should have a knowledge of Land Tenure, and this book has been written so that it may be easily understood by all. To those interested in the ownership or management of land it will be especially useful, whilst to candidates for the examinations of the Surveyors' Institution and the Auctioneers' Institute it will give all they need on the law of Copyholds and their Enfranchisement when supplemented by a proper course of preparation.

To those students of the Bar who are ignorant of law, it will form a useful introduction to the law of Real Property

and Conveyancing, but must not be relied upon nor regarded as more than an introduction. It should be followed by a most careful study, first, of "Williams on Real Property," then Strahan's "Law of Property," and then the usual course of lectures and study of case and statute law. On Copyholds, Elton's "Law of Copyholds and Customary Tenure" may be recommended as easy reading. The above-named books have been constantly used by the Author for some years past. He has found them of use in the preparation of this little work, and desires to fully acknowledge his indebtedness to the authors.

82, Victoria Street,
Westminster, S.W.
September, 1907.

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TABLE OF ABBREVIATIONS.

The following abbreviations mainly refer to law reports, the reporter's names, and the dates. Longer or shorter abbreviations, with similar meanings, are often used :—

A.C.	Appeal Cases, after 1890; *see* L.R.	
A. and E.	Adolphus and Ellis, Q.B.	1841–1852
Amb.	Ambler, Chancery	1737–1783
Anon.	Anonymous	
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App. Cas.	Appeal Cases, House of Lords and Privy Council; *see* L.R.	
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B. and Ald.	Barnewall and Alderson, K.B.	1817–1822
B. and Ad.	Barnewall and Adolphus, K.B.	1830–1834
B. and C.	Barnewall and Cresswell, K.B.	1822–1830
B. and P.	Bosanquet and Puller, C.P.	1797–1804
B. and S.	Best and Smith, Q.B.	1861–1869
Beav.	Beaven, Rolls Court	1838–1866
Bing.	Bingham, C.P.	1822–1833
Bing. N.C.	Bingham, New Cases, C.P.	1834–1840
Bro. C.C.	Brown, Chancery Cases	1778–1794
Bro. P.C.	Brown's Parliamentary Cases, H.L.	1702–1800
Bulst.	Bulstrode, K.B.	1609–1639
C.B.	The Common Bench or Court of Common Pleas	
C.B. N.S.	Common Bench, New Series	1856–1865
C.P.	Common Pleas	
C.P.D.	Common Pleas Division	
C. P. Coop.	C. P. Cooper, Chancery	1837–1838
C. and P.	Carrington and Payne, Nisi Prius	1823–1841
Cary	Cary, Chancery	1471–1603
Carth.	Carthew, K.B.	1688–1700
Ch.	Chancery	
Ch.D.	Chancery Division	
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Cha. Rep.	Reports in Chancery	1615–1712
Comb.	Comberbach, K.B.	1685–1698

Com. Law Rep.	Common Law Reports; all Courts	1853–1855
Coop.	*See* C. P. Coop.	
Cro. Eliz.	Croke's Reports during Reigns of Elizabeth, James I. and Charles I., K.B.	1581–1641
Cro. Jac.		
Cro. Car.		
D. and R.	Dowling and Ryland, K.B.	1822–1827
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Freem.	Freeman, Chancery	1660–1706
G. and D.	Gale and Davison, Q.B.	1841–1843
Gow	Gow, Nisi Prius	1818–1820
H.L.	The House of Lords	
H.L.C.	House of Lords Cases	1847–1866
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Hob.	Hobart, K.B.	1613–1625
Holt	Holt, K.B. and Q.B.	1688–1710
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J. and H.	Johnson and Hemming, V.-C. Wood	1859–1862
J. and W.	Jacob and Walker, Chancery	1819–1821
Jur.	Jurist Reports	1837–1854
Jur. N.S.	Jurist Reports, New Series	1855–1866
K.B.	The Court of King's Bench	
L.J.	Law Journal Reports	
L.Q.R.	Law Quarterly Reports	

L.R.	The Law Reports—	
	with prefix L.R.: *e.g.*, L.R. Q.B.; L.R. Ch.; L.R. C.P.; L.R. Eq.; L.R. Ex.	1865–1875
	without prefix: *e.g.*, Q.B.D.; App. Cas., Ch. D.; C.P.D.; Ex. D.	1875–1890
	with prefix of year: *e.g.* (1891) Q.B.: (1891) A.C.; (1891) Ch.	after 1890
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Marsh.	Marshall, C.P.	1813–1816
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N. and M.	Neville and Manning, K.B.	1832–1836
P.C.	Privy Council.	
P.W.	Peere Williams, Chancery	1695–1735
Per. and Dav.	Perry and Davison, Q.B.	1838–1841
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Q.B.D.	Queen's Bench Division.	
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FORMS IN VOLUNTARY ENFRANCHISEMENT.

INTRODUCTION.

To THOSE entirely ignorant of the law relating to Land Tenure it may be well to explain the nature of property and how it can be owned.

CORPOREAL AND INCORPOREAL PROPERTY.

Property can be divided into two classes—*Corporeal*, or that which has a body, *i.e.*, something which can be touched and seen, and *Incorporeal*, or that which is intangible and invisible.

Corporeal property includes both land and goods. Incorporeal property comprises such things as tithes and other rent charges; rights over land, such as easements and rights of common; future interests in property, stocks and shares, debts and other rights to money or money's worth.

In those cases where property descended direct to the heir under the old law it is called a *hereditament*.

REAL AND PERSONAL PROPERTY.

Another method of classifying property is by dividing it into *real* and *personal*. Real estate may be defined as the permanent ownership of indestructible property, such as freehold or copyhold land in possession, tithe rent charge and such like. Personal property may be defined as the limited ownership of indestructible property—for instance, leaseholds; or the permanent ownership of destructible property, such as goods and chattels.

The terms arose because of the form of action which could be brought in order to recover the property. Real property was recovered by an action to recover the thing itself; whereas, if personal property were wrongfully detained or destroyed, the action was against the person who wrongfully dealt with it in order to recover the damages suffered.

Prior to the Land Transfer Act, 1897, real property devolved upon the heir on the death of the owner and personal property upon the executors of his will (if any), or in case of intestacy upon his administrators. Since that Act all property, both real and personal, passes to the personal representative of the deceased for the payment of his debts and the estate duty.

OWNERSHIP.

Property belongs to its owner, and as a rule the enjoyment by the owner is exclusive. The ownership of land differs considerably from the ownership of goods in its incidents, and, although we are concerned with land alone, the following points are worthy of notice:—

The ownership of land is never absolute, except by the Crown, as it is always held of a superior lord. The ownership of goods is always absolute at common law.

There is always an owner of land; but as to goods an owner can abandon them, so that they belong to no one until they are taken possession of. Goods can also be consumed or destroyed, and can be moved anywhere within the country or out of it, but land cannot be destroyed and is immovable.

The ownership of land is frequently divided up into several successive interests, but this is not found with goods. With land also the ownership is often limited in character, whereas with goods limited ownership, though not unknown (*e.g.*, hire, pawn, etc.), is very unusual.

OWNERSHIP OF LAND.

The ownership of land, whether absolute or partial, may be in one of several forms, which have been described by Mr. Strahan as follows:—

1. Normal; *i.e*, when it is beneficial, exclusive, immediate and unconditional.
2. In trust; *i.e.*, when held for another or others and it is not beneficial.
3. Concurrent; *i.e.*, when held with another or others and it is not exclusive.

4. Future; *i.e.*, when held after another or others and it is not immediate.
5. Conditional; *i.e.*, when held subject to a proviso in favour of another or others.

These modes of holding interests in land will not be more fully treated of, with the exception of concurrent ownership, which is so frequently met with in the law of Copyholds and their enfranchisement that it should be well understood.

LEGAL AND EQUITABLE INTERESTS.

Without touching upon the intricacies of equity, it will be easy to understand from a few examples how legal and equitable interests may be found in the same property.

Only one person (or body of persons) can own the legal estate in land, and the evidence of his ownership is almost invariably the title deeds of the property; but many other persons may have rights to the property in some form or another, and these are equitable interests.

For instance, when an owner dies he frequently leaves his property to trustees, directing them to hold the property during the life of his wife, and on her death to sell it or divide it among his children. In this case the legal estate in the property is vested in the trustees, but the wife and children have equitable interests therein.

Again, if a property be left to A for life, and after his death to B, A has the legal estate and B an equitable estate during the life of A. B will succeed to the legal estate on A's death if he survive him.

In the case of a mortgage, where the mortgagor owns the legal estate, he, when he borrows money thereon, usually resigns his legal estate to the lender or mortgagee, but retains the right to pay off the loan and get his deeds back. Such right is an equitable interest and is called his equity of redemption.

In this last case the equity is often a valuable asset, and the owner of it could raise money on it by way of a second mortgage. He only has an equitable interest, so he can only

grant an equitable interest to another. There would then be an equitable interest remaining in the borrower, for he could pay off both loans, another equitable interest in the second mortgagee and the legal estate vested in the first mortgagee.

Another example of an equitable interest is found in the case of a sale. The sale commences with a contract between the vendor and the purchaser, and, as a rule, a deposit is paid and a considerable time elapses before the purchase is completed and the title deeds are handed over by the vendor to the purchaser. When the sale is completed and the deeds handed over, the legal estate passes; but as soon as a valid contract is entered into, the purchaser acquires an equitable interest in the property and can compel the vendor to carry out the contract. The equitable interest in this case is sufficient to vest the beneficial ownership in the purchaser, for the property is at his risk from the time of the contract, and any improvement or depreciation of the property is to his benefit or detriment and not to that of the vendor, although the vendor retains the legal estate up to the time of completion.

THE SUPREME COURT OF JUDICATURE.

At one time equitable interests were dealt with by the Court of Equity, but the Courts of Law and the Courts of Equity were fused by the Judicature Acts, 1873-1875, and converted into the Supreme Court of Judicature. This Court consists of two parts—the High Court of Justice and His Majesty's Court of Appeal.

The judgments of the Court of Appeal can be appealed against to the House of Lords.

The High Court is now divided into three sections :—

1. The Chancery Division, which deals with those matters which were formerly dealt with by the Court of Chancery.
2. The King's Bench Division, dealing with common law.
3. The Probate, Divorce and Admiralty Division.

The Judicature Acts further provided that in all the courts law and equity should be administered concurrently, and that all equitable estates, titles, rights, duties and liabilities should be recognised; and if there should be any conflict between the rules of law and equity, that equity should prevail.

COMMON LAW AND STATUTE LAW.

The Common Law of the land has its origin in the ancient custom and usages of the country. These became law as soon as they were so pronounced by the courts. From the earliest days to the present time the Common Law has been continually expanded and elucidated.

Statute Law is law made by Act of Parliament. A Statute may create entirely new law, or it may declare the Common Law, or repeal previous Statutes, or consolidate several Acts into one.

Common Law and Statute Law together make up the laws of the realm. The Courts dispense and explain the law, interpreting the meaning of Statutes and enforcing them.

EQUITY.

Equity may be regarded as a matter of justice and right. In those cases where a subject suffers from injustice or hardship, Equity will often give him a remedy or afford him relief when no remedy or relief would be obtainable at law.

Equity dates from very early times, when it became a practice for any suitor who could obtain no remedy at law to present a Bill or Petition to his Sovereign, who considered it in Council.

From the reign of Edward I. onwards, petitions upon matters to be granted by the Royal Grace were made to the Chancellor. Thus arose the Court of Chancery, which appears to have been well established by the reign of Richard II., and lasted until the Judicature Acts came into operation and the Chancery Division of the High Court took its place.

MATTERS DEALT WITH BY THE CHANCERY DIVISION.

Without enumerating a technically accurate list of the matters dealt with by the Chancery Division of the High Court, it will be well to give some idea of them.

Briefly, all matters as to trusts and trustees, the administration of the estates of deceased persons, partnerships, mortgages, rectification or setting aside of deeds and written instruments, the specific performance of contracts, the partition or sale of real estate, the wardship of infants and the care of their estates, are all dealt with in Chancery. Several Acts of Parliament direct that certain matters shall be in the hands of the Chancery Division, and this division is applied to if relief is desired against penalty or forfeiture, or if an injunction is required to restrain a person from doing what he ought not, or to compel him to undo something he has wrongfully done.

It may also be noted that equity will never give a remedy where the remedy at law is sufficient; that equity acts against the person compelling him to carry out its decrees; and that the Court of Chancery will only grant a remedy if it sees fit to do so.

If a suitor is dissatisfied with its decisions, he can appeal against them to the Court of Appeal, in the same way as he could from any other division.

CONCURRENT OWNERSHIP.

Most of the property in England is held by individuals and corporations who are considered as individuals, *i.e.*, the land is held in severalty; but some property is owned concurrently by two or more persons in some form of undivided tenancy.

There are four kinds of such tenancies, viz.:—

1. Joint tenancies.
2. Tenancies in common.
3. Tenancies in coparcenary.
4. Tenancies by entireties.

Of these the last-named—*i.e.*, tenancies by entireties—is practically a dead letter. It used to occur where property

was owned by a man and his wife under circumstances which would have made them joint tenants had they not been married; but as the old rule was that on marriage the husband took the wife's property, this tenancy by entireties arose. Since the Married Women's Property Act, 1882, however, by which a married woman can own property in her own right, the husband and wife would now be ordinary joint tenants just as if they had not been married.

The other classes of undivided estates still remain.

JOINT TENANCY.

A joint tenancy is one which is distinguished from the others by fourfold unity and the benefit of survivorship. It can arise only by act of party, as either by a deed or a will; but in the case of a will it must expressly state that a joint tenancy is intended, excepting in the case of trustees, who are always joint tenants. A joint tenancy never arises by operation of law; *e.g.*, it cannot arise by inheritance.

The fourfold unity mentioned above consists of --

1. Unity of title; *i.e.*, that the tenancy must arise out of the same instrument or act.
2. Unity of interest; *i.e.*, that each owner holds an equal share and has equal rights with all the other owners.
3. Unity of time; *i.e.*, that the various owner's interests must all arise at one and the same time.
4. Unity of possession; *i.e.*, every owner has the same right to the possession of the property as all the other owners, and no one of them is entitled to an exclusive possession of any part of the property.

If any of these unities are wanting in the first place, the estate will not be a joint tenancy; and if they all exist and any one of them is broken, the estate no longer remains a joint tenancy. *E.g.*, if a joint tenancy is severed by the partition of the property amongst the various parties who have a right thereto, so that in the future they shall

hold in severalty, the unity of possession is broken and the land is held in severalty; the unity of title is also broken, as there are several instruments or acts causing the conveyance of the several parts. Again, if a joint tenancy is severed by the alienation of part of it, as, for instance, in the case of one of five joint tenants selling his share, the unity of title and the unity of time would both be broken, and as a result the purchaser of the share would become a tenant in common with the remaining owners, while they as between themselves would be joint tenants as before.

A joint tenancy is also severed by merger in those cases where one of the joint tenants obtains a greater interest in the land than the others have; *e.g.*, in the event of there being four joint tenants for life, and one of them obtaining the fee simple of the land, he would thereby have a greater interest than any of the others, and the unity of interest would be broken.

The marriage of a woman used to cause the destruction of a joint tenancy, because whether she settled her share upon herself by trustees, or whether the estate became vested in her husband, the unity of title would be broken; but since the Married Woman's Property Act, 1882, if there is no fresh conveyance, that would not be so.

The benefit of survivorship means that where the property is devised to several joint tenants and one of them dies, the remaining joint tenants have the benefit of his share, because they survived him; and they still hold in the fourfold unity as before, until the last of them will become possessed of the entire interest.

This benefit of survivorship always appears to have been considered a somewhat unfair thing, and equity always leant against joint tenancies, and if possible interpreted them as tenancies in common; *e.g.*, partnerships, where the various partners are regarded as tenants in common. The creation of an undivided ownership by will or mortgage is always interpreted as a tenancy in common, unless it is expressly stated that a joint tenancy was

intended. Even a covenant agreeing to settle each joint tenant's share has been held sufficient to destroy a joint tenancy.

In dealing with the property in which the joint tenancy exists, the joint tenants are bound to do nothing that will deprive any of the others of the possession of part or the whole of the property, nor must any of them commit waste. They, or any one of them, are entitled to manage or work the estate in a proper manner even if it causes technical waste, and in such a case it is only necessary to render a proper account, so that the tenants shall benefit equally.

TENANCY IN COMMON.

A tenancy in common is one where each tenant has a right to the land, several though undivided, and claims by a separate title or in a separate right. The only unity between the various tenants of the property is unity of possession, as the title need not necessarily arise under the same instrument or act, and the interests may be created at various times and are always several.

There is therefore no right of survivorship in a tenancy in common, but on the death of the owner of any of the shares his share descends in the same way as if it were held in severalty.

The interest, which each tenant in common holds, need not be equal with that of the other tenants, and each has the right to dispose of his share without in any way affecting the tenancy in common; in fact, the only method of severance, whereby the tenancy in common is destroyed, is by a partition of the property amongst the various owners, so that they thenceforward hold in severalty.

This class of ownership, like a joint tenancy, never arises by inheritance but always by act of party; still, as has been before shown, it frequently arises by the destruction of a joint tenancy or by the interpretation of the Courts.

The various tenants in common, in their dealings with the property as between themselves, are in practically the same position as joint tenants.

COPARCENARY.

Coparceners are of an intermediate nature between joint tenants and tenants in common, as they hold by one title, but have no benefit of survivorship.

Coparcenary is at once distinguished from joint tenancy and tenancy in common by the fact that it always arises by inheritance and never by act of party.

By the common law rules of intestate succession, if there is no male heir, all females of the same degree inherit equally as coparceners. *E.g.*, if a man dies intestate, leaving no son but three daughters, these three daughters will take the whole of the property. In the event, however, of one of the daughters dying before the father, and having previously married and leaving say two daughters, these two daughters will inherit their mother's share, each having a sixth of the property, whereas their two aunts would be entitled to one-third each.

Coparcenary will also be found where the custom of *gavelkind* prevails, under which, on the death of an owner intestate, all his sons inherit equally as coparceners.

Of the four unities which are found in joint tenancies only two, viz., unity of possession and unity of title (at any rate, as to the original title), are found in coparcenary.

There is no unity of interest, for as shown above the shares may be unequal, and there is no unity of time, because in the event of the death of one of the coparceners, his or her share, if there is issue, would descend like property held in severalty.

Coparcenary is destroyed either by partition or alienation, *i.e.*, the coparceners may agree to a partition and the property being held in severalty; while, if one of the coparceners sells her share, the purchaser becomes a tenant in common with the remaining coparceners.

In dealing with the property as between themselves the rights and liabilities of coparceners are similar to those of joint tenants.

A COMPARISON OF THE VARIOUS KINDS OF UNDIVIDED TENANCY.

A tabulated statement showing the differences between the three classes of concurrent owners may be useful:—

	Joint Tenancy.	Tenancy in common.	Coparcenary.
How they arise	Act of party, *i.e.*, by gift, grant or agreement.	Act of party, severance of a joint tenancy or coparcenary, interpretation by law.	Inheritance only
Unities	Unity of Title. Unity of interest. Unity of time. Unity of possession.	Unity of possession. —	Unity of title. Unity of possession.
Survivorship ...	Benefit of.	None.	None.
Descent	Survivors.	Heirs.	Heirs.
Alienation ...	Destroys it.	Does not alter it.	Destroys it.

COPYHOLD

AND OTHER

LAND TENURES OF ENGLAND.

CHAPTER I.

THE HISTORY OF LAND TENURE.

THE ANGLO-SAXON PERIOD.

In order to grasp the system of English land-holding it is decidedly helpful to go back to the days of the Anglo-Saxons and to examine the state of society then existing.

The Angles, Saxons, Jutes and other Germanic races, who over-ran the greater part of Britain, appear to have entirely destroyed the Roman-British civilization then existing, exterminating the inhabitants or making them slaves. The greater part of the country was occupied by the incomers, but the Britons held their own in Cornwall, Wales and the mountainous districts of the country.

Kemble, writing of the period, aptly describes the gradual settlement of the country by the invaders in the following words:—"On the natural clearings of the forest, or in spots prepared by man for his own uses; in valleys bounded by gentle acclivities which poured down fertilizing streams; or on plains which

here and there rose clothed with verdure above surrounding marshes; slowly, and step by step, the warlike colonists adopted the habits and developed the character of peaceful agriculturists. The towns, which have been spared in the first rush of war, became deserted and slowly crumbled to the soil, beneath which their ruins are yet found from time to time; or upon which shapeless masses still remain to mark the sites of a civilization, whose basis was not deep enough. All over England there soon existed a network of communities, the principle of whose being was separation as regards each other, and the most intimate union as respected the individual members of each. Agricultural not commercial, dispersed not centralized, content within their own limits, little given to wandering, they relinquished to a great degree the habits and feelings which had incited them as military adventurers, and the spirit, which had achieved the conquest of an Empire, was now satisfied with the care of maintaining a little peaceful plot sufficient for the cultivation of a few simple households."

This description is of the greatest help in understanding the system of land-holding that grew up in England, and it is particularly worthy of note that these settlements belonged absolutely to the community that occupied them, and were not held under a superior lord—in other words, they were *allodial* property.

Out of these settlements arose the *mark* or *township*, an area or territory occupied by a village community, a number of which went to make up a hundred—while several hundreds make a shire.

The English *mark* appears to have consisted of four parts—

1. The township, where the houses were held in severalty.
2. The arable land, in which the land was divided into several plots for the growth of crops, but was subject to common use when fallow or after the crop had been reaped and before the next seeding.
3. The meadow land, which was common to all after the hay harvest.
4. The waste lands, over which the members of the community had various rights of pasturage and of taking wood, peat, etc.

The inhabitants of the country were divided into three classes---the *noble*, the *freemen* and the *slaves* or *thralls*.

The noble class are spoken of by some writers as *eorls*, others calling them *thanes* or *thegns*. They were of noble blood, and were large owners of land. Chief among them was the King, whose authority depended more upon his personal qualities than his station.

The freemen, commonly known as *cheorls* or *ceorls* were of a class altogether apart. They were of base blood, and appear to have been chiefly employed in husbandry, holding land from a thegn and paying him rent for it, but holding it as a rule merely at his will. In some cases, however, the *cheorls* appear to have obtained greater rights to their land, so that their holding could not be determined at their lord's will. This latter class appear to have been called *socmen* or *sokemen*, a term fully explained later. Their power was apparently considerable, for we find that any *cheorl* who could earn or win as his own five

hides[1] of land, a church, a kitchen, a bell-house and a burghate-seat could become a thegn, and might even be elected to sit on the great council of the country or *witena-gemot*.

The *slaves*, *villeins* or *thralls* were for the most part of Welsh or ancient British origin; usually prisoners of war or men sentenced to servitude. They were of two classes—the household slaves and the predial or rustic slaves. They were the absolute property of their master, and had no right to hold property.

The Government of the time—both local and political—appears to have been thoroughly well organised. The officer of the township was the *town-reeve*. He assembled all the grown men of the township at the *town-moot*, where they settled any question that arose concerning the township. If the town was defended by a mound it was a *burgh*, *borough* or *bury*, and its head officer was called the *borough-reeve*. If it was a place of trade it might be a *port* and its officer a *port-reeve*. The *hundred* was presided over by the *hundred-man* or *hundred-elder*, and the business of the hundred was dealt with in the *hundred-moot*. The head of the *shire* was the *earldorman* or *alderman*, who was appointed by the King and wise men of the entire kingdom. The men of the shire met in the *shire-moot* and settled all quarrels arising in the shire. The bishop was also present, and the King was represented by the *shire-reeve* or *sheriff*.

A group of shires made up the *kingdom*, which was governed by the King and his *witena-gemot* or council of wise men. The witena-gemot was made up of the King and the members of his family, the

[1] A hide is variously spoken of as 60, 80 and 100 acres of land.

earldormen, archbishop, and bishops and the King's thegns. The King's thegns were the King's servants, and it would appear that the bishops and earldormen also had thegns.

The witena-gemot elected the King, almost invariably from the royal family, and they decided questions of peace and war and settled disputes among great men—they were the parliament of their time. It seems also that in many cases they made grants of the land, which was held by a community, to certain persons to hold in severalty, and this was done by means of a title deed or book.

THE NORMAN CONQUEST.

It will doubtless be remembered that after the Battle of Hastings William cleverly managed to cut off London from the rest of the country by marching up the Thames to Wallingford, and then, after crossing the Thames, taking up a position at Berkhampstead close to Watling Street, where he was able to prevent a junction of the English forces. There the witena-gemot attended at William's camp and elected him King of England.

The Norman Conquest differed greatly from the Saxon invasion: There was no extermination of the people, no ruthless destruction of property; William merely succeeded to a kingdom which was fully organized, and took over the existing institutions as they were. In fact, he went so far as to declare his intention to preserve the English laws and not to supersede them by Norman practices.

The changes effected, however, were naturally great, for William forfeited the lands of all who opposed him and compelled the surrender of the lands of those who

submitted to him, re-granting the land to such of its original owners as swore allegiance to him, on the understanding that they should hold the land as his tenants. Moreover, there were many rebellions and insurrections, which threw more of the land into the King's hands.

It would appear that the King took care, in the first place, to look after himself, and that his *demesnes* were very extensive. In the second place, he no doubt had to satisfy the claims of many adventurers whose power was almost equal to his own, and for this purpose he divided up the country into *baronies*, conferring the lands upon the barons he so created, but reserving to himself certain stated services and payments.

These great barons, who held immediately of the King, shared out a large part of their land to other foreigners, who were denominated *knights* or *vassals*, and who paid their lord the same duty and submission in peace and war as he himself owed to his sovereign. It would appear probable that none of the baronies were granted to the English, but it is clear that many of the knights' fees were granted to those of them who swore allegiance to the King.

THE DOMESDAY BOOK.

In 1085 William ordered that a complete survey of the whole kingdom should be made, so that he might know exactly how much land each man had and what payments were due to the King. For this purpose he appointed commissioners, who were sent to the shire-moots, where they obtained information as to the various divisions of the country. Thence they proceeded to the hundred-moots and took all details of

land ownership in the hundred. Finally they visited every township, and took particulars there. In one way and another they learnt the amount of arable, pasture and woodland in every shire, the names of the persons to whom it belonged, what mills and fisheries there were, the slaves and live stock that each man had and many other particulars. They also ascertained the value of the land at that time and what it was worth prior to the Norman Conquest.

All this information they set forth in the Domesday Book, which is still preserved. There were found to be about seven hundred chief tenants and sixty thousand two hundred and fifteen knights' fees.

The labour involved in the preparation of the Book was no doubt enormous, but its value is to some extent discounted by the fact that the idea of it appears to have come from a survey of the country made by Alfred the Great upon practically identical lines.

THE FEUDAL SYSTEM.

As soon as the Domesday Book was completed and William had obtained a knowledge of the various landowners in the country, he summoned them all to meet him at Sarum (now Salisbury) in 1086. There he made each of them swear allegiance to him, whether such landowner held under an intermediate lord or not.

The importance of this step was enormous, and clearly shows the master-mind of the King. By means of it William obtained far greater rights than any other feudal lord in Europe, for every landowner in the country became his servant and was bound to serve him in peace or war. Other feudal lords could only summon their immediate vassals and not the vassals of

their vassals, but William was able to call upon every freeman in the country. The assembly at Salisbury may be regarded as the introduction or perfection of the feudal system into this country and the true origin of our present system of land tenure.

The feudal system became general in Europe during the tenth century. It originated in the military policy of the Northern and Celtic nations who overran Europe on the decline of the Roman Empire. The conquering general allotted portions of the country he seized to the superior officers as rewards, and they held of him on condition of faithful service and on the penalty of forfeiture of their lands if they broke their faith. The conquering general, who in some cases (as in England, for instance) was the King, was lord paramount of all the land which he granted, and those to whom lands were given were his tenants. No absolute ownership of land was possible, except by the King.

The persons to whom the lands were granted by the King held under him a *fief*, *feud* or *fee* (Latin, *feodum*), whereby in return for their right to hold their land they undertook to be faithful to the King and to render certain services to him, chiefly by providing knights and men-at-arms to fight for him. These persons who held feuds from the King parcelled out their lands to their followers on condition of similar military services; and those who took often made sub-grants to others on similar terms, every tenant binding himself to be faithful and to serve his immediate lord on penalty of the forfeiture of his land. This practice was termed *sub-infeudation.*

These tenants who held direct from the King were termed *tenants in capite* and the lords between a tenant and the King were called *mesne lords.*

On the Continent only the *tenants in capite* were liable to the King, all other tenants being liable to their immediate lord only. There was a risk, therefore, of one of the *tenants in capite* becoming so powerful as to organise a successful rebellion. In England, however, by William's shrewdness, every freeman was directly bound to the King, and if he broke faith his land was forfeitable to the King.

The feudal system may be regarded as one entirely dependent upon military service, for which purpose it formed an efficient and formidable organisation.

Reverting more particularly to England, it would appear that the feuds or fees originally granted were originally held at the will of the lord only; that is, they could be taken away by him whenever he saw fit, but they soon became secured for the life of the tenant if he performed the services required of him, and by degrees they became estates of inheritance, passing to the heir on the death of the tenant. The practice of sub-infeudation was generally practised, and as has already been shown the number of the *tenants in capite* was comparatively small.

The system of sub-infeudation, which was doubtless well suited to a newly-conquered country in early times, soon appears to have led to much complication and inconvenience. To remedy the evil the Statute of Quia Emptores, 1290, was passed. This Statute gave every freeman, who was a tenant in fee simple, power to sell his land or any part of it; and provided that the purchaser should hold the land, not from the person who sold it to him, but from the same immediate lord from whom it was held previously, and by the same services. The effect of this Statute was to stop any

further sub-infeudation and to prevent any freeholder from becoming a mesne lord from that time forward.

The fees that were originally granted, when it became usual to grant them as estates of inheritance, were of two kinds—*fees simple* and *fees conditional.* A fee simple was held of the lord that granted it for ever; and, after the passing of the Statute of Quia Emptores, 1290, it could be sold to another or otherwise dealt with. The fee conditional was only intended to be held so long as the tenant had direct descendants, and could not be sold. If the tenant of it died without children, or if the direct issue failed at any time, the land reverted to the lord who granted it. These tenures, whether granted in fee simple or fee conditional, were governed by the common law of the land, except where they were sub-tenancies of a manor and were governed by the custom thereof.

In the granting of the fiefs, feuds or fees, whether by the King or by the system of sub-infeudation, we have the origin of the present *freehold tenure* of this country; that is, a tenure held of a lord in return for a fixed and certain service, and governed by the common law of the land. Down to the present day this remains the most usual form of tenure in England, although the military service by which the land was originally held has long since been abolished.

HONORS AND MANORS.

We have already seen that William divided the whole of the country, except that which he retained as his share, into baronies and knight's fees, or, in other words, into *honors* and *manors.* An honor comprised several manors, often in very different parts of the country, and gave a title of honour to its owner.

A manor was an agricultural unit, no doubt the same as the Anglo-Saxon *mark*. It was usually conterminous with the parish, and consisted of an organisation for the cultivation of the land and for rendering military services in war. The manor differed from the mark mainly in the fact that the whole of the land therein was given to one man, who became *lord of the manor* and all the other persons upon the manor were obliged to swear fealty to him and to do him service. The old Saxon independence was gone.

On these manors many ancient grants of freehold land were made, and tenancies were created, which, though held of the lord of the manor, did not remain properly part of the manor. With these exceptions, the manor remained a complete and separate organisation governed by the particular customs referring to it, many of which had doubtless come down from Anglo-Saxon times. All dealings with land in the manor were carried out in the manorial courts and recorded in the record of the manor known as the *court roll*.

The *tenants of the manor* were *freemen* and *villeins*. The freemen were no doubt the old Saxon freemen who swore allegiance and the various Norman men-at-arms who followed the knight who was lord of the manor; the villeins probably the Anglo-Saxon slaves and such of the Anglo-Saxon men who lost their land owing to not surrendering to the Normans. The freemen held in *free tenure*, and had equal rights with the lord; their services were fixed and certain; they met with the lord in the *Court Baron* of the manor, and were judges with him.

The villeins were mere serfs; they held in *base* or *villein tenure*, and may be regarded as menial servants

or agricultural labourers. They had no legal rights against the lord, and held their land purely at his will, so that he could dismiss them and take away their land at any time. The services which the tenants had to yield in return for their holding were quite uncertain; in fact, it is said that they never knew from one day to the next what might be required of them. Most of the services appear to have been of an agricultural character, such as to plough the lord's land or attend to his animals, though no doubt some were slaves of the household. The sole title which these villeins had to their land was an entry of their name upon the court rolls of the manor.

These manorial tenancies still prevail, though in recent times they have been largely done away with. The freemen of the manor have become the *customary freeholders* and the villeins have become the *copyholders*. The copyholder still holds nominally at the will of the lord, but the custom of the manor has developed in his favour, and the lord's will has been limited thereby. The copyholder's title to his land is by copy of the court roll, but this has become well secured, and the copyholder's rights have so increased that he is now in almost as good a position as a freeholder, provided he performs his due service to the lord, which have become quite definite in character.

Very many of the customary freeholds and copyholds have been enfranchised, and are now subject to the same laws as freeholds, and no longer subject to the manorial customs. When enfranchised they are, to all intents and purposes, the same as ordinary freeholds, but for the fact that, when the enfranchisement takes place under the Copyhold Acts, the right of escheat, in

the case of intestacy and failure of heirs, remains in the lord of the manor instead of being vested in the Crown.

ANCIENT DEMESNE.

It will be remembered that at the time of the Norman Conquest William reserved large areas of land for himself. This land appears to have consisted of the demesne held by Edward the Confessor and other demesnes appropriated by William, as these are separately referred to in the Domesday Book as "the lands of King Edward and the lands of the King." These lands are held by the Crown as manors, and the tenants held directly from the Crown as lord of the manor.

The tenants of manors in ancient demesne held by a privileged villeinage tenure *(villanum socagium)*, and their services, although originally servile, were certain in character. The tenants could not be ejected so long as they performed their services, nor could they be compelled to remain in possession of their holdings. These peculiarities show a free tenure held independently of the lord's will, but many other incidents of tenure indicate a holding more akin to copyholds. For instance, they could not freely transfer their land to another, but the conveyance of the land was by surrender to the lord and admittance of a new tenant by him, and the recovery of the land could only be obtained in the King's Court. These matters have been modified greatly in quite recent times; and lands held in ancient demesne are now very similar to ordinary freeholds, for since 1833 they can be conveyed by a simple deed, and the action for their recovery was made similar to that for other freehold lands by the Common Law Procedure Act, 1852.

TENURE IN BURGAGE.

At the time of the Norman Conquest there were several towns of importance to be found in the country, such as London, Oxford, Cambridge, Chester, Nottingham, Derby, Lincoln, Colchester, Dover and Exeter. In these and other towns a third species of free tenure was created, known as *tenure in burgage.* The *burgeuscs* or *burgesses* as they were called, held their houses and lands of the lord of the manor by payment of a money rent, and the customs relating to the holding were often most advantageous to the tenants. Among the more notable of such customs may be named the custom of descent known as *borough English,* by which the youngest son inherited the land on the death of his father, instead of the eldest doing so as was usual elsewhere, and a custom enabling the tenant to devise his property; that is, to leave it by will.

TENURE OF GAVELKIND.

The County of Kent was of very ancient origin, and in Anglo-Saxon times a different system of landholding would appear to have existed there to that in vogue in other parts of the country. The land was held by the tenant paying a *gafol* or rent for it, and particular customs applied.

The Normans adopted the custom which they found, and down to the present day the custom of gavelkind prevails in the county. The land was held in free tenure, and among the customs may be noted that the descent was to all the sons equally; that the tenant had usually full power to devise, and that an infant had the power to grant his land when he

attained the age of fifteen years instead of being obliged to wait until he was twenty-one years old.

It seems that the custom of gavelkind does not apply to those lands in the county which were originally held by knight's service, and that many lands have been disgavelled, or freed from the custom, by Royal prerogative or Statute, but that the custom applies to all other land in the county.

FREE TENURES.

In ancient times free tenures appear to have been divided into three classes:—The feudal tenures or *tenure in chivalry*, including *knight service* and *tenures by grand and petty serjeanty; tenure in socage* and *tenure spiritual.*

Knight's service was the most honourable species of free tenure. It was by this tenure that the great barons held their land of the King, and most manors appear to have been held similarly either from the King or from a mesne lord. In course of time, however, the military service appears to have been commuted to a money payment assessed by the Crown, and afterwards by Parliament and called *scutage* or *escuage.* Even this appears to have become obsolete by the time of Richard II. In early times also the tenant who held by knight's service was bound to yield many other services to his lord, beyond serving him in war with his retinue. For instance, he could be called upon to pay money for his lord's ransom or for his lord's son's knighthood, or his lord's daughter's dowry; and a sum of money, called a *relief* had to be paid to the lord by the heir of full age on his succession to the estate. The lord also had the custody of all heirs under age, and held their lands and took the profit thereof without

having to account for it, and he could compel his wards to marry whom he pleased or to pay heavy penalties.

Tenure by grand serjeanty appears to have resembled knight's service, but the holder had to perform some special service, as, for instance, to carry the King's banner or his sword.

Tenure by petty serjeanty was somewhat similar, but the service was of a comparatively trivial kind.

Tenure in socage was the descendant of the Anglo-Saxon socmen or sokemen, *i.e.*, freemen who were bound to attend a court, but in very early times they were regarded as agriculturists, and their very name is often referred to the Norman word *soc*, a ploughshare.

Sokemen appear to have been numerous in the time of Edward the Confessor, but to have fared badly in the early Norman time, for at the time of the Domesday Survey they were few, except in the north-eastern counties. Nevertheless, as time went on they increased again in numbers, and the form of holding became a favourite one.

In early Norman times the services due from a tenant in free socage appear, as a rule, to have consisted of a payment of a money rent and doing certain agricultural work upon his lord's land. The tenant had also to swear fealty to his lord, and could be called upon to pay money for the knighthood of his lord's son or the dowry of his lord's daughter; he also had to pay a relief on succession and to attend the courts. The lord had, however, no wardship of infant heirs, and no say as to their marriage, as this duty was incumbent on the nearest relation to whom the property could not descend.

Before many years were passed the services in free socage tenures were much modified and became largely commuted to a money rent, and the term *socage* came to mean any form of free tenure not held by military service. Later still, even the money payments lapsed or fell into insignificance.

The military tenures, however, lost but little of their onerous responsibilities, and among other incidents those relating to wardship and marriage caused much discontent. The difficulties that arose during a period of civil war can be imagined. England was constantly moving in the direction of independence for its people; these military tenures were a restraint on independence, and were doomed. It is somewhat remarkable that they should have lasted as long as they did, for it was not until the time of Charles II. that they were done away with. Then, by the 12 Car. II. c. 24, an Act for the Abolition of Military Tenures, 1662, all freehold lay tenures were converted into free or common socage as from the 24th February, 1645.

Of *tenures spiritual* but little need be said. They were no doubt created owing to the power and persuasion of the various monastic bodies of early times, and the lords of the manors appear to have granted them in perpetuity to be held of themselves. The Statute of Quia Emptores, 1290, put a stop to this practice; but even in the present day there are many lands which were granted to ecclesiastical bodies before that date which are still held by them, under the donor, by the ancient spiritual tenure of *frankalmoign* or *free alms*.

FEE FARM GRANTS.

There is another method of holding land which might be confused with the sub-feudal tenancies before alluded to, viz., *fee farm grants*.

In this case the owner really sells his land to another; but, instead of taking full money payment for it, he agrees to accept an annual payment. In other words, he grants his land to another in consideration of a perpetual rent charge.

These grants are easily distinguished from the ancient feudal grants or the grants of modern leaseholds, as the grantor reserves no lordship over the land, nor has he any reversion to the land whatever; he merely has the right to a rent payable at such times as may be agreed.

The tenant in this case holds not under the person who granted the land to him, but under the Crown or other lord of the land, much as if the land had been sold to him for a lump sum.

In the present day there is nothing to prevent a grant being made in this form, and the practice is a common one in Lancashire and other parts of North England, though not often found in the South.

THE TERM OF YEARS.

The term of years was well known in the time of the Normans, but apparently was not regarded as a tenure, but merely as a contract. The term was granted by the freeholder to a person who agreed to hold the land for a certain time, under the freeholder and on his behalf, as his bailiff.

There was no security of tenure; the only right was under the contract, and the contract was regarded as purely personal property, so that on the tenant's death it passed, with his other chattels, to his executor.

The term of years, though perhaps of slight importance in Norman times, gradually acquired greater rights and formed the basis of the leaseholds of modern times.

THE RECOVERY OF POSSESSION.

Of the three main classes of tenant the freeman who held in free tenure, the villein who held in base tenure and the person who occupied another's land under contract for a term of years, the freeholder was the only one who was fully protected by the law.

In the earliest times even the freeholder appears to have had some difficulty in recovering his land if he was wrongfully dispossessed of it, but he was given full power to do so by the Assize of Novel Disseisin, passed in the reign of Henry II., whereby he could bring an action in the King's Court and recover possession of his land from anyone who had wrongfully seized it. At the present day the freeholder's position is similar, for if he is wrongfully kept out of the possession of his land he can only recover it by peaceable re-entry or by proper legal action. Forcible re-entry is unlawful, being contrary to the Statute 5 Richard II.

The tenant in villeinage had no right in the King's Court unless he claimed under a covenant with his lord, but he could appeal to his own lord's court if dispossessed of his property. In later times the copyholder obtained full rights of recovery.

The tenant for the term of years had at first no remedy at all if he were ejected, except under a covenant by his landlord; but by degrees special forms of action were given to him, by which he could recover damages at any rate. In the reign of Edward IV. power was given him to recover his holding as well.

SUCCESSION AFTER DEATH.

The freeholder's land was granted in fee, and passed on the tenant's death to his heir; that is, to his nearest blood relation as defined by the laws relating to the

succession of fees. Generally, the land was bound to pass in this way, for although the tenant could part with his land during his life he had no power to leave it by will.

The land of the tenant in villeinage passed, according to the custom of the manor, to the customary heir; the common law rules did not apply to the matter. There was usually no power to leave by will.

The tenant for a term of years only had a contract; this contract was a mere chattel, and he could leave it by will just like any other chattel, for he had the full and free right to dispose of his chattels as he pleased. These chattels were liable for the deceased's debts, and the balance passed to his executor if he left a will, or to his administrator if not, just as they do to the present day.

SUMMARY.

Summarising the tenures of England as described in the foregoing chapter it will be seen that the whole of the land in England which is not vested in the Crown is held of the Crown in free socage or freehold tenure. The freeholder of the land has in many cases created sub-tenancies of the land—freehold, copyhold or leasehold.

The classes of tenancy which may now be found are four in number, viz.:—

1. Freeholds held under the Crown direct.
2. Freeholds held under a subject (these being comparatively rare).
3. Copyholds held under the lord of a manor.
4. Leaseholds held under a landlord.

These tenancies are more fully explained in the following chapters.

CHAPTER II.

TENANCIES IN FREE SOCAGE OR FREEHOLDS.

ESTATES IN FEE SIMPLE.

DEFINITION OF "FREEHOLD."

"FREEHOLD" may be defined as a free tenure of land, usually under the Crown, according to the Common Law of the realm. They are held in three ways—either in *fee simple* (that is, to a man and his heirs general), in *fee tail* (*i.e.*, to a man and the heirs of his body), or *for life* (*i.e.*, for the life of the tenant or other person or persons).

FEES SIMPLE.

NATURE OF A FEE SIMPLE.

An estate in fee simple is the most usual kind of freehold, being that which a man hath to hold to himself and his heirs general, *i.e.*, to his children and all his relations. It is the highest form of tenure known to the English law, and the tenant of this estate has the entire uncontrolled disposition of his property.

A fee simple is the only absolute and everlasting estate; and, whatever other estates there may be in the land, there will always be a *reversion* to, or a *remainder* in, the fee simple. There may be many estates for life, or in tail, which come before the fee simple, but no estate can follow it.

The distinction between a remainder and a reversion is, that a reversion returns to him or the heirs of him that originally granted it, whereas a remainder is vested in someone to whom it was granted by a previous owner. Thus if A is the freeholder in fee simple, and he lets his land for ninety-nine years to B, he still has a reversion at the end of the term. Or if A creates a fee tail, or grants a life estate to B, the reversion is in A and his heirs. But if A grants a life estate to B, on whose death the estate is to go to C in fee simple, C has a remainder vested in him. This is an example of a *vested remainder*. There is also a *contingent remainder; e.g.*, if A grants a life estate to B with remainder in fee simple to C, if C marries X. This remainder is contingent on C marrying X. If he does not do so, the property would revert to A on B's death. The law as to contingent remainders is of great intricacy.

ESCHEAT.

If the tenant of a fee simple dies intestate (*i.e.*, without leaving a will), and without heirs (*i.e.*, without children or relations), the estate would escheat to the lord of whom he holds (*i.e.*, usually the Crown).

FEALTY AND HOMAGE.

The lord is entitled to *fealty* (*i.e.*, an oath by the tenant of his loyalty to the lord), but this is never demanded; and *homage* (*i.e.*, acknowledging his tenure by kneeling and taking oath to become the lord's man and receiving the lord's kiss) used to be rendered by the tenant of the lord, but was abolished by the Act for the Abolition of Military Tenures, 1662.[1]

[1] 12 Car. II. c. 24.

RENTS AND RELIEFS.

Where the lord is not the Crown, it is not unusual to find a *quit rent* (*i.e.*, a small sum of money) payable annually by the tenant to the lord, and a *socage relief* of one year's quit rent payable on death; these being often due in lieu of services which had to be rendered formerly. If the land is held of a manor, the tenant usually has the *rights of common* (*i.e.*, a right to take part of the produce of the land) over the waste lands belonging to the manor.

THE TENANT'S POWERS.

Everything on the land belongs absolutely to the freeholder, and he can do as he likes with it, provided that he does not infringe the rights of others; for instance, other persons may have *easements* (*e.g.*, a right of way) over the land, but he must not do anything which is a nuisance to his neighbours, and he may be bound by covenants which run with the land.

The owner of a fee simple can dispose of it as he pleases. He can sell it, exchange it, give it away or leave it by his will; and if he dies and leaves no will, the property, after going to the administrators with the rest of his estate, devolves upon his *heir-at-law* (*i.e.*, his nearest blood relation), according to the law of intestate succession.

THE LAW OF INTESTATE SUCCESSION.

By this law the estate devolves upon the eldest son, if there is one. Sons always succeed before daughters, and the elder son before the younger; but if there is no son, but several daughters, the daughters would succeed

to equal shares as coparceners. Similarly, if there were no children, the estate would go to the nearest male relation, or failing him to all the nearest female relatives of the same degree equally as coparceners. The degrees of kinship are traced through the *last purchaser* (*i.e.*, a person taking otherwise than by descent or escheat), being calculated as between lineal ancestor and descendant by the number of generations between them ; and, as between collateral relatives, by the number of generations from one relative up to the common ancestor and down to the other relative.

The heir-at-law, who obtains the property by descent, is bound to take it, and cannot disclaim it; whereas, if property is left by will, or if it is given, the *devisee* or *donee*, as the case may be, is not obliged to take it unless he wishes.

DOWER AND CURTESY.

Further, if the deceased owner were a woman, her husband would have a life interest in the whole of the land by the *curtesy of England*, if he had heirs by her who were capable of inheriting ; and if the deceased were a married man leaving a widow, such widow would have a life interest of one-third of the land for her life, this being called her *dower*.

After the decease of the *tenant by the curtesy* or *tenant in dower*, their interests descend to the heir of him or her who was tenant in fee simple, according to the ordinary rules of intestate succession.

GAVELKIND AND BOROUGH ENGLISH.

Exceptions to these rules of inheritance are found where the circumstances of *gavelkind* or *borough English* prevail.

Gavelkind is found as the common law of the County of Kent, and by custom in other places. Under it, lands descend to all the sons in equal shares; the wife's dower is in one-half of the land, and the husband's curtesy is in one-half also.

Borough English is the custom of descent in burgage tenure, which is a freehold tenure found in certain ancient cities and towns, and which has many peculiar customs.

By the custom of borough English the descent is to the youngest son of the tenant, and the law as to dower is various.

CHAPTER III.

DEALINGS WITH ESTATES IN FEE SIMPLE.

SALES OF FEES SIMPLE.

POWERS OF SALE.

A TENANT of an estate in fee simple has full powers of sale, provided that he or she is of full age and sound mind, and is not under legal disability by reason of coverture, bankruptcy, felony and the like, and knows what he or she is doing, and can exercise his or her own free will.

There are several classes of persons who do not come within this category, and whose powers, if any, are by Statute only; *e.g.*, *aliens*, *infants*, *married women*, *lunatics*, *felons undergoing sentence* and *bankrupts*. There are also certain owners whose powers of contracting are limited by Statute, such as corporations and charity trustees. Other owners are limited in their powers by the position they occupy, or the interest in the property which they possess; *e.g.*, *persons in a position of trust*, *mortgagees*, *tenants for life* and such like. Lastly, there are persons whose contracts would be voidable owing to the faults of others; *e.g.*, *persons under duress*, *persons subjected to undue influence* and *persons who are misled by fraud, misrepresentation or mistake*. The powers, if any, of these persons respectively, can be found in any work dealing with contracts, and will not be dealt with at length in the present work. Very briefly, it may be taken that the

disability of aliens and married women has been largely removed; that infants and lunatics are given all necessary powers to act through their trustees, committees and other persons appointed for the purpose; that the felon's property vests in his administrator, and the bankrupt's in his trustee in bankruptcy.

METHODS OF SALE.

The sale can be carried out either by *private treaty* or by *auction* or by *tender*. A sale of real property is never a completed transaction, as it is invariably followed by an investigation of the vendor's title and finally by a *conveyance* or transfer of the property by the vendor to the purchaser. The payment of the purchase-money and the completion of the purchase are always delayed until the time of conveyance. A sale, therefore, really means an agreement between the vendor and the purchaser, whereby the vendor obliges himself to transfer his property to the purchaser for a price.

From another aspect, a sale may be regarded as in reality merely a contract of sale. The sale itself is complete as soon as a proper agreement or contract has been entered into, and both the vendor and purchaser are bound thereby to proceed to the completion. The purchase is not completed until the whole of the money is paid, or otherwise arranged for, and the property transferred to the purchaser.

THE CONTRACT FOR SALE.

By the 4th section of the Statute of Frauds[1] "no action shall be brought whereby to charge any person upon any contract or sale of land, tenements

[1] 29 Charles II. c. 3.

or hereditaments or any interest in or concerning them unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith or some other person thereunto by him lawfully authorised."

The contract for sale must therefore be in writing, and the following points are essential for its validity :—

1. There must be an offer of the property, and an acceptance thereof, identical in all respects with the terms of the offer.
2. There must be a present or future consideration for the contract; or the contract must be by deed, if there is no consideration.
3. The assent of the parties to the contract must be a genuine one. They must not be labouring under any mistake, or suffering from any misrepresentation or fraud. The contract will fall through if either party signing it was coerced into doing so, or unable to exercise his own free will.
4. The object of the contract must be a legal one. If the consideration is illegal, or if the object of the contract is illegal, the contract is void. No maintainable action can possibly arise out of an illegal contract.
5. The property, the parties, and the price must be sufficiently identified.
6. The parties must be legally capable of entering into the contract.

WHAT IS INCLUDED IN THE CONTRACT FOR SALE.

An agreement to sell land will include, not only the land itself, but everything over it and under it, and all things attached to it; that is, such things as timber, growing crops, fixtures and minerals, unless the contrary is shown in the agreement.

The whole of the vendor's interest will be included, and any rights incidental thereto that he may be possessed of. The vendor's interest will be assumed to be an estate in fee simple, unless the contrary is expressed, and vacant possession will be implied, unless the contrary is mentioned.

THE EFFECT OF THE CONTRACT.

As soon as a proper contract is entered into between the vendor and the purchaser, the purchaser becomes the beneficial owner in equity, and the quantity and the quality is fixed at the time the contract was made. However much the property may improve or depreciate in value before the completion of the purchase, the purchaser will have the benefit thereof or will have to bear the loss, as the case may be, and the vendor will not be affected.

The purchaser does not, however, become the legal owner of the property until he has completed the purchase. Considerable time must, therefore, elapse between the signing of the contract and the completion of the purchase, during which the purchaser is owner in equity but not in law. Throughout this period the property remains in the hands of the vendor, and he becomes a trustee of the estate for the purchaser, and is bound to take reasonable care of

the property so that no depreciation of it shall arise through his fault; *e.g.*, he must prevent the land going out of cultivation or being injured by trespassers.

The vendor is entitled to take the rents which become due up to the time fixed for the completion, and to take the crops and produce of the soil; but after the date fixed for completion, the purchaser is entitled to the rents and profits; and, if the vendor continues to receive them, he must account for them to the purchaser.

PART PERFORMANCE.

Although a contract may not be sufficient to satisfy the Statute of Frauds, it may nevertheless become so by the equitable doctrine of *part performance*. Equity will not allow a Statute to be made an implement of fraud, and so where subsequent to a contract any acts are done, which can only be referable to the existence of a contract, the terms of such contract can be proved, and the contract itself will be held valid.

What amounts to sufficient part performance is a very difficult point, and is purely a matter for the Courts. Where an action is brought upon it, there must always be part performance by the plaintiff, and not by the defendant.

As an example of the doctrine, if there were a verbal agreement to sell and buy land, and in pursuance thereof the vendor let the purchaser into possession, and the purchaser built a house upon the land (although he would have no right to the land at law), he could bring an action in the Chancery Court for the specific performance of his agreement, and probably succeed. The building of the house could only be referable to the existence of a contract, and

equities had arisen which could not be administered unless the contract was regarded. The Court would, therefore, accept the parol evidence of what the contract actually was; and, having ascertained its terms, would enforce it.

PROCEDURE AFTER CONTRACT.

After a valid contract has been made, the purchaser investigates the title of the owner. If all is satisfactory, the purchaser in due course completes the contract, by paying the remainder of the purchase-money, over and above the amount of the deposit which was paid at the time of the sale. The vendor then conveys the property to the purchaser.

A CONVEYANCE OF FEE SIMPLE.

At the present day freehold property is conveyed by the vendor to the purchaser by a *deed of grant*. This deed is in the form of an *indenture*, made on a certain date between the two parties, which witnesseth that, in consideration of the purchase-money paid by the purchaser to the vendor for the purchase of the property (the receipt of which sum the vendor acknowledges), the vendor grants the property to the purchaser to have and to hold it unto the use of the purchaser in fee simple, in witness whereof the parties set their hands and seals and duly deliver the deed.

In some cases, such as where a company is purchasing under compulsory powers and the vendor cannot make a good title, the purchaser conveys to himself by means of a *deed poll*. This is only possible when power is given by Statute.

The deed poll differs from an indenture in that it has a straight top, not an indented one (which is usual

though no longer compulsory for indentures); is made in one part only instead of two; and has only one party to it instead of two or more.

MORTGAGES OF FEE SIMPLE.

A *mortgage* of a freehold greatly resembles a sale. The owner of the freehold conveys his legal estate in the property, to the person from whom he borrows money, by a mortgage deed transferring to him the various title deeds, under which he holds, as security for the money lent to him. The *mortgagor* (*i.e.*, the borrower) always has the right to redeem his property at the date named in the mortgage deed, or at any other subsequent time, by giving six months' notice or paying six months' interest in lieu of notice. He also has the right to sell his *equity of redemption*, or to borrow money upon it, the latter being an example of an *equitable mortgage* of an *equitable interest.*

An owner can also make an *equitable mortgage* of his *legal interest;* for instance, by merely depositing his title deeds as security for a loan, undertaking to make a legal mortgage if called upon, and taking a memorandum of the deposit, without making any deed conveying his property to the lender. A loan from a bank is frequently effected in this way, the bank having the right to a conveyance of the legal estate if the money is not returned.

LEASES OF FEE SIMPLE.

The owner of a fee simple, who is absolutely entitled thereto, has full power to make leases of any part of it, for any term he sees fit. The number of years which he can grant is not in any way limited. He can grant for several thousand years, if he sees fit. Generally speaking, occupation leases are seldom granted for

more than twenty-one years, but building leases are commonly granted for a term of ninety-nine years, and not uncommonly for a term of nine hundred and ninety-nine years.

WILLS OF FEE SIMPLE.

The owner of a fee simple, who is absolutely entitled thereto, has full power to leave his property by will (*i.e.*, to devise it) to anyone he pleases. The law upon the subject is chiefly to be found in the Wills Act, 1837.[1]

SETTLEMENTS OF FEE SIMPLE.

The owner of a fee simple sometimes desires to keep the property in his family, and so far as he can to prevent his descendants from parting with it, and for this purpose he creates a *settlement* entailing the property. In the majority of cases, they are made by a deed on the occasion of a marriage, or by will. This *real* or *strict* settlement, which is employed only in the case of large estates with the intention of preserving them intact from generation to generation, is dealt with in a later chapter.

Another form of settlement, commonly used, is an ordinary *marriage settlement*, whereby the husband and wife take the income of their property for their life, after which the property goes equally to their children. In this case the property is vested in the hands of trustees for sale, and the trust deeds direct what should be done with it.

LIABILITY OF FEES SIMPLE FOR DEBT.

Estates in fee simple are liable for the owner's debts during his lifetime by the Judgments Act, 1838[2];

[1] 7 Will. IV. and 1 Vict. c. 26.
[2] 1 and 2 Vict. c. 110.

and, when the owner dies, they become liable for his debts; as, under the Land Transfer Act, 1897,[1] the lands vest in his personal representative. If the owner becomes bankrupt, the property vests in the hands of his trustee in bankruptcy.

[1] 60 and 61 Vict. c. 65.

CHAPTER IV.

FORMER METHODS OF CONVEYANCE.

BEFORE the present method of conveying property by a deed of grant was created, many other ways were used from time to time. A short account of these will be found useful.

Land being part of the realm, it is of great importance that clear evidence of every change of ownership should be preserved. It has been invariably the case to do so from time immemorial, so that a considerable amount of formality has been necessary at all times.

It has always been the rule, that if property were incorporeal in its nature, it could only be granted by deed, because the possession of the property could not be given; and it was the rule that corporeal hereditaments could not be granted except by delivery of possession, or, as the old term goes, *livery of seizin.*

Corporeal hereditaments, therefore, were said to lie *in livery*, and incorporeal hereditaments were said to lie *in grant.* It was not until 1845 that conveyances of immediate freeholds were deemed to lie in grant as well as in livery.

FEOFFMENT WITH LIVERY OF SEIZIN.

The feudal system introduced the *feud* or *fief*, commonly called *fee*, and a grant or transfer of it was called a *feoffment*, the grantor being called the *feoffor* and the grantee the *feoffee*, the method of granting being called a *feoffment with livery of seizin*, which in modern language may be called a grant of the freehold with delivery of possession.

For many years this was the only method of conveyance, and it is possible, though obsolete, in the present day.

The feoffment with livery of seizin was carried out in one of two ways—either by *livery in deed* or by *livery in law*. Livery in deed was carried out by the owner going with the proposed tenant or purchaser on to the land, and there by formal and proper words giving him the vacant possession of the land. The gift was often accompanied by some appropriate act, such as the handing to the tenant or purchaser a turf or twig from the land, or the key or hasp of the door of the house. This was sufficient to convey all the land intended to be conveyed in the county in which the delivery was performed, but not in other counties; and, where land was situate in several counties, it was necessary for the livery of seizin to be performed in each county.

Livery in law was done in sight of the land without going on to it, by the feoffor telling the feoffee to enter and take possession; but the transfer of the property was not completed until he had actually entered and taken possession. This form of livery was sufficient to convey land although it lay in another county.

In either case clear evidence of the transaction was necessary. This was usually done in early times by means of witnesses, but a deed was often used, deeds being more common in these days than signed writings; because, as few men could write, it was easier to obtain their acknowledgment to a writing by means of a seal.

The particular words that were used at the time of the livery of seizin were of the utmost importance, as they decided what interest was granted. If an estate

of inheritance was intended, the employment of the word *heirs* was absolutely necessary, no other words being sufficient, even if they had a generally accepted similar meaning.

If the words used were *I give this land to A B and his heirs*, they conveyed a fee simple. The words *to A B and the heirs of his body* would convey a fee tail; but if any other words than *heirs* were used, they would only convey a life estate.

FINE AND RECOVERY.

Another method of conveying land in ancient times was by *fine and recovery*, and this being an action in the Courts, clear evidence of the transaction was preserved. There was no proper livery of seizin in the matter, but the judgment of the Court either presupposed seizin, or required their verdict to be followed by entry, so that possession of the land was assured.

LEASE AND RELEASE.

Another early method of conveying land was by *lease and release*. In these cases a landlord granted a lease to a tenant for a term, the tenant entered by force thereof, and the landlord subsequently released his interest in the land to the tenant by deed.

EXCHANGE.

Exchange appears to have been known, and to have been carried out by entry, without livery of seizin.

A tenant in possession could also surrender his land to the freeholder, without making a formal livery. In every case it appears that possession was the key-note of ownership.

BARGAIN AND SALE.

From comparatively early times conveyance by means of *bargain and sale* appears to have been common. When a man purchased land, even if he paid for it at once, the law did not give him a title to it until proper feoffment by livery of seizin was made; but the Courts of Equity took a different view, and under their maxim of considering that as done which ought to be done, they held that the vendor merely held to the use of the purchaser.

When the Statute of Uses was passed in 1536,[1] it had the effect of at once conveying the legal estate to the purchaser, if he had paid for the property, because this Act vested the legal estate in land in the person that had the use of it.

In consequence of this, the seizin of land was often transferred from one person to another by mere verbal bargain and sale, so that it was difficult to know to whom land belonged. To remedy the evil, the Act of Enrolments[2] was passed in the same year, requiring that every bargain and sale should be made by a deed, indented and enrolled in the Court of Record, within six months from the date thereof. This ensured a full knowledge of the ownership of property, and put a stop to the objectionable secret conveyances.

The lawyers of the time appear to have quickly discovered a method of evading the Statute. It was noticed that the Statute of Uses and the Statute of Enrolment only applied to freeholds, and not to terms of years, and that it was therefore possible to make a bargain and sale of a short term of years by word of mouth and the payment of money; then, when the

[1] 27 Henry VIII. c. 10.
[2] *Ibid.*, c. 16.

lease was made, the landlord's interest could immediately be released, so that the freehold was thereby conveyed without livery of seizin or enrolment.

The law, however, independently of the Statute of Uses, required that the tenant should enter, but the Statute of Uses did away with this necessity, as the payment under the bargain and sale created a use on behalf of the purchaser, and the Statute gave him the legal estate without entry.

The Statute of Frauds [1] put a stop to this practice of secret conveyances, and required that every contract for the sale of land, or of any interest therein, should be in writing; but the method of conveyance by lease and release survived, and from that time to 1841 it appears to have been the chief method for conveying property.

It was commonly carried out by two deeds—one conveying the lease to the purchaser, and the other, which was usually made on the same day, releasing the landlord's interest to him.

RELEASE.

In 1841 an Act [2] was passed, which provided that a release could be made to a purchaser without a lease being first granted to him. This would appear to have been a simple and satisfactory means of conveyance by a simple deed; but it was done away with, for the purposes of ordinary conveyance, by a still more simple method of conveyance created by the Real Property Act, 1845,[3] and known as the *Deed of Grant.*

DEED OF GRANT.

This Act set out that all corporeal tenements and hereditaments shall, for the purpose of the conveyance

[1] 29 Charles II. c. 3.
[2] 4 and 5 Vict. c. 21.
[3] 8 and 9 Vict. c. 106.

of the immediate freehold thereof, be deemed to lie in grant as well as in livery, so that a simple deed of grant was all that was in future necessary for their transfer. This quickly superseded any other method in practice, the method of release falling into disuse, except for conveying the remainder or reversion to a tenant in possession, so as to produce merger, or for conveying the interests between joint tenants and coparceners, or for extinguishing rights over land which were less than the full ownership thereof; *e.g.*, in copyholds by the lord releasing his seignorial rights to the tenant.

Even the deed of grant was a very lengthy and complicated matter, and required much skill in drafting, but it has been much simplified by the Conveyancing and Law of Property Act, 1881,[1] which sets out many things that may be implied by the use of particular words, and generally protects the interests of the parties concerned. Still, even at the present time, much skill is required in drafting a conveyance, and the use of proper words is essential, as an instance of which we find that the word *unto* and the words *to the use of* are still necessary.

REGISTRATION.

An even more modern form of conveyance is transfer by registration under the Land Transfer Acts of 1875[2] and 1897.[3]

[1] 44 and 45 Vict. c. 41.
[2] 38 and 39 Vict. c. 87.
[3] 60 and 61 Vict. c. 65.

CHAPTER V.

ESTATES IN FEE TAIL.

THE HISTORY OF FEE TAIL.

ALTHOUGH a large portion of the land, granted in early times, was granted in fee simple, a considerable portion was granted upon *fee conditional; i.e.*, granted to a man and his heirs to hold for so long as there should be heirs of his body; but, if there was no direct line of issue, that the property should revert to the grantor or his heirs.

Thus if A, the tenant in fee simple, granted an estate to B in fee conditional, B and his heirs would hold it for so long as there were direct descendants (children, grandchildren and so on) of B; but if B had no children, the estate would return to A; or, if A was dead, to the heirs of A.

It was intended that B, the owner of the fee conditional, should not part with the property under any circumstances; but the Courts held that, as soon as an heir was born, the condition of the grant was satisfied, and the owner B could alienate (*i.e.*, sell or give away) the property as a fee simple.

This decision led to considerable loss to the grantors of the conditional fees; for, in the case above, if B had a son, he could at once sell the land. In order to put a stop to the practice of alienating property granted in fee conditional, the Statute de Donis Conditionalibus, 1285,[1] was passed; requiring the condition of the grant to be strictly observed, and making fees conditional unalienable.

[1] 13 Edw. I. c. 1.

The result of this Statute was, that the tenants became practically life tenants only, with life estates to the heirs of their body in succession. This led to the fee conditional being changed in name to *fee tail*, as it has since remained.

BARRING FEES TAIL.

The great inconvenience, which the tenants in fee tail suffered, from not being able to alienate their property, led to the Courts endeavouring to find some methods of getting over the difficulty; and by degrees two forms of action, based upon legal fictions, arose, by means of which a tail could be barred, and the property alienated.

These actions were called *levying a fine* and *suffering the recovery*, but they were both done away with by an Act for the Abolition of Fines and Recoveries, 1833,[1] which enables the tenant in tail to bar the tail by making a disentailing assurance and enrolling it within six months of its execution in the central office of the Supreme Court. This disentailing assurance is really a deed of grant of the land discharged from all estates in tail of the grantor, either at law or in equity; so that the fee tail becomes converted into a fee simple, by the operation of the deed.

If the tenant in tail is in possession, and desires to convert the fee tail into a fee simple for his own use, he grants it to another person discharged of the tail to the use of the grantor and his heirs, and thereby obtains the fee simple through the operation of the Statute of Uses.

If the tenant in tail is not in possession, he can still only grant a base fee to last as long as he or his heirs lived; unless he obtains the consent of the *protector of the settlement*.

[1] 3 and 4 Will. IV. c. 74.

The protector of the settlement is usually one or more persons (not exceeding three) appointed when the deed of settlement was made; but if there is no one appointed, the office belongs to the owner of the first estate of freehold in possession; or if such person is a trustee, or in dower, or otherwise unfit, the Court of Chancery is the protector.

There is always a protector of the settlement, if the estate tail is preceded by a life estate, which is common when the estate is first settled by the tenant in fee simple. *E.g.*, if A, the owner of the fee simple, created an estate tail to his son B and the heirs of his body, reserving a life estate himself, A would be the protector of the settlement, if he did not appoint anyone else to that position.

If a base fee only is granted (*i.e.*, an estate which will only last as long as the grantor and the heirs of his body shall live), and it is held for twelve years after the original tenant in tail might have barred the remainder without the consent of anyone, it becomes a fee simple by virtue of the Real Property Limitation Act, 1874.[1] For instance, if A is tenant for life, and his son B, aged over 21, is tenant in tail, and B bars the entail without the consent of the protector of the settlement, he could only grant a base fee to last as long as B and the heirs of his body lived; but if A died, and B lived for twelve years afterwards, the base fee would become a fee simple by virtue of the Real Property Limitation Act, 1874.[1]

THE CREATION AND MAINTENANCE OF FEES TAIL.

At the present day fees tail are chiefly restricted to large property owned by the nobility and landed

[1] 37 and 38 Vict. c. 57.

gentry of the country, and have mostly originated by deeds of settlement made in modern times. The object of these settlements is to keep the property in the family, and in the hands of the oldest representative thereof, so that there may be always one head of the family, richer than the others, and able to look after them.

Settlements of this description cannot be made for any great length of time, on account of various rules of law which prevent it. *E.g.*, property cannot be settled on the unborn child of an unborn child; *i.e.*, it cannot be settled beyond the unborn children of living persons; nor, by the *rule against perpetuities*, can it be tied up beyond the longest of three lives in being and twenty-one years afterwards.

In order to keep the property in the family as long as possible, the usual method is for the settlor to settle it upon himself for life, and then upon his eldest son in tail; and, when such son comes of age, to induce him to make a new settlement, whereby he takes an estate for his life and creates a new remainder in tail to his eldest son.

The son, in executing this settlement, loses considerable rights, being no longer able to bar the tail and sell the property; and, on that account, his father generally agrees to pay him a fixed income out of the estate, so long as he (the father) lives.

By constant re-settlements of this kind, whereby no person of full age is entitled to more than a life estate, the property may be kept in the family for a long period; but, on the other hand, should it from any cause become necessary to bar the tail, this can be done whenever a son reaches the age of twenty-one, and before he resettles the property.

COMPARISON OF FEES TAIL WITH FEES SIMPLE.

The position of a tenant in tail is very different to that of a tenant in fee simple, and they may be compared as follows:—

	Tenants in Fee Simple.	*Tenants in Fee Tail.*
1.	Has uncontrolled disposition of his property.	Cannot alienate the property nor bar the tail, except by formal proceedings under the Fines and Recoveries Act.
2.	Can leave the estate by will to whomever he likes.	Cannot leave his estate by will.
3.	The estate is liable for debts during his life.	The estate is liable for debts during his life.
4.	On death the estate descends to the personal representatives, and is liable for all debts.	On death the estate descends to the heirs of his body, free from all his debts, except any due to the Crown, and any which may have been charged upon the land.
5.	Can grant leases in any way he pleases.	Has only the same powers of granting leases as a tenant for life, viz. :—Occupation leases twenty-one years, mining leases sixty years, building leases ninety-nine years, under certain conditions.
6.	Has unrestricted powers of sale.	Has the same powers as a tenant for life to sell the settled land under the Settled Land Act, 1882.

INCIDENTS OF ESTATES IN FEE TAIL.

A tenant in tail has as much free enjoyment of his property as a tenant in fee simple. He can open and work mines, cut down timber and commit waste without restraint; and in this way differs from a tenant for life, whose enjoyment of his property is greatly limited as a rule.

If a tenant in tail becomes bankrupt, his trustee in bankruptcy has power under the Bankruptcy Act, 1883, to bar the entail, and sell the property for the benefit of the creditors.

As a fee tail cannot be left by will, neither can any dealings with it be made by will; *e.g.*, it cannot be barred, its descent cannot be altered, nor can it be charged with any debts.

Fees tail may be granted in many different ways: For instance—

1. In general tail with general issue, as to A and the heirs of his body.
2. In general tail with special issue, as to A and the heirs male of his body.
3. In special tail with general issue, as to A and the heirs of his body by his wife B.
4. In special tail with special issue, as to A and the heirs male of his body by his wife B.

TENANT IN TAIL AFTER POSSIBILITY OF ISSUE EXTINCT.

When an estate is granted in *special tail—e.g.*, to A and the heirs of his body by his wife B, and B dies without issue—it is impossible for the estate to continue beyond the life of A, and he becomes what is known as a *tenant in tail after possibility of issue extinct*, and is really a tenant for life only. He has no power to bar the tail, and no interest beyond his own life; and practically the sole difference between him and any other tenant for life, is that he is not liable for waste.

The estate of the tenant in tail after possibility of issue is extinct has been called an *unbarrable fee tail*. Other instances of entails that cannot be barred are, when they have been granted by the Crown in return for public services, and some entails created by Act of Parliament.

CHAPTER VI.

TENANCIES FOR LIFE.

WHAT IS A TENANCY FOR LIFE?

A TENANCY for life is a Freehold Estate, which is not an estate of inheritance, but which only lasts either for the life of the tenant, or for the lives of one or more other persons.

A tenancy for life usually occurs as the result of a settlement of the property, but often arises in other ways, and there is an old rule of law by which life estates have been created unintentionally.

This rule was, that *if a grant of land was made to a man without further words expressly conferring on him an estate transmissible to his heirs, he takes an estate for life only.*

As a result of this, when a deed or a will was made, words sufficient to make the estate transmissible to the heirs had to be used. This was commonly done with deeds, which are always prepared by the legal profession; it was frequently not done in the case of wills, with most unintentional results.

By the Wills Act, 1837,[1] this was altered, and now a devise of real estate, without any words of limitation, (*i.e.*, words used to limit or mark out the estate conferred by the will), shall be construed to pass the fee simple, or other the whole estate or interest of which the testator had power to dispose, unless a contrary intention shall appear.

In deeds of settlement or gift—in fact, in all deeds—the old rule still applies; and, unless the deed expressly

[1] 7 Will. IV. and 1 Vict. c. 26.

states that an estate is granted to, or is transmissible to, the heirs, it will cease at the death of the grantee. For instance, if a deed conveys an estate to A B, it will only have the effect of conferring a life estate upon him, and on his death it will revert to the grantor and his heirs.

Such a case, however, would be very rare in practice, as it is not only proper, but usual, to use the words *for his life*, if only a life estate is intended, or to use other proper words, if a greater estate is meant to be conferred.

When an estate is granted for life only, the grantee may be said to hold his estate of the grantor, and the grantor can reserve a rent or other service if he sees fit.

WHEN AN ESTATE FOR LIFE ARISES.

A tenancy for life may be said to arise in two ways: either by act of party, as in the case of a deed or a will, or by operation of the law.

These tenancies have been classified under six headings, viz.:—

(*a*) Those created by act of party:—

1. Tenant for life as long as he lives.
2. Tenant for life as long as another lives, he being called tenant *pur autre vie*.
3. Tenant for life to hold for more lives than one.

(*b*) Those created by operation of law:—

4. Tenant in tail after possibility of issue extinct.
5. Tenant by the curtesy.
6. Tenant in dower.

The meanings of these various classes of estates are perhaps sufficiently explained by their titles. Those which are created by operation of law have been already dealt with in previous chapters.

Estates for life are held until the death of some person, but there may be a condition which makes them determinable earlier; *e.g.*, when an estate is granted to a widow for her life or until second marriage, or to a man for life or until he shall become bankrupt.

In the case of an estate *pur autre vie*, and the person for whose life they are held (*i.e.*, the *cestui que vie*) surviving the tenant, the property will go to the personal representative of the tenant, and will constitute part of his assets. But if the estate of the tenant *pur autre vie* is settled upon him and the heirs of his body, such heirs will have to take as *special occupants* of the estate on the tenant's death. The estate then becomes what is called *quasi entailed*, and is liable for the late tenant's debts as if it were a fee simple.

THE POWERS AND DUTIES OF A TENANT FOR LIFE.

The powers and duties of a tenant for life, depend not only upon the deed creating the estate, but are also regulated by the Common and Statute Law upon the subject; and these, as a rule, greatly restrict his enjoyment of his estate.

The chief incidents which have to be considered, are his *liability for waste*, his *right to emblements*, his *right to fixtures* and his *power of alienating*.

WASTE.

If there is no deed exempting the tenant for life from liability for waste, he will be liable for all *voluntary waste*. He must not, therefore, pull down or alter buildings, nor erect new ones which will change the nature of the property; nor must he break up ancient meadow land, or destroy hedges, or remove

drains, or otherwise injuriously alter the character of land. He cannot open mines, nor cut down timber, but he is entitled to take the rents and profits of the land for his life, and therefore he can work mines that have already been opened, can take timber for fuel and for repairs to his house and his hedges, and for making and repairing his agricultural implements; also he has the right to take the lops and tops of pollards in proper course, and on timber estates can cut and sell, for his own benefit, the yearly increase of the timber in a good and workmanlike manner. He also has the power, under the Settled Land Acts, to cut and sell timber that is ripe, with the consent of the trustees or the Court, and take one quarter of the proceeds for his trouble, the rest being invested as capital money by the trustees.

The liability of a tenant for life for *permissive waste* (*e.g.*, allowing buildings to decay for want of repair) depends mainly upon the exact words of the deed creating the estate; and, if such words are general, they will not extend to repairs of an unusual and expensive character, such as cleaning out a lake; but where there is no deed, or the deed is silent on the matter, the tenant has no liability at all for permissive waste.

This non-liability of the tenant for life for permissive waste is a question which was for some time in doubt. It was finally settled by the case In re *Cartwright Avis* v. *Newman*.[1] In this case there was a legal tenant for life of certain land, whose estate was created under a will. The will was silent as to the duty of the tenant for life to repair, and when she died the buildings upon the land were left in a very dilapidated condition. The remainderman in fee, who

[1] 41 Ch. D. 532.

came into the property on the death of the tenant for life, claimed compensation from her executor by way of damages for permissive waste. The Court held that the claim could not be sustained, Mr. Justice Kay stating that there must have been hundreds of thousands of similar cases, and not once, so far as legal records go, have damages been recovered against the estate of a tenant for life on that ground.

If the deed, creating the estate, expressly declares that the tenant for life shall not be liable for voluntary waste, he may nevertheless be restrained from committing acts of gross damage to the property, which would prejudice the remainderman, such as pulling down houses or destroying ornamental timber; as the Courts of Equity have always interfered to prevent such *equitable* or *unconscionable waste*. The deed may, however, clearly state that the life tenant shall not be liable even for equitable waste, and there is then no power to restrain him.

The old remedy for waste was by a forfeiture of the life tenant's estate under the Statute of Gloucester,[1] but this was abolished by the Real Property Limitation Act, 1833,[2] and now the remedy is by action for damages and injunction.

EMBLEMENTS.

The right of the tenant for life to *emblements*, consists of his right, if his estate is unexpectedly determined through no fault of his own, to enter and take the crops he has sown upon their ripening, although his estate has come to an end. The crops in which *emblements* can be claimed include only *fructus industriales;* that is, only those crops which are annually produced by the

[1] 6 Edw. I. c. 5.
[2] 3 and 4 Will. IV. c. 27.

labour of the cultivator, such as corn, roots, hemp, flax, teasles and hops, but not fruit trees, permanent pasture nor forest trees.

By the Landlord and Tenant Act, 1851,[1] an extension of tenancy until the expiration of the then current year of his tenancy is given, in lieu of emblements, to all tenants at a rack rent, whose tenancy shall determine by the death, or cesser of the estate, of any landlord entitled for life or other uncertain period.

FIXTURES.

The life tenant is entitled to *fixtures* which he erects, and his personal representative can remove them on the determination of his estate.

It is, however, often a very difficult point to decide whether the fixtures are of such a nature, and so attached, that they should be intended to remain permanently attached, to the freehold, in which case they are irremovable; or whether they are merely tenant's fixtures in the ordinary sense of the word. The matter has been fully treated of in the Author's book on the "Law of Landlord and Tenant," but the rules of landlord and tenant have been considered more favourable to the tenant, than those of tenant for life and remainderman. The important case of *Leigh* v. *Taylor*[2] has done much to clear up the matter. In this case Madame de Falbe was tenant for life of the Luton Hoo Estates, and she purchased some valuable tapestries, which she affixed to the walls of the house. The walls were originally papered, but she put strips of wood over the paper, stretched canvas over the wood, fastened the tapestries over the canvas, and finally put mouldings round

[1] 14 and 15 Vict. c. 25.
[2] [1902] A.C. 157.

them, so that they formed the decorations of the walls of the room. The House of Lords, affirming the judgment of the Court of Appeal, which had reversed that of the Court below, found that the tapestries were put up for the purpose of ornament and for the better enjoyment of them as chattels, and that they could be removed without doing any structural damage, and held that the tapestries put up for that purpose and attached in that manner did not pass with the freehold to the remainderman, but formed part of the personal estate of the tenant for life, and were removable by her executor. Lord Halsbury, in giving judgment, said: "One principle, I think, has been established from the earliest period of the law down to the present time, viz., that if something has been made part of the house it must necessarily go to the heir, because the house goes to the heir and it is part of the house. . . . . Another is equally clear, namely, that where it is something which, although it may be attached in some form or another to the walls of the house, yet having regard to the nature of the thing itself and the purpose of its being placed there is not intended to form part of the realty, but is only a mode of the enjoyment of the thing while the person is temporarily there, and is there for the purpose of his or her enjoyment, then it is removable and goes to the executor. Nothing points to any intention to dedicate these tapestries to the house. It was never intended to form part of the structure of the house; it was never intended to remain part of the house; it is a sort of ornamental fixture, and can be removed by whoever has the right to the chattel."

This case is of especial importance, as it made the law clear, where it had been somewhat obscure owing

to two earlier cases tried by Courts of First Instance, in both of which tapestries had been held irremovable. In one of these the tapestries had passed with the house and been in the house for a century or more, while in the other case the house had been expressly built to accommodate the tapestries.

ALIENATION.

Until comparatively recently, the life tenant's power of alienation, beyond the estate he held, depended entirely upon his deed of settlement, and much inconvenience was suffered. From time to time Parliament passed many Acts of a more or less experimental character, but eventually the Settled Land Acts, 1882-1890,[1] conferred extensive general powers. These Acts apply to every settlement made before or after 1882; they cannot be contracted out of; and the powers given by the Acts are additional to the powers given by the deed of settlement.

THE SETTLED LAND ACTS.

The tenant for life under the Acts is the person who is beneficially entitled to possession of the settled land for his life (*i.e.*, the owner and not a person merely entitled in consideration of rent), and each owner need not be entitled to the full benefit of the property.

The trustees under the Acts may be roughly described as the trustees of the settlement, or, if none, the Court will appoint trustees.

The chief powers of the tenant for life may be tabulated as follows:—

1. To sell the settled land, or part of it, or any easement, right or privilege over it (but not the

[1] 45 and 46 Vict. c. 38; 53 and 54 Vict. c. 69.

mansion house and lands occupied with it, unless the consent of the trustees or an order of Court is obtained).

2. To exchange the settled land, or part of it, for other land, and to take money for equality of exchange (but not the mansion house as above, nor land in England for land out of England).
3. To concur in the partition of settled land.
4. To enfranchise the settled land.
5. To transfer incumbrances from one part of the settled land to another.
6. To grant building leases, binding on the remainderman, for ninety-nine years, mining leases for sixty years, and other leases for twenty-one years.
7. To accept surrenders of leases.
8. To grant licences to copyholders.
9. To appropriate land for streets, gardens, open spaces, etc.
10. To raise money, by way of mortgage, for enfranchisement or for equality of exchange, or for the discharge of incumbrances, or for paying costs ordered by the Court to be paid on the settled land.
11. To convey the settled land so as to complete the exercise of the powers.
12. To direct the form of investment of trust funds.
13. To execute improvements upon the settled land.
14. To enter into binding contracts, and to vary and rescind contracts.
15. To cut timber with the consent of the trustees, or under an order of the Court, even when impeachable for waste.
16. To sell heirlooms under an order of Court.
17. To execute deeds and other instruments.
18. To complete contracts made by a predecessor in title.

The powers given to the tenant for life are to a great extent safeguarded by the provisions of the Act, so that the remaindermen may not be injuriously affected. In the cases of sale, exchange, or partition or lease, the tenant for life is bound to obtain the best price, rent or consideration; he is declared to be in the position of a trustee for all parties entitled under the settlement; and in any case of the exercise of powers, other than the granting of a lease for not over twenty-one years, he must give notice in writing to the trustees and their solicitors, who may apply to the Court if they are dissatisfied.

Capital money received, including any fines taken for leases, must be paid to the trustees or into Court, and all investments must be in the trustees' names. Investments must be in authorised securities only, but capital money may be used in discharging incumbrances, in authorised improvements, or in the purchase of other lands.

THE DUTIES OF THE TRUSTEES.

The duties of the trustees are to exercise a general supervision over the acts of the tenant for life; and, in case of difference between them and him, to apply to the Court. They receive all capital moneys and invest them in their own names, or apply them to the purposes directed by the tenant for life, and see that land purchased is made properly subject to the trusts of the settlement. They approve schemes for improvements and appoint a surveyor to inspect them, consent to the sale of timber (the tenant for life usually taking one quarter the price for his trouble), consent to the alienation of the principal mansion house and park, apportion purchase-money paid for a lease or reversion

between the tenant for life and remainderman, give receipts for capital and money, reimburse themselves or pay expenses properly incurred out of the trust funds; and, where a tenant for life for some reason cannot act personally, they can exercise his powers; for instance, if he is an infant, or if his interest is inconsistent with the personal exercise of those powers.

THE COURT.

The Court only acts if it is applied to, and some of the main purposes for which application may be made are—

1. To appoint trustees or persons to act for infants.
2. To settle differences between trustees and tenants for life.
3. To sanction the alienation of the mansion house or the sale of timber or heirlooms.
4. To sanction schemes of improvement and order payment of costs.
5. For payment of money out of Court to trustees.
6. For various directions as to investments, contracts and such like.

THE BOARD OF AGRICULTURE.

The Board of Agriculture may be called upon to certify that improvements have been executed; how much money should be paid in respect of them; how long the tenant for life should maintain them; to what amount he should insure them; and to receive reports from the tenant for life as to the state of such improvements.

The Acts enumerate a long list of improvements to the settled land for which capital money may be expended, which may be shortly stated as—

1. Drainage, irrigation, warping and embanking land, protecting it from water, enclosing or reclaiming land.
2. Making roads.
3. Planting trees or clearing rough ground.
4. Building cottages, farm-houses, farm-buildings, mills, kilns, engine-houses, water-wheels, etc.
5. Works connected with water supply.
6. Tramways, railways, canals, docks, piers, bridges, landing-places, etc.
7. Markets and market-places.
8. Streets, roads, gardens, etc., in connection with building estates and sewers, paving, brickmaking and such like in connection therewith.
9. Trial-pits and other preliminary works in connection with mines.
10. Reconstruction, enlargement or improvement of any of the above.
11. Additions to or alterations in buildings to make them let.
12. Erecting buildings in substitution of any taken by a local authority or other public body to the extent of the money received.
13. Houses for the working classes, which the Court considers not injurious to the estate.
14. Rebuilding the principal mansion house, if the cost is not more than one half-year's rental of the settled land.
15. Paying compensation to tenants under the Agricultural Holdings Acts.

CHAPTER VII.

CHATTEL INTERESTS IN LAND.

THE DIFFERENT KINDS OF CHATTEL INTERESTS.

THERE are, or were, six different kinds of chattel interests in land, which may be tabulated as follows:—

1. Tenancies for a time certain or terms of years.
2. Tenancies at will; held at the joint will of both parties.
3. Tenancies on sufferance; where the tenant comes into the property by right, and holds over after the right has expired.
4. Tenancies by elegit; *i.e.*, the tenancy of a judgment creditor.
5. Tenancies by executors; when the freehold was left by will for the payment of the debts of the deceased.[1]
6. Tenancies by Statute Merchant and Statutes Staple; which were modes of charging land with the payment of debts under certain Statutes.[2]

TENANCIES FOR YEARS.

Of tenancies for a term of years there are two kinds:—

1. Leasehold proper; *i.e.*, terms of years created by ordinary leases for the purpose of occupation, building, mining and the like, which are seldom granted for more than ninety-nine years, although longer periods are quite as possible, and for which a rent is reserved.

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[1] Now obsolete (Land Transfer Act, 1897).
[2] Repealed in 1863.

2. Long terms of a thousand years or so, created by deeds of settlement, or by will, or by mortgage deeds, which generally reserve no rent, but which form a security for the payment of rent charges, interest, etc., out of the land to the persons entitled to them.

These two classes of tenancies for terms of years are of the same nature from a legal standpoint and are properly considered together, but only the first kind will be dealt with, and that but briefly, for full details thereof may be found in the Author's book on "Landlord and Tenant," which is in use by many candidates for examination.

LEASEHOLDS.

NATURE OF LEASEHOLDS.

A leasehold is an interest in land, held of a direct landlord, for a limited period only, and governed by the terms of the lease. Its foundation is a contract between the person who lets (*i.e.*, the lessor) and the person who takes (*i.e.*, the lessee), and the terms of this contract govern the matter.

In leaseholds, except where the Crown grants a lease of its property direct, there is always a subject between the owner of the leasehold and the Crown, and there may be many such persons.

For instance, if a freeholder A grants a lease for nine hundred and ninety-nine years to B, and B sub-leases his term for ninety-nine years to C, who sub-leases his term for his entire interest less one day to D, who sub-leases his term for twenty-one years to E, there would in this case be four persons (A, B, C and D) between E and the Crown.

In every case the interest in the land is in at least two parts—(1) *the term* vested in the tenant or lessee,

and (2) *the reversion* vested in the landlord or lessor; *e.g.*, in the case of A and B above.

The leaseholder's interest is often a much more valuable one than the freeholder's, especially in the case of building leases, where the freeholder lets a piece of vacant land on lease for a long period, say ninety-nine years, at a low ground rent, and the leaseholder erects a house thereon, paying for his land perhaps one-tenth only of the rent he receives for the house and land combined; while in some cases terms of five hundred years or more are found where the leaseholder only has to render a peppercorn (a merely nominal thing not intended to be paid) for the right to hold the land, and receives perhaps hundreds of pounds per annum from the land with the premises which have been erected thereon.

And here it is well to notice that where a lease is granted for a term of three hundred years or more without any rent, or merely a peppercorn or other rent having no money value, and there remain at least two hundred years unexpired, and there is no condition for re-entry, and no trust for the freeholder, and the lease is not created by sub-demise, the leasehold can be converted into a fee simple freehold by the Conveyancing Act, 1881,[1] Section 65, as amended by the Conveyancing Act, 1882,[2] Section 11. This right has been held to apply where a rent of one silver penny was payable if demanded, but not where a rent of 3s. per annum was reserved, although such rent was proved to be so small as to be unsaleable.

On the other hand, the lessee's interest is often far less valuable than the freeholder's, as happens when agricultural land, or land with buildings already upon it,

[1] 44 and 45 Vict. c. 41.
[2] 45 and 46 Vict. c. 39.

is let at its full value; or where a long lease nears its close, and the reversion is worth far more than what remains of the lease.

A COMPARISON OF LEASEHOLDS AND FREEHOLDS.

The differences between leaseholds and freeholds are many. Some of the points may be tabulated as follows:—

Leasehold.	*Freehold.*
Personal property or chattel interests in land.	Real property.
The owner never has the full property in the land; he never has the *seisin* of the land, but merely a contractual right therein.	The owner always has full property in the land and always has the *seisin* of the land.
Held of one or more superior landlords between the tenant and the Crown.	Held of the Crown direct.
Governed by the terms of the lease as well as by the law of the land.	Governed by the law of the land alone.
Always liable to judgment debts.	Made liable to judgment debts, as to Courts of law, by Statute of Westminster II.,[1] as to Courts of Equity by the Judgments Act, 1838.[2]
On death of owner always went to executors and administrators.	Prior to Land Transfer Act, 1897,[3] went direct to heir-at-law.
The rule against perpetuities does not apply.	Cannot be made determinable subject to a condition, which may not take place within a life or lives in being and twenty-one years afterwards.
Liable to forfeiture.	Not forfeitable.
Rents and services usual.	Fealty to the Crown the only service.
Owner liable for waste and to perform all covenants, and his powers of doing what he likes limited by his lease.	Freeholder can do what he likes, his powers being unlimited.

[1] 13 Edw. I. c. 18.
[2] 1 and 2 Vict. c. 110.
[3] 60 and 61 Vict. c. 65.

The largest leasehold is less than the smallest freehold, and will merge in the freehold if there is unity of possession. Thus a term of one thousand years, held by a person having also a life estate, would merge therein and become extinguished.

TENANCY AT WILL.

A tenancy at will is where lands or tenements are let, by one man to another, for no certain term, but the lease is to continue during the joint will of both parties, and no longer.

A tenancy at will is, therefore, the opposite to a tenancy for years; for whereas a tenancy at will is for no certain term, and can be put an end to by either party at his will, a tenancy for years must have a certain determination.

Tenancies at will may arise by express contract, which may be by parol or by deed, by a landlord agreeing to let at will and the tenant agreeing so to take, but such cases are rare; and where such a tenancy does arise by contract, it is usually under a mortgage deed, where the borrower is sometimes expressed to become tenant at will of the lender of all the mortgaged property at a peppercorn rent if demanded.

More usually, tenancies at will arise by implication. For instance, if a man enters into possession of property with the consent of the owner during negotiations for a lease or agreement or otherwise, he becomes a tenant at will; or if a tenant enters under a lease which is void under the Statute of Frauds, he may be a tenant at will, or if a tenant hold over after the expiration of his lease with his landlord's consent, he is a tenant at will, unless the contrary is shown.

Tenancies at will are not favoured by the Courts; and if an annual rent is reserved and no term mentioned, a lease will always be construed as an annual tenancy, unless it is expressly stated to be at will; and where a tenancy at will arises by implication, it will be converted into a tenancy for years as soon as rent is paid and accepted or any agreement is entered into for the payment of rent. If an annual tenancy cannot be implied, sometimes a weekly, monthly or quarterly tenancy can be.

While a tenancy is purely at will, it can be determined not only at the will of either party, but by any act of either party inconsistent with the continuance of the tenancy; thus: if the landlord let the land to another, or if the tenant assigns, or if he commits waste, or becomes bankrupt.

The rights and liabilities of the tenant at will in the absence of express agreement are slight. He has no liability for permissive waste, but he is entitled to emblements; and it appears that although he cannot assign his property, he can, nevertheless, sublet it at will.

TENANCY ON SUFFERANCE.

This is a lower class of tenancy than one at will, and is in fact the very lowest class known to the law. A tenant at will occupies by right, but a tenant on sufferance has no right to be in possession. He is defined by Lord Coke "to be one who comes in by right and holds over without right," and is most usually found, in the case of a tenant whose lease or interest has expired, holding over without his landlord's consent.

This tenancy cannot be created by contract; it cannot be assigned or sublet, and may be regarded

as an invention of the law to prevent the tenant being liable as a trespasser.

If the owner of the land assented to the possession, it would at once be converted into a tenancy at will; while, if a rent was paid or accepted, it would change to a tenancy for years.

Cases, however, occasionally occur where a tenant remains on sufferance for a considerable period, and where the owner recovers from him a proper sum of money for his use and occupation of the premises.

There can be no tenancy at sufferance against the Crown, as a person so holding would be an intruder.

TENANCY BY ELEGIT.

This form of tenancy occurs where a creditor has obtained judgment against a debtor, and elects to take a writ of *elegit*, instead of a writ of *fieri facias;* so that the Sheriff, instead of levying the debt on the lands or goods of the debtor, as he would under the latter form of writ, delivers to the creditor the lands of the debtor.

The writ of *elegit* extends to all the lands of the debtor, both freehold and copyhold, and, it appears, leasehold also, by virtue of the Judgments Act, 1838[1]; but by the Bankruptcy Act of 1883[2] it no longer extends to goods. Under the old law of the Statute of Westminster II.[3] it used to extend to all the chattels and only half of the land.

The Sheriff can give possession of the land if the debtor is in possession; but if he is not, the tenant by *elegit* is merely an assignee of the reversion, and

[1] 1 and 2 Vict. c. 110
[2] 46 and 47 Vict. c. 52.
[3] 13 Edw. I. c. 18.

cannot eject any tenants in occupation of the land until their term expires by effluxion of time, or by forfeiture, or by proper notice to quit.

When the tenant by *elegit* does obtain possession, he can grant leases of the land; but such leases are conditional only, as his interest, and the interests of those holding under him, are determined by the payment or satisfaction of the debt and costs.

The other kinds of chattel interests being obsolete do not require description.

CHAPTER VIII.

COPYHOLD AND CUSTOMARY TENURES.

THE MANOR AND ITS LORD.

THE HISTORY OF THE MANOR.

REFERRING briefly to what has been already dealt with in the first chapter, it will be remembered that at the time of the Norman conquest practically the whole country was divided up into *manors*.

Some of these manors were *Crown* manors, and the tenants held free tenures by the custom of *ancient demesne*, and the rest were held under the Crown or one of the chief barons by military service.

The lords of the manors granted out from their manors certain feuds or fees which became *ancient freeholds;* and though these lands were held of the manor, they did not remain parcel of it, so that the manor, as it came to be recognised, was exclusive of such lands.

ANCIENT FREEHOLDS DISTINGUISHED FROM MANORIAL TENURES.

It will be well to make clear the difference between these ancient freeholds and the copyhold and customaryhold lands, which remained parcel of the manor.

The ancient freeholds are held of the manor, the lord has the *seignory* of them, and may be entitled to the payment of a *rent* or *heriot* or other service, but they are not governed by the *custom of the manor*, nor are they *parcel of the manor*, nor can they be considered the lord's lands in any legal sense. They are just ordinary freeholds under a *mesne lord*, and they are conveyed from one person to another as ordinary freeholds are conveyed.

The *copyhold* and *customaryhold* lands, on the other hand, are part and parcel of the manor itself; they belong to the lord of the manor; they are governed by the custom of the manor, and they are altogether of a different nature to freeholds. A person, who acquires them by purchase or descent, does not obtain any legal interest in the land, until he has been admitted thereto by the lord of the manor. The lord can, in some cases, raise objections to his admission; and, as a rule, requires certain payments to be made to him.

THE LORD OF THE MANOR.

The *lord of the manor* is the person who holds the manor under the Crown or mesne lord; and, as has been shown, he now always holds the manor in *free socage*. The lord of the manor, therefore, is the *freeholder*. The manor is held in *fee simple* as a rule, but a lord of the manor may have created an entail or settled it for life, so that it commonly occurs that the manor is in settlement. The manor, like other freehold property, can also be granted for a term of years.

Manors, which belong to one of the duchies, or to ecclesiastical or collegiate bodies, are frequently leased. In that case the tenant for years takes the place of the

lord of the manor, and has the rights of the lord of the manor. He is generally called the *lord farmer*. He takes the perquisites; grants enfranchisements; collects quit rents, heriots and reliefs; grants licences, and in all ways acts as lord. He pays a rent to the freeholders, and they take the same position as a remainderman or reversioner. This class of holding is perhaps most commonly found in the West of England, but it is of course merely the ordinary leasehold system, and could be created by any lord of any manor anywhere.

THE STEWARD OF THE MANOR.

The steward of the manor is the officer by whom all dealings with the manor are conducted on behalf of the lord. He is usually a solicitor, and represents the lord, in holding courts, agreeing to enfranchisements and such like. He keeps the court rolls, and makes all necessary entries therein. A steward may be appointed by deed for his life by the lord of the manor, and in that case, if the lord is tenant in fee, the lord's devisee cannot displace him.[1]

The court can be applied to for the dismissal of a steward, but the office must be kept filled; and the court will not displace one steward, without seeing that there is another one ready to perform his functions.[2]

The steward usually prepares all documents connected with the manorial property or approves them on behalf of the lord. A custom for him to prepare all surrenders of copyholds upon the manor is good.[3] He is entitled to many and various fees, some of which are

[1] Bartlett *v.* Downes, 5 D. and R. 526.
[2] Windham *v.* Giubilei, 40 L.J. Ch. 505.
[3] Rex *v.* Rigge, 2 B. and Ald. 550.

mentioned in the Copyhold Act and some have been decided by various cases:—

Blaker *v.* Wells, 28 L.T. 21.
Traherne *v.* Gardner, 5 Bl. and Bl. 913.
Everest *v.* Glyn, 2 Marshall 84.
Evans *v.* Upsher, 16 M. and W. 675.

He is also entitled to be compensated for the loss of further fees when a copyhold is enfranchised.

THE REQUISITES OF A MANOR.

A manor must have originated prior to 1290, and will last so long as it preserves its necessary attributes, and no longer. These are three in number, viz.:—

1. Demesne lands.
2. Tenemental lands.
3. At least two free tenants in fee, subject to escheat and capable of forming the court baron.

If any of these are wanting, the manor no longer exists, and it becomes merely a manor by reputation, though this will be sufficient to prove the right to franchises, wastes, and so forth.

Evidence that a court was held within the previous thirty-five years has been held sufficient proof that a manor continues to exist, without any documentary evidence whatever[1]; and the immemorial appointment of a sexton to the parish has been held to be evidence of a reputed manor.[2]

Reputation alone is admissible to prove the existence of a manor, without any proof of the actual exercise of manorial rights.[3]

THE MANORIAL LANDS.

The manor now consists of those lands which formed part of the original manor, and were not

[1] Doe d. Beck *v.* Heakin, 6 A. and E. 495.
[2] Soane *v.* Ireland, 10 East. 259.
[3] Steel *v.* Prickett, 2 Stark. 463, and see Curzon *v.* Lomaz, 5 Esp. 60.

granted out therefrom, but remain part and parcel thereof.

The lands consist of three parts—

1. The demesne lands, including those in the occupation of the lord and the waste lands of the manor, over which the tenants have, as a rule, various rights of common.
2. The tenemental lands, comprising those granted to the free tenants in consideration of rents and fixed and certain services.
3. The villenagium, or those lands originally occupied by the villeins and serfs in consideration of various base services which were uncertain in character. The tenants of these lands held merely at the will of the lord, and are now the copyholders of the manor.

If any portion of the demesne lands was conveyed in fee as a distinct property, and not as part of the manor, it became severed from the manor; and the mere fact that rents and dues were reserved, was not sufficient to preserve such lands as part of the manor. If the lord re-purchases such lands, they are his own freehold land, but they would not become re-united to the manor. On the other hand, if they were to come into his hands by escheat, it would seem that they would become re-united and be a part of the manor again.[1]

The boundary of the manor appears originally to have been conterminous with that of the parish, but now it is often difficult to determine. The most frequent causes of doubt are with regard to the foreshore, and as to the ownership of those pieces of waste land which adjoin a highway.

With regard to the foreshore, it was established in *Attorney-General* v. *Chambers*,[2] that the Crown

[1] Delacherois *v.* Delacherois, 11 H.L. Cas. 62.
[2] 23 L.J., Ch. 662.

has the right to the foreshore as far as the line of the medium high tide between the springs and the neaps, subject to the rights of the King's subjects for fishing and navigation. A subject can only establish a right to a part of it by proving an express grant by the Crown, or showing a user from which a grant can be implied; *e.g.*, by means of a several fishery vested in the lord of the manor.[1] The boundary of the manor may be at low water mark; and, to prove this, evidence of modern usage is permissible, if there is no proof of ancient title.[2] Evidence of fines paid for salvage, moorage, trespasses in taking wreck, sums paid to the lord for wreck sold by his bailiff, and such like evidence, may be used to prove the lord's title to the foreshore.[3]

With regard to land adjoining the highway, if no other title can be proved, the fact that certain pieces of similar land on the same manor have been granted, will be evidence that the waste land adjoining the highway belongs to the lord of the manor.[4]

An ancient survey of a manor is admissible as evidence to show the boundaries of the manor and the lands contained therein, but it is not conclusive evidence, and may be upset. The erection of boundary stones, with the initials, of an adjacent proprietor, so as to mark out unenclosed lands is strong evidence of ownership; and if the boundary so shown has been recognised and acquiesced in by those whose interest it would be to dispute such ownership, such stones may afford irresistible evidence in favour of the party claiming the property set out.[5]

[1] Attorney-General *v.* Emerson, [1891] A.C. 649.
[2] Duke of Beaufort *v.* Mayor of Swansea, 3 Ex. 413.
[3] Walton-cum-Trimley *in re* Tomline, *ex parte*, 28 L.T. 12.
[4] Dendy *v.* Simpson, 18 C.B. 831.
[5] Jenkins *v.* Earl of Dunraven, [1898] 62 J.P., 661.

The nature of the tenants' interests may be called into dispute in some cases, and will greatly affect the extent and value of the property belonging to the lord. For instance, in *Foljambe* v. *Smith's Tadcaster Brewery*[1] a piece of land parcel of the manor, of which there were no copyhold tenants, had been held since 1709 at a rent increasing from 1s. to 5s. 1d. Some of the additions to the rent were traceable to additions to the holding; others were not. There was no trace of the holding before 1709. It was held that the present holders were not freehold tenants at a quit rent, but merely annual tenants of the lord of the manor.

MANORIAL FRANCHISES.

In the granting of manors many rights and franchises were granted therewith by the Crown, or were obtained by long user from which a grant could be implied. Among such rights may be named the *advowson* of the parish, *i.e.*, the right of the next appointment to a vacant benefice; the right to hold various *fairs* and *markets;* the right to hold a *court leet* and to take the fines and perquisites thereof; the right of *waif,* or to appropriate goods thrown away by a thief in his flight; the right of *estrays,* or to take valuable animals found straying upon the manor and without a known owner; the right to take *wreck* where the manor abuts on the sea, and even in some cases where the foreshore does not belong to the lord; the right of *several fishery* or to take the fish from a navigable river, or one that passes through the lands of others; the right of *free warren,* or to take the beasts and fowls of warren over the entire manor, and perhaps beyond it, to the exclusion of the owners of the land, and to prevent others from taking them.

[1] [1904] 73 L.J., Ch. 722

These various rights are not attached to manors by common law, and must be proved by evidence of the grant or long user, from which a grant may be implied.

THE MANORIAL COURTS.

There are three kinds of courts found on manors:—Courts baron, customary courts, and courts leet.

The *court baron* was the freeholders' court, in which the freeholders were judges along with the lord, and in which all business relating to the freeholders' land was transacted, such as the decision of the custom of the manor relating to such land, the regulation of the commons, and such like. No court baron can be legally held unless there are two free suitors who are tenants of the manor,[1] and where a court baron was terminated by Act of Parliament and a new court substituted, which was in its turn abolished, it was held that the old court was not revived, and that a process obtained out of it was void.[2]

Proper records of all actions in the court baron are duly kept, and in recording the judgment it is proper to show that the court was held before the lord or steward and to name two suitors, but it is not necessary to name the steward or to give names of more than two suitors.[3]

The *customary court* was held for the copyholders. Here the lord or steward was the judge, and the jury was elected from the tenants, properly called the *homage*. This court could not be held out of the manor unless there was a special custom to warrant it;

[1] Rumsey *v.* Walton, 4 Term Rep. 446; and see Holroyd *v.* Breare, 2 B. and Ald. 473.
[2] Hellawell *v.* Eastwood, 6 Ex. 295.
[3] Brown *v.* Gale, 2 C.B. 861.

and, if so held, all that was done in it was void.[1] In the customary court all matters connected with the lands of the copyholders were dealt with; all tenants selling their land had to attend and surrender their tenements to the lord or his representative; all persons purchasing had to be admitted by the lord or his representative to the tenements they had bought; and all tenants devising their lands had to attend and surrender their tenements to the lord to the use of the will. Questions relating to the custom of the manor, and the rights of the lord and tenant respectively, were here tried and settled and much business of importance transacted. The functions of the customary courts have, however, ceased to be of so much importance, and they have to a great extent lapsed; for now surrenders can be accepted, admittances made, and many other things done without holding a court for the purpose.

The *court leet* was of an entirely different nature to the other manorial courts. It may be regarded as a kind of early police court, in which the petty nuisances and squabbles arising upon the manor were adjudicated upon. In some cases the steward had the right to nominate a jury to serve on the court leet and to elect a Mayor to the borough[2]; in other cases the jury had the customary right to test the weights and measures, and to destroy any which they found to be false.[3] The jury had to make presentments of their findings at the court at which they were sworn, and a custom to swear jurors at one court and return their presentments at the next court day was held bad in law.[4]

[1] Doe d. Leach *v.* Whitaker, 5 B. and Ad. 409.
[2] Rex *v.* Jolliffe, 3 D. and R. 240.
[3] Willcock *v.* Windsor, 3 B. and Ad. 43.
[4] Davidson *v.* Moscrop, 2 East. 56.

THE COURT ROLLS OF THE MANOR.

The *court rolls* are the records of the courts of the manor which are kept by the steward on behalf of the lord, the lord having the sole right to their custody, and the steward holding them solely as his agent. The steward is bound to produce them when called upon, and to deliver them up in proper condition, and may be ordered to deliver them to a receiver.[1] In a recent case[2] it was held that the steward of the manor is entitled to the possession of the court rolls to enable him to properly discharge the duties of his office. The lord is, in respect of the court rolls, *a trustee and guardian of the tenant's rights*, and the steward is not entitled to hold the rolls as against the lord if there is proof of any improper conduct on the part of the steward. In such case the court will order the rolls to be delivered to the lord; but if there is no suggestion of misconduct, the court will not deprive the steward of their custody. In the court rolls were entered all the proceedings of the courts, the grants of land to tenants, the surrenders, admittances, mortgages, wills and other dealings with the land, any licences granted by the lord to the tenants, the fines paid, and such like. The entries were binding, and the High Court will not alter entries without the lord's consent.[3]

In the court rolls could be traced not only a description of every property that formed part of the manor and frequently a plan, but a record of every transfer of ownership and other dealing with each tenement, so that it showed a complete chain of title to every tenement upon the manor. Nowadays, when a

[1] Rawes *v.* Rawes, 7 Sim. 624; North Western Railway *v.* Sharp, 10 Ex. 451.
[2] *In re* Jennings, [1903] 72 L.J., Ch. 454.
[3] Elston *v.* Wood, 2 Myl. and K. 678.

change of tenancy or other dealing with manorial land takes place, an entry must still be made in the court rolls of the manor, so that the record is maintained complete, notwithstanding that the courts may have become practically obsolete.

The importance of the maintenance of the court rolls, and the entry of all dealings with the copyholds therein, will be appreciated when it is grasped that upon enfranchisement under the Copyhold Acts the old title to the copyhold becomes the title to the freehold.

The court rolls are the best possible evidence in relation to anything connected with the manor; and where an action is brought, they are generally referred to, but they are evidence against the lord and the tenants of the manor only, and not against other parties.[1] An order for their production can usually be obtained, but it has been refused in some cases; *e.g.*, where a plaintiff contended that he was freeholder in fee simple,[2] and where a plaintiff claimed a right of common on the waste and the lord denied that the court rolls contained anything supporting the claim.[3]

THE COPY OF COURT ROLL.

On the admittance of a customary freeholder or copyholder to one of the manorial tenements, the steward prepares and gives to him a copy of the court roll relating to that particular tenement. The steward receives his fee for the preparation of this document, it forms the title by which the tenant holds his land, and is the cause of his being known as the copyholder.

The copy of the court roll is the proper evidence of the tenant's title to the land; it gives the various

[1] Attorney-General *v.* Lord Hotham, Turn. and R. 209.
[2] Owen *v.* Wynn, 9 Ch. D. 29.
[3] Minet *v.* Morgan, L.R. 11 Eq. 284.

changes of tenancy and other dealings with the tenement in question, and thus shows a complete chain of title.

In the event of the copy of court roll delivered to the tenant not being available, another copy authenticated by the steward is admissible as evidence.[1]

THE CUSTOM OF THE MANOR.

The custom of the manor is the code of local laws which governs all things upon the manor, and which cannot be altered except by Act of Parliament. So long as a property remains part of a manor it will be subject to the custom of that particular manor.

The custom of different manors varies, and the customs of one manor are no evidence of those of another manor, although it may be in the same parish or leet[2]; but there is a *general custom* of manors which extends to every manor in the country and is warranted by common law, and may be described as a part of the common law or general custom of the realm.

There are also certain *special or particular customs* which prevail in particular manors only; and, though these may be similar upon various manors in the same district, that is not necessarily so. These particular customs are of two kinds—either disallowing what the general custom allows, or permitting what it disallows.

The general custom may be reduced to a certainty by agreement in manor,[3] but special customs must be strictly proved and specially pleaded in the courts of law. They should be proved from immemorial origin

[1] Breeze *v.* Hawker, 14 Sim. 350.
[2] Marquis of Anglesey *v.* Lord Hatherton, 10 M. and W. 218.
[3] Anon., Cary 31.

and constant user, but modern user from which an immemorial origin can be implied is usually sufficient.

Every special or particular custom must be local, reasonable and definite in character—not absurd, immoral, nor prejudicial to the interests of State, nor destructive of property nor of the copyholder's estate; and must be such as can fairly be imagined to have originated in a local law, or in an agreement between the lord and his tenants in time immemorial.[1]

Customary rights differ from prescriptive rights. The former are usages which apply to a number of persons in a certain district, but prescriptive rights are claimed by one or more as existing in themselves or their ancestors, and as attached to a particular estate.[2] The Prescription Act[3] can be used to prove a custom, though it does not apply to *profits à prendre* (rights of common) claimed by copyholders by custom.[2]

A custom cannot be set up which is contrary to an Act of Parliament; and ancient documents, made within the time of legal memory, will be sufficient to negative a custom which could otherwise be proved.[4]

The law has laid down no rule as to the extent of evidence necessary to establish a custom, or from which the presumption or influence of the fact of a custom may be rightly drawn. It is the province of a jury to draw these conclusions of fact.[2]

For instance, a custom has been found for the tenants to dig and get sand, sandstone, gravel, and clay from their tenements, and to cart and carry away the

[1] Marquis of Salisbury *v.* Gladstone, 9 H.L. Cas. 692; Wilkes *v.* Broadbent, 1 Wils. 63; Badger *v.* Ford, 3 B. and Ald. 153.

[2] Hanmer *v.* Chance, 4 De G. J. and S. 626

[3] 2 and 3 Will. IV. c. 71.

[4] Duke of Portland *v.* Hill, 35 L.J., Ch 439.

same on to other lands, and to use and sell the same either on or off the manor without licence from the lord.[1] A custom for the tenants to fell timber on their lands without the lord's licence, although not for repair, is not unreasonable[2]; and a custom for the tenants to break the surface and take clay without limit, and make bricks to be sold off the manor, was held good.[3]

On the other hand, a custom to work mines under houses without paying compensation has been held bad, as unreasonable[4]; and a custom for a tenant for life to be free of liability for waste is also bad, though a custom for a copyholder in customary fee simple to be without impeachment of waste has been held good.[5]

The general and particular customs, which together make up the custom of the manor, are, however, not in doubt as a rule, and will set forth and regulate the powers of the lord, the rights of every tenant, what interest a lord can grant, what charges he can enforce against his tenants, what services the tenant must render to his lord, what privileges he has over the land he holds and over other lands belonging to the lord, and such like matters. Even the amount of the fees payable to the steward for certain professional services may be regulated by custom. In many cases a full statement of the customs is set forth in a document called the *Customary of the Manor*, prepared in some cases in quite modern times.

THE SALE OF A MANOR.

Prior to the Conveyancing and Law of Property Act, 1881,[6] there was some difficulty in deciding what

[1] Hanmer *v.* Chance, 4 De G. J. and S. 626.
[2] Blewett *v.* Jenkins, 12 C.B., N.S. 16.
[3] Marquis of Salisbury *v.* Gladstone, 9 H.L. Cas. 862.
[4] Hilton *v.* Earl Granville, Dav. and M. 614.
[5] Fawcett *v.* Lowther, 2 Ves. 300.
[6] 44 and 45 Vict. c. 41.

passed upon the sale of a manor, but it was held that the general words will pass any unascertained or undefined advantages, such as the minerals under the waste and the advowson to a living.[1] If the wastes were excepted they became severed from the manor, though the copyholder's rights over them continued[2]; and if only a reputed manor was granted, it was insufficient to pass the freehold interests in the wastes or in any specific tenement possessed by the grantee.[3]

Since the Conveyancing Act the matter has been simplified; for if there is no contrary intention expressed in the conveyance, and the rights can be conveyed by the party conveying, by Section 6, Subsection 3—

A conveyance of a manor shall be deemed to include and shall by virtue of this Act operate to convey, with the manor, all pastures, feedings, wastes, warrens, commons, mines, minerals, quarries, furzes, trees, woods, underwoods, coppices, and the ground and soil thereof; fishings, fisheries, fowlings, courts leet, courts baron, and other courts, view of frank-pledge,[4] and all that to view of frank-pledge doth belong, mills, mulctures,[5] tolls, duties, reliefs, heriots, fines, sums of money, amerciaments, waifs, estrays, chief rents, quit rents, rents-charge, rents-seck, rents of assize, fee farm rents, services, royalties, jurisdictions, franchises, liberties, privileges, easements, profits, advantages, rights, emoluments, and hereditaments whatsoever, to the manor appertaining or reputed to appertain, or at the time of conveyance demised, occupied, or enjoyed with the same, or reputed or known as part, parcel, or member thereof.

[1] Attorney-General *v.* Ewelme Hospital, 17 Beav. 366.

[2] Revell *v.* Joddrell, 2 Term Rep. 415.

[3] Doe d. Clayton *v.* Williams, 11 M. and W. 803.

[4] The view of frank pledge was an ancient system by which the householders of everything were pledges or mutual bail for the good behaviour of each other. Now obsolete.

[5] A mulcture was a toll paid to a miller for grinding corn.

When a manor is sold, any fines which accrue owing to deaths or admissions, between the time of the contract and the completion, belong to the vendor and not to the purchaser, although they may not be assessed or paid until after the completion.

CHAPTER IX.

MANORIAL TENURES.

MANORIAL tenures in England consist of a number of varieties of estates, the titles to which were originally constituted, and have since been greatly modified, by local custom. All such estates are part and parcel of the manor, and are governed by the custom of the manor, and not merely by the common law. They may be divided into three classes—customary freeholds, tenant right estates, and copyholds proper.

CUSTOMARY FREEHOLDS.

Customary freeholds are those lands which are part and parcel of the manor, and are governed by the custom thereof, but which have been granted in free tenure by the lord of the manor in early times in accordance with the custom of the manor, but which are not held at the will of the lord.

The services of the tenants are fixed and determinate; their title is usually by *copy of court roll*, and their lands are conveyed by *surrender and admittance*. They generally pay a *chief rent* annually to the lord, and are frequently liable to *heriots* and other services, their powers and duties being created and limited by the custom of the manor as shown by the court roll.

Customary freeholders, although they are free tenants, closely resemble copyholders, and the incidents of their tenure can be taken as similar to those of copyholders, so that the portion of the work dealing with the incidents of copyhold tenure can be referred to in

connection with them. It may be noted that in the case of customary freeholds held by copy of court roll, that the minerals belong to the lord of the manor.[1]

COMPARISON OF CUSTOMARY FREEHOLDERS AND ORDINARY FREEHOLDERS.

The customary freeholders of a manor are free tenants, and therefore freeholders in a sense; but in the incidents of their tenure they more closely resemble copyholders, so that the distinction between them and ordinary freeholders is a wide one.

The following table will explain the matter more particularly:—

Customary Freeholders.	*Ordinary Freeholders.*
Hold of the lord of the manor.	Hold of the Crown (or a mesne lord).
Governed by custom of manor.	Governed by common law.
Title by copy of court roll.	Title by title deeds.
Conveyance by surrender and admittance.	Conveyance by deed of grant.
Rents and services due to lord.	No service as a rule, except implied fealty to the Crown.
Escheat to lord of manor.	Escheat vested in Crown (or mesne lord).
Minerals belong to lord of manor.	Minerals belong to tenant.

TENANT RIGHT ESTATES.

Tenant right estates resemble customary freeholds, being lands which are part and parcel of a manor and governed by the custom thereof, but which have been granted in free tenure by the lord of the manor. They may be regarded as the customary freeholds of that part of the country which touches upon, or is near to, the Scottish border.

[1] Duke of Portland *v.* Hill, 35 L.J., Ch. 439.

They appear to have been originally created in consideration of border warfare against the Scots. They differ from customary freeholds in that they do not have title by copy of court roll, and are not alienable by surrender and admittance; but they resemble customary freeholds in not being determinable at the will of the lord.

COPYHOLDS PROPER.

A copyhold tenure may be defined as a base tenure of land held under the lord of the manor and at his will, according to the custom of the manor by copy of court roll.

Littleton's definition is—

"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, etc., 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 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 to the custom of the manor, yet they have but an estate at the will of the lord according to the common law."

This definition should be carefully read. It is of great importance in understanding the nature of a copyhold.

Elton, in his "Treatise on the Law of Copyholds," gives a more modern definition as follows:—

"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."

Every copyhold must be parcel of an ancient manor and demised or demisable by the custom thereof from time immemorial, *i.e.*, from the time of Richard II. A copyhold must have been such time out of mind, and cannot be created within the time of legal memory.[1]

The lord could always grant as copyhold any copyholds which had come into his hands, whether by escheat or forfeiture or other method by which a former grant was determined. It would appear that he could at one time make new grants of a portion of his manor which was demisable by the custom thereof; but where there was no custom for that purpose, the lord of the manor could not make a new grant of copyholds.[2]

Since 1887 the Copyhold Acts have practically put a stop to the creation of new copyholds. This was first brought about by the Copyhold Act, 1887,[3]

[1] Doe d. Newman *v.* Newman, 2 Wils., K.B. 215.
[2] Rex *v.* Hornchurch, 2 B. and Ald. 189.
[3] 50 and 51 Vict. c. 73.

Section 6, which has been re-enacted by Section 81 of the Copyhold Act, 1894,[1] which is as follows :—

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.

Three classes of copyhold are found—copyholds of inheritance, copyholds for life, and copyholds for years.

By the custom of copyholds each of the classes are not grantable by the lord for any greater estate than their names imply ; but the power to grant the greater will always give the power to grant the less, and therefore the lord can grant them for any less interest, should they come into his hands.

Any grant by the lord must be real in its nature, for a grant of copyhold by the lord to himself has been held to be void in law,[2] and so is a grant to his wife.[3]

If copyholds are held for more than years they are real property ; and, if the custom of the manor is not an onerous one, they are a very satisfactory form of property to own. In many cases, however, the custom

[1] 57 and 58 Vict. c. 46.
[2] Christchurch, Oxford *v.* Duke of Buckingham, 17 C.B., N.S. 391.
[3] Firebrass d., Symes *v.* Pennant, 2 Wils., K.B. 254.

is not entirely to the tenant's advantage, and the lord reaps considerable benefit by any improvements made by the tenants, instead of the tenants taking the whole of the benefit to themselves, as would be the case on freehold lands.

In consequence, copyholds have been largely enfranchised and converted into freeholds in recent years; *e.g.*, from 1841 to 1891 over seventeen thousand enfranchisements were effected.

CHAPTER X.

COPYHOLDS PROPER.

COPYHOLDS OF INHERITANCE.

COPYHOLDS of inheritance are those which are grantable in fee simple according to custom. The lord, while he has them, could grant them, in customary fee simple or other estate of inheritance, or he could grant them for life, or lives, or years.

In any case the grant must be a customary grant only, and determinable at the lord's will according to custom; for if they were granted for any common law tenancy greater than a tenancy at will, they would be extinguished as copyholds, and could never be granted as copyholds again.

COMPARISON OF COPYHOLDS OF INHERITANCE AND FREEHOLDS.

A copyhold of inheritance, though held in customary fee simple, is in many ways inferior to a freehold held in fee simple, and when subject to an arbitrary fine it is usually worth about three-quarters as much as the property would be if it were freehold. The inferiority of a copyhold can be seen from the following comparison:—

Copyhold of Inheritance.	*Freehold.*
Base tenure.	Free tenure.
Governed by custom.	Governed by common law.
Held of the lord of the manor.	Held of the Crown usually.

Copyhold of Inheritance—continued.	*Freehold*—continued.
Many payments and services due.	Fealty to the Crown the only service usual, and that not actively performed.
Dealings with the property limited by custom and to some extent subject to the lord's will.	Dealings with property unrestricted.
Powers of leasing very limited, only one year possible by general custom.	Powers of leasing unlimited.
Timber and minerals usually belong to the lord.	Timber and minerals belong to the freeholder.
Forfeiture possible for waste or failing to observe the custom of the manor.	Forfeiture now unknown.[1]
Costs much to enfranchise or make free.	Is free already.
Improvements largely for benefit of lord if fines assessed on annual value.	Improvements solely for tenant's benefit.
Descent to customary heir.	Descent to heir-at-law.
Customary curtesy and freebench by special custom.	Common law dower and curtesy.

DESCENT OF COPYHOLDS OF INHERITANCE.

In the absence of any special custom to the contrary, copyholds of inheritance descend according to the common law rules of inheritance. Special or particular customs are, however, commonly found, and these vary immensely in different parts of the country as well as in individual manors.

In the County of Kent most of the land appears to be subject to the custom of Kentish gavelkind, by which the males of each degree take as coparceners, as before explained. Customs similar to gavelkind are also found on many manors in other parts of the country, these customs varying enormously in their incidence.

[1] Forfeiture for treason and felony abolished 1870.

The custom of borough English may also be found on manors to a considerable extent. In many cases it is borough English proper, *i.e.*, similar to the custom found in burgage tenure.

Other customs are also found resembling borough English in nature, but infinite in the variety of their incidence, which have been classed under the name of *junior right*. These latter customs would appear to prevail extensively in many parts of Sussex, Surrey, and Middlesex, as well as in manors near London and many other parts of the country.

The subject of copyhold inheritance is therefore a very complicated one, and, being probably of slight general interest, will not be more fully dealt with.

If copyhold is vested in a trustee or mortgagee who dies, such trusts or mortgages devolve on his customary heir unless expressly devised; whereas trusts or mortgages of all other kinds of property devolve on the executor, and cannot be devised. Copyhold estates *pur autre vie* descend to the heirs if they are mentioned, or can be left by will. Copyholds go direct to the heir on death and are not affected by the Land Transfer Act, 1897[1]; but an equitable estate in copyhold devolves, upon the death of the owner, to his legal representative under the Land Transfer Act, and not to the customary heir.[2]

FREEBENCH.

By the general custom of copyholds there appear to be no incident analogous to dower of freeholds. On very many manors, however, there is a special custom whereby the widow is entitled to an interest in her husband's land. This interest is called *freebench*.

[1] 60 and 61 Vict. c. 65.

[2] *In re* Somerville and Turner's Contract, [1903] 72 L. J., Ch. 727.

The custom will decide the duration of this freebench, the quantity of her late husband's property which the widow is entitled to, and the class of property that will pass to her.

As a general rule, the widow's estate lasts for her life unless she marries again, when it is at once determined. The quantity to which she is entitled varies according to the custom. Where the custom is as in gavelkind, she usually takes one half; if the copyhold is only held for life, she takes the whole; and perhaps, in most ordinary cases, she would be entitled to one third; but in some manors she would take nothing, and in others she would be entitled to the entire land for her life.

Generally speaking, the widow's freebench only extends to the land of which her deceased husband died possessed, and not to other properties; but in some manors it also extends to rents, etc., arising under leases made by him. The Dower Act, 1833,[1] does not apply to copyholds.

CUSTOMARY CURTESY.

Common law curtesy does not apply to copyholds, nor is there any general custom in copyholds whereby a similar right can be claimed; but by special custom a husband may be given a life estate in his late wife's property, which is called *customary curtesy*.

Customary curtesy, or *man's freebench* as it is sometimes called, differs vastly in its incidence upon different manors, and the custom determines in every case the duration of his estate, the proportion of his late wife's lands he is entitled to, and in what tenements he can claim. In many cases the birth of issue is a necessary

[1] 3 and 4 Will. IV. c. 105.

condition, and generally he can only claim in respect of that land in which his late wife had a legal estate, while the woman must have been a copyholder before she was married.

This form of estate is frequently found in copyholds for life, as well as copyholds of inheritance, so that where the wife has a copyhold for her own life, the husband has an extension of her tenancy by customary curtesy should he survive her.

In the County of Kent the husband takes one half of his wife's gavelkind tenements, but his estate is determined by a second marriage, and where the custom of borough English proper prevails, the law as to curtesy in burgage tenure is probably followed by the custom of the manor.

GUARDIANSHIP.

In the absence of special custom, the guardianship of an infant heir follows the ordinary rules of guardianship of freehold land; that is to say, the nearest-of-kin to whom the land cannot descend is the guardian.

By the special custom of the manor, the lord may himself be the guardian or may have the right to nominate a guardian.

The guardian of an infant must, on the infant's behalf, pay all the necessary dues and rents to the lord; but he is not admitted, so is not liable for personal service.

Guardianship appears to end when the infant attains the age of fourteen years, and when it ends the infant has the right by custom to choose another guardian.

SALES OF COPYHOLDS OF INHERITANCE.

The tenant of a customary estate in fee simple of copyholds usually has full powers of sale. There is

but little, if any, difference in the sale of a copyhold and the sale of a freehold; but it must be clearly understood that by the sale is meant merely a contract of sale, as the difference between a conveyance of copyholds and freeholds is great.

The sale is made between a vendor and a purchaser in the ordinary way; the lord is not a party thereto. The ordinary rules relating to vendor and purchaser apply.

CONVEYANCES OF COPYHOLDS OF INHERITANCE.

In the case of a sale of a copyhold of inheritance, the vendor has no power to transfer the legal estate in his land to the purchaser. The transfer can only be made through and by the lord of the manor. No tenancy can be transferred without his assent,[1] and he can refuse to accept a new tenant if the conveyance is improper in its form, or if the terms on which the new tenant would be admitted are prejudicial to the lord's interests.[2]

There is often a custom that the steward of the manor shall prepare all surrenders upon the manor[3]; and, in such cases, the lord can refuse to accept a surrender unless it is so made.

The lord can also insist upon the tenement being properly described according to the court roll description,[4] and may refuse to accept the surrender if it be to the use of any person who is not to be liable for waste, or who is to be so appointed that a larger estate will be granted than the copyholder has power to convey.

[1] Oliver *v.* Taylor, 1 Atk. 474.

[2] Attorney-General *v.* Lewin, 1 Coop. 51, 54; Flack *v.* Downing Coll., Camb., 13 C.B. 945; Snook *v.* Mattock, 5 A. and E. 239.

[3] Rex *v.* Rigge, 2 B. and Ald. 550.

[4] Reg. *v.* Bishops Stoke Manor, 8 Dowl. 608.

In the ordinary case of the conveyance of copyholds, the copyholder attends at the lord's customary court, and there formally surrenders his copyhold estate to the lord of the manor to the use of the purchaser. If the lord is not present the tenant surrenders to the steward, or to some other person acting as steward, or to a person who is authorised to receive surrenders by the special custom of the manor.

The surrender was generally done by the symbolical delivery of a rod by the tenant to the steward; and, after the surrender was properly made, it was entered in the court rolls by the steward.

In those cases where a surrender was made out of court, it was necessary that a proper presentment of the transaction should be made by the suitors or homage assembled at the next court, though sometimes a special custom can be proved to present the surrender at some other subsequent court. This presentment was entered on the court rolls, and by this means a record of the surrender was always kept. If the surrender were made in court, it appeared as one of the proceedings of the court. If the surrender were made afterwards by presentment, the record of the presentment would appear.

After the surrender had been made the purchaser could then, or at any future time, procure admittance to the land which had been surrendered to his use; but, until the purchaser be admitted, the surrenderor remains liable to the lord for all customary services.

The purchaser had to attend the court and formally take admittance to the property. The tenant might be obliged to do fealty in person, and frequently took admittance by receiving a rod, straw, and the like from the lord.

On admittance the tenant paid the lord's fine, and received a copy of the court roll of his tenement, showing the surrender that had been made to his use amongst other dealings with the property. He also paid the steward's fees, and his admittance was duly entered on the court rolls.

Where a purchaser was being admitted to more than one tenement, the general rule was that he must be admitted to each tenement separately, so that the titles of each property might remain distinct; but there appear to have been some exceptions to this that have led to a good deal of confusion.

The conveyance of copyholds has been much simplified by the Copyhold Act, 1894,[1] Sections 82 to 88, which are as follows:—

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.

[1] 57 and 58 Vict. c. 46.

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.

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.

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.

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.

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.

88.—Section thirty of the Conveyancing and Law of Property Act, 1881,[1] 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.

Section 30 of the Conveyancing and Law of Property Act, 1881,[1] provides that where an estate of inheritance in any tenements or hereditaments is vested on any trust or by way of mortgage in any person solely, the same shall devolve on his personal representatives on his death, notwithstanding any testamentary disposition.

CONVEYANCE OF COPYHOLDS WHEN ENFRANCHISED.

After a copyhold has been enfranchised, it is conveyed similarly to an ordinary freehold. If the

[1] 44 and 45 Vict. c. 41.

enfranchisement were made at common law, the manorial title becomes the title to the enfranchised copyhold; but if the enfranchisement were made under the Copyhold Act, the enfranchised copyhold continues to be held under the same title that the old copyhold was held under prior to enfranchisement.

In either case, however, the question of title must be taken for granted; for by Section 3, Sub-section 2, of the Conveyancing and Law of Property Act, 1881,[1] where land of copyhold or customary tenure has been converted into freehold by enfranchisement, then, under a contract to sell and convey the freehold, the purchaser shall not have the right to call for the title to make the enfranchisement.

In sales of enfranchised copyholds, therefore, the usual practice is to make the enfranchisement deed the root of title; and where the enfranchisement was at common law and the lord's title was investigated, or where the enfranchisement was under the Acts, this is of the greatest fairness to the purchaser.

MORTGAGES OF COPYHOLDS.

The owner of a copyhold of inheritance has the right to mortgage his property to another. This he does, as a rule, by means of an equitable mortgage. A deed is prepared whereby the borrower deposits with the lender the copy of the court roll and the other muniments of title relating to the property, and enters into a covenant to surrender his property to the use of the lender, which will operate at once if the interest be unpaid or the mortgage deed be broken.

[1] 44 and 45 Vict. c. 41.

This conditional surrender is entered upon the court rolls of the manor; and, in the event of the provisions of the mortgage deed being broken, the copyhold becomes surrendered and the mortgagee can take admittance.

If a legal mortgage were desired, it could only be made by the surrender of the copyhold to the lord of the manor, and the admittance of the lender by the lord of the manor. This would result in much needless trouble and expense; as when the money was paid off there would have to be a re-surrender to the use of the mortgagor, who would have to be admitted afresh, and all fines and fees payable for the surrender and admittance would be unnecessarily incurred twice over.

Under the present system of an equitable mortgage, when the money is paid off, the conditional surrender is entered as satisfied, and the sole expense is that of two short entries on the rolls.

By general custom the surrenderee must present at the next court that is held, and the equity of redemption is governed by the same custom as the legal estate. Special customs may, however, alter this, and may prove a duty to present at a later court.

LEASES OF COPYHOLDS OF INHERITANCE.

The powers of a copyhold tenant to grant leases of his copyhold estate are, as a rule, very limited. By the general custom of copyholds he can only let it for one year, unless he obtains the lord's licence to grant it for a longer period.

There may be a custom of the manor by which the fine payable to the lord in respect of this licence is fixed in amount, or is limited to a low rate; but, on the

other hand, there may be no custom with regard to the matter, so that the lord can ask what he pleases as a condition for his consent.

There is sometimes found a special custom enabling the tenant to grant leases for terms of considerable length without the licence of the lord; *e.g.*, for nine, twelve, or twenty-one years. In any case, where the tenant wishes to grant a lease in excess of the powers which the custom gives him, he must obtain the lord's licence in order to make the grant, and must pay such fines as the custom requires or permits. The lease must not be for a longer term than the licence warrants, or it will be void, but a lease for any less time is good.[1]

Any custom preventing the lord from granting a licence to alienate is bad since the Copyhold Act, 1841[2]; but, generally speaking, the lord's licence will only continue during the continuance of his own estate.[3]

Where the lord is tenant for life of a settled manor, he has the same power to grant a licence as a tenant for life has to grant a lease under the Settled Land Act, 1882,[4] *i.e.*, to grant a licence for a lease of ninety-nine years for building purposes, or sixty years for mining purposes, or twenty-one years for occupation purposes; and he can, in some cases, obtain the consent of the High Court to grant licences for building leases for longer terms.

In the granting of leases, as in other things, the tenant is bound to obey and observe the custom of the manor; and if he does not do so, or if he commits waste, or creates an estate in the land which is not

[1] Jackson *v.* Neal, Cro. Eliz. 395; Worledge *v.* Benbury, Cro. Jac. 436.
[2] 4 and 5 Vict. c. 35.
[3] Petty *v.* Evans, 2 Brownl. 40.
[4] 45 and 46 Vict. c. 38.

authorised by custom or by the lord's licence, his estate will be forfeitable to the lord of the manor. The lease is good, however, as between the lessor and the lessee, and all others except the lord.[1]

If a lease be made by a copyholder, with the lord's licence, a subsequent forfeiture by the copyholder does not destroy the term that has been granted by such lease.[2]

A lease by a copyhold tenant for a period longer than the custom warrants is not absolutely void against a stranger, but is a ground of forfeiture of which the lord alone can take advantage.[3]

In a case where a copyholder demised for one year, and thence from year to year for the term of thirteen years more, if the lord would grant a licence, so that the copyhold should not be liable to forfeiture, it was held that the lord's licence was a condition precedent to the further term of thirteen years, and the lord refusing to give such licence, the assignee of the lessor could recover in ejectment after six months' notice to quit.[4]

A mandamus will not go to compel the lord to grant a licence to a copyholder to demise, on an alleged custom that the tenant can demise for three years without licence, and that for licence to demise during a longer term the lord should have a sum certain every year of such term.[5]

WILLS OF COPYHOLDS OF INHERITANCE.

By the custom of most manors the tenants appear to have the right to make a will, but by the particular

[1] Doe d. Tresidder *v.* Tresidder, 1 G. and D. 70.
[2] Clarke *v.* Arden, 16 C.B. 227.
[3] Doe d. Robinson *v.* Bousfield, 6 Q.B. 492.
[4] Doe d. Nunn *v.* Lufkin, 4 East. 221.
[5] Reg. *v.* Hale, 19 A. and E. 339.

customs of some manors there was no such right[1] or the right was limited. In order to make a will, the copyholder had to surrender his tenement to the use of the will, and a custom that copyholds should not be surrendered to the use of the will was held bad.[2]

When a copyholder died, his estate descended to his heir, subject to the right of the devisees to be admitted.[3] The surrender to the use of the will only operated on the estate which the copyholder surrendered, and did not pass lands subsequently acquired by him.[4]

The surrender to the use of the will appears to have been a complicated subject. The estate remained in the copyholder, and he could apparently sell it, and surrender it to the use of the purchaser without revoking the first surrender that he had made.[5] This is now only a matter of history, for the Wills Act, 1837,[6] 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 the will; or if 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 the surrender 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.

[1] Nicholson *v.* Nicholson, 1 Tam. 319.
[2] Pike *v.* White, 3 Bro. C.C. 286.
[3] Rex *v.* Wilson, 10 B. and C. 80.
[4] Doe d. Ibbot *v.* Cowling, 6 T.R. 63.
[5] Fitch *v.* Hockley, Cro. Eliz. 442.
[6] 1 Vict., c. 26.

Since this Act, therefore, a copyhold may be left by will in a similar way to the freehold.

SETTLEMENTS OF A COPYHOLD OF INHERITANCE.

The tenant of a copyhold of inheritance can make settlements of his property, and even entail it, provided there is a custom to warrant such dealings.[1]

The general rules relating to the custom of settlements and entails of freeholds will apply in respect of copyholds. The entail of a copyhold can by the Fines and Recoveries Act, 1833,[2] be barred by a surrender to the lord of the manor, and by a re-grant by him discharged of the tail; but the consent of the protector is necessary if the estate is not in possession, and this can be given by deed or by his concurrence in the surrender if the transaction is entered in the court rolls.

A deed intended to operate as a disentailing assurance of copyholds must, in order to be operative, be an actual disposition and not a mere declaration of trust, and must be entered on the court rolls of the manor within six months of its execution.[3] And in order to bar an equitable estate in copyholds under 3 and 4 Will. IV. c. 74,[4] such deed must be entered on the court rolls within six months of its execution.[5]

COPYHOLDS FOR LIVES.

Copyholds for lives are those which cannot be granted by the lord for a greater period than life. Customs relating to the grant vary greatly, and in many cases give the lord the power to grant for several successive lives, or for a single life with a right of

[1] Roe d. Crow *v.* Baldwere, 5 T.R. 104.
[2] 3 and 4 Will. IV. c. 74.
[3] Green *v.* Paterson, 56 L.J., Ch. 181; Honywood *v.* Forster, 30 L.J., Ch. 930.
[4] The Fines and Recoveries Act, 1833.
[5] Gibbons *v.* Snape, 1 De G. J. and S. 621.

renewal, by means of which the copyholder, by paying a fine of fixed amount, can continue the tenancy indefinitely. In some cases also, the tenant has the right to nominate his successor, and this resembles the tenant's right of renewal. In either of the two last-named cases, it is a very satisfactory form of tenancy to hold, and it has been styled *quasi copyhold in fee.*

In the Western counties of England, copyholds for lives are very common, especially upon manors belonging to Ecclesiastical Corporations, and it is not unusual to find copyholds for lives and copyholds for inheritance grantable upon the same manor.

The Ecclesiastical Corporations frequently grant their lordship to a lord farmer for a term of years, who grants the land to the tenants and takes the profits arising therefrom.

In the North of England some of the tenant right estates appear to be held for life only, usually for the joint lives of the tenant and the lord who admits him, the heirs of the tenant having, as a rule, the tenant right of renewal.

Where a copyhold was granted for the life of A (the tenant), and B and C (other persons), and A died intestate, it was held that his administratrix was entitled to have the estate during the lives of B and C.[1]

But a copyhold granted for successive lives passes in succession, as a rule, though a custom can be proved to give the first owner absolute power to dispose of the estate in his lifetime.[2]

COPYHOLDS FOR YEARS.

This class of copyhold is grantable for a term of years only, and for no greater estate.

[1] Howe *v.* Howe, 1 Vern. 415; Withers *v.* Withers, Amb. 151.
[2] Rundle *v.* Rundle, 2 Vern. 264; Phillips *v.* Ball, 6 C.B., N.S. 811.

The custom of the manor will define the term of years that can be granted; twelve years is a common term.

In many cases the tenants have a right of renewal, on payment of a fixed fine, and this right often descends to their heirs.

In all cases, where there is a right to renew a copyhold granted for a term of life or years, the renewal fine is fixed and certain; and provided that a tenant can, in addition to this, prove that there has been a constant usage of renewal over a prolonged period, he can insist upon his right.

These fines for renewal were fixed at a period when the value of money was great, and therefore they are commonly of very small amount compared with the value of the property. A copyhold tenancy for years, renewable by the tenant on payment of such a fine, is a valuable property to possess.

CHAPTER XI.

INCIDENTS OF COPYHOLDS.

On copyhold property there are numerous incidents which are governed by the custom of the manor, and are to some extent peculiar to this class of tenure. They are of considerable interest, and will be dealt with under the following headings:—

The Copyholder's Services.
The Tenant's Right of Possession.
The Liability for Repair.
The Lord's Right of Forfeiture.
The Lord's Right of Escheat.
The Custom as to Trees and Mines.
Rights of Common on Manorial Waste.

THE COPYHOLDER'S SERVICES.

The copyhold tenant, in consideration of his tenancy, has to render various services to the lord of the manor.

At first, these services, as has been already shown, were of a base and uncertain character; but, by degrees, they have to a great extent become certain by custom. Many of them have been commuted from a personal service to a money payment; many have lapsed through non-observance, and all become extinguished when the tenement is enfranchised, or when it ceases to be held according to the custom of the manor.

The whole question is one of custom; and, therefore,

the services that are due, and the incidents of each, differ immensely in different cases, but the chief liabilities may be summarised as follows :—

1. To pay a fine to the lord of certain or uncertain amount upon various occasions or for additional privileges.
2. To submit to the lord taking a heriot upon the happening of certain events.
3. To pay a relief to the lord on such occasions as the custom requires.
4. To pay an annual rent to the lord.
5. To swear fealty to the lord.
6. To observe suit of court.

THE LORD'S FINE.

The *lord's fines* may be classified under three headings, according to the times when they are payable, viz. :—(*a*) Fines payable for admission ; (*b*) Fines payable upon the death of the lord ; and (*c*) Fines payable for the lord's licence to do something which the custom does not otherwise allow. Any of these fines may, by custom, be either fixed or uncertain in amount ; that is, they may be *fines certain* or *fines arbitrary*.

FINES CERTAIN.

A *fine certain* is one which consists of a certain definite sum of money, or a sum of money which can be ascertained from some fixed standard, so that the amount can be found quite independently of the will of the lord, and is reducible to a certainty ; for instance, a fine of so much per acre. Any fine which can be fixed by the homage, or by a person appointed to fix it in case of dispute between the lord and the tenant as to its amount, is, properly speaking, a fine certain.

Where the fine certain is of fixed amount, or calculated at so much per acre and the like, it is generally a small sum of money, owing to the value of money at the time it became fixed. It can only exist where there is a special custom to warrant it, which can be proved by entries in the court rolls,[1] and in the case of copyholds for lives or years, where there is no custom of renewal, a fine certain is impossible.[3]

FINES ARBITRARY.

A *fine arbitrary* is one which is not of fixed amount, but which is dependent upon its assessment by the lord or steward of the manor. It is, as a rule, dependent by custom upon the annual value of the property, and frequently amounts to a very considerable sum. In all cases it must be assessed and demanded, before it can be recovered, and it must be reasonable.[3] What is a reasonable fine is a question for the Court, and it is the copyholder's duty to show that it is unreasonable.[4] In many cases a maximum limit is fixed by custom, but the reasonableness of the custom may be tried. The question is best considered with regard to the various classes of fines.

ADMISSION FINES.

The custom as to *admission fines* varies considerably. In some cases they are, by special custom, certain in amount; otherwise an arbitrary fine is due. As a rule a tenant has to pay a fine for his admittance to every tenement, and one fine cannot be assessed upon the admission of a tenant to several copyhold tenements.[5]

[1] Allen *v.* Abraham, 2 Bulst. 32.
[2] Wharton *v.* King, 3 Anst. 659.
[3] Hayward *v.* Raw, 30 L.J., Ex 178.
[4] Doe d. Twining *v.* Muscott, 14 L.J., Ex. 185.
[5] Grant *v.* Astle, 2 Dougl. 722.

In some cases a fine is only due on admittance after alienation or devise, and not upon an inheritance; in others a fine arbitrary may be due in one case and a fine certain in another, while the custom may show a smaller fine to be payable for an admission after death than that which is payable on an admission after alienation, and *vice versâ*.

If the fine is arbitrary, it must, as has already been shown, be reasonable in its amount, and the question as to what is a reasonable fine is fairly well settled. The present rule dates from 1677, when it was decided by Lord Nottingham, in *Morgan* v. *Scudamore*,[1] that a fine of two years' improved value of the tenement was the proper limit for an arbitrary fine. This applies for the admittance of a single life where a fine is due by custom for every admission, and has been approved on many occasions. For instance, it has been held that a custom to take ten per cent. on the purchase money cannot be good, as a fine can never exceed two years' purchase on admission, and that if the tenant paid more upon compulsion, he could recover any amount beyond the two years' purchase.[2] A custom, that the lord is not restricted in amount to any number of years' purchase of a copyhold tenement, has been held bad and unreasonable.[3]

It would appear that where an arbitrary fine is due on every purchase, but not upon descents, the amount of the fine could be increased in due proportion[4]; and it has been clearly decided that the fine can be greatly increased where it is due only on a first admission to a manor.

[1] 2 Rep. in Ch. 134.
[2] Leeke *v.* Lord Pigot, 1 Selw., N.P. 87.
[3] Douglas *v.* Earl Dysart, 10 C.B., N S 688.
[4] Scriven, Cop. 319.

In some cases the lord may have a claim to more than one fine upon the admission of a tenant, and the question becomes one of no little complexity.

Thus, where a copyhold tenement was conveyed in several parcels to different persons, and some of these afterwards devolved upon one man, the lord was held entitled to insist on a separate admission to each parcel, with separate fines and sets of fees.[1]

Where a person, entitled as copyholder in fee, died before he was admitted, and devised his property to his eldest son, the lord was held to be entitled to two fines—one for the admittance of the father and one for the son.[2]

In another case there was a sale by trustees under the Settled Land Acts, and it was shown that the trustees had not been admitted. The lord claimed a fine on the admission of the purchaser, and also what would have been payable if the trustees had been admitted. It was held that he could only recover the fine for the admittance of the purchaser, and not for that of the trustees.[3]

The fine becomes due on admittance, and not before. If it is a fine certain, the tenant must pay it immediately after admittance; but, in all cases of a fine arbitrary, the tenant will be allowed a reasonable time for meeting the lord's demand, and for pleading that it is an unreasonable demand.[4]

The right of the lord of the manor to a fine arbitrary accrues at the date of the admittance of the copyhold tenant, and the lord's action of debt to recover such fine is barred by Section 3 of the Civil Procedure

[1] Traherne *v.* Gardner, 3 El. and Bl., 913.
[2] Lord Londesborough *v.* Foster, 3 B. and S. 805.
[3] *In re* Naylor *v.* Spendla's Contract, 56 L.J., Ch. 453.
[4] Hobart *v.* Hammond, 4 Rep. 27b.

Act, 1833,[1] unless brought within six years from the date of admittance. The lord cannot, by delaying to assess and demand the fine for upwards of six years after admittance, prevent the operation of the Statute.[2]

LARGE FINES PAYABLE ON FIRST ADMISSION ONLY.

In those cases where a fine is payable on admittance to the manor, but no further fine, or no further fine of large amount, becomes due, a custom to take a fine of four, five, or even seven years' value has been held reasonable,[3] though a custom that the lord could claim what fine he pleased was held bad.[4] In such case, if many tenements are purchased or devised, there is no copyhold law to show that the purchaser or devisee can claim to be admitted to one tenement only, and subsequently to the others; but a special custom that he must be admitted to all at the same time, and pay a fine in respect of all, is good, and may be proved.[5]

The first purchase of a valuable property on any manor where the above custom prevails means, therefore, a heavy expense to the purchaser; and as the custom is found on several manors near London, where property is very valuable, purchasers have endeavoured to evade the expense by first purchasing a small property, and then the valuable one they desired. No doubt this practice was greatly to the lord's detriment, though it is difficult to see how it could be prevented by him, if the first purchase was *bonâ fide*. A recent case may assist to put a stop to this practice, as it has been held that, in assessing the amount of the fine

[1] 3 and 4 Will. IV. c. 42.
[2] Monckton *v.* Payne, [1899] 68 L.J. Q.B. 951.
[3] King *v.* Dillington, 1 Freem, 494, 496.
[4] Douglas *v.* Earl Dysart, 10 C.B., N.S. 688.
[5] Johnstone *v.* Earl Spencer, 30 Ch. D. 581.

which would be reasonable in any particular case of this kind, regard should be had to the value of the property purchased, and to the probability of its being purchased to enable the purchaser to avoid paying an arbitrary fine, on being afterwards admitted to other property of greater value.[1]

In this case it was shown that, by the custom of the manor, if a stranger purchased a copyhold property, he paid to the lord on admittance an arbitrary fine, which was assessed with reference to the yearly value of the property; but if a copyholder purchased additional copyhold property, he only paid a nominal fine. The defendant was a stranger to the manor, and had agreed to purchase a large copyhold property. He then, in order to avoid payment of the arbitrary fine in respect thereof, agreed to purchase from a copyholder a small cottage for a certain sum. The terms of this bargain were that the defendant would re-convey the property after three months, that the vendor should collect and retain all rents received while the defendant held the cottage, and should pay all outgoings; and that, in case the defendant should wish to keep the cottage, he should pay a certain further sum to the vendor. The cottage was thereupon surrendered in favour of the defendant, and the lord admitted him as tenant thereof on payment of an arbitrary fine. The defendant then completed his purchase of the larger property, and was admitted tenant thereof, on payment of a merely nominal fine. It was held that the agreement for the purchase of the cottage by the defendant was merely a colourable pretence, that the lord was entitled to be put in the same position as if he had never admitted the defendant as tenant of the cottage,

[1] Attorney-General *v.* Sandover, [1904] 73 L.J. K.B. 478.

and that the defendant must pay the lord an arbitrary fine in respect of the larger property.

FINES ARBITRARY PAYABLE ON ADMISSION OF JOINT TENANTS.

Where several tenants are admitted to a copyhold property, the lord will not obtain another fine until the death of the last of them, owing to the right of survivorship that is vested in them. The lord is, therefore, in a far worse position than he would be by the admittance of a single life, and is entitled to be paid a larger amount.

In manors where it is the custom to take a fine of two years' value for the admission of a single life, if several lives to hold in succession are admitted, it has been held reasonable to take two years' purchase for the first life, half what was paid for the first for the second, half what was paid for the second for the third, and so on in a descending series, so that the total fine would approximate to, but never reach, four years' full improved annual value of the property.

This method was approved in the important case of *Wilson* v. *Hoare*[1] and in *Sheppard* v. *Woodford*.[2] In the first of these cases fourteen trustees were admitted, and it was held that a fine of £5,657 19s. was unreasonable, and that the method above described was the proper one to adopt; but as in that particular case, owing to a decree of the Court, a further appointment and an entirely fresh admittance must be made on the death of nine of the trustees, for which another fine would be assessed, some allowance should be made on that account.

[1] 2 B. and Ad. 350.
[2] 9 L.J. Ex. 90.

In the ordinary way the admittance of one of several joint tenants operates as an admittance of all[1]; but, where there is a special custom of a manor, by which one only of several joint tenants of a copyhold can be admitted, and only one fine is payable on such admittance, this is a special circumstance which excludes the general rule; and, in case of a devise to joint tenants, such custom is not bad as restraining the power given to testators by Section 3 of the Wills Act, 1837,[2] to devise their copyholds without stint.[3]

One joint tenant can release his share in the tenement to one of his co-joint tenants without a fine being payable; and, if a joint tenant dies, the others succeed to his share, so no fine is due. But, if joint tenants combine to sell their property, only one fine is payable by the purchaser; and on some manors a fine is due if one joint tenant sells his share.

FINES ON ADMISSION OF LIVES IN REMAINDER.

According to the general rule, an admittance of a particular tenant is the admittance of all others who may be entitled in remainder,[4] and the lord may assess the whole fine[5]; but in some cases all are admitted at the same court, and a fine assessed as for joint tenants is reasonable.[6] In either case no further fine is usually paid by the remaindermen, though there may be a special custom to the contrary, and a separate admittance with separate fines can be demanded.[7]

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[1] Bence *v.* Gilpin, L.R. 3 Ex. 76.
[2] 7 Will. IV. and 1 Vict. c. 26.
[3] Howard *v.* Gwynn, [1901] 84 L.T. 505.
[4] Fitch *v.* Stuckley, 4 Rep. 23a.
[5] Lord Kensington *v.* Mansell, 13 Ves. 246.
[6] Richardson *v.* Kensit, 12 L.J. C.P. 154.
[7] Reg. *v.* Woodham Walter Manor, 10 B. and S. 439; Dean of Ely *v* Caldecott, 8 Bing. 439.

FINES ON ADMISSION OF COPARCENERS.

When coparceners are admitted to a manor, they take as one heir, by one title, and are entitled to be admitted upon payment of one fine and one set of fees,[1] and if one releases to another no fine is due. But if a coparcener dies, and another becomes entitled by descent, another fine will be due in respect of the property which passes.

When coparceners combine to sell their property to another, the purchaser will only pay one fine for admittance; and it seems that if one of them alienates his share, a fine may be due by special custom.[2]

FINES ON ADMISSION OF TENANTS IN COMMON.

Every tenant in common holds by a separate title and in a separate right, and so each must be admitted separately, and must pay a separate fine and a separate set of fees in connection with his admittance to his share.[3] If one of them dies or alienates his property, the incoming tenant must be admitted, and must pay a fine and a set of fees in respect of the share to which he is admitted.

If several tenants in common join in selling their property, the purchaser must be separately admitted to each share, and must pay a fine and a set of fees in respect of each share. For instance, where copyhold land was devised to A for life, with remainder to five persons as tenants in common, and A died after being admitted, whereupon the five tenants in common sold their property and severally surrendered their shares to

[1] Rex v. Bonsall, 4 D. and R. 825.
[2] Scriven, Cop. 377.
[3] Fisher v. Wigg, 1 P. Wms. 14, 21.

the use of B, it was held that B must pay five fines and five sets of fees, and that the admittance required five stamps.[1]

THE MODE OF ASSESSING FINES ARBITRARY.

Generally speaking, the assessment of a fine is in the form of a sum of money, representing that number of years' full improved annual value of the property which the custom of the manor allows. But where it was the custom to take a reasonable fine on admission, and the lord described the improved annual value for a certain number of years without stating the amount of the fine, it was held to be recoverable.[2]

The improved annual value of the property is what it will let for at the time when the assessment is made. In making the calculation the amount of the quit rent should be deducted,[3] and if there are buildings the annual cost of keeping them in repair[4]; and it would appear that the cost of putting the premises in repair, for the purpose of letting, may be considered, but no allowance should be made in respect of land tax or other similar charges.[3]

The rent reserved in a lease of copyhold property is not conclusive as to the amount of a fine payable to the lord, for the tenant may show that the actual value of the property demised is less than the rent reserved, and the fine must be estimated according to the improved value.[5] Conversely, it is presumed that the lord could show that the rent of the tenement demised was less than its annual value.

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[1] Reg. *v.* Eton College, 8 Q.B. 526.
[2] Fraser *v.* Mason, 52 L.J. Q.B. 643.
[3] Grant *v.* Astle, 2 Dougl. 722.
[4] Richardson *v.* Kensit, 12 L.J. C.P. 154.
[5] Earl Verulam *v.* Howard, 9 L.J., O.S., C.P. 69.

FINES DUE ON DEATH OF LORD.

In many of the manors in the North of England, the copyhold tenements are held for the joint lives of the tenant and the lord who admits them. In these cases, a tenant not only has to pay a fine when he is admitted; but, if a lord dies, and a new lord succeeds, a general fine is levied upon every tenant of the manor.

This custom is a perfectly good one, and applies even when the manor has been sold by the lord during his lifetime.[1]

The rules as to the amount of the fine are the same as those applying to fines payable for admission.

FINES PAYABLE FOR LICENCES.

Where a copyhold tenant desires to exercise greater privileges than he is allowed by the custom of the manor, it is possible for him to apply to the lord for his permission, and to take a licence for the purpose. The most usual circumstance is when the tenant wishes to let his land for a longer term than the custom permits, or to sell his land when the custom prohibits alienation, or when he wishes to fell timber beyond the amount to which he is entitled by custom.

On such occasions the lord grants the licence, if he sees fit, upon payment of a fine; and, the whole matter being one purely of agreement, there is no limit, as a general rule, to the amount that the lord may demand for his permission.

In some cases, however, there is a custom applicable to the matter, and the tenant may be able to prove a custom to sell or demise for a certain period on payment of a fine certain; while no fine can be

[1] Lowther *v.* Raw, 2 Bro. P.C. 451.

claimed for the right to sell, or to let for a year, unless there is a special custom to prove it. If there is such a custom, the fine, if not paid, can be recovered by action.[1]

UNLIMITED FINES ARBITRARY.

In the case of a grant of copyholds for life or for years, if there is a custom to renew, the fine payable to the lord is always certain in its nature.[2]

Where there is no custom to renew, the grant of copyhold comes to an end as soon as the life or lives for which it is granted expires, or as soon as the number of years runs out. The property returns into the lord's hands, and can be granted out again by him as he thinks fit, so far as the custom allows.

The fines payable in such cases are always arbitrary, and in the absence of special custom it would appear that there is no limit as to what the lord can demand. It is purely a matter of arrangement between the lord and the prospective tenant, for the lord owns the land entirely, and could sell it or lease it as freehold if he saw fit.

HERIOTS.

The taking of a heriot, is the right of the lord to enter upon the tenant's land, and to take something belonging to the tenant upon the happening of certain events. The word *heriot* appears to be used to indicate either the thing taken or the right to take it. There are three kinds of heriots—*heriot-service*, *suit-heriot* and *heriot-custom*, the last-named only being usual on copyhold land.

[1] Yaxley *v.* Rainer, 1 Ld. Raym. 44.
[2] Wharton *v.* King, 3 Anst. 659; Abergavenny *v.* Thomas, 3 Anst. 668n.

HERIOT-SERVICE.

Heriot-service is of the nature of a rent, and consists of the lord's right to seize the best beast or chattel of a tenant who dies possessed of an estate of inheritance. It is found upon fee simple tenancies of freehold lands which were granted prior to the Statute of Quia Emptores, 1290.[1]

The property in the heriot vests in the lord immediately on the death of the tenant, and the lord can seize his property wherever it may be, even if it has been given away or sold, unless it has been sold in market overt. If the lord cannot recover the heriot, he can distrain for it, but the distress can only be made upon the land granted to the tenant.

The lord can recover his heriot, or distrain for it, within six years of its becoming due, but his right of taking a heriot is not barred by failure to take for twenty years, even if he neglected to do so on the last occasion.[2]

SUIT-HERIOT.

Suit-heriot may be regarded as an additional rent, which becomes due at such times as may be agreed. It is created upon the grant or lease of freehold land in modern times, and is reserved like a rent. It is not limited to any particular class of beast or chattel, and it would seem that the lord cannot seize it, but can only distrain or bring an action for its non-payment.

HERIOT-CUSTOM.

Heriot-custom differs considerably from the two classes of heriot before alluded to. It is not of the

[1] 18 Edw. I.
[2] Lord Zouche *v.* Dalbiac, L.R. 10 Ex. 172.

nature of a rent; it is only found on copyhold and customary freehold lands, and it is merely a customary incident and not part of the actual tenure. It is the right which the lord has by the custom of the manor to the property in some animal, bird, or chattel which belonged to the tenant, upon the happening of certain events. The proper method of recovery is by seizure, which is always possible except when the animal or other heriot has been sold in market overt, and the lord cannot distrain for heriot-custom unless there is a special custom of the manor which authorises him to do so. Generally speaking, a heriot is due in respect of every tenement on the happening of the event upon which it becomes due; but in some cases there is a special custom by which only one heriot is due, irrespective of the number of tenements which the tenant is possessed of.

THE NATURE OF HERIOT-CUSTOM.

The most usual heriot due to the lord is the best beast of the tenant; but custom varies considerably upon the point, and such things as the second best beast, the best cloven-footed animal, the best bird, the best piece of dead goods, and such like, are met with.

In some cases the heriot has been commuted into a money payment; and where these commutations are of ancient date, the amount is generally a small one, but in order to prove this there must also be a custom of distress, which must be alleged positively and not merely by inference.[1]

A commutation would appear to be the only way in which the right to make a money payment can be

[1] Basingstoke Corp. *v.* Bolton, 1 Drew 270.

claimed, except where the lord or steward assesses the value of the heriot, for a custom for the homage to assess the compensation in lieu of a heriot has been held invalid.[1]

WHEN HERIOT-CUSTOM IS DUE.

A heriot is usually seizable on the death of every tenant upon the manor, and in respect of every tenement of which he dies seised, though a special custom is sometimes found whereby only one heriot is due on the death of a tenant, irrespective of the number of tenements he holds. Sometimes, also, a heriot is due by custom only in respect of those lands of which the tenant is solely seised at the time of his death; *i.e.*, not in respect of land held in joint tenancy, tenancy in common, or coparcenary. In such a case it has been held that, where a tenant in fee simple had by deed mortgaged his tenement and died without redeeming the mortgage, he remaining in possession of his land, a heriot was due upon his death.[2] It has been held that a heriot is only due upon the death of him who has the legal estate in the land, and not upon the death of one who has the equitable estate[3]; but this would appear to apply to interests not in possession, and not to a case as that of a mortgagor.

A heriot is also frequently due by custom when the tenant alienes his land, and on some manors a heriot can be claimed upon various occasions, such as the birth or marriage of the lord's eldest son, the death of the lord, and such like.

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[1] Parker *v.* Ratcliffe, 1 Bos. and P. 282.
[2] Copestake *v.* Hoper, [1907] 76 L.J. Ch. 232.
[3] Trinity Coll., Cambridge *v.* Browne, 1 Vern. 441.

HERIOT-CUSTOM IN THE CASE OF UNDIVIDED TENANCIES.

Where tenants hold undivided shares, the rules as to the payment of heriots depend upon the nature of their titles. Thus joint tenants and coparceners, having but one title and being admitted as one, will only pay one heriot. Tenants in common, on the other hand, being separately admitted and having separate titles, will have to yield one heriot each. In any case, should an action for partition be brought, or the shares in any way be converted into ownership in severalty, multiplication of heriots will result.

In the case of death of a joint tenant, as there is no fresh admission and the others take his share among them, no heriot would become due; and the same applies to a coparcener, provided the estate in both cases is not turned into a tenancy in common or in severalty. But should a tenant in common die, a heriot will be due.

In the case of alienation of his share by a joint tenant or coparcener, it seems that a heriot may be due by special custom; but when joint tenants, coparceners or tenants in common join in selling their land as one tenement to another, it remains one tenement, and only one heriot will be payable in the future.[1]

Thus where a copyhold was held by several tenants in common, the lord was entitled to a heriot from each of them; but as soon as the several interests were re-united in one person, one heriot only was payable.[2]

[1] Padwick *v.* Tyndale, 1 El. and El. 184; Garland *v.* Jekyll, 2 Bing. 273.
[2] Holloway *v.* Berkeley, 5 L.J., O.S., K.B. 1.

MULTIPLICATION OF HERIOTS.

In those cases where a copyholder divides his tenement into several parcels, which he sells or devises to different persons, the tenement is split up into several tenements. Each tenant will then have to be separately admitted, and a heriot will in future be due from each portion of the original tenement. In this way the lord will benefit by the multiplication of heriots.

THE TAKING OF HERIOT-CUSTOM.

On the death of the tenant or the happening of any other event which causes a heriot to become due, the property in the heriot at once vests in the lord of the manor, and the lord has the right to seize it wherever it may be, and whether it is found in or out of the manor, and he has a right of action against any person misappropriating it.[1]

But where the customary heriot is a best beast and the tenant dies possessed of several beasts, no property in any specified beast will vest in the lord before he has made his selection; and in a case where there were five beasts due to the lord, and he selected seven, it was held that he had no property in any five of them.[2]

If the heriot is a best beast and the tenant dies possessing no beasts at all, the lord's right will be defeated[3]; and if the lord once makes his selection, he is bound by it, even if there was a superior beast of

[1] Western *v.* Bailey, [1897] 66 L.J. Q.B. 48.

[2] Abington *v.* Lipscombe, 10 L.J. Q.B. 330.

[3] Shaw *v.* Taylor, Hob. 176.

which he had no knowledge.[1] If the tenant bequeaths his beast to another, it will not defeat the lord's title; but a sale in *market overt* by the executors will have that effect, and prevent the lord from seizing that particular beast.

EXTINGUISHMENT OF HERIOTS.

Enfranchisement of the land, or a destruction of the copyhold tenure, or enfranchisement of the heriot, will extinguish the lord's right to take a heriot. The lord cannot seize a heriot after six years from the time it was due; but if no heriot is taken for twenty years, that will not extinguish the lord's right to take one, whether one became due during that period or not.

RELIEFS.

Reliefs are payable by the tenant to the lord on the happening of certain events, usually upon an inheritance or upon a purchase, and greatly resemble fines certain. In fact, the customary fine due upon a purchase is termed a *relief* in some manors. They are usually limited to a very small sum, such as one year's quit-rent.

If a relief is not paid, the lord's proper procedure is to bring an action for its recovery, and distress can only be resorted to when there is a special custom to authorise it.[2]

Reliefs, like heriots, do not become due upon the death of one of several joint tenants or coparceners, but it is presumed they would be due on inheritance of the share of one of several tenants in common.

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[1] Odiham *v.* Smith, Cro. Eliz. 589.

[2] Mayor of Basingstoke *v.* Lord Bolton, 3 Dr. 50.

QUIT-RENTS AND CHIEF-RENTS.

Quit-rents and *chief-rents* are annual payments of small amount due from the copyhold tenant to the lord, and may be regarded as similar to ordinary rents. The lord can recover them by distress or by action up to six years' arrears, but non-payment for twelve years will bar the lord's right of recovery. It must not be supposed, however, that non-payment for a long period would necessarily destroy the copyhold tenure, for the rents are usually of quite small amount, and often not worth collecting. But where it can be shown that no rents have been paid and no other customs performed for very many years, but that the property has for a long period been treated as freehold, it will be presumed that an enfranchisement has taken place if it is possible to do so.

The payment of an unvaried rent for many years to the lord of the manor is evidence of his title to the rent only, and not to the land in respect of which the rent is paid. The presumption is, that the rent is a quit-rent.[1]

When a copyhold comes into the lord's hands, and is re-granted by him as copyhold, it would appear that he cannot increase, or otherwise alter, the amount of the ancient rents and services, and must keep them as they were before.[2]

On customary freeholds the term *chief-rent* is more generally used; and all manorial rents are commonly referred to as *rents of assize*, because they have been assized or made certain.

[1] Doe d. Whitlock *v.* Johnson, Gow. 173.

[2] Doe d. Rayer *v.* Strickland, 2 Q.B. 792.

The small amount of these rents is due to their having been fixed in ancient times, when money values were great.

FEALTY.

Fealty is a personal service, due by the tenant to the lord upon admittance or change of lord, consisting of the taking of an oath to be faithful and to observe the custom of the manor. It is often respited or commuted to a trifling sum, but even at the present day it is sometimes enforced with a good deal of ceremony.

SUIT OF COURT.

Suit of Court is another personal service due from the tenant, consisting of his duty in attending the manorial courts, and serving upon the homage jury if required. If a tenant fails to perform this service, he can be fined, if he has been properly summoned and did not attend.

CHAPTER XII.

INCIDENTS OF COPYHOLDS CONTINUED.

THE TENANT'S RIGHT OF POSSESSION AND QUIET ENJOYMENT.

COPYHOLD LAND is in the possession of the copyholder. By general custom he can maintain trespass against the lord, as well as against a stranger, for any invasion of the copyhold land, or disturbance of his quiet enjoyment thereof. So long as the tenant observes the custom of the manor, he is fully protected by the law; but, if he breaks the custom, the lord's right of forfeiture arises.

Special custom will in some cases diminish the rights of the tenant, as the lord may thereby have the right to enter upon the copyholder's tenement, and to take timber or minerals therefrom; and he, not infrequently, has rights of entry in connection with some of the manorial franchises or rights, which were expressly reserved when the copyhold was granted.

THE TENANT'S LIABILITY TO REPAIR.

By the general custom of copyholds, it is the duty of the tenant, as one of the conditions of his holding, to keep his *tenement in repair*, and not to commit, nor to permit, waste. A breach of the duty renders the tenement forfeitable.

Two recent cases upon the subject are instructive: In *Blackmore* v. *White*[1] it was held that a grant by copy of court roll, of buildings parcel of a manor, implies a contract on the part of the copyhold tenant in possession to fulfil the customary obligation to repair, which attaches on admission, by force of custom, to each successive tenant where the grant is for more lives than one; and such implied contract entitles the lord of the manor to an action of damages for non-repair against the tenant in possession during his lifetime, and to a like action against the executors of the last tenant in the grant after his death.

In *Galbraith* v. *Poynton*,[2] the lord of the manor brought an action against the executors of a deceased copyhold tenant for breach of an implied contract by the tenant to keep his tenement in tenantable repair. As the basis of this implied contract the lord alleged a custom of the manor imposing on the copyholders the duty of keeping their tenements in repair. To prove this custom he produced—(*a*) the customary of the manor, from which it appeared that the copyholders were entitled to house-bote; (*b*) entries in the court rolls, containing presentments for forfeitures for the non-repair of copyhold tenements, and admittances of tenants containing licences to sublet, provided all due reparations had been performed; and (*c*) oral evidence, showing that the copyholders had repaired their tenements, at the instance of the lord, without presentment to the homage. It was held that this afforded no evidence of the custom which was alleged, being referrable to the customary law applicable to all

[1] [1899] 68 L.J. Q.B. 180.
[2] [1905] 74 L.J. K.B. 649.

copyhold tenure, namely, that the tenement may be forfeited for non-repair.

These two cases would appear at first sight to be somewhat contradictory, but that is not really so. In *Galbraith* v. *Poynton*, it is shown that unless a custom can be proved whereby the tenants of the manor are under a contract, express or implied, to keep their premises in tenantable repair, they are not liable for damages for not doing so; and the lord's remedy is by forfeiture for breach of custom, and not damages for breach of contract. In *Blackmore* v. *White*, a custom was proved from which a contractual obligation to repair could be inferred, and under which the copyholders took, and were therefore liable for damages for breach thereof.

THE LORD'S RIGHT OF FORFEITURE.

There are two descriptions of forfeiture by which the copyhold property may be seized by the lord. First, a seizure of the property by him when the tenant dies or alienates his property, and the heir or alienee fails to take admittance; and, secondly, where the property in the tenant's hands is forfeited to the lord, owing to some wrong-doing on the part of the tenant.

SEIZURE ON FAILURE TO TAKE ADMITTANCE.

Upon the death of a copyhold tenant, his heir must come to the lord of the manor and be duly admitted to the copyhold tenement. This he must do within such time as the custom of the manor prescribes, usually within a year and a day. If no time is limited by custom, or if he does not appear within the limited

time, the lord may proceed to enforce the admittance. This he does by making proclamation, at three successive courts, for the heir to come and take the estates; and, if the heir fails to do so, the lord can seize the land himself, and hold it until such time as the heir comes for admittance; and if he so holds it for twelve years, the heir's rights will be barred by the Statute of Limitations,[1] subject to the provisions for extending the time in case of disability. This process is called *seizure quousque pro defectu tenentis.*

On some manors there is a custom that if the heir does not come for admittance after the proper proclamations have been made, that the lord can seize, not merely *quousque*, but absolutely, and that the estate of the heir is thereby defeated. Such an arbitrary proceeding is always regarded by the Courts with aversion, and they will insist upon the strictest accuracy in all proceedings, and full proof of the accuracy of the custom. Such custom to seize absolutely is not good as against an heir who is in prison or beyond the seas at the death of his ancestor, or against a person under disability.[2]

A lord cannot seize a copyhold as forfeited absolutely *pro defectu tenentis*, without a custom to warrant it; and if he does so, when he has only a right to seize *quousque*, the entire seizure is bad.[3]

Where the lord proceeds, in the first instance, on his right to enter and seize *quousque*, if that be answered, he can nevertheless recover on a right of entry and seizure *quousque* the fine is satisfied.[4]

A lord may seize copyhold land *quousque*, in virtue

[1] 3 and 4 Will. IV. c. 27.
[2] King *v.* Dilliston, 3 Mod. 221; Lechford's Case, 8 Rep. 99a.
[3] Doe d. Tarrant *v.* Hellier, 3 Term Rep. 162.
[4] Doe d. Twining *v.* Muscott, 12 M. and W. 832.

of a right which accrued to the preceding lord on default of the heir's coming in to be admitted, and that although he is the devisee, and not the heir of the preceding lord; but, to entitle the lord to make such seizure, there must be three proclamations made at three consecutive courts.[1]

The lord's right to seize *quousque*, does not accrue until the lord has, with due notice or proclamation, called upon the tenant to come in, and the latter has refused. The Statute of Limitations[2] runs only from such refusal.[3] By the Statute the lord's right to seize will be barred by neglecting to do so for twelve years after the right has accrued. Payment of a quit rent for twenty years, without formal admission, will also bar the lord's right to seize *quousque*.

In case of alienation, it appears that the lord cannot, as a rule, compel the surrenderee to come for admittance; but special custom may give the lord a power to seize *quousque*, or a power to forfeit the property absolutely, after the proper steps are taken, and the alienee fails to come for admittance. On other manors a surrender becomes void, and the old tenant is reinstated, unless an admittance takes place within a certain time.

FORFEITURE FOR WRONG-DOING.

It is the duty of every copyholder to observe the custom of the manor in all things. He must yield the customary services to his lord; he must not commit nor permit waste, nor create any unauthorised estate in his land. If he leaves undone what he is bound to do by

[1] Doe d. Bover *v.* Trueman, 1 B. and Ad. 736.
[2] 3 and 4 Will. IV. c. 27.
[3] Ecclesiastical Commissioners *v.* Parr, [1894] 63 L.J. Q.B. 784.

the custom, or does that which the custom does not allow him to do, his estate is *primâ facie* put an end to and forfeited to the lord of the manor.

Forfeiture is regarded by the courts with disfavour, and it is, as a rule, very difficult to enforce it, as the Courts will insist upon the greatest possible accuracy in the proceedings; and if any penalty, such as a fine, is obtainable by custom for the offence, the Courts would not permit forfeiture.

A Court of Equity will, as a rule, afford the tenant relief where the tenant is willing to make amends, and the offence is one which can be adequately remedied or compensated for.

A copyholder, who has been admitted to a tenement and done fealty to the lord, is estopped, in an action by the lord for forfeiture, from denying the lord's legal estate at the time of his admittance.[1]

FORFEITURE FOR WASTE.

A copyhold tenement is forfeitable to the lord for an act of waste, such as pulling down houses, ploughing up meadows, opening and working mines, or cutting timber contrary to custom; and where such acts are done wilfully, no relief will be given against a voluntary forfeiture of a copyhold[2]; but where the lord suffers no damage he could not enforce forfeiture.[3]

The copyholder is bound to keep his tenement in repair. If he fails to do so, and allows the buildings to decay, or the land to be flooded, his tenement is forfeitable to the lord.

[1] Doe d. Nepean *v.* Budden, 1 D. and R. 243.
[2] Peachey *v.* Duke of Somerset, 1 Str. 447.
[3] Caldwall *v.* Baylis, 2 Mer. 408.

If a copyholder persists in not repairing, whereby his copyhold is forfeited, it is doubtful if equity would relieve him.[1]

In those cases where a tenant commits waste, the lord can proceed by injunction instead of forfeiture.

Where the lord was proceeding to enforce forfeiture for non-repair, a mortgagee was held entitled to pull down certain ruinous houses for the purpose of building new ones and preventing the forfeiture.[2]

FORFEITURE FOR ALTERATION OF BOUNDARIES.

A tenant of a copyhold is bound to maintain the boundaries of his tenement, and not to remove old enclosures or landmarks, and not to inclose more land. If the tenant fails to carry out this duty, his estate is forfeitable to the lord. The lord can, however, if he see fit, apply to the Court instead of enforcing the forfeiture, and the Court will direct an enquiry for ascertaining the boundaries; or, if that is impossible, will order land of equal value to be set out in substitution. If the tenement is enfranchised, the obligation to preserve the boundaries ceases; but the tenant is liable for any default that occurred before the enfranchisement.[3]

FORFEITURE FOR ALIENATION.

A tenant of a copyhold renders his copyhold forfeitable if he grants a longer lease than the custom permits without the lord's licence; or if the lord's licence is necessary to effect a sale, and he sells without

[1] Cox *v.* Higford, 2 Vern. 664.
[2] Hardy *v.* Reeves, 4 Ves. 483.
[3] Searle *v.* Cooke, 59 L.J. Ch. 259.

it. It seems, however, that an interest in the land must actually pass, for a forfeiture was held not to be incurred where the tenant had merely agreed to grant a lease.[1]

FORFEITURE FOR NEGLECT OF SERVICES.

A copyhold tenement is forfeitable if the tenant fails, or wilfully refuses, to pay his fines or rents, or if he fails to attend the Courts and serve on the jury when required, or to yield the other customary services. In all cases it would seem he must have sufficient notice to comply with such demands as may be made upon him, and probably he is in but little worse position than a leaseholder at the present day, it being borne in mind that a copyhold is *primâ facie* held at will, and in consideration of the performance of various services.

Copyholders can obtain relief at equity against the lord for breach of custom, but there is no relief at law.[2]

FORFEITURE FOR TREASON AND FELONY.

Prior to 1870, if the tenant committed treason or felony, his estate was forfeited to the lord of the manor; and felony by a surrender, or before the admittance of the surrenderee, resulted in the property escheating to the lord.[3]

By the 33 and 34 Vict. c. 23, forfeiture for treason and felony was abolished; but whether this applies to copyholds has not been definitely decided, and is doubted by Mr. Elton.

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[1] Jackson *v.* Neal, Cro. Eliz. 395.
[2] Anon., Cary 3.
[3] Rex *v.* Mildmay, 2 N. and M. 778.

THE LORD'S RIGHT OF ESCHEAT.

In the event of a copyhold tenant dying without a will and without heirs, the estate escheats to the lord of the manor. The lord's right is, however, subject to any freebench which the widow of the late tenant may be entitled to, and to any leases which the late tenant made, either according to custom or with the lord's licence. Before taking the property, the lord must make the necessary proclamations for an heir, and must give notice to anyone entitled thereto; and, after the lord has taken the property, he must satisfy the late tenant's debts.

The lord's right of escheat will be barred by any act on his part which creates a new tenancy, such as the acceptance of rent or services from another, and will come to an end if not taken advantage of within twelve years of the death of the tenant.

After enfranchisement under the Copyhold Act, 1894,[1] the land still remains liable to the lord's right of escheat.

TREES AND MINES.

The custom with regard to the trees growing upon the copyholder's tenement, and the minerals, whether on the surface of the ground or underneath it, varies considerably upon different manors. The general custom is that both trees and minerals belong to the lord; but the tenant has the possession of his tenement, and the lord cannot enter and take what belongs to him, without the tenant's consent first had and obtained.

[1] 57 and 58 Vict. c. 46.

The tenant also has the right to take a reasonable allowance of the timber for repairs and fuel; and of the minerals, such as sand and stone, for husbandry or repairs; and peat for fuel; though here again the custom of the manor may define his rights. These allowances of wood and minerals are called the tenant's *estovers* or *botes*, and those relating to the taking of wood have been classified under four heads, as follows :—

1. *House-bote* (or greater house-bote), the right to take timber-trees for repairing houses.
2. *Fire-bote* (or lesser house-bote), the right to take smaller wood for fuel, such as the lops and tops of pollards, the under-boughs of trees, the under-wood, dead wood and windfalls.
3. *Plough-bote*, or the right to take timber for the repair of his agricultural implements, carts, and waggons.
4. *Hedge-bote* or hay-bote, or the right to take wood for repairing the hedges, fences and gates upon the copyholder's tenement.

These rights can only be exercised by the copyholder, and the wood can only be taken for use upon the copyholder's tenement.

The general custom as to trees and mines was dealt with fully in the important case of *Eardly* v. *Granville*,[1] in which Sir George Jessel, M.R., laid down that—

The estate of a copyholder is an estate in the soil throughout, except as regards, for this purpose, timber trees and minerals. As regards the timber 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

[1] 3 Ch. D. 826.

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 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 a 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 space where the minerals formerly were, and he is entitled to use it at his will and pleasure.

In *Bourne* v. *Taylor*,[1] it was laid down that the lord has no right, without a special custom, to enter and mine beneath the surface, and, if he does, the copyholder can maintain trespass against him.

In *Lewis* v. *Branthwaite*,[2] an adjoining coalowner worked a seam of coal from his own land under the subsoil of the copyholder's land, although no trespass was committed on the surface. It was laid down that the property in the coal was in the lord, and possession in the tenant, and that the tenant could maintain trespass.

The measure of damages which the tenant can

[1] 10 East. 189.

[2] 2 B. and Ad. 437.

recover from the lord, if the lord takes the timber or minerals without his consent, is instanced by the case of *Attorney-General* v. *Tomline*.[1] In this case the lord had entered upon the tenement and had dug up and removed coprolites, a kind of fossil used in the manufacture of artificial phosphatic manure, without the tenant's consent. Mr. Justice Fry, in giving judgment, said:

> 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. 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 return from the sale of the minerals, less such a sum by way of profit as would induce a third person to undertake the enterprise.

Beyond the tenant's right to take stone, sand, etc., for the purpose of husbandry, and peat for fuel, it seems that he has but little right to minerals, unless there is a special custom. For instance, although he is permitted to remove stones that are an impediment to agriculture, he cannot even remove loose flints for his own profit, as they are considered part of the soil.[2] Moreover, it appears that the Prescription Act, 1832[3] (which gives the right to take part of the profit of the land of another on proof of uninterrupted user for

[1] 46 L.J. Ch. 654.

[2] Deardon *v.* Evans, 5 M. and W. 11.

[3] 2 and 3 Wm. IV. c. 71.

the period of thirty years for a *primâ facie* right, and sixty years for an absolute right), does not apply to copyholds.[1]

With regard to the trees upon the copyholder's tenement, although they belong to the lord, he has no power to compel the tenant to keep trees upon the land, nor to plant trees; and, if a tree falls or decays, the land where it stood can be fully used and enjoyed by the copyholder. On the other hand, if the tenant plants a tree, it becomes the property of the lord as soon as it becomes timber. Under the tenant's right of estovers he is entitled to the underwood and to any trees not timber, and to the lops and tops of pollards; so, where a tenant planted a tree, or where trees were naturally regenerated, it was quite usual for the tenant to cut them periodically, or to pollard them before they became timber, so as to defeat the lord's title. Every discouragement to the tenant to have timber upon his land is clearly shown by this general custom, and, therefore, copyhold land has been called *treeless land*, because of its being so bare of trees.

Outside the general custom as to trees and mines, various special customs are commonly found. These customs are sometimes to the benefit of the lord, and in some cases they give far greater rights to the tenant. Thus, in some cases the lord has the absolute right to enter and take the minerals and timber without the tenant's consent, and to make such roadways, tramways, etc., as may be necessary for the purpose. How far he is liable for damage, or if at all, is doubtful. It was decided in *Hilton* v. *Earl Granville*,[2] that a custom to work mines under houses without paying

[1] Hanmer v. Chance, 4 De G. J. and S. 626.
[2] Dav. and M. 614.

compensation is bad, as unreasonable; but this has been doubted. In another case, where a copyhold was granted by deed, with a reservation of all mines and minerals within and under the premises, with full liberty of ingress, egress, and regress, to and for the grantor, his heirs, and assigns, to dig and search for, and to take, use, and work the excepted mines and minerals, it was held that the grantor was not entitled to get the china clay, as it could only be got in a manner utterly destructive of the surface, and the deed did not clearly reserve to him power to destroy the surface, and did not contain any provisions for making compensation for injury done to the surface.[1] In this case it should be noted that the question is one of the interpretation of a deed and not of the validity of a custom.

By the special custom of the manor, the powers of the tenants may be very great, and they may have the absolute right to take both timber and minerals, in which case they can cut timber and open and work mines to any extent.

A custom for the tenants to fell timber on their lands without the lord's licence, although not for repairs, is not unreasonable[2]; and a custom for the tenants to break the surface, take clay without limit, and make bricks to be sold off the manor, has been held good.[3] In an action by the lord to restrain his tenants from working or selling the coal under their tenements, the defendants set up a special custom for the tenants to work and sell the coal as long as the sale thereof in no way hindered the lord's sale. The

[1] Hext *v.* Gill, 41 L. J. Ch. 761.

[2] Blewett *v.* Jenkins, 12 C.B., N.S. 16.

[3] Marquis of Salisbury *v.* Gladstone, 9 H.L. Cas. 862.

Court found that the custom was proved, and that the defendants' sales being comparatively small were not a hindrance to the lord's sales.[1]

These special customs whereby the timber and minerals belong to the tenants, or can be taken by them, appear to be restricted to copyholds of inheritance, or copyholds for lives or years where there is a right of renewal. They have been held impossible where copyholders for lives held with no right of renewal.[2]

[1] Sitwell *v.* Worrall, 79 L.T. 86.

[2] Mardiner *v.* Elliot, 2 T.R. 246.

CHAPTER XIII.

RIGHTS OF COMMON AND SIMILAR RIGHTS.

THE COPYHOLDER'S rights of common consist of various rights which are attached to his tenement by the custom of the manor, to take some profit from the lord's waste for use upon the copyholder's tenement.

These *commons, profits à prendre,* or *profits in alieno solo,* as they are variously called, are a form of incorporeal hereditament of a somewhat complicated nature, and to some extent similar to easements. Before dealing with the copyholder's rights particularly, it will be well to deal with these matters generally, though in an elementary manner, so that their nature may be thoroughly understood and appreciated.

These incorporeal hereditaments may be held in three ways—*Appendant* when they are attached to a corporeal hereditament by operation of law; *Appurtenant* when they are so attached by grant or prescription; *In gross* when they are merely personal rights in no way connected with the land.

If appendant, or appurtenant, they pass by a conveyance of the hereditament to which they are attached; but if in gross they can only be granted by deed.

EASEMENTS.

THE NATURE OF EASEMENTS, AND HOW THEY ARE DISTINGUISHABLE FROM OTHER SOMEWHAT SIMILAR RIGHTS.

An *easement* is defined in Gale's "Law of Easements" as "a privilege without profit, which the owner of one neighbouring tenement has over another, existing in respect of their several tenements by which the *servient owner* is obliged to suffer or not to do something on his own land for the advantage of the *dominant owner.*"

An easement is one of the rights which exists over the land of another, or a right *in alieno solo* as it is called. It can also be called a *servitude*, a servitude being a right which the owner of one tenement can, by virtue of his interest therein, claim over another adjacent tenement, so that the owner of such neighbouring tenement is bound to submit to something being done upon his property, or is bound not to do something on his own land, whereby the neighbour is benefited.

These servitudes are not always easements, some of them being *profits à prendre*, and the two must be carefully distinguished.

DISTINGUISHED FROM PROFITS A PRENDRE.

A *profit à prendre* is a servitude with a right to take a portion of the substance of the neighbouring tenement, such as a right to graze cattle, or to take peat or minerals.

An easement, on the other hand, is a privilege

without profit, such as a right of way, or a right of light and air, or a right of support.

A *profit à prendre* may be held in gross; an easement cannot be.

DISTINGUISHED FROM LICENCES.

Easements must also be distinguished from licences; and this can be most readily done by appreciating the fact that easements are always attached to a tenement, whereas a licence is a purely personal right, in no way attached to the ownership or possession of land; and whereas a licence may be granted by parol, a grant of an easement must be by deed; and whereas an easement is an incorporeal hereditament, a licence is not an hereditament at all.

DISTINGUISHED FROM NATURAL RIGHTS.

Another class of rights which might be confused with easements are natural rights; but these can be at once distinguished by the general rule that natural rights are mere incidents of ownership; whereas easements must be acquired, and are always additions to the ordinary rights of ownership, and are obtained just as ordinary rights are lost.

Thus there are natural rights to take or use a reasonable quantity of the water in a stream passing through a property in a defined channel, whether above or below ground, and to enjoy the accustomed flow of such water, and to receive it in a state of purity. There is also a natural right to get rid of surface water, or to appropriate it if it flows in no defined channel.

There is also a natural right to receive the light and air coming vertically on to a property in an unpolluted

state, but not laterally; and there is a natural right to the support of land adjoining or over the land of another, though not for the support of buildings.

These natural rights are never extinguished; and if obstructed for a time by the acquisition of an easement, they at once revive if the easement is extinguished.

On the other hand, easements can be acquired to take a larger quantity of water than is reasonable; to pollute the water; to check the flow of water; to receive light and air laterally, for the support of buildings and so forth, while easements can be extinguished in many ways, and, if extinguished, do not revive.

DISTINGUISHED FROM PUBLIC RIGHTS.

Public rights also must not be confused with easements. Easements belong to a man as owner of a tenement, but public rights belong to a man as a member of a whole community. Examples of public rights are the right to use a public highway or a navigable stream.

DOMINANT AND SERVIENT TENEMENTS.

In the case of easements there are always two tenements in the question—the tenement in respect of which the owner enjoys the easement over the other being known as the *dominant tenement*, the owner being called the *dominant owner;* and that over which the easement is enjoyed being called the *servient tenement*, its owner being the *servient owner*. Both tenements must be permanent in character, or intended to last for a defined term, or the easement cannot be claimed. An easement is always attached to a tenement, and cannot be held in gross.

HOW EASEMENTS ARISE.

Easements arise in some five ways:—

1. By express public grant by Act of Parliament.
2. By express private grant between living persons, when a deed is necessary; or by will, when no deed is required.
3. By implied grant, when property is severed; *e.g.*, easements of necessity, such as a right of way to a field surrounded by others, or a previously existing right of drainage across the adjoining property.
4. By express or implied reservation, when property is severed.
5. By prescription.

Of these, perhaps the only one requiring further explanation is the last.

PRESCRIPTION.

At common law, if it can be shown that the use of property has been enjoyed immemorially or for a sufficient period, it will be presumed that a grant (since lost) was originally made of it. This cannot be claimed if it is contrary to Statute or to any existing grant or agreement, or if the servient owner did not know of the user, or could not resist it; nor can a claim be made to anything in which there is no property, such as undefined channels of water, or temporary collections of water.

Prescription is, however, largely governed by the Prescription Act, 1832,[1] some of the main points of which deserve special notice.

[1] 2 and 3 Will. IV. c. 71.

THE PRESCRIPTION ACT.

By the terms of the Prescription Act, 1832,[1] if easements (other than rights of light) have been enjoyed as of right, and without interruption for twenty years, the owner will have a *primâ facie* right thereto; but the claim to the easement may be defeated by showing that the enjoyment was not submitted to, or that it was secret and not known to the owner of the servient tenement, or was only enjoyed by licence, or if the enjoyment was not continuous.

If the easement has been enjoyed for a period of forty years as of right and without interruption, the owner obtains an absolute right which cannot be defeated.

Rights of light stand alone, an absolute right being obtained if they are enjoyed for twenty years without interruption; and, if there is an interruption, it must be for at least one year. The enjoyment of a right of light for nineteen years and one day will give a right thereto which cannot be defeated, although it cannot be asserted by action until the full period of twenty years has elapsed.

Similar provisions are contained with regard to *profits à prendre;* but in that case it requires thirty years to obtain a *primâ facie* right, and sixty years for an absolute right.

DIFFERENT KINDS OF EASEMENTS.

The most important easements found in connection with the ownership of land are:—

1. Rights of way, which may be limited to use as a foot-path, or in any other way.

[1] 2 and 3 Will. IV. c. 71.

2. Rights of water. *E.g.*:—
   (a) The right to obstruct or divert water.
   (b) The right to pollute water.
   (c) The right to discharge water through or over the land of another.
   (d) The right to draw water from another's well.
   (e) The right to discharge rain-water from roofs on to another's land.
3. Rights of air. *E.g.*:—
   (a) The right to an uninterrupted flow of air; *e.g.*, by means of a shaft.
   (b) The right to pollute air.
4. Right of support for buildings. *E.g.*:—
   (a) By the soil beneath them.
   (b) By the soil adjacent.
   (c) By ancient adjoining buildings.
5. Rights of light.

IMPOSSIBLE EASEMENTS.

No man can acquire a right of prospect across the land of another, nor is it possible to acquire a full lateral supply of air across the land of another; and this has even been held to apply where buildings were erected which stopped the flow of air to an ancient windmill.

EXTINGUISHMENT OF EASEMENTS.

Easements can be extinguished in some five ways:—

1. By express release; and as a deed is necessary to create an easement, a deed is required to release it.
2. By merger; for where the dominant and servient tenements are in the same hands, the easement ceases.

3. By abandonment; showing an intention not to use the easement again.

4. By cessation of the purpose; as where the water of a stream was granted to supply a canal, and the canal was converted into a railway.

5. By cessation of the necessity; as where a way of necessity is no longer required, owing to the owner of the dominant tenement purchasing land between his tenement and a highway.

RIGHTS OF COMMON.

THE ORIGIN OF COMMONS.

Rights of common appear to have their origin in the Anglo-Saxon system of landholding by village communities.[1] At that time the arable land in the mark was held in common after the harvest, and the meadow land was held in common after the hay was cut, while the waste lands were used in common at all times.

The Norman era effected a considerable alteration: the mark became the manor, and the lord of the manor became the owner of all the land therein, but the custom for his tenants to hold much of the land in common at certain periods of the year continued.

The waste lands of the manor belonged to the lord, but the rights of common appear to have continued in many cases, and in other cases to have been granted afresh, while in several instances they were implied by grants of land.

History thus discloses two kinds of common land, viz.:—(1) lands held in common, usually only for a part of the year; and (2) waste lands belonging to the lord of the manor and subject to rights of common.

[1] See Chapter I., *ante*.

LANDS HELD IN COMMON.

In many parts of the country large fields are found, in some cases of many hundreds of acres, where now, or at some former time, the various tenants each cultivated a small separate area until the harvest, after which their animals roamed at will and grazed over the entire field. At the present time these common fields are rare, as they have to a great extent been done away with under various inclosure awards and Acts of Parliament. Their nature and custom appear to have varied greatly, as may be gathered from the enumeration of their classes in the Inclosure Act.[1]

In some cases these common fields were arable, in others pasture; but, in both cases, the right to use them in common appears to have arisen by common right, and not by grant or agreement.

It is somewhat difficult at first to distinguish whether lands are actually held in common or whether there are merely rights of common over them. The difference is well explained in the decision in *Sir Miles Corbet's Case*, tried in the time of Elizabeth, which is shortly stated in Tudor's "Leading Cases," p. 698, as follows:—

"Where one has purchased divers parcels of land in D., together in which the inhabitants have used to have shack[2] and long since inclosed it; and notwithstanding always after harvest the inhabitants have had shack there, by passing into it by bars or gates with their cattle, then it shall be taken as common appendant or appurtenant, and the owner cannot exclude them of common; but if in the town of S. the custom and usage hath been that every

[1] See *post*, page 163.

[2] The shack fields were arable, and to go to shack is to go to liberty. Hence *common of shack*, frequently found in Norfolk.

owner in the same town hath inclosed his own lands from time to time and so hath held it in severalty, any owner may inclose and hold it in severalty and exclude himself to have shack with the others."

PROFITS A PRENDRE EXPLAINED.

A *profit à prendre* is the right to take a part of the natural produce of land which belongs to another person. *Profits à prendre* mainly consist of rights of common, *i.e.*, rights held by various persons in common, but they also extend to a few cases where the right is in severalty. For instance, a *several fishery* is one giving the exclusive right to take fish in a navigable river when the bed of the river belongs to the owner of the fishery, and this can be granted to another. The term, *profit à prendre*, is, however, often used as synonymous with *common*.

THE VARIOUS KINDS OF COMMON.

The chief kinds of common are :—

1. Common of Pasture, or the right of depasturing cattle on the land of another.
2. Common of Turbary, or the right of taking peat for fuel from the land of another.
3. Common of Estovers, or the right of taking wood for repairs and fuel from land belonging to another.
4. Common of Piscary, or the right to take fish from the streams and ponds of another.
5. Common of Pannage, or the right to turn out swine to eat the acorns and mast on the land of another.

Other rights are occasionally found, such as the right of taking underwood, furze, fern, thorns, hay, and rushes ;

and rights of taking minerals, such as stone, clay, sand, and gravel, and ores of various kind, and coals for fuel.

Rights of common may be held by any number of persons over the same land, or by a definite body of persons, as the copyholders of a manor, or the corporation of a borough acting on behalf of the burgesses, but not by mere inhabitants, except by Royal Charter.

In all cases the right can only extend to taking a part of any particular product of the land; and any claim, by custom or otherwise, to take the entire produce, to the exclusion of the owner of the land, is void. In the event of there being a right vested in a person, or a body of persons, to take the entire produce, such right gives the exclusive occupation and is an estate in land and not a common at all, for it is the essence of every common that it is limited in its user.

COMMON OF PASTURE.

Common of pasture, or the right to feed animals on the wastes of the manor, can be held in four different ways—either as appendant, appurtenant, in gross, or because of vicinage. The leading case upon the subject is *Tyrringham's Case*,[1] and a short statement of the general law is set out below.

Common of Pasture Appendant.

Common of pasture appendant arises of common right, and by implication of law, in those cases where the lord of the manor enfeoffed another of arable land to hold of him in socage. The right could only be appendant to arable land and not to a house, meadow or pasture; but if the land was arable when it was

[1] 4 Rep. 36b.

granted, and was subsequently converted into meadow or wood, or even if a house was built upon the land, this would not extinguish the right, provided that it was continually used. In order to prove a right, it is not necessary to plead prescription, but only that the common is appendant to land.

Ancient manorial freeholds must have been granted before the Statute of Quia Emptores, 1290,[1] so common of pasture appendant must have been created before that time, and must have existed ever since. It could not have been originally appendant to meadow, pasture, or to a house, but to arable land only; and it cannot be claimed in respect of land newly ploughed out of the wastes of the manor.

Common of pasture appendant only applies for such animals as are *levant* and *couchant* on the estate of the commoner, and as many as he has need of to plough and manure his land—that is, the commoner can only claim the right, in respect of such a number of animals as the winter eatage and the hay, obtained from his land in summer could support, and only in respect of horses, oxen, and sheep; not for swine, goats, geese, and other animals and birds. He could not claim in respect of animals other than his own, unless made use of to plough and manure the land all the year.

This description of common of pasture can be apportioned by a sale of a part of the land to which it applies; but in the event of the land to which it is appendant and the common land coming into the same hands, it is extinguished by unity of possession. It is absolutely extinguished if severed from the tenement.

No other kind of common but common of pasture can be appendant to land.

[1] 18 Edw. I. c. 1

Common of Pasture Appurtenant.

Common of pasture appurtenant does not owe its origin to common right or general privilege. It need not be of great antiquity, for it can be created at the present day, and it can be claimed in respect of a grant by the owner, or by prescription implying a grant.

It may be claimed in respect of any kind of land whatsoever, and it is possible even for it to be exercised over a different lordship from that in which the waste is situate. It is not confined to *commonable animals*—that is, to horses, oxen, and sheep—but may extend to swine, goats, geese, and such like.

A claim for an unlimited number of cattle is bad, for a person might collect as many cattle as he could from all parts of the kingdom and stock them on one common. A proper method is to show the number *levant* and *couchant* on the land during winter, and the utmost claim would be for as many as the land would sustain, over and above the rights of the lord and other commoners.

A right to put on a certain number of cattle can be claimed, and in that case the cattle need not belong to the commoner; and the right, if not appurtenant to copyhold, could in this case be severed from the tenement and converted into a common in gross, though in any other case severance from the tenement extinguishes the right.

The right can be claimed over *lammas lands*, which are held in severalty for half the year, and in common for pasturage during the remainder. In this case there must be some connection between the beasts reared

and those that can be depastured, and the right can only arise by prescription.

A *fold-course* is a right of common appurtenant for sheep.

Common of Pasture in Gross.

Common of pasture *in gross* is a merely personal right, which is not in anyway attached to the ownership of land. It arises at any time by grant by the owner of the land, or by prescription from which a grant can be implied.

It may be for a certain number of cattle or for cattle *sans nombre;* but, at most, this is limited to as many as the land will maintain beyond the cattle belonging to the lord and the other commoners of the manor.

This kind of common can be sold or otherwise dealt with. In its general incidents it somewhat resembles common of pasture appurtenant.

Common of Pasture because of Vicinage.

Common of pasture *pur cause de vicinage* is not, properly speaking, a *profit à prendre* at all, but rather an excuse for trespass.

It arises in those cases where the waste lands of two different manors adjoin, and are not separated by any fence or other division; and the persons, who have right to graze their cattle on the one common, allow them to wander indiscriminately on to the other common without restraint. When this right has been enjoyed for thirty years, it can be claimed under the Prescription Act, but the majority of such rights are very ancient. The parties claiming the right must put

their cattle on to the land over which they have common rights appendant, appurtenant, or in gross, and not upon the adjoining lands, and they must not put on more than their own common land will sustain. It seems also that the right can only be between the inhabitants of two townships, and not more. Thus, where three wastes belonging to townships A, B and C adjoin, A can intercommon with B, and C with B, but A could not claim rights over the land belonging to C, and B could claim in respect of the land of either A or C, but not with both. It is necessary also to prove actual intercommoning in order to establish the right; the mere fact that there was no inclosure between the wastes, and that one party always drove the cattle of the other back, was not sufficient.

If the right has once arisen, it can be at once extinguished by the enclosure of one of the wastes by means of a sufficient fence; but the right will continue until the separation of the wastes is complete.

COMMON OF SHACK.

In some English counties, particularly in Norfolk, there is a right of common of pasture over the whole of the open field after harvest. Every party, who claims the right, can only put on as many cattle as his own land will sustain when held in severalty.

COMMON OF ESTOVERS.

Common of *estovers* is a right to take the wood growing upon the land of another. Persons entitled to the right can claim it by grant or by prescription, but it cannot be claimed by custom, except by the copyholders of a manor. It can be held as appendant or

appurtenant to a tenement, or it can be held in gross. When claimed by prescription, it must be in connection with an ancient house. If a house is pulled down and another erected in its place, that will not extinguish the right; but if the house was demolished and no other house erected, no doubt the right would cease. Common of estovers extends to the right of taking timber for the repair of houses, for fuel, and for the repair of agricultural implements and fences. The right claimed must be reasonable, and limited to the wants of the tenement in respect of which it is claimed. The wood taken must be expended on the tenement, and cannot be sold or used elsewhere. In those cases where the right is limited to taking a certain quantity of wood per annum, it could be severed from a tenement to which it was attached without being extinguished, but in other cases it would be extinguished. It could only be claimed in gross, by prescription, if it were limited in this way.

The right is considerably varied in its incidents, and in some cases can only be exercised at certain periods of the year, or only under the view of and delivery by the lord or his bailiff.

On Crown manors, the inhabitants of a parish have a right, in some cases, to lop wood at certain periods of the year. This right must be claimed by Crown grant, Charter or Act, and cannot be claimed by custom or prescription.

COMMON OF TURBARY.

Common of *turbary* is the right to dig and take peat for fuel from the soil of another, and can still be frequently found in many parts of the country. Owing to its nature it can never be claimed as appendant or

appurtenant to bare land, but only to a house, and the destruction of the house would no doubt destroy the right, unless another house was erected in its place. A grant of a house and its appurtenances would convey this right to the grantee.

This right resembles common of estovers in many of its incidents. The quantity taken is limited to the requirements of the tenement, though in some cases it is limited to a certain number of turves per annum. A plea to dig and sell *ad libitum* is bad. Like other rights, this cannot be claimed by prescription by the inhabitants of a parish or township, but definite persons, such as the mayor and burgesses, can prescribe for them, and a freeman of a town may have the right.

COMMON OF PISCARY.

Common of *piscary* is the right of fishing in the rivers or ponds of another. It can be held as appendant, appurtenant, or in gross, and can be claimed by custom by the tenants of a manor. It consists of the right to take fish from the ponds, rivers, and streams, for food in the commoner's house; and no doubt, if appendant or appurtenant, it can only be claimed in connection with a house.

A common of piscary can never be claimed to the exclusion of the owner of the soil, and this is also said to be the case with a *free fishery*, which is the exclusive right to fish in a public river given by Royal grant; but if a man claims a *several fishery*,[1] he has the sole right, and the owner of the soil shall not fish there.

The four descriptions of common above described—common of pasture, common of estovers, common

[1] See p. 152, *ante*.

of turbary, and common of piscary—clearly show a provision for the maintenance and carrying on of husbandry by the village communities. By means of them the tenant was provided with food for his household and his cattle, with wood and peat for his fuel, and with wood for repairing his house, his implements of tillage, and the necessary fences to his ground.

THE COPYHOLDER'S RIGHTS OF COMMON.

On copyhold land it is most usual to find various rights of common attached to the tenements. These rights are practically always appurtenant to the tenement, and are held by the custom of the manor, not by grant or prescription. At common law a custom to take *profits in alieno solo* is bad, but copyholders can always claim a *profit à prendre* by custom, provided that it is reasonable, because copyholders could not otherwise establish a right of common at all, being in theory only tenants at will. The Courts will, it seems, go to some length in the tenant's favour, but will draw the line where necessary. Thus a custom for the tenants to dig up the lord's soil for turf was held good,[1] and so was a custom to take loam for repairing ancient tenements,[2] and a custom for the commoners to take and destroy game and rabbits on the waste,[3] and even to dig for sand, sandstone, gravel, and clay upon their tenements, and to use and sell it[4]; but where the tenants claimed a right by custom to take turf from the wastes of the manor in unlimited quantity, and when they

1 Dean and Chapter of Ely *v.* Warren, 3 Atk. 189.

2 Robertson *v.* Hartopp, 43 Ch. D. 514.

3 Coote *v.* Ford, 83 L.T. 482.

4 Hanmer *v.* Chance, 4 De G. J. and S. 626; Marquis of Salisbury *v.* Gladstone, 9 H.L. Cas. 862.

pleased, for the purpose of making plots in gardens and for improving their gardens and making banks to hedges and such like, the Court held that such a custom was unreasonable and, therefore, bad.[1]

Every person must claim in respect of his own right, and cannot claim a general right[2]; and a custom for the dwellers in a manor to have a right of common, or to be included in a class alleged to have such a right, is bad.[3] There is no general common law for the tenants of a manor to be entitled to common appendant on the waste,[4] and no common of pasture because of vicinage can be claimed by copyholders under a custom.[5]

The copyholder's right of common is always limited in its nature: it may extend so far as, but no farther than, the requirements of the tenement. His common of pasture may be limited to a certain number of cattle, or to certain kinds of cattle; it may extend to part only of the waste; or it may only be exerciseable at certain periods of the year. In every case it is not a question of what the tenant has acquired, but what the custom of the manor allows.

The striking peculiarities of the copyholder's right of common are that it may be stinted to a definite quantity, it can only be appurtenant, and severance from the tenement will at once extinguish the right. It will also be extinguished by an enfranchisement at common law; but under the Copyhold Act, 1894,[6] it is expressly provided that the tenant's right of common shall not be affected.

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[1] Wilson *v.* Willes, 7 East. 121.

[2] Baker *v.* Rogers, Select Ca. Ch. 74.

[3] Allgood *v.* Gibson, 34 L.T. 883.

[4] Earl of Dunraven *v.* Llewellyn, 15 Q.B. 791.

[5] Jones *v.* Robin, 10 Q.B. 620.

[6] 57 and 58 Vict c 46.

THE RIGHTS OF THE LORD OF THE MANOR OVER THE COMMON LANDS.

The lord of the manor is the owner of the soil of the common lands; and, subject to the commoner's rights, he can do as he pleases therewith. He can plant trees, make ponds, breed game, dig clay, get coals, and such like, provided that he does as little damage as possible, and does not interfere with the tenant's rights.[1] In a recent case,[2] the lord of the manor granted a lease by deed to train and gallop horses on the waste lands of the manor, and the tenants sued him for damage to their rights of common of pasture by the lessee. It was held that the lord would not be liable for such damage, unless it was proved that the lessee did the damage as the lord's agent or with his licence, and that even if licence were given it would not of necessity involve injury to the right of pasturage. In every case the onus of proof of damage, or undue interference with rights of common, lies upon the tenant or commoner.[3]

The lord has a right of common on his own land along with the rest, and a claim by commoners to rights of common, to the exclusion of the lord, is bad; but there may be a right excluding the lord for a certain period of the year, when land is held in severalty.

The lord has, in some cases, power to enclose portions of the waste by Statute or by the custom of the manor, as shown below. The lord also has power to convey the waste lands under various Acts of

[1] Kirby *v.* Sadgrove, 1 Bos. and P. 113.

[2] Coote *v.* Ford, [1900] 83 L.T. 482.

[3] Hall *v.* Byron, 4 Ch. D. 667.

Parliament, which provide for the compulsory taking of lands; for instance, under the Lands Clauses Consolidation Acts,[1] the Church Buildings Acts, the School Sites Acts, the Literary Institute Acts, and others.

THE RIGHTS OF THE COMMONERS.

The persons, who own a right of common over the waste lands of the manor, have no estate in the land, but only a right of entry thereon for the purpose of using their common, and they can take nothing beyond what they have the right to. For instance, a common of pasture gives no right to take peat or wood, nor even to cut down the bushes, bracken, heather, and the like, or destroy the rabbits, although his common may be injured thereby, unless he can prove a custom to do so. At the present day this is often a subject of dispute; and, in some parts, the commoners illegally set fire to the gorse and heather on the wastes, so as to allow grass to grow.

The commoner has the right of ingress, egress, and regress in connection with his common, and he has a right of action at law against anyone who deprives him of his right. Such action can be brought against the lord, or against other commoners, or against a stranger. He can also bring an action for establishing his rights. Thus, a freeholder can bring an action on behalf of himself and the other freeholders of the manor, or a copyholder on behalf of himself and the other copyholders; but one commoner suing alone could not proceed to establish a right of common *pur cause de vicinage*, for that belongs to all the commoners of the manor.

[1] 8 Vict. c. 18 and amending Acts.

The commoner has also the right to abate anything which prevents him from enjoying his common. *E.g.*, he can remove a hedge which keeps his cattle out, or break down a gate, but the law does not favour such methods; and if the commoner can get at the common, and enjoy it to a certain extent so that his rights are merely abridged and not entirely prevented, he must bring an action, and cannot take the law into his own hands, as by cutting down trees planted on part of the waste.[1] But where a house was erected on the waste and obstructed rights of common, a commoner was held to be entitled to pull it down, after giving notice to the occupier and requesting him to remove it, although the occupier was actually inhabiting it at the time.[2] A commoner also has the right to distrain the cattle of a stranger trespassing on the common.

THE EXTINGUISHMENT OF RIGHTS OF COMMON.

The rights of common, which exist over the waste of the manor and over the common fields, will be extinguished in cases of unity of possession where the land and all the rights become vested in the same owner; though it would appear that it can be revived in some cases, as where the tenant purchases the manor and subsequently grants his tenement as copyhold again. A right of common will also be extinguished in many cases by the severance of the right from the tenement, or by the destruction or alteration of the tenement to which it is attached, or by the commoner releasing his rights to the lord,

[1] Sadgrove *v.* Kirby, 6 T.R. 483; Arlett *v.* Ellis, 7 B. and C. 363.

[2] Davies *v* Williams, 16 Q.B. 546; and see Lane *v.* Capsey, [1891] 3 Ch. 411.

or by the product over which the right exists becoming exhausted, or by the tenant abandoning his right, or by enclosure, and such like.

It is unnecessary, in an elementary work of this description, to go further with these questions, except, perhaps, as regards enclosure, which is of more general interest.

THE ENCLOSURE OF COMMONS.

By various Acts of Parliament, and by the custom of some manors, a right is given to the lord of the manor or others to enclose a portion or the whole of the waste lands of the manor, or the common fields.

By the custom of some manors, the lord is given power to enclose, and grant as copyhold, portions of the waste lands, the consent of the homage being often necessary; but, owing to recent Statutes, this power has become inoperative.

ENCLOSURE BY ACT OF PARLIAMENT.

The earliest power given to enclose common lands by Act of Parliament is by the Statute of Merton, 1235,[1] under which, the lord was empowered to enclose against common of pasture appendant, provided he left sufficient land for the commoners' requirements. This power was extended to common of pasture appurtenant, and to rights of common held by persons who were not tenants of the manor by the Statute of Westminster II., 1285.[2] These Statutes, which are known as the Statutes of Approvement, do not apply to common of pasture in gross, nor to any other right than common of pasture; and, if such existed, no enclosure could be made under the Statutes of Approvement.

[1] 20 Henry III. c. 4.
[2] 13 Edw. I, St. 1, c. 46.

Enclosures under the Statutes of Approvement were made solely for the benefit of the lord; but, at a later date, enclosures by special Act of Parliament for the benefit of the lord and his tenants became usual, the common land being entirely enclosed and allotted in severalty amongst those having interests therein. Prior to the year 1800 it appears that about sixteen hundred or seventeen hundred of such Acts were passed.

In 1801 Sir John Sinclair's General Inclosure Act[1] was passed, consolidating the provisions usually inserted in Private Acts, and making legislation easier.

The special Acts of Parliament above referred to, appear to have dealt with waste lands only, but the Common Fields Enclosure Act, 1836,[2] aimed mainly at the enclosure of open and arable fields, and the protection of open spaces near towns.

The present procedure, however, is under the General Inclosure Act, 1845,[3] which was passed with the express object of facilitating the improvement and enclosure of common and other lands then subject to rights of property, which obstructed cultivation and the productive employment of labour. This Act appointed Commissioners to judge of the expediency of any proposed enclosure and to superintend its execution, and it expressly named the following classes of land as being subject to enclosure:—

(a) All lands subject to any rights of common whatsoever, and whether such rights may be exercised and enjoyed at all times, or be exercised or enjoyed only during limited times, seasons, or periods, or be subject to any suspension or restriction whatsoever in respect of the time of the enjoyment thereof.

[1] 41 Geo. I. c. 109.

[2] 6 and 7 Will. IV. c 115.

[3] 8 and 9 Vict. c. 118

(b) All gated and stinted pastures, in which the property of the soil, or some part thereof, is in the owners of the cattle-gates, or other gates, or stints, or any of them; also all gated or stinted pastures in which no part of the property of the soil is in the owners of the cattle-gates, or other, or stints, or any of them.

(c) All lands held, or 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 be otherwise distinguishable.

(d) 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.

(e) All lot-meadows and other lands the occupation or enjoyment of the separate lots or parcels of which is subject to interchange among the respective owners in any known course of rotation, or otherwise.

The Forest of Dean, the New Forest, and all village greens, town greens and recreation grounds were exempted from the operation of the Act; and no enclosure of waste land belonging to a manor, or other land subject to rights which could be exercised at all times of the year, could be enclosed without the previous authority of Parliament.

A similar consent was also required for the enclosure of any land within fifteen miles of the City of London, or within certain specified distances of other towns. The Act also enabled the Commissioners to require the appropriation of considerable areas of land for the purpose of the recreation of the inhabitants of the neighbourhood in which it was situate, such areas varying in size with the population of the parish. *E.g.*,

a parish with a population of 10,000 inhabitants was to have ten acres; 5,000-10,000, eight acres; 2,000-5,000, five acres; and, under 2,000, not more than four acres.

The majority in number and value of the persons interested in a waste may appropriate parts for roads, supplies of gravel, etc., for the parish roads, for public drains, watercourses and embankments, ponds, allotments, recreation grounds, burying grounds, for the site of a church, parsonage, school, workhouse, etc.

The Metropolitan Commons Act, 1866,[1] limited the Inclosure Act to outside the Metropolitan Police District. It provides for commons in the district to be vested in the local authorities, and compensation to be paid for damage done to any interest or right in the land. These commons are now vested in the London County Council.

Up to 1876 some 414,000 acres were enclosed under the 1845 Act,[2] and out of this less than 4,000 acres were dedicated to the public for recreation.

The Commons Act, 1876,[3] which does not apply to metropolitan commons, gives the Commissioners greater powers for the protection of the public, and directs them in their enquiry as to the benefit of the proposed enclosure, or regulations of commons; and where manorial wastes are to be enclosed, the lord must consent, as well as two-thirds of the persons interested, before the Commissioners can make their Provisional Order for the enclosure of the common, which Order would have to be confirmed by Parliament.

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[1] 29 and 30 Vict. c. 122.

[2] 8 and 9 Vict. c. 118.

[3] 39 and 40 Vict. c. 56.

This Act also greatly crippled the lord's right of approvement under the Statutes of Merton and Westminster[1]; and the Law of Commons Amendment Act, 1893,[2] absolutely prohibited any enclosure thereunder, unless the consent of the Board of Agriculture be first obtained.

The Copyhold Act, 1887,[3] as re-enacted by the Copyhold Act, 1894,[4] also prohibited the lord of the manor making any grants of lands, not previously of copyhold tenure, to any person to hold by copy of Court Roll without the previous consent of the Board of Agriculture; so that at the present time any enclosure of waste lands, except through and with the consent of the Board of Agriculture, is practically impossible.

ENCLOSURE BY CUSTOM.

The custom of the manor very often gave the lord the right to enclose portions of the waste lands. These customs varied greatly, but were in all cases defined and limited in character. A custom for the lord to enclose without limit is bad.[5]

The customs were not limited to enclosures against common of pasture, but extended to estovers, turbary, and the like, as well. Thus, although it was held that the Statute of Merton only applies to common of pasture, so that the lord had no right under it to approve against common of turbary or common of estovers,[6] it was also held that the lord might be able

[1] 20 Hen. III. c. 4 and 13 Edw. I., St. 1, c. 46.
[2] 56 and 57 Vict. c. 57.
[3] 50 and 51 Vict. c. 73.
[4] 57 and 58 Vict. c. 46.
[5] Arlett *v.* Ellis, 9 B. and C. 671.
[6] Grant *v.* Gunner, 1 Taunt, 435.

to do so by custom, provided he leaves sufficient for the commoner's requirements,[1] and further, that a custom for the lord to grant portions of the waste with the consent of the homage is good, notwithstanding the fact that sufficient common is not left to meet the full requirements of the commoners.[2]

ENCROACHMENT.

The commoner's rights may be lost by the encroachment upon the waste by a stranger; and, if such encroachment lasts for twenty years, and the commoner neglects to assert his rights, the common will be extinguished.

Where the commoners themselves encroach upon the waste land, and thereby increase their holding, such additions are in general for the benefit of the lord,[3] even if the encroachment is over the land of a stranger.[4] On some manors, a custom prevails, whereby the tenants are allowed to encroach upon the common, and to add portions thereof to their holdings, either temporarily or permanently.

An encroachment on the waste by a copyhold tenant (at any rate, if the lord can grant a part of the waste as copyhold) becomes an accretion to the original holding, and the tenant can only obtain a copyhold title under the Statute of Limitations.[5]

[1] Arlett *v.* Ellis, 7 B. and C. 346; Lascelles *v.* Lord Onslow, 2 Q.B.D. 433.
[2] Ramsey *v.* Cruddas, [1893] 1 Q.B. 229.
[3] Kingswell *v.* Millsed, 11 Ex. 315.
[4] Whitmore *v.* Humphries, L.R., 7 C.P. 1.
[5] Attorney-General *v.* Tomline, 46 L.J. Ch. 654.

CHAPTER XIV.

THE ENFRANCHISEMENT OF COPYHOLDS.

THE POWER of enfranchising his copyhold, which is possessed by every copyholder, is perhaps the most valuable of all his privileges. He is thereby enabled to do away with the copyhold tenure, and to convert it into freehold; so that the whole of his liabilities to the lord are extinguished, and the ordinary laws relating to freeholds apply, instead of the custom relating to the copyholds upon that particular manor.

HISTORY OF COPYHOLD ENFRANCHISEMENT.

The power to enfranchise, no doubt existed in comparatively ancient times, as enfranchisement merely means the acquisition by the copyholder of the lord's interest in the tenement. The lord can sell his interest to his tenant at any time; or, by another method of procedure, the lord can release to the tenant his seignorial rights over the copyhold land, and thereby free the land from all liability. There were many difficulties attaching to the enfranchisement at common law, and for the purpose of facilitating enfranchisements the Copyhold Act, 1841,[1] was passed.

This Act provided for the commutation of the manorial services into a rent-charge, providing either for a particular commutation by agreement between the lord and any individual tenant, or for a general

[1] 4 and 5 Vict. c. 35.

commutation between the lord and all, or a large number of, the tenants.[1] It also provided for enfranchisement by agreement between the lord and the tenant, and created a body of Copyhold Commissioners, before whom every agreement for enfranchisement had to come. This Act was followed by two others, passed in 1843[2] and 1844,[3] extending the provisions of the 1841 Act. These three Acts only provided for voluntary enfranchisement between the lord and the tenant, and neither of them could compel the other to enfranchise the land.

The first power of compulsion was given by the Copyhold Act, 1852,[4] which enabled either the lord or the tenant to compel the enfranchisement of any copyhold or customaryhold land, by giving notice to the other party. The consideration to be paid could then be agreed upon, or ascertained by the Commissioners, or by valuers and their umpire. This Act was further amended by Acts passed in 1858[5] and 1887,[6] the 1858 Act abolishing general commutations and repealing a short Act passed in 1853.[7]

By the Copyhold Act, 1894,[8] the whole of the above Acts were repealed and a new Act passed, consolidating the provisions of the previous Acts and making a few slight alterations, so that in this one Act may now be found the whole of the statute law upon the subject.

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[1] General commutations were done away with by the Copyhold Act, 1858, and particular commutations ceased after the passing of the Copyhold Act, 1894.

[2] 6 and 7 Vict. c. 23.

[3] 7 and 8 Vict. c. 55.

[4] 15 and 16 Vict. c. 51.

[5] 21 and 22 Vict. c. 94.

[6] 50 and 51 Vict. c. 73.

[7] 16 and 17 Vict. c. 57.

[8] 57 and 58 Vict. c. 46.

Besides the powers of enfranchising at common law, and that given by the Copyhold Acts, there are various Statutes under which power is given to enfranchise, such as Acts for the compulsory acquisition of property and Acts giving powers of sale. There are also various Acts relating to enfranchisement upon special manors, such as those belonging to the Crown, the Duchies of Lancaster and Cornwall, and the various ecclesiastical and collegiate bodies.

THE AUTHORITY FOR COPYHOLD ENFRANCHISEMENT.

Prior to the passing of the Copyhold Act, 1894,[1] the authority for copyhold enfranchisement had become changed.

By the Settled Land Act, 1882,[2] the Tithe Commissioners, under the Tithe Commutation Act, 1836[3]; the Copyhold Commissioners, under the Copyhold Act, 1841[4]; and the Inclosure Commissioners, under the General Inclosure Act, 1845,[5] were combined into one body called the *Land Commissioners*. By the Board of Agriculture Act, 1889,[6] the Land Commissioners were in their turn done away with, and a new body, called the *Board of Agriculture*, was constituted, which took over the whole of their powers and sundry additional ones. The present authority for copyhold enfranchisement is the *Board of Agriculture and Fisheries*, and all enfranchisements under the Copyhold Act, 1894,[1] are dealt with by them.

[1] 57 and 58 Vict. c. 46.
[2] 45 and 46 Vict. c. 38.
[3] 4 and 5 Will. IV. c. 83.
[4] 4 and 5 Vict. c. 35.
[5] 8 and 9 Vict. c. 118.
[6] 52 and 53 Vict. c. 30.

ENFRANCHISEMENT AT COMMON LAW.

METHODS OF ENFRANCHISEMENT.

There are two ways by means of which a copyhold may be enfranchised at common law—

1. By the lord conveying to the tenant the freehold of the specific premises which the tenant held by copy.
2. By the lord releasing to the tenant his seignorial rights; that is, a release of all the services and customs under which the copyholder formerly held.

The second method is but little used, and is chiefly of interest in those cases where it has to be decided whether the rights that have been released are sufficient to effect an enfranchisement.[1]

The conveyance of the freehold being the usual method, it will be well to consider it at greater length.

HOW THE ENFRANCHISEMENT IS EFFECTED.

The common law gives no powers of compulsion, and therefore the enfranchisement must be voluntary; that is, by agreement between the parties. The lord owns the freehold and the tenant the copyhold of the same property. The lord agrees to sell, and the tenant agrees to buy, the freehold of the land. The agreement is, therefore, merely a contract for the sale of an interest in land; and the various rules as to contracts for the sale of freehold land at common law will apply.

The agreement for the enfranchisement, therefore, must be in writing, and, as a rule, a proper formal contract is entered into. This will provide just what is usual in the case of a sale of freehold—as regards the abstract of title, the root of title, the time for

[1] See Phillips *v.* Ball, 6 C.B., N.S. 811; Doe d. Reay *v* Huntingdon, 4 East. 471; Fawlkner *v.* Fawlkner, 1 Vern. 21.

requisitions, the time for completion of purchase, the payment of deposit, the payment of purchase-money, and so forth.

Then, the title being in due course investigated, and the usual formalities having been gone through, the deed of grant of the freehold is duly made and entered into. The purchase is completed by the enfranchisement consideration being paid, or properly secured, or provided for; the deed is properly entered upon the Court Rolls by the steward; the steward's fees are paid; the deed is delivered to the tenant, and the enfranchisement is rendered complete. If the lands are situated in a district where registration is compulsory, the enfranchisement must be registered.

WHO CAN ENFRANCHISE AT COMMON LAW.

There are two parties to an enfranchisement at common law—the lord and the tenant.

First, as to the lord. The lord is selling the freehold; has he the power to do so? This is, of course, merely a matter of investigation of title, whereby it can be proved that he possesses the freehold and has the power to sell it. This investigation may, however, involve an immense amount of labour, as the entire manor may be brought into question, together with any number of incumbrances of various kinds. Such labour costs money, and the expenses may rise to a large proportion of, or, even more than the value of the property. In the cost of the investigation of the lord's title, and the uncertainty of its being satisfactory, lies the great objection to an enfranchisement at common law. It has been stated by Mr. Archibald Brown, in his excellent treatise upon copyhold enfranchisement—

That if the lord's freehold title is not free from incumbrances, the enfranchising tenant should not proceed with his proposed enfranchisement by the common law, until at least the lord's title is cleared of all incumbrances, or unless the incumbrancers will concur in the enfranchisement deed to release their incumbrances or charges.

The trouble and expense attached to these proceedings would be enormous, in all probability, so all will no doubt agree with Mr. Brown's further statement that—

The enfranchising tenant will be well advised, in all cases of difficulty over the lord's title, to abandon altogether the proposed enfranchisement and to begin *de novo* under the Copyhold Act, 1894[1]—an enfranchisement under that Act being free from all these inconveniences, perplexities, and dangers.

Generally, a lord who owns the fee simple of a manor, or has a power of sale or exchange, or even a special power to enfranchise, can grant an enfranchisement. Tenants for life entitled in possession can also enfranchise under the Settled Land Act, 1882.[2]

Secondly, as to the tenant. The tenant is the purchaser, and must be able to purchase; but beyond this he must, as a rule, be the tenant on the Court Rolls. An unadmitted heir has been held capable of accepting an enfranchisement, but it is doubtful whether an unadmitted devisee or surrenderee could do so[3]. In those cases where a copyholder has only a limited estate, he can take an enfranchisement, but all entitled in remainder or reversion will also benefit by it. Where he is tenant in tail, however, a very different result is accomplished, as the enfranchisement bars

[1] 57 and 58 Vict. c. 46.

[2] 45 and 46 Vict. c. 38.

[3] Wilson *v.* Allen, 1 J. and W. 611.

the issue in tail, and also all remaindermen and reversioners, so that the enfranchisement is entirely for his own benefit.[1]

Section 89 of the Copyhold Act, 1894,[2] is of considerable assistance with regard to enfranchisements at common law. The section reads as follows:—

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.

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.

THE ENFRANCHISEMENT CONSIDERATION.

The money or other consideration which shall be paid by the tenant to the lord for the enfranchisement of the copyhold is purely a matter for agreement. The preliminary agreement should either name the amount,

[1] Wynne *v.* Cookes, 1 Bro. C.C. 515; Parker *v.* Turner, 1 Vern. 393; Challoner *v.* Marshal, 4 East. 283.

[2] 57 and 58 Vict. c. 46.

or provide some means by which it may be ascertained. Where it is left to the decision of valuers, they should value every incident separately, and will be well advised to follow the rules for valuing laid down by the Board of Agriculture, in the case of enfranchisements under the Copyhold Acts. There are, however, some points where a departure from those rules is necessary; for instance, they must take into consideration the value of the lord's right of escheat.

THE EFFECT OF AN ENFRANCHISEMENT AT COMMON LAW.

When a copyhold is enfranchised at common law, the lord having conveyed to the tenant the freehold of the property, the tenant will thereafter hold it in free and common socage. Furthermore, owing to the effect of the Statute of Quia Emptores, 1290,[1] the tenant will hold it, not of the enfranchising lord, but of the superior lord; that is, in most cases, the Crown. The lord cannot reserve any rents or other services to himself, as his lordship is gone. (It must be remembered that, if the enfranchisement is in consideration of an annual payment, this is a rent-charge and not a rent service.) The customs of the manor will cease entirely, and common law rules prevail. All customary rules of descent, freebench, and the like, will be done away with, and even an entail of the property will be barred. The freehold of the land, and all above it and below it, becomes the property of the tenant, and so all mines and mining rights pass to him, unless they are expressly reserved by the lord. On the other hand, all rights of common over the wastes of the manor, which the tenant was possessed of, will be lost by him, and will pass to

[1] 18 Edw. I. c. 1.

the lord, unless the tenant expressly provides for their re-grant. Rights of common on waste lands not forming part of the manor would, however, remain, for these are not an incident of the copyhold estate. Furthermore, all easements belonging to the copyhold estate would be lost on enfranchisement if not expressly reserved, except a way of necessity; but easements over a stranger's land which were not part of the copyhold estate would remain.

DIFFERENCES BETWEEN AN ENFRANCHISEMENT AT COMMON LAW AND UNDER THE COPYHOLD ACT.

There are several points upon which an enfranchisement at common law differs considerably from one carried out under the Copyhold Act, 1894, and among these may be noted—

1. At common law only voluntary enfranchisement is possible. Under the Copyhold Act the enfranchisement may be by agreement, or can be compelled by either party.
2. At common law an investigation of the lord's title is necessary, as the tenant takes under the lord's title, together with all mortgages and incumbrances thereof. Under the Copyhold Act no investigation of title is necessary, for the enfranchised tenement is not held under the title to the manor, but under the old title by which the copyhold was held. (Section 21.)
3. At common law the enfranchisement is effected by a deed between the parties alone. Under the Copyhold Act, if the enfranchisement is voluntary, the deed is confirmed by the Board of Agriculture; or if compulsory, the enfranchisement is effected by the award of the Board of Agriculture.

4. At common law the right of escheat passes from the lord to his superior lord. Under the Copyhold Act the lord retains his right of escheat. (Section 21.)
5. At common law the lord loses his right to mines and minerals unless he expressly reserves them. Under the Copyhold Act the lord and tenant respectively retain their rights to mines and minerals, unless they expressly agree to sell them. (Section 23.)
6. At common law the tenant loses his rights of common over the wastes of the manor, which were appurtenant to his copyhold estate. Under the Copyhold Act the rights of common remain appurtenant to the freehold land after enfranchisement. (Section 22.)
7. At common law the parties lose their rights to easements, except ways of necessity. Under the Copyhold Act easements are preserved. (Section 23.)

PRESUMPTION OF ENFRANCHISEMENT AT COMMON LAW.

Although a copyhold may not have been actually enfranchised by any deed, there may be circumstances from which the Courts will presume that the copyhold tenure has been extinguished, and the property is, in fact, freehold tenure. What is really necessary to bring about such a result is a difficult question; but there is no doubt that in many cases, owing to neglect of the lord and artfulness of the tenants, that copyholds have been used as if they were freeholds for long periods; and it has been held that, in such cases, after a long enjoyment of the property as freehold, that an enfranchisement will be presumed if proper evidence is produced, even against the Crown.[1]

[1] Doe d. Johnson v. Ireland, 11 East. 233.

It has been made clear that mere neglect by the lord to collect his quit-rent, or to enforce the services due to him, will not by itself be sufficient to cause a presumption of enfranchisement. On the other hand, non-payment of quit-rent for twelve years, bars the lord's right to recover it under the Statutes of Limitation,[1] so in this way an extinction of that incident can be brought about and a partial enfranchisement is effected. And where it can be shown that neglect upon the lord's part is combined with other circumstances, such as the creation of a new rent, it appears right to presume that the old services have been done away with, and that a partial enfranchisement, of the nature of a commutation, has taken place.

But in the absence of evidence adverse to the lord's rights, the Court will not presume enfranchisement of land shown to have been copyhold in 1717, from mere negligence of the lord in exacting small acknowledgments for which the fines were then commuted.[2] In a case where land was sold as freehold, it was shown that the land had been treated as freehold for upwards of one hundred years, and the only intimation that it was copyhold, was to be found in some recitals and a covenant to surrender in a modern deed, to which the lord was not a party. The purchaser required the vendor to enfranchise; but the Court held that enfranchisement must be presumed, and that the purchaser could not require the vendor to enfranchise the land.[3] It was also held that the lord's right of entry was barred by the Statutes of Limitation.[4]

[1] 3 and 4 Will. IV. c. 27.

[2] Turner *v.* West Bromwich Union, 3 L.T. 662.

[3] *In re* Lidiard and Broadley's Contract, 58 L.J. Ch. 785.

[4] 3 and 4 Will. IV. c. 27.

CHAPTER XV.

THE COPYHOLD ACT, 1894.

THE PURPOSE OF THE ACT.

THIS Act was passed for the express purpose of consolidating the Copyhold Acts.

It repealed all the Copyhold Acts that were previously law, re-enacting the chief of their provisions.

REPEALS.

The Third Schedule of the Act sets out the enactments repealed as follows:—

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.

EXTENT OF ACT AND SAVINGS.

By Section 99 this Act does not apply to Scotland or Ireland, and by Section 95 nothing in this Act—

(a) shall affect the custom of gavelkind in the county of Kent: or

(b) shall authorise a lord to enclose any common or waste land: or

(c) shall revive any right to fines or other manorial claims which are at any time barred by any statute of limitations: or

(d) shall interfere with any enfranchisement which may be made independently of this Act: or

(e) shall interfere with the exercise of any powers contained in any other Act of Parliament: or

(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

(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

(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.

By Section 97—

Nothing in this Act shall affect any right acquired in pursuance of registration under the Land Registry Act, 1862,[1] or the Land Transfer Act, 1875,[2] except to such extent as may be recorded by registration in pursuance of those Acts.

AUTHORITY FOR EXECUTION OF ACT.

The authority for the execution of the Act is the Board of Agriculture (now the Board of Agriculture

[1] 25 and 26 Vict. c. 53.

[2] 38 and 39 Vict. c. 87.

and Fisheries), and the powers and duties of the Board are, to some extent, shown in Part VIII. of the Act, which is as follows:—

90. The Board of Agriculture shall in every year make a general report of their proceedings in the execution of this Act, and the report shall be laid before both Houses of Parliament as soon as may be after it is made.

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.

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.

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.

DEFINITIONS.

The definitions contained in the Act are of importance as explaining the meaning of the terms used. These are set out as follows in Section 94 :—

In this Act unless the context otherwise requires—

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 :

The expressions "ecclesiastical corporation" means an ecclesiastical corporation within the meaning of the Episcopal and Capitular Estates Act, 1851,[1] and the Acts amending the same :

The expression "enfranchisement" includes the discharge of freehold lands from heriots and other manorial rights :

The expression "heriot" includes a money payment in lieu of a heriot :

The expression "land" includes an undivided share in land :

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 :

The expression "manor" includes a reputed manor :

The expression "rent" includes reliefs and services (not being services at the lord's court), and every

[1] 14 and 15 Vict. c. 104.

payment or render in money, produce, kind, or labour due or payable in respect of any land held of or parcel of a manor:

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:

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

(*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

(*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.

The expression "valuer" includes an umpire.

AN OUTLINE OF COPYHOLD ENFRANCHISEMENT UNDER THE ACT.

The Copyhold Act, 1894,[1] enables any lord or any admitted tenant to agree to the enfranchisement, or to compel the enfranchisement, of any copyhold or customary freehold, or other land subject to manorial incidents. In those cases where the tenant was admitted prior to the 30th of June, 1853, he must, before he can enfranchise, pay the ordinary fine and

[1] 57 and 58 Vict. c. 46.

heriot, if any, as would become payable in the event of admittance or alienation, and two-thirds of the steward's fees in respect thereof. In any other case he must pay all fines and fees consequent on the last admittance to the land.

Compulsory enfranchisement commences by a notice to compel, and is completed by the award of the Board of Agriculture.

A voluntary enfranchisement commences with the agreement between the parties, and is completed by a deed approved by the Board of Agriculture.

For compulsory enfranchisement the consideration which the tenant must pay the lord is a lump sum of money, or a rent-charge of four per cent. thereon, which is allowable in every case except where the tenant gives the lord notice to compel the enfranchisement and the consideration does not exceed one year's annual value of the property. Where the enfranchisement is voluntary, the Act allows a considerable variety of forms of consideration, such as a gross sum or a fixed or variable rent-charge, a conveyance of land, or a right to mines or minerals, or a conveyance of a right to waste in lands belonging to the manor.

An enfranchisement takes effect from the date of the award, or from the day of the confirmation of the enfranchisement deed, unless some other date is named in the award or the deed.

The effect of the award or deed is that the land shall be freehold; the lord retains his right to escheat; customary rules of descent, excepting gavelkind in Kent, are done away with, and the rules applying to freehold take their place. Customary curtesy and freebench are done away with—ordinary dower and curtesy being substituted. The land would be held under the same

title as it was before enfranchisement. Mortgages and leases of the copyhold become mortgages or leases of the freehold. The tenant's rights of common remain, and the rights of the parties as to mines, easements, and such like, remain as before, unless affected by the award or enfranchisement deed.

In the following pages the details of enfranchisement are more fully set out, and many forms published by the Board of Agriculture relating to the matter are given.

CHAPTER XVI.

VOLUNTARY ENFRANCHISEMENT UNDER THE COPYHOLD ACT, 1894.

WHO CAN AGREE.

The power to enfranchise voluntarily under the Act is given by Section 14, which is as follows:—

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.

THE AGREEMENT FOR ENFRANCHISEMENT.

A voluntary enfranchisement commences with an agreement between the lord and the tenant, whereby the lord agrees to make, and the tenant to accept, an enfranchisement. This agreement can always be on such terms as the parties decide, but in every case it is

subject to the approval of the Board of Agriculture. The agreement may set forth the amount of the consideration to be paid by the tenant to the lord for the enfranchisement, or may fix some means by which it can be ascertained. It would appear that the parties can leave it to the Board to decide the question of the amount, or can agree it between themselves, or leave it to valuers, in a similar way to that in which the question is referred to valuers in the case of a compulsory enfranchisement.

Where the parties agree the enfranchisement consideration between themselves, they must agree something that is reasonable, or the Board of Agriculture will object.

THE ENFRANCHISEMENT CONSIDERATION.

In the case of voluntary enfranchisements, there is no need for the consideration to take the form of a money payment. By Section 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.

When the enfranchisement consideration, or any part of it, takes the form of a money payment, it is provided by Section 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 rentcharge and any charge having priority by statute), notwithstanding that those incumbrances are prior in date.

By Section 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.

By Section 17—

Where any part of the consideration for a voluntary enfranchisement under this Act is a rentcharge—

(1.) The rentcharge 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 rentcharge; and

(2.) The rentcharge 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 by the agreement; and

(3.) The tenant may grant the rentcharge 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 rentcharge may be charged on all or any part of the land enfranchised.

THE ENFRANCHISEMENT DEED.

A voluntary enfranchisement is completed by means of an enfranchisement deed, whereby the lord conveys to the tenant the freehold of the property. This deed must be submitted to the Board of Agriculture and approved by them, and in due course the Board confirm the enfranchisement deed by means of a memorandum. The provisions relating to this matter are contained in Section 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.

(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 enquiries 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 enquiries to be made as they think proper before consenting to the enfranchisement deed.

COMMENCEMENT OF ENFRANCHISEMENT.

By Section 20—

20. The date at which a voluntary enfranchisement under this Act shall take effect, and the commencement of a rentcharge 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.

THE EXPENSES OF ENFRANCHISEMENT.

By Section 34, Sub-section 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 may direct.

THE STEWARD'S COMPENSATION.

In the case of voluntary enfranchisements, the tenant usually agrees the amount, which he will pay to the steward for the loss of his future fees in connection with the copyhold. There is no provision in the Act setting out what this should be, so that it would appear to be purely a matter of agreement.

FORMS IN VOLUNTARY ENFRANCHISEMENT.

The following forms relating to voluntary enfranchisement are published by the Board of Agriculture and Fisheries :—

BOARD OF AGRICULTURE AND FISHERIES.

Voluntary Enfranchisement under the Copyhold Act, 1894.

DEED OF ENFRANCHISEMENT.

THIS Indenture, made the day of 190 , between *A. B.*, lord of the manor of of the first part, the Board of Agriculture and Fisheries 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
or by virtue of the will of
or as customary heir of
as the case may be]: And whereas the said [lord] has, under the authority of the Copyhold Act, 1894, 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 Act, 1894, and of any other

power whatsoever, and with the consent of the Board of Agriculture and Fisheries in pursuance of the powers vested in them by the said Act, 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* the rights reserved by Section 23 of the said Act, 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 Section 21 of the said Act. In witness whereof the said parties of the first and third parts have set their hands and seals, and the Board of Agriculture and Fisheries have hereunto set their Official Seal.

THE SCHEDULE.

B $\frac{28}{B}$

Voluntary Enfranchisement under the Copyhold Act, 1894.

DEED OF ENFRANCHISEMENT.

THIS Indenture, made the day of 190 , between *A. B.*, lord of the manor of of the first part, the Board of Agriculture and Fisheries of the second part, and *C. D.*, of in the County of , of the third part: Whereas the hereditaments described in the

* Including or excepting.

Schedule hereto are freehold or customary freehold of the said manor liable to* and other manorial incidents, and the said is the tenant of the said hereditaments And whereas the said [lord] has under the authority of the Copyhold Act, 1894, agreed with the said [tenant] that the said* 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] 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 Act, 1894, or any other power whatsoever, and with the consent of the Board of Agriculture and Fisheries in pursuance of the powers vested in them by the said Act, hereby extinguishes all and the said* and all other manorial incidents, and releases and enfranchises unto the said [tenant], 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], his heirs and assigns, as freehold, henceforth and for ever, discharged by these presents from the said* and all other manorial incidents whatsoever, but so as not to affect such right of escheat for the want of Heirs as is reserved by Section 21 of the said Act. In witness whereof the said parties of the first and third parts have set their hands and seals, and the said Board of Agriculture and Fisheries have thereunto set their Official Seal.

B $\frac{29}{B}$

THE SCHEDULE.

* Insert "heriots," "quit rents" or "free rents," as the case may be.

Voluntary Enfranchisement under the Copyhold Act, 1894.

NOTICE to person entitled to the next estate of inheritance in remainder or reversion in the manor.*

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 Act, 1894, give you notice that it is intended to enfranchise All that

[*Set out necessary wording.*]

to which the said was admitted tenant on or about the day of 190 , and that the compensation for such enfranchisement being the sum of is to be paid to pursuant to the provisions of the said Act.

AND I request that you will state in writing at the foot hereof your assent to or dissent from such enfranchisement and return the same for delivery to the Secretary, Board of Agriculture and Fisheries, 3, St. James's Square, London, S.W., under the said Act.

DATED this day of 190 ,

B 30/B

the person entitled to the next estate of inheritance in remainder or reversion in the above manor.

I the said do hereby [assent to *or* dissent from] the enfranchisement above proposed.

* If such person be a minor, notice must be given to his guardian.

CHAPTER XVII.

COMPULSORY ENFRANCHISEMENT UNDER THE COPYHOLD ACT, 1894.

The law upon this subject is summarised in a simple manner by the Minute of the Board of Agriculture, which is given at the end of this chapter, together with the other official forms.

It must be borne in mind that the Act does not extend to land belonging to the Duchy of Cornwall, nor to the manors belonging to any Ecclesiastical Corporation, or to the Ecclesiastical Commissioners where the tenant has not a right of renewal. It also applies to Crown lands and Duchy of Lancaster lands only so far as is in the Act expressly provided, and by Section 96 :—

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

(b) to manors in which Her Majesty has any estate or interest in possession, reversion, or remainder.

The provisions of the Act referring to compulsory enfranchisement set out the law at greater length than it is found in the Minutes, so are worthy of special notice.

Part I. of the Act relating to compulsory enfranchisement is as follows :—

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.

Power to extinguish Manorial Incidents.

2. A lord or tenant of any land liable to any heriot, quit-rent, 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 enfranchisement 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.

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

(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.

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.

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 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.

(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.

(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.

(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.

(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.

(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 the valuer or umpire having made a declaration under this section wilfully acts contrary thereto he shall be guilty of a misdemeanour.

The following form is contained in the First Schedule of the Act :—

Declaration to be made by Valuers and Umpires.

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 190 .

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.

(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.

In a case where a portion of the waste had been granted as copyhold, with the consent of the homage, on the condition that no building should be erected upon the land, the tenant compelled enfranchisement. It was held that the effect of the enfranchisement was to discharge the condition, and that the lord was entitled to compensation.[1]

Questions often arise as to whether there is actually a custom of the manor or not, and in such case, if there is evidence of one, it is the exclusive province of the Board of Agriculture to determine whether the custom is proved, and the Court will not interfere with their decision.[2]

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.

(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.

[1] Brabant *v.* Wilson, 6 B. and S. 979.

[2] Reynolds *v.* Woodham Walter Manor, 41 L.J., C.P. 281.

(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.

(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.

(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.

(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.

(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.

(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.

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.

Steward's Compensation.

9.—On a compulsory enfranchisement the tenant shall pay to the steward the compensation mentioned in the Second Schedule to this Act.

The following form comprises the Second Schedule to the Act :—

Scale of Steward's Compensation.

When the consideration for the enfranchisement—

	£	s.	d.
Does not exceed £1	0	5	0
Exceeds £1 but does not exceed £5	0	10	0
„ £5 „ „ £10	1	0	0
„ £10 „ „ £15	2	0	0
„ £15 „ „ £20	3	0	0
„ £20 „ „ £25	4	0	0
„ £25 „ „ £50	6	0	0
„ £50 „ „ £100	7	0	0
For every additional £50, or fractional part of £50, over and above the first £100 ...	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.

AWARD OF ENFRANCHISEMENT.

Board to make 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.

(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.

(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.

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.

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 Court will not interfere with the Board's decision of no hardship under this section.[1]

(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.

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.

EFFECT OF ENFRANCHISEMENT.

Part 3 of the Act deals with this matter. It must be remembered that it applies to all enfranchisements, whether carried out voluntarily or compulsorily. The words of the Act are as follows:—

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

[1] Reynolds *v.* Woodham Walter Manor, 41 L.J. C.P. 281.

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:

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.

(*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;

(*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.

(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.

(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.

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.

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:

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, or the right to work or carry away the same, 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.

(2.) A steward shall not, without special authority, have power to consent on behalf of a lord under this section.

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.

PROVISIONS AS TO CONSIDERATION MONEY, EXPENSES, RENTCHARGES.

Part 4 of the Act deals with these matters, and much of it is not of great importance to our subject; but it is set out in full so that there should be no omissions. The most important of the sections in this Part of the Act are 27-31, 34, 36, and 37.

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.

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.

(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.

(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.

(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.

(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.

RENTCHARGES.

Payment of Rentcharges under Act.

27. The following provisions shall apply to every rentcharge created under the provisions of this 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 recoverable by the like remedies as are provided by section forty-four of the Conveyancing and Law of Property Act, 1881,[1] 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.

The remedies given by the Conveyancing Act, 1881,[1] are shortly—

The right of distress if the rentcharge is twenty-one days in arrear;

The right of entry and receipt of rents and profits if the rentcharge is forty days in arrear; or

A right to create a term of years if the rentcharge is forty days in arrear.

Where such sums are paid by an occupying tenant, he can recover the money by action against his landlord, or can deduct it from his next payment of rent.

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

[1] 44 and 45 Vict. c. 41.

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.

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.

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.

(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.

(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.

(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,[1] 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.

(5.) When it appears to the Board of Agriculture that payment or tender of the consideration for the redemption of a rentcharge has been duly made, the Board may certify that the rentcharge has been redeemed and the certificate shall be conclusive.

(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.

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.

[1] 44 and 45 Vict. c. 41.

(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.

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.

(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.

(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.

(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.

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.

EXPENSES.

Expenses of dealings under Act, how borne.

34.—(1.) The expenses of a compulsory enfranchisement under this Act shall be borne by the person who requires the enfranchisement.

(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.

(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.

(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.

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.

(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.

(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.

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.

(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.

(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.

(4.) When a charge may be made under this section, the expenses of the charge may be included in the charge.

(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.

(6.) A charge under this section may be by deed by way of mortgage, or by a certificate of charge under this Act.

(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 rentcharge and any charge having priority by statute, notwithstanding that those incumbrances are prior in date.

(8.) Any money secured on land may be continued on the security thereof notwithstanding a charge under this section.

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.

(2.) A charge under this section shall be by deed by way of mortgage, or by a certificate of charge under this Act.

(3.) This section does not apply to the expenses of a purchase by the lord of a tenant's interest under this Act.

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.

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.

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.

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.

(5.) The certificate and the charge made thereby shall be transferable by endorsement on the certificate.

(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.

(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.

(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.

The following forms are contained in the First Schedule of the Act:—

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.

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.

ADMINISTRATIVE PROVISIONS.

Part 5 of the Act deals with various matters under this heading, many of which are of interest. The matter is therefore dealt with here *in extenso* :—

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.

The following form is contained in the First Schedule to the Act:—

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.

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.

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.

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.

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.

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.

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.

The following form is contained in the First Schedule to the Act:—

5. POWER OF ATTORNEY.

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.[1]

Dated this day of 189 .

(Signed) *A. B.*

[1] 57 and 58 Vict. c. 46.

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.

(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.

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.

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.

QUESTIONS ARISING IN PROCEEDINGS UNDER ACT.

Boundaries.

52. On an enfranchisement under this Act—

(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 with the boundaries of other lands and as being incapable of definition:

(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.

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.

(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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

Evidence from Instruments under Repealed Acts.

63.—(1.) Any person interested in any land included in any enfranchisement or commutation made by apportionment under the Copyhold Act, 1841,[1] 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.

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.

[1] 4 and 5 Vict. c. 35.

(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.

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.

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 to the other party to the enfranchisement whether he is or is not willing to adopt the scale of compensation published by the Board.

The present scale of compensation which was prepared under the provisions of this section, together with the scale of allowances to valuers for their services, is set out at the end of this chapter.

LEGAL PROCEEDINGS.

Proceedings under Act not to be quashed for Want of Form nor removed by Certiorari.

67. An order or proceeding under this Act by, or before, or under the authority of the Board of Agriculture, or a conviction under this Act, shall not be quashed for want of form, and shall not be removed by certiorari or otherwise into the High Court or any other court.

The Board of Agriculture and Fisheries, acting under the directions set forth in Sections 65 and 66 of the Copyhold Act, 1894, in due course framed and caused to be printed various forms of Notices and Agreements, Scales of Compensation for the extinction of the lord's interest in the copyhold lands, Scales of Allowances to Valuers, and such like. The more important of these forms relating to Compulsory Enfranchisement are set out below. Those relating to Voluntary Enfranchisement have already been dealt with.[1]

[1] See *ante*, p. 194.

COMPULSORY ENFRANCHISEMENT UNDER THE COPYHOLD ACT, 1894.*

MINUTE OF THE BOARD OF AGRICULTURE AND FISHERIES as to proceedings on Compulsory Enfranchisements under the Copyhold Act, 1894.

Lord or Tenant can compel Enfranchisement of Copyhold.

1. A lord or a tenant (*see* definitions in Section 94 of the Act) can compel enfranchisement of any copyhold land to which the tenant has been admitted, except where the tenant is a mortgagee not in possession, or where the land is held for a life or lives, or for years, and the tenant has not a right of renewal. But where the tenant has not been admitted since the 30th of June, 1853, he cannot avail himself of this power until after payment or tender 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.

Lord or Tenant can compel Enfranchisement of any Manorial Incident.

2. Any lord or tenant of any land liable to any heriot, quit rent, 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 enfranchisement of the land subject thereto, and the proceedings thereon are the same as in the case of enfranchisement of copyhold land. If the land is freehold (including customary freehold) and subject to heriots, and no heriot has become due or payable since the 30th of June, 1853, a tenant cannot

* 57 & 58 Vict. c. 46.

avail himself of this power until after payment or tender 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.

Fines, &c., to be paid before Enfranchisement.

3. A tenant is not entitled to require enfranchisement of any land until after payment or tender of all fines and fees consequent on the last admittance to the land.

Notice of desire to Enfranchise.

4. A lord or tenant requiring enfranchisement or extinguishment of manorial incidents, must give notice in writing, the one to the other, of his desire to have the land enfranchised, 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.

Lord and Tenant may agree as to Compensation.

5. The lord and tenant, after the notice requiring enfranchisement has been delivered, may agree in writing upon the compensation to be paid for enfranchisement. A form, showing the information to be furnished by the steward in such cases, may be obtained on application to the Board. A memorandum of agreement will be found at the foot of page 4 of the form.

Determination of Compensation.

6. The lord and tenant may, after the notice requiring enfranchisement has been delivered, agree in writing that the Board shall determine the compensation to be paid for enfranchisement, or they may appoint a valuer or valuers to determine such compensation. Forms of agreement or appointment applicable to such cases may be obtained on application to the Board.

Appointment of Valuers.

7. If the compensation is not otherwise determined, it is to be ascertained under the direction of the Board on a valuation to be made by a valuer, valuers or umpire*:—

(*a.*) The lord and tenant may, in any case, jointly appoint one valuer.

Appointment of Valuer by Justices.

(*b.*) When 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 where the land to be enfranchised is not rated for the relief of the poor at a greater amount than the net annual value of £30, the valuation is to 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 must pay the additional expenses caused by that mode of valuation. Before either party applies to the justices to appoint a valuer, notice of the application must be given 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.

Appointment of separate Valuers by Lord and Tenant.

(*c.*) In all other cases the lord and the tenant each appoint a valuer. 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

*NOTE—The valuers and umpire are not arbitrators, but are assessors and assistants to the Board, and the award is made by the Board under the authority given by the Act; see *The Queen* v. *Land Commissioners*, (1889) 23 Q.B.D. 59; 58 L.J., Q.B. 313.

to the Board, with the time and mode of service of the notice endorsed thereon. When the notice of the appointment of valuer has been received, the party on whom it has been served must within twenty-eight days appoint his valuer, and send a copy of the appointment both to the opposite party and to the Board.

Failure by Lord or Tenant to appoint a Valuer.

In any case where, after due notice as aforesaid, either party does not appoint his valuer within twenty-eight days or within such further time, if any, as the Board by order allow, the appointment devolves upon the Board, who, on being requested by either party, will appoint a valuer.

Appointment of Umpire.

8. The valuers, within fourteen days after their appointment, and before they proceed, must 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 umpire and to the Board. If the valuers fail to appoint within fourteen days, the appointment devolves upon the Board, who, on being requested by the valuers, or one of them, will appoint an umpire.

Death or Removal of a Valuer or Umpire.

9. When a valuer or umpire dies, or becomes incapable, or refuses to act, or is removed by the Board, another valuer or umpire may be appointed in his place, within a time to be fixed by the Board, by the person and in the manner provided by the Act with regard to the valuer or umpire, in whose place he is appointed, and in default by the Board. A valuer or umpire so appointed may adopt and act upon any valuation or proceeding agreed on or completed by the valuer, valuers, or umpire previously acting.

Declaration of Valuers or Umpire.

10. Before any valuer or umpire enters upon his valuation, he must, in the presence of a justice of the

peace, make and subscribe a declaration in the following form, which must be annexed to the Decision when forwarded to the Board:—

"I 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.

Made and subscribed in the presence of *A.B.* this day of , 19 ."

Instructions to be given to Valuers.

11. As the Decision of the valuers should be given within forty-two days, each party should, without delay, furnish his valuer with a description of the lands to be enfranchised and all other necessary information; but if either party neglect or refuse to do so, the valuers will proceed upon such information as they can otherwise obtain.

Circumstances to be considered by Valuers.

12. The circumstances to be considered by valuers are mentioned in Section 6 of the Act, which is as follows:—

"(1) In making a valuation for the purpose of "ascertaining the compensation for a compulsory en- "franchisement 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.

"(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."

Decision of Valuers or Umpire.

13. The valuers must determine the value of the matters to be taken into account in the valuation at a gross sum of money.[1] The valuers' decision must be in such form as the Board direct, and be made within forty-two days after their appointment or within such further time (if any) as the Board by order allow, and be forwarded to the Board with the details of the valuation separately given. A copy of the Decision must also be sent at the same time to the lord or steward and to the tenant or his attorney. If the valuers do not agree as to the compensation or any point arising in the valuation, they or either of them may refer the whole matter or the point in dispute to the umpire. If they do not give their Decision within the prescribed time and do not refer the matter to the umpire, the Board may direct the umpire to act as valuer. The umpire must give his Decision within forty-two days after the reference to him, and forward it with details as above-mentioned to the Board, and send copies of it to the lord or steward and to the tenant or his attorney.

Extension of Time.

14. If any extension of the prescribed time for doing an act be desired, application should be made to the Board before the expiration of that time.

Description of Land to be Enfranchised.

15. A schedule containing the exact description under which the land is 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 land, 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 Land.

16. Where the identity of the land cannot be ascertained to the satisfaction of the valuers, it is to be taken at the

[1] *See* paragraph 32 on page 251 *post* as to scale of compensation.

quantity (if any) in statute measure mentioned in the court rolls; and, if not so specified, the quantity is to be determined by the valuers.

Plans.

Where the land is not defined by a plan on the court rolls, the valuers, if requested in writing by either lord or tenant, are to define it by a plan. Ordnance Survey maps, or a tracing therefrom, will generally be found most convenient for the purpose. They are published on the $\frac{1}{2500}$ and 6-inch scales, and on larger scales in many instances for town properties. They can be obtained from Mr. Edward Stanford, 12, 13, and 14, Long Acre, London, W.C., who will afford full information respecting them. They can also be purchased from agents in most of the chief towns; through many of the Head Post Offices; and directly, or through any bookseller, from the Ordnance Survey Office, Southampton.

Except by agreement between the lord and tenant, a plan is not to be made 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 with the boundaries of other lands, and as being incapable of definition.

Where valuers have been appointed, the lord or the tenant may, in any case of doubt or difference of opinion as to the identity of the land, apply to the Board to ascertain and define the boundaries thereof.

Minerals and other Reserved Rights.

17. No enfranchisement will affect the estate or right of any lord or tenant in the minerals or any other rights mentioned in Section 23 of the Act, 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.

Board will prepare Award of Enfranchisement.

18. When the compensation has been ascertained under the provisions of the Act, the Board 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 the award will be prepared by them.

Board may continue Conditions of User for benefit of Public or other Tenants.

19. The Board have power under Section 13 of the Act by the award of enfranchisement to continue and give effect to any condition affecting the user of the land subject to which the tenant may have been admitted and which may have been imposed for the benefit of the public or of the other tenants of the manor, where, in the opinion of the Board, some special hardship or injustice would result if the land were released from the condition.

When Compensation to be a Rentcharge.

20. Where the enfranchisement is at the instance of the lord, or where the land can, in the opinion of the Board, be sufficiently identified, and the compensation amounts to more than one year's improved value of the land, then, unless the parties otherwise agree, or the tenant exercises the option hereafter mentioned, the compensation must be an annual rentcharge of £4 per cent. per annum on the amount of the compensation, 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 person for the time being in actual possession or in receipt of the rents and profits of the land, on payment of twenty-five times the amount of the rentcharge.

Compensation may be a Gross Sum at option of Tenant.

The tenant has, however, the option of paying the compensation in a gross sum of money, but he must within ten days after the receipt by him 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.

21. When the compensation for enfranchisement is a gross sum of money, the receipt of the person entitled to receive the same must be produced to the Board before the award of enfranchisement can be confirmed.

Questions of Law or Fact.

22. If any questions of law or fact arise in the course of the valuation on any compulsory enfranchisement they may be referred to the Board.

Proceedings not to Abate in case of Death of Lord or Tenant.

23. If pending any proceedings the lord or tenant dies, there is no abatement of the proceedings, and any admittance or enrolment consequent on such death 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.

24. Any lord may act either on his own behalf or by his steward, 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 on his own behalf, or that he has appointed an agent (to be named in the notice) other than his steward to act for him, the steward, for the purposes of the Act, represents 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, making agreements, and all other matters relating to enfranchisement; except that a steward, without special authority, has no power to consent on behalf of the lord to the rights comprised in Section 23 of the Act being affected by the enfranchisement.

When Lords or Tenants are Trustees.

25. When either 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 the Act may be done by the other trustee or trustees.

Married Women.

26. A married woman, being lady of a manor or tenant, is, for the purposes of the Act, to be deemed a feme sole.

Persons under Disability or Beyond the Seas.

27. When a lord or a tenant or any person interested in an enfranchisement or otherwise under the Act is an infant or a lunatic, or is abroad, or is unknown, or not ascertained, anything by the Act required or authorised to be done by or in respect of him is to 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 to represent him for the purposes of the Act.

Appointment of Agent by Power of Attorney.

28. An agent or attorney may be appointed by power of attorney by a lord or tenant, or other person interested in any proceedings under the Act, in the following form:—

"Manor of , in the County of

I, *A.B.*, of, &c., 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, 1894.

Dated the day of nineteen hundred and .

(*Signed*) *A. B.*"

The power of attorney must be in writing, and 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. The power of attorney, or a copy authenticated by two witnesses, must be sent to the Board.

Notices, Agreements, and Appointments to be duly Signed.

29. Notices, agreements, and appointments of valuers by the lord may be signed by him or his agent or by the steward, and if given, or made, by the tenant, may be signed by him, or by an agent duly authorised by power of attorney to act on his behalf.

Service of Notices.

30. A notice required or authorised by the Act to be given to any person must be given in writing, and may be served personally or by leaving it at the usual or last known place of abode or business in the United Kingdom, or by sending it by post in a registered letter addressed to him at that place, or where he is a tenant of any premises by delivering the same, 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, by fixing it on some conspicuous part of the premises.

Copies of Notice, &c., to be sent to Board.

31. Copies of all notices and appointments should be sent to the Board as soon as they are given or made.

Scales of Compensation and Allowance to Valuers.

32. A scale of compensation for enfranchisement and a scale of allowance to valuers, framed pursuant to section 66 of the Act, for guidance, may be obtained on application to the Board. The person requiring an enfranchisement should state to the other party to the enfranchisement whether he is or is not willing to adopt the scale of compensation.

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.

33. The compensation to be paid by a tenant to the steward in every case of compulsory enfranchisement is fixed by section 9 of the Act.

Exemption from Stamp Duty.

34. Agreements, decisions of valuers, and powers of attorney under the Act are not chargeable with stamp duty.

Expenses.

35. In case of any question as to the amount of the expenses relating to an enfranchisement, the matter may be referred to the Board.

Forms.

36. The under-mentioned forms may be obtained by application to the Board, or if a number be required, to Messrs. Shaw and Sons, Fetter Lane, London, E.C.:—

Notice from lord or tenant, of desire for enfranchisement.

Notice from lord or tenant, of desire for extinguishment of manorial incidents, and enfranchisement.

Information to be furnished to the Board in every case of enfranchisement under the Copyhold Act, 1894, with agreement as to compensation between lord and tenant, when they agree.

Agreement between lord and tenant that the Board shall determine the compensation for enfranchisement.

Joint appointment of one valuer by lord and tenant.

Appointment of valuer by lord or tenant.

Notice of appointment of valuer from lord or tenant and calling on the other to appoint his valuer.

Appointment of umpire by valuers.

Consent of lord to include reserved rights.

Decision of valuer or valuers.

Decision of umpire.

Declaration as to lord's title.

Receipt for compensation money.

T. H. ELLIOTT, Secretary.

Board of Agriculture and Fisheries,
3, St. James's Square, London, S.W
January, 1906.

COPYHOLD ENFRANCHISEMENT.

SCALE OF COMPENSATION in ordinary cases of Enfranchisement of Copyholds of Inheritance, framed pursuant to Section 66 of the Copyhold Act, 1894.

Fines Arbitrary.

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.

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 quitrent 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.

Fines Certain.

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.

Reliefs.

6. The amount of compensation for a relief may be calculated in like manner as a fine certain.

Heriots.

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.

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 *inter vivos* by a tenant and on his death, 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.

Quitrents and other Annual Payments.

11. The compensation for quitrents, freerents, and other annual rents, services, or payment, 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 annual value may be ascertained as in paragraphs 3 and 4.

Escheat.

14. The right of escheat being reserved to the lord under the Copyhold Act, 1894, its value is not to be taken into consideration.

Special Customs or Circumstances.

15. If there be any special customs of the manor, or special circumstances affecting or relating to the land to be enfranchised, or special advantages to arise from the enfranchisement, they should be taken into consideration and due allowance should be made in respect of them.

Interest.

16. Interest should be made payable by the agreement or decision on the amount of the compensation at the rate of four pounds per cent. per annum from the date of the

notice requiring the enfranchisement to the date of payment of the compensation, unless the compensation is paid by way of an annual rentcharge under the Act.

17. The foregoing 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.

T. H. ELLIOTT, Secretary.

Board of Agriculture and Fisheries,
3, St. James's Square,
London, S.W.

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.
5 or under	2.29	37	3.26	70	4.50
		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 AND FISHERIES.

Enfranchisement under the Copyhold Act, 1894.

SCALE of ALLOWANCES to VALUERS for their services in the execution of the Copyhold Act, 1894, framed in pursuance of Section 66 of the Act.

	Allowance. £	s.	d.
Where the annual value of the property enfranchised does not exceed 10*l.*	2	10	0
Exceeds 10*l.* and does not exceed 25*l.*	3	0	0
„ 25*l.* „ 50*l.*	4	0	0
„ 50*l.* „ 75*l.*	5	0	0
„ 75*l.* „ 100*l.*	6	0	0
„ 100*l.* „ 125*l.*	7	0	0
„ 125*l.* „ 150*l.*	8	0	0
„ 150*l.* „ 200*l.*	9	0	0
For every additional 50*l.* or fractional part of 50*l.*	1	0	0

In addition to the above, an allowance is approved 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.

Charges for tracings or plans, when plans are necessary, will be allowed, but Ordnance Survey Maps should be used whenever practicable.

When a case is referred to an umpire an additional allowance to the valuers is approved of from 2*l.* upwards, regard being had to the time occupied for attendance before the umpire.

This scale is for guidance only.

By order of the Board,

T. H. ELLIOTT, Secretary.

Board of Agriculture and Fisheries,
3, St. James's Square, London, S.W.
December, 1905.

BOARD OF AGRICULTURE AND FISHERIES.

FEES to be taken in respect of Transactions under the Copyhold Act, 1894, in accordance with the provisions of the Inclosure, &c. Expenses Act, 1868.[1]

On Enfranchisement—	£	s.	d.
Where the enfranchisement consideration money does not exceed the sum of 1*l.*	0	5	0
Exceeding 1*l.* and not exceeding 5*l.*	0	10	0
„ 5*l.* „ 10*l.*	1	0	0
„ 10*l.* „ 15*l.*	1	10	0
„ 15*l.* „ 20*l.*	2	0	0
„ 20*l.* „ 25*l.*	2	10	0
„ 25*l.* „ 50*l.*	3	0	0
„ 50*l.* „ 75*l.*	3	10	0
„ 75*l.* „ 100*l.*	4	0	0
„ 100*l.* „ 125*l.*	4	10	0
„ 125*l.* „ 150*l.*	5	0	0
„ 150*l.* „ 175*l.*	5	10	0
„ 175*l.* „ 200*l.*	6	0	0
„ 200*l.* „ 250*l.*	6	10	0
„ 250*l.* „ 300*l.*	7	0	0
„ 300*l.* „ 350*l.*	7	10	0
„ 350*l.* „ 400*l.*	8	0	0
„ 400*l.* „ 450*l.*	8	10	0
„ 450*l.* „ 500*l.*	9	0	0
„ 500*l.* „ 550*l.*	9	10	0
„ 550*l.* „ 600*l.*	10	0	0
For every additional 100*l.* or part of 100*l.* ...	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.

B 4/B

[1] 31 and 32 Vict. c. 89.

FEES—*continued.*	£	s.	d.
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 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*l.* or part of 50*l.* expended	0	2	6
On every Decision by the Board or an Officer of the Board, 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

T. H. ELLIOTT, Secretary.

Board of Agriculture and Fisheries,
3, St. James's Square,
London, S.W.

BOARD OF AGRICULTURE AND FISHERIES.

Compulsory Enfranchisement under the Copyhold Act, 1894.

NOTICE from Lord or Tenant of desire for Enfranchisement of Copyholds.

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 Act, 1894, give you Notice of my desire that the lands, copyhold of the above manor, to which [you were *or* was] admitted on or about the day of , 1 , shall be enfranchised under the said Act.

Dated this day of , 190 .

[*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 Secretary, Board of Agriculture and Fisheries, 3, St. James's Square, London, S.W.," with an endorsement stating when and how the original Notice was served.

B 5/B

BOARD OF AGRICULTURE AND FISHERIES.

Compulsory Enfranchisement under the Copyhold Act, 1894.

NOTICE from Lord or Tenant of desire for extinguishment of Manorial Incidents affecting Freeholds or Customary Freeholds.

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 Act, 1894, give you Notice of my desire that the [heriot, quit rents, *or* free rents, *as the case may be*] or 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 Act.

Dated this day of , 190 .

[*Signature, stating whether lord or tenant.*

To

of

Tenant of the said lands,

or

Lord or steward of the manor.

THE SCHEDULE.

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NOTE.—A copy of this Notice should be forwarded to "The Secretary, Board of Agriculture and Fisheries, 3, St. James's Square, London, S.W.," with an endorsement stating when and how the original Notice was served.

BOARD OF AGRICULTURE AND FISHERIES.

Enfranchisement under the Copyhold Act, 1894.

Manor of

Parish of

County of

Enfranchisement.

PART I.—Information to be furnished to the Board of Agriculture and Fisheries in every Enfranchisement.

1. The lands to be enfranchised should be described in the schedule hereto.

2. Name (in full) and address of the lord.

3. Is the lord seised in fee simple, fee tail, for life, or how otherwise; and if he is not seised in fee simple, who is entitled to the next estate of inheritance in remainder or reversion in the manor?

4. How is the compensation money proposed to be paid?

   To the lord?

   To trustees acting under the will or settlement under which the lord derives his estate or interest in the manor? If so, give names, addresses and descriptions.

   To trustees to be nominated by the Board of Agriculture and Fisheries if there be no trustees acting under the will or settlement, or if the lords be a corporation?

PART I.—*continued.*

Into the High Court *ex parte* the Board of Agriculture and Fisheries?

To the account of the Board of Agriculture and Fisheries, *ex parte* Universities and College Estates? (See the Universities and College Estates Act, 1898, s. 6.)

To the Church Estates Commissioners?

To the Governors of Queen Anne's Bounty?

To the Official Trustees of Charitable Funds?

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5. Is the manor incumbered? If so, state the nature of the incumbrance or incumbrances, and the names and addresses of the person or persons entitled thereto.

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6. Name (in full) and address and profession or calling of the tenant.

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7. Date of admittance or enrolment of the tenant, and estate for which he was admitted (whether for his life or in fee or otherwise, and whether to the entirety or to an undivided share).

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8. Has notice of compulsory enfranchisement been given under the Copyhold Act, 1894?

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9. Is the property copyhold or freehold of the manor?

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10. If copyhold, is it of inheritance or for lives?

PART I.—*continued.*

11. If for lives: (*a*) the names and ages of the lives; and (*b*) has the tenant a right of renewal?

12. The amount of compensation for the enfranchisement, if it has been settled by agreement.

PART II.—Additional Information required in Enfranchisements in which the compensation is not settled by agreement.

13 Age of the tenant.

14. (*a*) Is the property subject to any and what fines certain or fines arbitrary or reliefs?

(*b*) If the fines are arbitrary, is there, by the custom of the manor, any and what difference between the amounts of the fines on death and on alienation respectively?

15. The amount of the last fine or relief, and whether paid in consequence of death or alienation.

16. To what quit or free rents is the property subject?

17. Is the property subject to heriots? If so, state the nature and number of the heriots, the circumstances in 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.

18. Does the ordinary law of copyholds apply with respect to the timber and minerals, or is there any and what special custom of the manor with respect thereto?

PART II.—*continued.*

19. Has the tenant power to demise the property? If so, for what period?

20. Has the lord granted licences to demise in the manor? If so, on what terms?

21. (*a*) Does the lord claim any of the rights mentioned in s. 23 of the Copyhold Act, 1894?

(*b*) If so, is it proposed to extinguish these rights?

22. Has the land present or prospective building value, or any other facilities for improvements?

23. Are there any special advantages to arise from the enfranchisement which should be taken into account in ascertaining the compensation?

Dated this day of , 190 .

Steward of the Manor.

Address.

SCHEDULE of the lands to be enfranchised.

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 and is desired to be inserted in the Award or Deed of enfranchisement.

To be signed by lord or steward and tenant, when the compensation is settled by agreement.*

We do hereby agree that the compensation for the enfranchisement of the lands above mentioned† the rights reserved by the Copyhold Act, 1894, Section 23, shall be‡ § [together with interest on such sum at the rate of four pounds per cent. per annum from the date of the notice requiring the above enfranchisement to the date of payment of the compensation, unless the compensation is paid by way of an annual rent-charge].

Dated this day of , 190 .

Lord or Steward.

Tenant.

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* Steward may not without special authority include reserved rights.

† Including *or* not including.

‡ A gross sum of £—— or an annual rent charge of £——

§ The words in brackets will be struck out if no notice of compulsory enfranchisement has been given, or if the agreed compensation is a rent-charge

BOARD OF AGRICULTURE AND FISHERIES.

Compulsory Enfranchisement under the Copyhold Act, 1894.

AGREEMENT between Lord and Tenant that the Board of Agriculture and Fisheries 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 , 190 ,* the rights reserved by the Copyhold Act, 1894, Section 23, shall be determined by the Board of Agriculture and Fisheries pursuant to Section 5 of the said Act.

Dated this day of , 190 .

Lord or Steward.

Tenant.

B $\frac{S}{B}$

* Including *or* not including.

† Steward may sign for lord if reserved rights be not included; but if they are included he cannot do so without special authority.

BOARD OF AGRICULTURE.

Compulsory Enfranchisement under the Copyhold Act, 1894.

JOINT APPOINTMENT of one Valuer by Lord and Tenant.

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 Act, 1894, 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 , 190 .

Dated this day of , 190 .

Lord of the above Manor.
Tenant.

B 9/B

NOTE.—A Copy of this Appointment should be sent to "The Secretary, Board of Agriculture, 3, St. James's Square, London, S.W."

BOARD OF AGRICULTURE AND FISHERIES.

Compulsory Enfranchisement under the Copyhold Act, 1894.

APPOINTMENT of Valuer by Lord or Tenant.

Manor of , in the County of , enfranchisement.

I, , of , in the County of , do, in pursuance of the provisions of the Copyhold Act, 1894, 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 , 190 .

Dated this day of , 190 .

[*Signature, stating whether lord or tenant.*

B $\frac{10}{B}$ NOTE.—A copy of this Appointment should be sent to "The Secretary, Board of Agriculture and Fisheries, 3, St. James's Square, London, S.W."

BOARD OF AGRICULTURE AND FISHERIES.

Compulsory Enfranchisement under the Copyhold Act, 1894.

NOTICE of Appointment of Valuer by Lord or Tenant, 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 Act, 1894, 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 , 190 ; and I hereby call on you to appoint your Valuer within twenty-eight days from the giving of this Notice.

Dated this day of , 190 .

[*Signature, stating whether lord or tenant.*

To
of

Tenant
or
Lord or Steward of the Manor.

BOARD OF AGRICULTURE AND FISHERIES.

Compulsory Enfranchisement under the Copyhold Act, 1894.

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 , our Umpire.

Dated this day of , 190 .

B $\frac{12}{B}$

Note.—A copy of this Appointment should be sent to "The Secretary, Board of Agriculture and Fisheries, 3, St. James's Square, London, S.W." If the Valuers are unable to agree upon an Umpire within 14 days of their appointment, application may be made to the Board to appoint an Umpire for them.

Compulsory Enfranchisement under the Copyhold Act, 1894.

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 Act, 1894, of the lands comprised in the Notice of desire for enfranchisement given by , and dated on or about the day of , shall extend to and include all mines and minerals and also all other rights and easements reserved by Section 23 of the said Act.

Dated this day of , 190 .

B $\frac{15}{B}$ NOTE.—The steward cannot sign this Consent for the lord without special authority.

BOARD OF AGRICULTURE AND FISHERIES.

Enfranchisement under the Copyhold Act, 1894.

Decision of Valuer or Valuers.

Manor of , in the
County of , enfranchisement.

In the matter of the above enfranchisement under the Copyhold Act, 1894, I [*or* We] , 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 , 190 , do hereby, in pursuance of the Copyhold Act, 1894, determine and decide as follows; that is to say—

I [*or* We] determine and decide that the compensation to be paid for the enfranchisement of the said lands under the said Act is the sum* of
together with interest on such sum at the rate of four pounds per cent. per annum from the date of the Notice requiring the enfranchisement to the date of payment of the compensation, unless the compensation is paid by way of an annual rentcharge under the said Act, being the value of all the manorial rights and incidents of tenure affecting the said lands [excepting *or* including] the rights reserved

B 16/B

* The compensation determined is to be a gross sum of money.

by Section 23 of the said Act [and *or* but] excepting the value of the right of escheat for want of heirs reserved by Section 21 of the said Act.

WITNESS [my hand *or* our hands] this day of , One thousand nine hundred and

[*Signature of Valuer or Valuers.*

THE SCHEDULE hereinbefore referred to.

The court roll description by which the tenant was admitted or enrolled should 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 should be signed by the valuer or valuers.

The Declaration of each valuer should be annexed, and also the Consent of the lord when the rights reserved by the Copyhold Act, 1894, Section 23, are included.

The Decision should be forwarded to "The Secretary, Board of Agriculture and Fisheries, 3, St. James's Square, London, S.W." 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.

BOARD OF AGRICULTURE AND FISHERIES.

Compulsory Enfranchisement under the Copyhold Act, 1894.

Decision of Umpire.

Manor of , in the County of , enfranchisement.

Whereas in the matter of the above enfranchisement under the Copyhold Act, 1894, 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 Act, 1894, I do hereby determine and decide that the compensation to be paid for the enfranchisement under the said Act, 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 , 190 , is the sum* of , together with interest on such sum at the rate of four pounds per cent. per annum from the date of the Notice requiring the enfranchisement to the date of payment of the compensation, unless the compensation is paid by way of an annual rentcharge under the said Act, being the value of all the manorial rights and incidents of tenure affecting the said lands [excepting *or* including] the rights reserved by Section 23 of the said Act [and *or* but] excepting the value of the right of escheat for want of heirs reserved by Section 21 of the said Act.

Witness my hand this day of , One thousand nine hundred and

[*Signature.*

B 17/B

* The compensation determined to be a gross sum of money.

The Schedule hereinbefore referred to.

The court roll description by which the tenant was admitted or enrolled should 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 should 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 Copyhold Act, 1894, Section 23, are included.

The Decision should be forwarded to "The Secretary, Board of Agriculture and Fisheries, 3, St. James's Square, London, S.W.," 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.

Enfranchisement under the Copyhold Act, 1894.

DECLARATION AS TO LORD'S TITLE.

Manor of , in the County of

I, , of , in the County of , the* of the said manor, do solemnly declare that†

AND that the said is now and has for years past been the acting lord of the said manor; 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 190 .

AND that the said manor is subject to‡

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.

The said

declared to the truth of the above Declaration at

in the said County of

the day of 190 .

Before me,

B 20/B

NOTE.—This Declaration must be impressed with a 2s. 6d. stamp.

*Lord or steward.

†Here state the name of the lord of the manor, and describe the nature and extent of his estate and interest 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 if the lord be 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.

‡State here the nature and extent of the incumbrances (if any) which affect the manor, or that there are no incumbrances.

BOARD OF AGRICULTURE AND FISHERIES.

Enfranchisement under the Copyhold Act, 1894.

RECEIPT FOR COMPENSATION MONEY.

Manor of , in the
County of , enfranchisement.

RECEIVED on the day of 190 ,
of and from the
sum of , being the compensation money for the enfranchisement under the Copyhold Act, 1894, of certain lands comprised in the Notice of desire for enfranchisement given by and dated the day of , 190 .

Witness

B 23/B NOTE.—The receipt must be dated, and (where the amount is £2 or upwards) a stamp affixed and duly cancelled.

BOARD OF AGRICULTURE AND FISHERIES.

Compulsory Enfranchisement under the Copyhold Act, 1894.

Award of Enfranchisement.

Whereas the lands described in the Schedule hereto are held by copy of court roll of the manor of , in the county of , and is the tenant upon the court roll of the said lands:

And whereas the enfranchisement of the said lands has been duly required according to the provisions of the Copyhold Act, 1894:

And whereas the lord and the tenant [have *or* have not, *as the case may be*] consented that the rights mentioned in Section 23 of the said Act shall be affected by such enfranchisement:

And whereas the amount to be paid for such enfranchisement has been ascertained, according to the provisions of the said Act, to be the sum of £ , together with interest on such sum at the rate of four pounds per cent. per annum from the date of the Notice requiring the enfranchisement to the date of payment of the said sum, which has been duly paid, and the receipt for the same has been produced to the Board of Agriculture and Fisheries:

And whereas all other acts and matters required by the said Act previously to the confirmation of this Award of enfranchisement have been duly done and performed:

Now the Board of Agriculture and Fisheries, in pursuance of the powers vested in them by the Copyhold Act, 1894, Do, by this Award of enfranchisement, enfranchise All the said copyhold lands described in the Schedule hereto, with their appurtenances* [including any such rights

B $\frac{25}{B}$

* Omit if consent not given.

as are mentioned in Section 23 of the said Act], To be holden, as freehold, henceforth and for ever discharged from all fines, heriots, reliefs, 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 Section 21 of the said Act,* [or any such rights as are excepted by Section 23 thereof].

In witness and confirmation whereof, the Board of Agriculture and Fisheries have hereunto set their Official Seal this day of , Nineteen hundred and

---

The Schedule hereinbefore referred to.

---

* Omit if minerals, &c., are included.

BOARD OF AGRICULTURE AND FISHERIES.

Compulsory Enfranchisement under the Copyhold Act, 1894.

Award of Enfranchisement.

Whereas the lands described in the Schedule hereto are held by copy of court roll of the manor of , in the County of , and is the tenant upon the court roll of the said lands:

And whereas the enfranchisement of the said lands has been duly required according to the provisions of the Copyhold Act, 1894:

And whereas the lord and the tenant [have *or* have not, *as the case may be*] consented that the rights mentioned in Section 23 of the said Act shall be affected by such enfranchisement:

And whereas the compensation for such enfranchisement has been ascertained, according to the provisions of the said Act, to be an annual rentcharge of £ issuing out of the said lands:

And whereas all other acts and matters required by the said Act previously to the confirmation of this Award of enfranchisement have been duly done and performed:

Now the Board of Agriculture and Fisheries, in pursuance of the powers vested in them by the Copyhold Act, 1894, Do, by this Award of enfranchisement, enfranchise All the said copyhold lands described in the Schedule hereto, with their appurtenances* [including any such rights as are mentioned in Section 23 of the said Act], To be holden, subject to the payment of the said annual rentcharge, as freehold, henceforth and for ever discharged from all fines, heriots, reliefs, quit rents, and all other incidents whatsoever of copyhold or customary tenure, but so as not

* Omit if consent not given.

to affect such right of escheat for want of heirs as is reserved by Section 21 of the said Act,* [or any such rights as are excepted by Section 23 thereof].

IN WITNESS and confirmation whereof, the Board of Agriculture and Fisheries have hereunto set their Official Seal this day of , Nineteen hundred and .

THE SCHEDULE hereinbefore referred to.

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* Omit if minerals, &c., are included.

BOARD OF AGRICULTURE AND FISHERIES.

Compulsory Enfranchisement under the Copyhold Act, 1894.

Award of Enfranchisement.

Whereas the lands described in the Schedule hereto are freehold or customary freehold of the manor of , in the County of , liable to certain [heriots, quit rents *or* free rents, *as the case may be*] and other manorial incidents, and , of , is the tenant of the said lands:

And whereas it has been duly required that the said [heriots, quit rents, *or* free rents] and other manorial incidents should be extinguished, and the said lands released and enfranchised therefrom, according to the provisions of the Copyhold Act, 1894:

And whereas the compensation to be paid for such extinguishment, release, and enfranchisement has been ascertained, according to the provisions of the said Act, to be the sum of £ , together with interest on such sum at the rate of four pounds per cent. per annum from the date of the Notice requiring the enfranchisement to the date of payment of the said sum, which has been duly paid, and the receipt for the same has been produced to the Board of Agriculture and Fisheries:

And whereas all other acts and matters required by the said Act previously to the confirmation of this Award of enfranchisement have been duly done and performed:

Now the Board of Agriculture and Fisheries, in pursuance of the powers vested in them by the Copyhold Act, 1894, Do, by this Award, extinguish all the said [heriots, quit rents, *or* free rents] and all other manorial incidents to which the lands described in the Schedule hereto are liable, and release and enfranchise the said

B 27/B

lands therefrom, but so as not to affect such right of escheat for want of heirs as is reserved by Section 21 of the said Act.

In witness and confirmation whereof, the Board of Agriculture and Fisheries have hereunto set their Official Seal this day of , Nineteen hundred and .

The Schedule hereinbefore referred to.

CHAPTER XVIII.

ENFRANCHISEMENT OF COPYHOLDS ON SPECIAL MANORS AND UNDER VARIOUS ACTS.

WHERE lands form part of a manor belonging to the Crown, the Duchy of Lancaster, or the Duchy of Cornwall, the process of enfranchisement differs somewhat from the ordinary procedure under the Copyhold Act. Compulsory enfranchisement is impossible in any case, and voluntary enfranchisement is under different rules.

Other manors which have special rules applying to them are those belonging to the Universities or Colleges of Oxford, Cambridge, and Durham, or to the Colleges of Eton or Winchester, and those which belong to any Ecclesiastical Corporation or to the Ecclesiastical Commissioners.

These matters are not of great importance perhaps, but a work would not be complete without them; and before dealing with them, it will be well to note the provisions of the Copyhold Act relating to them.

It will be remembered that lands belonging to the Duchy of Cornwall are entirely outside the Act; that Crown lands and Duchy of Lancaster lands are only affected thereby as far as the Act expressly states; and that the Act does not extend to Church lands held for life, or lives, or years where the tenant has not a right of renewal.

APPLICATION OF THE COPYHOLD ACT TO SPECIAL MANORS.

Part VI. of the Copyhold Act deals with the application of the Act to special manors.

Proceeding for determining Compensation in certain Enfranchisements of Crown Lands.

By Section 68—

(1.) Where a manor is vested in Her Majesty in right of the Crown or of the Duchy of Lancaster, either in possession or in remainder expectant on an estate less than an estate of inheritance, and either solely or in coparcenary with a subject, and the Commissioners of Woods or the Chancellor and Council of the Duchy of Lancaster in exercise of the powers vested in them enter into negotiations for the enfranchisement of any land held of the manor, and cannot agree with the tenant as to the amount of the consideration money to be paid by him for the enfranchisement to the Commissioners or to the Receiver-General of the Duchy of Lancaster as the case may be, the Commissioners or the Chancellor and Council, as the case may be, may, if they think fit, on the request of the tenant, and on an agreement for the enfranchisement being entered into by them and the tenant respectively, refer it to the Board of Agriculture to appoint a surveyor to determine the said amount.

(2.) The Board of Agriculture shall on a reference being made under this section appoint a practical land surveyor for the purposes of the reference, and his award shall be final.

(3.) The expenses of and incidental to a reference under this section shall be treated as expenses on a compulsory enfranchisement at the instance of the tenant.

Voluntary Enfranchisement under Act in certain Crown Manors.

69.—(1.) Where a manor is vested in Her Majesty in right of the Crown in remainder or reversion expectant on

an estate of inheritance, the manor and any land held of the manor may, with the consent in writing of the Commissioners of Woods or one of them, be dealt with under the provisions of this Act with respect to a voluntary enfranchisement, subject to the provisions of this section.

(2.) Where the consideration for an enfranchisement under this section is a gross sum it shall either be paid to two trustees to be appointed for the purpose, one by the Commissioners of Woods or one of them, and one by the person for the time being entitled to the rents and profits of the manor, or be paid into Court to the account of *ex parte* Her Majesty the Queen and the person so entitled as aforesaid.

(3.) Money paid to trustees or into Court under this section shall be applied,—

(*a*) in the purchase or redemption of the land tax affecting the manor or any other land settled to the like uses as the manor; or

(*b*) in the purchase of land in fee simple convenient to be held with the manor; or

(*c*) in investment on Government or real securities or in any of the investments in which trustees are for the time being authorised by law to invest.

(4.) The income of an investment under this section shall be paid to the person for the time being entitled to the rents and profits of the manor.

(5.) Where land is purchased with any consideration money under this section, or where the consideration consists of a rentcharge, the land or rentcharge shall be conveyed to the uses on the trusts and subject to the powers and provisions then affecting the manor or as near thereto as circumstances permit.

(6.) On the payment of the consideration where it is a gross sum of money, or on or before the execution of the conveyance of the rentcharge, where the consideration is a rentcharge, the Commissioners of Woods or one of

them may join with the person for the time being entitled to the rents and profits of the manor in executing a deed of enfranchisement.

(7.) The deed shall state in what manner the enfranchisement, if any, has been applied.

(8.) The deed shall, on the enrolment thereof being made in manner provided by this Act, vest in the tenant all the estate, right, and interest of Her Majesty in right of the Crown and of all other persons interested under the settlement of the manor in the land enfranchised, either absolutely or subject to the reservations, if any, contained in the deed.

(9.) A trustee appointed under this section by the Commissioners of Woods or one of them shall be indemnified by the Commissioners out of the rents and profits of the possessions and land revenues of the Crown from all costs and expenses, if any, which he incurs in the execution of the trust, and of which he does not obtain repayment out of the trust moneys.

Enfranchisement in Manors held in Joint Tenancy with the Crown.

70. A manor vested in Her Majesty in right of the Crown in possession, remainder, or reversion, in joint tenancy or coparcenary with a subject may, so far as regards the rights and interests of the subject and of the tenant, be dealt with under this Act, and the provisions of this Act relating to enfranchisements in manors vested in Her Majesty in right of the Crown in remainder or reversion expectant on an estate of inheritance shall apply so far as regards the share or interest of Her Majesty.

Enrolment of Instruments on Enfranchisements in Crown Manors.

71.—(1.) The Keeper of Land Revenue Records and Enrolments shall, for the purpose of preserving a record of enfranchisements under this Act of land held of manors vested in Her Majesty, provide a book in which shall be

entered a memorial of every deed of enfranchisement of any such land, and of every grant of a rentcharge on the enfranchisement, and of every conveyance of land purchased with the enfranchisement money.

(2.) The memorial, where it is of a conveyance of land, shall be accompanied by a plan of the land.

(3.) The memorial of any instrument under this section shall be signed by one of the parties to the instrument.

(4.) An instrument of which a memorial is required to be enrolled under this section shall not take effect until there has been written thereon a certificate signed by the Keeper of Land Revenue Records and Enrolments, or by any person acting as his deputy or assistant, that a memorial thereof has been lodged at the office of Land Revenue Records and Enrolments.

(5.) A certificate purporting to be signed by the Keeper of Land Revenue Records and Enrolments, or by any person acting as his deputy or assistant, shall be admissible as evidence of the facts stated therein.

(6.) A copy of the enrolment of the memorial purporting to be signed and certified to be a true copy by the Keeper of Land Revenue Records and Enrolments, or by any person acting as his deputy or assistant, shall be admissible as evidence of the deed or instrument of facts referred to in the memorial.

(7.) The Treasury may direct what reasonable fees shall be paid in respect of an enrolment under this section, and fees paid for an enrolment shall be deemed to be expenses of the enfranchisement or purchase, as the case may be, in respect of which the enrolment is made.

Consent of Ecclesiastical Corporations, &c., required to dealings with Manors in which they are interested.

72.—(1.) An agreement for an enfranchisement shall not be valid—

(a) where the manor or land to be affected by the enfranchisement is held under an ecclesiastical or other corporation; or

(b) where any such corporation or the patron of a living is interested in the manor or land to the extent of one-third of the value thereof; or

(c) where in the opinion of the Board of Agriculture 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.

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.

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.

Application of Enfranchisement Money where Enfranchisement might have been under 14 and 15 Vict., c. 104.

75. Where on an enfranchisement under this Act it appears to the Board of Agriculture that the enfranchisement might have been effected under the Episcopal and Capitular Estates Act, 1851,[1] 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.

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

[1] 14 and 15 Vict. c. 104.

the Charitable Trusts Acts, 1853 to 1891,[1] 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.

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,[2] and the Charitable Trusts Amendment Act, 1855,[3] may at the option of the lord be paid to trustees appointed by the Board of Agriculture for the purposes of this Act.

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

[1] 16 and 17 Vict. c. 137 and amending Acts.

[2] 16 and 17 Vict. c. 137.

[3] 18 and 19 Vict. c. 124.

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.[1]

Provisions where Derivative Interests are entered on Rolls.

79. 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 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

[1] 21 and 22 Vict. c. 44.

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.

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.

Application of Act to Crown.

By Section 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.

(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.

CROWN LANDS.

The Act referring to the enfranchisement of lands or manors belonging to the Crown is the Crown Lands (General Management) Act, 1830.[1]

The authority for carrying out the enfranchisement is the Commissioners of His Majesty's Woods, Forests, and Land Revenues.

[1] 10 Geo. IV. c. 50.

The Commissioners can agree with the tenant for the enfranchisement of the lands; and as in the case of a voluntary enfranchisement under the Act, they can agree with the tenant how much he should pay as the enfranchisement consideration. In the event of the Commissioners, after having agreed to enfranchise, failing to agree the amount of the enfranchisement consideration, they can apply to the Board of Agriculture to appoint a surveyor to determine the amount, and his decision is final.

The enfranchisement is possible, whether the Crown owns in possession or remainder, and the enfranchisement consideration may be a gross sum or a rent-charge.

Although the Commissioners of His Majesty's Woods, Forests, and Land Revenues are the authority for enfranchisement, it is well to note that the King remains lord of the Royal Manors and that the legal estate therein remains in him.[1]

DUCHY OF LANCASTER LANDS.

The Acts relating to the enfranchisement of lands held of the Duchy of Lancaster are 19 Geo. III. c. 45 and 27 Geo. III. c. 34. The authority for enfranchisement is the Chancellor and Council of the Duchy.

The Chancellor and Council can agree with a tenant for enfranchisement; and if they cannot agree with him the amount of the enfranchisement consideration, they can apply to the Board of Agriculture to appoint a surveyor to determine the amount, and his decision is final.

[1] Reg. *v.* Powell, 4 P. and D. 719; Attorney-General *v.* Barker, 41 L.J. Ex. 57.

DUCHY OF CORNWALL LANDS.

The Acts relating to the enfranchisement of lands held of the Duchy of Cornwall are the 7 and 8 Vict. c. 65 and the 7 and 8 Vict. c. 105. The Copyhold Act does not apply. The Prince of Wales is lord of the Duchy. The lands appear to have mostly been what are called "conventionary estates," granted for successive short terms of years with a tenant right of renewal descending to the heirs.

The land can only be enfranchised voluntarily, as there is no provision for compulsory enfranchisement. Most of the land has already been enfranchised.

CHURCH LANDS.

The Copyhold Act only extends to Church lands in those cases where the tenant holds a copyhold of inheritance or where he holds for life, or lives, or years, and has a right of renewal. In that event, it would appear that a tenant could enfranchise voluntarily or compulsorily under the Copyhold Act, or voluntarily under the Ecclesiastical Estates Act, 1851,[1] and its Amendment Act, 1854.[2]

Where the tenant who holds for life or lives or years has no right of renewal, the Copyhold Act does not apply; and enfranchisement can only be carried out by agreement and under the Ecclesiastical Estates Acts, 1851-1854.

These Acts apply only to such lands as belong to an Ecclesiastical Corporation as defined by the Act: *E.g.*, archbishops, bishops, deans and chapters, deans, archdeacons, canons, prebendaries, and other

[1] 14 and 15 Vict. c. 104.
[2] 17 and 18 Vict. c. 116.

dignitaries or officers of cathedrals or collegiate churches (except the deans and canons of Christ Church, Oxford), and not to lands held by colleges, hospitals, parsons, vicars, or other incumbents.

The power to enfranchise can only be exercised with the consent of the Church Estates Commissioners, and the enfranchisement is by deed in a form prescribed by them, which must be also confirmed by them.

If the manor is leased to an individual, he is called the "lord farmer," and he is the enfranchising lord. The Ecclesiastical Corporation must assent to the enfranchisement, and notice must be given to the Ecclesiastical Commissioners, who must also assent.

UNIVERSITY AND COLLEGE LANDS.

University and college lands, which include those held by the Universities of Oxford, Cambridge, and Durham, the colleges of those Universities, Christ Church in Oxford, and the colleges of Eton and Winchester, can be enfranchised under the Universities and College Estates Act, 1858.[1]

The university or college must obtain the approval of the Board of Agriculture to the enfranchisement, in the form of an order under the seal of the Board.

The university or college makes the necessary application for the order to the Board of Agriculture, and pays all fees incidental thereto, forwarding, with the application, a report upon the matter prepared by the university or college surveyor.

[1] 21 and 22 Vict. c. 44.

Where the manor is leased to a lord farmer, he acts as enfranchising lord, the university or college being in the same position as a remainderman or reversioner would be in an ordinary enfranchisement.

The enfranchisement is carried out by means of a deed, to which the Board of Agriculture need not be a party.

OTHER METHODS OF ENFRANCHISEMENT.

There are several Acts, besides the Copyhold Act, which contain provisions for enfranchisement. Among these may be noted various Acts for the compulsory taking of lands by public or quasi-public bodies, such as the Church Buildings Acts, the School Sites Acts, the Defence Acts, the Lands Clauses Consolidation Acts, the Land Tax Redemption Acts, the Poor Laws Acts, the Settled Estates Acts, and the Settled Land Acts. Most of these are of but slight importance, but some of them may be briefly dealt with.

ENFRANCHISEMENT UNDER THE LANDS CLAUSES CONSOLIDATION ACTS.

The Lands Clauses Consolidation Acts form a code of laws relating to the acquisition of lands for undertakings or works of a public nature. When a public improvement, a railway, and such like undertaking is proposed, a special Act of Parliament is obtained for the purpose; and, as a rule, the Lands Clauses Consolidation Acts are incorporated.

The chief of the Acts is the Lands Clauses Consolidation Act, 1845[1]; and by Section 95 of that Act—

[1] 8 & 9 Vict. c. 18.

Every conveyance to the promoters of the undertaking of any lands which shall be of copyhold or customary tenure, or of the nature thereof, shall be entered on the rolls of the manor of which the same shall be held or parcel; and on payment to the steward of such fees as would be due to him on the surrender of the same lands to the use of a purchaser thereof, he shall make such enrolment, and every such conveyance, when so enrolled, shall have the like effect in respect of such copyhold or customary lands, as if the same had been of freehold tenure; nevertheless, until such lands shall have been enfranchised by virtue of the powers hereinafter contained, they shall continue subject to the same fines, rents, heriots and services as were theretofore payable and of right accustomed.

The lord of the manor is not entitled to any fine from the company on admittance, and the steward is only entitled to his fee on surrender and not on admittance.[1]

In those cases where no admittance has been made since 1853, or no heriot or fine has become due since that date, a tenant has under ordinary circumstances to pay a fine and a heriot, and two-thirds of the steward's fees before he can enfranchise; but this has been held not to apply to those cases where lands are taken under the Lands Clauses Acts.[2]

Where there is no admitted tenant to the land who can surrender to the promoters, the promoters are liable to pay the costs and expenses of all proceedings taken for the purpose of constituting a proper person to convey or assure the property to them,

[1] Cooper *v.* Norfolk Railway Company, [1849] 3 Exch. 546; Ecclesiastical Commissioners *v.* London and South Western Railway Company, [1854] 2 W.R. 560.

[2] *In re* Wilson, 32 L.J. Ch. 191.

including the costs of procuring the admission of a tenant to the copyhold, in order that he may surrender the property to their use. There is no distinction between the steward's fees and the fine, and the latter is as much part of the expenses of procuring a proper person to surrender as are the steward's fees and legal expenses.[1]

By Section 96—

Within three months after the enrolment of the conveyance of any such copyhold or customary lands, or within one month after the promoters of the undertaking shall enter upon and make use of the same for the purpose of the works, whichever shall first happen, or if more than one parcel of such lands holden of the same manor shall have been taken by them, then within one month after the last of such parcels shall have been so taken or entered on by them, the promoters of the undertaking shall procure the whole of the lands holden of such manors so taken by them to be enfranchised, and for that purpose shall apply to the lord of the manor whereof such lands are holden to enfranchise the same, and shall pay to him such compensation in respect of same as shall be agreed upon between them and him, and if the parties fail to agree respecting the amount of the compensation to be paid for such enfranchisement, the same shall be determined as in other cases of disputed compensation; and in estimating such compensation the loss in respect of the fines, heriots and other services payable on death, descent or alienation, or any other matters which would be lost by the vesting of such copyhold or customary lands in the promoters of the undertaking, or by the enfranchisement of the same, shall be allowed for.

Disputed compensation under the Act is settled, if the claim is not over £50 or the interest not greater than that of a tenant from year to year, by two justices. If the claim is over £50, and the interest greater than

[1] *In re* London United Tramways Act, [1906] L.J. Ch. 223

that of a tenant from year to year, by arbitration or a jury at the claimant's option.

By Section 97—

Upon payment or tender of the compensation so agreed upon or determined, or on deposit thereof in the bank, in any of the cases hereinbefore in that behalf provided,[1] the lord of the manor whereof such copyhold or customary lands shall be holden shall enfranchise such lands, and the lands so enfranchised shall for ever thereafter be held in free and common socage; and in default of such enfranchisement by the lord of the manor, or if he fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided[2] in the case of the purchase of lands by them, and thereupon the lands in respect of the enfranchisement whereof such compensation shall have been deposited as aforesaid, shall be deemed to be enfranchised and shall be for ever thereafter held in free and common socage.

Section 98 provides that the rents of copyhold lands, where part only is taken, shall be apportioned by agreement or by two justices, and the remaining lands not taken shall be subject only to the remainder of such rents.

ENFRANCHISEMENT UNDER THE LAND TAX REDEMPTION ACTS.

The Land Tax Redemption Act, 1802,[3] gives power to bodies politic, companies, and trustees for charitable and other public purposes, on whose land a land tax is imposed, to raise money by enfranchising (that is, by selling the freehold of) copyhold lands that are held of them for the purpose of redeeming the land tax thereon.

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[1] *E.g.*, if owner is absent or cannot be found, or in case of entry before purchase, or if he fails to make a good title.

[2] Section 75 gives the promoters power to deposit compensation agreed or awarded in the bank, and to convey the property to themselves by a deed poll.

[3] 42 Geo. III. c. 116.

The enfranchisement must be by deed, and subject to the consent of the Income Tax Commissioners, who have the power to settle any questions that may arise upon the enfranchisement.

ENFRANCHISEMENT UNDER THE SETTLED ESTATES ACTS.

The Settled Estates Act, 1877,[1] provides for leases and sales of settled estates by an order to be obtained from the Court of Chancery. An application for such order is made by the persons interested in the lands. Where the land, or part of it, is held as copyhold, the order may direct that they shall be enfranchised before sale; or, where settled land consists of a manor, the order may authorise the lord to sell the freehold of the lands held by him by copy.

The proceeds of the sale of settled lands can also be used in enfranchising copyholds forming part of the settlement.

ENFRANCHISEMENTS UNDER THE SETTLED LAND ACTS.

The Settled Land Act, 1882,[2] gives power to tenants for life of a manor or other settled land, of which copyholds or customary lands are held, to sell the seignory thereof so as to effect an enfranchisement.

The enfranchisement is by deed, and may include or exclude the lord's right to mines and minerals, and may be with or without any grant or re-grant of rights of common or of easements. The lord who

[1] 40 and 41 Vict. c. 18.
[2] 45 and 46 Vict. c. 38.

is tenant for life must give the usual notices of sale to the trustees and their solicitor.

The enfranchisement consideration must be a gross sum, and is paid to the trustees of the settlement or into court.

Capital money arising from the sale of settled land, or otherwise, can be used enfranchising any settled land that is copyhold or of other customary tenure.

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