T Burrow

# THE BOOKE

Called, The Mirrour of Justices: Made By ANDREVV HORNE.

With the Book, called, The Diversity of Courts, AND Their Jurisdictions.

Both translated out of the old *French* into the *English* Tongue.

By *W. H.* of Grays Inne Esquire.

Cassiodor.

*Iura publica, certissima sunt vitæ humanæ solatia; infirmorum auxilia, impiorum fræna.*

Imprinted at *London* for *Matthew Walbancke* at Graies Inne gate. 1646.

# The Translator to the Reader.

*Courteous Reader:*

IT hath ever been an Objection (grounded upon ignorance,) which hath been made by the meaner sort of the people to traduce the Common Lawes of *England*, and to bring the Professors thereof into contempt, to give out Speeches, and cast it in the teeth (as it were) of them, That the said Lawes are built but upon a sandy foundation, *viz.* the conceits of a few men, and that they are not grounded upon the Lawes of God, from which all Lawes of men ought to flow, as from a cleare and pure Fountaine.

This vulgar conceit and objection

hath been principally nourished amongst them, because the Common Lawes have been kept from their view and understandings, being for the most part published in the French Tongue.

I must ingeniously confesse, That since it is a received Maxime amongst us, That ignorance of the Law doth excuse no man, that it were good that the fundamentall Lawes were published in our Mother Tongue, that so no person might be misconsant thereof. And I have observed, that it hath been the course and care of most of the late Publishers of our Lawes, to put them forth in such Language as the common people might the better know them, and practice the due observation of them. But that I may with the more ease and plainnesse answer that frivolous Objection, remove that fond conceit of the ignorant, vindicate our Commnn Lawes from so foule an aspersion, and let the Objectors see from whence our Lawes deduce

their

their Originall (though the learned Authour in the ensuing Treatise hath in part done it) yet for the cleare manifestation thereof I shall entreat the courteous Reader to be pleased favourably to accept of this short Breviary of the Grounds and originals of the Common Law, which I shall apply only as an introduction to the Work which followeth.

All Lawes are comprehended under a Three-fold division: 1. The Law of Nature. 2. The Law of God, of Faith, or of the Gospell. 3. The Law of man; made upon the *Dictates of Reason*; upon all which Lawes the Common Lawes of *England* are built, as upon firme and sure foundations.

The First is, that which is called the Law of Nature, which is ordained of God, and may be called Gods Law, united unto mans nature; for what was that Image of God in man, consisting of righteousnesse, holinesse and truth; but *Lex primordialis*, a primordiall Law, Gen. 1. ver. 26, 27.

exactly requiring, and absolutely enabling the performance of duties of Piety unto God, and of equity to men both in habit and Art. *Antiquam scripta suis lex in hominum mentibus vigebat.* God in the beginning wrote his Lawes in mens hearts, and therefore according unto the opinion of most learned Divines and Legists: *Lex naturæ nihil aliud est quam participatio legis æternæ in rationali creatura*; And according to others, *Lex naturæ est lumen ac dictamen illud rationis, quo inter bonum & malum discernimus.* The most principall Precepts of the Law of Nature) which are also Maximes and Grounds of the Lawes of *England*) are 1. *Deum venerari*, 2. *Honeste vivere*, 3. *Patriæ magistratibus, & parentibus obedire*, 4. *Alteri ne facias quod tibi non vis fieri.* 5. *Suum cuique tribuere.* 6. *Tollere nocentes è medio propter servandam publicam salutem.* 7. *Rerum dominia proprietates, possessiones, & usum distinguere*; To honour God, to live honestly, to obey Magistrates, &c. to doe as we would

St. Ambrose

be

be done unto, to render every one his due, to punish the guilty for the preservation of the Publique, to distinguish and settle the Dominion, propriety, possession, and use of temporall things.

These fundamentalls of the Law of Natvre are not principally acquired or obtained by Art, or Doctrine, but naturally ingrafted. Learning and instruction serve only to bring forth and encrease those naturall Seedes; but neither Learning nor instruction doe principally and originally give them; they are (saith *Socrates*) but as skilfull Midwives, whose office it is only to further the birth of the Childe not to beget the Childe. *Socrates.*

The Second is the Law of God, the Law of Faith, or of the Gospell; which may well be called *Lex amoris*, the Law of love. Is not this Nation Christian? Hath it not professed the common Faith for 1200. yeares? Doe not our Lawes all tend to the maintaining of peace, concord and love?

love fruits of the Gospell? Are not all Statutes, Acts of Parliament, Constitutions Customes, made and used for the government of this people founded upon such principalls? Let the Objectors cite me any Law in use now amongst us, which is not warranted by some expresse Gospel, Text, either in the Letter, or not by necessary consequence drawne from it; sure I am that every Law, Custome, Usage, Priviledge, Prescription, Act of Parliament, or Prerogative, which doth exalt it selfe above or beyond the Law of God, the Law of Christ, or the Law of Nature hath ever by the worthy Sages of our Lawes been declared to be void It were to no purpose to instance upon particulars, it is sufficient to say; That as it appertaineth to all godly and Christian men to observe and keepe this Law; so to let all men know, that we are instructed by the worthy Professors of the Gospell of Christ, in the fundamentall Rules and grounds of this Law, to

live

live after it, and to direct all our words and actions according to it; and by it, and therefore I shall not say more of it.

The third the Lawes of men, and the municipall Lawes of this Realm, which although they may seeme to some to have their progeny from men; (for as *Solon* to the *Athenians*, *Lycurgus* to the *Lacedemonians*, *Numa Pompelius*, and *Actius Claudius* to the *Romans*, were accounted the Principall Authors and givers of Law to those severall Nations; so *Alured* on *Alfred*, *Athelstone*, *Edmundus*, *Edgar*, *Canutus*, *Edward* the Confessor, *William* the first, and *Henry* the first, called *Beauclark*, noble and famous Princes of this Nation, part of all whose Lawes are yet in force, were the chiefe promulgers of many necessary and good Lawes yet in use with us in this Realme) yet if we looke into their Laws we shall finde, that most of them have their rise from a higher power, from the Law of God, and the Law of Faith. It is

tru e,

Dan. Hist. in tit. *Wil.* Conq.

*Cicero* l. 1. *De legibus.*

true, that some Historiographers have written, that the originall of the Common Lawes now in use flowed first out of *Normandy*, I shall decline that as to the generality; but as *Cicero* was bold to derive the pedigree of his *Roman* Law from the great God *Jupiter*, so I hope without offence I may be emboldened in the person of our Common Law, to say, That when the Lawes of God, and Reason came first into *England*, then came I in.

*Bracton.* lib Serm.

The Temporall Lawes of this Kingdome may be divided into three parts. 1. The generall or Common Law. 2. The customary Law. 3. Statute or Parliament Lawes; the end of all which are, *Ut sopiantur jurgia & vitia propulsentur, & ut in regno conservetur pax & justitia.*

*Egerton,* Postant.

The Common Law is nothing else but pure and tryed Reason (*Responsa prudentum*) allowed and knowne containing the Principalls and Maximes of Law (consonant unto the Lawes of God) with a certaine method

method for the orderly proceeding therein; the rest consisting in the minds of the Sages of the Law, ready by Argument to approve what is truth, and under-propt with Authorities to condemne what is false.

The customary Laws are certaine ancient Customes grounded upon Reason, which abridge the course of the Common Law. The diversity of Customes have growne by reason of the severall Nations who have had government over this Kingdom; as 1. The *Britaines*. 2. The *Romans*. 3. The *Britaines* againe. 4. The *Saxons*. 5. The *Danes*, and lastly the *Normans*; all which sorts of people have left behind them within this Realme part of their Language, and part of their Country usages.

The Customes within the Realme are called by severall names: as

As { *Customes.*
*Prescriptions.*
*Usages.*
*By Lawes.* }

Customs

Customs extend properly to Countries, Cities, Boroughs, Towns Corporate, and large Signiories. 2. Prescriptions run with persons who have capacities to have Interests and properties. 3. Usages referre to Places or Townes not incotporate, as to Inhabitants and the like. 4. By-Lawes are properly made in Courts by the Tenants of the Mannor, or Precinct, or out of Courts, with a common consent for good order and Neighbourly usage. The efficient causes of good and lawfull Customes are, Reason and Time, the one begetting, the other bringing forth and continuing the same; in one place Master *Lit* saith, This is a good Custome, because it stands with some reason; in another, This is a void Custom because it is against reason.

*Lin. pl.* 209. 212.

3 The last is Statute or Parliament Lawes; Parliaments have been ancient, they were in the time of the *Saxons*, long before the *Norman* Conquest (for as the Proverb is) In the time of the *Danes*, the Lawes lay then in

in water, the people were governed rather by Princes wills then publike Lawes, for then (as one saith) *Sepultum fuit jus in regno, leges & consuetudines simul sopitæ, temporibus illorum prava voluntas vis & violentia magis regnabant, quam judicium in terra.*) And although in the *Saxons* time I finde the usuall words of the Acts then to have been: *Edictum, Constitutio*, little mention being made of the Commons, yet I further finde that, *Tum demum leges vim & vigorem habuerunt, cum fuerunt non modo institutæ sed firmatæ approbatione Communitatis.*

Our Author and others tell us, That the administration of Justice was onely originally in the Crown, and Kings in their own Persons rode Circuit every seven yeares through the Realme, to heare the Complaints of their People, and to redresse Publique grievances. But after the division of the Realme into Shires, publique Courts were erected; as the County Court, Sheriffes Turnes, Hundred

20. H. 7. 7. c. 12. part 86. *Bracton*, lib. 2. cap. 24.

Hundred Court, Court Leets, Viewes of Frankpledges, and Court Barons, for the conservation of the Kings Peace, and the hearing and determining of all differences, Debts, Contracts, &c. which might arise betwixt Party and Party; and all persons were sorted into Companies or Societies, wherein ten of the principall men called, *Capitales plegii*, or *Franchi plegii*, because they were Freemen, stood as Sureties for the residue, that they should stand to Justice, and not fly from it when they had committed any offence; The Law of Saint *Edward* is most excellent to that purpose in these words; *Est quedam summa & maxima securitas quæ omnes Statu firmissimo sustinentur, viz. Ut unusquisque stabiliat se sub fidejussionis securitate, (quod Angli vocant Friburber;) Hæc securitas hoc modo fiebat, quod de omnibus villis totius Regni sub fidejussione decemali debeant esse universi:* And to that purpose also is the Ordinance of King *Alured: Decrevit Aluredus ut liberæ conditionis quisque in*

*Legis Sancti Edwardi in Lambert.*

*in Centuriam ascriberetur aliquam atque in decenuirale conijceretur Collegium*, the difference only consisting in this, That King *Alureds* Law extended but to Freemen, Saint *Edwards* to all men.

This *Decenalis fidenissio*, or *Decenuirale Collegium*, by our Author is called the Decenery, who were charged to bring forth the Person of every offender to answer unto the Law; whereof Mr. *Bracton* speaketh in these words: *De eo autem qui fugam fecerit* (he speaketh of one after a Felony committed) *Diligenter erit inquirendum si fuerit in Franciplegio & decenna, & tunc erit decenna in misericordia coram Justiciariis quia non habent ipsum malefactorem ad rectum.* And according to that Law if a Felon after his flying, or conviction were possessed of Goods, the Towne or Decenary was answerable for the same. And if the same were imbesselled, or holden from them, the Decenery might seaze those goods in whose possession soever they were found; as

*Bracton*, lib. 3. cap. 10.

13. *H.* 4. 13. 6.

appeareth by 3. E. 3. Itin North, *Fitz Corone* 366. *quod vicecomes & Decennarii sesire possunt cattella felonum in manus Domini Regis; Et vic. cattella illa deliberabit ville ad respondend. Regi in itinere, quod si vic. nec Decinnarii sesierint villa respondebit dom. regi in itenere*, but this Law hath been since altered by the Statute of 3. *E.* 3.

I have Courteous Reader stood the longer upon these things, as well to vindicate the Common Lawes from those weak cavills of the ruder sort, as to demonstrate the care our ancient Kings and Counsells have had for the peaceable Government of the people of the Land, according to the right rules of Justice, deduced from the Law of Nature, of God, and of right Reason; and I wish that Princes in this age would consider and put in practice, that golden Rule of *Demosthenes*: *Benè gubernare, rectè judicare, justè facere*; so should their Kingdomes flourish, and they themselves be in high estimation

βουλεύειν καλῶς, κρίνειν ὀρθῶς, πράττειν δικαίως.

in

in the eyes of all their people.

In these distracted times, wherein the fundamentall Lawes, and Liberties of the Subject have been by a Malignant Party so much opposed, I have offered this Treatise, intitled, *The Mirrour of Justices*; I have translated the same out of the *French* Tongue into *English*: In this Booke many of those fundamentall Lawes so much of late called upon, are to be found (though I doe not warrant all in this Booke to be Law at this day; many of the Lawes being absolete, and altered by Acts of Parliaments and common usages) It hath been some difficulty for me to finish it: And although that the Manuscript Copy be in the Originall very imperfect: the *French* impression by misjoyning of words in many places without sence, and false Printed; the Termes of Law therein for the most part obsolete and worne out; yet have I endeavoured (as all Translators of Bookes, especially of Bookes of the Law ought) to

keep my selfe close to the words and meaning of the Authour, and of the Law then in use and practise, well knowing, that Lawes many times have their interpretation according to the strict Letter, and not according to such flourishes of Rhetorique and Oratory as may be put upon them.

I entreat thee, Courteous Reader, to accept of it as it is; if thou finde any Errours in the Translation (as I suppose thou maist doe many) to passe them over, or amend them: If thou finde any thing in the Worke it selfe which may advance the Common Lawes, or the Liberties of the Subject, or set forth the true Prerogative of Kings, to weigh them in the Balance of Justice: If thou finde any thing therein not fit to be published in these daies of distraction betwixt the King and people, Consider that this Worke was written in in the time of King *Edward* the first:

first: Consider againe, it is not mine, but the Authors; who for his Antiquity and Learning in the Lawes of the Realme then in use, hath found the favour and honour to be cited by many of the grave Sages of our Publique Laws; so I commend it to thy favourable acceptance, and bid thee farewell:

*Thy friend, who in his desires strives that the Common Laws of the Land may now and for ever flourish.*

W. H.

# The PREAMBLE.

WHen I perceived divers of those who should Governe the Law by Rules of Justice, to have a respect to their owne earthly profit, and chiefly to please Lords, and their friends, and to have a respect thereunto, and not to give their consents that the right Usages should be ever put in writing, whereby power might be taken from them to pervert Judgement, and others to banish or dis-inherite without

out punishment for the same; covering their offences by the exceptions of Errour and Ignorance, never or little regarding the Soules of Offenders condemned by their Judgments, as their duties and places required; having used to Judge the People according to their own heads by Abusions, and by the Examples of others erring in the Law, rather them by the Rules of the Holy Scripture, greatly to have erred from the true understanding thereof, building without any Foundation; and to Judge, and have Cognizance, and Jurisdiction in that which they little understood both in the Law of the Land, and of the Law of the Persons; as it is of those who take upon them, Art to pronounce false Judgements,

ments, and by their Executions falsly to pervert the Priviledges of the KING, and the ancient Roles of his Treasure. Taking the same into my serious consideration, and the Foundation and Originall of the Usages of *England* given by the Law, together with the Rewards of good Judges, and the punishments of others; I thought it needfull (wherein my Companions gave me their assistance) to study the Old and New Testament; and therein we found, That the Law is nothing else but Rules, delivered by our holy Predecessors in the Holy Scriptures, for the saving of Soules from perpetuall Damnation, notwithstanding that the same were disused by false Judges. And

we

we found that the Holy Scripture remained in the Old and New Testament.

The Old Testament contained 3. orders.
- The Law.
- The Prophets.
- The Hagiographies.

In the Law there are five Volumnes
- Genesis.
- Exodus.
- Leviticus.
- Numbers.
- Deuteronomy.

In the order of the Prophets are eight Volumnes.
- Josua.
- Judges.
- Samuel with the 1. and 2. of Kings.
- The 1. and 2. of Kings.
- Esay.
- Jeramy.
- Ezekiel.
- The Bookes of the 12. small Prophets.

In the order of Hagiographie are

- Job.
- The Psalmes.
- Proverbs of *Solomon*.
- Ecclesiastes.
- The Song of *Solomon*.
- Daniel.
- Paralipomenon.
- Esdras.
- Hester.

And besides these there are Bookes in the old Testament, although they are

Not authorized Canonicall.

- Tobie.
- Judeth.
- Maccabees.
- Ecclesiasticus.

The

The New Testament contain 3 Books.

The Evangelists.
The Apostles.
The holy Fathers.

The Evangelists contain 4 Volumnes.

The Epistles of St. *Paul*.
The Epistles of the Canon.
The Revelation.
The Acts of the Apostles.

The writings of the Apostles containe foure Volumnes.

Of the writings of the Fathers there is no certain matter agreed upon.

And we finde that our Lawes were agreeing to Scriptures, and that they were in a Language best known both for the help of us and the common people.

And

And for the condemning of falſe Judges, I compiled this little Book of the Law of Perſons, int o 5. Chapters, that is to ſay,

1 Of offences againſt the peace.
2 Of Actions.
3 Of Exceptions.
4 Of Judgements.
5 Of Abuſions.

Which Booke I have called *The Mirrour of Iuſtices*, according as I have found their vertues, and the moſt excellent ſubſtance after the time of King *Arthur*, uſed by holy uſages according to the Rules aforeſaid; and I deſire you that you would amend the defects therereof, according to ſuch lawfull and true warrants as you prove, both to learne the truth, and confound the daily abuſes of the Law.

## ERRATA.

FOl.4.l.18.for Iarrickshire,r.Everwickshire. f.5.l.12.r.after.f. 7.l.5.r.estray.f.10.l.11.r.thence.f.10.l.20.r.exigent.f.11.l.22 r.right heirs.f.12.l.8.r.that married before.f.13.l.5.ad they. ib.l.6.r.Bisenage.f.14.l.20.r.good.f.14.l.35.r.disseisins.f.16.l.27 r.Heresie.f.19.l.5.r.chinniage.f.25.l.5.r.offence. f.28. l. 18.r.not. f.30.l.11.r.duresse f.34.l.19.put out, to f.35.l.6. after appointed. ad time f.39.l.1.r.trove f.47.l.10.r.unknown.f.49.l.3.r.done.f 63 l.10.r.endictee.f.65.l.3.r Countors.f.66.l.12.put our (as)f.69.l.24 r.leisin.f.90.l.5.put out(the)f.76.l 9.r.contumacers.f.97.l.8.put out(the)f.93.l.14.r.disseisin.l.16.r. Darcein presentment. l.15.r. Mortdamicester f.99.l.1.promy.r. An.f.102.l.17.r.replegiary fa- cias.f.103.l.18.put out(of)f.105.after 100..f.r.five pounds.f.116 l 30.r.resummons.f.123.l.29.ad(in)f.126.l.3.r.felony.f.130.l.6.ad (not)f.152.l.28.29.r.disseisivit.f.154.l.8.r.waging.f.155.l.14.ad (not)f.156.33.r. Records. f.163.l.29.r. enjoyed.f.167.l.14.r. plaintiffs.f.167.l.26.put out(not).f.168.l.27.ad(be)f.176.l.23 r.plaint.f.178. l.14.r.remove.f.181.l.21.where the blank is,put (demeane)f.183.l.16.18.r. Law.f.190.l.10.r.pecuniar.f. 191 l 3.r.they.f.192.l.9.r. judgement. f.198.l.3.r. if.f. 201.l.30.r. contradict.f.208.l.11.r.by breach.f.209.l.21.r.or by.f.215.l.18 ad(say)f.217.l.9.put out(done)f.220.l.4.r.bought.f.225.l.28 r.payment of brasse.f.228.l.8.r. forcjudged.f.229.l.8.r.m. f.230 l.32 r.mortall.f.239.l.1. r.rarely. f.240.l.19.r.affist. f.243.l.17 r.had.f.256.l.33.r.grantiog.f.274.l.17.r.servants.f.288.l.18.r. tent.f.287.l.27 r.delivered.f.304.l.17.r.consideraverit.f.308.l. 3.r.villæ.ib.l.7.r.scienter.f.312.l.4.r. consuram. f.314.l.18.r. quærens.ibid.l.28.r.nervi.f.318..l.2.r.confessed.f.320.l.1.in the blank put the word(marke)f.322.l23 r. possessor. ibib.l.28.r. et per.l.of.r.quærens recaperit..f.325.l.12.r.bosci.ibid.l.7.r. disseivit.ibib.l.13.r.villæ.l.25.r.prefato.f.324.l.17.r.conduction ibid.l.13.r. impedit. ibid.r.plenarly.f.325.l.16.r. perlapidem: ibid.l.17.18.r.jurat.l.20.ad per.

# The Contents of the first Chapter.

# CHAP. I.

## SECT I.

## Of the Offences against the Peace.

### *Of the Originall of the Law.*

ALmighty God shewed more love to Man then to any other creature; when he made him after his own image and gave him understandiug; considering that he stood continually ready to fall into sinne by three manner of Adversaries, and therefore he gave the Law to force and drive sinners to salvation by earthly punishments; That for the pure love of God men would abstain from sinne, and thereof made *Moses* their Teacher, which place the Pope now holdeth.

That Law by Ordinance of our holy Predecessors is divided into two Volumes;

in the Cannon Law; which consisteth in the amendment of Spirituall offences; First, by Admonitions, Prayers, Reproofs, Excommunication; Secondly, into the written Law, which consisteth in the punishing of temporall Offences, by Summons, Attachments, and punishments or penalties.

Of the Spirituall Law, the Prelates judged; and lay Princes of the other Law: The Law whereof this summe is made, is the written Law of the ancient usages warranted by the holy Scripture. And because it is given to all in generall, it is called the Common Law. And because there was no other Law but that, were generall Councels and Parliaments in use, and that diversly in severall places, according to the qualities of the people of divers Countries, and Boroughs; they were according to ancient priviledges changed for the ease of the people of those places.

All our Usages and Laws are also layed for the keeping and exaltation of the peace of God; and therefore it is to be known, That the people are not to be adjudged by similitudes and examples not canonized, but by the love of Peace, of Chastity, of Temperance, of Charity, of Mercy, and of good Works.

CHAP.

## CHAP. 1.

### SECT. 2.

### *Of the coming of the English into this Realme.*

AFter that God brought down low the Nobility of the Brittons, who used more force then right, he delivered the Realm to the most humble and simple of all the countries adjoyning; that is to say, to the *Saxons*, who from the parts of *Almaine* became Conquerours thereof, of which Nation there were forty Soveraigns who were Companions. These Princes called this Land (*England*) which before was called Great Brittainie, or *Britania Major*. These Princes after great warrs, tribulations, and troubles, suffered for a long time, chose themselves one King to Raign over them, to governe Gods people, and to maintaine and defend their Persons and their goods in peace by Rules of Law. And at the beginning they made the King to sweare; That he should maintaine the Christian Faith with all his power, and governe his people by Law, without having regard to the Person of any one; and that he should be obedient to suffer Right as well as his other people should be.

And afterwards this Realme was divided in Inheritances according to the number

of those Companions who then remained in the Realme, into parts, by Shieres, and every one had a Shiere delivered unto him to keepe and defend against the enemies, according to every ones estate; That is to say.

| | |
|---|---|
| *Barkeshire* | *Gloucestershire* |
| *Bedfordshire* | *Cambridgeshire* |
| *Buckinghamshire* | *Hertfordshire* |
| *Cornwall* | *Herefordshire* |
| *Chestershire* | *Huntingtonshire* |
| *Cumberland* | *Kent* |
| *Dorset* | *London* |
| *Devonshire* | *Leicestershire* |
| *Darbyshire* | *Lancashire* |
| *Essex* | *Lincolnshire* |
| *Barrickshire* | *Middlesex* |
| *Yorkshire* | *Surrey* |
| *Norfolk* | *Southampton* |
| *Nottinghamshire* | *Somersetshire* |
| *Northumberland* | *Shropshire* |
| *Northamptonshire* | *Staffordshire* |
| *Oxfordshire* | *Wiltshire* |
| *Rutlandshire* | *Westmerland* |
| *Suffolk* | *Worcestershire.* |

And although that the King ought not to have any Peere in the Land; nevertheleſſe becauſe that the King of his owne wrong if he offend againſt any of his people, nor none of his Commiſſaries can be Judge and Party; It was behoveſull by the Law that he ſhould have Companions, to heare and determine of all Writs, and Plaints,

Plaints, of all wrongs, as well of the King, as of the Queene, and her Children; and of those especiall where one could not have otherwise Common Right: These Companions are now called Countees, Earles, according to the Latine *Comites*; and so at this day are those Shires called Counties, in Latine *Comitatus*; and that which is without these Counties, belongeth to the English by conquest.

Afer that time, these Companions, after the division of the Realme into Shires, divided their people which they found scattering about into Centuries, and to every Century they appointed a Centeyner, and according to the number of the Centuries spake every Shire; and to every Centeyner they assigned his part by Metes and Bounds, to keep and defend the same with his Century, so that they were ready to run to their Armes at all times when the enemies came, or other needfull occasion was. And these divisions in some places are called Hundreds, according to the number of the first people; and in some places Tythings, or Wapentakes, according to the English; (which is in French, taking of Armes) These divisions they made, whereby the Peace, which consisted in charity and true love, was kept and maintained.

## CHAP. I.
### SECT. 3.

### *Of the first Constitutions made by the ancient Kings.*

#### *Of King* Alfred.

FOr the Estate of the Realme, King *Alfred* caused the Earles to meet, and Ordained for a perpetuall usage, That twice in the yeere, or oftner, if need were, in time of Peace they should assemble together at *London*, to speake their mindes for the guiding of the people of God, how they should keepe themselves from offences, should live in quiet, and should have right done them by certaine usages, and sound judgements.

*King Ed.* I. By this Estate many Ordinances were made by many Kings, untill the time of the King that now is; the which Ordinances were abused, or not used by many, nor very currant, because they were not put into writing, and certainly published.

One of the Ordinances was; That every one should love his Creator with all his soule, and according to the points of the Christian Faith; And wrong, force, and every offence was forbidden.

And it was assented unto, that these things following should belong to Kings, and to the Right of Crown. *Soveraigne Jurisdiction.*

The

The Soveraigne Jurisdiction throughout the whole Land unto the middest of the Sea encompassing the whole Realme, as franchises, treasure found in the Land, Waife, Estiny, goods of Felons and Fugitives which should remaine out of any ones rights, Countries, Honours, Hundreds, Wards, Goales, Forrests, chiefe Cities, the chiefe Ports of the Sea, great Mannours; these Rights the first Kings [illegible] and of the residue of the Land they did infeoffe the Barles, Barons, Knights, Serjeants and others, to hold of the Kings by the services provided, and ordained for the defence of the Realme according to the Articles of the ancient Kings.

Also Coronors were ordained, in every Country, and Sheriffes to defend the Country, when the Counties were dismissed of their Guards, and Bailiffes in the places of Gemeyners. And the Sheriffes and Bayliffes gathered the Free-Tenants of their Bayliwicks to meet at the Counties and Hundreds, at which Justice was so done, that every one so judged his Neighbour by such judgement as a man could not elsewhere receive in the like cases, until such times as the customes of the Realme were put in writing, and certainly established.

And although a Free-man commonly was not to serve without his assent, nevertheless it was assented unto that Free-Tenants should meet together in the Counties, Hundreds, and the Lord

Courts, if they were not especially exempted to doe such Suits, and there judged their Neighbours.

And that Right should be done from 15. daies to 15. daies before the King and his Judges, and from month to month in the Counties, if the largenesse of the Counties required not a longer time; and that every three weekes Right should be administred in other Courts; And that every Free-Tenant was bound to doe [illegible] suite; And every Free-Tenant had ordinary jurisdiction: And that from day to day the Right should be hastened of Strangers, as in Courts of Pipowders according to the Law-Merchant.

The Turnes of Sheriffes and views of Free-pledges were Ordained; and it was Ordained, That none of the age of 14. yeeres or above, was to remaine in the Realme above forty daies, if they were not first sworne to the King by an Oath of Fealty, and received into a Decenery.

It was Ordained; That every Plaintiffe have a remediall Writ to his Sheriffes, or to the Lord of the Fee in this forme. *Questus est nobis C. quod O. &c. Et ideo tibi (vices nostras in hoc parte committentes) præcipimus quod causam illam audias & legitimo fine decidas.*

It was Ordained; That every one have a remediall Writ from the Kings Chancery, according to his plaint without difficulty, and that every one have the Processe from the day of his plaint without the seale

seale of the Judge, or of ths Partie.

It was Ordained; That Coroners should receive Appeales of Felony, and should give the Judgements of Our-lawries, and should make the visnes in the Causes aforesaid; And that all the next Townes should present to the Coroners in the Countie the mischances of the bodies of the people, and the names of the finders.

And that every Country should present Felonies, Mischances, and other Articles presentable in the Eyres for offences, that the Kings might send to summon them to appear against the comming of the Kings, or of the Justices assigned to hold all Pleas.

And for the great dammages which the Commons suffer by Amercements issuing out for Concealements, and for fault of these presentments in Eyres it was agreed unto; That these presentments in Eyres should be by the Coroners chosen by all the Commons of the County, and so the Coroners are as it were the Commons Bayliffes as to these Charges: nevertheleſſe they are the Kings ministers, because they take an Oath to him. For personall trespasses, nevertheleſſe the Coroners are only punishable without any damage to those who chose them, unleſſe they have not sufficient wherewith to satisfie for their trespasses.

The Exchequer was Ordained in manner as followeth; and the pecuniary penalties of Earldomes, and Baronies certaine, and

also

also of all Earldomes and Baronies entire, or dismembred; and that those Amercements were afferred by the Barons of the Exchequer, and that the Estreats of the Amercements be sent into the Exchequer though they were amerced in the Kings Court.

It was Ordained; That after a plaint of wrong be sued, that no other have jurisdiction in the same place, before the first plaint be determined; and from these came this clause in the Writ of Right, *Et nisi feceris vicecomes faciat.*

It was Ordained; That every one of the age of fourteene yeares and above should be ready to kill mortall offenders in their notorious sinnes, or to follow them from Towne to Towne with Hue and Cry; and if they could not kill them, the offenders to be put in exegent, and Out-lawed or banished.

And that none should be Out-lawed but for a mortall offence, and in no other County but where he committed the offence.

It was Ordained; That the Kings Courts should be open to all Plaints, by which they had originall Writs without delay, as well against the King or the Queene as against any other of the people for every injury but in case of life, where the plaint held without Writ.

It was Ordained; That no King of this Realme should change his money, nor impaire it, nor inhaunse it, nor make any other

other imoney but of Silver, without the assent of the Lords and all the Commons.

It was Ordained; That Felonies should be tryed by Appeales, and that Appeales might sometimes be ended by Barraite, and that Exigents of the Offanders should continue by three County Courts before the Our-lawrie.

It was Ordained; That all Free-Tenants should be obedient, and appeare at the Summons of the Lords of the Fee, and if one caused a man to be summoned elsewhere then in the Fees of the Avowants, or ofner then from Court to Court, that they were not bound to obey such summons, if not at the charges of the Avowants of the Summons.

It was Ordained; That Knights Fees should come to the eldest Sonne by succession of Inheritance, and that Socage Lands should be partable amongst the Heires rights, and that none might alien but the fourth part of his Inheritance without the consent of his Heire, and that none might alien his Lands by Purchase from his Heires, if Assignes were not specified in the Deeds.

It was Ordained; That every one might endow his Wife *Ad ostium Ecclesiæ*, or of the Monastery without the consent of his Heires; that Heire Females, nor Widowes should not Marry themselves without the assent of their Lords, because the Lords were not bound to take the Homages from their Enemies, or other

unknown

unknowne Persons, and the same is forbidden upon paine of Forfeitures, whether their Parents were consenting thereunto or not; and that Widowes in case they Marry without the consent of the Guardians of the Lands should lose their Dowries; That those also should be disinherited or lose their Dowries before that they Married; Widowes nevertheless this should not forfeit their Inheritance for whoredome, and that the eldest Son should forfeit nothing to the prejudice of his Ancestour, nor his Heires living the Ancestour whose Heire apparant he is.

It was Ordained, That the Lords of Fees might Summon their Tenants by the award of their Peeres into the Lords Courts or into his Counties, or the Hundred at all times that they detaine or deny to doe their services in Deed, or in Word, *Et è contra*, that is to say; The Lords against the Tenants, and there they shall be acquitted or forfeit their Alegiance with the appurtenances by the judgement of the Suiters, and all their Tenancy; and the Tortious or outragious Lords shall lose their Fees and the Services, and the Tenements shall goe to the chief Lords of the Fee.

It was forbidden, that none be destreyned by his moveable goods, but by their bodies, or by their Fees, except in speciall Cases after mentioned.

It was Ordained that Infants should be in Ward, with their Lands and Goods, and

and that the Guardians should answer for Trespasses done by their Wards, and give satisfaction to those who were damaged; except of Felonies; and that their Marriages should be to the Lords, and that should have Estruage Reliefe and Aydes of their Tenants which they held of the Lords, as to make the Heire of the Lord Knight, and to Marry their eldest Daughters, and that the Heires males should doe homage to their Lords, and the Females should sweare fealty: and that the Inheritance should discend to all the Children by warrant of right of the possession, and that the male should barre the female, and the next the more remote by warrant of right of propriety.

It was Ordained; That offenders guilty of death should not be suffered to remaine amongst the guiltlesse, and that the King should have the value of the Lands and the rent for one yeere, and the wast of Felons Lands; and also that he should have all *Deodand*; and that the Goods and Chattels, of Usurers should remaine as Escheates to the Lords of the Fees.

Essoines were Ordained in mixt and reall Actions, and not in personall Actions, as after is said.

It was forbidden that any one should alien the profits of his Lands, or his Rents to any one out of the Realme; and it was also forbidden, that none sold Wine in the Kingdome but by Tonnell or Pipe.

It

It was forbid that no money was to be carried out of the Realme; and that none should carry Wooll out of the Kingdom, nor should kill Lamb, or Calf which might live, nor Oxe which was not gelt:

It was forbidden; That no Bishop doe ordaine Lay-men to the Order of Clerkes above the number which are sufficient to serve the Churches, whereby the Kings Jurisdiction be destroyed: It was Ordained, That the poore should be sustained by Parsons, Rectors of the Church, and by the Parishioners, so that none of them dye for want of sustenance.

It was Ordained, That Faires and Markets should be in places, and that the buiers of Corne and Cattell should pay Tole to the Lords Bayliffes of Markets or Faires; That is to say, a false penny of six shillings of good, and of lesse, lesse, and of more, more; so that no Tole exceed a penny for one manner of Merchandize: and this Tole was given to testifie the Contracts, for that every private Contract was forbidden.

It was Ordained; That no action was receiveable to Judgement, if there was not a present proofe by Witnesses or other things; and that none was bound to Answer to any Suite, nor to appeare to any Action in the Kings Courts before the Kings Justices, before they found Sureties to Answer damages, and the costs of Suite if damages lay in the Case, except in foure offences; Dissersius, Cittification of Dissersius,

sersius, Attaints, Redisseisius and other Cases. To which Ordinance King *Henry* the first put this mittigation in favour of poore Plaintiffes, that those who had not sufficient Sureties present, should make satisfaction according to their ability, according to a reasonable taxation; and in the same manner in Summances, and in hatred of Perjury Attaints were Ordained in all Actions.

It was forbidden; That no Merchant Alien should repaire into *England* but at foure Fayres, and that none such should remaine in the Realm above forty daies.

Of the Curtesie of King *Henry* the first; It was granted; That all those who survived their Wives who were with childe by them, should hold their Wives Inheritance for ever.

Many other Ordinances were made by them, and since have been made in aide of the Peace, according as afterwards shall be said.

## CHAP. I.

### SECT. 4.

*Of Offences, and the Division of them.*

THe division of Offences is according to that which appeareth by the punishment. Mortall, or Veniall.

The mortall Offences are these:

Of { *Majesty, Burning, Burglary. Falsifying, Larceny, Homicide, Treason,*

Of

*Of the Offence of Majesty.*

The Crime of Majesty is an horrible offence done against the King; and that is either against the King of Heaven, or an earthly King.

Against the King of Heaven in three manners. *Heresie, Venery, Sodomy.*

Against the earthly King in 3. manners.

1 By these who kill the King, or compasse so to doe.

2 By those who dis-inherite the King of his Realm, by bringing in an Army, or compasse so to doe.

3 By those Adulterours who ravish the Kings Wife, the Kings lawfull eldest Daughter before she be married, being in the Kings custody; or the Nurse, or the Kings Ant, heire to the King.

Heresie is an evill and false belief, arising out of Error of the true Christian Faith; under this offence is Witchcraft or Divination, which are members of Heresie, and in case lesse notorious they come by presumptions of ill workes, which are by evill Art, arising from an ill beleife; and sometimes of a firmer beleif they doe wonders, and sometime they come by open confessions of Error.

So Ereſie is an Art to Divine.

Divination properly is taken in the ill sence, as Prophesie is taken in a good sence.

Divination used to be in many kinds, whereof one manner of Divination was through an ill beliefe, by the which the Witch caused *Samuel* to rise, who warned *Saul* of his death. Another

Another kind is Piromancy, which is done by fire.

Another is Areomancy, which used to be done by signes in the Ayre.

Another is Hydromancy, which is done by signes in the water.

Another is Geomancy, which is done by signes in the land.

Another is Negromancy, which is done by death, by making the dead to speake.

Another is South-saying, which was done by signes in the entrailes and bowels of Birds.

On the other part, some Diviners used to put trust in Lots, some in Songs, some in Verses of Psalmes; some in carrying Gospel and Charmes about their necks; some in Enchantments and Spels; some in signes in the entrailes of beasts, and in the palmes of the hands.

Some were called Mathematitions, and *Magij*, and Divined by the Starres.

Others were called *Arioles*, who tooke their answers from the Divell by evill men.

Others South-sayers, who numbred nights and daies, and houres whereby they ordered their businesse. There were many other kinds, all which manner of Divinersare to be by the Word of God himself, and authority of the Church to be excommunicated, and fobidden as much as Mahometry, and things against the true Faith. And this S. *Augustine* proves by many Reasons; & hence it is, that they who travell to Witches or Diviners to know things to

give that to the creatures which belongeth to God alone. Wherefore these wicked doers are to be removed from the society of Gods holy people, so that no good Christian be taken with their Art, nor partner in their sins.

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## CHAP. I.
### SECT. 5.

THe Crime of Majesty, or offence against the King is neighbour to many other offences; For all those who commit Perjury, whereby every one lyeth against the King falleth into this offence. As the Kings Ministers who are sworn to doe Justice, and forswear themselves in any thing, so those who disseise the King of any of his Franchises, or of any manner of Right which belongeth to the Crowne by Occupations, or Purpestures, or in any other manner although it be no mortall offence.

Into Perjury fall all those Subjects of the King who appropriate to themselves Jurisdictions over the King, and of themselves make Judges, Sheriffes, Coronours, and other Officers to have Counsance of Law.

Into Perjury against the King fall all the Kings Subjects who appropriate to themselves Jurisdictions of Counties, Honours, Socknes, *Retorna brevium*, or any thing which may fall to his Inheritance; as Wards, Escheates, Reliefs, Suits, Services,

or

or Marriages, Faires, Markets, Infang thef. Our Fangthef, Waife, Estray, Treasure found in the ground, Warren in their owne lands, or in the lands of others, Tole, Pavage, Pontage, Chimmage, Murage, Carriage, or other the like Customes.

Into Perjury against the King fall those the Kings Subjects who take Abjurations of Felons, and Fugitives, and are no Coroners, nor waranted by the King so to doe; and those who put out any Indicted, or Appealed of any Crime out of the Roll of the Coronours; and those Coroners who oftner then once receive Appeales of Aprovers, or procure that a man who is innocent be appealed by an Approver. And those who have detained Appeales of Approvers of forraign Acts, or whereby any forraigner is Appealed. And those Coronours who wittingly suffer the goods and chattels of Fugitives to be lesse valued then they ought to be of rights. Or conceale them in part or in all, or detaine them to their owne uses, to the damage of the King; or deliver them elsewhere then to the Townes; or for lucre have taken more then they should in damage of the Townes; Or suffered their Servants to have the garments, or other things which are to be seized for the Kings use, or the garments of the dead, or delay to doe their office through covetousnesse.

Into Perjury against the King fall those Officers who pardon Fines and Amerce-

ments which belong to the King, or any manner of penalty either corporall or pecuniary without speciall warrant. And those Officers who by Summons and Adjournments make the people to travaile in vaine, as to Goale deliveries, Assizes, Enquests, or otherwise; and all those Subjects who beare Armes against the King, or run away from his lawfull Army or Battaile; And those Ministers who unlawfully stop, or counsell the people that they goe not into War with the King, or that they are not bound to goe, where they have reasonable summons; and that the people be not made Knights but according to the Statutes of the Realme.

Into Perjury against the King fall all those the Kings Subjects, who hold Plea of Withernam, and have not returne of Writs, or hold Pleas of Distresses, or of any other thing which belongeth to the Kings Jurisdiction only, without the Kings speciall Commission; or hold Plea in case of life, of imprisonment, of blood-shed, of false Judgements, or of any thing disavowable of right without the Kings Writ, or Commission.

And all those the Kings Ministers who maintaine false Actions, false Appeales, or false defences.

Into Perjury against the King fall those Ministers who deny to Plaintiffes originall Writs possessory, Attaints, or of Formedon; or otherwise doe delay their Rights; and those who wrongfully doe delay, or disturbe

sturbe right Judgements, and those who wrongfully favour wrongfull Judgements; and all those who use their Priviledges or Liberties wrongfully, or too largely, contrary to their knowledge.

Into Perjury against the King fall those Ministers who receive Fines to other uses then to the Kings use for Treasure trove, for Wreck, Waise, Estray, Alliens for blood-shed, or imprisonment, Withernam, Redditsesin, or Disseisin; or forsweare themselves to resist, that a lawfull Judgement have not execution; for Usury, perpresture upon the King, or for any other thing whereof the Counsance doth belong to the King.

And those Receivers who pay not the Kings debts as they ought to doe, and are enjoyned, or render to him part for satisfaction of the whole, and doe not pay the King the rest.

Into Perjury against the King fall those who Charge the King wrongfully. And those who spend the Kings Quarries, Timber, or other things otherwise then in the Kings Service without sufficient warrant.

Into Perjury against the King fall Escheators, who make waste of the Kings Wards, or in his Fees, or unlawfully take Venison, Fish, or other goods; and by their authority seise the goods of the dead, and for gaine release them, or endow Widowes to the Kings losse; or make hurtfull extents for the King acompting for lesse then

the very value to the King; Or willingly suffer possessions to remaine in Mortmaine which ought to be seized into the Kings hands, and whereof the King ought to have the profit, or which receive more of their Bailiwickes then they answer to the King, or who wittingly suffer Feoffements of Lands, or of Advowsons of Churches prejudiciall to the King, or who suffer them to alien Wards or Marriages, to the Kings prejudice, or suffer the ages of infants to be proved in damage, or to the Kings prejudice take Fines for Wards, or Marriages without Writ, or deceive any one by colour of their Office, or leavy money upon any upon his owne proper Amercement.

Into Perjury against the King fall Sherriffes, who too high charge the People, by a surcharge upon the people of Horses, or of Doggs, and who leavy Fines or Amercements for escapes of Prisoners, or for anything against Law before the escapes be adjudged by the Justices in Eyre, and who increase or diminish Fines, or Amercements beyond the Wills of the Assessors or Jurours, and those Officers who conceal people deliverable to prison, and doe not bring them to Judgement.

Into Perjury fall all those Officers who are reproveable for the sufferance, negligence, or consent to the alienation of the franchises, or of the right of the King wrongfully, or to the occupying, or withholding of them.

And all those who elsewhere change old money

money which is forbidden for new, then at the Kings change.

## CHAP. I.

### Sect. 6.

### *Of Falsifying.*

FAlsifying is done in two manners; by falsifying the Kings Seal, & his Mony.

His Seal may be falsifyed in many manners. It is alwaies falsifyed when a Writ is sealed, whereof the ingrossing, and the matter, or the forme is not justifiable by the King, nor by the Law, nor by the lawfull Customes of the Realme, which is not to be intended of every Writ abatable.

It is falsifyed if a man seale therewith after that the Chancellour, or other Keeper thereof hath lost his Warrant, either by death, or in any other manner.

It is falsifyed when a Writ, or a Patent passeth against the Kings forbidding. It is falsifyed by those who seale by ill Art, or by Warrants not justifiable, and it is falsifyed by those who seale and have not authority to seale.

*Of falsifying the Money.* The Money was Ordained round and quarterable, and use so to be made that the outward circle was apparant through the whole, otherwise it was not to be received; and that the 1. l, was of 12. ounces of fine Silver, and it was

assented unto that the King should have 6d. for the sealing of every Writ; and for the coynage of every pound of money 12.d. and no more of monies currant in the Realme.

The money is falsifyed by him who by evill covetousnesse maketh it not justifiable; and it is falsifyed by those who make it, and have not authority or warrant so to doe; It is also falsifyed by those who for evill gaine put more alay in it then of right there ought to be. And it is falsifyed by all those who make it without the Kings coynage. And it is also falsifyed by all those who by ill Art counterfeit it, and by those who clip or wash it for ill gaine.

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## CHAP. I.

### SECT. 7.

### *Of Treason.*

TReason is not done but betwixt Alies, who may be by Blood, Affinity, and Homage, Oath, and Service. By blood, as if one of Parentage doe any thing to another of his blood which is the cause of his death, or dis-inheriison, or to losse of homage; for the quality of Treason is the taking away of life or member, or decrease of earthly Honour, or the increase of villanous shame. And in the same manner is this offence betwixt Affine, as betwixt Sisters, Sonnes in Law and Parents; for as cosinage is a line of

divers

divers pereeners discending of the same Stock, and drawne from carnall Copulation. In like manner Affinity is a neernesse of Persons discending from carnall copulation where there is no blood; and as this Office is done betwixt Affines, and Cousens, so it is also betwixt Allies.

Alliance is sometimes by { *Service*, *Homage*, and *Oathes*.

Which happeneth sometimes by reason of Fealty issuing from the service of the Fee; sometimes issuing from the Oath of Service of the body, and as one of the Allies, Parents, or Affines commit this offence against the other, in the same manner may they doe against them.

By Service, as if one who I have rewarded, to doe me Fealty, and he seized in demeane of a Mannour or other gift, or service, or Courtesie, falsifie my Seale, or ravish my Daughter, or my Wife, or the Nurse, or the Ant of my Heire, or doth any thing which is the cause of my death by a Felonious compassing the same, or to the great dishonour or damage of my body, or of my goods, or discovereth my Counsell, or my Confession, which he is charged to conceale.

And by reward is meant, Fee Possession, Robe, Church, Rent, or other gift; and meat and drinke during the service.

And as such a one may commit Treason against me, who taketh from me so much that he is seized, in the same manner I may offend

offend against him; by such Action or demand he shall have against me, as I may have against him.

## CHAP. I.
### SECT. 8.
### *Of Burners.*

BUrners are those who burne a City, Towne, House, Men, Beasts, or other Chattels, Felloniously, in time of peace for hatred or revenge. And if any one put a man into the fire, whereby he is burnt or blemished by the fire, although he be not killed with the fire, nevertheleſſe it is an offence for which he shall dye. Under this offence sometimes fall those who threaten burning.

## CHAP. I.
### SECT. 9.
### *Of Man-slaughter.*

MAn-slaughter is the killing of a man by a man; for if it be done by a beast, or by mischance it is not Man-slaughter.

This offence is two waies; either by the Tongue, or by the Act.

By the Tongue three waies; by Counsell, Commandement, or Deniall.

By

By Counsell, as he who counselleth another to kill; and so also is it by Commandment.

By Deniall; as he who denieth sustenance to a man.

By Act many waies; sometimes by Striking, by Poisoning, by Necessity, by Will.

By striking, as it afterward appeareth in the Appeales.

By poison or venoming; as by secret felony, and fained friendship giving poison to another to eate, or poisoneth or envenomed any thing, whereby a man is presently or in time killed. Or by Imprisonment; as he who keepeth the body of a man in prison by colour of Law, till he dyeth. By Chance; as by casting, or drawing of a Vessell, or other thing, and some one is killed by mischance; or by the falling of a Tree, and other the like cases. But you must distinguish where the killing is justifiable by Law, for there it is no offence; and when he doth not that which he ought to doe, and the party useth all the diligence which he may, crying out, and defending himselfe, for then he doth not greatly offend; but he who doth not so doe, he offendeth mortally.

By necessity; wherein you ought to distinguish whether the necessity be avoidable or not, and if it be avoidable, it is a mortall offence.

By Will, and that may be either of himselfe, or of some other person.

Of

Of himselfe; as in case when people hang themselves or hurt themselves; or otherwise kill themselves of their owne felony.

Of others; as by beating, famine, or other punishment; in like cases, all are Man-slayers. Also this offence is done willingly; as by those who paine men so much as ought not, or not so much as they ought, he offendeth morally. But it may be alleadged; that by reason of the paine the dead doth falsly confesse the Felony; and sometimes by the Reward of the Coroners or Justices are destroyed; and as it is of those who cast and leave Children and others who cannot goe in Deserts; or in such places and returne not to them though they doe now dye in the Deserts, God succouring them. And also false Jurours, and Witnesses are Men-slayers, and those who appeale others, or scande ously Indict them, or in other manner falsly accuse them.

And also they fall under this offence who Imprison the people in such places, or put them to such punishment, where it may be found by Enquest that by those meanes places or punishments they came sooner to their death.

Three wales was God himselfe killed; for Tongues killed him indeed, with the other who Crucified him, or procured him so to be; By the Tongue *Pilat* killed him, who Commanded him to be killed; By Will, the false witnesses, and all

all those who consented thereunto killed him; And hence it is that the Evangelists differ of the houre of his death, in setting forth his Passions.

This offence doth containe many branches:

viz. { *Imprisonment,*
*Mayheim,*
*Wounding,*
*Battery,*
*False Witnesses.*

Imprisonment is the wrongfull detaining of a mans body, and that may be in two manners; either in a common Prison of the King; or in a private Prison which is forbidden.

In a common Prison none ought to be put, if he be not attainted of an offence which requireth death; or especially appealed, or indicted, and by Judgement of a false and wrongfull Imprisonment.

A private Prison is 1. sometimes rightfull and justifiable; 2. wrongfull.

The same is lawfull and justifiable, when a man who is Baileable, is taken and put in custody till he hath found Baile to doe that which he ought.

People are in Custody in divers manners; In one manner by the warrant of Law, as it is of Enfants within age, Women in the Custody of their Husbands; men of Religion in the Custody of the Abbots; or other Soveraignes of their houses; and Villaines in the Custody of their Lords.

In

In another manner people are in Custody by Common assent, as it is of Idiots of people wasters of their estates, of mad-men, and of those who are drawne to follow infamous though pardonable offences, who are to be in Custody in such Cases.

Into the offence of Man-slaughter fall all those by whom a man dyeth in Prison; and that may be either by the Judge, who delayeth to doe Justice, or by durenesse of the Keepers, or by other unjustifiable occasion.

Into this offence fall all those through whose defaulr people dye, being forsaken of those who are bound to sustaine them.

And those who kill a man imprisoned, by a surcharge of paine, in case when any is adjudged to penance.

And all those who unjustly adjudge a man to death; and those who assent thereunto, and false Witnesses who falsly testifie a mortall offence against an innocent man.

Into this offence fall all Jurours, and false Phisitions, and maintainers of killing, and those who beate or wound a man, so so that he is farre from living, and nearer to his death.

Mayhem is the want of member, or the enseebling of it by breaking, or cutting the bones of a man, whereby he is lesse able to combare.

And *Turgis* saith; That the losse of the fore-

fore-teeth is Mayhem, and of the turning of the mouth, and of the little finger, and of the right joynt; and the taking away the toes of the feet is Mayhem, and the more reason where more losse appeareth.

*And Sennall* said; That the losse of the eyes is Mayhem, if nature have not taken them away; but the losse of the middle Teeth, or of the Nose, or the Eares is not Mayhem, although the body are thereby reviled or dishonoured.

And *Billing* saith; That Rasure by turning the bones of the Head, or of the Scull of the Head backwards is Mayhem, and also of other bones.

A wound is cause of death made by cutting of the hand, or the arme feloniously, which is shewed by the length, breadth, or depth; for the cutting of a stone, or of a staffe seldome becometh a wounding but a bruising.

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## CHAP. I.
### SECT. 10.

### *Of Larcines.*

LArcine is the treacherously taking away from another moveables Corporeall, against the will of him to whom they doe belong, by evill getting of the Possession, or the use of them. It is said a taking, for bailing, or delivery is not in the Case; It is said of moveables Corporiall, because of goods not moveables, or not Corporiall;

as of Land, Rent, Advowsons of Churches there can be no Larcine. It is said; Treacherously, because that if the taker of them away conceive the goods to be his owne, and that he may well take them, in such Case it is no offence. Nor in case where one conceives that it pleaseth the owner of the goods that he take them, but thereof there ought to be apparant presumption and evidence. There be two parts of Larcine.

One which is done openly in the day by Robbery. The other which is done in the night, or in the twilight.

Robery is done sometimes.

By
1. *Theeves.*
2. *Tortious Distresses of Bayliffes and other, who wrongfully extort from the people.*
3. *Extruders and Disseisors who with force openly take the goods of others as before is said.*
4. *By others, who run away with other mens Wives, or Wards, and their goods.*

Into this offence fall all such who take the goods of others by Authority of the King, or of other great Lords, without the consent of those whose goods they are.

Larcine is committed sometimes by open Theeves, sometimes by Treacherous; as it is in divers kinds of Marchandizes, and as it is of Labourers who steale their labours; and as it is of Bailiffes, Receivers, and Administrators of others goods, who steale

steale them in not giving their Accompts.

Into this offence fall all those who steale Purses or Cloke-baggs, or doe any other Larcine by encrease or covetousnesse of themselves, and all their favourers.

Into this offence fall all those who suffer Theeves to passe when they may arrest them; those also who may take or hinder them, or warne them of malice and doe not; & those who conceal them for love of Theef-boote; or other reward, or wittingly receive their Larcine, or their persons.

Into this offence fall all those who steale by false measures, and false weights, or in any other manner of treachery by colour of Merchandise, and those who wittingly suffer them where they may hinder them.

Into this offence fall those who wrongfully amerce the people with outragious Amercements, or outragiously afferre Amercements, or wrongfully condemne their Neighbours either in damages, or penalties; and those who wrongfully detaine treasure found, Wreck, Waise, or Estray which belongeth to the King; and those who otherwise finde them and doe not restore them when they may, and know to whom they doe belong.

Into this offence fall all those who take wrongfull or outragious Tole in Markets, Cities, Boroughs, Townes, Mills, or elsewhere; and those who take pavage, murage, chinniage, carriage, or other manner of Customes more then they ought to doe.

Into this offence fall those Bailiffes who

doe enquire in Turnes and viewes of Franck-pledges of more Articles then of personall offences, & of wrongs done to the King and his Crown, and of wrongs done to the common people, & those who by extortion take monies or Fines for Beaupleader, or for which the Jurours are not charged; and those who amerce any of their owne heads without reasonable affirment of the people sworne thereunto.

Into this offence fall those who unjustly distraine, and those who sell distresses for the Kings debt within the 15. daies.

Into this offence fall all those Officers of the Exchequer, and others who forbid to make Acquittances under the Exchequer Seale, to every one for so much as he hath paid, and who ofner then once cause a debt to be leavied; who to take Rewards, whereby the Townes doe not in due manner according to the Constitution of Winchester, or who suffer that the people be not furnished with Armes, according to Common appointment.

Into this offence fall all stealers of others Venison, and of Fish in Ponds, and of Conies, Hares, Pheasants, Partriges being in Warrens, & other fowl, Doves and Swanes, of the Eires of all manner of birds.

Into this offence fall all the Sheriffs, Bailiffes, and other the Kings Officers, who unjustifiable by extortions take money of the people, as for defaults unjustifiable, or for sheaves or other Custome unalowable, or for Plea whereof the Judge hath

no jurisdiction; and those who take mony to put men out of Pannells of Juries, and put others in.

Into this offence fall all those who take Lands, Tenements, Horses, or other things, and use them beyond the appointed for the loane of them; and those who by the authority of their Bailiffes make unjustifiable Collections for monies, or other provisions, or Corne in Sheaves for Scottalls, or other Feastivalls, or doe to the people other unlawfull grievance in the like case. And those sworn Officers who cause Fines, or Amercements, or other manner of duty to be oftentimes leavied upon one man, without making restitution; and those officers who take of other then of the King, or of their Lords, to doe their Office; and those who oftner then twice in the yeere hold Sheriffes Turnes, or who oftner then once in the yeere hold views of Frankpledges in one Court; and those who by unjustifiable Articles amerce the people; and those who at Mills or Markets take outragious Tole, and those who amerce the people by Presentments not made by the whole Decenry, or by others then of Free-men.

Into this offence fall they who doe any thing upon another Inheritance by evill covetousnesse, or for hatred.

Into this offence fall Counters who take outragious Sallary, or not deserved, or who are attainted of all defence, or of other discontinuance, and those who deny their

Seales in Judgement, and those who make Contracts which are forbidden.

Into this offence fall Usurers, who lend mony or other things, through covetousnesse to take the forfeiture. And those who rob, or steale the Marriages of others, or run away with others Wives, or villaines with the goods of others.

And all Fore-stallers, by whom Victuals or Cattell ate made deare.

They are Fore-stallers who within any Towne or Franchise buy to engrosse, and unlawfully to sell more deare; and those Butchers who sell unwholsome flesh for wholsome; and those Fish-mongers who buy and sell against the established Law; and all those of what Mysteries soever they be, who doe deceitfully in their trade or Mysteries.

## CHAP. I.

### SECT. II.

### *Of Hamsockne, or Burglary.*

BUrglary by an ancient Ordinance is a mortall offence; for the Law is, That every one be at peace in his owne house.

This offence is not done only by breaking of a house, but is also done by a fellonious assault of Enemies in time of peace, upon those who are in their houses with intent to repose there in peace; whether the assault be to kill, or to rob, or to beat those who are in rest within their houses. And although it be that these offenders doe not accomplish their purpose, if nevertheless they

they make any breaking by their assault of the doores, windowes, or walkes, to enter felloneously, they are guilty of this crime.

Into this offence fall all those who felloniously force their entry into anothers house, and therein doe any violence against the peace, although they doe not break the house, and that as well in the day time as the night; and those who disseise the people in such case, or cast them out of their houses, and out of their peaceable possessions wrongfully.

## CHAP. I.

### SECT. 12.

RAPe is done two waies, that is to say, of things, and of Women. This offence is here put because King E. 1. by his Statute made it mortall, which is more grounded upon the will, then upon discretion; for one sort is Whoredome, another Fornication, another Adultery, another Incest, and another Rape; but to speake properly we are to distinguish of the offences, whereof the first offence is greater then the other.

Whoredome is the deflouring of a married woman felloniously.

Fornication is to ravish women not Married.

Adultery is to ravish anothers wife.

Incest is to ravish Cousens, Parents, or Affines.

Rape is properly the taking away of a woman for the desire of Marriage.

Rape nevertheleſſe according to the meaning of the Statute is taken for one proper word, given for every enforcement of a woman, of what condition ſoever ſhe be.

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## CHAP. I.

### SECT. 13.

### *Of the Office of the Coroners.*

TO Coroners anciently were enjoyned the keeping of the Pleas of the Crown, which extend now but to Fellonies and Adventures.

There are 2 kinds of Coroners { *Generall* and *Speciall*

To the Office of generall Coroners it belongeth to receive the Appeales of all the County of Fellonies done within the yeere; to award the Exigents of Contempts, and to pronounce the Judgements of Out-lawries; and more, to enquire in what Pledge they were, or Decenery, or of whom Mainprized, and in whoſe Ward.

Speciall Coroners are Coroners of Liberties, and of priviledged places.

To the Office of the one and the other it doth belong, to view the Carcaſes of the dead by Felony, or by miſchance; or to ſee the burnings, and the wounds, and the other fellonies, that is to ſay, every one in his

his Bailiwick; and to see Treasure torne, and Wreaks of the sea, and to take the acknowledgements of Felony, and to give the Abjuration to flyers to sanctuary, and to take the Enquests of Felonies hapning within their Bailiwicks.

As to the view of the Carcase of the body of a man, it is his office that so soone as he shall be certified thereof, to send to the Hundred of the place to summon sufficient able men of the next Townes, that at a short day certainly named, they be before him at such a place, all which done the Carcase is to be viewed; and if he finde it there buried, that it be taken up, and to the Coroner it belongeth to Record the names of them who buried him; and if it hath been decreased or endamaged by ill keeping, or laine so long that it cannot be judged how it came by its death, that the same also be Recorded, that this negligence be punished at the comming of the King, or his Justices in Eyre into those parts; and if the Coroner, with the advice of the people present be able to judge of the death, then they are to present the manner of his killing, whether he dyed of anothers Felony, or of his owne, or by mischance; and if of blowes, whether of a staffe, or a stone, or a weapon; and the the Coroner is to Record in his Booke the names of those who were summoned and appeared not, that the same offences of disobedience remaine not unpunished, whereby the Coroner could not at that

time doe his office for want of Jurours.

In those Enquests lye no Exceptions, or Challenges to the Persons of the Jurours; but he ought to make his Pannells of the discreetest, and of the ablest and best of them, and to see that the Carcase be buried.

The Pannells are to be of Decenies; for Coroners at these Enquests, Sheriffes at their Turnes, Bailiffes at the viewes of Franck-pledges, Eschearors and the Kings Officers of his Forrests, have power by authority of their Office to send for the people, which none other have without the Kings Writ; and that is for the keeping of the peace, and for the right of the King, and for the common people.

*The Articles are these.*

*YOu shall by your Oathes declare of the death of this man, whether he dyed of Felony, or by mischance; and if of Felony, whether of his owne, or of anothers; and if by mischance, whether by the Act of God, or of man; and if of Famine, whether of Poverty, or of common Pestilence; and from whence he came, and who he was; and if he dyed of anothers Felony, who were Principalls, and who Accessours; and if Hue and Cry were duely made or not; and whether the men fled according to Law or not, and who threatned him of his life or members, and who were Sureties for the Peace; or whether he dyed of long Imprisonment, or of paine, and by whom he was farther from life, and nearer to his death; and so of all prevailing circumstances that can come by presumptions.*

*And*

*And in case where he dyed by hurt, or fall, or other chance by the Act of God, so that he had not power to speake before his death; then you shall tell the names of the finders, and of his next Neighbours, and who were his Parents, and if he were killed there or elsewhere, and if elsewhere, by whom, and how he was thence brought, and the value & kind of the Deodand, and to whose hands it came; for in case a man dyeth by a fall, in such case according to* Randulfe de Glanvill, *it is Ordained, whatsoever is cause of his death is Deodand; as it is for whatsoever moveth in the thing whereof he fell, as Horse, Cart, Mill-stone; also Vessels are sometimes Deodands but not in the sea; the summes upon the Horses, the goods lying in Ships, Mills, Carts, and Houses, are not accounted for Deodands.*

*And in case of anothers Felony, then the Jurours declare who were the Felons, in what Pledge, Dosien, Ward, or Maineprize they were, and from whence they came, and where they returned.*

*And if he was killed by false Judgement, then that the Jewry declare who were the Judges, who the Officers to forme the Judgement, and who Accessories; and if of false Witnesses, who were they, and the Jurours.*

*And if he dyed of his owne Felony, then that they tell the manner, and the value of his goods, and the names of his Parents, and the Finders, and of the Neighbours, and the value of the waft.*

There

There are nine manner of Accessories.

1 *Those who command.* 2 *Those who conceale* 3 *Those who allow and consent.* 4 *Those who see it.* 5 *Those who helpe.* 6 *Those who be partners in the gaine.* 7 *Those who knew thereof, and did not interupt or hinder it by forbidding.* 8 *Those who knowingly receive.* 9 *Those who are in the force.*

Of misadventures in Turnaments, in Courts and Lists, King *Henry* the 2. Ordained, that because at such Duells happen many mischances; That each of them take an Oath that he beareth no deadly hatred against the other, but onely that he endeavoureth with him in love to try his strength in those common places of Lists, and Duells, that he might the better know how to defend himselfe against his enemies; and therefore such mischances are not supposed Felony, nor the Coroners have not to doe with such mischances which happen in such common meetings, where there is no intent to commit any felony.

Coroners also ought to make their views of Sodomies, and of monstruous births ō f Children, who have nothing of humanity, or who have more of other Creatures then of man; and Coroners were to burie them. But the holy Faith doth more and more now daily confirme men, that they abstaine to commit these horrible sins which they used to do. Also they used to enquire of burnings, and who put to the fire, and how; and whether it were by felony or mischance; and

and if of felony, of whose felony, and who were the Principall, and who the Accesories, and who were the threatners thereof.

It belongeth to them at their viewes to enquire after Treasure privately hidden, and found in the ground, and how the Treasure was found, and by whom, and how much there was; and if it be all seised upon, or all carried away, and who carried it away, and how much; and who were the finders of it, and the next Neighbours.

At their viewes of Wrecks, they ought to enquire whether the Wreck came to Land, what be the things, and how much, and the value of them distinctly by parcels; and if a Man, Beast, Cat, or other living thing came with it or not; and that by Divident it be delivered to the next Towne, that they may answer the Lord if he come to claime it, & receive it within the yeere.

At his view of wounds, it behooveth him that he view the Wound, and make a Record of the length, breadth, and depth of it, in aide of the wounded if he complain, in case the wound be healed, the Coroner of the County may helpe him by the Record. Also it belongeth to them to view Burglaries, & to enquir of the names of the Felons, and what they have to live of, and from whence they came, or whether they returned; and of the Menasors, and of other Circumstances.

The Jurours are severed into doziens, so that one dozien speak not with another, but that every Jury answer by it self, and review the

the Presentments, and the Verdict, so are they chargeable, to accuse the Conspirators who procure to save any Offendant, or to indict an innocent in such Enquests.

All the Verdicts before the Coroners as well of Accessories as of the Principall are at the Commandment of the Coroners receiveable by the Sheriffes, and the Principall and Accessories are to be taken and delivered to Maine-prisors, and in the presence of them and of the Sheriffes their goods moveables and not moveables are to be seized into the Kings hands, and by a reasonable Extent and Divident, the moveables are deliverable for the finding of the Prisoners, and for their needful and reasonable sustinance, & the King to be answered the residue, saving the right both to the Principall if they be acquitted, and to the Accessories by Mainprise.

And if any one fly, or make resistance, and will not answer the Law, it is lawfull for every one to kill him, if he cannot otherwise apprehend him.

And *Bermund* awarded; That all goods of those that fled should remaine forfeit to the King, saving to every one his right, although that afterwards he yeeld himselfe to the Peace.

And *Iselgram* said; That he is no flyer who appeareth in Judgement before he be Out-lawed.

If any one fly to Sanctuary and there demand protection, we are to distinguish; for if he be a common Thiefe, Robber, Murderer,

derer, Night-walker, and be knowne for such a one, and discovered by the people, & of his Pledges and Deziners; or if any one be convict for Debt, or other offence upon his owne confession, and hath forjered the Realme, or hath been exiled, banished, Out-lawed or Weyved; or if any one have offended in Sanctuary, or joyned upon this hope to be defended in Sanctuary, they may take him out thence without any prejudice to the Franchise of Sanctuary. But in the right of Offenders, who by mischance fall into an offence mortall out of Sanctuary, and for true Repentance run to Monasteries, and commonly confesse themselves sorrowfull, and repent, such offenders being of good fame, if they require tuition of the Church, King *Hen.* 2. at *Clarendon* granted unto them, that they should be defended by the Church for the space of forty daies; and Ordained that the Townes should defend such flyers for the whole forty daies, and send them to the Coroner at the Coroners view. It is in the election of the offender to yeeld to the Law, or to acknowledge his offence to the Coroners, and to the people, and to waive the Law; and if he yeeld himselfe to be tryed by Law, he is to be sent to the Goale, and to waite for either acquittall or Condemnation; And if he confesse a mortall offence; and desire to depart the Realme, without desiring the tuition of the Church, he is to goe from the end of the Sanctuary ungirt in pure Sack-cloth,

and

and there sweare that he will keepe the straight way to such a Port, or such a passage which he hath chosen, and will stay in no parts two nights together, untill that for this mortall offence which he hath confessed in the hearing of the people he hath avoyded the Realme, never to returne during the Kings life without leave, so God him help, and the holy Evangelists; and afterwards let him take the signe of the Crosse and carry the same; and the same is as much as if he were in the protection of the Church.

And if any one remaine in Sanctuary above the forty dates, by so doing he is barred of the grant of Abjuration if the fault be in him; after which time it is not lawfull for any one to give him victuals.

And although such be out of the peace, and the protection of the King, yet none ought to disheaten them, all one as if they were in the protection of the Church, if they be not found out of the high way, or wilfully breake their Oathes, or doe other mischiefe in the high way.

If he who is killed be unknowne, in such case the Coroners ought to shew the murdered cloathes, according to the Statute of King *Canute*, who Ordained for the safeguard of his *Danes* whom he left in *England*; That if a man unknowne were killed, that the whole Hundred should be amerced to the King by the Judgement of Murder. Four things excuse the Hundred from the Judgement of Murder.

1 If

1 If the Felon be knowne who killed him, for if the Felon be knowne, then may he be attainted of the Felons.

2 Another, If the Felon be apprehended, or if he fly to a Monastery.

3 If the killing come not by Felony, but by mischance.

4 The fourth in case where a man is a felon of himself, and because there could be no Murder of a man knowne, it belongeth to the Coroners to enquire in those Fellonies of what Kindred or Lineage those that were killed were, so that one may know by their Parents whether they were of the *English* nation or not; for if no man could name their Parents, it was great presumption that they were Allieus, And thence it is that on e calleth that Parentage *Englishire*, where the Parentage be found of the Fathers or of the Mothers side; and if no *Englishire* be found, then that *it* hath the Judgement of Murder.

To the Office of the Coroners it also belongeth to receive the confession of Felons in the hearing of Witnesses, whereby of a grand Felony done by many offenders it came to passe in the time of King *John*, that one of the offenders petitioned the King, That he would pardon him his life, for that he had accused the other offenders who were his companions, and that the King Out-lawed them; aud at the request of the King the Earles granted; That in Sanctuaries only it should remaine for Law, that offenders having confessed the Felony might

might accuse others; and that it was then Ordained; That the Coroners should take such Confessions, and such Appeales but once, and not many times.

Women are not admitted to bring Appeales, nor Infants within the Age of 21. yeeres, no Idiots, nor men professors, nor Clerks indicted or appealed of any Crime, nor men attainted of false Appeale, nor those who are vanquished in battaile, but those who have government of themselves.

The Appelees are to be seised upon body and goods twice in the yeere, that is to say; once after Michaelmas, and another time after Easter; And because Sheriffes to doe the same make their Turnes of the Hundred, such visnes are called the Sheriffes Turnes; where it belongeth to the Sheriffe to enquire of all personall Offences, and of all the circumstances of Offences done within the Hundred; and of the wrongs of the King and Queens Officers, and of wrong done to the King and the Common people, according to the Articles aforesaid in the division of Offences.

The Appeales are to be seised upon body and goods as afore is said; and if any Forrainer be appealed who is out of the power of the Coroner, the Kings Commissary is to cause him to appeare, or Outlaw him.

CHAP. I

# CHAP. I.

## SECT. 14.

### *Of the Exchequer.*

THe Exchequer is a place which was Ordained onely for the Kings Revenew, where two Knights, two Clerkes, and two learned men in the Law are assigned to heare and determine wrongs one to the King and Crowne in right of his Fees, and the Franchises, and the Accompts of Bayliffes, and Receivers of the Kings Monies, and of the Administrators of his Goods, by the over-sight of one Chiefe who is the Treasurer to *England*.

The two Knights usually called two Barons, were for to afferre the Amercements of Earls, Barons, and of the Tenants of Earldomes and Baronies, so that none be amerced but by his Peers.

To this place there was a Seale assigned, with a Keeper of it, to make Acquittances upon every payment to those who desired them, and to seale Writs and Escheates under green Wax issuing from thence for the Kings Revenue.

In this place there are also Chamberlaines and many other Officers, who belong not very much to the Law.

# CHAP. I.

## SECT. 15.

### *Of inferiour Courts.*

FRom the first Assemblies came Consistories which we now call Courts, and that in divers places, and in divers manners; whereof the Sheriffes held one Monethly, or evety five weeks according to the greatnesse or largenesse of the Shires. And these Courts are called County-Courts, where the Judgement is by the Suiters if there be no Writ, and is by warrant of Jurisdiction ordinary. The other inferiour Courts are the Courts of every Lord of the Fee, to the likenesse of Hundred Courts; and also in Fayres and Markets, where right is to be ministred without delay, whether the matter concern the Plaintiffe or Defendant, according to the first Ordinances; in which Courts they have counsans of Debts, Covenants broken, and of Trespasses, and of such small things which passe not forty shillings value; and also they have Counsans of Trespasses, and forfeitures of the Fees betwixt the Lords Plaintiffes, and the Tenants Defendants, *Et è contra.*

There are other inferiour Courts which the Bayliffes hold in every Hundred, from three weekes to three weekes by the Suiters of the Free-holders of the Hundred. All the Tenants within the Fees are bound-

den to doe their Suit there, and that not for the service of their Persons, but for service of their Fees.

But Women, Infants within the age of 21. yeeres, deafe, dumb, idiots; those who are Indicted of Appealed of any mortall Felony before they be acquitted, diseased persons, and excommunicated persons are exempted from doing Suit, and although it be that such Free-holders may doe Suits at inferiour Courts by their Attornies, nevertheleſſe the Judgement is not to be given or holden for forraign; and if any Plea be removed by Writ of Justities, Replegiarie, wast, or of other nature, that enable the Jurisdiction from which the Writ is originally sent, and returneable.

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## CHAP. I.
### SECT. 16.

### *Of the Sheriffes Turnes.*

THe Sheriffes by ancient Ordinances hold severall meetings twice in the yeere in every Hundred, where all the Free-holders within the Hundred are bound to appeare for the service of their Fees; that is to say, once after Michaelmas, and another time after Easter; and because Sheriffes to doe this make their Turne; of Hundreds, such appearances are called the Sheriffes Turnes, where it belongeth to Sheriffes to enquire of all per-

sonall offences, and of all their Circumstances done within those Hundreds, and of all wrongs done by the King and Queens Officers, and of wrongs done to the King, and to the common people, according to the points aforesaid in the division of offences.

All Free-holders within the Hundred are not bounden to appeare at these Courts, for King *Hen.* 3. excused some persons, & said; That it was not needfull that Arch-Bishops, Bishops, Abbots, Priors, Earls, Barons, religious Persons, nay such people, nor other who were exempted to doe Suit at inferiour Courts should appeare in proper person, if their appearance were not necessary for some other cause then onely to make their appearance. And if any one hath divers Tenements in divers Hundreds, his presence is not to be excused notwithstanding the Kings grant.

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## CHAP. I.

### SECT. 17.

### *Of viewes of Franck-pledges.*

OF these first Assemblies it was also Ordained; That every Hundred doe make a common meeting once in the yeere, not onely of the Free-holders, but of all Persons within the Hundred, Strangers and Denizens of the age of 12. yeeres and upwards, except of Arch-Bishops, Bishops, Abbots, Priors, religious Persons, and

and all Clerkes, Earls, Barons, and Knights, Feme Coverts, Deafe, Dumb, Sick, Idiots, infected Persons, and those who are not in any Dozien, to enquire of the points aforesaid, and of the Articles following, and not by villanies, nor by women, but by the afferment of Free-men at the least; for a Villaine cannot indict a Free-man, nor any other who is not receiveable to doe Suite in inferiour Courts, and therefore it was anciently Ordained; that none should remaine in the Realme if he were not in some Decenny, and pledge of Free-men; it belongeth also to Hundredours once a yeare to shew the Franck-pledges, and the Pledgers, and therefore are the Viewes called the View of Franck-pledges.

The Articles are these.

*BY the Oathes you have taken, you shall declare whether all they who ought, doe appeare or not.*

*If all the Free-men of the Hundred, or of the Fees be present.*

*If all the Franck-pledges have their doziens entire, and all those who they have in pledge.*

*If all those of the Hundred, or of the Fees of the age of 12. yeeres and above, have sworn fealty to the King, and of the receivers of others wittingly.*

*Of all Bloud-sheds, of Hue and Cry wrongfully leavied, or rightfully leavied and not duely pursued, and of the names of the Pursuers, of all mortall offences, and of their kinds, and as well of the Principalls as of the Accessories.*

*Of all Exiles, Out-lawes, Waives, and banished*

*shed Persons returned, and who have since received them, and of those who have been judged to death, or abjured the Realm.*

*Of Usurers, and of all their goods.*

*Of Treasure trove, Wrecks, Waifes, Estreyes, and of every purpresture and encroachment upon the King, or upon his* Dignity.

*Of all wrongs done by the Kings Officers and others to the common people, and of all purprestures in common places, in the Land, or in the Water, or elsewhere.*

*Of Boundaries removed to the common Nusance of the people.*

*Of every breach of the Assize of Bread, Bear, Wine, Clothes, Weights, Measures, Beames, Bushels, Gallons, Ells, and Yards, and of all false Scales, and of those who have used them.*

*And of those who have bought by one kind of measure, and sold by another kind in deceit of Merchants, or buyers.*

*Of the disturbers of framing lawfull Judgements, and of the framers of wrongfull Judgements, and of the Abbettors, and consenters thereunto.*

*Of every wrongfull detinue of the body of a man, or other distresse.*

*Of every false Judgement given by the View in the other Hundred, or in the Fee.*

*Of every Fore-stallment done in the common High-way.*

*Of wrongfull Replevies, and wrongfull Recousses.*

*Of every outragious Distresse in another Fee, or in the Market for a forraign contract.*

*Of all Bridges broken, and Causies, wayes,*



common

*common Bridges, and who ought for to repaire them.*

*Of the makers of Cloathes dwelling out of great Towns in places forbidden.*

*Of Tanners and Curriers of Leather.*

*Of Butchers, and who sell unwholsome flesh for that which is sound, and of all those who sell corrupt Wine for sound Wine, or Beere, Ale raw and not well brewed, for that which is good and wholsome.*

*Of small Lavines.*

*Of cutters of Purses.*

*And of those who suffer people to use any Mysterie for reward or Fee.*

*Of Receivers of Thief-boot.*

*Of makers and haunters of false Dice.*

*Of outragious Tole-takers, and of all other deceivers.*

*Of all manner of Conspirators.*

*And of all other Articles availeable for the destruction of offenders.*

*And the Presentments are to be sealed with the Seales of the Jurours, so that none by fraud doe increase or diminish them, and that which cannot be redressed there by these Presentments, is presentable at the Sheriffes first Turne; and those things which the Sheriffes cannot redresse are to be presented by the Sheriffes into the Exchequer.*

*All those who are Presented for any offence which is mortall, and banished Persons who are returned, and their receivers, and those who are not in allegiance under the King are to be seised upon, and their goods to be seised into the Kings hands.*

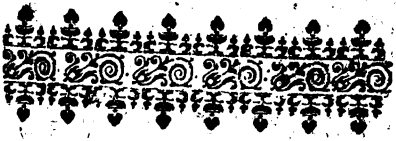
*And although it be so that the Bailiffe cannot heare and determine any Action at the Leete, nevertheleſſe if any one preſent be grieved by any wrongfull Preſentment, and complain thereof, or if the Bayliffe or Steward have a ſuſpition that the Jurours be in ſome caſe perjured by concealing of any offence which is Preſentable, or of any offender; It is lawfull for the Bayliffes (or Stewards) by twelve more diſcreet men, to enquire of the truth thereof without delay; and although that the laſt Jurours ſay that the firſt are perjured, nevertheleſſe becauſe that no Decenery or Jurour is not atteſtable with leſſe then two Jwyes; and becauſe the latter Jurie is not taken but ex officio of the Bayliffe, and not in the nature of an Attaint, the firſt Jurours are not to be taken Attainted, but are onely to be amerced.*

*And if any one profer himſelfe to ſweare fealty to the King, he is firſt to be pledged in ſome Franck-pledge and put in the Decenery, and afterwards ſworne to the King; and then he is forbidden to offend and common with offenders, and he is to be enjoyned to be obedient to his chiefe pledge.*

*And to take this Oath in thoſe Views is none exempted who is paſt the age of 21. yeeres, man or woman, Clerke nor Lay-man, except Alliens, Strangers, Meſſengers, or Merchants, and thoſe who are in cuſtody.*

*At theſe Viewes of Turnes, and viewes of Franck-pledges Eſſoignes hold, where the abſence of thoſe who cannot be there is excuſable, and ſuch Eſſoignes are adjournable to the next Courts following, that the Eſſoigners have their Warrants.*

The



## The Contents of the Second Chapter.





Of

# CHAP. II.

## SECT I.

### *Of Actions.*

WHen it is said that Kings and Princes have the Government and Correction of Offenders, with aide of the Prelates; and to that intent they are Gods Vicegerants on Earth, and to doe the same they have Jurisdiction over the offenders by paines, and cheifly those offenders which are under their Jurisdiction; nevertheleſſe Kings cannot nor ought not to take notice of the offences of others without Actions of Accusers, which well appeareth by the example which God shewed when he was in his Consistory, and demanded who was the Accuser of the woman-sinner; and because none presented himselfe an Accuser against her, to give us a perpetuall example that right Judgement cannot be given without there be three persons at the least, *viz.* a Judge, a Plain-

Plaintiffe, and a Defendant, God said to the woman-sinner, That she should goe in peace or quiet, since it belongeth not to a Judge, to be both Judge, and Plaintiffe; and therefore it behooveth to speake of Actions, and who are and may be Judges, and who Plaintiffes, and who Defendants.

An Action is nothing else but a lawfull demand of right, and there are three manner of Actions which have their Introductions by Writs, and by Plaints in manner as followeth, *viz.* Personall, Reall, and Mixt.

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## CHAP. II.
### SECT. 2.

### *Of Judges.*

ALthose who are not forbidden by Law may be Judges. To women it is forbidden by Law that they be Judges; and thence it is, that feme Coverts are exempted to doe Suit in inferiour Courts. On the other part, a villaine cannot be a Judge by reason of the two estates which are repugnants; Persons attainted of false Judgement cannot be Judges, nor Infants, nor any under the age of 21. yeares, nor infected persons, nor Ideots, nor mad-men, nor deafe, nor dumbe, nor parties in the Pleas, nor men excommunicated by the Bishop, nor criminall persons; for God when

when he was upon Earth entred into the Consistory where a sinner was to be judged to death, when God wrote upon the ground, and said to the Suiters who came to Judge her, *Who of you is without sinne?* and there gave a Judgement as an example to Judges, who take upon them every day to Iudge the people, whereby he taught them, That none should take upon themselves so high and noble a calling, as to sit in the Seate of God to Iudge offenders, when they themselves are guilty and Condemnable.

And those who are not of the Christian Faith cannot be Iudges, nor those who are out of the Kings Allegiance; next, those who have no Commission from the King cannot be Iudges, nor none whose Authority is repealed, nor any one after Iudgement is given in the Cause; an example thereof appeateth in the Writ of Right, *Et nisi feceris, vicecomes faciat*; nor none after death, or the Returne; none whose warrant is vicious, nor any one if his superiour will not have him. A Iudge Commissary hath not power to Iudge but according to the points, and within the words of his Commission; and the originall Writ, no more then the Arbitrary Iudge hath power to goe beyond the points of his submission.

CHAP.

## CHAP. 2.
### SECT. 3.

PLaintiffes are those who pursue their right against others by plaint.

All may be Accusers or Plaintiffes who are not forbidden by the Law.

Infected Persons, Idiots, Infants within age cannot accuse, or be Plaintiffes without their Guardians, nor Criminall Persons, nor an Out-lawed, exiled or banished Person, nor a woman wayve, nor a villaine without his Lord, nor a Feme Covert without her Husband, nor religious Persons without their Soveraignes, nor Persons Excommunicate, nor deafe, nor dumbe Persons without their Guardians, nor the Iudges of the Cases whereof they are Iudges, nor any one who is not of the Kings Allegiance, so as he hath been more then forty daies within the Realme, except Approvers who are suffered to accuse criminally people of his own condition in favour of the peace.

*How lawfull men ought to complaine.*

They ought in friendly manner to shew their offenders, that is to say, their Trespassours that they reconcile or amend themselves towards them; and if they will not doe so, and the Cause be Criminall, then yee are to distinguish, for if any one seeke revenge, then it behoveth him to bring his Action by Appeale of Felony, and if he seeketh only reparation of damages,

mages, then he behoveth to bring his Action by Writ which is to containe the name of the King, and of the Parties, and the name of the Judge, and of the County, and the Plaint in the demand, if the damages or the demand exceed forty shillings; and if not, then a Plaint sufficeth without a Writ. And because all Suites of the Plaintiffes could not be determined upon the first preferring of the Suits, nor the Suiters or Plaintiffes presently releeved in their Suits. Therefore Kings used to goe from County to County every seaven yeeres, to enquire of Offences and Trespasses, and of wrongs done to themselves and to the Crowne, and to the Common people; and of all wrongs, errours, and negligences of their Officers, and of all false Judgements; of paines pardoned or wrongfully Iudged, or outrageously; of Out-lawes returned, and of their Receivers, of the valewes of Counties out of Hundreds, Townes, Manners, and of moveable goods which belong to the King, and to the Crowne; of the Lands of Idiots, of alienators of Fees, of offences against the Kings Inhibition, of Priviledges and Franchises prejudiciall to the King; of Bridges and High-waies, and of all other needfull Articles; and they used to doe right to all Persons by themselves, or by their Chiefe Justices; and now Kings doe the same by the Justices Commissaries in Eyre, assigned to hold all Pleas.

In aide of such Eyres are Sheriff, Turnes needfull,

needfull, and viewes of Franck-pledges, and when the people by such Enquests were indicted of any mortall offence, the King used to Condemne them without Answers, which usage still remaineth in *Almaine*; but of pitty and mercy, and because that man by reason of his frailty cannot keepe himselfe from sinne (if he abstaine not from it by the Grace of God) it was accorded that no Appelee or Indicter should be condemned without answer. And Kings had no Jurisdiction but of mortall offences, and of the rights of the Crowne, and of their owne rights, and of the wrongs of their Ministers, and of wrongs done against Common Law, and Common Ordinances, and the Articles of Eyres.

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## CHAP. 2.
### SECT. 4.

### *Of Rewards and Fees.*

KIngs used to give Rewards to the Cheiefe of the Stock, and to all those who faithfully served them; and from the Rewards of Kings others tooke example to reward their servants; and because no Free-man was bouden to serve against his will, by reason whereof none were bound to serve the King or any other but by the service of his Fee, or by reason of his Residence or dwelling in another Fee; some are bound to serve the King for a certainty by

by the yeare. And it is not lawfull for those Officers who take wages certaine of the King, to take any wages of the people.

But the Iudges who serve the King, it is lawfull for them to take twelve pence of the Plaintiffe after the hearing of the Cause and no more, although there be two Iudges, or two Plaintiffes in one Action: and the Pleader six pence, and a Knight sworne a witnesse foure pence, and every Iurour foure pence, and the two Sumners foure pence.

Nevertheleſſe in the time of King *Henry* the 1. It was Ordained and assented unto; That Iurours sworne upon Enquests of Office, as in Assizes, Recognisances of Assizes, Redisseisins, Certificates of Assize, and Attaints, and other the like should not take Fees because they did the same *Ex officio*; and to answer these monies, and the damages are the Defendants chargeable, if Iudgement be given against them.

And to those who followed any Suit for the Kings profit, and were not any of his Ministers, King *Henry* the 1. gave to them the twentieth part of the profit with their reasonable Costs. In like manner the Iudge was not to heare the Plaintiffes Cause if he put not in security to answer his Adversaries damages, if he complaine of him wrongfully.

C H A P.

## CHAP. II.

### Sect. 5.

### *Of Countors or Pleaders.*

There are many who know not how to defend their Causes in Iudgement, and there are many who doe, and therefore Pleaders are necessary, so that that which the Plaintiffes, or Actors cannot, or know not how to do by themselves, they may doe by their Serjeants, Atturnies, or friends.

Countors are Serjeants skilfull in the Lawes of the Realme, who serve the common people to declare and defend Actions in Iudgement, for those who have need of them for their fees.

Every Pleader of others Causes ought to have a regard to foure things. 1. That there be a person receiveable in Iudgement, that he be no Heretique, Excommunicate Person, nor Criminall, nor a man of Religion nor a woman, nor within the Orders of a Subdeacon, nor a Benificed Clerke who hath cure of Soules, nor under the age of 21. yeares, nor Iudge in the same Cause, nor attainted of falsity in his place.

2 Another thing is, That every Countor is chargeable by Oath that he shall doe no wrong nor falsity contrary to his knowledge, but shall plead for his Cliant the best he can according to his understanding.

3 The third thing is, that he put no false Dilatories into Court, nor false Witnesses, nor move or offer any false corruptions, deceits, leasings, or false lyes, nor consent to any such, but truly maintaine his Clyents cause, so that it faile not by any negligence or default in him, nor by any threatning, hurt, or willany disturbe the Judge, Plaintiffe, Serjeant, or any other in Court, whereby he hinder the right, or the hearing of the Cause.

4 The fourth thing is as his Sallery, concerning which four things are to be regarded; 1. The greatnesse of the Cause. 2. The paines of the Serjeant. 3. His worth, as his Learning, eloquence, and gifts. 4 The usage of the Court.

A Pleader is suspendable when he is attainted to have received fees of two Adversaries in one Cause, and if he say or doe any thing in dispite or contempt of the Court, and if he fall under any of the points aforesaid, besides the exceptions which are to the person of the Pleader, for no man can be a Pleader who cannot be a Plaintiffe or Actor.

## CHAP. II.

### SECT. 6.

### *Of Attachments.*

PErsonall Actions have their Introductions by Attachments of the body; reall

still by Summons and mixt Actions first by Summons, and afterwards by Attachments.

The Law requireth that offenders in case of death have not such mitigation or favour that they be brought or summoned, or distreined to appeare in Judgement by taking of their Cattell if the offenders be knowne, and notorious, and the Plaintiffe pursue them so soone as he may. And if any one fly for such offence, then according to the Statute of Winchester he was to be followed with Hue and Cry, with Horne and Voyce, so that all those of one Towne who can are to follow the Felon to the next Towne; and if any such Felon be attaint and convict of the felony, let him be killed if he cannot be otherwise apprehended. But it is otherwise in felonies not knowne, for it is not lawfull to kill the offender without his Answer, if he may be taken alive.

And if any one would complaine to have revenge, or to drive the offender to the salvation of his Soule; let him goe to the Coroner of the place where the offence was done, and set forth his complaint there as he will prove it, and the Coroner is to cause the same to be distinctly enrolled; and if he cause him to record it as murder being corrupted to destroy his Neighbour by his plaint; so that he have Judgement; the like is to be done to him if he prove not his plaint.

At the next Court after the Appeale is enrolled it belongeth to such Plaintiffes to

recite their Appeales, and to finde Sureties to pursue them, or to remaine in Prison till they have found Baile; and to the Maine-prisors such Plaints are to be delivered by Coroners body for body, that they shall pursue their Appelees, and to cause them to appeare in Court to receive Justice when they shall be demanded, if they doe not prove their Appeales.

The Personall offences are these:

*Imprisonment.*
*Mayhem.*
*Wounding.*
*Battery.*
*Perjury.*
*Usury.*
*Rescusses.*
*Forestallings.*
*Breaking of Parkes.*
*Resistance of framing lawfull Judgements.*
*Executions of false Judgements, and all wrongfull offences.*
*Carrying away of Treasure trove, of Wrecks, Waife, Estrayes.*

The Attachments of mortall offenders are by their bodies without Sureties, and the Attachments of veniall Personall offenders are also by their bodies, but yet they are baileable.

Reall offences are those upon which are grounded Writs of right, of Cosinage, of Dower, of right of Advowson, of Entre, of Escheate, Writs of *Quo jure*, of Formedon, and of all Writs, feodalls.

Mixt offences are those upon which these

these Writs are framed, *viz.* of Customes and Services, of Villinage, of Covenant, of Homage, of rendring Distresses, of Mesne and other Acquittances, of Escheates, and the like, and by reason of the mixture of their Introductions, they are called Mixt.

## CHAP. II.
### SECT. 7.

*Appeales, and to whom Appeale is given.*

THe Action of Appeale is not given to all alike, but every one is allowed to have his Action of Trespasse to whom any Trespasse is done, except such as cannot have any Action at all.

Every one may have an Appeale of Burning to whom the damage is done, and the property of the thing burnt doth belong.

Parents, Kinred, and Allies used to be admitted to bring Appeales of Murder; but the Appeale of the Wife of the killing of her Husband is to be received before all other; and yet not of all his Wives, but of her onely who lyeth betwixt his Armes, which is as much as to say in whose seisage he was murdered; for if he had many Wives, and all were alive at the time of his murder; nevertheleſſe she only is admitted to bring the Appeales of all the rest whom he last tooke to be his Wife, although in right she be not his Wife;

and the reason thereof is because it belongeth not to the Temporall Court to try, which was his Wife of right, and which in Fact; and the Appeales of all other are to be suspended, the pendant the same Appeale brought.

After the Appeale of the Wife is the Appeale of the Sonne lawfully begotten, of the murder of his Father to be received before all other, it is (said lawfully begotten) because a Bastard is not to be accounted amongst Sons, for the Common Law only taketh him to be a Sonne whom the Marriage proveth to be so.

After the Appeale of the eldest Son, the Appeale of the next of blood is used to be received, and so from one degree to another in the right Line of Cosinage; and if the blood faile in that Line, then they of the Collaterall Line are admitted to bring the Appeale; or the Kinred where the blood faileth, according to the degrees of Consanguinity and Affinity, and especially in the Line of the Fathers side; but the Appeales of Murder were restrained by King *Henry* the 1. to the foure next degrees of blood.

And if any one within the age of 21. yeares doe bring an Appeale; the Defendant is not bound to answer so high an Action untill he hath passed that age; and therefore such Appeales are to be suspended till both the Parties be of full age, if exception in the case be taken to the Nonage.

Men and Women, Clerkes and Laymen,

men, Infants and others of what condition soever they be may bring Appeales, except those who are not suffered to bring any Actions; and although it be that many doe bring Appeales, yet one nevertheless is admitted to continue, and pendant that, all the others are to be suspended. And in all Cases the Appeales against the Accessories are to be suspended pendant the Appeale against the Principall, be it one or many.

## CHAP. II.
### SECT. 8.

### *Of Processe of Exigent in Appeales.*

AT the first County the Coroner is to doe no more but to enter the Pledges, who properly are Main-prisors, and to Command that such take the Appeales, and seize all their Possessions and their goods into the Kings hands, as before is said; and if they be taken, that they be kept till due deliverance be of them, and if they be not to be found, and the Plaintiffe come at another County, and recite his Appeale of Appeales, then are such Appelees demandable only by their names, and by such names as they are best knowne by, that they appeare to Answer the Kings Peace, for if any one be Appealed as Son of the Father, and is knowne by another Sir-name, the Appeale is thereby

ent, and by consequence abatable at the perill of the Plaintiffe; and at the third County they are to be demanded in like manner as before; at which County Court if the Appelees appeare not, nor are taken into Main-prise to appear at the next Court, Judgement is to be given against them for their contempt by the Coroners; and those who doe appeare before Judgement of the Coroner, are presently to be delivered over to the Goale, where they are to be received without difficulty of Fine, or request.

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## CHAP. II.
### SECT. 9.

### *Of Goales and Gaolers.*

A Goale is nothing else but a common Prison, and as a Leper, or a man who hath a diseased body is not to be suffered to dwell or remaine amongst men who are sound; so mortall sinne is a kind of Leprosie, which maketh the Soule abhominable unto God, and therefore such mortall sinners or offenders ought to be separated from the society of the people. And to the end that Innocents be not infected with their offences, Goales were Ordained in every County to keepe such mortall offenders in, there to remaine till Judgement were given against them in case the offences were notorious.

There

There are 2 kinds of Prisons { *Common* and *Private*.

Every common Prison is a Goale, and none hath a Goale but the King only.

A private Prison is another Prison, from whence every one may escape who can, so as he doe no other Trespasse in the escape. None are imprisoned in a common Prison but for a mortall offence, and therefore it was forbidden by King *Henry* the 3. That none should leavy money for any escape in the Land, if the escape were not adjudged before the Iustices in Eyre, whether for the same a Corporall or a pecuniary Punishment were awardable or not; and because it is forbidden that none be pained before Iudgement, the Law requireth, That none be put amongst vermine, or in any horrible nor dangerous place, nor into any other paine; but it is lawfull for Goalers to fetter those they doubt, so as the Fetters weigh no more then 12. ounces; and to enable the keeping of those in the Goale who ate violent, outragious, or doe other Trespasse there.

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## CHAP. II.
### SECT. 10.

*Of People Bayleable in Appeales.*

SOme Appeales of mortall offences, although they ate not bayleable by Law, nevertheless

nevertheleſſe they are ſuffered to be bayled when they are brought into the Goale; as namely, the Appeales of Murder, Robbery, Burglary, Larcine, or out of Priſon, where it is found that they are wrongfully Appealed; and for ſuch caſe was the Writ *De odio & atia* invented.

Thoſe who are condemned to have Corporall puniſhment are not to be Bayled; but it is otherwiſe of thoſe who are impriſoned for a Fine, or any other pecuniary penalty or puniſhment.

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## CHAP. II.

### SECT. II.

### *Of the Appeale of Maieſty.*

OF the Crimes of Maieſty, nor of falſifying, nor of any thing which concerneth the Kings right, there lyeth no Appeale, but Actions, or Indictments.

For ſlanders of Sodomy, our ancient Fathers would never agree thus for the ſcandalls of ſo doing, that any one ſhould bring Actions by way of Accuſation, nor Indictments, nor would ever aſſent that they ſhould be heard of in regard of the abominableneſſe of the ſinne; but they Ordained, that ſuch notorious ſinners ſhould be forthwith Iudged, and Iudgements framed againſt them.

Of the imagining of the Kings death, and of other kind of offences of Majeſty againſt an earthly King, there were Accuſations

sations: but for Indictments; for every true Subject was with all expedition to shew the same to the King, so that he be not taken or seised upon by his long stay, or by great delay, in what cases the Accusations are to be received; and in full Parliament let the Accuser by himselfe, or by a Serjeant doe it, according as it was done in this case in the time of King *Edmond* in these words.

*Rocelyn* here saith against *Walligrot*; That at such a day, in such a yeare of the Raigne of such a King, into such a place came the said *Walligrot* to this *Rocelyn*, and found him to be in Counsell, and in assistance with *Arheling*, *Turkille*, *Ballard*, and others, to Arrest, or to make Prisoner, or to kill our Lord King *Edmond*, and to doe the same they were sworne to keepe Counsell, and to commit this Felony according to their power.

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## CHAP. II.

### SECT. 12.

### *Appeale of Falsifying.*

THis offence is not openly done, it is seene by a false Writ, or false money found in ones possession, and although that three Persons are necessary in Judgement in this case, nevertheless it is Ordained; That the possessour of ill things be by the Iudge *Ex officio* driven to answer to the

the Title of their Possession thereof, which is not so in all Cases.

And if there be any one who will not plead to Jugdement, then he is to be returned to the Goale, and all his goods are to be seised into the Kings hands, and to be seised upon as in all Criminall Actions brought by Appeales or Indictments; also in veniall Actions such contumacies used to be condemned for not pleading, as by their pleading and lawfull Attainder.

And if any one saith that he came to the money lawfully, and doth not know by whom, nor none offer themselves against him to prove the affirmative of the Action; then it belongeth to the possessour of the money to prove the affirmative of his Answer.

And if any one saith, that it came to him from a man certaine, let it be as after herein is said.

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## CHAP. II.
### SECT. 13.

### *Of Appeales of Treason.*

THe Reason is set forth in Appeales in this manner, according as it is found in the Rolls in the time of King *Alfred*:

*Bardulf* here doth appeale *Dirling* there for that, that in as much as this same *Dirling* was the Allie of the same *Bardulf*, the said *Dirling* came such a day of the yeare,

yeare, &c. and during the Alliance ravished the Wife of the same *Bardulf*, or counterfeited his Seale, or did him some other mischiefe. Or thus; *Hakenson*, Father, or other Parent, or Lord, or Allie, this *Dirling* killed; or thus, remained in Aide, and in Counsell with *Daffray*, the adversary of the this *Bardulf* in speech which touched the losse of his life, or members, or of his earthly Honour; or thus, discovered his Counsell or his Confession; or thus, whereas he ought to have a lawfull enrolement according to Law of such a Plea, the same *Dirling* falsly enrollect the same to his dis-inherison, or otherwise to his damage; or thus, whereas he was his Attorney in such a Plea, before such Judges to gaine or lose, and should have done him right, he lost by his default, or by his folly, negligence, or collusion, or restored the thing in demand, or did him such hurt. Or thus; whereas he should have excused him, or essoigned him such a day, &c. he suffered him to lose the Possession, or such other thing through his default; or thus, whereas he ought to have truly spoken for him in such a Case, the said *Dirling* did ill advise him, or speake against him in such a Point; and afterwards thus, this Treason did the said *Dirling* feloniously as a Felon, and traiterously as a Traitor, and if he will deny it, *Bardulf* is ready to prove it upon him by his body; or as a mayhened man, or a woman, or a Clerk ought to prove.

And

And although that advice be given to some, that it belongeth not to the Plaintiffe to shew the proofe of his Action, untill it be denyed of the adverse Party to hasten right, nevertheless such usage is suffered, as in this case following, and others it is; as if any Sheriffe or other, take one to be Bayle or Surety for another and he denyeth it, it behoveth the Plaintiffe to say that he wrongfully denyeth it, and therefore wrongfully; for in such a yeare, such a day, and before such a one, of his owne will he became Pledge for such a one, and the Plaintiffe to hasten his business suffered to shew the same in his Declaration, and if he denyeth it, &c. the Answer of the adverse Party is suffered to be taken, and afterwards he is to goe to proofe by this Replication.

## CHAP. II.

### SECT. 14.

### *Of Appeale of Burning.*

THe Appeales of Burnings are in this manner; *Cedde* here appealeth *Harding* there (which he sir-names) for that, that whereas this same *Cedde* had one house, or divers; or a stack of Corne, or of Hay, or a Mill, or other manner of goods in such a place, or thus, whereas *Wetod*, Father, or Mother of this *Cedde* was in such a place such a day, &c. the same *Harding* came

came thither, and put fire into the house, and burnt the said *Wead* therein, whereof he dyed; and this felony the said *Harding* did feloniously.

## CHAP. II.

### SECT. 15.

### *Of the Appeale of Murder.*

OF the Offence of Murder, the Appeales are such, *Knotting* here Appeaseth *Carling* thus; That where *Cady*, Father, Brother, Sonne, or Vncle of that *Knotting* was in Gods peace and the Kings, *scil.* in such a place, the same *Carling* came thether, and the same day and yeare, &c. with a sword, or other kinde of weapon run him through the body, gave him such a wound, in such a part of his body, whereof he dyed; this murder he did upon malice fore thought feloniously, &c. Or thus, with a Hatcher, or with a Stone, or a Staffe struck the said *Cady* upon the head, or elsewhere, of which stroke he dyed such a day, at such a place, &c. or thus, That where the same *Cady* was hurt, in such a part of his body, of a curable wound; or had such a sicknesse, or curable Disease, and put himselfe to curing of this *Carling*, who said he was a Physitian; the said *Carling* came, and tooke upon him the recovery of the said *Cady*, who by his folly, negligence, &c. feloniously killed him;

him; Or thus, so long delayed his deliverance, whereby he killed him; Or thus, hung him, or feloniously killed him; Or falsly Iudged *Regicald* who first attainted the 12. Iurours, Witnesses, who wrongfully hanged *Gordian* her Husband by 24. Iurours, who afterwards by severall Appeales hanged the first 12. Iurours; Or thus, pained him so much to make him confesse, and to be an Approver, that he falsly acknowledged himselfe to have offended, and made him to Appeale Innocents of Crime, so that it lay not in *Carling* that the same *Knotting* was not adjudged to death; Or thus; whereas the said *Knotting* lay mayhemed upon his bed, and was reckoned so young, or so old, or so sick that he could not goe, the said *Carling* came and carried the same *Knotting* from such a place, such a day, &c. to such a Water, Ditch, Marle-pit, or Defart, and therein threw him, and so left him without helpe or sustenance, so as he did as much as lay in him, that he was not there dead of Famine; this misthance he did unto him feloniously, as a Felon, &c.

## CHAP. II.

### SECT. 16.

*Appeales of Robbery and Larcine.*

THe Appeales of Robbery are these; *Osmond* here appealeth *Saxemond* there, That

That whereas this *Osmond* had a Horse of such a price, the said *Saxemond* came such a day and robbed him of his Horse, &c. or of such a Garment of such a price feloniously; or of two Oxen of such a price; or other kind of goods of such a price, &c. he received the said goods so stolen, or was aiding, or consenting thereunto.

*Of Larcina thus:* *Armelwolde* here Appealeth *Oskeirill* there: That whereas he had such goods, namely, &c. he feloniously, and as a Theife stole them away.

In these Actions meete two rights, the right of the possession, as of the thing robbed or stolen out of his possession who had no right in the property, as of things taken from the Bayler, or Lessee, and the right of property as it is of a thing stolen or robbed out of the possession of him who hath the property in the thing.

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## CHAP. II.
### SECT. 17.

### *Of the Appeale of Burglary.*

OF Burglary are these Appeales; *Athalf* here appealeth *Colgrum* there; That whereas the said *Athalf* was in such a place in peace, &c. thether came the said *Colgrum*, and with force and armes assaulted his house, and in such a part brake it, or did such like other violence feloniously, &c.

## CAAP. II.
### SECT. 18.

### *Of the Appeale of Imprisonment.*

OF the Appeale of Imprisonment thus; *Darling* here appealeth *Wiloc* there; For that whereas the said *Darling*, &c. the said *Wiloc* came and arrested the said *Darling*, and brought him to such a place, or at such a day, and put him into the Stocks, or in Irons, or in other paine, or inclosure, from such a day unill such a day, &c. or thus; contrary to sufficient Bayle offered by him, in a case bayleable detained him, or after Iudgement given for his deliverance from such a day to such a day, this felony he did feloniously, &c.

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## CHAP. II.
### SECT. 19.

### *Of Appeales of Mayheime.*

APpeales of Mayheime are these; *Umbred* here appealeth *Mainawood* there; For that whereas the said *Umbred*, &c. the same *Mainawood* came and made an assault upon him of forethought malice, and armed in such a manner, cut off the foot, or the hand of the said *Umbred*; or with such

such a staffe stroke him upon the head whereby he pierced the scull of his head; or with a stone struck out his three foreteeth, whereby he mayhened him; this Mayhem he did feloniously, &c.

## CHAP. II.
### SECT. 20.

*Of the Appeale of wounding.*

OF Wounding are these Appeales; *Barnings* here appealeth *Olif* there; That whereas the said *Barnings*, &c. the said *Olif* with such a weapon strucke him, and wounded him in such a part of his body, which wound contained so much in length, so much in breadth, and so much in depth; and this wound he gave him feloniously.

## CHAP. II.
### SECT. 21.

*Appeale of Rape.*

AN Appeale of Rape is in this manner; *Arneborough* here appealeth *Atheling* there; For that whereas the said *Arneborough*, &c. the said *Atheling* came, and with force cast her downe, and in dispite of her feloniously ravished her; and because that every Rape used not to be

holden for a mortall offence, no Appeale was thereof, if therein she did not say, and tooke away her Virginity.

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## CHAP. II.

### SECT. 22.

### *Of Offences reall at the Kings Suit.*

THere are many who seeke not Absolution, notwithstanding they have offended against the King mortally; & therefore because the King is bound *Ex officio* to compell them to salvation, the King used every seaven yeares to goe through all Shires in his Realme, to make enquiry according as before is said; further, in aide of such Eyres were Coroners, Sheriffes Turnes, Viewes of Franck-pledges and other Enquests to enquire of those offenders as is said.

But because some are wrongfully slandered, King *Henry* the 1. Ordained, that none should be arrested nor imprisoned for slander of mortall offence before he were thereof endicted by the Oathes of honest men, before those who had Authority to take such Indictments, and then they were first to be seised upon by their bodies, and goods, as in Appeales, and to be kept in prison till they cleared them of the infamy before the King or his Justices.

Of the Crime of Majesty in no kind was any

any Indictment but of Herefie or Romery, whereof if any were indicted and brought to Judgement, let there be an indictment for the King by some of his people in this manner, according to that which is found in the Roles of ancient Kings.

I say *Sebourge* there is defamed by good people of the sinne of Herefie, because that he of evill Art, and beliefe forbidden, and by Charmes and Enchantments he rooke from *Brighten* by name, &c. the flower of his Ale, whereby he lost the sale thereof, so that Judgement be not given of lesse then three persons; or thus, *Molling* who is there defamed by good people, that such a day he denied his Baptisme, and caused himselfe to be circumcised, and became a Iew, or a Saracen, or offered or sacrificed to *Mahomet* in contempt of God, to the Damnation of his Soule; and this offence he did feloniously, &c. and so in every like Case for the King; and if he will deny it I am ready to prove it upon him for the King, as to the King it belongeth to doe; that is to say, according as an Infant within age.

Of falsifying thus; I say for the King, that *Mimunde* there is defamed, &c. for that he such a day, &c. falsifyed the Kings Seale, or his Money, in such a kind, or such, &c.

Of Trespasses Indictments now cease; of Burnings thus, I say &c. that *Seabright* there is defamed, &c. for that at such a day, &c. he set a fire such a house or

Of Murder thus, I say &c. that such a one, with such a weapon struck *Agole* in such a part of his body, by which stroke he is killed, &c.

The degrees of Accessories are to be shewed after the Principalls according to their right.

Of Larcine in this manner; I say, that *Cutbert* there, &c. robbed such a man knowne, or unknowne of his Horse, or of other kind of goods, &c. or feloniously stole, or was consenting to the offence of such Theeves knowne, or of unknowne Theeves by taking of Theef-boot which is a recept of Larcine, which he wittingly took to suffer such a one to passe, or to stop Suit, or wrongfully to procure his pardon.

## CHAP. II. Sect. 23.

### *Of Offences personall at the Kings Suit.*

A Personall offence is divived into two branches, whereof the one extendeth to Persons, and the other to Goods.

The Veniall offence which extends to Persons is divideable into great offences, and small offences; and although the King have Counsans of all offences, yet he reserveth only the ordering of all grosse offences to himself, and the Counsance of the lesser he leaves to all those men who have Courts within their Demesnes; and upon this division of offences hath the King established the Peace, so as such Lords & Bayliffs have the ordering of the Peace for smal offences.



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The Veniall offences Personall are these, Perjury when one telleth a lye against the King;, and Perjury of his Officers; The mortall offences not declared feloniously, as Imprisonment, Mayheim, Wounding, Battery, are to be shewed without Appeales, Allienation of old treasure found, Disseisin, Reddisseisin, and many others; the declarations of Personall offences, venialls, infamatories, are to be declared at the Kings Suit in this manner:

I say for our Lord the King, that T there is Perjured, and lyed against the King; that whereas the said T was the Kings Chancellour, and was sworne that he should not sell nor deny right, nor remediall Writ to any Plaintiffe, the said T such a day, &c. and sold to such a one a Writ of *Artaint*, or other remediall Writ, and would not grant it him for lesse then halfe a marke, &c. Or thus, whereas he was one of his Iudges assigned, and was sworne to doe Iustice, &c. he in this manner, in such a Court gave Iudgement, or awarded against such a Party, or released such a Party, or usurped such Iurisdiction upon the King; or made himselfe Iudge, Coroner, or Sheriffe, Bayliffe, or other Minister of the Kings without Warrant; or thus, whereas he was Chauncellor of the Exchequer, &c. he forbad to give an Acquitance of so much as such a one had paid of the Kings debt under the Exchequer Seale, or delayed to give an Acquittance from such a day till such a day,

and would not give an Acquittance unlesse he bought it for so much; or thus, for that he holdeth Plea against the Kings forbiding, or in prejudice of the King and his Crowne, and the rather seeing it belongeth not to any Ecclesiasticall Judge to hold secular Pleas, but only of Testamentary and of Matrimony; or thus, he disturbed the giving of Judgement, or surceased so to do justice by negligence, or by his consent.

In this manner are the Presentments to be made at the Kings Suit, of Personall wrongs of all his Ministers great and small; and also against all others not his Ministers, of all wrongs done to the King by those who have sworne fealty to him.

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## CHAP. II.

### SECT. 24.

### *Of Veniall Trespasses, and Personall Suits.*

TO those who have cause of Action and will not pursue revenge according to their rights by Actions of Trespasse to recover damages for the Trespasses; nevertheless ye are to distinguish where the Trespasse is done to the person of a man, and where to his goods.

And if to a mans person, every one may have an Action to whom the Trespasse is done,

done, except those who can maintaine no Action without their Guardians.

And if to the goods, then ye are to distinguish whether to his proper goods, or to the goods which he hath with others in common.

And if to the proper goods, then to distinguish if proper to a man, or belonging to another thing, as to the Crowne, or to any Church.

If to a man, then to distinguish if to a man free of himselfe, or to a man who is in ward.

And if to a man free of himselfe he hath severall Actions, and if proper to any other in ward, the Action belongeth to the Guardian.

If to a man in ward, the Action belongeth to the Guardian, or to the next of Kin, Parent, Affine, or Alley of his name to the use of him who is in ward.

Of goods which are in common no severall Action lyeth, and therefore of goods which belongs to men of Religion, the Action belongeth to the Soveraigne of the house, in his name for him and his Covent, or in his owne name, and the name of him who is in his custody, if the Action be an Action personall, veniall.

And there is a difference betwixt Actions which are to cause death, and pardonable Actions, for as much as to mortall Actions the Suit is to be brought first against the Principalls, and afterwards against the Accessories; and in Veniall

Actions

Actions of personall Trespasses, all ought to be comprehended in the Plaint in common; the Principalls, the Commanders, the Conspirators, and the Accessories, for as much as a man shall not recover severall damages by severall plaints thereof; nevertheleſſe none of the Accessories is to plead to the Action before the Principall hath pleaded, or be condemned for his Contempt.

Personall Trespasses used to be heard and determined in inferiour Courts of Lords of Fees, and then the offenders were Attachable by their bodies, and they used to keepe them and bring them to Judgement, if they were not bayled, without offending the Law.

The remediall Writ of Trespasse requireth bayle to them, which whosoever could not finde was to remaine in Custody without his Keeper, because they were bound to acquit their Pledgers.

And if any nevertheleſſe become Pledges of their owne will in such cases, they are to be taken; but if they are thereby endamaged by Non-suit of the party, they had no recovery against the principall Surety; a pursuing may be in divers manners, sometimes by Pledges, as it is of those who can finde them; sometimes by trusting them, as it is in case of Forraigners and poore, who have not ability to finde Pledges; and sometimes by the bodies of the Plaintiffes, as it is of Appealees, who have no other Sureties but the

the foure walls of the Prison.

And for the dureneſſe which is uſed to be done to the bodies of offenders in perſonall offences, or veniall, King *Henry* the 1. Ordained; That they ſhould arreſt them firſt by their bodies, untill they juſtifie themſelves by *Bayle*; and if they be not found, and if they doe not diſcharge their Bayle, they are then to be diſtreyned by their Lands to the value of the demand; and if they then make default, their Lands are to be delivered over to the Plaintiffes, untill they have made ſatisfaction by a reaſonable Extent, if before they have not acquirted themſelves by Law.

Of Pledges, note that thoſe are Pledges for purſuing who the Plaints affirme, and thoſe are Pledges who reprieve any other thing beſides the body of a man, for they are not properly Pledges, but Maine-priſors, becauſe they ſuppoſe that thoſe pleviſables are delivered to them by Bayle for the body.

The ordinary Declaration of Veniall Plaints begins in this forme; I ſhew unto you who am here; that *E.* who is there wrongfully delayed his Action, by a falſe eſſoigne which he caſt ſuch a day, in ſuch a place, &c. to the great damage of the Plaintiffe.

And of Treſpaſſes done againſt the Kings Peace it is eaſie to ſhew, and of Treſpaſſes done againſt Lords or Bayliffes, and in hatred of falſe Plaints, King *Henry* the 1. Ordained, that audience were forbidd

to Plaintiffes in veniall Actions, and that none was bounden to answer such Actions, if they had not present proofe of a lawfull Suit.

And there is such a difference between a Criminall Action in pleading and a Veniall, that if a Serjeant put these words, *scil.* (feloniously as a Felon, &c.) in Declarations of Veniall Actions, the Declarations are vitious and abateable, because that no Judge hath power by a Veniall Plaint to determine felony; and in the same manner is the Count vitious and abateable, where the Count is upon the right of property, and upon the plea of Possession, *Et è contra*, and there are some Actions wherein no Declaration or Count; as in Disseisin, Redisseisin, Certifications of Assize, false Judgements and Attaints.

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## CHAP. II.
### SECT. 25.

### *Of Assize of Novell, Disseisin, and Reddisseisin.*

AMongst other personall Trespasses, it is not to be forgotten to make mention of Disseisin, of which it is needfull first to see to the Title, why it is called *Assize of Novell Disseisin.*

An Assize in one Case is nothing else but a Cession of the Justice, in another case it is

is an Ordinance of Certainty, where nothing could be more or lesse then right; for the great evills which is used to be procured in witnessing, and the great delaies which were in the Examinations, Exceptions, and Attestations, *Randolphus De Glanvile* Ordained this certaine Assize, that Recognitions should be sworne by 12. Jurours of the next Neighbours, and so this establishment was called Assize. In the third case Assize is taken properly for an Action in foure manner of Pleas Possessories;

Scil. { *Novel Dissesius*
*Morldamcester.*
*Darreis Presentment.*
*Juris utrum.* }

But such Assize are called *Petit* Assizes, to make a difference from Grand Assizes, for the Law concerning Fees is grounded upon two rights of Possession and property.

And as the Grand Assize serveth to the right of property, so the *Petit* Assize serveth to the right of Possession, and because such *Petit* Assizes are to be taken of the Counties where the Fees are, by the Statute of King *Edward* called such Actions, Assizes, either for the generall Cession of the Justices, and of others, or from the propernames of such Actions.

It is called *Novell*, to put a difference from those which are ancient, for anciently Kings used to goe over the Shires to enquire, heare, and determine offences, and to redresse the wrongs there, and that which

which was not brought in such Eyres of personall Trespasses before remained to the Judgement of God alone; and afterwards by reason of the multitude of offences, and that Kings could not doe all by themselves, therefore they sent their Commissaries who now are called Justices in Eyre, who have not power to decree and determine a personall offence, but for a thing brought and not determined in the last Eyre; Then for as much as the Disseisin, or the personall Action was brought before the Eyre, the Action or Disseisin was ancient; but if the Disseisin be done since the last Eyre, then it is a Novell Disseisin.

Disseisin is a personall Trespasse, of a wrongfull putting one out of possession, it is said wrongfull to put a difference from rightfull, which is no offence; as if I take from my Wife, or my Villain, or from another who is my Ward that which is my owne; or if you take from me that which is mine, I take it from you againe, I doe not offend, for I am warranted so to doe by the Law of Nature, seeing this usage is common to Men, Beasts, Fishes, Fowles, and other earthly Creatures, but I cannot doe so afterward; for if I take from you forcibly any thing whereof you have had the peaceable possession, I doe disseise you, and I doe wrong to the King, when I disseise him of his right, or use force where I ought to use Judgement. On the other side, that which is taken from me by the rightfull

rightfull Judgement of any Judge Ordinary, or Arbitrary, is not taken wrongfully from me.

Wrong is here taken as well for deforcement or disturbance, as for ejection.

Deforcement, as if another entereth into anothers Tenement, when the rightfull owner is at the Market, or elsewhere, and at his returne cannot enter therein, but is kept out, and hindred so to doe.

Disturbance is, as if one disturbe me wrongfully to use my seisin which I have peaceably had, and the same may be done three waies.

1 As when one driveth away a distresse, so that I cannot distreyne in the Tenement lyable to my distresse, whereof I have had seisin before.

2 Another is where one doth Repleive his distresse by the Sheriffe, or the Hundred wrongfully.

3 As if one distreyne me so outragiously that I cannot manure, Plow, or use my Land duely; in which Case it maketh one an outragious distreyner to disseise, or for to eject the Tenant; as if any one eject me out of my Tenement, whereof I have had peaceable possession by discent of Inheritance, or other lawfull title to the possession.

Note that all right is in two kinds, either in right of possession, or in right of property, and therefore the right of property is not so determinable by this Assize, as is the knowne possession, or as that which

asto-

altogether favourreth of a possessory right.

The remedy of Disseisins hold not of moveable goods, nor of any thing which falleth not into Inheritance, as Land, Tenement, Rent, Advowson of a Church, and a house of Religion, Franchises, and the Appurtenances, and such other rights, whether they are holden perpetually in Fee, or for terme of life, or yeares, according to the Contract, as well as the Land morgaged to such a one and his Heires untill so much be paid to such a Tenant or his Heires.

Ejection of a terme of yeares falleth into the Assize, which sometimes commeth by Lease, or Baylement, or Loane, and sometimes by right of Wardship by the Nonage of some Heire, and to the recoverer it belongeth to hold them according to the Contracts.

Villinage in some Case falleth into this Assize; as to Free-tenants who are ejected or disturbed to continue their seisin of lawfull Presentments, and whereof a Bargaine is made betwixt any Doner, and any Purchaser, & although that the Purchaser cannot present living the Clerke of the Doner instituted into the Church; the Title nevertheleffe of Contracts barreth not altogether the Donee, so that afterwards he cannot present against the forme of the Contract, and if he doe the Doner falleth into this Assize, and the Bishop who gave the Institution to him who is not presented, by him to whom the right of presentation

sentation doth belong in his owne name.

Into this Assize also fall Donors and Purchasers, who make vicious Contracts of Lands and Possessions, as also it is of Guardians, and of Farmers who Lease their Lands for a longer time then their terme endureth, in prejudice of the Lord of the Fee, or of him to whom the Reversion belongeth, as it is of those Lessors who have Fee tayle.

On the other side fall into offence those the Kings Officers, and others who disseise a man, or a Corporation of their Franchises, whereof they have the Inheritance by lawfull Title, if not through the default, abuse, or negligence of those, or of their Bayliffes to whom the Franchises belong.

Into this offence also fall all Attornies, who yeeld up the Inheritance, or Freehold of their Clyents in Judgement, and the Justices also who yeeld to them, and the Tenants also; for it behoveth not Attornies to lose their Clyents rights, but it behoveth them to defend them till a rightfull Judgement be given.

Into this offence fall all those who commit any wast, exile, or destruction in Lands, as that which is not justifiable by Law, as those who assigne over Lands to others, where in the Feoffments to themselves, or their Ancestors there is mentioned but of Heires only, and that may be two waies, *viz.* to Heires generall, or to speciall Heires, named as in Fee tayle, or not

named, as in Franck-marriages.

This Action all Persons may bring, Men, Women, Clerkes and Laymen, Infants and others of what condition soever they be, who are not forbidden by the Law.

It is forbidden to Villaines to bring this Action without their Lord, for as much as they are in the Custody of their Lords; In the same manner to Feme Coverts, and to others who are in Ward, and to those who were never Tenants in their owne names, but in the name of the Lord

The Law also denyeth the Suit to those who have withdrawne themselves from the same action in Judgement, or have released or quit-claimed their right.

And note, that *Retrahere, & sub-trahere* is not all one, *Retrahere* doth acquit a man from those things which are in his Writ, or in his Action; but neither the one nor the other can utterly barre him, if he doe not openly declare the same; but *sub-trahere* withdraw his Action, every Plaintiffe may doe either by himselfe or his Atturney, whether he be present in Court or absent, and although it be that one will not pursue his Action, yet he doth not so barre himselfe, nor withdraw himselfe, but that he may have a new Writ, and a new Plaint, if he doe not openly in Judgement say, that he withdraweth his Action; these remedies hold against a Disseisor, and where there are many, against all those who appeare in the force, or in the aide.

CHAP.

# CHAP. II.
## SECT. 26.

### *Of Distresses.*

ANy Action rightfully grounded upon a Personall Trespasse, accrueth to people wrongfully distreyned, which is called a Distresse, and because that none can cover his Robbery, or his Larcine by Distresse, it is 1 to be knowne what is the division of Distresses.

2 Who may distreyne.

3 When, and of what things a Repleive lyeth.

A Repleive is nothing else but a reasonable distresse.

A reasonable distresse is to the value of the thing in demand without any other fault, for no outragious distresse is termed lawfull.

There are two manner of Distresses, a dead distresse, as of Corne, Wine, and other such Chattels; and a live distresse, as of a Man, a Beast, and of such like things.

No man can distreyne who is not warranted so to doe by Law, or by some other speciall deed.

1 By the Law, as for Damage feasanoe, and for Debts and Contracts of Forraigners; for Forraigners are distreynable by their moveable goods, and summonable

because they are not free Tenants in the places where they are destreyned; and for (as well) a Debt recovered as any other, and so for Amercements of damages, and Arrerages of Accompt, or other thing.

2 By Deed, as if you grant me any Annuity, and doe grant me to distreyne in the Lands for the Arrerages of the same, or other service, and binde your Possessions which are not of my Fee in whose hands soever they come to a distresse.

*When and what things a man may distreyne.*

A man may distreyne Cattell or other things so soone as he findes them damage feasant, and not the day after, and after the time of paiment, and not before, and not every day; And in the night a man may not distreyne, but only in the day time, but for damage feasant; for before Sun rising, or after Sun set no man may distreyne but for damage feasant, where a man may distreyn in places, or Lands within the Fee, lyable to distresse and not elsewhere. *Of what goods a Distresse may be.*

Of all goods which the Law forbideth not, the Law forbids that a man shall not distreyne within the view, where he may have a sufficient distresse in an open Covenable place.

A Covenable dead distresse is not by Armour or Vessels, by Robes or Jewels, by Writings if there be found another distresse sufficient in it selfe.

A Covenable live distresse is not to be of Sheepe which are guelt, Muttons, of Doggs,

Doggs, Birds, Fishes, or by Savage Beasts when there is a sufficient distresse found of other Cattell.

A distresse is to be carried, lead, or driven away at the will of the distreyner, and in case any distreyner finde not any distresse but within some inclosure, in such case he can doe nothing, but to shut up the goods inclosed, and so sequester them without doing any other violence, and if a man breake up such Pound, or the locks of it, or part of it, he greatly offendeth against the Peace, and doth Trespasse to the King, and to the Lord of the Fee, and to the Sheriffes, and Hundredours in breach of the Peace, and to the Party, and to the delaying of Justice; and therefore Hue and Cry is to be levied against them, as against those who breake the Peace.

A dead distresse found in a Covenable place, nor a live distresse is not to be led, or driven out of the Mannour, or out of the Hundred, or out of the County, nor to be put in any pound or elsewhere, where he to whom the goods are belonging cannot have sight of them, but is to be put into such a place where the distresse, and he who is the owner may be least endamaged.

*There are two kinds of leading of distresses*

1 One when a man leades away a live distresse against sufficient Gages & Pledges.

2 Another, when one will not suffer himselfe to be distreyned lawfully, and

the one and the other are Personall Trespasses against the Peace.

And then if any be wrongfully distreyned, ye are to distinguish whether it be by those who have power to distreyne or by others.

And if by others, then lyeth an Appeale of Robbery, whereof *Hailif* gave a notable Judgement; and if by those who may distreyne, then they ought to deliver the distresse by Gages and Pledges.

And if the distreyner, and the Plaintiffe of the distresse lead it away, then the Counsans thereof doth belong to the Kings Court, and so there is remedy by a Writ of Replegiary.

Nevertheless, for the releasing of such distresses, and for the hastening of the right, *Randulf de Glanvile* ordained, That Sheriffes and Hundredours should take Sureties to pursue the Plaints, and should deliver the distresses, and should heare and determine the Plaints of tortious distresses, saving to the King the Suit, as to the leading, &c.

Two things fall in these Plaints; Plaints of taking, and of detaining; whereof there are foure degrees.

1 Where the taking is justifiable for lawfull, and the detaining also, as for a debt due, or debt recovered.

2 Where both are wrongfull (as) such as are disavowable both in the taking and detaining.

3 Where

3 Where the taking is lawfull, as in damage feasant, and the detaining tortious, as against sufficient Gages and Pledges tendered.

4 Where the taking is tortious, as in a pound, and the detaining lawfull, as for a Debt confessed, and of no more have the ordinary Judges Counsans; but in case where the Plea begins by Writ, Counsans ought to be made of the taking; of the detaining lyeth remedy by an Assize of Novel Disseisin.

The taking and the detaining are sometimes by Parties knowne, and sometimes by Parties unknowne, but although the Persons are knowne, nevertheleſſe the names of the detainors ought to be known; and according to that the Avowant or the *Plaintiffe*, or of his Bayliffe if he be not present, ought to frame his Declaration, and the Plaint joyntly against the Persons, and against the detainers, or severally against one of them, and if against them both then thus; *A* wrongfully tooke, and caused to be taken, by such a one knowne, or unknowne, &c, and drove, and carried away, &c. and wrongfully doth detaine from him, &c. against Gages and Pledges, and is yet seised thereof: or thus, wrongfully detained from such a day till such a day, that he delivered the same to the Kings Bayliffe to his damage, &c. for these words (and yet is thereof seised) leaves it to them, that they cannot have right

of the distresse, and to those who detaine the distresse by Avowrie of property.

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## CHAP. II.

### SECT. 27.

### *Of Contracts.*

A Contract is a speech betwixt Parties, that a thing which is not done be done, of which there are many kinds, whereof some are perpetuall, as those of Matrimony; others are temporary, as of Baylements, and Leases; and one kind is mixt, as of Exchanges, which sometimes are for a time, and sometimes for ever; and one speciall kinde is an Obligation.

And because the Law doth not entermedle with every Contract, we are to see who may Contract, and of what things Contracts may be; every one may make Contracts with all persons who is not forbidden by Law.

The Law forbideth that none Contract with the enemies of the King of Heaven, nor with the enemies of their earthly King; nor with any mortall offenders, nor with those who are not of the Christian Faith, nor with Out-lawes, nor Waives, nor with those who are knowne Felons, nor Excommunicated, nor with any who are in Ward, if not to the profit of those who are in Ward; nor with Deafe, nor Idiots, not

nor Mad-men, nor Appealees, nor Persons endicted of Crime.

*Of what thing a Contract may be made.*

Of all things not forbidden by Law. The Law forbiddeth that a man doe not make a Contract of the right of another, although he offend not; the Law forbids Contracts of Usury, Disseisin, hurting of the body, dis-inheriting, and of other offences or vices.

Contracts are forbidden which are to the damage of the Party gayning, by vice, by forbidding mixture of offence.

Contracts are vicious; 1 Sometimes by intermixture of offence; 2 Sometimes by intermixture of ill beleeſe; 3 Sometimes when they are made againſt that which is abſolutely forbidden; 4 And ſometimes by falſe ſuppoſition.

In the firſt Caſe, as if I Contract with you, that if I doe not ſuch a thing, or ſuch a thing, that it ſhall be lawfull for you or another to kill me, or to wound me, or impriſon me; Or of Uſury, that you ſhall not demand of *C.* for 100. l. or other thing, &c.

In the ſecond, as if I give, or deliver, or leave a thing with you in hope that you will re-deliver the ſame to me againe, and you detaine this thing from me; Or if I deviſe in my Will, that you ſhall ſell ſome of my Tenements to pay my Debts, or to doe other things with the money, and you being

being my Executer, keepe this money for ever to your owne use, without doing of it; Or if I sell, change, deliver a lease unto you to have so much of you at such a time, and you keepe from me that which you promised.

In the third Case, as if I make any Contract with those with whom it is not lawfull, Nevertheleſſe the Contract of Matrimony is not forbidden betwixt Infants, although it be used to be, but in case of Disparagements; for disparagement is an offence which is greatly forbidden.

The fourth Case, as of Charters, or other kinds of Minuments, as it is of Charters, and Feoffments made in the seisin of the Donors, and of Charters of Quit-claime made out of the fiesin of those who have them; for no Charter, no Rent, nor gift remaineth good for ever, if the Donor be not seised at the time of the Contract of two Rights, of the right of Possession, and the right of Property; and as a Charter supposing a gift to be made without difference is void, so is the Quit-claime of a thing whereof the maker of the Deed is not in Possession of the thing Quit-claimed.

And as the Charters in the Cases aforesaid are nothing worth, so also are the Warranties, and whatsoever belongeth to such estates, which are without force by vertue of such false supposition.

On the other side, suppose that a single Deed be false, which testifieth the gift to



be

be returned to the Donor, or to his Heires, or in any other manner of Condition; for a gift is alwaies simple, and not of the same affection of the giver as to the right of the gift, that the thing given should remaine to the Purchasor without hope of Reversion.

A single Deed is a Minument without Indennire, and therefore the Law requireth, that Escripts, Testimonialls of Contracts conditionall, supposing a Reversion be Indented, and Chirographed.

Contracts are supposed false in taking Homage in deceit of the Law, as if I take your Homage for other service then for the service issuing out of the Tenure *De Haubert*.

The Law forbiddeth also, that none let nor take any Land, nor Fee, nor Possession, nor terme of yeares to come above the terme of forty yeares, nor that any Contracts be made in Fee farme for ever, nor for yeares, rendering more Rent by the year then the fourth part of the value; nor that any be endowed of Advowsons, nor any Allienation of Advowsons be made out of the blood, if not in perpetuity, or Fee-simple, nor that an Advowson be partable amongst Parceners, but that it remaine entirely to the next Heire of the Ancestour, or that there be any Lease for yeares left, or Fee tayle thereof, for the Advowson of a Church is so much in the spiritualty that there can be no Allienation thereof, but in Fee-simple.

In

In rights of Contracts of Baylement, and Administration of other goods and monies, it is lawfull for every one wisely to dispose of his goods to whom he will; and therefore it is advised that every one have Bayliffes, or Officers who he conceiveth doe well understand the Mannour, and if he be endamaged by any servant, or other hurt, that it be accounted his owne folly, seeing he tooke not sufficient surety of their faithfulnesse and discretion; and *è contra*, for against him who hath nothing the Law giveth no recovery, nor other remedy but revenge; nevertheleſſe if there be any such Bayliffes who will not render a true accompt to his Lord, he is chargeable thereunto by a Writ of Accompt, which is a mixt Action if he have wherewith to justifie himselfe; and if he be not distreynable, nor a Free-holder, and deceiveth his Lord, and will not render an Accompt for such disobedience, he shall have the said Action personall mixt.

And according to the change of the natures of the Actions, the formes of the remediall Writs are changed.

And although that such for their contempts are banished for a time, or for ever, yet is no man to be Out-lawed, or Imprisoned for the same; but if any be in Arrerages to his Lord, ye are to distinguish thereof if he have any thing, whereof satisfaction may be made by Judgement, to the example of a Debt recovered, or otherwise.

CHAP.

# CHAP. II.
## SECT. 28.

### *Of Villinage and Neiftie.*

AN Action of Villinage, or Neiftie is a mixt Action, grounded upon a Personall Trespasse done to an other, when a man porsecutes a Free-man to enslave his blood.

This Action is a Mixt Action in favour of Liberty, for very seldome will any one depart from his Lords Mannour, if he claime not himselfe to be a Free-man.

This Action hath Introduction, by Summons, and Attachments of the Lands.

A Waive is nothing else but a Villainesse, and notwithstanding that according to the Law of Nature all Creatures ought to be free, nevertheleffe by Constitution, and by the Deeds of men, ( are ) they and other Creatures enslaved, as it is of Beasts in Parkes, Fishes in Ponds, and Birds in Cages.

The Villinage of man is a subjection of such great Antiquity, that by the memory of man no free Stocke can be found thereof; which slavery according to some is the Curse which *Noah* gave to *Caanan* the Sonne of *Cham* his Son, and to his issue, and according to others of the *Philistines*, who became slaves at the battaile which was betwixt *David* and the children of

*Israel*

*Israel* of the one party, and *Goliah* the Philistine on the other part.

And as other Creatures are kept in inclosures, so are villains kept to guard the Possessions of their Lords, and from thence are said Regardants; and so men are villains by the Law of God, by the Law of man, and by the Cannon Law.

From *Shem* and *Japhet* come the *Gentile* Christians, and from those from *Cham*, the Villains which the Christians may give away, or sell as they doe other Chattels, but not devise by Will, because they are Astriers, who are annexed to the Franck-tenement, and of them there are many others.

Those are Villaines who are begot of Villaines and Neifrs in servitude, whether borne in Mattimony or out of Matrimony; those also are Villaines who are begotten of Villaines, and borne of Free-women in Matrimony, and those are Villaines who are begotten of a Free-man and a Neife, and borne out of Matrimony.

The other manner of Villaines are those who are adjudged Villaines by a Writ of *Nativo habendo*, and their issue after them.

Villains become free many waies; some by Baptisme, as those *Saracens* who are taken by Christians, or bought and brought to Christianity by grace.

Some became Free by the Pope, as it is of those villains who by Bishops are ordained into Orders of Deacon, and above; but

but norwithſtanding the ſame a man ſhall not loſe his right thereby who will ſue for them.

On the other part villains become Free-men if their Lords grant, or give unto them any free eſtate of Inheritance to diſcend to their Heires, or if the Lord take their Homage for their land, or if the Lord eject them out of their Fees and give them ſuſtinance; or if he put them in a common Priſon if it be not for crime.

A woman after ſhe is put in poſſeſſion by her Lord, is never againe to be challenged as a Neife, norwithſtanding ſhe be ſold.

And if the Lord ſuffer his Villaine to Anſwer in Judgement without him in a perſonall Action, or to be a Jurour amongſt Free-men, as a Free-man knowingly, and without the Lords claime; the Villaine hath this Plea to the Villinage if he returne not of his owne accord.

Alſo a Villaine becomes free through the Lords default in a Writ of *Native Habendo*, as by his Non-ſuit in the Writ.

Alſo by proofe of a free Stocke, or to have been borne of free Parents.

Alſo by the Lords grant in Court, and alſo by preſcription; alſo for default of proofe, and alſo by the Lords negligence, as by the remaining of the Villaine within a City, or upon the Kings Demeſnes for a whole yeate; Or if wittingly he ſuffer his Villaine to be a Suitor in another Court, or to be ſworne in Aſſize, or elſe-

where

where amongst Free-men; if a Villaine depart from his Lord claiming free estate, so that he cannot seise him within the Mannour within the yeare, or out of his Fee, nor after his Writ of *Nativo Habend.* brought, it belongeth to the Lord that he bring againe that Action which is *Vice-Countiel*, and pleadable in the County by Summons, and Distresses of his Lands; for the Law requireth that he doe right, and use not force

The Parties being brought to Judgement in the County court, and the Action being declared in the Defendant by way of exception may plead that he is Franck, and because that a free estate is of a higher nature then Villinage; therefore because the Sheriffe hath not power to try so high a Plea by the Writ of *Nativo Hebendo*, those Writs and such Pleas are suspendable till the comming of the Justices in Eyre into those parts; but if the King Command not to the contrary, those Pleas are not adjournable but from one County Court to another

Note that all Villaines are not slaves, for slaves are said Regardant, as before; they can purchase nothing but to the Lords use, they know not in the Evening what service they shall doe in the Morning, nor any certainty of their services; the Lords may fetter, imprison, beat, or chastise those at their pleasures, saving to them their lives and members; these may not fly, or run from their Lords so long as they

they finde them wherewith to live; nor is it lawfull for others to receive them without their Lords consent; those can have no manner of Action against any man without their Lords, but in case of Felony; and if those slaves hold Lands of their Lords, it is intended that they hold them from day to day at their Lords will, and not by any certaine services.

Villaines are Tillers of Lands, dwelling in Upland Villages, for of *Vill* commeth Villaine, of *Burough* Burgesse, and of City Citizen; and of Villaines mention is made in the Great Charter of Liberties, where it is said, that a Villaine be not so grievously amerced that his Tillage be not saved to him; but the Statute maketh no mention of slaves, because they have nothing of their own to lose.

Note by Villaines in this place is meant Copy-holders.

And of Villaines are their Tillages called Villinages.

Copy-holde called Copy holders.

And note, that those who are free, and quit of all servitude, become servile by Contracts made betwixt the Lords and the Tenants.

And there are many manners of Contracts of Fees, as of Gift, of Rent, of Exchange, and Lease, which all may make for a time, or for ever, and quitment without Obligation, and charge of service, and with charge.

And these Contracts (as all other) are made by Writings, Charters, and Minuments, by solemne Witnesses, according to the example of Contracts of Marriages,

 which

which ought to be a patterne to all other Contracts; according to which Example were the first Contracts made by the first Conquerours, when the Earles were enfeoffed of the Earldomes, Barons of the Baronies, Knights of Knights Fees, Serjeants of Serjanties, Villaines of Villinages, Burgesses and Merchants of Boroughs, whereof some received their Lands without Obligation, or service, or in Frankalmoigne; some to hold by Homage, and by Service for defence of the Realme, and some by Villaine Customes, as to Plough the Lords Lands, to Reape, cut, and carry his Corne, or Hay, or such manner of service, without giving of any wages, whereof many Fines were leavied of such services, which make mention of the doing of these base services, as well as of other more gentile services; and although so it be, that the people have no Charters, Deeds, nor Minuments of their Lands; nevertheless if they were ejected, or put out of their Possessions wrongfully, by bringing an Assize of Novell Disseisin, they might be restored to their estates as before, because they could averre that they knew the certainty of their services, and workes by the yeare, as those whose Ancestours before them were Asteries for a long time, in case Disseisors were not their Lords.

Domesday Booke, *Vt crede.*

And thereupon St. *Edward* in his time, caused enquiry to be made of all such who held, and did to him such services as ploughing his Lands, &c. besides their lawfull Customes.

And

And afterwards the people lesse fearing to offend then they ought, many of these Villaines by wrongfull Distresses were forced to doe their Lord the service of Rechat of blood, and many other voluntary Customes, to bring them in servitude under their power, for which their remedy was a Writ of *Ne nivestò vexes.*

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## CHAP. II.
### SECT. 29.

### *Of Summons.*

THis Chapter maketh mention of speciall Summons, to make a difference from generall Summons, where all Freeholders and others ought to come according to the nature of the Cry whereof, and every one may Summon by a common Cry; but of this Summons this Chapter maketh not mention.

A speciall Summons is a friendly admonition of an amendment of an offence, or wrong; and because none is tyed to Answer to any Action reall or mixt before a Summons, therefore it is to see;

1 Who have Authority to Summon.
2 Who are Summonable.
3 In what place he is Summonable.
4 How farre one is Summonable.
5 At whose Charges.
6 How often.

7 Who may be Summonors.
8 What is a reasonable Summons.

1 All who have Jurisdiction, have Authority to summon.

2 All those who are not forbidden by Law are Summonable, none is to be summoned for a personall offence, nor any one who is not a Free-holder.

3 A man is not summonable in all places, for no man is summonable, nor bounden to receive Summons out of the Fee of the Party who causeth the Summons, nor elsewhere but in the Mannour appendant to such a Court where he ought to Answer, nor in all places of the Mannour, but only at the Tenement in demand.

4 How farre one is summonable; not out of the Fee of the Court where one is to Answer.

5 At whose charges? at the charges of those, who are the first causers of the Summons, except in Juries and Enquests taken *ex officio*; for no Free-man is compelable to travell, and appeare in Judgements at his owne charges, notwithstanding that the Law requireth that every Tenant obey the Summons of his Lord.

6 How often one is summonable; but once in one cause, nevertheleſſe re-summoned holdeth place in some case.

7 Who may and ought to be Summonors; no man is compellable to be a Summonor if he will not agree to it; nevertheleſſe all those may be Summonors who will,

will, that are not forbidden by the Law. Women, nor Villaines, nor Infants, nor any infamous Person, nor any one who is not a Free-holder cannot be a Summonor.

8 It is a reasonable Summons, when it is testified by two loyall free Witnesses, Neighbours to the Person, or to the House, or Tenement contained in the Writ, with warning given of the day, place, party, Judge of the Cause, and a reasonable respite at least of fifteen daies to provide his Answer, and to appeare in Judgement. In Juries nevertheleſſe, nor Enquests there need not be so full time or respite given.

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## CHAP. II.
## SECT. 30.

### *Of Essoignes.*

ESsoigne is an excuse of a default by any hinderance in comming to the Court, and lyeth as well for the Plaintiffe as for the Defendant.

The Law of every Essoigne is; That the cause of the hinderance be enrolled with the name of the Essoigner, so that if the adverse Party, or his Attorney, or Essoignor will traverse the Cause, he is to be received so to doe, that if it be found false then that the Essoigne be turned to a default.

All those may be Essoigned who are not forbidden by Law, no Defendant in per-

seonall Actions, nor any after default can be Essoigned, nor any present in Court, nor doth Essoigne lye in a *Scire facias*, nor in a *Venire facias*, nor in a *Recordari facias toquelam*, nor in Admeasurment of Pasture, nor after the Parties have joyned issue in Judgement though the Jury appeare not, nor in case where the Plaintiffe hath not found Surety to pursue his Action, nor where one hath Arturney in Court, if both be not Essoigned, nor where the Summons is not testified; nor after an Essoigne not warranted, nor to him who was not named in the Writ, or in the Plaint, except in Warranties, not any one who is re-summoned in Mort-dauncester, and Darrein presentment, nor when the day is not come, nor where the Essoigner commeth too late, nor any one whose adversary is dead, or any of his Parceners, nor he who is adjourned from day to day, nor the Kings Officer as Officer, nor he to whom it is commanded that he appeare if he please.

No Essoigne is justifiable if it be not orderly cast, nor is it alowed to Infants within age, nor to any who is in custody, nor to many having one right, if the Cause be not divers.

All may be Essoigners who the Law forbiddeth not; it is forbidden to Women, to Infants, to Villaines, and to all who are in Custody; to Mad-men, to Idiots, to Excommunicated Persons, to the Iudges, and to the Parties in the Cause,

to Essoigners at other times not warranted, or attainted of false delayes, to criminall Persons, and to those who are not of the Christian Faith, or in the Kings Alleagiance, it is forbidden that they be Essoigners.

There are chiefly two kinds of Essoignes; the one of the Kings service, the other of hinderance.

The first is dividable, either into the service of the King of Heaven, or of the King on Earth; of the King of Heaven in three manners.

1 Either for the generall passage of all to the Land of; &c. ——— ——— ——— and this Essoigne is not otherwise adjournable, but that the Parties goe without day, and are to appeare againe by Re-summons of the Plaintiffes, at the returne of the Defendant. This Essoigne is not allowable to Plaintiffes, nor to the Defendant reasonably Summoned before his going from his house in a personall Action, nor in other, but in a Plea which toucheth Inheritance; nor but in a Writ of Right Parent, but not of Dower, nor of Burgage.

The other Essoigne of the service of the King of Heaven, is of a common Pilgrimage beyond Sea, towards the Holy Land, and this lasts for a yeare, this holds not but according as the other.

The third, of a Pilgrimage beyond Sea, as to *Rome*, or to Saint *James De compostella*, and takes place for halfe a yeare,

and these Essoignees are to appeare the next Courts following the Termes adjourned.

After Re-summons holdeth place the common Essoigne *De mal venier*, and also after the terme of Adjourment; but this common Essoigne never holds place before the Essoignes before said.

The Essoigne of the King on Earths service is in two manners.

1 The one is of those who serve as Souldiers, as Messengers, or as Ministers; and this Essoigne is not respited but from Court to Court, or the common day, to the example of a common Essogne, if it be not warranted at the next Court by the Kings Writ, it is to be turned to a Default.

2 The other is of those who serve the King by Tenure of their Land for the defence of the Realme, and he hath no day; but the Plaintiffe is without day, and the Pleais to be re-continued in the same Estate when his Adversary shall be returned.

These latter Essoignes are allowable in Pleas, summonable to Plaintiffes and Defendants, except in Dower *Unde nihil habet*, *Quare impedat*, Darrein presentment; nor to Women, nor to Infants, nor to Idiots, nor to Deaf, nor to Dumbe, nor Mad-men, nor to any in custody, nor to any who is not free of himselfe; nor to any Atturney, as Atturney; nor where the Essoigner acknowledgeth the Cause in Judgement to be false, nor after any Cape, nor after distresse in the Land.

After

After the Essoignes of the Kings service lyeth an Essoigne of *Malo veniendi*, but not *è contra*.

The Essoigne of disturbance or hinderacen is dividable, either of sicknesse, or of some other hinderance, as of those who comming towards the Court are taken by the Kings enemies, and so hindered; or by Waters, Bridges, or enemies discovered, or by Tempests, or other reasonable disturbance, so that they have not power to appeare at the day.

The Essoigne of hinderance and sicknesse is divideable, either of languishing, which is called *De malo lecti*, and that holdeth place for a yeate; or of sicknesse in the Journey, and that holds not but to the example of a common Essoigne; in these Essoignes of hinderance are Essoignes *De malo veniendi*.

This Essoigne lyeth after every Summons, and generall Re-summons upon Pleas, except to Jurours, and those who are summoned for the common-wealth.

But of Adjournments it is to distinguish; for in the Eyre of Justices, the Adjournement is for three daies, or foure at the most, or lesse according as the places are neare, or containe; and to this Essoigne is respited fifteen daies at the least.

The Essoigne of Sicknesse in passage lyeth before the Essoigne *De malo lecti*, and also after the yeare of the languishing, and it lyeth before appearance, and after appearance, except in foure Assizes;

and

and where it lyeth in Actions it holdeth in Warranties.

This common Essoigne is not allowable in the cases aforesaid, but once after the Parties have joyned issue, nor after the Parties have agreed to appeare without Essoigne, nor where a Bishop is commanded that he have or cause such a Person to appeare, nor there where many claime by one right, or are Tenants of the same right, nor to a man and his Wife, nor to all the parceners; but if a man dyeth without Heire after the Writ purchased and brought, the Writ is thereby abateable, because at the day of the date the Plaintiffe had no Action against the other parceners which are alive, as to that of the Party.

This common Essoigne lyeth as well for Infants where they are impleaded of their Lands, as for men of full age.

And as the same is allowed to the Tenant, so is it warranted where no sicknesse is adjudged; this Essoigne is allowable from day to day, according to the common Adjournments in Writs of right, till the sicknesse be Judged, if the Tenant rise not before from his sicknesse; nevertheleſſe none can doe it in such a case if not with the Plaintiffes leave, or by the Command of the King if the Plaintiffe will not give him leave.

This Essoigne holdeth in the Writ of Droit Patent sent to the Lord of the Mannour, and in a Writ of Droit close of

Lands

Lands holden of the Kings in *Capite*, and in the Writ of Customes and Services, after that the deforceor hath pleaded, and said that the Battaile or the Grand Assize may be joyned.

The Essoigne *De malo Lecti* is in Court for two yeares when the sicknesse turnes to weaknesse, this Essoigne lyeth not for the Plaintiffe; and after the sicknesse adjudged, it is adjournable by a yeare of respite to the Court of London.

Weaknesse lyeth not in any Writ of right after appearance, but where Battaile may be joyned, or the Grand Assize.

This Essoigne *De malo lecti* was never allowable to any Atturney, nor to any but those who had a Warrant before the common Essoigne cast by the Tenant, nor to any after the weaknesse adjudged, nor without rising; nor in *Justicies*, nor in the Writs *De quo jnre*, nor *De rationabilibus divisis*, nor *Quo warranto*, nor Customes and Services before that the Court be certified that Battaile might be joyned, or the grand Assize.

This Essoigne of *De malo veniendi* is called *De malo villa*, and this lyeth in case where one appeareth the first day in Judgement, and is suddenly taken with sicknesse in the Town, that he cannot the next day appeare in Court.

This Essoigne may be cast the second day

day by one, the third day by another, and the fourth day by a third; in which case the Judge ought to receive the Attornes of those who are sicke; but this Essoigne lyeth not but there where the Essoigne *De malo lecti* lyeth.

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## CHAP. II.

### SECT. 31.

### *Of Attornies.*

BEfore a Plea put into Court by Essoignes, by Attachment, or by appearance of the Parties, none is to be received by Attorney, no more then a Plea is removeable out of Court into a higher Court, where the Plaint or the Writ is not brought, nor any is to be received by Attorney in a Plea which was, nor in a Plea which shall be, but onely in a Plea which is Pendant in the County Court, or else-where; or is brought by the Kings Writ, and this plea be afterwards removed into a higher Court. By this removing the Attorney is not removed, for no Attorney is removeable unlesse he whose Attorney he is come into the Court in proper person and remove him, if not in case where one hath generall Attornies, for generall Attornies may appoint speciall, and remove them; nor

nor any can receive Atturnies after the Plea brought but the King, or other warranted by a speciall Writ, if not in the presence of the parties.

All may be Atturnies which the Law will permit; Women may not be Atturnies, nor Infants, nor Villaines, nor any who are in Custody, or any other who is not free of himselfe, nor any who is criminous, nor any who are not sworne to the King, nor any in any personall Action, nor in an Accompt, nor in *Naiuo habendo*, Plaintiffes notwithstanding they have Atturnies, in personall Actions are not to appeare, nor answer in Judgement by no Atturney, but he disseiseth his Clyent when he doth it.

The

## The Contents of the Third Chapter.



Of

CHAP. 3.

# CHAP. III.

## Sect. 1.

## *Of Exceptions.*

IT behoveth the Defendant to Answer the Plaintiffes Declaration, and because the people commonly know not all the Exceptions in Pleadings; Countors are necessary, who know how to advance and defend their Clyents Causes according to the rules of Law, and the Costoms of the Realm; and the more needfull are they to defend them in Indictments, and Appeales of Felony, then in personall or veniall Causes; and the better to helpe our memory, which every day inclineth to forgetfulnesse, it is necessary to shew what is an Exception, and the division of it, and the order of Excepting, or Pleading; for some account them guilty who Plead not, or Plead ill, or not sufficiently; for example, If any one Vouch one to warranty and Judgement passe (if he tell not the yeare, or before what Judges the Judgement passed) it is as if he had said nothing; and so of other Cases, and although a Plea be requisite, nevertheleſse every one is not received to Plead; for some are admitted to

Plead

Plead without Tutors in all Actions, and some not, but in Felonies.

Every one may Answer without a Tutor who is not forbidden by the Law.

The Law forbidderh Married women to Answer without their Husbands, but then we are to put a difference in the Cases; for if she be within the age of one and twenty yeares, she is not admitted to Plead in any Case without her Husband, but in Case where her dis-inheriting, or that which doth amount to as much doth appeare by the malice, or negligence of her Husband; & if she be of full age, then she shall so Answer alone in cases of death and Felony; and so it is of men within the order of Religion, and of Villaines, and of all those who are in Custody, and are not delivered.

## CHAP. III.
### SECT. 2.

### *What Exception is, and the order of Exception, or Plea.*

A Plea or Exception is a thing alleadged for Answer, either to delay or barre the Action.

And there are two manner of Exceptions, Dillatories, and Peremptories.

The order to Plead is such, that the Peremptory Plea is in the highest degree, or the Dillatory may have a recourse to

the Peremptory, but not *è contra.* And of Dillatories some are principall, and some are secondary, and from the secondaries there is no recourse to the principalls, and according to their degrees are they put in, partly to helpe our remembrance.

And some Exceptions are in Counts, in Replications, and Re-joynders, and so forth untill the truth be cleared in the proceedings of the Pleas, whereby one may surely come to give cleare Judgements.

Voucher to warranty lyeth not in personall Actions, although that averrements by Record, and Minements, and Witnesses availeth.

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## CHAP. III.

### SECT. 3.

### *Exceptions Dillatories.*

THere are many Dillatory Exceptions, whereof the first is to the Judge, and that many wales; one unto the power of the Judge, and that may be in two kinds, by reason of the two kinds of Jurisdictions, or because the King or his Iudge Deligate hath no Power, or Countenance in the Cause, as it is of the person of a Clerke, by reason of the Priviledges of the Church; or because the ordinary Iudge

Iudge hath not power or Counsans of a thing done out of his Iurisdiction, nor any one within a Franchise of a thing done in guildable, nor Kings, nor those of one Country, or of one Land, of things done in another Land or Country.

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## CHAP. III.

### SECT. 4

### *Of Exception of Clergy.*

FOr the Privilege of Clergy, as if a Clerke be ordered in Court before a Lay Iudge to Answer to an Action for a personall Trespasse, and especially in a Case criminall and mortall Plead that he is a Clerke, the Iudge hath no further Counsans of the Cause, for the Church is so enfranchised, that no Lay Iudge can have Iurisdiction over a Clerke, though the Clerke will acknowledge him for his Iudge; and in such a case he is without delay to be delivered to his Ordinary.

Nevertheleſse to give Actions to Plaintiffes against the Accessories in Appeales and Indictments, it belongeth to the Iudge *Ex officio* to enquire by the Oathes of honest men, in the presence of the Clerke whether he be guilty or not, and if he be guilty thereof, then he is without delay to be delivered to his Ordi-

nary, and the Plaintiffe shall Sue against the Accessories in the Kings Court, and in the Spirituall Court against the Clerke, and the Clerke after his due Purgation made, shall without delay have all his lands and moveables delivered to him.

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## CHAP. III.

### SECT. 5.

### *Replication of Bigamy.*

THe Exception of Clergy is sometimes Counterpleadable by a Replication of Bigamy in this manner.

Sir, he ought not to enjoy the benefit of this Priviledge, for he hath forfeited the same by the sin of Bigamy, as he who hath Married a widow, or many wives; and note that Matrimony is the lawfull Order of joyning together of a Christian man and woman by their assents; and as of the Diety and Humanity of Christ there is made an undissolveable Unity; so was Matrimony, and according to such Unity was such coupling found to be, and therefore none can remaine in that Unity who takes to himselfe a Plurality; and of a Plurality ariseth this offence of Bigamy, which offence draweth Clerkes nearer the Lay Power.

And note that Bigamy may be two waies; one by a Plurality of VVives, as he

he who Marrieth two wives or more, the one after the death of the other, or outliving the other; the other is plurality of Husbands as well as wives, as it is of a widow who suffereth her selfe to be Married to another man, whether her widowhood came by the death of her Husband, or by Divorce; and because it belongeth to say in what point a Clerke is Bigamus, the Bigamy is triable in the Lay Court; if nevertheleſſe the Jury doubt thereof, then the Ordinary is to certifie the ſame at the Command of the King, as in the caſe of Matrimony when it is denyed. On the other ſide, a Clerke is incounterable by other Replications, as he is for being a murderer, or a notorious lyer, or of ſuch a condition as the Church is not to proteſt him againſt the Kings Peace.

## CHAP. III.

### SECT. 6.

*Exception to the Power of the Judge.*

AGainſt the power of the Judge the Defendant may help himſelf by other Dillatory Pleas in this manner; Sir, I demand the ſight and the hearing of the Commiſſion, whereby you claime Jurisdiction over me; and if the Judge doe not deny it, or cannot ſhew it (notwithſtanding that no Judge Deligate is compelable to ſhew his power) yet may the Party plead thus; Sir, I appeale from this Commiſſion, be-

cause it maketh no mention of the Cause for which I was brought to Judgement, or not of that point; Or because you have no Counsans in such a point; or because it is vicious, and that may be divers waies, as if it be not sealed with the Kings Seale of the Chancery, for none is tyed to yeeld obedience according to the Lawes and Customes of the Realme to the Kings Privy Seale, or to the Seale of the Exchequer, nor unto any other Seale, but onely to the Seale which is assigned to be known of the common people, and especially in Jurisdictions and Originall Writs, if not for the King only. Or it may be vicious because the Seale is counterfeited or falsified, or because the King is not named in the Writ, he not being out of the Kingdome, nor in Ward; or because the Writ containeth Summons in the Action where it is personall, or Attachment where the Action is mixt or reall, or because the Seale is not fastned to the Parchment, but one may remove it, and take it from it at his pleasure; Or because the Writ was brought too late, or too soone; Or because it hath rasure, or enterlining, and diversity of hands, and of words, or false Latine; Or because the Writ is written upon Paper, or Parchment which is forbidden; Or for default found in the Writ, as the omission or transposition of a word, sillable, or clause, as it is of abatable Writs; Or because the King dyed before the Writ was brought, or because the Writ is false in the

in the day of the date, or because the Commission requireth the association of one who is not present; Or because the Writ was never sealed; or because the fact was not done within his Jurisdiction, or in a place not there determinable, or because the Iudge hath not power or Countance either of the quality or the quantity of the thing.

## CHAP. III.
### SECT. 7.

*Exception to the Person of the Judge.*

ALthough the Writ be good, and the Power be sufficient, yet there holds Dillatory Exceptions to the Person of the Iudge (as it is said) of such Persons who cannot be Iudges.

## CHAP. III.
### SECT. 8.

*Exception to the time.*

OTher Dillatories there are of time, of place, of houres, of manners, &c.

And note, there are three manner of times exempted from Pleas, in which no Parties sit in Courts and give Iudgements,

whereof two are by Law, and the other at the Will of the King.

One time containeth two Moneths, *viz.* *August*, and *September*, which are assigned to gather in the fruits of Corne, &c.

The other times containeth the Feasts and the Sundaies, which are appointed Feastivalls for the honouring of God, and the Saints, which Feasts are these:

1 The day of the birth of Christ, of St. *Stephen*, of St. *Silvester*, and the Epiphany, and the Purification of our Lady, Easter weeke, of the Rogations, which containe three daies, of the Assention, of Pentecost, of the Nativity of St. *John* the *Baptist*, of the twelve Apostles, of St, *Lawrence*, and of the Assumption of the Mother of God, and her Nativity, of St. *Michael*, and of all Saints, and of St. *Martin*, with all such Feasts which all Bishops hold Feastivalls in their Bishopricks, for that they are Canonized; besides these the daies of Reliques, of the Anunciation of the Mother of God, and of her Conception, and of the invention of the Crosse.

And note that whereas God Commanded to keepe holy the Sabbath day, it was Ordained, after the Resurrection, that we keepe holy the Sabbath Daies.

The third time is forbidden by the Kings Proclamation, of houres may arise Dillatories, for after the houre of Noone, or in the Night, no Plea is to be holden.

CHAP.

## CHAP. III.

### SECT. 9.

### *Exception of the place.*

OF the manner arise Dillatorie, for in Riding, nor in Walking, nor in Tavernes, nor else where, but in knowne places for a Consistory can any Court be holden.

## CHAP. III.

### SECT. 10.

### *Exception to the Person of the Plaintiffe.*

OTher Exceptions Dillatories arise from the Persons of some Plaintiffes, as it is of those Persons who are rebukeable of accusations. Other Exceptions Dillatories rise from the Persons of the Pleaders, or of the Attornies, or of the Essoigners, for none can doe that by his Attorney which himselfe cannot doe, nor can any be an Essoignèr, Attorney, or Pleader who may not be a Plaintiffe.

# CHAP. III.

## SECT. II.

### *Exception of Person, and of his Custody.*

OR he may take Exception against his owne Person, and say that he is not within the Kings Power, or if he be imprisoned for a greater offence, or Appealed, or Indicted of Crime, or of a higher Crime; Or he may say, that he is not bound to Answer thereunto, for as much as he is not brought to Judgement by a right course, which willeth that no man may be attached by his body, when he is distreyneable by his Lands or other goods, if not for a personall offence.

Or he may say, that he is not tyed to Answer to any Action which toucheth losse of life or member, or right of property, untill he be of the full age of one and twenty yeares or more; and there are other Dillatories of the Persons of the Answerers which appeare before.

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## CHAP. III.
### SECT. 12.

*Exception of Summons.*

IN Pleas of Summons he may say, he ought not to Answer, because the Plaintiffe holdeth no Suit of Distresse, nor hath any other manner of proofe present; Or because the Plaintiffe hath not found Sureties to pursue his Plaint, or because he was not summoned, or not reasonably summoned, or that he received the Summons by no Free-man, or but by one Freeman; Or because he was summoned too late, or because he was never summoned what thing to answer to, or because he was not summoned against the Plaintiffe.

## CHAP. III.
### SECT. 13.

*Exceptions of vicious Counts.*

AS Writs which are vicious are abateable, so also are vicious Appeales; as if the Appeales be not brought within the yeare after the Felony done, or not before the Coroner, or not in the County where the offence was done, or not in a

right.

right place, or for variance, or for Omission, or Interuption, or because the Plaintiffe is barred against others in the same Appeale.

Sometimes it happeneth that the thing which is robbed or stolne is found in the possession of a true man, against whom the Owner of the property, or of the possession frameth his Appeale, as he who is a Robber of another, in which case there is a difference, for if it be found that such a thing was given, sold, or delivered to him without Collusion, in such case the possessor is acquitted, or at least Bayleable untill the next comming of the Iustices; and when the Iustices come, the first possessor thereof is to be Arraigned, and he may shew how it came to him; nevertheleſse if he would vouch one to warrant it he cannot, nor deny the Title of his possession, but in the name of Voucher he may say, that it came to him by lawfull Title, as that he bought it in such a Market, or in such a place, without mentioning of whom; and the Sheriffe is thereupon to cause a Jury to be impannelled, and if the Answer be found true, then he is acquitted, and if not, then to be condemned as before, as if the Plaintiffe had proved the felony.

And if any one appeare, and justifie the thing to be his, he is not to be received as a Party, but the Cause is first to be tryed betwixt the two first, & afterwards he may make the estranger a Party if he will; and



if

if the case be that the buying was within a place within a Franchise, and the Sheriffe returne, that he cannot execute the Writ by reason of the Franchise of such a man, or of such a place; in such case the Sheriffe is to be Commanded that he forbeare not by reason of the Franchise, but that he enter and execute the Writ.

And if the Possessor saith, That he came to the thing from a man certaine, and he be present, and will maintaine the same without Collusion, he is to be admitted thereunto, and the other is to be discharged; and if he deny the Contract, this affirmative, and this negative are tryable by Battaile or Jury; nevertheleſſe at the Kings Suit the possessor ought make title to the Possession, or cleare himselfe thereof; for two things are necessary, *Conscience* for us, and Fame against others.

And that which is said of making of Title to the possession of things, in Case where a false Writ, or false Mony, or Larcine, or thing lost, or Estrey, or other hurt is found at the Kings Suit, although that the last professor acquit himselfe of the felony; if the Plainliffe nevertheleſſe prove the thing to be his, as of his possession, or stollen from another, or otherwise lost, the Law is, that he recover the thing without any payment for it.

Or he may have Exception Dillatory to a vicious Deed, for varience betwixt the words of the Writ and the nature of the Action, and the Count, as if he have omitted

omitted to Charge me, or if he Charge that in the Count which was not to be in that Action, as felony in a veniall Action.

And as the Defendant hath a Dillatory Exception to abate a vicious Count, in like manner hath the Plaintiffe a Replication against the Defendant upon a faulty Answer; but because none is to be Iudged for not Answering in Appeales of Felony, it is sufficient for every one to deny the fellony generally, though he Answer not particularly to every word mentioned in the Appeale.

And in Cases venialls, where the Defendants say nothing in excuse of that which is offered against them in Judgement, they are to be adjudged and Condemned as not Answering at all; in the same manner is it where one Answereth not duly, or insufficiently.

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## CHAP. III.

### SECT. 14.

### *Exception to Approvers.*

TO an Approver one may thus Answer; Sir, I am a true man, sworne to the King, and within a Franck-pledge; and this Approver is a Felon attainted by his owne confession, and out of the Kings protection, & by consequence out of the Kings Peace,

Peace, whereby he hath lost his free voice, and lost every right, and every Action, so as he is not to be admitted in any Action, no more then a man who is Out-lawed by Judgement.

Or he may plead, that he ought not to Answer him, because he did not Appeale him in his first Appeale, or not before the Coroners, and if the Approver cannot helpe himselfe by this Replication, as to say, that he is not any way out of the Kings protection; the Defendant is bound to Answer him, but he is not to be delivered to the Fee-pledges where he is in the Decenry; or to other Main-prisors untill he be appealed, or indicted.

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## CHAP. III.

### SECT. 15.

### *Exceptions of Indictments.*

THese Exceptions hold to Indictments; Sir, I demand sight of the Indictment, whereby I may take exceptions against the persons of the Endictors; or to the forme of the Indictment, for no Villaine can indite any man

Or if the Indictment be not made by the whole dozien of Free-men, or by others who cannot indict any man.

Or if the Indictment be not sealed with the Seale of the twelve Iurours, or that it is not the record of Iudges authorised

there-

thereunto; Or if the Indictment hath not been within the yeare, or by people of credit, and of good fame, no man is bound to answer to such an indictment.

Nor if the Indictment hath not been made within the Neighbour-hood of the same County, also if the Indictment be generall, for a generall slander defameth no man, nor is he compelled to answer thereunto; as if the Indictment be such a one is a Murderer, or a Thiefe, or wicked, without alleadging any particular offence therein, for to the common fame of the people an Indictment ought to give no credit or beleefe.

Or he may say, that the Iustices were the Eyre after the felony done, where nothing was moved of this felony.

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## CHAP. III.

### SECT. 16.

### *An Answer to Treason*

D*Arling* here denies all Treasons and Felonies, and whatsoever is against the Kings Peace.

And as to the consideration he may say thus; Sir, notwithstanding the joynt Alliance betwixt us by Homage sometimes

times before this time, nevertheleſſe when he counted that I ſhould commit this Treaſon, I had yeelded up to him all the Lands which I held of him, or I loſt them by Judgement, or by Diſſeiſin, which the Plainſtiffe did to me, or he appointed them to come to others; in which caſe the felony is barred, and the Plaintiffe is condemnable.

And as to the conſideration of preſent Fealty he may ſay, that this Alliance the Plaintiffe forfeited againſt him in ſuch a point, or ſuch a point; ſuch Fealty iſſued out of ſuch Lands whereof the Defendant was not then Tenant, neither in demeane nor in ſervice.

And so the Alliance of Counteſie he may ſay, that ſuch benefit was not to continue but untill a time paſt before the time named in the Appeale, for afterwards he paid him nothing of ſuch Penſion, or other Counteſie but by Judgement had againſt him, and in deſpite of him; Or thus, before the time named in the Appeale he yeelded up to him his deed of the Penſion, or releaſed the ſame unto him, or quitclaimed the ſame whereby the Alliance was deſtroyed.

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## CHAP. III.

### SECT. 17.

TO Burning he may say, that the mischiefe came by mischance, and not of a premeditated felon.

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## CHAP. III.

### SECT. 18.

*Murder.*

TO an Appeale of Murder he may plead, that the Action belongeth not to such women as the wife of the Plaintiffe, because he was not killed in her armes, or in her seisin. Or thus, Sir, the Plaintiffe is to have no Action, for as much as there is one nearer of blood who hath brought his Appeale, and is a person of ability so to doe; Or he may say, that he is not bounden to Answer in *England* unto an Act done out of the Realme, if the thing concerne not the Kings right, as his Person, or his Inheritance; nor in a Priviledged place, where the Kings Writ runneth not of an Act done in a forraigne place, nor *è contra* in a Franchise, of an Act done in Guildable; Or he may say, that he did it not feloniously, but by mischance, or by a lawfull Judgement: or thus, not against the Peace as a Fugitive, or as a known Felon, or as one who was not within Allegiance to the King at the time of the killing.

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## CHAP. III.

### SECT. 19.

TO an Appeale of Robbery or of Larcine he may plead, that he wrongfully bringeth this Appeale, for as much as the Plaintiffe brought an Action of Trespasse against the same Persons of the same before such Iudges; and if any one would cover his Larcine by colour of Avowry for an estray, or a Waife, in such case it behooveth that he shew forth a Title allowable for such a franchise; but this exception is counterpleadable by this peremptory replication; Sir, such Avowry ought not to be of any force, because he presently carried away the Estray, or Waife so found, or changed it, or sold it, or killed it, or put it out of the View; or from the knowledge of the neighbour-hood, whereas he ought to have publikely cried it in three Markets, and Monasteries next adjoyning, and keepe it in a common place for a whole yeare.

To the exception of Distresse holds this Replication; Sir, such Avowry ought not availe him, because he was not a knowne Bayliff in such a Hundred; or because he did not any thing in the manner of a distresse, as not in a due time, not had any warrant, but tooke it in the night time, or in such other manner feloniously robbed him, and stole, &c. and in the like manner may a Replication hold against a robbery made by colour of disseisin.

## CHAP. III.
### SECT. 20.

### *Of Burglary.*

TO Burglary he may say, That he entred into the Tenements without doing any Felony, and not against the Peace, as in to his owne demeane, and free-hold.

## CHAP. III.
### SECT. 21.

### *Of Rape.*

IN Appeale of Rape he may deny the Felony, and say that he ravished not her against her wil, but that she assented, and that appeareth because she conceived by him at the same time, and there is no presumption that she was ravished against her will by soiling of her Garments, nor shedding of blood, nor Hue and Cry made, or other manner of violence offered.

## CHAP. III.
### SECT. 22.

### *Of Imprisonment.*

TO the Appeale of Imprisonment he may say, that he did it by force of a right full Judgement of such a Iudge; but to that Plea is this Replication good, that

that after there came a Warrant to him to deliver him, he kept him in prison for the time named in the Appeale.

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## CHAP. III.
### SECT. 23.

### *Of Mayhem and Wounding.*

IN Mayhem he may demand the View thereof, for he cannot lawfully complaine when there is no Mayhem to be Iudged of; and of Appeale of Wounding in the same manner. By the death of the King all Pleas are suspended, all Goales opened, no Iudge, Bayliffe, or other Officer ought to entermeddle therewith for want of warrant, and all Out-lawes, and all Waives, and those who have forjured the Realme, and all banished Persons used then to returne, except those who were exiled and banished for ever; and if any recovered before for that he could not have Deit, if he were not justified to the Peace; and if he be brought to Iudgement, and if he be accused of Outlawry, he may say that he is discharged of the Outlawry by the Kings grant; Or he may say that the Outlawry ought not to prejudice him because he was under the age of 21. yeares at the time of the Outlawry, and therefore that he was not Outlawed for the felony.

Or because the felony was not done in such a County, or because he was not

Out-lawed in *England*, or not within the Kings Dominion where the Writ runneth; for an Outlawry prouounced against a man in the Bishoprick of *Durham*, or elsewhere in the Land where the Kings Writ doth not run, shall prejudice as one in the Land where the Kings Writ runneth. *Nec è contra.*

Or because the felony was not done in the time of this King, or not since the last Eyre in that County; Or because the Processe of the Outlawry was false, by a false Warrant, or without any Warrant, or because he lay sicke, and was Essoigned *De malo lecti*, or because he is alive for whose death he was Out-lawed, or because he was Imprisoned the day of the Outlawry, or because he was in the Kings service in the Holy Land, or within the Realm for the profit of the Common-wealth.

Or because he had the Kings Protection, or because he was a Mad-man, or an Idiot, or Deafe, or Dumbe, or professed in Religion, in which cases if he pray to be received to Answer, he is to be received.

And the Plaintiffe was to be demanded, and it was to be proclaimed, that if any one could shew why he should not be enlarged, that he appeared at a certaine day.

All Parties in Iudgement are necessary to be present, and they are to have Oyer of the Writs, of the Originall, the Plaintiffes Commission, the quantity or the quality

lity of his plaint. And the Disseisor or their Baylliffes, every one of them for himselfe may say in this manner, he may Answer and say for himselfe, that he hath not done any wrong or disseisin, nor hath any thing in the Tenements put in the Plaint, and he may so Answer, and so of others till it come to the Tenant in whose name the disseisin was; and he may Answer and say, that he is not in by disseisin, but is in by *D.* who infeoffed him who is not named in the Writ; and it may be that *D.* entred by *E.* and so there may be many, according to divers Feoffments betwixt the first Disseisor and the Tenant, in which cases no Voucher to warranty holdeth place for a Personall Trespasse, and therefore every one is well to looke not to make a Contract of a vicious thing, and that he take Caution, and such Surety in the Contract that he may have a recourse to recover if he lose the thing; and therefore the Lords used so keepe their Mannours that none could enter by Intrusion, Disseisin, or by other vicious bargaines, nor otherwise unlesse the bargaines were entred in their full Courts, whereby the Lords could not have received their enemies into their Mannours, nor have taken their Homage against their wills, nor any used to enter before they had found Sureties to restore to the Purchasor or his Heires the value of the thing, if by rightfull Iudgement it belonged to him after his

thing lost for the offence of Alienation, or for his power of this warranty.

To the principall Disseisor it belongeth to have a regard, if the Plaintiffe put more into his Plaint, that he Answer not but to that which he may avowe; he may say, that there is varience betwixt the Originall and the Commission, or that the Writ is vicious, as it is in misprision of names, or sir-names.

Of names, as *Renand* for *Harrand*, *Margery* for *Margaret*, and such like; or he may say the Writ is faulty for want of Sir-names; or if the names of Dignity be omitted; as if a Bishop, Abbot, Prior, or other be disseised of any thing in the right of his Dignity, and he makes his plaint simply of a Trespasse done onely to his Person, and not to his Church or Dignity in this manner; *A.* complaines to you, whereas he ought thus to make his Plaint. *A* Bishop of London, and so it is of Disseisors; Or he may say that the Writ is vicious, because the Plaintiffe who is solely in the Plaint hath no cause of Action, but with another who is not named in the Writ.

Or it may be faulty if it be not contained in the Writ, *Disseisivit eum*, where it ought to be *Disseisivit eam*, or *eos*, where it should be *eum* or *eam*, *et contra*.

It is contained in the Writ, (wrongfully and without judgement) &c. and to that one may plead not wrongfully, but rightfully denying any other force.

And note that one may be disseised wrong-

wrongfully and without Judgement, and wrongfully and by Judgement; as it is of those who are disseised of their Free-holds by the Judges who have no Iurisdiction, and nevertheleſſe adjudge men to be put out of their Poſſeſſions, and one may be rightfully and without Iudgement, as in the caſes aforeſaid; and further rightfully and by Iudgement, and thereof riſe Exceptions, and ſo not without Iudgement and yet by Iudgement, and that may be either by the Iudgement of Iudges Commiſſaries, or Iudges Ordinaries as were the Suitors.

Againe, Writs may be vicious by miſpriſion of the names of the Townes, as if a Hamlet be named for a Towne, or if the Towne be not right named, or if the Towne be not diſtinguiſhed where there are two Townes of like name in the ſame County.

And from theſe words (after the Term) may ariſe Exceptions; as if not the Term, yet he might have diſtreyned for, or the Arrerages of his Penſion, or ſpeciall Obligation, except that he had any wrong.

Or becauſe another Writ for the ſame Action is yet depending betwixt the ſame Parties, or he may ſay that he wrongfully complaines, whereas at his one Plaint he loſt the ſame Tenement by a lawfull Iudgement againſt him; Or that he hath releaſed or quit-claimed all his Right, or to the ſame purpoſe, or otherwiſe ratified his eſtate, or becauſe at another

another time he withdrew his Action before such Iudges.

For the helping of the peoples memories are Escripts, Charters, and Monuments very necessary to testifie the Conditions & the points of Contracts, for by the Statute of *Lenfred*, who ordained that one might deny Contracts by waging of his Law, and that Plaintiffes prove their Writings, otherwise their Charters which are not denied, & not to be shewed by Iurours in *England* for Forraigne Contracts, or of places Enfranchised, or elsewhere, where the Kings Writs run not by Coppies, or Collation of the Seales of others, or by Iurours, or by Battaile, according to the Plaintiffes Action.

To give matter and way to Exceptions in the aide of those who are to Answer, one is to know the end and limitation of Actions, and of Pleas, so that the Pleas may have an end, and therefore Prescriptions were ordained, whereof *Thurmond* Ordained, That Criminall Actions for revenge should cease at the yeares end, if they were not brought before, and the same time he appointed in all Actions for Wrecks, Estraies, Waife, and of things lost; in Personall Actions Venialls be appointed the Terme after the last Eyre in those parts; in reall Actions and Mixt he appointed forty yeares, nevertheleste as to the King in the right of his Crowne, and to a Francke estate *Nullam tempus occurrit.*

To an Action of Accompt he may say, that he never was his Receiver, nor Administrator of his goods, nor of his monies, whereby he was bound to render him any Accompt, and that he received them of him under the title of Buying; whereof he gave him a writing to surrender at a certain time. Or this, notwithstanding he was his Receiver or Administrator in a Franchise, or elsewhere out of the Realme, or in a Priviledged place, whereby he is not bounden to give him an Accompt within the Realme, nor where the Kings Writ runneth, or in guildable, or *contra*.

Or he may say that the Writ is vicious by false supposition, and falsly supposeth the Defendant to be a Fugitive, and besides not a Free-holder within his Bailiwick to whom the Writ is sent.

Or he is not bound to yeeld him any Accompt for that he was never Receiver of his owne hand, or of his daily Receipt he gave him a daily Accompt; or that he disbursed nothing, nor bought any thing but in the Plaintiffes sight, or of some of his; Or for that the Plaintiffe by Tallies and other Roles hath discharged him of so much in value as the Defendant was to give an Accompt for.

Or because he hath made him an Acquittance thereof, or because he was never Guardian of his Inheritance as his Guardian, but was Guardian during the time of the thing for his owne proper use, or it belongeth to him that is Guardian of the

the Lands in the right of his Fee whether it be Socage or other.

To the Action of Villinage he may say, That he is a Free-man, and that he hath proved the same at another time by a Writ of *Libertate probanda*, that he is quit from any Challenge by the Plaintiffe for ever, if he have no reasonable Counter-plea against it.

And as to the seisin of Villaine Services he may say, That he did those Services wrongfully, by Extortion, and threate of him and his Bryliffes, or for the service of Villinage and Villaine Land which he held of him, and not by service of blood; and there are two other things, the one that if the Defendant can shew a free Stocke of his Ancestours, either in the conception or in the birth, the Defendant hath alwaies been accounted for a Free-man, although his Father, Mother, Brother and Cousens, and all his Parentage acknowledge themselves to be the Plaintiffes Villaines, and doe testifie the Defendant to be a Villaine.

The other thing to be noted is, That no more then the long Tenure of Copy-hold Land maketh a Free-man a Villaine, the long Tenures of Free-hold maketh a Villaine a Free-man; for freedome is never lost by prescription of time.

There are many manner of proofs, by the same Pleas, sometimes by Rewards, sometimes by Battaile, sometimes by Witnesses, sometimes by the Confessions of the Adverse parties.

1 By

1 By Record, as in case where the parties doe agree together upon some enrolement, or to the Iudgement of some Iudge Ordinary or Assigned.

2 By Barraile, for upon warrant of the Combate which the Iudges tooke betwixt *David* for the people of *Israel* of the one party, and *Goliah* for the *Philistims* on the other party, is the usage of Barraile allowable by the Law in *England*, so that the proofe of Felony and other cases is done by combate of two according to the diversities of the Actions; for as there is a personall Action and a reall, so there is a personall Combate and a reall; personall in personall Actions, reall in realls; and these Combates are differing in this, that in a Personall Combate for Felony none can combate for another, nevertheleffe in Actions, Personalls, Venials, it is lawfull for the Plaintiffes to make their Barrailes by their bodies, or by loyall Witnesses, as in the right of reall Combates, because that none can be Witnesse for himselfe; and no man is bound to discover his reall right, and although they make these Combates for the Plaintiffes by Witnesses, the Defendants nevertheleffe may defend their owne right by their owne bodies, or by the bodies of their Free-men; and further they differ, for as much as in Appeales none can Combate for another, but it is otherwise in reall Actions; for if that one of the Parties be hurt so as he cannot Combate, his

eldest

eldest Son may wage the Battaile for him.

The Battaile of two men sufficeth to declare the truth, so that the Victory is holden for truth.

Combates are made in many other Cases, then in Felonies, for if a man hath done any falsity to me in deed, or in word, whereof he is Appealed or Impeached in Judgement, if he deny it, it is lawfull for me to prove the Action either by Jury, or by my Body, or by the Body of one Witnesse; and if it be of the false Judgement of many, then the proofe belongeth only against the pronouncer of the Judgement for the whole Court.

And so it is in case where you deny your Gift, Bayement, Pledges, Deed, Seale, or other manner of Contract, or the words which you spake, or the deed which you did.

Nevertheless you are to distinguish of the qualities of the Causes, for in Appeales of felony none can Combate for another as is said but in Veniall Causes, although one be killed in the Battaile he committeth no Murder, but onely those vanquished, or their Clyents for them shall render to the Combatants vanquishing forty shillings in name of Cowardize, besides the Judgement upon the principall.

And in case where Battaile could not be joyned, nor there was no Witnesse, the people in personall Actions used to helpe themselves by a Miracle of God in

in this manner; If the Defendant were a woman, or of such a condition that she could not joyne Battaile, and the Plaintiffe had no Witnesse to prove his Action, then the Defendant might cleare her credit by the Miracle of God, or leave the proofe to the Plaintiffe; and in the contrary case the proofe onely belonged to the Plaintiffe.

At the day of the proofe, or of the purgation, after the *Benediction*, and the *Maledition* of the Priest, cloathed with the holy Garments of the Masse, and after the parties Oathes one used to keepe the party; and he was to carry in his hand a peece of burning Iron if he were a Free-man, or put his hand or his foote in boyling water; if he were not Free, or to doe some such thing which were impossible to doe without a Miracle from God; and if he was not hurt or blemished the adverse Party remained as attainted; but Christianity suffered not that they be by such wicked Arts cleared if one may otherwise avoid it.

Battaile is not to be joyned betwixt all people, for it is not to be joyned but betwixt equalls, nor yet betwixt all equalls, for not betwixt the Father and the Son, nor betwixt Women, or Infants, or Clerkes, or Parents, or Assignes.

Equalls are not a man and a woman, nor a Holy man, and an Excommunicate Person,

Person, nor a Christian and an Infidell, nor a whole man and a sicke, nor a man of good memory and a Mad-man, nor a wise man and a foole, nor a sound man, nor a man mayhemed, nor a man and a childe, nor a Clerke and a Lay Person, nor a man professed in Religion and a Secular man, nor a true-man and a Felon, nor a man within the Kings Allegiance, and out of his Allegiance, nor the Lord, and Tenant.

The smallnesse also of the thing in demand doth hinder the Battaile, and many other Causes, as it appeareth in the Law of Fees; nevertheleſſe if those who are not receiveable to joyn in Battaile will Combate if the Battaile be joyned betwixt them, it is no wrong to them who desire it.

And if any one offereth himselfe to Combate with one armed, who before was not brought by the Parties, and the adverse Party demand Judgement for the defaut of his adversary, as if he tendereth a Witnesse who offereth himselfe to decide the difference, and now he offereth to furnish the Battaile by another who was not seene, nor heard in Court, and who cannot and ought not to try the Battaile; in such case it belongeth to try the Exception as peremptory to the Action, if the Parties will not agree unto it.

CHAP

Chap. 3. Sect. 24.

*Iuramentum Duelli.*

AFter the Battaile joyned, adjourned, and presented, & the parties duly armed, First the defendant is to swear in this manner, Heare this you man who I hold by the hand, whom you call N. by name, that I did never kill such a one your Father, or said any such thing such a day, &c. So God me helpe, and the holy Evangalist.

Afterwards the plaintife ought to sweare in this manner, Heare you this man who I hold by the hand, That you, who are called by your Right name N. are perjured, because that you such a day, &c. feloniously killed, &c. Or said such words, or did such athing, &c.

Cap. 3. Sect. 25.

*The Ordring of the Combatants.*

AFter their Oathes be taken, it behoveth to looke that the parties be Armed according to the ancient usage of what condition soever they be, Knights or others.

The Auncient usage to bee Armed in all Cases of Combate is this, The Bodies are armed without *Seme corus et baliea*, And the heades and the necks and the hands uncovered, the backs thyes, Leggs and Feet armed which Iron, And each to have a shield of Iron, and a staffe horned of one Assise. The Plaintife cometh into the List from the East, and the Defendant from the West, & on the place

they sweare in this manner, That they have not about them any Charme, nor deceit, nor have eat nor drunke any thing whereby the truth might be disturbed lessened, and the Law of the Divill enhaunced, So God them helpe and the holy Evangelists. Then Proclamation is made that none disturbe the Battaile, and Oyes is made, that there be no noise upon a Corporall punishment; And then they meet together, and if the defendant defend himselfe till after the Sun setting, and demand Judgment of the default of the Plaintife, In that case, Judgement shall be given for the defendant.

And if any fraud bee found with one of the parties, as to be privily armed, or here found or other thing unallowable, and the fraud be adjudged, that they be presently severed, and Judgment is presently to be given, and the vanquished is to acknowledge his offence in the hearing of the people, or speake the horrible word of Cravent in the name of *Cowardize*, or his left Foote to be disarmed and uncovered in signe of the Cowardize, and that Iudgment be presently given against the Principall.

Cap. 3. Sect. 26.

AS to personall Trespas, in the Case this exception lyeth, Sir, Hee wrongfully impleadeth me of this Trespas, for the same man impleaded such or such before such Iudges, in such a place of the

same

same Trespas, and made me no partie to the suit, and for asmuch as that hee then recovered by Judgment his full damages against them named in his plaint; And this suit is not brought against mee, but to recover damages, and the Law is; That a man shall not recover double damages, I demand Judgment of his Action.

As to the Allienations and Occupations of Franchises Reals Appendants to the Crowne, a man shall not vouch therein to warranty, nor demand the View, nor prescribe in them, for of such dignities none can helpe himselfe by a plea of long prescription, but such avowries of long Continuance, are accounted rather prescriptions of wrong, then lawfull exception, seing *nullum tempus occurrit Regi*, in his Franchises, but therein the King is like to an Infant who can loose nothing Although that for the personall trespas for the using of them, it behoveth every one to Excuse the wrong done to the King, or to any other, And that may be done two wayes, because his Ancestor whose heire he is, died seised theref, And so that he hath enjoyned the same by title of succession as a thing annexed to his Land. Or because hee of whom he purchased the Land to which the Franchise belongeth, was seised, as if hee were the possessor thereof. But this exception is counter-pleadable by this Replication, *Sir*, This Anowant cannot recover nor

excuſe himſelfe. For although that ſuch a one his Anceſtours was ſeiſed thereof, yet nevertheleſſe he could not grant away this Franchiſe, for the Kings never granted them ſo, that the Grantees could aſſigne them over, or make aſſignes of them.

## CHAP. III.

### SECT. 27.

### *Of Purpreſtures.*

TO Purpreſtures if the Defendant may excuſe his wrong, he need not to anſwer thereunto without a Writ, no more then to the Action of Franchiſes; Not of his own wrong of Land or Fees, or of the appurtenances againſt any other then againſt the King; nor for the King but in his preſence. And if the wrong bee not originally, the Plaintiffes, he may touch to warranty.

## CHAP. III.

### SECT. 28.

### *Of Treaſure.*

TO the Alienation of Treaſure found, he may juſtifie it if hee bee priviledged or authorized ſo to doe. Or he may ſay; that he himſelfe put it there, or ſuch other who he remembreth; whereby no action accrued to the King.

CHAP.

## CHAP. III.

### SECT. 29.

### *Of Wrecks.*

TO the Action of Wrecks he may Plead, That the King hath no Action for the same, because the yeere is not yet past; and in the same manner is it of Estrayes, and of all other things found. Or because that he knoweth to whom the goods belong who is alive. Or because the goods were taken farre in the sea, and were not cast upon the land by the waves of the sea.

## CHAP. III.

### SECT. 30.

### *Of Usery.*

TO Usery hee may Plead, and sweare that hee lent his Corne in Winter, to receive the same in *September*, according to the price as Corne should bee sould, which was dearer at that time; Or hee may sweare, he lent his monyes to receive better money for the same for a yeare; and that the same is no Usery.

## CHAP. III.

### SECT. 31.

### *Of Hunting.*

TO an Action of Hunting, Chasing, or Fishing, he may Plead, That he hath done no wrong, for it is his right to Hunt

 there-

there, for to Chase; or it is his common Piscary belonging to his Mannour of such a place, &c.

## CHAP. III.

### Sect 32.

### Of Obligation.

As to Obligations (or Covenants) he may Plead, That notwithstanding that Obligation be his Deed, nevertheless it ought not to binde him, because it is vicious, or by false supposition; or because the Defendant never saw any money or other thing to the value; or it is by mixture of offence or ill faith, as it is said of vicious Contracts. Or he may Plead a Release or quit-claime; or that it was contracted that he might do waste, or that he hath done nothing to be adjudged waste; or because he hath taken nothing but reasonable estovers for house-boote or hay-boote, or he may claime Fee in the Tenement by any lawfull Title.

## CHAP. III.

### Sect. 33.

### Of Attaint.

If any of the Parties say, That the Jurours have made a false oath, or any Jurry; an Action of Attaint lyeth, which is to be tried by 24 Jurours, so that every false witnesse be Attainted by two Juries. In which case it behoveth the Plaintiffe to have the first Verdict present under the Kings Seale, or of the party,

party, or of the Judge, and the parties to the Plea, and that he declare in what point they have made a false oath.

Or the Tenant may plead, That the Plaintiffe ought not to be answered to this attaint, because the first Judgement had not its full effect; or because that the principall in all, or in part, or in right of satisfaction of the damages remaineth yet to be barred.

Other Exceptions there are, as to the challenge of the persons of the Jurours, as appeareth in the Chapter following.

## CHAP. III.

### SECT. 34.

### *The Ordinance of Attaint.*

BEcause it belongeth to the Plaint. to prove his action, & to the affirmour to prove his affirmation, and not to the denyer his negation; & that two credible witnesses according to the Word of God are sufficient for witnesse. The usage is, That the affirmative party in aide of the Court, cause the neerest credible neighbours to appeare in witnes, so that there bee 12 men at the least of the Jury, of ancient time ordained to be of the Assize, of which if two men are by false verdict of them, and of the other Jurours; or if by good examination, if al the Jurours be not of one assent found convenable, it sufficeth; And if not, or if all the Jurours say generally; that they know nothing, or doubt of the matter, Or if they say not expressly against the Defendant, or if they speake for the Defendant

in such cases, it is to be adjudged against the Plaintiffe, that hee proveth not sufficiently his saying. And although the Defendant would make other defence, he shall not bee suffered so to doe.

Against Jurours hold challenges, as against witnesses in this manner. Sir, this man is not a convenable Jurour, because he is one of those who Endicted me of a mortall crime, so as hee did as much as in him lay to destroy me, and so he is my mortall enemy, Or for other cause of enmity.

Or because that he is Excommunicate, or Endicted, or Appealled of a mortall Felony; or because he is not of the Kings Allegiance, or because hee was at another time Attainted of a false oath, or suffered such corporall punishment for his offences, or otherwise, is infamous.

Or because he is friend, cosen, or allie, or of kindred to the other party; or because he is a villaine, or otherwise in custody; or because he is the servant, or Proctour, or Tenant of the adverse party; Or because shee is a woman, or because he was Out-lawed, or because he was forjured the Realme, or because he procured himselfe to one of the Jury, or because he is within age, or because he is a lunatique, or a mad-man, and many other exceptions of challengers there are; of which if any be denied, the challenge is to be tryed by the Jurours, and according to the tryall, the Jurour shall be admitted or refused And if no Jury once appeare for want of Jurours, he may have another.

CHAP.

## CHAP. III.

### SECT. 35.

### *Of Oathes.*

OAthes differ many wayes; The chiefe Oath is that of Fealty, which is incident to every Homage issuing out of Land, And sometimes there is the oath of Fealty, of resients and dwellers in other Mannours, and sometimes remaining in others service.

The oath of Allegiance was in these words. I will beare faith to such a King of life and member, and Terren honour, against all those that from this day forward, shall, *&c.* So God me helpe, and his holy Evangelist.

## CHAP III.

### SECT. 36.

### *Homage.*

HOmage is done in these words. I become your man for such Land; so that the whole quantity be shewed, and certainty specified; whereby the Lord well knoweth both how he may warrant his Tenant, and for how much he bindeth his Land to warranti; and that the Tenant know for how much he is his Tenant.

CHAP.

## Cap.3 Sect.37.

### *Fealty annexed to Homage.*

THe Oath of *Fealty* annexed to *Homage* is in these words: I shall beare *Fealty* to him by name of *life* and Member, &c: for so much as I shall be his Tenant against all, &c. saving the Oath of *Fealty* which I have made to such a King, &c:

And if I sweare *Fealty* to another then to the King, then thus, saving the Faith which I swore to the King, and to my other Lords,

And if the Homage be done to the King or to another to whom the Tenant hath before sworne *Fealty* in these Cases, Hee needeth not sweare *Fealty* againe, if the Alliance in no case hath bin broken.

## Chap.3 Sect.38.

### *Common Oathes.*

COmmon Oathes are in these words; I will speake truth in what you aske of mee in such a Case; So God mee helpe, &c.

The Oathes in Assises are in these words.

I will speake the truth of the Land of which I have had the view by Authority of this Assise, or of the Land of which this Action of Reddisseision is arraigned, or of the Pasture, or Fee or of the Nusance, or of the Wall, or of the Ditch, or of the Pool, or of the Water, or of the Church, or of the

the Rent or of the service, and nothing shall hinder me that I shall not speak the truth, &c.

Of Life and Member and Terren Honour, he will doe so much, that he will never assent that the King or his other Lord have damage of his life, or any of his Members, nor will assent that his honour shall be overthrowne in power, nor fame.

Cap. 3. Sect. 39.

*Of finall Accords.*

NO Law forbiddeth Pleas, nor Accords, wherefore it is lawfull for every one to agree with his adversarie, and to release and quit claime his Right, and his Action.

Nevertheleſſe after one hath once affirmed and brought his person all Action whereby scandall ariseth, none can agree it without the leave of the Iudge, so as he may withdraw it. For every Plaintiff in Actions of Scandall who attainteth not his Adversarie according to that as hee hath brought, his plaint is adjudged scandalous, as his adversarie should be if he were attainted. Nevertheleſſe in favour to save a man from death, who is not attainted of mortall Offences, it is suffered that the Adverse parties doe agree, After Battaile waged one of the parties nevertheleſſe remaineth infamous.

None can accord or agree, who is not of the Age of 21. yeares, nor any who is in custody, nor any by Attorney.

In

In custody are villanies, married women, men professed in Religion, Infants within the age of 14 years, heirs Idiots, heirs deafe and dumbe, heirs deseased, and those who are in prison, and under Bayle, and women who are in the custody of the Lords, who have the marriage of them.

# CHAP. IIII.

## The Contents.



Of

CHAP.

# CHAP. 4.

## SECT I.

## Of Iudgment.

THe flower, and necessity of Law doth depend in righteous Judgment, without which the Law can have no effect, nor any due end. And therefore it is fit to speake of judgments, which are not in all points here according to the rigour in the old Testament, and the usages used by *Moses* and the Prophets, before the Incarnation of Christ, but they are mittigated to the temper of mercy of the truth, and of the justice which Christ himselfe used upon the earth, and commanded to be used in the new Testament, and which the Apostles and their successours have used since the Incarnation of Christ, and according to the judgements of the ancient usages in Pleas, touching the Lawes of this Realme.

CHAP.

## CHAP. IIII.

### SECT. 2.

### *The Ordinance of Judgement.*

Iudgement commeth from jurisdiction, which is the greatest dignity which belongeth to the King. And there are two kindes of jurisdiction, Ordinary, and Assigned. Every one hath ordinary jurisdiction, if offence take it not away from him; for every one may judge his owne according to the right rules of Law. But this jurisdiction is now restrained by the power of Kings, in as much as none hath power to hold Plea of Trespasse or of Debt which passeth 40 s, but the King. Nor anie hath power of Counsains or Fees without a Writ. Nevertheless it is lawfull for every one to f. ouft the mortall offender, for committing of their offences by good witnesses, by warrant of ordinary jurisdiction, whether the offenders bee Clerks or Lay-people, of age, or within age, and all others of what condition so ever they be; and in those cases are those offences called notorious offences.

There are two kindes of notorious, notorious in fait, and notorious in right.

Notorious in fait is, where no contradiction lyeth, nor no oathes need to justifie them, by reason of the witnesse of the people.

Notorious of Right, is where the offenders are attainted of their offences by themselves, or by the oathes of witnesses, or otherwise in judgement. This jurisdiction assigned is

that

that which the King assignes by his Commissions of his Writs; for without a Writ he cannot by Law grant any jurisdiction, if not in the presence, and with the assent of the parties.

None can give jurisdiction but the King, & the reason is, because he is not sufficient to heare without helpe the charge which belongeth to him to punish the Trespasses, and to assoile the offenders which hee hath to governe.

And so our Ancestours appointed a Seale and a Chancellour to helpe the same, to give Writs remediall to all Plaintiffes without delay.

That Writs used to be of this Assize, They were without raysure, without enterlyning, without blots, without usuall transposition, and without every fault in the parchment and letters, and written in English with a knowne hand, by a Clerke of the Chancery and used to containe the name of the parties and the substance of the Plaintiffe, and the name of the Judge, and of the King, or other Teste of the Writ, which sometimes were directed to the Lord of the Fee, sometimes to the Bayliffes, sometimes to the Justices in Eyre, sometimes to certaine persons named, and sometimes to persons not named, as to Bayliffes, Justices, and Sheriffes.

And every Plaintiffe used to have a Commission to his Judge, by the Writ Patent aforesaid.

And now may Justices, Sheriffs, and their Clerks forge Writs, thorough draw loose a-

mand or empaire them, without any prosecuting or punishment, because the Writ are made close through abuse of the Law. By that Seale only is jurisdiction grantable to all Plaintiffes without difficulty, and the Chancellour is chargeable by his oath of allegiance to make such Writs, and that hee do not delay or deny justice, nor a remediall Writ to any one.

## Chap. IIII.

### Sect. 4.

*Jurisdiction is a power to declare the Law.*

That power God gave to *Moses*, and that power they have now, who hold his place upon earth, as the Pope, and the Emperour, and under them the King now hath this power in his Realme.

The King by reason of his dignity maketh his Justices in divers degrees, and appointeth to them jurisdiction, and that in divers manners, sometimes certaine, especially, as in Commissions of lesse Assizes; sometimes in certaine generally, as it is of Commissions of Justices in Eyre, and of the Chiefe Justices of Pleas before the king, and of Justices of the Bench, to whom jurisdiction is given to heare and determine Fines not determined, the grand Assizes, the transactions of Pleas, and the rights of the King and of the Queen, and of his Fees, and the words of the Kings Writs, whether they be named generally, or specially.

Besides, the Barons of the Exchequer have

jurisdiction over receivers, and the Kings Baylifes, and of Alienations of Lands and rights belonging to the King, and to the right of his Crowne. Sometimes jurisdiction is given to Sheriffes for the defaults of others, as appeareth in the Writ of Right; where it is sayd, That if he do not right, that the Sheriffe of the County shall do it.

Sometimes to those who have the Returne of Writs Returnables.

Sometimes jurisdiction is given to the Justices of the Bench by removing of the Pleas out of the Counties, before the sayd Justices, and sometimes to Record the Pleas holden in meane Courts without Writs, before the same Justices of the Bench: But as those Records ought not to availe the Plaintiffes, if not after judgement given, that the Pleers be Returnable untill after their judgements. And as the Pleas moved upon the Writs are to be remanded into the Lords Courts, where the Lords have not failed to do right. In like manner are the Pleas removed by Pone returnable in the Counties, in case where the parties never appeared in Court for to Plead.

To the office of chiefe Justices, it belongeth to redresse and punish the tortious judgements, and the wrongs and the errours of other Justices, and by Writ to cause to come before the King, the proceedings and the Records, with the originall Writs, and before such Justices are all Letters Pleadable returnable; and to be ended, wherein mention is made before the King himselfe; and the

the Writs nor Pleadable, nor Returnable before the King, are returnable into the Chancery.

And also it belongeth to their office, to heare and determine all plaints made of personall wrongs, within twelve myles of the Kings house, and to deliver Goals and the prisoners from thence, who are to be delivered, and to determine whatsoever is determinable by Justices in Eyre more or lesse, according to the nature of their commission.

On the other side, there is a kinde of jurisdiction which is called Arbitrary, which is not ordinary, nor assigned, as is such which is by the assent of the parties.

Of Jurisdiction commeth Judgement, which hath many significations: In the one, judgement is as much to say as absolution from offence; In another sence, as sentence, which sometimes soundeth well, as of discharge or acquittance from punishment, and sometimes ill, as Excomengment: and in another sence, as the end of the Plea, and the end of jurisdiction.

Jurisdiction assigned may be for a time, or for ever. For a time, as in some exception dilatory, where the Action reviveth; for ever, as by a definitive sentence upon the Action.

Judgements vary according to the difference of offences. In like offences, nevertheleſſe there are the like Judgements. For the mortall offences according to the warrant of the old Testament, were assoiled by death; For in the old Testament it is found, That

God commanded *Moses*, that he should not suffer Felons to live. But before, more is to be spoken of punishments, it is to see by what introduction offenders and contumacious persons are compellable to appeare in Court, and by what judgments.

## CHAP. IIII.

### SECT. 4.

### *Defaults punishable.*

DEfaults are punishable many wayes. In appeals of Felony they are punishable by Outlawry; which judgement is such, that after that any one hath been solemnly called, and demanded to appeare to the Kings peace at three severall Counties for felony, and he commeth not, that from thence forward hee is holden for a Woolfe, and is called Wolfshead, because the Woolfe is a beast hated of all people; and from thence forward it is lawfull for any one to kill him; as it is a Woolfe whereof the custome was to bring the heads to the chiefe place of the County, or of the Franchise, and according to Law, for every head of an Outlaw, to have halfe a marke, and such Fugitives, Outlawes, forfeited for their contempts, the Realm, Countrey, friends, and whatsoever belonged to the peace, and all manner of rights which they ever had, or could have by any Title, not only as to themselves, but to their heires for ever. Also, all confederations of Homages, of alliance, of affinity, of service, of oathes, and all maner of obligations betwixt the Outlawes and others were broken; severed

red, and defeated by such judgement. And all manner of Grants, Rents, and Contracts; and all manner of Actions which they had against any manner of persons, were void, not only from the time of judgement, but from the time of the Felony; for which such judgement was given, and such persons could never againe resort to answer the Felony, if the Processe of Outlawry were not faulty, if not by the great mercy and favour of the King; Weomen were not plevisibles, and put in dozens as men but were waves.

## CHAP. IIII.

### SECT. I.

### *Defaults.*

IN personall Actions, venialls, defaults used to be punished after this manner. The Defendants were distrained to the value of the demand, & afterwards they were to heare their judgements for their defaults, and for default after default, judgement was given for the Plaintiffe. This usage was changed in the time of King *Hen.* the first, That no Freeman was not to be destrained by his body for an action personall, veniall, so long as he had Lands; In which case the judgement by default was of force, till the time of King *Hen.* the third. That the Plaintiffe should recover his seisure of the Land, to hold the same in after default, untill due satisfaction was made, so as the defaults were more hurtfull to persons in contempt, then profitable.

Some Actions are personalls, and not mixt in the introduction, as of Neifitie of

Accompt; of leading away distresses: and some actions there are, that although they favour of the personalty and realty, yet they hold not the rules of those actions: As of Recognitions of Assizes, in which if the Tenants make defaults, for that there is no distresse nor seisure of the Land, or other thing in the Kings hands, but the Recognitions are to be taken *ex officio*, and the Judgements are to be pronounced according to the Verdict of the Jurours, in respect of such defaults.

## CHAP. IIII.

### SECT. 6.

### *Of Personall Action.*

IN personall Actions, venialls, where the Defendants are not Freeholders, the defendants used to be punished after this manner. First, Processe was to bee awarded to arrest their bodies, and those who were not found, were put in exigent in what Court so ever the Plea was, and were at three Courts solemnly demanded and proclaimed; and if they appeared not at the fourth Court, then were they banished the Lords jurisdiction, or the Baylisses of the Court for a time, or for ever, according to the quantity of the Trespasses.

CHAP.

## CHAP. IIII.

### SECT. 7.

### *Defaults in reall Actions.*

THe defaults in reall Actions are punishable in this manner. At the first default the plaintife is there seized to the value of the demand into the hand of the Lord of the Court, and the Tenants are sommonable to heare their Judgement of defaults; On after appearance, the seisure is to be adjudged to the Plaintifes, to hold in the name of a distresse, untill by lawfull judgment hee be ousted thereof. And if any one appeare in Court, first he is to plenise the thing in demand, and presently to answer the default; In which case hee may deny the Summons, because hee was never Summoned, or not reasonably Summoned, and thereof he may wage his Lawyer against the Testimoney of the Summoners, although they be present, and if he wage his Lawyer, he is presently to plead to the Action, or to the plaintife.

## CHP. IIII.

### SECT. 8.

### *Of Actions Mixt.*

THe defaults of mixt actions are punishable in this manner, The defendants are distrainable by all their moveable Goods and Lands, saving that they are not put out of that possession from Court to Court, till they apeare and Answere, and the

the issues come to the profits of the Lords of the Courts.

## Chap. IIII.

### Sect. 9.

### *Of Pledge and Mainpernor.*

Pledges and Mainpernors are of one signification, notwithstanding that they differ in names; But Pledges are those, who bails other things than the Body of Men, as in Reall Actions and Mixt Mainpernors are in personall Actions, only those who bayle the Body of a Man; safe Pledges are those who are sufficient to answere the demand, or the value; and are true men, and Freeholders to whom the Plaintife is, and in whose Court the Plea is brought; and if any one bring the Body or his Fees by default, he is sufficient punished, though hee bee not adjudged; but then the Offendor is first amerceable, when he is brought to judgement, and cannot excuse his wrong or save his default.

And as none who commeth before Summons is amerceable; so no Plaintife is amerceable, or his pledges; *de prosequendo* for Nonsuit, where the Tenant appeareth according to the warrant of the Summons; or otherwise maketh satisfaction for the same. As in Case where the King Commands the Sheriffe, that hee command such a one to appeare or to doe; and if he do not, and the Plaintifes put in sureties to prosecute his

suit

suit, then that he summon or attach the defendant, &c. In which case if the Sheriffe had not warned the Tenant to appeare or to do according to the points of the Warrant, if he take surety of the Plaintiffe to prosecute, hee doth him wrong: But the Plaintiffes and their pledges are to bee amerced, when the defendants offer themselves in judgment against them: and they make defaults by Nonsuit.

And also those Sheriffs do wrong who forbeare to execute the Kings Commands in as much as the Plaintiffes have found sureties to prosecute their Plaints when no mention is made in the Writs to put in sureties.

## CHAP. LIII.

### SECT. 10.

### *Defaults after summons.*

AS there is a default of persons, in the like manner there are of things; As of services issuing out of Lands where the Lands are in service, and whereof ¶ Rent, Suit, or other service bee behinde to the Lord of the Fee; The Tenant is not distrainable for the same by his moveable goods, but it behoveth to sommon the Tenants to save their defaults, or to make satisfaction, or to answere wherefore those services due out of their possessions are behinde to the Lords, and if they appeare not at the Sommon by the award of the suitors, their Lands are to be seised into the Lords hands, till they justify themselves by pledges. And if they be againe

summoned,

summoned, to heare the Iudgments for their defaults; Although they come not at the second Summon, they are not to bee amerced, in as much as they came, they may render the Land, or alledge a priviledge, or say something why they ought not to obey the Summons.

And if the Lord have not a proper Court, nor suitors, or hath not power to do Iustice to his Tenants in manner as aforesaid; That the same may bee done in the County or Hundred, or else in the Kings Courts; Or at first by a Writ of Customes and Services, and other Remediall Writs. And if any one hath not any thing to acquit himself, the Lord is not to loose his Right, although hee be delayed thereof; but the Lord may seize his Land as before is said, and the Tenant is to recover his damages where he can and it shall be accounted his follie to enter or remaine in another Fee, without the consent of the Lord.

And if any one out him of his Land, and of his Tenement, & enforceth another person to hould of him, and maketh himselfe mesne betwixt the Lord and the Tenant, in prejudice of the Lord, in such a case, the law is used to hould the course after said.

## CAP. IIII.

### SECT. XI.

### Of Champion.

If any one do or say to his Lord of whom he houldeth any thing, which ought to the

the hurt of his body, or to his disinheriſon or to his great diſhonour, Firſt by the Award of his Court, or of ſome other ſuch a one is ſommonable; if he be his Tenant, and afterwards if he make default he is deſtrainable by his Land by the Lord, till he appeare, and if hee appeare, and cannot diſcharge himſelfe, by his wager of Law, by 12. men more, or leſſe according to the Award of the Court hee is to bee diſinherited of the Tenancie which hee houldeth of the Lord in ſuch a manner by the Judgment of the Suitors, and ſo it behoveth that the Tenants leave their Lands, and that they come to the Lords.

And if any one denieth his ſervice which he ought to do, it may be ſaid by the Lords, that wrongfully he denieth either part or the whole, and that to his wrong, and ſo further count of ſeiſin by his owne hand, and that ſuch is his right, &c. as after ſhall be ſaid.

And the Tenant may choose to try his Right by his owne body, or by another, or joyne iſſue upon the Grand Aſſiſe; And pray Conuſans whether hee hath the better right to hould ſuch land ſpecified, diſcharged of ſuch ſervice, as he houldeth, or the ſaid A. to have the ſame Land indemeſure as he claimeth.

And if the Defendant will try his Right by the body of another, Then yee are to diſtinguiſh. For if the Action be perſonall, the Suit need not be preſent; and if the Action bee Reall, and the Tenant hath his Champion preſent; Then may the Plaintiſe offer his Champion againſt the Champion

on of the defendant, or he shall loose his Covenant or his Writ And if the Defendant have nochampion, then are the parties adjournable if they have joyned Battle, that they have their Champions ready at the next Court, as appeareth in the case of Saxeling to whom *Hunstan* was bounded in a Bond of 10. li. by a writing Obligatory made at Rome, which the said *Hunstan* denyed, That it was not his deed, To which Saxeling by way of Replication Answered, That hee wrongfully denyed the same, and that wrongfully, for that he sealed it with his Seale, or with the Seale of another which he borrowed of him, such a day, such a yeare, and at such a place, and that if he would deny it he was ready to prove it by the body of A. who saw it, or by O. and C. who saw the same, and if any hurt come to them, he was ready to prove the same by another, who could prove the same. And so it appeareth, that it is not needfull to have present Suit in such personall Actions the first day, but the Parties may bee adjourned as it is said.

And if any one who cannot bee a fit witnesse, or who is a Champion bee offered by one of the parties to combate who was not named before to make the Battle and the adverse partie there challenge him, and demand Iudgement of the default, in such, such case the Iudgement is to be given against the profferer.

And if any ill happen to any of their Champions wherebythey cannot combate according to their proffer, none is resceiveable

to try the battle for him but only his eldest sonne Lawfully begotten as by some is said.

And if the Tenants champion be vanquished. The Tenant thereby looseth all Homage and all Alliance, and all Oathes of Fealty; and all Homage betwixt him and the Lord, and the Lord is to enter therein and to hold the same in demesne as if he had recovered by the Grand Assise. And if the champion of the Lord be vanquished, that then the Iudgement be, that the Tenant hold his Land for ever quit of the service in the demand.

And if the King doth any wrong to any of his free men, who hould of him in chiefe, the same course is to be holden, The Earles of Parliaments, and the Commons have Iurisdiction to heare such causes and determine them; because the King cannot by himselfe, nor by his Iustices determine the Causes nor pronounce their Iudgment; where the King is a partie.

And as the Lords may challenge their Tenants of wrong, Or Injuries done to them against the Articles of their Fealtie, In the like manner are the Lords challengeable of wrongs and Injuries done by them to their Tenants. And if the Lords do not appeare to answer their Tenants; Then are the Tenants to be adjudged that they doe no service for their Lands, till the Lords have Answered.

CHAP.

## CHAP. IIII.
### SECT. 13.
### Of punishments.

PVnishment is a satisfaction for a Trespassor an Offence. There are two kinds of punishmentes. Voluntarie and Violent.

Voluntarie is that which bindeth the doer of his owne accord, as it is in his Compromises, to compell the people to keepe their Bargaines; But with such punishments the Law medleth not with: Of violent punishment wherewith the Law medleth, there are two kindes, Corporall, and Pecuniarie.

Of Corporall, some are Mortall, and some Veniall, Of Mortall, some are by beheading, some by drawing, some by hanging, some by burning alive, some by falling from dangerous places, and otherwise according to Auncient privileges, and Vsuages.

The Offences which require punishment of death, are the mortall Offences.

Of Veniall punishments, some are by losse of Member; As the Fellony of Mayhem in case of wrong; Of Member; some by the losse of hand as it is of false Notories, and of cutters of Purses with the Larcine of lesse then 12. d. and more then 6. d. which King Rich. changed, some by cutting out of Tongues, as it used to be of false witnesses, some by beating, some by Imprisonment, some by losse of all their moveable goods, and not moveable as of false Iudges, and

and it is of usurers attainted of usury after their decease, but not if they bee attainted thereof in their life, for then thy loose but only their moveables, because by pennance and Repentance, they may amend and have Heires. Some by exile and abjuration of their Christianity, or of the Realme, of the Towne, of the Manner or the Land and their friends, as it is of those who are attainted in personall Actions Veniells who are not able to make satisfaction, Some by Banishment, as it is in contempts in personall Actions, Veniells, some by other Corporall paines as it appeareth after its place.

And although one offend indeed, or in word, in all judgements upon personall Actions, 7. things are to bee weighed in the ballance of Conicience, that is to say, 1. The cause 2. The person. 3. The place. 4. The time. 5. The Quality. 6. The Quantity. 7. The end.

1. The cause whether it be mortall or veniall, 2. The person, the plaintiffe, and defendant, 3. The place whether in Sanctuary, or not. 4. The time, whether in day or in the night, 5. The Quality of the Trespasse, 6. The Quantity appeareth in it selfe, 7. The end; whether the taking were in manner of distresse by a justifiable imperiment, Or in manner of Larcine, By Alienation unjustifiable.

CHAP.

## CHAP. IIII.

### SECT. III.

### Of Infamous Persons.

ALL those who are rightfull attainted of an Offence, whereupon corporall punishment followeth are infamous.

Infamous ar all those who offend mortally or Felloniously, all those who are perjured in giving false witnesse, All false Iudges, All false Vsurours, and all those who are attainted of personall trespasses, to whom open penance is joyned by enjudgment of Law.

Those who Imprison a Free-man against his will, or blemish the credit of his Franchise by extortion, or by any purchase, Those who also bring attaints and cannot prove the perjury, whereby honest Iurours are slandered.

And those who indite or Appeale a man who is innocent of Crime, blemishing his credit or wrongfull slandering him of any personall wrong, For those 3, Pleas are held odious, the one because the Holy Scripture forbiddeth vengance to men, but the punishment of Offendors belongeth to God; and God commandeth to shew mercy, and that is against the Appeale of Felony. The other of attainder of perjury is odious for the Corporall punishment which followeth thereupon; The 3. because it is against the Law of Nature; which will not that any man should be in slavery to another Creature.

Againe those who combate deadly for reward, who are vanquished in the Combate by Judgement betwixt two men, those who with-draw themselves from Battailes when they have undertaken the Combate, if therein they make default; those who keepe Brothell-houses of loose women, those who take againe their Wives after their sinne of Adultery is knowne to them, or keepe those suspected of that sinne; those who are Adulterours, those who Marry other Wives leaving the first, those who are Ellopours or Ravishers, those who take rewards to suffer, those who cast out their Children to death, those who ravish their Cousens, or Affines, those who Marry a Wife within the yeare after the death of their former Wives, those who suffer themselves to be Married within the yeare after the deaths of their first Husbands, those and they who Contract Marriages elsewhere, leaving their Wives, or Husbands, and those who too soone purifie themselves, and many other infamous Persons are to be punished by Corporall punishments in divers manners.

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## CHAP. IV.

### SECT. 14.

### *Of Majesty.*

THe punishment of the morall Sin of *Majesty* against the King of Heaven;

Sodomy is by burying the offenders alive deepe in the earth, so that the remembrance of them be forgotten for the great abomination of the fact, it being such a sin which calleth for vengeance from God, and which is more horrible then the ravishing of the mother; but this offence is not to be brought before any Judge by way of Accusation; but the very hearing of it is forbidden. The Judgement of Romery is by fire, either to be burnt or hanged.

The Judgement of Heresie is foure fold, one is Excommunication, another Degradation, the third Dis-inheriting, the fourth is Burning to Cinders.

The Judgement of Majesty against the Earthly King is by punishment according to the Ordinance, and pleasure of the King.

The Judgement of falsifying, and of Treason is by drawing of the Parties, and hanging them till they be dead.

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## CHAP. IV.

### SECT. 15.

### *Of Burning.*

THe Judgement of Burning is to hang untill the Parties be dead, which used to be by burning, and in case where the damageous burning is by encrease of any combustable matter; it was used to cast

cast them into the fire when they found them fresh in the doing of it.

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# CHAP. IV.

## SECT. 16.

### *Of Murder.*

THe Judgement of Murder is commonly by hanging untill the Parties be dead, in Felonies not notorious, and in notorious it is by beheading the Murderours, nevertheleſſe we are to diſtinguiſh, for ſome kill men and offend not, nor deſerve any puniſhment; ſome are Manſlayers in ſignification and not by name; and ſome are ſlayers of themſelves.

The firſt are Lawfull Judges, who by a right Judgement, and good Conſcience kill men; and the Miniſters, or Officers who doe Executions of ſuch lawfull Judgement; and alſo as it is of thoſe who kill without Judgement, and without offence, as it is of thoſe who are without diſcretion and kill men, as Mad-men, Idiots, Infants within the age of ſeven yeares, and thoſe who kill men in keeping of the Kings Peace, and of thoſe who kill by Law, as of thoſe Men-ſlayers, who kill men in their morall offences, notorious in Fact, and as it is of thoſe who kill men in their owne defence, who otherwiſe cannot ſave their owne lives.

The other sort is of those who have a desire to kill and cannot, as it is of those who cast Infants, sicke people, old people, in such places where they intend they shall dye for want of helpe, and as it is of those who so paine innocent men, that to avoid the same they confesse themselves to have mortally offended; those who Condemne men by corrupt Judgement, although that they doe not directly kill them; and as willfull Men-slayers, who Appeale or Indite innocent Persons of mortall offence, and prove not their Appeales, or their Indictments; and although these used to be Judged to death, nevertheleſſe King *Hen.* the 1. Ordained this mittigation, that they be not Judged to dye, but that they have Corporall punishment; and of those who wrongfully Appeale yee are to distinguish, for if any one hath appealed another so falsly, that there was no colour of Appeale by Judgement, or other reasonable proofe, in such case he was to be adjudged to make satisfaction to the Party, and afterwards to suffer Corporall punishment.

King *Kanute* used to Judge the Maine-prisors according as the Principalls when their Principalls appeared not in Judgement, but King *Hen.* the 1. made this difference, That the Ordinance of *Kanute* should hold against Maine-prisors who were consenting to the Fact, and the other should be adjudged against the Plaintiffes, according to the example of the Principalls

palls if they were present, and against the King they were punished with a pecuniary penalty.

The third Case is of those who burne, hang, hurt, or otherwise kill themselves.

Againe wee are to distinguish of other Men-slayers, as of Phisitians, Jurours, Justices, Witnesses, of Idiots, Mad-men, and Fugitives; for Phisitians and Chirurgions are skilfull in their Faculties, and probably doe lawfull Cures having good Consciences, so as nothing faileth to the Patient which to their Art belongeth; if their Patients dye, they are not thereby Men-slayers, or Mayhemors, but if they take upon them a Cure and have no knowledge or skill therein; Or if they have knowledge, if nevertheless they neglect the Cure, or minister that which is cold for hot, or hot for cold, or take little care thereof, or neglect due diligence therein, and especially in Burning, and cutting off of members which they are forbidden to doe but at the perill of their Patients; if their Patients dye, or lose their members, in such cases they are Men-slayers, or Mayhemders.

Judges Judge men sometimes falsly to death wittingly, and sometimes out of ignorance, in the first case they are Murderers, and are to be hanged by Judgement, and not onely those who gave the Judgement but the Accessories, Abbettors, and those who hindred not such Judgement when they might have done it.

And in the second place yee are to distinguish; for one manner of ignorance is, as of a thing known had not been known, and this kinde of ignorance doth excuse; the other is of a thing not knowne which ought to have been knowne, although he was not bound to know it, and this excuseth; also the third kinde is, which commeth of not knowing that which a man is bound to know, and this excuseth not; And note, that ignorance in its selfe is no offence, but this neglect of knowing is an offence. The Iudge doth not offend so much that he doth not make the Law, but he offendeth in foolish undertaking upon him to Iudge foolishly or falsly. The fourth kinde of ignorance is, that a man Iudgeth of a thing otherwise then righteous, and if such ignorance come of the fact it excuseth, and of the Law then it excuseth not. Or thus, there is one manner of ignorance which one may overcome, and such excuseth not; and there is another kinde of ignorance which one cannot vanquish, and such excuseth whether it come by nature, or by too much passion, or sicknesse, as of rage.

And that which is said of Iudges is to be intended also of Iurours, and of Witnesses in cases notorious, where many entermedle feloniously, and any one be killed, and there be no cause to kill him; in case also where a childe is killed by too much beating, and in case where many have wounded one man, who dyeth of one

sole

sole stroke, all of them generally are adjudged Men-slayers for the apparant evidence of the fact; for none but God can Iudge the intentions of those that gave the stroke that it was to kill; nor who intermedled therein to hinder that any hurt were done, with a good intent; some who command what may be for hurt, or may be for good; some which held the Parties, and others who stroke.

Againe yee are to distinguish of other Men-slayers, as some kill those who enter to doe a mischiefe, if such cases be not notorious their acquittance or Condemnation is in the discretion of the Sutors; also in case when people kill a man in defence of themselves and their possessions, as it falleth in disseisins.

Againe, if a man draw another to fence with him, or to shoote with him, and he giveth him such a wound as if he meant willingly to murder him, the same is not to be Iudged for murder, seeing men cannot Iudge but according to Facts, and not according to the intents or thoughts of the parties hearts.

Of Fooles also yee are to distinguish, for all fooles are accountable Men-slayers, as to have Iudgement; but only Idiots, and Infants within age, for a crime cannot be done, nor an offence but through a corrupted will, and a corrupt will cannot be but where there is discretion, and innocency of Conscience doth save fooles outragious; and therefore *Robert Vol-*

mund ordained, That Idiots being Heires should be in the custody of the King, for their Marriages, and for their Inheritances of what Mainours or Lords soever they held their Lands.

Likewise yee are to distinguish of Madmen, for Frantickes and Lunatickes may offend mortally, and so they are to be accounted and Iudged for Man-slayers, but not those who are Mad continually.

Of Infants also yee are to distinguish, of Infants Murderors, and of Infants killed; the Murderors within the age of one and twenty yeares are not presently to be Iudged to death in a fact not notorious, before they be of full age.

Of Infants killed yee are to distinguish, whether they be killed in their Mothers wombes or after their births; in the first case is is not adjudged Murder, for that none can judge whether it be a Childe before it be seene, and knowne whether it be a monster or not; and to Infants killed in the first yeare of their age the Countenance belongeth to the Church.

Of Fugitives, and of those Defendants is the distinction which followeth; he who killeth a Fugitive after that he submiteth himselfe to the Kings Peace in a fact not notorious, he is to be adjudged to death as a Man-slayer, otherwise not; and he who killeth a man defending himselfe, who might flye and avoid the killing is also to be adjudged to death as a Man-slayer, otherwise not.

Of

Of the offences of Robbery, Larcine, Burglary, where the damage exceedeth 12 pence where the offenders are taken in their offences, the offenders are to be killed by losing of their heads, if the people be present after the fact and testifie the felony; and in cases not notorious the Iudgement is to be hanged till they be dead.

And if the Defendant be a Woman yee are to distinguish, whether she hath a Husband or not who is yet living, and also of the Action, whether it be mortall or not, for if she be, and was sole without a Husband which she hath married at the doore of the Monastery, and the Action be mortall she shall answer as a man doth; and if she be a Feme-Covert yee are to distinguish, for if she be accused of a mortall Crime as principall, she shall answer, and if as an Accessory then yee are to distinguish; for if she be accused of consenting to the felony of her Husband, or to any other, her Husband not knowing it, yet yee are to distinguish of the Crime; of the offences of Larcine, of Burglary, and of other small offences she may answer, That she was under the command of her husband, and that she could not contract him; that answer is peremptory in Larcine, and if without the knowledge of her Husband she shall answer: And if a Woman without her Husband be accused to have been in the company of a Theefe for a minute, or a very small time, she may

say

say, that she was not in his company but as his Concubine.

Of mortall Judgements, of Outlawry, of Abjuration of the Realme, of vanquished in Battailes for mortall felony, and otherwise attainted of a notorious mortall offence, or not notorious, the offence is such that the blood is corrupted; and of the offenders the blood is extinct in every discent in right of blood, so that nothing can descend from them to any of their Heires either next or remote by discent, but all shall remaine to the Lords of the Fee, from the time they committed the offences, whoever were Tenants thereof in the meane time by what Contracts soever; and all Fealties, Contracts, and Obligations are blotted out thereby. And of Fugitives it is according as it is with Out-lawes, and their goods which remaine (besides what belong to others) remaine forfeited to the King.

And the like in remembrance of their felonies, & in hatred of the felons it is lawfull to destroy all their mansion houses, to erradicate their Gardens, to cut downe and wast their Woods, to plow up their Meadowes, or otherwise overturne them, which King *Hen.* the 1. did moderate at the request of the Commons in this manner, for the saving of the Lands of mortall felons in their hands, of what Mannor soever they were holden, that he should hold the same, and should take the profits thereof for one yeare, and should doe

wast

wast if there were not other agreement made with him.

For the offence of Rape, the Iudgement was to be hanged till he dyed, without having regard whether the Woman ravished were a maiden or not, or without distinguishing of what condition she was, and whether at the Suit of the person, or at the Kings Suit; which offence before the time of King *Edw.* the second, was by burning of them over the eyes, because the lust came in by eyes, and the heate of whoredome came from the reynes of the cacher.

*Seaven things doe stay Judgement of Death.*

1 False Iudgement, or foolish Iudgement.

2 False Testimony.

3 Default of better Answer.

4 The hast of the King.

5 A woman with Childe.

The first three Cases have respite by forty daies, the fourth by thirty daies, the fifth by forty weekes, or more if the Childe be not borne.

6 Want of discretion, as it is of Idiots, Mad-men, and of Infants.

7 In Poverty, in which case yee are to distinguish of the poverty of the offender, or of the thing; for if poore people to avoyd famine take victuals to sustaine their lives, or clothes that they dye not of cold, so that they perish if they keepe not them-

themselves from death, they are not to be adjudged to death, if it were not in their power to have bought their victuals or clothes, for as much as they are warranted so to doe by the Law of Nature; and although the Law hath no respect but to the Soules of offenders, nevertheless King *Edward* limited the quantity of Robbery and Larcine in this manner; that is to say, that none should be adjudged to death, if the Larcine, or the stealing, or the Robbery did not exceed twelve pence Sterling; and note that King *Hen.* the 1. by *Randulph de Glanvile* Ordained, That in all mortall Actions, that where the Action was encountered with an affirmative exception, that the affirmation was first to be received in proofe in favour of life, and thence it was that if one man accused another of Felony, and he pleed that he is not the man, the proofe was awarded to the Defendant to convince the other of lying, either by his body or otherwise. And so it is if the Defendant say that he could not be at the doing of such an Act, at the day, place, or yeare named in the Plaint, because he was then in another place, where by presumption he could not doe it, or that he could not be there present; Or if he saith that the thing came to him by good title, in favour of life the proofe belongeth to the Defendant peremptorily as his peril, to the overthrowing of the Action, and the exception; but if the Defendant solve de-

ry

ny the Action, in such cases the proofe belongeth to the Plaintiffe.

Of Our lawes returned from exile, banished men, and those who have forjured the Realme and returned, being taken and kept for a justifiable offence, the Iudgement is, that they be hanged till they be dead.

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## CHAP. IV.

### SECT. 17.

### *Of Punishments in divers kinds.*

THe Corporall punishments of Death being past, we are to come to Corporall punishments venialls, which are by open infamous Penances; and first of punishments, Tallions, or (like for like) which are in three Cases, that is to say, in Mayhem, Wounding, and Imprisonment, in which if the Pleas be brought in by Appeales of Felony for revenge onely, then belongeth the Iudgement Tallion, or like Iudgement, as Mayhem for Mayhem, Wound for Wound, Imprisonment for Imprisonment.

And if pardonable in forme of a Trespasse, then these Iudgements hold place, that the offender make reasonable satisfaction to the Plaintiffes, and afterwards that they be adjudged to doe open Penance

nance according to the quantity of the offence.

Open Pennances are these; amendments of High-waies, Cawsies, Bridges, setting them up in Pillories, or Stocks; Imprisonment, and abjuration of the Realme, Exile, Banishment, either from off the Land, or from the Towne; from entring into such a place, or from going out of such a place, by Ransome of such a penalty by pecuniary punishment, or by other Fine, and such other kinds of Iudgements penals. And if the offenders be Infants, or otherwise in custody, that in such cases the Guardians be adjudged to make satisfaction of the damages, and the Guardians to betake themselves to the goods of the Trespassours; but the open Pennance is to be suspended so long as they are in Ward, so that according to the difference of the offences and the offenders the punishments were in manner as followeth; and first of false Iudges, who the more greatly offend for as much as they are in a higher degree then other people.

CHAP.

# CHAP. IV.

## SECT. 18.

### *Of false Judges.*

OF false Iudges Assigned, King *Alfred* Ordained such Iudgement, that the wrong they doe to God whose Vicegerents they are, and to the King who is put in so noble a place as is the Seate of God, and hath given them so great Dignity as to represent the Person of God, and the Counsance as to Iudge offenders, that first they be adjudged to make satisfaction to those they have hurt, and that the remainder of the goods should be to the King, saving all other rights, and all their Possessions, with all their purchased Lands should be forfeited in whose hands soever they be come, and that they be delivered over to false Lucifer, so low that they never returne to them againe, and their bodies that they be punished and banished at the Kings pleasure, and for a mortall false Iudgement that they be hanged as other murderers; And for Mayhem, Wounding, and Imprisonment, that they have like for like, and the same Law, and in the same condition.

The Iudgement of false Iudges Ordinaries is not in veniall Iudgements so penall, as it is of Iudges Deligates before; but they are to make satisfaction to the Parties Plaintiffes;

Plaintiffes, and to the King they are punishable by a pecuniary penalty, and disabled from all manner of Iurisdiction whatsoever; and in Cases mortall, and Tallions, according as it hath been said before of other Iudges.

## CHAP. IV.
### SECT. 19.

### *Of Perjury.*

PErjury is a great offence, of which yee are to distinguish either of Perjury of false Testimony, or of breach of faith, or by each of the Oath of fealty; of the first Perjury yee are to distinguish either of Perjury mortall, or veniall; if of mortall, then the Iudgement was mortall to the example of apparant murderers.

And note that in all personall Actions there belongeth such an award, that due satisfaction be made to the Plaintiffes, and that the offenders be punished with corporall paines, which paines are to be bought out by ransome of money; and if of veniall perjury, then that they be banished for a time, or for ever; and that their Woods, Meadowes, Houses, and Gardens be erradicated according to the example of murderers, saving that their Heires doe not remaine dis-inherited.

Of the other Perjury yee are to distinguish as breach of faith to the King, or to another

another Person, and if to the King yee are to distinguish whether as his Tenant or not; and if the Oath of Fealty be in respect of Land, and the fealty be broken in any of the points, then lyeth the Processe and defaults aforesaid; and if of an Oath not in respect of Land, yee are to distinguish whether of the common Oath of Fealty sworne to the King, for the remaining in his Fee, & then only Corporall punishment holdeth place, which passeth the punishment which should be adjudged to others not the Kings Offices, according to the Kings pleasure.

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## CHAP. IV.

### SECT. 15.

### *Of the Offices of Justices in Eyre.*

THe Presentments of offences are *Ex officio* by Coroners, by Sheriffes and Bayliffes in Turnes and viewes of Franck-pledge; by Enquests, and speciall Iustices, and by Kings *Ex officio*, or by their Chiefe Iustices, or of their Iustices generalls; and because that the one have not power to determine the presentments of such offences, nor to punish the Trespasses, and the other who can will not, or doe not that duty which of right they may doe; or punish the innocent, and spare the guilty. It was anciently Ordai-

ned that the Kings by themselves, or by their Chiefe Iustices, or by generall Iustices to heare and determine all Pleas, should goe Circuit every seven yeares through all Shires, to receive the Roles of all Iustices assigned, of Coroners, of Inquirers of Eschetors, of Sheriffes, of Hundredours, and of Bayliffes, and of all Stewards, of all their Iudgements, Enquests, Presentments, and all their Offices, and to examine those Roles whether any had erred therein, either in the Law, or to the damage of the King, or to the grievance of the people; and those things which they found not determined that they should determine them, and in the Eyre they should redresse the Officers, and punish the negligence of them according to the Rules of Law, and that they should enquire of all offences which belonged to the Kings Suit, and to his Iurisdiction. And note, that notwithstanding the King had the Suits of all mortall offences, and of wrongs done to the Law, and to the right of his Crowne, it is not thereby to be understood that he should have the Suit of all offences; but if any one be Plaintiffe and doth not proceed in his Suit after the same is affirmed, yee are to distinguish, if it be of a personall offence veniall it sufficeth for the Defendants, for the Non-suit of the Plaintiffe doth suppose satisfaction of the damage; and if it be of a mortall offence yet the King hath not the Suit, if not by warrant of Appeale, or Indictment,

dictment, wherein it behooveth to the Appealees and Enditees that they make haste to acquit themselves, for none is bound to Answer to any manner of Action brought by them, because they are barred by an Exception of mortall infamy, by being Appealed or Indicted.

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## CHAP. IV.

### SECT. 21.

### *Of the Articles in Eyre.*

EVery Shire usedto be warned by forty daies at the least, by generall Summons of the Kings comming, where after the Essoignes adjourned, and the Assize of Victuals set, and the Ordinances proclaimed, and those of Franchises adjourned, and the Jurours called, Sworne, and Charged with their Articles; and the claimers of Franchises, and the Rolls of the Justices, of Coroners, and of all Sheriffes, and of all other manner of Pleas, and Presentments after the last Eyre taken and received; the first thing was to enquire, heare, and determine the Articles presented and brought in the last Eyre which were not ended, and afterwards to determine Writs and Plaints, to deliver Visnes, to examine the Rolls, to redresse the errours, and all other wrongs by right Judgements, without respect unto any person.

All the Judges Ordinaries, and Assigned Sheriffes, Bayliffes, and Stewards of Lords of Mannours, and all other who claimed Iurisdiction which any one could attaint of any wrong done against the right rules of Law, were condemned for the wrongfull Iudgements, with regard to the distinction of the Parties grieved.

Coroners, Eschetors, Sheriffes, Bayliffes, and other Ministers doing wrong to the King, or to the people, used to be punished according to the example of the other, and further according to the Kings pleasure.

The offenders which were found using false Scales, and false Measures, and gaining by breaking of any Assize, either of Bread, Wine, Ale, Cloth, or other Merchendizes used to be set in the Pillory, and Women in the Tumbrell, and afterwards were not suffered to Merchandize at any time, nor could they depart from the place or Towne to any Liberty, because the usage was contrary to Law.

Cut-purses taken *De facto* in their notorious sins used to be hanged, and for the cutting of Purses and stealing of other goods under the value of twelve pence, and lesse then sixe pence one of their eares used to be cut off without carrying them to Prison, or before any Iudge Assigned, and to banish them from the Towne, or from the Mannor for the second offence.

And for their Larcine under the value of sixe pence they used to set them in the Pillory

Pillory for the first offence, and to banish them for the second.

In the Iudgements of Personall Trespasses, venialls, as to the taxing of the damages put in plaints, *Martin De Pateshall* used this course, the Judge used to enquire *ex officio* of the Iurours, by whom any principall Trespasse was adjudged before him, the names of all those who were guilty in the first degree, and of the Accessories, and therein he proceeded to Iudge the damages according to the number of the Endictors, so that no Plaintiffe should recover no more entire damages by plurality of Plaints for one sole trespasse against the Trespassours severally.

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## CHAP. IV.

### SECT. 22.

### *Of Franchises.*

OF Franchises note, that because the King doth not hold his Rights and Dignities of his Crowne but as an Infant, not a grant from him of any franchises is so established that Kings cannot repeale them againe, so as he give satisfaction to the value as by warranty; and it is lawfull for every one who findeth himselfe grieved to Sue for the King, to seize every Franchise forfeited for contumacy; as if the Bayliffe of a Franchise doe not execution

cution of the returne of the Sheriffe according to the Command of the King, by any abuse, as by using his franchise too largely, or not duely; by a Writ ensuing, it is commanded that the Sheriffe enter into the Franchise, and the King doth recover the seisin thereof, and so the same becomes guildable which was before a Franchise.

And all those used to forfeit the Franchise of keeping of a Goale in Fee, who by title of Franchise of Insangthiefe, or of return of Writs hurted not without delay, the Persons taken in the places within the Franchise for Felony done in Guildables, and send them into the Goale in Guildable, so that the King doe not lose the Goods and Chattels of the Felons, nor his other rights; for the King giveth no Franchise to his owne prejudice, nor to the prejudice of others, especially of returne of Writs, nor to have the custody of a Goale. An example may be as betwixt two Neighbours in a Franchise, the one cannot keepe a Prison to the prejudice of the King, and if he doe he forfeiteth the Franchise.

And it also appeareth, that Iurours came out of Franchises before the King and his Commissioners to Guildable and elsewhere at his command, as well upon criminall Actions as upon realls.

And if any one receive a Felon wittingly into his Franchise, the same is now challengable.

CHAP.

## CHAP. IV.

### SECT. 17.

### *Of satisfaction of Debt.*

IF a Plaintiffe recover against many by Iudgement he shall have but once damages, as in this case: If many Persons owe one Debt, and every one be bound in the whole, if one of them make agrement for the same, although he doe not make a speciall agreement for all the Debtors, all of them nevertheleſſe are discharged, because satisfaction hath respect to the Debt, and not to the persons.

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## CHAP. IV.

### SECT. 18.

### *Cases of Disseisin.*

IF the Iurours in Petit Assizes are agreed that one shall give their common Verdict for all, and if they say that they know nothing, nor that the Plaintiffe shall receive nothing because he proved not his Action; and if they be of divers opinions they are not therefore to be threatned, nor imprisoned; but they are to be severed and diligenrly examined. And if two Iurours be found to agree amongst

all the rest, it sufficeth for him for whom they speake, and they are not to be examined upon the title of the possession, but it is sufficient for the Iudge to know if the Plaintiffe were disseised of his Land, whether it were rightfull or wrongfull according to the Plaint; for though it were right, nevertheleſſe it was tortious, because the Tenant used force where he should have used Iudgement, and for that he made himselfe a Iudge therein, Iudgement is to be given for the Plaintiffe, so as he shall recover seisin, such as it is, saving every right by another Writ; for an Assize lyeth not upon Assize of the same Tenement, betwixt the same parties, nor an Attaint upon an Attaint; and if the Iurours for him, whether they were sworn upon the Action, or upon the Exceptions, Iudgement goes for him, and they behoove to enquire of the others named in the Writ, and if the Disseisors came in with force and Armes, although they hurt no persons body, all of them nevertheleſſe are to be adjudged to Corporall punishment, according to the quantity of the offence; and if they cast him out of his dwelling house, or out of his Demesne, the felony of this Burglary is punishable at the Kings Suit, or at the Suit of the Party, for none is to be cast out of his house where he dwelleth, and which he hath used as his owne for a yeare without Iudgement, although he hath no title thereunto but by Disseisin,

or

or intrusion, and it sufficeth for force and Armes, onely the shewing of Armes for to hurt the Adversaries; and under the name of Armes are contained Bowes, Arrowes, Sawes, Launces, Speeres, Staves, Swords, and Targets of Iron.

The Iury ought to enquire of the damages, that is to say, of the profits of the Tenements done since the Disseisin, and to whose hands such profits after came, and of the Charges, Costs, and reasonable expences which the Plaintiffe hath sustayned in his whole recovery, and in all things, and how much he is endamaged in distresse of his goods, and in his honour; and the damages being assessed, it is to be awarded that the Plaintiffe recover his seisin, such as it is, according to the view of the Recognitors, and the damages; and the Disseisors are punishable according to the points of the offences.

For the goods found in the Tenements whereof none can know the value, as Charter, Writings, Royall Treasure, and such things locked up, the Plaintiffe hath an Action by Appeale of Robbery, or by a Writ of Trespasse.

In Iudgement of Larcine venable satisfaction is to be made to the Plaintiffes, to the double of the value of the things which are stolen; and in case of Robbery, to the value (4 double) or foure times value.

CHAP.

# CHAP. IV.

## SECT. 25.

### *Of Amercements.*

A Pecuniary paine we call an Amercement, which follow reall offenders and mixt, and sometimes are certaine, and sometimes uncertaine. An Amercement is certaine, sometimes according to the dignity of the Persons, as it is of Earles and Barons; for he who holdeth an entire Earldome is to be amerced one hundred pound when he is least amerced; And a Baron for a Barony entire one hundred Markes, and he who holdeth lesse, lesse; and more, more; according to the quantity of the Tenure.

And sometimes by a certaine Assize in another case, as it is of Escapes of people imprisoned, in which case yee are to distinguish of the place, as where one escapeth out of the Kings Prison, or out of the Prison of another; out of the Kings Prison yee are to distinguish of the cause, whether it be mortall or veniall, and if mortall, then distinguish if the cause were adjudged or not, and if adjudged by notory of fact, or of right, then the Corporall punishment is uncertaine; for if the Keeper, or more be assenting to the escape, punishment of death followeth thereupon; and if the cause was not adjudged, and the Keeper

Keeper was not the Kings Officer, nor assented to the escape, then the Assize of punishment is so many Shillings sterling or more, according to the usage of the Country, or of the place, or of the person.

And if the Cause be veniall, then the escape is not punishable.

And if the escape be from the prison of others, then yee are to distinguish of the cause, and of the caption, whether the cause be mortall or veniall, and if mortall then the pecuniary paine aforesaid holdeth place; and if the cause be veniall, there is no punishment for the escape.

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## CHAP. IV.

### SECT. 26.

### *Of Amercements taxable.*

COmmon Amercements are Taxable by the Oathes and Afferments of the Peeres, of those who fall in *misere cordia*, according to the constitution of the Charter of Franchises, which willeth that a Free-man be assessed when he falleth into an Amercement according to the quantity of his offence, a Merchant saving to him his Merchandize, and a Villaine saving his Wainage; and these Afferrors are to be chosen by the assent of the Parties if they will, but the Kings Officers are the more

more grievously to be Amerced for the breach of their faith, &c.

Many cases there are where Corporall punishments are brought in by Fines of money, and such are called Ransomes, which is as much as to say, Redemption from Corporall paines; whereof some Fines are common, as for Murders, other for personall Trespasses of Townes and Commonalties, which Fines King *Edward* Ordained, that they should be assessed in the presence of the Justices, so as the names of them be put into the Roles of the Justices, so that the Estreates may come to the Sheriffe to leavie the same by parcells, and not by totall Summons.

And in case where one recovereth Debt or Damages, King *Edward* enacted that it should be in the election of them to doe execution by leavying such Debt, and damages of the moveable goods of the Debtors at the very value, to the value of the thing in demand, except the Oxen, and Beasts of the Plow, together with the moyety of Lands, and Tenements of the Debtors, if the goods be held sufficient by a reasonable Extent untill the debt and damages be leavied.

Those who are Appealed and Endicted of Felony, and are not to be found, it behooveth that they be proclaimed, and especially before the Kings and his Justices Errants, and if they be found guilty, then they are to be commanded

to

to put them in exigent, so that the first County after the Eyre be the first day, and so they be demandable at three County-Courts untill they be Out-lawed, if they tender not themselves to the Peace.

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## CHAP. IV.

### SECT. 27.

### *Of the Office of Justices in Eyre.*

TO the Office of Iustices in Eyre it belongeth especially to enquire by Iurours, and by examination of the Roles of the Coroners, of all that were Out-lawed after the last Eyre, and after Certificate of their names they are to enquire of the names of their Pledges, that is to say, whether they were in Dozien, or in Franck-pledge, and if their Pledges be in the same County then are the Pledges punishable by a pecuniary paine, because they brought not those they tooke in Maine-prise to appeare; and if they were elsewhere in Dozien, then they are to enquire in whose Main-prise they were, and they are punishable according to the example of the Pledges for the same cause.

To help the memories of the people are Escripts, Charters, and Minements very necessary to prove the conditions and the points of Contracts, Gifts, Sales, Feoffments and other things.

By

By the Statute of *Leuchfred* it was Enacted, that one might deny nude contracts made by words, and it was Ordained, that Plaintiffes should prove their Writings which were denyed, and not proveable by Neighbours in *England*, and for forraigne Contracts by Battaile, or by the setting to of other Seales, or by Iurours at the election of the Plaintiffes.

If Iurours have obscurely or doubtfully, or not sufficiently given their Verdict in any Action or Exception; or any of the parties be grieved thereby; there is remedy by a Commission of Certificate to make the Iurours come againe, and the Parties who are the Plaintiffs ought to have under the Kings Seale, and of the Iudge, and of the Parties, the proceedings of the Plea before, and shew the defect, and the offence of the Iurours; in which case if the Iudge by examination finde it doubtfull; the said doubt is to be reduced to certainty, and the obscurity to cleernesse, and the errour into truth; and so the first Iudgement is to be redressed.

CHAP.

# The Contents of the Fifth Chapter.

# CHAP. V.

## Sect. 1.

## *Abusions of the Common Law.*

THere are many who say, That although other Realmes use a written Law, yet onely *England* useth her Customes, and her Usages for Law not written; but betwixt rightfull and tortious usages there is a difference, for tortious usages not warranted by Law, nor suffered by Holy Scripture, are not at all to be used: as for example; those of Theeves, whose usages are to rob and steale.

And to shew some abuses holden for usages, which are frauds to the Law, and repugnants to right, and which are not found justifiable by Holy Scripture, is this Chapter made of a Collection of part of the abusions of the Law, and of persons erring from the knowledge of the right of Law, and from lawfull usages.

Abusion is a disuse, or a misuse of right usages turned to abuses, sometimes by contrariety and repugnancy to Law, sometimes by too large a usage thereof.

1 The

1 The first and chiefe abusion is, That the King is above the Law, whereas he ought to be subject to it, as it is contained in his Oath.

2 It is an abuse, that whereas Parliaments ought to be for the salvation of the Soules of Trespassors, twice in the yeare at *London*, that they are there but very seldome, and at the pleasure of the King; for Subsidies and Collections of Treasure and where the Ordinances ought to be made by the assent of the King, and of his Earles, they are now made by the King and his Clerkes, and by Aliens, and others who dare not contradict the King but desire to please him, and to Counsell him for his profit, though the Counsell be not Covenable for the common people without calling the Counties thereunto, and without following the rules of Law, whereby it followeth that many Ordinances are grounded more upon pleasure then upon Law.

3 It is an abuse that the Lawes, and the Customes of the Realme, with their occasions are not put into writing, whereby they may be knowne, so as they might be knowne by all men.

4 It is an abuse, that force holds in Disseisins after the third day of peaceable seisin, for as much as he is not worthy to be aided by the Law who flyeth from Iudgement, and useth force.

5 It is an abuse, that Justice is delayed in the Kings Court, more then else where.

6 It is an abuse to suffer any to be in the Realme above forty daies who is of the age of fourteene yeares, *English* or Alien, if he be not sworne to the King by an Oath of Fealty, and in some Pledge and Dozien,

7 It is an abuse that Clerkes, and Women are exempted to make the said Oath to the King, seeing the King taketh their Homage and Fealty for Lands.

8 It is an abuse to hold an escape out of Prison, or the breach of the Goale to be a mortall offence, for that usage is not warranted by any Law, nor is it used in any place but within this Realme and in *France*, for as much as one is warranted to doe it by the Law of Nature.

9 It is an abuse to suffer so many formes of Writs to be pleadable, and therein especially that the Writs are Close, and not Patents, as the Writs of Right; and in that they are made with interlinings and rasure, and otherwise vicious.

10 It is an abuse that the money is not quarterable, that it is not Silver, that it is held payable if the forrein circle be not whole, to allay the Money *per* 18. d. and make paying of Lead to every, &c.

11 It is an abuse that the King takes more then twelve pence for the exchange of twenty shillings in the pound.

12 It is an abuse that no pound is suffered to weigh twenty five shillings, or more then twelve ounces.

13 It is an abuse that Treason is not adjudged

adjudged more by Appeales then it is.

14 It is an abuse that a man who hath done Man-slaughter of necessity, or with the Peace, or not feloniously, is detained and kept in Prison untill he hath purchased the Kings Charter of pardon of death, as it is for mischance.

15 It is an abuse to hold the moveable goods of flyers forfeited before they be attainted of the Felony by Outlawry, or otherwise.

16 It is an abuse to Out-law a man before it hath been enquired by the Oathes of Neighbours.

17 It is an abuse to suffer a man attainted of Felony to be an Approvers, and to have a voice as a true man, and that Clerkes, Women, Infants, and others who cannot Combate are suffered to be Approvers.

18 It is an abuse that others receive the Appeales of Approvers, then Coroners, and that they are suffered to Appeale oftner then once, or by distresse or otherwise, or in any manner falsly.

19 It is an abuse that the Justices drive a true man to be tryed by his Country, where he profereth to defend himselfe against the Approver by battaile.

20 It is an abuse to force people Appealed by Approvers to Acquittalls, where the Approver put in his Appeales, if he be not thereof elsewhere endicted, or after the lying of the Approver attainted, or after the death of the Approver.

21 It is an abuse to suffer an Approver to live, after he shall be attainted of a false Appeale.

22 It is an abuse to suffer Theeves, and knowne and notorious Felons to be defended in Sanctuaries.

23 It is an abuse that those Felons who are forjured the Realme are not suffered to chuse their Port and passage out of the Realme, and to limit their Iournies.

24 It is abuse that they enter into the Sea, and from the Sea, the Church next the Sea, and that enteries into great places are denyed them, and that they have not the priviledge of Pilgrims.

25 It is abuse to adjudge Murder for default of *Englishire*, since Murder ought to be the *Engish* punishment of an Alian.

26 It is an abuse that Acquittances of paiments made to the King in the Exchequer are by Tallies, and not by the Seale appointed for it.

27 It is abuse that the Kings Officers of the Exchequer, have Jurisdiction of other things then the Kings Monies, of his fees, and of his Franchises without an Originall Writ out of the Chancery under white Waxe.

28 It is an abuse that the Kings Debts lye Dormant, and are delayed to be leavied by Estreates, since the Arreates of Sheriffe s, and of other the Kings Receivers are to be leavied without delay upon those who preferre them, if they themselves be not sufficient, and the Arrerages of the Debts of others are to be

leavied upon their Sureties where the principalls are not sufficient to pay the Arrerages; the Amercements are lyable upon the Assessors if the principalls are not sufficient, and so it is of Fines, and all other the Kings Debts, whereby it appeareth that no Debt ought to be much behinde; is so much as some thinke that none are chargable with an old debt if not of malice, or by negligence of the Kings Officers.

29 It is an abuse that they of the Exchequer, or others receive Atturnies, or hold Counsans without an Originall Writ out of the Chancery, which none can doe without Jurisdiction.

30 It is an abuse that Free-men, and Free-holders have ordinary Jurisdiction, but in the Courts of Lords of Manhours, or of Hundreds, or Counties.

31 It is an abuse to Amerce any man by reason of a Presentment in personall Trespasse, in as much as no man is to be Amerced but for the offence in a reall or mixt Action.

32 It is abuse to Amerce any man by a Presentment made of lesse then twelve sworne Free-men.

33 It is an abuse to assesse an Amercement certaine, without the afferment of Free-men sworne to it.

34 It is an abuse to afferre Amercements in the absence of those who are to be Amerced.

35 It is an abuse to Charge the Jurours with

with any Article touching wrong done betwixt neighbour and neighbour.

36 It is abuse to beleeve any one hath Jurisdiction, if a Commission give it not.

37 It is an abuse to obey the Judge who is appealed of doing wrong, the example whereof appeareth in the old Writ of right, *Et nisi fecerit vicecomes faciat.*

38 It is abuse that a Free-man be made the Kings Officer by any election against his will.

39 It is an abuse, that the salaries of Pleaders be not certaine.

40 It is an abuse that the Defendants have not amends of wrongfull Plaintiffes.

41 It is abuse that Pleaders are spared of Oathes according to the points.

42 It is abuse to suspend a Pleader if he be not attaint of a Trespasse, for which he is condemnable to Corporall punishment.

43 It is abuse to Summon a man for a personall offence.

44 It is abuse to adjudge a man to death by Sutors, if not in cases so known, that there need no Answer.

45 It is an abuse to bring the Appeale else where then before the Coronet of the County, and that appeareth by the Writ of Appeale, as a Writ grounded upon errour.

46 It is abuse to let to baile a man Appealed, or indicted of a martiall offence by Pledges.

47 It is an abuse to determine the Appeales of felony by Judges, Ordinaries, Suitors.



48 It

48 It is abuse that all persons are commonly receiveable in Appeales of felony.

49 It is abuse that all Infants within age are in Ward.

50 It is an abuse that people may Alien their Inheritances from their Heires further then the grants, or their purchase of Lands make mention, for none can make an Assignee if it bee not specified in the grant.

51 It is abuse that the Inheritances of Heires females are held in Ward (though it be of Knights service) as of Heire Males, since a woman is at age at 14. yeares.

52 It is abuse that Goalers or their soveraignes plunder Prisoners, or take from them other things then their Armes.

53 It is abuse that Prisoners or others for them pay any thing for their entries into the Goale, or for their comming out.

54 It is abuse that a Prisoner is laden with Irons, or put to paine before he be attainted of the felony.

55 It is abuse that the Goales are not delivered of the Prisoners who are deliverable without delay, without a Writ.

56 It is abuse to make a man to Answer to the Kings Suit where he is not indicted, nor appealed.

57 It is abuse to imprison any other then a man indicted or appealed, without a speciall Warrant, in case for want of Pledges or Maine-prisors.

58 It is abuse that Justices deliver Prisoners not taken before the date of their

War-

Warrants, since the Kings intention was not but of those who are then kept in Prison.

59 It is abuse that the Writ of *Odio & Atia* take no place but in Murder.

60 It is abuse that that Writ lyeth for Endictees.

61 It is abuse that Appealees or Endictees of mortall Crime are got out of Prison by Bayle, or those who are condemned to Corporall punishment before they doe their Penance, or that they have bought in the same by Fine and Ransome.

62 It is abuse that the Writs *Sicut alias, & sicut pluries* passe the Seale, in case where it should make those Officers inobedient of right, and to the King, and should charge others to doe such Commandement.

63 It is abuse to put these words in Writs, *Nisi captus sit per speciale perceptum nostrum vel Capitalis Justiciarii nostri vel pro forresta nostra, &c.* for no speciall Commandement ought to exceed the Common Law.

64 It is abuse to suffer the Judges to be Plaintiffes for the King.

65 It is abuse that Aliens, or others who have not sworne fealty to the King, or infamous persons, or Indicted or Appealed of mortall Crime, or who have not an able Commission, or after any wrong done, or after Judgement given, be suffered to have Jurisdiction, or to Judge out of the

the points specified in their Commissions.

66 It is abuse that in Appeales by Pleaders are the Places, and the Countries, and the houres of the daies, and that it is against the Peace, since every offence is against the Peace, and such other words needlesse.

67 It is abuse to abate sufficient Appeales, according to the Statute of *Gloucester*.

68 It is abuse, that the remediall Writs are saleable, and that the King Commands the Sheriffe, that he take Sureties to his use for the Writ, for and by the Purchase of these Writs one may destroy his enemy wrongfully; and because that such Fines and Penalties run in Estreates, though they doe nothing but hurt to the Purchasor theref.

69 It is abuse that Forraigners are not receiveable in Actions by Sureties of Freemen, who have not wherewith to finde Pledges.

70 It is abuse to distreine in personall Actions, where the profit of the Issues comes to the King, and no profit accrueth to the Plaintiffes.

71 It is abuse that any Plaint is received to be heard without Sureties present, to testifie the Plaint to be true.

72 It is abuse, that it is said that Villinage is not a Franck Tenement, and that an Assize lyeth not of an ejection for term of years, as well as it doth of a Franck Tenement for terme of life, or in Fee; for

for a Villaine and a Slave are not all one, either in name or signification, for as much as every Free-man may hold in Villinage to him and his Heires, performing the services and charges of the Fees.

73 It is abuse to hold that seisin accrued not to the Purchasor when the Donor left his goods, for as a Contract of Marriage is good by the consent of the wills of men and women, although that one of them repent, and after the Marriage would withdraw himselfe, but he cannot thereby dissolve the Contract; so as well it sufficeth to make the Contract by the delivery of seisin as by the celebration of the Marriage, although the Purchasor have no other seisin by taking the Esplees, nor any Deed, nor writing to testifie the bargaine; and if it were that a Woman after the Marriage were ravished and consented thereto, and the Husband repleeve her, and the ravisher answering to the Contract say, That the Husband had no right nor action, because he was never fully seised by taking the Esplees; nor had no Deed: or said, that he was never out of seisin of the Woman because she was clothed with his Robes, and by her robe she remained in his seisin; this Exception nothing availeth him to excuse his wrong no more then in this case. If a man buy a Horse, and agree with the seller, and the seller deliver the same to the buyer, notwithstanding that the seller repent of the bargaine, and forceably take backe the Horse, although

though the buyer hath no Action for the same, because he remained alwaies seised thereof at will; such Exception is not good.

74 It is abuse to thinke that Contracts for goods not moveables are otherwise then for moveable goods.

75 It is abuse to thinke that seisin accrueth not as soone to a Purchaser of his Purchase, as to an Heire of his Inheritance, since the Law requires but three things in Contracts. 1. The agreement of the Wills. 2. Satisfaction to the Donor. 3. Delivery of the possession and gift. If a transmutation of seisin be given to the Purchaser by the Donor at the houre of one of the Clocke, and the Purchaser dyeth at the houre of three of the Clocke he dyeth as well seised of the Tenement as he should be of a Woman, or a Horse, though the Donor have not departed with and removed his Chattels; and it shall never be a good Plea for him to say, That the Free-hold after the transmutation of seisin by a simple Livery remained in the Donor, after this Livery of the Tenement; but if the agreement of the Donor be not performed according to the Contract, then he may helpe himselfe thereby.

76 It is abuse to thinke that one cannot recover a Terme for yeares; nor Presentments to Churches in manner of Disseisin, since many Reasons may availe to Reddissesors.

77 It is abuse that Attaints are not granted

granted in Chancery without difficulty, to Attaint all false Jurours, as well in all other Actions Personalls, realls and mixt as in Assizes brought.

78. It is abuse to drive a Distresse out of the Hundred.

79 It is abuse to make the view of the Distresse to Bayliffes, in that a Plaint will suffice, and a Court, and that he is yet seised thereof.

80 It is abuse that we doe not sue for a Tortious Distresse by way of Felony, and that one attaint not these Robbers at the Kings Suit.

81 It is abuse that vicious Contracts are by agreements maintaied by Law, as forbidden of offence. Is not Usury an offence? is not Imprisonment an offence? how can one binde himselfe to Usury, or to Imprisonment, or a Disseisin, if he doe not offend.

82 It is abuse that Advowsons of Charters are aliened by Law for yeares in Morgage, or to ferme, or are partible.

83 It is abuse that Leases of Fermes are not longer then forty yeares, since continuance of seisin by length of time doth dis-inherit no man.

84 It is abuse that no Land is let to ferme or in Fee, or for yeares rendring Rent by the yeare, more then the fourth part.

85 It is abuse to Out-law a man for a default, in case where the principall cause is not felony.

86 It

86 It is abuse that Auditors are appointed by the Lords to heare Accompts without the assent of Bayliffes.

87 It is abuse that Bayliffes have no recovery of damages from Tortious Auditors.

88 It is abuse that regard is had to the Persons, when such Law is not for Bayliffes against their Lords, as *è contra* in the right of Debts due by the one to the other.

89 It is abuse that a man may challenge one for his Neife to whom he never found sustinance, in as much as a Villaine is not a Villaine but so long as he remaineth in custody; and since none can challenge his Villain for Villinage though he be in his custody, if he finde not sustenance to his Villaine, or send him to some Land in his Mannour where he may gaine his living, or otherwise retaine him in his service.

90 It is abuse that Villaines are Frank pledges, or Pledges of Free-men.

91 It is abuse that others suffer Villains to be in their Viewes of Franck-pledges.

92 It is abuse that the Lords suffer their Villaines to plead, or be impleaded without them, for a Villaine is not Amerceable in any other Court because he can lose nothing, as he who hath nothing proper of his owne.

23 It is abuse to hold Villaines for Slaves, and this abuse causeth great destruction of poore people, great poverty, and is a great offence.

94 It

94 It is abuse that a man is Summoned who is no Free-holder.

95 It is abuse to Summon a man elsewhere then in the Land contained in the demand, if it containe Land.

96 It is abuse that a man travaile at his owne Charges, by any Summons personall.

97 It is abuse that a Justice or other make a Summons who is not a Free-holder within the County.

98 It is abuse to Summon men without giving them reasonable warning upon what to Answer.

99 It is abuse that false Causes of Essoignes are admitted, for as much as the Law alloweth falsity in no case.

100 It is abuse that an Essoignor is admitted in a personall Action to the Defendant, since one is Maine-prised to appeare in Court by Maine-prisors.

101 It is an abuse to receive an Essoigne cast in by an infant within age.

102 It is an abuse to receive an Atturny, where no power so to doe is given by Writ out of the Chancery.

103 It is abuse to receive an Atturney, where the Plea is not to be judged in the presence of the Parties, if not in case where one maketh an Atturney generall.

104 It is abuse that none can make an Attuoney in personall Actions, where Corporall punishment is to be awarded.

105 It is abuse to receive Exceptions in Judgements if they be not sufficiently pronounced, for from the Order of the

the Exception early ariseth cleare, Judgement.

106 It is abuse to allow a warrant of Voucher to a Theife, or in other personall Action.

107 It is abuse that Judges Assigned shew not the parties pleading their Warrants, or of his power when they demand it.

108 It is abuse that Justices and their Officers, who kill people by false Judgement be not destroyed as other murderours, which King *Alfred* caused to be done, who caused forty foure Justices in one yeare to be hanged as murderours for their false Judgements.

He hanged *Darling* because he had Judged *Sidulf* to death, for the retreat of *Edulfe* his Son, who afterwards acquitted him of the fact. 1 Darling.

He hanged *Segnor*, who judged *Vlfe* to death after sufficient acquittall. 2 Segnor.

He hanged *Cadwine*, because that he judged *Hachwy* to death without the consent of all the Jurours, and whereas he stood upon the Jury of twelve men, and because that three would have saved him against the nine, *Codwine* removed the three, and put others upon the Jury, upon whom *Hachwy* put not himselfe. 3 Cadwine.

He hanged *Cole*, because he judged *Jve* to death when he was a Mad-man. 4 Cole.

He hanged *Malme*, because he judged *Prat* to death upon a false suggestion that he committed the felony. 5 Malme.

He

6 Athulf. He hanged *Athulf* because be caused *Copping* to be hanged before the age of one and twenty yeares.

7 Markes. He hanged *Markes* because he judged *During* to death by twelve men who were not sworne.

8 Ostline. He hanged *Ostline* because he judged *Seaman* to death by a false Warrant, grounded upon false suggestion, which supposed *Seaman* to be a person in the Warrant which he was not.

9 Billing. He hanged *Billing*, because he judged *Leston* to death by fraud, in this manner he said to the people, Sir all yee here but he who assisted to kill the man, and because that *Leston* did not sit with the other he him commanded to be hanged, and said that he did assist, where he knew he did not assisted to kill him.

10 Seafoule. He hanged *Seafoule* because he judged *Ording* to death, for not answering.

11 Thurston He hanged *Thurston* because he judged *Thurguer* to death by a verdict of Enquest, taken *Ex officio* without issue joyned.

12 Athelston. He hanged *Athelston*, because he judged *Herbert* to death for an offence not mortall.

13 Rombold He hanged *Rombold* because he judged *Lisclild*, in a case not notorious without Appeale, and without Endictment,

14 Rolfe He hanged *Rolfe*, because he judged *Dunston* to dye for an escape out of prison.

15 Freburne He hanged *Freburne* because he judged *Parpin* to dye, whereas the Jury were in doubt of their Verdict, for in doubtfull causes one ought rather to save then to condemne.

He

He hanged *Seabright* who judged *Aiheb*- 16 Sea-
*brus* to death, because he condemned one bright.
by a false judgement mortall.

He hanged *Hale* because he saved *Tris-* 17 Hale.
*tram* the Sheriffe from death, who took to the Kings use from another goods against his will, for as much as any such taking from another against his will, and Robbery hath no difference.

He hanged *Arnold* because he saved *Boy-* 18 Arnold.
*liffe*, who robbed the people by colour of Distresses, whereof some were by selling Distresses, some by extortion of Fines, as if betwixt extortion of Fines, releasing of tortious Distresses, and Robbery therewere difference.

He hanged *Erkinwald* because he han- 12 Erkin-
ged *Frankling*, for nought else but because wald.
he taught to him who vanquished by Bataile mortall to say the word of Cravant.

He hanged *Bermond* because he caused 20 Bermond
*Garbolt* to be beheaded by his Judgement in *England*, for that for which he was Outlawed in *Ireland*.

He hanged *Alkman* because he saved 21 Alkman.
*Cateman* by colour of Disseisin, who was attainted of Burglary.

He hanged *Saxmond* because he hanged 22 Saxmond
*Barrold* in *England*, where the Kings Writ runneth for a fact which he did in the same Land where the Kings Writ did not run.

He hanged *Alfset* because he judged a 23 Alfset.
Clerke to death, over whom he had not cognisance.

He hanged *Piron* because he judged 24 Piron.

*Hanting* to Death; because he gave judgement in Appeale before the forty daies pendant, the Appeale by a Writ of false judgement before the King.

25 Dilling. He hanged *Diling* because he caused *Eldon* to be hanged, who killed a man by misfortune.

26 Oswin. He hanged *Oswin* because he judged *Fulcher* to death out of Court.

27 Muclin. He hanged *Muclin*, because he hanged *Helgrave* by warrant of indictment not speciall.

28 Horne. He hanged *Horne*, because he hanged *Simin* at daies forbidden.

29 Wolmer. He hanged *Wolmer* because he judged *Graunt* to death by colour of a Larcine of a thing, which he had received by title of baylement.

30 Therbern. He hanged *Therberne* because he judged *Osgot* to death for a Fact, whereof he was acquitted before against the same Plaintiffe, which Acquittance he rendred to averre by Oath, and because he would not averre it by Record, *Therberne* would not allow of the Acquittall which he tendred him.

31 Wolstor. He hanged *Wolstor* because he adjudged *Haubert* to death at the Suit of the King, for a fact which *Haubert* confest, and of which the King gave him his pardon, but he had no Charter thereof, nevertheless he vouched the King to warrant it, and further tendred to averre it by enrolement of the Chancery.

32 Oskitell. He hanged *Oskitell* because he judged *Cathing*

*Catling* to death, by the Record of the Coroner, whereby Replication allowable the plea did not hold. And the case was such, *Catling* was taken and punished so much, as he confest he had mortally offended, and that to be quitted of the paine; and *Oskitell* adjudged him to death upon his Confession which he had made to the Coroner without triall of the truth of the paine, or the fact. And further, he caused the Coroners and Officers accessories to be apprehended, who hanged the people, and all those who might have hindred the false Judgement, and did not hinder the same in all cases; For he hanged all the Judges who had falsly saved a man guilty of death, or hath falsly hanged any man against Law, or any reasonable Exception.

He hanged the Suitors of *Calevot*, because they had adjudged a man to death in a case not notorious, although he were guilty thereof; for no man can Iudge within the Realme but the King, or his Commissaries, except those Lords in whose Lordships the Kings Writ doth not run. 33 Suitors of Calevot.

He hanged the Suitors of *Dorcester*, because they Iudged a man to death by Iurours in their Liberty, for a felony which he did out of the liberty, and whereof they had not the Counsance by reason of fortainty. 34 Suitors of Dorcester.

He hanged the Suitors of *Cirencester*, because they kept a man so long in Prison, that he dyed in Prison, who would have 35 Suitors of Cirencester

acquitted himselfe by Forraighers that he offended not feloniously.

36 Suitors of Doncaster. In his time the Suitors of *Doncaster* lost their Iurisdiction, besides other punishments, because they held Pleas forbidden by the Customes of the Realme to Iudges, Ordinaries, and Suitors to hold.

37 Colgrin. In his time *Colgrin* lost his franchise of Enfangtheife, because he would not send a Theife to the common Goale of the County who was taken within his Liberty for a felony done out of the Liberty in Guildable.

38 Buttolphe In his time *Buttolphe* lost his view of Franck-pledges, because he charged the Iurours with other Articles then those which belonged to the View, and Amerced people in Personall Actions where one was not to be amerced by a pecuniary punishment. And accordingly he caused mortall rewards to Criminall Iudges for wrongfull mortall Iudgements, and so he did for wrongfull Iudgements venialls. Imprisonment for wrongfull Imprisonments, and like for like with the other punishments; for he delivered *Thelweld* to Prison, because he judged men to Prison for an offence not mortall.

39 Lithing. He judged *Lithing* to Prison, because he imprisoned *Herbote* for the offence of his wife.

He judged *Rutwood* to Prison, because he imprisoned *Olde* for the Kings Debt.

On the other side he cut off the hand of *Haulf*,

*Hanlf*, because he saved *Armocks* hand, who was attainted before him that he had feloniously wounded *Richbold*.

He judged *Edulfe* to be wounded, because he judged not *Arnold* to be wounded, who feloniously had wounded *Aldens*.

In lesser Offences he did not meddle with the Judgements, but dis-inherited the Justices, and removed them according to the points of those Statutes in all points where he could understand that they had passed their Jurisdiction, or the bounds of their Delegacy, or of their Commission; or had concealed Fines, or Amercements, or other thing which belonged to the King; or had released or encreased any punishment contrary to Law, or procured the exercising or pleading without Warrant; either in the property by warrant of Writ; or of a plaint of the Possession, or *è contra*; Or in the veniall Actions by words of felony, or *è contra*, or had sent to no Party a transcript of his Plea at the Journey, or any of the Parties wrongfully grieved, or done any other wrong in dis-allowance of a reasonable Exception of the Parties, or to the Judgement.

In his time every Plaintiffe might have a Commission and a Writ to his Sheriffe, to the Lord of the Fee, or to certaine Justices assigned upon every wrong which was done.

In his time Law was hastened from day to day, so that above fifteen daies there was no default nor Essoigne adjournable.

In his time the parties might carry away the parts of their Pleas under the Seale of the Judges, or the adverse parties.

In his time there was no stay of Writs, all remediall Writs were grantable, as of Debt by vertue of an Oath.

In his time the Iudges used to take twelve pence of every Plaintiffe at the journey.

In his time Plaintiffes recovered not onely damages of the issues of the Possessions, and of the Fees, but recovered Costs as to the hurts, and as much as one might lawfully Taxe, by the occasion of such a fact.

109 It is abuse that such a multitude of Clerks are suffered to be made, whereby the Kings jurisdiction is overthrowne.

110 It is abuse that Clerkes have Leases of that which belongs to the Temporalty, and hold ay Fees.

111 It is abuse that Pleas hold upon Sundaies, or other daies forbidden, or before Sun rising, or in the night time in dishonest places.

112 It is abuse that none answer to a Felony, or other personall Action of trespasse or scandall before his age of one and twenty yeares.

113 It is abuse that when the Action is affirmative to take the proofe against the Answer; or Plea affirmative.

114 It is abuse that a man be accused of life and member, *ex officio*, without suit or without indictments

115 It

115 It is abuse that the Iustices shew not the Endictments to those who are endicted, if they require the same.

116 It is abuse that no man in *England* doth answer for a thing done out of the Realme *Et è contra*, or in a priviledged place, where the Kings Writ runneth not for a thing done to a Forraigner *et è contra*, or within a place within a Franchize, for a thing done in Guildable.

117 It is abuse that Rape is a mortall offence.

118 It is abuse that Rape extends to others then Virgins.

119 It is abuse to Out-law a man if not for felony.

120 It is abuse that one take in *England* any one Out lawed in *Ireland*, or elsewhere out of the Realme; or that one is put out of his Fee by judgement of Law of Judges Ordinaries, *Suiters*.

121 It is abuse to count of so long time, whereof none can testifie the hearing or seeing, which is not to endure generally above forty yeares.

122 It is abuse that a man have an Action personall from a longer time then the last Eyre.

123 It is abuse of the Writ of Accompt, for which every one may imprison another wrongfully.

124 It is abuse that one is bound to render an accompt of issues of Land whereof he is Guardian by title of Law.

125 It is abuse that the Writ of *Ne*

*cui justè vexcet* is so out of use.

126 It is abuse that Battailes be not in personall Actions as well as in Felonies.

127 It is abuse that proofes and purgations be not by the Miracle of God where other proofe faileth.

128 It is abuse to joyne Battaile betwixt persons who are not admitted to wage battaile.

129 It is abuse that a Knight is otherwise armed then another man in a Combate.

130 It is abuse that Judges have Cognizance by originall Writ, or warrant by Vouchers, or in others to which his jurisdiction extendeth not.

131 It is abuse to suffer a Voucher to warranty in the Kings Writ of *Quo warranto*.

132 It is abuse that those who are found Usurers by indictments after their deaths are suffered to be buried in Sanctuaries, and that the Lands doe not escheat to the Lords of the Fees.

133 It is abuse that vicious Obligations drive the Authors to personall Damages, in as much as they are voidables.

134 It is abuse to compell Iurours, Witnesses, to say that which they know not by distresse of Fine and imprisonment after their Verdict, when they could not say any thing.

135 It is abuse to use the words (to their knowledge) in their Oath, to make the Iurours speake upon thoughts, since the

the chiefe words of their Oathes be that they speake the truth.

136 It is abuse that one examine not the Jurours, though they finde at least two to agree.

137 It is abuse to put more words in the doing of Homage; but thus, I become your man, for the Land which I claime to hold of you.

138 It is abuse to Answer or appeare by Atturney.

139 It is abuse to make Justices such parties without the Writ in the Kings presence, if not with the assent of the parties.

140 It is abuse that the Writs of *Audita quareta*, and Conspiracy and others containe not the substance of the plaints.

141 It is abuse that the Justices of the Bench meddle with more Pleas then of wrong done against Fines, Grand Assizes, translation of pleas out of lower Courts, and of Darrein presentment, and of the rights of the King, Queene, and their Allies.

142 It is abuse to use a Pone when their Causes are discussed, if the parties challenge the same, for a lying purchasor ought not to have benefit of his leasings.

143 It is abuse to sue forth Grand Distresses in Pleas of Attachments, whereof the defaults are to the profit of the King, and not of the Plaintiffes.

144 It is abuse that Trespassours who have nothing are not banished from Townes,

Townes, Counties, Manours, and Hundreds as they used to be.

145 It is abuse to hold that a *Petit Cape* maketh other title but to save every right in reall Action, not in others.

146 It is abuse that the issues of Grand Distresses in mixt Actions come not to the profit of the Lords of the Fees, and others who have Courts, as they doe to the King of Pleas, moved in his Court upon the same Actions.

147 It is abuse to thinke the same punishment is to be to Maine-prisors as to Principals who make default, whereas they are amerceable onely in Courts.

148 It is abuse to amerce a man in plesive of Fee, or of service, going out of the Land by default in a personall Action or reall; for Outlawry or losse of Land is sufficient punishment.

149 It is abuse that Sheriffes doe not execution of Writs *Vice Comitiel*, in as much as the Plaintiffes have found Pledges *De prosequend*, where there is no mention to take Sureties.

150 It is abuse to distreine for Arrerages of services issuing out of Lands moveable goods, whereas no distresse ought to be but in the Land onely.

151 It is abuse that the Tenant may without punishment enseoffe a third person of the Land, of his Lord in prejudice of him, or doe other thing, or say any thing against the points of his Oath of fealty.

152 It

152 It is abuse to suffer a man who is a Champion to be a witnesse.

153 It is abuse that none have recovery of wrong done by the King, or the Queen, but at the Kings pleasure.

154. It is abuse to judge a man to divers punishments for one Trespasse, as to a corporall punishment and to a ransome, since ransome is but a Redemption from corporall punishment by payment of a fine of money.

155 It is abuse that people defamed of offence are not barred from making oathes, and of their dignities, and of their other Honors.

And divers other abuses appeare by those who well understand the Writ before written.

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## CHAP. V.

### SECT. 2.

### *The defects of the great Charter.*

SEeing how the Law of this Realm founded upon forty points of the Great Charter of Liberties is damnably dis-used by the Governours of the Law, and by Statutes afterwards made contrary to some of the points, to shew the defects or defaults of the points aforesaid; and the errours of some Statutes I have put in memory this Chapter of the defects and reprehen-

reprehensions of Statutes, and first of the defects of the points of the Great Charter.

To the point, That the Church of *England* shall have all her Rights and Liberties inviolable; for first it were necessary to ordaine a Corporall punishment, and namely to the Lay Judges, the Kings Ministers, and others who Judge Clerkes for mortall Crimes to Corporall punishments, infamatories, & doe detain their goods after their purgation, and to those Secular Judges who take upon them Cognizance in causes of Matrimony, and Testaments, or other speciall things.

The other point is, That every Free-man of the Realme inherite the Liberties of the Charter, and whereof every one is disseised as of his Free-hold; which is not adjudged according to the points following, there lyeth no recovery of damages by the Assize of *Novel Disseisin*.

A third point seemeth to be defective, for as the releise of an Earldome entire was to decrease in him who held lesse, so it seemeth that that certainety was to encrease as much if an Earle held more, so as he who held two Earldoms, and who held an Earldome and a Barony, shall pay as an Eardome and as a Barony; and so of other Fees if they be not expressed in the Charter, that the Fyne of one hundred pound be not an Earldome for no point encreased, and so of other certainties.

The fourth point is defective (for although

though it be that such a point be grounded upon Law, to binde the Lord of Fees to warranties by taking of such Homages, whether they tooke them of the right Heires or not ) because it is not expressed who should be Guardian of the Fees in time of vacancy, and have the issues in the mean time in case where the right Heires fly from their Lords, or cannot or will not doe their homage.

In the points of Wards it is defective, for as much as no difference is expressed between the heires Males, and the heires Females, for a woman hath her age when she is fully of fourteen yeares, and the seaven yeares besides were not ordained first but for the Males, who before the age of one and twenty yeares were not sufficient to beare Armes for the defence of the Realme.

And note that every Guardian is chargeable to three things: 1 That he maintaine the infant sufficiently. 2 That he maintaine his rights and inheritance without waste, 3. That he answer and give satisfaction of the Trespasses done by the infants.

The defect of the point of Disparagements appeareth amongst the Statutes of *Merton*.

And the default of Franckbenches and Widowes in the same manner, in which point it is sufficiently expressed that no woman is dowable if she have not been solemnly espoused at the doore of the Monastery

94 It is abuse that a man is Summoned who is no Free-holder.

95 It is abuse to Summon a man elsewhere then in the Land contained in the demand, if it containe Land.

96 It is abuse that a man travaile at his owne Charges, by any Summons personall.

97 It is abuse that a Justice or other make a Summons who is not a Free-holder within the County.

98 It is abuse to Summon men without giving them reasonable warning upon what to Answer.

99 It is abuse that false Causes of Essoignes are admitted, for as much as the Law alloweth falsity in no case.

100 It is abuse that an Essoignor is admitted in a personall Action to the Defendant, since one is Maine-prised to appeare in Court by Maine-priors.

101 It is an abuse to receive an Essoigne cast in by an infant within age.

102 It is an abuse to receive an Attorny, where no power so to doe is given by Writ out of the Chancery.

103 It is abuse to receive an Attorney, where the Plea is not to be judged in the presence of the Parties, if not in case where one maketh an Attorney generall.

104 It is abuse that none can make an Attorney in personall Actions, where Corporall punishment is to be awarded.

105 It is abuse to receive Exceptions in Judgements if they be not sufficiently pronounced, for from the Order of the

the Exception early ariseth cleare Judgement.

106 It is abuse to allow a warrant of Voucher to a Theife, or in other personall Action.

107 It is abuse that Judges Assigned shew not the parties pleading their Warrants, or of his power when they demand it.

108 It is abuse that Justices and their Officers, who kill people by false Judgement be not destroyed as other murderours, which King *Alfred* caused to be done, who caused forty foure Justices in one yeare to be hanged as murderours for their false Judgements.

He hanged *Darling* because he had Judged *Sidulf* to death, for the retreat of *Edulfe* his Son, who afterwards acquitted him of the fact. 1 Darling.

He hanged *Segnor*, who judged *Vlfe* to death after sufficient acquittall. 2 Segnor.

He hanged *Cadwine*, because that he judged *Hachwy* to death without the consent of all the Jurours, and whereas he stood upon the Jury of twelve men, and because that three would have saved him against the nine, *Codwine* removed the three, and put others upon the Jury, upon whom *Hachwy* put not himselfe. 3 Cadwine.

He hanged *Cole*, because he judged *Jve* to death when he was a Mad-man. 4 Cole.

He hanged *Malme*, because he judged *Prat* to death upon a false suggestion that he committed the felony. 5 Malme.

He

6 Athulf. He hanged *Athulf* because be caused *Copping* to be hanged before the age of one and twenty yeares.

7 Markes. He hanged *Markes* because he judged *During* to death by twelve men who were not sworne.

8 Ostline. He hanged *Ostline* because he judged *Seaman* to death by a false Warrant, grounded upon false suggestion, which supposed *Seaman* to be a person in the Warrant which he was not.

9 Billing. He hanged *Billing*, because he judged *Leston* to death by fraud, in this manner he said to the people, Sir all yee here but he who assisted to kill the man, and because that *Leston* did not sit with the other he him commanded to be hanged, and said that he did assist, where he knew he did not assisted to kill him.

10 Seafoule. He hanged *Seafoule* because he judged *Ording* to death, for not answering.

11 Thurston He hanged *Thurston* because he judged *Thurguer* to death by a verdict of Enquest, taken *Ex officio* without issue joyned.

12 Athelston. He hanged *Athelston*, because he judged *Herbert* to death for an offence not mortall.

13 Rombold He hanged *Rombold* because he judged *Lisclild*, in a case not notorious without Appeale, and without Endictment,

14 Rolfe He hanged *Rolfe*, because he judged *Dunston* to dye for an escape out of prison.

15 Freburne He hanged *Freburne* because he judged *Harpin* to dye, whereas the Jury were in doubt of their Verdict, for in doubtfull causes one ought rather to save then to condemne.

He

He hanged *Seabright* who judged *Aiheb*- 16 Seabright.
*brus* to death, because he condemned one by a false judgement mortall.

He hanged *Hale* because he saved *Tris*- 17 Hale.
*tram* the Sheriffe from death, who took to the Kings use from another goods against his will, for as much as any such taking from another against his will, and Robbery hath no difference.

He hanged *Arnold* because he saved *Boy*- 18 Arnold.
*liffe*, who robbed the people by colour of Distresses, whereof some were by selling Distresses, some by extortion of Fines, as if betwixt extortion of Fines, releasing of rortious Distresses, and Robbery therewere difference.

He hanged *Erkinwald* because he han- 19 Erkinwald.
ged *Frankling*, for nought else but because he taught to him who vanquished by Barraile mortall to say the word of Cravant.

He hanged *Bermond* because he caused 20 Bermond
*Garbolt* to be beheaded by his Judgement in *England*, for that for which he was Outlawed in *Ireland*.

He hanged *Alkman* because he saved 21 Alkman.
*Cateman* by colour of Disseisin, who was attainted of Burglary.

He hanged *Saxmond* because he hanged 22 Saxmond
*Barrold* in *England*, where the Kings Writ runneth for a fact which he did in the same Land where the Kings Writ did not run.

He hanged *Alfler* because he judged a 23 Alfler.
Clerke to death, over whom he had not cognisance.

He hanged *Piron* because he judged 24 Piron.

*Hanting* to Death; because he gave judgement in Appeale before the forty daies pendant, the Appeale by a Writ of false judgement before the King.

25 Dilling. He hanged *Diling* because he caused *Eldon* to be hanged, who killed a man by misfortune.

26 Oswin. He hanged *Oswin* because he judged *Fulcher* to death out of Court.

27 Muclin. He hanged *Muclin*, because he hanged *Helgrave* by warrant of indictment not speciall.

28 Horne. He hanged *Horne*, because he hanged *Simin* at daies forbidden.

29 Wolmer. He hanged *Wolmer* because he judged *Graunt* to death by colour of a Larcine of a thing, which he had received by title of baylement.

30 Therbern. He hanged *Therberne* because he judged *Osgot* to death for a Fact, whereof he was acquitted before against the same Plaintiffe, which Acquittance he tendred to averre by Oath, and because he would not averre it by Record, *Therberne* would not allow of the Acquittall which he tendred him.

31 Wolstor. He hanged *Wolstor* because he adjudged *Haubert* to death at the Suit of the King, for a fact which *Haubert* confest, and of which the King gave him his pardon, but he had no Charter thereof, nevertheleſſe he vouched the King to warrant it, and further tendred to averre it by enrolement of the Chancery.

32 Oskitell. He hanged *Oskitell* because he judged *Cathing*

*Catling* to death, by the Record of the Coroner, whereby Replication allowable the plea did not hold. And the case was such, *Catling* was taken and punished so much, as he confest he had mortally offended, and that to be quitted of the paine; and *Oskitell* adjudged him to death upon his Confession which he had made to the Coroner without triall of the truth of the paine, or the fact. And further, he caused the Coroners and Officers accessories to be apprehended, who hanged the people, and all those who might have hindred the false Judgement, and did not hinder the same in all cases; For he hanged all the Judges who had falsly saved a man guilty of death, or hath falsly hanged any man against Law, or any reasonable Exception.

He hanged the Suitors of *Calevot*, because they had adjudged a man to death in a case not notorious, although he were guilty thereof; for no man can Iudge within the Realme but the King, or his Commissaries, except those Lords in whose Lordships the Kings Writ doth not run. 33 Suitors of Calevot.

He hanged the Suitors of *Dorcester*, because they Iudged a man to death by Iurours in their Liberty, for a felony which he did out of the liberty, and whereof they had not the Counsance by reason of fortainty. 34 Suitors of Dorcester.

He hanged the Suitors of *Cirencester*, because they kept a man so long in Prison, that he dyed in Prison, who would have 35 Suitors of Cirencester

acquitted himselfe by Forraighers that he offended not feloniously.

36 Suitors of Doncaster. In his time the Suitors of *Doncaster* lost their Iurisdiction, besides other punishments, because they held Pleas forbidden by the Customes of the Realme to Iudges, Ordinaries, and Suitors to hold.

37 Colgrin. In his time *Colgrin* lost his franchise of Enfangtheife, because he would not send a Theife to the common Goale of the County who was taken within his Liberty for a felony done out of the Liberty in Guildable.

38 Buttolphe In his time *Buttolphe* lost his view of Franck-pledges, because he charged the Iurours with other Articles then those which belonged to the View, and Amerced people in Personall Actions where one was not to be amerced by a pecuniary punishment. And accordingly he caused mortall rewards to Criminall Iudges for wrongfull mortall Iudgements, and so he did for wrongfull Iudgements venialls. Imprisonment for wrongfull Imprisonments, and like for like with the other punishments; for he delivered *Thelweld* to Prison, because he judged men to Prison for an offence not mortall.

39 Lirhing. He judged *Lithing* to Prison, because he imprisoned *Herbote* for the offence of his wife.

He judged *Rutwood* to Prison, because he imprisoned *Olde* for the Kings Debt.

On the other side he cut off the hand of *Haulf*,

*Hanlf*, because he saved *Armocks* hand, who was attainted before him that he had feloniously wounded *Richbold*.

He judged *Edulfe* to be wounded, because he judged not *Arnold* to be wounded, who feloniously had wounded *Aldens*.

In lesser Offences he did not meddle with the Judgements, but dis-inherited the Justices, and removed them according to the points of those Statutes in all points where he could understand that they had passed their Jurisdiction, or the bounds of their Delegacy, or of their Commission; or had concealed Fines, or Amercements, or other thing which belonged to the King; or had released or encreased any punishment contrary to Law, or procured the exercising or pleading without Warrant; either in the property by warrant of Writ; or of a plaint of the Possession, or *è contra*; Or in the veniall Actions by words of felony, or *è contra*, or had sent to no Party a transcript of his Plea at the Journey, or any of the Parties wrongfully grieved, or done any other wrong in dis-allowance of a reasonable Exception of the Parties, or to the Judgement.

In his time every Plaintiffe might have a Commission and a Writ to his Sheriffe, to the Lord of the Fee, or to certaine Justices assigned upon every wrong which was done.

In his time Law was hastened from day to day, so that above fifteen daies there was no default nor Essoigne adjournable.

In his time the parties might carry away the parts of their Pleas under the Seale of the Judges, or the adverse parties.

In his time there was no stay of Writs, all remediall Writs were grantable, as of Debt by vertue of an Oath.

In his time the Iudges used to take twelve pence of every Plaintiffe at the journey.

In his time Plaintiffes recovered not onely damages of the issues of the Possessions, and of the Fees, but recovered Costs as to the hurts, and as much as one might lawfully Taxe, by the occasion of such a fact.

109 It is abuse that such a multitude of Clerks are suffered to be made, whereby the Kings jurisdiction is overthrowne.

110 It is abuse that Clerkes have Leases of that which belongs to the Temporalty, and hold ay Fees.

111 It is abuse that Pleas hold upon Sundaies, or other daies forbidden, or before Sun rising, or in the night time in dishonest places.

112 It is abuse that none answer to a Felony, or other personall Action of trespasse or scandall before his age of one and twenty yeares.

113 It is abuse that when the Action is affirmative to take the proofe against the Answer; or Plea affirmative.

114 It is abuse that a man be accused of life and member, *ex officio*, without suit or without indictments

115 It

115 It is abuse that the Iustices shew not the Endictments to those who are endicted, if they require the same.

116 It is abuse that no man in *England* doth answer for a thing done out of the Realme *Et è contra*, or in a priviledged place, where the Kings Writ runneth not for a thing done to a Forraigner *et è contra*, or within a place within a Franchize, for a thing done in Guildable.

117 It is abuse that Rape is a morrall offence.

118 It is abuse that Rape extends to others then Virgins.

119 It is abuse to Out-law a man if not for felony.

120 It is abuse that one take in *England* any one Out lawed in *Ireland*, or elsewhere out of the Realme; or that one is put out of his Fee by judgement of Law of Judges Ordinaries, Suiters.

121 It is abuse to count of so long time, whereof none can testifie the hearing or seeing, which is not to endure generally above forty yeares.

122 It is abuse that a man have an Action personall from a longer time then the last Eyre.

123 It is abuse of the Writ of Accompt, for which every one may imprison another wrongfully.

124 It is abuse that one is bound to render an accompt of issues of Land whereof he is Guardian by title of Law.

125 It is abuse that the Writ of *Ne*

*cui justè vetcet* is so out of use.

126 It is abuse that Battailes be not in personall Actions as well as in Felonies.

127 It is abuse that proofes and purgations be not by the Miracle of God where other proofe faileth.

128 It is abuse to joyne Battaile betwixt persons who are not admitted to wage battaile.

129 It is abuse that a Knight is otherwise armed then another man in a Combate.

130 It is abuse that Judges have Cognizance by originall Writ, or warrant by Vouchers, or in others to which his jurisdiction extendeth not.

131 It is abuse to suffer a Voucher to warranty in the Kings Writ of *Quo warranto.*

132 It is abuse that those who are found Usurers by indictments after their deaths are suffered to be buried in Sanctuaries, and that the Lands doe not escheat to the Lords of the Fees.

133 It is abuse that vicious Obligations drive the Authots to personall Damages, in as much as they are voidables.

134 It is abuse to compell Iurours, Witnesses, to say that which they know not by distresse of Fine and imprisonment after their Verdict, when they could not say any thing.

135 It is abuse to use the words (to their knowledge) in their Oath, to make the Iurours speake upon thoughts, since the

the chiefe words of their Oathes be that they speake the truth.

136 It is abuse that one examine not the Jurours, though they finde at least two to agree.

137 It is abuse to put more words in the doing of Homage; but thus, I become your man, for the Land which I claime to hold of you.

138 It is abuse to Answer or appeare by Atturney.

139 It is abuse to make Justices such parties without the Writ in the Kings presence, if not with the assent of the parties.

140 It is abuse that the Writs of *Audita quareta*, and Conspiracy and others containe not the substance of the plaints.

141 It is abuse that the Justices of the Bench meddle with more Pleas then of wrong done against Fines, Grand Assizes, translation of pleas out of lower Courts, and of Darrein presentment, and of the rights of the King, Queene, and their Allies.

142 It is abuse to use a Pone when their Causes are discussed, if the parties challenge the same, for a lying purchasor ought not to have benefit of his leasings.

143 It is abuse to sue forth Grand Distresses in Pleas of Attachments, whereof the defaults are to the profit of the King, and not of the Plaintiffes.

144 It is abuse that Trespassours who have nothing are not banished from Townes,

Townes, Counties, Manours, and Hundreds as they used to be.

145 It is abuse to hold that a *Petit Cape* maketh other title but to save every right in reall Action, not in others.

146 It is abuse that the issues of Grand Distresses in mixt Actions come not to the profit of the Lords of the Fees, and others who have Courts, as they doe to the King of Pleas, moved in his Court upon the same Actions.

147 It is abuse to thinke the same punishment is to be to Maine-prisors as to Principals who make default, whereas they are amerceable onely in Courts.

148 It is abuse to amerce a man in plesive of Fee, or of service, going out of the Land by default in a personall Action or reall; for Outlawry or losse of Land is sufficient punishment.

149 It is abuse that Sheriffes doe not execution of Writs *Vice Comitie*, in as much as the Plaintiffes have found Pledges *De prosequend*, where there is no mention to take Sureties.

150 It is abuse to distreine for Arrerages of services issuing out of Lands moveable goods, whereas no distresse ought to be but in the Land onely.

151 It is abuse that the Tenant may without punishment enseoffe a third person of the Land, of his Lord in prejudice of him, or doe other thing, or say any thing against the points of his Oath of fealty.

152 It

152 It is abuse to suffer a man who is a Champion to be a witnesse.

153 It is abuse that none have recovery of wrong done by the King, or the Queen, but at the Kings pleasure.

154. It is abuse to judge a man to divers punishments for one Trespasse, as to a corporall punishment and to a ransome, since ransome is but a Redemption from corporall punishment by payment of a fine of money.

155 It is abuse that people defamed of offence are not barred from making oathes, and of their dignities, and of their other Honors.

And divers other abuses appeare by those who well understand the Writ before written.

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## CHAP. V.

### SECT. 2.

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reprehensions of Statutes, and first of the defects of the points of the Great Charter.

To the point, That the Church of *England* shall have all her Rights and Liberties inviolable; for first it were necessary to ordaine a Corporall punishment, and namely to the Lay Judges, the Kings Ministers, and others who Judge Clerkes for mortall Crimes to Corporall punishments, infamatories, & doe detain their goods after their purgation, and to those Secular Judges who take upon them Cognizance in causes of Matrimony, and Testaments, or other speciall things.

The other point is, That every Free-man of the Realme inherite the Liberties of the Charter, and whereof every one is disseised as of his Free-hold; which is not adjudged according to the points following, there lyeth no recovery of damages by the Assize of *Novel Disseisin*.

A third point seemeth to be defective, for as the releise of an Earldome entire was to decrease in him who held lesse, so it seemeth that that certainety was to encrease as much if an Earle held more, so as he who held two Earldoms, and who held an Earldome and a Barony, shall pay as an Eardome and as a Barony; and so of other Fees if they be not expressed in the Charter, that the Fyne of one hundred pound be not an Earldome for no point encreased, and so of other certainties.

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though it be that such a point be grounded upon Law, to binde the Lord of Fees to warianties by taking of such Homages, whether they tooke them of the right Heires or not ) because it is not expressed whoshould be Guardian of the Fees in time of vacancy, and have the issues in the mean time in case where the right Heires fly from their Lords, or cannot or will not doe their homage.

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The defect of the point of Disparagements appeareth amongst the Statutes of *Merton*.

And the default of Franckbenches and Widowes in the same manner, in which point it is sufficiently expressed that no woman is dowable if she have not been solemnly espoused at the doore of the Monastery

nastery and there endowed.

In the point which requireth that the City of *London* have its ancient Liberties, and her free Customes, it is to be intetpreted in this manner; That the Citizens have their Liberties whereof they are inherited by lawfull Title of the gifts and confirmations of Kings, which they have not forfeised by any abuse, and that they may have their Liberties and Customes which are sufferable by Law, and not repugnant to the Law. And where it is said (of *London*) that the interpretation be as well of the Cinque Ports, and of other places.

The point which forbiddeth tortious Distresses for Fees is Covenable in it selfe, but the same shal not grieve any man of the Realme who hath Tenements, that it is no Trespasse in him, or by his Ministers, as appeareth in the Chapter of *Nativo habendo*.

The point which forbiddeth that Common Pleas follow not our Court, is to be interpreted in this manner; That the people shall not travail to Sue in the Kings Household in the Country as they used to doe. But this point willeth, that the Plaintiffes have Commissions to Sheriffes, to Lords of Mannours, and to Justices assigned, so that right be done to the parties in certaine places, where the Parties and Jurouts may be the lesse travailed.

Although it be that the Chapter command that *Petit* Assizes be taken in their Countries,

Counties, being made for the ease of Jurors, yet it is disused, in as much as the Justices make the Jurours to come from the furthest marches of the Counties, whereas it were better that the Justices Rod from Hundred to Hundred, then so to travaile the people.

The point of Amercements is misused by Iustices, Sheriffes, Bayliffes, Stewards, and others who amerce the people in certaine in this manner, putting such a one to so much for a Contempt or other Trespasse without a personall Trespasse, and without the afferment of the people sworn to it, and without specifying the manner and the quality of the Contempt. Cap. 14.

Againe, where the Afferrours ought to be chosen with the assent of those who are amerced, and in a common place, the Lords make the Afferrours to come to their houses to affer the Amercements according to their pleasures.

The point which forbiddeth that Rivers be defended is disused, for many Rivers are now appropriate and gotten, and so put in defence, which used to be common to Fish in in the time of King *Hen.* 1. Cap. 16.

The Chapter which forbiddeth that Sheriffes, Constables, Coroners, nor Bayliffes shall hold Pleas of the Crowne seemeth not needfull, for appeales of felony are not here to be brought before Coroners, and the exigents and Iudgements pronounced, and therefore this point had need to have had more words to Cap. 17.

have

have expressed the meaning of it.

For the end of the Chapter of the moveable goods of the dead, it appeareth that the Action accrueth to the Widowes, and to the Children to demand their reasonable parts of the goods of their Father taken away.

Cap. 19, 20. That which is forbidden to Constables to take is forbidden to all men, in as much as there is no difference betwixt taking from another against his will and liberty, whether it be Horses, Victuals, Merchandizes, Carriages, or other manner of goods.

The Chapter for holding the Lands of Felons for a yeare and a day is out of use; for whereas the King ought not to have the wast by Law, or but the yeate in the name of Fine for safeguard of the land from spoile, the Kings Officers take both.

The defence of the Precipe is not holden in that they doe it without Writs of possession of Farmes every day, that the Lords lose the Cognizance of their Fees, and the advantages of their Courts.

The point which commands that one Measure be throughout the whole Realm, and one Weight is dis-used by Merchants, and Burgesses, using for the pound the old Weight of twenty shillings of right Assize, and also of Ells and other measures.

The defence which is made of the Writ *De odio & atia*, that the King be not Chancellor, nor take any thing for granted; the VWrit ought to extend to all remedial VWrits, and the same VWrit ought not extend

extend onely to the felonies of Murder, but it ought to extend to all felonies, and not onely in Appeales but in Endictmenrs.

The point which forbiddeth that no Bayliffe put a Free-man to his Oath without Suit, is to be understood in this manner, That no Justice, no Minister of the King, nor other Steward nor Bayliffe have power to make a Free-man make Oath without the Kings Command, nor receive any plaint without Witnesses present who testifie the plaint to be true.

The point where the King granteth that he will not disseise, nor imprison, nor destroy, but by lawfull Iudgement, which overthrows the Statute of Merchants and other Statutes is to be interpreted thus, that none be arrested, if not by warrant grounded upon a personal Action, for if the Action be veniall, no Imprisonment is justifiable, if not for default of Maine-pernors. And so it appeareth that none is imprisonable for Debt. And if any Statute be made repugnant to this point, either for the Kings Debt, or for the Debt of any other, it is not to be kept. That (none be Outlawed) is to be meant, if not for mortall felony, from which one is saved by the Oath of Neighbours, *ex officio*, as it is the use in Eyres; and therefore that destroyeth the Statute of Outlawry of a man for arrerages of Accompt, and all other the like Statutes; and that which is said, that none be (exiled nor destroyed) is to be interpreted

in this manner, that every one have an Action to appeale all Persons, all Suitors, all Assessors who destroy men against the right course, and against the rules of Law.

On the other part, where the King forbideth that none be disseised of his Freehold, of his Liberties, or of his free Customes is thus to be understood, that one shall recover by Assize of *Novel disseisin* every manner of Free-hold, and all manner of Possession reall of Lands, or of Franchises whereout one is cast, if it be not by lawfull Iudgement; and these words (if it be not by lawfull Iudgement) referre to all the words of this Statute.

The point which the King grants to the people, that he will sell no Right, or hurt nor delay Iustice, is misused by the Chancellour, who sells the remediall Writs, and calls them Writs of Grace, & by the Chancellour of the Exchequer who denyeth Acquittances of payments made to the King under Green Waxe, and all those who delay right judgement or other right.

The point concerning leave for the staying of Merchants, Alliens, is so to be understood, that it be not prejudiciall to the Townes, nor to the Merchants of *England*, and that they be sworne to the King if they stay longer then forty daies.

The point which forbiddeth that none Allien his Land in prejudice of the Lord of the Fee, is to be interpreted in this manner, that no Tenant allien the Fee of his

his Lord without his consent, or to hold in chiefe of the Lord without encrease of new service.

The point of the custody of Abbies, and of religious places when they fall is thus to be understood, that every Lord have the keeping of his Fee during the Vacation.

The point that none shall be taken or imprisoned upon the appeale of any woman, for the death of any other then of her Husband, is to be meant of such a woman which the Husband last held for his wife, if in case there be many wives alive.

The points concerning Sheriffes Turnes and Viewes of Franck-pledges are disused three waies; the first that Sheriffes, Bayliffes, and Stewards take extortion of Fines, in that they make the people to fine for what they are not occasioned which they call for Beaupleader. The second, that they amerce the people for Presentments upon personall Actions. The third is, that they charge the Iurours with Articles touching Trespasse done by Neighbour to Neighbour, or of Tenant, or of other Lord then to the King.

The point which forbiddeth religious persons to purchase Lands, overthroweth the Statute afterward made at *Westminster* of the same, for as much as the Action of the chiefe Lord is limited in so short time, to hasten the Kings Action in prejudice of the Lords of the Fee.

The last point is of such verme and of such meaning as that the King hath the Cognisance of Trespasses done in such manner, as that the Fee-Tenants have their Courts, and the Cognisance of Trespasses done within their Mannours, and also as well of reall Actions, and Personalls, as of mixt.

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## CHAP. V.

### SECT. 2.

### *The Articles upon the Statute of Merton.*

SOme points are reproveable amongst the Statutes made at Merton after the Great Charter made, and namely the point of Redisseisins. Since the Law doth not attaint any Trespassor by enquest of Office, and because Pleas may perhaps availe the Tenants, and should be by Law allowable, Assizes lye to the example of Novel Disseisin; and where it is said, that Redisseisors be arrested and kept in Prison, and afterwards that they be released is but an abuse of the Law, which requireth that every one who is attainted of a personall Trespasse be punished by a Corporall punishment, if he cannot ransome it by money; and that which is said of this Statute is to be understood of all Statutes made after the Great Charter, made

made in the time of King *Hen.* the 1. for it is not Justice that he should be punished for one fault with Corporall punishment, as imprisonment or other, and further by a pecuniary paine, or by ransome; for ransome is nothing but a buying out the Corporall punishment.

The point of Improvements of Wasts is reproveable as being too generall, for it ought to distinguish of Commons; for in some places the Commoners are infeoffed in such manner that the whole Common is onely in the Tenants, so that the Lords have nothing but the soile, and in such case that Statute is prejudiciall to the Commoners, and repugnant to the Great Charter, which willeth that none be cast out of his Free-hold, nor the appurtenances without lawfull judgement.

The point of Rape of Marriages is reproveable, in as much that it hath an Exception of Persons of Laymen, and of Clerkes, for there is no more Law that a Clerke should offend without punishment then a Lay man.

Other points are repugnable; If the Tenant doe damage to his Lord, or *è contra*, for they are not punishable according to the Statute, but they are bound by their Homage and Fealty betwixt them, as it is before said amongst the judgements of defaults.

The points of making Attornies in Suits at Hundreds is to be understood in this manner; That although a Suitor by this

Statute may make an Atturney for him to save his default, yet none can give Judgement by Atturney; nor is a Woman named in this Statute, because that no judgement is to be given by a Woman.

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## CHAP. V.

### SECT. 3.

### *Of the Statutes of Marle-bridge.*

SOme points of the Statutes of Marle-bridge are reproveable, and namely the first five points, because that every personall Trespasse is punishable by a Corporall punishment if the Trespasse be not bought in by ransome according to the quantity thereof.

The Chapter which commandeth the Great Charter to be kept in all points is defective for want of addition of punishment, and it seemes grosse to make constitutions not holden.

The Chapters remedialls of Lords of Fees is reproveable in the mittigation of punishment: For all those who doe defraud the Law are punishable by a Corporall punishment, and not by a simple Amercement.

The point of Proclamation of Wards is reproveable, as that which is founded upon

upon Errour, as it appeareth in the Chapter of defaults.

The Chapter of Redisseisors is reproveable, for that no speciall command ought to exceed Common Right, nor any paine of imprisonment is judgeable but for a wrongfull imprisonment.

The Chapter of daies in Dower is reproveable, since the Law hasteneth right more in the Kings Court then elsewhere.

The Chapters following of Attachments and Distresses are reproveable, for in pleas of Attachments no Essoigne is allowable for the Defendants, nor any such order of distresses is to be holden according to Law.

The Chapter which forbiddeth that none make his Tenants Jurours is reproveable, because that no punishment is therein ordained, and because it hath no Exception; for there are many Cases where the people ought to be Jurours though they come not by the Kings Command, as before Justices of Forrests, before Coroners, and before Escheators, and as in Courts of Sheriffes and Viewes of Frankpledges, and as Afferrours, and at Goale deliveries.

The Chapter which commandeth the arresting of those who are bound to Accompt is reproveable, since the Action is mixt, and requireth Summons, and not personall Arrests.

The Chapter of wasters of Farmes is reproveable, for waste is a personall Trespasse,

passe, and requireth a personall punishment, and not a simple Amercement.

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## CHAP. V.

### SECT. 4.

### *Articles upon the Statute of Westminster, the first.*

MAny Chapters are reproveable of the Statute of *Westminster*. For the points touching religious Persons are matter to gaine monies, and a purchase upon a foundation of covetousnesse, more than for their advantage.

The Chapter of Clerkes found guilty of felony is reproveable, for for want of addition of punishment these Clerkes are not to be delivered to Ordinaries, but at the pleasure of the King, and of his Justices.

The Chapter of Wreck is reproveable, in as much as the finder is forjudged by the Statute to have part thereof, whereas he ought to have part of the profit, and so it is reproveable, as to the awarding of the punishment.

Of the points of Amercements is before spoken in the Great Chapter.

Cap. 9. The point of takings of distresse is much reproveable, as before is said.

The Chapter concerning pursuing of Felons to maintaine the Peace is reproveable in

in the punishment, for he is consenting to a Felon who doth not apprehend him when he may.

In the same manner is it of the Chapter of Coroners, contained in the Articles following.

The point of Election of Coroners was not needfull to have been ordained, for it behoveth more the Electors to have wise and loyall Coroners then to the King, and it had better have been enacted that the Coroners doe present the points of their Office under the Seales of the Jurours, then Sheriffes should make counter parts of the Rolls. Cap.

The point of Enquest of *Odio & atia* is reproveable, for *London* and other places in Liberties where there are no Knights. Cap. 12.

The point of putting people found guilty of felony, who will not put themselves upon the Country to pennance, it is out of use that one kill them, without having regard to the conditions of the Persons, and therein it is reproveable, since one may perhaps helpe and acquit himselfe otherwaies then by his Country, and in as much as none is to be put to Pennance before he be attainted of the offence for which he ought to be pained.

The Ordinances of punishments of long imprisonment are to be reprehended as before is said.

The point of the order of Outlawry of the principalls before the Accessories is no Statute, but a revocation of errour.

The

The point of Replevisalls is reproveable, according as it is said of Actions; the punishment of long imprisonment containe Errour as is said before.

The punishment of Heires males Married, as against the King, without the consent of their Lords, betwixt 14. yeares and 21. yeares is reproveable, for then the King should have amends for that, for which he hath not any personall Suit for the amends.

The point of Heires females containeth Errour, as appeareth in the reprehension of the point of Marriages in the Great Charter.

The point of tortious Distresses ought to contain the punishment for the robbery.

The punishment of Ministers, Disseisors by colour of their Office is reproveable for the smalnesse of it, as appeareth amongst the Judgements.

The point which forbiddeth Sheriffes that they take no rewards is reproveable in as much as the King taketh of them, and they take nothing of the King.

The point of Fines of Clerkes, and the officers of Justices in Eyre is reproveable, for the common grievance of the people without taking of profit.

The points of imprisonment are reproveable for the reasons aforesaid, and the point of Toils for the punishment of imprisonment, and because Tolls are not established certaine.

The point which willeth that those who dis-use

dis-use Marriages should lose them, was not needfull to have been made, for the Law is, that he shall lose his Franchise who useth it not.

The point of the Receivers of the Kings monies and not rendring the same is reproveable, for the smallnesse of the punishment, according to that which appeareth before.

The Errours of taking of Carriages and other goods appeareth sufficiently by the reasons before.

The point which forbiddeth Judgement to be given by Strangers in Counties is reproveable, for no Iudgement given by another then an ordinary Judge assigned is to hold.

The point which maketh mention of Robbery, or Disseisins is reproveable, for all those are to be seised upon who the Jurours indict of Robbery, according to the example of Theeves and other Felons.

The point of Attaint is reproveable, for it should not extend to one case, but it ought to comprehend all Oathes taken by twelve men if one of the Parties complaine thereof.

The point of limitations of Actions is reproveable, for the reasons in the Chapter given upon the same matter.

The point which forbiddeth falsities and abuses used in Courts before this time to false Judges, who used not the Law by sufferance of falsities.

The point of Champions is reproveable, for

for no Champion is to be receiveable as a witnesse.

The point of not allowing Essoignes in Assizes after appearance, is reproveable by the Assize of Novel disseisin, where no Essoigne is allowable for the Tenants no more before appearance then after; nor in no other personall Action.

The other points of Essoignes are reproveable, for no false cause of Essoigne ought to advantage any man.

The point of delaies in Pleas of Attachment is reproveable in many points, accordingas appearethin the chapter of defaults.

The point to plead upon the surcharge falleth in prejudice of Sheriffes, and of Lords of Fees, and of Liberties; and although the two points of Disseisins, that is to say, that every one may avoid the damages in the point of personall trespasse done to his Ancestors in as much as his Action lyeth, of what age soever the Parties be; yet is the first reproveable, for as much as the Plaintiffes have no recovery for the damages done to their Ancestors, nor any Action, but to have restitution of the possession.

The other point is reproveable for the smallnesse of the punishment, but according to common right this punishment should have time, that he should never doe Homage betwixt them for the Lords forfeiture, when he beginneth to dis-inherite his Tenant contrary to the right of Homage.

The

The Prayer of the King is reproveable, because he ought to aske nothing contrary to Law, but it is the prayer of the Justices who desire alwaies to have much to doe.

The point that if he who is vouched to warranty ought not to warrant, although he be bounden by the deed of his Ancestor whose Heire he is, in case he allegge that nothing descended to him from that Ancestor by whose deed he is vouched is reproveable, for according to the old Law, Lands remained liable to the Debt of those who acknowledged it, to whose hands soever the Lands afterwards came.

In the same manner it used to be in all other Contracts, where the Contracts were adjudged or granted; and although nothing descended to the Heire for that he lost not the Tenements for want of Acquittance, and if he who bound himselfe to warranty would not warrant the Land, nor vouch over, it appeareth thereby that the Ancestor was Tenant by a naughty title, and that he was possessor thereof by an ill way; and if the Heire had nothing whereby to discharge him, the Tenements bound to warranty should be recovered. And if the Heire had nothing whereby to discharge, nor no Land is found bound to the warranty, if the Purchasor lost his purchase it was at his owne perill, and accounted his owne folly, the better at any other time to looke to his assurance.

CHAP

# CHAP. V.

## SECT. 5.

### *Articles upon the Statute of Westminster, 2.*

THat which is said of the Statute of *Westminster* 2. which faileth in many cases is now to be understood, for against all Trespasses is the Law made although it be dis-used, or controuled by those who know not the Law.

And the three first Chapters are not Statutes, but are the revocations of the Errours of negligent Judges, for the Law permits not that a man make a better estate to another then himselfe hath, but requireth that every lawfull Contract be made according to the wills of the speakers; and that which is in the Statute, that if a Fine be leavied in deceit of right, that the same be *null* is reproveable; but it might have been better said, That for that Fine, that no man be barred of his right, for the Fine leavied cannot be rightly said *null*, but it holds in force, and barreth at the least the Donor of his Action.

The point if Distresses doth not repeale any Errour, but affirme them, as before appeareth in the second booke.

And that which is said in the second Statute, that Suitors in Counties have no Record

Record, is but abusion, since every Lawfull testimony is a Record, and every false testimony is a lye; and as lawfull may other people testifie as the Justices assigned. Is not the same Writ abused, to grant to Counties Records in Outlawries, Pledges, Maine-prises, Battrailes, Grand Assizes and other Cases, and not other points, and to deny that the Sheriffes or Lord of the Fee, or other to whom the King sendeth his Writ, hath not as well Record of Processe before him, as those whom they call Iustices, is but Errour?

And as to the causes of Writs of paines is suffered great Errour, that that which is not warranted in the Accessory, that he may in the principall, since the Law permits that none be aided by a lye or a vicious Writ.

Of the other side, because there is more realty in the Statute then personalty, as more Attachments are awarded in personall Actions then in mixt and realls.

The point of Measnes is reproveable, as to the Proclamation, and as to the *non*-acquittance of those who hold by lesse service then the Measnes, for be it that *B.* hold one hundred pound Land of *D.* by the service of twenty pound *per annum*, and the same *B.* give the moyety thereof in Frankalmoigne, or Frankmarriage, or to hold by the service of a Rose to *C.* if it happen that the same *B.* forfeited what he hath, by this Statute no remedy is ordained for *C.* who was purchasor from *B.*

and

and therefore the old course is to be holden which is said before in Iudgements.

The remediall Statute of the right of the Wife lost by the default of the Husband is reproveable, for the old Law was, that a woman after the death of her Husband should repleeve her Inheritance or purchase so lost, summoning the Tenants, for a Cape is not, but a distresse and ejection of seasin saving every right; and it is lawfull for one of the Tenants in common to defend his right where he is damnified by the negligence or the *non* ability of his Partner. In the same manner may a Woman according to Law in the right of her Husband; neither doth the Law give to Widowes Action to demand Dower in the cases named in the Statute, but in all cases the Law enables her to be received by Lawfull reversing of the Iudgement.

And that which is contained that Tenants may vouch to warranty, is but abuse; how holdeth voucher place where a Writ lyeth not; yet is it understood with a saving, that no jurisdiction of a Iudge assigned extend to other Persons then those who are named in the Writ, and that none shall vouch more then in the same Writ are named, by Writ of *Replegiare*, and therefore are warranties attainable and determinable by Writs.

The Statute following, which Ordaineth new Writs remedialls after defaults, is prejudiciall to Lords of Fees, who lose the

the advantages of their Courts, because that Writs of Right are forbidden in such cases where they wont to be used.

Presentments to Churches ought not to be but in the names of those to whom the meere right of the Advowson doth belong, according as is said before in Contracts; and it is errour and abusion of Law to endow women of Advowsons, or to Lease them to Farme, or for the terme of anothers life, or in Frank-marriage, or in Mortgage, or in Fee-tayle, or otherwise then in Fee-simple.

And those who receive Clerkes presented to Churches, in prejudice of those to whom the meere right in Fee doth appertaine, are bound to make restitution of the damages, and those who have recovered to Jurours by whom they were certified of the right of the personage; and so it appeareth that the punishment lyeth more against the Bishops then the presentors.

And that which enacteth long Imprisonment for a punishment, is but abuse; since none is imprisonable if not for a wrongfull imprisonment.

The Statute of Warranties is but a revocation of Errour used against Law.

The Statute of Admeasurement is reproveable in many points, as to the Proclamations, since admeasurement and surcharge are to be by Jurours.

The Statute of Measnes is reproveable in many points, as it appeareth in the

Chapter of Distresses, Contracts, and defaults, and the same appeareth in the end of the Statute where, the Plaintiffes know not a set fine.

The Statute of suspension of Writs in Eyres is reproveable, as repugnant to the great Charter, which saith, we will sell no Right, nor detaine it, and wherefore are Writs rebuttable from hearing but for the multitude of Writs which are, and for the small number of Justices the right of many perish.

The Statute of obligees in Accompt is reproveable in many points, one as to the exception to the Persons, for the Masters is ordained recovery, and to Serjeants not, when Auditors are assigned without the consent of the servants.

The other, that the Auditors are not tyed to allow any thing but at their pleasure without punishment.

Another, that the recovery is ordained by detinue of the servants, and not against the Surety, nor the goods.

Another, that the Lords are not to be Arrested according as of the servants.

Another, that the wickednesse of Auditors remaineth unpunished.

Another of Outlawry, for none is to be imprisoned if not for a tortious imprisonment.

The Statute of Appeales is reproveable in two points, one in the specialty of the Corporall punishment, and of the Plurality punishments, since the redemption by a pecuniary

pecuniary paine is but the buying out of the Corporall punishment.

The other to have jurisdiction against the Abettors without originall Writ.

The Statutes of Waste are founded upon Errour since waste is a personall Trespasse, and requireth other manner of Processes, as appeareth in the Chapter of defaults; and to defend a personall Trespasse by Writ is but a vaine labour.

The Statute of not allowing a false cause in the Essoigne *De malo lecti* is defective, for in no Essoigne for no Party is any false cause, or any falsity to be permitted, non ought to be profitable to any.

The Statute of Debs and Damages recovered is defective, for not onely should such remedy be in the Kings Courts, but it ought to comprehend in all other Lay Courts.

The Statute of those who are dead without Wills is defective, for it ought to comprehend Felons, and Fugitives as well as true men; and the King, and all others into whose hands their goods come as well as Ordinaries, for none can forfeit the right of another.

The Statute for allowing one manner of Exception in the like Actions was not needfull to have been made if not for the negligence of Justices, for every affirmative is encounterable with his negative at the peril of the party.

The Statute of detinue of service is a novelty dangerous to Lords of Fees, as

ppeareth in the Chapter of defaults.

The Chapter of making new Writs had not need to have been made, if the first Ordinances of Writs were observed.

The Stature to have remedy by Assize, of *Novel disseisin* is reproveable, for as much as it comprehendeth not Lands charged with Villain Customes, nor Lands holden for terme of yeares.

The point needed not have forbidden false Exceptions, if the Pleaders held themselves to the points given in charge.

And as to the point of Imprisonment, the Stature is reproveable for the reasons aforesaid, and also as to the paine of double damages, for the Law giveth a man no more then is his demand.

And that which appeareth in the Statute of false Appeales is more errour then right in the enacting the award of amends to Defendants, whereas *it is* not to the Plaintiffes.

And as to the Writ to the use of Sheriffes in Disseisins, it is no Statute, but it is a thing at pleasure, and a wrong.

And that which is used to grant Damages in part, or in all to Justices, or to Clerkes, or to Ministers, or others should be forbidden, as a usage very full of damage to the people.

And as punishments are reproveable in *Novel Disseisins*, so are they in the Statutes of Disseisins, Corporall punishments neverthelesse hold in such personall Trespasses, but in Reddisseisins more then in Disseisins.

The

The Statute which forbiddeth that Writs of *Oyer* and *Terminer* be not *Ligirment* granted is not founded upon any Law, as being repugnant to the words of the Great Charter, We will not sell or delay Justice to any man; but commeth rather from the temporall Iudges, who cause the same for their advantages, as desiring to embrace all Pleas. Easily.

The Statute of Caption of Assizes thrice in the yeare is reproveable, as to the adjournment of the Parties out of the Counties before the Iustices of the Bench, who have no jurisdiction over those Pleas, since the Commissions are given to Iustices assigned.

And as to take Iuries and Enquests in their Counties, so the Statute is not to destroy the Authours and indamage the people.

The Statute which forbiddeth Iustices that they cause not Iurours say, but their advice is defective, as appeareth in the Chapter of Iurours.

The Statute of Exceptions allowables rebutted by Iustices is not founded upon Law, as appeareth in the Iudgement of false Iustices, but is when it is in no part fixt.

The Statute of Rape is reproveable, for none can ordaine by Statute that a veniall punishment be turned into a mortall, without the consent of the Pope, or the Emperour.

The Statute that the King hath the Suit

in Rape, or in Ellopment of women Married is reproveable, for none is bounden to Answer to the Kings Suit if not by Appeale, or by Indictment.

And that which is contained in it, That Women should lose their Dower for the sinne of Adultery, ought also to comprehend all Adulterours, who claime to hold the inheritances of their Wives by the courtesie of *England*, so that there be no exception of persons.

The imprisonment of the Alloppors of Nunnes and their ransome is no Law, but is an errour in a double manner, as before is said in many places.

The imprisonment for two yeares or more, ordained for a Corporall punishment to Ravishers of Marriages is but errour, for no Corporall punishment ought to be ordained but for common profit, as before appeareth of open Penances.

And that which is ordained of Proclamations in personall Actions is but abuse of Law, as it is said in the Statute of Moignes.

The Statute which awardeth Ransome is reproveable, for Ransome is nothing else then the redemption of Corporall punishment.

The Statute of Distresses made by Bayliffes unknowne is distinguishable, for in tortious Distresses without warrant the Iudgement of Robbery holdeth; and by warrant is every one receiveable, whether knowne or unknowne.



The

The Statute of Iurours is reproveable, for the Law wills that the Plaintiffes have the aide of the Courts to cause the Witnesses to appeare, whereby they may the more lawfully helpe themselves without distinction of persons.

And that, that jurisdiction is granted to Justices assigned to *Oyer* and *Terminer* Plaints, without a speciall Commission is but abuse.

The Statute which awardeth that Writ of Judgement be made without warrant of originall Writ is nothing else then a Licence to falsifie the Kings Seale.

The punishment of Sheriffes ill answering is reproveable, as to the punishment; for dis-inheritors of the King offend of the crime of Majesty, and are by consequence punishable by death, which ought not to be in such cases.

And as to issues the Statute is reproveable, for no issues are awardable but after defaults in Actions mixt, and not to the Kings use, but for the profits of the Plaintiffes.

The defaults made of the Statutes of Clerkes, Cryers, and other Officers of the Court are but idle, because they are not kept at all.

The Statute that Cognizances and Enrolements which are made in the Chancery, the Exchequer, and before Iustices be established is an Authority of great ill; for by false enrolements might every one in Authority destroy those he pleased,

which should be a great inconveniency. Againe, by this Statute Authority should accrue to Authority to the Chancellor and others to falsifie the Kings Seale by Writs, to give judgement without originall Writs.

And therefore note, that none but the King can receive Atturnies in the Kings Court, nor recognitions bitwixt Parties without warrants of originall Writs.

The Statute of improvements of wasts and commons of Pasture is reproveable, and distinguishable according as hath been said before.

The Statute to have view of Lands is but a wrongfull delay of the right of the Plaintiffes; for the View appeareth sufficient by the Certificate of the Summons, upon what Tenements the Tenants are summoned.

The Statute which forbiddeth that no Officer of the Court take any presentment of any Church, nor other thing which is depending in Plea, or in debate is not kept.

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## *Reprehensions upon the Statute of Gloucester, 1 6. E. 1.*

THe Statutes to recover Damages in Pleas of possession enacted at *Gloucester* or else where, and of the horrible damages in waste are reproveeble, for that the

the Law giveth one no more then is his demand, and therefore it behooveth that the damages be mentioned in the Writs if damages ſhall be awarded; for a Judge cannot exceed the points of his Commiſſion, and ſo it would be needfull to uſe it according to the firſt Ordinance of Writs.

And the Statute of Tenements alliened of Lands in prejudice of others is reproveable, for the remedy ought to be ſuch as of Guardians allienors, to the diſ-inheriſon of the right Heires.

The Statute of Treſpaſſe pleaded in Counties is reproveable for want of diſtinction, for ſmall Treſpaſſes, Debts, Covenants broken, and ſuch other kinds not exceeding forty ſhillings. Suitors have power to heare and determine without Writs, by warrant of juriſdiction Ordinary, and by Writs granted afterwards; for Sheriffes have more juriſdiction in their Writs vicontiell then Juſtices of the Bench by the Pone.

And as to the recovery of twenty ſhillings or more in right of Eſſoigne of the Kings ſervice not warranted the Statute is reproveable, for that Eſſoigne might be caſt where the Defendant would make default by the adverſe Party, and ſo he ſhould have advantage of his malice.

The Statute which forbiddeth the abatement of Appeales is not obſerved.

The Statute which awardeth an innocent man to remaine in Priſon, or to have

no manner of punishment for necessary Man-slaughter; or by mischance, where no offence is found, is but an abusion.

The Statutes making mention of *London* ought to extend commonly throughout the whole Realme.

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## CHAP. V.

### SECT. 6.

### *The reprehensions of* Circumspectè agates, *An.* 13. E. 1.

THe first point which saith, That the Kings prohibition holds not in correction of mortall offences where a pecuniary paine is enjoyneable by Ordinaries, is founded upon open errour, and usage to enjoyne a pecuniary paine for a mortall offence, notwithstanding to destroy the Kings jurisdiction.

The other points to compell the Parishioners by corrections to enclose Church-yards, to offer, to give Mortuaries, Monies for Confessions, Chalices, Lights, Holy Vestments, and other adornement of Churches are more grounded upon interest then amendment of soules; and note, that after that they are offered to God, that they are so spiritualls that they are to be expended but in Almes, and spiritually, for they are never to be converted to Lay uses.

And

And then if any Parishioner for the hurt of the Parson of the Church keepeth back his Tithes, or stealeth them away, or doth not pay them duly or fully, the same is not punishable by a pecuniary paine, but by a corporall punishment.

For the Excommunicate no pecuniall paine was to be for restitution or satisfaction, no more then of a Pagan or a Jew, and if they doe demand a pecuniary paine, there the Kings Prohibition lyeth, and much more in the demand of Pensions, or of damages of Trespasse, or of defamation; but of Pleas of correction where one Pleades onely *Pro salute anima*, the Kings prohibition lyeth not.

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## CHAP. V.

### SECT. 7.

THe new Statute of Debts is contrary to Law, as it appeareth in the Chapter of Contracts; for every imprisonment of the body of a man is an offence if not for tortious Judgement, and the Law will not suffer any Obligarion, or vicious Contract by intermixture of offence, and therefore it was to be avoided as grounded upon an offence; for no honest man ought to agree to such a Contract which

which causeth him to offend, or to be punished.

Againe, it is contrary to the Great Charter which enacteth, that no man be taken, nor imprisoned if not by the lawfull judgement of his Peeres, or by the Law of the Land.

Here endeth the *Mirrour of Justices*, of the right Lawes of Persons according to the ancient usages of *England*.

*The end of the fifth Chapter, and of the whole Booke.*

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FINIS.

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# THE BOOKE

Called, The Diversity of Courts, And Their Jurisdictions.

Written by an unknown Author in the time of King *Henry* the Eighth, in the *French* Tongue.

Wherein many necessary and profitable things are contained.

Translated out of the *French* Tongue into *English* for the use of many.

By *W. H.* of Grays-Inne Esquire.

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# The Booke called, The diversity of Courts, and their Jurisdictions.

IT is to be understood that the King is the fountaine of Justice, and to this purpose ordayneth Judges, that Justice be administred to all his Subjects.

The King himselfe for the excellency of his Person may sit and give Judgement in all Causes personall or reall, betwixt Party and Party, but he cannot sit in Person in Judgement in any Cause where he himselfe is Party, or where the things of his Crowne or Dignity are concerned, as upon an Indictment of Treason, or upon an appeale of Murder or Felony, or upon an Action brought by himselfe, as Formdon of Land, of which the right is descended to him from a colaterall Ancester, or in an Action of Debt, by reason of the affection moving him to be favourable to himselfe; and therefore he maketh his Judges to sit and heare such matters in difference, and to doe justice to the parties.

And

And the place where the Judges sit to minister Justice are called Courts, which are of divers kinds, and the Judges thereof have severall Authority.

## *Of the Court of Marshalsey.*

AND first, the Court of Marshalsey is an ancient Court, and made for the well government and ordering of the Kings house, for the preservation of the King and his Servants; and this Court hath its bounds within which it hath jurisdiction, and not without.

The Iudges of this Court are the Steward and Marshall of the Kings house, for in them under the King is the ordering of the houshold, &c.

The title of the Court is, *Placita Corone aula Hospitii Domini Regis leat coram seneschallo & mareschallo hospitii Domini Regis, &c.*

And this Court hath power to enquire of Treason, Murder, and Felony, and to take Appeales of them, and of Mayhem if they be done within the Virge, betwixt persons who are of the Kings house.

And if one of the houshold Sueth another who is not of the houshold, he may plead to the jurisdiction of the Court; and if they will not allow of the Plea, he shall have a Writ of Errour, and the Iudgement shall be reversed in the Kings Bench.

And if one of the houshold sueth another

ther of the houshold, and the Plaintiffe be put from his service depending the Suit, the other shall shew the same and abate the Writ; but quere if it be so, if in case the Defendant be removed out of service, &c.

The Coroner of the Marshalsey shall sit with the Coroner of the Country upon the death of a man, and if the Plea may be determined before the King remove out of the Virge it shall be, otherwise it shall be at the Common Law.

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## The Kings Bench.

THere is another Court of high Authority called the Kings Bench, and the Iudges of that Court have Authority to enquire of, heare, and determine Pleas and things touching the Crowne; as High Treason, Murther, Man-slaughter, Robberies, Felonies at the Common Law; and by Statute Law, Mayhems, Trespasses, Burglaries, and all deceits and falsities wharsoever; but they have not authority to hold Plea betwixt Party and Party by originall Writ but in speciall cases.

They have power to proceed in and determine Indictments, and Presentments taken within any County within the Realme where the Kings Writ runneth, if it be certified by *Certiorare*, or be delivery under the hands of the Iustices of the Peace, or other Iustices before whom

the Indictments or Presentments be; whether it be of Treason, Felony, forcible entre, Ryot, or any other thing against the Peace; and they have Authority to reverse Iudgements given in the Common Pleas by a Writ of Errour, or before Iustices of Assize, and in Liberties and Franchises but not in *London*; for a Writ of Errour, of a Iudgement given before the Sheriffes of *London* shall be reversed before the Major in the Hustings.

And erronious Iudgements given before the Major in *London* shall be reversed at St. *Martins* before speciall Commissioners assigned to that purpose; and thereupon a Writ of Errour shall be directed to the Major to have the Record and proceedings thereof, and the Record shall be certified by the Recorder, &c.

And it is said, that if an erronious Iudgement be given in *Ireland*, it shall be reversed in the Kings Bench by a Writ of Errour, for that in *Ireland* the Lawes of *England* are used.

And if an erronious Iudgement be given in the Cinque Ports, it shall be reversed in the Kings Bench, and the Writ shall be directed to the Warden of the Cinque Ports, and he shall returne the Writ and the Record, &c.

The King may have a Formdon in the Kings Bench, Debt, Detinue, and every other Action, and a *Quere impedit* at his pleasure. And a common Person may bring an Action of trespasse *Quare vi & armis*

*armis* in the Kings Bench, and Actions for forging of false Deeds, maintenance, Conspiracy, Actions of deceit upon the case, or supposing any falsity and deceit, where the King shall have a Fine, &c.

And note that there are some Actions upon the case which shall be sued in the Kings Bench, and some not; as an Action upon the case against one supposing that the Defendant hath sold Land to the Plaintiffe for a certaine summe of Money, and that he covenanted to infeoffe him by such a day, and not by any Deed, &c. Or to build a house such a day, and did not doe it, &c. such actions shall be brought in in the same Court; but there are other Actions upon the case, which shall not be brought in the Kings Bench; as if a Horse be stollen out of the common Inne, an Action upon the case lyeth against the Hosteler, but not in the Kings Bench, as it is said. And so it is where a man is so bounden to keepe his fire, that the same hurt not his Neighbours houses, &c.

And note, that the chiefe Iustice of the Kings Bench is made by Writ, and not by Patent, and it is to this effect; *Rex dilecto & fidel. suo. I* Fitz-Iames Saltern, *Quia volumus quod vos sitis capital. Iusticiar. noster ad placita coram nobis tenenda vobis mandamus quod officio illi intendatis*, but he shall be sworne by the Chancellor of *England* before he take upon him his office.

The other Iustices of the same Court are made by Patent, *viz.* by these words; *Con-*

*Primum &c. unum justiciorum nostr. ad placita eorum nobis tenenda, habend & occupand officium illud quam diu nobis placuerit.*

And if a King maketh a Iudge to hold and enjoy the said Office by himselfe, or his sufficient Deputy for life, the grant is void as to the Deputy, and if the grant be to him and his Assignees, he cannot make an Assignee, &c.

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## *The Common Pleas.*

ANd note, there is another Court called the Common Pleas, which Court hath jurisdiction to hold Common Pleas, as well personall Pleas as reall, or any other *Precipe quod reddant*, of Lands or Tenements, &c, of Debt, Detinue, Accompt, and other personall Actions; and they have power to hold Plea of any of those Actions, which may be brought in the Kings Bench as Actions of Maintenance, Conspiracy, Forgery of false Deeds, and Actions upon the case, and trespasse against the Peace, of such Actions wherein the King ought to have a Fine, and also of Attaints; but they have not power to hold Pleas of Appeales of Murder, Rape, Felony, Mayhem, nor to enquire of them, nor of Riots.

And it is said, That one may Sue the Peace against another before the Iustices of the Common Pleas, and if the Party be in the Hall, or in the Place, or within their View,

View, they may send the Warden of the Fleet to bring the party before the Iustices to finde Sureties, or else commit him to the Fleet; and the reason why they may so doe is, that good order, and the Peace be kept about the Court; but the Iustices have not power to award Processe to the Sheriffe to Arrest the party to appeare in the Court where the Common Plea is; but it is otherwise of the Kings Bench, as it is said, &c.

And it is said, That the Iustices of the Common Pleas have jurisdiction in some things which touch the Crown, and to enquire and hold Plea of some felony, and also of misprision, and of deceit done within the Court, and within the Record thereof.

And if one imbesell a Pannell after the Enquest passed, and Iudgement given in the Common Pleas, by which the Iudgement is reversable by Errour for want of that Pannell; the Iustices of the Common Pleas have power to enquire of the embesselment of the Pannell by 12. of the Officers and Attarnies of the same Court, and they shall be sworn before the Iustices to enquire of that default; and if they endite the embesselors they shall be Arraigned thereupon, and shall be compelled to answer thereunto as other Felons, &c. and if they be attainted they shall forfeit their goods and chattels, *tamen quere, &c.*

And if one be condemned in Debt, or trespasse in the Common Pleas, and he be in the Hall, the Iustices at the prayer of

the Plaintiffe may send the Warden of the Fleet to bring him before them, to satisfie the party the money, or otherwise commit him to the Fleet.

And when he appeareth and will deny that he is the same person, then *Quære* what shall be done, if the Justices may commit him to the Fleet or not? And some say not, for that they know him not as Judges, but as other men by information of the parties; and the Plaintiffe cannot maintaine that he is the same person, because he commeth not in but by information of the party Plaintiffe, & not by Processe of Law; *Quære* what is to be done in that case?

And see another difference betwixt the Judges of the one Bench and of the other, for it is said, That if the Judges of the Kings Bench doe award Processe in a Formedon, a Writ of right, or execution of Land recovered in value, the Sheriffe ought to execute the Writs although they have not any Jurisdiction therein. But if the Judges of the Common Pleas will grant Processe of Treason, &c. out of their place, the Sheriffe ought not to execute the Processe, for that authority is onely of Common Pleas, &c.

The chiefe Iustice of the Common Pleas is made by Patent, *viz.* by these words *Constituimus ipsum capital. Iusticiar. nostrum de Coi Banco, &c. Habendum illud cum feodis vadiis & regardiis, eidem officia debit & consuet.* And the other Iudges of the same Bench are made by Letters Patents, &c.

The

## The Chancery.

ANd note, that the Court of Chancery is a Court of a high nature, out of which Court issue all originall Writs, and there a man shall traverse Offices and such things; and in that Court women who are widowes to the King shall be sworne that they shall not marry without the Kings Licence, before the time that they be endowed; and it is said, That of errour there upon a Patent, or a Traverse, the same cannot be reversed elsewhere but in Parliament, *Quere &c.* And in that Court a man shall have remedy for that which he hath no remedy at the Comuon Law; and it is called by the common people, *The Court of Conscience.*

And therefore see of matters in Conscience, how the party shall have remedy.

If a man hath Feoffes to his use, and maketh his Will, and thereby willeth that his Feoffes should make an estate to *I.* for terme of his life, the remainder to *C.* in Fee; if the said *I.* will not take the estate what remedy is for him in the remainder, in conscience, and how he shall helpe himselfe in Chancery, &c.

A man shall have remedy in Chancery for Covenants made without writings, if the party have sufficient Witnesses to prove the Covenants, and yet he is without remedy at the Common Law, &c. And for Evidences, when a man knowes not the

certainty of them, nor in what they are contained; it is usually to be releeved in Chancery, for he is without remedy by the Common Law, &c.

If a man infeoffeth another of certaine Lands to his use, and the Feoffee selleth the Land to another, if he giveth notice to the Vendee at the time of the sale of the intent of the first Feoffment, he is bounden to performe the will of the first Feoffer, as it seemeth in the Chancery.

A man was bounden unto another by Obligation in a certaine summe of money, and the Obligee brought an Action upon the same Deed in another County then where the Obligation was made, and had Iudgement to recover; and the Obligor in Chancery sued to be releeved, and it was surmised that by that forraigne Suit he was outed of diverse Pleas which he might have had, if the Action had been brought in the County where the Obligation was made, and it was conceived a good matter to releeve him in equity.

In the Court of Chancery a man shall not be prejudiced by mispleading, or for want of forme, but according to the truth of the Cause judgement ought to be given according to equity, and not *Ex rigore juris*. And note that there are two jurisdictions, Ordinary, and Absolute; Ordinary is as positive Law, and Absolute is *Omnibus modis quibus veritas sciri poterit*.

If a man be bounden by Obligation unto two men unto the use of one of them,

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and one of them *viz.* is he to whose use it is not, releaseth to the Obligor all Actions, so as the Obligation is discharged, he to whose use the Obligation was made hath good remedy in Chancery by Subpœna against his companion who released him, but against the Obligor it seemeth he hath no remedy, for every man is bounden to helpe himselfe, and it is lawfull for a man to get a discharge of that which he is charged withall, and in danger to others.

And if a man hath recovered against another debt or damages, and he hath paid the same without any Acquittance, or without having a release, and notwithstanding the party taketh execution against him upon the same Iudgement, he shall have no remedy by the Common Law; and it was then said by the Chancellor that he shall not have any remedy in equity in this case; and if the same should be remedied in equity, then every Record should be examined before him, and thereby the Common Law overthrowne.

And if I doe infeoffee one upon trust, and the Feoffee doth infeoffee another of the same Land upon trust, *Quære* if I shall have a Subpœna against the second feoffee, but where he is infeoffed *bona fide*, there the first Feoffer is without remedy against the second Feoffee, as it seemeth.

It is said, That the Chancellor of *England* wheresoever he shall be in *England*, hath power to command a man to prison, and he shall not be bayled; *Quære* whether the

the Iustices of the one Bench, or of the other, out of their Courts have the same authority or nor.

## The Exchequer.

THe Court which is commonly called the Exchequer, is properly for Accomptants, Sheriffes, Escheators and the like, and there they are compellable to make their Accompts according to the usages and customes of the same Court, &c. and it seemeth to be a Court which is much for the Kings profit, for there all remedies are provided, how the debts and duties to the King shall be levyed.

And in that Court the Barons are Iudges betwixt the King and his Subjects, and they are sworne thereunto; and Fines, Issues, and Amerceiments which are assessed in other of the Kings Courts, the estreates shall be made thereof to the Court of Exchequer, and there they shall write forth Processe against the parties to answer thereunto, and to satisfie the King what is due to him, and of divers other matters they have power and authority by reason of their Office, &c.

## The Cinque Ports.

THere are also divers other Courts, and inferiour places where Iustice is ministred,

ſued, and in thoſe places they have Iudges, as in the Cinque Ports, and ſuch places which have Counſans of Pleas, and alſo in Court Barons, in which Courts is Iuſtice done according to Law, &c. And although they of the Cinque Ports ought to be empleaded of their Lands within the juriſdiction of the Cinque Ports, yet that holdeth onely where the Tenant ſheweth the ſame, and taketh advantage thereof if he be impleaded in the Kings Courts of things which are within that juriſdiction; but if the Tenant be ſued in the Common Pleas for Lands within the Cinque Ports, if the demandant doth recover by default, or if the Tenant appeare, and plead any matter which is found againſt him, ſo that the demandant hath judgement for to recover the Land, that judgement ſhall bind him for ever, &c. But the Tenant might have alleadged, That the Land was within the Cinque Ports, and by ſuch Plea the Kings Courts ſhould be outed of the juriſdiction, &c.

And ſo it is of Lands within an ancient demeaſne, if a Writ be brought thereof in the Common Pleas, if the Tenant appeareth and pleadeth, and doth not take exception to the juriſdiction, and the Plea be found againſt him, ſo that the demandant recovereth, the Tenant ſhall not reverſe the judgement by a Writ of Errour, becauſe the Tenant might have taken exception to the juriſdiction of the Court, and it ſhould have been allowed, &c. But yet the

the Lord may reverse that judgement by a Writ of deceit, and shall make the Land ancient demeasne as it was before, &c.

And if one hath Counsans of Pleas in a Towne, or in a Mannor, and a Writ is brought in the Common Pleas of the same Land, and the Tenant pleadeth, and judgement is given against him, the recovery is good, for it is within the power of the King, and the Writ of the Common Pleas doth take place there; and if the Bayliffe, or Lord doth not demand Cognusans the judgement is good. But in another Action the Bayliffe shall have Cognusans for that the nature of the Land is not changed, and so see that where a man hath counsans of Plea, &c. it ought to be demanded by the Bayliffe, or the Lord, and the Tenant shall not demand the same if he be impleaded in the Kings Court; but of the ancient demeasne there it behoveth the Tenant to shew the same, and plead to the jurisdiction, &c. if he will have advantage thereof, &c.

And so note, that in the Cinque Ports there is such a liberty that the Lands and Tenements are pleadable there before the Barons, &c. and yet if one be impleaded at the Common Law of Lands within the Cinque Ports, the Barons shall not have Counsans of the Plea, but the Tenant may plead the same to the jurisdiction in abatement of the Writ, &c.

*The*

## The Court Baron.

NOte also that there is another Court which is called Court Baron, in which Court the Suitors are the Judges, and not the Steward; and they hold plea of Contracts within the jurisdiction, &c. and yet it is said by some, That the Defendant shall not shew that the Contract was made out of the jurisdiction, and pray that the Plaintiffe be examined as in a Court of Pipowder.

The Judges of the Court Baron have Authority to hold plea before them of Debt upon Contracts, or Detinue, but not of detinue of Charters, nor Actions of debt upon a judgement in a Court of Record, but otherwise I thinke it is of a recovery in the same Court; nor shall they hold plea of Maintenance, forgery of false Deeds, of deceit, nor of *Decies tantum*, nor of pleas of Accompts, for they have not authority to assigne Auditors. They shall not hold plea of Debt above the summe of forty shillings, unlesse it be by prescription; and they shall not hold plea of Free-hold by plaint, but by a Writ of right they may. But if a judgement be given of Free-hold upon a plaint, it is said it is good untill it be reversed by a Writ of false judgement, *tamen quære, &c.*

And note for what Suit a man shall be judged in a Court Baron, and it is said, That it is where a man is seised of Lands in Fee-simple, and which he holdeth by service

vice of Suit at the Lords Mannour, that Suit is properly Suit-service, and for such Suit he shall be judged in a Court Baron, and for no other Suit as it is said, &c.

And *quære* also, when erronious judgements are given how they shall be reversed, *viz.* when by Writ of false judgement and when by a Writ of Errour. And some say, That in all Courts where the party might remove the plea by a *Recordare* upon a judgement given, in such Courts a Writ of false judgement lyeth; as in ancient Demesne, Court Baron, County Court, and Hundred; but in other Courts which are of Record the plea shall be removed by a *Certiorare*, and upon judgement given in such Courts which are of Record, it shall be reversed by a Writ of Errour, &c.

And if a man recovereth in a Court of Record by erronious judgement, and Sueth not Execution, some say, That a Writ of Errour lyeth, and the party shall have a *Supersedeas* if he will prey the same; but if a man hath judgement in a Court Baron, and taketh not forth Execution, no Writ of false judgement lyeth: *Quære* the reason thereof, and what the Law is in that case.

And note that sometimes the Sheriffe is Judge, as in Reddisseisin, Wast, and Admeasurement, and the Processe shall be served by the Baily as is said.

And note that the Sheriffe is an Officer to the Kings Court, to execute the Processe thereof; yet sometimes the Coroner is the Officer to the Court where defect is found

found in the Sheriffe, &c. so that he cannot by Law indifferently execute the Processe as for divers apparent causes, yet if the Sheriffe dyeth the Processe shall not goe to the Coroner, but shall stay till another Sheriffe is chosen, &c. And because the Sheriffe is an Officer appointed by the Law to attend the Kings Courts, a man shall not take an Averment against the returne of the Sheriffe directly, and the reason is, because where Justice ought to be ministred and executed, those who have the Government of the Law ought to repose trust and confidence in some person, and if every one might averre against that which the Sheriffe doth, then Justice should not be executed, but should for ever be delayed, &c.

The meanes and the remedy how a man may come to his due, and to that which is wrongfully kept from him, and that is by plea, and this word is generall, and hath divers effects implyed therein, and may be divided into divers branches, *viz.* Into pleas of the Crowne, as appeales of Death, Robbery, Rape, Felony, and divers other things, &c. and into Actions reall, whereby Lands, Tenements, Rents, and other hereditaments are demanded, as Writs of right, Formedon, &c. Or Actions possessory, as Writs of Entre, Assize of Mortdamester, Cosinage and the like, &c. And it may also be divided into Actions personals, as Debt, Trespasse, Detinue, &c. and into Actions mixt, as into Assizes, and Actions

ons of wast which are as well in the realty as in the personalty. A personall plea may be divided into two parts, one into a meere personall plea, as an Action of debt, detinue, where none hath interest but the parties themselves; the Plaintiffe and the Defendant. And the other part is mixt in the Crowne, the Plaintiffe and the Defendant have not the sole interest in those Actions, but the King hath an interest in them also to have a fine; as in an Action of Trespasse, *Vi & armis*, and that is an Action mixt with the pleas of the Crown, &c.

And note that in matters of the Crown, for such for which a man shall suffer death, some may be principalls and some accessories, as Murder, Felony, Rape, and the like; but in High Treason I conceive all are principalls, & in petit treason there may be principall and accessory as well as in felony

In a Premunire all are principalls, and in cutting out of Tongues, and putting out of Eyes there may be an accessory as well as a principall, as is said, &c.

In Robbery all are principalls who are present at the time of the Robbery done, otherwise it is in Murder; for if one be present and doth nothing he is an accessory, and not a principall, &c. In Mayhem some say, that all are principalls, as well he who is comforting and abetting as he who giveth the Mayhem, as it is in Trespasse, *tamen quære*, for I conceive the Law to be contrary, &c. And it was said, That if a man be present at the death of a man, and moveth

moveth another to kill the man, that he is a principall, notwithstanding that he giveth him not any stroke, and notwithstanding that the Count in every Appeale is, That every principall did mortally strike and wound him, &c. but those are words of forme, and the blow of him who struck is the stroke of him who commanded him when he was present.

And it is to know that for such things for which a man deserveth death, there are two waies to bring him to answer the same; one by Appeale, which is at the Suit of the party the other is by way of Indictment, which is at the Kings Suit, &c. And for a Mayhem the party shall have an Appeale of Mayhem, wherein he shall recover damages, and no death shall follow, &c. and see the Appeale following, and first of the Appeale of the death of a man, &c.

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## *An Appeale of Murder.*

I H. *hic instanter appellat* W. F. *de morte* H. C *fratris sui, per eo quod cum predict.* H. *fuit in pace Dei & Dom. regis apud* D. *tali die, hora, & anno. tibi venit* W. F. *uti felo Dom. Regis, in assultu premeditat vi & armis, &c. Et in ipsum* H. *ad tunc & ibid. felonicè insultum fecit & cum quodam gladio precii* 12. *d. quem ipse in manu sua dextra ad tunc & ibidem tenuit predict.* H. *super caput sunt percussit & unam plagam mortalem in longitudine duorum policum in anteriori parte Capitis suo usque ad*

*cerebrum eidem* H. *adhunc & ibid. felonicè dedit, de qua quidem plaga pred.* H. *per 3. dies hunc proximè sequentes languebat & tunc ibid. obiit*; or *imediate obiit. Et sic idem Iohanes ut felo Dom. Regis pred.* H. *felonicè interfecit & mundravit contra pacem dicti Dom. regis, Coronam & dignitatem suas, & quod hoc fecit nequiter & ut felo contra pacem Dei & Dom. Regis, pred. Iohannes offert hoc disrationar prout curia Dom. Regis hic consideravit, &c.*

And it seemes the Appeale of Murder ought be be brought within the yeare and a day after the death of him who is murdered; and in an Appeale the party hath two issues, to put himselfe upon the Jury to try if he be guilty or not, or to wage Battaile, and to make the Battaile with the Appellant; and if he doe gage Battaile he ought to designe the battaile in his proper person, and by no Champion. But it is otherwise in a Writ of right, &c.

And there are divers causes to ouste the Defendant in the appeale of Battaile, for it is said, That if an Infant within age bringeth an Appeale, and the Defendant sheweth that he is within age, &c. the Justices have been of opinion that he shall be put to answer the Appeale of the Appellant being within age, and the Defendant hath lost the advantage to wage the Battaile, because it was his owne Act. And I conceive that if a Woman bringeth an Appeale of the death of her Husband against another, the Defendant shall lose the advantage of Battaile; for

for he cannot Combate or deraigne the Battaile with a Woman, &c. And if a party be indicted of the Felony or Murder, &c. he shall not wage battaile.

And see that in an Appeale of the death of a man against two, the one as Principall, and the other as Accessory, and they waged Battaile, and the Plaintiffe demurred upon the plea, and it was said, That the Accessory should not be put to answer till the Principall was attainted or acquitted; yet it is said, That the Accessory should answer presently; but the issue should not be tryed till the Principall were attainted or acquitted; and if the Principall be acquitted the other issue should not be tryed.

And I conceive that in every case of Felony where a man is indicted as Principall, and afterward hath his pardon, or forjureth the Realme, that in those cases and the like the Accessory shall not be arraigned, because that when the Principalls life is pardoned in what manner soever it be, the Felony is determined, and by consequence acquitted, and by the same reason the accessory is discharged. But *quære* what the Law is if the Principall have his Clergy.

And see that where there are three Brothers, and the middlemost killeth his eldest Brother, the youngest Brother shall have the Appeale, and yet he is not his Heire. The same Law where the eldest Brother killeth his Father, the youngest shall have the Appeale if there be but two Brothers.

And where the Wife killeth her Husband, the Heire shall have the Appeale as it is said. *Quære* what the Law is in the cases before, &c.

And the Processe in an Appeale of death is one *Capias*, and one Exigent, &c. but in an appeale of Robbery, an appeale of Rape and Mayhem, the Processe is two *Capias*, and one Exigent, &c. And note that a man can never have an appeale of Robbery, Rape, or Mayhem by discent, for the same shall never discend; but it is otherwise of Murder.

And also note, that the appeale shall not abate, if in the Declaration be the yeare, day, and other time when the Felony was done, and it shall not abate for want of Fresh-suit, if it be not within the yeare and the day, and that is by the Statute of Gloucester, &c.

In an Appeale if the Defendant plead that the Plaintiffe is a Bastard, and he is certified to be *mulier*, yet the Defendant shall be received to plead not guilty, because at the beginning when he alleadged Bastardy, he might have pleaded over to the Felony, because he demanded another tryall, for the one is tryable by the Record, and the other by Enquest. But of such matter which is tryable by Enquest if he pleadeth to the Felony, all the same shall be tryed by one Tryall, and by one Enquest. In an Assize, if the Tenant alledge Basterdy in the Plaintiffe, and the Bishop doth certifie muliarity,

muliarity, yet the Assize shall be taken to enquire of the seisin and disseisin, *quære.*

And *quare* if a man in an appeale plead a plea which is tryable in another County, if he shall plead over to the Felony, because he demandeth two Tryalls.

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## *Appeale of Robbery.*

THe Writ of Appeale of Robbery beginneth thus:

A. B. *nuper de London generosus, attachiatus fuit ad respondendum,* R. F. *generoso smal cum* D. *nuper de* F. *in suburbiis London, de robberia & pace domini regis nunc fracta, unde eos appellat, & sunt plegii de prosequend.* A. D. *et* C. *Et unde idem* R. *in propria persona suo instanter appellat pred.* C. A. *de eo quod ubi idem* R. *fuit in pace dei et Domini Regis nunc apud London, viz. in parochia sancti Dunstani in Fleetstreet in suburbiis Londonj* or, *apud talem villam in tali Comitatu,* 20. *Octobris Anno Regni Regis nunc* 17. *circa horam septimam post meridiem ejusdem diei venerunt tam pred.* W. I. *et* K. *qui modo non comparent, quam pred.* A. *qui modo comparet, felonicè ut felones Dom. Regis nunc insidiando et insult præmeditat contra pacem Regis nunc coronam et dignitatem suas die, anno, hora parochia, et wardo pred.* or *villa et com. predict. Et pred.* W. *unam galeam, precii* 26. s. 8. *d. et unam crateram argenteam et deauratum precii* 40. s. *de bonis et catallis pred.* R. *ad tunc ibid.*

*invent. felonicè furatus est, cæpit et asportavit. Et pred.* C. A. *et* I. K. *die, anno, parochia et warda pred. or vile et comitatu pred. felonice confortaverunt, sustentaverunt et auxiliaverunt pred.* W. *ad feloniam pred. in forma pred. faciend et perpetrand ac eum tunc et ibidem ad feloniam illam factam, sciente eum feloniam illam fic facisse receptaverunt. Et quam citò idem felones felonias, predictas in forma predicta fecissent, fugierunt, predictus* R. *eos recenter insequitus fuit de warda in wardam* ( if the Appeale be brought in London ) or *de villa in villam,* ( if it be brought in any County ) *usque ad quatuor wardas propinquiores. Et alterius quousque, et c. Et si predictus felo qui modo comparet feloniam predictam vult contradicere, predict.* R. *hoc paratus est verificare et versus eum prebare prout curiæ, &c.*

And the like Declaration is in burning of Houses, and of Burglary, *mutatis mutandis.*

And the Defendant in this Appeale shall have the same tryall as he shall have in the appeale before rehearsed, to put himselfe upon the issue tryable by the Enquest, or to wage Battaile if he pleaseth.

But there are certaine things which shall put the same from that advantage, that he shall not wage Battaile, &c. *viz.* If the Defendant be indicted of the same felony, &c. and if the Plaintiffe be mayhemed by the Defendant, or by another as I conceive; or if the Defendant be taken in the manner, or if the Plaintiffe be within age, or above the

the age of forty yeares; or if the Plaintiffe be a woman or the like.

And note that if the appeale of Murder, Robbery, or Rape be brought in the Kings Bench, and issue be taken before the Justices of Assize, if the Plaintiffe be non-suit they have not power to arraigne the Defendant; but if the appeale be brought before them, and afterwards the Plaintiffe is Non-suit, it is otherwise as it is said.

And there is another difference when a man is arraigned at the Kings Suit, and when at the Suit of the party; for if he be arraigned at the Kings Suit, he shall be put to answer the Felony, whether he be of that name or of another name; and it shall be no plea for him to say, That he is not of that Sir-name, nor knowne by such a name, but by another name; for if a man killeth another and is indicted thereof, he shall answer to the Felony, and shall not be admitted to plead misnosmer; but if it be at the Suit of the party it is otherwise, as if a man bring an appeale against another, there he shall be admitted to have the plea, and that is the difference.

Note that if a man bringeth an appeale of the death of a man who hath lawfull cause to have the appeale, and after Declaration he is Non-suit, the Defendant shall be arraigned a new at the Kings Suit; but if the Heire of the dead sueth the appeale, his Wife being alive, and after Declaration the Heire is Non-suit; the Defendant shall not

be arraigned a new at the Kings Suit, because that none could Sue the appeale but the Wife, and so the Declaration was without warrant. And *quære* how that matter may appeare to the Court.

And if one be acquitted in Appeale, or indictment wherein there is no errour in the Originall; he shall be arraigned *De novo* at the Kings Suit, although that errour be in the *Capias* or Exigent. But if errour be in the Originall, and he is acquitted, he shall be arraigned *De novo* at the Suit of the King, because that his Arraignment was never warranted but without warrant; for when the King is afferrained of a Felon, and of the day and yeare, if the Felon be not lawfully acquitted of the same Felony he shall be arraigned at the Kings Suits. But if he be once lawfully acquitted of the Felony, he shall never put his life in hazard againe for the same Felony, if it be not for Murder, in which case it is said, That if a Murderer be acquitted within the yeare at the Kings Suit, he may be afterwards in an appeale arraigned within the yeare at the Suit of the party, &c.

And if an appeale of Murder be brought before the Sheriffe and Coroner in the County, it is said, That it may be removed into the Kings Bench by a Writ, which shall be directed to he Coroner, and not to the Sheriffe, because that the Coroner hath the Record; yet I thinke the Law is otherwise.

And

And if one be indicted for Murder, and afterwards an appeale is brought against him, and after Declaration the Plaintiffe is Nonsuit, the Appellee shall be arraigned at the Kings Suit upon the Declaration, and not upon indictment, as it is holden in 4. *E.* 4.

Note that it was said by some Justices in times past, That in every case where the Defendant pleadeth a matter, whereby he proveth that the action doth *not* lye for the Plaintiffe as Bastardy, or never accoupled in loyall Matrimony, &c. there he need not to answer to the Felony; but if he pleadeth a release in Bar, then he ought to plead to the Felony, because it is not denyed by him that the Action once lay for the Plaintiffe, for when he pleadeth to the Felony then he confesseth that the Plaintiffe is such a person who can maintaine the action; yet it was said to the contrary, That he shall not plead to the Felony *infauorem vitæ*, where otherwise if the plea were found against him he should be attainted, and the Felony not enquired of, and that seemeth to be both reason and Law, &c.

And note, that when a man is found guilty for Murder, or Felony, &c. for which he suffereth death, he may pray his Booke to save him if he be a Clerke, and shall have it if he can read. But if that Bigamy at another time convicted be alledged against him, and proved, then he shall not have his Clergy.

And it was said, That if the Ordinary refuseth a Clerke generally, or specially, that the

the Judge may compell him to accept the felon. But the old Law was, That if the Ordinary had refused him specially, as to say, *Non habet vestem Clericalem, non habet consuram*; yet the Judge might compell him to accept of him. But if the Ordinary doe refuse him generally, the Judge cannot compell him to accept of him, because there may be some cause wherefore the Ordinary by the Law of Holy Church ought not to receive him. But that opinion as it was said, was alteted *in* the time of *William Hussey*, and his reason was, That if this Judge be his Judge where the Ordinary refuseth him specially, it is as great reason that he shall be his Judge where he refuseth him generally.

And see, that those who are so attainted of Murder, or of other Felonies, and for such things as they shall suffer death, they shall forfeit their Lands and Tenements, and their goods and chattels for ever, and the King shall have the Lands for a yeare and a day, and then the Lords of whom the Lands are holden shall have them. But he who is attainted of Treason, the King shall have all his Lands, as well those which are holden of other Lords as those which are holden of himselfe, &c. And if a man hath Land in the right of his Wife, and is attainted of Felony, the Land shall be forfeited for the terme of his life; and it was said, That if before the Attainder, he and his wife were disseised, and afterwards he were attainted and restored to the Kings peace, yet they could not have an Assize. *Tamen quere.*

## *Appeale of Rape.*

NOte also that the Appeale of Rape beginneth thus:

Robertus Wood *nuper de* A. *in Comitatu Salop Clericus, dict.* R. W. *nuper de* A. *in comitatu pred.ct capellanus Rector Ecclesiæ parochialis de* A. *in comitatu predict.* Or thus; *Nuper de* D. *in comitatu predict. gent. alias dict.* R. S. *nuper de* D. *in com. predicto yeoman attachiatus fuit per corpus suum, ad respondendum Alicie.* G. *de raptu ipsius Alicie, & pace Dom. regis nunc fracta, unde eum appellat. Et sum plegii de prosequend.* A. D. *de* C. *in comit.* C. *gentleman, &* E. I. *de* M. *in comitat.* C. *yeoman, &c. Et unde eadem Alicia in predict persona sua instanter appellat predict.* R. W. *de eo quod ubi pred.ct. Alicia fuit in pace dei & Domini Regis nunc apud* A. *in predict. in comit. Salop, 8. die mensis Maii ann. Regni Dom. Regis, 17. circa horam sextam post meridiem ejusdem diei, ibidem venit predict* S. *felonicè ut felo predict. domini regis nunc insideand. & insultu premedita contra pacem ejusdem dom. regis coronam & dignitatem suas, die, anno, hora, & loco in comitatu predict. & in prefatam Aliciam ad tunc & ibid. insultum fecit, & ipsam ad tunc & ibid. de virginitate defloruit contra voluntatem suam raduit & carnaliter cognovit, & sic predict.* R. S. *predict. Aliciam modo & forma pred.ct. rapuit, & quam viro idem felo feloniam & raptum predict. fecissit, fugiit, dictaq; Alicea ipsum recenter insecuta fuit de villa in villam.*

*usq; quatuor villas propinqiores, & ulterius quousq; &c. Et si idem felo feloniam et raptum predict. in forma predict. imposit didicere velit, predict Alacia hoc parata est verificare et versum eum probare, prout curia, &c.*

And if a man Sueth an Appeale of the Rape of his Wife, although she be not his Wife in right but in possession, yet the Appeale doth well lye as is said; otherwise it is in an Appeale of murder brought by a woman of the death of her Husband, for there it is a good plea, that they were never lawfully coupled in Matrimony.

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## *Appeale of Mayhem.*

SEE also that the Appeale of Mayhem is as followeth: *viz.*

*I. N. in propria persona sua hic instanter appellat W. de F. de eo quod cum idem, quare tali die & anno fuit in pace dei, et Dom. Regis nunc, &c, apud talem villam in tali comitatu circa horam sextam, &c. Ibi venit predict. W. vi et armis, viz. baculis ut felo domini regis nunc insidiand. et ex insulta premeditete ad tunc ibid. in dictum I. insultum fecit et ad tunc et ibid. eum quodam baculo precii, &c. quem predict W. in manibus suis ad tunc et ibid. tenuit, predict. querentem super brachium dextrum felonicè tunc percussit, per quod vene et nervi brachii sui perdict. restricti fuerunt ac neci, et mortificat. devenerunt; Or, cum quodam gladio, vel cultello precii &c. quem*

*&c. quem defendens in manibus suis ad tunc & ibid. tenuit manum dexteram, vel policem manus dexteræ, vel aliud membrum, vel auriculam, vel aliquam juncturam membri querentis felonicè amputavit, vel oculum suum evulsit, vel dentes suos anteriores fregit & deposuit. Et sic idem defendens in felo Dom. regis prædict. quer. ad tunc et ibid. felonicè mayheymavit, contra pacem dicti Dom. Regis Coronam et dignitatem suus. Et si defendans hoc velit dedicere, querens hoc paratus est versus eum probare, prout curia Dom. Regis de eo consideraverit, &c.*

And notwithstanding that the Plaintiffe declare in an appeale of Mayhem, that the Defendant hath mayhemed him feloniously, yet the Defendant shall not suffer the punishment of death, but shall answer damages according to the greatnesse and grievousnesse of the offence, &c. And if the Plaintiffe declareth in an appeale of Mayhem, &c. and the Defendant prayeth that it may be viewed if it be a Mayhem or not, *Quære*, if the Justices say, That he is mayhemed, if it be peremptory to the Defendant, so that he shall not be afterwards receiveable to plead not guilty to it, or any other barre. And I conceive it is peremptory, &c. And in an appeale of Mayhem the Plaintiffe declared, That the Defendant stroke him upon the head, so that he had lost his hearing, and because the Justices talked to him, and well perceived that he could heare they said that the Plaintiffe should be fined, &c.

And see that if the Defendant in in an appeale

peale of Mayhem saith, That the Plaintiffe at another time brought an Action of Trespasse against the same Defendant, and sued forth the same Mayhem, and recovered damages for the same, and sued execution, if the same be a good plea or not, &c. And it was said, That by an appeale of Mayhem a man shall not lose his Action of Trespasse, but contrariwise; he shall not have an appeale after he hath once recovered in Trespasse for the same Mayhem. *Quere* what the Law is.

And in an appeale of Mayhem against two, the Plaintiffe declared against one as Principall, and against the other as accessory, and it was challenged because that all ought to have been principalls, and the Court said, It was in his election, so that the Declaration one way or the other was good enough. And it was said by some, That it is no Mayhem to cut off ones Eare, whereby he loseth his hearing, &c. but the beating out of his Teeth is a Mayhem, because he may by them defend himselfe in Battaile. *Quare* if in the first case it be not a Mayhem, &c.

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## *Indictments.*

THere are also Indictments upon which a man shall be arraigned, upon which if he be found guilty he shall be executed, &c. and first see Indictments upon the view of the body taken before the Coroner in the County.

*Inquisitio indemenda capta apud* B. *in Com.* N. 20. *die*

*20. die mensis Maii anno regni nunc Regis Henrici, octavi 20. coram* I. W. *uno Coronatorum Dom. regis nunc Com. predict. et super visum Corporis cujusdam* I. F. *ibid. jacentem interfect. per Sacramentum,* I. S. W. C. *&c. Qui dicunt super Sacramentum suum. Quod quidam* I. N. *de London gent. 20. die, &c. Ann. &c. vi et armis, viz. gladiis beculis et cultellis animo felonico et ex malitiâ procogitata in prefatum,* I. F. *apud B. predict. insult. fecit et ipsum verberavit, vulneravit et male tractavit, ac dict.* I. M. *cum quodam cultello vocat a wood knife precii 12. d. quem ipse in manibus suis ad tunc tenuit, prefat.* I. F. *ad tunc et ibid. usq; ad medium corporis sui felonice percussit atq; invasit in profunditatem decem pollic. dans ei plaguam mortalem, de qua quidem plaga dict.* I. F. *infra unam horam tunc proxime sequent. ad tunc et ibidem obiit, et sic predict.* I. N. *eundem* I. F. *ad tunc et ibidem felonice interfecit et murdravit, contra pacem Dom. Regis, &c.*

And it was said, That the Coroner hath not power to take any Enquest of the death of a man if not upon the view of the body, & if he doe it, in other manner, all that he doth is void.

And it hath been used in times past that the Coroners might record the breaking of Prison by the Prisoners which are in them, and if the Prisoners were in for felony, they were put to execution without further answer; but *quere* if any such Law be now in use.

And a Coroner might take an appeale of an Approver, of felony done in any County of *England,*

*England*, and in the same manner he might make abjuration, if he affested the felony to be done in another County then in the County where the Coroner dwelt. And the reason was, because by that confession they shall be attainted. But he cannot so doe in an appeale of Robbery, if the felony be not done within the same County.

There are also divers Indictments, as of Robbery, Burglary, and other felonies which are mentioned in sundry books, and the course of them is well known, because they are common, and in daily use and experience.

If a man be indicted that he feloniously cut down Trees, &c. in such a place, and carried them away, the party shall not be arraigned upon such indictment, because it cannot be said to be felony.

A man was indicted for that he traiterously, &c. had made 100. s. of Alchamy to the likenesse of the Kings money, and it was moved that the indictment was sufficient, because it was not put certaine what money he made, groats or pence.

A man was indicted, That whereas another man was indicted of felony who was put into the Stocks, &c. that he entred into the house without breaking of the same, and set him out of the Stocks, and set him at liberty, and it was said, That it remained in the pleasure of the King, whether he should have perpetuall imprisonment, or other pecuniaty punishment according to the Kings Ordinance, but he shall not be hanged, &c.

And

And see that it was the use in times past, that the party should not be restored to his goods upon an Indictment of Robbery, unlesse it were found that he made fresh-suit; if he were not appealed; yet that Law is altered and changed, and the party shall be also restored to his goods where the felon is arraigned upon an Indictment as well as upon an Appeale, if the party giveth evidence against the felon at the time of his Arraignment, and he shall not be put to circuit of Action to sue his appeale, and it seemeth to be good Law.

Note, that the Writs are the principall and first thing in our Law, whereby a man shall recover that which is wrongfully detained from him, and they are the foundation of every Suit; and therefore looke when a man beginneth his Suit that the Writ be good, else all which followeth will be nothing worth; which Writs are ordained by Law according as the matter is.

And there see first the Writ of Right and the nature of it, because it is a Writ of a higher nature then any other Writ can be; and the chiefe things and Articles of that Writ are, the deforcement, the quantity of the Tenements in what Towne the Tenements are, and that the demandant hath a lawfull estate in fee by his owne Purchase, or of the seisin of his Ancestor, or his owne seisin, the taking of the Explees and the seisin thereof, in the time of what King, and in the time of peace, and the tender of the

Demy make a good discent, and in wha manner he hath right, and the avenment.

And note that the Explees ought to be of the Demesne or of the Services, and in a *Precipe quod reddat*, of the manner of Explees in Services, &c. and of the Demesnes in Sheep, and Corne, in Pasture or feeding of Cattle, of Wood, in selling of the Wood, Gardens, in selling the Apples, or Grasse, of Villain, is in base service to his profit, and in seisin of those of his blood; and for a Chaplaine, or finding of poore men, the Explees are alledged in Masses, and Prayers, &c. and of a Gorge in taking of the Fish; of a Mill, in taking of Tole; And generally, a man shall alledge Explees according to the matter in demand, and the nature of it.

And the triall in this Writ of Right may be two waies; the one by the Grand Assize, and the other by Battaile; but if the right be to be determined by the Battaile, it shall be done by Champions, and not by the parties themselves, as it is said; and the reason is, that if any of the parties be killed, Judgement of the Land cannot be given against a dead person. *Quere*, if that be the reason or not.

And it was said, That a man cannot have a Writ of Right of a Rent, but only of a Rent-service, for that other Rents are against common right, &c.

And see that a Writ of Right doth differ from other Writs in pleading, for in a Writ of Right the Tenant ought to conclude upon

the

the right. To conclude, so that he hath more right to have the Lands, &c. then the demandant; and not to conclude Judgement of Action, as the conclusion is in other Writs; yet the same holdeth not in every case; for if the Tenant in a Writ of Right plead a release collaterall, &c. without warranty, there the Tenant shall conclude Judgement if Action, and not otherwise as it seemeth; for the demandant hath more right to the Land then the Tenant hath, but by reason of the warranty the demandant shall be barred of his Action.

And note, that in a Writ of Right upon the Triall no attaint lyeth, and yet in a Writ of right of Dower an attaint lyeth, which is, a Writ of Right; but the reason is, because the Triall thereof shall not be by the Grand Assize, nor by Battaile, but by a Common Jury, &c.

And note, that there are divers Writs of Right, a Writ of Right which is triable by Battaile, or by Grand Assize, as a Writ of right of Land, or a Writ of Customes and Services, a *Quod permittat* in the *dower* Writs of right of Advowson, &c. and the like. And there are other Writs of the possession mixt with the right, as a Writ of Bichear, Cassavir, rationable part, &c. and the like, but in those no Battaile nor Grand Assize lyeth.

In a Writ of Customes and Services, the effect thereof is the wrongfull deforcement in not doing of the Services which ought to be done to the demandant out of the Land, and

the Land ought to be shewed, and how he holdeth by such Services, and shew seisin in him or his Ancestors of Fee and Right, and alledge the taking of Explees, and the Averment.

The Articles and things which are materiall in the Writs, appeare in the Writs themselves, and in the booke of *Novel Tales*, and in other bookes, and therefore they need not to be here mentioned, and for that cause I omit them here, &c.

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## *An Indictment upon the Statute of 8. H. 6.*

*JUrator present. pro Dom. rege, quod cum instatutum in Parliamento Dom. nuper Regis Henrici Angliæ sexti, post conquestum apud Westm. anno Regni sui 8. tent. edit inter cetera ordinatum fuit, quod si aliqua persona expulsa sit, seu dissesita, de aliquibus terris et tenementis modo forcibili aut pacifice expulsa sit, et postea manu forti et armis extra teneatur contra justic. pacem vel post aliquem talem ingressum aliquod feoffamentum seu discontinuatio alio modo inde factum sit ad jus possessor desistendum aut tollendum quod pars in ea parte gravata habeat assissam novæ dissesinæ aut breve de transgressione versus hujus dissessorem, et si pars gravata recuperaverit per assissam vel transgressionem, et prevenerit eum alio modo per debitum legis formam sit compactum quod pars defendens in terras et tenementa ingressus fuit, aut ea per vim post ingressum tenuerit, quæ ipse recipere*

*eiperet versus defendentem damna sua ad triplicem et ulteriius finem faciet Dom. Regi, et redemptionem pro ut in statuto pred. plenius continetur, &c. Quidam tamen* L. C. *de* E. *in com. pred. generosus simul cum quinq; personis juratoribus pred. ignotis statutum illud minime ponderans, die Dom. 20. die Januarii circa horam 9. post meridiem ejusdem diei anno Regni Dom. regis nunc 12. manu forti ac vi et armis, viz. Baculis et cultellis in unum messuagium, unum gardinum ducentas acras terre, 40. &c. prati, et 30. arras bosci cum pertinentiis quorundum* E. K. *Armigeri et* L. M. *armigeri &c. scituat jacen et existen in perochia de* L. *juxta* T. *in com. pred. ingressus fuit, et inde ipsas* E. K. *et* L. M. *vi et armis, viz. baculis et cultellis ac manu forti dissertivit. Et ejus inde statum et possessionem sic per disseissinam illam habitau et obtem, cum pred. personis ignotis usq; in crastinum diem sequentem, viz. 13. diem mensis Januarii continuavit. Quo quidem 13. die Januarii* H. L. *de* M. *in comitatu pred. yeoman,* W. B. *de pred. Husbandman, et* T. C. *nuper eisdem villa et comitatu laborer apud* L. *pred. in et super tenta pred. una cum prefato* T. C. *manu forti ac vi et armis, viz. baculis cultellis, gladiis scutis, arcubus et sagittis se assemblaverunt, et eadem tenementa vi et armis pred. a pred. 12. die Januarii hucusq; iniuriis ipsius* T. C. *et ipsum* T. *pretensa tenuerunt et prefat.* E. K. *et* L. M. *&c. inde hucusq; extra tenent in dicti Dom. Regis nunc contemptum ac contra formam statuti pred. et contra pacem dicti Dom. Regis, &c.*

When the Parties are at issue in their Action

ons the common Triall thereof in our Law is by Verdict of 12. men, who shall be swome upon the Booke to speake the truth according to their conscience. And sometimes the matter shall be tried by the Bishop, and not by Verdict of 12. men; as generall Bastardy alledged in any of the parties it shall be certified by the Bishop, and in a *Quare impedit* if the issue be joyned upon the institution it shall be tryed by the Bishop, for the same is in a manner a spiritiall thing. But induction shall be tryed by Jury, and also in a *Quare impedit*, if issue be taken upon Plenary it shall be tryed by the Bishop; but whether the Church be void or not void shall be tryed by the Jury. And if the Parties be at issue in a *quare impedit* upon the ability of the Person, whether he were sufficiently learned or not, it shall be tryed by the Bishop during the life of the Clerke, but if the Clerke be dead it shall be tryed by Jury. And it is said, That if Bastardy or other the like thing be alledged upon a thing which is not but dillatory, it shall be remanded to the Bishop to be tryed, &c.

And a man in an Action of Debt brought against him upon a Contract may wage his Law, to sweare upon a Booke that he oweth not the Plaintiffe the money which he demandeth, nor any penny thereof; and he ought to have with him 11. more to sweare with him, that they beleeve in their Conscience that he sayeth truth, and so he shall be discharged; but if the Action be brought

upon

upon any specialty, or upon matter of Record, or upon a thing touching Land, &c. he shall not help himselfe in that manner, but shall put the same upon the tryall of the Jury, but he himselfe shall not be admitted to sweare, &c.

And note, that an Oath ought to have three Companions, Truth, Justice, and Judgement, and if they be wanting it is no Oath but a Perjury; for if a man be forced by constraint to sweare, that for many yeares he quiely held such Lands, &c. it is Perjury, not in him who sweareth, but in him who compelleth him to sweare, *Reum non facit nisi mens sit rea. Nemo se circumveniat aut seducat. Qui per lapidem falsè jurat perjurus est. Quacunque arte verborum jurat aliquis, Deus ita accipit sicut ille qui jurat intelligit. Et minus malum est per Deum falsum jurare veraciter, quam per Deum verum jurare fallaciter Quanto enim id per quod juratur est magis sanctum, tanto magis est penale perjurium, &c.*

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# FINIS.

# The Table.

## A



## B



Baroks

C.



D.

Goale

G.



H.



I.



K.



L.



Majesty.

M.



N.



O.



Ordenary.

Veniall

FINIS.