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THE  
COMMON-  
WEALTH  
OF  
ENGLAND.

And the manner and Gouverne-  
ment thereof.

COMPILED BY THE  
Honorable Sir THOMAS SMITH, Knight,  
*Doctor of both Lawes, and one of the  
principall Secretaries unto the two most  
worthy Princes, King ED-  
WARD, and Queene  
ELIZABETH.*

With new Additions of the chiefe Courts  
in ENGLAND, and the Offices  
thereof by the said  
*Author.*

---

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Thomas Millington of  
Gosfield Hall in Com Essex Esq



## To the Reader.

**D**O conceale the graces inspired by God, or the gifts ingrafted by nature, or the vertues atchieued vnto our selues by indutry, in all ages, and of all wisemen, was accounted vndutifullnesse, vnkindnesse, and impiety vnto that Common-wealth, in which, and vnto the which we are both bred and borne: but to suppress the worthy workes of any Authour, may iustly be iudged not onely iniurie to the person, but euen enuy at the whole world. Wherefore, chancing vpon this short Discourse compiled by the Honourable Knight Sir *Thomas Smith*, and considering that the same could not but bee a great light to the ignorant, and no lesse delight vnto the learned in the Lawes and

*To the Reader.*

and policy of sundry Regiments. I thought it part of my duty, as well for the reuiuing of the fame of so notable a man, as for the publicke imparting of so pithy a Treatise, to present the same unto thy indifferent and discreet iudgement. Wherein, although the Errours and rashnesse of Scribes, appearing in the contrariety, and corruption of Copies, happening both by the length of time since the first making, as also by the often transcribing, might iustly haue bene mine excuse, or rather discharge: yet weighing the authoritie of the Authour together with the grauity of the matter, I made no doubt but that the reuerence due unto the one, and the recompence deserued by the other, would easily counteruaile all faults committed by a Clarke and Writer. And whereas some termes or other matters may seeme to dissent from the vsuall phrase of the Common Law of this Realme: notwithstanding, to him  
that

*To the Reader.*

that will consider that the profession  
of the maker was principally in the  
ciuill lawes, and therefore not to be  
expected as one excellent in both,  
and also that the finishing of this  
worke was in France, farre from his  
Library, and in an Ambassage, euen  
in the midst of waightie Affaires, it  
cannot, nor ought not without great  
ingratitude be displeasent, or in any  
sort disliking. Wherefore (gentle  
Reader) accept in good part my  
zeale, and this honorable man's tra-  
uaile, assuring thy selfe that the same  
framed by an expert workemaster,  
and forged of pure and excel-  
lent mettall, will not faile  
in prouing to bee  
a commodi-  
ous instru-  
ment.

A 3

*Vale*

**A**







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THE MANNER OF  
GOVERNMENT, OR  
POLICIE OF THE  
REALME OF  
ENGLAND.

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CHAP. I.

*Of the diuersities of Common-wealths  
or Governments.*

They that haue written heretofore of Common-wealths, haue brought them into three most simple and speciall kinds or fashions of Government. The first, where one alone doth gouerne, is called of the Greekes *Μοναρχία*; The second, where the smaller number, commonly called of them *Αριστοκρατία*; and the third, where the multitude doth rule, *Δημοκρατία*. To rule is vnderstood to haue the highest

*Democra-  
tia. Monar-  
chia. Aristo-  
cratia.*

B

*The Common-wealth*  
highest and supreme Authoritie of  
commandment. That part or mem-  
ber of the Common-wealth is said to  
rule, which doth controll, correct, and  
direct all other members of the Com-  
mon-wealth. That part which doth  
rule, define and command according to  
the forme of the government, is taken  
in every Common-wealth to be just &  
Law: As a rule is alway to be vnder-  
stood to be straight, and to which all  
workes are to be conformed, and by it  
to be judged: I do not meane the *Les-  
bians* rule, which is conformed to the  
stone: but the right rule whereby the  
Artificer and the Architect doe judge  
the straightnesse of every mans worke:  
And hee to be reckoned to make his  
worke perfectest who goeth nearest to  
the straightnesse.

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CHAP. II.

*What is just or Law in every Common-  
wealth or Government.*

**N**OW it doth appeare, that it is pro-  
fitable to every Common-wealth



(as it is to every thing generally & particularly) to be kept, in her most perfect estate. Then if that part which doth beare the rule, do commend that which is profitable to it, and the commandment of that part which doth rule on that sort, is to be accepted in every Common-wealth respectively to be iust. (as wee haue said before) it must needs follow, that the definition which *Thrasymachus* did make, that to bee just, which is the profit of the ruling & most strong part (if it bee meant of the Citie or Common-wealth) is not so farre out of the way, if it bee ciuilly vnderstood, as *Plato* would make it. But as there is profit, and likelihood of profit, so there is righte and likelihood of right. And as well may the ruling and soueraigne part command that which is not his profit, as the iust man may offend (notwithstanding his just & true meaning) when he would amend that which is amisse, and helpe the Common-wealth and doe good vnto it. For in as much as he attempteth to doe contrary to the Law which is already put, he therefore

by the Law is iustly condemned, because his doing is contrary to the Law and the Ordinance of that part which doth command.

CHAP. III.

Another Division of Common-

**B**UT this matter yet taketh another doubt: for of these manner of rulings by one, by the fewer part, and by the multitude on greater number, they which have more methodically, and more distinctly and perfectly written upon them, doe make a subdiuision, and diuiding each into two, make the one good and iust, and the other euill and against ius, where one ruleth, the one they call a King, or *Basileus*, the other *tyrannus*; a Tyrant: where the fewer number, the better they name a gouerning of the best men *Ariscoparicus*, or *Ramp. Optimatum*; the other of the vsurping of a few Gentlemen, or a few of the richer and stronger sort, *tyrannus*, or *Paucorum Potestatem*: and where the

multitude doth governe, the one they call a Common-wealth by the generall-name *πολιτείαν*, or the rule of the people *Δημοκρασίαν*, the other, the rule, or the vsurping of the popular, or rascal or viler sort, because they bee more in number, *Διμοκρασίαν αἰσχροτέραν*.

---

#### CHAP. IV.

*Examples of change in the manner of Governments.*

**I**N Common-wealths which had long continuance, the diuersities of times haue made all these manners of ruling or Government to be scene: as in Rome, Kings, *Romulus*, *Numa*, *Seruius*, Tyrants, *Tarquinius*, *Sylla*, *Cesar*: the rule of best men, as in time when the first Consuls were: and the vsurping of a few, as of the Senators after the death of *Tarquinius*, and before the succession of the Tribunate, and manifestly in the *Decem-uirate*, but more perniciously in the *Trium-uirate* of *Cesar*.

*Craſſus*, and *Pompeius*: and after-ward in the *Trium-virate* of *Octavianus*, *Antonius*, and *Lepidus*: The *Common-wealth* and rule of the people in the repulſing of the *Decem-viri*, and long after, eſpecially after the Law was made, either by *Horatius*, or (as ſome would haue it) *Hortenſius*, *quod plebs ſciuerit, id populum teneat*: And the ruling and uſurping of the popular and rascal, as a little before *Sylla* his reigne, and a little before *Caius Caſar* his reigne: For the uſurping of the Rascality can neuer long endure, but neceſſarily breedeth, and quickly bringeth forth a Tyrant. Of this hath *Athens*, *Syracuse*, *Lacedemon*, and other old ancient ruling Cities had experience, and a man need not doubt but that other *Common-wealths* haue followed the ſame rate. For the nature of man is, neuer to ſtand ſtill in one manner of eſtate, but to grow from the leſſe to the more, and decay from the more againe to the leſſe, till it come to the ſarall end and destruction,

on, within any turnes and turmoyles of sicknesse, and recovering; seldome standing in a perfect health neither of a mans body it selfe, nor of the politicke body which is compact of the same.

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### CHAP. V.

*Of the question what is right and iust in a Common-wealth.*

**S**O when the Common-wealth is euill gouerned by an euill Ruler and vniust (as in the three last named which be rather a sicknesse of the politick body, than perfect and good Estates) if the Lawes bee made, as most like they be alwayes, to maintaine that Estate: the question remaineth, whether the obedience of them be iust, and the disobedience wrong? the profit and conseruation of that Estate, Right and Iustice, or the dissolution? and whether a good and vpright man, and louer of his Country ought to maintaine and obey them, or to seek by all means to

## *The Common-wealth*

abolish them? which great & haughtie courages haue often attempted: as *Dion* to rise vp against *Dionysius*; *Thrasibulus* against the 30. Tyrants, *Brutus* and *Cassius* against *Caesar*, which hath bin cause of many commotions in Common-wealths: whereof the judgement of the common people is according to the euent and successe of them which be learned according to the purpose of the doers, and the estate of the time then present. Certain it is, that it is alwayes a doubtfull and hazardous matter to meddle with the changing of Lawes and Government, or to disobey the orders of the Rule or Government, which a man doth find already established.

---

### CHAP. VI.

*That Common-wealths or Governements are not most commonly simple, but mixt.*

**N**OW although the governments of Common-wealths bee thus

divided into two, so into sixe: yet you must not take that yet shall find any Common-wealth or Govern-ment simple, pure, and absolute in his sort and kind, but as Wisemen haue divided for vnderstanding sake, and found foure simple bodies which they call Elements; as Fire, Aire, Water, Earth, and in a mans Bodie foure Complexions or Temperatures, as Cholericke, Sanguine, Flegmaticque and Melancholick: not that yet shall find one utterly perfect without mix-  
 tion of the other, for that Nature al-  
 most will not suffer: but vnderstand-  
 ing doth discern each nature as in  
 his simplicitie: so seldome or neuer  
 shall you find Common-wealths or  
 Governements which are absolutely  
 and sincerely made of any of them a-  
 bove named, but alwaies mixed with  
 another, and hath the name of that  
 which is more, and ouer-ruleth the  
 other alwaies, or for the most part.

CHAPTER III.

The definition of a King  
and a Tyrant.

**W**HERE one person beareth the rule, they define that to be the state of a King, who by succession or election cometh with the good will of the people to that Government, and doth administer the Common-wealth by the Lawes of the same, and by equitie, and doth seeke the profit of the people as much as his owne. A Tyrant they name him, who by force cometh to the Monarchie against the will of the people, breaketh Lawes already made, at his pleasure, maketh other without the aduice and consent of the people, and regardeth not the wealth of his Commons, but the advancement of himselfe, his Faction, and Kindred. These definitions doe containe three differences: the obtaining of the authoritie, the manner of administration thereof, and the Butt or Marke



Marke wherunto it doth tend and shoot. So as one may be a Tyrant by his entry and getting of the Governement, and a King in the administration thereof. As a man may thinke of *Oltanius*, and peradventure of *Sylla*: For they both coming by tyrannie and violence, to that state, did seeme to trauell very much for the better order of the Common-wealth: howbeit, either of them after a diuers manner. Another may be a King by entry, and a Tyrant by administration, as *Nero*, *Domitian*, and *Commodus*: for the Empire came to them by succession. But their administration was vtterly tyrannicall, of *Nero* after five yeares, of *Domitian* and *Commodus*, very shortly vpon their new honour. Some both in the coming to their Empire, and in the Butte the which they shoot at, bee Kings, but the manner of their ruling is tyrannicall, as many Emperours after *Cesar* and *Oltanius*, & many Popes of *Rome*. The Emperours claime this tyrannical power by pretence of that

Re-

Rogation: or, *Plebiscitum*, which  
*Cainus Caesar*, or, *Octavianus* obtained,  
by which all the people of *Rome* did,  
conferre their power and authoritie,  
vnto *Caesar* wholly.

The Pope groundeth his from  
Christ (*cui omnis potestas data est in  
caelo & in terra*) whose Successor he  
pretendeth to bee; yet the generall  
Councils make strife with him, to  
make the Popes power eithers *Ari-*  
*stocratism*, or at the least *legitimum*  
*regnum*, and would faine bridle that  
*absolutam potestatem*. Some men doe  
judge the same of the Kings of  
*France*, and certain Princes of *Italy*,  
and other places, because they make  
and abrogate Lawes and Edicts, lay  
on Tributes and Impositions of their  
owne will, or by the priuate counsell  
and aduice of their friends and fa-  
uourers onely, without the consent  
of the people. The people I call that  
which the word *Populus* doth signi-  
fie, the whole bodie, and the three E-  
states of the Common-wealth: and  
they blame *Lewes* the Eleuenth, for  
bringing

bringing the administration Royall, of France, from the lawfull and regulate Reigne, to the absolute and tyrannicall Power and Government. Hee himsef was wont to glory and say, hee had brought the Crowne of France, hors de page, as one would say, out of Wardship.

## CHAP. VIII.

### *Of the absolute King.*

**O**ther doe call that kind of administration which the Greekes doe call *παυσαυισιας*, not tyranny, but the absolute power of a King, which they would pretend that every King hath, if he would vse the same. The other they call *βασιλειαν νομιμην*, or the Royall power Regulate by Lawes: of this I will not dispute at this time. But as such absolute administration in time of Warre, when all is in Armes, and when Lawes hold theit peace, because they cannot be heard, is most necessary: so in time of

peace.

peace the same is very dangerous, as well to him that doth vse it, and much more to the people vpon whom it is vsed: whereof the cause is the frailtie of mans nature, which (as *Plato* saith) cannot abide or beare long that absolute and vnecontrolled authoritie, without swelling into too much pride and insolencie. And therefore the *Romanes* did wisely, who would not suffer any man to keepe the *Dictatorship* above six moneths, because the *Dictators* (for that time) had this absolute power, which some *Greeks* named a lawfull tyranny for a time. As I remember, *Aristotle*, (who of all Writers hath most absolutely and methodically treated of the diuision and natures of Commonwealths) maketh this sort of government to be one kind of Kings. But all commeth to one effect: for at the first all Kings ruled absolutely, as they who were either the Heads and most ancient of their Families, deriued out of their owne bodies, as *Adam*, *Noe*, *Abraham*, *Iacob*, *Esau*, reigning

reigning absolutely over their owne children & bondmen, as reason was: or else in the rude World amongst barbarous and ignorant people, some one then, whom God had endued with singular wildome, to inuene things necessary for the nourishment and defence of the multitude, and to administer Iustice did so farre excell other, that all the rest were but beasts in comparison of him: and for that excellency, willingly had this authority given him of the multitude, and of the Gentiles when hee was dead, and almost when hee was yet liuing, was taken for a God, of others for a Prophet. Such among the *Iewes* were *Moses*, *Iosua*, and other Iudges, as *Samuel*, &c. *Romulus*, and *Numa*, amongst the *Romanes*. *Lycurgus*, and *Solon*, and diuers others among the *Greeks*, *Zamolxis* among the *Thracians*, *Mahomet*, among the *Arabians*. And this kind of rule among the *Greeks* is called *tyranny*, which of it selfe at the first was not a name odious: But because they who had such rule

rule, at the first, did for the most part abuse the same, waxed insolent and proud, vnjust, and not regarding the Common-wealth, committed such acts as were horrible and odious: As killing men without cause, abusing their Wives and Daughters, taking and spoiling all mens goods at their pleasures, and were not Shepherds as they ought to be, but rather Robbers and Deuourers of the people, whereof some were conueners of God, as *Dionysius*, other they liued like Deuils, and would yet be adored and accounted for Gods: as *Calus Caligula* and *Domitian* and that kind of administration, and manner also, at the first not euill, hath taken the signification, and definition of the vice of the abusers, so that now both in Greek, Latine, and English, a Tyrant is counted he, who is an euill King, and who hath no regard to the wealth of his people, but seeketh onely to magnifie himselfe, and his, and to satisfie his vicious and cruell appetite without respect of God, of right

right or of the Law: because that for the most part, they which haue had that absolute power, haue been such.

### CHAP. IX.

*Of the name of King, and the administration of England.*

**T**HAT which we call in one syllable King in English, the old Englishmen, and the Saxons from whom our tongue is deriued, to this day call in two syllables, *Cyring*, which whether it cometh of *Gen* or *Ken*, which betokeneth to know and vnderstand, or *Can*, which betokeneth to be able, or to haue power; I cannot tell. The participle absolute of the one wee vse yet, as when we say, a cunning man, *Vir prudens aut sciens*: the Verbe of the other, as I can doe this, *possum hoc facere*. By old and ancient Histories that I haue read, I doe not vnderstand that our Nation hath vsed any other generall authoritie in this Realme, neither *Aristocraticall*, nor

De-

not *Democraticall*, but onely the *Royal* and *Kingly* *Majestic*, which at the first was divided into many & sundry *Kings*, each absolutely raigning in his *Country*, not vnder the subiection of other, till by fighting the one with the other, the ouercommed alwayes falling to the augmentation of the vanquisher and ouercommer: At the last the *Realme of England* grew into one *Monarchie*. Neither one of those *Kings*, neither hee who first had all, tooke any *Inuestiture* at the hands of the *Emperour of Rome*, or of any other *superiour* or *forreine Prince*, but held of *God* so himselfe, and by his *Sword*, his *People* and *Crowne*, acknowledging no *Prince* on *Earth* his *Superiour*, and so it is kept & holden at this day: Although *King Iohn* (by the *Rebellion* of the *Nobilitie*, aided with the *Daulphin of France* his power) to appease the *Pope*, who at that time possessing the consciences of his *Subiects*, was then also his *enemy*, and his most *griuous* torment (as some *Histories* doe witnesse)



ness) did resign the Crowne to his Legate *Pandolphus*, and tooke it againe from him, as from the Pope, by Faith and Homage, and a certaine Tribute yeerely. But that Act being neither approoved by his people, nor established by Act of Parliament, was forthwith and euer since taken for nothing, either to binde the King, his Successors, or Subiects.

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## CHAP. X.

*What is a Common-wealth, and the parts thereof.*

**T**O be vnderstood hereafter it is necessary yet to make a third diuision of the Common-wealth by the parts thereof. A Common-wealth is called a societie or common doing of a multitude of Freemen, collected together, and vnited by common accord and couenants among themselves, for the conseruation of themselves as well in Peace as in Warre.

For

For properly an Hoast of men is not called a Commonwealth, but abusively, because they are collected but for a time, and for a fact: which done each divideth himselfe from others as they were before. And if one man had, as some of the old *Romanes* had (if it bee true that is written) five thousand, or ten thousand bondmen whom hee ruled well, though they dwelled all in one Citie, or were distributed into diuers Villages, yet that were no Common-wealth: for the bondman hath no communion with his Master, the wealth of the Lord is onely sought for, and not the profit of the slave or bondman. For, as they who write of these things haue defined, a bondman or slave as it were (sauiug life or humane reason) is but the instrument of his Lord, as the Axe, the Saw, the Chessill and Gowge is of the Carpenter. Truth it is, the Carpenter looketh diligently to saue, correct, and amend all these: but it is for his owne profit, and in consideration of himselfe, not for the

the

the Instruments sake. And as these be  
 Instruments of the Carpenter, so  
 the Plough, the Cart, the Horse, Oxe,  
 or Ass, be Instruments of the Hus-  
 bandman: and though one Husband-  
 man had a great number of all these,  
 and looked well to them, it made no  
 Common-wealth, nor could not be  
 so called. For the private wealth of  
 the Husbandman is only regarded,  
 and there is no mutuall societie or  
 portion, nor Law, nor pleading be-  
 twene the one and the other. And  
 (as hee saith) what reason hath the  
 Pot to say to the Potter, Why madest  
 thou mee thus? or why dost thou  
 breake mee after thou hast made mee?  
 Euen so is the bondman or slaue  
 which is bought for monie, for hee is  
 but a reasonable and living instru-  
 ment, the possession of his Lord and  
 Master, reckoned among his goods,  
 not otherwise admitted to the socie-  
 tie Ciuill, or Common-wealth, but  
 is part of the possession and goods of  
 his Lord. Wherefore, except there be  
 other orders and administrations a-  
 mongst

mongst the *Turkes*, if the Prince of the *Turkes* (as it is written of him) doe repute all other his bondmen and slaues (himselfe and his sonnes onely freemen) a man may doubt whether his administration bee to be accounted a Common-wealth, or a Kingdome, or he rather to be reputed onely as one that hath vnder him an infinite number of slaues or bondmen, among whom there is no right, law, nor Common-wealth compact, but onely the will of the Lord and Seignior. Surely none of the old *Greekes* would call this fashion of Government, *Reip.* or Πολιτεια, for the reasons which I haue declared.

### CHAP. XI.

*The first sort, or beginning of an  
House or Family called  
οικουμενα.*

**T**Hen if this bee a Societie, and consisteth onely of freemen, and the least part thereof must bee two.  
The

The naturallest, and first coniunction of two, toward the making of a further societie of continuance, is of the Husband and of the Wife after a diuers sort, each hauing care of the Family, the man to get, to trauaile abroad, to defend; the Wife to saue that which is gotten, to tarric at home, to distribute that which cometh of the Husbands labour, for the nurriture of the Children, and Family of them both, and to keepe all at home neat and cleane. So nature hath forged each part to his office: the Man sterne, strong, bold, aduenturous, negligent of his beautie, and spending: The woman weake, fearfull, faire, curious of her beautie and sauing. Either of them excelling other in wit and wisdom, to conduct those things which appertaine to their Office, and therefore where their wisdom doth excell, therein it is reason that each should gouerne. And without this societie of man and woman the kind of man could not long endure. And to this societie

tie men are so naturally borne, that  
 the Prince of all Philosophers, in  
 consideration of natures, was not a-  
 fraid to say, that a man by nature is  
 rather desirous to fellow himselfe to  
 another and so to liue in couple, then  
 to adhere himselfe with many. Al-  
 though of all things or living crea-  
 tures, a man doth shew himselfe most  
 politicke, yet can hee not well liue  
 without the societie and fellowship  
 Ciuill. *Hee that can liue alone,* saith  
*Aristotle, is either a wilde Beast in*  
*Mans likeness, or else a God rather*  
*than a Man.* So then the House and  
 Family is the first and most naturall  
 (but priuate) apparance of one of the  
 best kindes of a Common-wealth,  
 that is called *Aristocrattia*, where a  
 few, and the best doe gouerne: and  
 where not one alwayes, but sometime  
 and in some thing another doth beare  
 the rule. Which to maintaine for  
 his part, God hath giuen to the man  
 greater wit, bigger strength, and  
 more courage, to compell the woman  
 to obey by reason; or force: and so  
 the

the woman beautie, faire countenance, and sweet words, to make the man obey her againe, for loue. Thus each obeyeth & commandeth other; and they two together rule the house. *Domus, seu Familia.*  
 The House I call heere the Man, the woman, their children, their seruants bond and free, their cattell, their household-stuffe, & all other things, which are reckoned in their possession, so long as all these remaine together in one, yet this cannot be called *Aristocratia*, but *metaphoricè*, for it is but an house, and little sparke resembling as it were that Government.

## C H A P. XII.

The first and naturall beginning  
 of a Kingdome: in Greeke  
*Βασιλεία.*

**B**UT for so much as it is the nature of all things, to increase or decrease: this House thus increasing and multiplying by generation, so that

**Prouining, or propagation** is when a man layeth a Branch of a Vine or Olive, or any other tree into the ground so that it taketh root of it selfe, & may liue though it be cut cleane from the first root or stocke.

*Pagan, Oppidum, Ciuitas, Regnum.*

that it cannot well be comprehended in one habitation, and the children waxing bigger, stronger, wiser and thereupon naturally desirous to rule, the Father and Mother sendeth them out into couples, as it were by prouining or propagation. And the child by marriage beginneth, as it were to roote towards the making of a new stocke, and thereupon another House or Family. So by this propagation or prouining first of one, and then of another, and so from one to another, in space of time of many Houses was made a Street or Village; of many Streets and Villages ioined together, a Citie or Borough. And when many Cities, Boroughs and Villages, were by common and mutuall consent for their conuersation ruled by that one and first Father of them all, it was called a Nation or Kingdome. And this seemeth the first and most naturall beginning and source of Cities, Townes, Nations, Kingdomes, and of all ciuill Societies. For so long as the great Grand-father was alie and

able



able to rule, it was vnnatural, all for any of his Sonnes or Of-spring, to striue with him for the superioritie, or to go about to gouerne, or any wise to dishonour him, from whom he had receiued life and being. And therefore such a one doth beare the first and natural example of an absolute, and perfect King. For hee loued them as his owne Children and Nephewes, cared for them as members of his owne body, providing for them as one having by long time more experience than any one, or all of them. They againe honoured him as their Father of whose bodie they came, obeyed him for his great wisdom and forecast, went to him in doubtfull cases, as to an Oracle of God, feared his curse and malediction as proceeding from Gods owne mouth. Hee againe vsed nouriture: For, each paine put vpon them, he esteemed as laid vpon himselfe.

## CHAP. XIIII.

*The first and naturall beginning of  
the rule of a few of the best men,  
called in Greeke Α-  
ριστοκρατία.*

**B**Ut when that great Grand-father was dead, the sonnes of him, and brethren amongst themselves, not having that reuerence to any, nor confidence of wisdome in any one of them, nor that trust the one to the other, betweene whom (as many times it fareth with Brethren) some strifes & brawlings had before arisen: To defend themselves yet from them which were Welch and Strangers; necessarily agreed amongst themselves to consult in common, and so beare rule for a time in order, now one, and now another: so that no one might beare alwayes the rule, nor any one bee neglected. And by this meanes, if any one failed during his yeare or time by ignorance, the

next

next (being either wise of himselfe, or else by his brothers errour and fault) amended it. And in the meane while, at diuers and most times, when yrgent necessitie did occure, they consulted all those heads of Families together within themselves, how to demean and order their matters best for the conseruation of themselves, and each of their Families generally and particularly. Thus a few being Heads, and the chiefe of their Families, equall in Birth and Nobilitie, and not much different in riches, gouerned their owne Houses, and the descendants of them particularly, and consulted in common vpon publike causes, agreeing also vpon certaine Lawes & Orders to be kept amongst them. So the best, chiefe, and sagest did rule, and the other part had no cause to strine with them, nor had no cause nor apparance to compare with any of them, neither for age nor discretion, nor for Riches, or Nobilitie. The Rulers sought each to keepe and maintaine their Posteritie, as their

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Sonnnes and Nephewes, and such as  
should succeed them, and carry their  
names when they were dead, and so  
render them being mortall by nature,  
immortall by their fame and successi-  
on of Posteritie: hauing most earnest  
care to maintaine still this their coo-  
zenage and common Family, as well  
against forreine and barbarous Na-  
tions, which were not of their Pro-  
genie, Tongue, or Religion, as against  
wild and sauage Beasts. This seemeth  
the naturall course and beginning, or  
Image of that rule of the fewer num-  
ber, which is called of the Greekes  
*Aristocratis*, and of the Latines  
*Optimatum Republica*.

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#### CHAP. XIV.

*The first originall, or beginning of  
the rule of the multitude called  
Politeia or Democratia.*

**N**OW, as time bringeth an end of  
all things, these Brethren being  
all

all dead, and their Off-spring increasing daily to a great multitude, and the reuerence due to the olde Fathers in such and so great number of equals failing, by reason of the death or dotting of the Elders: each owing their merit of education apart to their Fathers and Grand-fathers, and so many arising, & such equalities among them, it was not possible that they should be content to be gouerned by a few. For two things being such, as for the which men in societie and league most strue; that is, honour and profit, no men of free courage can bee contented to bee neglected therein, so that they were faine of necessitie to come to that, that the more part should beare the price away in election of Magistrates and Rulers. So that either by course or by lot, each man in turne might be receiued to beare rule, and haue his part of the honour: and (if any were) of the profit which came by administration of the Common-wealth. For whosoeuer came of that olde great Grand-

fathers race, hee accounted himselfe  
 as good of birth as any other. For  
 service to the Common-wealth, all,  
 or such a number had done it, as they  
 could not be accounted few. And if a  
 few would take vpon them to vsurpe  
 ouer the rest, the rest conspiring to-  
 gether would soone bee Masters of  
 them, and ruinate them wholly.  
 Whereupon necessarily it came to  
 passe, that the Common-wealth  
 must turne and alter as before from  
 one to a few, so now from a few to  
 many and the most part, each of these  
 yet willing to saue the politick body,  
 to conserue the authoritie of their  
 Nation, to defend themselves against  
 all other, their strife being onely for  
 Empire and rule, and who should  
 doe best for the Common-wealth,  
 whereof they should haue expe-  
 rience made by bearing Office and  
 being Magistrates. This I take for  
 the first and naturall beginning of  
 the rule of the multitude, which  
 the Greeks called *Democratia*: the  
 Latines, some *Respublica*, by the ge-  
 neral.

nerall name, some *Populi potestas*,  
some *Census potestas*; I cannot tell  
how Latinely.

### CHAP. XV.

*That the Common-wealth or Politic,  
must be according to the  
nature of the people.*

**B**Y this proceffe and discourse, it  
doth appeare that the mutations  
and changes of fashions of govern-  
ment in Common-wealths be natu-  
rall, and doe not alwayes come of  
Ambition or Malice: And that ac-  
cording to the nature of the people,  
so the Common-wealth is to it fit and  
proper. And as al these three kinds of  
Common-wealths are naturall, so  
when to each partie, or espeece and  
kind of the people; that is applied  
which best agreeth, like a garment  
to the bodie, or shooe to the foote,  
then the bodie Politicke is in quiet,  
and findeth ease, pleasure and profit.  
But if a contrarie forme begiuen to a

contrarie manner of people, as when the shooe is too little or too great for the foote, it doth hurt and incumber the conuenient vse therof, so the free people of Nature tyrannized or ruled by one against their wils, were hee neuer so good, either faile of courage and waxe seruile, or neuer rest untill they either destroy the King & them that would subdue them, or bee destroyed themselues. And againe, another sort there is, which without being ruled by one Prince, but set at libertie, cannot tel what they should doe, but either through insolencie, pride, and idlenesse, will fall to roberie, and all mischief, and to scatter and dissolue themselues, or with foolish ambition and priuate strife consume one another, and bring themselues to nothing. Of both these two wee haue histories enough to beare witnesse, as the Greekes, Romanes, Samnites, Danes, Vandals, and others. Yet must you not thinke that all Common-wealths, administrations, and rulings began on this sort,

by

Græci.  
Romani.  
Samnites.  
Vandali.  
Dani.  
Norwegi.  
Lusci.



by prouining or propagation, as is before written: But many times after a great battaile & long War, the Captaine who led a multitude of people gathered peradventure of diuers Nations and Languages, liking the place which hee hath by force conquered, carrieth there, and beginneth a Common-wealth after this manner, & for the most part a Kingdome. As the Gothes and Lumbards in Italy, the Frenchmen in Gaule, the Saracens in Spaine, and part of France, the Saxons in great Brittain, which is now called England: Of which, when that one and chiefe Prince is dead, the Nobler sort consult among themselues, and either chuse another Head and King, or diuide it into more Heads and Rulers, so did the Lumbards in Italy, and the Saxons in England: or take at the first a common rule and popular estate, as the Switzers did in their Cantons, and doe yet at this day; or else admit the rule of a certaine few, excluding the multitude and Communalitic,

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munaltie, as the Paduans, Veronenses, and Venetians haue accustomed.

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CHAP. XVI.

*The diuision of the parts and persons  
of the Common-wealth.*

**T**O make all things yet cleere before, as we shall goe, there ariseth another diuision of the parts of the Common-wealth. For it is not enough to say that it consisteth of a multitude of Houses and Families, which make Streets and Villages, and the multitude of Streets and Villages make Townes, and the multitude of Townes the Realme, and that Freemen be considered onely in this behalfe, as Subiects and Citizens of the Common-wealth, and not Bondmen, who can beare no rule nor iurisdiction ouer Freemen, as they who be taken but as instruments, and the goods and possessions of others. In which consideration also we doe reiect women, as those whom Nature hath

hath made to keep home and to nourish their family, and children, & not to meddle with matters abroad, nor to beare office in a Citie or Commonwealth, no more than Children and Infants: except it bee in such cases as the Authoritie is annexed to the Bloud and Progenie, as the Crowne, a Duchie, or an Earledome: for there the bloud is respected, not the Age nor the Sex. Where, by an absolute Queene, an absolute Dutchesse or Countesse, those I call absolute, which haue the name, not by being married to a King, Duke, or Earle, but by being the true, right & next Successors in the dignitie, and vpon whom by right of the bloud that title is descended: These I say, haue the same authoritie, although they be women or children in that Kingdome, Duchie, or Earledome, as they should haue had if they had beene men of full age. For the right & honour of the bloud, and the quietnesse and suretie of the Realme, is more to be considered, then either the tender age as yet impotent

potent to rule, or the Sexe not accustomed (otherwise) to intermeddle with publike affaires, being by common intendment vnderstood, that such Personages neuer doe lacke the counsell of such graue and discreet men as bee able to supply all other defects. This (as I said) is not enough: But the Diuision of these which bee participant of the Common-wealth, is one way of them that beare office, the other of them that beare none: The first are called Magistrates, the second priuate men. Besides, the like was among the Romans of *Patricij* and *Plebei*, the one striuing with the other a long time, the *Patricij* many yeeres excluding the *Plebei* from bearing rule, vntill at last all Magistrates were made common betweene them: yet was there another diuision of the Romans, into *Senators*, *Equites* and *Plebs*: the Greeks had also *εὐγενεῖς* & *ἀπολίτες*. The French haue at this day, *les nobles* & *la populaire*, or *gentil homes* & *villaines*: wee in Eng-

Eng-

England diuide our men commonly into foure sorts, Gentlemen, Citizens, Yeomen, Artificers and Labourers: of Gentlemen, the first and chiefe are the King, the Prince, Dukes, Marquises, Earles, Vitcounts, Barons, and all these are called *αὐτοκρατορική*, the Nobilitie, and all these are called Lords and Noblemen: next to these be Knights, Esquires, and simple Gentlemen.

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CHAP. XVII.

*Of the first part of Gentlemen of England, called Nobilitas Major.*

**D**Vkes, Marquises, Earles, Vitcounts, and Barons either be created by the Prince, or come to that honour by being the eldest Sonnes, as highest and next in succession to their Parents. For the eldest of Dukes Sonnes during his Fathers life, is called an Earle: an

*Nobilitas major* Eldest Sonnes of Dukes are not Earles by birth, but Earles, and take their place above Earles, and so are Earles eldest Sons of Lords.

in respect of Barons. Esquires of Honour or Earles

Earles Sonne is called by the name of a Viscount or Baron, or else according as the Creation is. The Creation I call the first donation and condition of the honour (giuen by the Prince for good seruice done by him, and advancement that the Prince will bestow vpon him) which with the title of that honor, is commonly (but not alwayes) giuen to him and to his Heires Males only: the rest of the Sonnes of the Nobilitie, by the rigor of the Law be but Esquires, yet in common speech, all Dukes, and Marquises Sonnes, and the eldest Sonne of an Earle be called Lords. The which name commonly doth agree to none of lower degree then Barons, excepting such onely, as bee thereunto by soire speciall Office called. The Baronie or degree of Lords, doth answer to the dignitie of the Senators of Rome, and the title of our Nobilitie to their *Patricij*: when *Patricij* did betoken *Senatores*, and *Senatorum filios*. *Census Senatorum* was in Rome,

at diuers times diuers, and in England no man is created a Baron, except he may dispend of yeerely reuenue one thousand pounds or a thousand markes at the least; Viscounts, Earles, Marquesses, and Dukes more; according to the proportion of the degree and honour, but though by chance he or his Son haue lesse, he keepeth his degree: but if they decay by excoffe, and be not able to maintaine the honour (as *Senatores Romani* were *amoti Senatus*) so sometimes they are not admitted the vpper House in the Parliament, although they keepe the name of Lord still.

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### CHAP. XVIII.

*Of the second sort of Gentlemen,  
which may be called Nobilitas  
minor, and first of  
Knights.*

**N**O man is a Knight by succession, no not the King or Prince.  
And.

And the name of Prince in England κατ' ἐξοχήν betokeneth the eldest Sonne or Prince of Wales: although the King himselfe, his eldest Sonne, and all Dukes be called by generall name Princes. But as in France the Kings eldest Sonne hath the title of *Daulphin*, and he or the next Heire apparant to the Crowne is *Monfire*, so in England the Kings eldest Sonne is called κατ' ἐξοχήν the Prince. Knights therefore be not borne but made, either before the battell to incourage them the more to aduventure their liues, or after the conflict, as aduancement for their hardinesse and manhood already shewed: or out of the Warre for some great seruice done, or some good hope through the vertues which doe appeare in them. And then are made either by the King himselfe, or by his Commission and Royall Authoritie, giuen for the same purpose, or by his Lieutenant in the Wars, who hath his Royall and absolute power committed to him for that time. And

that.



that order seemeth to answer in part to that which the Romanes called *Equites Romanos*, differing in some points, and agreeing in other, as their Common-wealth and ours doe differ and agree: for never in all points one Common-wealth doth agree with another, no nor long time any one with it selfe. For all changeth continually to more or lesse, and still to diuers and diuers orders, as the diuersitie of times doe present occasion, and the mutabilitie of mens wits doth inuent and assay new wayes to reforme and amend that wherein they doe find fault. *Equites Romani*, were chosen *ex censu*, that is, according to their substance and riches. So bee Knights in England most commonly, according to the yeerly reuennue of their lands, being able to maintaine that estate: yet all they that had *Equestrem censum*, *non legebantur Equites*. No more are all made Knights in England that may dispend a Knights Land or Fee, but they onely whom  
the

the King will so honour. The number of *Equites* was vncertaine, and so it is of Knights, at the pleasure of of the Prince. *Equites Romani* had *Equum publicum*: The Knights of England haue not so but finde their owne Horle themselves in peacetime, and in ost vsualty in Warres.

*Census Equester* was among the Romanes at diuers times of diuers value: but in England whosoever may dispend of his free Lands fortie pounds sterling of yeerely reuenue, by an old Law of England, either at the Coronation of the King, Marriage of his Daughter, or at the dubbing of the Prince or Knight, or some such great occasion, may be by the King compelled to take that Order and Honour, or to pay a fine, which many not so desirous of Honour as of Riches, had rather disburse. Some, who for causes are not thought worthy of that Honour and yet haue abilitie, neither be made Knights, though they would, & yet pay the fine of fortie pounds sterling

ling at that time when this Order began, which maketh now a hundred and twentie pound of currant money of England: as I haue more at large declared in my Book of the diuersitie of Standards, or the value of Moneyes.

When the Romanes did write, *Senatus populusque Romanus*, they seemed to make but two Orders, that is, of the Senate, and of the people of Rome, and so in the name of people they contained *Equites & Plebem*: so when wee in England doe say the Lords and the Commons: the Knights, Esquires, and other Gentlemen, with Citizens, Burgessees, & Yeomen, bee accounted to make the Commons. In ordaying of Lawes, the Senate of Lords of England is in one House, where the Archbishops and Bishops also be, and the King or Queene for the time being as chiefe, the Knights and all the rest of the Gentlemen, Citizens and Burgessees, which be admitted to consule upon the greatest affaires of the Realme.

Realme, bee in another House by themselves, and that is, called the House of the Commons, as we shall more cleerly describe when wee speak of the Parliament. Wherupon this word Knight is deriued, & whether it doe betoken no more but that which *Miles* doth in Latine, which is a Souldier, might be moued as a question. The word Souldier now seemeth rather to come of sold and payment, and more to betoken a waged or hired man to fight, than otherwise, yet *Cesar* in his *Commentaries* called *Soldures*, in the tongue *Gallois*, men who denoted and swore themselves in a certaine band or oath one to another, and to the Captaine; which order if the *Almaines* did follow, it may be, that they who were not hired, but being of the Nation, vpon their own charges, and for their aduancement, and by such common oath or band that did follow the *Warres*, were (possibly) *auxiliares* called *Knights of Adulices*, and now among the *Almaines*

maines some are called Launc-  
knights, or Souldiers of their band  
not hired, although at this day they  
bee for the most part hirelings. Or  
peradventure it may bee that they  
which were next about the Prince,  
as his Guard and Seruants, picked  
or chosen men out of the rest, being  
called in the Almaine Language  
*Knighsten*, which is as much to say  
as Seruants: these men being found  
of good Seruice, the word afterward  
was taken for an Honour, and for  
him who maketh profession of  
Armes. Our Language is so chan-  
ged, that I dare make no judgement  
thereof. Now wee call him Knight  
in English, that the French calleth  
*Cheualier*, and the Latine *Equitem*  
or *Equestris ordinis*.

And when any man is made a  
Knight, he kneeling downe, is struc-  
ken of the Prince, with his Sword  
naked, vpon the backe or shoulder,  
the Prince saying, *suu* or *sois Che-  
ualier au nom de Dieu*, and (in times  
past) they added *Saint George*, and  
sc

at his arising the Prince saith *ANANS-  
cer*. This is the manner of dubbing  
of Knights at this present, and that  
terme dubbing, was the old terme in  
this point, and not Creation. At the  
Coronation of a King or Queene,  
there be Knights of the Bath made,  
with long and more curious Cere-  
monies. Knights Bannerets are  
made in the Field, with the Ceremo-  
nie of cutting of the point of his  
Standart, and making it as it were  
a Banner: he being before a Batche-  
ler Knight, is now of a higher de-  
gree, allowed to display his Armes  
in a Banner as Barons doe. But this  
order is almost growne out of vse in  
England. But howsoever one be  
dubbed or made a Knight, his Wife  
is by and by called a Ladie, as well  
as a Barons Wife: he himselfe is not  
called Lord, but hath to his name in  
common appellation added this syl-  
lable Sir, as if he before were named  
*Thomas, William, Iohn or Richard,*  
afterward hee is alwayes called *Sir  
Thomas, Sir William, Sir Iohn, Sir*

*Richard*, and that is the terme which men giue to Knights in England. This may suffice at this time, to declare the Order of Knighthood, yet there is another Order of Knights in England, which bee called the Knights of the Garter. King *Edward* the Third after he had obtained many notable victories, King *John* of France, King *James* of Scotland, being both Prisoners in the Towre of London at one time, and King *Henry* of Castile the Bastard expulsed out of his Realme, and *Don Pedro* restored vnto it by the Prince of Wales, and Duke of Aquitaine called the Blacke Prince, inuented a Societic of Honour, and made a choice out of his own Realme and Dominions, and al Christendome: & the best and most excellent renowned persons in Vertues and Honour, He did adorne with that Title to be Knights of his Order, gaue them a Garter decked with Gold, Pearle and Precious stones, with the buckle of gold, to weare daily on the left leg onely,

a Kirtle, Gowpe, Cloke, Chaperon, Collet, and other August and magnificall apparell both of stuffe and fashion exquisite and heroicall, to weare at high Feasts, as to so high and Princely an Order was meet: of which Order He and his Successors, Kings and Queenes of England to be the Souereigne, and the rest by certaine Statutes and Lawes among themselves, be taken as Brethren and Fellowes in that Order, to the number of six and twenty. But because this is rather an ornament of the Realme, than any Politie or Government, thereof, I leaue to speake any further of it.

## CHAP. XIX.

### Of Esquires.

**E**schier or Esquire (which wee call commonly Squire) is a French word, and brookeneth *Sanguisarius*, or *Armigerus*, and be all those



those which beare Armes (as we call them) or Armories (as they terme them in French) which to beare is a testimonie of the Nobilitie or Race from whence they doe come. These be taken for no distinct order of the Common-wealth, but doe goe with the residue of the Gentlemen: saue that (as I take it) they be those who beare Armes, Testimonies (as I haue said) of their Race, and therefore haue neither Creation nor dubbing; or else they were at first Costerels, or the Bearers of the Armes of Lords or Knights, and by that had their Name for a Dignitie and Honour, giuen to distinguish them from a common Souldier, called in Latine, *Gregarius Miles*.

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## CHAP. XX.

### Of Gentlemen.

**G**entlemen be those whom their Bloud and Race doth make

Noble and knowne, *Edyvelis* in Greeke, the Latines call them all *Nobiles*, as the French *Nobles*. *Nobilitas* or *Nobilitas* in Latine is defined, honour or title giuen, for that the Ancestors haue bene notable in riches or vertues or (in fewer words) old riches or prowesse remayning in one stocke. Which if the Successors doe keepe and follow, they be *verè Nobiles*, and *Edyvelis*: if they doe not, yet the fame and wealth of their Ancestors, serue to couer them so long as it can, as a thing once gilted though it be Copper within, till the gilt be worne away. This hath his reason, for the Etymologie of the name serued the efficacie of the word. *Gens* in Latine betokeneth the race and surname, so the Romans had *Cornelios*, *Sergios*, *Appios*, *Fabios*, *Emilios*, *Pisones*, *Iulios*, *Brutos*, *Valerios* of which who were *Agnati*, and therefore kept the name, were also *Gensiles*, and remayning the memory of the glory of their Progenitours fame,

were Gentlemen of that or that race. This matter made a great strife among the Romans, when these which were *noni homines*, were more allowed for their vertues new and newly showne, than the old smell of ancient race, newly defaced by the euill life of their Nephewes and Discendents, could make the other to be. Thus the *Cicerones*, *Catones*, and *Marij* had much adoe with those Ancients, and therefore said *Iuuenal*:

*Mal' pater tibi sis Therfices,*  
*dammodo tu sis,*  
*Bacidi similis Vulcaniaque arma*  
*capessas:*  
*Quam te Therfici similem produca-*  
*cas Achilles.*

But as other Common-wealthes were faine to doe, so must all Princes necessarily follow: that is, where vertue is, to honour it. And although vertue of ancient Race bee easier to be obtained, as well by the example

of the Progenitors, which incourageth, as also through habilitie of education and bringing vp, which enableth, and lastly, the entraced loue of Tenants and Neighbours, to such Noblemen & Gentlemen, of whom they hold, and by whom they doe dwell, which pricketh forward to perseue in their Fathers steps: So, if all this doe faile (as it were great pitie it should) yet such is the nature of all humane things, and so the world is subiect to mutabilitie that it doth many times faile: but when it doth, the Prince and Common-wealth haue the same power that their Predecessours had; and as the Husbandman hath to plant a new tree where the old faileth, so hath the Prince to honour vertue where he doth finde it, to make Gentlemen, Esquires, Knights, Barons, Earles, Marqueses and Dukes, where hee seeth you unable to beare that honour, or merits and deserues it, and so it hath alwayes beene vsed among vs. But ordinarily the King doth only make

Knights,

Knights, and create Barons or high degrees: for as for Gentlemen, they bee made good cheape in *England*. For whosoever studieth in the Lawes of the Realme, who studieth in the Vniuersities, who professeth liberal Sciences: & to be short, who can live idly, and without manuell labour, and will beare the pore charge and countenance of a Gentleman, hee shall be called Master, for that is the Title which men giue to Esquires, and other Gentlemen, and shall be taken for a Gentleman. For true it is with vs as he said, *Tanti, eris, alij, quanti, sibi, fueris*. And (if need be) a King of Herald shall also giue him for money Armes newly made and Invented, the title whereof shall pretend to haue beene found by the said Herald, in perusing and viewing of old Registers, where his Ancestors in times past had beene recorded to beare the same. Or if hee will do it more truly, and of better faith, hee will write that for the merits of that man, and certaine qualities,

which hee doth see in him , and for sundry noble Acts which hee hath performed: he by the authority which hee hath , as King of Heralds and Armes, giueth to him and his heires, these and these Armes: which being done , I thinke hee may be called a Squire , for he beareth euer after those Armes. Such then are called sometime in a scorne, Gentlemen of the first head.

*See an extract*

*from the old Chronicle of Edm<sup>d</sup> Howe*  
*at the end*

### CHAP. XXI.

*Whether the manner of England  
in making Gentlemen so easi-  
ly, is to be allowed.*

**A** Man may make doubt and Question, whether this manner of making Gentlemen is to be allowed or no , and for my part I am of that opinion, that it is not amisse: For first the Prince loseth nothing by it , as he should doe if it were in *France*: for the Yeoman or Husband man is no more subject to taile or  
taxe

taxe in *England*, than the Gentleman, no, in euery payment to the King, the Gentleman is more charged, which hee beareth the gladlier, and dareth not gainsay, for to saue and keep his honour and reputation. In any Shew or Muster, or other particular charge of the Towne where he is, hee must open his purse wider, and augment his portion aboue others, or else hee doth diminish his reputation. As for their outward shew, a Gentleman (if he will be so accounted) must go like a Gentleman, a Yeoman like a Yeoman, and a Rascall like a Rascall: and if he be called to the Warres, hee must and will (whatsoeuer it cost him) array himselfe, and arme him according to the vocation which hee pretendeth: he must shew also a more manly courage, and tokens of better education, higher stomacke, and bountifuller liberalitie than others, and keepe about him idle Seruants, who shall doe nothing but wait vpon him. So that no man hath hurt by

it but he himselfe, who hereby purchases will beare a bigger faile than he is able to maintaine. For as touching the policie and government of the Common-wealth, it is not those that haue to doe with it, which will magnifie themselves, and goe in higher Buskins than their estate will beare, but they which are to be appointed, are persons tried and well knowne, as shall be declared hereafter.

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CHAP. XXII.

*Of Citizens and Burgeses.*

**N**EXT Gentlemen be appointed Citizens and Burgeses, such as not only be free, and receiued as Officers within the Cities, but also be of some substance to beare the charges. But these Citizens and Burgeses, be to serue the Commonwealth, in their Cities & Boroughs, or in Corporate Townes where they dwell.



dwell. Generally in the Shires they be of none account, save only in the common assembly of the Realm to make Lawes which is called the Parliament. The shire Cities appoint foure, and each Borough two, to haue voices in it, and to giue their consent or dissent, in the name of the City or Borough for which they be appointed.

CHAP. XXIII.

Of Yeomen.

Those whom we call Yeomen, next vnto the Nobilitie, Knights and Squires, haue the greatest charge and doings in the Common-wealth, or rather are more trauctled to serue in it than all the rest: as shall appeare hereafter. I call him a Yeoman whom our Lawes do call *Legalem hominem*, a word familiar in Writs and Enquests, which is a freeman borne English, and may dispend

spend of his own free Land in yearly reuenue to the summe of forty shillings sterling. This maketh (if the iust value were taken now to the proportion of monies) sixe pound of our currant money at this present.

This sort of people confesse themselves to be no Gentlemen, but giue the honour to all which bee or take vpon them to be Gentlemen, and yet haue a certaine preheminance, and more estimation then Labourers and Artificers, and commonly liue wealthy, keepe good houses, and doe their businesse and trauel to acquire riches: these be (for the most part) Farmours vnto Gentlemen, which with grazing, frequenting of Markets, and keeping Seruants not idly as the Gentleman doth, but such as get both their owne liuing and part of their Masters, and by these meanes do cometo such wealth, that they are able and daily doe buy the Lands of vnthristic Gentlemen, and after setting their Sonnes to the Schoole

Schoole at the Vniuersities, to the Lawes of the Realme, or otherwise leauing them sufficient Lands where on they may liue without labour, do make their said Sonnes by those meanes Gentlemen: These bee not called Masters, for that (as I said) pertaineth to Gentlemen only. But to their surnames men adde Goodman: as if the surname bee *Luter*, *Finch*, *White*, *Browne*, they are called Goodman *Luter*, Goodman *Finch*, Goodman *White*, Goodman *Browne*, amongst their Neighbours. I meane not in matters of importance, or in Law. But in matters of Law and for distinction, if one were a Knight, they would write him (for examples sake) Sir *John Finch* Knight, so if hee bee an Esquire, *John Finch* Esquire or Gentleman, if he be no Gentleman, *John Finch* Yeoman. For amongst the Gentlemen they which claime no higher degree, and yet be to be exempted out of the number of the lowest sort thereof, bee written Esquires.

quires. So amongst the Husbandmen Labourers, the lowest and rascall sort of the people, such as be exempted out of the number of the rascalitie of the popular, be called and written Yeomen, as in the degree next vnto gentlemen. These are they which old *Caro* calleth *Aratores*, and *optimos cives in Republica*, and such as of whom the Writers of Common-wealths prayle to haue many in it. *Aristotle*, namely reciteth *μωδανας μωσνταμια*: these tend their owne businesse, come not to meddle in publike matters & iudgements, but when they are called, and glad when they are deliuered thereof, are obedient to the Gentlemen and Rulers, and in Warre can abide trauaile and labour; as men vsed to fight for their Lords of whom they hold their Lands, for their Wiues and Children, for their Country and Nation, for prayle and honour against they come home, and to haue the loue of their Lord and his children, to be continued towards them  
and

and their children, which haue ad-  
 uentured their children, which haue  
 aduentured their liues for and with  
 him and his. These are they which in  
 the olde world gat that honour to  
*England*, not that either for wit,  
 conduction, or for power they are  
 or were to be compared to the Gen-  
 tlemen, but because they be so many  
 in number, so obedient at the Lords  
 call, so strong of body, so hard to  
 endure paine, so couragious to ad-  
 uenture with their Lords or Cap-  
 taine, going with, or before them,  
 for else they be not hastie nor neuer  
 were, as making no profession of  
 knowledge of warre.

These were the good Archers in  
 times past, and the stable troupe of  
 Footmen that affraid all *France*,  
 that would rather die all, then once  
 abandon the Knight or Gentleman  
 their Captaine, who at those dayes  
 commonly was their Lord, & whose  
 Tenants they were, readie (besides  
 perpetuall shame) to be in danger of  
 vndoing themselues, and all theirs,  
 if

if they should shew any signe of cowardise, or abandon the Lord, Knight or Gentleman of whom they held their liuing. And this they haue amongst them from their forefathers, told one to another. The Gentlemen of *France*, and the Yeomen of *England*, are renoumed, because in battaile of Horsemen, *France* was many times too good for vs, as wee againe alway for them on foot. And Gentlemen for the most part be men at Armes and Horsemen; and Yeomen commonly on foot: howsoeuer it was, yet the Gentlemen had alwayes the conduction of the Yeomen, and as their Captaines were either afoote or vpon a little Nagge with them, and the Kings of *England* in foughten battailes, remaying alwayes among the Footmen; as the *French* Kings among their Horsemen: Each Prince thereby, as a man may ghesse, did shew where hee thought his strength did consist. What a Yeoman is I haue declared, but from whence the word is deriued

ued

ued it is hard to say: it cannot bee thought that Yeoman should be said of a young man, for commonly wee doe not call any a Yeoman till he be married, and haue children, and as it were, haue some authoritie among his Neighbours. *Yonker* in Low Dutch betokeneth a meane Gentleman, or a gay fellow. Possibly our Yeomen not being so bolde as to name themselves Gentlemen, when they came home, were content when they had heard by frequentation with Low Dutchmen, of some small Gentleman (but yet that would bee counted so.) to bee called amongst them, *Yonkerman*, they calling so in Warres by mockage or in sport the one another, when they came home, *Yonkerman*, and so *Yeoman*: which word now signifieth among vs, a man well at ease, and hauing honestly to liue, yet not a Gentleman: whatsoeuer that word *Yonkerman*, youngman, or *Yeoman* doth more or lesse signifie to the Dutchmen:

*German* in the *Saxon* is a married man, and hereof cometh our *Yeoman*, for after marriage men are accounted settled members in the Commonwealth, but not before. A *Yonker* sommech of yong heire which is a sonne and heire to a Gentleman, or a yong Gentleman.

## CHAPTER XXXIII

Of the fourth sort of men which  
doe not rule.

**T**HE fourth sort or classe amongst vs, is of those which the old Romans called *capite sensu proletarii* or *operarii*; day labourers, poore Husbandmen; yea, Merchants or Retailers, which haue no free Land, Copyholders, and all Artificers; as Tailors, Shoemakers, Carpenters, Brick-makers, Brick-layers, Makons, &c. These haue no voice nor authoritie in our Common-wealth, and no account is made of them, but only to be ruled, and not to rule other, and yet they be not altogether neglected. For in Cities and Corporate Towns for default of Yeomen, Enquests & Juries are impannelled of such manner of people. And in Villages they be commonly made Church-Wardens, Ale-cunners, and many times Constables; which Office toucheth more the Common-wealth, and at the first was not employed vpon such

low.



low and base persons. Wherefore generally to speak of the Commonwealth, or Policie of *England*, it is governed, administrated, and managed by three sorts of persons, the Prince, Monarch, and head Gouvernour, which is called the King, or if the Crowne fall to a Woman, the Queene absolute, as I haue heretofore said: In whose name and by whose authoritie all things are administrated. The Gentlemen, which be diuided into two parts, the Baronie or Estate of Lords containing Barons and all that be aboute the degree of a Baron, (as I haue declared before:)& those which be no Lords, as Knights, Esquires, and simply Gentlemen.

The third and last sort of persons, is named the Yeomanry: Each of these hath his part and administration in iudgements, corrections of defaults, in election of Offices in appointing and collection of Tributes and Subsidies, or in making Lawes as shall appeare hereafter.





# THE SECOND BOOKE.

## CHAP. I.

*The division and definition of the  
Laws of this Realme in  
generall.*

**T**he Lawes of Judgment  
in England consist } and  
in two points, } Practice.

In Judgment are } Persons.  
considered the } Place.  
} Matter, and  
} Manner.

The persons } Judges in the Courts  
in judgement } Sergeants and  
are the } Counsellors.

In practice are con- } Persons and  
sidered the } their Office.

The persons are } Protonotaries,  
Sollicitors, and  
Atturacies.

Their office is to prepare the matter, and to make it ready for the Judges to determine.

The Protonotaries are the Clerks in the Court, which doe record the matters hanging in judgement, and doe frame the pleading, enter the Rules and Orders of the Court, the Verdicts and Judgements given in the same.

Sollicitors are such, as being learned in the Lawes, and informed of their Masters Cause, doe informe and instruct the Counsellors in the same.

Atturacies are such as by experience have learned and doe know the orders and manner of proceeding in every Court; where they serue, and doe

doe purchase out Writs and Proceffe belonging to their Clients Cause. They see to his Suits, that he be not hindered by negligence. They pay the fees belonging to the Courts, and prepare the Cause for judgement.

The places for judgement are the Courts where sentence is given, and the Lawes made as the Parliament, Chancery, Kings Bench, the Common Pleas, the Exchequer, the Court of Wards, the Starre Chamber, the Court of Requests, and the Duchie Cour of Lancaster.

The matter of the Law is } Justice;  
 and }  
 Equity.

The manner of their severall proceedings, followeth.

CHAP.

## C H A P. II.

*Of the Parliament, and the  
authoritie thereof.*

**T**He most high & absolute power of the Realme of *England* consisteth in the Parliament. For as in Warre where the King himselfe in person, the Nobilitie, the rest of the Gentilitie, and the Yeomanrie are, is the force and power of *England*: So in peace and consultation where the Prince is to giue life, and the last and highest commandement: the Baronie or Nobilitie for the higher: the Knights, Esquires, Gentlemen and Commons for the lower part of the Common-wealth: the Bishops for the Clergie be present to aduertise, consult and shew what is good, and necessary for the Common-wealth, and to consult together; and vpon mature deliberation, euery Bill or Law being thrice read and disputed vpon in either House, the other two

parts,

parts, first each a part, and after the Prince himselfe in presence of both the parties, doth consent vnto and alloweth. That is, the Princes and whole Realmes Deed: wheretupon nistly no man can complaine, but must accommodate himselfe to finde it good and obey it.

That which is done by this consent is called firme, stable and *sanctum*, and is taken for Law. The Parliament abrogateth olde Lawes, maketh new, giueth order for things past, and for things hereafter to be followed, changeth right and possessions of private men, legitimateth Bastards, establisheth formes of Religion, altereth Waights and Measures, giueth forme of succession to the Crowne, defineth of doubtfull Rights, whereof is no Law alreadie made, appointeth Subsidies, Tailles, Taxes, and Impositions, giueth most free pardons and absolutions, restoreth in Bloud and Name, as the highest Court condemneth or absoluech them whom the Prince will put

to triall. And to be short, all that euer the people of *Rome* might doe, either *Centuriatis Comitijs* or *Tri-  
bunus*, the same may be done by the Parliament of *England*, which representeth, and hath the power of the whole Realme, both the head and bodie. For every Englishman is intended to be there present either in person, or by procuration and attorney, of what preeminence, state, dignitie or qualitic soeuer hee be, from the Prince, (be he King or Queene) to the lowest person of *England*. And the consent of the Parliament, is taken to be every mans consent.

The Iudges in Parliament are the King or Queens Maiestie, the Lords Temporall and Spirituall, the Commons represented by the Knights & Burgessees of euery Shire & Borough Towne. These all, or the greater part of them and that with the consent of the Prince for the time being, must agree to the making of Lawes.

The Officers in Parliament are the Speakers, two Clarkees, the one for  
the



Higher House, the other for the Lower, and Committies.

The Speaker is he that doth commend and preferre the Bills exhibited into the Parliament, and is the Mouth of the Parliament. Hee is commonly appointed by the King or Queene, though accepted by the assent of the House.

The Clarkes are the keepers of the Parliament Rolls and Records, and of the Statutes made, and haue the custodie of the priuate Statutes not printed.

The Committies are such as either the Lords in the higher House, or Burgesses in the Lower House, doe choose to frame the Lawes vpon such Bills as are agreed vpon, and afterward to be ratified by the same Houses.

E. S. CHAT.

## C H A P. III.

*The forme of holding the  
Parliament.*

**T**He Prince sendeth forth his Re-  
scripts or Writs to every Duke,  
Marquesse, Baron, and every other  
Lord Temporall or Spirituall, who  
hath voice in the Parliament, to be  
at his great counsell of Parliament  
such a day (the space from the date  
of the Writ is commonly at the least  
forty dayes) hee sendeth also Writs  
to the Sheriffes of every Shire; to  
admonish the whole Shire to choose  
two Knights of the Parliament in  
the name of the Shire, to heare and  
reason, and to give their aduice and  
consent in the name of the Shire: and  
to be present at that day: likewise to  
every Citie and Towne, which of  
ancient time hath been wont to send  
Burgesses of the Parliament, so to  
make election, that they might be  
present there at the first day of the  
Par-

Parliament. The Knights of the Shire bee chosen by all the Gentlemen and Yeomen of the Shire; present at the day assigned for the election: the voice of any absent can be counted for none. Yeomen I call here (as before) that may dispend at the least forty shillings of yeerely rent of free Land of his owne. These meeting at one day, the two who haue the more of their voices, bee chosen Knights of the Shire for that Parliament: likewise by the plurality of the voices of the Citizens & Burgessees, be the Burgessees elected. The first day of the Parliament, the Prince and all the Lords in their Robes of Parliament doe meet in the Higher House, where after Prayers made, they that be present are written, and they that be absent vpon sicknesse, or some other reasonable cause (which the Prince will allow) doe constitute vnder their hand and seale, some one of those who be present, as their Procurer or Attorney, to giue voice for them, so that by

presence, or Attorney, and Proxie they be all there, all the Princes and Barons, and all Archbishops and Bishops, and (when Abbots were) so many Abbots as had voice in Parliament. The place, where the assembly is, is richly tapessed and hanged, a Princely and Royall Throne as appertaineth to a King, set in the midst of the higher place thereof. Next vnder the Prince sitteth the Chancellour, who is the Voyce and Oretour of the Prince. On the one side of that House or Chamber, sitteth the Archbishops and Bishops, each in his rank; on the other side the Dukes and Barons.

In the midst thereof vpon Wool-sackes sitteth the Iudges of the Realme, the Master of the Rolls, and the Secretaries of Estate. But these that sit on the Wool-sackes have no voyce in the House, but onely sit there to answer their knowledge in the Law, when they be asked, if any doubt arise among the Lords: The Secretaries doe answer of such letters

ers of things passed in counsell, whereof they haue the custodie and knowledge: and this is called the vpper House, whose consent and dissent is given by each man seuerally, and by himselfe; first, for himselfe, and then seuerally for so many as he hath Letters and Proxies; when he cometh to the question, saying ouely, content or not content, without further reasoning or replying. In this meane time the Knights of the Shires, and Burgeses of Parliament (for so they are called that haue voyce in Parliament, and are chosen (as I haue said before) to the number betwixt three and foure hundred) are called by such as it pleaseth the Prince to appoint, into another great House or Chamber by name, to which they answer: and declaring for what Shire or Towne they answer, then they are willed to choose an able and discreet man, to be as it were the Mouth of them all, and to speake for, & in the name of them, and to present him so chosen

sen by them to the Prince: which done they comming all with him to a Barre, which is at the nether end of the vpper House, there hee first prayseth the Prince, then maketh his excuse of inability, and prayeth the Prince that he would command the Commons to choose another. The Chancellor in the Princes name doth so much declare him able, as he did declare himselfe ynable, and thanketh the Commons for chusing so wise, discreet, and eloquent a man, and willeth them to goe and consult of Lawes for the Common-wealth. Then the Speaker maketh certaine requests to the Prince in the Commons Name, first, that his Maiestie would bee content that they may vse and enioy all their Liberties and Priuiledges that the common house was wont to enioy.

Secondly, that they may frankly and freely say their mindes, in disputing of such matters as may come in question, and that without offence to his Maiestie.

Third-

Thirdly, if any should chance of that lower House to offend, or not to do or say as should become him, or if any should offend any of them being called to that his Highnes Court, that they themselves might (according to the ancient custome) haue the punishment of them. And fourthly, that if there come any doubt, whereupon they shall desire to haue the aduice or conference with his Maiestie, or with any of the Lords, they might doe it: all which he promitteth in the Commons names, that they shall not abuse, but haue such regard as most faithfull, true, and louing Subiects ought to haue to their Prince.

The Chancellour answereth in the Princes name, as appertaineth. And this is all that is done for one day, and sometime for two. Besides the Chancellour, there is one in the vpper House, who is called Clarke of the Parliament, who readeth the Bills. For all that commeth in consultation either in the vpper House

or in the neather House, is put in writing first in paper, which being once read, he that will, riseth vp and speaketh with it or against it: and so one after another: so long as they shall thinke good. That done, they goe to another, and so another Bill. After it hath beene once or twice read, & doth appeare that it is somewhat liked as reasonable, with such amendment in words, and peradventure some sentences, as by disputation seemeth to be amended: in the vpper House the Chancellour asketh if they will haue it ingrossed, that is to say, put into parchment: which done, and read the third time, and that eft-soones, if any be disposed to object, disputed againe among them, the Chancellour asketh if they will goe to the question: and if they agree to goe to the question, then hee saith, here is such a Law or Act concerning such a matter, which hath been thrise read heere in this House, are yee content that it be enacted or no? If the Not contents be moe, then  
the



the Bill is dashed, that is to say, the Law is annihilated, and goeth no farther. If the Contents be the moe, then the Clarke writeth vnderneath:  
*Sont bailie aux commons.*

And so when they see time, they send such Bills as they haue approved, by two or three of those which doe sit on the Wool-sackes to the Commons: who asking licence and comming into the House, with due reuerence saith to the Speaker: Master Speaker, my Lords of the vpper House haue passed among them, and thinke good, that there should bee enacted by Parliament such an Act, and such an Act, and so readeth the titles of that Act or Acts. They pray you to consider of them, and shew them your aduice, which done they goe their way. They being gone, and the doore againe shut, the Speaker rehearseth to the house what they said. And if they bee not busie disputing at that time another Bill, he asketh them straight way if they will.

will haue that Bill, or (if there bee moe) one of them.

In like manner in the lower house the Speaker sitting in a seat or chaire for that purpose somewhat higher, that he may see and be seene of them all, hath before him, in a lower seat his Clarke who readeth such Bills as bee first propounded in the lower House, or bee sent downe from the Lords. For in that point each house hath equall authoritie, to propound what they thinke meete, either for the abrogating of some Law made before, or for making of a new. All Bills be thrice in three diuers dayes read and disputed vpon, before they come to the question. In the disputing is a maruellous good order vsed in the lower House. He that standeth vp bare-headed, is to be vnderstood, that he will speake to the Bill. If moe stand vp, who that is first iudged to arise, is first heard, though the one doe prayse the Law, the other disswade it, yet there is no alteration.

For

For every man speaketh as to the Speaker, not as one to another, for that is against the order of the House. It is also taken against the order, to name him whom yee doe confute, but by circumlocution, as he that speaketh with the Bill, or hee that spake against the Bill, and gaue this and this reason. And so with perpetuall Oration not with altercation, hee goeth through till hee haue made an end. He that once hath spoken in a Bill, though he be confuted straight, that day may not reply, no though hee would change his opinion. So that to one Bill in one day, one may not in that House speake twice, for else one or two with altercation would spend all the time. The next day he may, but then also but once.

No reuiling or nipping wordes must be vsed. For then all the House will cry, it is against the order: and if any speake vnreuerently or seditiously against the Prince or the priuie Counsell. I haue seene them not  
 onely

only interrupted, but it hath beene  
 mooued after to the House, and they  
 haue sent them to the Towre. So that  
 in such a multitude and in such di-  
 uersitie of Mindes and Opinions,  
 there is the greatest modesty and  
 temperance of speech that can be v-  
 sed. Neuerthelesse, with much doulce  
 and gentle termes, they make their  
 reasons as violent and, as vehement  
 the one against the other as they may  
 ordinarily, except it bee for vrgent  
 causes, and halting of time. At the  
 afternoon they keep no Parliament.  
 The Speaker hath no voice in the  
 House, nor they will not suffer him  
 to speake in any Bill to moue or dis-  
 swade it. But when any Bill is read,  
 the Speakers Office is, as briefly and  
 as plainly as he may, to declare the  
 effect thereof to the House. If the  
 Commons doe assent to such Bills as  
 bee sent to them first agreed vpon  
 from the Lords thus subscribed, *Les  
 commons ont assentus*, so if the Lords  
 doe agree to such Bills as bee first a-  
 greed vpon by the Commons, they  
 send

send them downe to the Speaker thus subscribed, *Les Seigneurs ont assentus*. If they cannot agree, the two Houses (for euery Bill from whence soeuer it doth come, is thrise read in each of the Houses) if it bee vnderstood that there is any sticking, sometimes the Lords to the Commons, sometime the Commons to the Lords doe require that certaine of each house may meet together, and so each part to bee enformed of others meaning; and this is alwayes granted. After which meeting for the most part, not alwayes, either part agrees to others Bills.

In the vpper house they giue their assent and dissent, each man seuerally and by himselfe, first, for himselfe, and then for so many as hee hath proxie. When the Chancellour hath demanded of them, whether they will go to the question after the Bill hath bene thrise read, they saying only, content or not content, without further reasoning or replying: and as the more number doth agree, so

so it is agreed on, or dashed.

In the nether House none of them that is elected, either Knight or Burgesse can give his voice to another, nor his consent or dissent by proxie. The more part of them that be present only maketh the consent or dissent. After the Bill hath bene twice read, and then ingrossed, and afterwards read and disputed on enough as is thought, the Speaker asketh if they will goe to the question: And if they agree, he holdeth the Bill vp in his hand and saith: As many as will haue this Bill goe forward, which is concerning such a matter, say yea. Then they which allow the Bill cry yea, and as many as will not, say no: as the cry of yea or no is bigger, so the Bill is allowed or dashed. If it be a doubt which cry is bigger, they diuide the House, the Speaker saying, as many as doe allow the Bill goe downe with the Bill, and as many as doe not, sit still. So they diuide themselves, and being so diuided they are numbered, who made the more

more part, and so the Bill doth speed. It chanceth sometimes that some part of the Bill is allowed, some other part hath much controuersie, and doubt made of it, and it is thought if it were amended it would go forward. Then they chouse certaine *Committees* of them who haue spoken with the Bill and against it, to amend it, and bring it againe so amended, as they amongst them shall thinke meet; and this is before it is ingrossed, yea, and sometime after. But the agreement of these *Committees* is no prejudice to the house. For as the last question they will either accept it or dash it, as it shall seeme good, notwithstanding that whatsoeuer the *Committees* haue done.

Thus no Bill is an Act of Parliament, Ordinance, or Edict of Law, vntill both the houses severally haue agreed vnto it after the order aforesaid, nor then neither. But the last day of that Parliament or Session, the Prince cometh in person in his Parliament Robes, and sitteth in his  
state:

state: all the vpper House sitteth about the Prince in their states and order in their Robes. The Speaker with all the common-houſe commeth to the Barre, and there after thank-giuing firſt in the Lords Name by the Chancellour, &c. And in the Commons Name by the Speaker to the Prince, for that he hath ſo great care of the good gouernment of his people, and for calling them together to aduiſe of ſuch things as ſhould be for the reformation, eſtabliſhing, and ornament of the Commonwealth: the Chancellour in the Princes Name giueth thankes to the Lords and Commons for their pains and trauels taken, which hee ſaith the Prince will remember and recompence when time and occaſion ſhall ſerue, and that he for his part is ready to declare his pleaſure concerning their proceedings, whereby the ſame may haue perfect liſe and accompliſhment by his Princely authoritie, and ſo haue the whole conſent of the Realme. Then one reades  
the



the titles of euery Act which hath passed at that Session, but onely in this fashion: An Act concerning such a thing, &c. It is marked there what the Prince doth allow, and to such he saith: *Le Roy, or la Roynne le veut.* And those bee taken now as perfect Lawes and Ordinances of the Realme of *England*, and none other, and, as shortly as may be, put in print, except it bee some private Case or Law made for the benefit or prejudice of some priuateman, which the *Romanes* were wont to call *Prisologia*. These be onely exemplified vnder the Seale of the Parliament, and for the most part not printed. To those which the Prince liketh not, he answereth, *Le Roy, or la Rayne s'aduisera,* and those be accounted vnterly dashed and of none effect.

This is the order and forme of the highest and most authentical Court of *England*, by vertue whereof all those things be established whereof I spake before, and no other meanes accounted auailable to make any  
new

new forfeiture of life, member, or Lands of any Englishman, where there was no Law ordained for it before. Now let vs speake of the said parts when they be severall.

#### CHAP. IV.

*Of the Monarch, King, or Queen  
of England.*

**T**HE Prince whom I now call (as I haue often before) the Monarch of *England*, King, or Queen, hath absolutely in his power the authoritie of Warre and Peace, to defie what Prince it shall please him, and to bid him Warre, and againe to reconcile himselfe and enter into League or Truce with him at his pleasure, or the aduise onely of his priuy Councill. His priuy Councill are chosen all at the Princes pleasure out of the Nobilitie or Baronie, and of the Knights and Esquires, such and so many as he shall thinke good, who

who doe consult daily, or when need is, of the waighty matters of the Realme to giue therein to their Prince the best aduice they can. The Prince doth participate to them all, or so many of them as he shall thinke good, such Legations and Messages as come from forreigne Princes, such Letters or Occurrents as bee sent to himselfe or to his Secretaries, and keepeth so many Ambassages and Letters sent vnto him secret as hee wil, although these haue a particular path of a Counsellour touching faith and secrets administred vnto them when they be first admitted into that company. So that herein the Kingdome of *England* is farre more absolute then either the Dukedome of *Venice* is, or the Kingdom of the *Lacedemonians* was. In warre time, and in the field the Prince hath also absolute power, so that his word is a law, hee may put to death, or to other bodily punishment, whom hee shall thinke so to deserue, without pro-  
cess of Law or forme of iudgement:  
This

This hath been sometime vsed within the Realme before any open war, in suddaine insurrections and rebellions, but that not allowed of wise and grane men, who in that their iudgement had consideration of the consequence and example, as much as of the present necessitie, especially when by any means the punishment might haue beene done by order of Law. This absolute power is called martiall Law, and euer was, and necessarily must be vsed in all Campes and Hosts of men, where the time nor place doe suffer the tardiance of pleading and processe be it neuer so short, and the important necessitie requireth speedie execution; that with more awe the Souldiers might be kept in more straight obedience, without which neuer Captaine can doe any thing vaileable in the wars.

The Prince vseth also absolute power in crying and decreeing the money of the Realme by his Proclamation onely. The mony is alwayes stamped with the Princes Image and  
title.

title. The forme, fashion, manner, weight, finenesse and basenesse thereof, is at the discretion of the Prince; For whom should the people trust more in that matter, than their Prince, seeing the Coine is only to certifie the goodnesse of the metall and the waight, which is affirmed by the Princes Image and marke? But if the Prince will deceiue them, and giue them Copper for Siluer or Gold, or inhance his Coine more than it is worth, hee is deceiued by his Subjects. For in the same sort they pay the Prince his Rents and Customes. And in time they will make him pay ratically or more for meate, drinke, and victuals for him and his, and for their labour; which experience doth teach vs now in our dayes to be done in all Regions. For there euer hath bene and euer will be a certaine proportion betweene the scarcitie and plentie of other things, with Gold and Siluer. For all other Measures and Waights, as well of dry things as of wet, they haue

accustomed to be established or altered by the Parliament, and not the Princes Proclamation onely.

The Prince vseth also to dispense with Lawes made, whereas equitie requireth a moderation to bee had, and with paines for transgressing of Lawes, where the paines of the Law is applied onely to the Prince. But where the forfeit (as in popular actions it chanceth many times) is part to the Prince, the other part to the Declarator, Detector or Informer, there the Prince doth dispense for his own part onely. Where the criminal action is intended by inquisition (that manner is called with vs at the Princes suite) the Prince giueth absolution or pardon, yet with a clause, *modo facta rebus in curia*, that is to say, that no man object against the Offendor. Whereby notwithstanding that he hath the Princes pardon if the person offended will take upon him the accusation (which in our Language is called the Appeal) in cases where in such,

the

the Princes pardon doth not serue the offender.

The Prince giueth all the chiefe and highest Offices or Magistracies of the Realme, be it of Iudgement or Dignitie, Temporall or Spirituall, and hath the tenths and first fruits of all Ecclesiasticall promotions, except in the Vniuersities, and certaine Colledges, which bee exempt.

All Writs, Executions, and Commandements, be done in the Princes Name. We doe say in *England*, the life and member of the Kings subiect are the Kings only, that is to say, no man hath *hault* nor *mayenne* Justice but the King, nor can hold plea thereof. And therefore all those Pleas which touch the life or mutilation of man be called Pleas of the Crown, nor can be done in the name of any inferiour person than hee or she that holdeth the Crowne of *England*. And likewise no man can giue pardon thereof but the Prince onely: although in times past there were

certaine Countie Palatines, as *Ches-  
ster, Durham, and Elie*, which were  
*bault* Iusticers, and Writs went in  
their Name, as also some Loid Mar-  
ches of *Wales*, which claimed like  
priuiledge: all these are now worne  
away. The supream Iustice is done  
in the Kings Name, and by his au-  
thoritie ouely.

The Prince hath the Wardship  
and first Marriage of all those that  
hold Land of him in chiefe. And  
also the government of all fooles na-  
turall, or such as be made by aduen-  
ture of sicknesse, and so continue if  
they bee landed. This being once  
grounded by Act of Parliament (al-  
though some inconuenience hath bin  
thought to grow thereof, and since  
that time it hath beene thought very  
vnrasonable) yet once annexed to  
the Crowne, who ought to go about  
to take the Club out of *Hercules*  
hand? And being gouerned iustly  
and rightly, I see not so much incon-  
uenience in it, as some men would  
make of it: diuers other rights and

pre-



preheminences the Prince hath, which be called Prerogatiues Royall, or the Prerogatiue of the King, which bee declared particularly in the Bookes of the Common Lawes of *England*.

To be short, the Prince is the life, the head, and the authoritie of all things that be done in the Realme of *England*. And to no Prince is done more honour and reuerence, then to the King and Queene of *England*: no man speaketh to the Prince, nor serueth at the table, but in adoration and kneeling, all persons of the Realme be bare headed before him: In so much that in the Chamber of Presence where the Cloath of Estate is set, no man dare walk, yea though the Prince be not there, no man dare tarry there but bare-headed. This is vnderstood of the Subjects of the Realme, for all Strangers be suffered there and in all places to vse the manner of their Country, such is the ciuilitie of our Nation.

## C H A P. V.

*The chiefe points wherein one Common-wealth doth differ from another.*

**N**OW that wee haue spoken of the Parliament ( which is the whole, vniuersall, and generall consent and authoritie aswell of the Prince, as of the Nobilitie and Commons, that is to say, of the whole head and body of the Realme of *England*) and also of the Prince, (which is the Head, Life and Governour of this Common-wealth) there remayneth to shew, how this Head doth distribute his authoritie and power to the rest of the members for the government of this Realm, and Common-wealth of the politticke bodie of *England*.

And whereas all Common-wealths and Governments be most occupied, and be most diuers in the fashion of five things : In making of Lawes  
and

and Ordinances, for their owne government: in making of battaile and peace, or truce with forreigne Nations: in providing of money for the maintenance of themselves and defence of themselves against their enemies: in choosing and election of the chiefe Officers and Magistrates: and fifthly, in the administration of iustice. The first and third wee haue shewed is done by the Prince in Parliament. The second and fourth, by the Prince himselfe: the fifth remaineth to be declared.

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## CHAP. VI.

*Of three manners and formes of tryals or iudgements in England.*

**B**Y order and vsage of *England*, there be three wayes and manners, whereby absolute and definite

judge.

judgement is given, by Parliament, which is the highest and most absolute, by Battaile, and by the great Assise.

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## C H A P. VII.

### *Tryall, or Judgement by Parliament.*

**T**HE manner of giuing iudgment by Parliament between priuate and priuate men, or betweene the Prince and any priuate men, be it in matters Criminall or Ciuill, for land or for heritage doth not differ from the order which I haue prescribed, but it proceedeth by Bill thrice read in each House, and assented to, as I haue said before, and at the last day confirmed & allowed by the Prince, howbeit such Bills be seldome receiued, because that great Councell being enough occupied with the publike affaires of the Realme, will not gladly

gladly intermeddle it selfe with priuate quarrels and questions.

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## CHAP. VIII.

### *The tryall of Iudgement by Battaille.*

**T**HIS is at this time not much v-  
sed, partly because of long time  
the Pope and the clergy, to whom in  
time past we were much subiect, al-  
wayes cryed against it as a thing da-  
nable and vnlawfull: and partly be-  
cause in all Common-wealths, as to  
the tongue so to the manners, fashi-  
ons, habits, yea, & kinds of tryals &  
iudgements, and to all other things  
that is therein vted, time and space  
of yceres bringeth a change. But I  
could not yet learne that it was euer  
abrogated. So that it remaineth in  
force, whensoever it bee demanded:  
The manner of it is described in  
*Britton.*

## C H A P. IX.

The tryall by *Affise* or twelve men,  
and first of the three parts which  
bee necessary in iudgement.

**T**He two first iudgements be absolute, supream and without appeale, and so is also the iudgement by the great *Affise*. And the cause or manner of Iudgements in *England* is in many things different from the fashion vsed either in *France* or in *Italy*, or in any other place. If the Emperours Lawes and Constitutions (called the Ciuill Lawes) be put in vse, it will bee necessary here to make a little digression, to the intent that that which shall be said hereafter, may be better vnderstood. All pursutes and actions (wee call them in our English tongue, pleas) and in barbarous (but now vsuall Latine) *placita*, taking that name, *abusinè* of the definitiue sentence, which  
may

may well be called *placitum*, or *ap-  
 sor*. The French vsed the same, called  
 in their Language, the sentence of  
 their Iudges *arestte*, or *arest*, in which  
 words notwithstanding after their  
 custome they doe not sound the *s*.  
 But we call *placitum*, the action, not  
 the sentence, and *placitare* barba-  
 rously, for to plead in English, *age-  
 re*, or *litigare*. Now in all iudgments  
 bee two parties, the first wee call  
 the Impleader, Suiter, Demander,  
 or Demandant, and Plaintiffe. In  
 Criminall Causes, if hee professe to  
 be an accuser, we call him appellant,  
 or appelour, and so, accusation wee  
 call appeale. The other wee call the  
 Defendant, and in Criminall causes,  
 prisoner, for he cannot answer, in  
 causes Criminall, before he doer en-  
 der himselfe, or be rendered priso-  
 ner.

*Judex*, is of vs called Iudge, but  
 our fashion is so diuers, that they  
 which giue the deadly stroke, and  
 either condemne or acquite the man  
 for guilty or not guilty, are not cal-

led Judges, but the twelve men. And the same order is aswel in ciuill matters and pecuniary, as in matters criminall.

CHAP. X.

*Of Pleas or Actions.*

**P**Leas of Actions Criminall, be in English called Pleas of the Crowne, which bee all those which tend to take away a mans life or any member of him, for his euill deseruing against the Prince and Common-wealth.

And this name is giuen not without a cause. For taking this for a principle, that the life and member of an Englishman is in the power onely of the Prince and his Lawes, when any of his Subiects is spoyled either of life or member, the Prince is endamaged therby, and hath good cause to aske account how his Subiects should come to that mischief.

And



And again, for so much as the Prince who governeth the Scepter, and holdeth the Crowne of *England* hath this in his care and charge, to see the Realme well governed, the life, members, and possessions of his Subjects kept in peace and assurance: he that by violence shall attempt to break that peace and assurance, hath forfeited against the Scepter and Crowne of *England*: and therefore not without a cause in all inquisitions and inditements, if any be found by the twelve men to have offended in that behalfe, straight the Prince is said to be party, & he that shall speak for the prisoner shall be rebuked, as speaking against the Prince. Nevertheless, it is never forbidden, but the prisoner, and party Defendant, in any cause may alleadge for him all the reasons, means, and defences that he can, and shall be peaceably heard and quietly. But in those pleas and pursutes of the Crowne, Procuror or Aduocate hee gets none, which in ciuill and pecuniary mat-

Saving in  
appeales, &  
upon a spe-  
ciall plea,  
*Assise*, is the  
parties  
whole suite:  
*Breue* is the  
Kings pre-  
cept.

ters (be it for Land, Rent, Right, or Possession; although he plead against the Prince himselfe) he is neuer denied.

Pleas Ciuill be either personall or reall: personall, as contracts, or for iniuries: reall, be either possessory, to aske, or to keepe the possession, or in *rem*, which wee call a Writ or Right. For that which in the Ciuill Law is called *actio* or *formula*, wee call Writ in English, so the Greeks called it word for word *γραφή*, and in our barbarous Latine we name it *Breue*.

And as the olde Romans had their actions some *ex iure ciuili*, and some *ex iure pretorio*, and ordinarily *praetor dabat actiones, & formulas actionum*: so in England we retaine still this, and haue some Writs out of the Chancery, other out of the Common Pleas or the Kings Bench.

CHAP.

## CHAP. XI.

*Of the chiefe Tribunals, Benches, or  
Courts of England.*

**I**N times past (as may appeare to him that shall with iudgement reade the Histories and Antiquities of *England*) the Courts and Benches followed the King and his Court wheresoeuer hee went, especially shortly after the Conquest. Which thing being found very combersome, painfull, and chargeable to the people, it was agreed by Parliament, that there should bee a standing place where iudgement should be giuen. And it hath long time bene vsed in Westminster Hall which King *William Rufus* builded for the Hall of his owne house. In that Hall be ordinarily scene three Tribunals, or Iudges seats. At the entry on the right hand the Common Pleas where ciuill matters are to be pleaded, specially such as touch Lands or  
Con-

Contracts. At the vpper end of the Hall on the right hand, the Kings Bench where Pleas of the Crowne haue their place. And on the left hand sitteth the Chancellor accompanied with the Master of the Rolls, who in Latine may be called *custos archinarum Regis*, and certaine men learned in the Ciuill Law, called Masters of the Chancere, in Latine they may be called *Assessores*.

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## C H A P. XII.

*Of the times of pleading called Termes: and of the Chancery and Chancerie.*

**T**Wo things may bee moued in question here, how all *England* (being so long and so large, and hauing so many Shires and Prouinces therein) can be answered of iustice in one place, and in three Benches, be they neuer so great? Another (whereas the Kings Bench is exercised

cised in criminall causes, and in all pleas of the Crowne, and the Common place in all ciuill causes (reall, and personall) what place then hath the Chancerie?

The first question will seeme more maruellous, and haue more occasion of doubt, when I shal also tel that the Law is not open at all times, no, not the third part of the yeare. But where all other Cities & Commonwealths had all the yeare Pleas, Suites and Iudgements, except for certaine hollydayes and Haruest, Vintage, or when for some vrgent cause the Law was commanded to bee stopped, which is called *Iustitium*: contrarie in ours it is but few times open. That is onely foure times in the yeare, which they call Termes: After Michaelmas about ten dayes, during five or six weekes at the least. After Christmas about a moneth enduring by the space of three weekes. Then from seuentene dayes after Easter by the space of three weekes and odde dayes. Likewise from the six or se-

uenth day after Trinitie Sunday, during two weeks and odde dayes. All the rest of the yeare there is no pleading, entring nor pursuing of actions. This small time, and all that but in one place, may seeme very iniurious to the people, who must be faine to suffer much wrong for lacke of Iustice, and of place and time to plead: but vnto that hereafter I intend to answer more fully, and at large, and in the meane while that shall suffice. which the wise *Cato* answered to one who moued, that the pleading place in Rome might be couered ouer with canuasse, as their Theaters were, to the intent that the Plaintiffes and defendants that were there might pleade their matters more at ease, and not bee in so much danger of their health by the heate of the Sunne striking ful & open vpon their heads, which was no small grieffe and disease specially at Rome. Nay (saith *Cato*) for my part I had rather wish that all the wayes to the place of pleading were cast.

cast ouer with Galthrops, that the  
 secte of such as loue so well pleading  
 should feele so much paine of those  
 pricks in going, as their heads doe  
 of the Sunne in tarrying there: he  
 meant that they were but idle, ho-  
 heads, busie-bodies, and trouble-  
 some men in the Common-wealth  
 that did so nourish pleading: good  
 labourers and quiet men could bee  
 content to end their matters at home  
 by iudgment of their neighbours  
 and kinsfolke, without spending so  
 their money vpon Procurers and  
 Aduocates whom we call Attorneys  
 Counsellors, Sergeants, and gene-  
 rally men of Law. Those be accoun-  
 ted profitable Citizens who attend  
 their honest labour and busines at  
 home, and stand not waiting and  
 gaping vpon their Roles and Pro-  
 cesse in the Law: as for the other,  
 by his iudgement, it was no matter  
 what mischiefe they suffered. To  
 the other question of the Chancerie,  
 this I answered: That our law which  
 is called of vs the common law, as  
 yee:

ye would say *Ius civile*, is, and standeth vpon *expedients*, that is *Ius summum*: and their maximes be taken so streightly, that they may not depart from the tenour of the words, euen as the old ciuill Law was. And therefore as that lacked the help of the *Prætor* (which might *moderari illud ius summum*, giue actions where none was, mitigate the exactnesse and rigour of the law written, giue exceptions as *metus*, *doli mali*, *minoris ætatis* &c. for remedies, and maintaine alwayes *æquum bonum* :) the same order and rancke holdeth our Chancerie, & the Chancellor hath the very authoritie herein as had the *Prætor* in the old ciuill Law before the time of the Emperours. So hee that putteth vp his bill in the Chancery after that he hath declared the mischiefe wherein he is, hath reliefe as in the solemne *Forum*. And for as much as in this case hee is with out remedie in the common Law, therefore he requirerth the Chancelour according

to



to equitie and reason to prouide for him and to take such order as to good conscience shall appertaine: And the Court of the Chancerie is called of the common people the court of Conscience, because that the Chancellor is not strained by rigor or forme of words of Law to iudge but *ex aqno* and *bono* and according to conscience as I haue said. And in this Court the vsuall and proper forme of pleading of England is not vsed but the forme of pleading by writing, which is vsed in other countries according to the ciuil Law and the trial is not by twelue men, but by the examination of witnesse as in other Courts of the ciuil Law.

Out of this Court, as from the person of the Prince come all manner of originall Writs. The declaration of writs is at large set downe in the register of writs and in the *Natura breuium*, Out of this Court come most commonly Commissions, Patents, Licences, Inquisitions, &c.

The Iudges of this court are the L.

Chan.

Chancelour of England, assistants, the Masters of the Rols and six Masters of the Chancery, which are commonly Doctors of the Ciuil Law.

Officers are the fixe Clarks of the Chancery, the Clark of the Crowne general, the Register, Controler of the Seale, two examiners, the Clark of the Hamper, the three clarks of the Petty bag, the Cursiters, the Sergeant of the Mace.

The Lord Chancelor is the keeper of the great Seale, and hath it carried with him wheresoeuer he goeth.

The Master of the Rols is the keeper of the Records, Iudgments, and sentences giuen in the Court of Chancerie.

The six Masters are assistants to the Court, to shew what is the equity of the ciuill Law, & what is conscience.

The Clarke of the Crowne is the chiefe Guardian of the matters of the Crowne: what are Crowne matters, and pleas of the Crowne, see in the learned Booke of *Stanford* called the *Pleas of the Crowne*.

The

The six Clerks are the Attornies, as well for the Plantiffe, as Defendant, in every suite in the Court.

The Register is the engrosser and keeper of the decrees, publications, orders, and injunctions issuing out of this Court.

The two examiners are such as take the examination of the witnesses brought to prove or reprove any thing in suite in this Court, and to put their depositions and answers made to their interrogatories in writing.

The Controler of the Seale is to see and allow of all the Writs made in this Court.

The Clarke of the Hamper is hee that doth receive the fines due for every Writ sealed in this Court.

The three Clerks of the Pettie bag, are they that receive the Offices that are found in the Court of Wards.

The Cursiters are Clerks appointed to their severall shires which doe write originall writs that belong

to this court or the common place.

The Sergeant carrieth the Mace before the Lord Chancellor, & is to call any man before him at his commandement.

The Proceſſe in the Chancerie is a *Sub poena*, which is but to call the partie before him upon a paine, as upon paine of xl.li.&c. And this is the way used to bring in the party, or else by the Sergeant as before.

The punishment is, if the party will not come in, or coming in, will not obey the order of the court, imprisonment during the pleasure of the Lord Chancellor.

The order of proceeding is by Injunctions, Decrees, and orders which are to binde the partie, and if hee resist, his punishment is imprisonment.

The matter in this court are all causes wherein equity and extremity of Law doe strive, and where the rigour of Lawes have no remedy, conscience and the moderation of *Summum jus* hath sufficient.

And

And here is to be noted, that conscience is so regarded in this court, that the Lawes are not neglected, but they must both joyne and meete in a third, that is, a moderation of extremity.

This court is called of some *Officina Iuris Civilis Anglorum*, because out of this court issue all manner of Proesse which give the partie his cause of action in other Courts.

### CHAP. XIII.

*Of Iudges in the Common Law of England, and the manner of triall and pleading there.*

**T**HE Prince out of the numbers of those who haue bin Counsellours or Sergeants at the Law, which bee those who in Latine are called *considici* or *advocati*, chooseth two of the most approued for learning, age, discretion, and exercise,

cise, of whom the one is called chiefe Iustice of the Kings Bench, or simply Chiefe Iustice, the other of the Common Place, and others to the number of sixe or more, which haue each an ordinary fee or stipend of the Prince.

These doe sit at such dayes as be terme, which may be called *Dies legitimi, iudicij, or fasti*, in their distinct places as I haue said before. There they heare the pleading of all matters which doe come before them: and in ciuill matters where the pleading is for Money, or Land, or Possession, part by Writing, and part by Declaration & Altercation of the Aduocates the one with the other, it doth so proceed before them till it doe come to the issue, which the Latines doe call *statum cause*, I doe not meane *contestationem litij*, but as the Rhetoricians do call *statum*, we doe most properly call it the issue, for there is the place where the debate and strife remaineth (as a water held in a close and darke vessell

vessell'issueth out, and is voyded and emptied) and no where else: that stroke well stricken is the departing of all their Quarrels, Issues or *status* in our Law be ordinarily two, *facti* and *juris*.

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CHAP. XIV.

*Of the Kings Bench.*

**T**He Kings Bench is the Kings Court, so called because vsually the Kings haue sitten there, and also because that therein all causes are handled which appertaine to the Crowne: and such causes as wherein the King or Queene is a party, if they properly appertaine not to some other Court.

The Iudges of the Kings Bench are the Lord chiefe Iustice of England with other his companions assistant in giuing judgement.

The Sergeants and Counsellors doe debate the cause.

The sentence is given by the chiefe Iustice, the others all or the most part assenting, as it shall appeare to be in other Courts likewise. If they cannot agree, then is the matter referred to a demurre in the Exchequer chamber before all the Iustices of both the Benches, *viz* the Kings Bench, and the Common Pleas, and the Lord Chiefe Baron of the Exchequer.

The Officers in the Kings Bench, are the chiefe Prothonothary, the Secondary, the Clarke of the Crowne, the Clarke of the Exigents, the Clarke of the Papers, the Custos Breuium, and Custos Sigilli.

The Prothonothary is he, that recordeth all Iudgements, Orders, and Rules in this Court, and all Verdicts giuen, being not of Crowne matters.

The Secondary is the Prothonotharies Deputie, for the said causes, and he is the keeper and maker up of these Records in Bookes.

The Clarke of the Crowne, is to  
frame



frame all Indictments of Felony, Treason, Murther, &c. all manner of Appeales, & after to record them and enter the Verdict, and to make and keepe the Records touching these matters.

The Clarke of the Exigents is to frame all manner of Proceffes of *Exigi facias*, which doe issue out of that Court to out-law any man, and to record the out-lawry.

The Clarke of the Papers is hee that keepeth all Rols, Scripts, and pleadings, and other things in writing which are not of Record.

The Custos Breuium is he which fileth all the Writs Iudiciall and Originall, after the Sheriffe hath returned them: he is chargeable if any be embeseled or priuily conueyed away from the file.

The Custos Sigilli is he that doth keepe the Seale, and seeketh all iudiciall Writs and all Patents, Licences issuing out of this Court, and taketh the fee due for them, and thereof to make his account.

There are certaine Attornies belonging to this Court in number as the Protonotary shall appoint: those are for Plaintiffes and Defendants in euery cause, and they frame and make the pleadings.

The manner of proceeding in this Court is by Latitat, Arrest, and Bill.

The Latitat, is to bring the party in, when he is not to be found, or will not appeare and answer.

Arrest is when the party is arrested, and then is driven to finde baile, *viz.* two sufficient sureties or more as the case shall need.

By Bill the Suite is when the party is in *Custodia Mareschallia*, and from thence brought to answer.

The matters of this Court are properly all matters of the Crowne, whereof see *Standfords Booke* aforesayd.

In these they proceed by Indictments, Verdict, Appeale, improperly all suites wherein the King is a party, or haue any losse. Such are  
conspi-

conspiracies, cham-parties, Imbrafier, Maintenance, *Decisantium maymes*, Slanders, Actions *sur le cas*: of these see *Natura Breuium*.

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## CHAP. XV.

### *Of the Court of Common-Pleas.*

**T**HE Court of Common Pleas is the Kings Court, wherein are holden all common pleas between Subject and Subject, of all matters of common Law: so called, for that it serueth for the exact and precise administration of the common Law.

The Iudges in this court are, the Lord chiefe Iustice of the common Pleas, three other his Associates: The Sergeants at the Law whose number is sometimes more, sometimes lesse, at the pleasure of the Prince. These all are sworne to serue the turne of the common Law at this Barre.

Two of them are alwayes appointed

G. 3.

ted to serue the Princes turne in what Court soever, and are called the Kings Sergeants.

The Officers of this Court are the Custos Breuium, three Protonotharies, the Clarke of the Warrants, the Clark of the Essoynes, diuers Attornies, Fillisers for every Shire, the Clarke of the Iuries, the Chirographer for fines, the Clark of the Kings silver for errours in this Court committed, the Clarke of the Seale, as before for the Kings Bench.

The Custos Breuium is the chiefe Clarke in the Court, and hee hath the custody of all the Writtes whatsoever returnable into this court, come they either at the day of the returne, or after the day which is called *post diem*.

The Protonotharies are they which after the parties have appeared in court, do enter the matters in suite, and make the pleadings, and enter them.

The Fillisers are they which make up all meane processe upon the originall

Original Writts, and the same Writts returned by the Sheriffe, are by the Attornies delivered to the custos Brevium to file or string, there to remain on Record.

The Exigenters are such as make out the Exigents and Writts of Proclamation to every county, where the parties are, that upon the same Processe or Summons will not appear.

The clarke of the Warrants is he which doth take the Warrants of an Attorney, which shall prosecute for the Plaintiffe or Defendant: and is he that encolleth all deeds acknowledged before the Iustices of the same court.

The clarke of the Essoynes, is he which doth essoyne the Defendants in every Action, before the day of his appearance.

An essoyne is an ordinary delay by Office of court in action: and the Officer before whom the clarke is to take the Essoyne, is the peny Justice in the common pleas, who

for that purpose, sitteth three dayes before the Terme.

The common Attornies are such as are allowed in this court, by the Lord chiefe Iustice of the common Pleas, and his Assistants to prosecute or defend according to the instructions of their clients for the Plaintiffe or Defendant.

The Clarke of the Iuries is he that doth make the *Venire Facias*, to the Sheriffe to warne the Iuries by.

The Chirographer is he that hath the Writ of covenant with the concord brought unto him, and he maketh the Indenture tripartite, whereof two are delivered to the party for whose use the fine is acknowledged. And the third part is reserved with him. And all the Proclamations of the same fine according to the Statutes made, are endorsed on the third part remaying, and it is commonly called the foote of the fine.

The Clarke of the Kings silver is a distinct Office of the fines, and is

he

he who setteth downe the money that his Majesty is to have for the fine, according to the yearly value of the Land confessed, knowne, depoled, or agreed upon.

All Errours in this court committed, are reformed in the Kings Bench, before the Lord chiefe Iustice, and other Iustices there assistant by Writ of Errour.

There is also the clarke of the Out-lawries, who is the Kings Atturny Generall, and he entreteth the Out-lawry for the King, after the Exigent delivered: and he maketh all the Writs of Out-lawry: and none are to be made but by him.

The matters of the common Pleas are all suites of common Law commenced by any Writ originall, reall, or personall.

Reall are such as touch the inheritance, or fee of any man.

Personall are such as touch transitory things, as goods, chattels, personall wrongs.

The difference betweene a writ

G 5

Originall,

Originall, and a Writ Iudiciall, is this: the originall saith in the end of it (in the person of the King or Queene) *testeme ipso, or me ipsa apud Westmonasterium.* The Iudiciall Writ saith in the end, *Teste Christophoro Wray, or Teste Iacobo Dyer,* or such other as shal be the Lord chiefe Iustice of either of those Benches.

The order of proesse how they follow the one after the other. In this court is first a *Summoneas* in some Action, then *Attachias*, but in most a *Capias*, then a *Capias pluries*, then *Exigi facias*, and a Proclamation into the county wherethe Defendant dwelleth:

The *Summoneas* is the originall, and goeth out of the chancery, and is directed to the Sheriffe, to bring the party by a day.

The Sheriffes order in ferving this Writ, is to goe himselfe, or his Bayliffe, to the Land, and there to garnish the party, by sticking up a stick on his Land, which done, the Sheriffe returneth two common pledges,



ges, *Iohannes Do*, and *Richardus Ro*, and two *Summonees*, *Richardus Den*, *Henricus Fen*. After the *Summonees*, if the party come not in, ifsueth out an *Attachias* in nature of a precept, to authorize the Sheriffe to go to his Land or House, and there to take a pledge for his appearance.

But if the party Plaintiffe meane to out-law the Defendant, he getteth a *Summonees* out of the chancery to the Sheriffe to warne the party, who returneth *nihil habet, &c.* Then the Plaintiffe getteth a *Capias* to take his body, and then an *Alias Capias*, then a *Pluribus Capias*; to all which the Sheriffe returneth in order as they be given out, *non est inventus*, after which if the Party appeare not, goeth out to the Sheriffe the *Exigi facias*, and a Proclamation to proclaim the party in five severall county dayes: after which Proclamations, if he do not appeare, he is returned *Quinto exactus, & non comparuit & ideo utlagatus*, unlessse

lesse hee doe first purchase a *Superfedeas*, to the court to surcease. The *Superfedeas* is granted at the suite of the Defendant, to stay the Out-lawrie, and is an appearance to the suite for the Defendant, suggesting to the court, that his Exigent *improvidē emanavit* shewing that the Defendant was alwayes ready to appeare by his Attorney. This done, the Plaintiff declareth, the Defendant answereth, if the answer be issuable they proceed to tryall.

The manner of proceeding is either to joyne issue, and so to passe to Verdict, or else to Demurre. The tryall is by Verdict, when the question is made *de facto*, as where the matter was done, when, by whom, &c.

CHAP.

## CHAP. XVI.

*Of the two manner of Issues.*

**I**F the question bee of the Law, that is, if both the parties doe agree upon fact, and each doe claime that by Law hee ought to have it, and will still in that sort maintain their right, then it was called a Demurrer in Law, where if in the Law the case seeme to the Judges that fit, doubtfull, it is called a Checker chamber case, and all the Judges will meeete together, and what they shall pronounce to be the Law, that is held for right, and the other party looseth his Action or Land for ever. If the Sergeants or Counsellors doe stand upon any point in the Law which is not so doubtfull, the Judges who be taken for most expert, bids him goe forward, and if he hath no other to say, but standeth upon that point of the Law, that bidding goe forward,

But sometimes it is determined by the same Court only.

This should be meant of a respondens ouster, when the opinion is against him that taketh an exception, which is not peremptory he may deny it by procellation.

forward, is taken that hee loo-  
seth his action, and the Defendant  
is licensed to depart without a day:  
and this is where the issue or que-  
stion is of the Law or *Iuris*. So  
is that case where the Law is not  
doubtfull, according to the matter  
contained in the Declaration, Au-  
swer, Replication, Rejoynder, or  
Triplication, the Iudge out of hand  
decideth it. And it is the manner  
that each party must agree to the  
other still in the fact which he can-  
not deny. For if hee once come to  
deny any deed as not done, not his  
writing, that the man by whom  
the Adversary claimeth, was not  
the Adversaries Ancestor, or the  
evidence which the Adversary brin-  
geth, is not true, or that his gift was  
former, or any such like exception,  
which is availeable to abate the  
Action, or barre the party, and the  
other joyneth in the affirmative, and  
will averre and prove the same,  
this is called the issue and immedi-  
ately all question of the Law ceaseth

as

as agreed by both the parties, that there is no question in the Law. Then as the issue *facti* is found by the twelve men of whom wee shall speake hereafter, so the one party or other looseth his cause and Action: so that contrary to the manner of the civill Law, where first the fact is examined by witnesses, Indices, Torments, and such like Probations to finde out the truth thereof, and that done, the Advocates doe dispute of the Law, to make of it what they can: saying, *ex facto jus oritur*. Here the Sergeants or counsellours before the Judges doe in passing forward with their pleading, determine and agree upon the Law, and for the most part, and in a manner all Actions, as well criminall as civill, come to the issue and state of some fact which is denied of the one party, and averred of the other, which Fact being tried by the twelve men, as they find, so the Action is wonne or lost.

lost. And if a man have many peremptory Exceptions (peremptory Exceptions I call onely those which can make the state and issue) because the twelve men bee commonly rude and ignorant, the party shall bee compelled to choose an Exception whereupon to found his issue, which chosen, if he faile in that by the Verdict of twelve men, he looseth his Action and cause, and the rest can serve him for nothing.

Having scene both in France and in other places many Devises, Edicts and Ordinances, how to abridge Proesse, and to finde how that long Suites in Law might be made shorter, I have not perceived nor read, as yet, so wise, so just, and so well devised a meane found out as this, by any man among us in Europe.

Truth it is, that where this fashion hath not beene used and to them to whom it is new, it will not be so easily understood, and therefore

for they may peradventure bee of contrary iudgement : but the more they doe weigh and consider it , the more reasonable they shall find it.

How the Issue, Question, *Instan-  
tia juris* is decided, I have told : now I will shew how it is tried, when it doth come to the Question, State, or Issue of the Deed.

And first I must speake more largely of the manner of proceeding in the Procelle, and of such persons as be necessary for the execution thereof.

CHAP: XVII.

*Of the Sheriffe of the shire, and of the Court of Exchequer.*

**T**He Romanes had to execute the commandements of the Magistrates, *Lictores*, *Viatores*, *Accensos*. The civill Law since

Scats in an-  
cient Saxon  
is that which  
we by a bor-  
rowed terme  
call treasure,  
whereof is  
derived

*Scaccarium*, signifying a Court dealing with the Kings treasure or revenues, and also *Exchequer*, that is an Office which employeth the Kings profit.

that

that time hath other names, termes, and officers. The execution of the commandements of the Magistrates in England, is ordinarily done by the Sheriffes. The Sheriffe (which is as much to say as the Reeve or Bayly of the Shire) is properly word for word *Questor Provincia*, it is he which gathereth up and accounteth for the profits of the Shire, that come to the Exchequer.

The Exchequer (which is *Fiscus Principis*, or *erarium publicum*, and I cannot tell in what language it is called *Scaccarium*, some thinke it was first called *statarium*, because that there was the stable place to account for the revenues of the crowne, as well that which came of patrimony, which we call the demesnes, as that which cometh of other incident requisitions, be they rents, customes, tenthes, quinziesmes, taxes, subsidies whersoever the Prince or his court be according to the time and occasion) was a place stable, continuall,  
and



and appointed for to reckon an account. The hearers of the account (who in Latine may be called *tribuniarum*) have auditors under them; which the Latines doe call *Rationales*, but they are the chiefe for the accounts of the Prince, and may be called *juridici rationales*, in English we call them Barons, of the Exchequer, wheredof is one who is called the chiefe Baron, as *Tribunus*, or *Juridicus Rationalis primus*, or *princeps*, with others to them assistant: Chancellor of the Exchequer, two chamberlaines, and Atturney generall. The chiefe of all is called high treasurer of England, as you would say in Latine, *Supremus erarij Anglici questor*, or *Tribunus erarius maximus*.

He hath the charge and keeping of the King or Queenes treasure, and many Officers are at his sole appointment and to him accountable, as well in the Tower, Exchequer, as elsewhere, as Auditors  
in

in the Mint, Auditors and tellers in the Exchequer, Receivers. &c.

The Chancellour is the under treasurer, and is governour of the court, under the high treasurer. Many Officers also are at his appointment.

The chiefe Baron is the Judge in Lavv-causes, incident to this court, the three other Barons assistants.

The Attorney is the Attorney generall, to defend the Kings right, and to peruse all grants, particulars, suits and causes handled in this court. There are common Attorneys besides, which serve for the suiters of this court.

The other Officers are two Remembrancers, two clarkes of the Pipe, two of the first fruits and tenths.

The Remembrancers are those which keepe all the Records of the Exchequer betweene the King and his subjects, and enter the rules and orders there made, the one is for the

the Prince, the other is for the Lord treasurer.

The clarkes of the Pipe are those that make leases upon particulars, and receive the Sheriffes accounts, those receive also the bonds and titles of other assurances.

In the Office of the first fruits, are received all first fruits due to his Majesty by Bishops, Deanes, and all Ecclesiasticall Persons, answerable by order of the law. Other officers are tellers, Auditors, collectors, rent-gatherers, tailemakers.

The matters of this court are all punishments as intrusions, alienations without licence, penall, forfeitures upon popular actions (a popular action is while one part is given to the informer, the rest to the Prince.) Of these see the whole body of statutes at large in *Rastalls* collection.

In this court are handled all payments, accounts, expences of the Kings revenues.

The usuall Proesse of this court  
is

is a *Subpœna* out of this court, as a messenger to call the party.

In this court be heard *Quadruplatores*, which we call promoters, which be those that in popular and penall actions be *delatores*, having thereby part of the profit by the law assigned. In this court if any question be, it is determined after the order of the common law of England by the twelve men, as I have said, and all customers which were in Latine called *Publicani*, in Greeke *Telonai*, do account in this Office.

The Sheriffe of the shire is called in our common Latine *Vicecomes*, one would say, *Vicarius comitis*, *Procomes*, doing that service, to attend upon the execution of the commandements of the Tribunals or Iudges which the Earle or countie should doe: which Earle or county for the most part was attending upon the Prince in the warres, or otherwise about the Prince, as the word beareth *comes*  
*Principis:*

*Principis* : wherby it may appeare, that the chiefe Office of the county or Earle, was to see the Kings justice to have course, and to be well executed in the shire or county, and the Princes revenues well answered and brought in *erarium principis*, which is called of the tresurie.

If any fines or amercements, which in Latine be called *Multa*, be levied in any of the sayd courts, upon any man, or any arrerages of accounts by the Latines called *reliqua*, of such things as is of customes, taxes, Subsidies, or any other such occasions, the same the Sheriffe of the Shire doth gather, and is respondent therefore in the Exchequer. As for other ordinary Rents of Patrimoniall lands, and most commonly for the taxes, customes, and subsidies, there be particular receivers and collectors which doe answere it into the Exchequer. The Sheriffe hath under him an under Sheriffe at his charge and appointment,

lear-

learned somewhat in the law, especially if hee bee not learned himselfe, and divers Bayliffes which be called Errants, whom he makes at his pleasure, who can know each land and person in the shire, and their ability to goe upon enquests, either to distraine, or to summon him to appeare whom the Sheriffe shall appoint, and for this cause to the Sheriffes, as to the Minister most proper of the Law, the Writs be directed.

When any thing commeth to an issue of the deed or fact, there is a Writ and writing directed to the Sheriffe of the shire where the land is, whereupon the controversies, or where the man dwelleth of whom the money is demanded, which writ is called *venire facias*. Then after the same effect an *alias*, *pluries*, or *distringas*, according to the nature of the action to the returne of the Sheriffe. And if for any disobedience of not comming and appearing there be a fine (which the Latines doe

doe call *Multa*) set upon any Iurors head, the Sheriffe is charged with it, and taketh the distresses which in Latin are called *Pignora*, and answereth therefore to the Exchequer. The Sheriffe is also ready by himselfe or by his under-Sheriffe, to serve as well the Iustices of peace in their quarter Sessions, as the Iustices called *Itinerantes* in their great Assizes, when they come into the Shire, which is twice in the yeare to dispatch and void actions criminall and civill depending at the common law, and which be come now to the issue. He hath also the charge of all prisoners committed to the prison which we call the Goale, and when any is condemned to dye, it is his charge to see the sentence executed. To be short, he is as it were the generall minister and highest for execution of such commandements, according to the Law, as the Iudges ordaine, and this is enough for the Sheriffe.

## C H A P. XVIII.

*Of the twelve men.*

**O**F what manner and order of men in the common-wealth the twelve men be, I have already declared. The Sheriffe always warneth foure and twenty to appeare, lest Peradventure any might be sicke or have a iust cause of absence, and if there be not enow to make an enquest: the absents be amerced. For although they be called twelve men; as a man would say *duodecim viri*, yet if they be twelve, twenty; or the whole number of foure and twenty, that is no matter, twelve they must be at least to make an enquest, or as some call it a quest. An enquest or quest is called this lawfull kind of tryall by twelve men. In actions civill, which is either of contracts or for land, or possession, when so many of those that be warned appeare



peare at the call, as be able to make an enquest, which as I sayd before be no lesse then twelve, either part when they be come taketh their challenges against so many of them as they will, which bee, that he may not spend so much land a yeere, he is allied, fee'd, servant to his adverse party, he is his enemy, &c. And two of the whole number do try, and allow or disallow the rest.

If after exceptions, there be so many reiected that there is not a full enquest in some cases that day is lost. in some the enquest is filled *ex circumstantiis*: when the quest is full, they besworne to declare the truth of that issue, according to the evidence, and their conscience. Then the Sergeants of either side declare the issue, and each for his client saith as much as he can. Evidences of writings be shewed, witnesses be sworne, and heard before them, not after the fashion of the civill Law but onely that

not onely the twelve but the judges, the parties, and as many as be present may heare what each vvitness doth say: The aduerse party or his aduocates which we call Counsellours and Sergeants, interrogateth sometime the witnesses, and driveth them out of countenance.

Although this may seeme strange to our Civillians now, yet who readeth *Cicero* and *Quintilian* yvell shall see, that there was no other order and manner of examining vvitnesses, or deposing among the Romanes in their time. When it is thought that it is enough pleaded before them, and the vvitnesses have sayd what they can, one of the judges with a brieve and pithie recapitulation reciteth to the twelve in summe the arguements of the Sergeants of either side, that vvhich the witnesses have declared, and the chiefe points of the evidence theyved in writing, and once againe putteth them in minde of the issue, and sometime giueth it them in writing,

writing, delivering to them the evidence which is shewed on either part, if any be. (evidence here is called writings of contracts, authentically after the manner of England, that is to say, written, sealed, and delivered) and biddeth them goe together.

Then there is a Bayliffe charged with them to keepe them in a chamber not farre off, without bread, drinke, light, or fire: untill they be agreed: that is, till they all agree upon one verdict concerning the same issue, and upon one among them who shall speake for them all when they be agreed: for it goeth not by the most part, but each man must agree. They returne, and in so few words as may be, they give their determination: few I call six, or seven, or eight words at the most (for commonly the issue is brought so narrow, that such number of words may be enough to affirme or to deny it) which done they are dismissed to goe whither

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they

they will. The party with whom they have given their sentence, giveth the enquest their dinner that day most commonly, and this is all they have for their labour, notwithstanding that they come, some twentie, some thirtie, or fortie miles or more, to the place where they give their verdict, all the rest is of their owne charge. And necessarily all the whole twelve must be of that shire and foure of them of the hundred where the Land lieth which is in controversie, or where the partie dwelleth who is the defendant.

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## CHAP. XIX.

*Of parts of Shires called Hundreds, Laths, Rapes, Wapentakes.*

**A**N Hundred, or Lath, Rape, or Wapentake is called of the divisions or parts of Shires, in divers countries diversly named, after

after the manner and language of each Countrey. For the shires be divided, some into ten, twelve, thirteene, sixteene, twenty or thirtie Hundreds, more or lesse, either that they were at the first a Hundred Townes and Villages in each Hundred: and although now they be but sixteene, twenty, thirty, forty, fifty, threescore, more or lesse, yet it is still called an Hundred: or else there were but so many at the first as be now, or a few more or lesse, and they did find the King to his warres an hundred able men. Lath, and Rape I take to be names of service, for that so many Townes in old time and in the first povertie of the Realme did meete together in one day to carry the Lords corne into his Barne, which is called in old English a Lath. Or that they met at commandement of the Lord to reape his corne.

Wapentake I suppose came of the Danes, or peradventure of the Saxons. For that so many townes

came by their order then to one place, where was taken a muster of their Armour and weapons, in which place from them that could not find sufficient pledges for their good abearing, their weapons were taken away: weapon or weapon in old English doe signifie all Armes offensive, as sword, dagger, speare, lance, bill, bowes, arrowes.

Of that place where musters were taken, or where the sayd services were done, the Hundreds, Lathes, Rapes, & Wapentakes, had and have yet their names, which be most commonly good townes, and it is to be thought at the first they were all such. But sometime now in places whereof the Hundred hath the name, no mention nor memory of a towne remaineth: such mutation time bringeth with it of all things. A Hundreth hath one or two high Constables, who have some authority over all the lower and particular Constables. Those high Constables be made by the  
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 Iustices

Iustices of the peace of the shire, and each hundred hath his Bayliffe who is made by the Lord, if any hath that liberty, or else by the Sheriffe of the shire for the time being.

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CHAP. XX.

Of the Court Barons.

IT may appeare strange that of thirty-six shires, whereof each shire is divided into divers Hundreds, each Hundred containing divers Parishes, all pleading should be but in one place, that is, in Westminster Hall, and that but in certaine times of the yeare, making little more then one quarter of the yeare in the whole. And one would thinke that there should be much lacke of Iustice and right, and much wrong taken without redresse? But it is not so, the people being accustomed to live in such an equallie of Iustice, and in such sort, that the

rich hath no more advantage therein than the poore, the Proceffe and proceeding to the iudgement being so short, and iudgements also being peremptory and without appellation: yet to helpe for small matters where no great summe is in question, there are other Courts. In every Shire from three weekes, to three weekes, the Sheriffe for small things not passing forty shillings; and in certaine Hundreds and liberties the Bayliffe likewise from three weekes to three weekes holdeth Plea. And whosoever is possessor and owner of a Mannor, may hold from three weekes to three weekes, or at his pleasure, of his Tennants, and among his Tennants, a court called a court Baron; and there his Tennants, being sycome make a jury, which is not called the enquest, but the homage. These principally doe enquire of the copy-holders and other free-holders that be dead since the last Court, and bring in their  
 heires



heires and next successours, and likewise of incroachment or intrusion of any of the Tennants against the Lord, or among themselves. They make orders and Lawes amongst themselves, the paine of them if they be after broken, cometh to the Lord. And if any small matter be in controversie, it is put to them, and commonly they doe end it. But these Courts doe serve rather for men that can be content to be ordred by their neighbours and which love their quiet and profit in their husbandry more then to be busied in law. For whether party soever will, may procure a writ out of the higher Court, to remove the Plea to Westminster.

In Cities and other great townes there be divers liberties to hold Plea for a bigger sum, which doe determine as well as the Common Law and after the same manner, and yet for them that will it may be removed to Westminster Hall.

King.

King *Henry* the eighth ordain-  
 ned first a President, Counsel-  
 lours, and Judges, one for the  
 Marches of Wales, at Ludlow, or  
 else where: another for the North  
 parts of England, at Yorke, where  
 be many castles determined. These  
 two are as be Parliaments in France.  
 But yet if there be any matters  
 of great consequence, the party  
 may move at the first, or remove it  
 afterwards to Westminster Hall,  
 and to the ordinary Judges of the  
 Realme; or to the Chancellor, as the  
 matter is.

These two Courts doe hear mat-  
 ters before them part after the com-  
 mon Law of England, and part af-  
 ter the fashion of the Chancery.

## CHAP. XXI.

### *Of the Lect or Law day.*

**L**ect, or Law-day is not incident  
 to every Mannor, but to those  
 onely

only which by special grant, or long prescription, have such liberty. This was, as it may appear, first a special trust and confidence and Commission given to a few put in trust by the Prince, as is now to the Justices of peace, to see men sworn to the Prince, to take Pledges and Sureties in that manner of one for another to answer for obedience and truth, to enquire of privie Conspiracies, Frayes, Murders, and Bloudshed, and to this was added the over-sight of Bread and Ale, and other Measures. Many times they that be out of the homage and Court Baron of that Mannor and Lordship, be neverthelesse restrained and answerable to come to the Lect. This Lect is ordinarily kept butt twice in the yeere, and that at termes and times prescribed.

The Lect and Law-day is all one, & betokeneth word for word, *Legitimum*, or *juridicum diem*. Law the old Saxons called *Lant* or *lag*, or so by corruption and changing

ing of Language from *Lant* to *Leet*, understanding day, they which keep our full English terme, call it yet Law-yad.

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## CHAP. XXII.

*Of the proceedings of Causes Criminall, and first of the Iustices of the Peace.*

**B**Efore the manner of proceeding in causes Criminall can be well understood, it will be necessary to speake of three persons, the Iustices of Peace, the Coroners and Constables. The Iustices of Peace be men elected out of the Nobilitie, higher and lower, that is the Dukes, Marquesses, Barons, Knights, Esquires and Gentlemen, and of such as be learned in the Lawes, such, & in such number as the Prince shall thinke meet, and in whom for wisdom and discretion he putteth his trust, inhabitants within the Countie :

ric : saving that some of the high Nobilitie and chiefe Magistrates for honours sake are put in all, or in most of the Commissions of all the Shires of England. These have no time of their rule limited, but by Commission from the Prince, alterable at pleasure.

At the first they were but foure, after eight, now they come commonly to thirty or forty in every Shire, either by increase of riches, learning, or activity in policy and government. So many more being found, which have either will, or power, or both, are not too many to handle the affaires of the Commonwealth in this behalfe. Of these in the same Commission be certaine named, which be called of the *Quorum*, in whom is speciall trust reposed, that where the Commission is given to forty or thirty, and so at the last it commeth to foure or three, it is necessary for the performance of many affaires to have likewise divers of the *Quorum*. The words of Com-

Commission be such. *Quorum vos  
A B C D. E F. unum esse volumus.*

The Iustices of the Peace be those in whom at this time for repressing of Robbers, cheeves & Vagabonds, of privy complots and conspiracies, of Riots, and violences, and all other misdemeanours in the Common-wealth, the Prince putteth his speciall trust. Each of them hath authoritie vpon complaint to him of any Theft, Robbery, Man-slaughter, Murder, Violence, Complots, Riots, unlawfull Games, or any such disturbance of peace and quiet of the Realme, to commit the persons whom he supposeth offenders, to prison, and to charge the Constable or Sheriffe to bring them thither, the Goaler to receive them, & keep them till hee and his fellowes doe meete. A few lines signed with his hand is enough for that purpose: these doe meete foure times in the yeate, that is in each quarter once, to enquire of all the misdemeanours aforesaid: at which dayes the Sheriffe

riffe or his under-Sheriffe with his  
 Bailiffs, be there to attend upon him;  
 who must prepare against that time  
 foure enquests, & foure and twenty  
 Yeomen a piece, of diuers hundreds  
 in the shire, & besides one which is  
 called the great Enquest out of the  
 body of the Shire mingled with all.  
 These five Enquests are sworne be-  
 fore them to enquire of all Heretiks,  
 Traytors, Thefts, Murthers, Man-  
 slaughters, Rapes, false Moniers, ex-  
 tortioners, Riots, Routs, forcible En-  
 tries, unlawfull Games, and all such  
 things as be contrary to the Peace &  
 good order of the Realm, & to bring  
 in their verdict. If they among them-  
 selves upon their owne knowledge  
 doe find any culpable, they cause  
 one of the Clerks to make the Bill.  
 And if any be there to complaine  
 upon any man for these faults, he  
 putteth in his Bill, which Bill is pre-  
 sented first to the Iustices sitting up-  
 on the Bench, to see if it be concei-  
 ved in forme of law, which done the  
 complainant doth deliver it to one  
 of

This is not  
 alwayes and  
 in all places  
 obserued but  
 onely con-  
 cerning the  
 graund En-  
 quest.

of these Enquests, and after the complaint is sworne, he declareth to them what he can, for the prooffe of it. And if they find it true, they doe nothing but write on the backside of it, *bona vera*, as ye would say, *scriptum verum*, or *accusatio iusta*, or *reus est qui accusatur*: Then he who is there named is called indicted. The manner of the Bill is such, *Inquiratur pro Domino Rege*.

If they do not find it true, they write on the backside *Ignoramus*, and so deliver it to the Iustices, of whom it is rent in pieces immediately: he that is indicted is accounted a lawfull prisoner, and after that time looked more straisly unto. For this indictment is no conviction: and if he be indicted, and be not already in prison, the Sheriffe if he can find him, bringeth him into prison: if he cannot find him, processe is made out against him, to render himselfe prisoner, or else he shall be out-lawed. So he is called threentimes in divers countie



the dayes to render himfelfe to the Law. The fourth is called the Exigent, by which he is outlawed not rendering himfelfe, as ye would fay: *exactus* or *actus in exilium*. The Out-law loofeth all his goods to the King for his difobedience. But if after he will render himfelfe to answer to the Law, and shew fome reasonable cause of his absence, many times of grace his out-lawry is pardoned. These meetings of the Iustices of Peace foure times in the yeare, be called quarter Sessions, or Sessions of enquiry, because that nothing is there determined touching the Malefactors, but only the custody of them: and this kind of proceeding which is by inquisition of the twelve men within themselves, and their owne consciences, or by denunciation of him that putteth in his Bill to the twelve, is called at the Kings suit, and the King is reckoned the one party, and the prisoner the other. The Iustices of the Peace do meet also at other times  
by

by commandement of the Prince upon suspicion of warre, to take order for the safety of the Shire, sometimes, to take musters of Harnesse and able men, and sometimes to take order for the excessive wages of servants and labourers, for excesse of apparell, for unlawfull Games, for Conuenticles and euill order in Alehouses and Tavernes, for punishment of idle and Vagabond persons, and generally as I haue said for the good government of the Shire, the Prince putteth his confidence in them. And commonly every yeare, or each second yeare in the beginning of Sumner or afterwards, (for in the warme time the people for the most part be more unruly) even in the calme time of Peace, the Prince with his Councell chooseth out certaine Articles out of penall Lawes already made for to repressse the pride and euill rule of the popular, and sendeth them downe to the Iustices, willing them to looke upon these points, and after they have

met

met together, and consulted among themselves, how to order that matter most wisely and circumspectly, whereby the people might be kept in good order and obedience as for the Law, they divide themselves by three or foure: and so each in his Quartertaketh order for the execution of the said Articles,

And then within certaine space they meet againe and certifie the Prince or his Privy Councell, how they doe find the Shire in rule and order touching those points, and all other disorders. There was never in any Common-wealth devised a more wise, a more duke and gentle, nor a more certaine way to rule the people, whereby they are kept alwayes as it were in a bridle of good order, and sooner looked unto that they should not offend then punished when they have offended. For seeing the chiefe amongst them, their Rulers have this speciall charge, and do call upon it, and if occasion so do present, one or two presently are either

ther punished, or sent to prison for disobedience to those old Orders and Lawes, they take a feare within themselves, they amend, and do promise more amendment. So that it is as a new furbishing of the good Lawes of the Realm, and a continuall repressing of Disorders, which do naturally rest among men.

But as the invention of this, and the use and execution thereof is the most benefit that can be devised for the Common-wealth of England: so when it shall be misused, dissembled with, or be condemned, and be done *proformatantum*, and as they terme it in France, *Par mainere d'acquit* only, it will be the present ruine (though not at the first perceived) of the Common-wealth. Of which the fault may be as well in the Commanders for not making good choice, what, and how they command, as in the commanded, for not executing that which is commanded.

CHAP.

## CHAP. XXIII.

*Of Hue and Cry, and recognisance  
taken upon them that may give e-  
vidence.*

**B**Y the old Law of England, if any theft or robbery be done, if he that is robbed, or he that seeth or perceiveth that any man is robbed, do levie Hue and Cry, that is to say, do cry and call for ayd, and say that a theft or Robbery is done contrary to the Princes peace and assurance: the Constable of the Village to whom hee doth come, and so make that cry, ought to raise the Parish to ayde him, and seeke the thiefe, and if the thiefe be not found in that Parish, to goe to the next, and raise that Constable, and so still by Constables and them of the Parish one after another. This Hue and Cry from Parish to Parish is carried till the thiefe or robber be found.

That

That Parish which doth not his dutie, but lets by their negligence the thiefe to depart, doth not only pay a fine to the King, but must repay to the party robbed his dammages. So that every English man is a Sergeant to take the thiefe, and who sheweth himselfe negligent therein, do not only incurre evill opinion therefore, but hardly shall escape punishment: what is done with the thiefe or robber when he is taken, I shall shew you hereafter. The same manner is followed if any man be slaine, for straight the murder is pursued of every man till he be taken. So soone as any is brought to the Iustices of Peac. by this Husbandry, by the Constable, or any other who doth pursue the malefactor, he doth examine the malefactor, and writeth the examination, and his confession: then he doth bind the party that is robbed, or him that sueth, and the Constable and so many as can give evidence against the malefactor, to be at the

next

next Sessions of Goale delivery, to give their evidence for the King. He bindeth them in Recognisance of ten pound, twenty pound, thirtypound, forty, or an hundred pound, according to his discretion, and the quality of the crime, which certified under his hand, is levied upon the Recognisance, if they faile of being there.

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## CHAP. XXIV.

### *Of the Coroner.*

**B**Ut if any Man, Woman, or child, be violently slaine, the murderer not knowne, no man ought or dare bury the body before the Coroner hath seene it. The Coroner is choosen by the Prince of the meaner sort of Gentlemen, and for the most part a man seene in the Lawes of the Realme, to execute that office. And if the person slaine (slaine I call here, whosoever he be,

Man,

Man, Woman, or child, that violently commeth to his death, whether it be by knife, poyson, cord, drowning, burning, suffocation, or otherwise, be it by his owne fault, or default, or by any other) if (I say) the person slaine be buried before the Coroner doe come. (which for the most part men dare not do) he doth cause the body to be taken up againe, and to be searched, and upon the sight of the body so violently come to his death, he doth empannell an Enquest of twelve men or more, of those which come next by, be they strangers or inhabitants, which upon their othes, and by the sight or view of the body, and by such informations as they can take, must search how the person slaine came to his death, and by whom as the doctor causeth of. These are not enclosed into a strait place, (as I told before of other Enquests) but are suffered to goe at large, and take a day, sometime after twenty or thirty dayes,  
more



more or lesse, as the fact is more evident, or more kept close, to give their evidence at which day they must appeare there againe before the sayd Coroner to give their verdict. So sometime the person to have slaine himselfe, sometime the brother, the husband, the wife, the sister, some of acquaintance or stranger, such as God will have revealed, be taken. For whosoever they doe find as guiltie of the murder, he is straight committed to prison, and this is against him in the nature of an indictment, which is not a full condemnation; as ye shall see hereafter.

The empanelling of this Banquet, and the view of the body, and the giving of the Verdict, is commonly in the street in an open place, and in *Corona Populi*: but I take rather that this name cometh because that the death of every subject by violence is accounted to touch the Crowne of the Prince, and to be a detriment unto it; the Prince

accounting that his strength, and power, and Crowne doth stand and consist in the force of his people, and the maintenance of them in security and peace.

CHAP. XXV.

*Of the Constables*

**T**Hese men are called in the elder books of our lawes of the Realm *Custodes pacis*: and were at the first in greater reputation than they be now. It may appeare there was a credit given unto them, not altogether unlike to that which is now given to the Iustices of peace. To this day if any affray chance to be made, the Constables ought and will charge them that be at debate, to keepe to the Princes peace, and whosoever refuseth to obey the Constabletherin, all the people will set straight upon him, and by force make him to render himselfe to be orde-

ordered. Likewise if any be suspected of theft, or receiving, or of murder, or of man-slaughter, the Constable may take such persons, yea enter into any mans house with sufficient power, to search for such men till he find them: and if he see cause, keepeth the suspected persons in the stocks, or custody, till he bring them before a Justice of the Peace to be examined. But for so much as every little Village hath commonly two Constables; and many times Artificers, Labourers, and men of small ability be chosen unto that office, who have no great experience, nor knowledge, nor authority: the Constables at this present (although this they may doe upon their owne authority) yet they seeme rather to be as if they were the executors of the commandement of the Justice of Peace. For the Justice of Peace as soone as he understandeth by complaint that any man hath stolen, Robbed, slaine; or any servant, or labourer without licence, hath de-

One or two  
Constables  
Headbo-  
rowes or Te-  
chingmen.

parted out of his Masters service, or any that liveth idle and suspectedly, knowing once in what Parish he is, he writeth to the Constable of the Parish, commanding him in the Princes name, to bring that man before him: The Constable dareth not disobey. The man is brought and examined by the Justice, and if the Justice doe finde cause, he committeth him to the same Constable to convey him further to the Princes Goale, where the party must lye, till the Justices of Peace do meete either at their quarter Sessions, or at their Goale delivery, and that the law hath either condemned or acquitted him. These Constables are called in some places Headboroughes, in some places Tithingmen, and be like to them who are called *Centuls* in many Townes and Villages in *France*. The Constables are commonly made and sworn at the Lects of the Lords, chosen there to be by homage, and they keepe that office sometime two, three, or

four

four yeares, more or lesse, as the Parish doth agree. What Headborough doth beoken, it is easily knowne, our language doth declare him as the head or chiefe of the Borough or Village: likewise Tithing man is the chiefe of the tithing. Constable seemeth to come of our old English word *Kinning*, which is *Kinningstabl*, as ye would say, a man established by the King, for such things, as appertaine to pleas of the Crowne, and conservation of the Kings peace, and as I sayd at the first, were in some more reputation, approaching to that authority, which the Justice of peace now do hold.

*Kinningstabl* is *Regis virgula*, the Kings rod or wand, signifying the Kings power or authority, a representation whereof is the use of maces & white staves by officers in the Common wealth.

## CHAP. XXVI.

*Of the Sessions of Goale delivery, and the definitive proceedings in causes criminall.*

**H**OW theeves and murtherers,  
and other malefactors against  
I 4 the

the Crowne and Peace, are taken and brought into hold to answer to justice, partly by Hue and cry, partly by information, and partly by the diligence of the Iustices of Peace and the Constables: and how at the quarter Sessions they be indicted, or else by the Coroners, yee have heard before. Enditement (as ye may perceiue by that which is also gone before) is but a former judgement of twelve men which be called enquirers, and no definitive sentence, but that which in Latine is called *Prajudicium*, it doth but shew what opinion the countrey hath of the malefactor: and therefore commonly men be indicted absent, not called to it, nor knowing of it. For though a man be indicted, yet if when he come to the arraignment, there be no man to pursue further, nor no euidence of witnessse or other tryall and *Indices* against him, he is without difficulty acquitted. No man that is once indicted can be delivered without arraignment:

ment:

ment: For as twelve have given a prejudice against him, so twelve againe must acquit or condemne him. But if the prisoner be not indicted, but sent to prison upon some suspicious behaviour, and none doe pursue him to the judgement, first being proclaimed thus, A. B. prisoner standeth here at the barre, if any man can say any thing against him, let him now speak, for the prisoner standeth at his deliverance: If no man doe then come, he is delivered without any further processe or trouble, agreeing first with the Gayler for his fees. And these be called acquitted by proclamation. Twice in every yeare, the one is commonly in Lent what time there is vacation from pleading in Westminster Hall, the other is in the vacation in Summer, the Prince doth send down into every Shire of England certaine of his Iudges of Westminster Hall, and some Sergeants at the Law with commission to heare and determine jointly with the Iu-

stices of the Peace, all matters Criminal, and all prisoners which be in the goales. These Judges doe goe from shire to shire till they have done their circuit of so many shires as be appointed to them for that yeare: at the end of the terme going before their circuit, it is written and set up in Westminster Hall on what day and in what place they will be. That day there meeteth all the Iustices of the peace of that Shire, the Sheriffe of that Shire, who for that time beareth their charges, and after a kech allowance for it in the Exchequer.

The Sheriffe hath ready for criminal causes (as I writ before at the Sessions of inquirie) foure, five, or six Enquests ready warned to appeare that day to serue the Prince, and so many more as hee is commanded to haue ready to goe in ciuill matters betwixt private men, which they call *miss prima*, because that word is in the writ.

In the Towne-house, or in some  
open



open or common place, there is a tribunall or a place of judgement, made aloft upon the highest bench, there sit the Iudges, which be sent down in commission, in the midst. Next them on each side sit the Iustices of peace, according to their degree. On a lower bench before them, the rest of the Iustices of Peace, and some other Gentlemen, or their Clerks. Before these Iudges and Iustices there is a Table set betwixt them, at which sitteth the *Caster*, *Rotularius*, or keeper of Waits, *Treasurer*, the under-Sheriffe, and such Clerks as doe write. At the end of that Table there is a Barre made with a space for the Enquestes, and twelve men to come in when they are called, behind that space another Barre, and there stand the prisoners which be brought thither by the *Gayler*, all chayned one to another. Then the *Cryer* cryeth, and commandeth silence. One of the Iudges briefly telleth the cause of their coming;

and

and giueth a good lesson vnto the people. Then the prisoners are called for by name and bidden to answer to their names. And when the *Cassus Rotularius* hath brought forth their indictments, the Iudges do name one or two, or three of the prisoners that are indicted, whom they will haue arraigned. There the Clarke speaketh, first to one of the prisoners: A.B. come to the Barre, hold up thy hand. Then the Clarke goeth on: A.B. thou by the name of A.B. of such a Towne, in such a Country art indicted, that such a day, in such a place, thou hast stolne with force & armes an horse, which was such ones, of such colour, with such a valour, and carried him a way feloniously, and contrary to the peace of our Sovereigne Lord the King. What sayest thou to it, art thou guilty or not guilty? If he will not answer, or not answer directly guilty, or not guilty, after he hath bene once or twice so interrogated, he is judged mute, that

that is, dumbe by contumacie, and his condemnation is to be pressed to death, which is one of the cruelliest deaths that may be: he is laid upon a Table, and another upon him, and so much waight of stones or lead laid upon that table, while as his body be crushed, and his life by that violence taken from him. This death some strong and stout hearted man doth choose: for being not condemned for felony, his blood is not corrupted, his lands nor goods confiscate to the Prince, which in all cases of felony are commonly lost from him and his heires, if he be fore-judged, that is, condemned for a felon by the law. If he confesse the inditement to be true, then when he is arraigned, no twelve men goe upon him: there resteth but the Judges sentence of the paine of death.

If he plead not guilty, as commonly all thieves, robbers, and murderers doe, though they have confessed the fact before the Justice  
of

of the Peere that examined them, though they be taken with the manner, which in Latine they call *in flagrante crimine*, howsoever it be, if hee plead there not guiltie, the Clarke asketh him how he will be tried, and telleth him he must say, by God and the Country, for these be the words formall of his tryall after inditement, and where the Prince is party. If the prisoner say so, I will be tried by God and the Country, then the Clarke replieth. Thou hast bene indicted of such a crime, &c. Thou hast pleaded not guiltie, being asked how thou wilt be tried, thou hast answered by God and by the Countrie. Loe these honest men that be come here, be in the place & stead of the Country: and if thou hast any thing to say to any of them, looke vpon them well and now speake, for thou standest vpon thy life and death. Then calleth he in the first juror. &c. come to the Booke, and so he giueth him an oath to go uprightly betwixt the Prince

Prince and the prisoner, &c. If the prisoner objecteth nothing against him, he calleth another, and so another, till there be twelue or about: and for the most part, the prisoner can say nothing against them, for they are chosen but for that day, and are vnknowne to him, nor they know not him, as I said, being substantiall Yeomen that dwell about the place, or at least in the Hundred, or neere where the felonie is supposed to be committed, men acquainted with daily labour and trauell, and not with such idle persons as be ready to do such mischiefes.

When the Enquest is full, and the prisoner hath objected nothing against them, as indeed seldome he doth, for the cause aboue rehearsed: The Clark saith to the Crier, *Connets*; (in French as ye would say reckon) and so nameth all those that be on the Quest. The Cryer at euery name crieth aloud, one, then two, three, foure, and so till the number be full of twelue or more, and then saith

faith good men and true: and then  
 faith aloud: If any can giue evi-  
 dence, or can say any thing against  
 the prisoner, let him come now, for  
 he standeth vpon his deliuerance.  
 If no man come in, then the Iudge  
 asketh who sent him to prison, who  
 is commonly one of the Iustices of  
 Peace: he (if he be there) deliuereth  
 vp the examination which he tooke  
 of him, and vnderneath the names of  
 those whom he hath bound to giue  
 euidence: although the Malefactor  
 hath confessed the crime to the Iu-  
 stice of the peace, and that it appeare  
 by his hand and confirmation, the  
 twelue men will acquit the prisoner,  
 but they which should giue euidence  
 pay their Recognizance. Howbeit  
 this doth seldome chance, except it  
 be in small matters, and where the  
 Iustice of Peace who sent the pris-  
 oner to the Gayle is away. If they  
 which be bound to giue euidence  
 come in, first is read the examinati-  
 on, which the Iustice of peace doth  
 giue in, then is heard (if he be there)

the

the man robbed what he can say, being first sworne to say the truth, and after the Constable, and as many as were at the apprehension of the Malefactor: and so many as can say any thing being sworne one after another to say the truth. These be set in such a place as they may see the Iudges and the Iustices, the Enquest and the prisoner, and heare them, and be heard of them all. The Iudge after they be sworne, asketh first the partie robbed, if he knowe the prisoner, and biddeth him looke vpon him: he saith yea; the prisoner sometime saith, nay. The party Pursuiuant giueth good ensignes, *verba gratia*, I know thee well enough, thou robbedst mee in such a place, thou beatedst me, thou tookest my horse from me, and my purse, thou hadst then such a coate, and such a man in thy company: The thiefe will say no, and so they stand a while in altercation, then he telleth all that he can say: after him likewise all those who were at the apprehension  
of

of the prisoner, or who can give any *indices* or tokens, which we call in our language evidence against the malefactor. When the Iudge hath heard them say enough, he asketh if they can say any more: If they say no, then he turneth his speech to the Enquest, Good men (saith he) ye of the Enquest, yee haue heard what these men say against the prisoner, you haue also heard what the prisoner can say for himselfe, haue an eye to your oath, and to your duty, and do that which God shall put in your mindes to the discharge of your consciences, and marke well what is said. Thus sometime with one Enquest is passed to the number of two or three prisoners: For if they should be charged with more, the Enquest will say, my Lord, wee pray you charge vs with no more, it is enough for our memory. Many times they are charged but with one or two. At their departing, they haue in writing nothing giuen them but the indictment, the Clarke repeating to  
 them



them the effect of it, and shewing more, that if they find him guilty, they shall inquire what goods, lands and tenements the said person had at the time of the felony committed: and if they find any, they shall bring it in: if none, they shall say so. If they find him not guilty, they shall enquire whether he fled for the felony or no.

And there is a Bailiffe to wait vpon them, and to see that no man doe speak with them, and that they haue neither bread, drinke, wine, nor fire brought to them, but that they remaine in a chamber together till they agree. If they be in doubt of any thing that is said, or would heere againe looke of them that gaue euidence, to interrogate them more at full, or if any that can giue euidence come late, it is permitted that any that is sworn to say the truth may bee interrogated of them to informe their consciences. This is to be understood, although it will seeme strange to all nations, that doe use the Ciuill Law

Law of the Romane Emperors, that for life and death there is nothing put in writing but the indictment only. All the rest is done openly in the presence of the Judges, the Iurices, the Enquest, the prisoner, and so many as will or can come so neere as to heare it, and all depositions and Witnesses given aloud, that all men may heare from the mouth of the depositee and Witnesses what is said. As of this, so is it of all other prisoners after the same sort. By that time that the Enquest for the prisoners be dispatched, it is commonly dinner time, the Judges and Iurices goe to dinner, and after dinner doe resort to the same place: if the Enquest be not ready for the prisoners, they goe to some other Enquest of *Nisi prius*, which be civill masters and private, to drive out the times. The Enquest haue no sooner agreed upon their charge one way or another, but they call the Bayliffe, and pray to be heard, and considering that they be by themselves, all this while

as

as prisoners, as I said before, it is no marvaile though they make expedition. The prisoners be sent for againe to the Barre, the Enquest which hath agreed, is called for, each one of the Jury by his name to which he answereth. Then the Clarke asketh if they be agreed: and who shall speake for them: one or more saith yea; he that speaketh for them all is called the fore-man, and commonly it is he that is first sworne: then the prisoner is bidden to hold vp his hand. The Clarke saith vnto him: Thou art indicted by the name of *A.* of such a place, &c. being therefore arraigned thou pleadest thereto not guilty, being asked how thou wouldst bee tried, thou saidst, *By God and thy Countrey*: These honest men were given to thee by God and thy Prince for thy Country: Harken what they say. Then hee asketh of the Enquest; what say you? Is he guiltie or not guiltie? The fore-man maketh answer in one word, guilty; or in two; not

Country, they have found thee  
 guiltie, thou hast nothing to say  
 forthy telfe, Law is, thou shalt  
 returne to the place from whence  
 thou camest, from thence thou  
 shalt goe to the place of execution,  
 there thou shalt hang till thou bee  
 dead. Then he saith to the She-  
 riffe, Sheriffe doe execution: he  
 that claimeth his Clergie, is bur-  
 ned forthwith in the presence of  
 the Iudges, in the brawne of his  
 hand with a hot iron, marked  
 with the letter T. for a Thiefe,  
 or M. for a Murr-ayer, in ca-  
 ses whete Clergie is admitted, and  
 is deliuered to the Bishops Officer  
 to be kept in the Bishops prison,  
 from whence after a certaine time  
 by another Enquest of Clarke he  
 is deliuered and set at large: but if  
 he be taken and condemned the se-  
 cond time, and his marke espied, he  
 goeth to hanging. He whom the  
 Enquest pronounceth not guiltie,  
 is acquitted forthwith, and dischar-  
 ged of prison, paying the Gaolers  
 fees,

fees, and if he know any private man who purchased his indictment, and is able to pursue it, he may have an action of Conspiracie against him, and a large amends: but that case chance hfeldome.

## CHAP. XXVII.

*Certain orders peculiar to England, touching punishments of Malefactours.*

**F**OR any Felony, Man-slaughter, Robbery, Murther, Rape, and such Capitall Crimes as touch not Treason and *lesam Majestatem*, we haue by the Law of England no other punishment but to hang till they be dead: when they be dead, every man may burie them that will, as commonly they be: Heading, tormenting, dismem'oring either arme or legge, breaking vpon the wheele, empailing, and such cruell torments, as be vsed in other na-  
K
tions

tions by the order of the Law, we have not: and yet as few murders committed as any where: nor it is not in the Iudges power to aggravate or mittigate the punishment of the Law, but in the Prince onely, and his privy Councell, which is maruellous seldome done. Yet notable murderers many times by the Princes commandement after they be hanged with cord till they bee dead, be hanged with chaines while they rot in the ayre.

If the Wife kill her Husband, she shall be burned aliue. If the seruant kill the Master, he shall be drawne on a hurdle to the place of execution: it is called *petit treason*. Impoisoners, if the person die thereof, by a new Law made in King *Henrie* the Eighthtyme, shall be boiled to death: but this mischiefe is rare, and almost vnknowne in England. Attempting to imposit on a man, or laying a waite to kill a man, though hee wound him dangerously, yet if death follow not, it is no felony by the

the Law of England, for the Prince hath lost no man, and life ought to be giuen we say for life only.

And againe, when a man is murdered, all bee principalls and shall die, euen he that doth but hold the candle to giue light to the Murthers. For mitigation and moderation of paines, is but corruption of Judges, as wee thinke. Likewise torment or question, which is vsed by the order of the Ciuill Law, and custome of other Countries, to put a Malefactor to excessiue paine, to make him confesse of himselfe, or of his fellowes, or complices, it is not vsed in England, it is taken for seruile. For how can he serue the Common-wealth as a free man who hath his bodie so haled or tormented, if he bee not found guiltie, and what amends can bee made him? And if hee must die, what crueltie is it so to torment him before? Likewise, confession by torment is esteemed for nothing, for if he confesse at the judgement, the tri-

all of the twelve goeth not vpon him: if he denie the fact, that which hee said before hindereth him not. The nature of Englishmen is to neglect death, to abide no torment: And therefore hee will confesse rather to haue done any thing, yea to haue killed his owne father, than to suffer torment: for death our Nation doth not so much esteeme as a meere torment. In no place shall you see malefactors goe more constantly, more assuredly, and with lesse lamentation to their death than in England.

Againe, the people not accustomed to see such cruell torments will pittie the person tormented, and abhorre the Prince and the Iudges, who should bring in such crueltie amongst them, and the twelve men the rather absolue him. There is an old Law of England, that if any Iayler shall put any prisoner being in his custody to any torment, to the intent to make him an approuer, that is to say, an accuser, or *Index* of his complices, the Iayler shall



shall die therefore as a Fellow. And to say the truth, to what purpose is it to vse torment? For whether the malefactor confesse or no, & what-  
 focuer hee saith, if the Enquest of  
 twelue doe find him guiltie, he dieth  
 therefore without delay. And the  
 malefactor seeing there is no reme-  
 die and that they bee his Countri-  
 men, and such as hee hath himselfe  
 agreed vnto, if they doe find him  
 worthy death, yeelds for the most  
 part vnto it, and doth not repine, but  
 doth accommodate himselfe to aske  
 mercy of God.

The nature of our Nation is free,  
 stout-hault, prodigall of life and  
 bloud: but contumely, beating,  
 seruitude, and seruile torment, and  
 punishment, it will not abide. So  
 in this nature and fashion, our an-  
 cient Princes, and *Legislators* haue  
 nourished them as to make them  
 stout-hearted, couragious, and  
 Souldiers, not Villaines and slaues,  
 and that is the scope almost of all  
 our policie.

The twelve as soone as they have giventheir Verdict are dismissed to goe whither they will, and have no manner of commoditie and profit of their labour, and Verdict, but on-ly doe seruice to the Prince and Common-wealth.

## CHAP. XXVIII.

*Of Treason, and the tryall which is used for the higher Nobilitie and Barons.*

**T**He same order touching tryall by Enquest of twelue men is taken in treason, but the paine is more cruell. First, to be hanged, taken downe a line, his bowels taken out, and burned before his face, then to be beheaded, and quartered, and those set up in diuers places. If any Duke, Marquesse, or any other of the degrees of a Baron, or aboue Lord of the Parliament be appeached of treason, or any other Capital crime,

Crime, he is judged by Peeres and equals: that is, the Yeomanrie doth not go vpon him, but an Enquest of the Lords of the Parliament, and they giue their voice, not one for all but each seuerally as they doe in Parliament, beginning at the youngest Lord. And for Iudge one Lord sitteth, who is Constable of England for that day. The judgement once giuen, he breaketh his staffe, and abdicateth his office. In the rest there is no difference from that aboue written.

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# THE THIRD BOOKE.

## CHAP. I.

*Of that which in other Countries is called Appellation, or Pronocation, to amend the judgement of sentence definitive, which is thought unjustly given in causes criminall.*

**I**F the Enquest of twelve men doe seeme to the Iudges and the Iustices to haue gone too violently against the euidence given in matters criminall, either it is, that upon slender euidence they haue pronounced him guiltie, whom the Iudges and most part of the Iustices think by the euidence not fully pro-

ued guiltie, or for some other cause, do thinke the person rather worthy to liue than to die, The enquest is neuerthelesse dismissed: but when the Iudges should pronounce the sentence of death upon the person found guiltie, hee will deferre it, which is called to repriue the prisoner, (that is to say, to send him againe to prison) and so declare the matter to the Prince, and obtaineth after a time for the prisoner his pardon: and as for prouocation or appeale, which is vsed so much in other Countries, it hath no place in England after sentence given by the twelue, whereby the person is found guiltie or not guiltie: but, without that repriuing, the sentence is straight put in execution, by the Sheriffe. And if they escape, or die another death, the Sheriffe escapeth not to pay a great fine and ransom at the Princes mercy: if hauing pregnant euidence, neuerthelesse, the twelue doe acquit the malefactor, which they will do sometime, & especially if

if they perceiue either one of the Iu-  
 stices or of the Iudges, or some other  
 man to pursue too much, and too  
 maliciously the death of the priso-  
 ner, and do suspect some subornation  
 of the witnesse, or of them which do  
 giue euidence, and sometime if they  
 perceiue the Iudge would haue the  
 prisoner escape, and in repeating the  
 euidence doe giue them thereof some  
 watch-word. But if they doe (as I  
 haue said) pronounce not guilty up-  
 on the prisoner, against whom ma-  
 nifest witnesse is brought in, the pri-  
 soner escapeth: but the twelue not  
 only rebuked by the Iudges, but al-  
 so threatned of punishment, and ma-  
 ny times commanded to appeare in  
 the Starre-chamber, or before the  
 priuie Councell for the matter. But  
 this threatening chanceth oftner then  
 the execution therof, and the twelue  
 answer with most gentle words,  
 they did it according to their con-  
 sciences, and pray the Iudges to bee  
 good unto them they did as they  
 thought right and as they accorded  
 all,

all, and so it passeth away for the most part. Yet I haue seene in my time (but not in the raigne of the King now) that an enquest for pronouncing one guilty of treason contrary to such euidence as was brought in, were not only imprisoned for a space, but a huge fine set upon their heads, which they were faine to pay: Another enquest for acquitting another, beside paying a fine money, put to open ignominie and shame. But those doings were even then of many accounted very violent, tyrannicall, and contrary to the liberty and custome of the Realme of England. Wherefore it commeth very seldome in vse: yet so much at a time the enquest may be corrupted, that the Prince may haue cause with Iustice to punish them: For they are men, and subject to corruption and partiality, as others be.

CHAP.



## CHAP. II.

*What remedie is, if sentence bee  
thought uniuersally giuen.*

**I**N causes civill there is another order: for if the manner be pleaded to the issue, and the twelue men thereupon impanelled, the evidence brought and pleaded before them on both parties, the twelue seeme to be partiall, and to haue giuen sentence contrary to the evidence shewed unto them, the party griued may bring against them, and the partie for whom the sentence is giuen, a writ of attain: and whereas before vpon the first quest commonly they shall be Yeomen, now vpon this attain must goe foure and twentie Gentlemen dwelling within the shire, and twelue at the least of the hundreth where the land lieth. The matter is pleaded againe before the same Iudges. The party defendan: is not only now he who claimeth the land, but also all and euery of the  
Yeo-

Yeomen, who by their Verdict did giue it him.

There must in the attainr no more evidence be brought in, but on-ly that which was brought in and alledged before the first Enquest. And if this second enquest of foure and twenty Gentlemen do adudge as the first did, the Plaintiffe shall not only lose the land, but also pay a fine to the Prince, and damages to the party. If this second enquest do find that the first enquest haue gone partially, and against the euidence brought in before them, the first enquest is called attained, & accounted as periured and infamed. The Prince had before, the waste of all lands and possessions with other punishments, which at this present by a law made by Parliament in the time of King *Henry* the eight is abolished and now by that law or act of Parliament, beside other punishment, each of the quest attained payeth unto the Prince and partie, five pound, if it bee vnder fortie pounds :

pounds : and if above, then twentie pounds. Attaints be very seldome put in v're, partly because the gentlemen will not meete to slander and deface the honest Yeomen their neighbours : so that at a long time, they had rather pay a meane fine then to appeare and make the Enquest. And in the meane time they will intreate so much as in them lyeth the parties to cometo some composition & agreement among themselves as lightly they do, except either the corruption of the enquest be too euident, or the one partie is too obstinate and headstrong. And if the Gentlemen do appeare, gladlier they will confirme the first sentence, for the causes which I haue said, then goe against it. But if the corruption bee too much euident, they will not sticke to attaint the first enquest : yet after the Gentlemen haue attainted the Yeomen, before the sentence bee giuen by the Iudge (which ordinarily for a time is deferred) the parties be agreed, or

one

one of them bee dead, the attaint ceaseth.

If any time before the sentence be giuen or put in execution, there bee found some such error in the writ, in the proceſſe or forme (as our lawyers be very precise and curious of their formes) that it may be reuokable, it is brought a fresh to the diſputation by a writ of error, and all that is done, reuerſed: but that is common to all other Countries, where the ciuill law is vſed, which they call *de nullitate proceſſus*, and ſerueth both in England and in other places as well in cauſes criminal, as ciuill. Other kind of Appellation to reuoke proceſſes, and to make them of ſhort, long; of long infinite; which is vſed by the ciuill law: we haue not in our common law of England. By ſupplication to the Prince, and complaint to the Chancellour vpon ſuppoſall of loſſe, or lack of the euidence, or too much fauour in the Countrey, & power of the aduerſary, there is in our countrey

trey, as well as theirs both stopping  
 and prolonging of Iustice. For what  
 will not busie-heads and louers of  
 trouble neuer being satisfied, inuent  
 in any Countrey to haue their de-  
 sire, which is to vex their neigh-  
 bors, and to liue alwaies in disquiet?  
 Men euen permitted of God, like  
 flies, and lice, and other vermin, to  
 disquiet them who would employ  
 themselves vpon better busines and  
 more necessary for the Common-  
 wealth. These men are hated, and  
 feared of their neighbors, loued, and  
 aided of them which gaine by pro-  
 cesse, and waxe fat by the expence  
 and trouble of other. But as these  
 men ordinarily spend their owne  
 thrift, and make others against their  
 wils to spend theirs: so sometime  
 being throughly knowne, they doe  
 not onely liue by the losse like euill  
 husbands, but beside rebuke and  
 shame, by the equitie of the Prince  
 and Courts Soueraigne, they come  
 to be extraordinarily punished, both  
 corporally, & by their purse, which  
 thing

thing in my mind is as royall and Princely an act, and so beneficiall to the Commonwealth as in so small a matter a King or Queene can doe, for the repose and good education of their subjects.

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### CHAP. III.

*Of that which in England is called  
appeale, in other places accusation.*

**I**F any man hath killed my father, my sonne, my wife, my brother or next kinsman, I have choice to cause him to be indited, giving information to the enquest of enquiry (although hee chance to escape the Constable or Iustices hands & therefore not to bee apprehended) and thereupon to procure him to be outlawed, or else within a yeare and a day I may enter my appeale, that is mine accusations against him: If I began first to pursue him by information or denunciation to inditement,

ment, I am now no party but the Prince, who for his dutie to God & his Common-wealth and subiects, must see justice executed against all malefactors & offenders against the Peace, which is called Gods and his, and doth in such manner as I have sayd before. If I leaue that and will appeale, which is, profer my accusation against him who hath done to me this iniury, the defendant hath this advantage to put himselfe to the Jury, which is, to that which before is said to haue that issue and triall by God and his Country; whereof the fashion I haue at large declared: or to demand the tryall by battaile, wherein both the parties must either combat in person, or else find other for them, who be called in our law Champions, or Campions, some do interpret them *abartas*, because they be men chosen, fat, lusty, fit for the feate, or as the French doe terme them *Adroits aux armes*: Which fight it out by *μονομαχία*, or as now they do call it *duellum*, or the camp, which

which shall haue all things equall: but according as *Mars* giueth the victory, so the Law is iudged, the one as *peractus reus*, the other as *calumniator*, to suffer the paine of death. So that by the great assize there is no appellation but death or life to the defendant, but this is more dangerous and equall, for the one or the other must die.

So is it not in the grand assize, for the *reus* or defendant is only in danger of death. Short it is, from day to Sunne set, the quarrell is ended, or sooner, who hath the better fortune. That seemeth very military (as in maner all our policy of England is) & to haue as small to do with Lawyers, as with Physitians, quickly to dispatch, and for the rest to returne, each man to his busines to serue the Common-wealth in his vocation. The Popes of Rome, and men of the Church, who of long time haue had dominion in our consciences, and would bring things to a more moderation, haue much detested this kinde



kinde of triall and iudgement, as reason is euery man misliketh that which is not like to his education, and cold reasoning by Theology & Philosophy: they (I say) much mislike many things done necessarily in hot policy.

At the least a Common-wealth military must adventure many things to keepe it in quiet, which cannot seeme so precisely good to them which dispute thereof in the shadow and in their studies. Howsoeuer it be, this kind of tryall a long time hath bin vsed. So that at this time we may rather seeke the experiences of it out of our Histories of time passed, then of any view or sight therof, of them which are now aliue. Neue the'esse the Law remaineth still, and is not abolished, and if it shall chance the murtherer or man-slayer (the one wee call him that lying in waite, & as they terme it in French, *de quit appendant*, killeth a man; the other by casuall falling out and sodaine debate and

choler

choler doth. the same which way soever it bee done) if hee that hath slaine the man hath his pardon of the Prince as occasion or the fauour of the Prince may so present that hee may haue it, yet the partie griued hath these two remedies, I say to require justice by grand assize or battle upon his appeale and priuate reuenge, which is not denied him. And if the defendant either by great assize or battaile bee conuined upon that appeale, he shall die, notwithstanding the Princes pardon. So much fauourable our Princes and the law of our Realme is to iustice and to the punishment of bloud violently shed.

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#### C H A P. IV.

##### *Of the Court of Starre-chamber.*

**T**HERE is yet in England another Court, to the which that I can understād there is not the like in any other

other Country. In the Terme time (the Terme time as I haue heretofore shewed, I call the time & those daies when law is exercised in westminster Hall, which as I haue sayd, is but at certaine times and Termes) euery weeke once at the least (which is commonly on Fridayes, and Wednesdayes, and the next day after that the Terme doth end) the Lord Chancellour, and the Lords, and other of the Priuie Councell, so many as will, and other Lords and Barons which be not of the priuy Councell, and be in the Towne, & the Iudges of England, specially the two chiefe Iudges, from nine of the clocke till it be eleven, do sit in a place which is called the Starre-chamber, either because it is full of windowes, or because at the first all the roose thereof was decked with Images or starres gilded. There is plaints heard of riots. Riot is called in our English terme or speech, where any number is assembled with force to doe any thing: and it had the beginning, because

cause that our men being much accustomed either in forraine wars in France, Scotland or Ireland; or being ouermuch exercised with ciuill wars within the Realme ( which is the fault that falleth ordinarily among bellicious Nations) whereby men of warre, Captaines and Souldiers become plentifull: which when they haue no extreme seruice wherewith to occupie their busie heads and hands accustomed to fight & quarrell, must needs seeke quarrells and contentions amongst themselves, & become so ready to oppresse right among their neighbors, as they were wont before with praise of māhood to be in resisting iniury offered by their enemies. So that our Nation vsed hereunto, and vpon that more insolent at home, and not easie to be gouerned by law and politike order, men of power beginning many fraies, and the stronger by factions and parties offering too much iniuri to the weaker, were occasions of making good lawes. First of retainers,

ners, that no man should haue aboue a number in his Liuey or retinue, then of the enquiry of routs & riots at euery Sessions, and of the law whereby it is prouided that if any by force or by riot enter upon any possessions, the Iustices of the Peace shall assemble themselves & remoue the force, and within certaine time enquire thereof.

And further, because such things are not commonly done by the meane men, but such as be of power and force, & be not to be dealt withall with euery man, nor of meane Gentlemen: if the riot be found and certified to the Kings Councell, or if otherwise it be complained of, the party is sent for, and he must appeare in the Scar-chamber: seeing (except the presence of the King only) as it were the Majestie of the whole Realme before him, being neuer so stout, he will be abashed: and being called to answer (as he must come of what degree soeuer he be) he shall be so charged with such grauitie,  
 with

with such reason, and remonstrance, and of those chiefe personages of England, one after another handling him on that sort, that what courage soeuer he hath, his heart will fall to the ground, and so much the more, when if he make not his answer the better, as seldome he can in so open violence, he shall be commande d to the Fleet, where he shall be kept in prison in such sort as these Iudges shall appoint him, and lie there till he be weary as well of the restraint of his liberty, as of the great expences, which he must there sustaine, & for a time be forgotten, whiles after long suit of his friends, he will bee glad to be ordered by reason. Sometime as his deserts bee, he payeth a great fine to the Prince, besides great costs & dammages to the party, and yet the matter wherfore he attempted this riot and violence, is remitted to the common law. For that is the effect of the Court, to bridle such stout Noblemen, or Gentlemen which would offer wrong by force

to any manner of men, and cannot be content to demand or defend the right by order of the law. This Court began long before, but tooke augmentation and authority at that time that Cardinall *Wolsey* Archbishop of Yorke was Chancellour of England, who of some was thought to haue first devised that Court, because that he after some intermission by negligence of time augmented the authority of it, which was at that time marvellous necessary to do to repress the insolency of the Noblemen and Gentlemen of the North parts of England, who being farre from the King and the seat of justice, made almost as it were an ordinary warre among themselves, and made their force their law, banding themselves with their Tenants, and seruants, to do or reuenge iniury one against another as they listed. This thing seemed not supportable to the Noble Prince *Henry* the eighth and sending for them one after another to his Court, to answer before

the persons before named, after they had had remonstrance shewed them of their euill demeanour, & bin well disciplined, as well by words as by fleeting a while, and thereby their purse and courage somewhat asswaged, they began to range themselves in order, and to understand that they had a Prince who would rule his subjects by his law and obedience. Sith that time this Court hath beene in more estimation, and is continued to this day in manner as I haue said before.

The Iudges of this Court are the Lord Chancellor, the Lord Treasurer, all the Kings Maiesties Council, the Barons of this Land.

The officers therein are a Clarke, three Atturnies, an Examiner.

The Clarke keepeth the records, rules, entries, orders, and decrees, made in this Court.

The three Atturnies are for the plaintiffe, and for the defendant to frame their complaints, and answeres, and make the mat-  
ter



ter apt to be heard for the Lords.

The Examiner taketh the depositions of the witnesses of both sides, to the prooffe or disprooffe of the cause.

The order of proceeding to judgement is by assent of voices, and open yeelding their mind in Court, the maior part being preferred for sentence.

The punishment most vsuall, is imprisonment, pillory, a fine, & many times both fine and imprisonment.

The processe is a *Subpana*, an attachment, a proclamation of rebellion, and a commission of rebellion.

This *Subpana* is in manner of a libell or precept.

The Proclamation and commission of rebellion serueth when the party is stubborne, hauing made contempt, and commeth not in by the former processe.

The Messengers of this Court are the Warden of the Fleet: or the Sergeants at Armes.

The matters belonging most commonly, are by-statutes, as is taking away

way of maids within age against parents or guardians will. See *Anno 4. & 5. Phil. & Maria. cap. 8.* All notable forgeries, counterfeiting letters or privy tokens. See *Hen. Anno 33. cap. 1. An. 5. Eliz. cap. 11.* Slandering of Nobles, and seditious newes See *R. 2. Anno 2. cap. 5. Anno 1. & 2. Phil. & Maria. cap. 2. Anno 2. 3. Eliz. cap. 7.* All notable riots and unlawfull assemblies. See *Anno 1. Eliz. cap. 17.* And all the titles of Riots in *Rastals* Abridgement, all notable deceits, and all kinde of couzenage, &c.

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## C H A P. V.

*Of the Court of Wards and Liveries*

**H**E whom wee call a Ward in England, is called in Latine *pupillus*, and in Greeke *ἄρσενος*. The Guardian is called in Latin *tutor*, in Greek *ἐπίτροπος*. A Ward or infant is taken for a child in base age, whose

whose Father is dead. The Romans made two distinctions, *pupillum*, & *minorem*, the one fourteene yeere old, the other was accounted from thence to five and twenty. And as *pupillus* had *curatorem*, so *minor* had *curatorem*, till he came to the age of five and twenty. These Tutors or Curators were accountable for the reuenues of the Pupils, and Minors Lands; and great prouision, and many Lawes and orders bee made for them in the Bookes of the Ciuill Law, for rendring iust and true accounts. So that to be a Guardian or Tutor was accounted among them to bee a charge or trouble, a thing subject to much incumbrance and small profit, so that diuers meanes were sought for, to excuse men from it. With vs this is cleane contrary, for it is reckoned a profit to haue a Ward. For the Lord of whom the Ward doth hold the land so soone as by the death of the Father the child falleth Ward unto him, he seizeth vpon the body of the

Ward, and his lands, of which (so that he doth nourish the Ward) he taketh the profits without accounts. And besides that, offering to his Ward conuenable marriage without disparagement before the age of one and twenty yeeres if it be a man, of fouretcene if it be a woman. If the Ward refuse to take that marriage, he or she must pay the value of the marriage, which is commonly rated according to the profit of his Lands. All this while I speake of that which is called in French *garde noble*, that is, of such as hold lands of others by Knights seruice, for that is another kind of seruice, which we call in French *gard retourier*, we call it *gard in socage*, that is, of such as do not hold by Knights seruice, but by tenure of the Plough. This Wardship falleth to him who is next of the kin, and cannot inherit the Land of the Ward, as the Vnkle by the Mothers side, if the Land do descend by the Father, & of the Fathers side, if the Land doe descend by the Mother

ther. This Guardian is accountable for the reuenues and profits of the Land, as the Tutor by the Ciuill Law to the Ward or Pupill so soone as he is of full age.

The man is not out of Wardship by our Law till one & twenty yeere old, from thence he is reckoned of full age, as well as in the Romane Lawes at five and twenty.

The woman at fourteene is out of Ward: for she may haue a Husband able to doe the Knights seruice, say our Books. And because our Wives be in the power (as I shal tel you hereafter) of their husbands, it is no reason she should be in two diuers guards.

Many men do esteeme this Wardship by Knights Service very vnreasonable and vniust, and contrary to nature, that a Free-man and Gentleman should be bought and sold like an Horse or an Oxe, and so change Guardians as Masters and Lords: at whose government not only his body but his Lands and his houses should be, to be wasted and spent

without accounts, and then to marry at the will of him, who is his naturall Lord, or his will who hath brought him to such as he likes not peradventure, or else to pay so great a rancome. This is the occasion they say, why many Gentlemen be so e-uill brought vptouching vertue and learning, and but onely in daintinesse & in pleasure: and why they be married very young, and before they be wise, & many times doe not greatly loue their wiuies. For when the Father is dead, who hath the naturall care of his childe, not the Mother, nor the Vncle nor the next of kinne, who by all reason would haue most naturall care for the bringing up of the infant & *Minor*, but the Lord of whom hee holdeth his land in the Knights Service, be it the King or Queene, Duke, Marquesse, or any other, hath the gouernment of his body, and marriage, or else who that bought him at the first, second, or third hand. The Prince as hauing so many, must needs

needs giue or sell his Wards away to other, and so he doth. Other do but seek which way they may make most aduantage of him, as of an Oxe or other Beast. These all (say they) haue no naturall care of the infant, but of their owne gaine, and especially the buyer will not suffer his Ward to take any great paines, either in study or any other hardnesse, lest he should be sicke and die, before he hath married his Daughter, Sister, or Cousin, for whose sake he bought him, and then all his money which he paid for him should be lost. So he who had a Father which kept a good house, & had all things in good order to maintaine it, shall come to his owne, after he is out of Wardship, Woods decayed, Houses falne downe, stocke wasted & gone, Lands lent forth, and plowed to the barren, and to make amends, shall pay yet one yeeres rent, for reliefe, and sue *ouster le maine*, beside other charges, so that not of many yeeres, and peraduenture neuer he shall be able

able to recouer, and come to the estate where his Father left it. This as it is thought was first granted upon a great extremity to King *Henry* the third for a time upon the warre which he had with the Barons, and afterward increased, and multiplied to more and more persons and grieuances, and will be the decay of the Nobility and liberty of England. Other againe say, the Ward hath no wrong, for either his Father purchased the Land, or it did not descend unto him from his Ancestours with his charge. And because he holdeth by Knights Service, which is in armes and defence, seeing that by age he cannot doe that whereto he is bound by the Land, it is reason he answereth that profit to the Lord, whereby he may haue as able a man to do the seruice. The first Knights in Rome, those that were chosen *Equites Romanis* had *equum publicum*, on which they serued, and that was at the charge of the Widowes and Wards as appeareth by *Titus Li-*

*nus,*



ness, because that those persons could not doe bodily seruice to the Common-wealth. Wherefore this is no new thing, but reasonable in that most wise Common-wealth, and to the prudent King *Seruius Tullius*. As for the education of our Common-wealth, it was at first *Militarie*, and almost in all things the scope and designe thereof is *Militarie*. Yet it was thought most like, that Noblemen, good Knights, and great Captaines, would bring vp their Wards in their owne feats and vertues, and then marry them into like race and stocke, where they may find and make friends. Who can better looke to the education, or hath better skill of the bringing vp of a Gentleman, than he who for his higher Nobility hath such a one to hold of him by Knights seruice; or would do it better then hee that looketh or may claime such seruice of his Ward, when age and yeares will make him able to doe. That which is said that this manner of Ward-

Wardship began in the time of King *Henrie* the third, cannot seeme true. For in Normandy and other places of France the same order is.

And that Statute made in King *Henry* the Thirds time touching Wards, to him that will weigh it well, may seeme rather a qualification of that matter, and an argument that the fashion of Wardship was long before: but of this matter another time shall be more convenient to dispute. This may suffice to declare the manner of it.

The Iudge in this Court is the Master of the Wards.

Officers are the Attornie of the Wards for the King.

The Surueyor, the Auditor, the Treasurer, the Clarke; two common Attornies, inferiour Officers, also Messengers, and Pursuiuants.

The Attorny for the Wards is alwayes for the Kings right, and assistant with the Master of the Wards.

The Surueyor is he that hath the allowing of euery Liucry that issued out.

The

The Auditor taketh the account, and causeth Proceſſe to be made.

The Treasurer receiueth the money due to his Maieſty.

The Clarke is writer of the Records, & writer of the Decrees, Proceſſes, and Orders of the Court.

The matters of this Court are all benefits that may come vnto his Maieſty, by Guard, by Marriage, Priuueer, Seaſin, and Reliefe.

The generall Proceſſe in this Court is a Commiſſion, a Proceſſe in manner of a Proclamation, warning the party or parties to appeare before the Maſter of the Wards. More ſpeciall proceſſe belonging to this Court, are a *Diem clauſit extremum*, a *Deuenerunt*, a *melius inquirendum*, a *Datum eſt nobis intelligi*, a *Qua Plura*. Of the nature of theſe ſee *Stamford's* Books of the Kings Prerogatiue.

Out of this Court are the Liueries ſued, and committed to the Clarks of the Petty Bagge, Officers in the Chancery.

When

When the heire hath prooued his age, and sued his Liucry, then he must do homage to that is the Deputy of the Prince for that purpose, and then must pay a fine or fee to the Lord Priuy Seale.

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## CHAP. VI.

### *Of the Dutchie Court.*

**T**HE Dutchie Court of Lancaster is also the Kings Court of Record. In it are holden all Pleas reall and personall, which concerne any of the Dutchie lands, now in his Maiesties hands and parcell of the Crowne: but serued in Court and jurisdiction.

The Iudge in this Court is the Chancellor, assisted by the Attorney of the Dutchie for the King, the Clarke of the Court, diuers Surueyours, two common Attornies, diuers Auditors, two Assistants, the Sergeant of his Maiesty.

The

The Chancellor is a Iudge of the Court, to see Iustice administred betweene his Maicesty & his Subiects, and betweene party and party.

The Atturney is to maintaine the Kings, & is assistant to the Chancellor, & sheweth him what the Law is

The Clark keepeth the Rolles, and Records, and maketh the Pröesse.

The Surveyors are diuers : one more principall : they suruey the Kings land within the Dutchie.

The Auditors are diuers : one more principall : they are to account and make the Order of the receits within the Dutchie.

The common Atturnies are for the Suitors that haue cause in action within the Court.

The assistants are two Iudges at the Common law that are to ayde them in difficult points of law.

The Sergeant for the King, is a learned Counsellour, appointed to be of his Maiesties Council for his right.

There is also belonging to this Court

Court a Vice-chancellour, that serueth for the County Palatine of Lancaster, he maketh all originall Processes within his liberty, as doth the Lord Chancellour of England for the Chancery.

The Processe of the County Palatine, is a *Sub pœna*, as in the Chancerie.

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## CHAP. VII.

### *The Court of Requests.*

**T**HIS Court is the Court wherein all suits made to his Maiestie by way of supplication or petition are heard & ended; neither should it hold plea of any matter then such. And this is called the poore mans Court, because there he should haue right without paying any money: and it is called also the Court of conscience.

The Iudges in this Court are the Masters of Requests, one for the  
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Common Lawes, the other for the Ciuill Lawes.

The Officers in this Court, are the Register, the Examiner, three Attornies, one Messenger or Pursuiuant.

The Examiner is hee that opposeth the witnesses by oath, and recordeth their depositions.

The Attornies serue for the Plaintiffe and Dēfendant to frame their complaints and answers.

The Pursuiuant is an officer in this Court, to bring any man before the Judges whom they shall name.

The matters in this Court at this day, are almost all suits that by colour of equity or supplication made to the Prince, may be brought before them: properly all poore mens suits, which are made to his Maiesty by supplication.

The Proceses in this Court, are a priuy Seale, Proclamation of rebellion.

The nature of these Proceses is, as was said before in the Court of Star-chamber.

## C H A P. VIII.

*Of Wives and Marriages.*

**T**He Wives in England bee as I sayd *in potestate maritorum*, not, that the Husband hath *vite ac necis potestatem*, as the Romans had in the old time, of their children, for that is onely in the power of the Prince, and his Lawes, as I haue said before: but that whatsoeuer they have before marriage, as soone as marriage is solemnized is their husbands, I meane of Mony, Plate, Jewels, Cattell, and generally all moueables. For as for land and heritage, it followeth the succession, and is ordered by the Law, as I shall say hereafter, and whatsoeuer they get after marriage, they get to their husbands. They neither can giue nor sell any thing either of their Husbands or their owne. There is no moueable thing by the Law of England *constanti matrimonio*, but as *peculium serui aut familias*, and yet in  
 moue-



moveables at the death of her Husband she can claime nothing, but according as hee shall will by his Testament, no more then his sonne can: all the rest is in the disposition of the Executors, if he die testate. Yet in London and other great Cities they haue that Law & custome, that when a man dieth, his goods be diuided into three parts. One third part is imployed upon the buriall & the bequests, which the testator maketh in his testament. Another third part the wife hath as her right, and the third part is the due and right of his children, equally to be diuided among them. So that a man there can make testament but of one third of his goods: If he dye intestate, the Funerals deducted, the goods be equally diuided betwene the Wife and children.

By the common Law of England if a man dye intestate, the Ordinary (which is the Bishop by common intendment) sometime the Archdeacon, Deane, or Prebendary, by priuiledge

Judge and prescription, doth commit the administration of the goods to the Widow or the child, or next kinsman of the dead appointing out portions to such as naturally it belongeth vnto, and the Ordinary by common-vnderstanding, hath such grauity and discretion as shall besit for so absolute an authority for the most part, following such diuision as is used in London, either by thirds or halues. Our fore-fathers newly conuerted to the Christian faith, had such confidence in their Pastors and instructors, and tooke them to be men of such conscience, that they committed that matter to their discretion: and belike at the first were such as would seeke no private profit to themselves thereby: that being once ordained hath still so continued. The abuse which hath followed was in part redressed by certain Acts of Parliament made in the time of King *Henry* the eighth, touching the probate of testaments, committing of administration, and mortuaries.

But

But to turne to the matter which we now haue in hand, the wife is so much in the power of her Husband, that not onely her goods by marriage are straight made her husbands, and she loseth all her administration which shee had of them : but also where all Englishmen haue name and surname, as the Romans had, as *Marcus Tullius*, *Caius Pompeius*, *Caius Iulius*, whereof the name is giuen to vs at the Font, the surname is the name of the Gentility & stock which the son doth take of the Father alwayes, as the old Romans did, our Daughters so soone as they bee married, loose the surname of their Father, and of the family and stocke whereof they do come, and take the surname of their Husbands, as transplanted from their Family into another. So that if any wife was called before *Philip Wilford* by her owne name and her Fathers surname, so soone as she is married to me, she is no more called *Philip Wilford*, but *Philip Smith*, and so must she write  
and

and signe: and as she changeth husbands, so she changeth surnames, called alwaies by the surname of her last husband. Yet if a woman once marrie a Lord or a Knight, by which occasion she is called my Lady, with the surname of her Husband, if hee dye, and shee take a Husband of a meaner estate, by whom she should not be called Lady, (such is the honour wee doe giue to Women) shee shall still bee called Lady with the surname of her first Husband, and not of the second.

I thinke amongst the old Romans those marriages which were made *per coemptionem in manum*, and *per as* and *libram*, made the wife *in manu & potestate viri*, whereof also we had in our old law and ceremony of marriage, a certaine memory as a view and *vestigium*. For the woman at the Churchdoore was giuen of the Father, or some other man of the next of kinne into the hands of the Husband, and he layd downe gold and siluer for her upon the

Booke,

Booke, as though he did buy her, the Priest was belike in stead of *Lipri-pens*: our marriages bee esteemed perfect by the Law of England, when they bee solemnized in the Church or Chappell, in the presence of the Priest and other witnesses. And this only maketh both the husband & the Wife capable of all benefits which our Law doth give vnto them and their lawfull children. Insomuch that if I marry the widow of one lately dead, and at the time of her husbands death was with child, if the child be borne after marriage solemnized with me, this child shall be my heire, and is accounted my lawfull sonne, not his whose child it is indeed: so precisely we take the letter where it is sayd, *pater est quem nuptia demonstrant*. Those wayes & means which *Iustinian* doth declare to make Bastards to be lawfull children, *muliers*, or rather *mulieurs* (for such a terme our lawveth for them which be lawfull children) be of no effect in England: neither the Pope,

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nor

nor Emperor, nor the Prince himselfe neuer could there legitimate a bastard to enjoy any benefit of our Law: the Parliament hath only that power.

Although the wife be ( as I have written before ) *in manu & potestate mariti*, by our Law, yet they be not kept so straight as in a mew, and with a guard as they be in Italy and Spaine, but haue almost as much liberty as in France, and they haue for the most part all the charge of the house and houshold ( as it may appeare by *Aristotle* and *Plato*, the wiues of the Greekes had in their time ) which is indeed the naturall occupation, exercise, office, and part of a wife. The husband to meddle with the defence either by law or force, and with all forreine matters, which is the naturall part and office of the man, as I haue written before. And although our Law may seeme somewhat rigorous toward the wiues: yet for the most part they can handle their husbands so well and so

so dulcely, and specially when their husbands bee sicke, that where the law giueth them nothing, their husbands at their death, of their goods will giue them all. And few there be that bee not made at the death of their husbands either sole or chiefe executrices of his last will and Testament, and haue for the most part the gouernment of the children and their portions: except it be in London, where a peculiar order is taken by the City much after the fashion of the ciuill Law.

All this while I haue spoken on-ly of moueable goods. If the Wife be an inheritrix and bring land with her to the marriage: that land descendeth to her eldest sonne, or is di-uided among her daughters. Also the manner is, that the land which the wife bringeth to the marriage, or purchase after wards, the husband cannot sell nor alienate the same, nor with her consent, nor she her selfe during the marriage, except that shee bee sole examined by the

It is avoid-able after the husbands death, except it be for one and twentie yeares, or 3. lines according to the statute, except they lesie a fine.

Judge at the common law: and if he have no child by her & she die, the land goeth to her next heires at the common law: but if in the marriage he have a child by her, which is heard once to cry, whether the child liue or dye, the husband shall haue the vsufruit of her lands (that is the profit of them) during his life & that is called the curtesie of England.

Likewise if the husband haue any Land either by inheritance descended, or purchased & bought, if he die before the wife, she shall haue vsufruit of the one third part of his lands. That is, she shall hold the one third part of landes during her life as her dowry, whether hee hath child by her or no. If he hath any children, the rest descendeth straight to the eldest: if hee hath none, to the next heire at the common law and if she mislike the diuision, she shal aske to be endowed of the fairest of his lands to the third part.

This which I haue written touching



ing marriage and the right, in moueables and vnmoueables which cometh thereby, is to be understood by the common law, when no private contract is more particularly made. If there be any private pacts, coueuants, and contracts made before the marriage betwixt the husband and the wife, by themselves, by their parents, or other friends, those haue force to bee kept according to the firmitie and strength in which they are made: And this is enough of wiues and marriage.

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## CHAP. IX.

### *Of Children.*

**O**ur children be not *in potestate parentum*, as the children of the Romans were: but as soone as they be *puberes*, which we call the age of discretion, (before that time nature doth tell they bee but as it were *partes parentum*) that which

is theirs they may giue or sell, and purchase to themselves either lands and other moueables, the Father hauing nothing to do therewith. And therefore *mancipatio* is cleane superfluous, we know not what it is. Likewise *sui heredis* complaints *de inofficioso testamento* or *preteritorum liberorum, non emancipatorum*, haue no effect nor vse in law, nor we haue no manner to make lawfull children but by marriage, and therefore wee know not what is *adoptio*, nor *arrogatio*. The Testator disposeth in his last will his moueable goods freely as he thinketh meete and conuenient without controuersment of wife or children. And our testimonies for goods moueable be not subject to the ceremonies of the ciuill law, but made with all liberty and freedom, and *iure militari*. Of lands as ye haue understood before, there is difference: For when the owner dieth, his land descendeth only to his eldest sonne, all the rest both sonnes and daughters haue nothing by the

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common law, but must serve their eldest brother if they will, or make what other shift they can to live: except that the Father in his life time do make conveyance, and estate of part of his land to their use, or else by devise, which words amongst our Lawyers doe betoken a Testament written, sealed and delivered in the time of the Testament before witness: for without these ceremonies a bequest of lands is not available. But by the common Law, if he that dieth had no sonnes but daughters, the land is equally divided amongst them, which by portion is made by agreement or by lot. Although (as I have sayd) ordinarily and by the common Law, the eldest son inheriteth all the lands, yet in some Countreys they haue equall portion, and that is called gavel-kind, and is in many places in Kent. In some places the youngest is sole heire, and in some places after another fashion. But these being but particular customes of certaine places, and out of the rule

of common law, do little appertaine to the disputation of the policy of the whole Realme, and may be infinite. The Common-wealth is iudged by that which is most ordinarily and commonly done through the whole Realme.

## C H A P. X.

### *Of Bondage and Bondmen.*

**A**fter that we haue spoken of all the sorts of freemen according to the diversitie of their estates and persons, it resteth to say somewhat of Bondmen, which were called *serui*; which kind of people and the disposition of them and about them doth occupie the most of *Iustinians Digestes*, and *Code*. The Romanes had two kindes of Bondmen, the one which were called *serui*, and they were either which were bought for money, taken in warre, left by succession, or purchased by some other kind of lawfull acquisition; or else borne

borne of their bondwomen, and called *verne*: all those kind of Bondmen be called in our law villains in grosse, as you would say immediatly bond to the person and his heires. Another they had (as appeareth in *Iustinians* time which they call *adscriptionis glebae* or *agrigenisii*. These were not bond to the person, but to the Manor or place, and did follow him who had the Manors, and in our Law are called *villaines regardants*, for because they be as members, or belonging to the Manor or place. Neither of the one sort or of the other haue wee any number in England. And of the first I neuer knew any in the Realme in my time. Of the second, so few there be, that it is not almost worth the speaking, but our Law doth acknowledge them in both those sorts.

Manumission of that kind of villaines or bondmen in England, is used and done after divers sorts, and by other, and more light and easie means than is prescribed in the ci-

will Law: and being once manumitted, he is not *libertus manumittentis*, but simply *liber*: howbeit since our Realme hath receiued the Christian Religion, which maketh vs all in Christ brethren, and in respect of God and Christ, *conseruos*, men began to haue conscience to hold in captiuitie, & such extreme bondage, him whom they must acknowledge to be their brother, and as we vse to terme him a Christian, that is, who looketh in Christ, and by Christ, to haue equall portion with them in the Gospel and saluation.

Vpon this scruple, in continuance of time, and by long succession, the holy Fathers, Monkes and Friars, in their confession, & specially in their extreme and deadly sicknesse, burdened the consciences of the whom they had vnder their hands: so that temporal men by little and little, by reason of that terror in their conscience, were glad to manumitte all their villains: but the said holy Fathers, with the Abbets and Priors, did

did not in like sort by theirs; for they had also conscience to impouerish & dispoyle the Church so much as to manumit such as were bond to their Churches, or to the Manors which the Church had gotten, and so kept theirs still. The same did the Bishops also, till at the last, and now of late some Bishops (to make a piece of money) manumitted theirs, partly for argent, partly for slanders, that they seemed more cruell than the temporality: after the Monasteries coming into temporal mens hands, haue bin occasion that now they be almost all manumitted. The most part of bondmen when they were, yet were not used with vs so cruelly, nor in that sort as the bondmen at the Romans ciuill law, as appeareth by their comedies: nor as in Greece, as appeareth by theirs: but they were suffered to enjoy copyhold land, to gaine and get as other seruants, that now and then their Lords might fleece them, and take a piece of money of them, as in  
France.

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France the Lords doe taile them whom they call their Subjects, at their pleasure, and cause them to pay summes of mony as they list to put upon them. I thinke both in France and England, the change of Religion to a more gentle, humane, and more equall sort; (as the Christian Religion, is in respect of the Gentiles) caused this old kind of seruitude and slaerie, to be brought into that moderation, for necessity, first to villaines regardants; and after to seruitude of lands & tenures, and by little and little finding out more ciuill and gentle meanes, and more equal to haue that done which in time of heathenisme, seruitude or bondage did, they almost extinguished the whole. For although all persons Christians be brethren by Baptisme in IESVS CHRIST, and therefore may appeare equally free; yet some were, and still might be Christianed being bond and serue, and whom as the Baptisme did find, so it did leaue them, for it changeth not  
ciuill



ciuill lawes nor compacts amongst men which be not contrary to Gods lawes: but rather maintaineth them by obedience.

Which seeing men of good conscience having that scruple whereof I wrote before, haue by litle and litle found meanes to haue and obtaine the profit of seruitude & bondage which Gentility did vse, and is vsed to this day among Christians on the one part, and Turkes & gentiles on the other part, when warre is betwixt them, upon those whom they take in battaile. Turkes and Gentiles I call them, which vsing not our Law, the one beleueth in one God, the other in many Gods, of whom they make images. For the law of Iewes is well enough knowne, and at this day so farre as I can learne amongst all people Iewes bee holden as it were in a common seruitude, and haue no rule nor dominion as their owne prophecies do sett, that they should not haue after that Christ promised to them, was  
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of them refused: for when they would not acknowledge him, obstinately forsaking their helpe in soule for the life to come, & honour in this world for the time present, not taking the good tidings, newes, and Euangell brought to them by the great grace of God, and by the promise of the Prophets fructified in vs which be Gentiles, & brought forth this humanity, gentlenesse, honour, and godly knowledge which is some at this present. But to returne to the purpose.

This perswasion I say of Christians, not to make nor keepe his brother in Christ, seruire, bond, and vnderling for ever vnto him, as a beast rather then a man, and the humanity, which the Christian Religion doth teach, hath engendred through Realmes (not neere to Turkes and Barbarians) a doubt, a conscience, a scruple to haue seruants and bondmen; yet necessarie on both sides, of the one to haue helpe, on the other to haue seruice, hath kept a figure or fashion

shion thereof. So that some would not haue bondmen, but *adscripti i gleba*, and villaines regardant to the ground, to the intent their seruice might be furnished, that the Country being euill, unwholsome, and otherwise barren, should not be desolate. Others afterwards found out the wayes and meanes, that not the men, but the Land should bee bond, and bring with it such bondage and seruice to him that occupieth it, as to carry the Lords dung vnto the fields, to plow his ground at certainedayes, sow, reape, come to his Court, sweare faith vnto him, and in the end to hold the land but by copy of the Lords Court-rolle, and at the will of the Lord.

The tenure is called also in our law, villaine, bond, or seruite tenure: yet to consider more deeply, all Land, even that which is called most free land, hath a bondage annexed vnto it, not as naturally the lower ground must suffer and receiue the water and fish which falleth from the

the higher ground, nor such as *Iustinian* speaketh of *de seruitudinibus prediorum rusticorum & urbanorum*, but the land doth bring a certaine kinde of seruitude to the possessor. For no man holdeth Land simply free in England, but he or she that holdeth the Crowne of England: all others hold their land in fee, that is, upon a faith or trust, & some seruitice to be done to another Lord of a Manor, as superiour, and he againe of an higher Lord, till it come to the Prince, and him that holdeth the Crowne.

So that if a man die, and it bee found that he hath land which hee holdeth, but of whom no man can tell, this is understood to be holden of the Crowne, and *in capite*, which is much like to the Knights' seruitice, and draweth vnto it three seruices, *Homage, Ward*, and *Marriage*: that is, hee shall sweare to bee his man, and to be true vnto him of whom he holdeth the land: His ion who holdeth the land after his death

of

of his Father, shall be married where it pleaseth the Lord.

Hee that holdeth his land most freely of a temporall man (for frankalmes & franke marriage hath another cause and nature) holdeth by fealty only, which is, he shall sweare to be true to the Lord, and to such service as appertaineth to the land which hee holdeth of the Lord.

So that all free land in England is holden in fee, or *feodo*, which is as much to say, as *in fide*, or *fiducia*, that is, in trust and confidence, that hee shall be true to the Lord of whom he holdeth it, pay such rents, doe such service, and obserue such conditions as were annexed to the first donation. Thus all sauing the Prince be not *veri Domini*, but rather *fiduciarij uomini*, and *possessores*.

This is a more likely interpretation then that which *Littleton* doth put in his booke, who saith that *feodum idem est quod hereditas*, which it doth betoken in no language. This happeneth many times to them who  
be

be of great wit and learning, yet not  
 scene in many tongues, nor marke  
 nethe deduction of words which  
 time doth alter. *Fides* in Latine (the  
*Goths* comming into *Italy*, & cor-  
 rupting the language) was turned  
 first into *feud*, and at this day in *Italy*  
 they will say *in fide*, *en fide*, or *ala fe*.  
 And some uncunning lawyers that  
 would make a new barbarous La-  
 tine word, to betoken land giuen in  
*fidē*, or as the Italian saith, *in fide*, or  
*fe*, made it *feudum*, or *feodum*. The  
 nature of the word appeareth more  
 euident in those which we call to *feff*,  
*feoff*, or *feoffes*; the one be *fiduciarij*  
*possessores*, or *fides commissarij*: the o-  
 ther is, *dare in fiduciam*, or *fidei cō-*  
*missū*, or more latinly, *fidei cōmittere*

The same *Littleton* was as much  
 deceiued in *Wishernam*, and diuers  
 others old words. This *Wishernam*,  
 as he interpreteth *uicissim namium*,  
 in what language I know not: wher-  
 as in truth it is in plaine Dutch, and  
 in our old Saxon language, *Wisher-*  
*nempt*, *alterum accipere*, or *uicissim*  
*rapere*,

*rapere*, a word that betokeneth that which in barbarous latin is called *re-  
presalia*, whē one taking of me a dis-  
tress, which in latine is called *pignus*,  
or any other thing, & carrying it a-  
way out of the jurisdiction wherein I  
dwel, I take by order of him that hath  
jurisdiction, another of him againe,  
or of some other in that jurisdiction,  
and do bring it into the jurisdiction;  
wherin I dwel, that by equal wrong  
I may come to have equal right. The  
maner of *represalia*, and that we call  
*withernā*, is not altogether one: but  
the nature of them both is as I have  
described; and the proper significa-  
tiō of the words do not much differ.

But to returne thither where we  
did digresse: ye see that where the  
persons be free, and the bodies at sub-  
liberty, and *maxime ingenui*, yet by  
annexing a condition to the Land,  
there is meanes to bring the owners  
and possessors therof into a certaine  
seruitude, or rather libertinity: That  
the tenants beside paying the rent  
accustomed, shall owe to the Lord a  
certaine

certain faith, duty, trust, obedience: & (as we terme it) certain seruice, as *libertus*, or *Clients patrono*: which because it doth not consist in the persons, for the respect in them doth not make them bond, but the land & occupation thereof, is more properly expressed in calling the one Tenant, the other Lord of the fee; then either *libertus* or *clients* can doe the one, or *patronus* the other: for these words touch rather the persons, and the office and duty betwene them, than the possessions: but in our case leaving the possession and land, all the obligation of seruitude and seruice is gone.

Another kind of seruitude or bondage is used in England for the necessity thereof, which is called apprenticeshood. But this is onely by covenant and for a time; and during the time, it is *vera seruitus*. For what soeuer the Apprentice getteth of his owne labor, or of his masters occupation or stocke, hee getteth to him whose Apprentice he is, he must not

lyc



lye forth of his masters doores, he must not occupy any stocke of his owne, nor marry without his masters licence, and hee must doe all seruile offices about the house, and bee obedient to all his masters commandements, and shall suffer such correction as his Master shall thinke meete, and is at his masters cloathing, and nourishing, his Master being bound onely to this which I haue sayd, and to teach him his occupation; and for that he serueth some, for seuen or eight yeares, some nine or tenne yeeres, as the masters and the friends of the young man shall thinke meete, or can agree; he is altogether (as *Polidore* hath noted) *quasi pro seruo seruo*. Neuerthelesse, that neither was the cause of the name Apprentice, neither yet doth the word betoken that which *Polidore* supposeth, but a French word, and betokeneth a learner or a scholler.

*Apprendre* in French is to learne, and *Apprentize* in French  
(of

(of which tongue wee borrowed  
 this word, and many other) as  
*Discipulus* in Latine: Likewise he  
 to whom he is bound, is not called  
 the Lord, but his master, as ye would  
 say his teacher. And the pactions  
 agreed upon, be but in writing, sig-  
 ned and sealed by the patties, and re-  
 gistr'd for more assurance. With-  
 out being such an Apprentice in  
 London, and serving out such a ser-  
 vitude in the same Citie for the  
 number of yeeres agreed upon, by  
 order of the Citie amongst them, no  
 man being neuer so much borne in  
 London, and of parents Londoners,  
 is yet admitted to bee a Citizen or  
 freeman of London: the like is used  
 in other great Cities of England.  
 Beside, Apprentices, others be hired  
 for wages, and be called servants or  
 serving men and women through-  
 out the whole Realme, which bee  
 not in such bondage as Appren-  
 tices, but serue for the time for  
 daily ministerie, as *Yerai* and *ax-  
 cille* did in the time of Gentilitie,  
 and

The sons of  
 free men of  
 London are  
 also free by  
 birth, accor-  
 ding to the  
 custome.

and bee for other matters in libertie as full free men and women.

But all seruants, labourers, and others not married must serue by the yeere : and if hee bee in covenant, hee may not depart out of his seruice without his Masters licence, and hee must giue his Master warning that hee will depart, one quarter of a yeere before the time of the yeere expireth, or else hee shall be compelled to serue out another yeere. And if any young man vnmarried bee without seruice, hee shall bee compelled to get him a master, whom hee must serue for that yeere, or else hee shall bee punished with stockes and whipping, as an idle Vagabond. And if any man married, or vnmarried, not hauing rent or liuing sufficient to maintaine himselfe, doe liue so idly, he is enquired of, and sometime sent to the Iayle, sometime otherwise punished as a sturdie Vagabond :  
so

so much our policy doth abhorre  
 idleneffe. This is one of the chiefe  
 charges of the Iustices of Peace in  
 euery Shire. It is taken for vngent-  
 clenesse, dishonour, and a shew of  
 enmity, if any Gentleman doe take  
 another Gentlemans seruant. (al-  
 though his master doe put him a-  
 way) without some certificate  
 from his Master, either by word or  
 writing that hee hath discharged  
 him of his seruice. That which  
 is spoken of men-seruants, the  
 same is also spoken of women.  
 So that all youth that hath not suf-  
 ficient reuenues to maintaine it  
 selfe, must needs with us serue, and  
 that after an order as I haue writ-  
 ten. Thus necessity and want of  
 bondmen hath made men to vse  
 freemen as bondmen to all seruile  
 seruices: but yet more liberally and  
 freely, and with a more equality  
 and moderation, than in time of  
 Gentility Slaues and Bondmen  
 were wont to bee vsed, as I haue  
 sayd before. This first and latter  
 fashion

fashion of temporall seruitude, and upon paction, is used in such Countries as haue left off the old accustomed manner of seruants, slaues, bond-men and bond-women, which was in vse before they had receiued the Christian faith. Some after one sort, some either more or lesse rigorously according as the nature of the people is inclined, or hath deuised amongst themselves, for the necessity of seruants.

## CHAP. XI.

*Of the Court which is Spirituall or Ecclesiasticall, and in the Booke of Law, Court Christian, Curia Christianitatis.*

**T**HE Archbishops and Bishops haue a certaine peculiar jurisdiction vnto them, especially in foure manner of causes: Testaments and legations, Tithes and Mortuaries, Marriage and Adultery

N or

or Fornication , and also of such things as appertaine to Orders amongst themselues & matters concerning Religion. For as it doth appeare , our Ancestors hauing the Common-wealth before ordained and set in frame , when they did agree to receiue the true and Christian Religion , for that which was established before , and concerned externe policy (which their Apostles, Doctors, and Preachers did allow) they held and kept still with that which they brought in the new. And those things , in keeping whereof they made conscience, they committed to them to be ordered and gouerned as such things of which they had no skill , and as to men in whom for the holinesse of their life & good conscience, they had a great and sure confidence. So these matters be ordered in their Courts, and after the fashion and manner of the Ciuill Law, or rather common, by Citation , Libell , *contestationem litis* , Examination of witnesses priuily

privily, by Exceptions, Replications apart and in Writing, Allegations, Matters by sentences giuen in writing by Appellations, from one another, as well *à gramine* as *à sententia definitiua*, and so they haue other names, as Proctors, Advocates, Assessors, Ordinaries, and Commissioners, &c. farre from the manner of our order in the Common Law of England, and from that fashion which I haue shewed you before. Wherefore if I say the Testament is false and forged, I must sue in the spirituall Law, so also If I demand a Legacie: but if I sue the Executor, or Administrator, which is he in our Law, who is in the Ciuill Law, *heres or bonorum mobilium possessor ab intestata*, for a debt which the dead ought me, I must sue in the Temporall Court. These two Courts the Temporall and the Spirituall, bee so diuided, that whosoever sueth for anything to Rome, or in any Spirituall Court for that cause or

action, which may bee pleaded in the Temporall Court of the Realme, by an old Law of England, hee falleth into a *Premunire*, that is, hee forfaiteth all his goods to the Prince, and his body to remaine in prison during the Princes pleasure: and not that onely but the Iudge, the Scribe, the Procuror and Assessor which receiveth and doth maintaine that vsurped pleading, doth incurre the same danger. Whether the word *Premunire* doth betoken that the authoritie and jurisdiction of the Realme is provided for before, and defended by that Law, and therefore it hath that name *Premunire*, or *Pramuniri*, or because that by that law such an attemptor hath had warning given before to him of the danger, into which hee falleth by such attempt, and then *Premunire* is barbarously written for *Pramoneri*, *Pramuniri*, (as some men haue held opinion) I will not define: the effect is as I haue declared: and the Law was  
**first**



first made in King *Richard* the seconds time, & is the remedy which is used when the spirituall jurisdiction will goe about to encroach any thing upon the Temporall Courts. Because this Court or forme which is called *Curia Christianitatis*, is yet taken as appeareth for an externe and forraine court, & differeth from the policy and manner of government of the Realme, and is another Court (as appeareth by the Act and Writ of *Premunire*,) than *Curia Regis aut Regina*: yet at this present this Court as well as others, hath her force, power, authoritie, rule, and jurisdiction, from the Royall Maiestie, and the Crown of England and from no other forraine Potentate. or Power vnder God, which being granted (as indeed it is true) it may now appear by some reason that the first Statute of *Premunire*, whereof I haue spoken, hath now no place in England, seeing there is no pleading *alibi quam in Curia Regis ac Regina*.

N 3.

I haue

I haue declared summarily as it were in a Chart or Map, or as *Aristotle* termeth it *ἡ πολιτεία* the forme and manner of government of England, and the policy thereof, and set before your eyes the principall points wherein it doth differ from the policie and government at this time vsed in France, Italy, Spaine, Germany, and all other countries, which doe follow the ciuill law of the Romanes, compiled by *Iustinian* into his *Pandects* and *Code*, not in that sort, as *Plato* made his *Common-wealth*, or *Xenophon* his *Kingdome of Persia*, nor as *Sir Thomas Moore* his *Utopia*, being fained *Common-wealthes*, such as neuer was nor shall be, vaine imaginations, fantasies of Philosophers, to occupy the time, and to exercise their wits: but as England standeth, and is gouerned at this day the eight and twenty of March, *Anno 1565*, in the seuenth yeere of the Raigne and Administration thereof by the most Religious, ver-

TUOUS,

tuous, and Noble Queene E L I Z A B E T H, Daughter to King *Henric* the Eighth, and in the one and fiftieth yeere of mine age, when I was Embassadour for her Maiesty in the Court of France, the Scepter wherof at that time the noble Prince of great hope *Charles Maximilian* did hold, hauing then raigned foure yeeres. So that whether I write true or not, it is easie to be seene with eyes (as a man would say) and felt with hands. Wherefore this being as a proiect or table of a Commonwealth truly laid before you, not fained by putting a case: let us compare it with Common-wealths which be at this day in *esse*, or doe remaine described in true Histories, especially in such points wherein the one differeth from the other, to see who hath taken righter, truer, and more commodious way to gouerne the people as well in warre as in peace. This will be no illiberall occupation for him that is a Philosopher and hath a delight in disputing.

ring, nor vnprofitable for him.  
who hath to doe, and hath good  
will to serue the Prince and Com-  
mon-wealth, in giuing coun-  
saile for the better ad-  
ministration  
thereof.

---

*Thomas Smith.*

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**FINIS.**

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LONDON

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1635.

The following contract is from (Chap. 9)  
On the Colleges of the Municipal  
Lawyers or Common Lawyers  
Now called innors of Court,  
by Ed' Hoop

And because that by auncient  
custome, and by old orders of  
the houses of Courts & Chancery,  
althose which were admitted  
into these houses were & ought  
to be Gentlemen. But yet  
~~not~~ and that of three  
descents at the least, as  
Master Gerard Leigh affirms  
etc; therefore they which are  
now admitted are registered  
by the stile and name of  
Gentleman. But yet notwithstanding  
this, if they be not  
Gentleman, it is an error to  
thinke that the Sonnes of  
Grasers. Farmers. Merchants.  
Tradersmen. & Artificers, can  
be made Gentlemen by their  
admittance or matriculation  
in the Muttrees Role, or in the

Stewards Cooke of such a  
House or Inn of Court; for no  
man can be made a Gentleman  
but by his Father. . . And be it  
spoken (with all reverence,  
reservation of duty) the King  
who hath power to make  
Esquires, Knights, Baronets,  
Barons, Viscounts, Earls,  
Marquesses & Dukes, cannot  
make a Gentleman. . . for  
Gentility is a matter of race  
and of blood and of descent,  
from Gentile & Noble parents  
and ancestors, which no  
Kings can give to any, but  
to such as they beget. —  
Gent Magazine  
Febr. 1711.

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