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THE  
COMMON-  
WEALTH  
OF  
ENGLAND:

And the manner and Govern-  
ment thereof.

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

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

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1640.



*To the Reader.*

**N**O conceale the graces inspired by God, or the gifts ingrafted by nature, or the vertues atchieved unto our selves by industry, in all ages, and of all wisemen, was accounted undutifulnesse, unkindnesse, and impiety unto that common-wealth, in which, and unto the which wee are both bred and borne: but to suppress the worthy workes of any Authour, may justly bee judged not only injurie to the person, but even envie to the whole World. Wherefore, chancing upon this short Discourse compiled by the Honourable Knight Sir *Thomas Smith*, and considering that the same could not but be a great light to the ignorant, and no lesse delight unto the learned in the Lawes

*To the Reader.*

and policy of sundry Regiments, I thought it part of my duty, as well for the reviving of the fame of so notable a man, as for the publike imparting of so pithy a Treatise, to present the same unto thy indifferent and discreet judgement. Wherein, although the errors and rashness of Scribes, appearing in the contrariety, and corruption of Copies, happening both by the length of time since the first making, as also by the often transcribing, might justly have been mine excuse, or rather discharge; yet weighing the authority of the Authour, together with the gravity of the matter, I made no doubt but that the reverence due unto the one, and the recompence deserved by the other, would easily con-tervaile all faults committed by a Clarke and Writer. And whereas some termes or other matters may seeme to dissent from the usuall phrase of the Common-Law of this Realme: notwithstanding, to him  
that

*To the Reader.*

that will consider that the profession of the maker was principally in the Civill lawes, and therefore not to be expected as one excellent in both; and also that the finishing of this worke was in France, farre from his Library, and in an Embassage, even in the midst of waightie affaires, it cannot, nor ought not without great ingratitude be displeasent, or in any sort disliking. Wherefore (gentle Reader) accept in good part my zeale, and this honorable mans travaile, assuring thy selfe that the same, framed by an expert work-master, and forged of pure and excellent metall, will not faile in proving to be a commodious instrument.

*Vale*

A 4

A



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THE

I



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

CHAP. I.

Of the diversities of Commonwealths or Governments.

**H**ey that have written heretofore of Commonwealths, have brought them into three most simple & speciall kinds or fashions of Government. The first, where one alone doth govern, is called of the Greeks *Μοναρχία*; the second, *Μοναρχία*, where the smaller number, commonly called of them *Αριστοκρατία*; and the *Αριστοκρατία*. third, where the multitude doth rule, *Δημοκρατία*. To rule is understood to have *Δημοκρατία*.

2 *The Common wealth*

have the highest and supreme authoritie of commandement. That part or member of the Commonwealth is said to rule, which doth controll, correct, and direct all other members of the Common-wealth. That part which doth rule, define & command according to the forme of the government, is taken in every

*full*

Common-wealth to be just & Law :

As a rule is alway to be understood to be straight, & to which all workes are to be conformed, and by it to be judged: I do not meane the *Le. bians* rule, which is conformed to the stone: but the right rule whereby the Artificer and the Architect do judge the straightnesse of every mans worke : And he to be reckoned to make his work perfectest, who goeth neereft to the straightnesse.

CHAP. II.

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

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

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wealth (as it is to every thing generally and particularly) to be kept in her most perfect estate. Then if that part which doth beare the rule, doe command that which is profitable to it, and the comādement of that part which doth rule on that sort, is to be accepted in every Common-wealth respectively to be just (as we have said before) it must needs follow, that the definition which *Thrasimachus* did make, That to be just, which is the profit of the ruling & most strong part (if it be meant of the Citie or Common-wealth) is not so far out of the way, if it be civilly understood, as *Plato* would make it. But as there is profit, & likelihood of profit, so there is right and likelihood of right. And as well may the ruling & soveraign part comādem that which is not his profit, as the just man may offend (notwithstanding his just and true meaning) when he would amend that which is amisse, & help the Common-wealth, and doe good unto it. For inasmuch as he attempteth to do cōtrary to the Law

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Law which is already put, he therefore by the Law is justly condemned, because his doing is contrary to the Law and the Ordinance of that part which doth command.

CHAP. III.  
*Another division of Commonwealths.*

But this matter yet taketh another doubt: for of these manner of rulings by one, by the fewer part, and by the multitude or greater number, they which have more methodically, and more distinctly and perfectly written upon them, do make a subdivision: and dividing each into two, make the one good and just, and the other evill and unjust: as where one ruleth, the one they call a King, or βασιλεὺς, the other τυράννος, a Tyrant: where the fewer number, the one they name a governing of the best men ἀριστοκρατία, or *Temp. Optimatū*, the other of the usurping of a few Gentlemen, or a few of the richer and stronger sort, ὀλιγαρχία, or

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or *Paucorum Potestatem*: and where the multitude doth govern, the one they call a Commonwealth by the generall name πολιτεία, or the rule of the people δημοκρατία; the other, the rule or the usurping of the popular, or rascall or viler sort, because they be more in number, δημοκρατία ὀλιγαρχία.

CHAP. IV.  
*Examples of change in the manner of Government.*

IN Commonwealths which had long continuance, the diversities of times have made all these manners of ruling or government to be seen: as in Rome, Kings, *Romulus, Numa, Servius*, Tyrants, *Tarquinius, Sylla, Caesar*: the rule of the best men, as in the time when the first Consuls were: and the usurping of a few, as of the Senatours after the death of *Tarquinius*, and before the succession of the Tribunate, and manifestly in the *Decemvirate*, but more perniciously in the *Triumvirate* of *Caesar, Cras-*

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*Crassus*, and *Pompeius*: and afterward in the *Triumvirate* of *Octavius*, *Antonius*, and *Lepidus*: The Common-wealth and rule of the people in the repulsing of the *Decem-viri*, and long after, especially after the Law was made, either by *Horatius*, or (as some would have it) *Hortensius, quod plebs sciverit, id populum teneat*: And the ruling and usurping of the popular and rascall, as a little before *Sylla* his reign, and a little before *Caius Cæsars* reigne. For the usurping of the Rascality can never long endure, but necessarily breedeth, and quickly bringeth forth a Tyrant. Of this hath *Athens*, *Syracuse*, *Lacedemon*, and other old ancient ruling Cities had experience, and a man need not doubt but that other Common-wealths have followed the same rate. For the nature of man is, never to stand still in one manner of estate, but to grow from the lesse to the more, and decay from the more againe to the lesse, till it come to the fatall end and destruction;

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

## CHAP. V.

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

SO when the Common-wealth is seivill governed by an evill Ruler and unjust (as in the three last named, which bee rather a sicknesse of the politick body, then perfect and good Estates) if the Lawes be made, as most like they be alwaies, to maintaine that Estate: the question remaineth, Whether the obedience of them bee just, and the disobedience wrong? the profit and conservation of that Estate, Right and Justice, or the dissolution? and whether a good and upright man, and lover of his Country ought to maintaine and obey them, or to seek by all meanes to abo-

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

CHAP. VI.

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

**N**ow although the Governments of Common-wealths bee thus divi-

*of* ENGLAND. 9

divided into two, so into fixe: yet you must not take that yee shall find any Common-wealth or Government simple, pure, and absolute in his sort and kind: but as Wisemen have divided for understanding sake, and fantasied foure simple bodies, which they call Elements; as Fire, Aire, Water, Earth: and in a mans Bodie four Complexions or Temperatures, as Cholerick, Sanguine, Flegmatick and Melancholick; not that yee shall find one utterly perfect without mixture of the other, for that Nature almost will not suffer, but understanding doth discern each nature as in his sinceritie: so seldome or never shall you find Common-wealths or Governments which are absolutely and sincerely made of any of them above named, but alwaies mixed with another, and hath the name of that which is more, and over-ruleth the other alwaies, or for the most part.

CHAP.





Rogation or *Plebiscitum*, which *Caius Caesar*, or *Octavius* obtained, by which all the people of *Rome* did conferre their power and authoritie unto *Caesar* wholly.

The Pope groundeth his from Christ (*cui omnis potestas data est in caelo & in terra*) whose Successor he pretendeth to be: yet the generall Councils make strife with him, to make the Popes power either *Aristocratiam*, or at the least *legitimum regnum*, and would faine bridle that *absolutam potestatem*. Some men do judge the same of the Kings of *France*, and certain Princes of *Italy*, and other places, because they make and abrogate Lawes and Edicts, lay on Tributes and Impositions of their own will, or by the private counsell and advice of their friends and favourers onely, without the consent of the people. The people, I call that which the word *Populus* doth signifie, the whole bodie, and the three Estates of the Common-wealth: and they blame *Lewes* the Eleventh, for bringing

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

CHAP. VIII.  
*Of the absolute King.*

Other doe call that kind of administration which the Greeks do call *παμβασιλείαν*, not tyranny, but the absolute power of a King, which they would pretend that every King hath, if he would use the same. The other they call *βασιλείαν νομιμην* or the Royall power regulate by Lawes: of this I will not dispute at this time. But as such absolute administration in time of warre, when all is in Armes, and when Lawes hold their peace, because they cannot be heard, is most necessary: so in time of

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peace the same is very dangerous, as well to him that doth use it, & much more to the people upon whom it is used: whereof the cause is the frailtie of mans nature, which (as *Plato* saith) cannot abide or beare long that absolute and uncontrolled authoritie, without swelling into too much pride and insolencie. And therefore the *Romans* did wisely, who would not suffer any man to keep the *Dictatorship* above six moneths, because the *Dictators* (for that time) had this absolute power, which some *Greeks* named a lawfull tyrannie for a time. As I remember, *Aristotle*, (who of all Writers hath most absolutely and methodically treated of the division & natures of Common-wealths) maketh this sort of government to be one kind of Kings. But all cometh to one effect: for at the first all Kings ruled absolutely, as they who were either the Heads and most ancient of their Families, derived out of their own bodies, as *Adam*, *Noe*, *Abraham*, *Jacob*, *Esau*,  
reigning

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reigning absolutely over their owne children & bondmen, as reason was: or else in the rude World, amongst barbarous and ignorant people; some one then, whom God had endued with singular wisdom, to invent things necessary for the nourishment and defence of the multitude, and to administer Justice, did so farre excell other, that all the rest were but beasts in comparison of him: and for that excellency, willingly had this authoritie given him of the multitude, and of the *Gentiles* when he was dead, and almost when he was yet living, was taken for a God, of others for a Prophet. Such among the *Jewes* were *Moses*, *Joshua*, and other Judges, as *Samuel*, &c. *Romulus* and *Numa* amongst the *Romans*: *Lycurgus* and *Solon*, and divers others among the *Greeks*: *Zamolxis* among the *Thracians*: *Mahomet* among the *Arabians*; And this kind of rule among the *Greeks* is called *τιραννικη*, which of it selfe at the first was not a name odious; but because they who had such

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

*of ENGLAND.* 17

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

## C H A P. I X.

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

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

*Democraticall*, but onely the Royall and Kingly Majestie, which at the first was divided into many and sundry Kings, each absolutely raigning in his Country, not under the subjection of other, till by fighting the one with the other, the overcommed alwaies falling to the augmentation of the vanquisher and overcommer: At the last the Realme of England grew into one Monarchie. Neither one of those Kings, neither he who first had all, tooke any Investiture at the hands of the Emperour of Rome, or of any other superiour or forreine Prince, but held of God to himselfe, and by his Sword, his People and Crowne, acknowledging no Prince on Earth his Superiour: and so it is kept & holden at this day; although King *John* (by the Rebellion of the Nobilitie, aided with the Daulphin of *France* his power) to appease the Pope, who at that time possessing the consciences of his Subjects, was then also his enemy, and his most grievous torment (as some Histories do witness)

ness) did resigne the Crown to his Legate *Pandulphus*, and tooke it againe from him, as from the Pope, by Faith and Homage, and a certaine Tribute yeerely. But that act being neither approved by his people, nor established by Act of Parliament, was forthwith and ever sithence taken for nothing, either to binde the King, his Successors, or Subjects.

CHAP. X.

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

TO be understood hereafter, it is necessary yet to make a third division of the Common-wealth by the parts thereof. A Common-wealth is called a societie or common doing of a multitude of Freemen, collected together, and united by common accord and covenants among themselves, for the conservation of themselves as well in Peace as in Warre.

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

the Instruments sake. And as these be instruments of the Carpenter, so the Plough, the Cart, the Horse, Oxe, or Ass, be Instruments of the Husbandman: & though one Husbandman had a great number of all these, and looked well to them, it made no Common-wealth, nor could not be so called. For the private wealth of the Husbandman is only regarded, and there is no mutuall societie or portion, nor Law, nor pleading betweene the one and the other. And (as hee saith) what reason hath the Pot to say to the Potter, Why mad'st thou mee thus? or why doest thou breake me after thou hast made me? Even so is the bondman or slave which is bought for mony, for hee is but a reasonable and living instrument, the possession of his Lord and Master, reckoned among his goods, not otherwise admitted to the societie Civill or Common-wealth, but is part of the possession and goods of his Lord. Wherefore, except there be other orders and administrations amongst

mongst the *Turks*, if the Prince of the *Turkes* (as it is written of him) do repute all other his bondmen and slaves (himselfe and his sons onely free-men) a man may doubt whether his administration be to be accounted a Common-wealth, or a Kingdome, or he rather to be reputed onely as one that hath under him an infinite number of slaves or bondmen, among whom there is no right, law, nor Common-wealth compact, but onely the will of the Lord and *Seignior*. Surely none of the old *Greeks* would call this fashion of Government, *Remp.* or *Πολιτεία*, for the reasons which I have declared.

## C H A P. X I.

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

**T**hen if this be a Societie, and consisteth only of freemen, and the least part thereof must bee two;  
the

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

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tie men are so naturally borne, that the Prince of all Philosophers, in consideration of natures, was not afraid to say, that a man by nature is rather desirous to fellow himselfe to another, and so to live in couple, then to adhere himselfe with many. Although of all things or living creatures, a man doth shew himselfe most politick, yet can hee not well live without the societie and fellowship Civill. *He that can live alone, saith Aristotle, is either a wilde Beast in Mans likenesse, or else a God rather then a man.* So then the House and Family is the first and most naturall (but private) apparence of one of the best kinds of a Common-wealth, that is called *Aristocratia*, where a few, and the best doe governe: and where not one alwaies, but sometime and in some thing another doth beare the rule. Which to maintaine for his part, God hath given to the man greater wit, bigger strength, and more courage to compell the woman to obey by reason, or force: and to the

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

CHAP. VII.

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

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



Provining, or propagation is when a man layeth a branch of a Vine or O-lier, or any other tree, into the ground, so that it taketh root, of it selfe, & may live though it be cut cleane from the first root or stocke.

*Pagus, Oppidum, Civitas, Regnum.*

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

able to rule, it was unnaturall for any of his Sonnes or Off-spring, to strive with him for the superioritie, or to go about to governe, or any wise to dishonour him, from whom he had received life and being. And therefore such a one doth beare the first and naturall example of an absolute, and perfect King. For he loved them as his own Children and Nephewes, cared for them as members of his own body, providing for them as one having by long time more experience then any one, or all of them. They againe honoured him as their Father of whose body they came, obeyed him for his great wisdom and fore-cast, went to him in doubtfull cases, as to an Oracle of God, feared his curse and malediction as proceeding from Gods own mouth. He againe used nouriture: For each paine put upon them, he esteemed as laid upon himselfe.



## CHAP. III.

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

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

next (being either wise of himselfe, or  
else by his brothers error and fault)  
amended it. And in the meane  
while, at divers and most times when  
urgent necessitie did occurre, they  
consulted all those heads of Families  
together within themselves, how to  
demeane & order their matters best  
for the conservation of themselves,  
and each of their Families generally  
and particularly. Thus a few being  
Heads, and the chiefe of their Fami-  
lies, equall in Birth and Nobilitie,  
and not much different in riches, go-  
verned their owne Houses, and the  
descendents of them particularly, and  
consulted in common upon publike  
causes, agreeing also upon certaine  
Lawes & Orders to be kept amongst  
them. So the best, chiefest, and sagest  
did rule, and the other part had no  
cause to strive with them, nor had no  
cause nor apparance to compare with  
any of them, neither for age nor dis-  
cretion, nor for Riches, or Nobilitie.  
The Rulers sought each to keep and  
maintaine their Posteritie, as their  
Sonne

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 Sons and Nephewes, and such as should succeed them, and carry their names when they were dead, and so render them, being mortall by nature, immortall by their fame and succession of Posteritie: having most earnest care to maintaine still this their coozenage & common Family, as well against forrein and barbarous Nations, which were not of their Progenie, Tongue, or Religion, as against wild and savage Beasts. This seemeth the naturall course and beginning, or Image of that rule of the fewer number, which is called of the Greeks *Aristocratia*, and of the Latines, *Optimum Respublica*.

CHAP. XIV.

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

Now, as time bringeth an end of all things, these brethren being all

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

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

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

CHAP. XV.

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

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

contrarie manner of people, as when the shoe is too little or too great for the foot, it doth hurt and incumber the convenient use therof; so the free people of Nature tyrannized or ruled by one against their wils, were he never so good, either faile of courage and waxe servile, or never rest untill they either destroy the King & them that would subdue them, or be destroyed themselves. And againe, another sort there is, which without being ruled by one Prince, but set at libertie, cannot tell what they should doe, but either through insolencie, pride, and idlenesse, will fall to roberie, and all mischief, and so scatter and dissolve themselves; or with foolish ambition and private strife consume one another, and bring themselves to nothing. Of both these two wee have histories enough to beare witnesse, as the Greeks, Romanes, Samnites, Danes, Vandals, and others. Yet must you not think that all Common-wealths, administrations, and rulings began on this sort,

by

Græci.  
Romani.  
Samnites.  
Vandali.  
Dani.  
Norwegi.  
Sueci.

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

C

munaltie,

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munaltie, as the Paduans, Veronen-  
ses, and Venetians have accustomed.

CHAP. XVI.  
*The division of the parts and persons  
of the Common-wealth.*

**T**O make all things yet cleere  
before, as we shall goe, there a-  
riseth another division of the parts  
of the Common-wealth. For it is not  
enough to say that it consisteth of a  
multitude of Houses and Families,  
which make Streets and Villages,  
and the multitude of Streets & Vil-  
lages make Townes, and the multi-  
tude of Towns the Realme, and that  
Freemen be considered only in this  
behalf, as Subjects and Citizens of  
the Common-wealth, and not Bond-  
men, who can beare no rule nor ju-  
risdiction over Freemen, as they who  
be taken but as instruments, and the  
goods and possessions of others. In  
which consideration also we doe re-  
ject women, as those whom Nature  
hath

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hath made to keep home, and to nou-  
rish their family and children, & not  
to meddle with matters abroad, nor  
to bear office in a Citie or Common-  
wealth, no more then Children and  
Infants: except it be in such cases as  
the Authoritie is annexed to the  
Bloud and Progenie; as the Crowne,  
a Dutchie, or an Earldome: for there  
the bloud is respected, not the Age  
nor the Sex. Where, by an absolute  
Queene, an absolute Dutchesse or  
Countesse, those I call absolute, which  
have the name, not by being married  
to a King, Duke, or Earle, but by be-  
ing the true, right & next Successors  
in the dignitie, and upon whom by  
right of the bloud that title is de-  
scended: These I say, have the same au-  
thoritie, although they be women or  
children, in that Kingdome, Dutchie,  
or Earledome, as they should have  
had if they had been men of full age.  
For the right & honour of the bloud,  
and the quietnesse and suretie of the  
Realme, is more to be considered,  
then either the tender age as yet im-  
C 2 potent

potent to rule, or the Sexe not accustomed (otherwise) to intermeddle with publike affaires, being by common intendment understood, that such Personages never doe lacke the counsell of such grave and discreet men as bee able to supply all other defects. This (as I said) is not enough : But the division of these which bee participant of the Common-wealth, is one way of them that beare office, the other of them that beare none : The first are called Magistrates, the second private men. Besides, the like was among the Romans of *Patricii & Plebei*, the one striving with the other a long time; the *Patricii* many yeeres excluding the *Plebei* from bearing rule, untill at last all Magistrates were made common betweene them : yet was there another division of the Romans, into *Senators, Equites* and *Plebs*: the Greeks had also *εὐγενεῖς καὶ ἀναστυλιχθῆς*. The French have at this day, *les nobles & la populaire*, or *gentill homes & villaines* : wee in Eng-

England divide our men commonly into foure sorts, Gentlemen, Citizens, Yeomen, Artificers and Labourers : of Gentlemen, the first and chiefe are the King, the Prince, Dukes, Marqueesses, Earls, Viscounts, Barons, and all these are called *κατ' ἕξοχλῶ*, the Nobilitie, and all these are called Lords and Noblemen : next to these be Knights, Esquires, and simple Gentlemen.

CHAP. XVII.

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

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

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

in respect of Barons, Esquires of Honour or Lords.

Earles Sonne is called by the name of a Viscount or Baron, or else according as the Creation is. The Creation I call the first donation and condition of the honour (given by the Prince for good service done by him, and advancement that the Prince will bestow upon him) which with the title of that honour, is commonly (but not alwayes) given to him and to his heires males only; the rest of the Sonnes of the Nobilitie, by the rigor of the Law be but Esquires; yet in common speech, all Dukes, and Marquesses Sons, and the eldest Sonne of an Earle be called Lords. The which name commonly doth agree to none of lower degree then Barons, excepting such onely, as bee thereunto by some speciall office called. The Baronie or degree of Lords, doth answer to the dignitie of the Senators of Rome; and the title of our Nobilitie to their *Patricii*; when *Patricii* did betoken *Senatores, aut Senatorum filios*. *Census Senatorum* was in Rome, at

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

## CHAP. XVIII.

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

NO man is a Knight by succession; no not the King or Prince.

C 4 And



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And the name of Prince in England κατ' ἐξοχὴν betokeneth the eldest Son or Prince of Wales; although the King himselfe, his eldest Sonne, and all Dukes, be called by a general name Princes. But as in France the Kings eldest Sonne hath the title of *Daulphin*, and he or the next Heire apparant to the Crown is *Monsire*; so in England the Kings eldest Son is called κατ' ἐξοχὴν, The Prince. Knights therefore be not borne but made; either before the battell, to encourage them the more to adventure their lives; or after the conflict, as advancement for their hardinesse and man-hood already shewed; or out of the Warre, for some great service done, or some good hope through the vertues which doe appeare in them. And they are made either by the King himselfe, or by his Commission and Royall Authoritie, given for the same purpose; or by his Lievtenant in the Wars, who hath his Royall and absolute power committed to him for that time. And  
that

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



the King will so honour. The number of *Equites* was uncertaine, and so it is of Knights, at the pleasure of the Prince. *Equites Romani* had *Equum publicum*: the Knights of England have not so, but finde their owne Horse themselves in peace time, and most usually in Warres.

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

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

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

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

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

And when any man is made a Knight, he kneeling down, is stricken of the Prince, with his Sword naked, upon the backe or shoulder, the Prince saying, *Sus* or *sois Chevalier au nom de Dieu*, and (in times past) they added *Saint George*, and

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

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*Richard*, and that is the terme which  
men give to Knights in England.  
This may suffice at this time, to de-  
clare the Order of Knighthood: yet  
there is another Order of Knights  
in England, which bee called the  
Knights of the Garter. King *Edward*  
the Third (after he had obtained ma-  
ny notable victories, King *John* of  
France, King *James* of Scotland, be-  
ing both Prisoners in the Tower of  
London at one time, and King *Hen-  
ry* of Castile the Bastard expulsed  
out of his Realme, and *Don Pedro*  
restored unto it by the Prince of  
Wales, and Duke of Aquitaine, cal-  
led the Black Prince) invented a So-  
cietie of Honour, and made choice  
out of his own Realme and Domini-  
ons, & all Christendome; & the best  
and most excellent renowned per-  
sons in Vertues and Honour, he did  
adorne with the Title to be Knights  
of his Order, gave them a Garter  
decked with Gold, Pearle and Pre-  
cious stones, with the buckle of gold,  
to weare daily on the left leg onely,  
a Kirtle

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a Kirtle, Gowne, Cloke, Chaperon, Coller, and other august and magnificall apparell, both of stufte and fashion exquisite and heroicall, to weare at high Feasts, as to so high and Princely an Order was meet: of which Order He and his Successors, Kings and Queens of England, to be the Sovereigne, and the rest by certaine Statutes and Lawes among themselves, be taken as brethren and fellowes in that Order, to the number of six and twenty. But because this is rather an ornament of the Realme, then any Policie or Government thereof, I leave to speake any further of it.

## CHAP. XIX.

*Of Esquires.*

**E**scuier or Esquire (which wee call commonly Squire) is a French word, and betokeneth *Scutigerum*, or *Armigerum*, and be all those

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

## CHAP. XX.

*Of Gentlemen.*

**G**entlemen be those whom their Bloud and Race doth make  
No-

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Noble and knowne, Εὐγενής in Greeke, the Latines call them all *Nobiles*, as the French *Nobles*. Εὐγενεία or *Nobilitas* in Latine is defined, Honour or Title given, for that the Ancestors have beene notable in riches or vertues; or (in fewer words) old riches or prowesse remaining in one stocke. Which if the Successors doe keepe and follow, they be *verè Nobiles*, and Εὐγενής: if they doe not, yet the same and wealth of their Ancestors, serve to cover them so long as it can, as a thing once gilded though it be Copper within, till the gilt be worne away. This hath his reason, for the Etymologie of the name served the efficacie of the word: *Gens* in Latine betokeneth the race and surname, so the Romans had *Cornelios, Sergios, Appios, Fabios, Æmilios, Pisones, Julios, Brutos, Valerios*, of which who were *Agnati*, and therefore kept the name, were also *Gentiles*, and retaining the memory of the glory of their Progenitours fame, were

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

*Malo pater tibi sit Therfitis,  
dummodo tu sis  
Æacidi similis, Vulcaniaque arma  
capeffas:  
Quàm te Therfiti similem produ-  
cat Achilles.*

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

of the Progenitors, which incourage, as also through habilitie of education and bringing up, which enableth; and lastly, the enraced love of tenants and neighbours, to such Noblemen & Gentlemen, of whom they hold, and by whom they doe dwell, which pricketh forward to ensue in their Fathers steps: So if all this doe faile (as it were great pitie it should) yet such is the nature of all humane things, and so the world is subject to mutabilitie, that it doth many times faile; but when it doth, the Prince and Common-wealth have the same power that their Predecessours had; and as the Husbandman hath to plant a new tree where the old faileth, so hath the Prince to honour vertue where he doth finde it; to make Gentlemen, Esquires, Knights, Barons, Earles, Marqueses and Dukes, where he seeth vertue able to beare that honour, or merits and deserves it, and so it hath alwaies beene used among us. But ordinarily the King doth only make  
Knights

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

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

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CHAP. XXI.

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

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

taxe

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



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it but hee himfelfe, who fiereby perchance will beare a bigger faile then he is able to maintaine. For as touching the policie and government of the Common-wealth, it is not thofe that have to doe with it, which will magnifie themfelves, and goe in higher Buskins then their estate will beare : but they which are to be appointed, are perfons tried and well knowne, as fhall be declared hereafter.

CHAP. XXII.

*Of Citizens and Burgefles.*

**N**Ext Gentlemen be appointed Citizens and Burgefles, fuch as not onely be free, and received as Officers within the Cities but alfo bee of fome fubftance to beare the charges. But thefe Citizens and Burgefles bee to ferve the Common-wealth, in their Cities & Boroughs, or in Corporate Townes where they dwell.

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dwell. Generally in the Shires they be of none account, fave only in the common afsembly of the Realme, to make Lawes, which is called the Parliament. The ancient Cities appoint foure, and each Borough two, to have voices in it, and to give their confent or diflent, in the name of the Citie or Borough for which they be appointed.

CHAP. XXIII.

*Of Yeomen.*

**T**Hofe whom wee call Yeomen, next unto the Nobilitie, Knights and Squires, have the greateft charge and doings in the Common-wealth, or rather are more travelled to ferve in it then all the reft : as fhall appeare hereafter. I call him a Yeoman, whom our Lawes do call *Legalem hominem*, a word familiar in Writs and Enquefts, which is a free Englifh man borne, and may difpend



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

This sort of people confesse themselves to be no Gentlemen, but give the honour to all which bee, or take upon them to be Gentlemen, & yet have a certaine preheminance, and more estimation then Labourers and Artificers, and commonly live wealthily, keepe good houses, and doe their businesse and travell to acquire riches: these be (for the most part) Farmours unto Gentlemen, which with grazing, frequenting of Markets, and keeping Servants not idly, as the Gentleman doth, but such as get both their owne living and part of their Masters, and by these meanes do come to such wealth, that they are able and daily doe buy the Lands of unthriftie Gentlemen, and after setting their Sonnes to the

Schoole

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

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quires : so amongst the Husbandmen, Labourers, the lowest and rascal sort of the people, such as bee exempted out of the number of the rascalitie of the popular, be called and written Yeomen, as in the degree next unto Gentlemen. These are they which old *Cato* calleth *Aratores*, and *optimos cives in Republica*; and such as of whom the Writers of Common-wealths prayse to have many in it. *Aristotle* namely reciteth *μοθάρκας μεσσητιαιμα*; these tend their owne businesse, come not to meddle in publike matters & judgments, but when they are called, and glad when they are delivered thereof, are obedient to the Gentlemen & Rulers, and in Warre can abide travell and labour, as men used to fight for their Lords of whom they hold their Lands, for their Wives and Children, for their Country and Nation, for praise and honour against they come home, and to have the love of their Lord and his children, to be continued towards them  
and

and their children, which have adventured their children, which have adventured their lives for and with him and his. These are they which in the old world gat that honour to *England*; not that either for wit, conduction, or for power they are or were to be compared to the Gentlemen, but because they be so many in number, so obedient at the Lords call, so strong of body, so hardy to endure paine, so courageous to adventure with their Lords or Captaine, going with, or before them; for else they be not hastie, nor never were, as making no profession of knowledge of warre.

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

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

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

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

## CHAP. XXIII.

*Of the fourth sort of men, which  
doe not rule.*

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

ployed upon such low and base persons. Wherefore generally to speak of the Common-wealth, or Policie of *England*, it is governed, administered, and managed by three sorts of persons; the Prince, Monarch, and head Governour, which is called the King, or if the Crowne fall to a Woman, the Queene absolute, as I have heretofore said; in whose name and by whose authoritie all things are administered. The Gentlemen, which bee divided into two parts, the Baronie or Estate of Lords, containing Barons and all that bee above the degree of a Baron (as I have declared before:) and those which be no Lords, as Knights, Esquires, and simple Gentlemen.

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

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THE SECOND  
BOOKE.

CHAP. I.

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

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

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

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

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In practice are considered, the { Persons, and their Office.

The persons are, { Protonotaries, Sollicitors, and Attorneies.

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

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

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

Attorneies are such as by experience have learned and do know the orders and manner of proceeding in every Court where they serve, and doe

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

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

The matter of the Law is { Justice, and Equity.

The manner of their severall proceedings followeth.

CHAP. II.

Of the Parliament, and the  
authoritie thereof.

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

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parts, first each a part, and after the  
Prince himse in presence of both  
the parties, doth consent unto and al-  
loweth. That is, the Princes and  
whole Realmes Deed: whereupon  
justly no man can complaine, but  
must accommodate himse to finde  
it good and obey it.

That which is done by this consent  
is called firme, stable and *sanctum*,  
and is taken for Law. The Parlia-  
ment abrogateth old Lawes, ma-  
keth new, giveth order for things  
past, and for things hereafter to be  
followed, changeth right and posses-  
sions of private men, legitimateth  
Bastards, establissheth formes of Re-  
ligion, altereth Weights and Mea-  
sures, giveth forme of succession to  
the Crowne, defineth of doubtfull  
Rights, whereof is no Law alreadie  
made, appointeth Subsidies, Tailles,  
Taxes, and Impositions, giveth most  
free pardons and absolutions, resto-  
reth in Bloud and Name, as the  
highest Court condemne or absol-  
veth them whom the Prince will put

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to triall. And to be short, all that ever the people of *Rome* might doe, either *Centuriatis Comitibus* or *Tributis*, the same may be done by the Parliament of *England*; which representeth, and hath the power of the whole Realm, both the head and bodie. For every Englishman is intended to be there present, either in person, or by procuracy and attorny, of what preheminance, state, dignitie or qualitie soever hee be, from the Prince (be he King or Queene) to the lowest person of *England*. And the consent of the Parliament, is taken to be every mans consent.

*Alias, Tributis.*

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

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

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the Higher House, the other for the Lower; and Committees.

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

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

The Committees are such as either the Lords in the higher House, or Burgeses in the Lower House, doe choose to frame the Lawes upon such Bills as are agreed upon, and afterward to bee ratified by the same Houses.

CHAP.

## CHAP. III.

*The forme of holding the Parliament.*

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

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

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

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

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

sen by them to the Prince; which done they comming all with him to a Barre, which is at the neither end of the upper House, there hee first prayseth the Prince, then maketh his excuse of inability, and prayeth the Prince that he would command the Commons to choose another. The Chancellour in the Prince's name doth so much declare him able, as he did declare himselfe unable, and thanketh the Commons for chusing so wise, discreet, and eloquent a man, and willet them to goe and consult of Lawes for the Common-wealth. Then the Speaker maketh certaine requests to the Prince in the Commons Name:

First, that his Majestie would bee content that they may use and enjoy all their Liberties and Priviledges that the common house was wont to enjoy.

Secondly, that they may frankly and freely say their minds, in disputing of such matters as may come in question, and that without offence to his Majestie. Third-

Thirdly, if any should chance of that lower House to offend, or not to doe or say as should become him, or if any should offend any of them being called to that his Highnes Court, that they themselves might (according to the ancient custome) have the punishment of them.

Fourthly, that if there come any doubt, whereupon they shal desire to have the advice or conference with his Majestie, or with any of the Lords, they might doe it: all which he promiseth in the Commons names, that they shall not abuse, but have such regard as most faithfull, true, and loving Subjects ought to have to their Prince.

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

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or in the nether House, is put in writing first in paper; which being once read, he that will, riseth up and speaketh with it or against it: and so one after another, so long as they shall thinke good. That done, they goe to another, and so another Bill. After it hath beene once or twice read, and doth appear that it is somewhat liked as reasonable, with such amendment in words, and peradventure some sentences, as by disputation seemeth to be amended; in the upper House the Chancellour asketh if they will have it ingrossed, that is to say, put into parchment: which done, and read the third time, and that est-soones, if any be disposed to object, disputed again among them, the Chancellour asketh if they will goe to the question: and if they agree to goe to the question, then he saith, Here is such a Law or Act concerning such a matter, which hath been thrice read here in this House, are yee content that it be enacted or no? If the Not contents be moe, then  
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the Bill is dashed, that is to say, the Law is annihilated, and goeth no farther. If the Contents be the moe, then the Clark writeth underneath:  
*Soit baille aux commons.*

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

In like manner in the Lower House the Speaker sitting in a seat or chaire for that purpose somewhat higher, that he may see and be seene of them all, hath before him, in a lower seat, his Clarke who readeth such Bills as bee first propounded in the Lower House, or bee sent downe from the Lords. For in that point each House hath equall authoritie, to propound what they thinke meet, either for the abrogating of some Law made before, or for making of a new. All Bills be thrice, in three divers dayes, read and disputed upon, before they come to the question. In the disputing is a marvellous good order used in the Lower House. He that standeth up bare-headed, is to be understood, that he will speak to the Bill. If moe stand up, who that is first judged to arise, is first heard; though the one doe prayse the Law, the other dissuade it, yet there is no altercation:

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

No reviling or nipping words must be used. For then all the House will cry, it is against the order: and if any speake unreverently or seditiously against the Prince or the privie Councill, I have seene them not

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onely interrupted, but it hath beene mooved after to the House, and they have sent them to the Tower. So that in such a multitude and in such diversitie of Minds and Opinions, there is the greatest modesty and temperance of speech that can be used. Nevertheless, with much doulce and gentle termes, they make their reasons as violent and as vehement the one against the other as they may ordinarily, except it be for urgent causes, and halting of time. At the afternoon they keep no Parliament. The Speaker hath no voice in the House, nor they will not suffer him to speake in any Bill to move or disswade it. But when any Bill is read, the Speakers Office is, as briefly and as plainly as he may, to declare the effect thereof to the House. If the Commons doe assent to such Bills as bee sent to them first agreed upon from the Lords, thus subscribed, *Les commons ont assentus*, so if the Lords doe agree to such Bills as bee first agreed upon by the Commons, they

send

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

In the upper House they give their assent and dissent, each man severally and by himselfe, first, for himselfe, and then for so many as hee hath proxie. When the Chancellour hath demanded of them, whether they will go to the question after the Bill hath beene thrice read, they saying only, Content, or Not content, without further reasoning or replying: and as the more number doth agree,

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so it is agreed on, or dashed.

In the neither House none of them that is elected, either Knight or Burgesse can give his voice to another, nor his consent or dissent by proxie. The more part of them that be present only maketh the consent or dissent. After the Bill hath beene twice read, and then ingrossed, and est-scones read and disputed on enough, as is thought, the Speaker asketh if they will goe to the question: And if they agree, he holdeth the Bill up in his hand, and saith: As many as will have this Bill goe forward, which is concerning such a matter; say yea. Then they which allow the Bill cry yea, and as many as will not, say no: as the cry of yea, or no is bigger, so the Bill is allowed or dashed. If it be a doubt which cry is bigger, they divide the House, the Speaker saying, as many as doe allow the Bill goe down with the Bill, and as many as doe not, sit still. So they divide themselves, and being so divided they are numbred who made the  
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more part, and so the Bill doth speed. It chanceth sometime that some part of the Bill is allowed, some other part hath much controversie and doubt made of it: and it is thought, if it were amended, it would goe forward. Then they choose certaine *Committees* of them who have spoken with the Bill and against it, to amend it, and bring it againe so amended, as they amongst them shall thinke meet: and this is before it is ingrossed; yea, and sometime after. But the agreement of these *Committees* is no prejudice to the house. For at the last question they will either accept it or dash it, as it shall seeme good, notwithstanding that whatsoever the *Committees* have done.

Thus no Bill is an Act of Parliament, Ordinance, or Edict of Law untill both the houses severally have agreed unto it after the order aforesaid, no nor then neither. But the last day of that Parliament or Session, the Prince commeth in person in his Parliament Robes, and sitteth in his

state: all the upper House sitteth about the Prince in their states and order in their Robes. The Speaker with all the common House cometh to the Barre, and there after thanksgiving first in the Lords Name by the Chancellour, &c. and in the Commons Name by the Speaker to the Prince, for that he hath so great care of the good government of his people, and for calling them together to advise of such things as should be for the reformation, establishing, and ornament of the Common-wealth: the Chancellour, in the Princes Name, giveth thanks to the Lords and Commons for their pains and travels taken, which hee saith the Prince will remember and recompence when time and occasion shall serve, and that he for his part is ready to declare his pleasure concerning their proceedings, whereby the same may have perfect life and accomplishment by his Princely authoritie, and so have the whole consent of the Realme. Then one reads  
the

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

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

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

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CHAP. IV.

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

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

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

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This hath been sometime used within the Realme before any open war, in sudden insurrections and rebellions, but that not allowed of wise and grave men, who in that their judgement had consideration of the consequence and example, as much as of the present necessitie, especially when by any means the punishment might have beene done by order of Law. This absolute power is called **Martiall Law**, and ever was, and necessarily must be used in all Campes and Hosts of men, where the time nor place do suffer the tarriance of pleading and proesse, be it never so short, and the important necessitie requireth speedy execution, that with more awe the Souldiers might be kept in more straight obedience, without which never Captaine can doe any thing vaileable in the wars.

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

title. The forme, fashion, manner weight, finenesse & basenesse thereof, is at the discretion of the Prince. For whom should the people trust more in that matter then their Prince, seeing the Coine is only to certifie the goodnesse of the metall and the weight, which is affirmed by the Princes Image and marke? But if the Prince will deceive them, and give them Copper for Silver or Gold, or inhance his Coine more then it is worth, he is deceived by his Subjects; for in the same sort they pay the Prince his Rents and Customes: and in time they will make him pay rateably or more for meat, drinke, and victuals for him and his, and for their labour; which experience doth teach us now in our daies to be done in all Regions. For there ever hath beene and ever will be a certaine proportion betweene the scarcitie and plentie of other things, with Gold and Silver. For all other Measures and Weights, as well of dry things as of wet, they have

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

The Prince useth also to dispence with Lawes made, whereas equitie requireth a moderation to bee had, and with paines for transgressing of Lawes, where the paine of the Law is applied onely to the Prince. But where the forfeit (as in popular actions it chanceth many times) is part to the Prince, the other part to the Declarator, Detector or Informer, there the Prince doth dispence for his own part onely. Where the criminall action is intended by inquisition (that manner is called with us at the Prince's sute) the Prince giveth absolution or pardon, yet with a clause, *modo stet rectus in curia*, that is to say, that no man object against the Offender. Whereby notwithstanding that he hath the Princes pardon if the person offended will take upon him the accusation (which in our Language is called the Appeale) in cases where it lieth, the

the Princes pardon doth not serve the Offender.

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

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

certaine Countie Palatines, as *Chester, Durham, and Elie*, which were *haut Justicers*, and Writs went in their Name, as also some Lord Marches of *Wales*, which claimed like priviledge: all these are now worne away. The supreme Justice is done in the Kings Name, and by his authority only.

The Prince hath the Wardship and first Marriage of all those that hold Land of him in chiefe. And also the government of all fooles naturall, or such as be made by adventure of sicknesse, and so continue if they be landed. This being once grounded by Act of Parliament (although some inconvenience hath bin thought to grow thereof, and since that time it hath been thought very unreasonable) yet once annexed to the Crown, who ought to go about to take the Club out of *Hercules* hand? And being governed justly and rightly, I see not so much inconvenience in it, as some men would make of it: Divers other rights and

pre?

preheminenes the Prince hath, which he called Prerogatives Royall, or the Prerogative of the King, which bee declared particularly in the Books of the Common Lawes of *England*.

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

CHAP.

## CHAP. V.

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

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

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

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

## CHAP. VI.

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

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



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

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CHAP. VII.

*Tryall, or Judgement by Parliament.*

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

gladly intermeddle it selfe with private quarrels and questions.

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CHAP. VIII.

*The tryall of Judgement by Battell.*

**T**His is at this time not much used, partly because of long time the Pope & the Clergy, to whom in time past we were much subject, alwaies cryed against it as a thing damnable and unlawfull: and partly because in all Comon-wealths, as to the tongue so to the manners, fashions, habits; yea, and kinds of tryals and judgements, and to all other things that is therein used, time and space of yeeres bringeth a change. But I could not yet learne that it was ever abrogated. So that it remaineth in force, whensoever it be demanded: The manner of it is described in *Britton.*

CHAP.

CHAP. IX.

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

**T**He two first judgements be absolute, supreme and without appeale; and so is also the judgement by the great Assise. And the cause or manner of Judgements in *England* is in many things different from the fashion used either in *France*, or in *Italy*, or in any other place. If the Emperours Lawes and Constitutions (called the Civill Lawes) be put in use, it will bee necessary here to make a little digression, to the intent that that which shall be said hereafter, may be better understood. All pursutes and aetions (we call them in our English tongue, pleas) and in barbarous (but now usuall Latine) *placita*, taking that name, *abusivè* of the definitive sentence, which may

may well be called *placitum*, or *ἀρε-  
σον*. The French used the same, called in their Language, the sentence of their Judges *aresté*, or *arest*; in which words notwithstanding after their custome they doe not sound the *s*. But we call *placitum*, the action, not the sentence; and *placitare* barbarously, for to plead in English, *age-  
re*, or *litigare*. Now in all judgments be two parties, the first wee call the Impleader, Suiter, Demander, or Demandant, and Plaintiffe. In Criminall Causes, if he professe to be an accuser, we call him Appellant, or Appelour, and so, accusation wee call appeale. The other we call the Defendant, and in Criminall causes, Prisoner; for he cannot answer, in causes Criminall, before he doerender himselfe, or be rendered Prisoner.

*Judex*, is of us called Judge, but our fashion is so divers, that they which give the deadly stroke, and either condemne or acquite the man for guilty or not guilty, are not called

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

CHAP. X.

*Of Pleas or Actions.*

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

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

And

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

*Saving in appeales, & upon a speciall plea, Actio, is the parties whole suit: Breve is the Kings precept.*

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ters

ters (be it for Land, Rent, Right, or Possession, although he plead against the Prince himselfe) he is never denied.

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

And as the old Romans had their actions some *ex jure civili*, and some *ex jure pretorio*, and ordinarily *Prætor dabat actiones, & formulas actionum*: so in *England* we retaine still this, and have some Writs out of the Chancery, other out of the Common Pleas or the Kings Bench.

CHAP.

## CHAP. XI.

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

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

F 2 Con-

Contracts. At the upper end of the Hall on the right hand, the Kings Bench where Pleas of the Crowne have their place; and on the left hand sitteth the Chancellour accompanied with the Master of the Rolls, who in Latine may be called *Custos archivorum Regis*, and certain men learned in the Civill Law, called Masters of the Chancerie, in Latine they may be called *Assessores*.

CHAP. XII.

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

**T**WO things may be moved in question here, how all *England* (being so long and so large, and having so many Shires and Provinces therein) can be answered of justice in one place, and in three Benches, bee they never so great? Another (whereas the Kings Bench is exercised

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

The first question will seeme more marvellous, and have more occasion of doubt, when I shal also tel that the Law is not open at all times, no, not the third part of the yeere. But where all other Cities & Common-wealths had all the yeere Pleas, Suites and Judgements, except for certaine holy-dayes and Harvest; Vintage, or when for some urgent cause the Law was commanded to bee stopped, which is called *Justitium*: contrarie in ours it is but few times open. That is onely foure times in the yeere, which they call Termes: After Michaelmas about ten dayes, during five or six weekes at the least. After Christmas about a moneth enduring by the space of three weekes. Then from seventeene dayes after Easter by the space of three weekes and odde dayes. Likewise from the six or

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seventh day after Trinitie Sunday, during two weeks & odde dayes. All the rest of the yeere there is no pleading, entring nor pursuing of actions. This small time, and all that but in one place, may seeme very injurious to the people, who must bee faine to suffer much wrong for lacke of Justice, and of place and time to plead: but unto that hereafter I intend to answer more fully, and at large, and in the meane while that shall suffice which the wise *Cato* answered to one who moved, that the pleading place in Rome might be covered over with canvasse, as their Theaters were, to the intent that the Plaintiffes and Defendants that were there might plead their matters more at ease, and not bee in so much danger of their health by the heate of the Sun striking full and open upon their heads, which was no small grieffe and disease, specially at Rome: Nay (saith *Cato*) for my part I had rather wish that all the wayes to the piace of pleading were

cast

*of ENGLAND.* 113

cast over with Galthrops, that the feet of such as love so well pleading should feele so much paine of those pricks in going, as their heads doe of the Sunne in tarrying there: he meant that they were but idle, hot heads, busie-bodies, and troublesome men in the Common-wealth that did so nourish pleading: good labourers and quiet men could bee content to end their matters at home by judgment of their neighbours and kinsfolke, without spending so their money upon Procurers and Advocates whom we call Attorneys, Counsellors, Sergeants, and generally men of Law. Those be accounted profitable Citizens who attend their honest labour and busines at home, and stand not waiting and gaping upon their Rolles and Prozesse in the Law: as for the other, by his judgement, it was no matter what mischiese they suffered. To the other question of the Chancerie; this I answer: That our law which is called of us, the Common law, as

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ye would say *Jus civile*, is, and standeth upon *ἀρετῆς ἡθικῆς*, that is *Jus summum*: and their maximes be raken so streightly, that they may not depart from the tenour of the words, even as the old civill Law was. And therefore as that lacked the help of the *Prator* (which might *moderari illud ius summum*, give actions where none was, mitigate the exactnesse and rigour of the law written, give exceptions as *metus, doli mali, minoris atatis &c.* for remedies, and maintaine alwayes *aquum bonum*;) the same order and rancke holdeth our Chancerie, and the Chancellor hath the very authoritie herein as had the *Prator* in the old civill Law before the time of the Emperours. So hee that putteth up his Bill in the Chancery after that he hath declared the mischiefe wherein he is, hath reliefe as in the solemne *Forum*. And for as much as in this case hee is without remedie in the common Law, therefore he requireth the Chancellour according

to equitie and reason to provide for him and to take such order as to good conscience shall appertaine. And the court of the Chancerie is called of the common people the court of Conscience, because that the Chancellor is not strained by rigor or forme of words of Law to judge but *ex aequo* and *bono*, and according to conscience as I have said. And in this Court the usuall and proper forme of pleading of England is not used, but the forme of pleading by writing, which is used in other countries according to the civill Law, and the triall is not by twelve men, but by the examination of witnesse, as in other Courts of the civill Law.

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

The Judges of this court are the L.



Chancellour of England, Assistants, the Masters of the Rols, and six Masters of the Chancery, which are commonly Doctors of the Civil Law.

Officers are the six Clarks of the Chancery, the Clark of the Crowne generall, the Register, Controler of the Seale, two examiners, the clark of the Hamper, the three clarks of the Petty bag, the Curfiters, the Sergeant of the Mace.

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

The Master of the Rols is the keeper of the Records, Judgments, and Sentences given in the Court of Chancerie.

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

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

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The six Clarks are the Atturnies, as well for the Plaintiffe, as Defendant, in every suite in the court.

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

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

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

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

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

The Curfiters are Clarks appointed to their severall shires which do write originall Writs that belong

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to this court or the common place.

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

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

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

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

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

And

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

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

CHAP. XIII.

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

THE Prince out of the numbers of those who have been Counsellours or Sergeants at the Law, which bee those who in Latine are called *causidici* or *advocati*, chooseth two of the most approved for learning, age, discretion, and exercise,

cise, of whom the one is called Chiefe Justice of the Kings Bench, or simply Chiefe Justice; the other of the Common Place, and others to the number of fixe or more, which have each an ordinary fee or stipend of the Prince.

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

vessell

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

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CHAP. XIV.

*Of the Kings Bench.*

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

The Judges of the Kings Bench are the Lord chiefe Justice of England, with other his companions assistant in giving judgement.

The Sergeants and Counsellours doe debate the cause.

The

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

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

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

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

The Clarke of the Crowne, is to

frame

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

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

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

The Custos Brevium is he which fileth all the Writs Judiciall and Originall, after the Sheriffe hath returned them: he is chargeable if any be embeselled or privily conveyed away from the file.

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

There

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

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

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

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

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

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

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

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

CHAP. XV.

*Of the Court of Common-Pleas.*

THE court of Common Pleas is the Kings court, wherein are holden all common pleas betweene Subject and Subject, of all matters of common Law: so called, for that it serveth for the exact and precise administration of the common Law.

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

Two of them are alwayes appointed

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

The Officers of this Court are the Custos Brevium, three Prothonaries, the Clarke of the Warrants, the Clark of the Essoynes, divers Attornies, Fillisers for every Shire, the Clarke of the Juries, the Chitographer for fines, the Clark of the Kings silver for errours in this Court committed, the Clark of the Seale, as before for the Kings Bench.

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

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

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

*of* ENGLAND: 127

original Writs, and the same Writs returned by the Sheriffe, are by the Attornies delivered to the Custos Brevium to file or string, there to remaine on Record.

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

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

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

An Essoyne is an ordinary delay by Office of court in action: and the Officer before whom the Clarke is to take the Essoyne, is the punie Justice in the Common Pleas, who  
for

for that purpose, sitteth three dayes before the Terme.

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

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

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

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

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

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

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

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

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

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

The difference betweene a Writ Originall,



Originall, and a Writ Judiciall, is this; the originall saith in the end of it ( in the person of the King or Queen) *teste meipso*, or *meipsa apud Westmonasterium*. The Judiciall Writ saith in the end, *Teste Christophoro Wray*, or *Teste Jacobo Dyer*, or such other as shal be the Lord chiefe Justice of either of those Benches.

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

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

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

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

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

G

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

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

CHAP.

CHAP. XVI.

*Of the two manners of Issues.*

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

But some times it is determined by the same Court only.

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

G 2 forward,

forward, is taken that hee loo-  
 seth his action, and the Defendant  
 is licensed to depart without a day;  
 and this is where the issue or que-  
 stion is of the Law or *Juris*. So  
 is that case where the Law is not  
 doubtfull, according to the matter  
 contained in the Declaration, An-  
 swer, Replication, Rejoynder, or  
 Triplication, the Judge out of hand  
 decideth it. And it is the manner  
 that each party must agree to the  
 other still in the fact which he can-  
 not deny. For if hee once come to  
 deny any deed as not done, nor his  
 writing, that the man by whom  
 the Adversary claimeth, was not  
 the Adversaries Ancestor, or the  
 evidence which the Adversary brin-  
 geth is not true, or that his gift was  
 former, or any such like exception,  
 which is availeable to abate the  
 Action, or barre the party, and the  
 other joyneth in the affirmative and  
 will averre and prove the same,  
 this is called the issue; and immedi-  
 atly all question of the Law ceaseth

as

as agreed by both the parties, that  
 there is no question in the Law.  
 Then as the issue *facti* is found by  
 the twelve men, of whom wee shall  
 speake hereafter, so the one party  
 or other looseth his cause and  
 Action: so that contrary to the man-  
 ner of the Civill Law, where first  
 the fact is examined by Witneses,  
 Indices, Torments, and such like  
 Probations to finde out the truth  
 thereof, and that done, the Advoca-  
 tes do dispute of the Law, to  
 make of it what they can: say-  
 ing, *ex facto jus oritur*. Here  
 the Sergeants or Counsellours be-  
 fore the Judges do, in passing  
 forward with their pleading, deter-  
 mine and agree upon the Law,  
 and for the most part, and in a  
 manner all Actions, as well cri-  
 minall as civill, come to the issue  
 and state of some fact which is de-  
 nied of the one party, and averred  
 of the other, which Fact being  
 tryed by the twelve men, as they  
 find, so the Action is wonne or  
 lost.

G 3

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

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

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

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fore they may peradventure bee of contrary judgement; but the more they doe weigh and consider it, the more reasonable they shall find it.

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

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

CHAP. XVII.

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

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

Scars in ancient Saxon is that which we by a borrowed terme call treasure, whereof is

derived Scaccarium, signifying a Court dealing with the Kings treasure or revenues, and also Escastor, that is an Officer which employeth the Kings profit.

G 4 that

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

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

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and appointed for to reckon and account. The hearers of the account (who in Latine may be called *tribuni ararii*) have auditors under them; which the Latines doe call *Rationales*, but they are the chiefe for the accounts of the Prince, and may be called *juridici rationales*, in English wee call them Barons, of the Exchequer; whereof is one who is called the chiefe Baron, as *Tribunus*, or *Juridicus rationalis primus*, or *princeps*, with others to them assistant; Chancellour of the Exchequer, two Chamberlaines, and Atturney generall. The chiefe of all is called High Treasurer of England, as you would say in Latine, *Supremus ararii Anglici quaestor*, or *Tribunus ararius maximus*.

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

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

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

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

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

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

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

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the Prince, the other is for the Lord treasurer.

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

In the Office of the first fruits, are received all first fruits due to his Majesty by Bishops, Deanes, and all Ecclesiasticall Persons, answerable by order of the Law. Other officers are tellers, Auditors, Collectors, Rent-gatherers, taile-makers.

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

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

The usuall Proesse of this Court

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

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

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

*Principis*

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

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

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w

lear-



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

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

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

CHAP.

*Of the twelve men.*

OF what manner and order of men in the Common-wealth the twelve men be, I have already declared. The Sheriffe alwayes warneth foure and twenty to appeare, lest peradventure any might bee sicke or have a just cause of absence; and if there be not enow to make an Enquest, the absents be amerced. For although they bee called twelve men, as a man would say *duodecim viri*, yet if they be twelve, twenty, or the whole number of foure and twenty, that is no matter, twelve they must be at least to make an Enquest, or as some call it a Quest. An Enquest or Quest is called this lawfull kind of tryall by twelve men. In actions civill, which are ether of contracts or for land or possession, when so many of those that be warned ap-  
peare

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

If after exceptions, there be so many rejected that there is a not full Enquest in some cases that day is lost: In some the Enquest is filled *ex circumstantibus*. When the Quest is full, they be sworne to declare the truth of that issue, according to the evidence, and their conscience. Then the Sergeants of either side declare the issue, and each for his clyent saith as much as he can. Evidences of Writings be shewed, witnesses be sworne, and heard before them, not after the fashion of the civill Law, but onely that  
not

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

Although this may seeme strange to our Civillians now, yet who readeth *Cicero* and *Quintilian* well shall see, that there was no other order and manner of examining witnesses, or deposing among the Romanes in their time. When it is thought that it is enough pleaded before them, and the witnesses have said what they can, one of the Judges with a briefe and pithy recapitulation reciteth to the twelve, in summe, the arguments of the Sergeants of either side, that which the witnesses have declared, and the chiefe points of the evidence shewed in writing, and once againe putteth them in minde of the issue, and sometime giveth it them in writing,

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

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

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

CHAP. XIX.

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

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

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

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

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

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

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

## CHAP. XX.

*Of the Court Baron.*

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

rich hath no more advantage there-  
 in then the poore, the proceffe and  
 proceeding to the judgement being  
 so short, and judgements also being  
 peremptory and without appella-  
 tion: yet to helpe for small mat-  
 ters where no great summe is in  
 question, there are other Courts.  
 In every Shire from three weekes,  
 to three weekes, the Sheriffe for  
 small things not passing forty shil-  
 lings; and in certaine Hundreds  
 and liberties the Bayliffe likewise  
 from three weeks to three weeks,  
 holdeth Plea. And whosoever is pos-  
 sessor and owner of a Mannor,  
 may hold from three weekes to  
 three weekes, or at his pleasure,  
 of his Tenants, and among his  
 Tenants, a Court called a Court  
 Baron: and there his Tenants, be-  
 ing sworne, make a Jury, which is  
 not called the Enquest, but the Ho-  
 mage. These principally doe en-  
 quire of the copy-holders and o-  
 ther free-holders that be dead since  
 the last Court, and bring in their  
 heires

*of  
 a Court Baron  
 called*

heires and next successours, and  
 likewise of incroachment or intru-  
 sion of any of the Tenants against  
 the Lord, or among themselves.  
 They make orders and Lawes a-  
 mongst themselves, the paine of  
 them if they be after broken, com-  
 meth to the Lord. And if any  
 small matter be in controversie, it  
 is put to them, and commonly they  
 doe end it. But these Courts doe  
 serve rather for men that can bee  
 content to be ordred by their neigh-  
 bours, and which love their quiet  
 and profit in their husbandry more  
 then to be busied in Law. For whe-  
 ther party soever will, may pro-  
 cure a Writ out of the Higher Court,  
 to remove the Plea to West-  
 minster.

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

H King

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

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

CHAP. XXI.

*Of the Leet, or Law-day.*

**L**leet, or Law-day is not incident  
to every Mannor, but to those  
only

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

The Leet and Law-day is all  
one, & betokeneth, word for word,  
*Legitimum*, or *juridicum diem*.  
Law the old Saxons called *Lant* or  
*Lag*, or so by corruption and chang-  
ing



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

CHAP. XXII.

*Of the proceedings of Causes Crimi-  
nall, and first of the Justices  
of the Peace.*

**B**Efore the manner of procee-  
ding in causes Criminall can  
be well understood, it will be neces-  
sary to speake of three persons, the  
Justices of Peace, the Coroners, and  
Constables. The Justices of Peace  
be men elected out of the Nobilitie,  
higher and lower, that is, the Dukes,  
Marquesses, Barons, Knights, Es-  
quires and Gentlemen, and of such  
as be learned in the Lawes, such, and  
in such number as the Prince shall  
thinke meet, and in whom for wise-  
dome and discretion he putteth his  
trust, inhabitants within the Coun-  
tie:

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

At the first they were but foure, 4  
after eight, now they come com- 8  
monly to thirty or forty in every  
Shire; either by increase of riches,  
learning, or activity in policy and  
government. So many more being  
found, which have either will, or  
power, or both, are not too many to  
handle the affaires of the Common-  
wealth in this behalfe. Of these in  
the same Commission bee certaine  
named, which be called of the *Quo-*  
*rum*, in whom is especial trust repo-  
sed, that where the Commission is  
given to forty or thirty, and so at the  
last it commeth to foure or three, it  
is necessary for the performance of  
many affaires to have likewise di-  
vers of the *Quorum*. The words of

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Commission bee such. *Quorum vos ABCD, EF. unum esse volumus.*

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

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riffe or his under-sheriffe with his Bailiffs, be there to attend upon him, who must prepare against that time foure Enquests, & foure and twenty Yeomen a piece, of divers hundreds in the Shire, & besides, one which is called the great Enquest out of the body of the Shire mingled with all. This is not alwaies and in all places observed but onely concerning the graund Enquest.

These five Enquests are sworne before them to Enquire of all Heretiks, Traytors, Thefts, Murthers, Manslaughters, Rapes, false Moniers, Extortioners, Riots, Routs, forcible Entries, unlawfull Games, and all such things as be contrary to the Peace & good order of the Realm, & to bring in their verdict. If they among themselves upon their owne knowledge doe finde any culpable, they cause one of the Clarks to make the Bill. And if any bee there to complaine upon any man for these faults, hee putteth in his Bill, which Bill is presented first to the Justices sitting upon the Bench, to see if it be conceived in forme of law; which done, the complainant doth deliver it to one

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

If they doe not find it true, they write on the back-side, *Ignoramus*, and so deliver it to the Justices, of whom it is rent in pieces immediately: he that is indicted is accounted a lawfull prisoner, and after that time looked more straitly unto. But this indictment is no conviction: yet if he be indicted, and be not already in prison, the Sheriffe if hee can find him, bringeth him into prison; if hee cannot finde him, proceffe is made out against him, to render himselfe prisoner, or else hee shall be out-lawed. So hee is called three times in divers countie

tie dayes to render himselfe to the Law. The fourth is called the Exigent, by which he is out-lawed not rendering himselfe, as yee would say, *Exaltus* or *Altus in exiliū*. The Out-law loseth all his goods to the King for his disobedience. But if after he will render himselfe to answer to the Law, and shew some reasonable cause of his absence, many times of grace his out-lawry is pardoned. These meetings of the Justices of Peace foure times in the yeere, be called quarter Sessions, or Sessions of enquiry; because that nothing is there determined touching the Malefactors, but only the custody of them: and this kind of proceeding, which is by inquisition of the twelve men within themselves, and their owne consciences, or by denunciation of him that putteth in his Bill to the twelve, is called at the Kings suit; and the King is reckoned the one party, and the prisoner the other. The Justices of the Peace doe meet also at other times

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

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

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

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

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

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## C H A P. XXIII.

*Of Hue and Cry, and recognisance taken upon them that may give evidence.*

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

That

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

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

CHAP. XXIV.

*Of the Coroner.*

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

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

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

The empanelling of this Enquest, and the view of the body, and the giving of the Verdict, is commonly in the street in an open place, and in *Corona populi*: but I take rather that this name commeth because that the death of every subject by violence is accounted to touch the Crown of the Prince, and to be a detriment unto it, the Prince  
account-



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

CHAP. XXV.

*Of the Constables.*

*Const. Cu. 1-2*

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

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

*One or two Constables Headboroughes or Tithingmen.*

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

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foure yeers, more or lesse, as the Parish doth agree. What Headborough doth betoken, it is easily knowne, our language doth declare him as the head or chiefe of the Borough or Village: likewise Tithingman is the chiefe of the Tithing. Constable seemeth to come of our old English word *Kinning*, which is *Kinningstable*, as yee would say, a man established by the King, for such things as appertaine to Pleas of the Crowne, and conservation of the Kings peace, and, as I said, at the first, were in some more reputation, approching to that authority, which the Justices of Peace now do hold.

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

CHAP. XXVI.

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

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

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

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

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

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

In the Towne-house, or in some open

open or common place, there is a tribunall or a place of judgement, made aloft upon the highest bench, there sit the Judges, which be sent downe in commission, in the midst. Next them on each side sit the Justices of peace, according to their degree. On a lower bench before them, the rest of the Justices of Peace, and some other Gentlemen, or their Clarks. Before these Judges and Justices there is a Table set beneath, at which sitteth the *Custos Rotulorum*, or keeper of Writs. *Th'eschetor*, the under-sheriffe, and such Clarks as doe write. At the end of that Table there is a Barre made with a space for the Enquests, and twelve men to come in when they are called: behinde that space another Barre, and there stand the prisoners which bee brought thither by the Jayler, all chayned one to another. Then the Cryer cryeth, and commandeth silence. One of the Judges briefly telleth the cause of their comming,

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

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

If hee plead not guilty, as commonly all Theeves, Robbers, and murtherers doe, though they have confessed the fact before the Justice

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

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

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

I 3 saith,

saith, good men and true : and then saith aloud : If any can give evidence, or can say any thing against the prisoner, let him come now, for he standeth upon his deliverance. If no man come in, then the Judge asketh who sent him to prison, who is commonly one of the Justices of Peace : he (if he be there) delivereth up the examination which hee tooke of him, and underneath the names of those whom he hath bound to give evidence : although the Malefactor hath confessed the crime to the Justice of the peace, and that it appear by his hand and confirmation, the twelve men will acquit the prisoner, but they which should give evidence pay their Recognisance. Howbeit this doth seldome chance, except it be in small matters, and where the Justice of Peace who sent the prisoner to the Gaole is away. If they which bee bound to give evidence come in, first is read the examination, which the Justice of peace doth give in, then is heard (if he be there) the

the man robbed what hee can say, being first sworne to say the truth, and after the Constable, and as many as were at the apprehension of the Malefactor : and so many as can say any thing being sworne one after another to say the truth. These bee set in such a place as they may see the Judges and the Justices, the Enquest and the prisoner, and heare them, and be heard of them all. The Judge after they be sworne, asketh first the partie robbed, if hee know the prisoner, and biddeth him looke upon him : he saith, yea; the prisoner sometime saith, nay. The party Pursivant giveth good Ensignes, *verbi gratia*, I know thee well enough, thou robbedst mee in such a place, thou beatedst me, thou tookest my horse from me, and my purse, thou hadst then such a coat, and such a man in thy company: The Thiefe will say, no, and so they stand a while in altercation, then he telleth all that hee can say : after him likewise all those who were at the apprehension



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

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

And there is a Bailiffe to wait upon them, and to see that no man do speak with them, and that they have neither bread, drinke, meat, nor fire brought to them, but there to remaine in a Chamber together till they agree. If they be in doubt of any thing that is said or would heare againe some of them that gave evidence, to interrogate them more at full, or if any that can give evidence came late, it is permitted that any that is sworne to say the truth may bee interrogated of them to informe their consciences. This is to be understood, although it will seeme strange to all nations; that do use the Civill

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

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

not

not guiltie: the one is deadly, the other acquitteth the prisoner. So that neither Judge nor Justice hath to doe, or can reverse, alter, and change the matter: if they say, guiltie. The Clarke asketh what Lands, Tenements, or Goods the Prisoner had at the time of the felony committed, or at any time after. Commonly it is answered, that they know not, nor it shall not greatly need, for the Sheriffe is diligent enough to enquire of that, for the Princes and his own advantage, and so is the Escheatour also.

Of him whom the twelve pronounce guiltie, the Judge asketh what he can say for himselfe: if hee can read, he demandeth his Clergie. For in many felonies, as in theft of Oxen, Sheepe, Money, or other such things, which bee no open robberies by the high-way side, nor assaulting one by night in his house, putting him that is there in feare, such is the favour of our Law, that for the first fault the Felon

lon shall bee admitted to his Clergie, for which purpose, the Bishop must send one with authoritie under his Seale to bee Judge in that matter at every Goale delivery. If the condemned man demandeth to be admitted to his Booke, the Judge commonly giveth him a Psalter, and turneth to what place he will. The Prisoner readeth so well, as hee can. (God knoweth sometime very slenderly,) then he asketh of the Bishops Commissary, *Legit ut Clericus?* The Commissary must say *legit* or *non legit*, for these be the words formall, and our men of Law bee very precise in their words formall. If hee say *legit*, the Judge proceedeth no further to sentence of death: if he say *non*, the Judge forthwith, or the next day proceedeth to sentence, which is done by word of mouth onely. Thou *A.* hast beene indicted of a such a felony, and therefore arraigned, thou hast pleaded not guilty, and put thy selfe upon God and thy Coun-

Coutrey, they have found thee guiltie, thou hast nothing to say for thy selfe, Law is, thou shalt returne to the place from whence thou camest, from thence thou shalt goe to the place of execution, there thou shalt hang till thou bee dead. Then hee saith to the Sheriffe, Sheriffe doe execution: hee that claimeth his Clergie, is burned forthwith in the presence of the Judges, in the brawne of his hand with a hot iron, marked with the letter *T.* for a Thiefe, or *M.* for a Man-slayer, in cases where Clergie is admitted, and is delivered to the Bishops Officer to bee kept in the Bishops prison; from whence, after a certaine time, by another Enquest of Clarkes hee is delivered and set at large: but if he be taken and condemned the second time, and his marke espied, he goeth to hanging. He whom the Enquest pronounceth not guiltie, is acquitted forthwith, and discharged of prison, paying the Gaolers fees;

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

CHAP. XXVII.

*Certaine orders peculiar to England, touching punishments of Malefactors.*

FOR any Felony, Man-slaughter, Robbery, Murther, Rape, and such capitall crimes as touch not Treason and *lesam Majestatem*, wee have by the Law of England no other punishment but to hang till they bee dead: when they be dead, every man may burie them that will, as commonly they be: Heading, tormenting, dismembring either arme or legge, breaking upon the wheele, empailing, and such cruel torments, as be used in other nations

tions by the order of the Law, wee have not : and yet as few murthers committed as any where : nor it is not in the Judges power to aggravate or mitigate the punishment of the Law, but in the Prince onely, and his Privie Councill, which is marvellous seldome done. Yet notable murtherers many times by the Princes commandement after they bee hanged with cord till they bee dead, be hanged with chaines while they rot in the ayre.

If the Wife kill her Husband, she shall be burned alive. If the servant kill the Master, he shall be drawne on a hurdle to the place of execution : it is called *petit treason*, Impoisoners, if the person die thereof, by a new Law made in King *Henric* the Eighth time, shall be boiled to death : but this mischief is rare, and almost unknowne in England. Attempting to impoison a man, or lying a waite to kill a man, though hee wound him dangerously, yet if death follow not, it is no felony by the

the Law of England ; for the Prince hath lost no man, and life ought to be given we say for life onely.

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

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

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

shall die therefore as a Felon. And to say the truth, to what purpose is it to use torment ? For whether the Malefactor confesse or no, and whatsoever hee saith, if the Enquest of twelve doe find him guiltie, he dieth therefore without delay. And the Malefactor seeing there is no remedie and that they bee his Countrymen, and such as hee hath himselfe agreed unto, if they doe find him worthy death, yeelds for the most part unto it, and doth not repine, but doth accommodate himselfe to aske mercy of God.

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

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

CHAP. XXVIII.

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

**T**He same order touching tryall by Enquest of twelve men is taken in treason, but the paine is more cruell. First, to bee hanged, taken downe alive, his bowels taken out, and burned before his face, then to be beheaded, and quartered, and those set up in divers places. If any Duke, Marquesse, or any other of the degrees of a Baron, or above Lord of the Parliament, be appeach- ed of treason, or any other Capitall crime,

crime, he is judged by Peeres and equalls: that is, the Yeomanrie doth not go upon him, but an Enquest of the Lords of the Parliament, and they give their voyce, not one for all, but each severally as they doe in Parliament, beginning at the young- est Lord. And for Judge one Lord sitteth, who is Constable of Eng- land for that day. The judgement once given, he breaketh his staffe, and abdicateth his Office. In the rest there is no difference from that above written.

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# THE THIRD BOOKE.

## CHAP. I.

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

**I**F the Enquest of twelve men doe seeme to the Judges and the Justices to have gone too violently against the evidence given in matters criminall, either it is, that upon slender evidence they have pronounced him guiltie, whom the Judges and most part of the Justices think by the evidence not fally proved

ved guiltie, or for some other cause, doe thinke the person rather worthy to live then to die, The Enquest is neverthelesse dismissed: but when the Judges should pronounce the sentence of death upon the person found guiltie, hee will deferre it, which is called to reprove the prisoner, (that is to say, to send him againe to prison) and so declare the matter to the Prince, and obtaineth after a time for the prisoner his pardon: and as for provocation or appeal, which is used so much in other Countries, it hath no place in England after sentence given by the twelve, whereby the person is found guiltie or not guiltie: but, without that reprovng, the sentence is straight put in execution by the Sheriffe. And if they escape, or die another death, the Sheriffe escapeth not to pay a great fine and ranome at the Princes mercy: if having pregnant evidence, neverthelesse, the twelve doe acquit the Malefactor; which they will doe sometime, & especially if

if they perceive either one of the Justices or of the Judges, or some other man to pursue too much, and too maliciously the death of the prisoner, and do suspect some subornation of the witnessse, or of them which do give evidence, and sometime if they perceive the Judge would have the prisoner escape, and in repeating the evidence do give them thereof some watch-word. But if they doe (as I have said) pronounce not guilty upon the prisoner, against whom manifest witnessse is brought in, the prisoner escapeth: but the twelve not only rebuked by the Judges, but also threatned of punishment, and many times commanded to appeare in the Starre-chamber, or before the Privie Councell for the matter. But this threatning chanceth oftner then the execution therof, and the twelve answer, with most gentle words, they did it according to their consciences, and pray the Judges to bee good unto them, they did as they thought right, and as they accorded

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

C H A P.

## C H A P. III.

*What remedie is, if sentence bee thought unjustly given.*

**I**N causes civill there is another order: for if the manner be pleaded to the issue, and the twelve men thereupon impanelled, the evidence brought and pleaded before them on both parties, the twelve seeme to be partiall, and to have given sentence cōtrary to the evidence shewed unto them, the party grieved may bring against them, and the partie for whom the sentence is given, a Writ of attain: and whereas before upon the first Quest commonly they shall be Yeomen, now upon this attain must goe foure and twentie Gentlemen dwelling within the Shire, and twelve at the least of the hundreth where the land lieth. The matter is pleaded againe before the same Judges. The party defendant is not only now he who claimeth the land, but also all and every of the

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Yeomen, who by their Verdict did give it him.

There must in the attainr no more evidence be brought in, but only that which was brought in and alledged before the first Enquest. And if this second Enquest of foure and twenty Gentlemen do adjudge as the first did, the Plaintiffe shall not only lose the land, but also pay a fine to the Prince, & dammages to the party. If this second Enquest do find that the first Enquest have gone partially, and against the evidence brought in before them, the first Enquest is called attainted, & accounted as perjured and infamed. The Prince had before, the waste of all lands and possessions with other punishments, which at this present by a law made by Parliament in the time of King *Henry* the Eight is abolished, and now by that law or act of Parliament, beside other punishment, each of the Quest attainted payeth unto the Prince and partie, five pounds, if it be under fortie pounds;

pounds: and if above, then twentie pounds. Attaints bee very seldome put in ure, partly because the Gentlemen will not meete to slander and deface the honest Yeomen their neighbours: so that at a long time, they had rather pay a meane fine then to appeare and make the Enquest. And in the meane time they will intreat so much as in them lyeth the parties to come to some composition & agreement among themselves; as lightly they do, except either the corruption of the Enquest be too evident, or the one partie is too obstinate and headstrong. And if the Gentlemen do appeare, gladder they will confirme the first sentence, for the causes which I have said, then goe against it. But if the corruption bee too much evident, they will not sticke to attainr the first Enquest: yet after the Gentlemen have attained the Yeomen, before the sentence bee given by the Judge (which ordinarily for a time is deferred) the parties be agreed, or

one of them bee dead the attaint ceaseth.

If any time before the sentence be given or put in execution, there be found some such error in the Writ, in the processe or forme (as our Lawyers be very precise and curious of their formes) that it may be revokable, it is brought a fresh to the disputation by a Writ of error, and all that is done reversed; but that is common to all other Countries, where the civill law is used, which they call *de nullitate processus*, and serveth both in England and in other places, as well in causes criminal, as civill. Other kind of Appellation to revoke processe, and to make them of short, long; of long infinite; which is used by the civill law, wee have not in our common law of England. By supplication to the Prince, and complaint to the Chancellour upon supposall of losse, or lack of the evidence, or too much favour in the Countrey, & power of the adversary, there is in our countrey

treys as well as theirs, both stopping and prolonging of Justice. For what will not busie-heads and lovers of trouble, never being satisfied, invent in any Countrey to have their desire, which is to vex their neighbors, and to live alwaies in disquiet? Men, even permitted of God, like flies, and lice, and other vermin, to disquiet them who would employ themselves upon better busines and more necessary for the Commonwealth. These men are hated and feared of their neighbours, loved and aided of them which gaine by processe, and waxe fat by the expence and trouble of others. But as these men ordinarily spend their owne thrift, and make others against their wils to spend theirs; so sometime being thoroughly knowne, they doe not onely live by the losse like evill husbands, but beside rebuke and shame, by the equitie of the Prince and Courts Sovereigne, they come to be extraordinarily punished, both corporally, and by their purse, which

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

CHAP. III.

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

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

ment, I am now no party, but the Prince, who for his dutie to God and his Common-wealth and subjects, must see justice executed against all malefactors & offenders against the Peace, which is called Gods and his, and doth in such manner as I have said before. If I leave that and will appeale, which is, proffer my accusation against him who hath done to me this injury, the defendant hath this advantage to put himselfe to the Jury, which is, to that which before is said, to have that issue and triall by God and his Country, whereof the fashion I have at large declared: or to demand the tryall by battell, wherein both the parties must either combate in person, or else find other for them, who be called in our law Champions, or Campions, some do interpret them ἀθλητάς, because they be men chosen, fat, lusty, fit for the feate, or as the French doe terme them *Adroits aux armes*: which fight it out by μονομαχία, or, as now they do call it, *duellum*, or the camp, K. 5. which

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

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

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

At the least a Common-wealth military must adventure many things to keepe it in quiet, which cannot seeme so precisely good to them which dispute thereof in the shadow and in their studies. Howsoever it be, this kind of tryall a long time hath been used. So that at this time we may rather seeke the experiences of it out of our Histories of time passed, then of any view or sight thereof, of them which are now alive. Nevert helesse the Law remaineth still, and is not abolished; and if it shall chance the murderer or man-slayer (the one wee call him that lying in waite, & as they terme it in French, *de guet appendant*, killeth a man; the other by casual falling out and sudden debate and cholera



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choler doth the same which way soever it be done) if hee that hath slaine the man hath his pardon of the Prince, as occasion or the favour of the Prince may so present that he may have it, yet the partie grieved hath these two remedies, I say, to require justice by grand assize, or battle upon his appeale and private revenge, which is not denied him. And if the defendant either by great assize, or battell bee convinced upon that appeale, he shall die, notwithstanding the Princes pardon. So much favourable our Prince, and the law of our Realme is to justice, and to the punishment of bloud violently shed.

## CHAP. IV.

*Of the Court of Starre-chamber.*

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

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

cause that our men being much accustomed either in forraign wars in France, Scotland or Ireland, or being overmuch exercised with civil wars within the Realme (which is the fault that falleth ordinarily among bellicous Nations) whereby men of warre, Captaines and Souldiers become plentifull: which when they have no extreme service wherewith to occupie their buisie heads and hands, accustomed to fight and quarrell, must needs seeke quarrells and contentions amongst themselves, & become so ready to oppresse right among their neighbours, as they were wont before, with praise of manhood, to bee in resisting injury offered by their enemies. So that our Nation used hereunto, and upon that more insolent at home, and not easie to bee governed by law and politike order, men of power beginning many fraies, and the stronger by factions and parties offering too much injurie to the weaker, were occasions of making good lawes. First of Retainers,

ners, that no man should have above a number in his Livery or retinue; then of the enquiry of routs & riots at every Sessions, and of the law whereby it is provided that if any by force or by riot enter upon any possessions, the Justices of the Peace shall assemble themselves & remove the force, and within certaine time enquire thereof.

And further, because such things are not commonly done by the meane men, but such as be of power and force, & be not to be dealt withall with every man, nor of meane Gentlemen: if the riot be found and certified to the Kings Councell, or if otherwise it be complained of, the party is sent for, and he must appeare in the Star-chamber: seeing (except the presence of the King only) as it were the Majestie of the whole Realme before him, being never so stout, he will be abashed: and being called to answer (as he must come of what degree soever he be) he shall be so charged with such gravitie, with

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

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

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

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

The Officers therein are a Clark, three Attornies, an Examiner.

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

The three Attornies are for the plaintiffe, and for the defendant to frame their complaints, and answeres, and make the mat-  
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ter apt to be heard for the Lords.

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

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

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

The proesse is a *Sub pœna*, an attachment, a proclamation of rebellion, and a commission of rebellion.

This *Sub pœna* is in manner of a libell or precept.

The Proclamation and commission of rebellion serveth when the party is stubborne, having made contempt, and commeth not in by the former proesse.

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

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

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

## CHAP. V.

*Of the Court of Wards and Liveries.*

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

*minoriti*

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

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

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

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

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

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

without accounts, and then to marry at the will of him, who is his naturall Lord, or his will who hath brought him to such as he likes not peradventure, or else to pay so great a ranfome. This is the occasion, they say, why many Gentlemen be so evil brought up touching vertue and learning, and but onely in daintinesse and in pleasure: and why they be married very young, and before they be wise, & many times doe not greatly love their Wives. For when the Father is dead, who hath the naturall care of his child, not the Mother, nor the Uncle, nor the next of kinne, who by all reason would have most naturall care for the bringing up of the infant & *Minor*, but the Lord of whom hee holdeth his land in the Knights Service, be it the King or Queene, Duke, Marquesse, or any other, hath the government of his body, and marriage, or else who that bought him at the first, second, or third hand. The Prince as having so many, must  
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needs give or sell his Wards away to other, and so he doth. Other do but seeke which way they may make most advantage of him, as of an Oxe or other Beast. These all (say they) have no naturall care of the infant, but of their owne gaine, and especially the buyer will not suffer his Ward to take any great paines, either in study or any other hardnesse, lest he should be sick and die, before hee hath married his Daughter, Sister, or Cousin, for whose sake he bought him, and then all his money which he paid for him should be lost. So he who had a Father which kept a good house, and had all things in good order to maintaine it, shall come to his owne, after he is out of Wardship, Woods decayed, Houses falne downe, stocke wasted & gone, Lands lent forth, and plowed to the barren, and to make amends, shall pay yet one yeeres rent, for reliefe, and sue *ouster le maine*, beside other charges, so that not of many yeeres, and peradventure never he shall bee

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

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

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

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

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

Officers are the Attornie of the Wards for the King.

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

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

The Surveyor is he that hath the allowing of every Livery that issued out.

The

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

The Treasurer receiveth the money due to his Majesty.

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

The matters of this Court are all benefits that may come unto his Majesty, by Guard, by Marriage, Prievueer, Seafin, and Reliefe.

The generall Proesse in this Court is a Commission, a Proesse in manner of a Proclamation, warning the partie or parties to appeare before the Master of the Wards. More speciall proesse belonging to this Court, are a *Diem clausit extremum*, a *Devenerunt*, a *melius inquirendum*, a *Datum est nobis intelligis*, a *Qua Plura*. Of the nature of these see *Stamfords* Bookes of the Kings Prerogative.

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

L 3 When

When the heire hath proved his age, and sued his Livery, then hee must do homage to him that is the Deputy of the Prince for that purpose, and then must pay a fine or fee to the Lord Privie Seale.

CHAP. VI.  
*Of the Dutchie Court.*

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

The Judge in this Court is the Chancellor, assisted by the Atturney of the Dutchie for the King, the Clarke of the Court, divers Surveyors, two common Atturnies, divers Auditors, two Assistants, the Sergeant of his Majestie.

The

The Chancellour is a Judge of the Court, to see Justice administred between his Majestie and his subjects, and between party and party.

The Atturney is to maintaine the King, & is assistant to the Chancellour, & sheweth him what the Law is.

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

The Surveyors are divers: one more principall: they survey the Kings land within the Dutchie.

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

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

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

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

There is also belonging to this  
L 4 Court

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

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

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CHAP. VII.

*The Court of Requests.*

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

The Judges in this Court are the *Masters of Requests*; one for the Com-

Common Lawes, the other for the Civill Lawes.

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

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

The Attornies serve for the Plaintiffe and Defendant to frame their complaints and answers.

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

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

The Processe in this Court, are a privie Seale, Proclamation of rebellion.

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

**T**He Wives in England be, as I said, *in potestate maritorum*, not that the Husband hath *vita ac necis potestatem*, as the Romans had in the old time, of their children; for that is onely in the power of the Prince, and his Lawes, as I have said before: but that whatsoever they have before marriage, as soone as marriage is solemnized is their husbands, I meane of Mony, Plate, Jewels, Cattell, and generally all moveables. For as for land and heritage, it followeth the succession, and is ordered by the Law, as I shall say hereafter, and whatsoever they get after marriage, they get to their husbands. They neither can give nor sell any thing either of their Husbands or their owne. There is no moveable thing by the Law of England *constanti matrimonio*, but as *patrimonium servi aut familias*, and yet in  
move.

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

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

238. *The Common wealth*  
 ledge and prescription, doth commit  
 the administration of the goods to  
 the Widow or the child, or next  
 kinsman of the dead appointing out  
 portions to such as naturally it be-  
 longeth unto, and the Ordinarie by  
 common understanding, hath such  
 gravity and discretion as shall be fit  
 for so absolute an authority; for the  
 most part following such division as  
 is used in London, either by thirds  
 or halves. Our fore-fathers newly  
 converted to the Christian faith, had  
 such confidence in their Pastors and  
 Instructors, and tooke them to bee  
 men of such conscience, that they  
 committed that matter to their dis-  
 cretion: and belike at the first were  
 such as would seeke no private pro-  
 fit to themselves thereby: that being  
 once ordained hath still so continu-  
 ed. The abuse which hath followed  
 was in part redressed by certain Acts  
 of Parliament made in the time of  
 King *Henry* the eight, touching the  
 probate of testaments, committing  
 of administration, and mortuaries.  
 But

But to turne to the matter which we  
 now have in hand, the Wife is so  
 much in the power of her Husband,  
 that not onely her goods by marri-  
 age are straight made her Husbands,  
 and she loseth all her administration  
 which shee had of them: but also  
 where all Englishmen have name  
 and surname, as the Romans had, as  
*Marcus Tullius, Caius Pompeius,*  
*Caius Julius*, whereof the name is  
 given to us at the Font, the surname  
 is the name of the Gentily & stock  
 which the son doth take of the Fa-  
 ther alwaies, as the old Romans did,  
 our Daughters so soone as they bee  
 married, lose the surname of their  
 Father, and of the family and stocke  
 whereof they do come, and take the  
 surname of their Husbands, as trans-  
 planted from their Family into ano-  
 ther. So that if any Wife was called  
 before *Philip Wilford* by her owne  
 name and her Fathers surname, so  
 soone as she is married to me, she is  
 no more called *Philip Wilford*, but  
*Philip Smith*, and so must she write  
 and

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

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

Booke,

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

nor



nor Emperour, nor the Prince himselfe never could there legitimate a bastard to enjoy any benefit of our Law: the Parliament hath only that power.

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

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

All this while I have spoken only of moveable goods. If the Wife be an inheritrix, and bring land with her to the marriage, that land descendeth to her eldest sonne, or is divided among her daughters. Also the manner is, that the land which the wife bringeth to the marriage, or purchase afterwards, the husband cannot sell nor alienate the same, nor not with her consent, nor she herselfe during the marriage, except that shee bee sole examined by the Judge

It is avoidable after the husbands death, except it be for one and twentie yeeres, or three lives according to the statute, except they levie a fine.

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

Likewise if the Husband have any Land either by inheritance descended, or purchased and bought, if hee die before the Wife, she shall have usufruit of the one third part of his lands. That is, she shall hold the one third part of lands during her life as her dowry, whether hee hath child by her or no. If hee hath any children, the rest descendeth straight to the eldest: if he hath none, to the next heire at the common law; and if she mislike the division, she shall aske to bee endowed of the fairest of his lands to the third part.

This which I have written touch-

ing marriage, and the right in moveables and unmoveables which cometh thereby, is to be understood by the common law, when no private contract is more particularly made. If there be any private pacts, covenants, and contracts made before the marriage betwixt the Husband and the Wife, by themselves, by their Parents, or other friends, those have force to bee kept according to the firmitie and strength in which they are made : And this is enough of Wives and marriage.

CHAP. IX.

*Of Children.*

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

is theirs they may give or sell, and purchase to themselves either lands and other moveables, the Father having nothing to do therewith. And therefore *mancipatio* is cleane superfluous, we know not what it is. Likewise, *sui heredis* complaints *de inofficioso testamento* or *præteritorum liberorum non emancipatorum*, have no effect nor use in law, nor we have no manner to make lawfull children but by marriage, and therefore wee know not what is *adoptio*, nor *arrogatio*. The Testator disposeth in his last Will his moveable goods freely as hee thinketh meet and convenient without controlement of wife or children. And our testimonies for goods moveable be not subject to the ceremonies of the civill law, but made with all liberty and freedom, and *jure militari*. Of lands as yee have understood before, there is difference: For when the owner dieth, his land descendeth only to his eldest sonne, all the rest both sonnes and daughters have nothing by the com-

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

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

CHAP. X.

*Of Bondage and Bondmen.*

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

borne of their bondwomen, and called *verna*: all those kind of Bondmen be called in our law *villaines in grosse*, as you would say, immediatly bond to the person and his heires. Another they had (as appeareth in *Justinians* time) which they call *ascriptitii glebae*, or *agri censiti*. These were not bond to the person, but to the Mannor or place, and did follow him who had the Mannors; and in our Law are called *villaines regar-*

*dants*, for because they be as members, or belonging to the Mannor or place. Neither of the one sort or of the other have we any number in England. And of the first I never knew any in the Realm in my time: Of the second, so few there be, that it is not almost worth the speaking; but our Law doth acknowledge them in both those sorts. Manumission of that kind of Villaines or bondmen in England, is used and done after divers sorts, and by other, and more light and easie meanes then is prescribed in the ci-

vill

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

Upon this scruple, in continuance of time, and by long succession, the holy Fathers, Monks and Friars, in their confession, & specially in their extreme and deadly sicknesses, burdened the consciences of them whom they had under their hands : so that temporall men by little and little, by reason of that terrour in their conscience, were glad to manumitte all their villains : but the said holy Fathers, with the Abbots and Priors, did

did not in like sort by theirs; for they had also conscience to impoverish & dispoyle the Church so much as to manumit such as were bond to their Churches, or to the Mannors which the Church had gotten, and so kept theirs still. The same did the Bishops also, till at the last, and now of late, some Bishops (to make a piece of money) manumitted theirs, partly for argent, partly for flanders, that they seemed more cruell then the temporality : after the Monasteries coming into temporall mens hands, have been occasion that now they be almost all manumitted. The most part of Bondmen when they were, yet were not used with us so cruelly, nor in that sort as the bondmen at the Romans civill law, as appeareth by their comedies : nor as in Greece, as appeareth by theirs : but they were suffered to enjoy copy-hold lands, to gaine and get as other servants, that now and then their Lords might fleece them, and take a piece of money of them, as in

M France

*Cr. A.*

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

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

Which seeing men of good conscience having that scruple whereof I wrote before, have by little and little, found meanes to have and obtaine the profit of servitude and bondage which Gentility did use, and is used to this day among Christians on the one part, and Turks and gentiles on the other part, when warre is betwixt them, upon those whom they take in battell. Turkes and Gentiles I call them, which using not our Law, the one beleeveth in one God, the other in many Gods, of whom they make Images. For the law of Jewes is well enough knowne, and, at this day so farre as I can learn amongst all people, Jewes bee holden as it were in a common servitude, and have no rule nor dominion as their owne prophecies do tell, that they should not have after that Christ promised to them, was

*M 19*

*tr*

of them refused; for when they would not acknowledge him, obstinately forsaking their helpe in soule for the life to come, and honour in this world for the time present, not taking the good tidings, newes, and Evangell brought to them by the great grace of God, and by the promise of the Prophets fructified in us which be Gentiles, and brought forth this humanity, gentlenesse, honour, and godly knowledge which is seene at this present. But to returne to the purpose.

This perswasion I say of Christians, not to make nor keepe his brother in Christ, servile, bond, and underling for ever unto him, as a beast rather then a man, and the humanity which the Christian Religion doth teach, hath engendred through Realmes (not neere to Turkes and Barbarians) a doubt, a conscience, a scruple to have servants and Bondmen; yet necessitie on both sides, of the one to have help, on the other to have service, hath kept a figure or fashion

fhion thereof. So that some would not have Bondmen, but *adscriptitii glebae*, and villaines regardant to the ground, to the intent their service might be furnished, that the Country being evill, unwholsome, and otherwise barren, should not be desolate. Others, afterwards found out the wayes and meanes, that not the men, but the Land should be bond, and bring with it such bondage and service to him that occupieth it, as to carry the Lords dung unto the fields, to plow his ground at certaine dayes, sow, reape, come to his Court, sweare faith unto him, and in the end to hold the land but by copie of the Lords Court-roll, and at the will of the Lord.

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



256 *The Common-wealth*

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

*in*

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

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

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

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

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

Littleton  
Littleton

be of great wit and learning, yet not  
seene in many tongues, nor marke  
not the deduction of words which  
time doth alter. *Fides* in Latine (the  
*Goths* comming into *Italy*, and cor-  
rupting the language) was turned  
first into *fede*, and at this day in *Italy*  
they will say *in fide, en fide, or ala fe*.  
And some uncunning Lawyers that  
would make a new barbarous La-  
tine word, to betoken land given in  
*fidem*, or as the Italian saith, *in fide*, or  
*fe*, made it *feudum*, or *feodum*. The  
nature of the word appeareth more  
evident in those which wee call to  
*feff, feoff, or feoffes*; the one be, *fidu-  
ciarii possessores*, or *fidei commissa-  
rii*: the other is, *dare in fiduciam*, or  
*fidei commissum*, or more latinely,  
*fidei committere*.

The same *Littleton* was as much  
deceived in *Withernam*, and divers  
others old words. This *Withernam*,  
as he interpreteth *vetitum namium*,  
in what language I know not; wher-  
as in truth it is in plaine Dutch, and  
in our old Saxon language, *Witber  
nempt*,

*nempt, alterum accipere, or vicissim  
rapere*, a word that betokeneth that,  
which in barbarous latin is called *re-  
presalia*, when one taking of me a di-  
stres, which in latin is called *pignus*,  
or any other thing, and carrying it a-  
way out of the jurisdiction wherein I  
dwel, I take by order of him that hath  
jurisdiction, another of him againe,  
or of some other in that jurisdiction,  
and do bring it into the jurisdiction,  
wherein I dwel, that by equall wrong,  
I may come to have equall right. The  
manner of *represalia*, & that we call  
*Withernā*, is not altogether one: but  
the nature of them both is as I have  
described, and the proper significati-  
on of the words doe not much differ.

49  
represalia

But to returne thither where wee  
did digresse: yee see that where the  
persons be free, and the bodies at full  
libertie, and *maxime ingenui*, yet by  
annexing a condition to the Land,  
there is meanes to bring the owners  
and possessors therof into a certaine  
servitude, or rather libertinity: That  
the tenants beside paying the rent

accustomed, shall owe to the Lord a certaine faith, duty, trust, obedience, and (as we terme it) certain service, as *libertus*, or *cliens patrono*: which because it doth not consist in the persons (for the respect in them doth not make them bond, but the land and occupation thereof) is more properly expressed in calling the one Tenant, the other Lord of the fee, then either *libertus* or *cliens* can doe the one, or *patronus* the other: for these words touch rather the persons, and the office and duty between them, then the possessions: but in our case leaving the possession and land, all the obligation of servitude and service is gone.

Another kind of servitude or bondage is used in England for the necessity thereof, which is called apprenticehood. But this is onely by covenant & for a time; & during the time, it is *vera servitus*. For whatsoever the Apprentice getteth of his own labour, or of his masters occupation or stock, hee getteth to him whose

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

*Apprendre* in French is to learne.

learne, and *Apprentice* in French  
 (of which tongue wee borrowed  
 this word, and many other) as  
*Discipulus* in Latine: Likewise he  
 to whom he is bound, is not called  
 the Lord, but his master, as ye would  
 say his teacher. And the pactions  
 agreed upon, bee but in writing, sig-  
 ned and sealed by the parties, and re-  
 gistr'd for more assurance. With-  
 out being such an *Apprentice* in  
 London, and serving out such a  
 servitude in the same Citie for the  
 number of yeeres agreed upon, by  
 order of the Citie amongst them, no  
 man being never so much borne in  
 London, and of parents Londoners  
 is yet admitted to be a Citizen or  
 freeman of London: the like is used  
 in other great Cities in England.  
 Beside, Apprentices, others be hired  
 for wages, and be called servants or  
 serving men and women through-  
 out the whole Realme, which bee  
 not in such bondage as Appren-  
 tices, but serve for the time for  
 dayly ministerie, as *servi* and *an-*  
*cilla*

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

*cilla* did in the time of Gentilitie,  
 and bee for other matters in libertie  
 as full free men and women.

But all servants, labourers, and  
 others not married must serve by  
 the yeere: and if hee bee in cove-  
 nant, he may not depart out of  
 his service without his Masters  
 licence, and hee must give his  
 Master warning that he will de-  
 part, one quarter of a yeere before  
 the time of the yeere expireth, or  
 else hee shall be compelled to serve  
 out another yeere. And if any  
 young man unmarried bee with-  
 out service, hee shall bee compel-  
 led to get him a master, whom  
 hee must serve for that yeere, or  
 else hee shall bee punished with  
 stockes and whipping, as an idle  
 Vagabond. And if any man mar-  
 ried, or unmarried, not having  
 rent or living sufficient to main-  
 taine himselfe, do live so idly, hee  
 is enquired of, and sometime sent  
 to the Jayle, sometime otherwise  
 punished as a sturdie Vagabond:  
 so.

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so much our policie doth abhorre idleneffe. This is one of the chiefe charges of the Justices of Peace in every Shire. It istaken for ungentleneffe, dishonour, and a shew of enmity, if any Gentleman do take another Gentlemans servant (although his master doe put him away) without some certificate from his Master, either by word or writing that hee hath discharged him of his service. That which is spoken of men-servants, the same is also spoken of women: So that all youth that hath not sufficient revenues to maintaine it selfe, must needs with us serve, and that after an order as I have writen. Thus necessity and want of Bondmen hath made men to use Freemen as Bondmen to all servile services: but yet more liberally and freely, and with a more equality and moderation, then in time of Gentilitie Slaves and Bondmen were wont to bee used, as I have said before. This first and latter fashion.

cb m:

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fashion of temporall servitude, and upon paction, is used in such Countries as have left off the old accustomed manner of servants, slaves, bondmen and bond-women, which was in use before they had received the Christian faith. Some after one sort, some either more or lesse rigorously, according as the nature of the people is inclined, or hath devised amongst themselves, for the necessity of servants.

CHAP. XI.

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

**T**He Archbishops and Bishops have a certaine peculiar jurisdiction unto them, especially in foure manner of causes: Testaments and legations, Tithes and Mortuaries, Marriage and Adultery or

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3

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

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

Executo.  
Administrator



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

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



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I have declared summarily as it were in a Chart or Map, or as *Aristotle* termeth it, *ὡς ἐν τύπῳ*, the forme and manner of government of England, and the policy thereof, and set before your eyes the principall points wherein it doth differ from the policie and government at this time used in France, Italy, Spaine, Germany, and all other Countries, which doe follow the civill law of the Romanes, compiled by *Justinian* into his Pandects and Code; not in that sort, as *Plato* made his Common-wealth, or *Xenophon* his Kingdome of Persia; nor as *Sir Thomas Moore* his *Utopia*, being fained Common-wealthes, such as never were nor shall be, vaine imaginations, fantasies of Philosophers, to occupie the time, and to exercise their wits: but as England standeth, and is governed at this day the eight and twenty of March, *Anno 1565*. in the seventh yeer of the Raigne and Administration thereof by the most Religious, ver-

tuous

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

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 ting, nor unprofitable for him  
 who hath to doe, and hath good  
 will to serve the Prince and Com-  
 mon-wealth, in giving coun-  
 sell for the better ad-  
 ministration  
 thereof.

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*Thomas Smith.*

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FINIS.

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