Nor did the common law dictate that every estate held by a subject must be in tenure. Non-tenurial estates, other than fees simple, apparently could arise in some instances, as where a mesne lord purchased a life estate previously granted to another by his tenant in fee. Because the lord could not be both lord and tenant with respect to the same land,[82] his tenant's lordship over the life estate—which had become an estate *pur autre vie*—was suspended.[83] When the *cestui que vie* died, the land reverted to the tenant in fee,[84] but in the meantime the lord had a non-tenurial estate.[85]

The difficulty presented by the conclusion that the mutineers acquired lordless fee simple estates may thus be more apparent than real.[86] But even if it is a principle of law rather than just an inescapable consequence of the Crown's paramount lordship that a subject cannot hold a non-tenurial fee simple, it must be remembered that English law would have applied on Pitcairn only to the extent that local circumstances warranted. Given that the Crown did not acquire sovereignty when the mutineers arrived, that principle should be excluded because it

[82] *Co. Litt.* 152[b]. See also *Bingham* v. *Woodgate* (1829) 1 Russ. & M. 32, at 38; *Delacherois* v. *Delacherois* (1862–4) 11 HLC 62, at 102.

[83] Due to the reversion, the lordship was not extinguished, as it was when a lord purchased the fee simple from his tenant's tenant. In the latter case his tenant's lordship was extinct and the lord held of his own lord, though the difference in service was payable to his former tenant as rent seek: see Littleton, *Tenures*, ss. 231–2. See also the example given by Hargrave, *Co. Litt.* 41[b] n. 1.

[84] For a parallel situation arising from the death of Edward VI without issue, whereby a fee tail given to Henry VII ended and the remainderman, whose lordship would have been suspended while the Crown's estate lasted, became entitled to possession, see *Willion* v. *Berkley* (1561) 1 Plow. 223.

[85] For other instances of this see *Co. Litt.* 313[b]–314[a]; *Bacon's Abr.*, 'Tenure', C; *Bingham* v. *Woodgate* (1829) 1 Russ. & M. 32.

[86] For another possible objection to this state of affairs see the obiter remark of Jacobs J. in *New South Wales* v. *Commonwealth of Australia* (1975) 135 CLR 337, at 490: 'Unless under another sovereign, a subject of the English Crown could not own land except of that Crown because, if he could, he would be sovereign of that land'. Though this conclusion may accord with the feudal theory of sovereignty, we saw in ch. 3 (esp. n. 19) that English monarchs have never been purely feudal sovereigns. British subjects owe allegiance irrespective of whether they hold lands of the Crown. As the *Bristowe* case shows, they do not become sovereigns in their own right simply because they acquire lordless lands, which is the assumption Jacobs J. appears to make. Moreover, British subjects on the Orkney and Shetland Islands do own land allodially: see n. 102 below.