

DE
REPVBLICA
ANGLORVM

*The maner of governement or
policie of the Realme of Englande,
compiled by the honorable
man Thomas Smyth, Doctor of the
civil lawes, Knight, and Principall
Secretarie vnto the two most worthis
Princes, King Edwarde the sixt,
and Queene Elizabeth.*

Seene and allowed.

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[[Image](#) of 1583 title page]

A NECESSARIE TABLE OF ALL THE
PRINCIPALL MATTERS CONTAINED
IN THIS BOOKE.^[1]

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[PREFACE TO THE 1583 EDITION]

TO THE READER

To conceale the graces inspired by God, or the giftes ingrafted by nature, or the vertues atchived unto ourselves by industrie, in all ages and of all wise men was accounted unduetifulnesse, unkindnesse and impietie unto that commonwealth, in the which, and unto the which we are both bred and borne: but to suppress the worthie works of any author, may justly be judged not only injurie to the person, but even envie at the whole world. Wherefore chauncing upon this short discourse compiled by the honorable knight sir Thomas Smyth, and considering that the same could not but be a great light unto the ignorant, and no lesse delight unto the learned in the lawes and policie of sundrie regiments: I thought it part of my dutie, aswel for reviving of the fame of so notable a man, as for the publike imparting of so pythie a treatise, to present the same unto thy indifferent and discreete judgement. Wherein although the errors and rashnes of Scribes, appearing in the contrarietie and corruption of coppies, happening both by the length of time sithens the first making, as also by the often transcribing might justly have been mine excuse or rather discourage: yet weying the authoritie of the author together with the gravitie of the matter, I made no doubt but that the reverence due unto the one, and the recompence deserved by the other would easily countervail all faults committed by a clarke & writer. And whereas some termes or other matters may seme to dissent from the usual phrase of the common lawes of this realme: notwithstanding to him that will consider that the profession of the maker was principally in the civil lawes, and therefore not to be expected as one excellent in both, and also that the finishing of this worke was in Fraunce farre from his librarie, and in an ambassad even in the midst of waightie affaires, it cannot nor ought not without great ingratitude be displesant or in any sort disliking. Wherefore (gentle Reader) accept in good part my zeale and this honorable mans travaile: assuring thy self that the same framed by an expert workemaister, and forged of pure and excellent mettall, will not faile in proving to be a right commodious instrument. Vale.

DE REPUBLICA ANGLORUM

THE MANER OF GOVERNEMENT
OR POLICIE OF THE REALME OF ENGLANDE.

OF THE DIVERSITIES OF COMMON WEALTHES OR GOVERNEMENT.

Chap. 1.

They that have written heretofore of Common wealthes, have brought them into three most simple^[1] kindes or fashions of government. Where^[2] one alone doth governe, called^[3] of the Greekes , where^[4] the smaller number, commonly called of them , and the thirde where the multitude doth rule . To rule, is understoode to have the supreme and highest^[5] authoritie of commaundement. That part or member of the common wealth is saide to rule which doth controwle, correct,^[6] all other members of the common wealth. That part which doth rule, define and commaund according to the forme of the government, is taken in everie common wealth to be just and lawe: As a rule is alway to be understoode to be straight, and to which all workes be to be conformed, and by it to be judged: I doe not meane the *Lesbians* rule which is conformed to the stone: but the right rule whereby the Artificer and^[7] Architect doe judge the straightnesse of everie worke^[8] mans worke, he to be reckoned to make his worke straightest^[9] who goeth nearest to the straightnesse of yt.^[10]

WHAT IS JUST OR LAWE IN EVERIE COMMON WEALTH OR GOVERNEMENT

Chap. 2.

Nowe it doth appeare, that it is profitable to everie common 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 commaund that which is profitable to it, and the commaundement 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 is^[1] just which is the profite of the ruling and most strong part (if it be meant of the Citie or common wealth) is not so farre out of the way, (if it be civillie understood)^[2] as *Plato* would make it. But as there is profitable and appearaunce^[3] of profite, so there is juste and right

and appearance^[4] of right. And as well may the ruling part^[5] commaund that which is not his profite, as the just man may for his just and true meaninge who^[6] would amend that which is amisse, and helpe the common wealth, and doe profit^[7] unto it. For in asmuch as he attempteth to doe contrarie to the Lawe which is alreadie put, he be by the lawe justly condemned. If he be to be accompted justly condemned who is condemned for doing contrarie to the lawe and the ordinance of that part which doth commaunde.^[8]

AN OTHER DIVISION OF COMMON WEALTHES.

Chap. 3.

But this matter yet taketh an other doubt: for of these maner of rulinges by one, by the fewer part, and by the multitude or great^[1] number, they which have more methodically and more distinctly and perfectly written upon them, doe make another division^[2] and dividing eche 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 , the other , a tyrant: where the fewer number, the one they name a governing of the best men , or *Remp. optimatum*, the other of the usurping of a few Gentlemen, or a few of the richer and stronger sort , or *Paucorum potestatem*; and where the multitude doth governe, the one they call a common wealth by the generall name , or the rule of the people , the other the rule or the usurping of the popular or rascall and viler sort, because they be moe in number

EXAMPLE OF CHAUNGES IN THE MANER OF GOVERNEMENT.

Chap. 4.

In common wealthes which have had long continuance, by diversities of times all these maners of rules or government hath been seene:^[1] As in Rome: kinges, *Romulus*, *Numa*, *Servius*: tyrantes, as^[2] *Tarquinius*, *Sylla*, *Caesar*: the rule of best men, as in time when the first Consuls were: and the usurping of a few, as of the Senators after the death of *Tarquinius*, and before the secession^[3] of the Tribunate, and manifestly in the *Decemvirate*, but more perniciously in the *Triumvirate* of *Caesar*, *Crassus*, and *Pompeius*: and after^[4] in the *Triumvirate* of *Ottavius*, *Antonius*, and *Lepidus*: The common wealth and rule of the people, as in the expulsi^on of the *decemviri* and long after, especially after the law was made, either by *Horatius*, or (as some will^[5] have it) *Hortentius*, *quod plebs sciverit, id populum teneat*: And the rule^[6] and usurping of the popular and rascall, as a litle before *Scylla* his rule^[7] and a litle before *Caius Caesars*

rule.^[8] For the usurping of the rascality can never long endure, but necessarily breedeth, and quickly bringeth forth a tyrant. Of this, hath *Athens, Syracuse*, of this hath^[9] *Lacedemon* and other old auncient ruling Cities had experience, and a man neede not doubt but that other common wealthes have followed the same rate. For the nature of man is never to stand still in one maner of estate, but to grow from the lesse to the more, and so to^[10] decay from the more againe to the lesse, till it come to the fatall end and destruction, with many turnes and turmoyles of sicknesse and recovering, seldome standing in a perfect health, neither of a mans bodie it selfe, nor of the politique bodie which is compact of the same.

OF THE QUESTION WHAT IS RIGHT AND JUST IN EVERIE COMMON WEALTH.
Chap. 5.

So when the common wealth is evill governed by an evill ruler and unjust (as in the three last named which be rather sicknesse of a^[1] politique bodie than perfect and good estates) if the lawes be made, as most like they be alwayes to maintaine that estate: the question remaineth whether the obedience of them be 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 cuntrye ought to maintaine and obey them, or to seeke by all meanes to dissolve and abolish them. Great^[2] and hautie courages hathe taken one parte and this made *Dion* to rise^[3] against *Dionysius*, and^[4] *Thrasibulus* against the XXX. tyrantes, *Brutus* and *Cassius* against *Caesar*, and^[5] hath bin cause of many commotions in common wealthes, whereof 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. Certaine it is that it is alwayes a doubtfull and hasardous matter to meddle with the chaunging of the lawes and government, or to disobey the orders of the rule or government, which a man doth finde alreadie established.

THAT COMMON WEALTHES OR GOVERNEMENTS ARE NOT MOST COMMONLY
SIMPLE BUT MIXT.
Chap. 6.

Now although the governements of common wealthes be thus divided into three, and cutting ech into two, so into sixe: yet you must not take that ye shall finde any common wealth or government simple, pure and absolute in his sort and kinde, but as wise men have divided for understandings sake and fantasied iiij. simple bodies which they call elementes, as fire, ayre,

water, earth, and in a mans bodie foure complexions or temperatures, as cholericke, sanguine, phlegmatique, and melancolique: not that ye shall finde the one utterly perfect without mixtion of the other, for that nature almost will not suffer, but understanding doth discerne ech nature as in his sinceritie: so seldome or never shall you finde any common wealthe^[1] or government which is absolutely and sincerely made of the one^[2] above named, but alwayes mixed with an other, and hath the name of that which is more and overruleth alwayes or for the most part the other.^[3]

THE DEFINITION OF A KING AND OF A TYRANT

Chap. 7.

Where one person beareth the rule they define a king,^[1] who by succession or election commeth with the good will of the people to that government, and doth administer the common wealth by the lawes of the same and equitie,^[2] and doth seeke the profit of the people as much as his owne. A tyraunt they name him, who by force commeth to the Monarchy against the will of the people, breaketh lawes alreadie made at his pleasure, maketh other without the advise of the people,^[3] and regardeth not the wealth of his people^[4] but the advancement of him selfe, his faction, and kindred. These definitions do containe three differences: the obtaining of the authoritie, the maner of administration thereof, and the butte or marke whereunto it doth tend and shoote. So as one may be a tyraunt by the entrie and getting of the rule^[5] and a king in the administration thereof. As a man may thinke of *Octavius* and peradventure of *Sylla*. For they both comming by tyranny and violence to the rule^[6] did seeme to travaile verie much for the better orderinge^[7] of the common wealth, although each^[8] after a diverse maner. An other may be a king by the entrie, and a tyraunt by the^[9] administration, as *Nero*, *Domitian*, and *Commodus*: for the empire came to them by succession, their administration^[10] was utterly tyrannicall, of *Nero* after five yeares, of *Domitian* and *Commodus* very shortly upon their new honour. Some both in their^[11] comming to their Empire, and in the butte which they shoote at, be kings, but the maner of their rule^[12] is tyrannicall: as all the good Emperors of Rome after *Caesar* and *Octavius* and the better Popes of Rome.^[13] The Empereurs claime this tyrannicall power by pretence of that Rogation or *plebiscitum*, which *Caius Caesar* or *Octavius* obtained, by which all the people of Rome did conferre their power and authority unto *Caesar* wholly.

The Pope groundeth his from Christ (*cui omnis potestas data est in coelo et in terra*) whose successor he pretendeth to be: yet the generall Councils make a strife with him, to make the Popes power either *Aristocratian* or at the least *legitimum regnum*, and would faine bridle that *absolutam potestatem*. Some men doe judge the same of the kinges of Fraunce, and certaine Princes of Italie and other places, because that^[14] they make and abrogate lawes and edictes, lay

on tributes and impositions of their own will, or by their^[15] private Counsell and advise of their friends and favourers^[16] onely, without the consent of the people. The people I do call^[17] that which the word *populus* doth signifie, the whole body and the three estates of the common wealth: and they blame *Lewes* the xi. for bringing the administration royall of Fraunce, from the lawful and regulate raigne, to this^[18] absolute and tyrannicall power and government. He himself was wont to glory and say, he had brought the crowne of Fraunce *hors de page*, as one would say out of Wardship.

OF THE ABSOLUTE KING.

Chap. 8.

Other do call that kinde of administration which the Greekes do call, _____, not tyranny, but the absolute power of a King, which they would pretende that everie King hath, if he would use it.^[1] The other they call _____ 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 necessarie: so in time of peace, the same is verie daungerous, aswell to him that doth use it, and 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 uncontrold authoritie, without swelling into too much pride and insolencie. And therefore the Romanes did wisely, who would not suffer any man to keepe the *Dictatorship* above sixe monethes, because the *Dictators* (for that time) had this absolute power, which some Greekes named a lawfull tyrannie for a time. As I remember, *Aristotle*, (who of all writers hath most absolutely and methodically treated of the division and natures of common wealthes) maketh this espeece of rulers^[2] to be one kind of kings. But all commeth to one effect: for at the first, all kinges ruled absolutely, as such^[3] who were either the heades and most ancient of their families, derived out of their bodies,^[4] as *Adam*, *Noa*, *Abraham*, *Jacob*, *Esau*, who absolutely ruled^[5] over their owne children and bondmen as reason is^[6] or else in the rude world amongst rude^[7] and ignorant people, one^[8] whom God had endewed with singular wisdom both^[9] to invent thinges necessary for the nourishing and defence of the multitude, and to administer justice did so farre excell other, that all the rest were but beastes in comparison of him, and for that excellencie willingly had this authoritie given him of the multitude, and of the Gentils 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*, *Josua*, and the other Judges as *Samuel*, &c. *Romulus* and *Numa* amongst the Romanes, *Lycurgus* and *Solon* and diverse other among the Greekes, *Zamolxis* among the Thracians, *Mahomet* among the Arabians: And this kinde of rule among the Greekes is called _____, which of it selfe at the first was not a name odious: But because they who had such rule,^[10] did for the most part abuse the same, waxed insolent and proude, unjust and not regarding the common wealth, committed such actes 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 shepherdes as they ought to be, but rather robbers and devourers of the people, whereof some were contemners of God, as *Dionysius*, other when^[11] they lyved like divils, and would yet be adored and accompted for Gods, as *Caius Caligula* and *Domitian*: that kind of administration and the^[12] maner also, at the first not evill, hath taken the signification and definition of the vice of the abusers, so that now both in Greeke, 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 or of the law: because that for the most part they who have had that absolute power have beene such.

OF THE NAME KING AND THADMINISTRATION OF ENGLANDE.

Chap. 9.

That which we call in one syllable king in english, the olde english men and the Saxons from whom our tongue is derived to this day calleth in two syllabes *cyning*, which whether it cometh of *cen* or *ken* which betokeneth to know and understand, or *kan* or *kon*^[1] which betokeneth to be able or to have power, I can not tell. The participle absolute of thone we use yet, as when we say a cunning man, *Vir prudens aut sciens*: the verbe of thother as I [kan, and in some places and in the older language,] I kon^[2] do this, *possum hoc facere*. By olde and auncient histories that I have red, I cannot^[3] understand that our nation hath used any other and^[4] generall authoritie in this realme neither *Aristocraticall*, nor *Democraticall*, but onely the royall and kingly majestic which at the first was divided into many and sundrie kinges, each absolutely reigning in his countrie, not under the subjection of other, till by fighting thone with thother, the overcommed alwayes falling to the augmentation of the vanquisher and overcommer, at the last the realme of England grew into one Monarchie. Neither any one of those kinges, neither he who first had all, tooke any investiture of the empire^[5] of Rome or of any other superiour prince,^[6] but helde of God and hymself, his people and sword, the crowne,^[7] acknowledging no prince in earth his superiour, and so it is kept and helde^[8] at this day. Although king *John* (by the rebellion of the nobilitie ayded with the daulphin of Fraunce his power) to appease the Pope who at that time possessing the consciences of his subjectes was then also his enemy and his most greevous torment (as some histories do write) did resigne the crowne to his legate *Pandulphus*, and tooke it againe from him as from the Pope by faith and homage, and a certain tribute yearly. But that act neither approoved of his people, nor accorded^[9] by act of parliament, was forthwith and ever sithens taken for nothing, neither^[10] to binde the king, then, nor his successours, people, or Realme.^[11]

WHAT IS A COMMON WEALTH, AND THE PARTES THEREOF.

Chap. 10.

To be better understood hereafter, it is necessarie yet to make another^[1] division of the common wealth by the partes thereof. A common wealth is called a society or common doing of a multitude of free men collected together and united by common accord and covenantes among themselves, for the conservation of themselves aswell in peace as in warre. For properly an host of men is not called a common wealth but abusive, because that^[2] they are collected but for a time and for a fact: which done, ech divideth himselfe from others as they were before. And if one man had as some of the old Romanes had (if it be true that is written) v. thousande or x. thousande bondmen whom he ruled well, though they dwelled all in one citie, or were distributed into diverse 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, not^[3] the profit of the slave or bondman. For as they who write of these thinges have defined, a bondman or a slave is as it were (saving life and som^[4] reason) but the instrument of his Lord, as the axe, the sawe, the chessyll and gowge is of the charpenter. Truth it is the charpenter looketh diligently to save, correct and amend all these: but it is for his own profit, and in consideration of him selfe, not for the instrumentes sake. And as these be instruments of the charpenter, so the plow, the cart, the horse, oxe or asse, be instrumentes of the husbandman: and though one husbandman had a great number of all those and looked well to them, yet that^[5] made no common wealth nor could not so be called. For the private wealth of the husbandman is onely looked for^[6] and there is no mutuall societie or parte^[7] no law or pleading betwixt^[8] thone and thother. And (as he sayth) what reason hath the pot to say to the potter, why madest thou me thus? or why dost thou break me after thou hast made me? now^[9] the bondman or slave which is bought for monie is so:^[10] for he is but a reasonable and lyving instrument the possession of his Lorde and master, and received^[11] among his goods, not otherwise admitted to the societie civill or common wealth, but as^[12] part of the possession and goods of his Lorde. Wherefore except there be other orders and administrations amonst the Turkes, if the prince of the Turkes (as it is written of him) doe repute all other his bondmen and slaves (him selfe and his sonnes onely freemen) a man may doubt whether his administration be to be accompted a common wealth or a kingdome, or 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^[13] compact, but onely the will of the Lorde and seignior. Surely none of the olde Greekes would call this fashion of government *Remp.* or for the reasons which I have declared before.

THE FIRST SORT OR BEGINNING OF AN HOUSE OR FAMILIE CALLED OIKONOMIA.
Chap. 11.

Then if this be a societie, and consisteth onely of freemen, the least part thereof must be of two. The naturalest and first conjunction of two toward the making of a further societie of continuance is of the husband and the^[1] wife after a diverse sorte ech having care of the familie: the man to get, to travaile abroad, to defende: the wife, to save that which is gotten, to tarrie at home to distribute that which commeth of the husbandes labor for nurtriture^[2] of the children and family of them both, and to keepe all at home neat and cleane. So nature hath forged ech part to his office, the man sterne, strong, bould, advenurous, negligent of his beautie, and spending. The woman^[3] weake, fearefull, faire, curious of her bewtie and saving. Eche^[4] of them excellen other in wit and wisdom to conduct those thinges which appertaine to their office, and therefore where their wisdom doth excell, therein it is reason that ech dothe^[5] governe. And without this societie of man, and woman, the kinde of man coulde not long endure. And to this societie we be^[6] so naturally borne that the prince of all Philosophers in consideration of natures was not afraide to say that A man^[7] by nature is rather desirous to fellow himeselfe to another and so to live in couple, than to hearde^[8] himselfe with many. Although of all beastes^[9] or lyuing creatures a man doth shew him selfe most politique, yet can he not well live without the societie and fellowship civill. He that can live alone saith *Aristotle* is either a wild beast in mans^[10] likenes, or else a god rather than a man. So in the house and familie is the first and most naturall (but a^[11] private) apparance of one of the best kindes of a common wealth, that is called *Aristocratia* where a few and the best dothe^[12] governe, and where not one alwaies: but sometime and in some thing one, and sometime and in some thing another doth beare the rule. Which to maintaine for his part God hath given to the man greater^[13] wit, bigger strength, and more courage to compell the woman to obey by reason or force, and to the woman bewtie, faire countenance, and sweete wordes to make the man to obey her againe for love. Thus ech obeyeth and commaundeth other, and they two together rule the house. The house I call here the man, the woman, their children, their servauntes bonde and free, their cattell, their housholde stuffe, and all other things, which are reckoned in their possession, so long as all these remaine together in one. Marye they^[14] cannot be called *Aristocratia*, but *Metaphorice*, for it is but an house, and a litle sparke as it were like to^[15] that governement.

THE FIRST AND NATURALL BEGINNING OF A KINGDOME IN GREEKE
Chap. 12.

But for so much as it is the nature of all thinges to encrease or decrease, this house thus encreasing and multiplying by generation, so that it cannot wel be comprehended in one house^[1]

and the children waxing bigger, stronger, wiser, and thereupon naturally desirous to rule, the father and mother sendeth them out in couples as it were by provining or propagation. And the childe by mariage beginneth as it were to roote towards the making of a new stocke, and thereupon an other house and^[2] familie. So by this propagation or provining first of one, and then another, and so from one to another in space of time, of many howses was made a streete or village, of many streetes and villages joyned together a citie or borough. And when many cities, boroughes and villages were by their^[3] common and mutuall consent for their conservation ruled by that one and first father of them all, it was called a nation or kingdome. And this seemeth the first and most natural beginning and source of cities, townes, nations, and^[4] kingdomes, and of all civill societies. For so long as the great grandfather was alive and able to rule, it was unnaturall for any of his sonnes or ofspring to strive with him for the superioritie, or to go about to governe or any wise to dishonour him of whom he had all.^[5] And therefore he^[6] doth beare the first and natural example of an absolute and perfect king. For he loved them as his owne children and nephewes, cared for them as members of his owne body, provided for them as one having by long time more experience than they all or any one of them.^[7] They againe honoured him as their father of whose bodie they came, obeyed him for his great wisdom and forecast, went to him in doubtfull cases as to an oracle of God, feared his curse and malediction as cominge of^[8] Gods owne mouth. He againe used no rigoure^[9] for ech paine put upon them, he tooke as put^[10] upon himselfe.

THE FIRST AND NATURALL BEGINNING OF THE RULE OF A FEW OF THE BEST MEN CALLED IN GREECE

Chap. 13.

But when that great grandfather was dead, the sonnes of him and brethren among themselves not having that reverence to any, nor confidence of wisdom in any one of them, nor that trust thone to thother, amonge^[1] whome (as many times it doth amonge^[2] brethren) some strifes and brawlinges had before arisen: To defende themselves yet from them which were walsh and strangers to them,^[3] necessarily agreed among themselves to consult in common, and to beare rule for a time in order, now one, now another: so that neither^[4] one might beare alwaies the rule, nor any one be neglected. And by this meanes if anie one fayled during his yere or time for^[5] ignoraunce, the next (being wiser^[6] of himselfe, or by^[7] his brothers error and fault) amended it. And in the meane while, at diverse and most times when urgent necessitie did occurre, they consulted all those heads of families together within themselves, howe to demeane and order their matters, best for the conservation of themselves, and ech of their families, generally and particularly. Thus a few being heades and the chiefe of their families, equall in birth and nobilitie, and not much different in riches, governed their owne houses and the descendentes of them particularly, and consulted in common upon urgent^[8] causes, and agreed upon some lawes^[9] and orders to be kept amongst them. So the best, chiefest and sagest did rule, and thother

part had no cause to strive with them, nor had no cause nor apparance to compare with anie of them, neither for age nor discretion, nor for riches or nobilitie. The rulers sought ech to keepe and maintaine their posteritie, as their sonnes and nephewes, and who^[10] shoulde succede them and carie their names when they were deade, 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 cousinage and common familie aswell against forraigne^[11] and barbarous nations, which were not of their progenie, tongue, or religion, as against wilde and savage beasts. This seemeth the naturall source and beginning or image of that rule of the fewer^[12] which is called of the Greekes and of the Latines *optimatum reipublica*.

THE FIRST SOURCE^[1] OR BEGINNING OF THE RULE OF THE MULTITUDE CALLED
OR
Chap. 14.

Now as time bringeth an ende of all thinges, these brethren being all dead, and their ofspring increasing daily to a great multitude, and the reverence due^[2] the old fathers in such and so great a^[3] number of equals fayling by reason^[4] of the death or doting of the Elders: eche having^[5] their merites of education apart to their fathers and grandfathers, and so many arising and such equalitie among them, it was not possible that they should be content to be governed by a few. For two things being for^[6] the which men who be^[7] in society and league doe most strive for,^[8] that is honour and profite. No^[9] man of free courage can be contented to be neglected herein,^[10] so that they were faine of necessitie to come to that, that the more part should beare the price away to make more magistrates^[11] and rulers. So that either by course or by lot ech man in turne might be receaved 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 grandfathers race, he accompted him selfe as good of birth as any other. For service to the common wealth all or such a number had done it, as they coule not be accompted few. And if a few would take upon them to usurpe over the rest, the rest conspiring together would soone be master over 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, ech of these yet willing to save the politicke bodie, to conserve the authoritie of their nation, to defende themselves against all other, their strife being onely for empire and rule, and who should doe best for the common wealth, wherof they would have experience made by bearing office and being magistrates. This I take for the source^[12] and naturall beginning of the rule of the multitude which the Greekes called : the Latines some *Respublica* by the generall name, some *populi potestas*, some *census potestas*, I cannot tell howe latinely.

THAT THE COMMON WEALTH OR POLICIE MUST BE ACCORDING TO THE NATURE OF THE PEOPLE.

Chap. 15.

By this processe and discourse it doth appeare that the mutations and changes of fashions of government of^{f11} common wealthes be naturall, and do not alwayes come of ambition or malice: And that according to the nature of the people, so the commonwealth is to it fit and proper.

And as all these iii. kindes of common wealthes are naturall, so when to each partie or espeece and kinde of the people that is geaven² which agreeth³ as ye would putt a garment fyt to a man's bodie or a shoe fyt to a man's foot, so⁴ the bodie politique is in quiet, and findeth ease, pleasure and profit thereby.⁵ But if a contrary forme be given to a contrary maner of people, as when the shoe is too litle or too great for the foote, it doth hurt and encomber and letteth⁶ the convenient use thereof, so that⁷ free people of nature tyrannized or ruled by one against their willes, were he never so good, either faile of corage and wexe servile, or never rest while⁸ they either destroie their king or⁹ them that would subdue them, or be destroyed themselves: And againe another sort there is which without being ruled of¹⁰ one prince and ruler being set at their¹¹ libertie cannot tell what they shoulde doe, but either with¹² insolencie, pride, and idlenes will fall to robbery and all mischief, and to scatter and dissolve themselves, or with foolish ambition and private strife consume one another and bring themselves to nothing. Of both these two we have histories enough to beare witnesse, as the Greekes, Romanes, Samnites, Danes, Vandals, and others.¹³ Yet must you not thinke, that al common wealthes, administrations and rulinges began on this sort, by provining or propagation, as is before written, but many times after a great battle and long war the captaine who led a multitude of people, gathered peradventure of diverse nations and languages, liking the place which he hath by force conquered, tarieth there, and beginneth a common wealth after his¹⁴ maner, and for the most part a kingdome. As the Gothes and Lumbardes in Italie, the Frenchmen in Gaule, the Sarasins in Spaine and Fraunce,¹⁵ the Saxons in great Brittain, which is nowe called Englande: which¹⁶ when that one and chiefe prince is dead, the chiefs¹⁷ consult among themselves, and either choose an other head and king, or divide it into more heads and rulers, as the Lumbards did in Italie,¹⁸ and the Saxons in England, or take at the first a common rule and popular estate, as the Zwisers¹⁹ did in their cantons and do at²⁰ this day, or taketh²¹ the rule of a certaine fewe, excluding the multitude and the populace²² as the Paduans, Veronenses, and Vicentians at the erection of the citie of Venice.²³

THE DIVISION OF THE PARTS AND PERSONS OF THE COMMON WEALTH

Chap. 16.

To make all thinges yet cleare before, as we shal go, there ariseth another division of the partes of the common wealth. For it is not enough to say that it standeth by^[1] a multitude of houses and families which make stretes and villages, and the multitude of the stretes and villages, townes,^[2] and the multitude of townes the realme, and that freemen be considered only in this behalf, as subjects and citizens of the commonwealth, not^[3] bondmen who can beare no rule nor jurisdiction over freemen, as they who be taken but as instruments and of^[4] the goods and possessions of others. And in this^[5] consideration also we do reject women, as those whom nature hath made to keepe home and to nourish their familie and children, and not to medle with matters abroade, nor to beare office in a citie or common wealth no more than children and infantes: except it be in such cases as the authoritie is annexed to the bloud and progenie, as the crowne, a dutchie, or an erledome for there the blood is respected, not the age nor the sexe. Whereby an absolute Queene, an absolute Dutches or Countesse, those I call absolute, which have that^[6] name, not by being married to a king, duke, or erle, but by being the true, right and next successors in that^[7] dignitie, and upon whom by right of the blood that title is descended: These I say have the same authoritie although they be women or children in that kingdome, dutchie or earledome, as they should have had if they had bin men of full age. For the right and honour of the blood, and the quietnes and suertie of the realme, is more to be considered, than either the base^[8] age as yet impotent to rule, or the sexe not accustomed (otherwise) to intermeddle with publicke affaires, being by common intendment understood, that such personages never do lacke the counsell of such grave and discrete men as be able to supplie all other defaultes.^[9] This (as I sayde) is not enough: But the division of these which be participant of the common wealth is one way of them that beare office, and which beareth none,^[10] the one be^[11] called magistrates, the other^[12] private men. Another was^[13] among the Romanes of *Patritij* and *plebei*, thone striving with thother a long time, those that were^[14] *patricij* many yeares excluding those that were^[15] *plebei* from bearing rule, till^[16] at last all magistrates were made common unto^[17] them: as well as to the other yet had they^[18] another division among^[19] the Romanes *senatores*,^[20] *equites*, *plebs*:^[21] the Greekes had also . The French have at^[22] this day, *les nobles* and *la populaire*, or *gentils homes* and *villaines*: we in England divide our men commonly into foure sortes, gentlemen, citizens or burgesses,^[23] yeomen artificers, and laborers. Of gentlemen the first and chiefe be^[24] the king, the prince, dukes, marquises, earles, vicountes, and^[25] barrons, and this is^[26] called the nobility, and all these are called Lords and noblemen: next to these be knights, esquiers and simple gentlemen.

OF THE PARTIES OF THE COMMONWEALTH^[1] OF ENGLANDE.

Chap. 17.

Dukes, marquises, erles, vicountes, and barrons, either be created of^[2] the prince or come to that honor by being the eldest sonnes, or^[3] highest in succession^[4] to their parentes. For the eldest of dukes sonnes during his fathers lyfe is an earle,^[5] an earles sonne,^[6] or baron, or else according as the creation is. The creation I cal the first donation and condition of the honour (given by the prince, for the good service and advauncement^[7] that the prince will bestowe uppon him) which with the title of that honour is commonly (but not alwayes) given to him and to his heires, males onely: the rest of the sonnes of the nobilitie by the rigor of the lawe be but esquiers, yet in common speche, all dukes and marquises and earles sonnes, be called Lordes.^[8] The which name commonly doth agree to none of lower degree than barrons, yet by law and use thei be not esteemed barons.^[9] The barrony or degree of Lordes doeth answere to the degree^[10] of Senators^[11] of Rome, and the title of nobilitie as we use to call in England *patricii*:^[12] when *patricij* did betoken *Senatores aut senatorum filios*. Afterwards they were called *clarissimi*.^[13] *Census Senatorius* was in Rome, at diverse times diverse, and in Englande no man is created barron, excepte he may dispend of yearly revenue, one thousand poundes or one thousand markes at the least. Vicountes, earles, marquises and dukes more according to the proportion of the degree and honour, but though by chaunce he or his sonne have lesse, he keepeth his degree: but if the decaye be excessive and not^[14] able to maintaine the honour (as *senatores Romani* were *amoti senatu*) so sometimes they are not admitted to the upper house in the parliament, although they keepe the name of Lorde still.

OF THE SECOND SORT OF GENTLEMEN WHICH MAY BE CALLED 'NOBILITAS MINOR', AND FIRST OF KNIGHTES.

Chap. 18.

No man is a Knight by succession, not the king or prince, which name^[1] in england betokeneth the kinges eldest sonne or prince of wales: although the king himselfe, his eldest sonne, and all dukes be called by generall name princes. But as in Fraunce the kinges eldest sonne hath the title of the daulphine, and he or the next heire apparant to the crowne is monsire, so in Englande the kinges eldest sonne is called the prince. Knightes therefore be not borne but made, either before the battle to encourage them the more to adventure their lives, or after as an advauncement^[2] for their hardinesse and manhood alreadie shewed: or out of the warre for some great service done, or some good hope for^[3] the verrues which do appeare in them. And they are made either of^[4] the king himselfe, or by his commission and royall authoritie, given for the same purpose, or by his liuetenaunt in the warres, who hath his royall

and absolute power committed to him for that time. That^[5] order seemeth to aunswere in part to that which the Romanes called *Equites Romanos*, differing in some pointes, and agreeing in other, as their common wealth and ours do differ and agree: for never in all pointes one common wealth doth agree with an other, no nor long time any one common wealth with it selfe. For al chaungeth continually to more or lesse, and still to diverse and diverse orders, as the diversity of times do present occasion, and the mutabilitie of mens wittes doth invent and assay newe wayes, to reforme and amende that wherein they do finde fault. *Equites Romani* were chosen *ex censu*, that is according to their substance and riches. So be knightes in England most commonly, according to the yearely renew of their landes being able to maintaine that estate: yet all that^[6] had *Equestrem censum, non legebantur equites*. No more be not^[7] all made knightes in Englande that may spende^[8] a knightes landes^[9] but they onely whom the prince^[10] wil honour.^[11] The number of *Equites* was uncertaine, and so is^[12] of knightes, at the pleasure of the prince. *Equites Romani* had *equum publicum*. The knightes of England have not so, but finde their owne horse themselves in peace time.^[13]

Census equester was among the Romanes at diverse times at^[14] diverse valew: whosoever^[15] may dispende of his free landes 40. 1. sterling of yearely renew by an olde law of Englande either at the coronation of the prince^[16] or at the^[17] manage of his daughter, or at the making^[18] of the prince, 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 do.^[19] Some who for causes be^[20] not thought worthy of that honor and yet have that^[21] abilitie, neither be made knightes though they would, and yet pay the fine. XI. 1. sterling, at that time when this order began, maketh now an^[22] Cxx. 1. of currant mony of Englande: as I have more at large declared in my booke of the diversitie of standardes or the valor of monies.

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* and *plebem*: so when we in England do say the Lordes and the commons, the knights, esquires, and other gentlemen, with citizens, burgeses and yeomen be accompted to make the commons. In making^[23] of lawes the senate of Lordes of England is 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, and^[24] citizens and burgeses which be admitted to consult upon the greatest affaires of the Realme be in an other house by themselves, and that is called the house of the commons, as we shal more clearly describe when we shall^[25] speake of the parliament. Whereupon this worde knight is derived, and whether it do betoken no more but that which *miles* doth in latine, which is a souldier.^[26] The word souldier now seemeth rather to come of sould and payment, and more to betoken a waged or hyred man to fight than otherwise, yet *Caesar* in his Commentaries call *soldures* in the tongue gallois, men who devoted and swore themselves in a certaine band or othe one to another and the^[27] captaine, which order if the

Almains did follow, it may be that they who were not hyred but being of the nation, upon their owne charges and for their advancement, and by such common oth, execration^[28] or band did^[29] follow the warres, were (possibly) called knightes or *milites*. Nowe^[30] among the Almaines some are called lanceknights as souldiers of their band not hyred, although now^[31] they be for the most part hirelings. Or peradventure it may be that they which were next about the prince as his garde or servauntes picked and^[32] chosen men out of the rest being called in the Almaine language, *knighthen*, which is asmuch to say as servantes: these men being found of good service, the word afterward was taken for an honor, and for him who maketh profession of armes. Our language is so chaunged that I dare make no judgement thereof. Now we 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 downe is stroken of the prince, with his sworde naked upon the backe or shoulder, the prince saying: *sus* or *sois chivalier au nom de Dieu* and (the tyme^[33] past) they added *S. George*, and then when he riseth^[34] the prince saith, *avances*.^[35] This is the manner of dubbing of knights at this present: and that terme dubbing was the olde terme in this point, not^[36] creation. At the coronation of a king or queene, there be knightes of the bath made with longer^[37] and more curious ceremonies: But howsoever one be dubbed or made a knight, his wife is by and by called a Ladie as well as a barons wife: he himselfe is not called Lorde, but hath to his name in common appellation added this syllable, Sir, and if he were named before^[38] *Thomas, William, John, or Richard*, afterward he is alwayes called *Sir Thomas, Sir William, Sir John, Sir Richard*, and that is the title that^[39] men give to knightes in England. This may suffice at this time, to declare the order of knighthood, yet there is an other order of knightes in England which be called the knightes of the garter. King *Edward* the third, after he had had^[40] many noble^[41] victories, King *John* of Fraunce, and^[42] King *James* of Scotland, being both prisoners in the tower of London at one time, and king *Henrie* of Castell the bastard expulsed out of his realme, and Don *Petro* restored unto it by the prince of Wales and Duke of Aquitaine called the blacke prince, his eldest sonne,^[43] invented a societie of honour, and made a choise out of his owne realme and dominions, and all Christendom: and the best and most excellent and^[44] renoued persons in all^[45] vertues and honour, he did adorne with that title to be knightes of his order, gave them a garter enorned^[46] with golde, pearle and precious stones, with the buckle of gold, to weare daily on the left legge onely, a kirtle, gowne, cloke, chaperon, collar, and other august and magnificall appareil both of stuffe and fashion exquisite and heroicall, to weare at high feastes, as to so high and princely an order was meete: of which order he and his successors Kinges and Queenes of England be the head,^[47] and the rest by certaine statutes and lawes among themselves, be taken as brethren and fellowes in that order, to the number of xxvi. But because this is rather an ornament of the realme than any policie or government thereof, I leave to speake any further of it.

OF ESQUIERS.

Chap. 19.

Escuier or esquier (which we call commonly squire) is a French worde, and betokeneth *Scutigerum* or *Armigerum*, and be all 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 do 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 saide) of their race, and therefore have neither creation nor dubbing: or else they were at the first costerels or the bearers of the armes of Lordes or knightes, and by that being taught in armes^[1] had that^[2] name for a dignitie and honour given to distincte^[3] them from a common souldier called in latine *Gregarius miles*.

OF GENTLEMEN.

Chap. 20.

Gentlemen be those whom their blood and race doth make noble and knowne, as^[1] in Greeke, the Latines call them all *Nobiles*, as the French *Nobles*, or *Nobilitas* in Latine is defined, honour or title given, for that the auncestor hath bin notable in riches or for his^[2] vertues, or (in fewer wordes) old riches or prowes remaining in one stock. Which if the successors do keepe and followe, they be *vere nobiles* and : if they doe not, the^[3] fame and riches^[4] of their auncestors serve to cover them so long as it can, as a thing once gilted though it be copper within, till the gilt be worne away. This hath his reason, for the Ethnologie of the name serveth thefficacie of the worde. *Gens* in Latine betokeneth the race and sirname, so the Romaines had *Cornelios, Sergios, Appios, Fabios, Aemilios, Pisones, Julios, Brutos, Valerios*, of which who were *Agnati*, and therefore kept the name, were also *Gentiles*: and being yet^[5] remaining the memorie of the glorie of their progenitors fame, were gentlemen of that or that race. This matter made a great strife among the Romanes, when those which were *Novi homines* were more allowed, for their verrues new and newly shoven, then the olde smoke^[6] of auntient race newly defaced by the cowardise and evill life of their nephewes and discendautes could make the other to be. *Cicerones*,^[7] *Catonnes*, and *Marii* had much adoe with those men^[8] and therefore said *Juvenalis*:

*Malo pater tibi sit Tersites, dummodo tu sis
Æacidi similis vulcaniaque arma capessas,
Quam te Thersiti similem producat Achilles.*

1.

But as other common wealthes were faine to doe, so must all princes necessarilie followe, where^[9] vertue is to honour it: and as^[10] vertue of auncient race is^[11] easier to be obtained, for^[12] the example of the progenitors, for the abilitie to give to their race better education and bringing up for the enraced^[13] love of tenants and neybor to such noblemen and gentlemen, of whom they holde and by whom they doe dwell. So^[14] if all this doe faile (which it is^[15] great pitie it should) yet such is the nature of all humaine thinges, and so the world is subject to mutability, that it doth many times faile: but when it doth, the prince and common wealth have the same power that their predecessors had, and as the husbandman hath to plant a new tree where the olde fayleth, to^[16] honour vertue where he doth find it, to make gentlemen, esquiers, knights, barons, earles, marquises, and dukes, where he seeth vertue able to beare that honour or merits, to deserve^[17] it, and so it hath alwayes bin used among us. But ordinarily the king doth but^[18] make knights and create the barons and^[19] higher degrees: for as for gentlemen, they be made good cheape in England. For whosoever studieth the lawes of the realme, who studieth in the universities, who professeth liberall sciences, and to be shorte, who can live idly and without manuall labour, and will beare the port, charge and countenance of a gentleman, he shall be called master, for that is the title which men give to esquiers and other gentlemen, and shall be taken for a gentleman: for true it is with us that^[20] is saide, *Tanti eris alijs quanti tibi fueris*:^[21] (and if neede be) a king of Heralds shal also give him for mony, armes newly made and invented, which the title shall beare that the said Herald hath perused and seen olde Registers^[22] where his auncestors in times past had borne^[23] the same: Or if he wil do it more truely and of better faith, he will write that for the merittes of that man, and certaine qualities which he doth see in him, and noble^[24] actes which he hath done, by^[25] the authoritie which he hath as the^[26] king of Heraldes and armes, he^[27] giveth to him and his heires these and these armes, which done^[28] I thinke he may be called a squire, for he beareth ever after those armes. These men be^[29] called sometime in scorne gentlemen of the first head.

WHETHER THE MANER OF ENGLAND IN MAKING GENTLEMEN SO EASILY IS TO BE ALLOWED.

Chap. 21.

A man may make a^[1] doubt and question whether this maner of making gentlemen is to be allowed or no, and for my part I am of that opinion that it is not amisse. For first the prince loseth nothing by it, as he shoulde doe if it were as in Fraunce: for the yeomen or husbandman is no more subject to taile or taxe in Englande than the gentleman: no, in every payment to the king the gentleman is more charged, which he beareth the gladlier and dareth not gaine saie for to save and keepe his honour and reputation. In any shew or muster or other particular charge of the towne where he is, he must open his purse wider and augment his portion above others, or else

he doth so much^[2] diminish his reputation. For other^[3] outward shew, a gentleman (if he wil be so accompted) must go like a gentleman, a yeoman like a yeoman, and a rascall like a rascall: and if he be called to the warres, he must and will (whatsoever it cost him) array himselfe and arme himself^[4] according to the vocation which he pretendeth: he must shew a^[5] more manly corage and tokens of better education, higher courage^[6] and more^[7] liberalitie than others, and keepe about him idle men^[8] who shall doe nothing but waite upon him. So that no man hath hurt by it but he himselfe, who will^[9] beare a bigger saile than he is able to maintaine. For as for^[10] the policie and government of the common wealth, it is not those that have to do with it, who^[11] will magnifie them selves, and goe in higher buskins than their estate will beare: but they which be^[12] appointed, be tryed^[13] and well knowen, as shall be declared hereafter.

OF CITIZENS AND BURGESSES.

Chap. 22.

Next to gentlemen, be appointed citizens and burgesses, such as not onely be free and received as officers within the cities, but also be of some substance to beare the charges. But these citizens and burgesses, be to serve the common wealth, in their cities and burrowes, or in corporate townes where they dwell. Generally in the shyres they be of no^[1] accompt, onely^[2] in the common assembly of the realme to make lawes, which is called the Parliament. The aunciet cities appoint iij. and ech burrough ij. to have voices in it, and give^[3] their consent or dissent in the name of the citie or burrough.^[4]

OF YEOMEN.

Chap. 23.

Those whom we call yeomen next unto the nobilitie, the^[1] knights and squires, have the greatest charge and doings in the common wealth, or rather are more travailed to serve in it than all the rest: as shall appeare hereafter. I call him a yeoman whom our lawes doe call *Legalem hominem*, a worde familiar to^[2] writtes and enquestes, which is a freeman borne English, who^[3] may dispend of his owne free lande in yerely revenue to the summe of xl. s. sterling by the yeare:^[4] This maketh (if the just value were taken now to the proportion of monies) vi. l of our currant mony at this present. This sort of people confesse themselves to be no gentlemen, but give honour^[5] to al which be or take upon them to be gentlemen, and yet they have a certaine preheminance and more estimation than laborers and artificers, and commonly live welthilie, keepe good houses, do^[6] their businesse, and travaile to get^[7] riches: these be (for the most part)

fermors to^[8] gentlemen, and^[9] with grasing, frequenting of markettes, and keeping servauntes, not idle servants^[10] as the gentleman doth, but such as get both their owne living and parte of their maisters: by these meanes doe come to such wealth, that they are able and daily doe buy the landes of unthrifitie gentlemen, and after setting their sommes to the schooles, to^[11] the Universities, to the lawe of the Realme, or otherwise leaving them sufficient landes whereon they may live without labour, doe make their saide sonnes by those meanes gentlemen. These be not called masters, for that (as I saide) pertaineth to gentlemen onely: But to their surnames, men adde goodman: as if the surname be *Litter, Finch, White, Browne*, they are called, goodman *Luter*, goodman *White*, goodman *Finch*, goodman *Browne*, amongst their neighbours, I meane not in matters of importance or in lawe. But in matters of lawe as^[12] for distinction, if one were a knight they would write him (for example sake) sir *John Finch* knight, so if he be an esquier, *John Finch* esquier, if he be not esquire, John Finch gentleman, if he be not gentleman, John Finch yeoman.^[13] 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, be written esquiers. So amongst the husbandmen labourers, and such the^[14] lowest and rascall sort of the people such as be exempted out of the number of the rascabilitie of the popular be called and written yeomen, as in the degree next unto gentlemen. These be these^[15] which olde Cato calleth *Aratores* and *optimos cives in Republica*: and such as the^[16] writers of common wealthes praise to have manie in it. *Aristoteles* namely reciteth : these tende their owne businesse, come not to meddle in publike matters and judgements but when they are called, and gladd when they are delivered of it,^[17] are obedient to the gentlemen and rulers, and in warre can abide travaile and labour as men used to it, wisheth^[18] it soone at an ende that they might come home and live of their owne. When they are foorth they fight for their Lordes of whom they have^[19] their landes, for their wives and children, for their countrey and nation, for praise and honour, against they come home, and to have the love of their Lorde and his children to be continued towards them and their children, who hath^[20] adventured their lives to and with him and his. These were^[21] they which in the old world gat that honour to Englande, not that either for witte, conduction, or for power they are or were ever to be compared to the gentlemen, but because they be so manie in number, so obedient at the Lordes call, so strong of bodie, so heard to endure paine, so courageous to adventure with their Lorde I mean^[22] 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 footemen that affaide all France, that would rather die all, than once abandon the knight or gentleman their Captaine, who at those daies commonly was their Lorde, and whose tenauntes they were, readie (besides perpetuall shame) to be in danger of undoing of them selves, and all theirs if they should shewe any signe of cowardise or abandon the Lorde, Knight or Gentlemen of whom they helde their living. And this they have amongst them from their forefathers tolde one to an other. The gentlemen of France and the yeomen of Englande because^[23] in battle of horsemen

Fraunce was many times too good for us, as we alway^[24] for them on foote. And Gentlemen for the most part be men at armes and horsemen, and yeomen commonlie on foote: howsoever it

was, yet the gentlemen had alwaies the conduction of the yeomen, and as their captaines were either a foote or upon a little nagge with them, and the Kinges of Englande in foughten battles remained^[25] alwaies among the footemen, as the French Kinges amongst their horsemen. Each Prince therby, as a man may gesse, did shew where he thought his chief^[26] strength did consist. What a yeoman is I have declared, from^[27] whence the word is derived it is hard to say: it cannot be thought that yeomen should be said as^[28] young man, for commonly wee doe not call any a yeomen till he be married, and have children, and as it were have some authoritie among his neighbours. Yonker in lowe dutch betokeneth a meane gentleman or a gay fellowe. Possibly^[29] our yeomen not being so bolde as to name themselves gentlemen, when they came home, were content when they had heard by frequentation with some^[30] lowe dutchmen some^[31] small gentleman (but that^[32] would be counted so) called^[33] amongst them, yonker man, they^[34] calling so in the^[35] warres by mockage or in sport one^[36] an other, when they come home, yonker man, and so yeoman: which worde now signifieth among us, a man well at ease and having honestlie to live, and yet not a gentleman: whatsoever that worde yonker man, yonke man, or yeoman doth more or lesse signifie to the dutch men.

OF THE FOURTH SORT OF MEN WHICH DOE NOT RULE.

Chap. 24.

The fourth sort or classe amongst us, is of those which the olde Romans called *capite censij proletary* or *operæ*, day labourers, poore husbandmen, yea marchantes or retailers which have no free lande, copiholders, all^[1] artificers, as Taylers, Shoormakers, Carpenters, Brickemakers, Bricklayers, Masons, &c. These have no voice nor authoritie in our common wealth, and no account is made of them but onelie to be ruled, not to rule other, and yet they be not altogether neglected. For in cities and corporate townes for default of yeomen, they are faine to make their enquests^[2] of such manner of people. And in villages they be commonly made Churchwardens, alecunners, and manie times Constables, which office toucheth more the common wealth, and at the first was not employed uppon such lowe and base persons. Wherefore generally to speake of the common wealth, or policie of Englande, it is governed, administred, and manied^[3] by three sortes of persons, the Prince, Monarch, and head governer, which is called the king, or if the crowne fall to a woman, the Queene absolute, as I have heeretofore saide: In whose name and by whose authoritie all things be^[4] administred. The gentlemen, which be divided into two partes, the Baronie or estate of Lordes which conteyneth^[5] barons and all that bee above the degree of a baron, (as I have declared before): and those which be no Lords, as Knightes, Esquires, and simple^[6] gentlemen. The thirde and last sort of persons is named the yeomanrie: each of these hath his part and administration in judgements, corrections of defaultes, in election of offices, in appointing tributes^[7] and subsidies, and^[8] in making lawes, as shall appear heereafter.

THE SECOND BOOKE

OF THE PARLIAMENT AND THE AUTHORITIE THEREOF.

Chap. 1.

The most high and absolute power of the realme of Englande, is^[1] in the Parliament. For as in warre where the king himselfe in person, the nobilitie, the rest of the gentilitie, and the yeomanrie is,^[2] there^[3] is the force and power of Englande: so in peace and consultation where the Prince is to give life, and the last and highest commaundement, the Baronie for the nobilitie and lordes,^[4] the knightes, esquiers, gentlemen and commons for the lower part of the common wealth, the bishoppes for the clergie bee present to advertise, consult and shew what is good and necessarie for the common wealth, and to consult together, and upon mature deliberation everie bill or lawe being thrise reade and disputed uppon in either house, the other two partes first each a part,^[5] and after the Prince himselfe in presence of both the parties doeth consent unto and alloweth. That is the Princes and whole realmes deede: whereupon justlie no man can complaine, but must accommodate himselfe to finde it good and obey it.

That which is doone by this consent is called firme, stable, and *sanctum*, and is taken for lawe. The Parliament abrogateth olde lawes, maketh newe, giveth orders for thinges past, and for thinges hereafter to be followed, changeth rightes, and possessions of private men, legitimateth bastards, establisheth formes of religion, altereth weightes and measures, giveth formes of succession to the crowne, defineth of doubtful rightes, whereof is no lawe alreadie made, appointeth subsidies, tailes, taxes, and impositions, giveth most free pardons and absolutions, restoreth in bloud and name as the highest court, condemneth or absolveth them whom the Prince will put to that triall: And to be short, all that ever the people of Rome might do either in *Centuriatis comitijs* or *tributis*, the same may be doone by the parliament of Englande, which representeth and hath the power of the whole realme both the head and the bodie. For everie Englishman is entended to bee there present, either in person or by procuracy and attornies, of what preheminance, state, dignitie, or qualitie soever he be, from the Prince (be he King or Queene) to the lowest person of Englande. And the consent of the Parliament is taken to be everie mans consent.

THE FORME OF HOLDING THE PARLIAMENT.

Chap. 2.

The Prince sendeth forth his rescripts or writtes to every duke, marques, baron, and every other Lorde temporall or spirituall who hath voice in the parliament, to be at his great counsell of Parliament such a day, (the space from the date of the writ is commonly at the least fortie dayes): he sendeth also writtes to the Sherifes of every shyre to admonish the whole shire to choose two knightes of the parliament in the name of the shyre, to heare and reason, and to give their advise and consent in the name of the shire, and to be present at that day: likewise to every citie and towne which of ancientie hath bin wont to finde burgesses of the parliament, so to make election that they might be present there at the first day of the parliament. The knightes of the shyre be chosen by all the gentlemen and yeomen of the shyre, present at the day assigned for the election: the voice of the^[1] absent is^[2] counted for none. Yeomen I call here (as before) who^[3] may dispense at the least xl. s. of yearely rent of free lande of his owne. These meeting at one day, the two who have the more of their voices be chosen knightes of the shire for that parliament: likewise by the pluralitie of the voyces of the citizens and burgesses be the burgesses elected. The first day of the parliament the Prince and all the Lordes in the^[4] robes of parliament do meete in the highe^[5] house, where after prayers made, they that be present are written, and they that be absent upon sicknes or some other reasonable cause (which the prince will allowe) do constitute under their hande and seale some one of those who be present as his^[6] procurer or attorney to give voice for him,^[7] so that by presence or attorney and proxey they be all there, all the princes and barrons and all archbishops and bishops, and (when abbots were) so many abbots as had voice in parliament. The place where the assembly is, is richly tapessed and hanged, a princely and royal throne as appertaineth to a king, set in the midst of the higher place thereof. Next under the prince sitteth the Chancellor, who is the voyce and orator of the prince. On the one side of that house or chamber sitteth the archbishops and bishops, ech in his ranke, on the other side the dukes and barons. In the midst thereof uppon woollsackes sitteth the Judges of the realme, the master of the roubles, and the secretaries of estate. But these that sit on the woollsacks have no voice in the house, but onely sit there to aunswere their knowledge in the law, when they be asked if any doubt arise among the Lordes. The secretaries to aunswere of such letters or thinges passed in counsell whereof they have the custodie and knowledge: and this is called the upper house, who giveth their^[8] consent and dissent ech^[9] man severally and by himselfe, first for himselfe, and then severally for so many as he hath proxies or letters,^[10] when it commeth to the question, saying onely content or not content, without further reasoning or replying. In this meane time the knights of the shires and burgesses of the parliament (for so they are called that have voice in parliament, and are chosen as I have said before, to the number betweixt iij. C. and iiij. C.) are called by such as it pleaseth the prince to appoint, into an other great house or chamber by name, to which they aunswere and declaring for what shyre or towne they aunswere: then they are willed to choose an able and discrete 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 by them to the prince: which done they comming al with him to a barre, which is at the nether ende of the upper house, there he first praiseth the prince, then maketh his excuse of unabilitie, and prayeth the prince that he would command the commons to choose another. The chancellor in the princes name doth so much declare him able, as he did declare himselfe unable, and

thanketh the commons for choosing so wise, discrete and eloquent a man, and willeth them to go and consult of lawes for the common wealth. Then the speaker requireth^[11] certaine requests of^[12] the prince in the name of the commons, first that his majestie would be content that they may use and enjoy all their liberties and priviledges that the common house was wont to enjoy. Secondly that they might franckely and freely saye their mindes in disputing of such matters as may come in question, and that without offence of^[13] his Majestie. Thirdly that if any should chauce of that lower house to offend or not to do or say as should become him, or if any should offend any of them being called to that his highnes court: That they might^[14] (according to the ancient custome) have the punishment of them. And fourthly, that if there came any doubt, whereupon they shal desire to have thadvise or conference with his Majestie or with any of the Lordes, that they might doe it: All which he promiseth in the commons names that they will^[15] not abuse, but have such regarde as most faithfull, true and loving subjectes ought to have to their prince.

The Chauncelor answereth in the princes name, as apperteyneth. And this is all that is doone for one day, and sometime two. Besides the Chauncelor, 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 or in the neather 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 doone they goe to another, and so an other bill. After it hath bin once or twice read, and doth appeare that it is somewhat liked as reasonable, with such amendment in wordes and peradventure some sentences as by disputation seemeth to be amended: In the upper house the Chauncelor asketh if they will have it engrossed, that is to say put into parchement: which doone, and read the third time, and that eftsoones if any be disposed to object disputed againe among them, the Chauncelor asketh if they will goe to the question: and if they agree to goe to the question, then he sayth, here is such a lawe or act concerning such a matter, which hath beene thrise read here in this house, are ye content that it be enacted or no? If the not contentes be moe, then the bill is dashed, that is to say the lawe is antiquated^[16] and goeth no further. If the contentes be the more, then the Clarke 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 woollsacks to the commons: who asking licence, and comming into the house, with due reverence, sayth to the speaker: Master speaker, my Lordes of the upper house have passed among them and thinke good, that there should be enacted by Parliament such an act, and such an act, and so readeth the titles of that act or actes. They pray you to consider of them, and shew them your advise, which doone they goe their way. They being gone and the doore againe shut, the speaker rehearseth to the house what they sayd. And if they be not busie disputing at that time in an other bill, he asketh them streightwaie if they will have that bill or (if there be mo) one of them reade.^[17]

In like manner in the lower house the speaker sitting in a seate or chaire for the nonce^[18] somewhat higher, that he may see and be seene of them all, hath before him in a lower seate his Clarke, who readeth such bills as be first propounded in the lower house, or be sent down from the Lords. For in that ech^[19] house hath equal authoritie, to propounde what they thinke meete, either for thabrogating of some law made before, or for making of a newe. All bills be thrise in three diverse dayes read and disputed upon, before they come to the question. In the disputing is a mervelous good order used in the lower house. He that standeth uppe bareheaded is understood that he will speake to the bill. If moe stande uppe, who that first is judged to arise, is first harde, though the one doe prayse the law, the other diswade it, yet there is no altercation. For everie man speaketh as to the speaker, not as one to an other, for that is against the order of the house. It is also taken against the order, to name him whom ye doe confute, but by circumlocution, as he that speaketh with the bill, or he that spake against the bill, and gave this and this reason, [dothe not satisfie but I am of the contrary opinion for this and this reason.]^[20] And so with perpetuall Oration not with altercation, he goeth through till he do make an end. He that once hath spoken in a bill though he be confuted straight, that day may not replie, no though he would chaunge 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 woulde spende all the time. The next day he may, but then also but once.

No reviling or nipping wordes must be used. For then all the house will crie, it is against the order: and if any speake unreverently or seditiouslie against the Prince or the privie counsell, I have seene them not onely interrupted, but it hath beene moved after to the house, and they have sent them to the tower. So that in such a multitude, and in such diversitie of mindes, and opinions, there is the greatest modestie and temperance of speech that can be used. Neverthelesse with most^[21] doulce and gentle termes, they make their reasons as violent and as vehement the one against the other as they may. Ordinarily, except it bee for urgent causes and hasting of time, at^[22] the afternoone they keepe no parliament. The speaker hath no voice in the house, nor they will not suffer him to speake in any bill to moove or diswade it. But when any bill is read, the speakers office is as brieflie and as plainely as he may to declare the effect thereof to the house. If the commons doe assent to such billes as be sent to them first agreed upon from the Lords thus subscribed, *Les commons ont assentus*, so if the Lordes doe agree to such billes as be first agreed upon by the Commons, they sende them downe againe^[23] to the speaker thus subscribed, *Les Seigneurs ont assentus*. If they cannot agree, the two houses (for everie bill from whence soever it doth come is thrise reade in each of the houses) if it be understoode that there is any sticking, sometimes the Lordes to the Commons, sometime the Commons to the Lords doe require that a certaine of each house may meete together, and so ech part to be enformed of others meaning, and this is alwaies graunted. After which meeting for the most part not alwaies either parte agrees to others billes.

In the upper house they give their assent and dissent each man severally and by himselfe first for himselfe, and then for so manie as he hath proxie. When the Chaunceler hath demanded of them if^[24] they will goe to the question after the bill hath bene thrise reade, they saying only content or not content, without further reasoning or replying: and as the more number doeth agree, so is it agreed on, or dashed.

In the neather house none of them that is elected either Knight or Burges can give his voice to an other nor his consent nor dissent by proxie. The more parte of them that be present onely maketh the consent or dissent. After the bill hath been twice reade, and then engrossed and eftsoones reade and disputed on ynough as is thought: the speaker asketh if they will goe to the question. And if they agree he holdeth the bill up in his hande and sayeth, as many as will have this bill goe forwarde, which is concerning such a matter, say yea. Then they which allowe the bill crie yea, as^[25] many as will not, say no: as the crie of yea or no is bigger, so the bill is allowed or dashed. If it be a doubt which crie is the bigger, they divide the house, the speaker saying, as many as doe allowe the bill goe downe with the bill, and as many as do not sitte still. So they divide themselves, and being so divided they are numbred who make the more part, and so the bill doeth speede. It chaunceth sometime that some part of the bil is allowed, some other part hath much contrariety and doubt made of it: and it is thought if it were amended it would goe forwarde. Then they chuse certaine *committees* of them who have spoken with the bil and against it to amende it, and bring it in againe so amended, as they amongst them shall thinke meete: and this is before it is engrossed, yea and some time 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 doone.

Thus no bill is an act of Parliament, ordinance, edict or^[26] law, untill both the houses severally have agreed unto it, after the order aforesaide, 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 commeth to the barre, and there after thankes given first in the Lordes name by the Chaunceller &c. and in the commons name by the speaker to the Prince, for that hee hath so great care of the good government of his people, and for calling them together to advise of such thinges as should be for the reformation, establishing and ornament of the common wealth: the Chaunceller in the Princes name giveth thankes to the Lords and commons for their paines and travailes taken, which he saith the Prince will remember and recompence when time and occasion shall be^[27] and then sayeth that the Prince hath well viewed and wayed what hath been moved and presented and debated amongst the Lords and them and thereupon will show his mind that the doings might have^[28] perfect life and accomplishment by his princelie authoritie, and so have the whole consent of the Realme. Then one reades the title of everie act which hath passed at that session, but only in this fashion: An

act concerning such a thing, &c. It is marked there what the Prince doth allowe, and to such he sayth: *Le roy or la royne le veult*. And those be taken nowe as perfect lawes and ordinances of the Realme of Englande and none other, and as shortlie as may be put in print, except it be some private cause or lawe made for the benefit or prejudice of some private man, which the Romans

were wont to call *privilegia*. These be onelie 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 saduise*^[29] and those be accounted utterly dashed and of none^[30] effect.

This is the order and forme of the highest and most authentical court of Englande, by vertue whereof all those things be established whereof I spake before, and no other meanes accounted available to make the^[31] forfeiture of life, member, or landes of any English man, of new^[32] where there was no lawe made^[33] for it before. Nowe let us speake of the saide partes when they be severall.

OF THE MONARCH KING OR QUEENE OF ENGLANDE.

Chap. 3.

The Prince whom I nowe call (as I have often before) the Monarch of Englande, King or Queene, hath absolutelie in his power the authoritie of warre and peace, to defie what Prince it shall please him, and to bid him warre, and againe to reconcile himselfe and enter into league or truce with him at his pleasure or the advice onely of his privie counsell. His privie counsell be chosen also at the Princes pleasure out of the nobilitie or baronie, and of the Knightes, and Esquiers, such and so many as he shal thinke good, who doth consult daily, or when neede is of the weightie 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 forren Princes, such letters or occurrentes as be sent to himselfe or to his secretaries, and keepeth so many ambassades and letters sent unto him secret as he will, although these have a particular oth of a counseller touching faith and secrets administred unto them when they be first admitted into that companie. So that heerein the kingdome of Englande is farre more absolute than either the dukedome of Venice is, or the kingdome of the Lacedemonians was. In warre time, and in the field the Prince hath also absolute power, so that his worde is a law, he may put to death, or to other bodilie punishment, whom he shall thinke so to deserve, without processe of lawe or forme of judgement. This hath beene sometime used within the Realme before any open warre in sodden insurrections and rebellions, but that not

allowed of wise and grave men, who in that their judgement had consideration of the consequence and example, asmuch as of the present necessitie, especiallie, when by anie meanes the punishment might have beene doone by order of lawe. This absolute power is called marciall lawe, and ever was and necessarilie must be used in all camps and hostes of men, where the time nor place do suffer the tariance of pleading and processe, be it never so short, and the important necessitie requireth speedie execution, that with more awe the souldier might be kept in more straight obedience, without which never captaine can doe anie thing vaileable in the warres.

The prince useth also absolute power in crying and decreeing the monies^[1] of the realme by his proclamation onely. The monies be^[2] alwayes stamped with the princes image and title. The forme, fashion, maner, weight, finenesse, and basenesse therof, is at the discretion of the prince. For whom should the people trust more in that matter than their prince, for^[3] the coine is only to certifie the goodnes of the mettall and the weight, which is affirmed by the princes image and marke? But if the prince will deceave them and give them copper for silver or golde, or enhance his coyne more than it is worth, he is deceived himselfe, aswell as he doth goe about to deceave his subjectes. For in the same sort they pay the prince his rentes and customes. And in time they will make him pay rateably or more for meate, drinke and victualles for him and his, and for their labour: which experience doth teach us nowe in our dayes to be doone in all regions. For there was ever^[4] and ever wil be a certaine proportion betwixt^[5] the scarceness^[6] and plentie of other thinges, and^[7] gold and silver, as I have declared more at large in my booke of Monies.^[8] For all other measures and weightes, aswell of drie thinges as of wet, they have accustomed to be established or altered by the Parliament, and not by the princes proclamation only.

The prince useth also to dispence with lawes made, whereas equitie requireth a moderation to be had, and with paynes for transgression of lawes, where the payne of the lawe is applyed onely to the prince. But where the forfaitie (as in popular actions it chaunceth many times) is part to the prince, the other part to the declarator, detector or informer, there the prince doth dispence for his owne part onely. Where the criminall action is intended by inquisition (that maner is called with us at the princes suite) 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. But^[9] notwithstanding that he hath the princes pardon if the person offended will take uppon him the accusation (which in our language is called the appeale) in cases where it lieth, 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 tenthes and first fruites of all Ecclesiasticall promotions, except in the Universities and certaine Colledges which be exempt.

All writtes, executions and commaundementes be done in the princes name. We doe say in England the life and member of the kinges subjectes are the kinges onely, that is to say no man hath *hault* nor *moyenne* justice but the king, nor can hold plea thereof. And therefore all those pleas, which touche the life or the mutilation of any parte of a^[10] man, be called pleas of the crowne, nor can be doone in the name of any inferior person than he or shee that holdeth the crowne of Englande. And likewise no man can give pardon thereof but the prince onely: Although in times past there were certaine countie Palatines, as Chester, Durham, Elie, which were *hault* justicers, and writtes went in their name and some^[11] Lorde marchers of Wales, which claymed like priviledge. All these are nowe worne away. The supreme justice is done in the kinges name, and by his authoritie onely.

The Prince hath the wardshippe and first mariage of all those that hold landes of him in chiefe. And also the government of all fooles naturall, or such as be made by adventure of sicknes, and so continue, especially^[12] if they be landed. This being once graunted by act of Parliament (although some inconvenience hath beene thought to have growen^[13] thereof, and sith that time it hath beene thought verie unreasonable) yet once annexed to the crowne who canne^[14] take the clubbe out of *Hercules* hand. And if it were^[15] governed justly and rightly [as it might be, whether it be or no, let others judge, there is not] so much^[16] inconvenience in it, as some men would make of it: diverse other rights and preeminences the prince hath which be called prerogatives royalles, or the prerogative of the king, which be declared particularly in the bookes of the lawes and lawyers of England.^[17]

To be short the prince is the life, the head, and the authoritie of all thinges that be doone in the realme of England. And to no prince is doone more honor and reverence than to the King and Queene of Englande, no man speaketh to the prince nor serveth at the table but in adoration and kneeling, all persons of the realme be bareheaded before him: insomuch that in the chamber of presence where the cloath of estate is set, no man dare walke, yea though the prince be not there, no man dare tarrie there but bareheaded. This is understood of them^[18] of the realme: For all strangers be suffered there and in all places to use the maner of their countrie, such is the civilitie of our nation.

THE CHIEFE POINTES WHEREIN ONE COMMON WEALTH DOTHT DIFFER FROM AN OTHER.

Chap. 4.

Now that we have spoken of the parliament (which is the whole universall and generall consent and authoritie aswell of the prince as of the nobilitie and commons, which is as much to say^[1] of the whole head and bodie of the realme of England) and also of the prince, (which is the head, life and governor of this common wealth): there remaineth to shewe, how this head doth distribute his authoritie and power to the rest of the members for the government of his realme, and the common wealth of the politique bodie of England. And where^[2] all common wealthes and governmentes be most occupied, and be most diverse in the fashion of five thinges: in making of lawes and ordinaunces, for their owne government: in making of battell and peace, or truce with forraine nations: in providing of mony for the maintenance of themselves, within themselves, and defence of themselves against their enemies: in choosing and election of the chiefe officers and magistrates: and fiftly in the administration of justice. The first and third we have shewed is doone by the prince in parliament. The seconde and fourth by the prince himselfe. The fifth remaineth to be declared.

OF THE THREE MANERS AND FORMES OF TRIALLES OR JUDGEMENTES IN ENGLAND.

Chap. 5.

By order and usage of Englande there is three wayes and maners, whereby absolute and definite judgement is given, by parliament which is the highest and most absolute, by battle and by the great assise.

TRIAL OR JUDGEMENT BY PARLIAMENT.

Chap. 6.

The matter of giving judgement by parliament betwixte^[1] private and private man, or betwixte^[2] the prince and any private man, be it in matters criminall or civill, for land or heritage^[3] doth not differ from thorder which I have prescribed, but it proceedeth by bill thrise read in ech house and assented to as I have saide before, and at the last day confirmed and allowed by the prince.

Howbeit such bills be seeldome received, because that peat counsell being enough occupied with the publique affaires of the realme, will not gladly intermedle it selfe with private quarels and questions.

TRIAL OR^[1] JUDGEMENT BY BATTLE.

Chap. 7.

This is at this present not much used, partly because of long time the Pope and the cleargie to whom in times past we were much subject, alwayes cryed against it as a thing damnable and unlawful, and partly because in all common wealthes (as to the tongue) so to the maners, fashions, habits, yea and kindes of trials and judgmentes, and to all other things that is therein used, time and space of yeares 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 maner of it is thus^[2] described in *Briton*: ____.^[3]

THE TRIALL BY ASSISE OR XIJ. MEN AND FIRST OF THE THREE PARTES WHICH BE NECESSARY IN JUDGEMENT.

Chap. 8.

The other two^[1] judgementes be absolute supreme and without appeale, and so is also this^[2] judgement by the great assise. And because our manner of judgementes in England is in many things different from the fashion used either in Fraunce, or in Italie, or in any other place where the Emperors lawes and constitutions (called the civill lawes) be put in use, it will be necessarie here to make a litle digression, to that^[3] intent, that that which shalbe said hereafter may be better understood.^[4] All pursuities and actions (we call in^[5] our English tongue pleas) and in barbarous (but now usuall) latine *placita*, taking that name *abusive* of the definitive sentence, which may well be called *placitum* or ____ . The French useth the same calling in their language, the sentence of their judges *arestes* or *arest*: in which wordes notwithstanding after their custome they do not sounde the *s*, Marye^[6] we call *placitum* the action not the sentence, and *placitare* barbarouslie, or to pleade in englishe, *agere* or *litigare*. Now in all judgementes necessarily being two parties, the first we call pleader,^[7] suiter, demaunder or demaundaunt.^[8] In criminall causes if he professe to be an accuser, we call him appealer^[9] or appellour, and so accusation we call appeale. The other we call the defendand and in criminall causes prisoner, for he cannot aunswere in causes criminall before he do render himselfe or be rendred prisoner.

Judex is of us also^[10] called Judge, but our fashion is so diverse that they which give the deadly stroke, and either condemne or acquite the man for guiltie or not guiltie, are not called Judges but the xij. men. And the same order aswell is in civill matters and pecuniarie, as in matters criminall.

OF PLEAS OR ACTIONS

Chap. 9.

Pleas or actions criminall be in English called pleas of the crowne, which be all those which tende 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 subjectes is disspoyled^[1] either of life or member, the prince is endammaged thereby, and hath good cause to aske accompt, how his subjectes should come to that mischief. And againe for so much as the prince who governeth the scepter, and holdeth the crowne of Englande hath this in his care and charge, to see the realme well governed, the life, members and possessions of his subjectes kept in peace and assurance: he that by violence shall attempt to breake that peace and assurance, hath forfeited against the scepter and crowne of England: and therefore not without a cause in all inquisitions and inditementes, if any be found by the xij. men to have offended in that behalfe, streight the prince is saide to be partie, and he that shall speake for the prisoner shall be rebuked, as speaking against the prince. Neverthelesse it is never defended, but the prisoner and partie defendant in any cause may alleadge for himselfe^[2] al the reasons, meanes and defences that he can, and shall be peaceablie hearde and quietlie: But in those pleas or^[3] pursuites of the crowne, procurer or advocate he gettes none, which in civill and pecuniarie matters (be it for land, rent, right, or possession, although he plead against the prince himselfe) is never denied.

Pleas civill be either personall or reall, personall as contractes or for injuries: reall be either possessorie to aske, or to keepe the possession, or in *rem*, which we cal a writte of right. For that which in the civill lawe is called *actio* or *formula*, we call writ in English: so the Greekes called it worde for word and in our barbarous latine we name it *breve*.

And as the olde Romanes had their actions some *ex jure civili*, and some *ex jure praetorio*, and ordinarily *praetor dabat actiones & formulas actionum*: so in Englande we retaine still this, and have some writtes out of the chauncerie, other out of the common place or the kings bench.

OF THE CHIEFE TRIBUNALS, BENCHES OR COURTES OF ENGLANDE.

Chap. 10.

In times past (as may appeare to him that shall with judgement reade the histories and antiquities of England) the courtes and benches followed the king and his court wheresoever he went, especially straight^[1] after the conquest. Which thing being found very cumbersome, painful and chargeable to the people, it was agreed by parliament, that there shoulde be a standing place where judgement should be given. And it hath long time beene used in Westminster hall, which king *William Rufus* builded for the hall of his owne house. In that hal be ordinarily seene three^[2] Tribunals or Judges seates. At the entrie on the right hande, the common place, where civill matters are to be pleaded, specially such as touch landes or contractes. At the upper end of the hall, on the right hand, the kinges bench, where pleas of the crowne have their place. And on the left hande sitteth the Chauncelor accompanied with the master of the Roules, who in latine may be called *custos archivorum regis*, and certaine men learned in the civill lawe called Masters of the chauncerie, in latine they may be named *Assessores*.

OF THE TIMES OF PLEADING CALLED TERMES, & OF THE CHAUNCELOR AND CHAUNCERIE.

Chap. 11.

Two things may be moved in question here, how all Englande (being so long and so large, and having so many shyres and provinces therein) can be answered from^[1] justice in one place, and three benches were^[2] they never so great? An other where judgement is exercised^[3] in criminall causes and in all pleas of the crowne, and the other^[4] in all civill causes, reall and personall what place hath^[5] the chauncerie?

The first question will seeme more marvelous and have more occasion of doubt, when I shall also tell that the lawe is not open at all times, no not the third part of the yeare. But where all other cities and common wealthes had all the yeare pleas, suites, and judgements, except for certaine holy daies and harvest and vintage, or when for some urgent cause the lawe was commaunded to be stopped, which is called *Justitium*: Contrarie in ours, it is but fewe times open. That is onely foure times in the yeare which they call termes. [After Michaelmas about ten daies, during five or sixe weekes at the least. After Christmas about a moneth, enduring by the space of three weekes. Then from xvij. dayes after Easter by the space of three weekes and odde dayes. Likewise from the sixt or seventh day after Trinitie Sunday, during two weekes and odde daies.]^[6] All the rest of the yeare there is no pleading, entring nor pursuing of actions. This small time, and all that but in one place may seeme verie injurious to the people, who must be faine to suffer much wrong for lacke of Justice and of place and time to pleade it.^[7] Heereafter I entende to answer more fully, but^[8] in the meane while that shall suffice which the wise *Cato* answered to one who mooved that the pleading place in Rome might be covered over with canvas as their theaters were, to the intent that the plaintifes and defendantes that were there might plead their matters more at ease, and not be in so much danger of their health by the heate of the sunne striking full and open upon their heades, which was no smal grieffe and disease, specially at Rome. Nay (saith *Cato*) for my part I had rather wish that all the waies to the place of pleading were cast over with galthrops, that the feete of such as love so well pleading, should feele as^[9] much paine of those prickes in going thither as their heades of^[10] of the sunne in tarrying there: he ment that they were but idle, whot heades, busie bodies, and troublesome men in the common wealth that did so nourish pleading: good labourers and quiet men could bee content to ende their matters at home by judgement of their neighbours and kinsfolke without spending so their money upon procurers and advocates whom we call attornies, Sergeantes,^[11] and generallie men of lawe. Those he accounted profitable citizens, who attended^[12] their honest labour and businesse at home, and not stande waiting and gaping upon their rolles and processe in the lawe: those^[13] other by his judgement, it made^[14] no matter what mischiefe they had.^[15] To the other question of the chancerie, this I answer: That our lawe which is called of us the common lawe as ye would say *Jus civile*, is and standeth upon _____, that is *Jus summum*: and their maximees be taken so straitlie that they may not depart from the tenour of the wordes even as the olde civill lawe was. And therefore as that lacked the helpe of a *Prætor* (which might *moderari illud jus summum*, give actions where none was, mitigate the exactnesse and rigour of the lawe written, give exceptions, as *metus, doli mali, minoris ætatis*, &c. for remedies, and maintaine alwaies *Æquum & bonum*): the same order and rancke holdeth our chauncerie, and the chauncellor hath the verie authoritie heerin as had the *Prætor* in the olde civill law before the time of the Emperours. So he that putteth up his bill in the chauncerie, after that he hath declared the mischiefe wherein he is, hath this^[16] as in the solemne form.^[17] And for so much as in this case hee is without remedie in the common lawe, therefore he requireth the chauncellor 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 chauncerie is called of the common people the court of conscience, because that the chauncellor is not strained by rigour or forme of wordes of lawe to judge but *ex æquo* and *bono*, and according to conscience as I have said. And in this court the usuall forme of pleading and proper^[18] of Englande is not used, but

the forme of pleading by writing, which is used in other countries according to the civill lawe: and the tryall is not by xii. men, but by the examination of witnessse as in other courtes of the civil lawe.

OF JUDGES IN THE COMMON LAWE OF ENGLAND, AND THE MANNER OF TRIALL AND PLEADING THERE.

Chap. 12.

The Prince out of the numbers of those who have beene Counsellors or Sergeants in^[1] the law, which be those who in latin be^[2] called *causidici* or *advocati*, chooseth of^[3] the most approved for learning, age, discretion, and exercise two, whereof^[4] the one is called chiefe Justice of the Kings bench, or simply chiefe Justice, the other chiefe Justice of the common place, and others to the number of ____.^[5] These hath^[6] each an ordinarie fee or stipend of the Prince. The two the chiefe, thone to the some of ____, th'other to the summe of ____, the rest ____ a piece.^[7]

These doe sit at such daies 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 thother, it doeth so proceede before them till it doe come to the issue, which the latines doe call *statum causæ*, I doe not meane *contestationem litis*, but as the Rhetoritians doe call *statum*, we doe most properly call it the issue, for there is the place where the debate and strife^[8] (as a water held in a close and darke vessel can issue out and be^[9] voided and emptied) and no where else: that stroke well stricken is the departing of all the quarells. Issues or *status* in our lawe bee ordinarily two *facti* and *juris*.

OF THE TWO MANNER OF ISSUES.

Chap. 13.

If the question be of the lawe, that is if both the parties doe agree upon the fact, and each doe claime that by lawe he ought to have it, and will still in that fashion^[1] maintaine their right, which is^[2] called a demurre^[3] in the^[4] lawe: if^[5] in the lawe the case seeme to the Judges that sitte doubtfull, this^[6] is called a checkerchamber case, and all the Judges shall^[7] meete together,

and what they shall pronounce to be the lawe, that is helde for right, and the other partie looseth his action and^[8] lande for ever. If the Sergeants or counsellors doe stand upon anie point in the law which is not so doubtfull, the Judges who be taken for most experte biddes him goe forwarde: and if he hath no other to say but standeth upon that point of the lawe, that bidding goe forwarde is taken that he looseth his action, and the defendant is licensed to depart without a day: and this is where the issue or question is of the lawe or *Juris*. So that in that^[9] case where the lawe is not doubtfull thus it is ended, that in the answere, replication, rejoinder, or triplication^[10] and so forth, the matter is concluded in the pleadinge. If the exception be not vailable,^[11] the Judge out of hande decidinge.^[12] And it is the manner that each partie must grant^[13] to the other stil that^[14] in the fact which he cannot denie. For if he once come to denie any deede as not doone, not his writing, the^[18] man by whome the adversarie claimeth was not the adversaries auncestor, or the evidence which his adversarie bringeth is not true, or that his gift was former, &c.^[16] or any such like exception which is vaileable to abate the action and^[17] the other joyneth in the affirmative and will averre and prove it,^[18] this is called the issue, straight^[19] all question of the lawe ceaseth as agreed by both the parties, that there is no question in the lawe. Then as that issue *facti* is founde by the xij men of whom wee shall speake hereafter, so the one partie or other looseth his cause and action: so that contrarie to the maner of the civill lawe where first the fact is examined by witnesses, iudices,^[20] tormentes and such like probations to finde out the truth thereof, and that doone the advocate doe dispute of the lawe to make of it what they can: saying, *ex facto jus oritur*: heere the Sergeantes or counsellors before the Judges doe in passing forwarde with their pleadinge determine and agree upon the lawe, and for the most part and in manner all actions as well criminal as civill, come to the issue and state of some fact which is denied of the one partie, and averred of the other: which fact being tried by the xij men as they find, so the action is wonne or lost. And if a man have many peremptorie exceptions (peremptorie exceptions I call onely those which can make the state and issue) because the xij men be commonly rude and ignorant, the partie shalbe compelled to choose one exception whereupon to founde his issue, which chosen if he faile in that by the verdict of xij men, he looseth his action and cause, and the rest can serve him for nothing.

Having seene both in Fraunce and other places manie devises, edictes and ordinaunces howe to abridge procÈs and to finde howe that long suites in law might be made shorter: I have not perceived nor reade as yet so wise, so just, and so well devised a meane found out by^[21] any man among us in Europe.

Trueth it is that where this fashion hath not beene used, to^[22] them to whom it is newe, it will not be so easy to understand^[23] and therefore they may peradventure make judgement contrarie but^[24] the more they doe weigh and consider it, the more reasonable they shall finde it.

Howe the issue, question or *status juris* is decided, I have tolde: now I will shewe howe it is tryed when it doth come to the question, state or issue of the deede or fact. 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.

OF THE SHERIFE OF THE SHIRE, AND OF THE EXCHEQUER.^[1]

Chap. 14.

The Romans had to execute the commaundements of the magistrates *Lictores, viatores, accensos*. The civill lawe sith that time hath other names, termes, and officers (as ____).^[2] The execution of the commaundementes of the magistrates in England is ordinarily doone by the sherifes. The sherife (which is as much to say as the Reeve or Bayly of the shire) is properly word for word *Questor provinciÆ*: he^[3] is he that^[4] gathereth uppe and accompteth for the profittes of the shire, which^[5] come to the exchequer. The exchequer (which is *fiscus principis*, or *ærarium publicum*, and I cannot tell in what language it is called *Scaccarium*, some thinks that it was first called *statarium*, because that there was the stable place to account for the revenues of the crowne, aswell that which came of the patrimony which we cal the demeasnes: as that which commeth of other incident acquisitions be they rentes, customes, tenthes, quinziesmes, taxes, subsidies, wheresoever the Prince of his court be according to the time and occasion) this^[6] was a place stable, continual and appointed for to reckon and account. The hearers of the account (who in latin may be called *tribuni Ærarij*) they^[7] have auditors under them which the Latines doe call *Rationales*: but they are the chiefe for the accounts of the Prince, and may be called *Juridici rationales*, in English we cal them Barons of the exchequer, whereof is one who is called the chiefe Baron, as *Tribunus* or *Juridicus rationalis primus* or *princeps*. The chiefe of all is called high treasurer of Englande, as you would say in latin *Supremus ærarij anglici quæstor*, or *Tribunus Ærarius maximus*. In this court be hearde *Quadruplicatores* (which we call promoters) which be those that in popular and penall action be *delatores*, having thereby the profit in^[8] the lawe assigned. In this court if anie question be, it is determined after the fashion^[9] of the common lawe of Englande as^[10] by the xij men as I have saide: and all customers which were in latin called *publicarij* in Greeke _____, do account in this office. The Sherife of the shire is called in our common latin *Vicecomes*, as one would say *vicarius comitis* or *procomes*, doing that service to attende upon the execution of the commaundementes of the Tribunalles or Judges which the Earle or countie should doe, which Earle or Countey for the most part was attending uppon the Prince in the warres or otherwise about the Prince as the worde beareth, *comes principis*: whereby it may appeare that the chief office of the Countie or Earle was to see the kinges Justice to have course and to be well executed in the shire or Countie, and the Princes revenues well answered and brought in *Ærarium principis*, which is called of us the treasurie.

If any fines or amerciaments, which in latin be called *mulctae*, be levied in anie of the saide courtes upon any man, or any arrerages of accountes of^[11] the latins called *reliqua*, of such thinges as is of customes, taxes, subsidies or any other such occasions, the same the sherife of the shire doth gather and is respondent therefore in the exchecher. For^[12] other ordinarie rentes of patrimoniall landes for the most part^[13] for the taxes, customes, and subsidies, there be particular receivers and collectors which doe answere it in^[14] the exchequer. The sherife hath under him an under sherife at his charge and appointment learned somewhat in the law, especially if he be not learned himselfe, and divers bailifes which be called errantes, whom he maketh at his pleasure, who can knowe ech lande and person in the shire, and their abilitie to goe uppon enquestes, either to streine^[15] or to summon him to appeare whom the sherife shal appoint, and for this cause to the sherifes as to the minister most proper of the lawe the writtes be directed.

When any thing commeth to an issue of the deede or fact, there is a writ or writing directed to the sherife of the shire where the lande is, whereupon the controversie is, or where the man dwelleth of whome the money is demaunded, which writ is called *venire facias*, and is in this forme _____.^[16] Then after the same effect an *alias*, *pluries* or *distringas* according to the nature of the action.^[17] And if for any disobedience of not comming and appearing there be a fine (which the latins doe call *Mulcta*) set upon any mans^[18] head, the sherife is charged with it, and taketh the distresses which in latin be called *Pignora*, and answereth therefore to the exchequer. The sherife also is readie by himselfe or by his undersherife to serve aswell the Justices of peace in their quarter sessions as the Justices called *Itinerantes* in their great assises, when they come to^[19] the shire, which is twice in the yeare, to dispatch and voide all^[20] actions criminall and civil depending at the common law, and which be come nowe to the issue. He hath also the charge of all the prisoners committed to the prison which we call the gaole, 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 commaundementes according to the lawe as the Judges do ordaine, and this is ynough for the sherife.

OF THE XIJ. MEN.

Chap. 15.

Of what manner and order of men in the common welth the xij men be I have already declared. The sherife alwaies warneth xxiiij to appeare, least peradventure any might be sicke or have a just cause of absence: and if there be not enowe to make an enquest, the absentes be amersed,

according to the discretion of the judges.^[1] For although they be called xij men as a man would say *duodecim viri*, yet if they be xvj, xx or the whole number of xxiv, that is no matter, xij they must be at the least to make an enquest or as some call it a quest. An enquest or quest is called this lawfull kinde of tryall by xij men. In actions civill which is either of contractes or for lande or possession when so many of those which be warned appeare at the call as be able to make an enquest, which as I saide before be no lesse then xii, either partie^[2] when they be come taketh their exceptions^[3] against so many of them as they will, which be that he may not spende so much lande a yeare, he is alied, feed, or servant to his adverse partie, he is his enemie &c. If iiii bee once allowed of both parties they four^[4] doe trie and allowe or disallowe the rest. If after exceptions there be so many rejected that there is not a full enquest, in some cases that day is lost, in some the enquest is filled *ex circumstantibus*: when the quest is ful, they be sworne to declare the truth of that issue according to the evidence and their conscience. Then the Sergeantes of either side declare the issue, and each for his client sayth 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 openly, that not only the xii, but the Judges, the parties and as many as be present may heare what ech wisse doeth say: The adverse partie or his advocates which wee call counsellors and sergeants interrogateth sometime the witnesses, and driveth them out of countenance. Although this may seeme strange to our civillians nowe, yet who readeth *Cicero* and *Quintillian* well shall see there^[5] was no other order or^[6] maner of examining witnesses or deposing among the Romans in their time. When it is thought that it is enough pleaded before them, and the witnesses have saide what they can, one of the Judges with a briefe and pithie recapitulation reciteth to the xii in summe the argumentes of the sergeantes of either side, that which the witnesses have declared, and the chiefe pointes of the evidence shewed in writing, and once againe putteth them in minde of the issue, and sometime giveth it to them in writing, delivering to them the evidence which is shewed on either part, if any be, (evidence heere is called writings of contractes autentical after the manner of England, that is to say, written, sealed and delivered) and biddeth them goe together. Then there is a baylife 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 verdite upon^[7] the same issue, and of^[8] 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 fewe wordes as may be they give their determination: fewe I call vi or vii or viii wordes at the most (for commonly the issue is brought so narrow, that such number of words may be ynough to affirme or to denie it) which doone they are dismissed to goe whither they will. The partie with whom they have given their sentence, giveth the enquest their dinner that day most commonly, and this is all that they have for their labour, notwithstanding that they come some xx some xxx or xl miles or more, to the place where they give their verdite all, the rest is of their owne charge. And necessarilie the^[9] whole xii must be of the shire and iiii of them of the hundred where the lande lyeth which is in controversie, or where the partie dwelleth who is the defendant.

OF PARTIES OF SHIRES CALLED HUNDREDS, LATHES, RAPES, WAPENTAKES.

Chap. 16.

An hundred, lath^[1], rape, or wapentake be called of the divisions or partes of shires soe^[2] in divers countries diversly named after the manner and language of each countrey. For the shires be divided some into x. xii. xiii. xvi. xx. or xxx. hundreds, more or lesse, either that they were at the first C. townes and villages in eche hundred: now^[3] they be but xvi. xx. xxx. xl. 1. lx. more or lesse, yet it is still called an hundred, or else there were but so many at the first as be nowe, or a few more or lesse, and those^[4] did finde the king to his warres an hundred able men. Lath, and rape I take to be names of service, for that so many townes in old time, and in the first povertie of the Realme did meete together in one day to carrie the Lordes corne into his barne, which is called in olde English a Lath. Or that they mette at commaundement of the Lorde to reape his corne.

Wapentake I suppose came of the Danes or peradventure of the Saxons. For that so manie townes came by their orders then, to one place, where was taken a mouster of their armour and weapons, in which place from them that could not finde sufficient pledges for their good abearing, their weapons were taken away: weapen or wapen in olde English doe signifie all armes offensive, as sworde, dagger, spear, launce, bill, bowes, arrowes.

Of the place where the monsters were taken or where the saide services were doone, the 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 soe.^[5] But sometime nowe in places whereof the hundred hath the name, no mention nor memorie of a towne remaineth, such mutation time bringeth with it of all things. Ech^[6] hundred hath one or two high Constables, who hath some authoritie over all the lower, and particular Constables. Those high Constables bee made by the Justices of the peace of the shire, and each hundred hath his baylife, who is made by the Lorde if any hath that libertie, or else by the sherife of the shire for the time being.

OF THE COURT BARON.

Chap. 17.

It may appeare strange that of xxxvi shires, whereof each shire is divided into divers hundreds, each hundred containeth^[1] diverse parishes, all pleading should be but in one place, that is in Westminster hall, and that but in certaine times in^[2] the yeare, making little more than one quarter of the yeare 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 that in such sort that the rich hath no more advantage therein than the poore, the proces, and proceedinges to the judgement being so short, and judgements also being peremptorie and without appellation: Yet to helpe for small matters, where no greate summe is in question there are other courtes. In everie shire from three weekes to three^[3] weekes the sherife for small thinges not passing xl. s. and in certaine hundreds and liberties the baylie likewise from three weekes to three^[3] weekes, of^[4] his tennantes and amongst his tennantes a court called a court Baron. And there his tennantes being sworne make a Jurie which is not called the enquest, but the homage. These principallie doe enquire of the copie holders, and other free holders that be dead sith the last court, and bring in their heires, and next successours, and likewise of incroachment or intrusion of anie of the tennantes against the Lorde, or among themselves. They make orders and lawes amongst themselves, the paine of them if they be after broken, commeth to the Lorde. And if anie small matter be in controversie amongst them^[5] it is put to them, and commonly they doe ende it. But these courtes can^[6] serve rather for men which^[7] can be content to be ordered by their neighbours, and which love their quiet and profit in their husbandrie, more than to be busie in the lawe. For whether partie soever will, may procure a writte of Westminster Hall to bring it thither.^[8]

In cities and other great townes there be diverse liberties to holde plea for a bigger summe, who to such a quantyete doth^[9] determine aswell as the common lawe, and after the same manner, and yet from^[10] them, who^[11] that will may bring it^[12] to Westminster hall.

King *Henrie* the eight ordained first a president, Counsellors and Judges, one for Wales,^[13] at^[14] an other for the north parts of Englande at Yorke, where be manie causes determined. These two be as^[15] Parliaments in Fraunce. But yet if there be anie matter of great consequence, the partie may moove it at the first, or remoove it afterwarde to Westminster hall, and to the ordinarie Judges of the Realme, or to the Chaunceller, as the matter is.

These two courtes doe heare matters before them, part after the manner of the^[16] common lawe of Englande, and part after the fashion of the chauncerie.

OF THE LEETE OR LAWE DAY.

Chap. 18.

Leete or law day is not incident to everie mannor, but to those onely which by special graunt, or long prescription have such libertie. This was as may^[1] appeare first a speciall trust and confidence and commission given to a fewe put in trust by the Prince, as is nowe to the Justices of peace, to see men sworne to the Prince, that ruled^[2] to take pledges and suerties in that maner of one for an other to answere for obedience and truth, to enquire of privie conspiracies, fraies, murders, and bloudsheddes, and to this was added the oversight of bread and ale, and other measures. Many times they which^[3] be out of the homage and court Baron of that mannor and Lordship, be nevertheless astreined and answerable to come to the Leete. This Leete is ordinarily kept but twice in the yeare, and that at termes and times prescribed.

The Leete and^[4] Lawe day is all one, and betokeneth worde for worde, *legittimum* or *iuridicum diem*. Lawe the olde Saxons called *lant* or *lag*, and so by corruption and chaunge^[5] of language from *Lant* to *Leete*, understanding day. They which keepe our full english terme, call it yet lawe day.

OF THE PROCEEDINGES IN^[1] CAUSES CRIMINALL, AND FIRST OF THE JUSTICES OF THE PEACE.

Chap. 19.

Before the maner of proceeding in causes criminall can be well understood, it will be necessarie to speake of three persons, the Justices of peace, the Coroners, and the Constables. The Justices of peace be men elected out of the nobilitie, higher and lower, that is the Dukes, Mar- quises, and the^[2] Barons, and of the^[3] Knightes, and^[4] Esquiers, and Gentlemen, and of such as be learned in the lawes, such and in such number as the Prince shall thinke meete, and in whome for wisdome and discretion he putteth his trust, inhabitantes within the countie: saving that some of the high nobilitie and chiefe magistrates for honors sake are put in all, or in the most of the commissions of all the shires of England. These have no time of their rule limited but by commission of^[5] the Prince alterable at pleasure.

At the first they were but iiij, after viij, nowe they come commonly to xxx or xl in everie shire, either by increase of riches, learning, or activitie in policie and government. So manie more beeing founde, which have either will, or power, both, to manage and handle^[6] the affaires of the common wealth in this behalfe. Of these in the same commission be certaine named, which be called of the *Quorum*, in whome is especiall trust reposed; that where the commission is given to xl or xxx, and so at the last it commeth to iiij or three. It is necessarie to do manie thinges to have manye of the *Quorum*, for because the^[7] wordes of the commission be such, *Quorum vos AB. CD. EF. unum esse volumus*.

The Justices of the peace be those in whom at this time for the repressing of robbers, theeves, and vagabunds, of privie complots and conspiracies, for^[8] riotes, and violences, and all other misdemeanors in the common wealth, the prince putteth his special trust. Each of them hath authentic upon complaint to him made of any theft, robberie, manslaughter, murder, violence, complotes, riottes, unlawfull games, or any such disturbance of the peace, and quiet of the Realme, to commit the persons whom he supposeth offenders, to the prison, and to charge the Constable or sherife to bring them thither, the gaoler to receive them and keepe them till he and his fellowes doe meete. A fewe lines signed with his hande is ynough for that purpose: these doe meete foure times in the yeere, that is, in each quarter once, to enquire of all the misdemeanors aforesaide: at which daies the sherife, or his undersherife with the baylifes be there to attende uppon them,^[9] who must prepare against that time fower enquestes of xxiiij yeomen a peece of diverse hundredes in the shire, and besides one which is called the great enquest of^[10] the bodie of the shire mingled of^[11] all. These five enquests are sworne before them to enquire of all heretiques, traitors, theftes, murders, manslaughters, rapes, false moniers, extortioners, riottes, routes, forcible entries, unlawfull games, and all such thinges as be contrarie to the peace and good order of the Realme, and to bring in their verdict. If they among themselves upon their owne knowledge doe finde any culpable, they cause one of the clerkes to make the bill. And if any be there to complaine of^[12] any man for any of^[13] these faults, he putteth in his bil, which bil is presented first to the Justices sitting upon the bench, to see if it be conceived in forme of lawe, which doone the complainant doth deliver it to one of these enquests, and after the complainant is sworne, he declareth to them what he can, for the profe of it. And if they finde it true they do nothing but write on the backe^[14] of it, *billa vera*, as ye would say, *scriptum verum*: or *accusatio iusta*, or *reus est qui accusatur*: Then he who is there named is called indicted. The manner of the bill is suche: *Inquiratur pro Domino Rege. Si _____*.^[15]

If they do not finde it true, they write on the backside *ignoramus*, and so deliver it to the Justices of whome it is rent in^[16] peeces immediatly: he that is indicted is accounted a lawfull prisoner, and after that time looked more streitly unto. For this inditement is no conviction: and if he be indicted, and be not alreadie in prison, the sherife if he can finde him, bringeth him into prison: if he cannot finde him, procÈs is made out against him, to render himselfe prisoner, or else hee

shalbe outlawed. So he is called three times in diverse shires^[17] to render himselfe to the lawe. The fourth is called the exigent, by which he is outlawed not rendring himselfe, as ye would say: *exactus* or *actus in exilium*. The outlawe looseth all his goods to the King for his disobedience. But if after he wil render himselfe to answer to the lawe, and shewe some reasonable cause of his absence, manie times of grace his outlawerie is pardoned. These meetinges of the Justices of peace foure times in the yeare, be called quarter sessions or sessions of enquirie, because there is nothing determined there^[18] touching the malefactors, but onely the custodie of them: and this kinde of proceeding which is by inquisition of the xij men within themselves, and their owne consciences, or by denunciation of him that putteth in his bill to the xij, is called at the kings suite, and the king is reckoned the one partie, and the prisoner the other. The Justices of the peace doe meete also at other times by commandement of the Prince in^[19] suspition of warre, to take order for the safetie of the shire, sometimes to take musters of harnes and able men, and sometime to take orders for the excessive wages of servaunts and labourers, for excesse of appareil, for unlawfull games, for conventicles and evill orders in alehouses, and tavernes, for punishment of idle and vagabund persons, and generally as I have saide, for the good government of the shire, the Prince putteth his confidence in them. And commonly every yeare, or each seconde yeare in the beginning of summer or afterwarde, (for in the warme time the people for the most part be more unrulie) even in the moste^[20] calme time of peace, the Prince with his counsell chooseth out certaine articles out of penall lawes alreadie 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 pointes, and after they have mette together and consulted among themselves, howe to order that matter most wisely and circumspectly, whereby the people might be kept in good order and obedience after the lawe, to divide^[21] themselves by three or foure: and so each in his quarter to take^[22] order for the execution of the saide articles. And then within a^[23] certaine space to^[24] meete againe and certifie the Prince or his privie counsell how they do finde the shire in rule and order touching those pointes and all other disorders. There was never in no^[25] common wealth divided a more wise, a more dulce and gentle, nor a more certaine way to rule the people, whereby they are kept alwaies as it were in a bridle of good order, and sooner looked unto that they should not offend, than punished when they have offended. For seeing the chiefe amongst them, their rulers to have this speciall charge and doe call upon it, and if occasion so doe present, one or two presently either punished or sent to prison for disobedience to those olde orders and lawes, they take a feare within themselves, they amende and doe promise more amendment, So that it is as a newe forbushing of the good lawes of the realme, 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 benefitte that can be devised for the common wealth of Englande: So when it shalbe misused, dissembled with, or be contemned, and come to^[26] be doone *pro forma tantum*, and as they terme it in Fraunce *par mainere d'acquit* onely, it will be the present ruine (though not at the first apperceiued) of the common wealth. Of which the fault may be as well in the commaunders for not making good choice what and howe they commaunde, as in the commaunded, for not executing that which is commaunded.

OF HUE AND CRIE AND RECOGNISAUNCE TAKING UPON THEM THAT CAN^[1]
GIVE EVIDENCE.

Chap. 20.

By the olde lawe of Englande if any theft, or robberie be doone, if he that is robbed, or he that seeth or perceiveth that any man is robbed doe levie hue and crie, that is to say, doe call and crie for aide, and say that a theft or robberie is doone contrarie to the Princes peace and assurance: The Constable of the village to whom he doth come, and so make that crie, ought to raise the parish to aide him and seeke the theefe, and if the theefe be not founde in that parish, to go to the next and raise that Constable, and so still by the Constables and them of the parish one after another. This hue and crie from parish to parish is caried, till the theefe or robber be founde. The^[2] parish which doeth not his dutie, but letteth by their negligence the theefe to escape,^[3] doth not onely paie a fine to the king, but must repaie to the partie robbed his dammages. So that everie English man is a sergiant to take the theefe, and who sheweth himselfe negligent therein, doth not only incur evill opinion therefore, but hardly shall escape punishment: what is doone with the theefe or robber when he is taken, I shall shewe you hereafter. The same manner is followed if anie man bee slaine, for streight the murtherer is pursued of everie man till he be taken. So soone as any is brought to the Justices of peace by this hue or crie, by the Constable or anie other who doth pursue the malefactor, he doeth examine the malefactor, and writeth the examination and his confession: then he doth binde the partie that is robbed or him that sueth, and the Constable, and so manie as can give evidence against the malefactor to be at the next sessions of gaole deliverie to give their evidence for the Queene. He bindeth them in recognisance of x.l. xx.l. xxx.l. xl.l. or C.l. according to his discretion, and the qualities of the crime: which certified under his hande, is levied upon the recognizance if they faile of being there.

OF THE CORONER.

Chap. 21.

But if anie man, woman, or child, be violently slaine, the murtherer not knowen, no man ought or dare burie the bodie 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 cal here, whosoever he be, man, woman, or childe that violently commeth to his death, whether it be by knife, poyson, cord, drowning, burning, suffocation, or otherwise, be it by his owne fault or default, or by any other) if (I say) the person slaine be buried before the Coroner come^[1] (which for the most part men dare not doe) he doeth cause the bodie to be taken up againe, and to be searched, and upon the sight of the bodie so violently come to his death, he doth empanell an enquest of xij men or mo, of those

which come next by, be they strangers or inhabitantes, which upon their othes, and by the sight or viewe of the bodie, and by such informations as they can take, must search howe the person slaine came to his death, and by whome as the doer or causer thereof. These are not inclosed into a streit place, (as I tolde before of other enquestes) but are suffered to goe at large, and take a day, sometime of^[2] xx or xxx daies, 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 saide Coroner to give their verdict. So sometime the person slaine himselfe, sometime the brother, the husbände, the wife, the sister, some of acquaintance or stranger, such as God wil have reveiled, be taken. For whosoever they doe finde as guiltie of the murder, he is streight committed to prison, and this is against him in the nature of an inditement, which is not a full condemnation, as ye shall see heereafter.

The empanelling of this enquest, and the viewe of the bodie, and the giving of the verdict, is commonly in the streete in an open place, and in *Corona populi*: but I take rather that this name commeth because that the death of everie subject by violence is accounted to touch the crowne of the Prince, and to be a detriment unto it, the Prince accounting that his strength, power, and crowne doth stande and consist in the force of his people, and the maintenaunce of them in securitie and peace.

OF THE CONSTABLES.

Chap. 22.

These men are called in the elder bookes of our lawes of the Realme *custodes pacis*, and were at the first in greater reputation than they be nowe. It may appeare that there was a credit given unto them not altogether unlike that which is now given to the Justices of peace. To this day if any affraie chauce to be made, the Constables ought and will charge them which^[1] be at debate to keepe the Princes peace: and whosoever refuseth to obey the Constable therein, all the people will set streight upon him, and by force make him to render himself to be ordered. Likewise if any be suspected of theft, or receiving, or of murther, or of killing any man,^[2] the Constable may take the^[3] persons, yea enter into any mans house with sufficient power to search for such men till he finde them: and if hee finde^[4] cause keepe the suspected persons in the stockes, or custodie, til he bring them before a Justice of the Peace to be examined. But for so much as everie litle village hath commonly two Constables, and many times artificers, labourers and men of small havor and^[5] abilitie be chosen unto that office, who have no great experience, nor knowledge, nor authoritie, the Constables at this present (although this they may do upon their owne authoritie) yet they seeme rather to be as it were the executors of the commaundement of the Justices of peace. For the Justice of peace as soon as he understandeth by complaint that any

man hath stolen, robbed, slaine, or any servant or labourer without licence hath departed out of his maisters service, or any that liveth idle and suspectly, knowing once in what parish he is, he writeth to the Constable of the parish, commanding him in the Princes name to bring that man before him: the Constable dareth not disobey. The man is brought and examined by the Justice, and if the Justice doe finde cause, hee committeth him to the same Constable to convey him further to the Princes gaole, where the partie must lie till the Justices of peace doe meete either at their quarter sessions, or at their gaole deliverie, and that the lawe 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 manie townes and villages in Fraunce. The Constables are commonlie made and sworne at the Leetes of the Lordes, chosen thereto by the homage, and they keepe that office sometime ij. iij or iiij yeare, more or lesse, as the parish doth agree. What headborow doth betoken it is easily knowne, our language doth declare him as the head or chiefe of the borowe or village: likewise tithing man is the cheife of the tithing. Constable seemeth to me to come of our olde English word *connyng*,^[6] which is King *Connyngstable*,^[7] as ye would saye a man established by the king, for such thinges as appertaineth to pleas of the crowne and conservation of the Kings peace, and as I saide at the first were in some more reputation, approching to that authoritie which the Justices of peace nowe doth holde.

OF THE SESSIONS OF GAOLE DELIVERIE, AND THE DEFINITIVE PROCEEDINGES IN CAUSES CRIMINALL.

Chap. 23.

Howe theeves and murtherers and other malefactors against the crowne and the peace are taken and brought into holde to answer to justice, partly by hue and crie, partly by information, and partly by the diligence of the Justices of peace and the Constables, and howe that at the quarter sessions they be indicted, or else by the Coroners yee have hearde before. Enditement (as yee may perceive by that which is gone^[1] before) is but a former judgement of xij men which be called enquirers, no^[2] definitive sentence, but that which in latin is called *præjudicium*, it doeth but shewe what opinion the countrey hath of the malefactor: and therefore commonly men be indicted absent, not called to it, nor knowing of it. For though a man be endicted, if^[3] when he come to the arainement, there come^[4] no man to pursue further, nor no evidence of witsnesse or other triall and *indices* against him, he is without difficultie acquitted. No man that is once indicted can be delivered without arainement. For as xij have given a prejudice against him, so xij againe must acquite or condemne him. But if the prisoner be not indicted, but sent to prison upon some suspition or suspitious behaviour, and none doe pursue him to the enditement, first being proclaimed thus, A.B. prisoner standeth heere at the barre, if any man can say any thing against him, let him now speake, for the prisoner standeth at his deliveraunce: if no man doe

then come, hee is delivered without any further procÈs or trouble, agreeing first with the gaoler for his fees. And these be called quitte^[5] by proclamation.

Twise everie yeare the one is commonly in lent what time there is vacation from pleading in Westminster hall, the other is in the vacation in summer. The Prince doth sende downe into everie shire of Englande certaine of his Judges of Westminster hall, and some Seargeantes at the lawe with commission to heare and determine joyntly with the Justices of the peace all matters criminall and all prisoners which be in the gaoles. These Judges doe goe from shire to shire till they have doone their circuit of so manie shires as be appointed to them for that yeare: and so other to other^[6] at the ende of the terme going before their circuit it is written and set up in Th'Exchequer^[7] on what day and in what place they will be. That day there meeteth them^[8] all the Justices of the peace of that shire, the sherife of that shire, who for that time beareth their charges, and asketh after allowance for it in the Exchequer and his bailiffs.^[9] The sherife hath readie for criminall causes (as I writ before at the sessions of enquirie^[10]) iij. v. or vj. enquestes readie warned to appeare that day to serve the Prince, and so manie more as he is commaunded to have readie to go in civill matters betwixt private men, which they call *Nisi prius*, because that worde is in the writ ____.^[11]

In the towne house, or in some open or common place, there is a tribunall or place of judgement made aloft upon the highest bench, there sitteth the two or three^[12] Judges which be sent downe in Commission in the midst. Next to^[13] them on eche side, sitteth the Justices of peace, according to their estate and degree. On a lower bench before them, the rest of the Justices of the peace, and some other gentlemen or their clarkes. Before these Judges and Justices, there is a table set on lowe,^[14] where^[15] sitteth the *Custos rotulorum*, or keeper of writtes, Thexchetor, the undershirife, and such clarkes as doe write. At the end of that table sitteth the sheriff of the shire, behind that^[16] there is a barre made, a^[17] space for thenquestes or the xij to^[18] come in when they are called, behind that space another barre, and there stand the prisoners which be brought thither by the gaoler all chained one to another. Then the cryer crieth, and commaundeth silence. One of the Judges briefly telleth the cause of their comming, and giveth a good lesson to the people. Then the prisoners are called for by name, and bidden to aunswere to their names. Which,^[19] when the *Custos rotulorum* hath brought forth their enditements, the Judges do name one or two or three of the prisoners that be^[20] endicted, 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. The clarke goeth on: A.B. thou by the name of A.B. of such a towne, in such a countie, art endicted, that such a day, in such a place, thou hast stolen with force and armes an horse, which was such a^[21] ones, of such a colour, to such a valor, and carried him away feloniously, and contrarie to the peace of our soveraigne Ladie the Queene. What sayest thou to it, art thou guiltie or not guiltie? If he will not aunswere, or not aunswere directly, guiltie or not guiltie, after he hath beene once or twise so interrogated, he is judged mute, that is dumme by contumacie, and his

condemnation is to be pressed to death, which is one of the cruellest deaths that may be: he is layd upon a table, and an other uppon him, and so much weight of stones or lead laide uppon that table, while as his bodie 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 of felonie, his bloud is not corrupted, his lands nor goods confiscate to the Prince, which in all cases of felonie are commonly lost from him and his heires, if he be forejudged, that is condemned for a felon by the lawe. If he confesse the enditement to be true, then when he is arraigned, no xii. men goeth upon him, there resteth but the Judges sentence of the paine of death.

If he pleade not guiltie, as commonly all theeves, robbers, and murtherers doe, though they have confessed the fact before the Justice of the peace that examined them, though they be taken with the maner, which in Latine they call *in flagranti crimine*, howsoever it be, if he pleade there not guiltie, the Clarke asketh him how he will be tryed, and telleth him he must saie, by God and the Countrie, for these be the words formall of this triall after Inditement, and where the Prince is partie: if the prisoner doe say so, I will be tryed by God and the Countrie, then the Clarke replyeth, Thou hast beene endicted of such a crime, &c. Thou hast pleaded not guiltie: being asked how thou wilt be tryed, thou hast answered by God and by the Countrie. Loe these honest men that be come here, be in the place and stead of thy^[22] Countrie: and if thou hast any thing to say against^[23] any of them, looke upon them well and nowe speake, for thou standest upon thy life and death. Then calleth he in the first^[24]: B.C. come to the booke, and so giveth him an othe to goe uprightlie betwixt the Prince and the prisoner, &c. If the prisoner objecteth nothing against him, he calleth an other, and so an other, till there be xii. or above: and for the most part the prisoner can say nothing against them, for they are chosen but for that day, and are unknowen to him, nor they know not him, as I said before^[25] being substantial yeomen, that dwell about the place, or at the least in the hundred, or neere where the felonie is supposed to be committed, men acquainted with daily labour and travaile, and not with such idle menne,^[26] as be readie to doe such mischiefes.

When the enquest is full, and the prisoner hath objected nothing against them, as in deede seldome he doeth, for the cause above rehearsed: The clarke saith to the cryer, *countes*, (in French as ye would say reckon) and so nameth all those that be on the quest. The crier at everie name cryeth aloude, one, then ii. iii. iiii. and so till the number be full of xii. or more, and then saith good men and true: and then sayth aloude: If any can give any^[27] evidence, or can saie any thing against the prisoner, let him come nowe, 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 he tooke of him, and underneath the names of those whom he hath bound to give evidence. If none come in to give evidence^[28] although the malefactor hath confessed the crime to the Justice of the peace, and that appeare by his hande and confirmation, the xij. men will acquite the prisoner, but they which should give

evidence pay their recognizance. Howbeit this doth seldome chaunce, except it be in small matters, and where the Justices of peace, who sent the prisoner to the gaole, is away. If they which be bound to give evidence come in, first is read the examination, which the Justice of peace doeth give in: then is heard (if he be there) the man robbed what he can say, being first sworne to say trueth, and after the Constable, and as many as were at the apprehension of the malefactor: and so many as can say anything being sworn one after an other to say truth. These be 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 first after they be sworne, asketh first the partie robbed, if he knowe the prisoner, and biddeth him looke upon him: he saith yea, the prisoner sometime saith nay. The partie pursuivaunt giveth good ensignes *verbi gratia*, I knowe thee well ynough, thou robbest me in such a place, thou beatest mee, thou tookest my horse from mee, and my purse, thou hadst then such a coate and such a man in thy companie: the theefe will say no, and so they stand a while in altercation, he^[29] telleth al that he 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 ynough, he asketh if they can say any more: if they say no, then he turneth his speeche to the enquest. Good men (saith he) ye of the enquest, ye 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 othe, and to your duetie, to God and the Prince^[30] and doe that which God shall put in your mindes to the discharge of your consciences, and marke well what is saide. Thus sometime with one enquest is passed to the number of ij. or iij. prisoners: For if they should be charged with more, the inquest will say, my Lord, we pray you charge us with no more, it is ynough for our memorie. Many times they are charged but with one or two. At their departing, they have in writing nothing given them, but the enditement, the clarke repeating to them the effect of it, and shewing more, that if they finde him guiltie, they shall enquire what goods, lands, and tenements, the saide person had at the time of the felonie committed: and if they finde any, they shall bring it in: if no, they shal say so. If they finde him not guiltie, they shall enquire whether he fled for the felonie or no.

And there is a bailife to waite upon them, and to see that no man doe speake with them, and that they have neither bread, drinke, meate, ne 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 saide, or would heare againe some of them that give evidence to interrogate them more at full, or if any that can give evidence come late: it is permitted that any that is sworne to say the trueth, may be interrogated of them to enforme their consciences. This is to be understood^[31] although it will seeme straunge to all nations that doe use the civill Lawe of the Romane Emperours, that for life and death there is nothing put in writing but the enditement onely. All the rest is doone openlie in the presence of the Judges, the Justices, the enquest, the prisoner, and so manie as will or can come so neare as to heare it, and all depositions and witnesses given aloude, that all men may heare from the mouth of the depositors and witnesses what is saide. As of this, so is of^[32] all other prisoners after the same sort. By that time that the enquests for the prisoners be dispatched,

it is commonlie dinner time, the Judges and Justices goe to dinner, and after dinner returne to the same place: if the enquest be not readie 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 Bailife, and pray to be heard, and considering that they be themselves all this while as prisoners as I saide before, it is no marvell.^[33] The prisoners be sent for againe to the barre, the enquest which hath agreed, is called for eche one of the Jurie by his name, to which he answereth. Then the clarke asketh if they be agreed, and who shall speake for them. One or moe saith yea. He that speaketh for them all is called for foreman, and commonlie it is he that is first sworne: then the prisoner is bidden to holde up his hande. The clarke saith unto him, Thou art endicted by the name of A. of such a place, &c. being therefore arraigned thou pleadest thereto not guiltie, being asked howe thou would be tryed, thou saydst by God and thy countrie. These honest men were given to thee by God and thy Prince for thy Countrey: Hearken what they say. Then he asketh of the enquest, what say you? Is he guiltie or not guiltie? The foreman maketh aunswere in one worde, guiltie, or in two, not guiltie: the one is deadlie, the other acquiteth the prisoner. So that neither Judge nor Justice hath to doe, or can reverse, alter or chaunge that matter. If they say guiltie, the clarke^[34] asketh what landes, tenements, or goods, the prisoner had at the time of the felonie committed, or at any time after. Commonlie it is aunswered they^[35] knowe not, nor it shall not greatly neede, for the Sherife is diligent enough to enquire of that, for the Princes and his owne advantage, and so is the excheator also.

Of him whom the xij. men pronounce guiltie, the Judge asketh what he can now^[36] say for himself: if he can reade, he demaundeth his Clergie. For in many felonies, as in theft of oxen, sheepe, money, or other such things, which be 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 Lawe, that for the first fault the felon shalbe admitted to his Clergie, for which purpose the Bishop must send one with authoritie under his seale to be Judge in that matter at everie gaole deliverie. 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 as well as he can (God knoweth sometime very slenderly:) then asketh^[37] of the Bishops commissarie, *legit ut clericus*? The commissarie must say *legit* or *non legit*, for these be wordes formall, and our men of Lawe be verie precise in their words formall.^[38] If he 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 doone by word of mouth onelie: Thou A. hast beene endicted of such a felonie and thereof arraigned, thou hast pleaded not guiltie, and put thy selfe upon God and thy Countrey, they have found thee guiltie, thou hast nothing to say for thy selfe, the Lawe is, thou shalt first returne to the place from whence thou camest, from thence thou shalt goe to the place of execution, there thou shalt hang till thou be dead. Then he saith to the Sherife, Sherife doe execution: he that claimeth his Clergie, is burned foorthwith in the presence of the Judges in the brawne of his hand with a hot yron marked with the letter T. for a theefe, or M. for a mansleer, in cases where Clergie is admitted, and delivered^[39] to the Bishops officer to be kept in the

Bishops prison, from whence after a certaine time by an other enquest of Clarkes he is delivered and let 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 foorthwith and discharged of prison, paying the gaolers fees: and if he knowe any private man who purchased his inditement, and is able to pursue it, may^[40] have an action of conspiracie against him, and a large amendes: but that case chaunceth seldome.

CERTAIN E ORDERS PECULIAR TO ENGLAND, TOUCHING PUNISHMENT OF MALEFACTORS.

Chap. 24.

For any felonie, manslaughter, robbetrie, murther, rape, and such capitall crimes as touch not treason and *LÆsam maiestatem*, we have by the Lawe of England no other punishment, but to hang till they be dead: when they be dead, everie man may burie them that will, as commonly they be. Heading, tormenting, demembring, either arme or legge, breaking upon the wheele, empailing, and such cruell torments, as be used in other nations by the order of their law, we have not: and yet as few murthers committed as any where: nor it is not in the Judges or the Justices power, to aggravate or mitigate the punishment of the Lawe, but in the Prince onely and his privie Counsell, which is marvellous seldom done. Yet notable murtherers many times by the Princes commaundement, after they be hanged with corde till they bee dead, bee hanged with chaines while they rotte in the ayre. If the wife kill her husbände, shee shall bee burned alive. If the servaunt kill his master, hee shalbee drawen on a hurdle to the place of execution: it is called *petit treason*. Impoisoners, if the person die thereof, by a new lawe made in King *Henrie* the eights time shalbe boyled to death: this^[1] mischiefe is rare and almost unknowen in England. Attempt^[2] to impoison a man, or laying await to kill a man, though he wound him dangerously if^[3] death followe not, is no felony by the lawe of Englande, for the Prince hath lost no man, and life ought to be given we say, but for life only. And againe, when a man is murdered, all be principals and shall die, even he that doth but hold the candel to give light to the murderers. For mitigation and moderation of paines, is but corruption of Judges, as we thinke. Likewise, torment or question which is used by the order of the civill lawe and custome of other countreis to put a malefactor to excessive paine, to make him confesse of him selfe, or of his felowes or complices, is not used in England, it is taken for servile. For what can he serve the common wealth after as a free man, who hath his bodie so haled and tormented, if he be not found guiltie, and what amends can be made him? And if he 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 tryall of the xii goeth not upon him: If he denie the fact, that which he saide before hindereth him not. The nature of English men is to neglect death, to abide no torment: And therefore he will confesse rather to have done any thing, yea, to have killed his own father, than to suffer torment, for death our nation doth not so much esteem as a mean torment. In no

place shal you see malefactors go more constantly, more assuredly, and with lesse lamentation to their death than in England. Againe, the people not accustomed to see such cruell torments, will pitie the person tormented, and abhorre the Prince and the Judges, who should bring in such crueltie amongst them, and the xij. men the rather absolve him. There is an olde lawe of England, that if any gaoler shall put any prisoner being in his custodie to any torment, to the intent to make him an approver, that is to saie an accuser or *Index* of his complices, the gaoler shall dye therefore as a felon. And this is enquired upon in every session.^[4] And to say the trueth, to what purpose is it to use torment? For whether the malefactor confesse or no, and whatsoever he saith, if the enquest of xij. do find him guiltie, he dyeth therefore without delaye. And the malefactours,^[5] seeing there is no remedie, and that they be men of whom they have agreed themselves who do^[6] finde them worthie death, yeeldes for the most part unto it, and doeth not repine, but doth accommodate them^[7] selfe to aske mercie of God. The nature of our nation is free, stout, haultaine,^[8] prodigall of life and bloud: contumelie,^[9] beatings, servitude and servile torment and punishment it will not abide. And^[10] so in this nature and fashion, our auncient Princes and legislators have nourished them, as to make them stout hearted, courageous and souldiers, not villaines and slaves, and that is the scope almost of all our policie. The xij. as soone as they have given their verdict are dismissed to goe whither they will, and have no manner commoditie and profit of their labour and verdict, but onely the^[11] service of^[12] the Prince and common wealth.

OF TREASON, & THE TRIAL WHICH IS USED FOR THE HIGHER NOBILITIE AND BARONS.

Chap. 25.

The same order touching trial by enquest of xij men is taken in Treason, but the paine is more cruell. First to be hanged, taken downe alive, his bowels taken out and burned before his face, then to be beheaded, and quartered, and those set up in diverse places. If anie Duke, Marques, or any other of the degree of a Baron, or above, Lord of the Parliament be appeached of treason, or any other capitall crime, he is judged by his peeres and equals: that is, the yeomanrie doth not go upon him, but an enquest of the Lordes of the Parliament, and they give their voice, not one for all, but eche severally as they do in Parliament, beginning at the yongest Lord. And for Judge one Lord sitteth, who is Constable of England 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.

THE THIRDE BOOKE.

OF THAT WHICH IN OTHER COUNTRIES IS CALLED APPELLATION, OR PROVOCATION, TO AMEND THE JUDGEMENT OR SENTENCE DEFINITIVE, WHICH IS THOUGHT UNJUSTLY GIVEN IN CAUSES CRIMINALL.

Chap. 1.

If the enquest of xii men do seeme to the Judges and the Justices to have gon too violently against the evidence given in matters criminall, either it is that upon slender evidence they have pronounced him gilty, whom the Judges and most part of the Justices thinks by the evidence not fullie proved gilty, or for some other cause, do thinke the person rather worthie to live than to die. The enquest is neverthelesse dismissed: but when the Judges should pronounce the sentence of death upon the person found gilty, he will differ 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: for^[1] as for provocation and^[2] appeale which is used so much in other countries, it hath no place in England, after sentence given by the xii, whereby the person is founde gilty or not gilty: but without that reprovng the sentence is streight put in execution by the sherife. And if the sheriff should deferre the execution and the prisoner^[3] either escape^[4] or die an other death, the sherife escapeth not to paie a great fine and ransom at the Princes mercie: if having pregnant evidence neverthelesse the xii doe acquite the malefactor, which they will doe sometimes, and especially if they perceive either one of the Justices, or of the Judges, or some other man to pursue too much and too malitiously the death of the prisoner, and doe suspect some subornation of the witness, or them which doe give evidence, and sometime if they perceive the Judge would have the prisoner escape, and in repeating the evidence doe give them thereof some watchworde. But if they doe as I have saide, pronounce not gilty the^[5] prisoner against whome manifest witness is brought in, the prisoner escapeth: but the xii not onely be rebuked by the Judges, but also threatned of punishment, and many times commaunded to appeare in the starre chamber, or before the privie counsell for the matter. But this threatning chaunceth oftener than the execution thereof, and the xii answer with most gentle wordes, they did according^[6] to their consciences, and pray the Judges to be good unto them, they did as they thought right, and as they accorded all, and so it passeth away for the most part. Yet I have seene in my time (not^[7] in the raigne of the Queene nowe) that an enquest for pronouncing one not gilty of treason contrarie to such evidence as was brought in, were not onely imprisoned for a space, but an houghe fine set upon their heads, which they were faine to pay: An other enquest for acquiring an other, beside paying a fine of money, put to open ignominie and shame. But those doinges were even then of many accounted verie violent, and^[8] tyrannical, and contrarie to the libertie and custome of the realme of England. This^[9] commeth verie 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 parcialitie, as others be.

WHAT REMEDIE IS, IF THE SENTENCE BE THOUGHT UNJUSTLY GIVEN.

Chap. 2.

In causes civill there is an other order: for if after the matter be pleaded to the issue, and the xij men thereupon impaneled, the evidence brought and pleaded before them on both the parties, the xij seeme to be parciall, and to have given sentence contrarie to the evidence shewed unto them: the partie greeved may bring against them, and the partie for whome the sentence is given, a writ of attainit; where before^[1] upon the first quest commonly they all be yeomen, now upon this attainit must go xxiiij gentlemen dwelling within the shire, and xij at the least of the hundreth where the lande lyeth. The matter is pleaded againe before the same Judges. The partie defendand is not onely nowe he, who claimeth the lande, but also all and every of the yeomen, who by their verdict did give it him. There must in the attainit no more evidence be brought in, but onely that which was brought in, and alledged before the first enquest. And if this seconde enquest of xxiiij gentlemen do adjudge as the first did, the plaintife shall not onely lose the land, but also paie a fine to the Prince and damages to the partie. If this seconde enquest do finde that the first enquest hath gone partially, and against the evidence brought in before them, the first enquest is called attainited, and accounted as perjured and infamed. The Prince had before yereday and waste^[2] of all their lands and possessions with other punishments, which at this present by a lawe made by parliament in the time of king *Henrie* the eight is abolished, and nowe by that law or act of parliament, beside other punishment, eche of the quest attainited payeth unto the Prince^[3] v. li.^[4] Attainits be verie seldome put in use, partly because the gentlemen will not meete to slaunder and deface the honest yeomen their neighbours: so that of a long time, they had rather paie a mean fine than to appeare to^[5] make the enquest. And in the meane time they will intreat so much as is in them^[6] the parties to come to some composition and agreement among them selves, as lightly they do, except either the corruption of the enquest is^[7] too evident, or the one partie is too obstinate and headstrong. And if the gentlemen do appeare, gladlyer they will confirme the first sentence, for the causes which I have saide, than go against it. If^[8] the corruption be too much evident, they will not sticke to attainit the first enquest: yet after the gentlemen have attainited the yeomen, if before the sentence be given by the Judge (which ordinarily for a time is differred) the parties be agreed, or one of them be dead, the attainit ceaseth.

If at anie time before the sentence be given or put in execution, there be found some such error in the writ, in the proces, or forme (as our lawyers be verie precise and curious of their formes)

that it may be revocable, it is revoked^[9] afresh to the dispute^[10] by a writ of error, and all that is doone 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 Englande and in other places aswell in causes criminall, as civill.

Other kinde of appellation to revoke processes, and to make them of short, long, of long, infinite, which is used by the civill lawe, we have not in our common lawe of Englande. By supplication to the Prince and complaint to the Chauncellor upon supposall of losse or lacke of evidence, or too much favour in the countrey, and power of the adversarie, there is in our countrey as well as theirs both stopping and prolongation of Justice. For what will not busie heades and lovers of trouble never satisfied^[11] invent in any countrey to have their desire, which is to vex their neighbours, and to live alwaies in disquiet? Men permitted^[12] of God like flies, and lise, and other vermine to disquiet them, who would imploie themselves upon better businesse and more necessarie for the common wealth: these men are hated, and feared of their neighbours, loved and aided of them which gaine by procÈs, and waxe fatte by the expence and trouble of other. But as these men ordinarily spende their owne thrift, and make others against their wils to spende theirs: so sometime being throughly knowen, they do not onely live by the losse like evill husbandes, but beside rebuke and shame, by the equitie of the Prince and courtes soveraigne, they come to be extraordinarily punished, both corporally, and by their purse, which thing in my minde is as royall and princely an act, and so beneficiall for^[13] the commonwealth, as in so small a matter a King or a Queene can doe, for the repose and good education of their subiectes.

OF THAT WHICH IN ENGLAND IS CALLED APPEALE, IN OTHER PLACES ACCUSATION.

Chap. 3.

If any man hath killed my father, my sonne, my wife, my brother, or next kinsman, I have choice to cause him to be endicted, by giving information to the enquest of enquire, (although he chauce to escape the Constable or Justices handes, and therefore not to be apprehended) and constitute prisoner not to be outlawed: yet^[1] within a yeere and a day I may enter my appeale, that is mine accusation against him. If I begun first to pursue him by information or denunciation to enditement, I am nowe no partie but the Prince, who for his duetie to God and his common wealth and subjects, must see justice executed against all malefactors and offenders against the peace, which is called Gods and his, and doeth in such maner as I have saide before. If I leave that and will appeale, which is profess^[2] accusation against him who hath doone to me this injurie, the defendant hath this advauntage to put himselfe to the Grande Assize^[3] which is to

that which before is saide to have that issue and triall by God and his countrie, whereof the fashion I have at large declared: or to demaunde the triall by battle, wherein both the parties must eyther themselves in person, or else finde other for them, who be called in our Law Champions or Campions, some doeth interprete them, because they be men chosen, fat, lustie, fit to the feate, or as the *Frenche* doe terme them *adroicts aux armes*, which shall fight it out by, or as now they doe call it *duellum*, or the campe, which shall have all things equall: but according as *Mars* giveth the victorie, so the Lawe is judged the one as *peractus reus*, the other as^[4] *calumniator* to suffer the paine of hanging.^[5] So that as well as^[6] by the great assise there is no appellation but death to the one or to the other, *Marye*^[7] this is more daungerous and equall, for the one or the other must die. So it is not in the grande assise, for the *reus* or defendaunt is onely in daunger of death. Short it is from day to sunne set, the quarell is ended, or sooner who hath the better fortune. This seemeth very militarie (as in maner all our policie of Englande) to^[8] have as small to doe with Lawyers as with Phisitions, quicklie to dispatche, and for the rest to rerurne, eche man to his businesse, 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 of triall and judgement, as reason is everie man misliketh that which is not like to his education; and colde reasoning by Theologie and Philosophie much mislikes^[9] many things doone necessarily in whot policie. At the least a common wealth militarie must adventure many things to keepe it in quiet, which cannot seeme so precisely good to them which dispute thereof in the shadowe and their^[10] studies: Howsoever it be, this kinde of triall of long time hath not beene used. So that at this time we may rather seeke the experience of it out of our histories of time passed, than of any viewe or sight thereof, of them which are nowe alive. Neverthesse the Lawe remaineth still, and is not abolished, and if it shall chauce the murtherer or mansleer (the one we call him that lyeth in waite, and as they terme it in *Frenche* *de guet appendaunt* killeth the man, the other who by casuall falling out and sodaine debate and choller doeth the same which way soever it be doone) if he that hath slaine the man, hath his pardon of the prince, as occasion may so present or the favour of the Prince^[11] that he may have it, yet the partie grieved hath these two remedies, I say to require justice by grande assise, or battle upon his appeale and private revenge, which is not denied him. And if the defendant either by great assise or by battle be convinced upon that appeale, he shall die, notwithstanding the Princes pardon. So much favourable our Princes be, and the lawe of our Realme, to justice and to the punishment of blood violently shed.

OF THE COURT OF STARRE CHAMBER.

Chap. 4.

There is yet in Englande an other court, of the which that I can understand there is not the like in any other Countrie. In the Terme time (the Terme time as I have heretofore shewed, I call the

time and those daies when the Lawe is exercised in Westminster hall, which as I have said is but at certaine times and termes) every weeke once at the least, (which is commonly on the^[1] Fridaies, or^[2] Wednesdaies, and the next day after that the terme doeth ende,) the Lorde Chauncellor, and the Lordes and other of the privie Counsell, so many as will, and other Lordes and Barons which be not of the Privie Counsell, and be in the towne, and the Judges of England, specially the two chiefe Judges, from ix. of the clocke till it be xj. 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 rooffe thereof was decked with images of starres gilted. There is plaints heard of riots. Riot is called in our English terme or speache, where any number is assembled by^[3] force to doe any thing: and it had the beginning, because that our nation^[4] being much accustomed to be^[5] either in foreine wars, in Fraunce, Scotland, or Ireland, and too much accustomed to^[6] civill warres within themselves^[7] (which is the fault that falleth ordinarily amongst bellicous nations) and where^[8] men of warre, Captaines and souldiers be^[9] plentifull: which when they have no externe warres^[10] wherewith to occupie their buisie heads and handes accustomed to fight and quarell, must needes seeke quarels and combattes^[11] amongst themselves. So much impatient of injury and right as they were wont to do all injury they could before with praise of manhoode, to their enemies.^[12] Our^[13] nation used hereunto, and upon that more insolent at home, and not easie to be governed by Lawe 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, that no man should have above a number in his Liverie or retinue: then of the enquire at everie Sessions of routs and riots^[14] and of the lawe whereby it is provided that if any by force or by riot enter upon any possessions, the Justices of the peace shall assemble themselves and remoove the force, and within certain time enquire of the Ryott.^[15] And further, because such things are not commonlie done by meane men, but such as be of power and force, and be not to be dealt with^[16] of everie man, nor of meane Gentlemen: if the riot be found and certified to the Kings Counsell, or if otherwise it be complained of, the partie is sent for, and he must appeare in this starre chamber, where seeing (except the presence of the Prince onely) as it were the maiestie of the whole Realme before him, being never so stoute, he will be abashed: and being called to aunswere (as he must come of what degree soever he be) he shall be so charged with such gravide, with such reason and remonstrance, one^[17] of those chiefe personages of Englande after^[18] an other handling him on that sort, that what courage soever he hath, his heart will fall to the grounde, and so much the more, when if he make not his aunswere the better, as seldome he can so in open violence, he shalbe commaunded to the Fleete, where he shall be kept in prison in such sort as these Judges shall appoint him, lie there till he be wearie aswell of the restraint of his libertie, as of the great expences, which he must there sustaine, and for a time be forgotten, whiles after long suite of his friends, he will be glad to be ordered by reason. Sometime as his deserts be he payeth a great fine to the Prince, besides great costs and dammages to the partie, and yet the matter wherefore he attempteth this riot and violence remitted^[19] to the common lawe. For that is the effect of this Court to bridle such stoute noble men, or Gentlemen which would offer wrong by force to any manner man,^[20] and cannot be content to demaund or defend their^[21] right by order of lawe. This court began long before, but tooke great augmentation and authentic at that time that Cardinall *Wolsey* Archbishop of Yorke was Chauncellor of Englande, who of some was thought to have first devised that^[22] 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 insolencie of the noble men and gentlemen of the North partes of Englande, who being farre off^[23] from the King and the seate of iustice made almost as it were an ordinarie warre among themselves, and made their force their Lawe, banding themselves with their tenaunts and servaunts to doe or revenge injurie one against another as they listed. This thing seemed not supportable to the noble prince King *Henrie* the eight: and sending for them one after another to his Court to aunswere before the persons before named, after they had had good^[24] remonstrance, shewed them of their evill demeanor, and beene 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 lawes and obedience. Sith that time this court hath beene in more estimation, and is continued to this day in manner as I have saide before.

OF THE COURTS OF WARDS AND LIVERIES.

Chap. 5.

He whom we call a ward in Englande, is called in Latine *pupillus*, and in Greeke . The gardian is called in Latine *tutor*, in Greek . A warde or orphan^[1] is taken for a childe in base age, whose father is dead. The Romanes made two distinctions *pupillum* & *minorem*, the one to xiiij. yere old, the other was accounted from thence to xxv. And as *pupillus* had *tutorem*, so *minor* had *curatorem* til he came to the age of xxv. These tutors or curators were countable^[2] for the revenues of the minors^[3] lands, and great provision and many lawes and orders is made for them in the bookes of the civil Lawe, for rendering of^[4] just and true accounts. So that to be a gardian or tutor was accounted among them to be a charge or trouble, a thing subject to much encumbrance and small profite, so that diverse meanes were sought for, to excuse men from it. With us this is cleane contrarie, for it is reckoned a profite to have a warde. For the Lorde upon^[5] whom the warde doeth hold the lande, so soone as by death^[6] of the father the childe falleth warde unto him, he seaseth upon the body of the person^[7] and his landes, of which (so that he doeth nourish the warde,) he taketh the profite without accounts, and beside that offering to his warde covenable mariage without dispergement before the age of xxj. yeres if it be a man, of xiiij. if it be a woman. If the ward refuse to take that mariage, he or she must pay the value of the mariage, which is commonly esteemed by^[8] the profite of years of^[9] his landes. All this while I speake of that which is called in French *garde noble*, for that is of such as holde lands of an other,^[10] by knight service, for that is an other kinde of wardship^[11] which is called^[12] in French *gard returier*, we call it ward^[13] in socage, that is of such as doe not holde by knight service, but by tenure of the plough. This wardship falleth to him who is next of the kinne, and cannot inherite the land of the warde as the uncle by the mothers side, if the land doe discend by the father, of^[14] the fathers side, if the lande discend by the mother. This gardian is countable^[15] for

the revenues and profites of the lande, as the tutor by the civill Lawe to the warde or pupill so soone as he is of full age.

The man is not out of wardshippe by our lawe till xxj. yere olde, from thence he is reckoned of full age, aswell as in the Romane lawes at xxv. The woman at xiiij. is out of warde, for she may have an husband able to doe knightes service say our bookes. And because our wives be in the power (as I shall tell you hereafter) of their husbands, it is no reason, she should be in two diverse gards.

Many men doe esteeme this wardship by knightes service verie unreasonable and unjust, and contrarie to nature, that a Freeman and Gentleman should be bought and solde like an horse or an oxe, and so change gardians as masters and lordes: at whose governement not onely his bodie but his landes and his houses should be, to be wasted and spent without accounts, and then to marie at the will of him, who is his naturall Lorde, or his will who hath bought him, to such as he like not peradventure, or else to pay so great a ransome. This is the occasion they say, why many gentlemen be so evil brought up touching vertue and learning, and but onely in deintinesse and pleasure: and why they be married very young and before they bee wise, and many times do not greatly love their wives. For when the father is dead, who hath the natural care of his childe, not the mother, nor the unckle, nor the next of kinne, who by all reason would have most naturall care to the bringing up of the infant and *minor*, but the Lorde of whom he holdeth his land in knights service, be it the King or Queene, Duke, Marquesse, or any other, hath the governement of his bodie and mariage, or else who that bought him at the first, second or thirde hande. The Prince as having so many, must needes give or sell his wardes away to other, and so he doeth. Other doe but seeke which way they may make most advauntage 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 warde to take any great paines, either in studie, or any other hardenesse, least he should be sicke and die, before he hath married his daughter, sister or cousin, for whose sake he bought him: and then all his money which he paide for him should be lost. So he, who had a father, which kept a good house, and had all things in order to maintaine it, shall come to his owne, after he is out of wardshippe, woods decayed, houses fallen downe, stocke wasted and gone, land let foorth and plowed to the bare^[16] and to make amends, shall pay yet one yeres rent for reliefe and^[17] *ouster le maind*, beside other charges, so that not of manie yeres and peradventure never he shall be able to recover, and come to the estate where his father left it. This as it is thought was first graunted upon a great extremitie to King *Henrie* the 3. for a time upon the warre which he had with his Barons, and afterward increased, and multiplied to more and more persons and grievances, and will be the decay of the nobilitie and libertie of England. Other againe say, the warde hath no wrong. For eyther his father purchased the lande, or it did discend unto him from his auncesters with this charge. And because he holdeth by knightes services, which is in armes and defence, seeing that by age he cannot doe

that whereto hee is bound by his lande, it is reason he aunswere that profite to the Lorde, whereby he may have as able a man to doe 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 widowes and wards, as appeareth by *Titus Livius*, because that those persons could not doe bodilie service to the common wealth. Wherefore this is no new thing, but thought reasonable in that most wise common wealth, and to the prudent King *Servius Tullius*. As for the education, our^[18] common wealth, was^[19] at the first *militaire*, and almost in all things the scope and deseigne thereof is *militaire*. It was^[20] thought that most like, that noble men, good knights, and great captaines would bring up their wards in their owne feates and vertues, and then mary them into like race^[21] and stocke where they may finde and make friendes, who can better looke to the education or better skill of the bringing up of a gentleman, than he who for his higher nobilitie hath such a one to holde of him by knights service, or would doe it better than he that looketh or may claime such service of his ward, when age and yeres will make him able to doe it. That which is saide that this manner of wardship began in the time of King *Henrie* the 3 cannot seeme true. For in Normandie and other places of Fraunce the same order is.

And that statute made in King *Henrie* the thirds time touching wards, to him that will wey it wel, may seeme rather a qualification of that matter, and an argument that the fashion of wardship was long before: but of this matter an other time shall be more convenient to dispute. This may suffice to declare the maner of it.

OF WIVES AND MARIAGES.

Chap. 6.

The wives in Englande be as I said *in potestate maritorum*, not that the husbände hath *vita ac necis potestatem*, as the Romans had in the olde time of their children, for that is onely in the power of the Prince, and his lawes, as I have saide before, but that whatsoever they have before mariage, as soone as mariage is solemnished is their husbändes, I meane of money, plate, juelles, cattaile, and generally all moveables. For as for lande and heritage followeth the succession, and is ordered by the Lawe and fee^[1] as I shall say heereafter: and what soever they gette after mariage, they get to their husbändes. They neither can give nor sell anie thing either of her^[2] husbändes, or hers.^[3] Hers^[4] no moveable thing is by the law of England *constanti matrimonio*, but as *peculium servi aut filij familias*: and yet in moveables at the death of her husbände she can claime nothing, but according as hee shall will by his Testament, no more than his sonne can: all the rest is in the disposition of the executors if he die testate. Yet in London and other great cities they have that lawe and custome, that when a man dieth, his goods be divided into three partes. One thirde is employed upon the buriall and the bequestes which the testator

maketh in his testament. An other thirde part the wife hath as her right, and the thirde third part is the dewe and right of his children, equally to be divided among them. So that a man there can make testament but of one thirde of his goods: if he die intestate, the funerals deducted,^[5] the goods be equally divided betwixte^[6] the wife and the children.

By the common lawe of Englande if a man die intestate, the Ordinarie (which is the Bishoppe by common intendment) sometimes the Archdeacon, Dean, or Prebendarie by privileged and prescription, doeth commit the administration of the goods to the widowe or the child, or next kinsman of the dead, appointing out portions to such as naturally and by common understanding such gratuitie is due according to his discretion,^[7] for the most part following such division as is used in London, either by thirdes or halfes. Our forefathers newly converted to the Christian faith had such confidence in their preachers^[8] and instructours and tooke them to be men of such conscience that they committed that matter to their discretion, and belike at the first they were such that they^[9] would seeke no private profit to themselves thereby, that they^[10] once so ordeined hath still so continued. The abuse which hath followed was in part redressed by certaine actes of parliament made in the time of King *Henrie* the eight, touching the probate of testaments committing of administration and mortuaries. But to turne to the matter which we nowe have in hande, the wife is so much in the power of her husband, that not onely her goods by marriage are streight made her husbandes, and she looseth all her administration which she had of them: but also where all English men have name and surname, as the Romans had, *Marcus Tullius, Caius Pompeius, Caius Iulius*, whereof the name is given to us at the font, the surname is the name and the gentilitie and stocke the^[11] which the sonne doth take of the father alwaies, as the olde Romans did, our daughters so soone as they be married loose the surname of their father, and of the family and stocke whereof they doe come, and take the surname of their husbands, as transplanted from one^[12] family into another. So that if my wife was called before *Philippe Wilford* by her owne name and her fathers surname, as^[13] soone as she is married to me she is no more called *Philippe Wylford*, but *Philippe Smith*, and so must write^[14] and signe: and as she changeth husbandes, so she chaungeth surnames, called alwaies by the surname of her last husbande. Yet if a woman once marrie a Lorde or a Knight, by which occasion she is called my Ladie with the surname of her husbande, if he die and she take a husbande of a meaner estate by whom she shall not be called Ladie (such is the honour we doe give to women) she shall still be called Ladie with the surname of her first husbande and not of the seconde.

I thinke among the olde Romans those marriages which were made *per cæmptionem in manum*, and *per ces* and *libram* made the wife *in manu & potentate viri*, wherof also we had in our olde ceremonies^[15] of mariage, a certaine memorie as a viewe and *vestigium*. For the woman at the Church dore was given of the father or some other man next of her kinne into the handes of the husbande, and he layde downe golde and silver for her upon the booke, as though he did buy her, the priest belike was in steede of *Libripeus*:^[16] our manages be esteemed perfect by the law of

England, when they be solemnished in the Church or Chappell, in the presence of the priest and other witnesses. And this only maketh both the husbände and the wife capable of all the benefites which our lawe doth give unto them and their lawefull children. In so much that if I marie the widowe of one lately dead, which at the time of her husbandes death was with childe, if the childe be borne after mariage solemnished with me, this childe shalbe my heire, and is accounted my lawefull sonne, not his whose childe it is in deede, so precisely wee doe take the letter where it is saide, *pater est quem nuptiÆ demonstrant*. Those waies and meanes which *Justinian* doth declare to make bastardes to be lawefull children, *muliers* or rather *melieurs* (for such a terme our lawe useth for them which be lawefull children) be of no effect in England, neither the Pope nor Emperour, nor the Prince himselfe never could there legitimate a bastarde to enjoy any benefitte of our lawe, the Parliament hath onely that power.

Although the wife be (as I have written before) *in manu & potentate mariti*, by our lawe yet they be not kept so streit as in mew and with a garde as they be in Italy and Spaine, but have almost as much libertie as in Fraunce, and they have for the most part all the charge of the house and houshoulde (as it may appeare by *Aristotle* and *Plato* the wives of Greece^[17] had in their time) which is in deede the naturall occupation, exercise, office and part of a wife. The husband to meddle with the defence either by lawe or force, and with all foren matters which is the naturall part and office of the man, as I have written before. And although our lawe may seeme somewhat rigorous toward the wives, yet for the most part they can handle their husbandes so well and so doulcely, and specially when their husbands be sicke: that where the lawe giveth them nothing, their husbandes at their death of their good will give them all. And fewe there be that be not made at the death of their husbandes either sole or chiefe executrixes of his last wil 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 citie much after the fashion of the civill lawe.

All this while I have talked^[18] onely of moveable goods: if the wife be an enheretrix and bring lande with her to the mariage, that lande descendeth to her eldest sonne, or is divided among her daughters, as the manner is of the lande which the husband bringeth to the mariage or purchaseth afterwarde. The husbände can not sell nor alienate his wifes land,^[19] no not with her consent, nor she her selfe during the mariage, except that she be sole examined by a Judge at the common lawe: and if he have no childe by her and she die, the lande goeth to the^[20] next heires at the common lawe: Marye^[21] if in the mariage he have a child by her, which is heard once crie,^[22] whether the childe live or die, the husbände shall have the usufruit of her landes, (that is the profite of them during his life) and that is called the courtisie of Englande.

Likewise if the husbände have any lande either by inheritance descended or purchased and bought, with his money^[23] if hee die before the wife, she shall have the usufruite of one thirde part of his landes. [That is, she shall holde the one thirde part of his landes]^[24] during her life as her dowrie, whether he hath child by her or no. If he hath any children, the rest descendeth streight to him:^[25] if he hath none, to the next heire at the common lawe: and if she mislike the division, she shal aske to be indowed of the fairest of his landes to the thirde part.

This which I have written touching mariage and the right in moveables and unmoveables which commeth thereby, is to be understood^[26] by the common law when no private contract is not^[27] more particularly made. If there be any private pacts, covenants, and contracts made before the mariage betwixt the husbände and the wife, by themselves, their^[28] parents, or their friends, those have force and be kept according to the firmitie and strength in which they are made. And this is ynough of wives and mariage.

OF CHILDREN.

Chap. 7.

Our children be not *in potestate parentum*, as the children of the Romans were: but as soone as they be *puberes*, which we call the age of discretion, before that time nature doth tell they be but as it were *partes parentum*. That which is theirs they may give and^[1] sell, and purchase to themselves other^[2] lands and other moveables the father having nothing to do therewith. And therefore *emancipatio* is cleane superfluous, we know not what it is. Likewise *sut hÆredes*, complaints *de inofficioso testamento* or *prÆteritorum liberorum non emancipatorum* have no effect nor use in our lawe, nor wee have no manner to make lawefull children but by mariage, and therefore we know not what is *adoptio* nor *arrogatio*. The testator disposeth in his last will his moveable goods freely as he thinketh meete and convenient without controlling^[3] of wife or children. And our testamentes for goods moveable be not subject to the ceremonies of the civill lawe, but made with all libertie and freedome, and *iure militari*. Of landes as ye have understoode before, there is difference: for when the owner dieth, his lande descendeth wholie^[4] to his eldest sonne, all the rest both sonnes and daughters have nothing by the common lawe, but must serve their eldest brother if they will, or make what other shift they can to live: except that the father in life time doe make some conveyance and estates of part of his land, to their use, or els by devise, which word amongst our lawiers doth betoken a testament written, sealed and delivered in the life time of the testator before witsnesse: for without that ceremony^[5] a bequest of landes is not available. But the common lawe taketh place^[6] if hee that dieth hath no sonnes but daughters, the lande is equally divided among them, which partition^[7] is made by agreement or by lotte. Although as I have saide ordinarily and by the common lawe, the eldest sonne inheriteth

all the lands, yet in some countries all the sonnes have equall portion, and that is called gavelkinge, or gabellkinde, and is in^[8] many places in Kent. In some places the youngest is sole heire: and in some places after an other fashion. But these being but particular customes of certaine places and out of the rule of the common law, doe litle appertain to the dispute^[9] of the policie of the whole Realme, and may be infinite. The common wealth is judged by that which is most ordinarily and commonly doone through the whole Realme.

OF BONDAGE AND BONDMEN.

Chap. 8.

After that we have spoken of all the sortes of free men according to the diversitie of their estates and persons, it resteth to say somewhat of bondmen which^[1] kinde of people and the disposition of them and about them doth occupie the most part of *Justinians*, *Digestes*, and *Code*. The Romans had two kindes of bondmen, the one which were called *servi*, and they were other^[2] which were bought for money, taken in warre, left by succession, or purchased by other kinde and lawfull acquisition, or else borne of their bonde women and called *vernæ*: all those kinde of bondmen be called in our lawe villens regardantes,^[3] as ye would say bonde^[4] to the person and his heires. An other they had as appeareth in *Justinians* time, which they called *adscripticij glebæ* or *agri censiti*. These were not bond to the person, but to the manor or place, and did followe him who had the manors. Those in^[5] our lawe are called villaines appendantes,^[6] for because they be as members, and appendantes of^[7] the manor or place. Neither of the one sort nor of the other have we any number in England. And of the first I never knewe any in the realme in my time: of the seconde so fewe there be, that it is not almost worth the speaking. But our lawe doth acknowledge them in both those sortes. Manumission of all kinde of villaines or bondmen in Englande is used and done after diverse sortes, and by other and more light and easie meanes than is prescribed in the civil lawe, and being once manumitted, he is not *libertus manumittentis*, but simply *liber*: howbeit sith 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 captivitie and such extreme bondage him whome he^[8] must acknowledge to be his brother, and as we use to terme even^[9] Christian, that is who looketh in Christ and by Christ to have equall portion with me^[10] in the Gospel and salvation. Upon this scruple, long time ago,^[11] and by long succession, the holie fathers, Munkes and Friers in their confession, and specially in their extreme and deadly sicknesses, burdened the consciences of them whom they had under their handes: so that the^[12] temporall men by little and litle by reason of that terror in their conscience, were glad to manumit all theirs such: Marye^[13] the said holie fathers, Abbots^[14] and Priors, did not theirs,^[15] for they had also conscience to impoverish and dispoyle the Churches so much as to manumit such as were bond to their Churches, or the^[16] manners which the Church had gotten, and so kept theirs still. And the^[17] same did the Bishoppes also till at the last and now of late some Bishoppes to make a peece of money

manumitted theirs partly for argent, partly for slaunders, that they seemed more cruell than the temporalitie: after the monasteries comming into temporall mens handes have been occasion that now they be almost all manumitted. The most part of bondmen when they were, were^[18] not used with us so cruelly nor in that sort as the bondmen at the Romane civill law, as appeareth by their Comedies, nor as in Greece as appeareth by theirs: but they were suffered to hold^[19] coppieholde lande to gaine and get as other, save^[20] that nowe and then their Lordes would^[21] fleese them and take a peece of money of them, as in France the Lords doe taile them nowe^[22] whom they call their subjectes at their pleasure, and cause them pay^[23] such summes of money 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 respectes of the Gentiles) caused this olde kinde of servile servitude and slaverie to be brought into that moderation, for necessitie first to villaines appendantes^[24] and after to servitude of landes and tenures, and by litle and litle extinguished it^[25] finding out more civill and gentle meanes and more equall to have that doone which in time of gentility^[26] servitude or bondage did.^[27] For although all persons Christians be brethren by baptisme in Jesu Christ, and therefore may appeare equally free: yet some were and still might be christianed being bond and serf^[28] and whom as the baptisme did find so it did leave them, for it chaungeth not civill lawes nor compactes amongst men which be not contrarie to Gods lawes, but rather maintaineth them by obedience. Which seeing men of good conscience and^[29] having that scruple whereof I wrote before, have by litle and litle found meanes to have and obtaine the profit of servitude and bondage which gentilitie did use and is used to this day amongst Christians on the one part, and Turkes and Gentiles on the other part, when warre is betwixt them upon those whom they take in battaile. Turkes and Gentilles I call them, which using not our lawe the one beleeveth in one God, the other in many gods, of whom they make Images. For the lawe of Jewes is well ynough knowen, and at this day so farre as I can learne, amongst all people Jewes be holden as it were in a common servitude, and have no rule nor dominion as their own prophesies doe tell that they should not have, after that Christ was promised to them, was of them refused or when they would not acknowledge him obstinatly forsaking their helpe in soule for the life to come and honour in this worlde for the time present, not taking the good tidinges, newes, and evangill brought to them for their disobedience by the great grace of God, and by the promise of the Prophets fructified in us which be Gentils and brought forth this humanitie, gentlenes, honour and godly knowledge which is seen at this present. But to returne to the purpose.

This perswasion I say of Christians not to make nor keepe his brother in Christ, serfe,^[30] bond and underling for ever unto him, as a beast rather than as a man, and the humanitie which the Christian religion doth teache, hath engendered through Realmes not neere to Turkes and Barbarians, a doubt, a conscience and scruple to have servants and bondmen: yet necessitie on both sides, of the one to have helpe, on the other to have service, hath kept a figure or fashion thereof. So that some would not have bondmen, but *adscripticij gleets*, and villaines appendantes^[31] to the ground, and for that service^[32] and that the countrie being evill, unwholsome, and otherwise barren, should not be desolate. Others afterwarde found out the

wayes and meanes, that not the men but the land should be bound and bring with it such bondage and service to him that occupieth it, to^[33] carie the Lordes dung unto the fieldes, to plough his ground at certaine daies, sowe, reape, come to his Court, sweare faith unto him, and in the ende to holde the lande but by copie of the Lords court rolle, and at the will of the Lord. This tenure is called also in our lawe, villaine, bonde, or servile tenure: yet to consider more deeply all lande, even that which is called most free lande, hath a bondage annexed unto it, not as naturally the lower ground must suffer and receive the water and filth which falleth from the higher ground, nor such as *Justinian* speaketh of *de servitudinibus prÆdiorum rusticorum & urbanorum*, but the lande doeth bring a certaine kinde of servitude to the possessor. For no man holdeth land simply free in Englande, but he or she that holdeth the Crowne of Englande: all others holde their land in fee, that is upon a faith or trust, and some service to be doone to another Lorde of a Mannor, as his superior, and he of^[34] an higher Lorde, till it come to the Prince and him that holdeth the Crowne. So that if a man die, and it be found that he hath land which he holdeth, but of whom no man can tell, this is understoode to be holden of the Crowne, and in capite,^[35] which is much like to knights service, and draweth unto it three services, homage, ward and mariage: That is, he shall sweare to be his man, and to be true unto him of whom he holdeth the lande. His sonne who holdeth the land after the death of the^[36] father, if he be within the age, shalbe his ward, and his daughter if she hold the land after the death of the father^[37] shall be married where it pleaseth the Lorde. He that holdeth the lande most freely of a temporall man (for franke almose and franke mariage hath an other cause and nature) holdeth by fealtie onely, which is, he shal sweare to be true to the Lorde, and doe such service as appertaineth for the land which he holdeth of the Lord. So that all free lande in Englande is holden in fee or *feodo*, which is asmuch to say as in *fide* or *fiducia*: That is, in trust and confidence, that he shall be true to the Lorde of whom he holdeth it, pay such rents, doe such service, and observe such conditions as was annexed to the first donation. Thus all save^[38] the Prince be indeed^[39] not *viridi domini*, but rather *fiduciary domini*, and *possessores*: This is a more likely interpretation than that which *Littleton* doeth put in his booke, who saith that *feodum idem est quod hÆreditas*, which it doeth betoken in no language. This hapneth many times to them who be of great witte and learning, yet not seene in many tongues, or marketh not the deduction of wordes which time doth alter. *Fides* in Latine the Gothes comming into Italie, and corrupting the language, turned^[40] first into *fede*, and at this day in Italie they wil say *in fide*, *en fede* or *ala fe*. And some uncunning Lawyers that would make a newe barbarous latine worde to betoken lande given *in fidem*, or as the Italian saith in *fede*, or *fe*, made it *in feudum* or *feodum*. The nature of the worde appeareth more evident in those which we call *to fef*, *feoff*, or *feoffees*, the one be *fiduciary possessores*, or *fidei commissarij*, the other is, *dare in fiduciam*, or *fidei commissum*, or more latinely, *fidei committere*. The same *Littleton* was as much deceived in withernam, and diverse other olde wordes. This withernam he interpreted *vetitum navium*, in what language I know not: when^[41] it is in plaine Dutche and our^[42] olde Saxon language, *wyther nempt*, *alterum accipere*, *iterum rapere*, a worde that betokeneth that which in barbarous Latine is called *represelia*, when one taking of me a distresse, which in Latine is called *pignus*, or any other thing, and carrying it away out of the jurisdiction wherein I dwell, I take my order of him that hath jurisdiction, an other of him againe or of some other of that jurisdiction, and doe bring it into the jurisdiction wherein I dwell, that by equal wrong I may come to have equall right. The

manner of *represalia*, and that we call withernam, is not altogether one: but the nature of them both is as I have described, and the proper signification of the words doe not much differ. But to returne thither where we did digresse: ye see that where the persons be free, and the bodies at full libertie and *maxime ingenui*, yet by annexing conditions^[43] to the lande, there is meanes to bring the owners and possessors thereof into a certaine servitude or rather libertinitie: That the tenants beside paying the rent accustomed, shal owe to the Lord a certaine faith, duetie, trust, obedience, (as^[44] we terme it) certaine service as *libertus*, or *diem patrono*: which because it doeth not consist in the persons, for the respect in them doeth not make them bond, but in the lande and occupation thereof. This^[45] is more properly expressed in calling the one tenant, the other Lord of the fee, than either *libertus* or *cliens* can doe the one, or *patronus* the other: for these wordes touche rather the persons, and the office and duetie betwixte^[46] them, than the possessions. But in our case leaving the possession and lande, all the obligation of servitude and service is gone.

An other kinde of servitude or bondage is used in Englande for necessitie^[47] thereof, which is called apprenticehoode. But this is but^[48] by covenant, and for a time, for^[49] the time it is *vera servitus*. For whatsoever the apprentice getteth of his owne labour, or of his masters occupation or stocke, he getteth to him whose apprentice he is, he must not lie foorth of his masters doores, he must not occupie any stocke of his owne, nor mary without his masters licence, and he must doe all servile offices about the house, and be obedient to all his masters commaundementes, and must^[50] suffer such correction as his master shall thinke meete, and is at his masters cloathing and nourishing, his master being bounde onely to this which I have saide, and to teach him his occupation, and for that he serveth, some vij.^[51] or viij. yeres, some ix. or x. yeres, as the masters and the friends of the young man can agree:^[52] altogether (as *Polidore* hath noted) *quasi pro emptitio servo*: neverthesse that neither was the cause of the name apprentice, and the worde doth not betoken that as *Polydore* suppose,^[53] but it is a Frenche worde, and betokeneth a learner or scholer. *Apprendre* in French is to learne, and *apprentise* is as much to say in Frenche (of which tongue we borrowed this worde and many more other) as *discipulus* in Latine: likewise he to whom he is bound, is not called his Lorde but his master, as ye would say his teacher. And the pactions agreed upon, be put in writing, signed and sealed by the parties, and registred for more assurance: without being such an apprentice in London, and serving out such a servitude in the same Citie for the number of yeeres agreed by^[54] order of the Citie amongst them, no man being never so much borne in London, and of parentes londoners is admitted to be a Citizen or free man of London: the like is used in other great Cities of England. Besides apprentices, others be hired by the yeare^[55] for wages, and be called servaunts or serving men or^[56] women throughout the whole Realme, which be not in such bondage as apprentices, but serve for the time for daily ministrie, as *servi* and *ancillæ* did in the time of gentilitie, for^[57] other matters in libertie as full free men and women.

But all servaunts, labourers and other not maryed, must serve by the yere: and if he be in covenant, he must^[58] not depart out of his service without his masters licence, and he must give his master warning that he will depart out of his service^[59] one quarter of a yere before the terme of the yere expireth, or else he shalbe compelled to serve out an other yere. And if any young man unmarried be without service, he shalbe compelled to get him a master whom he must serve for that yere, or else he shalbe punished with stockes and whipping as an idle vagabond. And if any man married or unmarried, not having rent or living sufficient to maintaine himselfe, doe live so idely, he is enquired of, and sometime sent to the gaole, sometime otherwise punished as a sturdie vagabond: so much our policie doth abhorre idlenesse. This is one of the chiefe charges of the Justices of peace in everie Shire. It is taken for ungentlenesse and dishonour, and a shew of enmitie, if any gentleman doe take an other gentlemans servaunt (although his master hath put him away) without some certificate from his master eyther by word or writing, that he hath discharged him of his service. That which is spoken of men servaunts, the same is also spoken of women servaunts. 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 written. Thus necessitie and want of bondmen hath made men to use free men as bondmen to all servile services: but yet more liberally and freely, and with a more equalitie and moderation, than in time of gentilitie slaves and bondemen were woont to be used, as I have saide before. This first and latter fashion of temporall servitude, and upon paction is used in such contryes, as have left off the old accustomed maner of servaunts, slaves, bondemen and bondwomen, which was in use before they received^[60] the Christian faith. Some after one fashion,^[61] and some other^[62] more or lesse rigorously, according as the nature of the people is enclined, or hath devised amongst themselves for the necessitie of service.

OF THE COURT WHICH IS CALLED^[1] SPIRITUALL OR ECCLESIASTICALL, AND IN THE BOOKES^[2] OF LAW, COURT CHRISTIAN, OR 'CURIA CHRISTIANITATIS'.

Chap. 9.

The Archbishops and Bishops have a certaine peculiar jurisdiction unto them especially in foure maner of causes: Testamentes and legations, Tythes and mortuaries, mariage and adulterie or fornication, and also of such things as appertaine to orders amongst themselves and matters concerning religion. For as it doeth appeare, our auncestors having the common wealth before ordeined and set in frame, when they did agree to receive the true and Christian religion, that which was established before, and concerned externe policie (which their Apostles, Doctors and Preachers did allowe) they helde and kept still that^[3] which they brought in of newe and whereof^[4] they made conscience that they should be kept and ordered as they were before in paganisme,^[5] they committed to them to be ordered and governed as such things, whereof^[6] they had no skill of the dispute^[7] as to men in whom for the holinesse of their life and good conscience, they had a great and sure confidence. So those matters be ordered in their Courts,

and after the fashion and maner of the lawe civil or rather common by citation, libel, *contestationem litis*, examination of witnesses privilie, by exceptions, replications apart and in writing, allegations, matters by sentences given in writing, by appellations from one to another as well a *gravamine* as a *sententia definitiua*, and so they have other names, as Proctor, Advocates, Assessors, Ordinaries, and Commissaries, &c. farre from the manner of our order of^[8] Englande, 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 lawe, or^[9] if I demaunde a legacie: but if I sue the executor or administrator which is he in our lawe, who is by^[10] the civill lawe *hÆres* or *bonorum mobilium possessor ab intestato*) for a debt which the dead ought me, I must sue in the temporall court. These two courtes the temporall and the spirituall be so divided, that who so ever sueth for any thing to Rome or in any spirituall court for that cause or action which may be pleaded in the temporall court of the Realme, by an olde lawe of Englande hee falleth into a *prÆmunire*, that is hee forfeiteth all his goods to the Prince, and his bodie to remaine in prison during the Princes pleasure: and not that onely, but the Judge, the scribe, the procurer and assessor which receiveth and doth maintaine that usurped pleading doth incur the same daunger. Whether the word *prÆmunire* doeth betoken that the authoritie and jurisdiction of the realme is provided for before, and defended by that lawe, and therefore it hath that name *prÆmunire* or *prÆmuniri*, or by^[11] that lawe such an attempture hath had warning given before to him of the daunger into which he falleth by such attempt, and then *prÆmunire* is barbarously written for *prÆmonere*, *prÆmoneri*, (as some men have helde opinion) I will not define, the effect is as I have declared: and the lawe was first made in King *Richarde* the secondes time, and is the remedie which is used when the spirituall jurisdiction will goe about to encroch any thing upon the temporall courts, Because this court or forum^[12] which is called *curia christianitatis*, is yet taken as appeareth for an externe and forren court, and divers^[13] from the policie and manner of government of the Realme, and an^[14] other court (as appeareth by the act and writ of *prÆmunire*) than *curia regis* aut *reginÆ*: I speake of this last. Although at^[15] this present this court as well as others hath her force, power, authoritie, rule and jurisdiction, from the royall majestie and the crowne of England and from no other forren potentate or power under God, which being granted (as it^[16] is true) it may appeare^[17] by some reason that the first statute of *prÆmunire* whereof I have spoken, hath nowe no place in Englande, for^[18] there is no pleading *alibi quam in curia regis ac reginÆ*.

I have declared summarily as it were in a chart or mappe, or as *Aristotle* termeth it the forme and maner of the government of Englande, and the policie thereof, and sette before your eies the principall pointes wherein it doth differ from the policie or government at this time used in Fraunce, Italie, Spaine, Germanie and all other countries, which doe followe the civill lawe of the Romanes which Justinian hath compiled^[19] into his pandects and code: not in that sort as *Plato* made his common wealth, or *Zenophon* his kingdome of Persia, nor as *Syr Thomas More* his *Utopia* feigned^[20] common wealths, such as never was nor never shall be, vaine imaginations, phantasies of Philosophers to occupie the time and to exercise their wittes: but so as Englande standeth and is governed at this day the xxviiij of March Anno 1565, in the vij yeare

of the raigne and administration thereof by the most vertuous and noble Queene *Elizabeth*, daughter to King *Henrie* the eight, and in the one and li^[21] yeere of mine age, when I was ambassador for her majestie in the court of Fraunce, the scepter whereof at that time the noble Prince and of great hope *Charles Maximilian* did holde, having then raigned iij years. So that whether I writ true or not, it is easie to be seene with eies (as a man would say) and felt with handes. Wherefore this being as a project or table of a common wealth truely laide before you, not fained by putting a case: let us compare it with common wealthes, which be at this day in *esse*, or doe remaine discribed in true histories, especially in such pointes wherein the one differeth from the other, to see who hath taken the righter, truer, and more commodious way to governe the people aswell in warre as in peace. This will be no illiberall occupation for him that is a Philosopher and hath a delight in disputing, nor unprofitable for him who hath to doe and hath good will to serve the Prince and the common wealth in giving counsell for the better administration thereof.

THOMAS SMYTH.

Finis.