posſeſſions in their own families, to put a stop to this prac­tice, procured the statute oſ Weſtminſter the second (com­monly called the ſtatute de *donis conditiοnalibus)* to be made; which paid a greater regard to the private will and inten­tions of the donor, than to the propriety of ſuch intentions, or any public conſiderations whatſoever. This ſtatute re­vived in ſome sort the ancient feodal reſtraints which were originally laid on alienations, by enacting, that from thence­forth the will of the donor be observed ; and that the tene­ments ſo given (to a man and the heirs of his body) ſhould at all events go to the iſſue, if there were any ; or if none, ſhould revert to the donor.

Upon the construction of this act of parliament, the judges determined that the donee had no longer a condi­tional fee ſimple, which became abſolute and at his own diſpoſal the inſtant any iſſue was born ; but they divided the estate into two parts, leaving in the donee a new kind of particular eſtate, which they denominated a f*ee-tail ;* and veiling in the donor the ultimate fee-ſimple of the land, ex­pectant on the failure of iſſue ; which expectant eſtate is what we now call a *reverſion.* And hence it is that Little­ton tells us, that tenant in fee-tail is by virtue of the ſtatute of Weſtminſter the second. The expreſſion f*ee-tail,* or *feo­dum talliatum,* was borrowed from the feudiſts (fee Crag. *l. s. t.* 10. § 24, 25.), among whom it ſignified any mutilated or truncated inheritance, from which the heirs general were cut off ; being derived from the barbarous verb *taliare,* to cut ; from which the French *tailler* and the Italian *tagliare* are formed, (Spelm. *Gloss.* 531.).

Having thus ſhown the original of eſtates tail, we now proceed to conſider what things may or may not be entailed under the ſtatute *de dοnis.* Tenements is the only word uſed in the ſtatute : and this Sir Edward Coke expounds to comprehend all corporeal hereditaments whatſoever; and alſo all incorporeal hereditaments which ſavour of the realty, that is, which iſſue out of corporeal ones, or which concern or are annexed to or may be exerciſed within the ſame ; as rents, eſtovers, commons, and the like. Alſo offices and dignities, which concern lands, or have relation to fixed and certain places, maybe entailed. But mere perſonal chattels, which ſavour not at all of the reality, cannot be entailed. Neither can an office, which merely relates to ſuch perſonal chattels ; nor an annuity, which charges only the perſon, and not the lands of the granter. But in theſe laſt, if grant­ed to a man and the heirs of his body, the grantee hath ſtill a fee conditional at common law as before the ſtatute, and by his alienation may bar the heir or reverſioner. An eſtate to a man and his heirs for another’s life cannot be entailed ; for this is ſtrictly no eſtate of inheritance, and therefore not within the ſtatute *de dοnis.* Neither can a copyhold eſtate be entailed by virtue of the ſtatute ; for that would tend to encroach upon and reſtrain the will of the lord : but, by the ſpecial cuſtom of the manor, a copyhold may be limited to the heirs of the body ; for here the cuſtom aſcertains and interprets the lord’s will.

As to the ſeveral ſpecies of eſtates-tail, and how they are respectively created ; they are either general or ſpecial. Tail-general is where lands and tenements are given to one, and the heirs of his body begotten : which is called *tail­general ;* becauſe, how often soever such donee in tail be married, his iſſue in general, by all and every ſuch marriage, is, in ſucceſſive order, capable of inheriting the eſtatetail p*er formam doni.* Tenant in *tail-ſpecial* is where the gift is reſtrained to certain heirs of the donee’s body, and does not go to all of them in general. And this may happen ſeveral ways We ſhall inſtance in only one ; as where lands and tenements are given to a man and the heirs of his body, on Mary his now wife to be begotten. Here no iſſue can in­herit but ſuch ſpecial iſſue as is engendered between them two ; not ſuch as the huſband may have by another wife ; and therefore it is called *ſpecial tail.* And here we may obſerve, that the words or inheritance (to him and his heirs) give him an eſtate in fee ; but they being heirs to be by him begotten, this makes it a fee-tail ; and the perſon being alſo limited, on whom ſuch heirs ſhall be begotten (viz. Mary his preſent wife), this makes it a fee-tail ſpecial.

Eſtates in general and ſpecial tail are farther diverſified by the diſtinction of ſexes in ſuch entails ; for both of them may either be in tail male or tail female. As if lands be given to a man, and his heirs-male of his body begotten, this is an eſtate in tail male general; but if to a man, and the heirs-female of his body on his preſent wife begotten, this is an eſtate in tail female ſpecial. And in case of an entail male, the heirs-female ſhall never inherit, nor any de­rived from them ; nor, *e converſo,* the heirs-male in caſe of a gift in tail female. Thus, if the donee in tail male hath a daughter, who dies leaving a ſon, ſuch grandſon in this caſe cannot inherit the eſtate tail ; for he cannot deduce his deſcent wholly by heirs-male. And as the heir-male muſt con­vey his deſcent wholly by males, ſo muſt the heir-female wholly by females. And therefore if a man hath two eſtates-tail, the one in tail male and the other in tail female, and he hath iſſue a daughter, which daughter hath iſſue a ſon ; this grandſon can ſucceed to neither of the eſtates, for he cannot convey his deſcent wholly either in the male or female line.

As the word *heirs* is neceſſary to create a fee, ſo, in far­ther imitation of the ſtrictneſs of the feodal donation, the word *body,* or ſome other words of procreation, are necessary to make it a ſee-tail, and aſcertain to what heirs in particu­lar the fee is limited. If, therefore, either the words of inheritance or words of procreation be omitted, albeit the others are inſerted in the grant, this will not make an eſtate­-tail. As if the grant be to a man and the iſſue of his body, to a man and his feed, to a man and his children or offspring; all theſe are only eſtates for life, there wanting the words of inheritance, “ his heirs.” So, on the other hand, a gift to a man, and his heirs male or female, is an eſtate in fee- ſimple and not in fee-tail ; for there are no words to aſcer­tain the body out of which they ſhall iſſue. Indeed, in laſt wills and teſtaments, wherein greater indulgence is allowed, an eſtate-tail may be created by a deviſe to a man and his ſeed, or to a man and his heirs-male, or by other irregular modes of expreſſion.

There is ſtill another ſpecies of entailed eſtates, now indeed grown out of uſe, yet ſtill capable of ſubſiſting in law ; which are eſtates *in libero maritagio,* or Frankmarriage. See that article.

The incidents to a tenancy in tail, under the ſtatute Weſtminſter 2. are chiefly theſe : 1. That a tenant in tail may commit waste on the eſtate tail, by felling timber, pul­ling down honſes, or the like, without being impeached or called to account for the ſame. 2. That the wife of the tenant in tail ſhall have her dower, or thirds, of the eſtate­tail. 3. That the huſband of a female tenant in tail may be tenant by the curteſy of the eſtate-tail. 4. That an eſtate tail may be barred, or deſtroyed, by a fine, by a com­mon recovery, or by lineal warranty deſcending with aſſets to the heir. See Assets.

Thus much for the nature of eſtates-tail : the eſtabliſhment of which family law (as it is properly ſtyled by Pi­gott) occaſioned infinite difficulties and diſputes. Children grew diſobedient when they knew they could not be ſet aside : farmers were ousted of their leaſes made by tenants in tail ; for if ſuch leaſes had been valid, then, under co­lour of long leaſes, the iſſue might have been virtually diſinherited : creditors were defrauded of their debts ; for, if