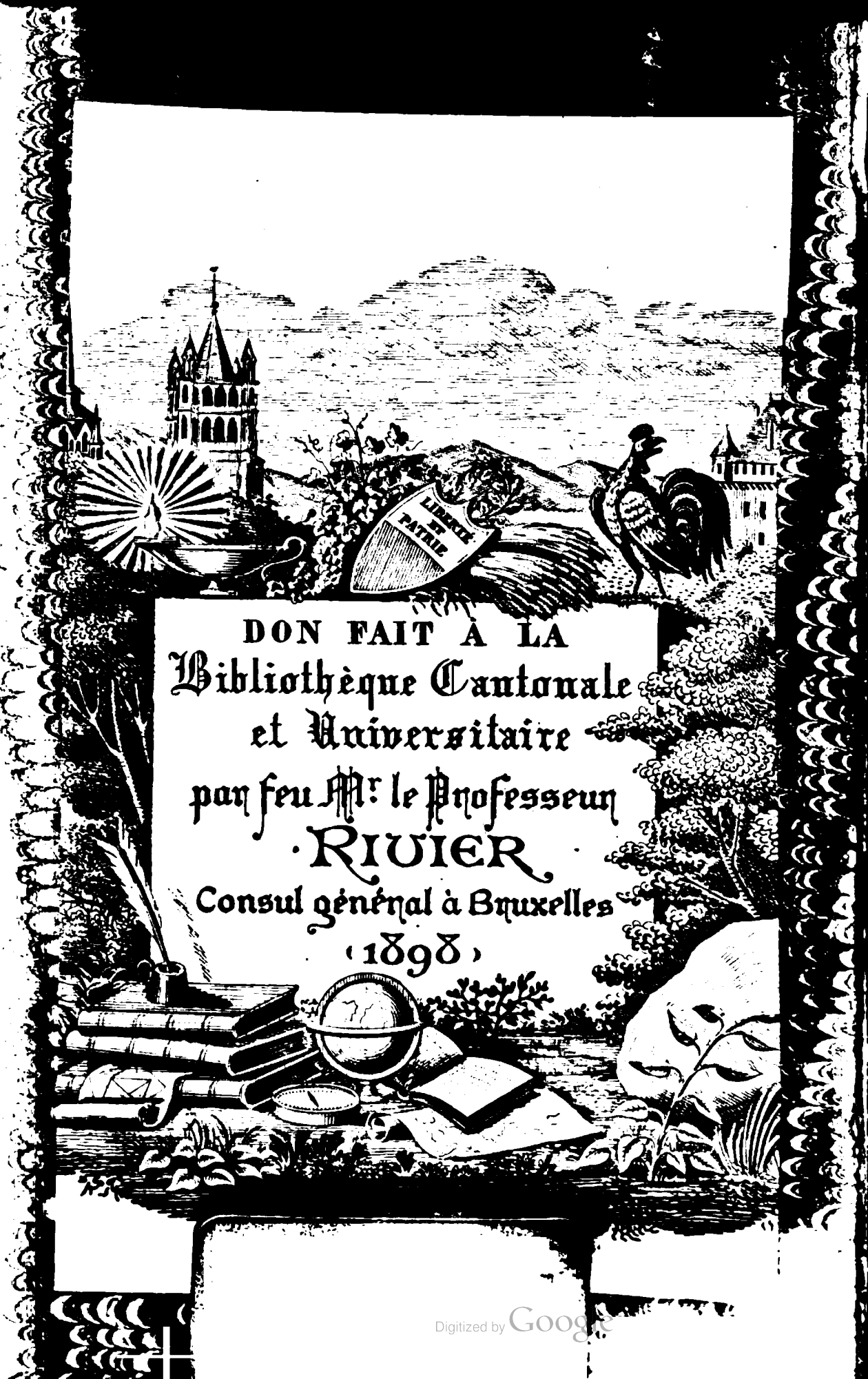

DE
Laudibus Legum Angliæ

writen by

Sir IOHN FORTESCVE

L. *Ch. Iustice*, and after L. *Chancellor* to K. *Henry* VI.

Hereto are ioind the two *Summes* of

Sir RALPH *de* HENGHAM

L. *Ch. Iustice* to K. *Edward* I. commonly calld Hengham *Magna*, and Hengham *Parua*.

Neuer before publisht.

Notes both on FORTESCVE and HENGHAM are added.

LONDON
For the Companie of Stationers.
M. DC. XVI.

To the Reader.

THis Author, Sir *Iohn Fortescue*, was Chiefe Iustice to *Hen: VI*, as the Records of the later halfe of his Raigne, euery where shew; and that hee might *Statum suum decentiùs manutenere*, in *Part. I. Rot. Pat.* 20. *Hen.* 6. *membran.* 10. an annuity of *CLxxx* markes is giuen him out of the Hamper, with Cxvj. s. xj. d. q; *Percipiendum singulis annis ad Festum natalis Domini pro vna roba & furrura pro eadem, erga idem festum*, and Lxvj. s. vj. d. *singulis annis ad festum Pentecostes pro vna roba & linura pro eadem, erga idem festum.* Hee is call'd his Chancellor also. In this booke, his title, giuen by himself, is *Cancellarius Angliæ*, and in

his *Declaration*, or rather *Retractation*, of that he had writen against the title of the house of *York*, himself puts in the mouth of a friend of his expostulating with him, these words, **Considering that yee were the Chief Chancellor to the said late King.** It seemes, being with *Henry* VI. driuen into *Scotland*, hee was made his Chancellor, the memorie whereof (as it could hardly bee otherwise) wants in the Patent Rolls. His bookes which I haue seene are three. This now newly publisht, his *Difference* between *Dominium Regale* and *Dominium Politicum* and *regale*, and that *Declaration* touching the title of the Crowne. Neither of the two last were euer publisht, but they remaine Mss. in diuers hands. As touching his discent; by good testimonie, hee is made sonne to

Henry

Henrie Fortescue sonne of Sir *Iohn Fortescue* knight (Captain of *Meaux* and Gouernor of *Brie* in *France* vnder *Hen*: V.) who was second sonne of *William Fortescue* of *Wimeston* in *Deuonshire* Esquire. Because hee was Englisht by him that first publisht him, this part of the title, and the Notes on him are in English. what hee hath of the *Commendations of the Law of England*, must not bee expected to be so copious, as if all, that might thereof haue been said, had been hunted for by him to bee here congested. Hee shewes that hee instructed the yong Prince, and onely in some such few occurences of our trialls and positions, as might bee, without difficultie, apprehended by a minde so tender and strange to the Courts of iudiciall contention. Neither giues

hee enough to satisfie or the malice, or the ignorance of some foule mouth'd declaimers against it, who for the most part (if they discend to particulars and make a case to finde fault withall) either ridiculously compact things incompatible; iust like the Sycophant in that Geographie of his in *Trinummus*,

Omnium primum in Pontum aduecti
ad Arabiam terram sumus

and thence

Ad Caput amnis quod de cœlo
exoritur sub solio Iouis,

or els, measuring an establisht and vniuersall proceeding or position only by their own damage, neuer comming neer apprehension of the true reason, raile at it, with like

iudge-

iudgement, as the Parasite, in a lost Comedie of *Plautus*, doth at the certain course of sunne Dialls, being thence only moued, because the shadow went not so fast as his stomach, which when hee was a Child was the only Diall, and that

—iste monebat esse, nisi quùm nihil erat.
Nunc etiam quod est non est,
nisi SOLI lubet

But no place is here for more of this, and *nos hac à scabie tenemus ungues.* To this edition, are added the *Sumes* of Sir *Ralph de Hengham* Chief Iustice to *Edward* I. neuer till now printed; in whom although most of the learning bee touching *Essoines, Defalts*, and course of proceedings in such actions which are in seldome vse at this day, yet diuers things

things occurre both specially obseruable in what hee hath touching those proceedings (which a professor of the Law cannot but wish to know) as also hee often otherwise giues light to the Customes or Law of his time, whence, as through an ancestor of the right line, wee must deduct that of the present. Of him in the preface to the Reader, before him, enough is said, and of his *Summes*. Of his language, which with the rest of our Comon Law Latin is accused of Barbarism, somewhat is there brought in excuse. That preface was thought fit to speake Latin, the autor of the booke himself being publisht only in that tongue. But the Notes are English. For what other readers then English are to bee expected? Many an igno-

rant

rant had been deterred by pure Latin, and to haue vsed Barbarism in them would haue turn'd the stomach of a polite Reader. Though diuers Copies of *Hengham* were examin'd in preparing this, yet could not a perfect one bee extracted from them all. As one helpt another, choise was so made that this might bee the best; which yet is not without many faulty passages. So faithfully it is publisht from the Mss. that euen the false language, which by consent of old Copies appeard not to bee the transcribers, but proceeded from the ages either negligence or ignorance, is religiously retain'd. so should the lost monuments of ancient writers bee giuen to the publique; so should wee abstaine from wronging their *Manes*. Some places, that the erring hands

of

of such as anciently Copied him corrupted, are by way (mongst other obseruations collected in the heat of the presse) noted, and either by coniecture restored, explaned, or, marked with asteriskes, left to better Iudgement. The varying of letter, in the print, is only to lead the Readers eie the sooner to what hee may looke after. Farewell from the Inner Temple, September XXIV. CIↃ.DC.XVI.

In the preface before Hengham.

F. 4. l. 9. *read* ambæ velut agendi normulæ

In the Notes.

Pag. 127. l. 16. Read *as* Litleton *also notes. But by ancienter autoritie* Carruca *is not a* plough, *but a* chariot, *or such like. as* Carrucâ cum iunctura Legatâ, mulæ quoq; legatæ, *which is found in* Iul. Paull. Recept. sentent. lib. 3. tit. 7. *where the old Interpreter hath* Carpentum *for* Carruca. *In like sense is* Carruca *in* Martial, Plinie, and others. *And to* pag. 143. *touching being compell'd to oth without warrant of the King see the case of* T. 35. Ed. 1. *recited in* Titles of Honor pag. 263.

He that firſt publiſht *Forteſcue* added the epiſtle and dedication following.

Pio Lectori.

IStius non minus pij, quam eruditi opusculi exemplar, nactus, quum antiquitatem venerandam, vnà cum eruditione ac pietate coniunxerim: Non potui optime lector, aut patriæ tam ingratus, aut antiquitatis tam inofficiosus cultor esse, vt te illius lectione diutius fraudarem. Continet enim in se (vt cætera taceam) politicarum & ciuilium nostræ

Angliæ

Angliæ legum, quibus præclara & florentissima hæc respublica sub illustrissimo & nunquam satis laudato principe nostro rege Henrico sexto, eiusque progenitoribus regibus Angliæ hactenus felicissime fuerit erecta, instituta & gubernata, doctissimum encomion. Vnde easdem nostras leges non solum Romanorum Cæsarũ, sed & omnium aliarum nationum constitutiones, multis parasangis, prudentiã,

iusti-

iustitia, & equitate, præcellere, facile perspicias. Eme ergo, lege, & fruere, ac labores nostros boni consule.

Vale.

A

To the right Worshipfull *Iohn Walshe*, Esquire, one of the Queene her learned Iusticers of her Highnesse Court of common Plees, *Robert Mulcaster*, wisheth life and health.

IT hapned me of late (Right Worshipfull sir) to light vpon this little Treatise, which I incontinent desired to ranne ouer, because it seemed to discourse vpon some points of the Lawes of our Countrie, whereof I my selfe then was and am now a Student. When I had ouer-runne it, my desire to reade it, became nothing counteruailable with the gladnesse that I had read it, for my desire to read it came vpon hope to finde some profitable lessons for my studie, but my gladnesse after reading sprang of the excellencie of the argument, whereon I did not dreame, neither to finde so rich a treasure in so simple an habit. And

 because

because I wished al men to haue part of my delight, me thought it good to translate it into English forth of Latin, in which tong it was first writen. The author of the book was one master *Fortescue* Knight, Sericant at the Law, and for his skil and vertues preferred by king *Henrie* the sixt, to be Chancellor of this Realm. The entry of the book it self sheweth, where, and vpon what occasion, it was writen. It was writen in Berrie in France, where Prince *Edward*, sonne to *Henrie* the sixt, afterward slain at *Tewkesburie* by *Edward* the fourth, did then remaine with his mother Queen *Margaret* in the house of *Renate* her father Duke of Angew & king of Cicile, during the time that *Edward* the fourth reigned in the Realme, and *Henrie* the sixt was fled into Scotland. The occasion was this: The Chancellor being fled into Frace with the yong prince, and perceiuing his delight to be all bent to Chiualrie as a thing of greatest need, considering he meant by force the restitution of his father, and thereby his owne, to the kingdome of England, tooke occasion (for that his hope was to see the Prince raigne here)

here) to moue him to a diuisiõ of his affairs, and as he armed himself against the enemy, so to adorne himself against his being king, with skill of Lawes, which doe preserue each state so in peace, that it may, if need be, warre; and so gard it in warre, that it may haue peace in it. The argument is this, that the skill of the Countrie lawes is needfull for the Prince, although not so deepe as for purposed professours, yet so full as to their honor may and ought to fall in Princes. And for that the Prince should think the thing to be a princely knowledge, hee taketh occasion (by comparing the gouernment of this realm with others, & the lawes of this land with the Ciuill, with whom it is of all men lightly compared, and the betternesse of points wherein they both trauel, and prouisions by the one wiselier foreseene then by the other) to proue the singularitie of this state which it behooued the Prince to learne, seeing hee was like to succeed his father, and to vnderstand the Lawes, which maketh the state to bee singuler. The particulars I refer to the booke, whereof thus much I doe and no lesse

could wel say, Why I did choose your worship to be protector of my labours, I shall not need tediously to touch, it shall bee sufficient to say that in cheise of many, I picked you alone, not doubting your liking in allowing, seeing mine election in dedicating: And so committing to the Almightie the good preseruation of your worship, I humbly take my leaue,

(***)

Robert Mulcaster.

During the cruel rage of the late mortall warres within the realme of England, when the most vertuous and godly King Henrie the sixt with Queene Margaret his wife, the Kings daughter of Ierusalem and Scicile, & their only sonne Edward Prince of Wales, were forced to flie the land: and the king himselfe afterward in the same ciuil tumult falling into the bloody handes of his deadly enemies his owne subiects, was of them cõmitted to prisõ, where he a lõg time remained in strait captiuity, the Queen & the prince her son thus banished out of their country, making their abode in the Duchy of Berrie, a dominiõ of the foresaid king of Ierusalẽ.

Euiente dudum in regno Angliæ nefandissima rabie illa, qua *pissimus* ibidem Rex *Henricus sexrus*, cum *Margarita* Regina consorte sua, filia Regis *Ierusalem & Scicilie*, ac eorum vnigenito *Edwardo* principe *Wallie*, inde propulsi sunt sub qua & demum Rex ipse Henric' a subditis suis deprehensus, carceris diutinum passus est horrorem, dum Regina ipsa cum sobole, patria sic extorris, in Ducatu *Berrei* prædicti regis Ierusalem dominio, morabantur.

Princeps ille, mox vt factus est adult⁹, militari totũ se cõtulit disciplinæ, & sæpe ferocibus & quasi indomitis insedens caballis, eos calcaribus vrgens, quandoque lancea, quãdoq; mucrone, alijs quóque instrumentis bellicis, sodales suos, iuuenes sibi seruientes, bellantium more inuadere ferireque, iuxta martis gimnasij rudimenta delectabatur. Quod cernens miles quidam grandæuus, prædicti regis Angliæ Cancellarius, qui etiam ibidẽ sub hac clade exulabat: prĩcipem sic affatur,

The Prince shortly after growing to mãs state, applied himself wholy to the feates of armes, much delighting to ride vpõ wilde & vnbrokẽ horses, not sparing with spurs to break their fiercenes. He practised also sometimes with the pike, sometimes with the sword, & other warlik weapons after the maner and guise of warriors according to the vse of martiall discipline, to assaile and strike his companions, I meane the young men that attended vppon his person. Which thing when a certaine ancient knight, being Chancellor to the foresaide king of England saw, who also in the miserable time did there remaine in exile hee spake thus to the Prince.

First

First he moueth the prince to the knowledge of the lawe. Chap. I.

YOur singuler towardnesse, most gracious Prince, maketh me right glad, when I behold how earnestly you do embrace martiall feates: For it is conueniēt for your grace to be thus delited, not only for that you are a souldier, but much rather for that you shall bee a King. For it is the office & dutie of a King to fight the battailes of his people, & also righely to iudge them, as in the viii. chapter of the first book of kings you are plainely taught. Wherefore I would wish your grace to be with as ernest zeale giuen to the study of the lawes, as you are to the knowledge of armes,

GAudeo verò, *serenissime prīceps*, super nobilissima indole tua: videns quanta auiditate militares tu amplecteris act°, conuenit namq; tibi taliter delectari, nedum quia miles es, sed amplius quia Rex futurus es. *Regis nempe officium pugnare est bella populi sui, & eos rectissime iudicare*, vt primo regum capitul. viij. clarissimè tu doceris. Quare vt armorum, vtinam & legū studiis, simili zelo te deditum contēplarer, cum

cum vt *armis bella, ita legibus iudicia peragantur.* Quod *Iustinianus Augustus*, æquissima libranis mente, in initio prohemij libri sui institutionum, ait: *Imperatoriam Maiestatem non solum armis decoratam, sed & legibus oportet esse armatam*, vt vtrumque tempus bellorum & pacis recte possit gubernare: Tamen vt ad legum studia feruide tu anheles, maximus legislator ille *Moyses*, olim Synagogæ dux, multo fortius Cæsare te inuitat, dum regibus

because that like as warres by force of chiualrie are ended, euen so iudgemēts by the Lawes are determined. Which thing Iustinian the Emperour well & wisely & aduisedly pondering, in the beginning of the preface of his book saith thus: It behoueth the imperiall maiestie not only to be garded with armes, but also to bee armed with lawes, to the end that he may be able rightly to execute the gouernment of both times aswel of war as of peace. Howbeit for your most earnest endeauour to the studie of the Law, the exhortation of the chiefest lawmaker Moses, sometime captaine of the Synagogue, ought to be of much more force with you, then the

words of Iustinian wher-as in the xvii. Chapter of the booke of Deuteronomie hee doth by the authoritie of God straitly charge the Kings of Israel to be readers of the law all the daies of their life saying thus: When the King shall sitte vpon the princely seate of his kingdome, hee shall write him out this lawe in a booke; taking the copie thereof of the priests the Leuites: and he shall haue it with him, and hee shall reade it all the daies of his life, that he may learne to feare the Lord his God, and to keepe his Commandements and ordinances written in this Lawe, And Helynandus expounding the same saith thus:

Israel diuina auctoritate ipse præcipiat, eorum leges legere omnibus diebus vitæ suæ, sic dicens: *Postquam sederit Rex in solio regni sui describet sibi Deuteronomij Leges in voluminе, accipiens exemplar à sacerdotibus Leuiticæ tribus & habebit secum, leget-que illud omnibus diebus vitæ suæ, vt discat timere Dominum Deum suum, & custodire verba & ceremonias eius quæ in lege scripta sunt*, Deuteron. capit. decimo septimo, qd exponens *Helynandus* dicit:

Prin-

Princeps ergo non debet iuris ignarus esse, nec pretextu militiæ legem permittitur ignorare. Et post pauca, a sacerdotibus Leuiticæ tribus assumere iubetur exemplar legis, id est a viris Catholicis & literatis, Hęc ille: Liber quippe Deuteron. est liber legum, quibus Reges Israel subditum sibi populum regere tenebãtur. Hunc librum legere, iubet Moyses Reges, vt discant timere Deum, & custodire mandata eius, quæ lege scripta sunt.

A Prince therefore must not be ignorant of the law, neither is it tollerable that he vnder the pretence of warfare should be vnskilfull in the Lawe. And a little after hee is commanded, saith hee, to receiue the coppy of the law of the priests the Leuites, that is to say, of catholike and learned men. Thus much hee: For the booke of Deuteronomie is the booke of the lawes, wherewith the kings of Israel were bound to rule and gouerne their subiectes. This booke doth Moyses command kings to read, that they may learne to feare GOD, and keepe his Commaundements, which are written in the Lawe.

Behold

Beholde the effect of the law is to feare God, wherunto man cannot attain, vnlesse hee first know the will of God, which is written in the Law. For the principall point of all seruice is to knowe the will and pleasure of the, lord or master to whom seruice is due. Howbeit the lawmaker Moyses first in this charge mentioneth the effect of the Law, that is the feare of God, and next he allureth vs to the keeping of the cause thereof, that is to say, of Gods commaundements. For in the mind and intent of the exhorter, the effect goeth before the cause. But what feare is this, which the Lawes doe propone to the obseruers thereof?

Ecce *timere Deum effectus est legis*, quem non consequi valet homo, nisi prius sciat voluntatem Dei, quę in lege scripta est. Nam principium omnis famulatus, est scire voluntatem domini cui seruitur. Legis tamen lator Moyses, primo in hoc edicto effectũ legis videlicet timorem Dei commemorat: deinde ad custodiam causæ eius, videlicet, mandatorum dei ipse inuitat. Nam effectus prior est quã causa, in animo exhortãtis. Sed quis est timor iste, quẽ ꝓmittũt leges obseruatoribꝰ suis?

Vere

Verè non est timor ille, de quo scribitur: Quod perfecta charitas foras mittit timorem. Timor tamen ille, licet servilis, sæpe ad legendum leges, reges concitat: sed non est ipse proles legis. Timor vero, de quo hic loquitur Moyses, quem & parium leges, est ille de quo dicit propheta: *Timor Domini sanctus permanet in seculum seculi.* Hic filialis est & non nouit pœnam, vt ille qui per charitatem expellitur.

Surely it is not that feare whereof it is written: that perfect charitie or loue expelleth feare. Yet this same feare, though it be bond and servile, oftentimes prouoketh kings to the reading of the lawes: but it proceedeth not out of the law. But that feare whereof Moses here speaketh, which also proceedeth out of the Lawes, is the selfe same feare, that the prophet speaketh of, saying: The feare of the Lord is holy, and endureth for euer and euer. This is such a louing feare as naturally children beare to their dear parents, commonly tormentes the tenerente of the child towards his parents. Wherevnto there is no punishment due as a thing wrought by loue.

For this feare proceedeth out of the Lawes, which teach to doe the will of God, so that it deserueth no punishment. But the glorie of the Lord is vpon them that feare him, and he doth glorifie them. Yea this feare, is euen that same, feare whereof Iob, after that he had diuerslie searched for wisdome, saith thus: Behold the feare of the Lord is perfect wisdome, and to forsake euill is vnderstanding. That the forsaking of euill is the vnderstanding of the feare of God, this doe the Lawes teach, wherby it followeth that the same feare proceedeth out of them.

Nam iste à legibus proficiscitur, quæ docent facere voluntatem Dei, quo ipse pœnâ non meretur. Sed gloria domini est super metuentes eũ, quos & ipse glorificat. Timor autem iste, timor ille est, de quo *Iob*, postquam multifarie sapientiã inuestigat, sic ait: *Ecce timor domini, ipsa est sapiẽtia, & recedere à malo intelligentia.* Iob ca. 28. Recedere à malo, qd̃ intelligentia timoris dei est, leges docent, quo & timorẽ hanc ipse parturiunt.

¶ The Princes replie to the Chancellors motion. Chap. 2.

Hęc

HÆc vt audiuit *princeps*, erecto in senem vultu, sic locutus est. Scio, Cancellarie, quòd liber deut. quem tu commemoras, sacrę scripturæ volumen est: leges quoque & ceremoniæ in eo conscriptæ, etiam sacrę sunt, à domino editę, & ꝑ Moysen promulgatæ: quare eas legere sanctæ contẽplationis dulcedo est. Sed lex, ad cuius scientiam me inuitas, humana est, ab hominibus ędita, & tractãs certens ꝓ quo, licet Moyses ad Deuter lecturam Reges Israel astrinxerit, eum per hoc reges alios,

THe Prince hearing this, and stedfastly beholding the old man, spake thus to him. I know good Chancellour that the booke of Deuteronomie, wherof you speak, is a booke of holy Scripture: The lawes also and ordinances therein contayned are holy, of the Lords making, and published by Moses: Wherefore the reading of them is a pleasant act of holy contemplation. But that Law, to the knowledge whereof you counsell me, is humane, made by men, and intreating of worldly matters: wherefore though Moyses bind the Kings of Israell to the reading of Gods Law, yet that thereby he forceth all other Kings

to

to doe the like in their owne lawes, that standeth by no good reason, seing that of both the readings the cause is not like.

ad consimiliter faciendum in suis legib⁹, concitasse, omnē effugit rationē, cū vtriusq; lecturę non sit eadem causa.

Here the Chauncelour fortifieth his assertion.
Chap. 3.

I Perceiue (q̃ the Chancellour) by your answere, most worthye prince, how earnestly you haue considered & weighed the qualitie of my exhortation: So that hereby you doe much encourage mee, both more plainely, more largely, and also more deepely to discourse ỳ same. Wherefore you shall vnderstand, that not only Gods Lawes, but also manns are holy, for so much as the Lawe is defined by

AT Cancellari⁹. Scio (inquit) per hæc quæ iam dicis, princeps clarissime, quāta aduertētia, ex hortationis meæ tu ponderas qualitatē, quo me non infime cōcitas sup inceptis ne dū clarius, sed & profūdi quodāmodo tecū disceptare: Scire igitur te volo, quod nō solū Deuc, leges, sed & omnes leges humanæ sacrę sunt, quo lex sub

his

his verbis definitur: Lex est sanctio sancta, iubens honesta, & prohibens contraria: sanctum etenim esse oportet, quod esse sanctum definitum est. Ius etiam describi perhibetur, quod illud est ars boni & æqui, cuius merito quis nos Sacerdotes appellat. *Sacerdos* enim, quasi sacra dans, vel sacra docens, per etimologiam dicitur, quia vt dicunt, iura, leges sacrę sunt quo eas ministrantes & docentes, Sacerdotes appellantur. A deo etiam sunt omnes leges editæ, quę ab homine promulgantur. Nam cum

these words: The law is a holy sanction or decree, commanding things that be honest, and forbidding the contraries: Now the thing must needs be holy, which by diffinition is determined to bee holy. Right also, by description is called the Art of that which is good & streight, so that in this respect a man may well call vs *Sacerdotes*, that is to say, giuers or teachers of holy things (for so by interpretation doth *sacerdos* signifie.) Forsomuch then as ye lawes are holy, it followeth that the ministers and setters forth of them may right well be called *Sacerdotes*, that is giuers & teachers of holy things. Furthermore all lawes published by men haue also their authoritie frõ God.

All

For as the Apostle saith: All power is from ỳ Lord God. Wherefore the lawes, that are made by man, which thereunto hath receiued power frõ the Lord, are also ordained of God, as also appeareth by this saying of the Author of all causes: What soeuer the secõd cause doth the same doth the first cause by a higher and more excellent meane. Wherefore Iosaphat the king of Iuda saith to his Iudges: The iudgements, which ye execute, are the iudgements of God, in the nineteenth Chapter of the second Booke of Cronicles. Wherby you are taught, that to learne Lawes, though they bee Mans lawes, is to learne holy lawes and the ordinances of God: so that the

dicat Apostolus, quod omnis potestas a Domino Deo est, leges ab homine conditæ, qui ad hoc a Domino recipit potestatem, etiam a Deo constituuntur, dicente *Auctore causarum: Quicquid facit causa secunda, facit & causa prima, altiori & nobiliori modo.* Quare *Iosaphat* Rex *Iuda*, ait Iudicibus suis: *Iudicia, quæ vos profertis, iudicia Dei sunt*, secundo Paralipo. xix. Capitul. Ex quibus erudiris, quod leges, licet humanas, addiscere, est addiscere leges sacras & editiones dei, quo earum

studium

studium nõ vacat a dulcedine cõsolationis sanctę. Nec tamen, vt tu conjicis, dulcedo hmõdi causa fuit, cur Moyses reges Israel Deut. legere præceperat. Nam causa hęc, non plus reges quã plebeios, ad eius lecturam prouocat, nec pl' Deut. librũ, quã alios Pentateuchi libros legere, pulsat causa ista, cum non minus libri illi, quã Deut. sacris abundant carismatibus, in quibus meditari sanctũ est. Quare non aliã fuisse causam mandati huius, quam quia in Deut. plus quam in alijs libris veteris testamenti, leges inse-

studyng of them is not without a pleasant sweetnesse of holy cõsolatiõ. And yet such sweet pleasure was not the cause, as you suppose, wherefore Moyses commanded the kings of Israel to read the lawes of Deut. For this cause moueth not kinges no more, then the common sort to ý reading of it, nor to the Booke of Deuter. more then of any of the other books of Moyses, in which, as wel as in ý book of Deuteronomy, is plentifull store of godly lessõs & holy instructiõs, wherein to bee deuoutly occupied is a holy thing. Wherfore ý there was none other cause of this cõmandement, thẽ for ý ý lawes, wherby the king of Israel is bound to rule his people, are more precisely cõtained

feined in the Boke of Deutronomie then in the other books of the old testament, the circumstaunces of the same commandement do manifestly inform vs. For which cause you ought, most worthie Prince, no lesse then the kings of Israel to be moued and prouoked, to be a diligent trauailer in the study of those lawes, wher by hereafter you shal rule your people. For that which was spoken to the king of Israell, must bee vnderstoode to be figuratiuely spoke to euery king hauing dominio ouer godly people. And haue I not then well & holsomly propounded vnto you the cõmandement giuen to the kings of Israel, cõcernig the lerning of their law?

runtur, quibus rex Israel populum regere obnoxius est, eiusdem mandati circumstãtię manifeste nos informant. Quo, & te, princeps, eadem causa, non min⁹, quam reges Israel exhortatur, vt legũ, quibus populum in futurũ reges, tu sis solers indagator. Nam, quod regi Israel dictũ est, omni Regi populi videntis deũm, typice dictum fuisse intelligendũ est. An tunc non conuenienter vtiliterque proposui tibi mandatum Regibus Israel latum, de eorum lege addiscenda?

Dum nedũ eius exemplum, sed & eius auctoritas figuralis, te erudiuit & obligauit, ad consimiliter faciendũ de legibus regni, quod annuente Domino hæreditaturus es.

Forasmuch as not onely his example, but also his like Authoritie, hath taught you, and bound you to the like doing in the Lawes of the Kingdome, which God willing you shall inherite.

¶ *Here the Chancellour proueth that a Prince by the laws may be made happie and blessed. Ca. 4.*

NOn solũ vt deũ timeas, quo & sapiens eris, *princeps colendissime*, vocant te leges, cũ propheta dicente, *Venite filij, audite me, timorẽ domini docebo vos:* Sed etiã vt felicitatem, beatitudinemq; (prout in hac vita nancisci poteris) adipiscaris, ipsæ leges ad earum disciplinatũ te inuitant. Philosophi namq;

NOt only to the intent you should feare God and so become wise, doe the Lawes with the Prophet call you saying, Come Children, heare mee, I will teach you the feare of the Lord: but also that you may aspire vnto felicitie and blessednesse (as farre forth as in this life they may bee attained) do the Laws will you, most gratious Prince, to bee studious of them. For all the Philosophers, which

which haue so diuersly reasoned of felicity, haue al agreed together in this one point, that felicitie or blessednesse is the end of all mans desire, and therfore they call it chiefe goodnesse. How bee it the Peripatetikes placed it in Vertue, the Stoikes in Honesty, and the Epicures in Pleasure. But seeing the Stoikes defined Honestie to bee that, which is well and laudably done with vertue, and the Epicures held nothing to bee pleasant without vertue, therfore al those sects, as saith Leonard Aretine in his Introduction to Morall Philosophie, agreed in this, that it is only vertue that causeth felicity. Wherefore Aristotle also in the 7. booke of his poli-

omnes, qui de felicitate tã varie disputabãt, in hoc vno conuenerũt, vz. qd felicitas siue beatitudo finis est, oĩs humani appetitus, quare & ipã sũmũ bonũ appellãt, *peripateticis* ã cõstituebãt eã in virtute: *Stoici* in honesto: et *Epicuri* in voluptate. Sed quia *Stoici* honestũ definiebãt esse qd bene fit & laudabilit ex virtute, & *Epicuri* asserebãt nihil esse voluptuosũ sine virtute, Oẽs sectę illę, vt dicit *Leonard' Aretin'* Ysagogico moralis disciplinæ, in hoc concordauerũt, qd sola virt' est, quę felicitat operatur. Quo & Philosoph' (in 7. polit. felicitatõ

definiẽs) dicit, quod ipsa est perfect' vsus virtutũ. His iã ꝑsup positis, cõsiderare te volo etiã ea quę sequentur. Leges humanę nõ aliud sunt quã regulæ, quibus pfecte iustitia edocetur. Iustitia vero, quã leges reuelant, non est illa, quæ cõmutatiua vel distributatiua vocatur, seu alia quæuis particularis virt' sed est virtus pfecta, quæ iusticię legalis nomine designatur. Quam Leonardus prædictus ideo dicit esse perfectã, quia omne viciũ ipsa eliminat, & omnem virtutem ipsa docet: quo & omnis virtus ipsa merito nuncupatur.

tiques defining Felicitie sayth, that it is the perfect vse of Vertues. Thus much being now presupposed, I would haue you to consider these thinges also that follow. Mans lawes are nothing else but certaine rules, whereby Iustice is perfectly taught. But that Iustice, which the Lawes doe shewe, is not the same that is called Commutatiue or distributiue, or any other particular vertue, but it is a perfect vertue expressed by the name of Iustice legall. Which the foresaid Leonard doth therfore affirme to be perfect, because it excludeth all vice, & teacheth all vertue: For which cause also it is worthily called by the name of all vertue.

Wherefore

Whereof Homer sayth, and likewise Aristotle in the fifth Booke of Morall Philosophie, that it is the chiefest of all vertues, and that neither Lucifer nor Hesperus are so bright and beaming as it is. Moreover this iustice is the thing whereuppon all Princely care dependeth and resteth, without the which the King can neither rightly iudge, nor yet duly fight. But this being once obtained & perfectly kept, then al the whole duty required in a king is iustly performed. Now then seeing that the perfect vse of vertues is felicity, and that Iustice vsed amongst men, which cannot be obtained vnto nor learned but by the Law,

De qua Homer' dicit, similiter & philosophus quinto Ethicorũ, Quod ipsa est præclarissima virtutũ, &, nec Lucifer, nec Hesperus, vt illa, est admirabilis. Iusticia vero hæc, subiectum est omnis regalis curæ, quo sine illa Rex iuste non iudicat, nec recte pugnare potest. Illa vero adepta, perfectęq; seruata, æquissime peragitur omne officium Regis. Vnde cum perfectus vsus virtutum sit fœlicitas, & Iusticia humana, quę non nisi per legem perfecte nacisitur, aut docetur,

nedum

nedum sit virtutum effectus, sed & omnis virtus: Sequitur, quòd iustitia fruens, fœlix per legem est, quo & per eam ipse fit beatus, cum idem sit beatitudo & œlicitas in hac fugaci vita, cuius & per iustitiam ipse summum habet bonum. Tamen non nisi per gratiam lex poterit ista operari, neque legem aut virtutem sine gratia tu addiscere poteris, vel appetere. Cum, vt dicit Pariss. in libro suo de *Cur Deus homo*, virtus hominis appetetiua interior,

is not onely the effect of vertues, but is all vertue it selfe: hereof it followeth, that the practiser of Iustice is by the Lawe happie, and so thereby he is made blessed, forsomuch as blessednesse or happinesse and felicitie are both one in this short and transitorie life, of the which life through Iustice hee enioyeth the chiefe & principall goodnesse. And yet the lawe is not able to performe these thinges without the assistaunce of grace, without the which also you cannot learne nor conuet either Lawe or vertue. For, as sayth Pariss. in his booke intituled *Cur deus homo*, the inward vertue of mã, wherin his desiring is placed, is so

through

through originall sinne defaced & corrupt, that it esteemeth vitious works for pleasaunt, & vertuous workes for vnpleasant. Wherefore, in that some men applie and endeuour themselues to the loue & following of vertues, it procedeth of the boũtiful goodnes of God, & not of ẏ power of man. Is there not thẽ speciall cause why ẏ lawes, which being preuented, & accompanied wẏ grace, do performe all the premises, should with all diligent trauel be lerned? Seeing that who so hath perfectly attained thereunto, the same shall enioy felicitie, the end & performaunce, as the Philosophers say, of mans desire, by means wherof he shall in this life be blessed, in ẏ

per peccatũ originale ita viciata est, vt sibi viciorũ suauia, & virtutum aspera opera sapiant. Quare, quod aliqui ad amorem sectationémque virtutis se conferunt, diuinæ bonitatis beneficiũ est, & non humanæ virtutis. Num tunc leges, quæ, præueniente & comitante gratia, omnia premissa operãtur, toto conamine addiscendæ sunt? dum felicitatẽ, quæ secũdum Philosophos, est hic finis & complementum humani desiderij, earum apprehensor, obtinebit, quo & beatus ille erit in hac vita,

eius

eius possidens summum bonum. Verè, etsi non hæc te moueant, qui regnum recturus es, mouebunt te & arctabunt ad disciplinatũ legis Prophetæ verba dicentis: *Erudimini, qui iudicatis terram:* non enim ad eruditionem artis factiuæ, aut mechanicæ, hic mouet Propheta: Cum non dicat, Erudimini, qui colitis terram, nec ad eruditionem scientiæ tantum theoricæ, quamuis oportuna fuerit incolis terræ, quia generaliter non dicit, erudimini qui inhabitatis terram,

he now possesseth ẏ chiefe goodnes therof. Doubtles if these things moue you not, which shall haue the rule and gouernment of a kingdom, yet the words of the Prophet shal moue you, yea and force you to the studie of the Lawe, which wordes bee these: Bee yee learned you that are Iudges of the Earth: Heere the Prophet exhorteth not to the learning of a base art or a handicraft, for hee saith not: Be yee learned you that are thinhabiters of the earth, neither doth hee counsell to the lerning of knowledge speculatiue, though it bee not vnnecessary for ẏ inhabiters vpon the earth; For hee sayeth not generally: Be ye learned you that dwel vpon the earth,

but

but by these words doth the Prophet call Kinges onely to the learning of ỳ law, wherby iudgements are executed, forsomuch as he specially saith, be ye learned you that are Iudges of the earth. And it followeth: least the Lord ware angrie, & so you perish from the way of righteousnes. Neither doth holy scripture (O kings sonne) cõmand you onely to be skilfully instruct in the Lawes, whereby you shall purchase and obtain the possessiõ of iustice, but also in an other place it biddeth you vnfainedly to loue iustice, wher it saith: O set your loue & affection vpon Iustice, you that are Iudges of the Earth, in the first chapter of the booke of Wisedome.

sed solùm ad disciplinam legis, qua Iudicia redduntur, Reges inuitat Propheta in his verbis, Cum specialiter ipse dicat: *Erudimini, qui iudicatis terram.* Et sequitur: *Nè quãdo irascatur Dominus, & pereatis de via iusta.* Nec solùm legibus, quibus iustitiam consequeris, (fili Regis) imbui te iubet sacra Scriptura, sed & ipsam iustitiam diligere, tibi alibi præcipit, cum dicat: *Diligite Iustitiam, qui iudicatis terram*, Sapientiæ capitulo primo.

Igno-

¶ *Ignorance of the Law causeth the contempt thereof. Cap. 3.*

SEd quomodo iustitiam diligere poteris, sinon primó legum scientiam, quib⁹ ipsa cognoscatur, vtcunque apprehēderis? Dicit namque Philosophus, quod nihil amatum nisi cognitum. Quare *Fabius* Orator ait, *Quod felices essent artes, si de illis soli artifices iudicarent*. Ignotum vero non solum non amari, sed & sperni solet. Quo poeta quidam sic ait.

Omnia quæ nescit, dicit spernenda colonus.

But how can you loue Iustice, vnlesse you first haue a sufficient knowledge in the lawes, whereby the knowledge of it is won and had, for the Philosopher sayth, that nothing can bee loued except it bee knowen. And therefore Quintilian the Orator saith, That happie should Arts bee, if Artificers onely were Iudges of them. As for that which is vnknowne, it is wont not onely not to bee loued, but also to be despised. And therefore a certaine Poet thus saith:

The plowman doth despise and skof,
The thing he is not skilfull of.

And

And this is the saying not of Plowmen alone, but also of learned and right skilfull men. For if vnto a naturall Philosopher, that neuer studied the Mathematicall sciences, a supernaturall philosopher should say, that this Science considereth things seuered from all matter and mouing, according to their substantiall being and reason: or the Mathematicall man should say that this Science considereth things ioyned to matter, and mouing, after their substãce, but seuered according to reason: both these, though Philosophers, will the naturall Philosopher, which neuer vnderstood things seuered from matter and motion, either

Etnon coloni solum vox hæc est, sed & doctorũ peritissimorum quoq; virorũ. Nam si ad Philosophum naturalẽ qui in Mathemat. nunquam studit, metaphisicus dicat, qd sciẽtia sua cõsiderat res separatas ab omni materia & motu secundum esse et secundũ rationẽ: Vel Mathematicꝰ dicat, q̃ sua scientia considerat res cõiunctas materiæ, & motui, secundũ esse, sed separatas secũdũ rationẽ: ãbos hos, licet philosophos, philosophus ille naturalis qui nunquam nouit res aliquas separatas a materia & motu,

essentia

essentia vel ratione, spernet, eorumque scientias, licet sua scientia nobiliores, ipse deridebit, non alia ductus causa, nisi quia eorum scientias ipse penitus ignorat. Sic & tu, Princeps, legis Angliæ peritum miraberis, si dicat, quod frater fratri sibi nequaquam vterino, non succedet in hæreditate paterna, sed potius hæreditas illa, sorori integri sanguinis sui descendet, aut capitali dño feodi accidet vt escaeta sua: Cum causam legis hui⁹ tu ignores, in lege tamen Angliç doctũ, hui⁹ casus difficultas nul-

in being or in reason, vtterly despise, and their sciences, though in deede more excellent then his, will hee laugh to scorne, mooued so to doe by none other cause, but that he is altogether ignorant in their sciences. Likewise you, most worthy Prince, would wonder at one skilfull in the Lawes of England, if he should say, that the brother shall not succeede his halfe brother in their Fathers inheritance, but rather his inheritance shal discend to the sister of the whole bloud, or else it shall be intituled to the chiefe Lord of the fee as his escheat: Hereat you would much maruel, because you know not the cause of this law, howbeit the difficultie of this case

nothing

nothing troubleth him that is learned in ẏ laws of England. Wherefore it is a common saying, that an Art hath no foe but an ignorant person.

But God forbid, O noble Prince, ẏ you should be an enemie to the Lawes of that Realme, which you shall by succession inherite: or that you should despise them, seeing that ẏ aforecited text of scripture instructeth you to the loue of Iustice. Wherefore, most Soueraigne Prince, I doe with most earnest affection require you to learne the laws of your fathers kingdome, whom you shall succeede, not only to the intent you may the rather auoyde these inconueniences, but also because mens

latenus perturbat. Quare & vulgariter dicitur: quod *ars non habet inimicum nisi ignorantem.*

Sed absit ate, *fili Regis*, vt inimiceris legibus Regni, quo tu successurus es, vel vt eas spernas, quum iustitiam diligere, prædicta sapientiæ lectio te erudiat. Iterum igitur atque iterum, *Princeps inclitissime*, te adiuro, vt leges Regni patris tui, cui successurus es, addiscas: Ne dum vt inconuenientias has tu euites: Sed quia mens huma-

na, quæ naturaliter bonum appetit, & nihil potest appetere, nisi sub ratione boni, mox vt per doctrinam bonum apprehenderit, gaudet & illud amat, ac quanto deinceps illud plus recordatur, tanto amplius delectatur in eodem, quo doceris, quod si leges prædictas quas iam ignoras, intellexeris per doctrinam, cum optimæ illæ sint, amabis eos. Et quanto plus easdem mente pertractaueris, delectabilius tu frueris.

Nam omne, quod amatur, vsu tra-

minde, which naturally desireth the thing that is good, & can desire nothing but in respect that it is good, as soone as by learning it hath taken hold of that which is good, it becommeth ioyfull and loueth the same: & the more that it is afterward occupied in the remembrance of the same, so much it is more delighted therein: Whereby you are taught ẏ if you once by learning attain to ẏ vnderstanding of ẏ foresaid lawes, wherein you are now ignorant, seeing they bee perfectly good, you must needs loue thẽ. And ẏ more ẏ you record thẽ in your mind, so much ẏ more delite & pleasure shall you haue in thẽ. For whatsoeuer it is that is loued, the same drawe-

eth

eth the louer of it into the nature therof. So that as the Philosopher saith, vse or exercise becommeth an other nature: So a slip of a Peare tree being graffed into the stock of an Apple tree, after ý it hath taken, it so drawetheth ý apple tree into ý nature of the peare tree, ý they both for euer after are rightly called a pear tree, & do bring forth the fruit of a peare tree. In like sort, continuall vse and practise of vertue causeth a full perfection thereof, in so much that the practiser of the same is afterward named therby: as a man indued with modestie, of the vse therof is named modest, Yee that vseth continencie is called continent, and one garnished with wisdome

hit amatorem suum in naturam eius. Vnde, vt dicit Philosophus, *vsus altera fit natura:* sic ramunculus pyri, stipiti pomi insertus, postquam coaluerit, ita pomum trahit in naturam pyri, vt ambæ deinceps, merito pyrus appellentur, fructusque producant pyri. Sic & vsitata virtus habitum generat, vt vtens ea deinde a virtute illa denominetur, quo modestia præditus, vsu modestus nominatur, continentiæ continens, & sapientiæ sapiens.

Quare & tu princeps, postquam iustitia delectabiliter functus fueris, habitumque legis indutus fueris, merito denominaberis iustus, cuius gratia tibi dicetur, *Dilexisti iustitiam, quo & odisti iniquitatem, propterea vnxit te dominus Deus tuus oleo letitiæ præ consortibus tuis regibus terræ.*

is called wise. Wherefore you also, most mightie prince, when you are plesantly delited in Iustice, and therewith indued, in respect of the perfectiõ of the law you shal worthily be called Iust, For which cause it shall be said vnto you: Thou hast loued Iustice & hated iniquity, and therfore the Lord thy God hath annointed thee with the oyle of gladnes aboue the Kings of the earth thy companions.

¶ *Heere the Chauncellour briefely repeateth the effect of all his persuasion.*
Cap. 6.

NOw, most gratious Prince, is not all this inough to moue your Highnesse to the studie of the Law? Seeing that thereby you shall indue your selfe with Iustice, which shall yeeld vnto you the name of a iust man, And shall also eschewe the infamie of ignorauncе in the Lawe, And further by the Lawe you enioying felicitie, shall be blessed in this life, And finally being furnished with a loving feare, which is the wisedome of God, you shall obtaine and possesse Charitie, which is a stedfast loue to God-ward, and by the meane thereof cleauing to God, you shall by the Apostles saying, Be made one Spirit with him.

NOnne tunc, *Princeps serenissime*, hæc te satis concitant ad legis rudimenta? cum per ea iustitiam induere valeas: quo & appellaberis iustus, ignorantiæ quoque legis euitare poteris ignominiam: ac per legem fœlicitate fruens, beatus esse poteris in hac vita, & demum filiali timore inductus, qui Dei sapientia est, charitatem, quæ amor in deum est imperturbatus, consequeris, qua Deo adhærens, per Apostoli sententiam, *Fies vnus spiritus cum ea.*

Sed quia ista, sine gratia lex operari nequit, tibi illam super omnia implorare necesse est, legis quoque diuinæ & sanctarum scripturarum indagare scientiam.

Cum dicat scriptura sacra, quod *vani sunt omnes, in quibus non subest scientia Dei*, Sapientiæ cap. xiij.

His igitur, *Princeps*, dum adolescens es, & anima tua velut tabula rasa, depinge eam, ne in futurum ipsa figuris minoris frugi delectabilius depingatur.

Quia etiam (vt Sapiens quidam ait)

But forasmuch as the Law without grace cannot accomplish these things, it is necessary and requisite, that aboue all things you make earnest intercession for it: and also that you becom a studious sercher of Gods law, and of the holy scripture.

For Scripture saith, that all men are vaine, in whom is not the knowledge of God, in the xiij. chapter of the booke of Wisdome.

Wherefore, most noble Prince, while you are yet young, & while your soule is as it were a smooth blanke table, write in it these things, least hereafter you happen to take pleasure in writing lessõs of lesse profit therein.

For as a certaine wise man saith:

Where-

Whereof the vessell new,
did first receiue the tast,
Therein, when it is old,
the sent will euer last.

Quod noua testa capit,
Inueterata sapit.

What handicraftes man doth so negligētly regard the profit of his childe, whom whites he is yong, he will not see brought vp in such an occupation, as therby he may afterward obtaine to leade a merrie life: So ẏ Carpenter teacheth his son to cut with an axe: the smith to strike with an hammer: ¶ whom hee entendeth to make a spiritual minister, him he procureth to bee trained vp in learning: So likewise is it conuenient, that a Kings son, which shall gouerne the people after his father, be in his youth instructed in the lawes.

Quis Artifex tam negligens profectus suæ prolis est, vt non eam, dum pubescit, artibus instruat, quibus postea vitæ solatia nanscisatur? Sic lignarius faber secare dolabro, ferrarius ferire malleo, filium instruit: & quem in spiritualibus ministrare cupit, literis imbui facit: Sic & principi, filium suum, qui post eum populum regulabit, legibus instrui, dum minor est conuenit.

Qualiter si fecerint Rectores orbis, mũdus iste ampliori, quam iam est, iustitia regeretur, quibus, si tu, vt iam hortor, facias, exemplum nõ minimum ministrabis.

Which order if the Rulers of the world would obserue, then the world should be gouerned with much more Iustice then now it is, Vnto whom, if you will follow mine exhortation, you shall minister no small example.

¶ Now the Prince yeeldeth himselfe to the studie of the Lawes, though he bee yet disquieted with certaine doubts. Cha. 7.

SIlente extunc Cancellario, *Princeps* ipse sic exorsus est. Vicisti me, vir egregie, suauissima oratione tua, qua & animum meum

THus whẽ ỳ Chancellor had said, hee held his peace, to whom the Prince began on this wise to speake. You haue ouercome mee, welbeloued Chancellour, with your most pleasant talk, wherwith you haue inflamed my

my minde with a fer-
uent desire towarde the
knowledge of the Lawe.
Howbeit two things
there bee, that doe tosse
my minde too and fro,
and so disquiet it, that
like a Shippe in the ra-
ging waues it know-
eth not which way to
encline for ease. The
one is, while it conside-
reth how many yeeres
the students of the lawes
bestowe therein before
they can attaine to suf-
ficient knowledge of the
same: Which causeth
my minde also to dread,
least that I should like-
wise spend the yeeres
of my youth. The o-
ther is, whether I shall
apply my selfe to the
studie of the Lawes of
England, or of the Ci-

ardore non mini-
mo, legis fecisti si-
tire documenta. Sed
tamen duobus, me
huc illucque agi-
tantibus, animus
ipse affligitur: vt
tanquam in turbi-
do mari Cimba,
nesciat quorsum di-
rigere proras. Vnũ
est, dum recolit
quot annorum cur-
riculis leges addis-
centes, earum stu-
dio se conferunt,
antequam sufficie-
entem earundem
periciam nanciscan-
tur: quo timet ani-
mus ipse ne con-
similiter ego præ-
teream annos iu-
uentutis meæ. Al-
terum est, an An-
glię Legum vel Ci-
uilium

uilium, quæ per orbem percelebres sunt, studio operam dabo. Nam non nisi optimis legibus populum regere licet, etiam vt dicit Philosophus, *Natura deprecatur optima*, Quare libenter super his, quod tu consulis, auscultaremus. Cui Cancellarius. Non sunt hæc, *fili Regis*, tantis celata mysterijs, vt deliberatione egeant ingenti, quare, quid in his mihi visum est prodere, non differemus.

uile laws, which throughout the whole World are chiefely esteemed: For people may not bee gouerned but by right good Lawes, and as the Philosopher saith, nature coueteth that which is best. Wherefore I would gladly heare your councell in this behalfe. To whom the Chancellour made this answer. These matters, O Kings sonne, are not hidde vnder so deepe and darke mysteries, that they require any great deliberation, or aduisement. And therefore what I thinke best heerein I will not hyde

So much knowledge of the Law as is necessarie for a Prince, is soone had. Chap. 8.

Aristotle

ARistotle in the first Booke of his naturall Philosophie saith, that then weesuppose our selues to haue the knowledge of euery thing, when wee know the causes and beginnings thereof euen to the principles, vppon the which text the Commentatour saith, that the Philosopher by beginnings or principles did vnderstãd the causes efficient, by the terme Causes hee vnderstood causes finall, and by Elements, matter and forme. But in the Lawe there are not matter and forme, as in things naturall and compound. How bee it there be in them certaine Elements, out of ẏ which they proceede as out of

PHilosophus in primo Phisicorum dicit, quod *Tunc vnumquodque scire arbitramur, cum causas & principia eius cognoscamus vsque ad elementa.* Super quem textum commentator dicit, quod Aristoteles per principia intellexit causas efficientes, per causas intellexit causas finales, & per Elementa materiam & formam. In Legibus vero non sunt materia & forma, vt in Phisicis & compositis. Sed tamen sunt in eis Elementa quędam, vnde ip sæ profluunt, vt ex materia

materia & forma, quæ sunt *consuetudines, statuta, & ius naturæ*, ex quibus sunt omnia iura regni, vt ex materia & forma sunt quæque naturalia: & vt ex literis, quæ etiam elementa appellantur, sunt omnia quæ leguntur. *Principia* autem, quæ Commentator dicit esse causas efficientes, sunt quædam vniuersalia, quæ in legibus Angliæ docti, similiter & Mathematici, *Maximas* vocant: Rethorici, Paradoxas: & Ciuilistæ, Regulas iuris denominant. Ipsa reuera non

matter and forme, these are customes, statutes, and the Law of nature, of the which al the lawes of the realme haue their beginning, euen as all naturall things haue of matter & forme, and as all things that are written and read do cõsist of letters, which also are called elements. But principles, or beginnings, which are as the Commentarie saith, causes efficient, they are certaine vniuersal propositiõs, which they, that be learned in the Lawes of England, & likewise the Mathematicals do terme Maximes: the Rhethoricians doe call the same Paradoxes: & the Ciuilians terme them rules of the law. These in deede cannot be proued by force of argu-

arguments, or by demonstrations Logicall: But as it is said in the second booke of Posteiorum, they are knowne by induction by the way of sense and memorie. Wherefore in the first booke of his naturall Philosophy, Aristotle saith, that principles are not made of others, nor one of them of another, but all other bee made of them, And according thereunto in the first booke of his Topikes he writeth, that euery principle is a sufficient proofe of it selfe. And therefore the Phylosopher saith, that such as denie them, ought not to be disputed or reasoned withall: because that as hee writeth in the fifth books

argumentorum vi, aut demonstrationibus logicis dignoscuntur: Sed vt secundo *Posteriorum* docetur, inductione, via sensus & memoriæ, adipiscuntur. Quare & primo Phisicorum phylosophus dicit, quod *principia non fiunt ex alijs, neque ex alterutris, sed ex illis alia fiunt*, quo primo Topicorũ scribitur, quod *vnumquodque principiorum est sibi ipsi fides*. Vnde, *cum negantibus ea*, dicit Phylosopus, *non est disputandum*: quia, vt scribi-

cur

tur vj. Ethicorum, *ad principia non est ratio.* Igitur principijs imbuendi sunt, quiqui gliscunt aliquas intelligere facultates. Ex eis etenim, reuelantur causæ finales, ad quas, rationis ductu, per principiorum agnitionem, peruenitur; vnde, his tribus, videlicet, *Principijs, Causis, & Elementis ignoratis, scientia, de qua ipsa sunt, penitus ignoratur.* Et his cognitis, etiam scientiam illam cognitam esse, non determinatè, sed in confuso &

of his Moral phylosophie, there is no reason to be giuen for principles. Wherfore whatsoeuer they bee that couet to profit in the knowledge of any faculties, they must néds first be furnished with principles. For by thē are opened the causes final, vnto the which by ẏ direction of reason, through the knowledge of the principles, we do attaine; wherfore these thrée, viz. Principles, Causes, and Elements, being vnknowne, the science, whereof they are, is altogether vnknowen. And the same thrée being known, the science also, whereof they are, is thought to bee knowne, not determinatly or precisely, but superficially after

after a confuse & vniuersall sort.

Thus wee thinke our selues to haue the knowledge of Gods Lawes, when wee vnderstand our selues to know faith, charitie, and hope, and also the Sacraments of the Church, and the Commaundementes of GOD, leauing to the Prelates of the Church the other misteries of Theologie. Wherefore the LORD saith vnto his Disciples: To you it is giuen to knowe the mysterie of the kingdome of GOD, but to others in Parables, that seeing they may not see, &c. And the Apostle saith, Not to bee wiser, then it behooueth. And in an other place,

vniuersaliter arbitratur.

Sic Legem diuinam nos nosse indicamus, dum fidem, charitatem, & spem, sacramenta quoque Ecclesiæ ac Dei mandata, nos intelligere sentiamus; cetera Theologiæ mysteria Ecclesiæ presidentibus relinquentes. Quare dominus discipulis suis ait: *Vobis datum est nosse mysterium regni Dei, cæteris autem in parabolis, vt videntes non videant, &c.* Et Apostolus dixit, *non plus sapere quam oportet sapere.* Et alibi,

non

non alta sapientes. Sic & tibi, *Princeps*, necesse non erit misteria legis Angliæ longo disciplinatu rimare, sufficiet tibi, vt in Grammatica tu profecisti, etiam & in legibus proficias. Gammaticæ vero perfectionem, quæ ex *Ethimologia*, *Ortographia*, *Prosodia*, *& Syntaxi*, quasi ex quatuor fontibus profluit, non specie tenus induisti, & tamen grãmatica sufficienter eruditus es, ita vt merito grãmaticus denomineris. Consimiliter quoq; denominari legista mereberis, si legum principia

Not being high in wisedome. In like manner, O most worthy Prince, it shall not bee needfull for you with long studie to search out the secret mysteries of the Law of England, It shall suffice for you, as you haue profited in grammer, so also to profit in Law, Unto the perfection of Grammer, springing out of Etimologie, Orthographie, Prosodie, and Construction, as out of foure fountaines, you haue not exactly attayned, and yet you are so sufficiently grounded in grammer, that you may well bee called a Grammarian. Likewise shall you bee well worthie to be called a Lawier, if you search out the principles

and

and cauſes of the Lawes, euen to the elements, after the manner of a ſcholar or a learner. For it ſhall not be needful or expedient for you by the travell of your owne wit, to ſtudie out the hid myſteries of the Law, But let that geare be left to your Iudges and men of law, which in the Realme of England are called Serieants at Law, and to other profeſſors of ye Law commonly called Apprentices: For you ſhall better execute iudgements by other, then by your ſelfe: Neither hath it been ſeen that any King of England hath pronounced iudgement with his owne mouth, And yet neuertheleſſe ye iudgements of the Realme are his, though

& cauſas, vſq; ad elementa, diſcipuli more indagaueris. Non enim expediet tibi, propria ſenſus indagine, legis ſacramenta rimare, ſed relinquatur illa iudicibus tuis & aduocatis, qui in regno Angliæ ſeruientes ad legem appellantur ſimiliter & aliis peritis, *quos Apprenticios* vulgus denominat: melius enim per alios, quam per teipſum iudicia reddes, quo, *proprio ore*, *nullus regum Angliæ* iudicium proferre vſus eſt, & tamen ſua ſunt omnia iudicia regni licet per alios ip-

sa reddãtur, sicut & *Iudicũ omnium sententias, Iosaphat* asseruit *esse iudicia dei.* Quare, *tu princeps serenissime,* paruo tẽpore, parua industria, sufficienter eris in legibus regni Angliæ eruditus, dummodo ad eius apprehensionem tu cõteras animũ tuũ. Dicit nãq; *Seneca* in epistola ad *Lucillum: Nil est qd pertinax opera, & diligens cura, nõ expugnat.* Nosco namque ingenij tui perspicacitatẽ, quo audacter pronuncio, qd in legibus illis, licet earum peritia, qualis iudicibus necessaria est, vix, xx.

by other they bee vttered and pronounced, Like as also King Iosaphat affirmed the sentences of all the Iudges to be the iudgements of God. Wherfore, most gracious Prince, you shall in short time with little labour bee sufficiently learned in the Lawes of England, so that you doe apply your minde to the obtaining thereof. For Seneca in an Epistle to Lucillus, saith: There is nothing which earnest trauell and diligent care atchiueth not. And so well doe I know the prompt towardnesse of your nature, that I dare bee bolde to say, that in those Lawes (though the exact knowledge of them such as is requiredin iudges

ges can skant bee gotten in the space of xx. yeres) you shal sufficiētly in one yere attain to so much vnderstanding as is conuenient for a prince. Neither in the meane time shal you neglect and omit the study of martiall discipline, whereunto you are so feruently giuen, but during all the same yere in stead of recreatiō you shall vse the practise thereof at you pleasure.

annorum lucubrationibus acquiratur, tu doctrinam Principi congruam in anno vno sufficienter nanciscēris, nec interim militarem disciplinam, ad quam tam ardenter anhelas, negliges, sed ea, recreationis loco, etiam anno illo, tu ad libitum perfrueris.

A King, whose gouernement is politike, cannot change the Lawes of his Realme.

Chap. 9.

The secōd point, most worthy prince, wherof you stand in feare, shal in like maner, & as easely as the other, be confuted. For you stand in doubt,

Secundum vero, *Princeps*, quod tu formidas, consimili nec maiori opera elidetur. Dubitas nēpe, an Anglorum

glorum legum, vel ciuilium studio te conferas, dum Ciuiles supra humanas cunctas leges alias, fama per orbem extollat gloriosa. Non te conturbet, *fili Regis*, hęc mentis euagatio: Nam non potest rex Angliæ, ad libitum suum, leges mutare regni sui. Principatu namq;, nedum *regali*, sed & *politico*, ipse suo populo dominatur. Si regali tantum ipse præesset eis, Leges regni sui mutare ille posset, *Tallagia*quoque & cætera onera eis imponere ipsis inconsultis, quale dominiū denotant leges

whether it bee better for you, to giue your mind to the studie of the lawes of England, or of the Ciuile lawes, because they thorowout the whole world are aduanced in glory and renowne aboue all other mans lawes. Let not this scruple of minde trouble you, O most noble Prince: For the king of England cannot alter nor change the lawes of his Realme at his pleasure. For why, hee gouerneth his people by power, not only royall, but also politique. If his power ouer thē were roial only, thē he might change the lawes of his realme, & charge his subiects with Tallage & other burdens without their consent, & such is the dominion that the ciuill Law purporte, when

whē they say, The Prince his pleasure hath the force of a Law. But from this, much differeth the power of a King, whose gouernment ouer his people is politique, For he can neither change Lawes without the consent of his subiects, nor yet charge them with strange impositions against their wils. Wherfore his people do franckly and freely enioy and occupie their own goods, being ruled by such lawes as they themselues desire, Neither are they pilled either of their owne king or of any other, Like pleasure also & freedome haue the subiects of a king ruling only by power royal, so long as hee falleth not into tyrannye. Of such a King speaketh Aristo-

ciuiles, cum dicant *qd principi placuit, legis habet vigorem.* Sed longe aliter potest Rex, politice imperās genti suæ, quia nec leges ipse sine subditorum assensu mutare poterit, nec subiectum populum renitentē onerare impositionibus peregrinis, quare populus eius libere fruetur bonis suis, legibus, quas cupit regulatus, nec per Regem suum, aut quemuis alium depilatur, consimiliter tamen plaudit populus, sub Rege regalit tantum principante, dummodo ipse in tyrannidem non labatur.

De quali rege dicit philosophus iij. politicorũ, quod *melius est Ciuitatem regi viro optimo, quam lege optima.* Sed quia non semper contingit præsidentẽ populo, huiusmodi esse virum, *sanctus Thomas* in libro, quem Regi Cipri scripsit, *de regimine principum*, optare censetur, regnũ sic institui, vt rex non libere valeat populum tyrannide gubernare, quod solum fit, dum potestas Regia lege politica cohibetur: Gaude igitur, *princeps optime*, talem esse legem regni, in quo tu successurus

tie in the third Booke of his Ciuill Philosophie, saying, that it is better for a Citie to bee gouerned by a good King, then by a good Lawe. But forasmuch as a King is not euer such a man, therefore Saint Thomas in the Booke, which hee wrote to the King of Cyprus, Of the gouernance of Princes, wisheth the state of a Realme to bee such, that it may not bee in the kings power to oppresse his people with tyrannie, Which thing is performed onely, while the power Royall is restrained by power politique. Reioice therefore, O soueraigne Prince, and bee glad, that the Lawe of your Realme, wherein you shall succeed, is such,

For

For it shall exhibite and minister to you and your people no small securitie and comfort. With such Lawes as saith the same St. Thomas should al man kinde haue beene gouerned, if in Paradise they had not trãsgressed Gods commandement, with such Lawes also was the Sinagogue ruled, while it serued vnder God only as King, who adopted the same to him for a peculiar kingdome, But at the last, when at their request they had a man king set ouer them, they were then vnder royall Lawes onely brought very lowe, And yet vnder the same Lawes, while good kings were their Rulers: they liued wealthily, and when wilfull and tyrannous

es, quia, & tibi, & populo, ipsa securitatem præstabit non minimã & solamen. Tali lege, ut dicit idem *sanctus*, regulatũ fuisse totũ genus humanum, si in paradiso Dei mandatũ non præterijsset tali etiã lege regebatur Sinagoga, dum sub solo Deo, Rege, qui, eam in regnum peculiare adoptabat, illa militabat, sed demum eius petitione, rege homine sibi constituto, sub lege tantum regali ipsa deinceps humiliata est. Sub qua tamen, dum optimi Reges sibi præfuerunt, ipsa plausit, & dum discoli

discoli ei præesse bant, ipsa incōsolabiliter lugebat, vt regum liber hęc distinctius manifestauit. Tamen quia de materia ista in opusculo, quod tui contemplatione de *natura legis naturæ* exaraui, sufficienter puto me desceptasse, plus inde loqui iam desisto.

rannous Kings had the gouernmēt of them, then they continued in great discomfort and misery, as the booke of Kings doth more plainly declare. But for so much, as I suppose, I haue sufficiētly debated this matter in my worke which at your request I compiled of the nature of the law of nature, therfore at this time I surcease to speake thereof any more.

Heere the Prince demandeth a question. Cha. 10.

TVnc *princeps* illico sic ait. Vnde hoc cancellarie, *quod Rex vnus plebem suam regaliter tantū regere valeat, & regi alteri potestas huiusmodi denegatur*, æqualis fastigij cum sint Reges

IMmediatly the Prince thus sain. How commeth this to passe, good Chancellour, that one King may gouerne his people by power Royall onely, & that another king can haue no such power, seing both these Kinges are in dignitie equall,

I cannot chose but much muse & marueile why in power they should thus differ.

ambo, cur in potestate sint ipsi dispares nequeo non admirari.

The answer to this question is here omitted, for that in an another worke it is handled at large.

Chap. 11.

I haue sufficiently, quod the Chancellor, declared in my forefaid worke, that the King, whose gouernmēt is politike, is of no lesse power, thē he that royally ruleth his people after his owne pleasure, howbeit they differ in authority ouer their subiects, as in the same worke I haue shewed, and say I still. Of which difference I will open vnto you the cause as I can.

CAncellari'. Nō minoris esse potestatis, regē politicè imperantem, quā qui, vt vult, regaliter regit populū suū, in supradicto opusculo sufficiēter est ostēsum, diuersę tamē auctoritatis eos in subditos suos ibidēve iā nullatenʼ denegaui, cuius diuersitatis causam, vt potero, tibi pādam.

How kingdomes ruled by royall gouernment only first began.

Chap. 12.

Men in times passed, excelling in power,

HOmines quōdam, potentia præpol-

præpollentes, auidi dignitatis & glorię, vicinas sæpe gentes sibi virib⁹ subiugarunt, ac ipsis seruire obtemperare quoq; iussionibus suis cõpulerũt, quas iussiones extunc leges hominib⁹ illis esse ipsi sancierũt. Quarum perpetione diutina, subiectus sic populus, dũ per subijciẽtes à ceterorũ iniurijs defẽdebatur, in subijciẽtium dominiũ consentierunt: Oportunius esse arbitrãtes, se vni⁹ subdi imperio, quo erga alios defenderẽtur, quam omnium eos infestare volentium oppressionib⁹ exponi. Sicq; regna

gredy of dignitie & glorie, did many times by plaine force subdue vnto them their neighbors ye nations adioyning: & cõpelled thẽ to do them seruice & to obey their cõmandements, which commandements afterward they decréd to be vnto those people very lawes. And by long sufferãce of the same, the people so subdued, being by their subduers defended from ye iniuries of other, agreed and consented to liue vnder the dominiõ of the same their subduers, thinking it better for thẽ to be vnder the empire of one man, which might be able to defend thẽ against other, then to bee in danger to bee oppressed of all such as would violently offer them any wrong.

And

And thus certaine kingdomes were begun, And those subduers thus ruling the people vnto them subdued, tooke vpon them of ruling to bee called rulers, which our language termeth kings, And their rule or dominion was named onely royall or kingly. So Nemroth was the first that got vnto himself a Kingdome, And yet in the holy Scriptures he is not called a King, but a stout and mightie hunter before the Lord: For like as a Hunter subdueth wilde beastes liuing at their libertie: so did he bring men vnder his obedience. So did Belus subdue the Assirians, & Ninus the most part of Asia. So also did the Romans vsurpe the Empire of the

quædam inchoata sunt, & subijcientes illi, dum subiectum populum sic rexerunt, *a regando sibi nomen regis vsurparunt*, eorum quoq; dominatus tantum *regalis* dictus est. Sic *Nembroth* primus sibi regnum cõparauit, tamen non rex, ipse, sed *Robustus venator coram domino* sacris litteris appellatus est: Quia vt venator feras libertate fruẽtes, ipso homines sibi compescuit obedire. Sic *Belus Assyrias*: & *Ninus* quam magnam *Asiæ* partem, ditioni suæ subegerunt. Sic & *Romani* orbis imperium vsur-

vsurparunt qualiter ferē in omnibus gēnibus regna inchoata sunt. Quare, dum filij Israel regē postulabant, sicut tunc habuerunt omnes gentes, dominus inde offensus, legem *regalē* eis per Prophetam explanari mandauit. Quæ nō aliud fuit, quam placitum regis eis præessentis, vt in primo Regum libro plenius edoceretur. Habes nunc (ni fallor) *Princeps clarissime*, formā exordij regnorū, regaliter possessorum. Quare, quomodo regnum *politice* regulatum, primitus erupit, etiam iam propalare

whole world, & thus almost were the kingdoms of all nations begunne. Wherefore ý Lord, being displeased with ý children of Israel requiring to haue a king, as thē al other nations had, cōmanded the law regall to bee declared vnto thē by the Prophet. Which law regal was no other thing, but the pleasure of the king their gouernor, as in ý 1. booke of the kings more fully it is cōtained. Now you vnderstand, as I suppose, most noble Prince, the forme & fashion of ý beginning of those kingdomes, ý be regally possessed and ruled. Wherefore, now I wil assay to make plain to you, how & by what meanes ý gouernmēt of ý kingdom politique, tooke his first entrance

entrance & beginning, to the end & intent, that whē you knowthe beginnings of them both, it may bee right easie for you thereby to discerne the cause of the diuersitie, which in your questiōis conteined.

conabor, vt cognitis amborum regnorum initijs, causam diuersitatis, quam tu quæris, inde elicere tibi facillimum sit.

¶ *How Kingdomes of politique gouernance were first begun. Chap. 13.*

SAint Augustine in the xxiii. chapter of his xix booke de Ciuitate Dei, saith, That a people is a multitude of men associated by the consent of law, & communion of wealth. And yet such a people being headlesse, that is to say, without a head, is not worthy to bee called a bodie. For as in things naturall, when the head is cut off, the residue is not called a bo-

S*Anctus Augustinus* in libro xix. *de Ciuitate Dei, cap.* xxiij. dicit, Quod *populus est cætus hominū, iuris consensu & vtilitatis cōmunione sociatus.* Nec tamē populus hmodi dux acephalus, (.i.) sine capite, esse corpus vocari meretur. Quia vt in *naturalibus*, capite detrūcato, residuū non cor-

pus,

pus, sed truncum appellamus, sic & in *politicis*, sine capite communitas nullatenus corporatur: Quo, primo polit. dicit *Philosophus*, quod *quãdocunque ex pluribus constituitur vnũ inter illa, vnum erit regens, & alia erũt recta*, Quare populum se in regnũ aliunde corpus *politicum* erigere volentẽ, semper oportet vnum præficere totius corporis illius regitiuum, quem *Regem* nominare solitũ est. Hoc ordine, sicut ex embrione corp° surgit phisicum, vno capite regulatum, sic ex populo erũpit reg-

die but a truncheon, so likewise in things *politique*, a communaltie without a head is in no wise corporate: Wherefore, Aristotle in the first booke of his ciuill philosophie saith, that whensoeuer one is made of many, among the same, one shall be the ruler, and the other shall be ruled, wherfore a people that will raise themselues into a kingdome, or into any other bodie politique, must euer appoint one to be chiefe ruler of the whole bodie, which in kingdomes is called a King. And this kinde of order, as out of the embrion riseth a bodie naturall, ruled by one head, euen so of a multitude of people ariseth

a

a kingdome, which is a bodie mystical, grounded by one man as by an head And like as in a naturall body, as saith the Philosopher, the heart is the first that lineth, hauing within it bloud, which it distributeth among al the other members, whereby they are quickned and doe liue: semblably in a body politique, the intent of the people is the first liuely thing, hauing within it bloud, that is to say, polititique prouision for the vtilitie and wealth of the same people, which it dealeth forth and imparteth aswell to the heade as to all the members of the same bodie, whereby the bodie is nourished & maintained. Furthermore the law vn-

num, quod corpus extat mysticũ vno homine vt capite gubernatum. Et sicut in naturali corpore, vt dicit Philosophus, cor est primũ viuens, habens in se sanguinẽ, quẽ emittit in omnia eius membra, vnde illa vegetãtur & viuunt: sic in corpore politico intẽsio populi primum viuidum est, habens in se sanguinem, viz. prouisionẽ politicam vtilitati populi illius, quã in caput & in omnia membra eiusdem corporis, ipsa transmittit, quo corhus illud alitur & vegetatur. Lex vero sub qua

cętus

cętus hominum, populus efficitur, neruorũ corporis phisici tenet rationem: Quia sicut per neruos compago corporis solidatur, sic per legem, quę à *ligando* dicitur, corpus huiusmodi misticũ ligatur & seruatur in vnũ, & eiusdẽ corporis mẽbra ac ossa, quę veritatis qua cõmunitas illa sustẽtatur, soliditatẽ denotant, per legẽ, vt corpus naturale per neruos propria, retinent iura: Et vt nõ potest caput corporis phisici, neruos suos cõmutare, neque mẽbris suis proprias vires, & propria sanguinis ali-

der the which a multitude of men is made a people, representeth ý semblance of sinewes in the body natural: because that like as by sinewes the ioyning of the body is made sound, so by the Law, which taketh the name a ligãdo, that is to wit, of binding, such a mistical body is knit & preserued together: & the mẽbers & bones of ý same body, wherby is represented the soundnes of ý wealth wherby ý body is sustayned, do by the lawes, as the natural body by sinewes, retein euery one their proper funcions: And as the head of a body natural cãnot change his sinewes, nor cannot deny or wõhold from his inferior mẽbers their peculiar powers, & seuerall nourishments of blood,

blood, no more can a king, which is the head of a bodie politike, change the Lawes of that bodie, nor withdraw from the same people their proper substance against their wils and consentes in that behalfe. Now you understand, most noble Prince, the forme of institution of a Kingdome politique, whereby you may measure the power, which the King thereof may exercise ouer the Law and subiects of the same. For such a king is made and ordained for the defence of the law of his subiects & of their bodies, and goods, whereunto he receiueth power of his people, so that he can not gouerne his people by any other power. Where-

mēta denegare, nec rex, qui caput corporis politici est, mutare potest leges corporis illius, nec eiusdē populi substātias proprias subtrahere, reclamantibus eis aut inuitis. Habes ex hoc iam, *princeps*, instituti omnis *politici* regni formā, ex qua metiri poteris potestatē, quā Rex eius in leges ipsius, aut subditos valeat exercere. Ad tutelā nāq; legis subditorū, ac eorū corporū, & bonorū, rex huiusmodi erectus est, & ad hāc, potestatē a populo effluxā ipse habet, quo ei non licet potestate alia suo

populo dominari: quare vt postulationi tuę, qua certiorari cupis, vnde hoc ꝓuenit qd̃ potestates regũ tã diuersimode variantur succinctius satisfaciã. Firme cõiector, qd̃ diuersitates institutionũ dignitatũ illarũ, quas ꝓpalaui, ꝑdictã discrepantiã solũmodo operantur, ꝓuerationis discursu, tu ex prẽmissis poteris exhaurire. Sic namq; Regnum *Angliæ*, qd̃ ex *Bruts* comitiua *Troianorũ*, quã ex *Italiæ* & *Græcorũ* finibus ꝑduxit, in dominiũ *politicũ*, & *regale*, ꝓrupit: Sic & *Scotia*, *quæ ei quondã vt du-*

foze to satisfie your request, in that you desire to be certified, how it cõmeth to passe that in the powers of Kings there is so great diuersitie: Surely in mine opinion the diuersity of the institutions or first ordinãces of those dignities, which I haue now declared, is the onely cause of this foresaide difference, as of the premises by the discourse of reason you may easely gather. For thus the Kingdome of England out of Brutes retinue of the Troyanes, which hee brought out of the Coastes of Italie and Greece, first grewe to a politique and regall dominion: Thus also Scotlande, which sometime was subiect to

England

Englande as a Dukedome thereof, was aduanced to a politique and royall Kingdome. Many other kingdomes also had thus their first beginning not onely of regall but also of politique gouernment. Wherefore Diodorus Siculus in his second booke of old histories, thus writeth of the Egyptians: The Egyiptian kings liued first, not after the licentious manner of other rulers, whose will and pleasure is in steade of law, but they kept themselues as priuate persons in subiection of the lawes, And this did they willingly, being perswaded that by obeying the lawes they should bee blessed. For of such rulers, as followed their owne lustes,

cat⁹ obediuit, in regnũ creuit politicũ et regale. Alia q[illegible] plurima re[illegible] dũ regalia [illegible] politice regula[illegible] li origine in[illegible] sunt. Vnde *Diodor⁹ Siculus* in secundo libro *historiarũ pri[illegible]carum* de *Egypti[illegible]*, sic scribit: suam primum *Egyptij* reges vitam non aliorum regnantium, quibus voluntas pro lege est, traducebant licentia, sed veluti priuati tenebantur legibus, neque id egreferebant, *existimantes parendo legibus, se beatos fore.* Nam ab his, qui suis indulgerent cupiditatibus,

multa censebant fieri, quibus dampna periculaq; subirent. Et in quarto libro sic scribit: Assumptus in Regem *Ethiopum*, vitam ducit statutam legib' omniaque agit iuxta patrios mores, neque premio, neque pena afficiens quenquam, præter per traditam a superioribus legem. Consimiliter loquitur de rege *Saba in fœlici Arabia*, & alijs quibusdam regib' qui priscis temporibus feliciter regnabāt.

they supposed many thigs to be done, whereby they were brought in danger of diuers harms & perils. And in his fourth Booke thus he writeth: The Ethiopian king as soone as he is created, hee ordereth his life according to the laws, & doth al things after the manere & custome of his countrie, assigning neither reward nor punishmēt to any mā, other then the law made by his predecessours appointeth. Hee reporteth likewise of the king of Saba in Arabia the happy, & of certain other kings which in old time honorably reigned.

Here the Prince compendiously abridgeth all that the Chauncellor afore hath discourſed at large. Cha. 14.

CVi *Princeps*, Effogasti, Can

TO whom the Prince thus answered. You

haue

hane, good Chancellour, with the cleare light of your declaratiõ quite driuen away the cloudy mist, wherewith the brightnes of my mind was darkned: so that I do most euidẽtly see that no natiõ did euer of their owne voluntarie minde incorporate themselues into a kingdom for any other intent, but only to the end, ẏ thereby they might with more safetie then before maintaine thẽselues, & enioy their goods from such misfortunes & losses as they stood in feare of, And of this intẽt should such a natiõ be vtterly defrauded, if then their king might spoile them of their goods, which before was lawfull for no man to do. And yet should such a people be muchmore iniured,

cellarie, declarationis tuæ lumine tenebras, quibus obducta erat acies mẽtis meæ, quo clarissime iam conspicio, quod non alio pacto gens aliqua, proprio arbitrio, vnquam se in regnum corporauit, nisi vt per hoc, se & sua, quorum dispendia formidabant, tutius quam antea possiderent, quasi proposito gẽs huiusmodi fraudaretur, si exinde facultates eorum eripere possit Rex suus, quod antea facere vlli hominum nõ licebat. Et adhuc graui[a] multo populus talis læderetur,

si deinde peregrinis legibus, etiam ipsis forsan exosis, regerentur. Et maxime, si legibus illis, eorum minoraretur substantia, pro cuius vitāda iactura, vt pro suorum tutela corporum, ipsi se Regis imperio, arbitrio proprio, submiserunt, non potuit reuera potestas huiusmodi ab ipsis erupisse: & super si non ab ipsis, Rex huiusmodi super ipsos nullam obtineret potestatem. E regione, a[illegible] concipio de regno, quod [illegible] solum auctoritate & potentia incorporatum est,

if they should afterward bee gouerned by foreins and straunge Lawes, yea and such as they peradauenture deadly hated and abhorred. And most of all, if by those Lawes, their substance should bee diminished, for the safegard whereof, as also for the defence of their own bodies, they of their owne free will submitted themselues to the gouernance of a King, no such power surely could haue proceeded frõ them: And yet if they had not beene, such a King could haue had no power ouer them. Now on the other side I perceiue it to stande muche otherwise with a kingdome, which onely by the authoritie of a king is incorporate,

For

For such a Nation is no otherwise subiect vnto him, but that the same Natiõ which by his pleasure is made his kingdome, should obey his Lawes, and bee ruled by the same beeing nothing else but his like pleasure. Neither haue I yet, good Chauncellour, forgotten that, which in your treatise of the nature of the Lawe of Nature, you haue with pithie reasons clarkely prooued: concerning that the power of these two kings is equal. Howbeit ẏ power of the one, whereby hee is at liberty to deale wrõgfully, is not by such libertyaugmented and increased, as to be of habilitie to decay and dy, is no hability, but in respect of ẏ priuation

qui non alio pacto gẽs talis ei subiecta est, nisi vt eius legibus, quę sunt illius placita, gens ipsa, quæ eodem placito regnum eius effecta est, obtemperaret & regeretur. Neque, Cancellarie, a mea hucusque memoria elapsum est, quod alias in tractatu de natura legis naturę, horum duorũ regũ æqualem esse potẽtiam, doctis rationibus ostendisti, dum potestas, qua eorũ alter perperam agere liber est, libertate hm̃di nõ augetur, vt posse languescere, moriue, potentia nõ est, sed propter priuationes inadiecto,

impotentia potius denominandum. Quia vt dicit *Boetius*, *potentia non est nisi ad bonum*, quod posse male agere, vt potest Rex regaliter regnans, liberius quam Rex politice dominans populo suo, potius eius potestatem minuit, quam augmentat. Nam sancti spiritus, iam confirmati in gloria, qui peccare nequeunt potentiores nobis sunt, qui ad omne facinus liberis gaudemus habenis. Solum igitur mihi iam superest a te scisitandum, *si Lex Angliæ,*

and feblenes in the thing, it is rather to be called a dishabilitie. Because that as Boetius saith: hability and power is not but to good: So that to bee of habilitie or power to doe euill, (as is the king that Regally doth rule, and that with much more libertie, then the King that hath a politike dominion ouer his people) is rather a diminution then an increase of power. For the holy spirits, which are now established in glorie, and cannot sinne, doe in power far excell and passe vs which haue a delight & pleasure to run headlõg into all kinde of wickednes. Now therfore I haue but this one only questiõ to demande of you, whether the law of England,

to

to the studie whereof you exhort me, be as good and effectuall for the gouernment of that kingdome, as the Ciuill law, whereby the holy empire is gouerned, is thought sufficient for the gouernment of the whole world? If vñ sound reasons and apparant demonstrations you resolue me in this point, I will straight yeeld mee to the studie of the Lawe, without further troubling you with my questions in this matter.

ad cuius disciplinatum me prouocas, *bona & efficax est ad regimen regni illius, vt lex ciuilis, qua sacrum regulatur imperiũ, sufficiens arbitratur ad orbis regimen vniuersi?* Si me in hoc, demonstrationibus congruis, indubium reddideris, ad studiũ legis illius ilico me cõferã nec te postulationib' meis super his, amplius fatigabo.

That all Lawes are the law of nature, customes, or statutes. Chap. 15.

THe Chãcelor answered saying: you haue wel cõmitted to memory, most worthy Prince, all that I haue hitherto declared vnto you, Where-

CAncellarius, memoriæ tuæ, *Princeps optime*, commendasti, quæ tibi hucusque suggessi, quare & quæ'

quæ iam interrogas, meritus es vt pandam. Scire te igitur volo, quod *omnia iura humana, aut sunt lex naturæ, consuetudines, vel statuta, quæ & constitutiones* appellantur. Sed consuetudines & legis naturæ sentẽtiæ postquã in scripturã redactæ, & sufficienti auctoritate principis promulgatę fuerint, ac custodiri iubeãtur, in constitutionũ siue statutorũ naturam mutantur, & deinde penalius, quã antea subditos principis ad earum custodiam constringunt, seueritate mãdati illius,

fore you are well worthy to haue this doubte opened, whereupon now you haue mooued your question. You shall therefore vnderstand, that all humane Lawes are either the Law of nature, or customes, or els statutes, which are also called constitutions. But customes and the sentences of the Law of nature, after that they were once put in writing, and by the sufficient authoritie of the Prince published & commaunded to bee kepte were changed into the nature of constitutions, or statutes, & did after that more penally, then before, binde the subiectes of the Prince to the keeping of thẽ, by the seueritie of his commandemẽt,

Of this sorte are the most part of the Ciuile lawes, which of the Romane Princes are digested in great volumes & by their authoritie commanded to bee obserued. And not they onely are called by the name of the Ciuill Law, but also al the other statutes of Emperours. Now then, if that among these three welsprings of all Law, I proue the preeminence of the Lawe of England to excell aboue the rest: I shall therewith proue the same Law to be good and effectual for the gouernment of the kingdome. And further, if I doe shew it to be as commodious for the wealth of that Realme, as the Ciuill Lawes are for the wealth of the Empire,

qualis est legum ciuiliũ pars non modica, quæ a Romanorum principibus in magnis voluminibus redigitur, & eorum auctoritate obseruari mãdatur. Vnde legis Ciuilis, vt cętera Imperatorũ statuta, iam pars illa nomen sortita est. Si igitur in his tribus quasi omnis iuris fontibus, legis Angliæ præstantiã probauerim pręfulgere, legem illam, bonam esse & efficacem, ad regni illius regimen, etiam comprobaui. Deinde si eam, ad eiusdem regni vtilitatem, vt leges ciuiles ad imperij bonum, accom-

accommodam esse lucide ostenderim, nedum tunc legem illam præstantē, sed &, vt leges ciuiles, electam (vt tu optas) etiam patefeci. Igitur hæc duo tibi ostendere satagens, sic progredior.

then shal I make euident & plain not only ȳ this law is of much excellency, but also that it is an elect and chosen law, as well as the Ciuill laws are: which is ȳ thing that you require. Wherefore to the proofe and declaratiō of these ij. points, thus I proceede.

The Law of nature in all countries, is all one.

Chap. 16.

LEges Anglię in his, quę ipsę sāciūt legis naturę ratione, non meliores peioresue sunt in iudicijs suis, quā in cōsimilib⁹ sunt omnes leges cæterarum nationū. Quia, vt dicit *Philosophus 5. Ethicorū: Ius naturale est, quod apud omnes homines*

THe laws of England, in those thigs, which they by force of the Law of nature do ratifie & establish, are neither better nor worse in their iudgements, then the lawes of all other nations are in ȳ like cases. For as Aristotle in the 5. booke of his Morall Philosophie saith: The Law of nature is that which among all people hath

hath like strength and power, wherefore hereof to reason any longer it shall not auaile. But now henceforth we will search out what manner of Customes & Statutes these of England are. And first the qualitie of those customes wee will consider.

eandem habet potentiam, quare de ea amplius disceptare non expedit. Sed quales sunt Angliæ cõsuetudines similiter & statuta, est a modo perscruãdũ, & primo consuetudinũ illarum visitabimus qualitates.

¶ *The Customes of England are of most ancient antiquitie, practised and receiued of v. seuerall Nations, from one to another, by succession. Chap. 17.*

THe Realme of England, was first inhabited of the Britons, next after them the Romanes had the rule of the land and then againe the Britons possessed it, after whom the Saxons inuaded it, who changing the name thereof did for Britaine call it England, af-

REgnũ *Angliæ,* primo per *Britanos* inhabitũ est, deinde per *Romanos* regulatum, iterumq; per *Britanos,* ac deinde per *Saxones* possessum, qui nomen eius ex *Britannia,* in *Angliam* mutauerunt: extunc

per

ter then for a certain time the Danes had the dominion of the Realme, and then Saxons againe, but last of all the Normans subdued it, whose discent continueth in the gouernment of the kingdome at this present. And in all the times of these seueral nations & of their kings, this realme was still ruled with the selfe same customes, that it is now gouerned withall. Which, if they had not been right good, some of those kings mooued either with Iustice, or with reason or affection, would haue changed thē, or els altogether abolished them, & especially the Romans, who did iudge all the rest of the world by their owne lawes. Likewise would

per *Danos* idē regnum parumper dominatum est, & iterum p *Saxones*, sed finaliter per *Normannos*, quorum propago regnū illud obtinet in præsenti. Et in omnibus nationum harum & regum earū temporibus, regnum illud eisdem, quibus iam regitur, consuetudinibus continuē regulatum est. Quæ, si optimæ non extitissent, *aliqui regum illorū, iustitia, ratione, vel affectione* concitati eas mutassent, aut omnino deleuissent, *& maxime Romani*, qui legib⁹ suis quasi totū orbis reliquū iudicabā. Similiter

militer & alij regũ prędictorũ, qui solùm gladio regnum Angliępossiderunt, quo & potentia simili, ipsi, leges eius exinanissevaluerũt. Neq; vero tantorũ tẽporum curriculis, *leges ciuiles, in quãtum Romanorum, inueteratæ sunt*, neque *Venetorũ* leges, quę sup alias antiquitate diuulgantur, quorum tum insula, in initio *Britonum*, inhabitata non fuit, sicut nec *Roma* cõdita, nec vllorũ mũdi regnorũ deicolarũ leges tanto quo inolitę sunt: Quare nõ bonas, immo non optimas esse, *Anglorum* consuetudines,

other of ye foresaid kings haue done, which by the swoord, only possessing the realme of Englãd, might by the like power & auctority haue extinguisht, o the Lawes thereof. And touching the antiquitie of the same, neither are the Romane Ciuile lawes, by so long continuance of ancient times, confirmed, nor yet ye Laws of ye Venetiãs, which, aboue al other are reported to be of most antiquity, for somuch as their Ilãd in ye beginning of ye Britons was not thẽ inhabited, as Rome then also vnbuilded, neither ye laws of any Paynim nation of ye world, are of so old & ancient yeeres: Wherefore the contrarie is not to be said nor thought, but that the English customes

are

sicut non dicere, ita nec suspicari fas est.

are verie good, yea of all other the verie best.

¶ *Here he sheweth with what grauitie Statutes are made in England. Chap. 18.*

STatuta tunc Anglorũ, bona sint necne, solum restat explorandum. Non enim emanant illa a principis solum voluntate, vt leges in regnis, quæ tantum regaliter gubernantur, vbi quandoq; statuta ita constituentis procurant cõmodum singulare, quod in eius subditorũ ipsa redundant dispendium, & iacturam: Quandoq; etiam inaduertẽtia principũ huiusmodi, & sibi consulentium inertia, ipsa

NOw whether the statutes of England be good or not, that onely remaineth to bee discussed. For they proceed not only from the Princes pleasure, as doe the lawes of those kingdomes that are ruled onely by regall gouernement, where sometimes the statutes doe so procure the singular commodity of the maker, that they redound to the hinderance and dammage of his subiects: Sometimes also by the negligence & ouersight of such princes, and their sleight regard, respecting onely their owne commodities, they

are

are so vnaduisedly made, that they are more worthy to haue the name of disorders, then of well ordered Lawes: But statutes can not thus passe in England, for so much as they are made not only by the Princes pleasure, but also by the assent of the whole Realme: so that of necessitie they must procure the wealth of the people, and in no wise tende to their hinderance. And it cannot otherwise be thought but that they are replenished with much wit and wisdome, seeing they are ordained not by the deuise of one man alone or of a hundred wise Counsellors onely, but of moe then three hundred chosen men, much agreeing with the number of the ancient

tam in consulte edũtur, qd̃ corruptelarum nomina potius, quã legum, illa merentur. Sed non sic Angliæ statuta oriri possunt, dum *nedum principis voluntate, sed & totius regni assensu*, ipsa conduntur, quo populi læsurã illa efficere nequeunt, vel non eorũ cõmodũ procurare. Prudentia, etiã & sapientia necessario ipsa esse referta putandũ est, dum non vnius, aut centũ solũ consulkorũ virorũ prudentia, sed plus quã trecentorũ electorum hominum, quasi numero olim *senatus Romanorũ*,

regebatur, ipsa edita sūt, vt hij qui par liamēti Angliē formā, conuocationis quoq; eius ordinem & modum, nouerunt, hæc distinctius referre norūt. Et si statuta hæc, tanta solemnitate & prudentia edita, efficatiæ tantæ, quantæ cōditorū cupiebat intencio, non esse contingāt: concito reformari ipsa possunt, & non sine cōmunitatis & procerum regni illi° assēsu, quali ipsa primitus emanarūt: patēt igitur iam tibi, *princeps*, legum anglorum species omnes. Earum quoq; qualitates, vt si bonæ

Senatours of Rome: as they that know the fashion of the Parliament of England, and the order and manner of calling the same together, are able more distinctly to declare. And if it fortune these Statutes beeing deuised with such great solemnity and witte, not to fall out so effectually, as the intent of the makers did wish: they may bee quickely reformed, but not without the assent of the commons, and states of the Realme, by whose authority they were first deuised: Thus most worthie Prince, you doe plainely understand all the kindes of the Lawes of England. And touching their qualities, as whether they bee

good or no, you shall be able to mesure that, as wel by your owne wit, as by comparing them with other lawes: And when ye shall finde non in ye whole world of like excellentie, you must of force grant them to be not only good, but also on your behalfe most to be embraced.

ipsæ sint, metiri tu poteris prudentia tua, comparatione etiam aliarum legum: & cum nullam tantæ præstantię in orbe reperies, eas nedum bonas, sed tibi optabilissimas fore, necessario confiteberis.

¶ *Here hee deuiseth a meane how to know the diuersitie, betweene the Ciuill Lawes, and the Lawes of England.*

Chap. 19.

One only doubt, wherewith your mind is troubled, remaineth now behind vndiscussed, And ye is this: whether as the ciuill lawes, so likewise ye lawes of England, bee fruitfull and effectuall, these for the Realme of England,

Solum iam vnũ de his, quibus agitatur animꝰ tuus, restat explanandũ vz. an, vt Ciuiles, ita & Anglorum leges, frugi sint & efficaces, isti Angliæ regno, vt illæ impe-

rio, etiã & accommodæ iudicari mereantur. *Comparationes* vero, *Princeps*, vt te aliquãdo dixisse recolo, *odiosæ reputantur*: quo eas agredi non delectator: tu, an ęqualis sint ambæ leges meriti, vnaue altera celsius præconium mereatur, non ex meo iuditio, sed ex his, in quibus earum differunt sentẽtiæ efficatius carpere poteris argumentum, Nam vbi conueniunt leges ambæ, æqualis laudis ipsæ sunt, sed in casibus, vbi ipsæ, dissentiunt, præstãtioris legis præconia, digna pensati-

as the other for the Empire, and whether they may worthily bee iudged fitte and meete. Comparisons, most noble Prince, (as I remember I heard you once say) are compted odious. Wherefore I am loath to meddle with them: but whether they bee both of like worthynesse, or that the one deserueth an higher commendation then the other heereof you may gather a pithier argument, out of those points, wherein their sentences do differ, then by my declaration. For where bothe the Lawes doe agree, the praise of them is equall. But in cases where they disagree, the worthier Law is most praise worthy.

thy. Wherefore we will now propound some such cases, to the intent you may indifferently ponder and weigh, whether of these doth most iustly and better define the same: And first, wee will put forth examples of cases of much weight.

one refulgent. Quare casus hisidi aliquos iam in medium proferemus, vt que legũ illarum, eos iustius meliusq; definiat, æqua lance valeas põderare & primo ex casib⁹ maximi ponderis, exempla proponamus.

¶ *The first case wherein the Ciuill Lawes, and the Lawes of England doe differ*

Chap. 20.

If they that haue a matter of controuersie depending before a Iudge, come to the contestation of the suit vpon the matter of the deede, which the Lawiers of England call the issue of the plea: the truth of such an issue, by the ciuill Lawes, must be tried by the depositions

Si coram Iudice contẽdentes, ad litis pertiniat contestationem super materia facti quam Legis Angliæ periti, *exitum placiti* appellant: Exitus huiusmodi veritas, per Leges Ciuiles, testiũ depositione

 pro-

probari debet, in qua duo testes idonei sufficiunt: Sed per leges angliæ *veritas illa, non, nisi 12. hominum de vicineto, vbi factũ huiusmodi supponitur, sacramẽto, Iudici cõstare poterit.* Quæritur igitur, quis horum duorũ processuũ tam diuersorũ, rationabilior cẽseri debeat & efficatior ad veritatẽ, quæ sic quæritur, reuelandã? Quia lex, q̃ eã certius meliusq; ostendere potest, præstãtior in hoc est lege altera quę non tantæ efficatiæ est & virtutis, quare in huius rei indagine sic procedimus.

of witnesses wherein two allowable witnesses are sufficient. But by the Lawes of England, the truth of the matter cannot appeare euident to the Iudge, without the oathes of twelue men neighbours to the place, where such a deed is supposed to bee done. Now therefore the question is, whether of these two so diuers proceedings ought to bee esteemed more reasonable and effectuall for the opening of the truth, which thus is sought for. For ye Law, that can more certainely and better shew the truth is in this behalfe of more excellency, then the other that is of lesse efficacie & force, wherefore in the search of this matter thus we proceed.

¶ *Here*

¶ *Here are set forth the inconueniences proceeding of that Law, which no otherwise then by witnesses admitteth trials. Cha. 21.*

By the Ciuill Lawes, the partie which in the issue holdeth the affirmatiue, must bring forth witnesses, which hee himselfe at his own pleasure shall name. But the negatiue cannot bee proued directly, though indirectlie it may. For the habilitie of him is thought to bee very small and weake, and his witte much lesse, which among all the men that hee knoweth, is not able to find two so voide of conscience and trueth, which for dread, loue, or profit, will not be readie to gainsay all truth. Such then may hee produce for witnesses on his side.

Per leges Ciuiles, pars, quę in litis contestationē affirmatiuādicit, *testes* p ducere debet, quos ipsemet ad libitum suū nominabit. Negatiua autē probari nō potest, vz. directe, licet possit p ob liquū. Exilis quippe creditur esse potētię, minoris quoq; industrię, qui de oīb⁹ quos noscit hoīb⁹ duos reperire nequit, ita conscientia & veritate vacuos, vt timore, amore, vel cōmodo, omni velint cōtraire veritati. Hos potes tunc ipso in testes producere in causa sua.

Et si cõtra eos pars altera dicere velit, vel contra eorũ dicta, non semper cõtinget, eos eorũ quoque mores aut facta apud contradicere volentẽ, agnosci, vt ex eorũ fedi tate & vitijs, testes illi possint reprobari. Et dũ eorũ dicta affirmatiuã cõtineãt, nõ facile poterũt illa p circumstantias aut obliqua alia improbari: Quis tũc poterit suorũ aut sui ipsius, sub legetali, viuere securus, dũ cuilibet, sibi inimicari volẽti lex tale prestat subsidium? Et qui iniqui duo tam incauti sunt, quo facti, de quo ipsi examina-

And if the other partie would obiect any thing against them, or their sayings, it chanceth not euer, that they and their conditions & doings are knowen to the contrary partie, so that by reason of their foule liues & vicious behauiour such witnesses might be reproued. And while their sayings conteine ye affirmatiue, it shall bee very hard to reprooue the byeir cũstances, or any other indirect meanes: who then shall be able to liue in surety of his goods or of himself vnder such a law, that ministreth such aide to euery bude body ye lusteth to trouble another? And what? wicked men are so vnwary & vncircũspect, which touching the deede, whereof, they shal be

be examined in iudgemēt, will not, before they are called forth for witnesses, secretly imagine & deuise a forme and fashion therof, & frame therūto al circumstances, euen such, as must needs haue bin so, if the thing had bin true indeed? For the children of this world (saith the Lord) are wiser then the children of light. So the most wicked Iesabel brought forth 2. witnesses of the children of Belial in iudgmēt against Nabot, wherby he lost his life, & King Achab her husband obtained ỳ possession of ỳ vinyarde. So the most chaste matron Susanna should haue died for adulterie by the witnes of two old notards being iudges, if the Lord had not maruel-

buntur in initio, non, antequā in testes producātur, occulte fingāt imaginem & figurā, componant quoq; eidē oēs circumstantias, quales sibi fuissent, si illud in veritate constituisset? *Prudētiores namq;* vt dicit dominus, *sunt filij huius mundi quam filij lucis.* Sic *Iesabel* sceleratissima, testes duos, filios *Belial* contra *Nabot* in iuditio produxit, quo ipse vitam perdidit, & *Achab* rex, eius vineā possidebat. Sic duorum senum etiam Iudicū testimonio, mortua fuisset pro adulterio, vxor castissima

Susan-

Susanna, si non eam miraculose liberasset domin⁹ inexcogitabili prudentia, quam a natura non habuit puer iunior, nondum ętate prouect⁹. Et si ipsos, depositione sua varia, cõuicerat puer ille, esse falsarios, quis, nisi solũ dominus, nouisse poterat eos in dictis suis taliter variaturos? dũ, non de arboris natura, sub qua impuratum facinus fiebat, lex aliqua eos arctabat reminisci. Quia testes sceleris cuiusq; cõsiderare nõ putãtur omnia vmbracula &cętera vicina illi facto, quæ ad aggrauationẽ vel de-

lously deliuered her by a wõderful feat of prudẽce, which of nature the yong childe had not, being yet vnder age. And though ỹ same childe by their altering e doubling in their depositions did conuict thẽ to be false wretches, yet who (saue onely the Lord) could haue known that in their sayings they would thus haue disagreed? Seeing their was no Lawe that did moue them to haue in remembrance what kind of tree it was, wherevnder the fact was supposed to bee done. For, the witnesses of euerie wicked deede are not thought to consider al circumstances appertaining to the same, being such as doe nothing helpe to

the

the aggrauation and detestion of the fault. But while those wicked Iudges, willingly swearing, did alter touching the kindes of trees, their owne words proued them to bee false varlets: Wherefore they worthely suffered the same punishment themselues.

You also, most gracious Prince, doe know how that lately Master Iohn Fringe, after that hee had continued three yeeres in the order of Priesthoode, was compelled by the deposition of two wicked persons, which witnessed that hee had, before hee was made Priestes, betrothed himselfe to a certaine young woman, to forsake the holy order of Priesthoode,

tectionē criminis illi minimè operātur Sed dum de arborū specieb, iudices illi nequam vltro deponētes, variabant, eorum dicta ipsos veritatis fuisse præuaricatores demōstrabant: quo & talionis pænā merito incurrerunt. Nosti & tu, *Princeps diuine*, qualiter iam tardé *magister Iohannes Fringe*, qui, postquam annis tribus sacerdotali functus est officio, duorum iniquorum depositione qui eum antea iuuenculam quandam affidasse testati sunt, sacrū presbiteratus ordinē relinquere cōpulsus est,

&c

& matrimoniũ cũ femina illa consummare. Cũ qua, postquam annis 14. moratus, sobolẽ septimã suscitauerat, demũ de crimine læsæ maiestatis in tuã celsitudinem cõiurato conuictus, subornatos fuisse testes illos, & falsũ dixisse testimonium, in mortis suæ articulo, coram omni populo, fassus est. Qualiter & sæpe peruerti iudicia, falsorum testium medio, etiam sub optimis iudicibus, non est tibi inaudium, nec incognitum mundo, dum scelus illud (proh dolor) creberrime commitatur.

and to marrie the same woman. With whom when he had liued fourteene yeeres, and had begotten seuen children of her, at the last being conuicted of Treason, conspired against your Highnesse, hee confessed before all the people euen at the very point of death, that those witnesses were hyred, and that their depositions were false. And thus many times are iudgements peruerted by the meane of false witnesses, yea and that vnder the verte best Iudges, as vnto you it is not vnheard, nor to the worlde vnknowne, while this wickednesse (the moze is the pitie) is often committed.

¶ *Of*

¶ *Of the crueltie of Rackings. Chap. 22.*

Therefore the law of France, in offences criminal, wherupon death dependeth, is not content to conuict the party accused by witnesses least by the testimony of false persons, innocēt blood should be condemned. But that law choseth rather to torment such offenders with racking, vntill they themselues confesse their own fault, rather then by the deposition of witnesses, which manye times through wicked affections, & sometimes by the subornation of euill men, are moued to periurie. Vpon this, and such like cautels & respects, offenders and suspect persons are in that realme with so many kinds of rackings

NOn igitur cōtenta est lex *Franciæ* in criminalibus, vbi mors imminet, rerum testib' conuincere, ne falsidicorū testimonio sāguis innocēs condemnetur. Sed mauult lex illa reos tales *torturis* cruciari, quousq; ipsi eorum reatum cōfiteātur, quā testium depositione qui sepe passionibus iniquis, & quandoq; subornatione malorum, ad periuria stimulantur. Quali cautione & astutia, criminosi etiam & de criminibus suspecti, tot torturarum in regno illo generibus affligun-

affliguntur, quod fastidit calamus ea, literis designare. Quidam vero in equuleis extenduntur, quo eorum rumpuntur nerui, & venæ in sanguinis fluēta prorumpūt: Quorundam vero, diuersorum ponderum pendulis dissoluuntur compagines & iuncturæ: Et quorundam gaggantur ora, vsque dum per illa, tot aquarum infundantur fluenta, vt ipsorum venter montis tumescant more, quo tunc vēter ille, fossorio vel simili percussus instrumēto, per os aquam illā euomat, ad instar

tormented, that my penne abhorreth to put them in writing. For some are stretched out vpon a horse in such wise, that their sinewes breake and their vaines gushe out with streames of blood: Again other some haue diuers great weightes hanged at their feete, whereby their lymmes and ioynts are dissolued and vnloosed: Some also haue their mouthes so long gaged open till such abundance of water bee powred in, that their belly swelleth like a hill or a tonne, to the intent that then the belly being pierced with some boring instrument, the water may issue & spout out thereat, and at the mouth stream wise, not much vnlike a

Whale,

Whale, which, when he hath supped vp, and swalloweed downe a great quantitie of Sea water, with herrings and other small fishes, gusheth out the same water againe, as high as the topps of any Pine apple tree. My penne is both wearie and ashamed to rehearse the outragiousnes of torments deuised in this behalfe: For the number of them is so great, that it can skant well be noted in a whole skinne of parchement. Moreouer the Ciuill Lawes, for want of witnesses, doe fetch out the trueth by such rackinges: And so doe diuers other Countries too. But who is so harde harted, which being once

Balenæ, quæ, cum halecibus & alijs pisciculis mare absorbuit, aquam despumat ad altitudinem arboris Pini. Piget (proh pudor) iam penna exquisitorum ad hæc cruciatuũ enarrare immania. Nam eorum variatus numerus vix notari poterit magna in membrana. Leges etiam ipsæ Ciuiles, deficiente testium copia, in criminalibus, veritatem consimilibus extorquent tormentis: Qualiter & faciunt etiam quàm plurima Regna. Sed quis tam duri animi est, qui semel

ab

ab atroci tanto torculari laxatus, non potiùs innocẽs ille, omnia fateretur scelerum genera, quàm acerbitatem sic experti iterum subire tormenti, & non semel mori mallet, dum mors sit vltimum terribilium, quam toties occidi, & totidem gehennales furias morte amariores sustinere? Et nonne, *princeps*, tu nouisti criminosum quendam qui inter tormenta huiusmodi, militem nobilem, probum, & fidelem de proditione quadam, super qua, vt asseruit, ipsi duo insimul coniurarunt,

released out of so cruell a Racke, though he bee innocent & faultlesse, would not yet rather accuse himselfe of all kindes of offences, then againe to commit himself to the intollerable crueltie of the torment once proued: and had not rather die at once (seeing death is the ende of all miseries) then so often to bee killed, and to sustaine so many hellish furies, painfuller then death it selfe? And did not you, most worthy Prince, know a certaine offender, which in such torments accused a worshippefull, yea a right good and faithfull Knyght of Treason, wherein, as hee saide, they two had conspired together,

which

which treason, he himself beeing released from the racke, afterward attempted & accomplished, thereby to acquite himselfe from comming to the torture againe. But at the last, by meane of those torments beeing so wrynged in his bodie, that thereby hee was brought in despaire of his life, and thereupon receiving his howsell, he then swore by the same body of the Lord and by the death which he beleeued that hee should forthwith die, that the said knight was innocent and guiltlesse in all things whereof hee had accused him, howbeit the paines, wherein hee was at the time of that his accusation, hee said were so extreme, that rather then he

accusare, quod & constãter postmodum ipse fecit, a torturis illis relaxatus, ne ie rum eadem tormenta ipse subiret. Sed demum, cũ ex pœnis illis lęsus usq; ad moriens articulũ infirmaretur, vltimũ quoq; viaticũ, christi videlicet corp⁹ sumpsisset, iurauit tunc super corpus illud, & p̃ mortem, quã tunc proinuseredidit se passurum, militem illũ innocentẽ fuisse & immunem de omnibus in quibus eum accusauit, tamen ai pœnas, in quibus ipse tempore delationis suæ fuerat, ita atroces extitisse, q̃ prius-

priusquã eas iterũ experiretur, etiã cũ dem militẽ, ille iterum accusaret, similiter & patrem proprium, licet tunc in mortis limine, quã non credidit se posse euadere, fuerit cõstitutus, necvero, ipse mortem, quã tũc metuit, euasit. Sed demum suspensus, tempore mortis suæ ipsum militem purgauit ab omni crimine, de quo dudũ defamauit. Taliter, proh dolor, & quã plures alij miseri faciunt, non veritatis causa, sed solum vrgentib' cortuis arctati, quid tunc certitudinis resultat, ex confessionibus tali-

would feele the same againe, he would not sticke to accuse the said Knight againe, yea and his owne Father to, This he said being then at the verie point of death, which hee beleeued hee could not then escape, no, nor hee escaped not the death which hee then feared. But afterward beeing hanged, at the time of his death hee cleared the saide Knight of all crimes whereof beefore hee had defamed him. Thus (O pitiffull case) dae many other wretches, not for the truthes sake, but forced thereunto by the extremitie of torments, And what certainetie then can arise of the confessions of miserable tormented persons?

But

But if some innocent hodie, having his minde fixed vpon eternall saluation, would in such a Babylonicall Fornace, with the three Children blesse and magnifie the LORD, and not lye to the damnation of his owne soule, in that the Iudge pronounceth him vnguiltie, doth not that Iudge by the selfe same iudgement iudge himselfe guiltie of all the cruelty and paines, wherwith hee hath tormented the innocent? O how cruell is such a Lawe, which in that it can not condempne the syely innocent, condempneth the Iudge? Surely such a custome is not is hee accompted a law, but rather the highe

rer compressorum? Cęterum si innocẽs aliquis non immemor salutis eternæ in huiusmodi Babilonis fornace, cum tribus pueris benedicat domino, nec mentiri velit in perniciem animæ suæ, quo iudex eum pronunciat innocentẽ, nõne eodẽ iudicio, Iudex ille, seipsum reum iudicat omnis sæuitię & pęnarum, quibus innocentem afflixit? O quã crudelis est lex talis, quæ dum innocentem damnare nequit, iudicẽ ipsa cõdamnat? Vere non lex ritus talis esse perhibetur, sed potius semita ipsa est ad

gehennã. O iudex quibus in Scholis didicisti, te præsentem exhibere, dum pœnas luit reus? Executiones quippe iudiciorum in criminosos, per ignobiles fieri conuenit: Nam earum actores, infames solent esse ipso facto, quo & ipsi de inde ad iudicialem apicem reddunur indigni: non enim per angelos, sed per dęmones, exequi facit dominus iudicia sua reddita in damnatos. Nec reuera in purgatorio cruciat animas, quãuis prędestinatas ad gloriam angelis boni, sed mali. Maligni etiã homines sunt per-

way to the Deuill. O Iudge, in what Schoole hast thou learned to bee present, while ý offendor is tormented. For the executiõs of iudgemẽts vpon offendors ought to be done by men of base degree: the doers wherof do purchase to thẽselues present infamie by the deede doing, insomuch that euer after they are disabled frõ the preferment of a iudge: neither doth ý Lord God execute his iudgements, pronounced against the dampned, by angels, but by deuils. Yea e in Purgatory ý soules there remaining, though they bee predestinate to glorie, yet are they not tormented with good angels, but of euill. Those also are euill e wicked men by whom

the

the Lord in this world doth minister to wretched sinners deserued punishment. For, when God said in the two and twentieth Chapter of the third booke of Kings: Who shall deceiue Achab? It was an euil spirit that answered: I will be a lying spirit in the mouth of all his prophets. For it becommeth not a good spirit to take vpon him the execution of such thinges, though this iudgement proceeded from the Lord, that Achab should bee deceiued by a lye. But the Iudge peradventure will say: I with mine owne handes dide nothing in these torments. But what differeth it, whether one be a doer with his owne handes, or els bee present

quos dominus in hoc mundo, miseris tribuit malum pœnæ. Nam, cũ diceret Deus iij. Regum in Capiculo vicesimo secundo: *Quis decipiet mihi Achab?* malus erat spiritus, ille, qui respondit *Ego ero spiritus mẽdax in ore omnium Prophetarum eius.* Non enim decuit spiritum bonũ exequi talia, licet a domino prodijt iudicium, quod *Achab* mendacio deciperetur. Sed dicet Iudex forsan: Ego nihil egi manibus meis in cruciatibus istis. Sed quid refert proprijs facere manibus, an

præsentem esse, & quod factum est, mandato suo iterum atque iterum aggrauare: Solum magister nauis est qui eam ducit ad portum, licet eius mandato alij agitent proram. Credo quod vulnus, quo sauciatur animus iudicis pœnas huiusmodi infligentis, nunquam in cicatricem veniet, maxime dum recolit acerbitatem pœnarum miseri sic afflicti.

at the dooing, and the thing that is done to exasperate it by his commaundement. It is onely the Master of the ship that bringeth it to the Hauen, though by his commandement an other bee the stirresman, I beleeue that the wound wherewith the minde of the Iudge thus tormenting any man is plagued, will neuer bee healed againe, especially while hee remembreth the extremities of the paines sustained by the poore wretch in those miserable torments.

Here he sheweth that the Ciuill Law oft faileth in doing of Iustice. Chap. 23.

PRæterea, si ex contractibus, il-

MOreuer, if by reason of bargaining, or by suffe-

suffering of iniuries, or by Title of inheritance, right doe accrue to a man, to plead in Iudgement: If there bee no witnesses, or if such as were witnesses bee deade, the Plaintife must needes let his Action fall, except hee bee able to proone his right by ineuitable coniectures, which is seldome seene. Wherefore concerning Lordeshippes, and other possession ruled by the Ciuill Lawe, And in all Actions falling under the same Lawe, the Actions of the Plaintifes, for want of witnesses, many times are choked, so that scante the halfe part of them attaineth to the desired ende.

latisue iniurijs, vel hereditatis titulo, ius accreuerit hominі agendi in iudicio: si testes non fuerint, vel, si qui fuerint, moriantur, succumbet ipse agens in causa sua, nisi ius suũ probare valeat ineuitabilibus coniecturis, qd̃ facere crebro non contingit. Quare de dominijs & alijs possessionibus iure ciuili regulatis, similiter & in omnibus actionibus cadentibus sub eodẽ iure, *actiones agentium* pro defectu testium quam pluries suffocantur, ita quod earum vix pars media optatum finem sortiatur.

ter. Qualis tunc est lex huiusmodi, quę iniuriatis, taliter deficit in iustitia reddenda? dubito an iusta vocari mereatur, quia in eadem lege scribitur quod *Iustitia unicuique tribuit quod suum est*, quod non faciat lex talis.

ends. What manner of law then is this, which to them that sustain wrong thus faileth in yeelding Justice? I doubt whether it deserueth to be called a iust Law, because in the same Law it is written, that Justice reddeth to euerie man that which is his owne, But this cannot such a Law do.

Here he declareth, how Counties are deuided, and Shirifes chosen. Chap. 24.

EXpostra is fortuna, qua leges Ciuiles de veritate facti in Iudicio deducti iudicem erudiunt, superest vt modum, quo leges Anglię huiusmodi facti eliciunt veritatem etiā doceamus.

NOw that we haue opened, after what manner the Ciuill Lawes doe enforme a Iudge of the truth of a matter brought into Iudgement, it is consequent to declare by what meanes the Lawes of England doe bouke out the truth of such a matter.

For the orders of both the Lawes beeing laide together, the qualities of them both will more plainely appeare: forsomuch as the Philosopher saieth, that contraries, placed one by an other, will shewe themselues more euidently. But herein, after the maner of Orators, in steade of a Proheme, it shall not be amisse, that wee open certaine thinges before, the knowledge whereof will giue light to thinges which hereafter shall come in talke, wherefore thus wee wee procede. The Realme of England is deuided into Counties, as the Realme of France, is into Baylywickes, so that in England there is no place

Nam ambarum legum formulis contigue positis, qualitates earundem lucidius eminebunt: cum dicat Philosophus, quod *opposita iuxta se posita magis apparent*, Sed in hoc, Oratorum more (Prohemij loco) quædam prænarrare congruet, quorum agnitione, deinde tractanda clarius patere queat, quare sic procedimus. Regnum Angliæ per *Comitatus*, vt regnum Franciæ per *Ballivatus*, distinguitur, ita vt non sit locus in Anglia, qui non sit intra

corpus

corpus alicuius comitatus. Comitatus quoque diuiduntur in *Hundreda*, quę alicubi *Wapentagia*, nuncupantur. Hundreda vero diuidũtur per *Villas*, sub quarũ appellatione cõtinẽtur & *Burgi atque Ciuitates*. Villarum etiam metæ, non muris, ædificijs, aut stratis terminantur, sed agrorum ambitub⁹, territorijs magnis, *Hamiletis* quibusdã & multis alijs, sicut aquarum, boscorum & vastorum terminis, quæ iam non expedit nominibus designare, quia vix in Anglia est locus aliquis,

that is not within the bodie of some Countie. Counties also are deuided into Hundreds, which somewhere are called Wapentages. And Hundreds are deuided into Villages, vnder which appellation are contained Borowes, and Cities. For the bounds of Villages are not contained within the circuit of Walles, Buildinges, or Streets, but within the compasse of Fields, great Territories, certeine Hamletes, and many other, as of Waters, Woods and waste Grounds, which it is not needefull now to set forth by their names: because that in Englande there is skant any place, which

which is not contained within the compasse of Villages, though certaine Priuiledged places within villages, are supposed to bee no parcell of the same Villages. Moreouer in euerie Countie there is one certaine officer called the Kings Sheriffe, which among other duties belonging to his Office, putteth in execution all the commandements and iudgements of the kings courts, that are to be executed within his counties. His office endureth but for one yeere, so that after the expiration of the yeere, hee may not minister in that Office, Neither shall hee, within two yeeres next ensuing, bee admitted to the same Office againe.

qui non infra villarum ambitus conti-neatur, licet priuilegiati loci quidam infra villas de eisdem villis pars esse non censentur. Preterea in quolibet comitatu est officiarius quidam vnus, *regis vicecomes* appellatus, qui inter cætera sui Officij ministeria omnium mandata & iudicia curiarum regis in comitatu suo exequenda, exequitur, *cuius officium annale est*, quò ei post annum, in eodem ministrare non licet, *nec duobus* tunc sequentibus annis ad idem officium reassumetur.

Offi-

Officiarius iste sic eligitur. Quolibet anno in *crastino animarũ*, cõueniunt in scaccario regis omnes cõsiliarij eius tã domini Spirituales & tẽporales, quam alij oẽs iusticiarij, omnes Barones de scaccario, Clericus rotulorũ, & quidã alij officiarij, vbi hij oẽs cõmuni assẽsu, nominãt de quolibet comitatu tres milites vel armigeros, quos inter cęteros eiusdem comitatus ipsi opinantur melioris esse dispositionis & famæ, & ad officium vicecomitis comitatus illius melius dispositos: ex quibus Rex

This officer is thus chosen. Euerie yeere, the morrow after All soules daye, all the Kinges Counsellers meete together in the Kinges Exchequer, aswell the Lords Spirituall and Temporall, as all other Iustices, all the Barons of the Exchequer, the Master of the Rolles, and certaine other Officers, where all these with one communen assent doe name of euery County three Knights or Esquires, whom among other of the same County they take to be of good disposition & fame, and best disposed to the Office of Sheriffe of that County. Of the which three the Kinge then

choosethy one, whom, by his letters patents, hee appointeth Shyrife of the Countie, that hee is chosen of, for the yeere then following: But he, before hee receiue his patent, shall sweare vpon the holy Gospell, among other articles, that hee shall well and faithfully and indifferently exercise and doe his office all that yeere, and that hee shall receiue or take nothing of any other man then the King, by colour or meane of his office.

These things beeing thus now presupposed, let vs proceede to the search of those thinges that we seeke for.

vnum tantũ eligit, quem per literas suas patentes constituit Vicecomitẽ comitatus, de quo eligitur pro anno tunc sequente: sed ipse, antequam literas illas recipiat, iurabit super sancta dei Euangelia, inter articulos alios, quod bene fideliter & indifferenter exercebit & faciet officiũ suũ toto anno illo, neq; aliquid recipiet colore aut causa officij sui, ab aliquo alio quam a rege.

His iam sic præsuppositis, ad eorum, quę quęrimus, indaginem procedamus.

¶ How

¶ *How Iurours must be chosen and sworne. Ch: 25.*

QVotiescunque contendentes in curijs regis Angliæ, ad extrũ placiti sup materia facti deuenerint, concito Iusticiarij p breue Regis scribũt vicecomiti comitatus in quo factũ illud fieri supponitur, qd ipse venire faciat coram eisdem Iusticiarijs, ad certũ diẽ p eos limitatũ, *duodecim probos & legales homines*, de vicineto, vbi illud factũ supponitur; qui neutri ã partiũ sic placitantiũ vlla affinitate attingunt, Ad recognoscendũ sup eorũ sacramẽta, si factum illud factũ fuerit, si-

AS oft as suters in the courts of the King of England, are come to the issue of their ples vpon the matter of the fact, forthwith the Iustices by vertue of the Kings writ, doe writ vnto the Shirife of the Countie, wherein the deede is supposed to be done, that hee doe cause to come before the same Iustices at a certaine day by them limited, xij. good and lawfull men, neighbours to the place where the fact is supposed to bee done: the same to be such as bee of no kin to either of the pleaders, to the ende that by their othes it may certainely be knowne, whether the deede were done as the one partie affirmeth,

meth, or els as the other partie denieth. Upon the day aforesaid, the Shirife shall returne the said Writ before the same Justices, together with the pannell of their names, which hee hereunto hath summoned: When they are come, either partie may refuse them, alleaging that the Shirife hath made that pannell fauourably for the other partie, of persons not indifferent: Which exception, if it bee found true by the oath of two men of the same pannell chosen thereunto by the Justices, that pannell shall immediately bee quassed: and then the Justices shall write to the Co-

cit vna earũdẽ partiũ dicit: vel non, sicut altera pars negat Quo aduenientẽ die, vicecões returnabit breue p̃dict' corã eisdẽ Iusticiarijs, vna cũ panello nominũ eorũ, quos ipse ad hoc sũ monuit, quos (si venerint) vtraq; pars recusare poterit, dicẽdo qd̃ vicec' panellũ illud fauorabiliter fecit, p̃ parte altera, vz. de personis minus indifferẽtib': Quę exceptio, si cõpta fuerit vera per sacramentũ duorũ hominũ de codẽ panello ad hoc p̃ Iusticiar' electorũ mox panellũ illud quassabitur, & Iusticiarij tunc scribent

Core-

Coronatorib⁹ eiusdē cōitat⁹ qd ipsi nouū faciāt panellum. Qd cū fecerit, si & illud cōsimiliter reptū fuerit viciatū, etiā & illud quassabitur: Et tūc Iustic⁹ eligēt *duos de clericis curiæ illius*, vel alios de eodē comitatu, qui in p̄ētia curiē p̄ eorū sacramēta faciēt indifferens panellū, qd deinde per nullam partem illarū calumniabitur: Sed cū venerint sic impanellati in curia, quēlibet partū *excipere potest* contra personam cuiuscunq; eorū, sicut & potest in omni casu & omni tēpore quo aliquis qualiter cūq;

roners of the same county, that they shall make a new pannell. Which when they heue done, if it bee likewise found faultie, it shall also be quassed: And then the Iustices shall elect and choose two of the Clerkes of the same court, or other of the same Countie, which in the presence of the court vpon their oathes shal make an indifferent pannell, which by neither of the parties shall bee challenged: Howbeit, when the men so impannelled are come into the court, either of the parties may make exceptions against the parson of any of them, as hee may also doe in all cases and at all times, when any man by any meanes impa-

impanelled shal appere to be sworne in ȳ court vpō the truth of such an issue: saying, that the persō impanelled is cosin or alied to the other party, or by anykind of amity so knit vnto him that he is not indifferēt to declare the truth betweene thē: and of these exceptions there are so many kinds and sorts, that they cannot bee in few words rehearsed. Whereof if any one be found true, thē shal not hee be sworne, against whom the exception is proposed, but his name shal be cancelled in the pannel. So also shal be done of all ȳ names of ȳ persons impanelled vntil xii. of them so indifferēt be sworn, that

impanellat', cōparuerit in curi super veritate exitus huiusmodi iuraturus, dicendo, qd impanellatus ille, est consanguineus, vel affinis parti alteri, vel amicitia quacunq; tali sibi cōiunctus, qd *indifferens ipse non est* ostēdere inter eos veritatē: qualiū exceptionum tot sunt genera & species, qd non licet eas breui explicare sermone. Quarum si aliqua reperta fuerit vera, nō tunc iurabitur ille contra quē exceptio illa proponitur, sed cancellabitur nomen eius in panello. Sic quoq; fiet de omnibus nominibus impannellatorum, quousque xij. eorum iurētur ita indifferentes,

quod versus eos neutra partium habeat aliquã materiam calumpniæ: horum autẽ xij. ad minus iiij. erunt *de hundredo*, vbi villa in qua factum de quo contẽditur, fieri suponitur, facta est: & *quilibet iuratorũ huiusmodi habebit terras vel redditus pro termino vitæ sua, ad minus ad valorem annuum xl.s.* Et hic ordo obseruatur in omnibus actionibus & causis criminalibus, realibus, & personalibus, præterquam vbi damna vel debitum in personalibus non excedunt xl. marcas monetæ Anglicæ, quia tunc non requiritur, quod iuratores in actionibus huiusmodi can-

neither party can haue against thẽ any matter of exceptiõ or challẽge: Also of these xii. iiii. at ye least shalbe of the hũdred, where the village standeth, wherin ye fact whereupon the suit riseth, is supposed to bee done: And euery such Iurer shal haue lands or reuenues for terme of life, at the least, to the yerely value of xl. s. And this order is obserued & kept in all actons and causes criminall, reall, and personall, sauing where the dammages or debt in actiõs personall exceedeth not the summe of xl. marks of English money: For then it is not requisite, that Iurers in such actions, shall bee able to

dispende

dispende so much. Yet they shall haue land or rents to a cõpetent value after ye discretion of the Justices, Otherwise they shall not bee sworne, lest for nede & pouertie, such Iurers might easily be corrupt & suborned. And if by such exceptions so many Iurers names bee cancelled in the pannell, that their remaineth not a sufficient number to make thereof a Iurie, then the Shirife by the Kings Writte shall bee commanded to adioyne moe Iurers, which thing may often bee done, so that for lack of Iurors, the inquisition of the trueth vpon such a plea shal not remain.

tum expẽdere possint. Habebunt tamen terrã vel redditũ, ad valorẽ cõpetentem, iuxta discretionẽ iusticiariorũ, alioquin ipsi minime iurabuntur, ne pinediã & paupertatem iuratorum huiusmodi, de facili valeant corrumpi aut subornari. Et si per tales exceptiones, tot iuratorũ nomina in panello cancellentur, qd̃ non remaneat numerus sufficiens ad faciendam inde iuratam tunc mandabitur vicecomiti per breue regis, quod ipse apponat plures iuratores, qd̃ & sepius fieri potest, ita quod inquisitio veritatis sup exitu placiti non remanebit ob defectum iuratorum.

Et hæc est forma, qualiter iuratores & veritatis hm̃di inquisitores eligi debēt in curia regis similiter & iurari: quare, quomodo ipsi de veritate illa dicenda onerari debent & informari, iam restat vt quæramus.

And this is ye form, how iurers, & inquisitors of trueth ought to be chosen in ye kings court, & likewise to be swoorne: Wherefore, how they must be charged and informed of ye vttering of ye same truth, this now resteth to be discussed.

¶ *How Iurers ought to be informed by euidences and witnesses.* *Chap. 26.*

IVratis demũ in forma prędicta xij. ꝓbis & legalib' hominibus habentibus vltra mobilia sua possessiones, vt prędicitur, sufficientes, vnde eorũ statum ipsi continere poterunt, & nulli partiũ suspectis nec inuisis, sed eisdē vicinis, legetur in anglico corā eis per curiā, *totum recordum & processus placi-*

Twelue good lawful men being at ye last swoorn in form aforesaid hauing beside their mouables, sufficiēt possessiōs asaforesaid is declared wherby they may be able to maintaine their owne states, & being to neither party suspect or hated, but neighbors to thē both, thē shal be red before them in English by ye court, al the record

and

& processe of the plea depending betweene ye parties, with a plaine declaration of the issue of the plea, touching the trueth wherof those sworne men shall certifie the Courte: which things being done, either party by himself or his Counsellors, in ye presence of the Court, shall vtter and open to the said sworne men, al ye singuler matters and Euidences, whereby he thinketh hee may best informe them of the truth of ye issue so impleaded. And then may either party bring before ye same Justices and sworn men, al and singular such witnesses on his behalfe, as hee will produce, Who by the Justices being charged vpon the holy Gospel of God, shal testi, quod pēdet inter partes, ac diludice exponetur eis exit⁹ placiti, de cui⁹ veritate iurati illi, curiā certificabūt: quib⁹ peractis, vtraq; partium p se vel cōsiliarios suos, in ꝑsentia curie, referet & manifestabit eisdē iuratis, oēs & singulas *materias & euidētias*, quib⁹ eos docere se posse credit veritatē exit⁹ taliter placitati. Et tūc adducere potest vtraque pars corā eisdē iusticiarijs & iuratis, oēs & singulos testes, quos pro parte sua, ipsa ꝑducere velit, qui super *sancta dei Euangelia*, per Iusticiarios onerati,

testificabuntur omnia quæ cognoscũt *probantia veritatem facti*, de quo partes contendũt. Et si necessitas exegerit, diuidãtur testes huiusmodi, donec ipsi de posuerint quicquid velint, ita qd̃ dictũ vni⁹, nõ docebit aut cõcitabit eorũ alũ ad cõsimiliter testificandũ. Quib⁹ consummatis, postquã iuratores illi deinde ad eorũ libitũ, sup veritate exit⁹ hm̃di, deliberatione, quantã ipsi obtabũt, colloquiũ habuerint: *in custodia ministrorũ curiæ*, in loco eis ad hoc assignato, ne interim eos aliqui subornare valeant,

tifie all things prooving the trueth of the facte, whereupon the parties contend. And if neede so require, those witnesses shall be seuered and deuided, till they haue deposed all that they will, so that the saying of one shall not mooue or prouoke another to testifie the like. The premisses being done, then after that those Jurors haue had talke at their pleasure, vppon the trueth of that issue, with as much deliberation as themselues shall require, in the keeping of the ministers of the Court, within a place to them for the same purpose assigned, to the intente that no man in the meane time may corrupt them, they shall

returne

returne into the Court, and certefie the Justices vpon the veritie of the issue so ioyned, in the presence of both the parties, (if they will be there) and specially of the plaintife. The report of which Iurers, by the lawes of England, is called a verdict, by the which word is meant, a true report, or a report of the truth: And then according to the qualitie of that verdict the Justices shall frame and forme their iudgement. Notwithstanding, if the other partie, against whō the verdict is giuen, complaine, that he is thereby vniustly grieued, then the same party may sue a writ of attainte against those Iurors, and against the party that hath preuailed

reuenient illi in curiam, & certificabūt iusticiarios sup veritate exitus sic iuncti, in pręsentia partium (si interesse velint) & maxime petentis. Quorū iuratorum *dictū* p leges Anglię, *veredictum* nuncupatur, & tunc secundum hmōdi veridicti qualitatē, iusticiarij reddent & formabunt iudiciū suum. Tamē, si pars altera, contra quam veredictum hmōdi platum est, conqueratur se p illud iniuste esse grauatū, pseq́ tūc potest pars illa, versus iuratores illos, & versus partem quæ obtinuit, breue de attincta.

Virtute cuius, si cōpertū fuerit per *sacramentum xxiiij. hominum*, in forma prænotata retornatorū, electorū, & iuratorum, qui multo maiora habebūt patrimonia, quam iuratores primi, quod ijdē primi iuratores *falsum fecerunt sacramentū*, corpora eorundē primorum iuratorū prisonę regis cōmittētur, bona eorū confiscabūtur, ac omnes possessiones eorundē *in manus regis capientur*, domus quoque eorum & ædificia prosternētur, bosci succidentur, & prata arabuntur, ipsi etiam iuratores primi

By force of which Writ, if it shall be found by the oath of twentie and foure men, in forme aforesaide returned, elect, and sworne, which shall bee men of much greater liuings, then the first Jurers were, that the same first Jurers haue made a false oathe, then the bodies of the same first Jurers shall bee committed to the Kings Prison, their goods shall bee confiscate, and all their possessions shall bee seised into the Kings hands, their Houses also and Buildings shall bee rased and throwne downe, their Woodes felled, and their Meadowe grounds plowed, And also the same first Jurers

vers shall for euer after be noted for infamed persons, and shall in no place bee receiued to testifie the trueth: And the partie, which in the former plea had the ouerthrowe, shall bee restored to all things, which by occasion thereof he hath lost: Who then, though hee regard not his soules health, yet for feare of so great punishment, and for shame of so great infamie, would not vppon his oath declare ỳ truth? And if one man peraduenture haue so little respect to his honour or estimation, yet some of so manie Iurores will not neglect their owne good fame, nor will not thorough their owne default, suffer themselues

extunc infames erunt, *nec alicubi recipientur in testimonium veritatis*: & pars, quæ succubuit in priori placito, restituetur ad omnia, quæ ipse perdidit occasione eius. Quis tunc (etsi immemor salutis animæ suę fuerit) non formidine tãtę pœnæ, & verecundia tantæ infamiæ, veritatem non diceret sic iuratus? & si vnus forsan tantus sui honoris prodigus esse non pepercerit, aliqui tamen iuratorum tantorum famã suã non negligent, neq; bona & possessiones suas taliter distrahi patientur,

tur, propria culpa sua. *Nonne iam, hic ordo reuelandi veritatem, potior & efficatior est, quam est processus, qualem pariunt Ciuiles leges?* Non hic periunt causæ aut ius alicuius, per mortem aut ob defectum testium, non hic producuntur testes ignoti, conducticij, pauperes, vagi, inconstantes, aut quorum cōditiones vel malicię ignorantur. Vicini sunt testes isti, de proprijs viuere potētes, famæ integrę, & opinionis illæsæ, non per partem in curiam ducti, sed per officiarium nobilē & in-

thus to be spoiled of their goodes and possessions. Is not this order now for the boulting out of the trueth better and more effectuall, then the processe which the Ciuill lawes doe procure? Here no cause, for no mans right quaileth through death or for want of witnesse, Heere are not brought forth vnknowen witnesses, hired persons, poore men, vagabonds vnconstant people, or such, whose condition and naughtinesse is vnknowne. These witnesses are neighbours able to liue of their owne, of good name and fame, of honest report, not brought into the Court by the partie, but by a worshipfull and indifferent

ferent Officer chosen, and so compelled to come before the Judge. These know all, that the witnesses are able to depose, and they knowe also the constancie and unconstancie of the witnesses, and what report goeth uppon them. And what will yee haue more. Doubtlesse, there is nothing, that may disclose the trueth of any doubt falling in contention, which can in any wise bee hidde from such Jurers, so that it bee possible for the same to come to mans knowledge.

differentē electi, & coram iudice venire compulsi. Isti omnia sciunt, quæ testes deponere norunt, & isti testium ꝓductorum agnoscunt cōstantias, incōstātiasq; & famā. Quid vltra? verè nihil est, quod veritatē dubij, de quo cōtendi poterit, detegere valebit, quod iuratoribus talibus latere quomodo libet potest aut ignorari, dummodo possibile sit, illud venire posse in agnitionem humanā.

¶ *Here he sheweth, how causes criminall, are determined in England.*

Chap. 27.

Sed

SEd quomodo in criminalib⁹ leges Anglię scrutãtur veritatem, etiã rima re perneceſſariũeſt, vt & in eis plenarie agnita ambarũ legũ forma, quę earũ efficacius latentem reuelat veritatẽ certius agnoſcamus. Si reus quiſpiam de *felonia aut proditione in Anglia rettatus, crimen ſuum coram iudicib⁹ dedicat*, mox vicecomes comitatus, vbi facinus illud cõmiſſum eſt, venire faciet coram eiſdem iudicib⁹, viginti quatuor probos & legales homines de vicineto villæ, vbi illud factũ eſt, qui rettatũ

BUt it is alſo neceſſarie to diſcuſſe, how in matters criminall, the lawes of England doe fetch out the truth, that perfectly vnderſtanding the forme of both the Lawes, wes may the more certainely perceiue and knowe, whether of them both both more effectually diſcouer the hidden trueth. If any man accuſed of felony or treaſon in Englande, doe at his arraignement before the ſame Iudges denie the offence, forthwith the Sherife of the Countie, where the deed was done ſhall cauſe to come before the ſame Iudges foure e twentie good and lawfull men dwelling nighe to the village, where the fact was done, ſuch men as

to

to the partie accused bee nothing allyed: and such as euerie of them hath an hundreth shillinges of Landes and Reuenues, to certifie the Judges vppon the trueth of the crime. Which at their apparance the partie accused may challenge, in like sort as in actions reall may bee done, as afore is described. And moreouer the same partie in fauour of his life may challenge fiue and thirtie men such as hee most feareth: which vppon his challenge shall bee cancelled in the pannell: or shall bee noted with such markes, that they shall not passe vppon him: though hee bee not able to shewe any cause of his ex-

illũ nulla affinitate attingunt, & quorũ quilibet C.s. habeat terræ & reddit' ad certificãdum Iudic' illos sup criminis illi' veritate. Quibus cõparẽtib', rettatus ille eos *calumpniare* potest, eadẽ forma, qua in actionib' realib' fieri deberẽ superi' describitur. Et insup re' ipse *in fauorẽ vitæ suæ calũpniare potest 35. hõines, quos ipse maxime formidat*, qui ad ei' calumpniã cancellabunt in panello aut signis talib' notabũtur, quod (vt verbis legis vtar) illi super eum nõ transibunt, licet ipse nullã causã assignare sciat excepti

ceptionis seu calumpnię suæ. Quis tunc mori posset iniquè in Anglia *pro crimine*, cum tot iuuamina habere ille poterit ob fauorem vitæ suę, & non nisi vicini eius, probi & fideles homines, vers' quos ipse nullam habet materiā exceptionis, eum condemnare poterunt? *Mallem reuera viginti facinorosos mortem pietate euadere, quam iustum vnum iniuste condemnari.* Nec tamen reum quēpiam sub hac forma, reat' sui pęnā euadere posse suspicandum est, dum eius vita et mores timori deinceps

reption and challenge. Who then can vniustly die in England for any criminall offence, seeing hee may haue so many helpes for the fauour of his life, and that none may condempne him but his neighbours, good and lawfull men, against whom hee hath no matter of exception. Indeede I would rather wish twentie euill doers to escape death through pittie, then one man to bee vniustly condempned. And yet it is not to bee suspected, that any offendour can vnder this forme, escape the punishment of his offence, forasmuch as his life and conuersation shall bee afterward a terrour to them that haue

thus

thus cleared him of the crime. In this kinde of proceeding there is no cruelty or extremity vsed, Neither can the innocent & vnguilty person be hurt in his bodie or limmes: Wherefore hee shall not stand in feare of the slander of his enemies, because hee shall not be racked or tormented at their will and pleasure. Thus vnder this Lawe a man may passe his life with quietnesse and safetie. Judge you therfore, most noble Prince, whether of these lawes ye had rather chuse, if you should liue a priuate life.

erunt eis, qui eũ sic purgarũt a crimine. In hoc equidẽ processu, nihil est crudele, nihil inhumanum, nec lædi poterit innocens in corpore aut membris suis: Quare nec formidabit ille calũpniã inimicorum eius, quia non torq;bitur iste ad arbitriũ ipsorũ. Sub hac igitur lege viuere quietũ et securũ est. Iudica ergo, *Princeps optime*, quæ legũ harũ tibi electissima foret, si tu priuatã spirares vitam.

¶ *The Prince granteth the Lawes of England to be more commodious for the subiects, then the Ciuill Lawes in the case now disputed. Chap. 28.*

Cui

CVi *Princeps*, arduũ ambiguumue, Cancellarie, non conspicio, qd̃ morosum me titubantemue redderet in electione rei, quã interrogas. Nam quis non sub lege, qua securam ducere posset vitam, viuere potiũs eligeret, quã sub lege tali, subqua inermem, indefensumq; se sẽper redderet sęuitiæ omnium inimicorũ eius? Vere tutus quisquã esse non poterit in corpore aut in bonis, quem inimicus eius (in omni causa) conuincere poterit, testib' duobus etiã ignotis, p ip̃mmet electis & ꝓductis.

WHereunto the Prince answered and saide: I see no hard or strange matter, good Chancellour, that should make mee doubtfull or dangerous in the election and choise of the thing that yee aske. For who would not rather choose to liue vnder that Lawe, wherevnder hee might liue in securitie, then vnder that Lawe, which would set him naked and succourlesse against the crueltie of his enemies? Verely, no man can bee safe in bodie or goods, whom his aduersarie may conuince in suerie cause, with twoo vnknowne witnesses of his owne choosing and bringing foorth.

And

And though a man be not compelled by their sayings to die, yet is he little relieued, ý hath escaped death, being wronke in al his sinnewes and limmes and cast into a perpetuall impotencie of his bodie, And truely into such danger may the craft of a spiteful person bring any manne, that liueth vnder the Lawe, which here-while you speake of. But such mischiefe and inconuenience cannot bee wrought by witnesses, ý make their depositions in the presence of tiuelue credible men, neighbours to the deede, that is presently in question, and to the circumstances of the same: which also know the manners and conditions of the same wit-

Et licet quis mortē, per dicta eorum, subire nō cogatur, parum tamē releuatur ipse qui mortem euasit, contractione neruorum, & membrorum suorū, atq; corporis eius languore ꝑpetuo. Tali reuera discrimini impellere potest inimici astutia omnē hominē qui sub lege degit, quā tu iam dudum explicasti. Sed tale malū operari nequiūt testes, qui depositiones suas faciūt, in ꝑsentia duodecim fide dignorū virorū, facto vicinorum, de quo agitur, & circūstantijs eius: qui & noscunt eorundē testi-

um mores, maxime si vicini ipsi fuerint, noscunt etiam, & si ipsi sint credulitate digni. Omnes etiam duodecim tales latere omnino non poterit, quicquid actum est, per, aut inter vicinos eorum. Nosco namque ego certius, quæ iam aguntur hic in Barro, vbi sum modo conuersatus, quam quæ in Anglia fiunt. Nec effugere posse puto notitiam probi viri ea, quæ aguntur, licet quodammodo occulte, prope domicilium eius. Sed tamen cur prędicta lex Anglięque tam frugi & optabilis est

nesses, especially if they bee nigh dwellers, and know also, whether they bee men worthy to bee credited or no. And further all those twelue can not bee ignorant in those thinges, that were done by and among their neighbours. For I know more certainely the thinges that are donne heere in Berry, where I am nowe remaining, then those thinges that are done in Englande. Neither doe I thinke, that things can bee kept from the knowledge of a good and honest man, being done nigh to his house and almost vnder his nose, be they neuer so secretly done. But yet I maruell much, why the foresaid law of England,

which

which is so good and commodious, is not common to all the whole world.

non est toti mundo communis, vehementer admiror.

¶ *Why inquestes are not made by Iurers of xij. men in other Realmes, as well as in England. Chap. 29.*

YOur highnesse came verie young out of Englande (quod the Chancellour) so that the disposition and qualitie of that lande is vnknowen vnto you. Which if yee know, and should compare therewith the commodities and qualities of other Countries, you would nothing maruaile at these things, which now doe trouble your minde. Indeede England is so fertile and fruitefull, that comparing quantity to quãtity,

CAncellarius, Iuuenis recessisti (*Princeps*) ab Anglia, quo tibi ignota est dispositio, & qualitas terræ illius, quas si agnoueris, & cæterarum regionum emolumenta qualitatesq; eisdem comparaueris, non admirareris ea, quibus iam agitatur animus tuus. Anglia sane tam fertilis est, quod quantitate ad quãtitatem comparata,

ipsa cæteras omnes quasi regiones exsuperat *vbertate fructuum*, etiam suum vltro ipsa pferet, vix industria hominis concitata. Nã *agri* eius, *campi, saltus*, & *nemora*, tanta fecunditate germina ebulliunt, vt inculta illa, sæpe plus commodi afferant possessoribꝰ suis, quam arata, licet fertilissima ipsa sint *segitum*, & *bladorum*. Includuntur quoq; in terra illa *pasturarum arua*, *fossatis*, & *sepibus*, deluper *arboribus* plantatis, quibus muniuntur a procellis & æstu solis, eorum *greges* & *armenta*,

it surmounteth all other landes in fruitefulnesse, Yea it bringeth foorth fruite of it selfe, scant prouoked by manns industrie and labour. For there the Landes, the Fieldes, the Groues, and the Woodes, doe so aboundantlye springe, that the same untilled doe commonly yeeld to their owners more profite then tilled, though else they bee most fruitfull of Corne and Graine. There also are Fieldes of pasture inclosed with Hedges and Ditches, with Trees planted and growing vppon the same, which are a defence to their heardes of Sheepe, and Cattell, against stormes and heate of the Sonne,

And

And the pastures are commonly watered, so that Cattell shutte and closed therein, haue no neede of keeping, neither by day, nor by night. For there bee no Wolues, nor Beares, nor Lyons, Wherefore their Sheepe lye night by night in the Fields unkept within their Foldes wherewith their Land is manured. By the meanes whereof, the men of that Countrie are scant troubled with any painefull labour, Wherefore they liue more spiritually, as did the auncient Fathers, which did rather choose to keepe and feede Cattell, then to disturbe the quietnesse of the minde with care of Husbandrie.

ipsæque pasturæ vt plurimum irriguæ sunt quo infra earũ claustra reclusa animalia, custodia non egent, per diem, nec per noctem. Nam ibi lupi nõ sunt, vrsi, nec Leones, quare de nocte oues eorũ incustoditę in campis recumbunt, in caulis, & ouilibus, quibus impinguantur terræ eorum. Vnde homines patriæ illius, vix operis sudore grauãtur, quare spiritu ipsi magis viuunt, vt fecerunt patres antiqui, qui pascere malebãt greges quam animi quietẽ agriculturę solicitudine turbare.

Ex quib', homines regionis istius, apti magis redduntur & dispositi ad discernendum in causis, quæ magni sunt examinis, quam sunt viri, qui telluris operibus inhabitantes, ex ruris familiaritate mentis contrahũt ruditatem. Regio etiã illa, ita respersa, refertaque est *possessoribus terrarum* & agrorum, quod in ea, villula tã parua reperiri non poterit, in qua non est *miles, armiger*, vel paterfaãlias, qualis ibidẽ *Franklain* vulgariter nuncupatur, magnis ditatus possessionibus, necnon libere tenentes alij,

And hereof it commeth, that menne of this Countrie are more apte and fitte to discerne in doubtfull causes of great examination and triall, then are menne wholiye given to moyling in the ground: in whome that rurall exercise ingendereth rudenesse of witte and minde. Moreouer the same Countrey is so filled and replenished with Landed menne, that therein so small a thorpe cannot bee founde, wherein dwelleth not a Knight, an Esquire, or such a Householder, as is there commonly called a franklayne, enryched with greate possessions. And also other Freeholders,

and

and many Yeomen able for their liueloodes to make a Iurye in fourme afore mentioned. For there bee in that Lande diuers Yeomen, which are able to dispende by the yeare aboue a hundred poundes, Wherefore the Iuries afore declared, are there verie oft made, specially in great matters, of Knights, Esquires, and others, whose possessions in the whole amounteth yeerely aboue the summe of fiue hundred markes.

Wherefore it cannot bee thought, that such menne can bee suborned, or that they will bee periured, not onely for that they haue before their eyes the feare of God, but also, for that they

& *Valecti* plurimi, suis patrimonijs sufficientes, ad faciendum iuratā in forma prenotata. Sunt namque valecti diuersi in regione illa, qui plusquam sexcenta scuta per annum expendere possunt, quo *iurata* superius descriptæ, sæpissime in regione illa fiunt, presertim in ingentibus causis, de militibus, armigeris, & alijs, quorum possessiones in vniuerso excedunt duo millia scutorum per annū. Quare cogitari nequit, tales subornari posse, vel periurari velle, nedum ob timorē Dei, sed & ob

honorē suum conseruandū, & vituperium, dampnum quoque inde consequuturū euitandum, etiam, ne eorum hæredes ipsorum lædantur infamia. Taliter, *sili regis*, disposita, inhabitataque non sunt aliqua alia mundi regna.

Nam licet in eis sint viri magnæ potentiæ, magnarum opum & possessionum, non tamen eorum vnus prope moratur ad alterum, vt in Anglia tanti morantur viri, nec tanta, vt ibi, hæreditatorum est copia & possidentium terras.

haue a carefull regarde to the preseruation of their Honours, and to the eschewing of reproach, and dammage thereupon ensuing, and also that their heiers bee not impeached thorough their infamie. After this manner, O mightie Prince, are none other Realmes of the world disposed and inhabited.

For though there bee in them men of greate power, of greate riches, and possessions, yet they dwell not one nigh to another, as such greate men doe in England, Neither is many inheritours and possessours of Land are elsewhere, as in England.

For in a whole towne of any other Countrie, it is hard to finde one man, whiche for his liuelyode is able to bee receiued into a Iurie. For there, except it bee in Cities, and walled Townes, verie fewe there bee, besides Noble men, that haue any possessions of Landes or other immoueables. The Noble menne also haue there small store of pasture, And to labour in vnieyards, or to put their handes to the plough, that is vnfitte for their estate and degree, And yet in Vineyardes, and eareable groundes, consisteth the Substance of their possessions, sauing onely a fewe fieldes nert adioyning to great ri-

Vix enim in villata vna *regionum aliarũ* reperiri poterit vir vn° patrimonio sufficiens, vt in iuratis ipse ponatur. Nam raró ibidem, aliqui pręter nobiles reperiuntur, possessores agrorũ; aliorumue immobilium, extra ciuitates & muratas villas. *Nobiles* quoque ibidem, pasturarum copiam non habẽt, & vineas colere, aut aratro manus apponere statui eorum non conuenit, tamen in vineis & terris arabilibus cõsistit substãtia possessionũ eorum, *exceptis* solum pratis quibusdã, adiacẽtibus *magnis ri-*

parijs

parijs, & exceptis *boscis*, quorum pasturæ cõmunes sunt tenẽtibus, & vicinis suis. Quomodo tunc in regionibus talibus iurata fieri poterit, ex duodecim probis hominibus de vicineto, vbi factũ aliquod in iudicio deducitur, cum vicini dici non poterunt, qui tanta distantia distinguuntur? Vere remotos multum a facto duodecim iuratos ibidem esse opportebit, postquam reus in regionibus illis, triginta quinq; (sine assignata causa) de propinqũiorib° calumniauerit: quare aut

uers, and sauyng alse certeine Woodes. the pastures whereof are common to their tenants and neighbours. Howe then can a Iurye bee made in suche Countries of twelue substantiall menne, nigh adioyning to the place of any deed brought in iudgement, seeing they cannot bee called neighbours that dwell so farre a sunder. Truely twelue sworne men, there, must needes bee farre distant from the place of the deede, when the defendant in those Countries hath challenged thirtie fiue menne of the nerte dwellers, without shewing any cause whye: Wherefore, in those landes a Iurie

must

must bee made, either of such, as dwell farre off from the place of the deede that is in controuersie, and therefore cannot attaine to the knowledge of the trueth thereof, or els it must be made of poore men, that bee not ashamed of infamie, neither doe feare the losse of their goods, which they haue not, They also blinded with rusticall and brute rudenesse, are not able to behold the cleare brightnes of the truth.

Marueyle not therfore most worthy Prince, if the Law, whereby the trueth is sifted out in England, bee not frequented and vsed in other nations, For they are not hable to make sufficient and

de multum remotis a facto, de quo contenditur, qui veritatem facti non agnoscunt, in regnis illis oportebit facere iuratam, aut de pauperibus, quibus non est verecundia infamiæ, nec timor iacturæ bonorum suorum, cum ipsa non sint, ipsi etiam rusticitatis ruditate obcecati, veritatis claritatem nequeunt intueri.

Non igitur mireris, *Princeps*, si Lex, qua in Anglia veritas inquiritur, alias non peruagetur nationes, ipsæ namque, vt Anglia, facere neque-

unt

unt sufficientes cõsimilésque iuratas.

like Iuries, as bee made in England.

¶ *Heere the Prince commendeth, the Lawes of England, of their proceeding by Iuries.*

Chap. 30.

TVnc *Princeps, Comparationes odiosas esse* licet dixerimus, lex tamen Ciuilis, in comparatione per te facta, omni se purgabit à crimine: quia, licet ei Legem Angliæ tu præculeris, odium inde ipsa non meretur, dum neque eam, neque cõditores eius increpasti: sed solum *patriam*,

THough we haue faid, (q̃ the Prince) that comparisons are odious, yet the Ciuile Lawe in the comparison by you made, hath cleared it selfe from all blame: For, though you haue preferred the Lawe of England to bee of more excellencie then it, yet it deserueth not thereby to bee odious, for so much as you haue blamed neither it, nor the makers thereof: But haue shewed the coun-

countrie, where it ruleth to be the onely cause, why it doth not, in matters of doubt trie out the truth with so commendable a kinde of proceeding, as the Lawe of England doth. But as touching that the Lawe of England, in the case by you now discussed, is more fit and mēet for that realme, then the Ciuill law, herein wee may not doubt: Wherefore, wee are not desirous to change it for the Ciuill law: Howbeit thys preeminence of the Law of England, proceedeth not of the fault of the other, for it is onely the fertility of England, that hath caused it to bee such as it is.

vbi illa regit, causam esse demonstrasti, quod non tam optabili processu, vt lex Angliæ, ipsa in dubijs elicit veritatē. Legem vero Angliæ, in casu iam per te disputato, accōmodatiorem esse regno illi, quam est lex Ciuilis, ambigere non sinimur, quo, eam pro Ciuili commutare non appetimus: Sed tamen hęc Leges Angliæ præeminentia, ab alterius crimine non euenit, solum enim eam, Angliæ fertilitas sic causauit.

The

¶ *The Prince doubteth, whether this proceeding by a Iurse, be repugnant to Gods law, or not.*

Chap. 31.

SEd, licet non insimé, Cancellarie, nos delectet forma, qua leges Angiæ in contentionibus reuelant veritatem, tamen, an modus ille sacræ repugnet scripturæ, vel non, paululum agitamur: Ait namque *Dominus* Phariseis, Iohañ viij. *In lege vestra scriptum est, quia duorum hominum testimonium verum est*, & huic applaudens

BUt, though wee bee greatly delited in the forme, which the Lawes of England vse in sifting out the trueth in matters of contention, yet whether the same law be contrarie to holy Scripture or not, that is to vs somewhat doubtfull: For our LORD saieth to the Phariseis, in the eight chapter of Saint Johns Gospell: In your Lawe it is written, that the testimonie of two men is true: And the LORD confirming

ming the same saith: I am one that beare witnesse of my selfe, and the Father that sent mee, beareth witnesse of mee. Now Sir, the Pharasies were Iewes, so that it was all one to say: It is written in your Lawe, and it is written in Moyses Lawe, which God gaue to the children of Israell by Moyses. Wherefore to gayneſay this Lawe, is to denie Gods Lawe: Whereby it followeth, that if the Lawe of England swarue from this Law, it swarueth also from Gods Lawe, which in no wise may bee contraried. It is written also in the eighteenth Chapter of Saint Mathewes gospel,

Dominus inquit: *Ego sum, qui testimonium perhibeo de me ipso, & testimoniũ perhibet de me, qui misit me, pater.* Pharisæi quippe Iudæi erant vnde idem erat dicere, in lege vestra scriptũ est, & in lege Moysaica (quę à Domino, per Moysen filijs Israel, prolata fuit) scriptum est. Quare huic legi cõtraire, legi est diuinę refragari, quo sequitur, qd̃ lex Angliæ, si ab hac lege discedat, a lege diuina, cui reluctari non licet, ipsa discedit. Scribitur etiam Matth. xviij. quod

Quod dominus (loquens de correctione fraterna) inter alia sic ait: *Si autem non te audierit frater tuus, adhibe tecum adhuc vnum aut duos, vt in ore duorum vel trium, stet omne verbum.* Si in ore duorum vel trium, Dominus omne verbum statuerit, frustra plurium hominũ quæritur in dubijs veredictum. Nemo enim potest, melius, aut aliud fundamentum ponere, quam posuit dominus.

Hæc sunt, Cancellarie, quæ me, de

Where the Lord, speaking of brotherly admonition, among other things sayeth thus: But if thy brother heare thee not, then take yet with thee one or two, that, in the mouth of two or three witnesses, euerie matter may bee established. If the Lord haue appoynted euery matter to be established in the mouth of twoe or three witnesses, then it is in vaine for to seeke for the verdict of many men in matters of doubt. For no man is able to lay any other or better foundation then the Lord hath laide

These are the doubtes, good Chauncellour, which, touchyng the pro-

proceeding of the lawe of England in the triall of matters doe somewhat trouble me. Wherefore, what answere may hereunto bee made, I woulde gladly learne of you.

legis Angliæ processu in probationibus, aliquantulum conturbant. Quare, quid his respondēdum est a te, doceri deposco.

Here is shewed, that the proceeding by a Iurie, is not repugnant to the Law of God. Chap. 32.

THe Lawes of England & the Chancellor, are nothing at all repugnant to these things y trouble you, most worthy Prince, though they in matters of doubt do somwhat otherwise boult out the truth. The law of the generall Councel, wherin it is prouided that Cardinals shall not be conuicted of criminal offēces, otherwise then by the depositiō

CAncellari⁹. Nō his, quibus turbaris, *Princeps*, cōtrariātur leges Angliæ, licet aliter quodammodo ipsæ in dubijs eliciant veritatē. Quid duorum hominum testimonio obest *lex illa generalis Concilij*, qua cauetur, vt non nisi *duodecim testium depositione*

Kj. Car-

cardinales de criminibus conuincãtur? Si verum est *duorũ* testimonium, a fortiori, testimonium *duodecim* verũ iudicari debet, dicente iuris regula: *Plus, semper in se continet, quod est minus.* Supererogationis meritum promittebatur *stabulario*, si plus quam duos, quos recepit, denarios, ipse in vulnerati curationẽ erogasset. Nonne plus quam duos aut tres testes producere oportebit quempiam, qui absentem se fuisse probare nititur, tempore criminis sibi impositi, quod per duos aut tres testes

of twelue witnesses, is it any hinderance to the testimonie of two men? If the testimonie of two men bee true, of more force must the testimonie of twelue men bee iudged true, according to a rule of the Law that saith: The more, euer containeth in it, that which is lesse. The Inholder was promised to bee rewarded with an ouer-plus, if hee bestowed vppon the cure of the wounded man, more then the two pence, which hee receiued. A man that laboureth to proue, that hee was absent at the time of the offence, wherewith hee is charged, shall it not bee needefull for him to bring forth moe then two

two or three witnesses, when his aduersarie hath proued, or is readie to proue the same, by two or three witnesses: And so hee, that trauelleth to cõuince witnesses of periurie, must of necessitie bring forth many moe then they were, so that the testimonie of two or three men shall not euer be iudged true: But that Lawe must thus bee vnderstanded, that by a lesser number of witnesses then two, the truth, in matters doubtfull, ought not to bee searched for, as appeareth by Bernarde assygning diuers cases, wherein by the Lawes moe then three witnesses must needes bee produced: As in some of them fiue, and in

aduersarius eius p̃bauit, vel probare parat' est? Sic & qui testes de periurio conuincere satagit, multo illis plures, producere necesse habet, quo nõ sẽp ij. vel iij. hominũ testimoniũ verũ esse iudicabitur: sed intelligenda est lex illa, qd̃ *minore testiũ numero quam ij.* veritas in dubijs non debet exquiri, vt patet per *Bernardum* extra. de testi. ca. licet in glossa ordinaria, vbi ipse assignat diuersos casus, in quib' per leges, plures quam tres oportet producere, testes: Vz. in aliquibus eorum v.

& in aliquib⁹ septē: per duos etiā testes veritatē ꝓbari posse, cū non aliter ipsa pateret, vtiq; leges Angliæ affirmant. Nam *siquæ supra altum mare* extra corp⁹ cuiuslibet comitatus regni illius fiant, quæ postmodū in placito *corā Admirallo* Angliæ deducantur, per testes illa iuxta legū Anglię sanctiones probari debent. Consimiliter quoq; corā cōstabulario et mariscallo Anglię fieri solitū est de facto, q̄d in regno alio actum est, dūmodo ad iurisdictionē *curiæ Cōstabularij*, cognitio eius pertineat.

and in some seuen. Nor yet the Lawes of England bee not against it, but that the trueth may be prooued by two witnesses, when it cannot otherwise be tried. For if thinges bee donne vpon the Sea without the bodie of any Countie of that Realme, which afterward bee brought in plea before the Lord Admiral, the same things by the decrees of the lawes of England must bee prooued by witnesses. In like maner it hath bin accustomed to bee donne before the Constable and Marshall of England, touching a fact that was donne in an other Royalme, so that the heareing thereof appertaineth to the Constables court.

Poste-

Moreouer, in the Courts of certaine Liberties in England, where matters proceede by Lawe Merchant, contractes or bargaines, made among Merchaunts in another Realme, are proued by witnesses. And this commeth to passe, because that in these cases there be no neighbours found, by whose oathes, Iuries of twelue men may bee made, as in contractes, and other cases, arising within the Realme of Englande is accustomed to bee done. Likewise if a deede, wherein witnesses are named, bee brought into the Kings Court, then processe shall bee made against those witnesses: and they together with twelue Iurors

Etiam & in curijs quarundã libertatum in Anglia, vbi per *legem Mercatoriã* proceditur, probant per testes, contractꝰ inter mercatores extra regnum factos. Quia in casibus his non reperiuntur vicini, p quorum sacramenta, iuratæ ex duodecim hominibꝰ fieri possunt, prout de contractibus & alijs casibus, infra regnum Angliæ emergentibus, est fieri consuetum. Similiter, si carta, in qua testes nominantur, deducatur in curia Regis, processus tunc fiet erga testes illos, ipsi

 quo-

quoq; recognoscēt simul cū xij. iuratorib' per eorū sacramēta verū carta illa sit factum eius, cui' supponitur, an non. Quare, legē, qua testib' veritas extorquetur, lex Angliæ nō condōnat, maxime cum *necessitas* id deposcat: quia & sic faciunt ipsę leges Anglię ñedū in casibus iā notatis, sed etiā in quibusdā casibus alijs, quos nō expedit hic notare. Sed per testes solū, lex ipsa nūquā litē dirimit, quæ per iuratam xij. hominum decidi poterit, cum sit modus iste ad veritatem eliciendā multo potior &

shall by their oathes recognise, whether the same bee his deede or no, whose it is supposed to bee. Wherefore the Lawe of Englande reprooueth not the Lawe, which by witnesses tryeth out the truth, specially when necessitie so requireth: For so doe the Lawes of Englande too, not onely in the cases now mentioned, but also in certiane other cases, whereof here to make rehersall it shall not be materiall. Howbeit this Lawe neuer determineth a controuersie by witnesses onely, that may be determined by a Iury of triemen: forsomuch as this way is much more amiteable and effectuall for the tryall of the truth

then

then is the forme of any other Lawes of the worlde, and further from the daunger of corruption and subornation. For this forme of proceeding, cannot in any cause faile for want of witnesses, nor the testimonies of witnesses (if any bee) cannot chose but come to their due ende and effecte: Neither can such twelue men bee forsworne, but that for their offence they must suffer most sharpe punishment, and neuertheleſſe the partie, by their depositions grieued, shall obtaine due remedye: And these things shall not bee done by the will and sayings of strange or vnknowne

efficatior, quam est forma aliquarũ aliarum legum orbis, & remotior a corruptionis & subornationis periculo. Nec potest hęc procedendi forma in causa aliqua, ob defectũ testiũ deperire, neq; testium (si qui fuerint) attestatio, effectũ debitũ non sortiri, nec perjurari possunt duodecim homines huũdi, quin pro eorũ crimine, ipsi acerbissime puniãtur, & nihilominꝰ pars, p eorum depositionẽ grauata, remedium debitum consequetur: ac, non fient hæc per extraneorum aut ignotorum

torũ hominũ arbitriũ aut dictamẽ, sed p proborũ, nobilium & fide dignorũ, vicinorũ partibus, sacramẽtũ, quib⁹ partes illę nullã habent causam calumpniæ aut diffidẽtiæ de eorum dicto. O quã horrendum & detestabile discrimẽ sępe accidit, ex forma p depositionem testium procedendi! Nonne, si quis clandestinum cõtrahat matrimoniũ, & postea coram testib⁹ mulierẽ aliã ipse affidauerit, cum tadẽ cõsummare matrimonium arctabitur in *foro contencioso*, & postea in *penitẽtiali foro* iudicabitur ipse

men, but by the oathes of good, of worshipfull, and of credible men, neighbours to the parties, in whom the same parties haue no cause of challenge or mistrust, touching their verdict. O how horrible and detestable dangers happen manie times through the forme of proceeding by witnesses! If a man make a priuie contracte of matrimonie, and after warn before witnesses, doe beetroth or assure him selfe to another woman, shall hee not in the contentious court bee compelled to marrie her, and also after that in the Penitenciall court, bee iudged to lye with the first, if hee bee duely required, and to do penance, as oft as by his

his owne motion and procurement hee lyeth with the second, though in both Courtes the Iudge be one and the self same man. In this case, as it is written in Iob, are not the sinewes of Leuiathan perplexed and intricate? Fie for shame they are intricate in deed: For, this man can carnally companie with neither of these two women, nor with any other, without punishment eyther by the contentious Court, or by the Penitentiall Courte, Such a mischiefe, inconuenience, or danger, can neuer happen in any case by the way of proceeding by the Law of England, no not though Leuiathan himselfe would labour to

cõcumbere cũ prima, si debito requiratur, & penitere debet quoties ex actione propria cõcubuerit cũ secũda, licet in vtroq; foro iudex fuerit homo vnus & idẽ. Nonne in hoc casu, vt in *Iob* scribitur, *perplexi sunt testiculi Leuiathã*? Proh pudor, vere perplexi sunt, nã, cum neutramulierũ harũ, neq; cum alia, contrahens iste, extunc concumbet, sine animaduersione in foro contendentium aut penitentium: quale malum, inconueniens, aut discrimen per modum & formã processus legis Angliæ im-

impossibile est in casu aliquo euenire, etiã si *Leuithiã* ipse ea generare nitatur. Nõne vides iã, *princeps clarissime*, leges Anglię tanto magis clarescere, quanto eisdem tu amplius reluctaris?

procure the same. Doe yee not nowe see, most noble Prince, that the more you obiect against the Lawes of Englande, the more worthy they appeare?

¶ *Wherefore, certaine Kings of England, haue had no delight in their owne Lawes.*

Chap. 33.

PRinceps, video, inquit, & eas inter totius orbis iura (in casu, quo tu iam sudasti) præfulgere considero, tamen progenitorum meorum Angliæ regum quosdam audiuimus, in legibus suis minime delectatos,

I see plainely, quod the Prince, that in the case, wherein you haue nowe trauailed, they haue the preeminence aboue all other Lawes of the world, yet wee haue heard, that some of my progenitors, Kings of England, haue not bin pleased with their owne Lawes, and haue therefore gone about to bring

bring in the Ciuill lawes to the gouernement of England, and to abolishe their owne Countrie Lawes. For what purpose & intent they so did, I much maruell.

satagentes proinde, leges ciuiles ad Angliæ regimẽ inducere, & patrias leges repudiare fuisse conatos: horum reuera consilium vehemẽter admiror.

¶ *Here the Chancellour openeth the cause, which the Prince demandeth Chap. 34.*

YOu woulde nothing maruaile heereat, quod the Chauncellour, if you did deepely consider with your selfe, the cause of this intent. For you haue heard afore, how that, among the Ciuill Lawes, that maxime or rule is a sentence most notable, which thus singeth: The Princes pleasure standeth in force of a Lawe: quite

CAncellarius. Nõ admiraretis, Princeps, si causam hui⁹ conaminis mẽte solicita pertractares. Audisti nam quesuperius, quomodo inter leges Ciuiles præcipua sententia est, maxima siue regula, illa quæ sic canit, *quod Principi placuit, legis habet vigorem,*

rē, qualiter non sanciunt leges Angliæ, dum nedum *regaliter*, sed & *politice* rex eiusdē dominatur in populum suum, quo ipse, in *coronatione* sua ad legis suæ obseruanciam astringitur sacramento, quod reges quidam Anglię ęgre ferentes, putātes proinde se non libere dominari in subditos, vt faciunt reges regaliter tantum principantes, qui lege ciuili, & potissime prædicta legis illius maxima, regulant plebem suam, quo ipsi, ad eorum libitum, iura mutāt, noua condunt, pœnas

contrarie to the decrees of the Lawes of Englande, whereby the King thereof ruleth his people, not onely by Regall, but also by Politique gouernement, In somuch that at the time of his coronation, hee is bound by an oath to the obseruance and keeping of his owne Lawe, which thing some Kings of Englande not well brooking, as thinking that thereby they should not freely gouerne their Subiectes as other Kings doe, whose rule is onely regall, gouerning their people by the Ciuile Lawe, and chiefely by that foresaide Maxime of the same law, whereby they at their pleasure change Lawes, make

make newe Lawes, ere-
cute punishments, bur-
den their subiectes with
charges: and also, when
they lust, doe determine
controuersies of suters,
as pleaseth them. Where-
fore, these your progent-
tours went about to cast
off the yoke politique,
that they also might like-
wise rule, or rather rage,
ouer the people their sub-
iectes in regall wise one-
ly: not considering that
the power of both kings
is equall, as in the fore-
said Treatise of the Lawe
of Nature is declared:
and that to rule the peo-
ple by gouernement po-
litique, is no yoke, but
libertie, and great secu-
ritie, not onely to the
subiectes but also to the
King himselfe: and sur-

infligunt & onera
imponunt subditis
suis, proprijs quo-
que arbitrijs, contē
dentium, cum ve-
lint dirimunt lites.
Quare, moliti sunt
ipsi pgenitores tui
hoc iugum politicū
abijcere, vt consi-
militer & ipsi in sub
iectum populū re-
galiter tantū domi-
nari, sed potius de-
bacchari queāt: nō
attendentes, quod
ęqualis est vtriusq;
Regis potētia, vt in
prędicto *tractatu de
Natura legis naturæ*
docetur, & qd̄ non
iugū sed libertas est
politicē regere po-
pulū, securitas quo-
que maxima nedū
plebi, sed & ipsi re-
gi:

gi, alleuatio etiam non minima solicitudinis suæ. Quæ vt tibi apertius pateant, vtriusq; regiminis experientiam percunctare, & à regimine tantum regali, qualiter Rex Frãciæ principatur in subditos suos, exordium sumito: deinde à regalis & politici regiminis effectu, qualiter Rex Angliæ dominatur in sibi subditos populos, experientiam quære.

ther no small lightning or easement to his charge. And that this may appeare more euident vnto you, ponder and weigh the experience of both regiments, And begin with the King of France, perusing after what sort he ruleth his subiectes by Regall gouernement alone: And then come to the effecte of the iopnt gouernance, regall and politique, examining by experience, how and after what maner, the King of England gouerneth his subiects.

¶ *The inconueniences, that happen in the Realme of France, through regall gouernement alone. Chap. 35.*

Call

CAll to remembrance, most worthy Prince, after what sort you sawe the wealthy Villages and Townes (as touching store of Corne) in the Realme of Fraunce, while you were there a sojourner, pestered with the Kings men at armes and their horses, so that skant in any of the great townes there you could get any lodging: Where, of the inhabiters you learned, that those men, though they continue in one village a moneth or two, doe not, nor will paye any thing at all, either for their owne charges, or for the charges of their horses, But which is worse, they compelled the inhabytants of the Villages

REminiscere (*princeps diuine*) quaes liter villas & oppida regni Frãcię frugum opulentissima, dum ibidẽ peregrinabaris, cõspexisti, Regis terræ illi⁹ *hominibus ad arma, & eorum equis*, ita onusta, vt vix in eorum aliquib⁹ quã magnis oppidis tu hospitari valebas: vbi ab incolis didicisti, homines illos, licet in villa vna per mẽsem aut duos perhendinauerint, nihil prorsus, pro suis aut equorum suorum expensis, soluisse, aut soluere velle, sed quod peius est, arctabãt incolas villarũ

&c

&oppidorū, in quę descēderant, sibi de vinis, carnibus, & alijs, quibus indigebant, etiā cariorib⁹ necessarijs quā ibi reperiebantur, à circumuicinis villatis, suis proprijs sūptib⁹ puidere. Et si qui sic facere renuebāt, cōcito fustib⁹ cæsi, properè hoc agere cōpellebātur: ac de mū cōsūptis, in villa vna, victualib⁹, so calib⁹, & equorum p̄bēdis, ad villā aliā homines illi properabāt, eam cōsimiliter deuastando, nec denarium vnum p aliquib⁹ necessarijs suis, etiam aut concubinarum suarum, quas in magna co

and towne dwellers, whether they came, to prouide of their owne proper costes, out of the villages adioyning, wine and flesh for them, and other thinges that they needed, at dearer prices, then they might haue bought the same at home. And if any refused thus to doe, they were anonne by plaine Statford Law forced to do it: And when they had spent all the victuals, fewell, and horse meat, in one towne, then those men went to an other towne, wasting the same in like manner, not paying one penie for any necessaries, either for themselues or else for their concubines and harlots, whereof they euer carried about with them

great

great abundaunce, nor for hosen or shoes, and other like, euen to ye lest point or lace but they compelled ye townsmẽ where they tarried to beare al their expenses. And thus were al ye villages & vnwalled townes of ye land vsed, so ye there is not ye least village there, fre frõ this miserable calamity, but that it is once or twise euery yere beggered by this kinde of pilling. Furthermore ye King suffreth no man to eate salt win his kingdome, except hes buy it of the king at such price, as pleaseth him to assesse. And if any poore man had rather eat his meat fresh thẽ to buy salt so excessiuely deare, he is

piasecũ sẽper vehebãt, vel pro secularib', caligis, & alijs humãdi, vsq; ad minimã earũ ligulã soluerunt, sed singulas suas qualescunq; expẽsas habitatores villarũ, vbi moras fecerunt, soluere coegerũt. Sicq; & factũ est in omnib' villis & oppidis nõ muratis totius regionis illi', vt non sit ibi villula vna, expers de calamitate ista, quæ non semel aut bis in anno, hac nephanda pressura depiletur. Præterea non patitur rex quenquam regni sui *salem edere*, quem non emat ab ipso Rege, precio, eius solum arbitrio, assesso. Et si insulsum *pauper*, quiuis mauult edere, quam salem excessiuo,

ꝑcio cõparare, moxcõ-
pellitur ille, tãtũ de sa-
le regis ad eius preciũ
emere, quantũ congru-
et tot personis, quot ip
se in domo sua fouet.
Insup omnes regni il-
liusꝰ incolæ, dant omni
anno, regi suo, *quartam*
partẽ omniũ vinorum,
quę sibi accrescunt, &
omnis *caupo quartũ de-*
nariũ ꝑcij vinorũ, quæ
ipse vẽdit. & vltra hęc
oẽs *villæ & burgi* solu-
unt Regi annuatim,
ingentes summas su-
per eos assessas, pro
stipendijs hominum
ad arma, sic quod ar-
mata regis, quæ quam
magna semper est, pas-
catur annuatim de sti-
pendijs suis per paupe-
res villarum, burgorũ,
& ciuitatum regni.

immediatly cõpelled to
buy so much of ẏ kings
salt at ẏ kings price, as
shall suffice so many p-
sõs as he keepeth in his
house. Moreouer al the
inhabiters of ẏ realme,
giue yerely to ẏ king, ẏ
iiij. part of all the wines
ẏ their groũds beareth:
and euery Vintener the
fourth peny of ẏ price of
the wine that he selleth
And besides all this, e-
uery village & borough
paieth yerely to ẏ king
great summes of mony
assessed vpon them for
the wages of men at
armes, so that the charg-
es of the kings army,
which is euer very
great, is maintained
by ẏ poore people of the
villages, boroughes, &
townes of the realme.

And

And yet moreouer, euery village findeth cõtinually iij. Crossebowes at ỳ least, & some moe, with al furniture & habiliments, requisit for the kings seruice in his wars, as oft as it pleaseth him to muster thẽ which he doth very oft: And, these things not considered, other exceeding great talleges are yerely assessed vpon euery village of ỳ same realme to ỳ kings vse, wherof they are neuer releseed. The people being w̃ these & diuers other calamities, plaged & oppressed, doe liue in great misery, drinking water daily, Neither do the inferior sort tast any other liquor, sauing only at solemne feasts.

Et vltra hęc, quælibet villa semper sustinet sagittarios duos ad minus; & aliquę plures, in omni apparatu, & abilimentis sufficientibus ad seruiendum regi in guerris suis, quoties sibi libet eos summonere, qd̃ & crebro facit: ac, hijs non põderatis, maxima *tallagia* alia, sunt omni anno assessa ad opus regis, sup̃ quãlibet villam eiusdem regni, de quibus non vno anno ipsi alleuiantur. Hijs & nonnullis alijs calamitatibus, plebs illa lacessita, in miseria non minima viuit, aquam cotidie bibit, nec alium, nisi in solemnibus festis, plebeij gustant liquorem.

Froccis siue collobitis de canabo admodũ pãni saccorum teguntur. Panno de lana, pręterquam de vilissima, & hoc solum in tunicis suis subtus froccas illas non vtuntur, neq; caligis nisi ad genua, discooperto residuo tibiarum. Mulieres eorum nudipedes sunt exceptis diebus festis, *carnes* non comedunt, mares aut fæminę ibidẽ præter lardũ baconis, quo impinguant pulmentaria sua in minima quantitate. Carnes *assatas coctasue* alias ipsi non gustant, præterquam interdum de intestinis & capitibus animalium, pro nobilibus & mercatoribus occisorum;

Their shamewes are made of hẽp, much like to sackcloth. Wollen cloth they weare none except it be very course & ỳ only in their coates vnder their said vpper garments, neither vse they any hosen, but frõ ỳ kne vpward: the residue of their legs go naked. Their women go barefoot sauing on holidaies, neither men nor women eate any flesh there, but only larde of bacon, wi a smal quãtity whereof they fatten their pottage & broths. As for rosted or sodden meat of flesh they taste none, except it be of the inwards sometimes & heades of beastes, that be killed for gentlemẽ and marchants.

But

But the men at armes, they deuoure & consume all their pulleine, so, that they haue scant the egges left to eat for special daintie. And if they fortune at any time to grow somewhat welthy in substãce, so that any of them bee counted rich, hee is by and by charged to the Kings Subsidie, more deepely then any of his neighbors, so that within short time he is made equall in pouerty with the rest of his beggerly neighbours. And this, as I suppose is the state of the cõmon and rascall people of that nation. But Gentlemen and Nobles are not so oppressed, & ouercharged with exactions. But if any of them chaunce to be accused of any crime,

Sed gentes ad arma comedunt alitilia sua, ita vt vix oua eorum, ipsis relinquantur, pro summis vescenda delicijs. Et si quid in opibus, eis aliquando accreuerit, quo locuples eorum aliquis reputetur, concitoipse ad regis *subsidium*, plus vicinis suis cæteris oneratur, quo, ex-tunc conuicinis cæteris ipse æquabitur paupertate. Hæc, ni fallor, forma est status gentis plebanæ regionis illius. *Nobiles* tamen, non sic exactionibus opprimuntur. Sed si eorum aliquis calumniatus fuerit de

crimine, licet per inimicos suos nõ semper coram iudice ordinario ipse conuocari solet: Sed quam sæpe, in regis camera, & alibi in priuato loco, quandoque vero solum per internuncios, ipse inde aloqui visus est, & mox vt *criminosum* eum principis conscięntia, relatu aliorum, iudicauerit, in *sacco* positus, absque figura iudicij, ꝑ prępositi mariscalorum ministros noctanter in flumine proiectus, *submergitur*, qualiter & mori audiuisti maiorem multo numerum hominum, quam qui legitimo

though it be by his enemies, he is not euer wont to be cited or called before an ordinarie Iudge: But many times it hath bęene seene, that he hath in that behalfe beene talked with in the Kinges Chamber, or elsewhere in some priuate place, and sometimes onely by a Purseuant or Messenger: And immediately as soone as the Princes conscience hath, through the report of others, iudged him guiltie, hee is without any fashion of iudgement put in a Sacke, and in the night season by the Marshalls seruants hurled into a Riuer, and so drowned, After which sort you haue heard of many moe put to death, then that haue beene by

ordi-

ordinarie processe of the Lawe condemned. Howbeit the Princes pleasure, as say the Ciuill lawes, hath the force of a Lawe. Also, while you were abyding in Fraunce, and nigh to the same Kingdome, you heardye of other great enormyties like vnto these, and some much worse then these detestable and damnable, done no otherwise but vnder the colour of that Lawe, which heere to rehearse would continue our talke too long a time. Now therefore, let vs see, what the effecte of the Law politique and Regall, which some of your progenitors would haue changed into this ciuill, hath wrought in the

processu iuris conuicti exiterũt. Sed tamẽ, qd principi placuit (iuxta leges ciuiles) legis habet vigorem. Etiam & alia *enormia*, hijs similia, ac quædam hijs deteriora, dum in Francia & prope regnum illud conuersatus es, audisti, non alio, quã legis illius, colore, detestabiliter damnabiliterq; perpetrata, quæ hic inserere, nostrum nimium dialogum protelaret: Quare, quid effect legis politicę & regalis, quam, quidã progenitorũ tuorũ, pro lege hac ciuili, cõmutare nisi sunt, operatus est in reg-

no Anglię, a modo visitem', vt vtraque legum experientia doctus, quæ earum tibi eligibilior sit, ex earum effectib' eliçere valeas, cũ (vt supra memoratur) dicat Philosophus, quod, *opposita, iuxta se posita, magis apparent.*

Realme of Englande, that you being instructed with the experience of both Lawes, may the better by their effectes iudge, whether of them ye ought rather to choose, Seeing the Philosopher, as afore is reherſed, doth say, that contraries laid together do more perfectly appeare.

¶ *The commodities, that proceede of the ioint gouernement, politique and regall, in the Realme of England. Cap. 36.*

IN regno Anglię, *nullus perhendinat in alterius domo*, inuito domino, si non in *hospiçijs publiçis*, vbi tunc pro omnibus, quæ ibidem expendit, ipse plena-

WIthin ꝑ Realme of England, no man soiorneth in an other mans house, without the leue the leaue of the goũman of the same house: sauing in common Innes, where before his departure thence, he shall fully satisfie

satisfie and pay for all his charges there: Neither shal he escape vnpunished whosoever he be, that taketh another mans goods without the good will of the owner thereof, Neither is it vnlawfull for any man in that Royalme, to prouide and store himself, of salt, and other merchandises, or wares, at his owne will & pleasure, of any man that selleth the same. Howbeit, the King, though the owners would say nay, may by his Officers take necessaries for his house, at a reasonable price, to bee assessed by the discretions of the Constables of the towns: Neuertheleſſe, he is bound by the Lawes to pay therefore, either presently in hand, or else

rie soluet ante eius abinde recessum: nec impune quisq; *bona alterius capit sine voluntate proprietarij eorundem*, neq; in Regno illo, prepeditur aliquis, sibi de sale, aut quibuscunque mercimonijs alijs ad proprium arbitrium, & de quocunque venditore, prouidere. *Rex* tamen, necessaria domus suæ, *per rationabile precium*, iuxta constabulariorum villarum discretiones assidendum, inuitis possessoribus, per officiarios suos capere potest: sed nihilominus precium illud in manibus, vel ad

diem

diē per maiores officiarios domus suæ limitandum *solvere* per leges suas obnoxi⁹ ē: quia nulli⁹ subditorū suoꝝ bona iuxta leges illas, ipse deripere potest sine satisfactione de bita ꝓ eisdē. Neq; rex ibidē, ꝑ se, aut ministros suos, *tallagia*, *subsidia*, aut quęuis onera alia, imponit legijs suis, aut leges eorū mutat, vel nouas cōdit *sine cōcessione* vel assensu totī⁹ regni sui, in *parliamēto* suo ex ꝑsso. Quare incola omīs regni illi⁹, fructub⁹ quos sibi parit terra sua, & quos gignit pec⁹ ei⁹, emolumētis quoq; om-

at a day to bee limitted and set by the higher Officers of his house: For by his Lawes hee may take away none of his Subiectes goods, without due satisfaction for the same. Neither doth the King there, either by himselfe, or by his Seruants and Officers leuie vppon his subiectes, Tallages, Subsidies, or any other burdens, or alter their lawes, or make newe Lawes, without the expresse consent and agreement of his whole Realme in his Parliament. Wherefore euery inhabiter of that Realme, vseth and enioyeth at his pleasure, all the fruites that his lande or cattel beareth, with al the profits and commodities,

which

which by his owne trauell, or by the labour of others, hee gaineth by lande or by water: not hindered by the iniurie or wrong detainement of any manne, but that hee shall bee allowed a reasonable recompence: And heereby it commeth to passe, that the men of that Lande are rich, hauing aboundaunce of Gold and Siluer, and other things necessarie for the mainetenance of mans life. They drinke no water, vnlesse it bee so, that some for deuotion and vpon a zeale of pennance, doe abstaine from other drinke, They eate plentifully of all kindes of flesh and fishe, They weare fine wollen cloth in all their apparell,

nibꝰ, quę industria ꝓpria, vel aliena, ipse terr mariq; lucratur, ad libitū ꝓpriū vtitur, nullꝰ ꝓpedit iniuria vel rapina, quī ad minꝰ in debitas consequitur emēdas: vnde inhabitātes terrā illā, locupletes sūt abūdātes auro & argēto & cūctis necessarijs vitę. A quā ipsi non bibūt, nisi q, ob deuotionis & penitēciezelū, aliqādo ab alijs potubꝰ se abstinēt, oī genere *carniū* & *pisciū*, ipsi in copia vescuntur, quibꝰ patria illa nō modice est referr, pannis de lanis bonis ipsi induuntur in omnibus *operimētis* suis,

etiam

etiam abundant in *lectisternijs*, & quolibet suppellectili cui lana congruit, in omnibus domibus suis, necnõ opulenti ipsi sunt in omnibus *hustilimentis* domus, necessarijs culturę & omnibus quæ ad quietam, & felicem vitam exiguntur, secundum status suos. Nec in placitũ ipsi ducuntur, nisi coram iudicibus ordinarijs, vbi illi per leges terræ iuste tractantur. Nec allocuti siue implacitati sunt de mobilibus aut possessionibus suis, vel arrestati de crimine aliquo, qualitercũq; magno &

They haue also abundance of bedde couerings in their Houses, and of all other woollen stuffe, They haue great store of all hustlements and implementes of household. They are plentifully furnished with al instruments of husbandrie, and all other things, that are requisite to the accomplishment of a quiet and wealthie life, according to their estates and degrees. Neither are they sued in the Law, but only before ordinarie Iudges, where by the Lawes of the Land they are iustly intreated. Neither are they arrested or impleaded for their moueables or possessiõs, or araigned of any offence criminall, bee it neuer so great and out-

outragious, but after the Lawes of the Lande, and before the Iudges afore said. And these are the fruits, which, gouernement politique and regall conioyned, doth beare and bring forth: Whereof now appeare euidently vnto you the experiences of the effects of the Law, which some of your progenitors trauelled to abolish. Before also you saw plainly the effectes of the other Lawe, which they with such earnest endeuour laboured to aduance and place in steade of this Lawe, so that by the fruites of them both, you may know, what they are: And did not ambition, riot, and wanton lust, which your said

enormi, nisi *secundum leges terræ illius, & coram Iudicibus* antedictis. Et hij sunt *fructus*, quos parit regimen *politicum & regale*: Ex quibus tibi iam apparent experientiæ effectus legis, quam quidam progenitorum tuorum abijcere conati sunt.

Superius quoque tibi apparent effectus legis alterius, quam tanto zelo, loco legis istius, ipsi nisi sunt inducere, vt ex fructibus earum tu agnoscas eas: Et, nonne ambitio, luxus, & libido quos p̃dicti

proge

progenitores tui, regni bono præferebant, eos ad hoc commercium concitabant? Considera igitur, *Princeps optime*, & iam alia, quæ sequentur.

progenitors esteemed aboue the wealth of the Realme, moue them to this alteration? Consider therefore, most worthy Prince, and that earnestly this that followeth.

¶ *A comparison of the worthinesse of both the regiments. Chap.37.*

SAnctus *Thomas* in libro, quem Regi Cipri *de regimine principũ* scripsit, dicit: *quod Rex datur propter regnum, & non regnum propter Regem*, quo omnis potestas regia referri debet ad bonum regni sui, quod effectiuè consistit, in defensione

SAint Thomas in his booke which he wrote to the king of Cyprus, of the regiment of Princes, saith, that the King is giuen for the kingdome, and not the kingdome for the King, Whereupon it followeth, that all kingly power must bee applyed to the wealth of his kingdome, Which thing in effect consisteth, in the defence

defence thereof from forreine inuasions, and in the maintenance of his subiects, and their goods, from the iniuries and extortions of the inhabitants of the same. Wherefore, that king, which is not able to performe these things, must of necessitie bee iudged impotent and weake. But if he be so ouercome of his owne affections and lustes, or so oppressed with pouertie, that hee can not withhold his hands from the pilling of his subiects, whereby himselfe impouerisheth them, and suffereth them not to liue and to be sustained vpon their owne substances: how much more weake or feeble is hee in this

eiusdem ab exterorum incursibus, & in tuitione regnicolarum, & bonorum suorum ab indigenarum iniurijs & rapinis. Quare, Rex, qui hæc peragere nequit, impotens est necessario iudicandus. Sed si ipse, passionibus propriis, aut penuria, ità oppressus est, quod manus suas cohibere nequit à depilatione subditorum suorum, quo ipsemet eos depauperat, nec viuere sinit & sustentari proprijs substantijs suis: quanto tunc impotentior

ille

ille iudicandus est, quam si eos defendere, ipse non sufficeret erga aliorum iniurias? Reuera, Rex talis, nedum impotens, sed & ipsa impotentia, dicendus est: & non liber iudicari potest, tantis impotẽtiæ nexubus vinculatus. Eregione, Rex liber & potens est, qui incolas suos erga exteros, & indigenas, eorum quoque bona & facultates, nedum erga vicinorum & conciuium rapinas defendere sufficit, sed erga propriam oppressionem, & rapinam,

respect to be iudged, then if he were not able to defend them against the iniuries of others: Truely, such a King may well be called, not only feeble, but euen verie feeblenesse it selfe: nor is not to bee iudged free, being tied with so many bandes of feeblenesse. On the other side, that King is free and of might, that is able to defend his subiectes, aswell against straungers, as against his owne people: and also their goods and possessions, not onely from the vyolent and vnlawfull inuasions of their owne countreymen and neighbours, but also from his owne oppression and extortion, though

though such wilfull lusts and necessities do moue him to the contrarie. For who can bee more mightie or more free, then hee, that is hable to conquer and subdue, not onely others, but also himselfe? Which thing a King, whose gouernance is politique, can doe and euer doth. Thus, most worthy Prince, it appeareth vnto you by the effecte of experience, that your progenitours, which were thus minded to renounce their politique gouernement, could not thereby not onely not obtaine the might and power, which they wished, that is to say, increase thereof, but rather they should haue endangered, and greatly hazarded, the wealth

licet sibi passiones necessitatesque huiusmodi reluctetur. *Quis enim potentior liberiorue esse potest, quam qui, non solum alios: sed & se ipsum sufficit debellare?* quod potest, & semper facit, Rex *politice* regens populum suum. Quare experientiæ effectu tibi constat, *princeps*, progenitores tuos, qui sic politicum regimen abijcere satagerunt, non solum in hoc non potuisse nanciscipotentiâ, quam optabant, videlicet ampliorem, sed & sui bonum, similiter & bonum Regni sui, per

hoc, ipsi discrimini exposuissent, & periculo grādiori. Tamen hęc quæ iā de experientię effectu practicata, potentiam regis, regaliter tantum præsidētis, exprobrare videtur non ex legis suę defectu processerunt, sed ex incuria negligētiaq; taliter principantis. Quare, ipsa, dignitatem illam potentia non minuunt, a dignitate regis politice regulātis, quos paris esse potentiæ, in prædicto *tractatu de Natura legis Naturæ*, luculenter ostendi. Sed potentiam regis regaliter tantum principantis difficiles

as well of themselues, as also of their kingdome. Notwithstanding these thinges now practised, which, as touching the effect of experience, doe seeme to blemish the power of a king ruling alone regally, neuer proceeded of the default of their law, but of the careles demeanour, and negligent loosnes of such a Ruler. Wherfore, that dignitie is not heereby in power imbased, vnder the dignitie of a politique Gouernour, which both, in my forsaid treatise of the Nature of the Law of Nature, I haue plainely prooued to be in power equal. But the premises doe most euidently declare it to bee a matter of much more difficultie for a king whose

whose rule is only regal, to exercise his power, and that both he and his people, stand in much lesse securitie, and therefore it were not to bewished of a wise king, to change a politike regiment into that gouernement, which is onely regall. And according to this, the foresaide Saint Thomas, wisheth that all the kingdomes of the world were ruled by politique gouernance.

lioris esse exercitij, ac minoris securitatis sibi & populo suo, illa clarissime iam demonstrare, quo optabile non foret regi prudenti, regimen politicum pro tantum regali commutare. Vnde & sanctus *Thomas* supradict' optare cēsetur, vt omnia mūdi regna politice regerentur.

¶ *The Prince breaketh the Chancellour of his tale.*

Chap. 38.

BEare with me, I beseech you good Chancellour, quod the Prince,

TVne *Princeps*, parce, obsecro, Cancellarie,

quod te ad tantam a proposito tuo digressionem compuli quæstionibus meis, mihi namque perutilia sunt, quæ hac occasione exarasti, licet te parumper retardauerint a meta intẽtionis tuæ ad quam vt tu iam celerius properes, flagito, & primo, vt aliquos alios casus, in quibus, legũ Angliẹ, & Ciuiliũ discrepant sentẽtiẹ, vt promisisti & cœpisti, mihi enarres.

in that with my questions I haue drawne you so far from your purpose: For, the things, which by this occasion you haue discussed, are to me right profitable, though they haue somewhat staied you, and pulled you backe from the ende of your intent, Whereunto I pray you now make haste: and first as you promised, and as you haue begunne, open vnto me some other cases wherein the sentences of the lawes of England, and of the Ciuill lawes, doe disagree.

¶ *The second case, wherein the Ciuill Lawes, and the Lawes of England, disagree in their iudgements.*

Chap. 39.

Accor-

According to your request, most noble Prince (quoth the Chancellour) I will open vnto you certaine other cases, wherein the said Lawes disagree. Howbeit, whether of the same Lawes in their iudgements, excelleth the other, that will I leaue to your owne determination.

The Ciuill Law doth legittimate the childe borne before matrimony, as well as that which is borne after: and giueth vnto it succession in the Parents inheritance: But to the childe borne out of matrimony, the Lawe of England alloweth no succession, affirming it to be naturall only, and not lawfull. The Ciuilitãs in this case, aduance their Lawe,

Cancellarius. Quoscũ casus alios, in quibus dissentiunt Leges prędictæ, vt petis *princeps*, detegere conabor. Sed tamen quæ legũ earũ prestãtior sit in iuditijs suis, non meo sed arbitratui tuo relinquam. *Prolem ante matrimonium natã, ita vt post, legitimã, lex ciuilis, & succedere facit in hæreditate parentum*: sed prolem, quam matrimoniũ non parit, *succedere non sinit lex Anglorum*, naturalẽ tantũ eam esse, & non legititimam proclamans. Ciuilistæ in casu hoc, legẽ eorum extollunt,

quia incitamētū eā esse dicunt, quo matrimonij sacramēto cesset peccatum, ꝑ quod alias duorum animę interirēt: prę sumendum quoque esse dicunt, tales fuisse contrahentium animos in primo eorum concubitu, quales esse demōstrat subsequens sacramentum. Ecclesia etiā, fœtus hmōdi habet ꝑ legitimis, hæc, ni fallor, tria fulcimēta sūt maiora, quib' ipsi approbant, defenduntque legē suam. Ad quę, sic respondent *legis Angliæ periti*: primo dicunt quod *peccatū primi concubitus*, in casu proposito,

alleaging that by meane thereof, the sacrament or state of matrimonie comming in place, extinguisheth the former sinne, whereby else the soules of two persons should haue perished: And it is to be presumed, say they, that they were at their first copulation both so minded, as the sacrament ensuing afterward declareth. The Church also accepteth such children for legitimate. These, I trow, are the three strongest reasons, whereby they maintetaine and defend their Lawe. Which are thus answered by the Lawiers of Englande: First, they say, that the sinne of the first carnall action, in the case propoūded, is not purged by the ma-

matrimonie ensuinge, though by the worthines therof, the sinners punishment is somewhat abated. They say also, that they, which thus do sinne, are so much the lesse repentant therefore, in as much as they perceiue the Lawes to fauour & beare with such transgressors: And vpon this consideration, they are made the redier to commit sinne: therby breaking the commandement both of Gods and of the Church. Wherfore this Lawe doth not onely participate with the offence of sinners, but also swarueth from the nature of a good Lawe. Forasmuch as a Law is a holy stablishment, commaunding things honest, and forbidding the contrarie:

nō purgatur per subsequens matrimonium, licet eiꝰ merito delinquentiū quodam modo minuatur pœna. Dicūt etiā qd *peccati illius cōscij, tāto minꝰ inde pœnitent*, quo leges trāsgressoribus illis fauere considerant: Quasi etiam consideratione, *proclinioires ipsi redduntur ad cōmittendū peccatū*, p qd, nedum Dei, sed & ecclesiæ præcepta negligūt. Vnde lex illa, nedum delinquentiū participat culpā, sed & legis bonæ naturā ipsa declinat: cum lex sit *sanctio sancta, iubens honesta, & prohibens contraria*:

qualia ipsa non prohibet, *sed potius ad inhonestatem animos labẽtium inuitat*. Nec vallari potest lex ista p hoc, qd ecclesia fœtus hmdi pro legitimis habet. Pia namque mater illa, in quãplurimis dispensat, quæ fieri ipsa non cõcedit, dispensatiua enim laxauit Apostol² virginitatis frena qd cõsulere noluit, cũ oẽs ipse voluerit, vt se virgines permansisse. Et absit, vt mater tanta, a filijs suis in casu isto pietatem suã cohiberet, dum sæpe ipsi, etiã legis huius ciuilis fomento cõcitati, incidũt in peccatum.

Which this Lawe doth not, but rather alloreth the mindes of sinners to dishonestie. Neither can it bee any defence to this Law, that the Church accepteth such Children for legitimate. For that louing mother dispenseth in many things, which shee licenceth to be done, And it was by way of dispensation, that the Apostle setteth Virgines at liberty, wherunto hee would not counsell them, rather wishing all to continue Virgines like himselfe. And God forbid, that so great a mother, should in this case withdraw her tender loue from her children, which by the intisement of this Law doe many times fall into sinne.

And

And by the matrimonie ensuing, The Church is informed, that the parties so marrying are penitent and sorry for the offence passed, and are willing in time to come, through matrimonie, to liue continent. But the Lawe of England, in this case, worketh a much contrarie effect, For it prouoketh not to sinne, nor cherisheth or maintaineth sinners, but puteth them in feare, and to keepe them from sinne threateneth punishment: For the wantonnesse of the flesh hath no neede of allurement, but rather of discouragement: because the lustes of the flesh are wanton, and almost vntameable. And forasmuch as it is impossible for mã to liue euer in himselfe,

Et per matrimonium subsequens docetur Ecclesia, contrahentes pœnitere de preterito, & de futuro per matrimonium se velle cohibere, Sed *longè alium*, in hoc casu, *lex Angliæ effectum operatur, dum ipsa non concitat ad peccatum, neque peccantes fouet, sed terret eos, & ne peccent, minatur pœnas:* carnis etenim illicebrę fomento non egent, egent verò frœnis, quia irritamẽta carnis lasciua & quasi infatigabilia sunt. Et homo, quum individuo per petuari nequit, perpetuari natu-

naturaliter appetit in specie sua, quia omne, qd̃ viuit, assimilari cupit causæ primæ, quæ perpetua est & æterna. Vnde fit, quod *plus delectatur homo in sensu tactus, quo seruatur species eī, quā in sensu gustus*, quo conseruatur indiuiduum. Quare *Noe*, vlciscens in filium qui eius pudenda reuelauit, nepoti suo, filio delinquētis, maledixit, vt inde plus cruciaretur reus, quā ꝓprio possit in cōmodo: quare *lex*, *quæ vindicat in progeniem delinquentis*, *penalius prohibet peccatum, quam quæ solum de-*

hee naturally coueteth to liue euer in his like, because euery liuing thing desireth to be like the first and chiefe cause, which is perpetuall & euerlasting. And heereof it commeth, that man hath more delite & pleasure in the sense of feeling, wherby his kind is preserued, then in the sense of taste, which preserueth only the particular man. Wherefore Noe, executing vengeāce vpon his sonne which vncouered his priuities, did curse his Nephew the offenders child, that thereby the offender might bee more grieued then with his owne mishap: Wherefore the Law that punisheth the offenders issue, doth more penally prohibite sinne, then that, which plagueth

but

but the offender alone. Wherby it may easily be considered with what zele the Lawe of England abhorreth vnlawfull coniunctions, which doth not onely iudge the childe so gotten to be illegittimat, but also prohibiteth it to succeed in the parents inheritance. Is not this law then chaste & pure? And doth it not more forceably and more earnestly suppresse sinne, then the foresaid ciuil Law, which winketh at the sinne of lecherie, and leaueth it vnpunished?

linquentem flagellat. Ex quib⁹ cõsiderare licet, quãto zelo lex Angliæ illicitos p-sequitur concubit⁹, dũ ex eis editã prolẽ, ipsa, nedum iudicat non esse legittimã, sed & succedere prohibet in patrimonio parentũ. Nũ quid tunc, lex ista casta non est? & nõ forti⁹ firmiusq; repellit peccatũ, quã facit lex prædicta ciuilis, quæ cito, & quasi inultũ luxuriæ crimẽ remittit?

¶ *Speciall causes, why base borne children, are not legittimate in England by matrimonie ensuing. Chap. 40.*

MOreouer, the Ciuill lawes say, that your

PRęterea *leges ciuiles* dicũt, *filiũ natu-*

naturalem tuum esse filium populi, de quo metric⁹ quidã sic ait *Cui pater est populus, pater est sibi, nullus, & omnis. Cui pater est populus, non habet ipse patrem.* Et dum proles talis patrem non habuit tempore natiuitatis suæ, quomodo ex postfacto ipse patrem nanscici poterit, natura non nouit: quò, si ex fornicatoribus duob⁹, mulier vna filios peperit duos, quã postea, vnus ex concubinarijs illis ducat ĩ vxorẽ, quis ex filijs hijs duob⁹, per matrimonium illud legitimatur? *Opinio suadere potest,*

naturall or bastard sonne is the sonne of the people. Whereof a certaine Petritian writeth in this wise.

To whõ the people father is, to him is father none and all:
To whõ the people father is, well fatherlesse wee may him call.

And while such a childe had no Father at the time of his birth, surely nature knoweth not howe he could afterward come by a Father: For, if one woman should beare two children of two Fornicators, and the one of them should afterwarde marry her: Whether of these two children should by this marriage be legittimate? Opinion may somewhat persuade, but

but reason cannot finde: seeing the time was once, when both those children, being iudged the children of the people, did not know their fathers. It were therefore vnreasonable, that a child afterward borne in the same wedlocke, whose generation cannot be vnknown, should bee disherited, and that a child which knowsth no father, should be heire to the father & mother of the other, specially in the realme of Englande, where the eldest sonne onely inioyeth the fathers inheritance, And an indifferent Iudge would thinke it no lesse vnreasonable, that a base borne childe should bee equally matched with a lawfull begotten child in

sed ratio reperire nequit, dum ambo filij illi populi fœtus iudicati, semel parentes ignorabant. Inconsonũ propterea videretur, quod in matrimonio illo extunc ab eadẽ muliere natus, cuius generatio ignorari nõ poterit, expers essee hæreditatis, & filius nescius genitoris sui succederet patri & matri eius, maximé infra regnũ *Anglia*, vbi *filius senior solus succedit in hereditate paterna*, & nõ minus incongruum esse sentiret abiter çquus, si filio ex stupro, çqualiter perticiparet cum filio ex legitimo thoro, hære-

hæreditatem, quæ iure ciuili inter masculos diuidēda est. Nam *sanctus Augustinus* xvj, *lib. de Ciuitate Dei*, sic scribit: *Abraham omnem censum suum dedit Isaac filio suo, filijs autem concubinarum dedit dationes:* Ex quo videtur innui, qd̄ spurijs non debetur hæreditas, sed viet' necessitas. Hæc ille. Sub nomine vero spurij, denotat *Augustinus*, omnē fœtū illegittimū, qualiter & sæpius facit scriptura sacra, quę neminem vocat bastardum. Ecce, differentiam non minimam sentit *Augu-*

the inheritance, which by the Ciuill lawes can bee diuided but onely among male children. For Saint Augustine in the xvi. book de Ciuitate Dei writeth thus: Abraham gaue all his substance to his sonne Isaac: and to the sonnes of his concubines he gaue gifts: Whereupon seemeth to be ment, that to bastarde children there is no inheritance due, but onely a necessarie liuing. Thus saith hee. And vnder the name of a bastard childe, S. Augustine vnderstandeth all vnlawfull issues, and so doth holy Scripture also in diuers places, calling none by the name of a bastard. Loe, Saint Augustine thinketh no small difference to bee,

and

and so thinketh Abraham too, betweene the succession of a bastard, and of a sonne lawfully begotten. Yea, holy Scripture reprehendeth all unlawfull children under this Metaphor, saying, bastard slippes shall take no deepe roote, nor lay any fast foundation, in the fourth chapter of the booke of Wisdome. The Church also reprooueth the same, in that it admitteth them not to holy orders, And if so bee, that the Church doe dispense with such a one, yet it permitteth not him to haue any dignity or preeminence in the Church, Wherefore it is conuenient, that mans lawe in the benefite of succession, should cutte them short,

stinus, sentit & *Abraham*, inter successionem spurij, & filij ex legitimo concubitu. Cæterùm, omnes filios illegittimos reprehendit *Scriptura sacra*, sub Metaphora hac, dicens: *spuria vitulamina non dabunt radices altas, nec stabile fundamentum collocabunt*, Sapientiæ iiij. Reprehendit & ecclesia, quæ eos à sacris repellit ordinibus, & si cum tali dispensauerit, non eum tamẽ permittit dignitate pręesse in ecclesia Dei cõgruit. Idcirco legi hominum in successionis beneficio, minuere,

quos

quos ecclesia indignos iudicat sacro ordine, & quos ipsa repellit ab omni prelatia: ipsos etiã, quos Scriptura sacra in natalibus, minoratos iudicat a legitimè procreatis. *Gedeon* autem *virorum fortissimus*, lxx. filios in matrimonio legitur procreasse, & nõ nisi vnum solum habuisse ex cõcubina, filius tamen ipse concubinę, omnes filios illos legitimos nequiter peremit, excepto vno solo, Iudicũ ix. Quo in notho vno, plus malitię fuisse deprehẽditur, quã in filijs legitimis lxix. Trieũ etenim puerbiũ est

whom the Church iudgeth vnworthy to bee receiued in holy orders, and reiecteth from all prelacie: yea whom holy Scripture iudgeth, as touching their birth, much inferiour to them that be lawfully begotten. Wee reade, that Gedeon the puissant begat threescore and teme sonnes in wedlocke, and but one onely out of wedlocke, yet this misbegotten childe wickedly slew al those lawfully begotten children, one onely excepted, Iudges the ninth chapter: Whereby it is perceiued, that there was more wickednesse in one Bastard childe, then in lxix. lawfull sonnes. For it is a common saying:

If

If a bastard be good, that cõmeth to him by chance, that is to witte, by special grace, but if hee bee euill that commeth to him by nature. For it is thought, that the base childe drawe-eth a certaine corruption and staine from the sinne of his parents, without his owne fault, as all we haue receiued of the sinne of our first parents, much infection, though not so much, Howbeit the blemish, which bastards by their generation doe receiue, much differeth frõ that wherein lawful children are borne, For their conception is wrought by the mutuall sinnefull lust of both parents, which in the lawfull and chaste copulation of married couples taketh no place, The

si bonus est bastardus hoc ei venit a casu, videlicet gratia specialis, si autem malus ipse fuerit, hoc sibi accidit a natura. Corruptionẽ namq; & maculam quandam censetur illegitimus partus contrahere a peccato genitorum suorum sine culpa eius vt maximã nos cõtraximus omnes a crimine primorũ parentum, licet non tantam: aliam tamẽ nothi quam legittimi, contrahunt maculam ex genitura sua, eorũ namq; generationẽ mutua vtriusq; parẽtis libido culpabilis operatur, qualiter in legitimis castisq; amplex

ibus coniugatorum ipsa nō solet debacchari, mutuum sane & cōmune est peccatum taliter fornicātium, quo primo similatum peccato magis seuit in fetū, quam peccatum aliter solitarieq; peccātiū vt ex inde natū, potiū peccati filiū dici mereatur, quā filiū peccatorū. Qua re *sapientia liber*, generationes has duas distinguens, de generatione legittima sic affatur: *O quam pulchra est casta generatio cum claritate! Immortalis est enim memoria illius, quoniam apud deum nota est & apud homines.* Altera vero

sinne of such fornicators is committed by the mutuall consent of them both. Wherefore it is likened to the first sin, and cleaueth more cruelly to the childe, then the sinne of such as doe otherwise offend alone: so that the Childe so begotten deseruetb to bee called the childe of sinne, rather then the childe of sinners, wherefore the Booke of Wisdome making a difference betweene these two generations, of the lawfull generation it saith thus: O how faire is a chaste generation with vertue! The memoriall thereof is immortall: For it is knowne with GOD and with men. But the other is not knowne with men,

so

so that the children thereof borne, are called the children of the people. Of which base generation, the same booke thus speaketh: All the children, that are borne of wicked parents, are witnesses of wickednesse against their parentes, when they bee asked. For beeing demaunded of their parentes they open their sinne, euen as the wicked sonne of Noe vncouered his fathers priuities. It is therefore beleeued touching the blind borne, of whom the Pharisees in the ninth Chapter of Saint Iohns Gospell said: thou art all together borne in sinne: that hee was a bastarde, who wholly is borne of sinne: whereof followeth

nō est nota apud homines, quo filij ex ea nati, filij populi nominātur. De generatione vtiq; illa altera, liber ille dicit: *ex iniquis oēs filij qui nascuntur, testes sunt nequitiæ aduersus parentes, suos in interrogatione sua.* (Sapientiæ cod̄ē iiij cap.) interrogati etenim de parētib̄ suis, eorū ipsi reuelāt peccatū, vt filio *Noe* nequā reuelauit pudēda patris sui. Credidit idcirco, cecū illum natum de quo Pharisei, Io. ix. dixerunt, tu in peccatis natus es totus, fuisse bastardū, qui nascitur totaliter ex peccato, & dum subditur

ditur, & tu doces nos, videtur eos intellexisse, bastardū non vt legitimum, in naturalibus esse dispositum ad sciētiam & doctrinam. Non igitur bene diuidit lex illa, q; bastardos a natiuitate, & legitimos, parificat, in hęreditate paterna, cum eos dispares iudicet ecclesia in hęreditatedei, similiter & distinguat sacra scriptura in forma ꝑnotata, diuidatq; natura in donis suis, signans naturales, tantū, nævo quasi naturali quodam, licet latente, in animis suis. Quā igitur legū istarū, *Anglicarum*, viz. & *Ci-*

doest thou teach vs, It seemeth that thereby may bee vnderstanded, that a bastard hath no like naturall disposition to knowledge and learning, as a lawful child hath. Wherefore, that law maketh no good diuision, which in the fathers inheritaunce maketh equall bastarde children and lawfull children, whom the Church in Gods inheritance maketh vnequall, Betweene whom also Scripture putteth a difference in forme aboue mentioned: e when nature in her gifts seuereth, marking the natuall or bastard children, as it were, with a certaine priuie marke in their soules. Whether therefore of the two lawes, English or Ciuill, do you now imbrace,

most

most noble Prince, and iudge to haue the preheminence in this case.

uilium, in casu hoc, tu *princeps illustrissime*, amplecteris & iudicas preferendã.

The Prince alloweth the Lawe, which doth not legittimate children borne before matrimonie, Chap. 41.

SUrely, euen to that law doe I giue the preferment, quoth the Prince, which is of more force to abandon sinne out of the Realme, & to aduance vertue. Those also in the benefit, of mans law doe I suppose abiect & base, whõ the Law of God considereth vnworthy, & whom the Church in her benefits reiecteth, and nature also iudgeth more prone vnto sinne. I thinke you do not iudge amis, q̃ the Chancellour. Wherefore I will rehearse yet other cases,

PRinceps, Reuera *eam quæ fortius a regno peccatũ eliminat, & firmius in eo virtutẽ conseruat.* Arbitror etiã illos in legis humanę beneficijs minorandos, quos lex diuina indigniores cõsiderat, & quos postponit ecclesia in beneficijs suis, natura quoq; procliuiores iudicat ad peccãdũ. Cancellarius. Recte estimo te sentire, quare & casus alios me-

memorabor, in quibus discrepant hæ leges duæ.

wherein the said Lawes disagree.

The third case wherein the Lawes aforesaid disagree. Chap. 42.

LEges ciuiles sãciunt, quod *partus semper sequitur ventrẽ*, vt si mulier seruilis conditionis nubat viro cõditionis liberæ, Proles eorum seru⁹ erit: & e conuerso, seruus maritat⁹ liberæ, nõ nisi liberos gignit. Sed lex Angliæ *nũquã matris, sed semper patris conditionẽ imitari partũ iudicat*. Vt ex libera, etiã ex natiua, nõ nisi liberũ liber generet, & nõ nisi seruũ in matrimonio procreare potest seru⁹.

THe Ciuil Lawes decree, that the issue euer followeth the wombe, that is to say, the mother. As for example, if a bond woman be married to a free man, their issue shall bee bond: And contrariwise if a bond man marieth a free womã, he begetteth none but free children. But the Lawe of England neuer iudgeth that issue to follow the mothers condition, but alway the fathers. So that a free mã begetteth free children aswell of a bond womã, as of a free woman, & a bondman in wedlocke can beget none other but bond children.

The-

Whether of these laws is better thinke you in their sentences? It is a cruell law, which without offēce subdueth the free mans childe to bondage. And no lesse crueltie is to bee thought in the law, which without any desert oppresseth the free womans child with bondage. Yet the Ciuilians say, that the Ciuil Lawes in these their iudgements do excel. For an euill tree, say they, can not bring foorth good fruites, nor a good tree beare euill fruites. And by the consent of all Lawes it is agreed, that euerie plant yeeldeth to the nature of the ground wherein it is planted, the childe also hath much more certaine & sure knowledge of the mother, then of the

Quæ, putas, legum harum melior est in sentēcijs suis? crudelis est lex, quę liberi prolē sine culpa subdit seruituti. Nec minus crudelis censetur, quę liberę sobolē sine merito redigit in seruitutem. *Legistæ* vero dicunt, leges Ciuiles pualerē ī hijs iudicijs suis. Nā dicunt, quod *nō potest arbor mala fructus bonos facere, Neque arbor bona fructū malos facere.* Ac omnis legis sentētia est, qd plātatio quę libet cedit solo quo inseritur, Certior quoq; multo est partus, quę eū fuderūt viscera, quā quis eū pater ꝓcreauit.

Ad hęc, *legis Angliæ consulti* dicũt quod *partus ex legittimo thoro, non certius nosceit matrem quam genitorem suum.* Nam ambæ leges, quæ iâ contendunt, vniformiter dicunt, quod *ipse est pater, quem nuptiæ demonstrant.* Nunquid tunc magis est conueniẽs, vt filij cõditio ad patris, potius quam ad matris cõditionem referatur, cum de coniugatis dixerat *Adam? erunt ipsi duo in carne vna,* qd *dominus* exponens in *Euangelio* ait: *Iam non sunt duo, sed vna caro*, & cum masculinum concipiat fæmini-

father. Wherenuto the Lawiers of England answere on this wise: That a childe lawfully begotten hath no more certaine and sure knowledge of the mother then of the father. For both these lawes thus disagreeing, agree yet in this point, that hee is the father, whom wedlocke declareth. And is it not then more conueniẽt, that the condition of the child should haue relation rather to the fathers condition, then to the mothers, Seeing that Adam speaking of married couples, said: They shall be two in one flesh, which our Lord expounding in the Gospel saith: Now are they not two but one flesh. And forsomuch as the male, as more worthy, containeth the

the female, thē the whole flesh so united must haue relation to the male as to the worthier, wherefore the Lord called Adam & Eue not by the name of Eue, but because they were both one flesh, hee called them both in the name of Adam, the man, as it appeareth in the fift chapter of Genesis. The Ciuill Lawes also holde that women doe euer glister with the shining beames of their husbāds. Wherefore in the title beginning with these words: Qui se professione excusant, in the 9. Booke L. fi. the text saith thus, we auaunce women with the honour of their husbands, and with the kinred of their husbands we worship them, in the court

num, ad masculinum quod dignius est, referri debet tota caro sic facta vna, Quare *Adam* & *Euam* vocauit dominus, *non Euam*, sed quia caro vna ipsi erāt, ambos eos vocauit ipse nomine viri, videlicet, *Adam:* vt patet *Genesis* quinto capitulo. Ipsę quoq; ciuiles leges dicunt: quod mulieres semper coruscāt, radijs maritorum suorum. Vnde C. *qui professione se excusant*, libro nono, l. fi. textᵒ sic loquitur: *Mulieres honore maritorum erigimus*, & genere nobilitamᵒ, & forum ex eorum

rum persona statuimus, & domicilium mutam⁹. Sin autem *minoris ordinis virũ postea sortita, priore dignitate priuata, posterioris mariti consequantur conditionem & domicilium.* Et cum nomen patris, & non matris, gerat proles omnis, & maxime masculina, Vnde tunc prouenire poterit, qd̃ filij⁹, ratione matris, amitteret honorẽ, conditionemue patris sui mutaret, cui⁹ tamen nomen ipse retinebit præsertim dum honore patris eiusdẽ ac conditione resplendeat mater eius, & dum viri honor vel conditio

we decre matters to passe in the name of their husbands, & into the house & surname of their husbãds do we trãslate the. But if afterward a woman marie with a man of baser degree, then loseth shee her former dignitie, & followeth the condition of her latter husband, And forsomuch as all children, specially male childrẽ, beare the fathers name, and not ỳ mothers, whereof then should it come, that the sonne by reason of the mother should lose the honor, or change the condition of the father, whose name neuertheless he shall still keepe, Especially seeing the mother her selfe receiueth of the same Father, honor, worship & dignitie which honor, worship and dignitie

dignity of the husbād can neuer be desteined or impeached through the fault of ȳ wife. Truly that law maywel be deemed cruel, which without any cause, cōmitteth to bondage the fremans son, ȳ which, disheriting the innocent son of the innocēt free father, adiudgeth his land to an vnworthy strāger, which also with the base state of bondage in the sonne defaceth the name of the fre father. Cruell also of necessity must that lawe bee counted, which augmenteth thraldome, and diminisheth libertie or freedome. For libertie is the thing that mans nature euer coueteth. For, by man and for sinne, did bondage first enter. But freedome is graffed in mans

nunquā per vxoris vitium denigratur. Crudelis nēpe censeretur lex, quæ sine causa, filiū liberi seruituti committit & terrā, pro qua liber ille innocens à crimine, sudauit innocētis filij sui titulo, non sudanti, tradet extraneo possidendam, ac patris nomen, etiā filij seruitutis nota cōmaculat. Crudelis etiā necessario iudicabitur lex, quæ seruitutem augmentat, & minuit libertatem. Nam *pro ea natura semper implorat humana.* Quia, ab homine, & pro vicio, introducta est seruitus. Sed libertas

a deo

à Deo hominis est indita naturę. Quare ipsa ab homine sublata, sēper redire gliscit, vt facit omne, quod libertate naturali priuatur. Quo ipse & crudelis, iudicād' est, qui libertati non fauet. Hæc considerantia *Angliæ iura*, in omni casu libertati dāt fauorē. Et licēt *iura illa iudicent eum seruum, quem seruus in coniugio ex libera procreauit*, non per hoc, iura illa rigida, crudeliaue sentiri poterunt. Nam mulier, quæ coniugio seruo se subiecit facta ei caro vna, quo ipsa, vt dicunt leges suprascriptæ,

nature of God. Whereof if men be deprived, he is euer desirous to recouer the same again, like as al other things doe, that are spoiled of their naturall libertie. Wherefore wicked and cruell is hee to be deemed that fauoreth not libertie. Which things the Lawes of Englande, duely considering doe in all respects shew fauour to libertie. And though the same lawes iudge him thrall, whom a bondman in wedlocke begetteth of a free woman, yet hereby cannot these lawes bee reputed seuere and cruel. For a woman, which by marriage hath submitted herselfe to a bondman, is made one flesh with him, wherefore as the foresaid Lawes determine,

hee followeth the state of his condition, and of her owne free will hath made her selfe a bond woman, not forced there to by the Lawe, much like to such, as in Kings Courts become bondemen, or sell themselues into bondage without any compulsion at all. And how then can the Lawe determine the childe to bee free, whom such a mother hath thus borne? For the husband can neuer bee in so much subiection to his wife, though shee bee a right greate Ladye, as this woman is subiect to the bond man, whom she hath made her Lord, insomuch as the Lord saith to all wives: Thou shalt bee vnder the power of thy

ei⁹ consequitur cõditionem, & ꝓprio arbitrio se fecit ancillam, sed potiùs seruam, nullatenus à lege coacta, qualiter & faciunt, qui se seruos reddunt in curijs regum, vel in seruitutem se vendunt, nullatenus ad hoc compulsi. Quo modo tunc, liberũ sancire possunt leges filium illum, quẽ mater talis, taliter est enixa? Nunquam enim sic subiectus est vir vxori, *licet maxima Domina ipsa fuerit*, vt subiecta est libera hęc seruo, quẽ ipsa facit dominum ei⁹, dicente *Domino* vxori omni, *Eris sub potestate*

potestate viri, & ipse dominabitur tibi, Et quid est, quod dicunt legistæ illi de fructu arboris bonę vel malę, nonne cōditionis liberæ vel seruilis, est vxor omnis, qualis est maritus eius? Et *in cuius solo plantauit maritus, dū vxor eius est sibi caro vna? Nonne in proprio?* Quid si surculū dulcis naturę inseuerit ipsesti piti arboris acerbę: Dūmodo arbor illa eius est, *nōne fructus* (licet ex stipite redolent) *sēper sint fructus eius;* Sic ex muliere genita proles, mariti est pgenies, fuerit mater libera vel ancilla. Sancitū

husband, And hee shall haue dominion ouer thee, And what is it that these Ciuilians say of the fruit of a good or euill tree, Is not euery wife of a free or thrall condition, according to the state of her husband? And in whose ground hath the husband planted, while his wife is one flesh with him? Not in his owne? And what then if he haue grafted a slip of a sweete nature in a stocke of a sower tree: So that the tree be his owne, shall not the fruites, though they euer sauer of the stock, be his owne fruites? So the childe, which the wife beareth is the husbandes issue, whether the wife bee free or thrall. Howbeit the Lawes of England

land decree, that if a bond woman, without the consent of her lord, be married to a free man, though they cannot bee deuorced, because the Gospell saith, whom God hath conioyned, let no man seperate, yet shall her lord recouer against the same freeman all the dammages, that he hath sustained by reasõ of ỳ losse of his vassal or bõd woman. This now, as I suppose, is the summe & forme of the law of England in the case now declared. What therefore is your opinion most excellent Prince, in the same case: And whether of these two lawes do you esteem to be of more worthinesse and excellencie?

tamẽ leges Angliẹ, qđ *dominus natiuæ à libero in matrimoniũ sumptæ ipso incõsulto*, cum eã repudiare nequeat, dicẽte Euangelio: *quos deus coniunxit, homo non separet*: recuperabiṭ versus liberum illum, omne damnũ, qđ ipse sustinuit ratione deperditi seruitij, & amissæ ancillæ. Hæc iã vt æstimo, est sũma & forma legis Angliẹ, in casu iã enarrato. Quid igitur iã tibi videtur, *Princeps*, in casu isto ? & quæ legũ ꝑdictarũ præstantior aut eligibilior à te iudicatur ?

The Prince approueth the Law, whereby the issue followeth not the wombe. Cha. 43.

Princeps

PRinceps, Anglo rumlegē in hoc casu Romanorū legi præstare dubitare nos ratio nō permittit. Et optatior mihi semp est lex, quę fauorem potius quā rigorē, partib' administrat. Recolo nāq; illi' iuris regulā, quę sic dicit: *Odia perstringi, & fauores conuenit ampliari.* Cancellarius, Et bene quidem. Aliū adhuc casum tibi referam, princeps, in quo concertant leges istę, & nō multum postea, tūc desistā, ne onerosū tibi sit, tātis solicitari scismatib', etiā ne in fastidiū tibi veni ac desceptatio mea

REason suffereth vs not to doubt (quod the Prince) but that in this case the law of England surmounteth the Romane Law. And that Lawe is to mee more allowable, which vnto children sheweth fauour, rather then rigour. For I remember a rule of the Lawe, that saith: It is behooueable that cruell hate bee repressed, and fauour aduanced. And good reason (quod the Chancellour) Yet will I expresse vnto you an other case, wherein these Lawes are repugnant, And shortly after I will make an end, least it be tedious to you, to bee troubled with so many disagreeings, and lest you happen to be wearied with

with my ouer long talke. diutius protelata.

¶ *The fourth case, wherein the said Lawes varie.*

Chap. 44.

THe Ciuil lawes commit the tuition of Orphans to the next of their bloud, whether the kinred grow on the fathers side, or on ẏ mother side, that is to say, to euery man according to the degree and order, wherein his turne is next to succeede the pupill in his inheritãce. And the reason of this lawe is for that no man will behaue himselfe more tenderly or more fauourably in the carefull education of the Infant, thẏ he that is nert of his bloud.

LEges ciuiles, *impuberum tutelas, proximis de eorum sanguine, committunt*, agnati fuerint seu cognati, vnicuique videlicet secundum gradum & ordinem, quo in hæreditate pupilli successurus est. Et ratio legis huius est, quia nullus, tenerius fauorabiliusue infantem alere sataget quam proximus de sanguine eius.

Tamen longe aliter *de impuberum custodia* statuunt leges Angliæ. Nam ibidem, *si hæreditas, quæ tenetur in Socagio, descendat impuberi ab aliquo agnatorum suorum, non erit impubes ille, sub custodia alicuius agnatorum eius, Sed per ipsos cognatos, videlicet, consanguineos ex parte matris ipse regetur.* Et si ex parte cognatorum hæreditas sibi descenderit, pupillus ille cum hæreditate sua, per proximũ agnatum, & non cognatũ eiº custodietur, Quousq; ipse fuerit adultus. Nam leges illæ

Neuertheleſſe the Lawes of England, touching the cuſtodie of Orphanes, doe determine much otherwiſe. For there, if an inheritance, being holden in Socage deſcende to an Orphane, from any of the kinred of his Fathers ſide, the ſame Orphane ſhall not be vnder the keeping of any of that kinred but he ſhall bee gouerned by his coſins or kinsfolke of his mothers ſide. And if the inheritance come to him from any kineſman of his mothers ſide, then the pupill with his inheritance ſhall bee in the cuſtodie, till hee come to lawfull age, of him that is nert of his kinne of his fathers ſide, and not of any kineſman of the mothers ſide. For our lawes

ſay,

say, that to commit the tuition of an infant to him, that shall next succeede him, is like as if one should betake a lambe vnto a Wolfe to bee deuoured. But if the inheritance be not holden in socage, but by Knights seruice, then by the Lawes of the same land, the child with his inheritance shall bee in the keeping of none of his kindred of neither side, but in the custodie of the Lord of the fee, vntill hee come to the age of one and twentie yeeres. And thinke you, that anye man can or will better instruct and traine vp the childe in feates of Armes, which, by reason of his tenure, hee is bounde to yeeld to ye Lord of his fee,

dicunt quod *cõmittere tutelam infantis illi qui est ei proximo successurus, est quasi agnum committere lupo ad deuorãdum.* Sed si hæreditas illa, non in socagio, sed teneatur per *seruitium militare*, tũc per leges terrę illi', infans ipse & hęreditas eius non per agnatos neq; cognatos, sed *per dominum fœodi illius custodientur, quousque ipse fuerit etatis viginti & vnius annorũ.* Quis, putas, infantẽ talẽ, in *actibus bellicis*, quos facere, ratione tenurę suę, ipse astrĩgitur domino feodi sui, melius instruere poterit, aut velit,

quam dominus ille, cui ab eo seruitium tale debetur? & qui maioris potentię & honoris estimatur, quã sunt alij amici propinqui tenentis sui? Ipse namq; vt sibi ab eodem tenente melius seruiatur, diligentẽ curã adhibebit, & meliꝰ in his eum erudire expertus esse censetur, quam reliqui amici iuuenis rudes forsan & armorum inexperti, maxime si non magnum fuerit patrimonium eius. Et qd̃ vtilius est infanti, qui vitam & omnia sua periculis bellicis exponet in seruicio domini sui ratione tenuræ suæ,

then the Lord himselfe, to whom such seruice is by him due? Which is also to be iudged of more power and honour, then the friends and kinsfolke of his tenaunt. For hee, to the intent hee may in time to come bee the better serued of his tenaunt, will vse the more diligence towardes him, And it is to be presumed, that hee is more expert & skilfull to trade him in these things, then his other friends, rude peraduenture & vnpractised in martiall feates, specially if his patrimonie bee but small. And what can bee more profitable for the childe, which by reason of his tenore, shall in the seruice of his Lord, endanger his life

and

and all that hee hath, in the actes of Chiualrie, then in his nonage, to be brought vp in the discipline and practise of the same, seeing that in his ripe age hee shall not bee able to auoide the aduenture thereof? And to say the truth, it shall bee no small commoditie for the Realme, that the inhabiters of the same bee well expert in the knowledge of Armes. For, as saith the Philosopher, euery man doth the things boldly, wherein hee assureth himselfe to be skilful. And do you not then, most noble Prince, allow this Lawe, and commende it aboue the other now described?

quam in militia actubusque bellicis imbui, dum minor est, cum actus huiusmodi ipse in ætate matura declinare non poterit? Et reuera, non minime erit regno accommodum, vt incolæ eius in armis sint experti. Nam, vt dicit Philosophus, *audacter quilibet facit, quod se scire ipse non diffidit.* Nunquid tunc legem hanc, tu approbas, *fili Regis*, & collaudas super Legem alteram iam descriptam?

¶ *Here, the Prince commendeth the education of Noble mens children being Orphanes. Chap. 45.*

P*Rinceps*, Immo, Cancellarie, legem hanc, plusquꝫ alteram, ego laudo. Nam, in eius parte prima quam tu notasti, caute magis, quam ciuilis, ipsa prouidet securitati pupilli. Sed tamẽ in eius parte secunda, multo magis ego delector. nam ab ea est, qd̃ in Anglia, nobilium progenies de facili degenerari nõ potest, sed *probitate* potius, *strenuitate*, & *morum honestate*, antecessores suos ipsa transcendet, dum in altiori,

YEs, good Chancellor, quoth the Prince, this Law I doe allow much more then the other. For in ỳ first part of it, which you noted, it prouideth much more warily for the securitie and safegard of the pupill, then the Ciuill law doth. Howbeit in the second part of the same, I do take more delight. For thereof it cõmeth to passe, that in England Noble mens children cannot easily degenerat, but rather passe and surmount their auncestors in vertue, in courage, and in honest conditions, forsomuch as they are brought vp and instructed in an higher

and

an honourabler Court, then in the houses of their Parents, though their Parents were peradventure brought vp in the like places: For their Parents house was neuer yet like the Lords house, whom as well the Parents, as also the Children serued. The Princes also of the Realme, being ruled by this Lawe, and likewise other Lordes, holding their Lande immediately of the King, cannot lightly fall to wantonnesse and vnseemelinesse, seeing that in their childhoode, while they bee Orphanes, they are brought vp in the Kinges house, wherefore I must needes highly praise and commende the riches

nobiliorique curia, quam in domo parentum, illa sit imbuta, licet in domo consimili forsan parentes eius educati erant: Quia consimilis adhuc non erat, domus parentum illorū, domui Dominorum, quibus, ipsi parētes, & ipsi infantes, seruierūt. Principes quoque regni sub hac lege regulati, similiter & domini alij a rege immediate tenentes, non possunt de leui in lasciuiam ruditatemue labi, cum in puericia, dum Orphani fuerint ipsi, in domo regia nutriūtur. Quare non infime

domus regiæ opulentiam magnitudinemq; collando, dū in ea gimnasium supremū, sit nobilitatis regni schola quo q; strenuitatis, probitatis, & morum quib' regnū honoratur, et floret ac cōtra irruentes securatur, etiam formido, ipsa erit, inimicis & amicis regni. Hoc reuera bonum accidisse non potuisset regno illi, si nobilium filij, orphani & pupilli, per pauperes amicos parentum suorum nutrirentur. Nec regni bono officere potest, licet burgensium filij & aliorū libere tenentium,

and high porte of ỳ Kings Court, in that it is the chiefest schole within the Realme, for the Nobility of the Land. It is also the Schoolehouse of manhood, of vertue, and of good manners, whereby the Realme is honoured, and flourisheth, & is preserued against inuasions: so that it is dreaded both of friends and foes. And to be plaine, this great commoditie could not haue happened to the Realme, if Noble mens children, being Orphanes and pupilles, had beene nourished and broughte vp by the poore friends of their Parents. Neither can this bee preiudiciall or hurtfull to the wealth of the Realme, that the Children of Burgesses,

and

and of other freeholders, which holde their tenements in socage, & are not therby bound to warfare, are brought vp in ý houses of their like friends, as to him, that shall thoroughly weigh ý matter, it may euidently appeare.

qui in socagio tenẽt tenementa sua, quo ipsi ad militiam nõ astringuntur, in domo consimilium amicorũ suorũ educãtur, vt perspicue consideranti, lucide apparere potest.

¶ Yet he rehearseth other cases, wherein the foresaid Lawes differ. Chap. 46.

There bee yet diuers other cases, quod the Chancellour, wherein, the Lawes aforesaide doe varie. As in that the Ciuill Lawes doe iudge, open Theft, to bee satisfied by the recompence of foure folde, and priuie Theft, by the recompence of double. But the Lawes of England suffer neither of

Vnc Cancellari⁹. Sunt & alij casus nonnulli, in quib⁹ differũt leges antedictæ. Vt quia leges ciuiles iudicãt *furtum manifestum*, p redditionẽ quadrupli: & *furtum nõ manifestum*, per dupli recõpensationẽ, expiari. Sed leges Angliæ, *neutrum faci-*

facinorum illorum, mitius quam cõmittentis morte puniri permittunt, dummodo ablati valor, *duodecim denariorũ valorem excedat*. Item *libertinum*, ingratum, leges ciuiles in priſtinã redigunt ſeruitutẽ: ſed leges Angliæ *ſemel manumiſſũ, ſemper liberum iudicãt*, gratum & ingratũ. Alij quoque ſunt caſus huiuſcemodi non pauci, quos iam, ſtudio breuitatis, prætereo. Et neque in hijs duobus caſibus, prædictarum legum preſtãtias, ego iam deſcribo, cum nõ magnæ ſint indaginis,

thoſe offences to bee more fauourably punyſhed, then with the offendours death, ſo that the value of the thing ſtollen, bee aboue the value of twelue pence. Alſo a libertine, that is to ſay, a freeman, that ſometime was bonde, if hee become vnkinde or churliſhe, the Ciuill Lawes reduce him into his former ſtate of ſeruitude againe: But by the Lawes of England he, that is once made free, bee hee grate or ingrate, is adiudged to enioy his Freedome ſtill. There bee other like caſes alſo not a fewe, which at this time for breuites ſake I ouerpaſſe. Neither in theſe two caſes, doe I diſpute the excellencie of the forefaide Lawes,

ſeeing

seeing the qualities of thē require no great searche. And I doubt not, but the quicknesse of your wit is such, that it can sufficiētly discusse the same.

eorum qualitates, nec diffido, ingenij tui solertiam eas sufficienter posse rimari.

¶ *The Prince regardeth not the cases now rehearsed*
Chap. 47.

NO, no, it boteth not, good Chancellour heerein much to tarrie, ꝓ the Prince. For though in England, aswell open, as priuy theeues, are commonly put to death, yet cease they not there from stealing, as though they had no feare of so great a punishment. Howe much lesse then woulde they withholde their handes from theft,

Princeps. Nec expedit Cācellarie, in hijs multū sudare: q̃a, licet in Anglia fures clandestini & manifesti passim morte plectantur, non cessant ipsi ibidē omnino prædari, ac si pęnā tantam illi minime formidarent. Quanto tunc minus, *se abstinerent a crimine*

st

si panam praeuiderent mitiorem? Et absit, a seruitute semel euasum, semper deinde sub minis tremere seruitutis, maxime ingratitudinis colore, cum ingratitudinum species, vix poterint, præ multitudine, numerari, & *humana natura, in libertatis causa fauorem semper, magis, quam in causis alijs, deprecetur.*

Sed iam, Cancellarie, obnixe te imploro, vt amodo amissa plurium casuũ huiusmodi examinatione, mihi edicas, quare leges Angliẹ, tam bonæ, frugi, & optabiles, *in*

if they foresawe once that the punishment were mitigated? And God forbid, that hee, which once hath escaped miserable seruitude, should euer after tremble and quake at the threatnings of bondage, specially vnder the colour of ingratitude or vnkindnesse, seeing the kindes of ingratitude are so many, that they can skante well bee numbred: and mans nature in the cause of libertie of freedome, more then in other causes, requireth fauour.

Wherefore at this time, good Chauncellour, I beseech you hartily meddle no more with the examination of any such cases. But now explane & open vnto me, why the lawes of England, being so good,

so

so fruitfull, and so commodious, are not taught in the Vniuersities, as the Ciuill and Canon lawes are: and why in the same, none are commenced Bachelers and Doctors, as in other faculties and sciences it is accustomed.

vniuersitatibus non docentur, vt Ciuiles similiter & Canonũ leges: & quare in eisdem, non datur *Baccalariat⁹ & Doctoratus* gradus, vt in alijs facultatibus & scientijs est dari consuetum.

¶ *Heere the Chancellour sheweth, why, the Lawes of England are not taught in Vniuersities. Chap. 48.*

In the Vniuersities of England, quod the Chancellour, sciences are not taught but in the Latine tõgue: And the lawes of that land are to be learned in iij. seueral tõgues: to witte, in the English tongue, the French tõgue, and the Latine tongue.

CAncellari⁹, In Vniuersitatib⁹ Angliæ, non docentur scientiæ nisi in *Latina* lingua: Et leges terræ illius in triplici lingua addiscuntur: videlicet, *Anglica, Gallica, & Latina.*

Anglica

Anglica, quia inter Anglos lex illa maximè inoleuit. *Gallica*, quia postq̃ galli, *Duce Wilhelmo Angliæ cõquestore* terrã illã optinuerũt, nõ pmiserunt ipsi eorũ aduocatos placitare causas suas, nisi in lingua, quã ipsi nouerunt, qualiter & faciũt omnes aduocati in Frãcia, etiã in curia parliamẽti ibidẽ. Consimiliter gallici post eorũ adueũtum in Angliam, ratiocinia de eorum prouẽtibus non receperunt, nisi in proprio idiomate, *ne ipsi inde deciperentur. Venari* etiã, & iocos alios exercere, vt *talorũ & pi*

In the englishtongue, because ye law is most vsed, & longest cõtinued amõgst the Englishmen. In the Frẽch tõgue, because that after the French men ouer William the Conqueror of England had obtained ye lãd, they suffred not their men of law to plead their causes, but in ye tong which they knew, and so doe all the men of law in France, yea in the court of Parliamẽt there. Likewise the Frenchemen, after their comming into Englãd, receiued not the accõpts of their reuenues but in their owne language, lest they should be deceiued therein. Neither had they delight to hunt, and to exercise other spoyts and passtimes, as dice play, and the hand ball,

ball, but in their owne proper tongue. Wherefore the Englishmen by much vsing of their companie, grewe in such a perfectnesse of the same language, that at this day in such plaies and accompts they vse the French tongue, And they were wont to pleade in French till by force of a certaine Statute, that manner was much restrained, But it could neuer hitherto, bee wholly abolished, aswell by reason of certaine Termes, which pleaders doe more properly expresse in French, then in Englishe, as also for that declarations vpon originall writts cannot bee pronounced so agreeably to the nature

larũ ludos, nõ nisi in ꝓpria lingua delectabuntur. Quo, & Anglici ex frequẽti eorũ in talib' comitiua, habitũ talẽ cõtraxerũt, qd̃ hucusq; ipsi in ludis huiusmodi, & cõpotis, linguã loquũtur gallicanã & placitare in eadẽ lingua soliti fuerũt quousq; mos ille, vigore cuiusdam statuti quãplurimũ restrict' est, tamẽ in toto hucusq; aboleri nõ potuit, tũ ꝓpter terminos quosdam, quos pl' ꝓpriẽ placitantes in gallico, quã in Anglico, expmũt, tũ quia declarationes super brĩa originalia, tã cõueniẽter ad naturã breuiũ illo-

illorũ ꝓnũtiari ne-
qũt, vt in Gallica,
ſub quali ſermone
*declarationũ huiuſ-
modi formulæ addiſ-
cũtur*. Reportantur
etiã *ea, quæ* in curijs
regijs *placitãtur, diſ
putãtur, & iudicãtur*
ac in libros ad futu-
rorũ eruditionẽ re-
digũtur in ſermone
ſẽpꝗ gallico. Quãplu
rima etiã *ſtatuta* reg
ni illiꝰ, in gallico cõ
ſcribũtur. Vnde ac-
cidit, qd̃ lingua iam
in Francia vulgaris,
non concordat aut
conſimilis eſt galli-
co inter ligiſperitos
Angliẹ vſitato, ſed
vulgariter quadam
ruditate corrupta.
Qd̃ fieri nõ accidit
in ſermone gallico

of thoſe writtes, as in
French, And vnder the
ſame ſpeech the formes
of ſuch declarations are
learned. Moreouer, all
pleadings, arguings, and
iudgements paſſed in the
kings court, and entered
into bookes, for the in-
ſtruction of them that ſhal
come after, are euer more
reported in the French
tongue. Many Statutes al-
ſo of that realme are writ-
ten in French. Whereof
it hapneth that the com-
mon ſpeech, now vſed in
France, agreeth not, nor
is not like the French
vſed among the Lawy-
ers of England, but it
is by a certaine rudeneſſe
of the common people
corrupt. Which cor-
ruption of ſpeech chan-
ceth not in the French
that

that is vsed in England, forsomuch as the speech is there oftner written then spoken. Now in the third of the said three tongues, which is the Latine tongue, are written all Writs originall and iudicial: and likewise at the Recordes of pleas in the Kings Courts, with certaine Statutes also. Wherefore, while the Lawes of Englande are learned in these three tongues, they cannot conueniently bee taught or studied in the vniuersities, where onely the Latine tongue is exercised. Notwithstanding the same Lawes are taught and learned, in a certaine place of publique or common studie, more conuenient and apt for attayning to the

infra Angliã vsitato, cũ sit sermo ille ibidẽ sæpi' scriptus quã locut'. Sub tertia vero linguarum prædictarũ. vz. sub *latina*, omnia *breuia originalia & iudicialia*, similiter & omnia *recorda placitorũ* in curijs regũ, etiã & quædam *Statuta* scribuntur. Quare, dum leges Angliæ in his trib' addiscũtur linguis, ipsę in vniuersitatib', vbi solũ exercetur lingua latina conuenienter erudiri non poterũt aut studeri. Leges tamen illę in quodã studio publico, p illarũ apprehensione (omni vniuersitate conuenientiore & pro-

pniore docetur & addiscutur. *Studiũ* nãq; *istud situ est pro pe curiã regis*, vbileges illę placitantur, disputantur & iudicia p easdẽ reddunturp iudices viros graues, senes, in legib' illis pitos & graduatos, quo in curijs illis, ad quas omni die placitabili cõfluũt studẽtes in legibus illis, quasi in scolis publicis, leges illę legũtur & docẽtur. Situatur etiã studiũ illud, *inter locũ curiarũ illarũ & Ci*uitatẽ *Lõdon*, quę de omnib' necessarijs opulẽtissima est omniũ ciuitatum & oppidorũ regni illius, Nec in ciuitate illa,

knowledge of thẽ thẽ any other vniuersity. For this place of studie is situate nie to the Kings courts, where ẏ same lawes are pleaded & argued, & iudgemẽts by ẏ same giuen by Iudges, men of grauitie, auncient in yeares, perfit and graduate in the same lawes. Wherefore, euery day in court, ẏ students in those Lawes resort by great nũbers into those courts wherein the same Lawes are read and taught as it were in common scholes. This place of studie is set betweene the place of the said Courtes, and the Citie of London, which of all things necessarie is the plentifullest of all the Cities and townes of the Realme. So that the said place of studie is not

situate

situate within the Cittie, where the confluence of people might disturbe the quietnes of ỳ studentes, but somewhat seuerall in the suburbes of the same Cittie, and nigher to the said Courts, that the studentes maye dayelye at their pleasure haue accesse and recourse thether without wearinesse.

vbi cōfluētium turba, studentiū quietē pturbare possit, situm est studiū istud sed seorsum parumper, in ciuitatis illi⁹ suburbio, & propi⁹ Curijs prędictis, vt ad eas sine fatigationis incōmodo, studētes, indies ad libitū, accedere valeant.

¶ *Here he declareth the disposition of the generall studie of the Lawes of England, and that the same in number of students passeth certaine vniuersities. Cap. 49.*

But to the intent, most excellent Prince, yee may conceiue a form and an image of this study, as I am able, I will describe it vnto you. For there bee in it tenne lesser houses or Innes, & sometimes more,

Sed, vt tibi constet *princeps* hui⁹ studij forma & imago, illam, vt valeo, iam describā. Sunt namq; in eo, *decem hospitia minora*, & quādoq; vero plura

que nominātur *hospitia Cancellariæ* ad quorū qd̄libet pri-nēt cētū studētes ad minus, & ad aliqua eorū maior in multo numer⁹, licet nō oēs sēp in eis simul cōueniant. Studētes etenim isti, ꝓ eorū parte maiori, iuuenes sunt, *originalia*, &, quasi legis elemēta addiscētes, qui in illis ꝓficiētes, vt ipsi maturescunt, ad *maiora hospitia* studij illius, quæ *hospitia curiæ* appellantur, assumuntur. Quorū maiorum, *quatuor* sunt in numero, & ad minimum eorū pertinent in forma prænotata, ducenti studētes aut prope.

which are called Innes of the Chancerie. And to euery one of them, belongeth an hundred students at the least, and to some of them a much greater number, though they be not euer al together in ꝗ same. These students, for the most part of them, are young men, learning or studying the originals, and as it were the elemens of the Lawe, who profiting therein, as they grow to ripeneſſe, so are they admitted into the greater Innes of the same studie, called the Innes of Court. Of the which greater Inns there are foure in number. And to the least of them belongeth, in some aboue mentioned, two hundreth students or there aboutes.

For

For in these greater Innes, there canne no Student bee maintayned for lesse expenses by the yeare, then twenty Markes. And if hee haue a seruant to waite vppon him, as most of them haue, then so much the greater will his charges be. Nowe, by reason of this charges, the children onely of Noble men doe studie the Lawes in those Innes. For the poore and common sort of the people, are not able to beare so great charges for the exhibition of their Children. And Marchaunt men can seldome finde in their hearts to hinder their marchandise with so great yearely expenses.

In hijs enim maioribus hospitijs, nequaquā potest studens aliquis sustētari minoribus expensis in anno, quam octoginta scutorū, & si seruientem sibi ipse ibidem habuerit, vt eorum habet pluralitas, tanto tunc maiores ipse sustinebit expēsas. Occasione vero sūptuū hūmodi, ipsi nobiliū filijcātū in hospitijs illis leges addiscunt. Cū pauperes & vulgares, pro filiorum suorum exhibitione, tantos sumptus nequeant sufferre. Et mercatores raro cupiant tantis oneribus annuis attenuare mercādisas suas.

Quo fit vt vix doctus in legibus illis reperiatur in regno qui non sit nobilis, & de nobilium genere egressus. Vnde magis alijs consimilis status hominibus, ipsi nobilitatem curant & conseruationē honoris & famæ suæ. In his reuera *hospicijs maioribus*, etiam & *minoribus*, vltra studium legū, est quasi gimnasiū omnium morū, qui nobiles decent. Ibi *cantare* ipsi addiscunt similiter & se exercent in omni genere harmoniæ. Ibi etiam *tripudiare*, ac *iocos singulos nobilibus conuenientes* qualiter in

And thus it falleth out that there is scant any man founde within the Realme skilfull and cunning in the lawes, except he be a Gentleman borne & come of a Noble Kocke. Wherefore they more, the any other kinde of men haue a specyall regard to their Nobilitie, and to the preseruation of their honor & fame. And to speake vprightly, there is in these greater Innes, yea, and in the lesser too, besides the study of the lawes, as it were an vniuersitye of schooles all cōmendable qualities requisite for gentlemen. There they learn to sing, & to exercise themselues in all kinde of harmony. There also they practise dauncing, & other Noble mens pastimes, as they are

to

to doe, which are brought vp in the Kings house: On the working daies, most of them apply themselues to the studie of the Lawe, And on the holy daies to the studie of holy Scripture: and out of the time of Diuine seruice, to the reading of Cronicles. For there indeede are vertues studied, and vices exiled. So that, for the endowment of vertue, and abandoning of vice, Knights and Barons, with other States and Noblemen of the Realme, place their Children in those Innes, though they desire not to haue them learned in the Lawes, nor to liue by the practise thereof, but onely vppon their fathers allowance.

domo regia exercere solēt, enuriti: in ferialibus dieb⁹, eorū pars maior, *legalis disciplinæ* studio, & in festiualibus *sacræ scripturæ*, & *cronicorū* lectioni, post diuina obsequia, se confert. Ibi quippe disciplina virtutum est & vitiorum omnium exiliū. Ita vt propter virtutis acquisitionem, vitij etiam fugam, milites, barones alij quoq; magnates & nobiles Regni, in hospitijs illis ponunt filios suos, quamuis non gliscant eos legum imbui disciplina, nec eius exercitio viuere sed solum ex patrocinijs suis

Ibi vix vnquam se-
ditio, iurgium, aut
murmur resonat, &
tamen delinquēces
nō alia pœna quam
solum a communio-
ne societatis suæ a-
motione plectūtur,
qui pœnam hanc
ipsi plus formidant,
quam criminosi ali-
bi carcerem timent,
aut vincula, nam se-
mel ab vna societa-
tum illarum expul-
sus, nunquam ab ali
qua cæterarum so-
cietatum earundē,
recipitur in socium,
quo ibi pax est cō-
tinua, & quasi amici-
tia coniunctorum
est eorum omnium
conuersatio. For-
mā vero, qua leges
illę in his discuntur

Scont at any time is
there heard amongst them
any sedition, chiding or
grudging, And yet the
offendours are punished
with none other paine,
but onely to be amooued
from the companye of
their fellowship. Which
punishment they do more
feare, then other crimi-
nall offendors doe feare
imprisonment and yrons:
For he that is once expel-
led from any of those
fellowships, is neuer re-
ceiued to bee a fellow in
any of the other felow-
shippes. And so by this
meanes there is continu-
all peace: and their be-
meanour is like the be-
hauiour of such as are
coupled together in per-
fect amitie. But, after
what manner and fort the
laiwes

laws are learned in those Innes, thereof heere to make rehearsall, it is not needfull, forasmuch as it is not for your estat, most noble Prince, to put the same in vse. Yet knowe ye this, that it is pleasant and delectable, and in any wise expedient, for the learning of the Law, and worthy with all affection to be embraced. But one thing there is, ý I would haue you to know, ý neither at Orleance, where aswell the Canõ, as ý Ciuill laws, are taught, and whether out of many coũtries, scholars do repaire, nor at Angeo, or at Cane, or any vniuersity of Frãce (Paris onely excepted) are found so many students past childehoode, as in this place of studie,

hospitijs, hic exprimere non expedit, cum tibi, *princeps*, eã experiri nõ liceat. Scito tamen, qd̃ delectabilis ipsa est & omni modo expedit̃ legis illã disciplinę, *omni quoq; affectione* digna. Vnum tamen te scire desidero, qd̃ neq; *Aurelianis* vbi tam Canones addiscuntur, quam ciuiles leges, & quo, a quãpluribus regionib̃ conflunt scolares, neq; *Andaginis*, aut in Cadomo, aliaue vniuersitate Franciæ, præterquam solã *Parisijs*, reperiuntur tot studentes infantiam euasi, sicut in hoc studio,

licet

licet ibi addiſcẽtes omnes, ſolũ ab Anglia ſint oriundi.

notwithſtanding that all the ſtudẽts there are Engliſh borne.

¶ *Of the eſtate and degree of a Serieant at Law, and how he is created.* Chap. 50.

SEd cum tu, *princeps*, ſcire deſideres, cur in legib⁹ Anglię nõ dãtur *Bacalariat⁹ & Doctorat⁹ grad⁹*, ſicut in vtroq; iure in vniuerſitatib⁹ eſt dare cõſutum: Scire *te* volo, qd̃ licet gradus huiuſmodi, in legibus Angliæ, minime cõferãtur: datur tamẽ in illis, *nedũ gradus, ſed & ſtatus quidã, gradu doctoratus nõ minus celebris aut ſolemnis*, qui *gradus ſeruiẽtis ad legẽ* appellatur. Et cõfertur ſub hac, quæ ſubſe-

BUt forſamuch as you deſire to know, moſt gracious Prince, for what cauſe the degrees of Bachelars and Doctors are not giuen in the Lawes of England as they are accuſtomably giuen in both Lawes within vniuerſities, your Maieſtie ſhall vnderſtand, that, though there degrees are not giuen in the Lawes of England, yet there is giuen in them not a degree onely, but alſo a ſtate no leſſe worſhipfull and ſolemne, then the degree of doctors: which is called the degree of a Serieant at Lawe. And it is giuen

given under the manner and form following. The Lord chiefe Iustice, of the Common Bench, by the counsell & assent of all the Iustices, vseth, as oft as hee thinketh good, to chose seuen or eight of the discreetest persons, that in the foresayd generall studie haue most profited in the Lawes, and which to the same Iustices are thought to bee of best disposition, and their names hee presenteth to the Lord Chauncellour of England in writing, Who incontinent, by vertue of the Kings Writ, shall charge euery of the persons elect, to be before the King at a day by him assigned, to take vpon him the state & degree of a ser-

quitur, forma. Capital' *Iusticarius* de *communi banco*, de cõsilio & assẽsu omniũ Iusticiariorũ, eligere solet, quoties sibi videtur oportunum, 7 vel 8 de maturioribus personis, qui in prędict' generali studio maius in legibus profecerunt, & qui eisdem iusticiarijs optimæ dispositionis esse videtur, & nomina eorum ille deliberat solet *Cãcellar' Angliæ* in scriptis, qui illico mandabit per breuia regis, cuilibet electorũ illorũ, q̃ sit coram rege, ad diẽ p ipsũ assignatũ, ad suscipiendum *statum* & *gradũ seruientis*

mientis ad legem, sub ingēri pęna, in quolibet breuiū prędictorum, limitata, ad quem diē quilibet corū cōparens, iurabitur (sup sancta dei euangelia) fore paratū, ad diē & locum tūc sibi statuendos, ad recipiēdū *statū & gradū* prędictum, & qd̄ ipse in die illo dabit *aurū* secundū cōsuetudinē regni in hoc casu vsitatā. Tamē, qualiter ad diem illum, quilibet electorum prędictorū se habebit, necnō formam & modum, qualiter *status* & *gradus* huiusmodi conferentur & recipientur, hic inserere omittor:

ieant at Lawe, vnder a great penaltie in euerie of the saide Writtes ymitted: On the which day, euerie one of them appearing, shall bee sworne vpon the holy Gospell of GOD, to bee redie, at the day and place then to bee appointed, to receiue the state and degree aforesaid, and that he the same day shall giue Golde according to the custome in that behalfe vsed. Vnto be it, howe and after what sort, euerie of the saide personnes shall that day demeane himselfe, and also the forme and manner, howe, that state and degree shall bee giuen and receiued, for so much as the same can not

so

so briefely be written, as to the shortnesse of this worke is requisite therefore at this time, I will leaue these points vntouched. And yet I haue declared the same to you ere now by way of talke. But this you must vnderstand, that when the day appointed is come, those elect persons among other solemnities, must keepe a great dinner, like to the feast of a Kings Coronation, which shall continue and last by the space of seauen dayes, And none of those elect persons shall defray the charges growing to him about the coastes of this solemnitie, with lesse expences, then the summe of foure hundred markes, so that the expences, which

cum scripturâ maiorem illa exigant, quam cõgruit operi tam succincto. Tibi tamen, ore tenus, ea aliàs explicaui. Scire tamen te cupio quod, aduenięte die sic statuo, electi illi, inter alias solemnitates *festũ* celebrant & *conuiuiũ* ad instar *coronationis Regis*, quod & continuabitur p *dies septem*, nec quisquam electorum illorum, sumptus sibi contingentes circa solemnitatem creationis suæ, minoribus expensis perficiet, quam mille & sex centorum scutorum, quo, expensæ, quas

octo

octo, sic electi, tunc refundent, excedũt summã 3200 *marcarũ* expẽsarũ: pars quędã inter cætera, hęc erit. Quilibet eorum dabit *annulos de auro*, ad valenciam in toto, 40. librarum (ad minus) monetę Anglicane: Et bene recolit Cãcell' ipse, q̃, dũ ille statũ & grad̃ hm̃odi recepit, ipse soluit p̃ aulis, quos tũc distribuit, 50. libras, quę sunt 300. scuta. Solet namq; vnusquisque *Seruiẽtium* hm̃odi, tẽpor creationis suę, dare cuilibet *Principi, Duci, & Archiep'o, in solẽnitate illa presẽti, ac Cancellario, & The-*

eyght men, so elect, shall then bestow, will surmount to the sum of three thousand and two hundred Markes: Of the which expences, one parcell shall bee this: Euery of them shall giue rings of gold, to the value of fortie poundes sterling at the least: And your Chauncellour well remembreth, that at what time hee receiued this state and degree, the rings which hee then gaue, stood him in fiftie pounds. For, euerie such Serieant, at the day of his creation, vseth to giue vnto euerie Prince, Duke, and Archbishop, being present at that solemnitie, and to the Lord Chauncellour, and Lord Treasurer

forer of England, a ring of the value of xxvi. shillings viij. pence. And to euery Earle and Bishop being likewise present, and also to the Lord Priuie seale, to both the Lords chiefe Iustices, and to the Lord chiefe Baron of the kings Eschequer, a ring of the value of xx. shillings. And to euery Lord Baron of the Parliament, and to euery Abot & notable Prelate, & worshipful Knight, being then present, & also to the Master of the Rolls, and to euerie Iustice, a ring, of the value of a Marke, And likewise to euery Baron of the Exchequer, to the Chamberlaines, and to all the officers and notable men seruing in the Kinges courts, rings of a smal-

saurario Angliæ, anulũ ad valorẽ 26.s 8.d', & cuilibet *Comiti* & *E*po cõsimiliter p̃lẽtib', necnõ *Custodi priuat' sigilli* vtriq; *capitali Iustic'* & *capitali Baroni* de *scaccario* regis anulũ ad valorẽ 20.s. & oĩ dño *baroni perliamẽti*, & oĩ *Abbati* & notabili *Prelato*, ac magno *Militi*, tũc p̃senti, *custodi* etiã *Rotulorũ cancellarie* regis, & cuilibet *Iustic'*, anulũ ad valẽtiã 1. marcę, Similiter & omni *Baroni* de *scacc'* regis, *camerarijs*, etiã omnib' *officiarijs*, & notabilib' viris ĩ *euriis* regis ministrãtibus, anulos minoris pręcij,

cij, cõueniẽtes tamẽ statib⁹ eorũ, quibus donãtur. Ita qđ, nõ erit *clericꝰ*, maxime in *curia cõmunis bãci*, licet infim⁹, quin anulũ ipse recipiet conuenientẽ gradui suo. Et vltra hos ipsi dant anulos, alijs amicis suis. Similiter & *libratã magnam* panni vnius sectæ, quã ipsi tunc distribuent in magna abundantia nedũ familiarib⁹ suis, sed & amicis alijs & notis, qui eis attendent & ministrabũt tẽpore solẽnitatis prędictę. Quare, licet in vniuersitatibus in gradum doctóratus erecti, expensas non modicas faciant tẽ-

ler price, but agreeable to their estats, to whom they are giuen. Insomuch that there shal not be a Clerke, specially in the court of ỳ cõmon bench, but he shall receiue a ring conuenient for his degre. And besides these, they giue diuers rings to other of their friends. They giue also liueries of cloth of one sute or colour in great abundance, not onely to their houshold meany, but also to their other friends and acquaintance, which, during the time of the foresaid solemnity, shal attẽd and waite vpon them. Wherefore, though in the Vniuersities, they, that are promoted to the degree of Doctors, doe sustaine no smal charges at the time of their commence-

mencemēt as in giuing of bonets and other rich giftes, yet they giue no gold, nor do bestow any other gifts or costs like unto these expenses. Neither in any countrie of the world, is there ante speciall degree giuen in the Lawes of the same Land, but onely in the realme of England. Neither is there any man of Lawe through out the vniuersal world, which, by reason of his office or profession, gaineth so much as one of these Serieants. No man also, be hee neuer so running and skilful in the lawes of the realme, shalbe exalted to the office & dignitie of a Iustice in the court of plees before the king, or in the court of the comen bench, which

pore creationis suę, ac burreta, alia quoque donaria quam bona erogent: non tamen aurum ipsi conferunt aut alia donaria, sumptusue faciunt, his expensis similia. Neque in regno aliquo *orbis terrarum*, datur *gradus specialis* in legibus regni illi°, prętęrquā *solum in regno Angliæ*. Nec est aduocatus in vniuerso Mundo, qui ratione officij sui, tantum lucratur, vt *seruiens* huiusmodi. Nullus etiam, licet in legibus regni illius scientissimus fuerit, assumętur ad *officium* & *dignitatem iusticiarij*, in *curijs placitorum coram ipso Rege*, & *communis banci*, quæ

sunt supremæ curiæ eiusdem Regni ordinariæ, nisi ipse primitus statu & gradu seruientis ad legem fuerit insignitus. Nec quisquam, præterquã *seruiens* talis, in *curia communis banci*, vbi *omnia realia placita* placitantur, placitabit. Quare ad *statum* & *gradum* talem, nullus hucusque assumptus est, qui nõ in prædicto generali legis studio, *sexdecim annos* ad minus, antea compleuit, & in signum, quod omnes *iusticiarij* illi taliter extant graduati, quilibet eorum semper vtitur dum in curia regis sedet, *birreto albo de serico*, quod primũ &

are the chiefe ordinarie Courts of the same realme, vnlesse hee bee first promoted to the state & degree of a Serieant at Law. Neither shal any man, but onely such a Serieant, plead in the Court of the Common bench, where al reall actions are pleaded. Wherefore to this state and degree hath no man beene hitherto admitted, except he hath first continued by the space of sixteene yeares in the said generall studie of the law, and in token or signe, that all Justices are thus graduat, euery of them alwaies, while he sitteth in the Kinges court, weareth a white Quoife of silke: which is the principal and chiefe in-

insignement of habite, wherewith Serieants at law in their creation, are decked: and neither the Iustice, nor yet the Serieant, shall euer put of the quoife, no not in the kings presence, though hee bee in talke with his maiesties highnesse. Wherefore, most noble Prince, you cãnot hereafter doubt, but ỳ these lawes, which so singularly aboue the Ciuile lawes, yea and aboue ỳ lawes of al other Realms are honored, & with so solemne a state of such, as are learned therein, & doe professe ỳ same, are worshipped must needs be precious, noble and high, and of great excellencie, and of speciall knowledge and vertue.

precipuũ est de insignib⁹ habit⁹, quo *seruiẽtes* ad legẽ, in eorũ creatione, decorãtur. Nec *birretũ* illud *Iusticiari⁹* sicut nec *seruiẽs* ad legẽ vnquam deponet, quo caput suũ in toto discooperiet, etiã in *presentia regis* licet *cũ celsitudine* sua ipse loquatur. Quare, *Princeps preclarissime*, tu amodo hæsitare non poteris, quin leges istę, quæ tam singulariter supra ciuiles leges, leges etiam omnium aliorum regnorum honorãtur, & tam solemni statu eruditorum & ministrantium in eis venerantur, *pracciosæ* sint, *nobiles*, & *sublimes*, ac magnæ *prestantiæ* maximæq; *scientiæ* & *virtutis*.

After what manner, a Iustice is treated, and of his habite and conuersation. Chap. 51.

SEd vt *Iusticiariorum* (sicut & *seruientum ad legem*) status *Tibi* innotescat, eorum *formam officiumque* (vt potero) iam describam. Solent nãque in *communi Banco quinque Iusticiarij* esse, vel *sex* ad maius: Et in *Banco regis*, *quatuor* vel *quinque*, ac quoties eorum aliquis per mortem vel aliter, cessauerit, Rex, de aduisamento consilij sui, eligere solet vnum de *seruientibus ad legem* & eum per *literas* suas *patentes* constituere in *Iusticiarum*, loco iudicis sic cessantis, & tunc Cancel-

BUt to the intẽt the state of Iustices as well as the Serieants at Law, may be known to your grace, as I can, I will describe vnto you their forme & office. In the comon bench there are customable v. Iustices or six at ỳ most. And in the Kings bench iiij. or fiue. And as oft as the place of any of them by death or otherwise, is voide, the King vseth to chose one of the Serieaunts at Lawe, and him by his Letters Patents, to ordaine a Iustice, in the place of the Iudge so ceasing, And then the Lord Chancellour of Eng-

land shall enter into the Court, where the Iustice is so lacking, bringing with him those letters patents, & sitting in the middest of the Iustices causeth the Serieant so elect to bee brought in, to whom in the open Court he notifieth the Kings pleasure touching the office of the Iustice then voide & causeth the foresaid letters to be openly reade. Which done, the Master of the Rolles shall reade before the same elect person, the oath ỳ he shal take, which when he hath sworne vpon the holy Gospell of God, the Lord Chancellor shall deliuer vnto him the Kings letters aforesaid, And the Lord Chiefe Iustice of the Courte shall assigne vnto him a

lari Anglię adibit *curiā*, vbi *iustic'* sic deest, deferēs secum literas illas, ac sedēs in medio iustic' Introduci faciet seruiēte sic electū, cui in plena curia, ipse notificabit voluntatē regis, de officio, iudiciario sic vacāte, & legi faciet in publico literas p̄dictas Quo facto, *custos rotulorū cancellariæ regis* leget corā eodē electo, *iusiurandum* quod ipse facturus est, qd & cum sup *sancta Dei Euangelia* ipse iurauerit, *cancellarius* sibi tradet literas regis p̄dictas, & capitalis iusticiarius curiæ illius assignabit sibi

locũ in eadẽ, vbi deinceps ille sedebit, & moxtũ sedere faciet in eodẽ. Sciẽdũ tamẽ *tibi* est, *Princeps*, q *Iusticiarius* iste inter cætera tũc iurabit: *se iusticiam ministraturũ indifferẽter omnibus hominib*ꝰ, corã eo placitãtib*ꝰ*, inimicis & amicis, nec sic facere differet, etiamsi rex per literas suas, aut ore tenus contrariũ iusserit. Iurabit etiã qd extunc nõ recipiet ipse ab aliquo prẹterquam a *rege*, *feodum*, aut *pensionẽ* aliquã, seu *liberatã*, neq; donũ capiet ab habente placitũ coram eo, prẹterquã esculenta & poçu-

place in the same, where he shall then place him, & that place shall hee afterward keepe. Yet you must know, most noble Prince, that this Iustice shall then among other thinges, sweare, that he shall indifferently minister Iustice to all men, as well foes as friends, that shall haue any suite or plea before him, And this shall he not forbeare to do though the king by his letters, or by erpresse word of mouth, would command the contrary. He shal also sweare ẏ frõ ẏ time forward, hee shal not receiue or take any fee, or ꝓfiõ, or liuery of any man but of the King only, nor any gift, reward or bribe of any man hauing suite or Plea before him, sauing meate & drinke,

drink, which shal be of no great value. You shall also knowe, that a Iustice, thus made, shall not be at the charges of any dinner or solemnity, or any other costes at the time when he taketh vpon him his Office and dignitie, For so much as this is no degree in the facultie of the Law, but an office onely and a roome of authoritie, to cõtinue during the kings pleasure, Howbeit the habite of his raiment, he shal from time to time forwarde, in some pointes change, but not all the ensignements thereof.

For beeing a Serieaunt at Lawe, hee was clothed in a long roabe priest like, with a Furred Cape about his shoulders, and thereupon a Hoode with

lenta, quę nõ magni erũt precij. Sciẽdũ etiã tibi est, q̃ *Iusticiar'* sic creat', conuiuiũ, solẽnitatẽue, aut sũptus aliquos, nõ faciet tempore, susceptionis officij & dignitatis suæ, cũ non sint illa *gradus* aliqui in *facultate legis*, sed *officiũ* suum illa sint & *magistratus*, ad regis nutum duratura, *habitũ* tamen *indumenti* sui (in quibusdã) ipse extunc mutabit, sed non in omnibus insignijs eius. Nã *seruiens ad legem* ipse existens, *roba longa* ad instar sacerdotis, *cum capicio penulato* circa humeros ei' & desup *collobio*, cum

duob⁹ *labelulis*, qua
licet vti solēt docto-
res legūm vniuersi-
tatib⁹ quibusdā, cū
supra descripto *bir-*
reto vestiebat. Sed
Iustic' fact⁹, loco col
lobi', *clamide* indu-
ctus, *firmata super*
humerū et⁹ dexterū,
cæteris ornamentis
seruientis adhuc p-
manentibus, excep-
to quod *stragulata*
veste, aut *coloris bi-*
pertiti, vt potest *ser-*
uiens, *Iusticiarius*
non vtetur, & *capi-*
cium eius non alio
quam *meneuero* pe-
nulatur. *Capicium*
tamen *seruientis pel-*
libus agninis sem-
per *albis* implicatur
qualem *habitum* te
plus ornare optarē,

two Labels such as Doc-
tours of the Lawes vse
to weare in certaine Vni-
uersities, with the a-
boue described Quoyfe.
But being once made a
Iustice, in steede of his
Hoode, hee shall weare
a Cloake cloased vp-
pon his right shoulder,
all the other Orna-
ments of a Serieaunt
still remaining: saue-
that a Iustice shall weare
no partie couloured Ve-
stiure as a Serieaunt may.
And his Cape is Fur-
red with none other
then Meneuer, where-
as the Serieaunts Cape
is euer Furred with
white Lambe. And this
Habite I woulde with
your Grace to bring
into highe estimation,

when

when it shall be in your power, for the worship of the state of the Law, & the honour of your Realme. Furthermore, I would ye should know, that the Iustices of Englande sit not in the kings courts aboue iij houres in a day, that is to say, from viij. of the clock in the forenoone til xj. complete, For in the afternoones, those courtes are not holde or kept. But the Suters then resort to the peruling of their writtings, & elsewhere consulting with the Serieants at law, & other their Counsaylors. Wherefore the Iustices, after they haue taken their refection, doe passe & bestow all the residue of the day in the study of the lawes, in reading of holy Scripture, and vsing

cū potestas tibi fuerit, ad decorē status legis & honorē regni tui. Scire *te* etiam cupio, quod iusticiarij Angliē nō sedēt in curijs regis, nisi *per tres horas in die* .s. *ab hora viij. ante meridiē, vsq; horam vi. completam*, quia *post meridiem curiæ illæ non tenentur*. Sed *placitantes* tunc se deuertunt *ad peruisum*, & alibi consulentes cū seruientibus ad legem & alijs consiliarijs suis. Quare *Iusticiarij*, postquam se refecerint, totum diei residuum pertrāseunt, studēdo in *legibus*, *sacrā* legēdo *scripturam*, & aliter ad

eorum

eorum libitū *cōtem-plādo*, vt vita ipsorū pl⁹ contēplatiua videatur quà actiua. Sicq; quietā illi vitā agunt ab omni solicitudine & mundi turbinib⁹ semotam: nec vnquā cōpertū est, eorum aliquem, donis aut munerib⁹ fuisse corruptū. Vnde & hoc gen⁹ gratię vidim⁹ subsecutum, quod *vix eorū aliquis sine exitu decedat*, quod iustis magnę & quasi appropriatę benedictionis dei est, mihi quoq; non minimi muneris diuini censetur esse pensandū, quod *ex iudicū sobole, plures de proceribus & magnatibus*

other kind of contemplation at their pleasure, So that their life may seeme more contemplatiue then actiue. And thus doe they lead a quiet life, discharged of all worldly cares and troubles: And it hath neuer beene knowne, that any of them hath beene corrupt with gifts or bribes. Whereupon we haue seene this kinde of grace following, that skant any of them dieth without issue, which vnto iust men is a token of the great and peculiar blessing of God, And in mine opinion it is to bee iudged for no small point of the bountifull goodnesse of God, that out of the generation of Iudges there haue hitherto sprung vp moe States and Peeers

of

of the Realme, then out of any other state of men: which by their owne wit & pollicy haue aspired vnto great wealth, nobilitie & honour. Yea though the state of Merchants surmount the nũber of Iudges by many thousands, being men of such singular wealth, that among them comonly there bee such, as one of them in riches passeth all the Iustices of the Realme. For this cãnot be ascribed vnto Fortune, which is nothing, But it is to bee attributed (as I take it) only to the blessing of God. Forsomuch as by his prophet he saith, that the generation of righteous men shalbe blessed. And ỳ prophet in an other place, speaking of iust men, saith,

regni hucusque prodierunt, quam de aliquo alio statu hominum regni, qui se prudentia & industria propria opulentos, inclitos, nobilesque fecerunt. Quanquam *mercatorum status*, quorũ aliqui sunt, qui omnib' *iusticiarijs*, regni præstãt diuitijs, iudicũ numerũ in millibus hominum excedat. Nam fortunæ, quæ nihil est, istã ascribi nõ poterit: sed diuinę solũ benedictioni fore arbitror tribuẽdum. Cum ipse per *prophetã* dicat: quod *generatio rectorum benedicetur.* Et alibi de iustis loquens *propheta* ait:

quod

quod *filij eorum in benedictione erunt.* *Dilige* igitur, (*fili Regis*) *iusticiam*, quæ sic ditat, colit, & perpetuat fetus colentium eam Et. *zelator esto legis*, quæ iusticiam parit, vt *à te* dicatur, quod *à iustis* scribitus: *& semen eorum in æternum manebit.*

that their children shal be in blessing. Wherefore, O most magnificēt Prince, be you in loue with Iustice, which thus enricheth, raiseth to honor & auauceth to perpetuity the children of thē that haue her in veneration. And be you a zelous louer of the Law, the very welspring of iustice, that by you it may be said yt is writtē of the righeous, And their seede shall remaine for euer.

¶ *The prince findeth fault with delaies, that are made in the Kings Courts. Chap. 52.*

PRinceps. Vnū iā solū supest, Cācellarie, declarādū: quo parūper adhuc fluctuat, inquietat quoq; mens mea, In quo, si eā solidaueris, nō amplius te quęstionibus fatigabo.

THere remaineth now but one thing, good Chauncellour, quod the Prince, to bee declared, wher wī my mind sōewhat yet wauereth & is vnquieted, wherein if you stay & satisfie me, I will trouble you with no mo questiōs.

The

The Lawes of England as the report goeth, suffer great delayes in their processes, more then the Lawes of other Nations, which unto suters is not onely a hinderance of their right, but also many times an importable burden of charges, and chiefly in those actions, wherein dammages are not allowed

Dilationes ingētes, vt asseritur, patiuntur leges Angliæ in processib' suis plusquam leges aliarum nationum qd̄ petētib', nedū iuris sui prolatio est, sed & sumptuū, quādoq; importabile on', & maxime in actionib' illis in quib' dāna petentibus non redduntur.

¶ *Delayes, that happen in the Kings Courts are necessarie and reasonable. Chap. 53.*

In actions personall, quod the Chancellour out of Cities and Townes of marchandize, where the manner of proceeding is according to the customes and liberties of the same, there the proceedings are ordinarie. And though they suffer great

Cancellari', In *actionibus personalib'* extra *vrbes* & *villas* merçatorias, vbi proceditur *secundum consuetudines & libertates earundem*, processus sunt ordinarij. Et quantaslibet dilationes

ones patiuntur, non tamen *excessiuas*. In vrbibus veró & villis illis, potissimũ cũ vrgens causa deposcat, celeris, vt in aliis mũdi partib⁹ fit processus, nec tamẽ (vt alibi) ipsi nimiũ aliquando festinantur, quo subsequit partis lęsio. Rursus in *realib⁹ actionib⁹*, in omnib⁹ fere mũdi partibus, morosi sunt ꝓcessus, sed in Anglia, quodãmodo *celeriores*. Sunt ꝗppe i regno *Frãc* in curia ibidẽ sup̃ma, quę *curia parliamẽti* vocitat ꝓcessus quidã, qui in ea pl⁹ quã *triginta* annis pepẽderunt. Et noui ego appella-

delayes, yet they bee not excessiue. But in the same Cities and Townes chiefely when any vrgent cause so requireth, there is quicke dispatch made, like as in other parts of the world, and yet not with such hot haste as in some other places, that the partie bee thereby endammaged. Againe, in actions reall, the proceedings are very slow, almost in all parts of the world, but in England, somewhat speedier. For, within the Realme of Fraunce, in the highest Court there, which is called the Court of Parliament, there bee certaine processes that haue hanged there aboue thirtie yeares. And I know that

ÿ a cause of apeale, which in ÿ court betwẽn Rich: Heron an English merchãt, & other merchãt mẽ, for a transgression made, hath bin debated within ÿ iurisdiction of that court, hath already hãged by the space of x. yeres, And it is not yet like, that it can be decided wẽin other x. yeres While I was lately abiding in Paris, mine hoste shewed me his processe in writing, which in ÿ court of Parliament there he had then followed ful 8 yeres, for iiij. s. rẽt, which in our money maketh not aboue viii. d. & yet he was in no hope to obtain iudgmẽt in 8. yeres more: & I know other cases ther, like vnto these, So that ÿ Lawes of Englãd, as seemeth to me, cause not so great delaies,

tionis causã vnã, qs in curia illa agitata fuit, iã per decẽ anñ suspẽsã fuisse & adhuc verisimile, non est, eã infra annos x. alios posse decidi. Ostẽdit & mihi dudũ, dũ *Parisiis* morabar, hospes meus ꝓcessũ suũ in scriptis, q̃ in curia parliamẽti ibidẽ ipse tũc 8. anñ, ꝓ 4. s' redditus, qui de pecunia nostra 8. d'. nõ excedunt ꝓsecutus est, nec sperauit se in 8. anñalijs iudiciũ inde obtẽturũ. Alios quoq; nõnullos noui casus ibidem, his similes, sic q̃ leges *Angliæ, non tantas*, vt mihi visũ est, *dilationes sortiuntur vel faciunt*

faciūt leges regionis illi. Sed revera p-nessariū est, *dilationes* fieri in ꝓcessib⁹ oīū actionū, dūmodo nimiū ipsæ non fuerint excessiuæ. Nā sub illis *partes* & maxime *pars rea*, quāsepe sibi prouidēt de defensionib⁹ vtilibus, similiter & consilijs, quib⁹ alias ipsi carerēt. Nec vnquā in judicijs tātū imminet periculū, *quantū parit processus festinatus*. Vidi nēpe quondā apud ciuitatē *Sarū*, corā *judice* quodam ad gaolā ibidē deliberandā, cum clerico suo assignato, mulierem de morte mariti sui *infra annum*, as do the Lawes of that countrey. But to speake vpright ly it is necessarie that delaies be had in the processes of al nations, so that the same bee not too much excessiue. For by reason therof, the parties, and chifely the partie defendant, doe oftentimes prouide thēselues of good defences, and also of coūsels, which else they shuld lack. And in iudgements, there is neuer so great danger toward, as when processe goeth forward with ouermuch haste. For I saw once in the Citie of Salisburie, before a certaine Iudge, at a gaole deliuerie there, with the Clerke of the assises, a woman arrainted and burned for the death of her husband within a yeere, after

after he was slaine, In ý which case, it was in the Iudges power to hauerepriued, or respeted ý womans araignment till the end of the yere, And about a yeere after that, I saw one of ý seruants of the slaine man, conuict, before the same Iustice, of the death of the same his master. Who then openly confessed, that he himselfe alone slue his master, & that his master his wife, which before was burned, was altogether innocent of his death. And hee for the same was drawne and hanged. And still, euen at ý point of death, hee lamented the woman burned, as one cheare frõ that offence.

de interfectione eiꝰ *attinctã similiter & cõbustam*, in quo casu licuit iudici illi, vsq; post annum illũ arretamentũ siue distrationẽ mulieris illius respectuasse, & post annũ illũ, vidi vnũ de fermẽtibꝰ interfecti illiꝰ, coꝝ eodẽ iusticiario, de morte eiusdẽ magistri sui cõuictum, qui tunc publice fatebatur, ipsummet solum magistrum suum occidisse, & magistram suam, vxorem eius, tunc combustam, innocentẽ omnino fuisse de morte eius: quare ipse *tractus & suspensus* fuit. Sed tamẽ omnino, etiã in ipso mortis articulo, mulierem combustam immunem à crimine illo fuisse, ipse lugebat.

O quale putãdũ est ex hoc facto cõsciẽtiæ discrimẽ & remorsũ euenisse iusticiario illi tam præcipiti, qui potuit processũ illũ iuste retardasse? Sæpi' proh dolor, ipse mihi fassus est, qd̃ nunquã in vita sua animum eius de hoc facto ipse purgaret: *crebro* etenim *in deliberationibus, iudicia maturescunt*: Sed *in accelerato processu, nunquã*. Quare *leges Angliæ essonium admittunt*, qualia nõ faciunt leges aliæ mundi vniuersi. Non ne quam vtiles sunt *vocationes ad warrantum? Auxilia* de his ad quos spectat *reuersio tenementorum*, qui in placitum deducunt, & qui habent euiden-

O what ꝑplexity & remorse of cõscience it is to be thought, ꝑ this so hasty a Justice had of this dẽd, wõ might iustly haue staied ꝑ ꝓcesse? He himself (alas) often confessed vnto me ꝑ he shuld neuer during his life be able to clear his conscience of this fact: For many times, in deliberations, iudgements grow to ripenes: but in ouerhasty proces, neuer. Wherefore ꝑ lawes of Englãd admit essoyne, & so do no other lawes of al the world. Are not vouchings to warrant right ꝓfitable, are not the aides of them ꝓfitable to whom the reuersion of tenements brought in plea belongeth, & which haue the euiden-

euidences of ẏ same. Are not also the aides of copertners profitable, which shall pay according to the rate of a tenement, allotted to their copertner by force of the Law euicted from him, And yet all these are delayes, as you, most noble Prince, by my talke at other times doe well knowe: and the like delayes to these doe no other Lawes admit, neither doe the Lawes of England admitte trifeling and vnfruitfull delaies. And if any such fonde delaies should bee vsed they maye at euerie Parliament, bee cut away. Yea and other Lawes vsed in the same Realme, when in any point they begin to halt, they may at euerie

cias eorũdẽ. *Auxilia* etiã *de copertici-bus* qui reddẽt pro rata, si reneme ẽtũ cõ-participi allottatũ, euincatur, & tamen hæc *dilationes* sunt, sicut, *tu Princeps*, alias nosti ex doctrina mea: Et dilationes his similes, leges aliæ nõ admittũt, neq; leges Angliæ friuolas & infructuosas pmittunt inducias. Et si quę in regno illo dilationes in placitis, minus accommodæ, fuerint vsitatę, in omni parliamento amputari illæ possunt, etiam & omnes leges alię, in regno illo vsitatæ, cum in aliquo claudicauerint, in

omni Parliamento poterunt reformari. Quo recte cōcludi potest, quod *omnes leges regni illius optimæ sunt, in actu vel potentia*, quo faciliter in actū duci poterunt & in essentiam realē. Ad quod faciendum, quoties equitas id poposcerit, singuli reges ibidem, sacramento astringuntur solemniter præstito tempore receptionis diadematis sui.

Parliament be reformed. Wherefore, it may well bee concluded, that all the Lawes of that Realme are right good, either in deede, or in possibilitie, so that if they bee not presently good, they may easily bee reduced to the present perfection of goodnesse. To the performance whereof, as oft as equitie so requireth, euery king there is bound by an oath solemnely taken at the time of his Coronation.

¶ *The Lawes of England are right good, the knowledge whereof is expedient for kings. Yet it shall suffice them to haue but a superficiall knowledge of the same. Chap. 45.*

Princeps. Leges illas, nedū bo-

I haue well and euidently perceiued, q̄ the prince by

by the proces of your talk
good Chãcellor, that those
Lawes are not only good
but also of most perfect &
excellent goodnes. And if
any of thē haue need to be
amēded, ý may quickly be
done, asý formese orders
of ý Parliamēts there do
plainly proue. Wherefore
ý realme is euer, really, or
potentially, gouerned by
most excellēt & most wor-
thy Lawes, and I doubt
not, but that your instruc-
tions, in thisour talk, shal
be profitable for the kings
of England, which here-
after shall be: so that they
haue no pleasure in gouer
ning bynapleasant laws.
For the vnhansomnes of
the tool or instrumēt weari
eth the workman: & a blūt
pike or a dull sword ma-
keth a cowardly soldiour.

nas sed & optimas
esse cãcellarie, ex p.
secutione tua in hoc
dialogo certissime
deprehēdi. Et siq;
ex eis meliorari de-
poscãt, id citissime
fieri posse, parlia-
mentorũ ibidē for-
mulę nos erudiunt.
Quo, realiter, potēti
aliterue, regnũ illud
sēp pstãtissimis legi
bus gubernatur, nec
tuas in hac concio-
natione doctrinas,
futuris Angliæ regi
b', inutilis fore cõ-
ijcio, dum nõ dele-
ctet regere legibus,
quę non delectant.
*Fastidit namq; arti-
ficē, ineptio instru-
menti: & militē igna
vũ reddit, debilitas
lancie & mucronis.*

Sed sicut ad pugnā animatur miles, cū, nedū sibi prona sint arma, sed & magis, cum in actibus bellicis ipse sit expert', dicēte Vegetio de re militari qd, *sciētia rei bellicæ, dūcādi au daciā nutrit.* (Quia nemo facere metuit qd se benedidicisse confidit.) Sic & rex omnis, ad iustitiā animatur, dū leges, quibus ipsa fiet, nedum iustissimas esse agnoscit, sed & earum ille expertus sit formam & naturā, quas tantum in vniuersali, inclusiue & in confuso, *Principi* scire sufficiet, remanente suis *iudicibus*, earum discreta de-

But like as a soldiour is encouraged to fight, not only, whē he hath handsome & fit weopōs in a redines, but also much more, whē he is expert and skilful in warlike acts, according to ỳ saying of Vegeti' in his booke of chiualry, ỳ knowledge & cunning in Martial feats ministreth boldnes in fighting (for no man feareth to doe that, which he trusteth he hath well learned) in like manner euery King hath a feruent zeale, & earnest desire to the maintenance of Iustice, not onely knowing the Lawes, whereby that must be done, to be most iust, but also being skilful in the forme & nature of the same: Wherof it shall suffice the Prince to haue only an vniuersal, a superficiall,

ficiall & a confuse knowledge, ỳ discreete & determinate perfectnes, & deep vnderstanding of ỳ same, being left to his Iudges. So also, ought all princes to be well seen in the holy scriptures of God, as saith Vincentius Beluacensis in his booke of the Moral institution of Princes, For asmuch as the Scripture aboue mentioned saith, ỳ vaine are all they, in whom is not the knowledge of God, and for that in the sixteenth Chapter of the Prouerbs it is thus written: Let prophesie, or the Word of God, bee in the lips of the King, & then his mouth shall not go wrong in iudgement. And yet is not a King bound to haue profound knowledge and determinate vnderstan-

terminataque peritia & scientia altiori. Sic equidẽ & *scripturarum diuinarum peritiam*, vt dicit *Vincentius Beluacensis* in libro de *Morali institutione Principum*, Omnis princeps habere deberet, cum dicat scriptura superius memorata, quod *vani sunt omnes, in quibus non est scientia dei*, & *Prouer.* xvi. scribatur: *Diuinatio*, id est diuina sententia, vel, sermo diuinus, *sit in labijs regis*: & tunc *in iudicio non errabit os eius*. Non tamẽ profũde, determinateue intelligere tenetur *Princeps* scrip-

turas sacras, vt decet *sacræ Theologiæ professorem*: sufficit namque ei, earū in confuso degustare sentētias, qualiter & periciā legis suę. Sic et fecerunt *Carolus Magnus*, *Lodouicus* filius eius, & *Robertus* quondā rex *Frācie*, qui hāc scripsit sequētiā (*Sancti spiritus adsit nobis gratia*,) & quā plures alij, vt in xv. cap. lib. p̄dicti *Vincētius* prędictus luculenter docet. Vnde & doctores legum dicūt: q̄d *Imperator gerit omnia iura sua in scrinio pectoris sui*, nō quia omnia iura ipse nosciet realiter & in actu sed dum principia

ding in the holy Scriptures as it becommeth a professour of Diuinitie: For it shall be enough for him, superficially to taste the sentences thereof, as also of his Lawes. Thus did Charles the great, Lewes his sonne, and Robert sometime King of France who wrote this sequence. (Sancti Spiritus adsit nobis gratia) and diuers other Princes, as the foresaid Vincentius in the fifteenth Chapter of his Booke aforesaid plainely sheweth. Wherefore the Doctors of the Lawes doe say, that an Emperour beareth all his Lawes in the boxe of his breaste: not for that hee knoweth all the Lawes really and in deed, but for that hee under-

stan-

standeth the Principles of them, likewise their forme and their nature, in which respect he is iudged to bee skilfull in all his Lawes, Which also he may altar, change, and repeale: So that in him are potentially all his lawes, as Eue was in Adam before she was made. But now, good Cancellour, seing I perceiue my selfe sufficiently perswaded to the studie of the lawes of England, which thing in the beginning of this worke you promised to performe, I will no lõger trouble you in this behalfe, But thus I instantly desire you that ye will instruct mee in the principles of the Lawe, as you once began to do: and that you will teach

corũ ipse pcipit, formã similiter & naturã, omnia iura sua ipse intelligere censetur, quæ etiã trãsformare ille potest, mutare & cassare: quó in eo potẽtialiter sunt omnia iura sua, *vt in Adã erat Eua, antequam plasmaretur*. Sed quia, Cancellarie, ad legum Angliæ disciplinatum mihi iam conspicio sufficienter esse suasum, qd & in hui° operis exordio facere promisisti: Nõ te amplius huius prętextu, solicitare conabor, sed obnixè deposco, vt *in legis huius principijs*, vt quondam incepisti, me erudias: do-

docēs quodāmodo eius agnoscere formā & naturā, quia *lex ista* mihi semper peculiaris erit *inter cæteras leges orbis*, inter quas ipsam lucere cōspicio, vt *lucifer inter stellas*. Et dum intentioni tuę, qua ad collationem hanc concitatus es, iam satisfactum esse non ambigo; tempus postulat & ratio, vt nostris colloquijs terminum cōferamus: reddentes ex eis, laudes ei & gratias, qui ea incepit, prosecutus est, & finiuit *Alpha* & *O*. quem dicimus, quem & laudet omnis spiritus. Amen.

mee to knowe and vnderstand the forme and nature thereof, For this Lawe, shall bee euermore peculiar to me among all other Lawes of the world, among the which I see it shine, as Lucifer among the Starres. And forsomuch as I doubt not but your intent, where by you were mooued to this conference, is fully satisfied: both time and reason requireth, that we make an end of our talke, yeelding therefore lauds and thanks to him, which beganne, furthered, and hath finished the same, Whom we call Alpha & O. who also bee praised of euery liuing creature. Amen.

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FINIS.

Notes upon Sir IOHN FORTESCVE Knight, L. Chiefe Iustice of England,

De laudibus legum Angliæ.

Ad CAP. III.

1 A*Vctore causarum.*] Questionlesse hee ment the author of the little booke *De causis*, put in some latine editions at the end of *Aristotle's* workes with some other ridiculously attributed to *Aristotle*. There are, who thinke it to be done by *Alpharabius*, others by *Auempace*, others by *Proclus*. It was turn'd out of Hebrew into Latine, but is not extant in *Aristotles* language. It's ancient, but cleerely beneath the age of *Aristotle*. In *proposit.* 1. the substance is of what he cites.

Ad CAP. VIII.

2 APprenticios.] From *Apprendre*. i. *to learne*, comes *Apprentice de la ley*; which will denote as much as *Discipulus* applied by *Iustinian* to somewhat a like degree in his law. For after hee had reckon'd his *Dupondij* or *Iustiniani novi* (that is, students of two yeeres standing) his *Papinianists* (students of three yeeres) his *Lytæ* (those of foure yeers) and his *prolytæ* (for them of fiue) to whom the reading of the whole course of that law and an able vnderstanding was imputed, he then, comprehending the *prolytæ* and the rest labouring to that degree, addes; *Discipuli igitur omnibus eis legitimis arcanis reseratis, nihil habeant absconditum*, but that they might afterward be *Iustitiæ satellites & iudiciorum optimi tam athletæ quam gubernatores, in omni loco æuoq; felices*. So hee writes *C. tit. de veteri iure enucl. l.* 1. *Deo auctore*. §. 6. The antientest mention of an *Apprentice* in this sens which our publisht bookes haue is in 1. *Ed.* 3. *fol.* 17. *a pl.* 3. But in the monuments of Parlament of 20. *Ed.* 1. extant

in

in the Tower, this testimonie is of them: *De Atturnatis & Apprenticijs, D. Rex iniunxit* Iohanni *de* Mettingham *& sociis suis, quod ipsi per eorum discretiones provideant & ordinent certum numerum de quolibet cõitatu de melioribus & legalioribus & libentiùs addiscentibus secũdũ quod intellexerint quod Curiæ suæ & populo de regno melius valere poterit & maius cõmodũ fuerit, & quod ipsi quos ad hoc elegerint Curiã sequantur, & alij non. Et videtur Regi & eius consilio quod septies-viginti sufficere poterint &c. Apponant tamen præfati Iustitiarij plures si viderint esse faciendum vel numerum anticipent, & de alijs remanentibus fiat secundũ discretionem Iustitiariorum.* Mencion is of them also in *Fleta lib.* 2. *cap.* 37. Part of that of 20. *Ed.* 1. is transcrib'd in the Epistle of the 9. reports, where more is out of antiquity touching these Apprentices. The name was vs'd for Practisers, and *Apprenticij ad Barros* are Barristers in the ridiculous verses of *Andrew Horn* before his *Mirrour aux Iustices.* These are they,

Hanc legum summã, si quis vult mira tueri,
Perlegat, & sapiens si vult orator haberi;
Hoc Apprenticijs *ad* Barros *ebore munus,*

Gratum iuridicis vtile mittit opus
Horn *mihi cognomẽ*, Andreas *est mihi nomẽ*.

This *Horn* liu'd about *Ed.* 2. His certain age I yet know not. The verses I transcrib'd out of an ancient copie of him, extant in *Bennet* College Librarie in *Cambridge*, and writen, as it seems by the hand, about *Edw.* 3. or *Rich.* the seconds time.

3 *Proprio ore nullus Regnm Angliæ.*] Yet certainly the Kings themselues often sate in court (in the Kings Bench:) and in the rolls of Charters vnder King *Iohn* and the time neere him, often occurre grants that such or such English should not bee impleded or put to answere *nisi corã nobis vel capitali iustitia nostra*, and to *Normans nisi coram nobis vel capitali senescallo nostro*. For example, in *Rot. Chart.* 1. *Reg. Ioh. Chart.* 171. *memb.* 28. the king giues to one *Iacob* a Iew of *London* and a priest of the Iews, *presbyteratum omnium Iudæorum totius Angliæ* for life, and the patent hath in it, *prohibemus etiã ne de aliquo ad se pertinente ponatur in placitum nisi corã nobis aut coram capitali Iustitia nostra sicut Charta Regis Richardi fratris mei testatur*. Here *coram capitali Iustitia* is deuided from *coram*

Rege;

Rege; the last signifying before the Kings person; although now pleas held in the Kings Bench before the successor of the *Capitalis iustitia*, are enter'd *coram Rege*, and some rolls (as of 44. *Hen.* 3.) haue *placita corã Domino Rege de Tempore* Hugonis Bigod *Iustitiarij Angliæ*, and also in the same bundle *Placita coram* Hugone *le* Bigod *Iustitiario Angliæ*. And *Bracton lib.* 3. *tract. de Actionibus cap.* 5. *si actiones criminales sint, in curia Domini Regis debent terminari, & hoc coram ipso Rege si tangant personam suam.* and in 2. *Ed.* 4. the king sate in person.

Ad CAP. XIII.

4 *Scotiam, quæ ei quondam vt ducatus.*] Of that matter see *Guil. Malmesburiens. de gest. reg. lib.* 2. *cap.* 6. *Roger. de Houeden fol.* 311. *b.* & 377. *a* & *b.* & 461. *Matth. Paris sub anno* 1072. & 1175. & 244. *pag.* 208. 872. & 1124. *sub anno* 1252. *Matth. Westmonasteriens. sub anno* 1054. and what hee hath with *Thomas* of *Walsingham sub anno* 1290. & *seqq.* and *Edward Hall* in his Henry 8. out of old monumẽts, also *Walsinghã pag.* 85. 133. & 171. *Edit. Francofurt*, & *Florence* of *Worcester* & *Henry*

Henry of *Huntingdon* where they speake of King *Athelstan*, and authority enough wil appeare against what *Buqhanan* writes in *lib.6. & 8. Rerum Scoticarum*, touching the englisſh Empire. For autorities in law of the ſame thing, ſee 11. *Edw.3. tit.* **Breife** 473. 39. *Edw.3. fol.35. & 36.42. Edw.3. fol.2.b.* 13. *Hen.4. Brook tit.* **Appeale** 153. 6. *Rich.2. tit.* **protection** 46. 8. *Rich.2. tit.* **Continuall claime** 13. 13. *Elizab. Dyer fol.*304. *a Rot. Parlamēt.*21. *Ed.*1 in Arce London fol.51. *& ſeqq.* beſide diuers originals of matters of that nation yet remaining in the Treaſuries of *Records*. Neither is that of *Godfrey* of *Malmesburie* vnneceſſarie to be here rememberd. He relates that whē *William* 11 was offended with *Malcolm* 111. of *Scotland*, that he would not *ſecundum iudicium Baronum ſuorum in curia ſua rectitudinem Regibus Anglorū facere*, the Scottiſh King *id agere niſi in regnorum ſuorum confinijs vbi reges Scotorum erant ſoliti rectitudinem facere regibus Anglorum, & ſecundum iudicium primatum vtriuſque regni nullo modo voluit, & ſic impacati ad inuicem diſceſſerunt.* He places this in 7. *Willielmi* 2. When this *Godfrey* liued I know not, his Annales begin with the Saxons, and end in 29. *Hen.*1.

He

He hath much of Northern matters; & the same that is in *Roger* of *Houedē*. oftē & this very passage also is in *Houeden, pag.*265.

Ad CAP XVII.

5 A *Liqui Regum*] But questionlesse the *Saxōs* made a mixture of the *British* customes with their own; the *Danes* with old *British*, the *Saxon* and their own; and the *Normans* the like. The old laws of the *Saxōs* mencion the *Danisſo* law (Danelage) the *Mercian* law (Mercenlage) and the *Westsaxon* law (Westsaxonlage) of which also some Counties were gouerned by one, some by another. All these being considered by *William* 1. comparing them with the laws of *Norway* (which he most of all affected, mainly, as I thinke, because by them a Bastard of a Concubine, as himselfe was, had equall enheritance with the most legitimat sonne. You may see for it *Roger de Houeden fol.*347.& 425.) heè *quasdam reprobauit* (as the words of *Geruase* of *Tilburie* in his Dialogue *de Scaccario* are) *quasdam autem approbans illis transmarinas* Neustriæ *leges quæ ad regni pacem tuēdam efficacissimè videbātur adiecit*, but so indeed, that

ſuch laws as he in writing allowd, are, by a denomination from the greater part called *bonæ & adprobatæ antiquæ regni leges* by *Matth. Paris* in his Mſ. life of *Fretherique* Abbot of *S. Albons*, and *leges Edwardi Regis quæ prius inuentæ ſunt & conſtitutę in tempore Adgari auiſui* by *Roger* of *Houeden*, and *leges ęquiſſimi Regis Edwardi* by *Ingulphus* Abbot of *Crowland*, who liued vnder the Conqueror, and brought a copie of them from *London* to his Abbey, as he remembers in his printed ſtorie. And in a Mſ. copie, communicated to mee, mongſt diuers other, by that liuing Treaſure of Antiquitie and moſt exquiſit monuments, my noble and much deſeruing friend *Sir Robert Cotton*, and continued by *Peter* of *Blois*, after that which is in the print, ſucceed thoſe laws of *William* 1. there ſpoken of with this title in broken french, Ces ſont leis ę les Cuſtumes qui li Reys William grãtaſt a tut le puple de Engleterre apres la conqueſt de la terre ice les meiſmes que le Reys Edward ſun Coſin tint deuant lui. Ceo eſt a ſauoir, pais a ſaint Eggliſe ęc. the contexr of them throughout being much corrupted. They were you ſee called S. *Edwards* laws, and to

this day, are. But cleerly, diuers Norman customes were in practice first mixt with them, and to these times continue. as succeeding ages, so new nations (comming in by a Conquest, although mixt with a title, as of the *Norman* Conqueror, is to be affirmed) bring alwaies some alteration. by this wel cõsiderd, That of the laws of this realm being neuer changed will be better vnderstood.

6. *Et maximè Romani*] Vnderstand not this neither otherwise, but that the *Romans* had their laws in such parts of this land, as they had their most ciuill gouernment in. I meane in Colonies hither deduced. For euery Colonie was but as an image of the mother Citie, with like holie rites, like Courts, Laws, Temples, places of publique commerce, and for the most part with *Duumviri* in steed of Consuls, & *Ædiles* and *Decuriones* in lieu of a Senat: and it is cleer that diuers Colonies from *Rome* were in *Britain*, as at *Camalodunum* (now *Maldon* in *Essex*) that was deduced to be *subsidium aduersus rebelles* (as *Tacitus* sayes) *& imbuẽdis socijs ad officia legũ.* And an old inscription remembers one *Aurelius Bassus* to be *Censitor ciuium Romanorum Coloniæ victricensis*

censis quæ est in Britannia Camalodunum. At *Yorke* was also a Colonie. an old piece of money of *Seuerus*, thus,

COL. EBORACVM. LEG. VI. VICTRIX.

Another inscription is iustifying the same in *Camden, pag.* 572. although *Aurelius Victor* calls it *Municipium* in his life of *Seuerus*. Likewise one was at *Chester*, anciently called *Deuana*, *Deua*, or *Deuuana*, (as wee see in *Ptolomy* and *Antoninus*) from the Riuer *Dee*. witnesse an old coine of *Septimius Geta* thus inscribd.

COL. DIVANA LEG. XX. VICTRIX.

And a fragment of a stone in *Bathes* walls hath

DEC. COLONIÆ GLEV. VIXIT ANN. LXXXVI.

Glev, is *Glocester*, as the most learned *Clarentius Camden* teaches. Some thinke *Colchester* had a Colonie too. But here are enough to shew, that the laws of *Rome* were vsd in *Britain*, as in other places where the Romans conquered. *Seneca ad Albinam*

cap.7. Hic denique populus Colonias in omnes prouincias misit vbicunque vicit Romanus habitat: and *Gildas of* this land, *non Britannia sed Romania censebatur.* So one anciently speaking to *Mars, Romulus,* and *Claudius,* (vnder whō the first Colonies were deduced hither) *in Catalect. vet. Poet. lib. 1. tit. 7.*

Cernitis ignotos Latia sub lege Britannos.

After *Claudius,* the Britons began to learne the arts, to exceed the Gaules in wit and learning, and they that at first did *Linguam Romanam abnuere* (as *Tacitus* speaks in the life of *Agricola*) did at length *eloquētiam concupiscere. Inde etiam* (sayes hee) *habitus nostri honor & frequens toga; paullatimque discessum ad delinimenta vitiorum porticus & Balnea & conuiuiorum elegantiam; idque apud imperitos humanitas vocabatur, cum pars seruitutis esset:* and this is spoken of naturall Britons, not Colonies. They affected, we see, Roman language, Rhetorique, Roman habit, Roman pleasures, diet, and the like. Neither needed *Tacitus* to haue mentioned their affecting the laws of Rome, when they were subiect to them as a conquerd people. And no doubt is, but they that imitated their Conquerours, and neighbour Colonies in the rest, were not back-

backward in affecting those laws, for which the languages and rhetorique were most vsefull. *Iuvenal* speaking of *Gaule* which hee calls in *Satyr.7.* —*nutricula Causidicorum*, saies in *Satyr.15.*

Gallia Causidicos docuit facunda Britannos,
De conducendo loquitur iam rhetore Thule.

The easier might the vse and studie of the laws of *Rome* be receiued here, after this *Claudius* his conquest, in regard that those which before & in ancient time had the determining of controuersies, and the learning of that kind in their hands, were by him forbidden to vse any longer their religion, for which they were most of all reuerenced and regarded. I meane the *Druides*. and when their holy rites were prohibited by the Emperor, it's likely enough that the nations gouerned by them in point of law (as the *Gaules* and *Britons* were) grew regardlesse, at lest remain'd nothing so respectfull of them as before, and so became prone to receiue the laws of *Rome* which had both conquer'd them, and also taken away the reuerence before giuen to the *Druides*. That the

Druides before *Claudius* were the lawiers and determin'd controuersies *I. Cesar* is witnesse *lib.* 5. and 6. *de bello Gallico*, compar'd with the Catholique opinion in antiquity of an identity (at least in their office, actions and learning) in *Gaule* and *Britain.* That *Claudius* tooke away their religion, *Sueton* is autor in his life *cap.* 25. *Druidarum religionem apud Gallos dire immanitatis, & tantùm ciuibus sub Augusto interdictam, penitus aboleuit.* With him agrees *Seneca* in his *Apocolocyntosis.* It may well enough be imagin'd, that the taking it away in *Gaule* extended to *Britain* which was both the nursery of it, and mother too, as *Iulius Cesar* writes. If only to Gaule; yet it's probable enough that the Druides in Britain could not but suffer by it, at least in reputation. For that of *Pliny nat.hist.lib.*30.*cap.*1. *Tiberij Cesaris principatus sustulit Druidas Gallorum*; it's to bee refer'd only to Rome as *Lipsius* well takes it in *Comment. ad Tacit. Annal.* 12. *num.*98. and in such sense as *Sueton* speakes of *Augustus* his forbidding thē *tantùm ciuibus.* And indeed although after *Claudius*, mention bee in *Tacitus*, *Lampridius*, and *Vopiscus* of them, yet shall you not

find

find any ſigne of their legall power extant either in thoſe, or in *Ammianus Marcellinus* that ſpecially remembers them, but only attributs a ſtudie of the myſteries of nature and a Pythagoricall learning to them, vnder *Conſtantius* and *Iulian*, as you ſee in his 15. booke. For the matter of Colonies before ſpoken of; he that deſires accurat inſtruction of their nature and particular rights, may ſee, beſides what ſuch as writing of the *Roman* State vniuerſally haue of it, *Lipſ. de Magnitud. Romana lib.* 1. *cap.* 6. and *Marc. Velſer lib.* 2. *Antiquit. Auguſtæ Vindelicorum.*

7 *Leges Ciuiles in quantum Romanorum inveteratæ ſunt.*] The antiquity which he means of our Laws before the Ciuill of Rome, is only vpon theſe conditions. Firſt that the ſtory of *Brute* bee to be credited, and then that the ſame kind of law and policy hath euer ſince continu'd in *Britain*. That Storie ſuppoſes him here CCC. yeers and more before *Rome* built. But (with no diſparagement to our common laws) we haue no teſtimony touching the inhabitants of the Iſle before *Iulius Cæſar*, nor any of the name of it till *Polybius*, in *Greeke*, nor till *Lucretius* in *Latine*.

Polybius lib. 3. speakes of the *British* Isles, and *Lucretius lib.* 6. hath *Celum Britannum.* Neither is the booke *de Mundo* attributed to *Aristotle* of like age with the falsely supposed autor. In that, *Albion* is spoken of, but *Polybius* was before that was spoken, if I deceiue not my selfe. All testimony of later time, made of that which long since must be, if at all it were, is much to bee suspected. And though the *Bards* knew diuers things by tradition, which they only sung, and so a specious argument is made vsually for that common storie, because they sung it, yet I see not why any, but one that is too prodigall of his faith, should beleeue it more then Poeticall story, which is all one (for the most part) with a fiction. For what were *Bards* but such as sung the praises of old suppos'd *Heroes* at their pleasure? As *Athenæus* and *Marcellinus*, of them. and, for later autority, you may see in *Leg. Howeli Dha cap.* 25. That the chiefest dignity mongst thē was the Pēkert of the country, whose place was of great eminencie before others in the welsh court, & his office (when the King was pleas'd to heare any songs) was *Duo Carmina scilicet vnū*

de Deo, alterum de regibus in interiore parte aulæ decantare. Nor he nor the reſt were bound to truth of Story, but free to vſe invention, which they did in making a founder of the *Britiſh* name out of a community of ſound. 'Twas as eaſie to fetch *Brute* out of *Brutaine*, as it's often called, as it hath beene to make *Francio* out of *Francia* or *Franci*, *Hiſpanus* or *Hiſpalus* out of *Hiſpania*, *Scota* out of *Scotia*, *Angela* for a queene out of *Anglia*, *Bato* out of *Bataua*, *Italus* out of *Italia*, and diuers ſuch, which are all neere fictions or impoſtures. Scarce indeed is there a nation in *Europe*, whoſe deduction from a like name of the firſt autor, is of ſufficient credit. All teſtimonies any thing neere the ſuppoſ'd time of thoſe firſt autors being loſt. This writer ſtands on *Brutes* arriuall, and ſpeakes of it *Cap.* XIII. Yet if that would make ſo much for this ſide of antiquity of our laws, much more is to be had from the ancienter & true origination of the *Britons*, which is frõ *Iaphet* and his Poſterity. See *Camden*. and in the *Greeke Scaligeran* Chronicle of *Euſebius*, the *Britiſh* Iſles, with all the weſt, are giuen by *Noah's* laſt will and teſtament to *Iaphet*,

But

But so is *Italy* too, and the rest of *Europe*. This way, might an equally strong argument be for the like antiquitie of both laws, of those of *Italy* and *Britain*. And it would be such a one as this autor vses from *Brute*. For questionlesse, if *Iaphet* and his posteritie possest these parts of *Europe* (as they did) their gouernment was not without laws. But in truth, and to speak without peruerse affectation, all laws in generall are originally equally ancient. All were grounded vpon nature, and no nation was, that out of it took not their grounds; and nature being the same in all, the beginning of all laws must be the same. As soone as *Italy* was peopled, this beginning of laws was there, and vpon it was grounded the *Roman* laws, which could not haue that distinct name indeed till *Rome* was built, yet remaind alwaies that they were at first, sauing that additions and interpretations, in succeeding ages increased, and somewhat alterd them, by making a *Determinatio iuris naturalis*, which is nothing but the *Ciuill law* of any Nation. For although the law of nature be truly said Immutable, yet its as true that its limitable, and limited law

of nature is the law now vſd in euerie State. All the ſame may bee affirmd of our *Britiſh* laws, or *Engliſh*, or other whatſoeuer. But the diuers opinions of interpreters proceeding from the weakneſſe of mans reaſon, and the ſeueral conueniencies of diuers States, haue made thoſe limitations, which the law of Nature hath ſufferd, verie different. And hence is it that thoſe cuſtoms which haue come all out of one fountain, *Nature*, thus varie from and croſſe one another in ſeuerall Common welths. Had the *Britons* receiud the x. or xii. *Tables* from *Greece* (which in *Rome* was, as *Liuy* ſaies, *in immenſo aliarum ſuper alias aceruatarum legum cumulo, fons omnis publici priuatique iuris*) cleerly the interpretations, and additions which by this time would haue been put to them here, muſt not be thought on as if they would haue fell out like the body of the *Roman* Ciuill law. Diuers nations, as diuers men, haue their diuers collections, and inferences; and ſo make their diuers laws to grow to what they are, out of one and the ſame root. Infinit laws we haue now that were not thought on D. yeers ſince. Then were many that D. yeers before had

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no being, and lesse time forward alwaies produced diuers new; the beginning of all here being in the first peopling of the land, when men by nature being ciuill creatures grew to plant a common societie. This rationally considerd, might end that obuious question of those, which would say something against the laws of England if they could. 'Tis their triuiall demand, *When and how began your common laws?* Questionlesse its fittest answerd by affirming, when and in like kind as the laws of all other States, that is, *When there was first a State in that land, which the common law now gouerns:* then were naturall laws limited for the conueniencie of ciuill societie here, and those limitations haue been from thence, increased, altered, interpreted, and brought to what now they are; although perhaps (sauing the meerly immutable part of nature) now, in regard of their first being, they are not otherwise then the ship, that by often mending had no piece of the first materialls, or as the house that's so often repaired, *vt nihil ex pristina materia supersit*, which yet (by the Ciuill law) is to be accounted the same still, as we see in *π. tit. de legat. 1. l. 65.*

si ita §.2. Little then follows in point of honor or excellency specially to be attributed to the laws of a Nation in generall, by an argument thus drawn from difference of antiquitiē, which in substance is alike in all. Neither are laws thus to be compar'd. Those which best fit the state wherein they are, cleerly deserue the name of the best laws. And none are best or worst but *secundum quid*. But vpon this ground more to the purpose might haue been said for the *English* common laws, compard with the ciuill of *Rome*. For it appears that the Emperors from *Iustinian*, who died in D. LXV. of *Christ*, vntill *Lothar* the II. in the yeer CIↃ.C.XXV. so neglected the bodie of the Ciuill law (which now, against an expresse Constitution of *Iustinian*, commanding that it should not be read nor taught in any place sauing *Rome*, *Berytus*, and *Constantinople*, is profest in euerie Vniuersity) that all that time none euer profest it. But when *Lothar* took *Amalfi*, he there found an old copy of the *Pandects*, or *Digests*, which as a precious monument he gaue the *Pisans* (by reason whereof it was called *Litera Pisana*) from whom it hath bin since translated to *Florence*, where in

in the Dukes Palace it is neuer brought forth but with Torch-light, and other reuerence. Vnder that *Lothar*, began the Ciuill law to be profest at *Bologna*, and *Irner* or *Werner* (as some call him) first made Glosses on it about the beginning of *Frederique Barbarossa* in CIↃ. C. L. of Christ, and *Bologna* was by *Lothar* constituted to be *Legum & Iuris Schola vna & sola*. And this was the first time and place of profession of it in the Western Empire. You may see *Odofredum apud Sigonium de regno Italiæ lib.* 11. *&* 7. *& Paul. Merul. Cosmogr. part.* 2. *lib.* 4. *cap.* 23. Why were they so neglected neer DC. yeers in the Empire, if their excellēcy were so beyond others, as is vsually said by many, that, to the purpose, know nothing of either them or ours? This part of story of them I haue noted elsewhere in the Preface to the *Titles of Honor*. And cleerly you see the profession of them is not so ancient in the Western Empire, as the latest of time, to which som most ignorantly refer the beginning of the common law; I mean as the Norman *William*, who arriu'd in the yeer CIↃ. LXVI. I think not, that good discretion can out of any of this or the like add much honor to, or detract

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from either *Common* or *Ciuill* law; yet its fit to be rememberd in answer of such as ignorantly fetch a reason out of the antiquity of the profession of the one. As if the profession begun vnder *Lothar*, and since thus continued, were not meerly new, and not a recontinuance of what was in vse vnder *Iustinian*. But hereof too much.

Ad CAP. XXI.

8 *Testes.*] But some trialls by our law haue also Witnesses without a Iurie: as of the life and death of the Husband in *Dower*, and in *Cui in vita*. Examples thereof are in *Bracton lib.* 4. *tract.* 6. *cap.* 7. 2 *Ed.* 2. *tit.* Triall 46. 8. *Ed.* 2. *eod. tit.* 95. 9. *Ed.* 2. *tit.* Iudgement 231. 2. *Elizab. Dyer fol.* 185. *a.* and in 13. *Elizab. Dy. fol.* 301. *a.* in Error by an infant to reuerse a fine, both inspection and the testimonie of foure witnesses concurre to proue his infancie, & in 26. *Ed.* 3 *fol.* 70. *a pl.* 6. a death in *Bretagne*, is said, shall be tried by proofs. But all this is of issues, which properly haue no visne, whence a Iurie may be. The course of Declarations also at this day shew, that witnesses were respected in the begin-

beginning of euerie action. The conclusion is alwaies *Et inde producit sectam.* Which *secta* or *suit*, in law-language, is nothing but witnesses to proue his action, as in the Counts of *writs* of *Right* they were wont to declare, & *hoc paratus sum probare per hunc liberum hominem meum A. B. & si quid, &c.* Which was a tender of Battel, as the other is of suit or witnesses. See *Glanvil. lib. 2. cap. 3.* And those proofes of the death of the husband in dower are called *secta* by *Bracton fol.* 302. *a*, and in *Nou. Narrat.* **suit & barraign bon**, is only *secta & disrationatio bona* .i. good proof to maintain the count. In ancient time this suit, or witnesses were examind before any other issue, as in 18. *Hen.* 3. *Coram Rege apud Windsore rot.* 13. *in dors. in Turr. Lond.* In a *Recordare loquelam* that was in the Bishop of *Salisburies* court at *Sunnings*, the action being for a Mare, by *Walkelin de Stok* against *William de la Guilhalle*, the entrie is; *Et Willielmus producit* sectam *suam & ipsi quos produxit per se discordantes sunt in multis, & in tempore, & in alijs circumstantijs, quia quidam dicunt quod quædam equa mater ipsius pullani empta fuit &c. & quidam dicunt &c. Et Walkelinus producit se-*

ctam *qui concordati sunt in omnibus & per omnia & dicunt omnes quos ipsi producit per se &c.* The proofs of both sides are called *secta.* It was either this or some like case, that *Shard* entended in 17. *Ed.* 3. *fol.* 49. *b* in *Iohn Warreins* case, speaking of a Iustice that examind the suit. and it appears there that vnder *Ed.* 3. the tendering of suit or proofs was become only formall, as at this day, like the *plegij de prosequendo.* But in *Hill.* 44. *Hen.* 3. *Coram Rogero de Thurkelby & socijs suis Iustitiarijs de Banco Rot.* 16. *in dorso.* One *Gilbert Chyteine* brought a *Repleuin* against *William le Fouler*, and the defendant pledes *non cepit &c. Et hoc offert de fendere contra ipsum &* sectam *suam sicut Curia Considerauerit. Et quia prædictus Gilbertus nullam* sectam *producit versus prædictum Vvilielmum, consideratum est quod prædictus Willielmus eat inde sine die, & Gilbertus in misericordia.* See *ad cap.* 32. I omit, that in *Englesherie* anciently, in a *Natiuo habendo*, in prouing a *deed denied*, and such like, witnesses by the common law are required as the speciall triall.

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Ad CAP. XXIV.

9 WV*Apentagia.*] In *Ethelreds* laws, which the Abbot *Iohn Brampton* hath in a Ms. storie, *cap.* 4. *Habeantur placita in singulis* Wapentakis, *vt exeant seniores* XII. *thayni & præpositus cum eis & inrent super sanctuarium quod eis dabitur in manus quod neminem innocentem velint accusare vel noxium concelare.* And the Laws called the *Confessors, cap.* 33. say that *Yorkshire, Lincoln, Notingham, Leycester,* and *Northampton,* call that *Wapentachium quod Angli vocant Hundredum & non sine causa.* For he that was *præfectus VVapentachij,* or high Constable of the *VVapentach,* came amongst them at the *Hundred* or *wapentach* court, and with regardfull entertainment, they all *cum lanceis suis ipsius hastam tangebant, & ita se confirmabant per contactum armorum, pace palàm concessa. Anglice n.* (so say those laws) *arma vocantur* Waepun, *&* taccare *confirmare, quasi armorum confirmatio, vel vt magis expressè secundum linguam Anglicam dicamus,* Wapentac *armorum tactus est.* Waepun *n. arma sonat,* tac *tactus est.* Doubtlesse this de-

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duction of the name ſauors of the truth. For amongſt the old *Germans* (whence our *Anglo-Saxons* came) that vſd to meet armed in their courts, when any one had ſpoken, if he were diſlik'd, *fremitu aſpernabantur*, if lik'd, *frameas concutiebant* (as *Tacitus* witneſſes) which well includes this touching or ſtriking together of weapons. *Honoratiſsimum* (ſaies he) *aſſenſus Genus eſt, armis laudare.* The Wapentakes, Hundreds, and Counties were firſt inſtituted by K. *Alfred*, about the yeer DCCC. LXXX. Of him, *Ingulphus p.495.b, Totius Angliæ pagos & provincias in Comitatus primus omnium Commutauit. Comitatus in Centurias, id eſt,* Hundredas *& in* Decimas, *id eſt, Tithingas diuiſit.* See alſo *Malmesburienſ. de geſt. reg. lib. 2. cap.* 4.

10 *Villas.*] *Villa* & *Villata* de *Norwich*, de *wallingford* and the like are in old Rols, which alſo ſomtime call like places, & the ſame, *Burgi* or *Ciuitates*. And the citie of *Chicheſter* is *Villata de Ciceſtria* in *Itin. Suſſex.* 47. *Hen.* 3. *rot.* 25. *in dorſo.* And there *rot.* 44. *Burgus de* Horſham *venit per* XII. *Villa de* Brembre *venit per* XII. *Villa de* Shoreham *venit per* XII. yet *Bramber* and *Shoreham* are Boroughs as well as *Hore-*

Horesham. Parlamentarie Boroughs. But also *Rot.* 38. is *Burgus de* Seford *venit per* XII. which is no Parlamentarie Borough. The rest all which now send Burgesses to Parlament in *Sussex*, as *Lewes*, *Midhurst*, *Stening*, *Grenstede* and *Arundel*, are in that Eire called Boroughs.

11 *Hamletis.*] *Hameau* or *Hamel* is a member or part of some ville or town, as you may see in 14. *Assis. pl.* 9. & 3. & 4. *Ph. & Mar. Dyer fol.* 142. it came first from Ham or Heim in old Saxon, signifying a circuit or territorie, *Circulum vel septum quo Pagi sive Territorij cuiuspiam limites includuntur*, as the most noble *Hans Douze* notes out of the Records of *Holland* in *Annal. Holland. lib.* 2. & 7. *fol.* 388.

12 *Annale est.*] but before the statut of 14. *Ed.* 3. *cap.* 7. Shrifes continued vsually in their offices longer.

13 *Nec duobus.*] It should be *nec tribus* by *Stat.* 1. *Rich.* 2. *cap.* 11.

Ad CAP. XXV.

14 DE *Hundredo.*] For the number of the Hundredors at this day, see the statuts of 35. *Hen.* 8. *ca.* 6. & 27. *Eliz. c.* 6

Ad CAP. XXVI.

15 F*Alsum fecerunt sacramentum.*] The ancient punishment in *Attaint* was as its here describ'd, and the like in conspiracie for periurie. See *Glanvil. lib.2. cap.19.* 4.*Hen.5.tit.* Iudgment 220. 27. *Assis.pl.* 59.& 46. *Assis.pl.* 11. The iudgment is called *the villanous iudgment in* 24. *Ed.3.fol.*34.*b.* See *Bracton* also *lib.*4. *tract.* 5 *cap.*5.& *Flet. lib.* 5. *cap.* 21. & *Stamford fol.* 175. And the case in *Temp. Ed.* 1. *tit.* Attaint 70. is more large in my Ms. Report of 21.*Ed.* 1.*fol.* 58. it is brought against the Abbot of *Westminster*, as there its shewed, but the iudgment by *Weylond* is in these words, Pur ceo agarde cest court que ceux de l'enquest perdent franche ley de ceo tour en auant a tous iours e lour terres e leur chateus a la volonte le Roy, e lour cors a la prison, e John seit assous de cele rent e seit restore de ses damages. But see now Stat. 23.*Hen.*8.*cap.*3. another iudgment in *attaint.*

16 *Nec alicubi recipientur in testimonium veritatis.*] Our books expresse that, by

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que mise ne soit en testimoignance de veritye, 24. *Ed. 3. fol. 34. b.* 33. *Hen. 6. fol. 55. a.* It is titled the losse of frank law, franchley in 27. *Assis. pl. 59. & 46. assis. pl. 11.* that is, he which is thus convict of periurie, shal be no more Othesworth as *Bracton* calls it *lib. 4. tract. 4. cap. 5. & cap. 19. §. 2.* where his words are of such a one. *Legem amittit, & ideo dicitur quod non est vlterius dignus lege quod Anglicè dicitur,* He ne is othes worthe that is enes gylty of oth broken. Which agrees with K. *Knout* his law *cap.* 33. that one so convicted ne beo thanon forth athes wyrthe, the selfe same words almost, being in *leg. Edwardi senioris cap.* 3. & *leg. Athelstan cap.* 25. That which is *legem amittere* in this sense in *Bracton*, is *liberam legem amittere* (answering to the losse of frank law) in the entries of iudgment against them, and *legem terræ amittere* in *Glanvill*, and sometime in *Bract.* & *Fleta.* See also *Regiam Maiestatem lib.* 1. *cap.* 14. §. 5. Hence may bee truly vnderstood that of the grand Charter *cap.* 29. —— *nec super eum ibimus nec super eum mittemus, nisi per legale iudicium Parium suorum vel per legem terræ.* I would English it thus: *Neither will we enter on his possession nor commit him*

him (for in that place of the Charter of 17. of K. *Iohn* by which this was made, it is *nec eum in carcere mittemus*, perhaps it should be *carcerem*, as the language requires) *but legall iudgment of his Peers, or men of his condition* (that is by Iury) *or by triall of him by oth, or wager and doing his law.* *Lex terræ* here is only as it signifies in *amittere legem terræ*. And **Ley gager** and a Iury are the two trialls, as I suppose, there thought on. And indeed in old rolls nothing is more vsuall then in criminall actions (not capitall) and ciuill, of any kind to admit *Ley gager*, as in *Attachments* vpon *prohibitions*, *quare impedits* and the like, which is against all knowledge and practise of law in later ages. Euerie one knows that at this day *Vadiare legem* is to offer the oth vpon triall that way, and *facere legem* is to make the oth. all vvhich shew that *lex* and *lex terræ* signifie in this notion only the Oth of a man not disabl'd by law. And, in that statut, it is meerly the oth vpon *Ley gager*.

17 *Calumniare potest 35. homines.*] Peremptorie challenge is now reduced to xx. by *stat.* of 22. *Hen.* 8. *cap.* 14.

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Ad CAP. XXXII.

18 S*I quæ supra altum mare &c. coram Admirallo.*] As then, so now, the Admiraltie hath Iurisdiction of things don vpon the main sea. & what that court might or may do is shewed and limited by the statuts of 13. *Rich.* 2. *cap.* 5. & 15. *Rich.* 2. *cap.* 3. & 2. *Hen.* 5. *cap.* 6. The first case in our law extant touching marine iurisdiction is in *Temp. Ed.* 1. *tit.* Avowry 192. in a *Repleuin* brought of a ship vpon the coste of *Scarborough*, where no mention is of the Admiralls autority, as the print is in the Abridgment, but conisans of it is allowed to the common law. Yet in my Ms. Report of 25. *Ed.* 1. *fol.* 82. *b* the case is thus more at large, and expressely speaks of the Admirall. *William Crake* de *Holtham* fuit sommon a respondre a *Robert de Benfo* de play pur que il auoit pris vne sune neef pris de xl. l. en la mer iuste la costere de *Scardburn* & de yleke le amena a *Holtham* en le County de *Norff. Mutford.* del hors qu'il auute Conte de vne prise fete en la mer que est hors del conte issi que si pais se ioyn fust, il ne sauersint a quel viscont

mander pur fere bener pays e dõ iudgment si ceyns pussont de ceo conuster. *Ed'autre part*, il lysont assigne Admirall de par le Roy sur la mer a oyer & terminer les pleynts de chose fait in mer, e nentendons point que vous volys a eux tolyr iurisdiction &c. *Bery* Nous auons poer general per my tut Engleterre, mes del poer des Admirals dont vous parles ne sauons rien, ne rien de nostre poer a eux volomus assigner, si ceo ne seist per commandment le Roy de quey vous ne monstres rien &c. *Mutf.* sire le luy en ils dient la neef esse pris nest in nul visnee de que &c. *Haward.* il est issint visne que si vne home occist vn auter la il serra pris & a mesn al terre e pende aussi ben come pur fet fet sur la terre. *Metingham.* nous vous dions que nous avons aussi ben poer de conisans de fet fet en mer come sur terre, dont agard que vous respondes ousster. Vnlesse they ment there, that the visne might be out of the adioyning countie, as in old trialls of issues in Wales, I conceiu not their disallowance of the exception against the place, whence properly no visne could be. For such trialls of issues rising in Wales, or in Counties Pala-

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tin by the adioyning Counties, see especially 18.*Ed.*2.*tit*: Assise 382.24.*Ed.* 3.*fol.* 33.*b.* 30.*Hen.*6.*fol.*6.*b.* 35.*Hen.*6.*fol.*30.*a* 45.*Ed.*3.*tit.* Assise 50. I haue transcribd the case according to the very letters of my copy. It seems by this that in those times the common law had conisans of things done vpon the British sea, howeuer it afterward kept its limits *infra corpus Comitatus.*, leauing the Sea to the Admiralty. Some cases in old records iustifie it also. *In Placit.* 37. & 38. *Hen.* 3. *Rot.* 10. *Deuon:* One *Galfredus de Leysina* brings *trespas* against *Ralf de Valle torta*, and others, *quare asportauerunt bona quæ fuerunt in naui quæ fuit* Clementis *de* Bolan *quæ nuper periclitabatur in Costera de* Brikesham *quæ bona dominus Rex dedit predicto Galfredo tanquam wreccum maris &c.* The defendants plead, in effect, the general issue, & *sic ad patriam.* although, through want of forme in the declaration it appears not whether the goods were taken being in or out of the Sea, yet it seems they held that matter indifferent. So in *Itin. Sussex apud Cicestriam* 47.*Hen.*3.*Rot.* 10. A fragment of a torne roll left in the bundle, hath this signe of a declaration remaining. *Rogerus de Louere,*

& Radulphus de Leuere queruntur de Ricardo *de* Hatfeuld . . . . . *proxima ante festum sancti Martini hoc anno se credebant salno* . . . . . *ibidem fregerunt nauem suam super quendam locum* . . . . . *nauis & socij sui circiter quinque submerserunt*. These words are only left vpon the 9. roll, the rest being by some wicked hand, purposely, it seems, torne off. But its easily coniectur'd that this was an action on the case, brought by one that had committed himself or his goods to the defendants care for his passage, with his company, ouer sea, and that the offence was, that the defendant had by negligence made shipwrack on the sea, or some such like; and though the *Assumpsit* at land might make such an action at this day, maintainable at common law, according to the learning in *Dowdales* case *Rep. 6. fol. 47.* yet in those times so ancient, I cannot imagin the difference of a contract at land from one at sea was thought on. Likewise in *Trin. 50. Hen. 3. apud Westm. in Bancaxet.* 22. the entrie is, *Suff. Abbas Westmonasterij per atturnatum suum obtulit se quarto die versus* Petrum *filium* Iohannis, Richardum *fratrem eius*, Walterum Cheyney,

ney, Augustinum *filium Iocei*, Iohannem *fratrem eius*, Richardum Andred, Anthonium Clunch, & Richardum Silkento *de placito cum homines ipsius Abbatis nuper duci fecissent quandam nauem suam per Costeram maris prope* Dunwicū, *bonis & catallis ipsius Abbatis & hominum suorum cariatum, idem* Petrus *& alij simul cum Augustino filio Iohannis nauem prædictam cum bonis & catallis prædictis ab hominibus suis prædictis abstulerunt, & nauem & bona & catalla sic Ablata detinent ad damnum ipsius Abbatis & hominum suorum sexaginta librarum & contra pacem &c.* Vnlesse here the ship were taken vpon the sea *super Costeram maris* I vnderstand it not. But touching their trialls in the Admiralty, in som hands is extant a Ms. **De l' Office del Admiralty**, translated into Latin by one *Thomas Rowghton*, calling it *De officio Admiralitatis* (the vse of two copies of it, with the roll of *Oleron*, written all about *Hen.* 6. was communicated to me by that learned and truly sufficient Sir *VValter Raleigh* knight) where enditements and trialls are supposd to be by a surie of xii. as at common law. But the book it self is rather a monument of antiquitie (yet not aboue about *Hen.* 6.)

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then of autority, and rather as a purpose of what was in some failing proiect, then euer in vse and iudgment held authenticall. Most of it is against both the now receiu'd and former practise. Yet these things hath it worth obseruation. that is, constitutions often mencioned touching the Admiralty of *Hen.* 1. *Richard.* 1. King *Iohn*, & *Edward* 1. which are elsewhere hardly found. In *rot. Pat.* 23. *Ed.* 1. *VVilliam Leyburn* is Admirall, and often mention is after that of the Admiralls of the North and South seas, the distinction being the *Thames* mouth, as *Trent* was wont to be for the generall Escheatorship, and is for the Iusticeship of the Forests. The first mention of the *Admirall* in our printed law, is in 8. *Ed.* 2. *Itin. Canc. tit.* Coroner 399. with that, see 40. *Ed.* 3. *fol.* 44. 40. *Assis. pl.* 25. *Stamford cap.* des Coroners, Sir *Henry Constables case in Rep.* 5. *fol.* 107. & *Hill.* 2. *Iacob. Philipps case in Com. Banco*, & 19. *Hen.* 6. *fol.* 7. *a.* and note that in 7. *Rich.* 2. *Statham tit.* Trespas 54. a iustification is in trespas in these words nous les prisonous en le haut mere ouesq; les Normans queux sont enemies le Roy, iudgment si action, and held good. If this issue offerd rising wholly

ly on the main sea, might not be tried at the common law, how could it be good? either a trauerse must haue been to the taking in the count, or else the replication must haue made the issue vpon two affirmatiues (which is against the course of our law) or els questionlesse they took it in those times triable, as it was pleded by a Iury of the visne, either adioining to the coast (which is fittest) or of the place where the action was laid. See also 46. *Edw.* 3. *Statham tit.* Trespas 38.

19 *Curia Constabularij.*] That court & the great Officer, chief Iustice of it, hath been long discontinued. Neither was any continuing *High Constable* of England since 12. *Hen.* 8. when *Edward* Duke of *Buckingham* was beheaded. He was the last High Constable, and by inheritance of tenure from the *Bohuns*, as you see in 6. *Hen.* 8. *Kel. fol.* 170. *& seq.* & 11. *Eliz. Dy.* 285. *b.* & *vide Rot. Fim.* 3. *Ed.* 1. *memb.* 14. The Court is that which was titled the *Court of Chiualrie*, wherein all matters of Armes, Treason committed beyond sea, Warre, and the like, which could not bee tried at the common law, were determinable *summarie & de plano sine strepitu & figura*

gura iudicij, as the words are in *Part.* 1. *patent.* 7. *Ed.* 4. *memb.* 9. where it appears the office had been giuen to *Iohn* Earl of *Worcester*, to hold plea of such things *quæ in Curia Constabularij ab antiquo videlicet tempore Domini Willielmi Conquestoris quondam Angliæ progenitoris nostri seu aliquo tempore citra tractari audiri examinari & decidi consueuerunt aut de iure debuerunt*, who surrendering his patent, in the same termes with particulars of the office, it is granted to *Richard Wideuill* Earle of *Riuers*, the Kings father in law, for life, and after his death to *Anthony Wideuill*. By the 1. *statut of* 13. *Rich.* 2. *cap.* 2. *&* 1. *Hen.* 4. *cap.* 14. the office and iurisdiction of the court is best describ'd. you may see 37. *Hen.* 6. *fol.* 3. *&* 20. 30. *Hen.* 6. *fol.* 5. 6. *Hen.* 8. *fol.* 171. *b Brook tit.* Prerogatiue 31. Some Records are extant of the whole formall proceeding by the law of armes in this Court, as specially that of 17. *Rich.* 2. in the Tower concerning the Castell of *Brest*, between *Hanley* and *Roches*. Their trialls were by Battell or Witnesses. Speciall commissioners haue now good part of this iurisdiction. In 2. *part. rot. Patent.* 23. *Hen.* 6. *memb.* 20. *Thomas Kent* Doctor of Law

is made *sub constabularius Angliæ* for life.

20 *Legem mercatoriam.*] that is such as the law of the staple in *stat.* 2. 27. *Ed.* 3 *cap.* 2. Mencion is of it in *Regist. Orig. in Computo fol.* 135. *a* & *Fitzh. Nat. Br. fol.* 117. D. Indeed the nature of this law is well expreſt by *Bartol.* in *π. tit. Mandati vel contra l.* 29. §. *quædam* 4. ſpeaking of the Merchants court (which name may well be giuen to the court of **Pee poudrous.**) *Nota*, ſaith he, *quod in Curia Mercatorum debet iudicari de bono & æquo, omissis iuris solennitatibus. Hoc non dico quod debeat intelligi non habito respectu ad iura ciuilia quod esset contra* l. bona fides tit. Depositi, *sed debet intelligi non inspectis solennitatibus iuris, hoc est non inspectis apicibus qui veritatem negotij non tangunt, vt si esset intentata actio directa cum competebat vtilis, vel non erat contestata lis & similia.* For in common societie of Marchants, and mutuall contracts, equity and good conſcience rather then ſtrict law is required. *Tryphonius π. tit. Depositi vel contra l.* 31. *Bona fides quæ in contractibus exigitur, æquitatem summam desiderat.* A ſpeciall caſe of this law Marchant is in *Itin. Derb.* 2. *Edw.* 2. *Ms.* where *Iohn Combton* brings debt *secundam legem mercatori-*

catoriam vpon a tally, against another marchant, and tenders suit by two witnesses: the defendant wages his law, but the iudgment is thus by *Ornesby* pronounced. John de Combton Marchand port vn brief tiens vers vn *Rauf* Marchand & demande vj. marks par vn Justicies forme selon la ley Marchand (it had been commenc'd by *Iusticies*, and came out of the common place into the Eire) & ad mis auãt vn taille la quelle il tender a prouer per tj s. per *Richard* & par *Geffrey* que esteyent al blee mesurer (the debt was due for corne) & al liuerer, mes vous per vostre ley vous voudres couerer la quele cest cort en ceo cas ne voet my resceiuer & refuses la prue que il vous tend selon ley Marchand & selon la nature de sun breife, per que agard cest court q̃ John rescouere sa debt vers vous come vers non defendu & ses dammages de cent sous. See for this matter of suit *Ad cap.* 21.

Ad CAP. XXXIII.

21 S*Atagentes proinde leges Ciuiles ad Angliæ Regimen producere.*] I confesse I here vnderstand him not. What Kings

Kings of England euer desired the Ciuill laws of *Rome*? I haue read of a protestation against them in Parlament by the King and Lords, which you may see in *Rot. processf. & iud.* of the appeale of *Thomas* Duke of *Glocester*, and others, against *Alexander* Archbishop of *York*, *Robert de Veer* Duke of *Ireland*, *Michael de la Pole E.* of *Suffolk*, and *Robert Tresilian* cheif Iustice, *in Parlamento Westm.* 3. *Febr. anno* 11. *Rich.* 2. where vpon default of the appellees, the appellants desire that the court would proceed to iudgment, sur quoy les dits Roy nostre seignior & seigniors du Parlament prisstront deliberation tanqz lendemain le mercedy prochein ensuant, a quel temps les *Iustices & Sergeants & autres sages du ley de roialm* & aurint les *sages de la ley Ciuill* seuront charges de par le Roy nostre dit sir, de doner loiall Counseill as sirs du Parlement de duement proceder en la cause de l' appel susdit, les queur *Iustices Sergeants* & *sages de la ley du roialm* & aurint les dits *sages de la ley Ciuill* prisstront ent deliberation, & responderont, as dits sirs du Parlement q̃ ils auoient veue & bien entendus le tenor du dit appell, & disoient que mesme l'appele ne fust

pas fait ne afferme solonq̃ l'ordre que l'une ley ou lautre requireit. sur quoy les dits sirs du Parlemt prirent ent deliberation e auisement, e p assent du Roy nostre dit sir e de lour common accord e estoit declare que en ci haut crime come est pretendue en cest appelle que touch le person du roy nre dit sir e lestate de tout son roialme, ppetre per persons que sont peers du roialme ouesq̃ autres, la cause ne serra alors deduc q̃ en parlement, ne p autre ley q̃ ley e cours du parlement e q'il apptient as sirs du parlemt e a lour franchise e libertie d'ancien custume du plement destre iuges en tieur cas, e de tieur cas aiugger p assent du roi e q̃ ensi serra fait en cest cas p agard du parlemt, pur ce q̃ *le roialme d'Engleterre n'estoit denant ces heures ne a l'ement du roy nostre dit seignior & seigniors du parlement vnques ne serra rule ne gouerne per la ley Ciuill*, e auxint leur entent nest pas de reuler ou gouerner cy hauke cause come cest appell est, q̃ ne serra alors trie ne termine q̃ en parlemt come dit est, p cours processe e ordre vse en aucun court ou place plus bas deins mesme le roialm, queux courts e places ne sont q̃ executors d'auncienes

leys

leys & cuffumes du reialme & ordinances & eſtablifhements du parlemts. & fenſt auiſe au meſmes les ſnrs du parlement y aſſent du roy noſtre dit ſnr, q̃ ceſt appel fuit fait & afferme bien & aſſets duement & le preſſe d'ycelle bone & ferme ſolon les leys & cours du parlement, & pur tiel l'agarderoit & ainggeroit. I remember alſo King *Stephen* his publique edict againſt the laws of *Italy*, but remember not any ſtorie or autority teaching that any of our Kings would haue had them here vſd. That of *Stephen* is related by that noble and moſt learned Frier *Roger Bacon* in his *Compendium Theologiæ*, or his *Opus minus* (both thoſe names are of one Ms. book) where ſpeaking of the Ciuill laws of *Italy*, and that they are abuſd, and too much affected by Clergie men, leauing their profeſſion to ſtudy thoſe laws, he thus adds; *Preterea omne regnum habet ſua iura quibus laici reguntur; vt iura Angliæ & Franciæ; & ita ſit iuſtitia in alijs regnis per conſtitutiones quas habent ſicut in Italia per ſuas. Quapropter cum iura Angliæ non competant ſtatui clericorum, nec Francia, nec Hiſpania, nec Almannia, ſimiliter nec iura Italiæ vllo modo. Quod ſi debeant clerici vti legib' patria, tunc*

est minus inconueniens vt Clerici Angliæ vtantur legibus Angliæ & Clerici Franciæ vtantur legibus Franciæ, quapropter maxima confusio Clericorũ est quod huiusmodi constitutionibus laicalibus subduntur colla. Rex quidam Angliæ Stephanus *allatis legibus Italiæ in Angliam publico edicto prohibuit, ne ab aliquo retinerentur. si igitur laicus princeps laici principis alterius leges respueret, multo magis omnis clericus deberet respuere leges laicorum. Addo etiam quod magis concordant iura Franciæ cum Angliæ & econverso propter vicinitatem regnorum & communicationem morũ gentium istarum quam Italiæ & illarum. Quare deberent magis clerici Angliæ subiycere se legibus Franciæ & e converso quam legibus Lombardiæ.* This was a kind of invectiue against the receiuing of the Ciuill law mongst the Clergie in any other nation, sauing that wherin it was first bred. that is the *Italian*. Our stories haue no mention of this edict of *Stephen*. But it is in an autor of better autoritie (in regard of his time) then Frier *Bacon*. I mean *Iohn* of *Salisbury* liuing vnder *Hen*.2. He in his *De Nugis Curialium lib*.8. *cap*.22. speaking of such as too prophanely medled with what the Clergie had to do,

goes

goes on with *alios vidi qui legis libros deputant igni nec scindere verentur, si in manus eorum pervenirent iura vel Canones. Tempore Regis* Stephani *a regno iussa sunt leges Romanae quas in Britanniam domus venerabilis patris Theobaldi Britanniarum primatis asciuerat. Ne quis etiam libros retineret edicto regio prohibitũ est, & vicario nostro indictum silentium. Sed, deo faciente, eò magis virtus legis invaluit, quò eam amplius nitebatur impietas infirmare.* Wheras Frier *Bacon* takes it cleer that he prohibited the Ciuill laws, this *Iohn* of *Salisbury* (a man of great place and autoritie both with the King & Pope) seems to affirme it only of the Canon law. For he remembers it as an offence to the Church. Indeed in Archb. *Theobalds* time both the Canons and Ciuill law began to be publisht, & its like enough that he might bring in *Iuo's* or *Gratian's* Decree. *Iuo's* was written in time of *Hen.*1. and *Gratians* vnder K. *Stephen.* That *Theobald* was before Abbot of *Bec* in *Normandie*, and went to *Rome* for his Pall, and so, it seems, brought those laws home with him in 3. *Stephani Regis.* Its maruaile that our stories are so silent of this of K. *Stephen.* But see the Monks *sub anno* 1139. and specially

Guil. Malmesb. hist. Nouell. 2. fol. 103. *b.* touching the councell of *Winchester*, where the ground of his Prohibition perhaps shews it self.

Ad CAP. XXXIV.

22 *Quod Principi placuit.*] That is *Vlpians* in *π. tit. de Constit. Princip. l.* 1 *Quod Principi placuit legis habet vigorem, vtpote cum lege Regia, quæ de imperio eius lata est, populus ei et in eum omne suum imperium et potestatem conferat.* The same is in *Instit. tit. de Iure nat.* §. *sed & quod.* and thence haue the Greek Lawiers their ὅπερ ἀρέσῃ τοῦ βασιλέως νόμος ἐστί, as *Harmenopulus* a Iudge of *Thessalonica* expresses it *Procheir. lib. α. tit. α.* and the Emperor is in *Near. Diatax.* 105. *cap.* 2. titled νόμος ἔμψυχος, a *liuing law.* The two Codes of *Theodosius* and *Iustinian*, the *Gregorian* and *Hermogenian* Codes, the *Nearæ Diataxeis* or *Authentiques*, and the rest of the *Nouellæ* are nothing but Constitutions by the Emperors, to whom the State of Rome permitted all by the *lex Regia* that was before in the people of Rome.

Ad

Ad CAP. XXXIX

23 P*Rolem ante matrimonium.*] This point of Ciuill law, is text in *C. tit. de Naturalibus lib. l* 10. *cum quis. Quomodo* (saies *Iustinian*) *non est iniquissimum ipsam stirpem secundæ posteritatis priorem quasi iniustam excludere, cum gratias agere fratribus suis posteriores debeant, quorum beneficio ipsi sunt iusti filij, & nomen & ordinem consecuti.* For the birth of the first is often cause of the mariage following. But it is limited by some Doctors, that the woman be before *in concubinatu, in familia retenta*, that there be *indubitatus affectus sicut in vxore &c.* as you may see in *Bartol. ad finem* 1. *de Concubinis. Mynsinger. ad Instit. de Nuptijs* §. *Aliquando. Gothofred. ad Nouell.* 89. *cap.* 15. The Canon law agrees with the Ciuill in this matter, as is shown in an Epistle of Pope *Alexander* 3. to the Bishop of *Excester* in *Ext. tit. Qui filij sint legit. c.* 6. *Tanta est vis.*

Ad CAP. XL.

24 S*I bonus est bastardus.*] yet see *Tiraquell. de Nobilitate cap.* 15. *& Pontus*

tus Heuterus his collection touching Bastards at the end of his *De veteri Belgio*, & you shall find, that most of the braue spirits and able, of the former times, are in the catalogue of famous Bastards. Remember *Euripides* in his *Andromache*

* Νόθοι τε, saies he, πόλλοι γνησίων ἀμείνονες.

* *Many Bastards are better then legitimats.*

Ad CAP. XLII.

25 P*Artus semper sequitur ventrem.*] That is in respect of being free or bond. *In liberali causa, matris non patris inspicitur conditio C.tit.de lib. causa l.28. aui & l.42.placuit & de rei vendic l.7.Partum.* where the DD. dispute this point. But in matter of honor, or, as it were, hereditarie office their law is otherwise, as you may see in *C.tit.de Decurionibus l.22.eos. l.36.Exemplo.l.44.nulli°.& tit.de Murilegulis l.15. qui aut.* But the true reason was vpon this; that where mariage or *iura connubij* could not be, there alwaies *partus sequebatur ventrem*, in regard no legall father was of such a birth. and the *iura connubij* extended, before Christianity receiu'd, only to free men. *Vlpian* in his *Tituli, tit.de his. qui*

in potestate sunt hath these words, which are more worth then all the barbarous Doctors comments. *Connubio interveniente, liberi semper patrem sequuntur; non interveniente connubio, matris conditioni accedunt, excepto eo qui ex peregrino & ciue Romana, peregrinus nascitur: quoniam lex Mensia* (from whom that law is so called I remember not) *ex alterutro peregrino natum deterioris parentis conditionem sequi iubet. Ex ciue Romano & Latina, Latinus nascitur, & ex libero & ancilla, seruus, quoniam quum his casibus connubia non sunt, partus sequitur matrem.* For his speech of a *Roman's* marying with an *Italian* woman (not a *Roman*,) beleeue it not without examination of such storie as you may find collected in *Carol. Sigon. de antiq. iure Ciu. Rom. lib. 1. cap. 9.* and others dealing with that subiect. But cleerly its true generally, that where *iura connubij* were not, there the Roman law makes the issue follow the mother, as the law of nature requires, which the same *Vlpian* saith also *in 1. tit. de statu hominum l. 24. lex.* in which title *l. 19. Celsus* agrees with what wee haue transcribd from *Vlpian*. And the mariages with bond persons, were alwaies accounted but *contubernia*, and not

connubia, & they were ſtiled *contubernales*, not *coniuges*, as appears in *π. tit. de legatis* 3. *l.* 41. *vxorem* §. 2. *Codicillis*, & *C. tit. de inceſt. nuptijs l.* 3. *cum ancillis.*

25 *Mulieres honore maritorum.*] The text is not voucht out of the true place. it is in *C. tit. de incolis l. fin.* and alſo in *C. tit. de Dignit. l.* 13.

Ad CAP. XLIV.

27. *PRoximis de eorum ſanguine.*] The Ciuill law firſt gaue the wardſhip (of males till XIV. of females till XII.) to the *adgnati*, or thoſe *qui per maſculos coniunguntur*, and this was by the laws of the XII. tables, as appeareth *π. tit. de legitimis Tutoribus l* 1. *Inſtit. de legit. tutela.* But the difference twixt *adgnati* and *cognati* both in inheritance, as alſo in wardſhips, *Iuſtinian* took away in *Authent.* 118. *cap.* 5. and this is that which is here ſpoken of, and ſo is that law at this day.

28 *Ex parte matris.*] This matter of ſocage wardſhip is grounded vpon that ancient ground, held to this day regularly. *Nunquam cuſtodia alienius de iure alicui remanet de quo habeatur ſuſpicio quod poſsit*

vel velit aliquod ius in ipsa hereditate clamare. Glanvil hath it *lib.7.c.11.* & *Bracton lib. 2.c. 37.§. 6.* which is the same in substance in *Litleton* §.123. and *Breton cap.66.*

29 *In actibus bellicis.*] For, the ground and cause of Knight seruice wardships, was in this, that the Lords of whom the infants held, might bring them vp till full age, and instruct them in militarie performances, that so they might be better able to do their seruices by which they held; which because they could not doe in their infancie, the profits of the land was, as at this day, taken by the Lords to supply the defect of seruice. Neither is this custome of Wardship so new, as *Randolf Higden* in his *Polychronicon*, or rather some others not vnderstanding him, ignorantly make it, by supposing the beginning of it here vnder *Hen.* 3. Cleerly Wardships were before and from the *Normans*, at lest. See the *Grand Custumier*, and *Glanvil lib. 7. cap. 9.* Neither, if *Higden* himselfe had vnderstood those words in his Chronicle, which he took out of a former, written by an other Monk of *Chester*, which I haue seen, had any autority there been for *Henry* the thirds beginning them. His words are these, *sub*

anno 1224.& 6.*Hen.*3.*Magnates Angliæ concesserunt Regi Henrico Wardas hæredum & terrarum suarum quod fuit initium multorum malorum in Anglia.* An old Chronicle in that inestimable Library of Sir *Robert Cotton*, written by another of *Hidgens* covent, vnder the same yeer; *Magnates Angliæ reddiderunt Wardas suas Regi quod fuit initium malorum.* This Monk knew what he said, and vsd the word *Wardas* cheifly for Forts, Castells, Honors, and the like. by which the possessors preserued their safety in those troublesome times. For at *Northampton* all such were renderd to the king by the Nobility, vpon the exaction of *Hubert de Burgo* cheif Iustice, as both *Matthew Paris*, and *Florilegus* expresse in these words, *reddiderunt singuli castella, municipia, honores & custodias Regi qua ad coronam suam spectare videbantur.* Perhaps *custodiæ* might here comprehend the wardship too of some heires: But if so, yet they were such as some great men posset by reason of ancient tenures, and the King would then haue with the Castells, and Fortresses by others held, that he might enioy them with their enheritances, as part of securitie against the Barons. No such intent is in any

of

of the elder Monks, as some would extract out of *Polychronicon*. Neither was that giuing of Wardships to the King, other then as if the Nobilitie should now giue all their Wards to the King; supposing that the storie were cheifly of giuing Wardships of body and land in the common sense of *Wardæ*, as *Higden* misreports it. But for the true vnderstanding of that in storie, take *Rot.Fin.6.Hen.3.memb.4.* where a recitall is *provisum est de consilio Archiepiscopi Cant.& Episcoporum Angliæ & H. de Burgo Iustitiarij nostri & Comitum & Baronum nostrorum quod à die sci Barnabæ Apostoli proximo præterito caperentur in manum nostram omnia dominica nostra &c.* & hereupon writs go into all Shires, to seise into the Kings hands all such lands, castles, forts, mannors &c. But for the antiquitie of Wardships in *Britain*, both *England* and *Scotland*, See also *Hect.Boet.l.* 11. *Buchanan Rer.Scot.l.6.&* 10. *& leges Malcolmi* 2

Ad CAP. XLVI.

30 D*Vodecim denariorum valorem excedat.*] So is it vnderstood in the statut of *West.1. cap.* 15. that speaks of endite-

diremenes of petit larceny que n' amount ouster le value de xij. deniers. And therewith agrees *Itin. Canc.* 8. *Ed.* 2. *tit.* Coronne 404.406.& 415. But by *Breton cap.* 15. value of xi i.d. without more, makes it capitall felonie. So are also opinions in 18. *Assis. pl.* 14.22. *Assis. pl.* 39. See *Stamford lib.* 1. *cap.* 15.

Ad CAP. XLVII.

31 IN *vniuersitatibus.*] Indeed the study of the common law hath not place in our vniuersities of *Oxford* or *Cambridge*, because another vniuersitie (the Innes of Court) is appointed for it. Yet the statuts of the Vniuersitie of *Cambridge*, *Earum legum* (saies Doctor *Cowell* in his Epistle before his *Institutions*, as he calls it, of the laws of England) *quas habet patria nostra, imperitos nos esse prohibent, vt differentias exteri patriyque iuris sic cognoscamus.*

Ad CAP. XLVIII.

32 G*Allica.*] Touching this, *Ingulph* Abbot of *Crowland*, at the conquest, thus: *Ipsum etiam idioma* (Normanni)

ni) *tantùm abhorrebant, quod leges terræ, statutaque Anglicorum regum linguâ Gallicâ tractarentur: & pueris etiam in scholis principia literarum grammatica gallicè, ac non Anglicè traderentur, modus etiam scribendi Anglicus omitteretur & modus Gallicus in chartis & in libris omnib' admitteretur.* And *Robert Holkot* a learned Dominican Frier in *lect.* XI. *super Sapientiam. Narrãt historiæ quod cum Willielmus Dux Normannorum regnum Angliæ conquisiuisset deliberauit quomodo linguam Saxonicam posset destruere & Angliam & Normanniam in idiomate concordare, & ideo ordinauit quod nullus in Curia regis placitaret nisi in Gallico, et iterum quod puer quilibet ponendus ad literas addisceret Gallicã et per Gallicam Latinam, quæ duo vsque hodie obseruantur.* He saies the French continued till his time. For he died in the great plague 24. *Ed.* 3. But by statut of 36. *Edw.* 3. *cap.* 15. it was alterd, which is the Statut this autor speaks of.

Ad CAP. LI.

33 AD *Peruisum.*] This, *Chaucer* remembers in his Sergeant.

A Sergeant at law ware and wise,
That often had been at the Peruise.

It signifies an afternoons exercise or Moot, to the instruction of yong Students, bearing the same name originally (I ghesse) with the *Paruisiæ* in *Oxford*, as they call their sitting Generalls in the scholes in the after noon; which ingenuously I confesse, I first learned out of Mr *Wake* his *Musæ Regnantes pag.* 125. where he deuides the *Quodlibets* or *Disputationes Magnæ*, which are their exercises of Regent Masters in the forenoon, from *Paruæ*, that is, Scholers exercise in the after noon. *Has* (are his words) *quia ijs inferiores*, Paruas, *iam etiam corrupto nomine*, Paruisias *dicere consueuimus.*

Radulphi
de
HENGHAM

Edwardi Regis I.

Capitalis *olim* Iustitiarij

Summæ,

Magna Hengham, & Parua, *vulgò nuncupatæ. nunc primùm ex vett. Codd. Mss. in lucem prodeunt.*

LONDINI
Bibliopolarum corpori excuditur.

M. DC. XVI.

Ad Lectorem.

HAùt importunum est, vt de *Scriptore* isthoc iam nunc publici iuris facto, de *Opere* ipso, de *Sermone* deniq; Aristarchis satis inviso, & instar portenti (vt reliquus ferè, quo ius Anglicanum conscribitur) habito, paucula prælibentur. Ex iis erat RADVLPHVS de HENGHAM *Justitiarijs* qui, quòd lites suas fecissent postulati, & repetundarum damnati, non modò grauissimè anno XVI. Edwardi primi, cum in Angliam ex Aquitania remearet, multabantur, sed etiam ordinem amittebant. Priuatis, siue

Centumviralibus, iudicijs, hac tempestate, præerat iudex primarius (quem *Capitalem Iustitiariũ* de *Communi Banco* phrasi dicimus forensi) *Thomas* de *Weylond*, Publicis Radulphus; *Capitalis Angliæ Iustitiarius* vulgò nuncupatus. Vterque ordine summotus. Radulphus VII. CIↃ. libris luebat. verùm Thomas ille bonis omnibus exutus exulabat, quod veteri etiam iure Romanorum erat nonnunquam repetundarum pœna, vti ad legem Iuliam docet Iulius Paullus. Hic autem, postquã in principis redierat gratiam, summus iudiciorum priuatorum suffectus est præfectus. Et hunc & illum ita me-

memorat vetustus annalium scriptor,

Thomas de *Weylöd* en banc pꝛies nome
Per agard de court, le reign ad soꝛiure
Sir *Rause* de *Hengham* ad tant disputé
Que du Banc le Roy perdu ad le ses.

Plura de ijs, cæterisque, sub id tempus, *Iustitiarijs* pœnæ obnoxijs, habes apud rerum Anglicarum consarcinatores vernaculos. Ex eadem ortus esse videtur familia, ex qua *Willielmus* filius *Adæ* de *Hengham* & *Richardus* de *Hengham*; qui in pago Norfolciensi, plerunque Thetfordiæ, *Iustitiarij ad assisas capiendas & ad Gaolam deliberandam*, sub initijs Henrici tertij, in *Archiuis sæpius memorantur. Obijt anno salutis re-

* *Rot. Pat. 11. Hen. 3. Memb. 11.* & alibi *eodem Rot.* & *Claus. 11: Hen. 3. memb. 8.*

reparatæ cIↃ. CCC. IX, hoc est anno Edwardi secundi secundo; quod ex actis publicis transactionum, quas Fines appellamus, cognoscitur. Marmore eius sepulchrali, in D. Pauli ædibus, restant inscripti, literis fugientibus, versiculi hi miseri.

Per versus patet hos, Anglorũ qd iacet hic
Legum qui tuta dictauit verâ statuta, (flos;
Ex Henghã *dict°* Radulpi° *vir benedict°.*

Summas hasce, *Magnam* Hengham, & *Paruam* Henghan vocant. Vtraque in ius vocandi seu vadandi, excusationum, & exceptionum, in actionibus maximè *de Recto*, *de Dote*, & *de Assisa*, formulæ & verba solen-

nia

nia continentur. quæ tametsi æuo nostro vix sint in vsu, praxi nimirùm iuris aliò plerunque vergente, inde tamen colligas licet quanta fuerint apud priscos iuris Anglicani peritos autoritate, quòd in optimæ notæ Codd. vett. statt. mss. ambas velut agendi normulas olim à pragmaticis circumferebantur. Accedit etiam, quòd quisquis ille fuerit qui *Magnam Chartam* & quæ sequuntur Latinè & Francicè conscripta in notissimo illo iuris enchiridio, primùm Anglico donauerit idiomate, has etiam Radulphi, vt lectore ante alia dignas, transtulerit, alteramque Michele Hengham

alteram Luttle Hengham inscripserit. Manuscriptum exemplar illius versionis ætatem Edwardi siue II, siue III, redolentis, penes est virum CL. multijugæ item eruditionis, & vetustatis peritissimũ *Franciscum Tate* ICtum. Stylus scriptoris, vel potiùs ipsa styli vocabula, satis sunt à latinitate aliena, vti & veteres ferè qui restant autores, constitutiones, atque acta publica iuris Anglicani. Cæterùm, cum ante Normannos Anglicè, tempestate verò citeriori, Frãcicè, actiones heic intenderentur, & solennes pro tribunali disputationes haberentur, sermo autem Latinus casu accederet,

deret; id ferè necessum est eueniret eis, qui, siue publicis actis siue priuatìm conscriptis libris, ius Anglicanum latio donare sermone sunt adgressi, quod olim Theophilo Antecessori, Constantino Harmenopulo, autori Basilicôn, Athaliatæ, Blastari, Photio, Theodoro Balsamoni atque eiusdem farinæ alijs accidit, qui iura Romanorum & Ciuilia & Pontificia Græcè, in Orientalis Imperij vsum, verterunt, vt nimirùm quamplurima vocabula merè Latina Græco in contextu, mutatis tantummodò elementis, retinerent. cuiusmodi sunt Ιντέρδικτον δικορέμ, φορεβέμ, Αδιδλίζια ἀγωγή, Βονορέμ ῥαπορέμ, δολό-

λφ μάλφ, Δεινοφρικωσσο, Ινρὲμ, ἰφοῖερε, ἐμμάγκιπεσθέιν, Ιεν ϛεροτὰς, φιδεικομιστὲμ pro *Interdictum de quorum Bonorũ, AEdilis actio, Bonorum raptorũ, de Dolo malo, De inofficioso, In rem, Ipso iure, emancipare, vniuersitas, Fidei commissum*, atque id genus sexcenta alia passim occurrentia. Minimè enim ignari erant, non tam atticismos in oratione, nec græcas voces in nominum versione sectari se debere, quam Iuris peritorum quorum Responsa, atque imperatorum, quorũ Sanctiones interpretarentur, mentem seruare. Ridiculum est, pharmacum à poculi materie æstimare. Insanum, Decembri eò repudiare lacernam, quòd

non

non ex lana sit siue Apula, siue Attica, siue Lemsteriana. id quod faciunt fermè ij, qui ob orationis barbariem res ipsas reijciunt. quod optimè olim notauit magnus Plutarchus longè etiam charissimus Musarum alumnus, in eos, qui rebus seu docendis seu dicendis sermonis puritatem fastidiosi anteferunt. Inter ea autem scripta forsan hæc Radulphi fuerint censenda, quæ in antiquariorum loculis seruata non tam reconditũ quid aut inauditum docent, quam ideò maximè desiderantur, vt quæ, quanta, & cuiusmodi doceant, cum nimirùm magna præ se ferant nomina, studio-

sorum

forũ votis innotescat. Nec tamen desunt Radulpho, quæ valorem ei concilient. Absq; illo esset & Henrico de Bractona (qui etiam plurima, nec tamen quæ scitu digna omnia heic habentur, nec tam certo formularum ordine, tradidit) haùt pauca de Excusationibus præsertim & vadimonijs desertis (Essoins & Defaults in foro vocant) prorsus forent incognita. Cæterùm his fruere quisquis es lector, & Vale. Ex ædibus Interioris *Templi Prid. Cal.* Augusti. CIↃ.DCXVI.

Radulphi
de
HENGHAM

Summa Magna.

LIcet ordo placitandi in Curia Domini Regis, ſecundum leges & conſuetudines regni a Primicerijs noſtris ꝓtinus retro ſtatutas, æquus & iuſtus ac in omnibus acceptabilis extiterit, Hoc tamen, quod idem ordo in forma communis ſcripturę non regiſtratur, quamplurimos ipſum ſcire conantes aliquantiſper impedit & retardat. Nam ſi mens humana ſingula cordetenus, quod abſurdum eſt, memorare valeret, ſequeretur tunc quod ſcribere nil aliud eſſet quam laborem laboribus anticipare. Et quia frequenter ſcriptura & properè rememorat ea quæ per labilitatem ingenij ſæpiùs ſubcidunt & vacillant, Ego non ad inſtruendū aliquem ſuper huiuſmodi

legibus

legibus regni, verum ad materiandum futuris correctoribus quędam introductura, non serie qua debui sed qua sciui, proposui compilare. Cernentibus ea supplicans, vt opera huic apposita, in scientiam acquietent operari & excusent. *Breuia* siquidem Regis de placito terræ; & qualiter & quibus *dilationibus* potest tenens differre litem, ante communē *apparitionem* in Curia. & Quomodo debet *Petens* opponere, & respondere *tenens*; In quibus casibus potest denegari *visus* terræ & in quibus Non; & natura *exceptionum* tam *dilatoriarum* quam *peremptoriarum* videlicet ante visum terrę factarum & post; & Modus *Cyrograffandi* si per *finem* factum lis decidatur necnon & exceptiones contra ipsum finem; ac Quędam *Exemplaria* discussionem huiusmodi placitorum iuuantia suis locis continentur inferi. Et de Iurisdictione *Curiæ Baronis* & *Comitatus* cum lis a tali Curia translata fuerit.

CAP. I.

Breue *de Recto* cum suis Branchijs.

E*Dwardus dei gratia &c.* Henrico Hussy *salutem. Præcipimus tibi quod*

sine

sinè dilatione plenum rectum teneas Ric. le Iay *de vna Carucata terræ cum pertinentijs in H.quam clamat tenere de te per liberum seruicium vnius d. per annum pro omni seruicio quam* I.de B. *ei deforciat.& nisi feceris,vicecomes de* Sussex *faciat, ne amplius inde clamorem audiamus pro defectu recti.* T.&c.vel sic *vnde* W. de O. *quatuor acras* B.de O. *quinque acras & tu ipse decem acras terræ &c. Et vnde* I. de D. *vnam medietatem &* R.de P. *aliam medietatem terræ ei deforciat. Et nisi feceris &c.* vel sic.

Rex tali salutem. præcipimus tibi quod sinè dilatione plenum rectum teneas Richardo le Iay *de vno mesuagio vno molendino decem acris terræ x. acris pasturæ, x. acr.bosci & xx.acr.marisci cum pertinētijs in H.quæ clamat tenere de te per liberum seruicium vnius denarij per annum pro omni seruicio vnde* W. de M. *duas partes vnius mesuagij & vnius molendini,decem acras terræ,decem acras prati,x.acras pasturæ & x.acras marisci, Et* W. de B.*tertiam partem vnius mesuagij vnius molendini x. acr. terræ x.acras prati x.acras pasturæ,x.acras marisci eidem deforciat & nisi &c.* vel sic.

Rex tali salutem. Præcipimus tibi quod

sinè

sinè dilatione plenum rectum teneas R. le Iay *de xx.acris terræ & mediet. vnius mesuagij & vnius molēdini cum pertinentijs in H.quas clamat pertinere ad liberum tenementum suū quod de te tenet in eadem villa per liberum seruitium vnius libræ Piperis vel Cumini per annum pro omni seruicio, vnde* W.de I.*decē acras terræ & medietatem vnius mesuagij* & W.de E.*x.acr.terræ & medietat. vnius molendini ei deforciant. & nisi &c.*vel sic.

Rex tali salutem. Præcipimus tibi quod sinè dilatione plenum rectum teneas Ric. le Iay *de x.acris terræ x. acris prati x. acris pasturæ cum pertinentijs in H. quas clamat esse rationabilem partem suam quæ eum contigit de libero tenemento quod fuit* E.de N.*patris* vel *matris fratris* vel *sororis, auunculi* vel *amitæ consanguinei* vel *consanguineæ suæ in eadem villa & tenere de te per liberum seruitium &c. quas* W.de C. *ei deforciat. vel quas clamat esse de rationabile parte sua quæ eum contingit de libero tenemento quod fuit* E.de N.*patris* vel *matris &c.in eadem villa & tenere de te &c.*

Et si terra, quæ petitur, pertinet ad eam quæ tenetur sub eodem seruicio, tunc sic. *Quam clamat pertinere ad liberum tenementum*

mentum quod de eo tenet in eadem villa per liberum seruitium &c. quam talis ei deforciat &c.

Vacante Archiepiscopatu vel Episcopatu, seu alio magnate extra regnum existente, tunc sic.

Rex Custodi Archiepiscopatus vel *Episcopatus salutem. Præcipimus vobis &c. quas clamat tenere de prædicto Archiepiscopatu* vel *Episcopatu per liberum seruiciũ &c. quas* O. *ei deforciat &c. & nisi &c.* vel sic, *Rex Balliuis I. Lincolniensis Episcopi* vel *Balliuis* G. de Clare *Com. Glocestriæ* vel *Balliuis* I. filio Alani *Comiti de* Arundel *salutem. Præcipimus vobis quod sine dilatione &c. tali de xx. acris terræ cum pertinentijs in N. quas clamat tenere de prædicto Episcopo* vel *prædicto Comite*, vel *de prædicto filio* Alani *&c. quas* M. de N. *ei deforciat & nisi &c.* vel sic.

Rex venerabili in Christo patri I. eadem gratia Lincolniensi Episcopo, salutem. mandamus vobis quod sine dilatione &c. A. de N. *de x acris terræ cum pertinentijs quas clamat tenere de vobis per liberũ seruicium &c. quas E. ei deforciat, & nisi &c. Vicecomes &c.* vel sic. *Rex Balliuis suis* Wintonię *s. Præcipimus vobis &c.* A. de N. *de*

vno mesuagio cum pertinentijs in W. quod clamat tenere de Nobis in liberum Burgagium vel *maritagium.*

Hic non dicatur, per annum, nec, pro omni seruicio. vel sic.

Rex Maiori & Vicecomi. London *S. præcipimus vobis &c.* A. de N. *de vno mesuagio cum pertinentijs in London quod clamat tenere de nobis per liberum seruitium, &c. quod* O. *ei deforciat. Ne amplius &c.* vel sic.

Rex A. de N. *S. præcipimus tibi &c. de quatuor virgatis terræ &c. quas clamat tenere de te per liberum seruicium vnius Austurconis* vel *vnius esperuarij sorij*, vel *vnius libræ piperis* vel *Cummini per annum* vel *per liberum seruicium sequendi curiam tuam de N. de ribus septimanis in tres septimanas* vel *per liberum seruicium portandi breuia infra regnum Angliæ*, vel *infra talem comitatum*, vel *sequendi Comitatum talem*, vel *hundredum pro omni seruicio.*

Hic non dicatur, per annum.

Sunt autem huiusmodi breuia infinita secundum diuersitatem eorundem seruitiorum & tenentium, quod non est opus inserere. vel sic.

Rex tali salutem. Præcipimus tibi &c.

de

de pastura ad centum oues &c. vel ad x. oues in N. *quam clamat pertinere ad liberum tenementum suum quod de te tenet in eadẽ villa per liberum seruicium &c. ne amplius, &c.* vel sic.

Rex tali salutem. Præcipimus tibi &c. tali de tribus carucatis terræ &c. quas clamat tenere de te per seruitium vnius Militis, vel *inveniendi tibi duos homines equites* vel *pedites ad eundum tecum cum arcu & sagittis in exercitum per tantum tempus,* vel *per seruitium decem solidorum quando* XL. *solidi capiuntur de scuto,* vel *per seruitium vnde decem carucatæ terræ, vel tot Hydæ terræ faciunt feodum vnius militis pro omni seruicio.*

Hic non dicitur, per annum.

Breue de *recto de dote* semper debet dirigi hæredi viri vel eius custodi, si hæres infra ætatem extiterit; nisi tenementũ illud denenerit in manus capitalis domini pro defectu hæredum; quia tunc debet dirigi capitali domino, ut inferius patebit suo loco.

CAP. II.

Quæ placita pertinent ad *Maiorem Curiam* Domini Regis, & quæ ad *Vicecomites* provinciarum pertinent placitanda.

COnstat quod placita de *Crimine lesæ Maiestatis*, vt de *Nece* vel *seditione* personæ domini Regis vel regni vel *exercitus*, *homicidio*, *raptu*, *Incendio*, *roberia*, *pace* domini Regis *fracta*, *crimine falsi*, & si quæ sunt similia, vbi scilicet imminet periculum vitæ & membrorum, ad *Curiam* domini Regis *Maiorem* pertinent audienda & de terminanda. Placita vero de *furtis*, *melletis*, *hutesio*, *plagis*, *verberibus*, *transgressionibus*, vbi non agitur de pace domini Regis fracta, ad *Vicecomites* pertinent audienda & determinanda. De placito verò terræ, similiter potest vicecomes cognoscere. quemadmodum quando placitũ aliquod diuertitur a *Curia Baronis* propter defectum ipsus Curiæ, & quando conuenitur ipse tenens in *Comitatu* absolute. ex quo dominus feodi non potest ex officio facere

hanc

hanc Assisam in Curiam suam venire, videtur quod non defuit petenti de recto, quando non falsat. Tunc ipse petens supplicabit capitali domino vt remittat ei Curiam suam. Et tunc potest ire bene ad *Comitatum* si velit. Et hæc est cautela necessaria.

CAP. III.

De iurisdictione *Curiæ Baronis* & qualitur procedendum est in eadem.

QVodlibet autem breue de *Recto*, præterquam breue *parvum secundũ consuetudinem manerij*, debet esse patens, & *præcipe in capite* clausum, & debet deferri in Curia ipsius Baronis de quo ipse petens clamat tenere terram petitam. Potest autem petens si voluerit in Curia illa prosequi loquelam suam vsque ad discussionem litis per narrationem narratam, vel feriationem duelli. Sed si tenens posuerit se in *Magnam assisam* domini Regis in Curia illa, remanebit loquela illa hoc modo. Tenens ille adibit Curiam & habebit breue Regis ad vicecomitem loci, per quod breue idem vicecomes pro-

hibebit dicto domino feodi ne teneat placitum in Curia sua, nisi duellum fuerit inde vadiatū, eo ordine quo rex mandat quando huiusmodi placitum deducitur in Comitatum. Et tenens semper gaudebit essonijs suis tam de *malo veniendi* quam de *malo lecti*. Tamen in adoptione petentis erit, si voluerit in eadem Curia tam diu deducere placitum suum, vel non. Qui si voluerit abinde recedere, adeat ballium Regis & probet sacramento suo vel per duos testes Curiam domini sibi de recto defecisse, & sic velit nolit dominus ipsius Curiæ, etiam invito ipso tenente, potest huiusmodi loquela sic transferri ad comitatum. Et quid si Curia ipsius Baronis non defecerit ipsi petenti de recto, qui sic transtulerit loquelam suam ad Comitatum? Certe dominus illius Curiæ, si voluerit, potest retrahere loquelam illam in Curiam suam, & eam ibi terminare ordine prædicto; Dum tamen sufficienter probare poterit Curiam suam de recto dicto petenti non defecisse. Videtur autem quod idem Dominus Curiæ potest adeo simpliciter procedere in huiusmodi probatione, sicut potest dictus petens in probatione

fal-

falsandi curiam suam. In *Maiori* autem *Curia* domini Regis, potest Idem Dominus facere consimilia; tamen rarò contingit. Paruum enim seu nullum dominis curiarum in huiusmodi placitis tenendis proficuum ascribitur. Et sciendum quod in *Curia Baronis* non debet *Attornatus* aliquis admitti sine breui domini Regis. Potest equidem dominus alicuius curiæ si voluerit ex gratia per literas suas patentes scribere domino Regi quod remisit ei curiam suam, si tantum diligat ipsum petentem; qua litera porrecta in Cancellaria domini Regis, petens ipse habebit suum *præcipe de recto*, directum vicecomiti, per quod precipiet tenenti quod reddat terram petitam, & nisi tenens hoc fecerit & ipse petens fecerit ipsum vicecomitem securum de clamore suo prosequendo tunc summoneatur ipse tenens quod sit ad certum diem in Banco. Et sic ante aliquem ingressum litis in curiam comitatus vel Baronis, potest huiusmodi loquela vel placitum primo die diuerti ad *Curiam* domini Regis *Maiorem*.

CAP. IIII.

Qualiter procedendum est in *Comitatu* post *Curiam Baronis* alicuius falsatam. Breue *de Pace*. Recordum *Comitatus*. *Falsum iudicium* in Comitatu. *Sectatores*.

PRobata siquidem in solennitate quà decet, quod *Curia Baronis* defecerit huiusmodi petenti de recto, potest ipse petens in eadem curia prosequi loquelam suam si voluerit in omni euentu, vsque ad diffinitam discussionem litis. Hoc tn. excepto, si tenens posuerit se in magnam assisam domini Regis super repetita. Et si tenens sic se posuerit, ad proximum sequentem Comitatum, gaudere potest essonio, ita quod in secundo comitatu protendat in pleno comitatu breue *de pace* quod vocatur *prohibemus*. Tunc remanebit loquela ad petitionem tenentis vsque dum venerint *Iustitiarij ad omnia placita*. Ex hoc liquet quod nec dominus alicuius feodi, nec vicecomes regis, qui maior est in iurisdictione, posit aliquem liberum hominem ad corporale sacramentum

mentum ponere sine breui domini Regis. quod si facere possent, & tam dominus ille quam vicecomes ex officio sibi commisso huiusmodi *magnas assisas* caperent suis locis. Caueat rursus reus sibi qui se sic in illam assisam regalem posuerit quod dictum breue *de pace* deferat ad proximum comitatū vel secundum, saluato en. per essonium primo Comitatu post talem positionem. Quod si non fecerit, ad calumniā petentis per præcisam amissionis defaltam, se ipsum ac perpetuam eius successionem priuare iudicabitur de petitis. Hanc vero defaltam habet Comitatus determinare & inde Recordum in omnibus * Curijs reportare, quicquid erit in Comitatu in huiusmodi placito, ante positionem in magnam assisam vel duelli vadiacionem. Etiam, si apparentibus partibus quereletur & respondeatur, siue loquela per nontenuram vel per quemcunque * bipertijocum cauilletur lis illa, dummodo detur dies ad proximum Comitatum partibus, ad petitionem petentis, per breue quod dicitur *pone*, potest transferri negotium, siue placitum illud fuerit, coram iustitiaris in *Banco* vel *Itinerantibus* in ipso Comitatu.

* al. breuibus.

* al. bipartiuocum.

Et

Et sic adnihilabitur processus inde habitus, & stat breue. Petens autem quicunque fuerit moderatâ gratia potest habere *Pone*. Supponendum est n. quod procrastinatio petitionis non prejudicat occupāti. verbi gratia. si Peterem a te fundū hodie mihi restitui, quod me procurante differtur, possit a casu tibi occupanti proficere. ideò quia ponere aliquam loquelam extra comitatum vbi celerior litis habetur determinatio quam in banco* & quia presumitur quod petens petitionem maturare debet. Et sic patet, quia prorogat quod * congerere debet petens, ex gratia cursoria conceditur sibi *Pone*, Tenenti autem nequaquam, nisi ex gratia maiori, & causa speciali, vtpote, si vicecomes loci fuerit de stipite consanguinitatis vel aliqua affinitate *siue particeps in pētitione petentis*, vel aliquantisper rei offensa separauerit vicecomitem a tenente. ex dicta causa siue aliqua alia rationabili interueniente innuitur tenenti dictum *Pone*. A vicecomite vero prefixo die litigantibus in Comitatu, ad primum comitatum potest tenens facere defaltā. Caueat tn. quod infra xv. dies terram suam replegiet, quod si non fecerit, seisinā per-

*al. *congrauare*

perpetuā, nisi aliunde recuperet, amitter. vel ad primum Comitatum potest essoniari de *malo veniendi*, & ad secundum facere defaltam & ad tertium de *malo lecti*. Essonium autem de *malo lecti* semper sequitur essonium de *malo veniendi*, & non econtra. Tamen vicecomes ex officio suo mittere debet quatuor milites de eodem Comitatu ad videndum infirmum, eo ordine quo faceret si placitum esset in Banco; & ideo pręcipietur ei hoc idem facere per breue de iudicio. Ipsi quoque milites, secundum quod infirmus surgere aut languorem capere elegerit, pręfigant ei diem quindenæ, vel vni° anni & vnius diei. Breue ad videndum infirmum.

Rex vicecomiti salutem. mitte quatuor legales milites de Comitatu tuo vsque N. *ad* I. *qui languidus est ad videndum vtrum infirmitas quase essoniauit de malo lecti versus B. de placito terræ quod est inter eos in Comitatu tuo, sit languor necne. Et si sit languor tunc ponant ei diem a die visus sui in vnum annum & vnum diem apud Turrim London præfato B. inde respondsurus, vel sufficientem per se mittat responsalem. Et si non sit languor tunc ponant ei diem a die*

 visus

visus sui in xv. dies quod tunc sit ad proximum Comitatum tali præfato B. inde responsurũ vel sufficientem &c. Et dic quatuor militibus illis quod tunc sint ibi ad testificandum visum illum & quem diem ei posuerunt, & habeas ibi nomina militum & hoc breue.

Ante visum terræ petitum & factum, potest tenens essoniari de *malo lecti*, & post visum similiter, precedenti semper essonio de *malo veniendi*. Sed tantum vnus languor capi potest ante visum vel post, pro voluntate tenentis, & non plus, quamuis essonium de *malo lecti* in *Maiori Curia* domini Regis, vtpote ad *Bancũ* vel in *Itinere Iustitiariorum*, iaci debeat tertio die ante diem placiti prefixum & per duos essoniatores. Et hoc in præsentia Cõstabularij Castri, ciuitatis, vel Burgi vbi huiusmodi placita tenentur, qui inde Recordum portat coram eisdem Iustitiarijs vel corã Maiore huiusmodi ciuitatis si Castrum non habeatur, nec per consequens Constabularius. Quia frequenter euenit quod comitatus tenentur in siluis, & Campestribus foris, villis & alibi. videtur n. quod calumniatio essonij de *malo lecti* non proiecti ante ter-

*al. tales seu talas.

tium diem, nec per duos testes locum non tenet. quia in talibus locis nulla residet talis persona quæ talia recordare vel testificare posset vel deberet. Tamen si huiusmodi placitum fuerit coram Iustitiarijs *de Banco* vel *Itinerantibus*, debet ex consuetudine & iure huiusmodi essoniũ iaci ad Castrum Comitat⁹ vel Burgi coram Constabulario vel ad Turrim Londoniæ ꝓ Banco, vel alibi in Itinere Iustitiariorum propter huiusmodi reseantiam. Idem dico de *Curia Baronis*. Non n. tenens ignorat a quo domino tenet & cui feodo est annexus. Per duos autem essoniatores solemnizari debet tale essoniũ, vt vnus per essonium excuset infirmum, & alius propter priorem excusationem in essonio de *malo veniendi*, in hoc essonio quasi iterato de vna & eadem ęgritudine, testimonium perhibeat. Et idem iaci debet tertio die ante diem litis, propter computationem dierum in anno bissextili, vt cum detur dies languido a die visus sui in vnum annum & vnum diem per ipsum diem integrum ante tertium diem, ante diẽ litis possit saluari dies excrescens in anno bissextili, & computari in integritate anni, quo dictum essonium

pro-

proiectum fuit, Teste *consilio domini Henrici Regis*, ac breui suo inde directo Iustitiarijs suis de Banco anno regni regis *Henrici* LIIII. Essonium autem de *vltra mare* de iure locum non tenet nisi in prima excusatione iaceatur, & hoc intelligito nisi reus iter arripuerit versus vltra mare prius quam summonitionem receperit. si n. reciperetur huiusmodi essonium de vltra mare post essoniū de *malo veniendi*, vel summonitionem saltem, frequentèr accideret quod ipse reus malitiose hoc faceret ad prorogandum ius petentis. Et ideò locum tenet in prima excusatione litis. Quia ex quo implacitatus ille iter arripuerit ante summonitionem receptam, videtur quod non constabat ei dies de placito prędicto. Et quid si reus de *vltra mare* essoniatus tali die essonij proiecti, fuerit in regno. Certè si petens hoc eodem die calumniet, ad aliud diem placito prefixum dummodo hoc sufficientèr probare poterit, reo adiudicabitur pro defalta. Interest autem Iustitiariorum inquirere huius rei veritatem. Vicecomes autem in suo comitatu similiter faciat, aut probationem illius petentis recipiat *sexta manu*. Comperto siquidem

ipsum

ipsum reum in die dicti essonij proiecti extitisse in regno, reus ille amittet seisinã terræ petitæ per defaltam. Essonium de *seruicio D. Regis* semper admittitur & locum tenet ad alium diem, dummodo porrigatur breue domini Regis de warranto essonij prædicti. Et si reus non porrigat sic, cadit illud breue in defaltam amittendi seisinam terrę. Et si placitum fuerit de captione aueriorũ cadit in misericordiã tanquã indefensus, & petens habebit per iudicium retornum aueriorum. Quando dominus *Rex est in exercitu*, reo secum existente, & hoc liquet in Cancellaria domini Regis, warrantum habebit, Sed si *rege non existente in exercitu* miserit aliquem talem in seruicio suo, si hoc in rotulis Cancellarię non inseratur oportet quod *aliquis miles* compatriota ipsius sacramento testificetur ipsum reum esse tali die in seruicio domini Regis antequam breue *de seruicio suo* concedatur. Si in sine rita examinatione concedetur tale breue, ordo iuris creberrimè peruerteretur. Nam in quocunque statu esset lis huiusmodi siue post vel ante positionem in magnam assisam aut duelli vadiationẽ, per talem warrantum posset ius petentis

retardari

retardari & casualiter imperpetuum. Et ideò tali solemnitate fiat huiusmodi warrantizatio. De plerisque autem placitis potest *Comitatus* ferre recordum. Vt cum quis aliquē implacitauerit in *Comitatu* p breue domini Regis de *Consuetudinibus & seruicijs*, & ipse reus dedicit in pleno comitatu ipsi petenti huiusmodi seruicia petita, & ipsum disaduocet pro domino. Tunc dominus ille posteritate dierum petierit per breue domini Regis *de Recto* de petendo tenementum illud de quo dedicta sunt huiusmodi seruicia petita, habendum in dominico pro seruicio sic dedicto. Si reus ille hoc in responsione negauerit, siue in eodem *Comitatu* id neget, siue in *Maiori Curia*, habet comitatus in hac causa ferre recordum. Et si *Comitatus* sic recordatur, petens recuperabit de prędicto tenente seisinam perpetuam, & si *Comitatus* econtrario recordetur, petens amittet clamium imperpetuū. De his portat *Comitatus* Recordum. De *positionibus in magnā assisam, duelli vadiatione, defaltis post defaltam*, vtpote post visum terræ factum, vt in defaltis ; si reus postquam se posuerit in magnam assisam, ad proximū comitatum non tulerit breue

ue domini Regis *de pace* quod vocatur *prohibem*⁹; vel essoniatus fuerit ad proximum comitatum post huiusmodi positionem & ad secundum non deferat dictum breue,& in singulis placitis terræ vbi tenens amittet per defaltam. Et in *vetlegarijs*,& in prosecutione *appelli sine breui*,vel *cum breui*,habet comitatus portare recordum in eodem *comitatu*, & in *maiori curia* domini Regis. Tamen si reus fecerit defaltã in eodem comitatu post visum terræ factum,& ad calumniam ipsi⁹ petentis summonitus esset ille reus ad audiendum iudicium suum,& deferat suum *pone* ad amouendam loquelam illinc coram *Iustitiarijs de Banco*, quod ꝑ assignationem causarum superius expressarum facere posit ex gratia speciali, generaliter sunt reincipienda omnia retroacta in comitatu ante positionem in magnam assisam vel duelli vadiationem.& cum per *pone* venerit loquela ad *Bancũ* in prædicta defalta post visum,comitat⁹ non portat recordũ.Singula *placita sine breui* deducta in *Comitatum*,extra comitatum carent Recordo ipsius comitatus. Et omnia placita deducta in Comitatum *per breue* transferri possunt per breue

coram Iustitiarijs de *Banco*, vel *Itinere*, & non econverso. Quia in ipsomet *Pone* semper sic dicitur; *Pone ad petitionem petentis loquelam quæ est in Comitatu tuo per breue nostrum de recto &c.* Tunc igitur sequitur ex verbo illo [*per breue nostrum*] quod si petens non agat per breue, quod nulla est ibi loquela. Hoc autem dico ad adnullandam opinionem Rusticorum ruralium qui frequenter ex impetuoso garritu, vt appareant quod non sint, sustinent econverso. Sin autem placitum fuerit in Comitatu *sine breui* vel *cum breui*, *executiones* Iudiciorum habitorum in comitatu fient & fieri debent per Balliuos domini Regis eiusdem comitatus. Quemadmodum siue, p̄narrationem narratam, siue per defaltam post defaltam, adiudicetur ipsi petenti seisina de petitis, ex pręcepto vicecomitis ponat dictus Balliu⁹ petentem in huiusmodi seisinam, nec oportet ipsum petentem quęrere aliud breue ad hoc faciendum. Quia vicecomes ex iudicio comitatus in hoc casu naturam & tenorem tam *parui Cape* quam *magni* ex officio sibi commisso habet sine breui. Ideo Iudicia siquidem comitatus pronunciari debent per aliquem *Sectatorem*

torem ipsius comitatus. Et cum aliquotiens euenit, quod quis queratur domino Regi de *falso iudicio* reddito in *ipso Comitatu*, non intelligatur, si comperiatur ipsum *iudicium falsum* esse, quod *vicecomes* inde puniri debet, immo comitatus, id est *communitas comitatus*, vnde expedit huiusmodi *sectatoribus* tale respondere quale pro iusto poterint aduocare. Si autem vicecomes possit reddere huiusmodi iudicium, quandoque pretextu lucri, vel causa ignorantiæ deuiaret, quod si sic faceret, indebitum esset & iniquum * prosequentibus huiusmodi causam impingere. Et alia subest causa. Sunt n. nonnulli *vicecomites* adeo simplices quod non habeant vnde respondere possint de misericordia assignata quando convincentur de tali iudicio in curia. Et ideò statuitur quod *totus Comitatus* reddat iudicium. Caueant nunc de iniustè procedere. Semper intelligendum est quod quęlibet *summonitio* fieri debet per *bonos summonitores*. Videamus ergo quid & quale sit officium summonitorum.

*al. *sectatoribus*.

CAP. V.

De officio *summonitorum*. Lex vadiata. Essonia,

CVm ordo placitandi in *Curia Baronis* & *Comitatu* p breue domini Regis de recto superi' in parte exprimatur, nunc cum huiusmodi loquela in pleno comitatu per breue quod vocatur *Pone* adiornata fuerit in Bancum, opus est docere quomodo ipsi petens & tenens de cętero debent procedere. Cursorium est autem, quod quandocunque petens fecerit defaltam, tenens eat quietus sine die. Et tam petens quam plegij sui de prosequendo in misericordia. Et ideò de tenente & eius defensionibus loquamur. Primò de placito atterminato ad *Bancũ* foris *Comitatum* per *Pone*. In primo die potest petens essoniari de malo veniendi ab initio & gaudere eodem essonio, sed non decet propriam commoditatem differre. Duo boni *summonitores* adibunt tenentem dicendo sic. *Nos A. & B. summonemus te quod sis tali die apud* London, *corã Iustitiarijs de* Banco *respon-*

surus tali *de* tanto *terræ cum pertinentijs in* N. & specificare debent quantitatem. In iudicando autem *essonio* semper respicienda sunt breuia originalia & status placitorum, ne fortè per iterationem essonij nimis differatur petitio petentis seu per machinosam cautelam prosequentis aliquid huiusmodi essonium. sed si tale *essonium* irritum fuerit convertatur in *defaltam*. Et ideo Iustitiarij sic faciunt ad euitandum periculum & errorem. Et si *summonitores* non faciunt officium suum vt prædictum est, tunc non conceditur secundum legem terræ. Et hoc idem dico, quod si summonitio non fit secundum legem terræ post terram captam in manum Domini Regis, replegiare eam potest reus & omninò disaduocando omnia essonia cuiuscunque generis vel naturę fuerint & defendere summonitionem sic. **Sire defaute ne poye ieo fere. Car ie ne su pas somons selounley de terre. e ceo suy prest afere quant ke cest Court agard que fere deueroye.** Et tunc debent *summonitores*, si sint boni, esse præsentes ad testificandum summonitionem suam: Et nisi se representent ad te-

testificandam summonitionē, licet illam decenter fecerint non sunt *boni summonitores*. Et tunc adiudicabitur reus ad *legem* suam XII. manu quam facere potest secure, si non sit summonitus secundum legem terræ. Et hæc est cautela necessaria. Et si *summonitores* sint *boni*, adhuc dico potest reus esse ad *legem* contra eos, licet falso. Et summonitores non portant *recordū* in hoc causa ad destruendum *legem* Rei. Ista autem vltima lex potest vadiari ad saluandū *autumnalia* aut *Redditū assisum*. Et potest reus retrahere se de lege & esse in misericordia, & autumnalia lucrari. In omnibus autem curijs & singulis placitis potest fieri hęc cautela. Qui rite summonent & eandem summonitionem testantur, vocantur *boni summonitores* per legem terræ & non aliter. Licet vero præsentia tenentis ex consuetudine regni debet in curia domini Regis vsque ad *quartum diem* expectari, infra quam tenens non adiudicabitur pro defalta, caueat tamen tenens quod essonium suum *primo die* iaceatur, aut calumniari potest & in defaltam reduci. Attamen *secundo die* possunt aliquando essonia intrari in rotulo; quanquam ex gratia

Iu-

Iustitiariorum quandoque propter nimietatem essoniorum *primo die* non possunt intrari.

CAP. VI.

Modus *essoniandi* & reddendi essonia & *dies communes* in breui *de Recto.* Essoniatores. Atturnati.

MOdus essoniandi talis est. *Talis versus talem de placito terræ per talem.* & sic irrotulabitur. Modus reddendi essoniorum talis est. Dicat Prænotarius clamatori. *Exige essoniatorem Richardi le Iay.* respondeat essoniator. *Ecce Adsum.* Iterum Prænotarius *vbi est W. Husse*, ac si diceret *petens*, qui similiter dicat *ecce adsum. Tu essoniator Richardi affida habendi hic warrantum tuum a die sancti Michaelis in* xv. *dies, & tu Willielme serua eundem diem.* Affidatis in *manibus* vel super *virgam clamatoris* recedant vtrique si velint. Potest autem tenens essoniatus, ante redditionem essonij, apparere si voluerit, & respondere petenti si voluerit. Et si ipse tenens inuentus fuerit iuxta * plebiscitum, antequam reddatur

* lege *placitū*.

tur essonium ad calumniam petentis, coercetur respondere petenti, velit nolit, de de capitali placito. Et sic per propriam fatuitatem posset in prima tali appariti-one amittere dilationes statutas. Sunt etiam *dies communes* dati, ex consuetudine regni, in omnibus placitis secundum diuersitatem naturarum breuium. In hoc autem breui *de recto* generaliter dentur duo dies per annum tantum. Et ratio quare in isto breui assignatur pauciores dies per annum quam in alijs breuibus; quia de quovis potes dissilire ad istud, & non econverso. Istud n. stirps est alijs, ita quod quicquid per ipsum ritâ determinatione concluditur stat imperpetuũ. Et ideo per hanc moderatam dilationem parcitur tenenti. Curia namque domini Regis neminem vult decipere. De *diebus omnibus* in hoc breui sic distinguo. si breue primo venerit ad festum Sancti Michaelis de Octabis & Quindena Sancti Michaelis adiornetur à die Paschæ in xv. dies. De tertia septimana, in iii. septimanas Paschæ, De mense in mensem, & quinta septimana in quintam septimanam. De in Crastino Animarum in Crastinum Ascensionis domini. De crastino

Sancti Martini in crastinũ Sanctæ Trinitatis, de quindena Sancti Martini in quindenam Sanctæ Trinitatis, vltra quod quindenam Sancti Martini in hoc termino non recipietur breue. Et si breue venerit ad terminum Sancti Hillarij hoc ordine respondeat ei terminus Sancti Iohannis Baptistæ & econverso. Pascha n. Sanctus Michael, Iohannes & Hillarius in hac regula convertibiliter se habent in omnibus breuib' & placitis. *Essoniator* autem, absente vel præsente aduersario suo, tantũ potest facere quantum *Attornatus* omni die, nisi eo die quo oportuerit partes litigare. Litigare autem pro domino suo non potest *essoniator*. Sed si petens essoniatus fuerit vel compareat *essoniator* tenentis, benè potest capere diem versus eum adeò bene sicut dominus suus vel eius *attornatus*, vel si petens fecerit defaltam idem essoniator in redditione essonij potest calumniare defaltam, & sic per calumniam suam petens pdet breue suum, & *plegij* sui in misericordia, & tenens & *essoniatores* quieti sine die. Et si reus deficiat in redditione essonij petentis, reuera essoniator

 ille

ille potest sequi defaltam versus eum & habere breue de iudicio ad capiendam terram in manũ domini Regis per *magnum Cape* aut per *Paruum* de *habenda seisina* vel de *attachiando* seu *distringendo* secundum qualitatem & diuersitatem breuium & dierum, adeò bene sicut potest *dominus suus* vel eius *attornatus*. Aliter autem posset talis defalta transcurrere impunita frequenter ad damnum cuiuspiam & in illusionem regię dignitatis. Quando autem *essoniator* sequitur defaltam pro *domino suo* vel pro *suo atturnato*, certum nomen eius irrotulabitur in Rotulatione defaltę illius, propter * tenerem statum ipsius essoniatoris qui in hoc casu tam solemnis efficitur in potestate. Quando autem *atturnatus* sequitur defaltam pro domino suo, non sic fit; nisi dubitetur de fraude atturnati.

* ita codices queis vtimur.

CAP. VII.

De *Attornatis* faciendis.

POst igitur essonium redditum, potest reus apparere in Curia & facere *atturnatos*. Securum est n. ei facere *duos at-*

atturnatos pro periculo infirmitatis, seu mortis, vel etiam fraudis in quocunque statu esset lis illa. Ambo reus & petens possunt facere *atturnatos* & debent fieri per hæc verba. *Talis ponit loco suo* talem *versus* talem *de placito terræ*. Et si prius fecerit attornatos quos amouere voluerit, sic *Et amouet tales quos prius &c.* Possunt autem per breue domini Regis de Cancellaria tam pro reo quam pro petente admitti *Attornati*. Et si reus aut petens infirmentur in provincia, & non possunt venire ad curiam coram Iustitiarijs, nec ad Cancellariam domini Regis ad faciendos attornatos, cum oporteat de necessitate facientem attornatos personaliter in Curia præsentem esse, tunc ad procurationem volentis facere attornatos, mittat Cancellarius aliquem notum clericum de Cancellaria ad infirmum coram quo faciat *attornatos*. Et Cancellarius quando eos recepit, mandabit Iustitiarijs per *breue* domini Regis *de huiusmodi attornati receptione*. Et quando dominus Rex ex gratia sua dat alicui potestatem recipiendi huiusmodi attornatos tunc sic. *Rex dilecto & fideli suo* tali *salutem. Sciatis quod dedimus vobis potestatem*

tem recipiendi attornatos tales, quos loco suo atturnare voluerit, ad lucrandum vel perdendum in loquela quæ est coram Iustitiarijs nostris apud Westmonasterium per breue nostrum, inter præfatum talem *petentem &* talem *tenentem de* tanto *terræ cum pertinentijs in N. Et ideo vobis mandamus quod, cum Attornatos illos receperitis, de nominibus eorundem attornatorum constare faciatis remittentes nobis hoc breue &c.* Si autem petens siue reus languidus fuerit, potest habere breue domini Regis de attornato faciendo sic. *Rex vicecomiti salutem. Mitte quatuor legales milites de comitatu tuo vsque* N. *ad* F. *qui languidus est ad videndum quem Idem F. loco suo attornare voluerit ad lucrandum vel perdendum in loquela quæ est in comitatu tuo coram Iustitiarijs nostris Itinerantib' de* tanto *terræ cum pertinentijs in* N. *& dic quatuor militibus illis quod sint coram Iustitiarijs nostris* tali *die ad testificandum quem idem F. in præfata loquela loco suo attornare voluerit &c.* Iusticiarij similiter in provincia possunt recipere atturnatum & hoc significare socijs suis per breue suum, & stabit atturnatus. Reus autem in nullo placito quod determinari poterit per

legem,

legem, non potest facere atturnatũ propter imprisonamentum quod subsequitur. quia non debet quis imprisonari pro delicto alterius. Ex quo illud est personale delictum, nec per consequens facere debet pro eo *legem*, nec cum reus fecerit atturnatum, oportebit petentem se essoniare versus illum Atturnatum, immò versus principalem, Attornatus autem si fuerit essoniandus, semper nomine suo essoniatur & non in nomine principalis.

CAP. VIII.

Secundus dies placiti. *Defalta. Magnum Cape. Paruum cape.* Non Plenine. Legis vadiatio.

SEcundo die placiti potest reus facere defaltam si velit ex consuetudine regni, dum tamen essoniatus fuerit primo die ordine præmonstrato. Petens autem expectans quartum diem ipso die offerat se liti sic versus ipsum reum in hæc verba. Richardus le Jay se profre vers William Yuse de play de terre, e ils ent iour par son essoneur iekes ore, e ceo est huy le quart

iour, dont nous demandons iudgment de sa defaute. cuius præsentatio sic irrotulabitur. Richardus le Iay *op. se iiij die versus* Willielmum Husse *per atturnatum suum de placito terræ cum pertinentijs in H. quam clamat ius suum versus eum, & ipse non venit & habuit diem per essonium suum hic ad hunc diem.* Iudicium. *prædicta terra capiatur in manum domini regis, & diem captionis scire faciat Iustitiarijs nostris per literas suas sigillatas vicecomes, &c. Et ipse summoneatur quod sit hic* tali *die coram Iustitiarijs nostris.* Et tunc exibit illud breue quod vocatur magnum cape. [*Rex vicecomiti salutem. Cape in manum nostram per visum legalium hominum de comitatu tuo vnam Carucatam terræ cum pertinentijs in H. quam* Richard[9] le Iay, *in curia nostra coram Iustitiarijs nostris apud Westmonasterium clamat vt ius suum versus* Willielmum Husse, *pro defectu ipsius W. & diem captionis scire facias Iustitiarijs nostris apud Westmonasterium* tali *die* * *& habeas ibi nomina eorum per quorum visum hoc feceris &c.* Quotquot fuerint deforciatores in breui nominati, toties repetatur *le Cape* singillatim super vnumquenque deforciatorem. & tunc

* Inseras oportet hic, *inde responsurus & ostensurus quare non seruauerit d. ē sibi dauum per essoniatores suos &c.* nec tamen in Codd. mss. queis vtimur alitèr legitur hoc breue quã in contextu descripsimus. quæ sequuntur atis docent ta locũ hunc ſſe supplendũ siue *Hengham* verba sint siue nsitia.

leg. irro-

irrotulabitur proffrum suum sic. *& versus Willielmum de tanto terræ &c.* Et sic de singulis. Duo verba in hoc *cape* notabilia sint, *responsurus* & *ostensurus*. *Responsurus* refert ad capitale placitum, *Ostensurus* ad defaltam sanandam. cui? scilicet domino Regi. Quia ex hoc defalta si terra debite replegiatur, nemo lucratur nisi dominus Rex. Et ideo sic dicitur *quare non seruauerit &c.* Si autem reus primo die fecerit defaltam, tunc in hoc breui de capiendo terram in manum domini Regis * omittatur hoc verbum *Ostensurus* quia illo die nullo modo comparauit nec per consequens habuit alium diem sed *ostensurus quare non fuit coram Iustitiarijs nostris sicut summonitus fuit.* Istud *cape* vocatur *magnum cape* ad differentiam alterius breuis de iudicio de placito terræ quod incipit per *Cape*, non ꝑ eo quod scilicet maior est in subsequentia vel effectu, sed quod plures articuli continentur in eo quam in subsequenti breui quod dicitur *paruum Cape.* verbi Gratia.] In simplici defalta ab initio post suummonitionem & essonium adiornatum si quis reus defecerit, vt prædictum est, capietur terra in manum D. Regis per *mag-*

* Legerem [*omittantur hæc verba ostensurus quare non seruauerit diem sibi datum per essoniatores suos &c. quia illo die*] & quæ sequuntur. Verum quæ signis [ ] hisce includuntur non satis integra sunt, nec in omnibus codicibus *Radulphii* agnoscunt autorem. Sed relegatur lector siue ab autore ipso siue ab exscriptoribus nonnullis. ad summam quæ dicitur *Fait assauoir*, omissis annuò breui de *Magno cape* & quę sunt id genus cætera vti diximus, hic signata.

magnum cape. Sed reo deficiente postquam comparauerit in Curia, capietur terra in manum domini Regis per *paruum cape* pro defectu rei qui summonebatur ad audiendum iudicium suum & ex hoc petens consequetur seisinam de terra petita. Caueat rursus sibi reus deficiens quod infra xv. dies terram suam captam in manum domini Regis *replegiet*, quod si non fecerit, ad calumniam petenti proximo die placiti amittet seisinam terræ, sicut per defaltam post defaltam. & per *magnum cape* returnatum fiet huiusmodi probatio scilicet fiat collatio de die captionis indorsato a retro breuis illius returnati a vicecomite, & de replegiatione. Si districto compoto comperiatur terram non esse replegiatam infra xv. dies post captionem, amittet seisinam per defaltam. Et de hoc seruit hoc verbũ *Et diem captionis &c.* Et ista defalta vocatur gallicè **Non pleuine**, & ęquipollet naturaliter *defaltæ post defaltam.* In quib' vtrisque defaltis, & defalta post primam summonitionem, defalta post visum, defalta post vadiationẽ duelli, defalta post positionem in magnam assisam, defalta post warrantum vocatum, & defalta si

non

non miserit certũ responsalem post consummationem languoris, semper reus amittet seisinam. Terra siquidem capta in manum domini Regis ꝑ visum, non potest replegiari nisi coram Iustitiarijs vel in Cancellaria & hoc mandabit domin⁹ Rex Iustitiarijs ꝑ breue suum. tamen vbicunq; inventus fuerit aliquis de tali officio priuilegiatus, siue fuerit hic coram quo dependeat placitũ siue alius coram quo terra sic capta replegiabitur, ille mandabit socijs suis diem *replegiationis*. Sed non oportet eum in propria persona terram suam *replegiare*. Quilibet n. extraneus pro noto, & econtra terram alterius potest *replegiare*. Sciendum est autem quod *vicecomes* nequitiam in officio sibi commissam potest facere multipliciter. verbi gratia si reo non sũmonito testetur & indorset *vicecomes* in breui remisso ipsum esse summonitũ, vnde *magnũ cape* exiuit. & si iterum in *magno cape* testetur captionẽ terrę quę non capiebatur, & diẽ captionis ꝑtextu cuiusdam fraudis, vnde dicta terra non fuit replegiata, eo qd re⁹ inde nihil sciuit, & petens ꝑcise se capit ad defaltam *nonpleuinæ*. Et quid si testetur vltimam summonitionẽ quę est in *le cape*,

reo non ſummonito, & petens per defaltam recuperet ſeiſinam, cum de iure nullā potuit facere defaltam ex quo ſummonitus non fuit? ſciendum eſt quod pòſt defaltam irritare poteſt per dedicere primam ſummonitionem per *legem* ſe XII. manu. Captio tamen, vt ſanetur defalta *non pleuinæ*, per *legem* dedici non poteſt. Nam ſi reus vellet dedicere captionem oportet prius euincere fraudem captorum dictæ terrę per viſores dictæ captionis. & hoc ad impediendā vltimā ſummonitionem contentā in *le cape* ꝑ qd reus recuperauit ſeiſinā dictæ terræ petitæ, non poteſt dedici *per legem*. Quia teſtificatum fuit die quo petens recuperauit ſeiſinam terræ petitæ cum reus non fuerit ibidem, & licet affuiſſet non expediret ei dedicere ſummonitionem, cum non poſſet reſpondere de capitali placito nec poſſet vadiare *legem* de non ſummonitione contra ſummonitores qui tunc non fuerunt ibi & ſic recuperata ſeiſina petentis re⁹ non haberet partem adverſam cui reſpondere deberet nec diem placiti vnde poſſet aliquid dicere vel *legem vadiare*. Hic nullum habetur remedium niſi dare domino Regi de ſuo pro ſic,

quod

quod faceret venire ſummonitores ad attingendum huiuſmodi falſitatem, & ita poſſet recuperare dictam terram ſuam. Et licet ſummonitores teſtantur aduerſus ipſum reum, ſecundum *Henricum de Bathoria*, reus poteſt tunc dedicere *per legem* ſe XII. manu contra ſummonitores de non ſummonitione quam teſtantur ſe feciſſe & eorum teſtimonium infirmare, & licet reus perdat per defaltam *non pleuine* vel per defaltam poſt defaltam, habet tamen recuperare pro hoc per breue *de recto*. Eſſonia ſiquidem de *vltra mare* de *ſeruitio domini Regis* & *malo veniendi*, ſi terra capiatur in manum domini Regis* quod debita hora replegietur, poſſunt infirmari, per dedicere primam ſummonitionem, & ſic de novo reincipiendum eſt. Et ſi terra capiatur in manum domini Regis & debitè replegiatur, tunc poteſt in apparentia rei petens eſſoniari.

CAP. IX.

Placiti *Tertius* dies. *Eſſonij* calumniatio. **Fourcher. Pleuine. Recouery ſur default.** Breue de *Scias*. *Paruum* & *magnum cape*. *Eſſoniorum* formulæ. De

malo lecti. Languor. *quatuor milites* missi ad infirmum. **Defalt puis essoin de mal de lit, & auters defaults.** Visores. **View de terre.**

TErtio die apparente petente, si reus essonietur proculdubio essonium illud disallocabile est. quia non potest reus essonium gaudere, donec prima sanetur defalta postquam terra sua capta fuit. Et si sit essoniatus perdit seisinam terræ vt per defaltam post defaltam. Facto autem atturnato rei sequenti die placiti, ambo atturnatus petentis & reus *essoniabuntur*, atturnatus autem rei requaquam. Si reus essonietur & atturnatus suus non vel tunc petens ad alium diem potest calumniare essonium illius rei, vel non. Certè secundum *Henricum de Bathonia*, non. Hora enim hoc faciendi iam pręterijt. Petens autem seu attornatus suus vel eius essoniator in redditione essonij illius potuit hoc fecisse & allocaretur de iure. Hic autem probatur de iure quod quandoque aufertur quod differtur. licet tamen generalitèr dicatur, quod differtur non aufertur. Calumnia enim essonij proiecti die pambulo hodie * devoluta

al. locũ non
enet in ore
et.

voluta in os petentis, quia expedit debitum tempus calumniandi, hodie locum non tenet. Hic autem disputari potest quod *essoniator* in casu plus facere potest quam *atturnatus*. Si autem *vir* & *mulier* inveniatur in vno breui, quemadmodum si terra petita fuerit hæreditas ipsius mulieris vel data cum ea in liberum maritagium, seu est questus illorum viri & mulieris coniunctim, alter eorum primo die potest essoniari, & alter deficere. Congruit tamen viro primò essoniari in hoc casu. Quid erit tunc de defalta mulieris? Terra capietur in manum domini regis aut deerit ordo iuris. Et quid si replegietur hora debita? Et hoc comperiatur per indorsamentum breuis vicecomitis? Die dato essonio ipsius viri amitteturne terra petita per defaltam ipsius mulieris? Cum habeat virum sine quo de iure coniunctim non debet respondere, Certè licet vir pręcellat mulierem generaliter, & in ore suo stet verbum mulieris, si terra petita fuerit de hæreditate ipsius mulieris, videatur quod debeat amitti. Sed si fuerit talis terræ questus viri & mulieris coniunctim, vel si donetur cum ea in liberum

maritagium, vbi vir tantum habeat in terra illa quantum mulier aut plus, non amittatur tunc per defaltam illam. Non enim convenit qd quis pro alterius contumacia puniatur. Quid erit tunc de defalta ipsius mulieris? Resummoneatur vna cum viro suo quod tunc sit ad alium diem. quia hic ordo de viro primitus essoniato * in mulierem primitus essoniatam converti non potest. Caveant vir & mulier coniunctim implacitati quod semper in essonio alterius alter compareat quamdiu *furcare* possint, &, cum vltra non possint, concurrant eorum essonia in suis locis. Alter autem illorum tantum vnum essonium *de malo lecti* habere potest. Hęc autem omnia dico de pluribus *participibus* vbi terra impertita est seu tenementum. videlicet de *furcatione* essonij & de defaltis inde prouenientibus; numerantur in parte in * statutis domini *Henrici* Regis. Si autem plures participes fuerint in breui, currat ordo communis. * Et cum iste erant dilationes tempore quo ista summa erat composita vbi plures erant participes tenentes per quos iusta petitio vltra quam debuit prorogabatur, illustris rex *Edwardus* filius R. *Henrici*

* Locus plerisq; exempll. corruptus.

* *Marlbrige* cap. 14.

* Desunt quæ his signis * * hinc distincta sunt, plerisque exempll.

rici in primo parlamento suo decreuit in premissis sicut plenius patebit in * sexagesimo articulo constitutionum illarum. Essonium autem de *vltra mare* si ritè iaceatur semper exposcit inducias XL. dierum ad minus. Et semper debet precedere essonium de malo veniendi & non econtra. Tertio die placiti post captionem terræ per defaltam quam tenens fecit die precurso, aut tunc ipse tenens defuit aut apparet. Siue autem appareat siue non ad profrum petentis inspiciat prænotarius indorsamentum vicecomitis a retro breuis per quod terra capiebatur. Et si reperiatur non esse replegiatam infra xv. dies post captionem tunc petens offerat se liti sic **Richard le Iay se pfre vers** William Huse **de play de terre. A tiel iour fu la terre pise in la main le rey par sa defaut de non pleuine de tout outre.** Ita offerre se debet, si tenens fuerit præsens; & si se teneat ad defaltam, quod securè facere potest, hoc modo irrotulabitur pfrum suum. *Richardus le Iay* **aut** *per se*, aut *per attornatum optulit se iiij. die versus* Willielm. Huse *de placito vnius carucatæ terræ cum pertinentijs in* H. *quam clamat vt ius suum versus eum. & ipse non*

* *West. 1. cap. 43*

venit & alias fecit defaltam ita quod præceptum fuit vicecomiti quod caperet prædictam terram in manum domini Regis & quod diem &c. & ipse suum &c. quod esset hic ad hunc diem. Et vicecomes mandauit diem captionis & quod summonitus fuit &c. & ideo consideratum est quod prædictus Richardus *recuperet seisinam suam versus eum per defaltam &* W. *in misericordia.* Et si tenens fuerit præsens tale erit breue petentis de Iudicio quod vocatur *Scias.* Rex *vicecomiti salutem. scias quod* Richardus le Iay *in Curia nostra coram Iustitiarijs nostris apud Westmonasterium recuperauit seisinam suã versus* Willielmum Huse *de vna carucata terræ cum pertinentijs in* H. *pro defectu ipsius* Willielmi. *Et ideo tibi præcipimus quod prædicto* Richardo *de prædicta carucata terræ cum pertinentijs plenariam seisinam habere facias sicut prædictum est &c.* Et si tenens defecerit post apparitionem, tunc exibit *paruum cape* sic. *Rex vicecomiti salutem Cape in manum nostram vnam carucatam terræ cum pertinentijs suis in N. quam* Richard' le Iay *in Curia nostra coram Iustitiarijs nostris apud Westmonasterium clamat vt ius suum versus* Willielmum

Huse

Huse *pro defectu ipsius* Willielmi, *Et summoneas per bonos summonitores prædictum* Willielmum *quod sit coram Iustitiariis nostris apud Westmonasterium tali die ad audiendum Iudicium suum.* Et habeas &c. Tunc autem ad proximum diem reo præsente petens habebit dictum breue *Scias* per quod adiudicetur ei seisina. Et quid si vicecomes ad alium diem per *magnum cape* non ceperit terram in manum domini Regis vt præceptum fuit ei, nec miserit breue ad bancum? Erit ne ipse tenens inde perdens, aut derogabitur ne in aliquo ipsi petenti? Respondeo. Tenens ob hoc non est puniendus. Nam licet contumax extiterit vicecomes, negligentia vicecomitis non debet ei impingi. Petens autem amittet vnum diem. Et cadet hæc negligentia vicecomitis in detrimentum vicecomitis sic. *Rex vicecomiti salutem. Præcipimus tibi sicut alias tibi præcipimus quod capias per visum &c.* vt supra in *magno Cape* & in fine sic. *Et tu ipse tunc sis ibi ad audiendum iudicium tuum de hoc quod prædictam terram in manum nostram non cæpisti nec prædictum* Willielmum

sum-

summonuisti quod esset coram Iustitiarijs &c. nec breue nostrum quod inde tibi venit, præfatis iustitiarijs nostris ad præfatum diem non misisti, sicut tibi præceptum fuit. Et habeas &c. Terra autem post primam vel iteratam captionem, vt moris est, replegiata, tenens potest securè essoniari de *malo lecti* quod quidem essonium sic irrotulabitur. *Richardus le Iay versus* Willielmum Huse *de malo lecti de placito terræ per talem & talem*, et sic reddi debet. *exige essoniatorem* Richardi le Iay. *vbi est* Willielmus Huse &c. *vos essoniatores* Richardi le Iay *quia non constat vtrum dominus vester velit se capere ad languorem necne vobis non datur certus dies. Sed tu* Willielme *sequere breue ad vicecomitē ad faciendum venire infirmum.* Rex *vicecomiti salutem. Mitte quatuor legales milites de comitatu tuo vsque N. ad F. ad videndum vtrum infirmitas qua* Willielmus Huse *in Curia nostra coram Iustitiarijs nostris apud Westmonasterium se essoniauit de malo lecti versus* Richardum le Iay *de placito terræ in Comitatu* Sussex, *sit languor necne. Et si sit languor tunc ponant ei diem a die visus sui in vnum annum & vnum*

num diem apud Turrim London *quod tunc sit ibi responsurus vel sufficientem pro se mittat responsalem & si non sit languor tunc ponant ei diem coram Iustitiarijs nostris a die visus sui in* XV. *dies quod tunc sit ibi responsurus vel sufficientem pro se mittat responsalem. Et dic quatuor militibus illis quod tunc sint coram præfatis Iustitiarijs nostris ad præfatum diem ad testificandum visum illū & quem diem ei posuerint. Et habeas ibi nomina militum & hoc breue teste tali Iustitiario &c.* Ex quo autē placitum capitale est coram Iustitiarijs de Banco quare debent visores ponere languido diem apud Turrim London cum non sedeant ibi Iustitiarij? Solutio. In hoc breui *mitte quatuor legales milites* sic dicitur *si sit languor tunc ponant ei diem a die visus sui in vnum annum & vnum diem*, & quia milites illi non habent certum diem videre infirmum, per consequens non potest constare quem diem prefigent languido. Ergo cum constare non potest adhuc de certo die ponendo à visoribus quia accidentaliter posset istud essonium iaci in fine vel quasi in fine alicuius termini, sicut frequenter, & forte infirmus deberet videri tali hora

quod

quod oporteret ei præfigere diem tempore vacationis; Et in vacationibus nullus in Banco residet priuilegiatus quod possit vel debeat admittere responsalem languidi cum surrexerit; Ideo ad *Turrim London* vt dictum est adiornetur languidus respondere coram *Constabulario Turris London* qui ibi residet per totum annum qui ipsum languidum adiornabit quod respondeat coram Iustitiarijs de Banco proximo die placiti. Et idem *Constabularius* testificari debet coram Iustitiarijs in Banco præsente languido, vel responsali suo. Et quid si languidus ille, die a visoribus præfixo ad Turrim non venerit nec responsalem miserit? Hoc reuera testificato coram Iustitiarijs in Banco ab ipso Constabulario, ad profrum petentis reus ex rigore iuris amittet seisinam hoc modo. Richard le Jay se pkkre vers William Huse de play de terre. William se fist essonier de mal de lyt a ceu iour per cely e cely. Richard suist vn brief an viscont a fere le veu de IV. cheualers de counte les queux le virent e iour assisserent y languor quil prist a la Tour de Londres soloun le vsage d' Engleterre. & il ne vent pas e ceo est

bien tesmoigne par le Constable de la tour que en ceo case port record & tesmoignage, d' ont nous demandons Iudgment de se defaute tout outre. Et tunc petens habebit *paruum cape*, ad capiendam terram in manum domini Regis & ad summonendum reum ad audiendum iudicium suum. Et sic recuperabit petens in hoc casu. Et licet reus comparuerit in Curia vel in Banco in hac calumnia actoris, & non seruauerit diem ad Turrim tunc ad consimile proffrum petens ipse recuperabit seisinam per breue *scias* propter præsentiam rei qui in absentia sua iudicari non debet. Quia cum reus ita defecerit quod debeat seisinam amittere si præsens fuerit exibit *scias*, si absens, *paruum Cape*. Istud autem essonium de malo lecti non iacet nisi in hoc breui patenti vel clauso scilicet *præcipe in capite*. Tamen secundum *Heuricum de Bathonia* iacet in breui de *consuetudinibus & seruicijs* & post vadiationem duelli vel positionem in magnam assisam & non ante. Si *sororestres* vel *quatuor* vel plures vel pauciores reæ efficiantur coniunctim, Hæ omnes gaudere possunt hoc essonio

tamen

tamen vna tantũ pro singulis capiat languorem. Ex quo tunc generaliter oportet quod *duo essoniatores* iaceant hoc essonium pro vnico reo, & istæ quatuor sorores videtur esse quasi quatuor reæ, quęro si sigillatim per duos essoniatores debent hoc essonium iactari pro illis? Solutio. Ius permittet vnam pro se & reliquis sororibus languere ad cuius languorem cessabit placitum versus sorores complices vsque ad diem a visoribus p̃fixum. Ergo cum per languorem vnius, reliquæ in hoc casu excusari possunt, Quę nam illarum debet capere languorem? Et primitus equidem visa à militib⁹ languebit. Et quid si disgregentur? id est si inventæ non fuerint in vna villa, & prima secunda & tertia velint surgere, tunc quarta vltimò visa a militibus capiet languorem. Dico autem per languorem vltimò visæ cessabit placitum ac si omnes concordarent. In fine autem languoris, an ista languida si appareat die à visorib⁹ præfixo, debeat ne pro se & alijs respondere? vel responsalem mittere, ita quod in ore aliarum sororum responsio non iacet? in hoc casu, si pręsens fuerit languida, dico quod oportet illas comparere. Et quic-

quicquid respondebit illa quę languebat tenebitur pro constanti. Et si miserit responsalem, aliæ sorores benè possunt absentare. Esto tunc quod per collusionem inter petentem & languidam vel responsalem eius habitam, recognoscatur ius petentis in respondendo ad exhęredacionem trium sororum huiusmodi per cui' recognitionem petens recuperet seisinã. hic nisi per remedium Curiæ attingatur illa collusio & Curiæ deceptio, ad restitutionem trium sororum huiusmodi nullum habetur recuperare nisi per breue *de recto.* Quicquid autem dico de *sororibus* iunctis in vno breui, dico de *viro & muliere* coniunctis & de *participibus* vbi terra impertita est. Die autem præfixo tenenti à visoribus, debent visores apparere in Curia ad testificandum visum suum, quia ex eorum testimonio procedendum est. Videlicet si testentur se vidisse infirmum tali die, & p districtum compotum liqueat tunc infirmum illum misisse responsalem suum die ab eis visoribus præfixo, de quibus visu & responsali ita in Curia computandum est vt supra in capitulo de Ordine placitandi in Curia Baronis, penitus liquet quod admittend'

est

est responsalir eiusdem. Et si non venerit tenens nec responsalem miserit, & hoc testificato à visoribus & comperto per certum compotum quod non seruauit diem ab eisdem præfixum vt suprascribitur, offerat se petens & obtinebit seisinam per *paruum Cape* vel per *scias*. Et ad proffrum petentis calumniantis defaltam rei, sic intrabitur defalta illa. *Richardus le Iay petit versus* Willielmum Huse *vnam carucatam terræ cum pertinentijs in H. vt ius suum &c. & alias se essoniauit de malo venicndi scilicet tunc, & habuit diem per essonium suum in Octabis &c. ad quem diem W. essoniauit se de malo lecti, ita quod præceptum fuit vicecomiti quod mitteret quatuor legales milites apud &c. ad videndum vtrum infirmitas &c. esset languor vel non. Et si esset languor tunc ponerent ei diem a die visus sui in vnum annum & vnum diem apud* Turrim London *apud tunc esset ibi vel per se vel per sufficientem responsalem &c. Et si non esset languor, tunc ponerent ei diem hic &c. vel sufficientem &c. Et Willielmus non venit nec responsalem misit. Ideò consideratum est qd prædictus* Ricard' *recuperet seisinam suam versus eum per defaltam ipsius W. & ipse in misericordia, &*

prædictus Richardus *sequatur breue suum ad vicecomitem*. Et quid si Willielmus non compareret p se vel per attornatum suum secundo saltem die sibi dato per essoniatores suos? tunc post essonium de *malo lecti* procul dubio petens securè & pręcise se capiet ad defaltam illam sic dicens. *Willielmus fecit defaltam primò die placiti eo quod solemniter vocatus non comparuit, vnde idem petens petit iudicium de defalta rei præcise.* Reus tamen replicando requirere debet a petente vtrum velit se tenere pręcise ad defaltam illam vel ad capitale placitum. Oportet quod si se teneat ad defaltam illam quod de toto renunciet capitali placito et ecōverso. Nam inconsuetum est quod quis in Curia domini Regis duplici remedio siue baculo in vno casu simul & semel gaudeat siue pugnet. Si autem petens requisitus se teneat ad defaltam illam præcise, reus potest sic dicere, qd nullam fecit defaltam, quod venit ad Bancum primo die placiti, & obtulit se versus prædictum petentem de placito prædicto & ibi morabatur quousque publicò proclamatum fuit per *seruientem de Banco* quod *omnes offerentes se ibidem ad placitandum de quibus-*

cunque placitis, exceptis placitis vnde magna assisa arrainiata fuit, vel duellum vadiatum, sine occasione recederent in crastinum. Et dicit quod si solemniter vocatus fuerit per *seruientē de Banco* hoc fuit postquam clamatum fuit sicut prædictum est. Ista siquidem allegatio super hac defalta penitus dependet a Recordo Iustitiariorū. Et si Iustitiarij recordarentur ipsum seruientem ita vt dictum est publicè clamasse proffrum in Banco, *Reus eat inde sine die & petens amittet clamium illa vice & tenens in misericordia.* quia præcisè se tenuit ad defaltam. Et si Iustitiarij recordarentur qd non fuit publicè clamatum proffrum in Banco sicut prædictum est, & quod omnibus horis primi diei placiti vlque ad horam nonam prędictus reus solemniter vocatus non comparuit nec sufficientem pro se misit responsalem, *consideratum est quod prædictus petens recuperet seisinam versus eum per defaltam, & tenens in misericordia.* Sequatur autem petens breue suum. Caueat autem calumniator huius defaltæ quod sit certus de recordo Iustitiariorum in hoc casu. In defalta quoque post essonium de *malo lecti*, post *visum* terræ factum, post positionem

nem in *magnam assisam* & post vadiationem *duelli*, reus amittet seisinam per absentiam primi diei. Si visores illi non venerint ad testificandũ visum suum, quid erit? semper distringantur donec venerint. Primò per vadios & saluos plegios sic. *Rex vicecomiti salutem. Pone per vadios, & saluos plegios* A. B. C. D. *visores infirmitatis talis quod sint coram Iustitiariis nostris, &c. ad testificandum &c.* Quare autem debent primò attachiari cum non summoneantur vt videtur? quia in hoc breui *Mitte quatuor legales milites &c.* continetur versus finem istud verbum qd valet summoneas; *Et dic quatuor militibus illis qui visui illi interfuerint quod sint &c.* Et sic licet pateat quod non summoneantur, sunt quasi summoniti. Et ideo primò attachiantur p plegios ratione illi' verbi in breui contenti scilicet *& dic.* Secundo si Non venerint ad prosecutionem petentis, sic. *Rex vicecomiti, salutem. Pone per vadios & meliores plegios A. B. C. D. &c.* Et tunc sunt primi plegij in misericordia. Tertio per corpora eorum; Et tunc sunt tam primi plegij quam secundi in misericordia. Quartò per terras & catalla, ita quod vicecomes habeat

corpora & quod manum non apponant, & quod vicecomes respondeat de exitibus, & interim taceat tenens. Si autem tenens ad diem sibi datum a visoribus non venerit personaliter sed responsalem pro se miserit, admittendus est & eius responsalis audiendus quicunque fuerit responsalis ille, dummodò ætatem habuerit. veruntamen si determinatiuè respondeat, vtpote si debeat iudicium fieri & loquela terminari, vt de duello vadiato vel de magna assisa summonita, vel aliquo alio modo vnde loquela debeat terminari; Tunc debet iudicium illud poni in respectu quousq; per milites de nouo missos per breue domini Regis ad tenentem sciatur ab eo si aduocauerit responsalem suum prædictum an non. Quod si non fecerit reuertantur illi quatuor milites & id testentur coram Iustitiarijs de Banco & tunc procedendum est eodem modo ac si reus personaliter comparuisset & respondisset. Et si negauerit responsalem & eius responsum dedixerit, tunc erit manifesta defalta rei, sicut sæpe contingit, & debet ad calumniam petentis iudicari & inde petens breue *Scias* habebit. Ista siquidem defalta, sicut omnes aliæ,

per

*per essonium de seruitio domini Regis, habito inde speciali warranto, saluari potest. Dato siquidem quod reus omisso hoc essonio de *malo lecti*, in adoptione sua erit quod appareat hodie & petat visum terræ sic. Richard le Jay se proffre per son attorne vers William Huse, de play de terre. Dicat *Willielmus* vel eius ⋆ atturnatus veies ci William encontre Richard. Ceo vous monstre Richard que ci est ꝛc. Et *Willielmus* respondet ita. Mort e force defend William que ci est e demande le oyer de breif. Lecto autem & audito breui sic. Nous emperlerons a vos congies. In regressu autem eiusdem rei sic. Mort e force defend William a son issir e si fet il vncore a son entrer ꝛc.

*locus in plerisque exx. deprauatus.

⋆ *al.* narrator, vt in nonnulli

CAP. X.

De *Exceptionibus. Visu* petendo.

MOdò videndum est de naturis *exceptionum*. Sunt quędam *dilatoriæ* & quędam *peremptoriæ*. Exceptio dilatoria cassat breue, & non perimit ius. Peremptoria perimit ius & cassat breue. Ha-

rum quoque exceptionum quędam sufficiunt ante *visum* terræ ad cassandum breue, quædam post *visum* nihil operantur. quia nulla dilatoria locum habet post *visum* [* nisi exceptio *nontenuræ* quæ ꝓponi debet post visum.] Nescit enim reus petitionem petentis prius, & facto visu affirmatur breue, ita quod per dilatoriam cassari non potest, nisi tantum per *nontenuram*. Ideo omissis hic peremptorijs antequam petamus visum, proponamus dilatorias quę tales sunt. *Vitium scripturæ, Rasuræ literæ in hoc breui patenti*, Error *nominis pro nomine, Agnominis pro agnomine, vnius villæ pro alia*, & quando breue impetratur *extra naturam sui ipsius*, & consimiles cassant breue ante visum. Excussis autem istis exceptionibus, aut tenent locum aut non. Si tenent tunc ad præsens consumitur breue. nec oportet tunc plus facere, si non teneant locum, nisi petere visum. De *visu petendo* loquimur sic. Tort e force defend Wi. que ry est e demand dew de la terre ore apmeismes. Concedetur, & irrotulabitur sic. *Richardus le Iay petit versus* Will. Huse *vnam carucatam terræ cum pertinentijs in H. vt ius suum, & Willelmus venit & petit inde*

De sunt in nonnullis.

inde visum & habeat; dies datus est ei & fiat visus per hoc breue. Rex vicecomiti salutem. Præcipimus tibi quod sine dilatione habere facias Willielmo Huse *visum de vna carucata terræ cum pertinentijs in H. quam* Richardus le Iay *in curia nostra coram Iustitiarijs nostris apud Westmonasterium clamat vt ius suum versus eum. & dicas quatuor militibus illis qui visui illi interfuerunt quod sint coram præfatis Iustitiarijs nostris apud Westmonasterium tali die, ad testificandum visum illum, & habeas ibi nomina militum &c.* Opus est amodò exprimere in quibus casibus potest denegari *visus* terræ & in quibus non. Videlicet quantũ ad hoc breue & consimilia. Constat quod in hoc breue et in alijs breuibus per quæ potest deueniri ad *duellum* vel ad *magnam assisam*, visus generaliter iacet, si petatur ante duelli vadiationem, vel positionem in magnam assisam, tamen si plures fuerint tenentes successiuè, per vocationem ad warrantiam, nullus habebit visum nisi primus tenens. & quomodo potest tam primus tenens quam successiuus vocati visum amittere? sic. A. petit versus B. vnam carucatam terræ cum pertinentijs &c. vt ius suum, & B. venit &

vocat inde ad warrantiam C. qui summonitus venit, & antequam warrantizat vel post petit visum. Non iacet reuerà. Quia cum inculpauerit C. sic A tort ly defoyce par sa garantie &c. Iuris ordo vult quod respondeat ad cartam suam vel ad cartam antecessorum suorum, si in carta illa specificatur terræ illa petita. Et licet vocator non habuerit cartam, vocatus debet bene scire de qua terra cepit homagium & seruitium vocantis. vnde cum warrantizauerit, petens petit eandem terram quam warrantizauit, & ideo non iacet visus. Et illud idem dicendum est de decem tenentibus si de warranto in warrantum fierent tenentes. *Campiones* tamen si ad duellum vel ad magnam assisam puenerint habeant visum post duelli vadiationem vel positionem in magnam assisam. Et dicetur eis qd infra diem sibi dictam, terram illam videant & hoc pro sacramento suo quod facient secundum quod perpendi potest in forma sacramenti eorundem. Et possunt quidam casus accidere de campionibus in quibus denegabitur eis visus terræ. De visu quidem habendo in placitis *intrusionis*, *dotis*, & huiusmodi, suis locis tractabitur inferiùs.

Gene-

Generaliter autem intellige quod vbi tenens potest vocare ad warrantiam, potest habere visum, nisi fuerint in casibus quibusdam specialiter exceptis vt si mulier petat *dotem* petens non habeat visum de tenementis vnde vir obijt seisitus, tamen potest vocare ad warrantiam & in breuibus *de ingressu* vbi fit mentio de gradibus ibi conceditur visus. * veruntamen non potest ibi vocare ad warrantiam extra lineam sed tantum respondere ad ingressum. & potest aliquando haberi visus vbi non potest vocari ad warrantiam vt in breui *quod permittat*. Periculum est autem ante visum vocare ad warrantiam, verbi gratia. Quidam petijt versus quendam vnam carucatam terræ cum pertinentijs in H. & tenens ille habuit duas carucatas in eadem villa, petens verò non habuit ius nec ad vnam nec ad aliam. Ipse tenens cum non potuit esse certus quid ab eo peteretur, antequam visus inde sibi fieret, venit antequam visum petijt & vocat inde ad warrantiam C. qui summonit° fuit, venit et petijt sibi ostendi ꝑ qd debeat ei warrantizare qui ꝓtulit quandã cartam ꝑ quam antecessores ipsius C. & heredes sui debeant warrantizare vnam caruca-

* variatim se habent hic codd. mss.

carucatam terræ in eadem villa & petens dicit quod non petit dictam carucatam terræ sed aliam, & tenens cum hoc vidit voluit respondisse de capitali placito & petens petit iudicium si, post warrantum vocatum, possit tenens respondere de capitali placito, & *consideratum fuit quod non, Sed quod ille quietus de warrantia, & quod petens recuperet seisinam suam versus tenentem tanquam indefensum & tenens in misericordia.* coram *Henrico de Bathonia.*

CAP. XI.

Quartus dies placiti. Essonium de *seruicio domini Regis.*

QVarto die, remisso per vicecomitem breui, per quod visus terræ factus fuit, actore se liti offerente, prænotarius inspiciat indorsamentum breuis vicecomitis, & si reperiatur p nomina militum qui visui interfuerunt quod visus terrę factus fuit, tunc ad proffrum petentis clamabitur reus qui die illo iustè si velit essoniari potest de *malo veniendi*, qd quidem essonium iaci & reddi debet quemadmodum superiùs est expressum.

Et

Et quid si habita collusione inter tenentem & vicecomitem visus terræ factus non fuerit nec breue remissum? proculdubiò ita procedendum est erga *vicecomitem* in hoc casu vt superius distinguitur, quando vicecomes p̃ collusionem omittit exequi *magnum cape*, nec ibi nec hic propter negligentiam vicecomitis reus debet puniri, nec petens promoueri. Esto autem quod reus nullo modo venerit ad hunc diem. quid iuris? petens offerat se liti. Richard le Iay se proffre vers William Huse de play de terre. William auoit view de terre a teu iour, e la view est testmoniage per les quatre chiualers queux a la view fuerent e il ne vient pas, d'ont nos demandomous iudgment de sa default. Quæ defalta sic intrabitur. *Richardus le Iay obtulit se quarto die versꝰ* Willielm. Huse, *de placito vnius carucatæ terræ cum pertinentijs in H. quã clamat vt ius suum versus eum &* Willielmus *petit visum terræ à die &c. & habuit diem hic post visum terræ factum ad hunc diem & per quatuor milites qui visui illi interfuerunt, testificatur hic nunc. & prædictus* Willielmus *non venit, & ideo consideratum est quod prædicta terra capiatur in*

manum domini Regis & ipse summoneatur quod sit hic tali die *ad audiendum iudicium suum.* & tunc exibit *paruum cape* quod supra scribitur. Et sciendum quod isto die & alijs diebus præteritis & futuris, absentia rei saluari potest vt ꝑdictum est, dum tamen reus ille excusetur ꝑ essonium de *seruitio domini Regis*, & inde pretendat tale breue. *Rex Iustitiarijs suis de Banco, salutem. Sciatis quod* Willielmus de H. *fuit coram nobis tali die apud N. per præceptum nostrum ita quod eo die interesse non potuit loquelæ quæ est corã vobis per breue nostrum de recto inter R. petentem & ipsum* Willielmum *tenentem de vna carucata terræ cum pertinentijs in H. & ideo vobis mandamus quod prædictus* Willielmus *propter absentiam suam illius diei non ponatur in defaltam, nec in aliquo sit perdens, quia diem illum quoad hoc ei warrantizamus &c.* Dato siquidem quod reus sequendo huiusmodi prædictum breue defecerit die ei dato de breui illo post visum terrę factũ, gratia dilationis faciendę, quid hoc proficeret ei? Ex quo autem vt de plano constat, possit ꝓrogari huiusmodi loquela de vno termino in aliam & in casu lucrari *autumnalia* aut *redditus assisus* aut v-

trun-

trunque & petens possit interim decedere, & sic breue & processus irruentur de toto, ideò, quia cauti sunt homines, frequenter fit talis dilatio ex lege & principis beneficio.

CAP. XII.

Quintus dies placiti. *Capere languorem* semel tantum licet.

QVinto die placiti, postquam reus essoniatus fuerit de *malo veniendi* post visum terrę factum, si reus ille hoc die sibi dato per essonium, nullo modo venerit, quid iuris? Petens se offerat liti sic. **Richard le Iay se proffre vers William Huse de play de terre. William fust essoin a teu iour puis veu de terre fete, e auoit iour teskes ore e il ne vient pas, d'unt nus demandons iudgmēt de sa defaute.** Ista siquidem defalta apta est per quam petens recupauit seisinam, & sic irrotulabitur. *Richardus le Iay optulit se* IV. *die versus* W. de Huse *per talem de placito vm̄ carucatæ terræ cum pertinentijs in N. quam clamat vt ius suum versus eum. Et ipse non venit, & habuit diem*

em per essonium suum postquam comparuit in Curia & petijt visum terræ. Iudicium. *prædicta terra capiatur in manum domini Regis, & ipse summoneatur quod hic sic tali die ad audiendum iudicium suum,* & tunc exibit *paruum cape* pro petente. Ex quo autem in iure permittitur quod in placito terræ, vbi agatur de proprietate recti, vt in hoc breui & suis branchijs, post essonium de *malo veniendi* generaliter sequitur essonium de *malo lecti*, per hanc regulam, cum ante visum terræ (vt supra in capitulo de IV. die) per idem essonium cęperit languorem, tamen intelligatur quod languor captus sit commoditas & exitus essonij *de malo lecti* in litis prorogatione, Quid iuris? Regula data, quod post essonium *de malo veniendi* generalitèr subsequitur essonium *de malo lecti* semper se tenet, sed semel potest reus tantum capere languorem & nonplus, & si reus essoniet se hodie de *malo lecti* & prius ceperit languorem; dabitur ei dies per essonium suum ad proximum diem placiti, & omittentur mittendi quatuor milites, quia non potest reus capere languorem plusquam semel. & quia reus aliter, vt dictum est, vt sentio, non potest de-

dicere demandam petentis quantum ad hunc diem, nisi aliquis respondeat, transeat per hoc essonium hodie & die sequenti. Ad alia decurramus.

CAP. XIII.

Sextus dies placiti. Voucher. Recouerie & counterpleas sur ceo. Voucher d'enfant. *Warrantia* ex *Dedi.* ex *homagio* & *seruicijs* receptis. Age.

SExto die placiti si reus se essonians de *malo lecti* defecerit, currat lex communis contra eum sicut faciendum tertio die vt superiùs quando fecit defaltam post languorem. si autem reus appareat hodie, quid faciendum est? Si habeat warrantum est ne bonum quod vocet hodie vel non? Distinguendum est. Si iste reus ita recenter feoffatus fuerit vel antecessor eius ab ipso warranto vel antecessore suo qui nihil sciat vel possit dicere a se ipso contra tenentem, vt per quietum clamium vel huiusmodi, Tunc vocet hodie ad warrantiam si quem habuerit. Sed si aliquid actum fuerit inter ipsum reum & petentem vel antecessores eorum per

quod

quod petẽs excludi debet ab actione sua id proponat tenens vtpote si habet quietum clameum ab ipso petente, vel si aliàs in Curia lis decidatur per aliquem finem inter eos, vel quod non possit respondere sine participibus, vel qood non teneat totam terram petitam, si ita sit & alia similia bonum est apponere antequam vocet ad warrantiam. Si autem reus vocare voluerit ad warrantiam cum petens loquut° fuerit per verba curiæ. reus defendet vim & iniuriam & dicet. **Jeo vouche a garrant per aid de cest court B.** & dicit hoc verbum **per l'aid de cest court** quia vocator non potest facere vocatum venire ad Curiam autoritate sua propria & tunc petens habebit hoc breue ad faciendum warrantum venire. *Rex vicecomiti salutẽ. Summoneas per bonos summonitores B. qd sit coram Iustitiarijs iuris apud Westmonasterium tali die ad warrantizandum W. vnam carucatam terræ cum pertinentijs in H. quam* Richardus le Iay *in Curia nostra coram Iustitiarijs nostris clamat vt ius suum versus prædictum W. & vnde idem W. in eadem curia nostra vocat prædictum B. ad warrantũ versus eum, & habeas ibi summonitores & hoc breue.* Ad quem diem

tenens

tenens poteſt eſſoniari de *malo veniendi* ſic. *W. qui vocat B. ad warrantum verſus* Richardum le Iay *de placito terræ per talem.* Warrantus autem vocatus appareat ſed nihil faciendum eo die quia non habet partem adverſam, licet principaliter ſequitur eſſonium illud, & tunc reddat eſſonium tenentis. dabitur petenti idem dies vt eſſoniatori & conſimiliter; warranto vocato vnus & idem dies. Ad quem diem warrant° poteſt eſſoniari de *malo veniendi*, ſic. *B. quem W. vocat ad warrantum verſus R. de placito terræ per talem.* quo die tenens non appareat ſed dabitur ſibi & petenti & eſſoniatori vocati vnus & idem dies. Nec plus fiat illo die quia primus tenens iam ſubſtituit ſibi alium tenentem per vocationem ſuam. Dato autem die per illud eſſonium poteſtne warrantus eſſoniari de *malo lecti* necne? de cętero non poteſt, niſi poſt vadiationem duelli vel poſitionem in magnam aſſiſam. Vocatio autem ad warrantum ſic debet irrotulari. *Richardus le Iay petit verſus* W. de Huſe *vnam carucatam terræ cum pertinentijs in H. vt ius ſuum &c. &* Willielmus *venit & vocat inde ad warrantum per auxilium Curiæ B. & habuit diem*

&c.& si B. vocatus venerit & vocat alium tunc sic. *Richardus petit versus B. quem W. vocat ad warrantum et qui ei warrantizet vnam carucatam terræ &c. vt ius suum &c.*& quotquot fuerint warranti vocati, tot successiuè essonia iactari debent. Et primus reus post singulorum apparitionem semper potest essoniari de *malo veniendi*; si autem warrantus defecerit post essonium, capiatur de terra ipsius ad valentiam in manum domini Regis p *magnum cape.* Rex *vicecomiti salutem, Cape in manum nostram per visum legalium hominum &c. de terra B. ad valentiam vnius carucatæ terræ cum pertinentijs in H. quam* Richard⁹ le Iay *in Curia nostra coram Iustitiarijs nostris apud Westmonasterium clamat vt ius suum versus* W. Huse, *& vnde idem W. in eadem Curia vocat prædictum B. ad warrantum versus eum pro defectu ipsius W. & diem captionis &c.* omnia vt supra in *magnum cape* in prima defalta tenentis post primum essonium. hæc defalta intrabitur sic. *Willielmus Huse obtulit se quarto die versus* Richardum le Iay *de placito vnius carucatæ terræ cum pertinentijs in H quam* Richardus le Iay *in Curia nostra coram Iustitiarijs nostris apud westmonaste-*

monasterium clamat vt ius suum versus eum. & ipse non venit. & habuit diem per essonium suum vt supra. Iudicium. *de terra prædicti* Richardi *capiatur in manum domini Regis ad valentiam &c.* ad quem diem si warrantus defecerit Richardus recuperabit seisinam versus eundem W. & W. versus B. ꝑ equipollentiam statim & sine difficultate per *Scias*, & hoc erit de pluribus warrantis vocatis successiue. Si primus vocatus defecerit petens per defaltam recuperabit seisinam suam versus primum tenentem & primus tenens versus primum vocatum & ille versus secundum & sic de singulis. Warrantus autem vocatus potest per exceptiones diuersas derogare ius petentis, sicut & tenens & ponere se in *magnam assisam*, vel defendere ius suum per *duellum in omni euentu*, siue determinare negotium per diuersas responsiones, vtpote per *finem* in Curia domini Regis *finem duelli*, per *quietam clamiam* factam, exceptionem *Bastardiæ*, & consimilia quatenus viderit expedire. Esto quod reus vocet ad warrantiam & reo essoniato, appareat warrant⁹, dico qd warrantus non potest intrare in warrantia sine suo vocatore, & sic per essonium

ipsius rei dabitur dies ipsi vocato. ad quem diem apparente vocatore ille vocatus facit defaltam. Quid iuris? Petens autem dico sequetur defaltam illam. versus quem? Certe versus vocatum ad warrantiam & non versus vocatorem. Quia vocator vbi & quando debuit vocauit & post vocationem suam essonium habuit, & die sibi dato debitè comparuit, vnde constat quod nullus deliquit nisi vocatus ad warrantiam. Quęro tunc cuius naturæ debeat esse defalta. vtrum debeat exequi per *magnum cape* aut *per paruum*. per *paruum cape* fiat huiusmodi executio, non pro eo quod vocatus intrauit in Curiam sine responsione facienda (vt prædictum est in warrantia intrare non potest sine suo vocatore.) Sed quod die sibi dato in essonium vocatoris defecerit præcisè. Et ideo exeat super ipsum *paruum cape* pro vocatore & petens recuperabit seisinam versus eum de petitis. Et sciendum quod vocatus non potest habere visum terræ quòd debet benè scire vnde vocatur ad warrantiam. Et generaliter accidit quod vocator prius habet visum. Caueat rursus is qui vocat ad warrantiam quod non *vocet minorem*; nisi

habeat

habeat cartam de feoffamento in manib⁹ per quam vocat. Quod si non fecerit amittit pro se & hæredibus suis seisinam imperpetuum. Tamen ex officio suo Iustitiarij possunt sibi facere gratiam si voluerint. Quum autem supradictum est quod essonium de *malo veniendi* generaliter sequitur essonium de *malo lecti*; inde quero si vocatus ad warrantiam postquam essoniatus fuerit primo die de *malo veniendi* possit se essoniare de *malo lecti*. Consequenter non potest, antequā warrantizet sed post potest. Esto quod duæ sorores tanquam vnus hæres, vna videlicet maior & altera minor vocentur ad warrantiam. quid iuris? appareant ambę in Curia & minor se alleget esse infra ętatem & petat custodem & habebit. maior autem non respondebit, sine sorore minori. Et remanebit loquela illa sine die vsque ad ętatem minoris prædictæ. Et cum minor maior fuerit, resummoneatur loquela in eodem statu in quo dimissa fuit. Idem dico de quibuslibet participibus terrarum, de quibus quidam sunt minores & quidam maiores. Ex iuris ordine siquidem habemus quod minor non *habet legem*, id est quod non potest facere

legem. & hoc sequitur quod non habet essonium de *malo veniendi*, nec per consequens de *malo lecti.* Quid erit tunc cum aliquis minor implacitetur, possit gaudere huiusmodi essonio an non? si minor ille feoffatus fuerit infra ætatem, siue reus sit, siue per reum vocatus ad warrantiam, ad euitandum dilationes suas non amittat propter teneritatem ætatis suæ quia per feoffamentum iam efficitur maior in hoc casu & habeat essonia sua supradicta. Quum autem plerique sentiunt minus instructi in legibus terrarum quod warrantia non iacet in Chartis, vbi hæc clausula *Ego et hæredes mei warrantizabimus* non inseritur, opus est inde certitudinem exponere. In qualibet simplici charta de feoffamento per hoc verbum *dedi* quamuis plus de warrantia non specificatur, tenetur donator vel eius hæres warrantizare si ad horam vocati fuerint, nisi in feoffamento i. in carta aliquod speciale huic contrarium apponatur. Sic contigit inter A. & B. coram *R. de Thurkelby* vnde postea fuit duellum vadiatum & arrainatum. Non autem dico quod assignati donatoris debeant per illud verbum *dedi* warrãtizare huiusmodi feoffato; nisi specifi-

cificetur in charta donatoris, quod ille & hæredes & assignati sui debeant warrantizare. verbi gratia. Si huiusmodi donator antequam feoffasset istum qui modo vocat ad warrantiam habuisset tres acras terræ, de quibus vnam dedit isti de quo loquor & posteà residuas duas C. vel D. nulla mentione facta in carta primi feoffati quod assignati dicti donatoris debeant warrantizare. licet, dico, tertia acra annexa fuerit prædictis duabus acris, non tenetur assignatus ille warrantizare. Et quid si donator talis penitus donauerit & fuerit ita debilis quod non habeat vnde warrantizet, cum vocatus fuerit vt sæpe contingit In hoc casu nihil scio consulere, nisi quod ille feoffatus adquirat sibi confirmationem a Capitali Domino si fieri posset. Et si capitalis dominus illud confirmauerit & vocatus fuerit inde ad warrantiam oportet quod warrantizet, licet non nominet donatorem. tali dico ratione. Iste capitalis dominus de quo tenementum illud tenetur, cum se obligauerit ad hoc, per confirmationem suam, omnia verba in dicto feoffamento contenta tam le *dedi* quam le *confirmaui* vna cum dicto donatore simul firmat coniun-

gens & obligans fortiter seipsum ad pactionem tenendam dicto feoffato quasi pro defectu ipsius donatoris. Licet autem superiùs in hoc capitulo dicatur qd minor respondere non debeat si implacitatus fuerit, nec warrantizare cum vocatus fuerit, antequam peruenerit ad ætatem, non debeat nisi in minore ætate feoffat' fuerit, dico in eadem ætate respondeat. In actione siquidem dotis respondeat minor semper, siue petatur ab eo dos, siue in dote petenda si vocatus fuerit ad warrantiam. Sed ista lex videtur esse contraria illi quæ supra scribitur quę dicit quod minor respondere non debet donec peruenerit ad ętatem nisi in minori ætate feoffatus fuerit. Petitio siquidem dotis non prejudicat proprietatem iuris hæredis a quo petitur dos. Quia cum mulier petat dotem i. tertiam partem hęreditatis, hæres ipse manifestatur, & quod ea decedente pars tertia reuertatur ad duas, & quod hic non iacet huiusmodi exhęredatio hæredis. Et si mulier expectaret ætatem minoris poterit interim in fata decedere & sic per consequens semper dotem amittere, statuitur ex iure qd minor in hoc casu respondeat. Si quis

autem

autem vocauerit minorem ad warrantiam non habens in promptu cartam vel aliud per quod ipse minor si maior esset respondere deberet, sine vlteriore dilatione ad calumniam minoris amittet ab eo petita. Dato siquidem quod sorores sint participes alicuius hæreditatis de quibus vna tantum vocata fuerit ad warrantiam quæ se nihil tenere assereret nisi in propartia & peteret iudicium desicut vocata sola fuit ad warrantiam sine participe; Distinguendum est vltrum terra partita esset inter participes illas necne. Si impetita fuerit, dicta responsio tenet locum, si verò partita & illa quæ sola vocata fuerit ad warrantiam de proparte sua recepérit homagium & seruitium vocantis, respondeo quod *sine participibus respondere non debet* non habet locum, sed debet warrantizare præcise. nisi aliud de nouo proponat versus ipsum vocantem. Adhuc autem de warrantia sic definio. *Walter° petit versus* Thomam *vnam carucatam terræ cum pertinentijs in H. & versus R. tantum vt ius suum, & vnde quidam B. antecessor suus fuit seisitus in dominico suo vt de feodo & iure tempore &c. &* Thomas *venit & vocat inde ad warrantiam quen-*

dam

dam G *qui præsens est & petit sibi ostendi per quod debeat ea warrantizare & dicit quod tenet dictum tenementum de ipso* G. *et ei inde fecit homagium, ita quod ipse est in seisina de homagio et similiter de seruitio suo scilicet de tali redditu assiso & similiter de secta ad Curiam suam sibi de tribus septimanis in tres septimanas. Et prædictus* Thomas *quesitus si habeat aliquam cartam vel instrumentum de dicto* G. *vel ab antecessoribus suis per quod teneatur prædictam terram ei warrantizare dicit quod non, & dicit quod non debet ei warrantizare vt sibi videtur ratione homagij tantum de sicut nihil ostendit neque cartam neque instrumentum aliquod per quod teneatur ei warrantizare, tum quia in Cancellaria domini Regis nunquam conceditur aliquod breue de warrantia nisi expresè fiat mentio quod is qui vocat ad warrantiam habeat cartam illius quem vocat vel alicuius antecessoris ipsius, tum quia nec prædictus* Thomas *nec antecessores sui inde fuerint seisiti ab eo nec ab antecessoribus suis. Dicit enim quod quidam* Richardus le Iay *feoffauit quendam* Widonem *auum prædictæ* Thomæ *cuius hares ipse est de prædicto tenemento per prædictum seruitium per annum. Et idem* Richardus

chardus *dedit cuidam* Willielmo *auo prædicti* G. *cuius hæres ipse est homagium & seruicium* Widonis *de prædicto tenemento ita quod idem* Wido *sponte & voluntate sua atturnauit se de prædicto seruicio* Willielmo, *& postea descendit prædictum seruicium ipsi* G *iure hæreditario, & dicit quod quando recepit homagium de prædicto* Thoma *recepit illud* saluo iure cuiuscunq; *eò quòd audiuit quod* Walterus *qui modo petit vendicabat ius in prædicta terra, ea ratione quod antecessores sui & antecessores prædicti* Thomæ *exierunt de duobus fratribus et idem* Walterus exijt *de fratre antenato vt asserebat & desicut idem* G. *cepit homagium & seruicium suum* saluo iure vniuscuiusque, *Iudicium si debeat ei warrantizare ratione prædicti homagij tantum versus ipsum* Walterum *qui clamat esse propinquior hæres de eodem stipite & eadem linea parentelæ.* Adhuc autem videtur quod non debeat ei warrantizare ratione prędicti homagij tantùm. Hac ratione homagium non obligat nec excludit aliquem ab actione nisi tantum personam illius quæ illud homagium receperit. verbi gratia. si quis ceperit homagium de aliquo tenemento ratione cuius ho-

homagij excluditur quod non potest in vita sua tenementum illud petere in dominico, & si ius haberet in eodem hæredes sui non excluderentur ratione dicti homagij quin bene possint tenementum illud petere in dominico si voluerint. Et si idem G. warrantizaret prędicto *Thomæ* prædictam terram & eandem terram per considerationem Curiæ domini Regis postea amitteret versus prędictum *Walterum*; tunc teneretur facere prędicto *Thomæ* Exchambium ad valentiam prædictæ terræ, absque hoc quod idem G. nec hæredes sui aliquid possint recuperare versus prædictum *Thomam* & hęredes suos de prædicto exchambio in perpetuum. & sic contingeret quod hæredes ipsius G. excluderentur ab agendo de prædicto exchambio, per prędictum homagium quod idem G. ceperit quod manifestè est contra rationem prædictam. Ex cussis quæ in pręsenti recoluntur quo ad vocationem warranti & quoad exceptiones dilatorias de *peremptorijs* loqui congruit isto loco. Ad primum autem distinguendum est vtrum fuerit principalis re aut per vocationem substitutus qui respondere debeat, quia vtrique competunt

tunt exceptiones futuræ quæ tales sunt & vigent singillatim. *Præscriptio temporis* probata excludit petentem & hæredes suos ab actione quę talis est in hoc breui, si dicatur quod is de cuius seisina petit actor non fuisset in seisina rei petitæ ✶Tempore Regis *Henrici* patris Regis *Edwardi* nunc. peremptoriè discinditur actio actoris.

✶ *al.* vltra tempus Regis *Richardi* auuncuili Regis *Henrici* &c.

Radulphi de *Hengham*

Summæ magnæ

Finis.

Deesse videntur plurima; sed ita finiunt omnia, quæ vidisse nobis contigit, exemplaria.

SVMMA PARVA

Radulphi de *Hengham.*

CAP. I.

De Essonijs.

NOtandum quod quinque sunt essonia. *Primum* videlicet de *vltra mare*. *Secundum* autem *de terra Sancta*. Ista duo iacent in principio placitorum & non alibi. Et nisi veraciter proponantur vertenda sunt in defaltas. & quomodo Essoniatus de *vltra mare* vertitur in defaltam, queratur in statuto *primo westmonast*. cap. XLIV. Inducię primi essonij XL. dies. Induciæ secundi vnius anni & diei. & continuò posteà iacet essonium de *malo veniendi* & non econverso. *Tertium* de *malo veniendi*, cuius adiornamentum est quindecem dies, & iacet in quolibet placito ante apparentiam & post; exceptis quibusdam casibus, vt in breuibus *Assisarum*, *Attinctarum*, & *Iuratarum*

rum de Vtrum. Et intelligendum est qd post apparentiam, nec Actori nec Reo competit istud essonium, nec Reo alicubi in disseisina. Quæratur autoritas in *primo* Stat. *Westmonast.* cap. XLII. & in *secundo* Stat. *Westm.* cap. XXXII. Item nec in *appello* de morte hominis iacet istud essonium vt in *secundo* Stat. *Westm* cap. XIV. Item in quolibet placito in quo allocatur istud essonium postquam partes descenderint in inquisitionem, non iacet, nisi semel & hoc ad ꝓximum diem post inquisitionē adiudicatā. Et post alias apparentias subsequentes non remanebit ꝑ istud essonium inquisitio capienda. Item post diem datum prece partium non iacet istud essonium; vt in casu quo partes concedunt venire sine essonio. Quæratur autoritas vtriusque in *secundo* Stat. *westm.* cap. XXXI. Item post diem datum de die in diem quod habet fieri in eodem termino non iacet continuè post defaltam in actione Reali. non competit in personali. non iacet continuè post *magnam districtionem*, nec post *magnum cape*, nec postquam præceptum est vicecomiti quod faciat *aliquem venire* vel quod *habeat corpus* alicuius, vel quod *capiat* aliquem,

quem, vel postquam mandatum fuerit Episcopo, quod faceret *venire clericum* suum. In casu etiam quando vir & vxor vel duo tenentes in communi implacitantur, non habebunt de cætero nisi vnicum essonium, quia si vnus se essoniauerit & alter compauerit ad alium diem illi qui comparuit non potest se essoniare quia sunt in statu quasi vnius personæ. quæratur autoritas in *primo* Stat. *westm.* cap. XLIII. & in Stat. *Gloceſt.* cap. x. Et istud solum essonium & non aliud tam iacet attornato quam principali personę. Ita tamen quod si quis essoniauerit seipsum & non attornatum suum, non allocabitur ei essonium suum. Et si duos habuerit atturnatos vel plures, & vnum & non alium essoniauerit vel si plures habuerit & miserit vnum essonium, non allocabitur ei essonium. Sed videtur instantiam recipere, in casu quo lex vadiata fuerit per atturnatum, postquam atturnatus se non poterit essoniare, quia post legem vadiatam dictum est per Iustitiarios atturnato quod faciat venire dominum suum in propria persona sua ad faciendum legem. *Quartum* esonium est de *malo lecti*, cuius adiornamentum est in *morbo*

transeunti

transeunti sicut adiornamentum de *malo veniendi*, secundum discretionem Iustitiariorum, & in *languore* vnius anni & vnius diei a die visus sui apud *Turrim London*. Et habet istud essonium quasdam proprietates quas non habent alia essonia, videlicet, quod alia essonia in ipso primo die placiti ꝓferri debent, istud in tertio die præcedenti. Item in alijs essonijs sufficit vnus essoniator, in isto exiguntur duo essoniatores. Item alia essonia iacent sine essonio præcedenti immediate, istud essonium non iacet nisi immediate præcedat essonium de *malo veniendi*. Præterea in alijs essonijs datur certus dies, sed in isto essonio dicitur essoniatoribus qd eant sine die & iacet solummodo in omni breue *de recto*, ante apparentiam & post, exceptis quibusdam casibus, scilicet in breui in quo non iacet *duellum*, vel *magna assisa*, vt inter eos qui per eundem sanguinem & eundem discensum clamant. Item in alijs breuibus de recto, quum placitum fuerit in eodem comitatu non iacet nisi causa sit vera; quia si convincatur falsa, vertetur in defaltam. Quæratur autoritas in *secundo* Stat. *Westm.* cap. XIX. *Quintum* essonium

 est

est de *seruicio domini Regis* & iacet in quolibet placito & loco, exceptis quatuor casibus, videlicet *Nouæ disseisinæ*, de *Dote vnde nihil habet*, *vltimæ præsentationis*, & in *Appello* de morte hominis. In quibus non iacet, eo quod Rex non concedit protectionem suam in casibus illis & alijs casibus in quibus nullum iacet essonium. Et solummodo allocabitur istud essonium si ad diem datum proferatur warrantum Regis, et licet istud essonium videatur allocatum esse eo quod adiornatur non tamen adiornatur sine conditione sicut alia essonia, quia si ad diem datum non proferatur warrantum, sequitur pæna talis. qui non habet warrantum in actione reali, vertetur in defaltam. in actione personali condemnabitur ad expensas. quæratur auctoritas in Stat. *Gloceſt.* cap. VIII.

CAP. II.

Breuia de Dote.

SCiendum quod tria sunt breuia *de dote vnde nihil habet*, videlicet vnum breue de communi dote quod est tale.

Præcipe A. quod iustè &c. reddat B. quæ fuit vxor C. rationabilem dotem suam quæ eam contingit de libero tenemento quod fuit prædicti C. quondam viri sui in tali villa vnde nihil habet &c. Et per istud breue petitur tertia pars tenementi quod fuit viri sui die quo eam desponsauit & postea. Et aliquando *medietas* vt de *socagio*, & tamen non de omnib' sed de antiquis & de hijs de quibus mulieres dotari consueuerint secundum consuetudinem certæ patriæ. Et istud breue aliquando est clausum vt in casu quando nihil habet & aliquando patens, quando aliquid habet & aliquid deficit. In quibus casibus vnum & aliud locum habent. Inuenietur in Prouisione de *Merton* cap. 1. In supradicto breui clauso adiudicari debent *damna* mulieri de tenementis de quibus vir obijt seisitus. De tenementis verò alienatis per virum de quacunque dote petita per breue patens non adiudicantur *damna*. Aliud est breue *de dote nominata*, quando vir dotat vxorem suam & hoc aliquando de minori quam de tertia parte, & de hoc tenebit se contentam. Et aliquando de tertia parte in certo loco & si non excedit tertiam partem remanebit

illa certa dos. aliquando autem de maiori & remanebit ei quousque admensuretur & reddatur ei per breue *de admensuratione dotis*; & in hoc breui sicut in alijs adiudicantur damna. Et est *breue de dote nominata* tale. *Praecipe D. quod iustè &c. reddat B. quæ fuit vxor C. tale manerium de quo prædictus C. eam dotauit nominatim* ad ostium ecclesiæ *quando eam desponsauit &c.* Aliud est breue quando filius dotat vxorem suam de tenementis patris sui & de voluntate patris sui quod aliquando est de certo tenemento nominato; aliquando de tertia parte omnium tenementorum patris sui, quo similiter *damna* adiudicantur, & est breue tale. *Praecipe A. quod iustè &c. reddat B. quæ fuit vxor C. tale manerium* vel *tertiam partem tenementorũ de quo* vel *de qua prædictus C. eam dotauit de assensu & voluntate E. patris ipsi C. ad ostium ecclesiæ &c.*

CAP. III.

Exceptiones contra Breuia de Dote.

EXceptiones contra prædicta breuia, & maximè contra primum potest obijci

obijci quod demandans dotem suam habere non debet, eo quod prędictus C. quondam vir suus die quo eam desponsauit vel vnquam postea non tenuit tenementum vnde petit dotem in dominico vt de feodo. Et per hoc non excluditur, quin habebit dotem de tenemento quod per virum suum vel antecessorem dimissum fuit ad terminum ante desponsationem & remansit in manu terminarij vsq; ad obitum viri. quia licet commodum rei fuit terminario, tamen feodum & dominicum remansit pęnes virum. Item in omnibus breuibus prædictis potest obijci quum vir suus commisit feloniam, ob quam fuit *suspensus*, *vtlagatus* vel alio modo *morti damnatus*, vel *demembratus*, vel apud **Douere** *infalistatus*, vel apud **Southampton** *submersus*, vel apud **Winton** *demembratus*, vel *decapitatus* vt apud **Northampton**, *in mari supervndatus* sicut in alijs partibus portuum. nec recolo in alijs casibus in quibus homo habetur pro felone, nisi in casu vbi quis mouet guerram contra Regem, vel Regnum, ita quod abiurauit regnum, vel in fugiendo tanquam public latro fuit decollatus. Item quod inter ipsam & virum suum *di-*

uortium fuit celebratum. Item si vir suus amiserit tenemẽtum vnde illa dotem petit per iudicium excepto iudicio per defaltam, de quo dicitur in *secundo* Stat. *Westmonast.* cap. IV. Item amittit vxor dotem in casu de quo dicitur in ijsdem statutis cap. XXXVIII. Item si minor existens in custodia alicuius ducat vxorem sine assensu domini sui, & in minori ætate obierit, dotem amittit. Secus est si expectet ætatem. Item vxor quæ propter minorem ætatem suam, vel propter minorem ętatem viri sui non potest *dotem deseruire* ab actione dotis excluditur excepto tamen si a minori dotetur ex voluntate patris, quia licet sit inhabilis secundum ius commune, voluntas tamen patris, quę firmatur secundm conventionem, facit habilitatem. Alia vero exceptio est, si objiciatur quod *non* fuit viro *legitimè desponsata* &c. Sed istius exceptionis discussio pertinet ad episcopum & ordinarium, & secundum eius responsionem procedatur ad iudicium. Sed quid erit si pro vna muliere petente dotem, cui obiecta fuerit prædicta exceptio, scribatur episcopo, & per responsum episcopi mulier illa recuperabit dotem, & post modum venerit

alia

alia mulier petens dotem de dono eiusdem mariti & similiter obijciatur quod non fuit viro legitimo matrimonio copulata, & ordinarius scribat Regi quod vltima est vxor legitima, & quod decepcus fuit in priore casu matrimonij? Dato hoc stabitur posteriori mandato Ordinarij. Sic contingit de *Albreda* & *Alicia* de Pasham. Alia est exceptio, quod si petat dotem de muliere dotata dicitur quod de *dote non debet dotem habere*, sed intelligendum est quod illa exceptio non repellit quamlibet mulierem ab actione vel a petitione dotis. Quia contingit in casu. *Radulphus* habens vnam carucatam terræ ducit vxorem & dotat eam & postmodum dat filio suo vnam virgatam terræ qui ducit vxorem & dotat eam, mortuo filio *Radulphi*, vxor filij dotata est de tertia parte virgatæ terræ, mortuo *Radulpho* vxor *Radulphi* petit dotem de toto. Si obijciatur ei quod de dote non debet habere dotem, non allocabitur ei exceptio illa, quia in priori contractu matrimonij inter *Radulphum* & vxorem suam adquisitum fuit ius vxori prædicti *Radulphi* de toto. nec debet ei preiudicare secundus contractus inter filium

Radulphi & vxorem suam post dotatam. Secus est si *Radulphus* obierit ante filium suum & dotem suam recuperauerit de tenemento quod *Radulphus* dedit filio suo & similiter de tenementis quæ remanserunt prædicto R. post illud donum, si postmodum prius mortuo R. prædicto, & postmodũ filio *Radulphi*, veniat vxor filij & petat dotem versus vxorem *Radulphi* quæ ius habuit in toto, obstabit ei illa exceptio, quod *de dote dotem non habebit, &c.*

CAP. IV.

De visu concedendo.

VT fciatur in quibus casibus visus terræ concedatur sciendum est quod in omnibus breuibus quæ incipiunt *Præcipe* tali *quod reddat* aliquid quod actor petit tenere ad minus ad vitam, vel ad terminum vitæ alterius, vt in breuibus *de recto*, & *ingressu*, & *consanguinitate*, de *forma donationis*, de *Eschaeta*, & similibus in quibus tenetur in dominico, visus conceditur; exceptis quibusdam casibus. Quia per hoc quod dicitur *ad terminum vitæ* ex-

excluditur breue de *custodia*. Per hoc qd dicitur breue *de Recto de tenementis*, excluditur breue de *consuetudinibus & seruicijs*, & breue de *Recto de aduocatione ecclesiæ*, in quo visus non conceditur si tantum sit vna ecclesia in villa in breui contenta. Et si plures sint ecclesiæ & nominetur ecclesia talis sancti, si plures ecclesiæ de illo sancto in eadem villa non habeantur. Per hoc quod dicitur *tenens in dominico*, excluditur warrantus sine quo tenens se non posse dicit respondere. exceptis quibusdam casibus &c. Cuiusmodi sunt *commune breue de dote vnde nihil habet* de tenementis vnde vir suus obijt seisitus. Item breue de dote assignata, quando filius dotat vxorem ex voluntate patris & alij sunt casus expressi ex statutis *Westmonast. secundi* cap. LIII. Per hoc quod dicitur *Præcipe quod reddat tenementum* excluditur breue *de nuper obijt* in quo visus non conceditur licet tenementum per illud petatur. Alia sunt pluria breuia in quibus visus conceditur, nec tamen fit Mencio quod *aliquis reddat tali*, sed *quod permittat &c.* Sicut in omnibus breuibus *de ingressu*, quæ proveniunt & originem habent a breuibus *nouæ disseisi-*

ne de *communia pastura*, & omnibus alijs de quibus fit mentio in *vltimo statuto* Westmonast.cap.xxix. Item in omnibus alijs breuibus de *ingressu* de *fossato* de *stagno* &c.de quibus iacet assisa exceptis quibusdam casibus pasturæ. Quia si petatur communia vbique in villa de qua fit mentio, non est necesse concedere visum,sed si in aliquo loco petatur & in aliquo loco non, necessario habet concedi. Vnum est breue de recto quod non est de forma supradictorum breuium, scilicet *Quo iure* in quo * conceditur visus,si actor dicat Reum nullo modo communicare in terris suis, sicut dictum est de Pastura. Sunt alia breuia quæ ad Vicecomitem pertinent placitanda quæ aliquando ponantur coram Iustitiarijs vt de *Domo,muro,porta,gurgite*, in quibus propter nocumentum, visus concedicur; & de quibusdam consimilib', vt de *mercato,feria*, *Ouili* non conceditur visus quia non est necessarius.

* Nonnullis mss.non conceditur.

CAP.

CAP. V.

De breuibus *Assisarum.* & primo de breui *nouæ Disseisinæ.*

SCiendum est de quibus iacet Assisa, & quibus fit modis disseisina, & quibus personis competit, & contra quos. De quibus; sciendum est quod de tenementis cuiusmodi sunt *terra, pratum, Boscus, Pastura, Vastum, Piscaria separalis,* ad minus versus deforciantes, *Gurgites* & alia quæ numerantur in *secundo statuto* Westmonast. cap. xxix. Quę in seisina alicuius sunt aliquo titulo in feodo, vel ad minus ad terminum vitæ & hoc aliquando ad vitam possessoris, de quo non fit distinctio. Aliquando ad vitam dimittentis, super quo distinguitur. vel dimittens nihil aliud habuit quam ad terminũ vitę vt *Rector ecclesiæ,* tenens in dotẽ, & consimilib⁹ in quibus casibus transfertur liberum tenementũ in possessorẽ, vel dimittens habens feodũ transfert in possessorem ad vitam dimittentis reseruata reuersione hæredib⁹ vel alijs in quo casu aliquorũ opinio est qd liberũ tenementũ non transfertur. Iacet et de *Fossato prostrato,*

ta, vel *leuato*, *stagno prostrato* vel *exaltato*, *sepe prostrata*, *leuata*, vel *exaltata*, via *obstructa*, vel *arctata*, *aqua diuersa*, pro cursu aquæ ad nocumentum arctato. Quædam sunt consimilia ad nocumentum leuata, de quibus non datur *Assisa*, sed pertinent ad vicecomitem placitanda, velut *Domus*, *Virgultum*, *Porta*, *ouile*, *molendinum*, *Gurges*, & *Furnus*. Quædam & hijs similia quæ sunt ad nocumentum, quæ coram Iustitiarijs sunt placitanda, vt *feria*, *mercatum*.

CAP. VI.

De titulis. *Hereditaria successione*, *feoffamento*, & *Eschaeta*. quomodo acquiritur *liberum tenementum*.

ET quod dicitur supra de *titulo*, sciendum est quod veri *tituli* sunt *Successio hæreditaria*, *feoffamentum* [*perquisitum titulo feoffamenti*] *Eschaeta*. Sed in quibusdam horum casuum, maior exigitur seisina, ad liberum tenementum perquirendum, & in quibusdam minor. Vt in successione vero heredi per pedis positionem adquiritur liberum tenementum, quia posito pede adquiritur liberum tenemen-

mentum de toto tenemento quod annectitur tenemento in quo pes ponitur, vel cui illud tenementum annectitur. Non sic est de hærede non vero, veluti de vero Bastardo vel nato ante matrimonium, vel alio de longiore sanguine. Licet ante aduentum veri hæredis stet in hæreditate p magnum temp', videlicet per dimidium anni vel amplius, & postea verus hæres eum eijciat, non propter hoc timere oportet verum hærodem breue nouæ disseisinæ, quia possessio non veri hæredis *seisina* vel adquisitio dici non debet sed potiùs *Intrusio*. Si autem contingat quod post mortem alicuius intrat verus hæres, & alius qui verus non est, & similiter morantur in possessione per magnum temp', & postea verus hæres eijciat non verum, non competit non vero actio vel remedium per disseisinam. Sed si non verus eijciat verum, vero hęredi competit actio, quia cum ambo essent in seisina, seisina dicitur illius qui maius ius habet. De titulo liberi tenementi per adquisitionem per *feoffamentum*, multa sunt consideranda. Quia cum aliquis feoffat alium non tam cito transfertur liberum tenementum in feoffatum sicut superius dictum est in

successione hęreditaria. Quia primo videndum est vtrum feoffator feoffat aliū, absque alterius prejudicio, in quo casu p bonam transmutationem adquiritur feoffato liberum tenementum; de his maximè de quibus se dimisit ad plenum, nullo sibi reseruato præter seruicium. Et si forte in prejudicium alterius fiat feoffamentum, non tam cito adquiritur liberum tenementum feoffato, vt in casu quo feoffator se facit medium inter Capitalem Dominum & feoffatum, vbi oportet qd plena & pacifica seisina fiat feoffato antequam competat actio ei versus feoffatorem, contra quod tamen potest subueniri per finem *factum*, vel per *Recognitionem factam coram Rege vel Iustitiarijs*; quarum virtute adquiret feoffatus liberum tenementum non obstante contradictione capitalis domini. Et similiter si vxor dotata, vir tenens p legem Angliæ, vel aliter ad terminum vitæ, vel per feodum tálliatum. in supradictis tenuris feoffato requiritur longa seisina & pacifica antequam adquiratur ei liberum tenementum. Et in huiusmodi feoffamentis multa alia consideranda, videlicet remota absentia illius cuius interest; tempus quo

ad

ad ipsum deuenire possit notitia, potestas eius resistendi & multa alia. Similiter de *Villano* alienante villenagiũ, & *Ballino* alienante tenementum in custodia sua existens, in quibus casibus, de breui seisina, non adquiritur liberum tenementum. In titulo per *Eschaetam.* adquisitio quæ aliquando adquiritur Capitali Domino per feloniam tenentis & in alijs casibus his similib⁹, vt in reuersione post feodum talliatum de iure, & quod alicui competit per formam donationis, de facili adquiritur liberum tenementum ratione reuersionis ad personam à qua vel cui⁹ antecessoribus exiuit tenementum, cessante successione reuertendi, vel per formam donationis alicuius remansurum. Sed in istis duobus casibus, diuersa exigitur verificatio in iudicio. quia in reuersione ratione feodi talliati vel doni sub conditione non exigitur quod clamans reuersionem scriptum aut aliquid aliud ostendat ad intentionem suam probandam, quàm patriam; eo quod carta doni pęnes adquisitorem ex consuetudine remanet & non pęnes donatorem. Et ideo tenementum sine ostensione cartæ ad donatorem reuerti potest. In alio casu quando debet re-

*al. continuò.

remanere extraneæ personæ non * coniunctæ post mortem alicuius, necesse habet petens ostendere finem vel cartam de forma doni. Et cum dicitur supra quod titulus liberi tenementi tripliciter adquiritur, non propter hoc credat aliquis quin alia via adquiritur alicui liberum tenementum, attamen per aliquem colorem oportet quod supponatur prædictis titulis. verbi gratia. Quidam ingreditur per disseisinam quæ nullum facit titulum, postea disseisitus remittit & quietum clamat eorum ius suum. Iam habet disseisitor titulum liberi tenementi per quietam clamantiam disseisiti vbi prius non habuit, & sic æquipollet quieta clamantia feoffamento. *Præscriptio* similiter & *præsumptio* fit aliquando loco tituli. verbi gratia. Aliquis ingreditur per disseisinam & disseisitus ætatis & suę potestatis permittit disseisitorem per magnum tempus tenere ipsum non eijciendo nec versus ipsum impetrando actionem; quare præsumitur, ex quo per tantum temp' stetit in seisina per aliquem titulum clamauit tenere. Et propter hoc si post magnum tempus eijciatur, competit remedium p breue *nouæ disseisinæ*. Mulieri etiam dotatæ,

dotatæ, siue tenenti per legem Angliæ, competit remedium per breue nouæ disseisinæ, si eijciantur quia donum viri in dote est quoddam genus perquisitionis. Similiter adquiritur tenementum ad terminum vitæ viri ducendo mulierem, cuius hæreditas tenementum est; & sub eodem genere comprehendi potest. Quorundam tamen ingressus cum ceperit per prędictos titulos vel sub colore eorundem titulorum nunquam alicui facit liberum tenementum. Et illis, quibus dimittitur aliquod tenementum ad voluntatem, vel ad terminum annorum, licet a tam magno tempore tenuerint, cuius dimissio non poterit haberi in memoria, nunquam adquiritur liberum tenementum, nisi per consequens factum videlicet p̄ feoffamentū aut quietam clamantiam illi⁹ cui fuit liberū tenementū. Et hoc intellige qd liberum tenementū non adquiritur illi cui supradicto modo facta fuit dimissio, sine facto illi⁹ cui⁹ fuit liberum tenementū. sed aliquando contingit qd huiusmodi tenentes ad voluntatē vel ad terminum feoffant alios de facto, tn. de iure non possunt, & tn. p̄ eorū feoffamentum, adquiritur feoffatis liberū tenemen-

tum, quod nunquam euenit per factum illorum qui nullam habent tenentiam. Et quod dicitur ſupra de felonia, ſciendum quod *felones* ſunt *ſuſpenſi, vtlagati*, & alij de quibus dicitur hic & ſupra in *cap. de Dote* * ſecundo.

* *Tertio*; vti hac diſtinguitur editione.

CAP. VII.

Quibus modis fit diſſeiſina:

SCiendum, quod, cum quis tenens realiter eijcitur de tenemento. item abſens, cum ingredi voluerit, eijcitur & repellitur. Item cum * manuopus alicuius impeditur per * ſuperfluoſam, & hoc in tenemento diu ante appruato, vel de tenemento de nouo appruando. verbi gratia. Si qui vaſtum ſuum non prius appruatum redigat in culturam, ſalua tenentibus & vicinis ſufficiente paſtura cum libero ingreſſu & egreſſu, cum inceperit appruare impediatur, impeditor pro diſſeiſitore habetur. Item in paſcendo alterius ſeparale fit diſſeiſina vt in *vltimo ſtatuto* Weſtmonaſt. cap. XXIX. Item aliquando continuando poſſeſſionem a qua abiudicatur. verbi gratia. Diuortium cele-

* *al.* manuopere.
* Nonnullis *vel per ſuperfluam*; alijs, *ſuperflitioſam.*

celebratum est inter virum & mulierem, si post diuortium vir teneat se in hæreditate perquisita in maritagio mulieris, statim cum post diuortium manuoperetur disseisitor est. Item intrando per iudicium quod non ligat. verbi gratia. A. implacitat B. de tenementis C. & fit iudicium de tenementis C. cum tria exigantur ad iudicium scilicet *Actor, reus*, & *Iudex*, & in isto iudicio deficiat vnus trium, videlicet verus tenens qui dicitur reus, ille qui recuperat pro disseisitore habetur. Eodem modo si in Curia Comitis *Glocestriæ* recuperatur tenementum alicuius qd est de feodo Comitis *Warreniæ*; quia defuit ibi Iudex, ille qui recuperat pro disseisitore habetur. Et tamen illa iudicia non peccant in forma, quia verus est ibi processus sed substantialia deficiunt. Non sic est in falsis iudicijs quæ habent sua substantialia, scilicet actorem, reum & iudicem (& his non existentibus fit iniquum iudicium) quia istud iudicium ligat quousq; infirmetur, & solummodo competit recuperare per breue de *falso iudicio* & non per breue *nouæ disseisinæ*. Item dicitur in casu disseisitor quando non per factum fit sed per aduocationem

in Curia. Et hoc est cum ille qui dimisit terram ad terminum posuerit se in tenementum ante terminum finitum & terminari⁹ eum eijciat, si ille qui dimisit terram ad terminum impetrauerit *breue nouæ disseisinæ* versus terminarium, clarum est quod si terminarius dicat se nihil habere nisi ad terminum & convincatur per assisam quod terminarius eiectus ante terminum finitum vim vi repellendo se reposuerit, impetrator nihil per assisam recuperabit. Sed si falso coram Iusticiarijs clamauerit feoffamentum, & contrarium convincatur per illam falsam clamationem factam in exhæredationem illi⁹ qui tenementa ei dimisit, habeatur pro disseisitore. Eodem modo si terminarius eiectus impetret breue *nouæ disseisinæ* versus eum qui ad terminum ei dimisit, convicto quod nihil aliud habuit quam terminum, per suam falsam clamationem, amittat terminum suum. Et est disseisina de redditu in omni casu, cum tenementũ aliquod alicui obligatur in aliquo redditu, siue de eo siue de alio teneatur & districtio * recusetur vel replegietur.

C A P.

CAP. VIII.

Quibus Personis competit *assisa*. Exceptiones item *dilatoriæ* & *peremptoriæ*. De vocando in *auxilium*. per *eundem descensum*.

SCiendum est, qd quibuscunq; liberis & in statu liberorum existentibus, qd dicatur ꝑ hijs qui in * *nayvitate* ꝑ creati sunt, & cum à magno tempore fugerint & ad remota loca extra *astrum* se transtulerint & tenementa perquisierint, si ab illis eijciantur, competit eis remedium per breue *nouæ disseisinæ*, & contra veros dominos quia quousque natiuos in seruitutem ꝑ iudicium redigerint, ad tenementa seisienda manum apponere non possunt. *Villanis* quidem in *Astro* commorantibus non competit huiusmodi remedium versus veros dominos non magis de *perquisito*, quam de *villenagio*. Si tamen de *villenagio* vel de *perquisitis* eijciantur per extraneos competit eis remedium ꝑ breue *nouæ disseisinæ*; quia in hoc casu villan' non quo ad verũ dominũ sed quoad ex-

* al. natiuitate.

extraneos ꝑ libero habetur. Eodem etiã modo *Sokemann'* de *antiquo* dominico, licet contra dominum vel vicinum de eodem socagio placitare non possit nisi per *paruum breue de recto clausum*, versus tamen extraneum si eum eijciat, competit ei remedium per breue nouæ disseisinæ. Competit etiam liberis a magno tempore in seruitutem redactis, illis videlicet quorum patres & aui & quicunque antecessores à tempore quo currit *breue de recto* in seruitutẽ redacti fuerint. quamdiu enim in *astro* morantur competit eis remedium ad liberum * statum rehabendum per breue *Ne Vexes*. Et si a tenemento eijciantur non competit eis aliud remedium quam per breue *nouæ disseisinæ*. Sciendum est, quod contra quamlibet ꝑsonam; dum tamen verus nominetur tenens, quo in breui non nominato, nihil impetranti acquiritur. Competit etiam aliquando viro contra vxorem in casu in quo vxor profuga alienat tenementum viri sui, vel etiam tenementum vxoris. Contra impetrantem competunt exceptiones aliquando *dilatoriæ* aliquando *peremptoriæ* breuis. Dilatorię ; veluti senten-

* *al.* tenementum.

tentia *excõmunicationis*. excipitur etiam contra impetrantem *quod nihil habet nisi ratione vxoris*, vel contra clericum qui nihil habet nisi *ratione ecclesiæ suæ*, de qua non fit mentio in breui, vel quod *Villanus* vel *Sokmannus* est, de quorum discussione dicitur supra. Item excipitur contra virum & vxorem, si disseisina facta fuerit mulieri ante matrimonium & conquerantur ambo disseisiri. Cassatur etiam breue si erratum sit in *nominibus personarum, villæ*, aut *Comitatus*. Similiter si dominus quest⁹ fuerit se disseisiri de redditu & conuincatur quod seisitus fuerit de redditu per manus villanorum, super quo iacet breue *nouæ disseisinæ* de tenemẽto in dominico potius quam de redditu. *Peremptoriæ* breuis. eo quod alias assisa transiuit; ad quod requiritur quod de eodem tenemento inter easdem personas de eodem tempore. Item si quis clamat liberum tenementum siue exprimat titulum siue non, & recognoscatur p assisam quod iure successionis intrauit, & pendet inter eos placitum in Curia Christianitatis de *Bastardia*; quamdiu fuerit placitum in *Curia Christianitatis* remanebit

placitum in Curia Regis in suspenso. Competit etiam exceptio *quietæ clamantiæ, feloniæ præiudicatæ, exchambij* & consimiles &c. In breuibus *assisarum* & in omnibus alijs breuibus generaliter locum habet ista exceptio, videlicet si tenens dicat quod *nihil clamat nisi cum vxore sua coniunctim*. Et hoc tripliciter, vel qd fuerint similiter feoffati, & tunc habet necesse ostendere cartam, vel qd invenit vxorem suam seisitam, antequam eam desponsauit, vel quod tenementum petitum vxori suæ descendit iure hæreditario post desponsationem. Item alia est exceptio ad cassandum breue videlicet si tenens dicat *se nihil clamare nisi ad voluntatem talis* vel *se esse villanum alicuius*, vel *tenere de villenagio tali*; quo comperto vel recognito cassatur breue. in quo casu vel oportet petentem intrudere se in tenementum si potest vel impetrare aliud breue super dominum ipsius tenentis & super tenentem. Item potest excipi quod *tenens nihil clamat nisi ratione custodiæ* talis minoris infra ætatem, qui in breui non nominatur. Replicatio contra istam exceptionem potest esse quod *antecessor illius minoris*

noris non obijt inde sesitus, nec die quo obijt habuit aliud in tenemento petito. Si tenens dicat quod antecessor illius minoris ius habuit in tenemento illo, & iterum alia proponatur replicatio quę vera est quod antecessor illius minoris aliquod habuit, sed id quod habuit dimisit ad plenum eidem petenti per feoffamentum, tunc vlterius distinguendum est, ex quo tenens cognouit antecessorem minoris aliquod habuisse &c. si antecessor illius minoris obijt &c. vel non, quod fieri non potest, sine breui in quo minor nominetur. quia dato quod *assisa* transierit contra minorem, minor cum ad ætatem pervenerit non posset facere *attinctam*, quia fuit neutra pars in breui priori, & sic cassatur breue. Alia est exceptio dilatoria quando reus dicit se *non posse respondere sine suo participe*; quod est in casu quando hæreditas descendit duabus sororibus, aut pluribus vel exitui vnius vel ambarum, & postquam hæreditas partita fuerit, si vnus hæredum de parte sua implacitatus fuerit, excipere possit qd tenet in proparte cum tali cohærede sine quo non potest respondere & in hoc casu ꝑcipia-

piatur qd hæredes summoneantur ad respondendum cum ea si voluerint. Et si ad diē venerint & respondere voluerint cum participe audiantur & tunc ꝓcedat placitū versꝰ eos, tanquā versꝰ vnū tenentē. Et si forte ad diem datū non venerint nec essoniatorē miserint, vel forte ad diem datum per essonium non venerint, respondeat tenens solus. Sed sanè intelligatur quod illa exceptio locum habet quando res petitur per ius quod competere posset actori ante mortem communis antecessoris. Quia si quis petat per aliquod ius quod ei competere posset per factum cohæredis post participationem hæreditatis, satis clarum est qd in hoc casu non habebit auxilium participis. quia potest esse quod cohæredes rem vnam litigiosam vendiderint, vel excambiauerint vel per iudicium per malam defensionem amiserint, vel per feloniā forisfecerint antequam cohæres de re litigiosa fuerit implacitatus. In quo casu dicendum est qd de nihilo non est auxilium petendum. Dictum est qualiter petitur auxilium participis quando cohæredes implacitantur de tenementis. Sed contingit aliquando

quando quod *sectæ Curiæ, Iurisdictiones, libertates, seruicia,* & *consuetudines* veniunt in iudicium inter querentem & vnũ de participibus tenentem manerium vel tenementum ad quod spectant huiusmodi *sectæ, iurisdictiones, libertates seruicia* & *consuetudines* in quo casu, tenendum est quod sicut tenens habere debuit auxilium participis de *principali* ita habebit de *accessorio.* Dum tamen illud accessorium ad annuum proficuum extendi posset. hoc obseruato tamen de huiusmodi supradictis quæ fuerunt in possessione cõmunis antecessoris antequam hęreditas fuerit partita & quæ ad vnicum hæredẽ per extentam proficui devenerunt. Et sic excluditur obiectio. In casu, si vnus hæredum leuauerit iniustas exactiones & consuetudines de propria sua iniuria in quo casu non erit auxilium participis petendum. Alius est casus, quo tenens dicit quod non potest sine alio respondere videlicet cum Rector implacitatus fuerit de iure ecclesiæ suę dicit quod *inuenit ecclesiam suam seisitam* & quod non potest sine patrono & loci Diocesano respondere, in quo casu præcipiatur patrono & loci

loci diocesano summoneri. Et si venerint vel non venerint vel diem datum per essonium suum non servauerint, seruetur processus supradictus. Alius est casus consimilis quando tenens per legem Angliæ dicit quod *tenementum petitum fuit ius vxoris suæ de qua procreauit quendam talem sine quo non debet respondere.* Summonebitur tunc ille & post summonitionem seruetur processus supradictus. Sed differunt isti duo casus vltimi à superioribus, quia si tenens in istis duobus casibus vltimis amittat rem petitam nullum erit suum recuperare super episcopum, patronum, aut heredes, sed in superiorib' casibus de participibus tenens obseruato suo ordine, si amiserit, recuperabit super cohæredem per processum vlterius procedendi. Sed vnam proprietatem habent omnes isti casus supradicti quod siue cohæres siue patronus siue hæres hæreditatis quæ tenetur per legem Angliæ fuerint infra ætatem, generaliter remanebit loquela vsque ad ætatem hæredis, & per hoc quod dicitur supra *quod rector invenit ecclesiam suam seisitam* satis excluditur dubitatio si rector de suo perquisito

vel

vel de ſua intruſione aliquid appropriat eccleſiæ ſuæ, in quo caſu non poteſt auxilium patroni aut Dioceſani ſui petere. Sed eſt caſus quando mulier dotata implacitatur de dote ſua in quo caſu diſtinguendum eſt vtrum petatur verſus eam tenementum vel tenemento annexum, vt *iuriſdictio* vel *ſecta* & huiuſmodi in valorem partis dotis ſuæ extenſa. In primo caſu vocare poteſt ad warrantiam tanquam warrantum dotis ſuæ. In ſecundo caſu cum non iaceat vocare ad warrantiam, habet dicere quod non poteſt ſine hærede reſpondere, & tunc ſummonebitur hæres ad reſpondendum ſicut prædictum eſt ſi voluerit, in quo caſu ſeruabitur proceſſus ſupradictus. Et in vtroque caſu ſi vxor pro defectu warranti hæredis amiſerit, recupabit mulier excambium non tamen ad plenum valorem rei amiſſæ. Cuius ratio benè patet ſubtilitèr intuenti. In aſſiſa mortis anteceſſoris & in alijs breuibus poſt viſum terræ iacet exceptio de *non tenura*; quæ ſic debet proponi. *dicit B. quod non debet A. ad breue ſuum reſponderi eo quod non tenet integram terram verſus eum petitam*

petitam, eo quod talis inde tantum tenet; & talis tantum inde tenet, quo comperto p inquisitionem vel recognitionem cassabitur breue Replicatio contra istam exceptionem. *B. tenuit die quo breue fuit impetratum & hoc in feodo vel in dominico vel* si illa tenuit de B. ad *terminũ annorum* vel in *villenagio* vel *ad voluntatem*, quo comperto, vel recognito, stabit breue. Et sciendum quod in breuibus *Assisarum* potest proponi ista exceptio cum alijs exceptionibus tangentibus verba breuis. Sed in alijs breuibus si proponatur cum effectu, cum ea non possunt proponi alię exceptiones, sed secundum quod p eam compertum fuerit, fiat iudicium & hoc diuersimode. quia in breuibus *Eschaeta*, de *ingressu, forma donationis*, & *consanguinitatis*, & alijs in quibus non iacet *duellum* vel *magna assisa*, si inquisitio facit p excipiente, tunc cassabitur breue & sic est dilatoria. Si p parte aduersa recuperabit petens tenemẽtum, salua tamen tenenti actione p *breue de Recto*. Et si in breui de Recto proponatur ista exceptio cum effectu adimit ei ius contra quem transiuit. Proponitur aliquando exceptio huic si-

similis, cum non sit, sic dicendo, *quod tenens versus quem petuntur viginti, non tenet viginti eo quod tenet nisi decem.* in quo casu si non possit dicere quis teneat residuum, oportet respondere de eo quod tenet. Tam in breuibus *assisarum* quam in alijs breuibus iacent exceptiones dilatorię sic dicendo. *Tu petis versus A. tantum & versus B. tantum, ac si vterque sciret suum separale & ipsi tenent in communi,* quo comperto eodem modo erit vt supra. Et est alia exceptio in assisa *mortis Antecessoris* sic. *tu petis de morte A. & verum est A. obijt seisitus sed post eius mortem intrauit B. filius vel soror vel neptis vel consanguinea & de sicut non petis seisinam vltimi seisiti peto iudicium,* quo comperto cassabitur breue sed fallit hoc casu. in casu scilicet in quo non intrat verus hæres, licet habeatur pro consanguineo, de cuius seisina non cassabitur breue, ꝓ eo maximè quod si ipse inventus esset tenens & seisitus potius haberetur pro iniusto deforciatore quam pro vero tenente. Item quidam pro ratione feoffamenti quod defunctus ei fecit, post mortem defuncti ingreditur tenementum & sub colore feoffamen-

menti est seisitus, licet feoffamentum sit vacuum, venit post verus hæres & eijcit sic seisitum, ꝑ quod tenementum recuꝑabitur per breue *nouæ disseisinæ*, & postmodum verus hęres ꝑ *assisam mortis antecessoris* sui petat, & excipiatur contra eum quod seisitus fuit post mortem antecessoris sui, replicare poterit quod illa seisina adnullari poterit vel adnullata fuerit per assisam *nouæ disseisinæ* per exceptionem, quo compto non valebit sua exceptio. Item duo cohęredes sunt, vnus antecessor, & vnus ingreditur in tota hæreditate & eijcitur postmodum, si nomine amborum ꝑquiratur breue mortis antecessoris, & excipiatur quod vnus ipsorum fuit seisitus post mortem antecessoris, non ꝓpter hoc cassabitur hoc breue, pro eo quod & sunt quasi vnus hæres & per factum vnius, non adnullabitur actio amborum cum ambo non fuerint seisiti. Alia est exceptio in breui *mortis antecessoris* dicendo, *tu petis tenementum de morte talis patris sui & bene cognosco quod obijt seisitus & post mortem eius ego intraui, vt filius suus, nepos, & sumus de eodem sanguine & clamamus per eundem descen-*

scensum vnde peto iudicium. proposita exceptione prædicta, prædictis verbis, nisi in contrarium obijciatur *bastardia* vel *diuersitas consanguinis* cassatur breue, & reuertetur ad *breue de Recto,* in quo non iacet duellum nec magna assisa. Sed quid erit si tenens vocet ad warrantiam, & warrantus postquam warrantizauerit vel vlterius alium vocauerit ad warrantum? postquam warrantizauerit, cassabitur breue per eundem descensum. Et similiter si tenens per legem Anglię dicat *quod nihil clamat nisi ratione hæreditatis vxoris suæ.* Et hæres postquam summonitus fuerit cassat breue per eundem descensum. Et si postmodum petens perquirat breue *de Recto,* nunquid poterit tenens defendere se per *duellum* vel per *magnam assisam,* cum non sit de sanguine petentis? certe non. quia ex quo alias warrantus suus cassauit breue per exceptionem eiusdem descensus, in *breui de recto,* non magis defendit se p *duellum* vel per *magnam assisam,* quam defenderit ille qui prius cassat si compertus fuisset tenens.

Summæ Paruæ
Radulphi de *Hengham*
Finis.

Errata sic corrigenda. Lege

PAg.2.l.2.introductiua.Pag.7.deuenerit.Pag.34.*In margine*, post oportet, *& summoneas dictum Willielmum quod sit, &c. inde respondurus &c.*Pag.35.l.15.paruit.*in margine*,nullis ad sum-& omninò pro annuò. *Pag.prox.l.*11. petentis.*Pag.*50.*l.*21.quod tunc. *Pag.*59.*l.*3.fuerit,*Pag.*72.*l.*20.donator & eius heredes: *Pag.*79. *l.*8.nunc,peremptoriè. *Pag.* 82. *l.* 19. essoniatorem.

Notes upon Sir Ralph de Hengham.

PAg. 1. *Primicerijs.*] He means *Prenotaries.* The word is often in Constitutions of the time of the declining Empire; as *Primicerius sacri cubiculi, Lampadariorum, Officiorũ Palatinorum,* and the like. Mongst them was *Primicerius Notariorum,* that is, the Emperors cheif Notarie. *Alciat. ad Cod.* 12. *tit.* 7. *Primicerius, Notarius principis dicitur, & honore inter Notarios primus, sicut sequens dicitur secundicerius.* Κηρὸς n. *ceram significat,* κηρωτὴ *tabulam signatam, in qua antiqui scribebant. ab huiuscemodi igitur tabulis dicti sunt primicerij.* Those *primicerij Notariorum* in *Rome*, although discharg'd from their office, yet remaind in equall degree of honor with the *Proconsuls,* as appears in a Constit. of *Gratian, Theodo-*

Theodosius, and *Valentinian* in *Cod. Theodos. lib. 6. tit. 10.*

Pag. 2. Modus Cyrograffandi.] It seems by this, that either we haue not all his first copy, or els he neuer finisht what he here promises. For we haue no more of it.

Pag. 5. I. filio Alani *Comiti de Arundel.*] By mariage of a *Fitz-Alan* with the heire female of the *D' Aubignies* Earl of *Arundel*, came that surname, which is here, as a word literally signifying, turnd into Latine, by *Filius Alani.* It was vsuall in those elder times to do so. As to expresse *Champernoun*, by *de Campo Arnulphi* 7. Ed. 3. *fol.* 35. a & 49. b. and the rolls haue commonly *Filius Petri*, *Filius Herberti*, de *Bello monte*, de *Bellofago*, de *S. Leodegario*, de *Monte Canisio*, de *Monte forti*, *Mortuo Mari*, for *Fitz-Peeter*, *Fitz-Herbert*, *Beaumont*, *Beaufage*, *S. Leiger*, *Mount-Chensy*, *Mount-fort*, *Mortimer*, and such more. So in 29. *Ed.* 3. *fol.* 30. *b.* Colle beside Somersham and *Colle iuxta Somersham* (although Colle indeed appeard in the record to be in Somersham) are held all one in expressing the name of that place. In 30.

Ed.

Ed.3.fol.2.b. villa de Pontefracto is Pomfreit in a *præcipe*, and in 38. *Ed.3.fol.28.* Newark is taken in the name of the prioresse of *Newark*, as a name signifying a new work. But in 25. *Ed.3.fol.38.a. Apud villam Sancti Petri* is disallowed for *apud* Petreston, though one interpret the other. and the case of *P.* 11. *Ed.3.tit. quid iuris clamat* 2. in the ms. is, that *Iohn de Brayford* brought the writ against *Isabell Peuerell*, grounded vpon the note of a Fine, whereby *Gilbertus filius Stephani* had granted the reuersion of the mannor of *Wolward* which *Isabell* held for life, to *Iohn* in fee; and *Parning* took exception to the note and writ, because this *Gilberts* fathers name was *Richard Fitz-Esteuen* which *Richard* gaue the mannor in taile to *Isabell* &c. all that is stood on, in the argument, is that of the name; and in the ms. occurres also icy fust dit que tout fust il vtlaghe per tiel nome que il ne fereit pas per tant atteint &c. & auri fil fust endite per tiel nome que home ne ireit pas de ly arreiner &c. and so *Stonar* (as in the print) giues iudgment against the Conuse. This case is rememberd in 11. *Assis.pl.4.* And by 11. *Ed.3.*

tit. Estoppell 228. *Filius Thomæ* in Latine cannot be a surname; But, that its a good plea, to shew that the party so design'd had a father of another name, its held 40. *Ed.* 3. *fol.* 22. *a.* 44. *Ed.* 3. *fol.* 12. *b.* and the law hath been lately so taken, as you see in *Osbornes* case *Rep.* 10. *fol.* 132. *b* For other autority, how *Filius* may bee vnderstood either as part of a name, as for a legitimate sonne, or as a note of only natural relation, see 38. *Ed.* 2. *fol.* 22. *a.* 39. *Ed.* 3. *fol.* 11. *a.* & 25. *a.* 3. *Hen.* 4. *fol.* 14. *a.* 30. *Assis. pl.* 51. *per* Seton. 14. *Ed.* 3. *tit.* Estoppell 173. 13. *Rich.* 2. *tit* Breife 645. 10. *Edw.* 4. *fol.* 12. a Cursons case.

Ib. Eadem gratia Lincolniensi Episcopo.] nothing is more vsual of that time, thē to find Bishops, Abbots, Priors, & the like to haue *Dei gratia* in their titles. But later ages hath appropried it to Kings. *Lewes* XI. of *France* would not endure, that *Francis* then Duke of *Bretagne* should vse it. See *Bodin. de Republica lib.* 1. *cap.* 10. and others noted in the *Titles of Honor pag.* 116.

Pag. 6. *In liberum Burgagium.*] As free *socage* in the country of lands, so free *Burgage*

gage in Boroughs, and cities, is the tenure of houses, regularly. and they are the two base tenures in regard of *Knights seruice. Burgagium, socagium,* & *Feodum militare* make vsually *Bracton's* tripartit diuision. See him *lib.* 4. *tract. de Assis. mort. antecessoris cap.* 14. & *in cap. precedent.* §. 3. of Burgage: *Reuera terminatum est quod potest legari, vt callatum tam hæreditas quam perquisitum per Barones* Londoniæ *& Burgenses* Oxoniæ, *& ideò verum est qd in Burgis non iacet Assisa mortis antecessoris.* that must be vnderstood only of such Boroughs as had by custome their lands deuisable. see **Burgages deuisables** in *Stat.* 11. *Ed.* 1. *Acton Burnell, Bract. fol.* 272. *a.* and *Thorpe* 21. *Ed.* 3. *fol.* 21. *b.* Tradesmen that held these burgages are the *Burgenses* entended in *Stat. Merton cap.* 7. where an heire of a Gentleman (a tenant by Knights seruice) is disparaged, if maried to *Burgensis* or *Villanus* 31. either tradesman, or husbandman.

Ib. vel Maritagium.] Although *Hengham* liu'd and wrote after *Westm.* 2. yet this, as other examples of his *writs of right* are, is of elder time then the statut. *Bracton fol.* 329. *a.* hath this verie writ in-

substance, as of his time, and thither must *liberum maritagium* be referd. For cleerly since the statut of *Westm.* 2. a writ of Right would not lie for lands held in Frankmariage.

Ib. Nec pro omni seruitio.] But *Bracton's* writ with that tenure hath expressely *Pro omni seruitio.*

Ib. Portandi breuia.] Now *breuia* is appropried to the signification of the Kings writs. Vnderstand it in this tenure (which is mention'd also in *Bracton fol.* 328. *b.* and *Regist. Orig. fol.* 2. *b.*) for letters of message and the like. For, because the Kings writ was a short letter of command, therefore had it the name of *Breue.* So *Bracton lib.* 5. *de Except. cap* 17. §. 2. and, in the Ciuill law, both *Breue* & *Breuis* are in like sense, you may see *C. tit. de conveniendis fisci debit. l.* 5. *de apochis public. l.* 1. *& tit.* 42. *lib.* 1. restor'd by *Gothofred.* Very often also for letters, *Breues* and *Breuia* occurre in *Theodosius* his Code, *Cassiodore's* Precedents, *Symmachus* his Epistles, other of that time. The later Grecians call'd it βρίϛιον & βρεουιον. yet those are as ancient as *Iulian* and *Eusebius*, who vse them. and those, which wrote them,

them, they called βρεϛιάτορες, or *Breuiatores* which I read in *Iustinians Auth.* 105. *cap.* 2. *si autem* § 4. and an old Glossarie of the law interprets βρέϛιον by *ἐπιστολή*. letters of presentation giuen by an Earle in 45. *Edw.* 3. *tit.* Exchange 10. are titled Breif de presentation.

Pag. 7. *Quando* XL. *solidi cap. de scuto.*] So in *Bracton* also is the seruice exprest. But the *Register fol.* 2. *a.* hath a note that makes this forme obsolet. Now it should be, *per seruitium quartæ partis vnius feodi militis &c.* Escuage is here apparantly ment. Neither had the ancients any more particulars in denoting it, neither by them was it restrain'd to warre against the *Scots* or *Welsh* only, as by later autoritie it seems to be, where only *Scotland* & *Wales* are spoken of, as in *Litleton, Fitzh. Nat. Br. fol.* 83. *C. Regist. Orig. fol.* 88. *a.* 19 *Rich.* 2. *tit.* Gard 165. *Plowd. Comm. c. Rice Thomas fol.* 129. *b.* and elsewhere. In the Red book of the Exchequer, *Alexander* Archdeadon of *Shrewsbury* vnder *Hen.* 3. relates an Escuage of two marks out of euerie Knights fee in 7. *Hen.* 2. for the enterprise against *Tholouse*, in 8. *Hen.* 2. one marke for the same purpose; In 18.

Hen.

Hen.2. xx.s. *pro exercitu Hibernie*, and others he hath for warre in *Normandie*, *Poiters*, elſwhere vnder *Rich.1.* and King *Iohn*. And that they were ſuch as are now vnderſtood in our tenure by eſcuage, will more openly appeare in *Rot. Clauſ.* 16. *Iohannis memb.* 24. *in dorſo*, where the *Scutagia Pictauie* are at large in a Catalogue; as, *Willielmus de* Cantebrigia, *quia habuit ſuos cum domino Rege in* Pictauia, *habet ſcutagium*. And there is alſo *Mandatum eſt Domino* Petro *Wintonienſi Epiſcopi* (he was then, cheif Iuſtice of England) *qd habere faciat* Willielmo *Comiti* Arundell *Scutagium de* XVI. *feodis militum quæ* Robertus *de* Tateſhale *qui eſt in Cuſtodia ſua de Domino Rege tenet in capite* v. *de ſcuto* III. *marcas*, which paſſage I ſufficiently vnderſtand not. If *Tateſhale* were in ward to the Earle (as ſo it muſt bee taken) either by the Kings grant or otherwiſe, why ſhould he pay eſcuage? if his land held in *capite* were to him by diſcent, how came the Earle to the wardſhip? except by grant. Admit he had it by purchaſe, why ſhould the Earle haue the eſcuage? except by way of liberate from the Kings bounty. Ve-

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ry many other escuages are there, as *Henricus de* Tayden *habet Scutagium de feodo* VI. *militum ad opus filij sui qui est in Pictauia. Robertus de* Cardman *de* LX. *&* XIV. *feodis militum pro filio suo qui fuit in Pictauia. Thomas* Pannell *habet auxilium* L. *librarum Turonensium de liberè tenentibus suis & alijs de insula de* Geresey. But, for the default of tenants not comming to the armie, a place in the Leiger book of *Abingdon* in the hands of my Noble and much deseruing friend, that best furnisht Antiquary Sir *Robert Cotton*, is worth obseruation. *Est iuxta* Abbendune *Burgum* (are the words) *vnius militis mansio quæ* Lea *vocatur. Hanc* Willielmus *Regis Camerarij de* Lundonia *tenebat*. This *William* held it of the Abbey, and by Knights seruice; In 2. *Hen.* 1. forces were leuied to encounter *Robert* Duke of *Normandie*, when *Faritius* Abbot of *Abingdon* requir'd of *William* his tenant to find him a man for the armie, as his tenure bound him to do, but *William* denied it, whereby the Abbot was driuen by other means to supply the number of his part. The Abbot afterward *tamdiù* (as the book saith) *in presentia sapientum, hanc rem*

rem ventilari fecit, vt ille neutrum negaret, imò fateri sic esse vera ratione cogeretur. Vnde cum lege patriæ *decretum processisset ipsum exortem terræ meritò deberi fieri, interpellatione bonorum qui intererant virorum reddidit terram illam illi.* and so the tenant vnder faire conditions had his land again. This Lea is now called Bessles-Lee, and is of the possessions of the *Fettiplaces.*

Ib. Vnde decem carucatæ &c.] This forme also is disallowed by the *Register.* But when it was in vse, no particular quantity of the seruice was exprest, because the land by reference to a Knights fee shewed its own seruices. *Bracton lib. 5. tract. 1. cap. 2. vbi quantitas feodi exprimitur in quantitate terræ petita, non ponitur aliquod seruitium, quia in quantitate feodi ostenditur quantitas seruitij.* it being all one in substance to say that one holds IIII. *carues, wherof* VIII. *make a knights fee,* and that hee holds so many acres or carues *per seruitium dimidij feodi militis.* Carues and Hides are vncertain quantities, yet by that name, diuision was anciently made in leuying *Hidage* and *Carucage.* See what is noted in *Titles of Ha-*

nor pag.270. & seq. and *in Codice Abingdoniæ pag.42. Goffredus de* Ver *Albrici filij* giues to the Abbey some possessions *Cum duarum hidarum duodecies* XX.*acrarum terra disterminata.* & *Hen.*1. giues to *Maurice* B. of *London*, *duas hidas de duodecem* XX.*acris*, so that there 240.acres is taken for a *hide*. In the Monks euer with one consent almost, it is alwaies *a Plough land*. and S.*Dunstan* in the yeer DCCCC. LXIII.giues *terræ partem septem Aratrorum quod Anglicè dicitur septem hydas*. Its *in Cod.Chart.Arch.Cant.* Thus should *Hida* and *Carucata* be all one. for, *Carucata* speaks the Plough. *Charou* in French so signifying,as *Litleton* also notes. and by ancient autority *Caruca* is a Plough, which is found in *Iul. Paul. Recept. Sentent.lib.*3.*tit.*7. It seems when Hidage or Carucage was granted,the commissioners for leuying it (with aid of Iurors) vsed in euery shire to assesse how much should be in certain reckond for a Hide or Carue. As in 9.*Rich.*1. when an aide of fiue shillings, of euerie Carue in the land,was to be leuied, *qui electi fuerant & constituti ad hoc negotium regis faciendum,statuerunt per æstimationem legalium homi-*

hominum, ad vniuscuiusque Carucæ Wainagium centum acras terræ. Here 100. acres were for that purpose a Hide. See *Roger de Houeden fol.* 442. & 443. Neither is any difference twixt *Carucata* & *Carucæ wainagium.* For *wainagium* is tuilth as its Englisht in the ancient English of *Magna Charta*, or Gainage as its called *Westm.* 1. *cap.* 17. See *Bracton fol.* 37. *a.* 4. *Ed.* 2. *tit.* Avowry 200 and especially *Lowes* case in *Rep.* 9. *fol.* 123. *b.* & *seqq.*

Pag. 8. *Seditione personæ Domini Regis.*] *Bracton fol.* 118. *b. Si aliquid egerit vel agi procurâuerit ad seditionem domini Regis vel exercitus sui &c.* so *Glanvil. l.* 1. *cap.* 2.

Ib. Vita & membrorum.] Iudgment de vie & de membre is vsd for Iudgment of death, or punishment capital, in *Stat. westm.* 2. *cap.* 38. 3. *Edw.* 3. *fol.* 19. *a pl.* 34. in 18. *Ed.* 3. *fol.* 32. *a. pl.* 5. 13. *Ed.* 3. *tit.* Utlarie 49. and elswhere often. But anciently also part of it is taken for iudgement of *losse of life*, & part for *losse of member* only. as in *Westm.* 1. *cap.* 15. — pur le quel vn ne doit perdre vie ne membre. And *Bracton* speaking of punishments

lib.

lib.3.tit.de Actionib⁹ cap.6. saith *sunt quædam quæ adimunt vitam, vel membrum,* & the like hath he in *tract. de Corona cap.36 maiora crimina aliquando vltimum inducunt supplicium aliquando membrorũ truncationem.* One flying to a Sanctuarie by the laws of *William* 1. had pais de vie & de membre, as the words of it are in the book of *Crowland.* And *amissio membrorum* was a speciall punishment of Rape before *westm.2.* as you see in *Bracton l.3. tract. de Corona cap: 28.* He that was condemned lost his Eies and his Stones. but by *Glanvil,* before *Bracton,* it appears it was death, *lib.14.ca.6.* But, that the iudgment de vie & de membre in *Westm. 2. cap.38.* was only iudgment to be hangd; & ment, about that time, to be so, is plain by the book attributed to *Breton cap.14.* where the autor hath reference to the statut of *westm.2.* made in 13. *Edw.1.* which obserue also for another purpose. Its commonly affirm'd, with one consent, that *Iohn* le *Breton* Bishop of *Hereford* vnder *Hen.3.* and *Ed.1.* wrote that book. But its cleer that this *Iohn* the Bishop was dead ten yeers before the stat. of *Westm. 2.* here cited. For he died in 3. *Edw.1.*

which

which the ſtorie of *Florilegus* the Monk of *Weſtminſter* enough iuſtifies, yet, that no ſcruple in that may remain, its to bee prou'd alſo by infallible record. In *Rot. Pat.* 3. *Ed.* 1. *memb.* 203. the conge d'eſlier, for choiſe of a new Biſhop there, relates *quod cum eccleſia veſtra* Herefordenſis *paſtoris ſolatio per mortem bonæ memoriæ* Iohannis *nuper* Herefordenſis *Epiſcopi ſit deſtituta, alium vobis eligendi in Epiſcopum &c.* this was 23. *May*; and in *memb.* 19. of the ſame roll, the royall aſſent is giuen to the choiſe of *Thomas de Cantilupo* ſucceſſor to *Iohn le Breton* being dead. All this is moſt certain. and it is as certain, that, about that time, was a Iudge of this name. for in *Rot. Clauſ.* 51. *Hen.* 3. *memb.* 12. *Mandatum eſt* Richardo *de* Ewell *&* Hugoni *de* Turri *Emptori Garderobæ domini Regis quod habere faciat dilectis & fidelibus ſuis* Iohannis le Breton *&* Henrico de Monteforti *Inſtitiariis ſuis* Robas *ſuas integras prout cæteris Inſtitiariis domini Regis invenire conſueuit, quamdiu ſteterint in Officio domini Regis.* & the *Dorſ. Rot. Pat.* of that yeer hath moſt frequent mention of *Iohn* le *Breton*, & *Henry* de *Bracton* for Iudges of ſpecial aſſiſes:

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He is sometimes called *Bretun*, then *Briton*, and also *Breton*. and *Florilegus sub anno* 1275. *Obijt hoc anno* Iohannes Bretoun *episcopus* Herefordensis, *qui admodum peritus in iuribus Anglicanis, librum de eis conscripsit, qui vocatur* le Bretoun. That there was a Iudge of that name, and that about that time one of that name was Bishop of *Hereford*, here appears plainly, and that a book of common law called le Bretoun was written, and by the Bishop, if you beleeue the Monk and the consent of late writers which speak of it. But what book euer the Bishop wrote, it cannot be this we haue now left vnder that name, vnlesse you will allow that one dying in 3. *Edw.* 1. could cite a statut of 13. *Edw.* 1. as our *Breton* doth in this of Rape, or the statut of 6. *Edw.* 1. of *Cessauit* at *Glocester*, as he doth in his chapter de purchase conditionel, or the stat. of *winchester* of 13. *Edw.* 1. as he does touching high waies, in his chapter de plusors torts. Some other author then, then the Bishop of *Hereford*, must be sought for that volume. This, by the way. For Iudgment de membre, anciently it was in Appeales of *Maihem*. to this day the

counc is *felonicè*, but nothing but damages are now recouerable, nor was the law otherwise vnder *Ed.* 3. as appears by 22. *Assis.pl.*82. 41. *Assis.pl.* 16. and other books. But before that time, the party attainted lost membre pur membre as its said 18. *Ed.* 3. *fol.* 20. *a.pl.* 31. with which agrees *Breton cap.* 25. where is added si la pleint soit faite de femme que auera tolle a home ses membres, en tiel case perdra le femme la vne mein per iudgment, come le membre d'ont el auera trespasse. and if a Knight were strook by a Ribaud per felonie sans desert de chiualer, the Ribaud (saith the book) was to loose his hand. and it appears in *Glanvil lib.* 14. *cap.* 1. and *Bract. lib.* 3. *tract. de Corona cap.* 24. that the trialls of mayhem were by duell or Ordells, as of capitall offences. See *infra pag.* 87. where if the husband had been, by iudgment, *demembratus*, the wife lost her dower. and, for particulars, see there more, and the notes. By K. *Knouts* laws *cap.* 50. Adulterie in the woman was punisht by losse of Nose and Eares, to which, it seems, reference is in that of *William* 1. his laws in the ms. *Ingulphus*, si femme est iudges a mort u a de-

a defaciun des membres ki est enceintee, that iustice should not bee executed till she be deliuered, which in iudgment of death is law at this day. and in *Fleta lib.* 1. *ca.* 38. for petit larcenies, or cutting of purses with nothing in them, the Pillorie and losse of Eares was the punishment. See 10. *Hen.* 3. *tit.* **Coronne** 434. And, in *Fleta lib.* 2. *cap.* 5. of euery common whore following the Court, the Marshall, at the first apprehension, was to exact 4. d. at the second, to bring her before the Steward, who was to take her name and forbid her the Court; at the third, *considerabitur quod amputetur ei tressorium, & qd tondeatur*; at the fourth, *amputentur ei superlabia, ne de cetero concupiscantur ad libidinem.* At this day, saueing for striking in the presence of the King or his Courts, no losse of member is in vse by course of common law. Ancient and late examples are of punishment of such striking by losse of the righe hand, in 22. *Ed.* 3. *fol.* 13. *a.* 19. *Edw.* 3. *tit.* **Iudgment** 174. 39. *Assis. pl.* 1. 33. *Hen.* 4. *Br. tit.* **Paine** 16. *Stamford fol.* 38. *a.* & 2. & 3. *Eliz. Dy. fol.* 188. *b.* By late statuts, for some offences the hand, or

eares are to bee cut off.

Ib. Curiam Regis Maiorem.] He calls that *Curia Maior* here, which hath conisans of all capitall offences. and in his following chapters the same name hee vses for the Court whither, by *Pone*, a suit in a writ of right is to be remoud, that is cleerly the *common pleas*. and *Bracton fol.* 105. hath *loquela à Comitatu transferri potest ad magnam Curiam*, vvhere often to him *Magna Curia* is the common pleas plainly. so doth he vse the same title in *fol.* 332. §. 14. & often elswhere. But it seems, that to *Hengham*, *Maior Curia* is no singular name for any one Court, but for any of those of the Kings highest Courts, which haue that name in regard of all inferior. and the subiect which he speaks of with it, may designe vvhat court he means. as here, that he means the Kings bench, or *Aula Regia* (as *Bracton* calls it *fol.* 105. *b.* 3.2.) appears by the crimes recited afterward, when he talks of a *Pone* to remoue the suit of a writ of right into *Maior Curia*, there it must bee the common pleas. and it seems in *pag.* 16. hee takes the name expressely as well for the Court of *Iusticiar in Eire*, as for the *Common pleas*. Note

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the words: *Quamvis essonium de malo lecti in* maiori Curia *Domini Regis, vtpote ad* Bancum *vel in* Itinere Iusticiariorum *iaci debeat tertio die &c.*

Ib. Placita verò de furtis.] How the law hath been since taken touching pleas of the Crown to be *Viscontiel*, is taught in *Stamford lib.* 1. *cap. vlt. & lib.* 2. *cap.* 14. No capital offence was, by this opinion, to be heard and determined in the County. For though hee name *Furta* here, it seems, hee means not that theft which is capitall, but as *Furtum* is in the Ciuill law, so he vnderstands it, that is, only for wrongfull taking away goods, as the word Roberie is vsd in *Westm.* 1. *cap.* 37. And all other kind of felonious taking our autor comprehends before, in *Roberia*; vvhich in those times expresst also all felonious taking, or *Furtum* in that sense, as its now vsd. witnesse *Bracton* cited by *Stamford fol.* 27. *b.* yet in *Glanvil lib.* 1. *cap.* 2. *Furtum* is excepted to the Shirifs Court, as out of such offences *quæ vltimo puniuntur supplicio aut membrorum truncatione.* It's no doubt but *Hengham*, in writing this, had regard to *Glanvil.* as it may appeare by the same words in

both. so had *Bracton* speaking of this matter, *lib. 3. tract. de Corona fol. 154. b. Ad vicecomitem pertinent huiusmodi placita in Comitatu. Cognoscere quidem potest de medletis, plagis, verberibus, & consimilibus, nisi quærens adijciat de pace domini Regis infracta, vel feloniam apponat. Extunc n. se vicecomes non debet intromittere, cum hoc tangat personam ipsius domini Regis & coronam suam.* But, he saies the Coroners were to inroll Appeals of capitall offences, and present them in the Eire. So that in those times, by *Bractons* opinion, if one had sued criminally in the county, & concluded *contra pacem domini Regis, &c.* the Court had not iurisdiction, but if *contra pacem vicecomitis*, then it had. so is his difference there and *pag. 145. b.* For in the one case, Iudgment de vie au de membre or imprisonment was to follow in the other only amerciament, or *pœna pecuniaria*, as he calls it. But see this autor *pag. 21.* where he speaks of appells *sine breui.* Appeals then might be taken or commenced, but not determined, in the County, if they were *de pace Regis fracta.* so it seems. See *Stat. Mag. Chart. cap. 17.* which belongs hither. Neither is it amisse

amisse to remember a iudgment giuen in the time of *Hengham*, and before him in 30. *Edw.* 1. not from the matter here spoken of. It is in *P.* 30. *Ed.* 1. *ms. fol.* 280. *a.* where the Shirife of Yorkshire is commanded q̃ il feist bener le appel Ion de Morton ensemblement oue Ion de Thouthorp attache per sun appel oue tote les choses meme le appel touchans deuant Justices en Bank per bre de la Chancelerie. Le quel retorna son bre que il aueit maunde au Peyre e a Bailiffes de la ville de Euerwike ꝛc. les queux responent que Ion de Morton appela Ion de Thouthorp que il ly assepiy a saint purpense le demaine prochein deuant la feste de seint Nicholas en la ville de Euerwike en Steyngate e illeuke ly robba de vn tabbard pris de treis sous e de duse deniers d'argent contra la pies ꝛc. Demand fut au Peyre la manere del attachment, e syl y fut Meinoure, e y queu garrant ils tenent ten maner de play, il dist q̃ Ion de Morton *leua* la mene sur Ion de Thouthorp e trouua pleges de suer son appel au Coroners de la ville y quer eus le attacherent e le pistent e tinorent le play en lur Gyldhalle

balle de cest appele p vsage de la Cytie
vsee de tens d'ont il ne ad memorie a
tener sans bre e sans Meynouere ou
pulfre &c. *Et quia secundum legem & con-
suetudinem regni, maior & Coronatores a-
licuius Cinitatis huiusmodi appella coram
eis audire non possunt, & terminare, nisi eo-
rum cognitio per Cartam domini Regis vel
progenitorum eius vel per breue domini Re-
gis de huiusmodi appello coram eis audien-
do & terminando specialiter sit cõcessa, cum
ea ad dominum Regem ratione iuris sui Re-
gij & non ad alium, in Regno Regis, pertine-
ant, Consideratum est quod appellum prae-
dictum coram ipsis Maiori & Coronatoribus
habitum, tanquam coram eis qui nullum in
huiusmodi casu habent iurisdictionem ad-
nulletur & pro nullo habeatur. Et quia prae-
dicti maior & Coronatores nullam in Curia
hic* manuopus *vel* pelfrum *proferent nec
Idem* Iohannes de Morton *solempniter
vocatus appellum praedictum in Curia hic
prosequitur, Visum est Curie qd ad sectam
domini Regis versus praedictum* Iohannem
de Thouthorp *in Curia hic non est proce-
dendum. Et idem praedictus* Iohannes de
Thouthorp *inde sine die. Et ad iudicium
de praedictis Maiore & Coronatoribus qui*

appellum illud tenuerunt sine warranto. These are the words of my report verie anciently written. I transcribd it all, because diuers things are in it specially obseruable.

Ib. Melletis.] *Glanvil* & *Bracton* haue *de Medletis*, for suddain affraies or dislikes. the word is so vsd too in *Regiam Maiest. l. 1. ca. 3.* & hence is our **Chaunce medley**, corrupted from *Chaud melle*, vvhich signifies *hot* or *suddain debate*. whence, in *Scotland*, *Chaud melle* is opposd against **Forethought felony**, as **Manslaughter** with vs, gainst **Murder**. See *Skene ad cit. at loc: & de verb. signific.* But, **Chance medley** is in *Stamford* otherwise. *Skeen* interprets *Chaud melle* by *Rixa* in the Ciuill law.

Ib. Hutesio.] Although *clamor* & *Hutesium* or *Huesium* is for huy and cry in our law, yet it seems here its a word made from *Hutin*, i. *scolding*, *brawling*, *contention*, whereby the peace of the county vvas disturbd. For all the rest here spoken of are offences, mongst which you cannot vvell reckon **Huy and Cry**. although of that the Shirif had power to determine, if it grew in question twixt the appellant

and

and appellee *vtrum appellans hutesium leuauerit, Bract. lib. 3. fol. 145. b. §. 2.*

Ib. vbi non agitur de pace domini Regis fracta.] He means, when the plaintif or appellant did not complain of the kings peace broken, but only of the peace of the shirife. so *Bracton* teaches the law of that time, that if, for the like, suits vvere in inferior Lords courts the conclusion was *contra pacem Domini*, if in the court of a corporation, *contra pacem Ballinorii*, if in the shirifs, *contra pacem Vicecomitis.* Neither means *Hengham* that those offences were not in themselues *contra pacem Regis*, but that in the suit commenced in the Shirifs court the Kings peace broken might not be cōplaind of. which vvell agrees with, and explanes the law now, that, without writ, the shirif cannot hold plea *de transgressionibus contra pacem domini Regis*, as it appears in *Fitzh. Na. Br fol. 47. A.*

Pag. 9. hanc Assisam.] supposing the mise be put on the grand assise.

Ib. falsat.] that is, by oth prouе that the Lords court hath faild him of right. the two following chapters haue more of it. and see *Bracton lib. 5. fol. 329. & 330.* where

vvhere the falsifying (as it vvas calld) of the Lords court is by oth taken by the demandant, vvith two others, in the Lords court, or at his mannor house; but *Hengham* allows it by the oth only of the party. this *Bracton* stiles *defalta probata*. Touching this obsolet vsage, a case of 11. *Hen.* 2. is worth obseruation. Its related in *Roger de Houeden pag.* 283. vvhen *Thomas Becket* desir'd the King, hee might, with his leaue, go visite Pope *Alexander* then commorant in *France*, the King answerd him *Tu priùs respondebis mihi de iniuria quam fecisti* Iohanni Marischallo meo *in Curia tua. Conquestus n. erat Regi idem* Iohannes *quod, cum calumniatus esset in Curia Archiepiscopi terram quándam de illo tenendam iure hereditario, & diù inde placitasset, nullam inde potuit assequi iustitiam, & quod ipse* Curiam *Archiepiscopi* falsificauerit *secundum consuetudinem regni, cui Archiepiscop' respondit, nulla Iustitia defuit* Iohanni *in Curia mea, sed ipse (nescio cuius consilio an propria voluntatis motu) attulit in curiam meam quendam* Taper & iurauit super illum, quòd ipse pro defectu Iustitiæ a Curia mea recessit, *& videbatur Iustitiarijs curiæ meæ,*

quod ipse inuriam mihi fecit, quia sic à Curia mea recessit, cum statutum sit in regno vestro, Quod qui curiam alterius falsificare voluerit oportet eum iurare super sacrosancta euangelia. *Rex quidem, non respiciens ad verba hæc, iurauit, quòd ipse haberet de eo iustitiam & Iudicium. Et* Barones curiæ Regis *iudicauerunt eum esse in misericordia Regis, & quamvis Archiepiscopus niteretur iudicium illud falsificare, tamen prece &* consilio Baronum *posuit se in misericordia Regis de D. libris & invenit ei fideiussores.* That Loper was a Church book of the time, and it is what in a Constitution of *Robert Winchelsey* is calld *Troperium* in *Lindw. Prouinc. constit. tit. de Eccles. ædific. c. vt Parochiani.* Of this falsifying, more in *Breton fol.* 275 according to *Bracton.* and the *seruiens domini Regis* in *Bracton* appears to be Bailiff of the hundred or some such minister.

Pag. 10. *vel per duos &c.*] If you read *&*, then agrees he with *Bracton* and *Breton.*

Pag. 11. *non debet Atturnatus aliquis.*] examine it by *Breton cap.* 128. *fol.* 286. *a. Stat. Merton cap.* 10. *Regist. Orig. fol.* 26. *et* 27. *Temps Ed.* 1. *tit, Attorney* 106.

Pag.12.Breue de Pace.] Mention is of this course *Temp.Ed.1.tit.Donit 45.* and precedents are of the vvrit in *Glanvil lib. 2.cap.8.* and *Bracton fol.331.§.5.* See also *Breton fol.277.b. & Regist.Orig.fol.7.b.*

Ib.Iustitiarij ad omnia placita.] Iustices in Eire; which were in som like nature to the now Iustices of assise, but had not their circuits so often. The beginning of them was in 22.*Hen.2.* which was by example after followed. See *Houeden pag. 313.& 337.& Gernas.Tilburiens.in Dialogo de scaccario.* But it seems great delay of iustice might so haue been. For the Eires vvere not verie frequent. and by som, the distance of them was 111. yeers. So saies *Scrope* in *Temps Edw.3.fol.143.a.* and see *fol. 149. a. Aldenham. Glanvil* speaks not of them in this case. io being not in vse in the infancie of Eires, to haue the *prohibemus* referrd to them. succeeding time brought in that, & about *Ed. 3.* the Eires were left.

Ib. ad Corporale sacramentum ponere &c.] *Bracton fol.106.a. Non potest aliquis Baro, vicecomes vel alius de liberis tenementis cognoscere, nec tenens tenetur respondere sine precepto vel warranto domini regis*

regis nec possunt aliquem de huiusmodi ad sacramentum sine warranto compellere. See *Stat. Marlb. cap. 23., 44. Ed. 3. fol. 19. b.* & *39. Ed. 3. fol. 35. b.*

Pag. 14. * *Congerere.*] it may be, *contrahere* was the word of the autor.

Pag. 16. non plus, quamvis.] read *Non plus. Quamvis &c.*

Ib. alibi videtur n.] Whatsoeuer *alibi* should be (some copies hauing *tales*, som *talas*) continue it with *videtur quod cal. &c.* the reason is plain.

Pag. 17. Turrim London.] Refer hither *Bracton fol. 345. & 359. a.* and *3. Hen. 3. tit. Essoine 186.* and the reason of day giuen at the Tower, see in *Hengham pag. 45.*

Ib. Anno bissextili.] The foure excrescent quadrants of a day in the *Iulian* yeer were & are at the end of euery foure yeers space, put into one day, which added to the *365.* of the common yeer makes *366.* for the Leap or bissextile yeer: the addition was not to the end of the yeer, but the day is so intercalculated in Februarie, that it falls to be ioind with the VI. Kalends of March, which being euery fourth yeer so made of two daies ioind,

ioind, denominated their yeer with *bissextus*, because *eo anno bis diceretur sexto Kl. Martias.* That ordinance of the Leap yeer after spoken of, is dated *apud windeshore 10. die Maij anno regni nostri 54.* by *Hen.* 3. in the old statuts. See for this matter *Bracton fol.* 344. *b.* and 359. *b.* In the Roman Ciuill law, the like account was of the intercalated day, and it, with that wherewith it was ioind, was as one day. *Vlpian in r. sit. de minoribus l.* 3. *denique* §. 3. *Proinde si in* bissexto *natus est, sive priore sive posteriore die, Celsus scripsit nihil referre. Nam id biduum pro* vno die *habetur, & posterior dies Kalendarum intercalatur.*

Pag. 27. *Reddenti esson.*] More largely of that in *Bracton fol.* 351. & 352.

Ib. Affidatis in manibus.] read *affidati.* The Affidauits here are taken *in manibus vel super virgam clamatoris.* For that *in manib*ᵒ see *Bracton* speaking of falsifying the Lords court *fol.* 329. *b. Vadiata probatione defaltæ in manum seruientis domini Regis.*

Pag. 28. *duo dies per annum.*] but see stat. of *Dies Communes in Banco*, and 8. *Edw.* 4. *fol.* 4. *b.* where that is affirmd for a good

good statut law.

Pag.29.lin.18.vel compareat.] read & *comp.*

Pag.33.l.4. delicto alterius. Ex &c.] read *delicto alterius, ex &c.* What hee means by this, appears not cleer enough. Of Pleas determinable *per legem* now, none is wherupon imprisonment should follow. In alder times indeed *Ley gager* (if you take *logem* here for that) was a triall in many actions which now admit it not. as in *attachment* vpon a *prohibition* 24.*Ed.3.fol.39.a.*& see 28. *Ed.3.fol.100. a.* 18.*Ed.3.fol.4.a.* 2. *Ed.3.fol.8.b.* 48. *Ed.* 3. *fol.* 6. *a.* and in *Placit. Assis. apud Northampt.* 31. *Hen.* 3. *Coram Rogero de Thurkelby & socijs suis Rot.*11.*in dorso. Gerualse de Bernake* brings a writ of *Mesne* against *Peeter de Bernake*, and the tenant confesses cause of acquitall, but saies the demandant was not distraind through his default, which plea is tried by his law. And in a roll in the Tower indorsed *Circa* 34. *Hen.* 3. *Rot.*7. in a writ *de Fine facto* by *Matthew de Stratton* against *Ralf Mautanner* about a common, in the court the defendant was charged with vsing the common otherwise then

the fine would; he pleads he did not vse it otherwise *Et offert se defendere contra ipsum & sectam suam sicut curia considerauerit. Ideo consideratum est quod vadiet ei* legem se xii. manu, *& veniat cum lege sua à die sancti Hillarij in* xv. *dies & plegij de lege* Willielmus Branthe *&* Willielm' filius Roberti. *Postea à die Paschæ in* iii. *septimanas venit prædictus* Radulphus *& fecit legem suam; ideo Consideratum est qd prædictus* Radulphus *inde sine die &* Matthæus *in misericordia.* Thus different were ancient times from the present. But what had this *Ley gager* to do with imprisonment spoken of in this autor? *Quere.* Or doth he mean by *legem*, the arraignment on criminall offences, which being not capitall are punisht by imprisonment? *Poni ad legem* is a vsuall phrase in old rolls, especially in that of 31. *Hen.* 3 now cited; for *one to be arraind*, or *put to answer to criminall offences.*

Pag. 34. *son pleinne.*] This is remedied by the stat. of 9. *Ed.* 2. *cap.* 4.

Pag. 37. *secundum Henricum de Bathonia.*] A Iustice of *Henry* 3. his time is obuious in the rolls, of that name. But this point of *Ley gager* against the testi-

mony

mony of the summoners is in *Henry de Bracton fol.* 334. *b.* Hee cites him again *pag.* 38. 47. & 60.

Pag. 48. *velunt surgere.*] i. haue *licentiam surgendi*, whereof more speciall matter is in *Bracton fol.* 355. 3. *Hen.* 3. *tit.* Essoine 186. 14. *Hen.* 3. Essoin 190. & *vide Regist. Orig. fol.* 8. & 9. He that was essoind *de malo lecti* might not rise before his being seen by the 4. Knights, which if he did, and were not found in his bed when they came to make their view, his essoin was turnd into a default, of which also is a notable case of 16. *Rich.* 1. in the book of *Crowland*, where *Henry de longo Campo* Abbot, though being in possession, yet sued the Prior of *Spalding* for entring vpon his Marsh *contra pacem Regis*, the Prior pleades, he enterd as into his own fee simple, and offers 40. marks for the grand assise. and the mise is ioind so. The Abbot is essoind *de malo lecti.* The writ goes out to the 4. Knights to make the view. while one is comming to view him he rises, & comes towards the court. the Knight certified hee could not find him in his bed. wherupon iudgment was giuen after long consideration *quod*

Abbas

Abbas Crowlandię *qui se assoniuisit contra Priorem de* Spalding *de malo lecti apud* Crowland, *& illic non est inuentus in lecto, quando visus deberet de eo fieri, amitteret ad tempus seisinam.* Note, seisin was vpon his default giuen to the defendant in the suit. The whole plea and storie of it is long, but most worthy the reading, to instruct in the Courts, Courses of that time, and specially in processes sent out by the L. Cheif Iustice of England, in his own name, sitting with the Iustices in *Banco.* Divers whole writs from the king beyond sea, and from the Cheif Iustice at home, are in it, and the whole is verie vnderstandingly related.

Pag. 52. ad horam nonam.] See 16. *Ed. 2 tit.* Attin sur le case 47. where so much of the day as is from nine of clock is taken for half a day. *Quare.*

Pag. 58. Cepit homagium & seruitium vocantur.] That homage and other seruices was cause of warranty anciently, autorities are frequent, *Temp. Edw. 1. tit.* Garranty 90. 47. *Hen. 3. Itin. Cornub. Eod. tit.* 99. & Vouscher 270. *Temp. Ed. 1. tit.* Age 129. 13. *Ed. 1. tit. Per quæ seruicia* 23. *Breton cap.* 70. & 68. *Bract. lib.* 4.

tract. de Mort. Antecessoris cap. 1. & *De warrant. lib.* 5. *cap.* 2. §. 4. *Stat. de Bigamis cap.* 6. & this autor *cap.* 13. although now only homage ancestrell bee cause of warranty.

Ib. Et hoc pro sacramento suo] see *Glanvil. lib.* 2. *cap.* 3. and *Westm.* 1. *cap.* 41.

Pag. 59. *ad warrantiam*] the latine of that time is rather *ad warrantum*, and so afterward is it often printed. the copies being indifferent.

Ib. Quod permittat] but, in *Hen.* 3. his time, voucher was allowd in a *qd permittat*, as appears 12. *Hen.* 3. *Itin. Norff.* **Voucher** 282. & 33. *Ed.* 1. *tit.* **Voucher** 272.

Pag. 69. *duellum in omni euentu*] that is, *Combat a tout oultrance* i. battaile to the vtmost, according as the law requires. so *pag.* 12. *supra*, he hath *prosequi in omni euentu*, to follow the suit to the vtmost. Is not **tout attrenche** in the defences corrupted from **tout oultrance** ? see *Nov. Narrat. fol.* 3. *a.* 2. *Ed.* 3. *fol.* 64. *a.* Basset.

Pag. 71. *Cartam de feoffamento*] Of the ancestor of the enfant, whose heire he is. For otherwise the tenant failes in the voucher of an enfant. See *Bracton lib.* 5. *tract. de warrantia cap.* 2. §. 2. 43.

Edw.

Edw. 3. *fol.* 3. *&c.*

Ib. Minor non habet legem.] For, in the warranting the essoine, oth is to be taken. See *Bracton fol.* 337. & 338. and *Breton cap.* 125. *fol.* 284. *b. Habere legem* is here to be able to take a legall oth, and *facere legem* (as at this day) to take it. See in the Notes to *Fortescue*, of *legem terræ*. By *Bracton* also *fol.* 340. *b.* an enfant cannot haue these essoins *quia iurare non potest nec essonium warrantizare.* see 38. *Edw.* 3. *fol.* 8. *b.* 32. *Ed.* 3. *tit. Per quæ seruitia* 9. 26. *Ed.* 3. *fol.* 63. & 64.

Pag. 72. *tenetur donator & eius hæredes*] so must you read. so was the law in feoffments before the statut of *Quia emptores &c.* when a tenure was reserud to the feoffors. See *Stat. de Bigamis cap.* 6. 13. *Ed.* 1. *apud West. tit.* Garranty 92. & 13. *Ed.* 1. *tit.* Voucher 290.

Pag. 73. *residuas duas C. vel D.*] Its supposd by this, that the other land, of which the feoffor is seisd at the feoffment might be bound by the warranty comprehended in the deed. So also was the law taken in 16. *Hen.* 3. in the case of *Alice de Ware* reported by *Bracton fol.*

382.*a.* being (it seems) the same with 17. *Hen.* 3. *tit.* **Recovery en value** 25. and see 32. *Ed.* 1. *tit.* **Voucher** 292. But its plain now, no land is bound but what the feoffor or his heire hath at the time of the **Voucher**, or **Warranty de chartres** brought.

Pag. 79. *Tempore Regis Henrici*] But that in the margine (as some copies are) agrees with the law of *Westm.* 1. *cap.* 39. vvherein, the writ of right was limited to *Richard* 1. his time, which limitation continued till 32. *Hen.* 8. *cap.* 2.

Pag. 83. *in quo non iacet duellum &c.*] See 18. *Hen.* 3. *tit.* **Droit** 62. & 13. *Ed.* 1. *eod. tit.* 51. *Stat. de Mag. assis. eligenda*, & *Hengham pag.* 115.

Pag. 85. *si non excedit tertiam*] for, by the ancient opinions, only a third part might bee assignd *ad ostium ecclesiæ.* so *Glanvil. lib.* 6. *cap.* 1. *Bracton lib.* 2. *de acq. rer. dom. cap.* 39. & *tract. de act. Dotis. fol.* 215. *a. Breton cap.* 113. But see 9. *Hen.* 3. *tit.* **Dower** 190. & *Fitzh. Nat. Br. fol.* 150. P.

Pag. 87. *infaliStatus.*] It appears that severall customs of places, made in those daies, capitall punishments severall. But, what

what is *infalistatus?* in regard its of a custome vsd in a Port town, I suppose it was made out of the French word *Falaize*, which is *fine sand by the water side*, or *a banke of the sea.* in this sand or bank it seems their execution, at *Douer*, was. In this place the copies varie. no one hauing all the punishments. but for the raritie of the remembrance, I took out of diuers copies all these. The old English translation here helpt not.

Ib. vel apud **Winton** *demembratus.*] that is of his Eies and Stones. For, such was anciently the punishment of Felons in *Winchester*; as also in *Walingford.* One autority iustifies both. in 45. *Hen.* 3. *Berk. Coram* Gilberto de Preston *& socijs suis in Oct. Purif. B. Mariæ Rot.* 29. the Iurors of the Borough of *Walingford* giue in *quod nullus de natione istius Burgi pro quocunque facto quod fecerit, debet* suspendi, *imò secundum consuetudinem istiʼ Burgi debet* Oculis *&* Testiculis *priuari, & tali libertate vsi sunt à tempore quo non extat memoria,* & so they there say one *Benedict Heruey* was lately so punisht. *Et, quæsiti Iuratores, si tali libertate vsi sunt;*

dicunt quod à tempore Henrici *aui domini Regis nunc vsi fuerunt eadem libertate per Cartam eiusdem D. Regis quam eis fecit per quam eis concessit omnes libertates quas Ciuitas* Winton *habet &c.* They challenged this libertie from a Charter of *Hen.* 2. who gaue them all such liberties as *Winchester* had.

Ib. Decapitatus.] See *Regist. Orig. fol.* 165.*a.* & *Fitzh. Nat. Br. fol.* 144.H. of beheading for felony.

Ib. vbi quis mouet Guerram &c.] See 8.*Ed.*3.*fol.*388.*a.* 7. *Hen.* 4.*fol.*32.*b.* & 47.*a.* 15.*Ed.*3.*tit.* Petition 2. *Plowd. Comm. fol.*263.*a.* the sadlers case in *Rep.* 4. *fol.* 57.*b.* *Stamford fol.* 189. and *Park,* 8.391.

*Pag.*88.*Item si minor &c.*] By this, and what *Glanvil* hath *lib.* 7.*c.* 12. it appears that in those times greater preiudice was often to the heirs of both sexes, by mariage without their Lords consent, then the law since burdens them with.

Ib. dotem deseruire.] that is *demereri.* By such vncertainty, without limitation of yeers, those old autors iudgd of a womans dower. so *Bracton l.*2.*c.*39. *Breton c.* 109.

109. And by the Roman law *non potest videri nupta quæ virum pati non potest*. in so much that if a legacie be giuen to a yong girle, to be paid *quando nupserit*, if shee take a husband before she bee *viripotens*, the legacy is not yet due, by expresse text in *π. tit. Quando dies legat. vel fideicomiss. cedat l.* 30. *qd pupilla.* So in the *Reg. Maiest.* of Scotland *lib.* 2. *cap.* 17: a woman looses her dower *si sit ita iuuenis, quòd non potest habere rem, hoc est, coire cum viro suo.* But in our yeer books diuers cases are of later time touching a certainty of yeers, and now it is taken vsually (as *Litleton* saies) she must be aboue nine. Besides the common autorities, see *Fleta lib.* 5. *cap.* 22. and for the two cases of this matter, in 7. *Ed.* 2. *tit.* Dower 147. and 12. *Edw.* 2. *tit. eod.* 159. they are worth more obseruation in the report at large, which is extant in our *Inner Temple* Librarie. the first is between *Symond* and *Benster fol.* 107. *a.* the second is *fol.* 163. *b.* where *Berry* saies expressely, that it lies in the discretion of the Iudges, whether she deserue dower or no.

Ib. requiritur longa seisina & pacifica.]

for

for in those times the law was taken, both that long seisin so added a title to a disseisin, that the disseisee might not enter, and also, by some, that short seisin of one that had right to enter, gaue him not so much freehold that he might haue his assise against a disseisor. so it appears in 12. *Hen.* 3. *Itin. Staff. tit.* Assise 428. & 429. 30. *Edw.* 1. *Itin. Cornub. tit.* Attaint 76. *Bracton fol.* 160. & 161. *Hengham pag.* 98. But see *Breton chap.* 42. to which (that wee may obserue the opinions of that time) adde a case, adiudged before our Autor, vpon this point of *Longa* or *brevis seisina*, and reuerst in the kings bench. In 33. *Ed.* 1. *ms. fol.* 59. *b. John le fitz Aueline* brought a *Mort d'ancestor* before *Sir Ralph de Hengham* & his companions, of the death of *John le Clark* his vncle, against *Edmond* of *London* gardein of the house of Saint *Thomas* of *Acres*. the tenant pleads plus darrain seisin in *Aueline* mother to the demandant, who was seised after the death of the vncle. Issue vpon this is joind, and the Assise taken, they find q̃ apres la mort mesme relup Ion le Clerk mesme cestuy Auseline

tant

tant come le corps fust en la bere entre & l'eins fust reclamant come heir Ion & y vn demy hour de iour ydemurra tant que fut l'emporter du corps, ou ele se voleit estre l'eins tenus, vient le dit Emon & la osta. so are the words in my copie, verie anciently written. and to Sir *Ralph* and his companions (saies the book) it seemd that *cele petite seisin & en ten temps ne fust nul*, and so they adiudged that the demandant should recouer. But by writ of error, and vpon the very point, that iudgment was reuerst *quia sola* (as the report is) *pedis positio vero heredi seisinam contulit*, cy agard la court que Edmond receit sa seisin &c. & les dammages, & eit Ion son resconeitir per autre voie sil volle. And this reuersall agrees well with what our autor hath in the beginning of this chapter. See 3. *Ed.* 3. *in Vet. Nat. Br. fol.* 126. *b. in Dum fuit infra aetatem.* But now its plain law, that the left time is inough for seisin to him that hath right to enter, as in 8. *Assis. pl.* 25. 26. *Assis. pl.* 42. and elsewhere. The true meaning of *transfertur liberum tenementum in feoffatum &c. in Stat. Westm.* 2. *cap.*

*cap.*29. may be had out of this old opinion. see *infra pag.*99.

*Pag.*103. *extra Astrum*] All this passage, in the same words, is in *Fleta lib.*4. *cap.*2. whereby, *Astrum* must be taken for the Lords dwelling house, or such like. See the customes of *Kent*; in particion, there, le astre demoura al puine ꝛc. *pag.* 574. The elder times had also *homo Astrarius* for a housholder (as I ghesse) or in such like signification. *Bracton lib.*2. *cap.*36. §.7. speaking of paiment of releifs; *Esto quod hæres sit* astrarius, *velqd aliquis antecessor restituat hæredi in vita sua hæreditatem & se dimiserit, videtur quod nullo tempore iacebit hæreditas.* as if he had said, *suppose the heir be housholder, or, as tenant to the Lord in life of his ancestor &c.* and in *Fleta lib.*1. *cap.*47. Frithborgh *est laudabilis homo astrarius.* and *extra astrum* in them, is to *Bracton*, *extra potestatem dominorum fol.*165. & 166.

*Pag.*104. *Sokemannus.*] This also is in *Fleta lib.*4. *cap.*2. and agrees with that which is called *Tractatus de antiquo dominico*, and in a verie old English translation of the statuts is titled a statut. being indeed

indeed only ſom lawiers anſwer (or in the nature of Ciuilians *Conſilia*, or ſuch like) to queſtions propoſd touching **ancien demeſne**. But the law in the yeer books is cleer, that to any reall actions or ſauoring of the realty, **auncien demeſne** is a good plea. See *Bracton fol.* 272. *& Breton cap.* 66. **de Gardes.**

THE END.