

for life, for years, and at will; But I shall divide them into Estates in fee and for life only, this Division being large enough for My purpose.

Estates in fee are either fees simple, or fees tail.

A fee simple is not so called, because it imports an Estate purely allodial, or free from all Geniuses; but it is called in Opposition to fees conditional at common Law and fees tail, since the Statute of Westminster 2^{do} don't, as importing a simple Inheritance clear of any Condition Limitation or Restriction to any particular heirs, and Descendable to the heirs General, whether Male or female lineal or Collateral. By the Feudal Rules and Course of Succession, a father cannot succeed to his son, and is Excluded from any possibility of succeeding to the sons Inheritance as such, Grand. lib. 2 fol. 50. 89. For this Reason the father could not succeed to Feudum An lignum aut Patrimonium, because it must have pass him before it possibly could have come to the son, Harneton de Jure Feud. p. 154. Stryk Cocam. Jure Feud. cap. 16 L. 2. 3. 4. *Zafus in usus Feud. cap. 6 f. 46. And Feudum Novum* or a Feud newly Conferred upon the son or purchased by him could only Descend to his Children Craig Feud. Stryk Cocam. Jure Feud. cap. 16 L. 4. 5. And if he had no Phil dren, it returned to the Lord, Harneton de Jure Feud. lib. 2 cap. 5 pag. 164. *Zab. in usus Feud. cap. 8 fol. 46.* This stood the Feudal Law, because who so ever would succeed to a Feud must have Inherited himself to the Succession in a Regular Course of Descent from the first Feudatary or purchaser. But it being now sufficient by the Law of England, that the person who claims a fee by Descent, makes it appear that he is heir to him who was last actually seized Co. he, Just. 11. b. 15. a. b. 3 Rep. 91. 92. It is strange, that the father who is Heir in Blood should not be heir to his son, but that the Uncle or father's brother should be preferred to him; and that in case the Uncle died without issue, the father should be admitted as brother to the Uncle to succeed to the sons Inheritance, &c. Stryk

Craig. Feud. lib. 2 fol. 13 515 *Vors Generalis Stagy* hee proposed. So that it may be answered, that this is not properly a Rule of Descent, but of Evidence Relative to the old Feudal Course of Succession, and Calculated to make that good as far as possible for it becoming in many cases impossible, by length of time and a long course of Descents, to deduce a title from the first Feudatary or purchaser, proof of being heir to the last was necessarily allowed as the best proof that could be expected of title from the first. Hence therefore it is, that the father tho' he stands upon the old as to the son himself yet, as he may, within the Feudal Rules of Succession, succeed to the Uncle as his brother, may as heir to his brother (who cum saisnam suam obtinuit stipe tenfacit) *Plota lib. 6 cap. 2 sect. 2* make title even to the sons Inheritance passing through him, the Law of England for this Reason above mentioned looking no farther back than to the Uncle, who was the person last actually seized. The person who would Inherit himself to a fee by Descent must be heir of the whole blood to him who was last seized, *vid Little. fact. 67. 8. Coke, Just. 15.* and the half blood is Excluded Contrary to the Custom of Normandy, *Custom. de Norm. cap. 25 fol. 91. Pale* *Ref. of the Common Law 219. Craig. Feud. lib. 2 fol. 15 52.*

A Fee tail, as distinguished from a fee simple, is a fee limited and restrained to some particular heirs Exclusive of others, as to the heirs Male of the Brother of the Donee or Feudatary Exclusive of females and Collaterals; or to the heirs of his or her body Exclusive of Collaterals only. It was first called a fee tail, from the French word *gailloir* to Cut *Coke 2 Just. 13. b. 8. Skinner* *Etymol. Ling. Angl.* upon Account of the particular limitation or Restriction by which the heirs General was often, and Collateral or Remote heirs were all ways cut off. *Spelman Gloss ad verb. Feodum.* But a fee thus limited was at Common Law known by the Name of a fee conditional, so called from the Condition expressed or implied in the Gift or Constitution of the fee, that in case the Donee died without such particular heirs