



Notes upon Sir John Fortescue
Knight, Lord Chief Justice
of England.

De laudibus legum Angliae.

Ad C A P. III.

I. **A**uctore causarum.] Questionless he meant the author of the little book *De causis*, put in some latine editions at the end of Aristotle's works with some other ridiculously attributed to Aristotle. There are, who think it to be done by Alpharabius, others by Avempace, others by Proclus. It was turn'd out of Hebrew into Latine, but is not extant in Aristotle's language. It's ancient, but clearly beneath the age of Aristotle. In proposit. I. The substance is of what he cites.

Ad

Ad CAP. VIII.

2. **A**pprenticios,] From *Apprendre*, i. to learn, comes *Apprentice de la ley*; which will denote as much as *Discipulus*, applied by Justinian to somewhat a like degree in his law. For after he had reckon'd his *Dupondii* or *Justiniani novi* (that is, students of two years standing) his *Papinianists* (students of three years) his *Lytæ* (those of four years) and his *prolytæ* (for them of five) to whom the reading of the whole course of that law and an able understanding was imputed; he then, comprehending the *prolytæ*, and the rest labouring to that degree, addes; *Discipuli igitur omnibus eis legitimis arcanis reseratis, nihil habeant absconditum*, but that they might afterward be *Justitiae satellites & judiciorum optimi tam abletæ quam gubernatoress in omni loco æ quoque felices.* So he writes C. tit. de veteri jure encl. l. **I. Deo auctore. Sect. 6.** The ancientest mention of an *Apprentice* in this fence which our publisht books have, is in 1 Ed. 3. fol. 17. a. pl. 3. But in the monuments of Parliament of 20 Ed. 1. extant in the Tower, this testimony is of them: *De Attornatis & Apprenticiis, D. Rex iunxit Johanni de Mettingham & sociis suis, quod ipsi per eorum discretiones provideant & ordi-*

dinent certum numerum de quolibet comitatu de melioribus & legalioribus & libentius addiscen-
tibus, secundum quod intellexerint quod Curiæ
suae & populo de regno melius valere poterit &
majus commodum fuerit, & quod ipsi quos ad hoc
elegerint Curiam sequantur, & alii non. Et vi-
detur Regi & ejus consilio quod septies-viginti
sufficere poterint, &c. Apponant tamen prefati
Justiciarii plures si viderint esse faciendum vel
numerum anticipent, & de aliis remanentibus fu-
at secundum discretionem Justiciariorum. Men-
tion is of them also in *Fleta* lib. 2. cap. 37. Part of
that of 20 Ed. 1. is transcrib'd in the Epistle of
the 9. reports, where more is out of antiquity
touching these Apprentices. The name was
used for Practisers, and *Apprenticii ad Barros*,
are Barristers in the ridiculous verses of *An-
drew Horn*, before his *Mirroir aux Justices*:
These are they,

Hanc legum summam, si quis vult mira tueri,
Perlegat, & sepiens si vult orator haberi;
Hoc Apprenticiis ad Barros ebore munus,

Gratum juridicis nile mittit opus
Horn mihi cognomen, Andreas est mihi nomen.

This *Horn* lived about Ed. 2. His certain age
I yet know not. The verses I transcrib'd out
of an ancient copy of him, extant in *Bennet*
Col-

Colledge Library in Cambridge, and written, as it seems by the hand, about Edw. 3. or Rich. the seconds time.

3. *Proprio ore nullus Regum Angliae.*] Yet certainly the Kings themselves often sat in Court (in the Kings Bench) and in the rolls of Charters under King John and the time near him, often occur grants that such or such English should not be impleaded or put to answer *nisi coram nobis vel capitali justitia nostra*, and to Normans, *nisi coram nobis vel capitali senescallo nostro.* For example, in Rot. Chart. 1. Reg. Joh. Chart. 171. memb. 28. the King gives to one Jacob a Jew of London and a Priest of the Jews, *presbyteratum omnium Iudeorum totius Angliae* for life, and the patent hath in it, *prohibemus etiam ne de aliquo ad se pertinente ponatur in placitum nisi coram nobis aut coram capitali Justitia nostra sicut Charta Regis Richardi fratri mei testatur.* Here *coram capitali Justitia* is divided from *coram Rege*; the last signifying before the Kings person, although now pleas held in the Kings Bench before the successor of the *Capitalis justitia*, are entred *coram Rege*, and some rolls (as of 44 Hen. 3.) have *placita coram Domino Rege de Tempore Hugonis Bigod Justitiarii Angliae*, and also in the same bundle, *Placita coram Hugone le Bigod Justitiario Angliae.* And Bracton lib. 3. tract. de Actionibus

cap. 5. si actiones criminales sint, in curia Domini Regis debent terminari, & hoc coram ipso Rege si tangant personam suam: and in 2 Ed. 4. the King sat in person.

Ad C A P. XIII.

4. **S**icutiam, quae ei quondam ut ducatus] Of that matter see *Guil. Malmesburiens. de gest. reg. lib. 2. cap. 6.* Roger. de Hovenden fol. 311. b. & 377. a. & b. 461. Matth. Paris sub anno 1072. & 1175. & 244. pag. 208. 872. & 1124. sub anno 1252. Matth. Westmonasteriens. sub anno 1054. and what he hath with Thomas of Walsingham sub anno 1290. & seqq. and Edward Hall in his Henry 8. out of old monuments, also Walsingham pag. 85. 133. & 171. Edit. Francofurt, and Florence of Worcester and Henry of Huntingdon where they speak of King Athelstan, and authority enough will appear against what Buchanan writes in lib. 6. & 8. *Rerum Scoticarum*, touching the English Empire. For authorities in law of the same thing, see 11 Edw. 3. tit. Brieft 473. 39 Edw. 3. fol. 35, & 36. 42 Edw. 3. fol. 2. b. 13 Hen. 4. Brook tit. Appeal 153. 6 Rich. 2. tit. protection 46. 8 Rich. 2. tit. Continual claim 13. 13 Eliz. b. Dyer fol. 304. a. Rot. Parliament. 21 Ed. 1. in Arce London, fol. 51. & seqq. beside divers

vers originals of matters of that Nation yet remaining in the Treasuries of Records. Neither is that of Godfrey of Malmesbury unnecessary to be here remembered. He relates that when William I. was offended with Malcolm III. of Scotland, that he would not secundum judicium Baronum suorum in curia sua restitutinem Regibus Anglorum facere; the Scottish King, id agere nisi in regnorum suorum confiniis ubi reges Scotorum erant soliti redditudinem facere regibus Anglorum, & secundum judicium primatum utriusque regni nullo modo voluit, & sic impacati ad invicem discesserunt. He places this in 7 Willielmi 2. When this Godfrey lived I know not, his Annals begin with the Saxons, and end in 29 Hen. I. He hath much of Northern matters, and the same that is in Roger of Hoveden often, and this very passage also is in Hoveden, pag. 265.

Ad CAP. XVII.

S. **A** Liqui Regum] But questionless the Saxons made a mixture of the British customes with their own; the Danes with old British, the Saxon and their own; and the Normans the like. The old laws of the Saxons mention the Danish (Danelage) the Mercian law (Mercengage) and the Westsaxon law (West-

(Westsaxonlage) of which also some Countries were governed by one, some by another. All these being considered by William I. comparing them with the laws of Norway (which he most of all affected, mainly, as I think, because by them a Bastard of a Concubine, as himself was, had equal inheritance with the most legitimate son. You may see for it Roger de Hoveden fol. 347. & 425.) he quasdam reprobavit (as the words of Gervase of Tilbury in his Dialogue de Scaccario are) quasdam antem approbans illis transmarinas Neustriæ leges quæ ad regni pacem tuendam efficacissimæ videbantur, adjecit; but so indeed, that such as he in writing allowed, are, by a denomination from the greater part, called, bone & adprobatae antiquæ regni leges, by Matth. Paris in his Ms. life of Fretherique, Abbot of S. Albons; and leges Edwardi Regis quæ prius inventæ sunt & constitutæ in tempore Adgari avi sui; by Roger of Hoveden; and leges æquissimi Regis Edwardi, by Ingulphus, Abbot of Crowland, who lived under the Conqueror, and brought a copy of them from London to his Abby, as he remembers in his printed story. And in a Ms. copy, communicated to me, amongst divers other, by that living Treasure of Antiquity and most exquisite monuments, my noble and much deserving friend Sir Robert Cotton, and continued

tinued by Peter of Blois, after that which is in the print, succeed those laws of William I. there spoken of with this title in broken French, *Ces sont leis & les Custumes qui li Reys William grantast a tut le puple de Engleterre apres la conquest de la terre ice les meismes que le Reys Edward sun Eosin tint devant lui.* Ceo est a savoir, pais a sanc Egglise, &c. the context of them throughout being much corrupted. They were you see called S. Edwards laws, and to this day, are. But clearly, divers Norman customes were in practice first mixt with them, and to these times continue; as succeeding ages, so new Nations (coming in by a Conquest, although mixt with a title, as of the Norman Conqueror, is to be affirmed) bring always some alteration. By this well considered, That of the laws of this realm being never changed will be better understood.

6. *Et maxime Romani*] Understanding not this neither otherwise, but that the Romans had their laws in such parts of this land, as they had their most civil government in. I mean in Colonies hither deduced. For every Colony was but as an image of the mother City, with like holy rites, like Courts, Laws, Temples, places of publick commerce, and for the most part with *Duumviri* in stead of Consuls, and

Ædiles

Ædiles and Decuriones in lieu of a Senate : and it is clear that divers Colonies from Rome were in Britain, as at *Camalodunum* (now *Maldon* in *Essex*) that was deduced to be *subsidium adversus rebelles* (as *Tacitus* says) & *imbuendis sociis ad officia legum*. And an old inscription remembers one *Aurelius Bassus* to be *Censor civium Romanorum Coloniae vi. Ettricensis quæ est in Britannia Camalodunum*. At *York* was also a Colony, an old piece of money of *Severus*, thus,

COL. EBORACUM. LEG. VI. VICTRIX.

Another inscription is justifying the same in *Camden*, pag. 572. although *Aurelius Victor* calls it *Municipium* in his life of *Severus*. Likewise one was at *Chester*, anciently called *Devana*, *Deva*, or *Devana* (as we see in *Ptolemy* and *Antoninus*) from the River *Dee*, witness an old coin of *Septimius Geta* thus inscribed.

COL. DIVANA. LEG. XX. VICTRIX.

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

DEC. COLONIÆ GLEV. VIXIT.
ANN. LXXXVI.

C

Glev,

Glev, is Gloucester, as the most learned Claren-
tius Camden teaches. Some think Co'chester
had a Colony too. But here are enough to
shew, that the laws of *Rome* were used in Bri-
tain, as in other places where the Romans con-
quered. *Seneca ad Albinam cap. 7. Hic deniq;*
populus Colonias in omnes provincias misit, ubi-
cunque vicit Romanus habitat: and Gildas of
this land, non Britannia sed Romania censebatur.
So one anciently speaking to *Mars*, *Romulus*,
and *Claudius* (under whom the first Colonies
were deduced hither) *in Catalect. ver. Poet. lib.*
I. tit. 7.

Cernitis ignotos Latia sub lege Britannos.

After *Claudius*, the Britons began to learn
the arts, to exceed the Gaules in wit and
learning, and they that at first did *Linguam Ro-
manam abnuere* (as *Tacitus* speaks in the life of
Agricola) did at length *eloquentiam concupisce-
re*. *Inde etiam* (says he) *habitus nostri honor*
& *frequens toga*; *paulatimque discessum ad de-*
linimenta vitiorum porticus & Balnea & convi-
viorum elegantiam; *idque apud imperitos huma-*
nitas vocabatur, cum pars servitutis esset: and
this is spoken of natural Britons, not Colonies.
They affected, we see, Roman language, Rheto-
rique, Roman habit, Roman pleasures, diet, and
the

the like. Neither needed *Tacitus* to have mentioned their affecting the laws of *Rome*, when they were subject to them as a conquered people. And no doubt is, but they that imitated their Conquerors, and neighbour Colonies in the rest, were not backward in effecting those laws, for which the languages and rhetorique were most useful. *Juvenal* speaking of *Gauls*, which he calls in *Satyr. 7.* — *nuricula Cau-*
fidicoram, saies in *Satyr. 15.*

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

The easier might the use and study of the laws of *Rome* be received here, after this *Claudius* his conquest, in regard that those which before and in ancient time had the determining of controversies, and the learning of that kind in their hands, were by him forbidden to use any longer their Religion, for which they were most of all reverenced and regarded; I mean the *Druides*: and when their holy rites were prohibited by the Emperor, it's likely enough that the Nations governed by them in point of law (as the *Gauls* and *Britons* were) grew regardless; at least remained nothing so respectful of them as before, and so became prone to receive the laws of *Rome*.

which had both conquer'd them, and also taken away the reverence before given to the *Druides*. That the *Druides* before *Claudius* were the Lawyers and determin'd controversies *I. Cæsar* is witness *lib. 5. and 6. de bello Gallico*, compared with the Catholique opinion in antiquity of an identity (at least in their office, actions and learning) in *Gaul* and *Britain*. That *Claudius* took away their Religion, *Sueton* is author in his life, *cap. 25. Druidarum religionem apud Gallos diræ immanitatis, & tantum civibus sub Augusto interdictam, penitus abolevit*. With him agrees *Seneca* in his *Apocolocyntosis*. It may well enough be imagin'd, that the taking it away in *Gaule* extended to *Britain* which was both the nursery of it, and mother too, as *Julius Cæsar* writes. If onely to *Gaule*; yet it's probable enough that the *Druides* in *Britain* could not but suffer by it, at least in reputation. For that of *Pliny nat. hist. lib. 30. cap. I. Tiberii Cæsaris principatus sustulit Druidas Gallorum*; it's to be refer'd onely to *Rome*, as *Lipsius* well takes it in *Comment. ad Tacit. Annal. 12. num. 98.* and in such sense as *Sueton* speaks of *Augustus* his forbidding them *tantum civibus*. And indeed, although after *Claudius*, mention be in *Tacitus*, *Lampridius*, and *Vopiscus* of them, yet shall you not find any sign of their legal Power extant either

either in those, or in *Ammianus Marcellinus* that specially remembers them, but onely attributes a study of the mysteries of nature and a Pythagorical learning to them, under *Constantius* and *Julian*, as you see in his 15. book. For the matter of Colonies before spoken of, he that desires accurate instruction of their nature and particular rights, may see, besides what such as writing of the *Roman State* universally have of it, *Lips. de Magnit. Romana l. I. c. 6.* & *Marc. Velsor l. 2. Antiq. Augustae Vindelicorum.*

7. *Leges Civiles in quantum Romanorum inviteratæ sunt.*] The antiquity which he means of our Laws before the Civil of *Rome*, is onely upon these conditions. First that the story of *Brute* be to be credited, and then that the same kind of law and policy hath ever since continued in *Britain*. That story supposes him here CCC. years and more before *Rome* built. But (with no disparagement to our common laws) we have no testimony touching the inhabitants of the Isle before *Julius Cæsar*, nor any of the name of it till *Polybius* in *Greek*, nor till *Lucretius* in *Latine*. *Polybius lib. 3.* speaks of the British Isles, and *Lucretius lib. 6.* hath *Cœlum Britannum*. Neither is the book *de Mundo* attributed to *Aristotle* of like age with the falsely supposed author. In that, *Albion* is spoken of, but *Polybius* was before that was

spoken, if I deceive not my self. All testimony of latter time, made of that which long since must be, if at all it were, is much to be suspected. And though the *Bards* knew divers things by tradition, which they onely sung, and so a specious argument is made usually for that common story, because they sung it, yet I see not why any, but one that is too prodigal of his faith, should believe it more then Poetical story, which is all one (for the most part) with a fiction. For what were *Bards* but such as sung the praises of old supposed *Heroes* at their pleasure? As *Athenaeus* and *Marcellinus* of them, and, for latter authority, you may see in *Leg. Howeli. Dha. cap. 25.* That the chiefest dignity amongst them was the *Penkert* of the country, whose place was of great eminency before others in the Welsh Court, & his office (when the King was pleased to hear any songs) was *Duo Carmina, scilicet unum de Deo, alterum de regibus, in interiore parte aulae decantare.* Nor he nor the rest were bound to truth of Story, but free to use invention, which they did in making a founder of the *British* name out of a community of sound. 'Twas as easie to fetch *Brute* out of *Brutanie*, as it its often called, as it hath been to make *Francio* out of *Francia* or *Franci*, *Hispanus* or *Hispalus* out of *Hispania*, *Scota* out of

of *Scotia*, *Angela* for a queen out of *Anglia*, *Bato* out of *Batavia*, *Italus* out of *Italia*, and divers such, which are all meer fictions or impostures. Scarce indeed is there a Nation in *Europe*, whose deduction from a like name of the first author, is of sufficient credit. All testimonies any thing near the supposed time of those first authors being lost. This writer stands on *Brutes* arrival, and speaks of it Cap. XIII. Yet if that would make so much for this side of antiquity of our laws, much more is to be had from the ancient and true origination of the *Britons*, which is from *Japhet* and his Posterity. See *Camden*, and in the Greek Scaligerian Chronicle of *Eusebius*, the British Isles, with all the West, are given by *Noah's* last will and Testament to *Japhet*; But so is *Italy* too, and the rest of *Europe*. This way, might an equally strong argument be for the like antiquity of both laws, of those of *Italy* and *Britain*. And it would be such a one as this author uses from *Brute*. For questionless, if *Japhet* and his posterity possesse these parts of *Europe* (as they did) their Government was not without laws. But in truth, and to speak without perverse affectation, all laws in general are originally equally ancient. All were grounded upon nature, and no Nation was, that out of it took not their grounds; and

nature being the same in all, the beginning of all laws must be the same. As soon as *Italy* was peopled, this beginning of laws was there, and upon it was grounded the *Roman* laws, which could not have that distinct name indeed till *Rome* was built, yet remained always that they were at first, saving that additions and interpretations, in succeeding ages increased, and somewhat altered them, by making a *Determinatio juris naturalis*, which is nothing but the *Civil Law* of any Nation. For although the law of nature be truly said Immutable, yet its as true that its limitable, and limited law of nature is the law now used in every State. All the same may be affirmed of our *British* laws, or *English*, or other whatsoever. But the divers opinions of interpreters proceeding from the weakness of mans reason, and the several conveniencies of divers States, have made those limitations, which the law of Nature hath suffered, very different. And hence is it, that those customs which have come all out of one fountain, *Nature*, thus vary from and cross one another in several Commonwealths. Had the *Britons* received the ten or twelve *Tables* from *Greece* (which in *Rome* was, as *Livy* saies, in immenso aliарum super alias acervatарum legum cumulo, fons omnipisci publici privatique juris) clearly the interpre-

pretations and additions which by this time would have been put to them here, must not be thought on as if they would have fell out like the body of the *Roman Civil law*. Divers Nations, as divers men, have their divers collections and inferences, and so make their divers laws to grow to what they are, out of one and the same root. Infinite laws we have now that were not thought on D. years since. Then were many that D. years before had no being, and less time forward always produced divers new; the beginning of all here being in the first peopling of the land, when men by nature being civil creatures grew to plant a common society. This rationally considered, might end that obvious question of those, which would say something against the laws of *England* if they could. 'Tis their trivial demand, *When and how began your common laws?* Questionless its fittest answered by affirming, when and in like kind as the laws of all other States, that is, *When there was first a State in that land, which the common law now governs*: then were natural laws limited for the conveniency of civil society here, and those limitations have been from thence, increased, altered, interpreted, and brought to what now they are; although perhaps (saving the meerly immutable part of nature) now, in regard

gard of their first being, they are not otherwise than the ship, that by often mending had no piece of the first materials, or as the house that's so often repaired, *ut nihil ex pristina materia supersit*, which yet (by the Civil law) is to be accounted the same still, as we see in *tit. de legat. I. l. 65. si ita Sect. 2.* Little then follows in point of honor or excellency specially to be attributed to the laws of a Nation in general, by an argument thus drawn from difference of antiquity, which in substance is alike in all. Neither are laws thus to be compar'd. Those which best fit the state wherein they are, clearly deserve the name of the best laws. And none are best or worst but *secundum quid.* But upon this ground more to the purpose might have been said for the English common laws, compared with the civil of Rome. For it appears that the Emperors from Justinian, who died in D. LXV. of Christ, until Lothar the II. in the year CIC. C. XXV. so neglected the body of the Civil law (which now against an express Constitution of Justinian, commanding that it should not be read nor taught in any place saving Rome, Berytus, and Constantinople, is profest in every University) that all that time none ever profest it. But when Lothar took Amalfi, he there found an old copy of the Pandects, or Digests, which

as

as a precious monument he gave the *Pisans* (by reason whereof it was called *Litera Pisana*) from whom it hath been since translated to *Florence*, where in the Dukes Palace it is never brought forth but with Torch-light, and other reverence. Under that *Lothar*, began the Civil law to be profest at *Bologna*, and *Irner*, or *Werner* (as some call him) first made Glosses on it about the beginning of *Frederique Barbarossa* in C10. C. L. of Christ, and *Bologna* was by *Lothar* constituted to be *Legum & Juris Schola una & sola*. And this was the first time and place of profession of it in the Western Empire. You may see *Odofredum apud Sigoniu[m] de regno Italie lib. II. & 7. & Paul. Merul. Cosmogr. part. 2. lib. 4. cap. 23.* Why were they so neglected near DC. years in the Empire, if their excellency were so beyond others, as is usually said by many, that to the purpose, know nothing of either them or ours? This part of story of them I have noted elsewhere in the Preface to the *Titles of Honour*. And clearly you see the profession of them is not so ancient in the Western Empire, as the latest of time, to which some most ignorantly refer the beginning of the common law; I mean as the *Norman William*, who arrived in the year C10. LXVI. I think not, that good discretion can, out of any of this or the like add much honor

honor to, or detract from either *Common* or *Civil* law; yet its fit to be remembred in answer of such as ignorantly fetch a reason out of the antiquity of the profession of the one. As if the profession begun under *Lothar*, and since thus continued, were not meerly new, and not a continuance of what was in use under *Justinian*. But hereof too much.

Ad CAP. XXI.

8. **T***estes.]* But some trials by our law have also Witnesses without a Jury: as of the life and death of the Husband in *Dower*, and in *Cui in vita*. Examples thereof are in *Braeton lib. 4. tract. 6. cap. 7. 2 Ed. 2. tit. Trial 46. 8 Ed. 2. cod. tit. 95. 9 Ed. 2. tit. Judgement 231. 2 Elizab. Dyer fol. 185. a. and in 13 Elizab. Dy. fol. 301. a. in Error by an infant to a reverse fine, both inspection and the testimony of four witnesses concur to prove his infancy, and in 26 Ed. 3. fol. 70. a. pl. 6. a death in *Bretagne*, is said, shall be tried by proofs. But all this is of issues which properly have no visne, whence a Jury may be. The course of Declarations also at this day shew, that witnesses were respected in the beginning of every action. The conclusion is always *Et inde producit sectam.* Which *secta**

or

or
an-
out
one.
and
ew,
der

ave
s of
ver,
in
tit.
• a.
by
and
to
. a.
ried
ro-
be.
day
be-
n is
cta
or

or *suit*, in law-language, is nothing but witnesses to prove his action, as in the Courts of *writs of Right* they were wont to declare, *& hoc paratus sum probare per hunc liberum hominem meum A. B. & si quid, &c.* which was a tender of Battel, as the other is of suit or witnesses. See *Glanvil lib. 2. cap. 3.* And those proofs of the death of the husband in dower are called *secta* by *Bracton fol. 302. a.* and in *Nov. Narrat. suit & darraign bona* is onely *se-
cta & disfrationatio bona*, i. good proof to main-
tain the count. In ancient time this suit, or
witnesses were examined before any other
issue, as in 18 Hen. 3. *Coram Rege apud Wind-
sore rot. 13. in dorf. in Turr. Lond.* In a Recor-
dare loquela that was in the Bishop of Salis-
buries court at Sunnings, the action being for
a Mare, by *Walklin de Stok* against *William de
la Guiballe*, the entry is, *Et Willielmus produ-
cit sectam suam & ipsi quos produxit per se dis-
cordantes sunt in multis, & in tempore, &
in aliis circumstantiis, quia quidam dicunt quod
quædam equa mater ipsius pullani empta fuit,*
*&c. & quidam dicunt, &c. Et Walkelinus pro-
ducit sectam qui concordati sunt in omnibus &
per omnia & dicunt omnes quos ipsi producit per
se, &c.* The proofs of both sides are called
secta. It was either this or some like case, that
Shard intended in 17 Ed. 3. fol. 49. b. in *John
Warreins*

Warreins case, speaking of a Justice that examined the suit, and it appears there that under Ed. 3. the tendering of suit or proofs was become onely formal, as at this day, like the plegii de prosequendo. But in Hill. 44 Hen. 3. Coram Rogero de Thurkelby & sociis suis Justitiariis de Banco Rot. 16. in dorso. One Gilbert Chytein brought a Replevin against William le Fowler, and the defendant pleads non cepit, &c. Et hoc offert defendere contra ipsum & sectam suam sicut Curia consideraverit. Et quia predictus Gilbertus nullam sectam producit versus predictum Willielmum, consideratum est quod predictus Willielmus eat inde sine die, & Gilbertus in misericordia. See ad cap. 32. I omit, that in Englesherie anciently, in a Nativus habendo, in proving a deed denied, and such like, witnesses by the common law are required as the special trial.

Ad CAP. XXIV.

9. **W**apentagia.] In Ethelreds laws, which the Abbot John Brampton hath in a Ms. story, cap. 4. Habeantur placita in singulis Wapentakis, ut exeat seniores 12. thayni & præpositus cum eis & jurent super sanctuarium quod eis dabitur in manus quod neminem innocentem velint accusare vel noxiuum concelare. And the

the laws called the *Confessors*, cap. 33. say that *Yorkshire*, *Lincoln*, *Nottingham*, *Leycester*, and *Northampton*, call that *Wapentachium* quod *Angli vocant Hundredum & non sine causa*. For he that was *prefectus Wapentachii*, or high Constable of the *Wapentach*, came amongst them at the *Hundred* or *Wapentach* court, and with regardful entertainment, they all cum lanceis suis ipsius hastam tangebant, & ita se confirmabant per contactum armorum, pace palam concessa. *Anglice n.* (so say those laws) *arma vocantur Maepun*, & taccare confirmare, quasi armorum confirmatio, vel ut magis expresse secundum lingham *Anglicam dicamus*, *Wapentac armorum tactus est*. *Maepun n.* *arma sonat, tac tac tus est*. Doubtless this deduction of the name favours of the truth. For amongst the old *Germans* (whence our *Anglo-Saxons* came) that used to meet armed in their courts, when any one had spoken, if he were disliked, *fremitu aspernabantur*, if liked, *frameas concutiebant* (as *Tacitus* witnesses) which well includes this touching or striking together of weapons. *Honoratissimum* (saies he) *assensus Genus est, armis laudare*. The *Wapentakes*, *Hundreds*, and *Counties* were first instituted by K. *Alfred*, about the year *DCCC. LXXX.* Of him, *Ingulphus p. 495. b.* *Totius Angliae pagos & provincias in Comitatus pri-*

primus omniam Commutavit. Comitatus in Centurias, id est, Hundredas, & in Decimas, id est, Titbingas divisit. See also Malmesburiens. de gest. reg. lib. 2. cap. 4.

10. Villas.] *Villa & Villata de Norwich de Wallingford and the like are in old Rolls, which also sometime call like places, and the same, Burgi or Civitates. And the city of Chichester is Villata de Cicestria in Itin. Sussex 47 Hen. 3. rot. 25. in dorso. And there rot. 44. Burgus de Horsham venit per XII. Villa de Brembre venit per 12. Villa de Shoreham venit per XII. yet Bramber and Shoreham are Boroughs as well as Horsham. Parliamentary Boroughs. But also Rot. 38. is Burgus de Seford venit per XII. which is no Parliamentary Borough. The rest all which now send Burgesses to parliament in Sussex, as Lewes, Midhurst, Grenstede and Arundel, are in that Eire called Boroughs.*

11. Hamletis.] *Hamean or Hamel is a member or Part of some ville or town, as you may see in 14. Assis. pl. 9. & 3 & 4 Ph. & Mar. Dyer fol. 142. it came first from Ham or Heim in old Saxon, signifying a circuit or territory, Circulum vel septum quo Pagi sive Territorii cuiuspiam limites includuntur, as the most noble Hans Douze notes out of the Records of Holland in Annal. Holland. lib. 2. & 7. fol. 288.*

12. *Annale est.*] But before the Statute of 14 Ed. 3. cap. 7. Sheriffs continued usually in their offices longer.

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

Ad CAP. XXV.

14. **D**E *Hundredo.*] For the number of the Hundreds at this day, see the Statutes of 35 Hen. 8. cap. 6. & 27 Eliz. cap. 6.

Ad CAP. XXVI.

15. **F**alsum fecerunt *sacramentum.*] The ancient punishment in *Attaint* was as its here described, and the like in conspiracy for perjury. See *Glanvil lib. 2. cap. 19.* 4 Hen. 5. tit. *Judgement 220.* 27 *Affis. pl. 59.* & 46. *Affis. pl. 11.* The judgement is called *the villainous judgement* in 14 Ed. 3. fol. 34. b. See *Braeton also lib. 4. tract. 5. cap. 5.* & *Flet. lib. 5. cap. 21.* & *Stansford fol. 175.* And the case in *Temp. Ed. 1. tit. Attaint 70.* is more large in my Ms. Report of 21 Ed. 1. fol. 58. it is brought against the Abbot of *Westminster*, as there its shewed, but the judgment by *Weylond* is in these words, *Pur ceo agarde cest court que ceur de l' enquest perdent franche ley de ceo jour en avant a tous jours e leur terres*

terres & leur chateus a la volonte le Roy, & leur corps a la prison, e John seit assous de cele rent & sett restoze de ses damages. But see now Stat. 23 Hen. 8. cap. 3. another judge-
men in attaint.

16. *Nec alicubi recipientur in testimonium veritatis.*] Our books express that, by que
mise ne soit en testmoignance de veritye, 24
Ed. 3. fol. 34. b. 33 Hen 6. fol. 55. a. It is ti-
tled the loss of frank law, franch ley in 27. *Affis.*
pl. 59. & 46. Affis. pl. II. that is, he which is
thus convict of perjury, shall be no more
Otheswurth as *Bracton* calls it *lib. 4. tract. 4.*
cap. 5. & cap. 19. Sect. 2. where his words are
of such a one, *Legem amittit, & ideo dicitur*
quod non est ulterius dignus lege quod Anglice
dicitur, He ne is othes worthe that is enes
gylty of oth broken. Which agrees with
K. Knout his law, cap. 33. that one so convicted
ne beo thanon forth athes wyzthe, the self same
words almost, being in *leg. Edwardi senioris*
cap. 3. & leg. Athelstan cap. 25. That which is
legem amittere in this sense in *Bracton*, is *libe-*
ram legem amittere (answering to the loss of
frank law) in the entries of judgement against
them, and *legem terre amittere* in *Glanvii*, and
sometime in *Bract. & Fleta.* See also *Regiam*
Majestatem lib. I. cap. 14. Sect. 5. Hence may
be truly understood that of the grand Char-
ter,

ter, cap. 29.—*nec super eum ibimus nec super eum mittimus, nisi per legale judicium Parium suorum vel legem terræ.* I would English it thus: *Neither will we enter on his possession nor commit him* (for in that place of the Charter of 17. of K. John by which this was made, it is *nec eum in carcere mittimus*, perhaps it should be *carcerem*, as the language requires) but by legal judgement of his Peers, or men of his condition (that is by Jury) or by tryal of him by oath, or wager and doing his law. *Lex terræ* here is onely as it signifies in *amittere legem terræ*. And *Ley gager* and a Jury are the two trials, as I suppose, there thought on. And indeed in old rolls nothing is more usual then in criminal actions (not capital) and civil, of any kind to admit *Ley gager*, as in *Attachments* upon prohibitions, *quare impeditis* and the like, which is against all knowledge and practice of law in later ages. Every one knows that at this day *Vadiare legem* is to offer the oath upon trial that way, and *facere legem* is to make the oath, all which shew that *lex* and *lex terra* signifie in this notion onely the Oath of a man not disabl'd by law. And, in that Statute, it is meerly the oath upon *Ley gager*.

17. *Calumnire potest 35. homines.*] Peremptory challenge is now reduced to xv. by *statas* of 22 Hens 8. cap. 14.

Ad CAP. XXXII.

18. **S**i quæ supra altum mare, &c. coram Admirallo] As then, so now, the Admiralty hath Jurisdiction of things done upon the main sea, and what that Court might or may do is shewed and limited by the Statutes of 13 Rich. 2. cap. 5. & 15 Rich. 2. cap. 3. & 2 Hen. 5. cap. 6. The first case in our law extant touching marine jurisdiction is in Temp. Ed. I. tit. Abowry 192. in a Replevin brought of a ship upon the coast of Scarborough, where no mention is of the Admirals authority, as the print is in the Abridgement, but consans of it is allowed to the common law. Yet in my Ms. Report of 25 Ed. I. fol. 82. b. the case is thus more at large, and expressly speaks of the Admiral, *William Crake de Holtbam* fuit common a respondre a Robert de Beaufo de play pur que il avolt pris une sunne naef pris de xl. l. en la mer juste la costere de Scardburn & de pleke le amen a Holtbam en le County de Norff. Muford. del horz qu' il abute Conte de une prise jete en la mer que est horz del contz issi que si pais se joyn fist, il ne fabereint a ql viscont mander pur fere vener pays & do judge- ment si ceyns pussont de ceo conuster. Ed' autre part, il lysont assigne Admiral de par le Roy sur la mer a oyrr & terminer les pleynts
de

de chose fait in mer, e nentendons point que
 vous holys a eux tolyr jurisdiction, &c.
Bery, Nous abons poer general per my tut
Engleterre, mes del poer des Admirals dont
 vous parles ne savons rien, ne rien de nostre
 poer a eux volomus assigner, si ceo ne leist
 per commandment le Roi de quey vous ne
 monstres rien, &c. *Mutf.* sirz le luy on ils
 dient la naef este pris nest in nul visnes de que,
 &c. *Haward,* Il est issint visne que st un home
 occist un autre la il sera pris & amesnal terre
 e pende ausi ben come pur fet fet sur la terre.
Metingham, nous vous dions que nous abons
 dions que nous abons ausi ben poer de con-
 sans de fet fet en mer come sur terre, dont a-
 gard que vous respondes ouster. Unless they
 meant there, that the vilne might be out of the
 adjoyning County, as in old trials of issues in
 Wales, I conceive not their disallowance of
 the exception against the place, whence pro-
 perly no visne could be. For such trials of is-
 sues in rising in *Wales*, or in the Counties Pa-
 latin by the adjoyning Counties, see especially,
 18 Ed. 2. tit' Assise 382. 24 Ed. 3. fol. 33.b.
 30 Hen. 6. fol. 6. b. 35 Hen. 6. fol. 30.a. 45
 Ed. 3. tit. Visne 50. I have transcribed the
 case according to the very letters of my copy.
 It seems by this that in those times the com-
 mon law had conisans of things done upon the

Brittish sea, however it afterward kept its limits *infra corpus Comitatus*, leaving the Sea to the Admiralty. Some cases in old records justifie it also. In *Placit. 37 & 38 Hen. 3. Rot. 10. Devon.* One *Galfredus de Leysina* brings *trespass* against *Ralf de Valle torta*, and others, *quare asportaverunt bona quæ fuerunt in navi quæ fuit Clementis de Bolan quæ nuper periclitabatur in Costera de Brikesham quæ bona dominus Rex dedit predicto Galfredo tanquam wreccum maris, &c.* The defendants plead, in effect, the general issue, & *sic ad patriam*, although, through want of form in the declaration, it appears not whether the goods were taken, being in or out of the sea, yet it seems they held that matter indifferent. So in *Itin. Sussex apud Cicestria 47 Hen. 3. Rot. 10.* A fragment of a torn roll left in the bundle, hath this signe of a declaration remaining, *Rogerus de Levere, & Radulphus de Levere queruntur de Richardo de Hatefuld—proxima ante festum sancti Martini hoc anno se credebant salvos—ibidem fregerunt navem suam super quendam locum—navis & socii sui circiter quinque submerserunt.* These words are onely left upon the 9. roll, the rest being by some wicked hand, purposelly, it seems torn off. But its easily conjectur'd that this was an action on the case, brought by one that had com-

mitted himself or his goods to the defendants care for his passage, with his company, over sea, and that the offence was, that the defendant had by negligence made shipwrack on the sea, or some such like; and though the *Assumpſit* at land might make such an action at this day, maintainable at common law, according to the learning in *Dowdales case Rep.* 6. fol. 47. yet in those times so ancient, I cannot imagin the difference of a contract at land from one at sea was thought on. Likewise in *Trin. 50 Hen. 3. apud Westm. in Banco rot. 22.* the entry is, *Suff. Abbas Westmonasterii per alternatum suum obtulit se quarto die versus Petrum filium Johannis, Richardum fratrem ejus, Walterum Cheyney, Augustinum filium focei, Johannem fratrem ejus, Richardum Andred, Anthonium Clunch, & Richardum Silkento de placito, cum homines ipsius Abbatis super duci fecissent quandam navem suam per Cesteram maris prope Dunwicum, bonis & catallis ipsius Abbatis & hominum suorum cariatam, iidem Petrus & alii simul cum Augustino filio Johannis navem prædictam cum bonis & catallis prædictis ab hominibus suis prædictis abstulerunt, & navem & bona & catalla sic ablata detinent ad damnum ipsius Abbatis & hominum suorum sexaginta librarum & contra pacem, &c. Unless here the ship were taken upon the sea super*

Costeram maris I understand it not. But touching their trials in the Admiralty, in some hands is extant a Ms. de l' Office del Admiralty, translated into Latin by one Thomas Roughton, calling it *De officio Admiralitatis* (the use of two copies of it, with the roll of Oleron, written all about Hen. 6. was communicated to me by that learned and truly sufficient Sir Walter Raleigh Knight) where inditements and trials are supposed to be by a Jury of 12. as at common law. But the book it self is rather a monument of antiquity (yet not above about Hen. 6.) than of authority, and rather as a purpose of what was in some failing project, than ever in use and judgement held authentical. Most of it is against both the now receiv'd and former practice. Yet these things hath it worth observation, that is, constitutions often mentioned touching the Admiralty of Hen. I. Richard I. King John and Edward I. which are elsewhere hardly found. In rot. Pat. 23 Ed. I. William Leyburn is Admiral, and often mention is after that of the Admirals of the North and South seas, the distinction being the *Thames* mouth, as Trent was wont to be for the general Escheatorship, and is for the Justiceship of the Forests. The first mention of the *Admiral* in our printed law, is in 8 Ed. 2. Itin. Canc. tit^r Coronæ 399. with that,

that, see 40 Ed. 3. fol. 44. 40 *Affis. pl. 25.*
Stamford cap. Des Coroners, Sir Henry Con-
stables case in Rep. 5. fol. 107. & Hill. 2 Jacob.
Philips case in Com. Banco, & 19 Hen. 6. fol. 7.
and note that in 7 Rich. 2. Statham tit. *Tres-*
pas 54. a justification is in trespass in these
words *nous les prisomous en le haut mere*
obesque les Normans quux sont enemis le
Roy, judgement si action, and held good. If
this issue offered, rising wholly on the main sea,
might not be tried at the common law, how
could it be good? either a traverse must have
been to the taking in the count, or else the re-
plication must have made the issue upon two
affirmatives (which is against the course of our
law) or else questionless they took it in those
times triable, as it was pleaded by a Jury of
the visne, either adjoyning to the coast (which
is fittest) or of the place where the action was
laid. See also 46 Edw. 3. *Statham tit. Tres-*
pas 38.

19. *Curia Constabularii*] That court and
the great Officer, chief Justice of it, hath been
long discontinued. Neither was any continuing
High Constable of England since 12 Hen. 8.
when Edward Duke of Buckingham was be-
headed. He was the last High Constable, and
by inheritance of tenure from the Bobuns, as
you see in 6 Hen. 8. Kel. fol. 170. & seq. & 11
Eliz.

Eliz. Dy. 285. b. & vide Rot. Fim. 3 Ed. I. memb. 14. The Court is that which was titled the *Court of Chivalry*, wherein all matters of Armes, Treason committed beyond sea, War, and the like, which could not be tried at the common law, were determinable *summarie & de plano sine strepitu & figura judicii*, as the words are in Part. I. patent. 7 Ed. 4. memb. 9. where it appears the office had been given to John Earle of Worcester, to hold plea of such things quæ in Curia Constabularii ab antiquo videlicet tempore Domini Willielmi Conquestoris quondam Angliæ progenitoris nostri seu aliquo tempore citra tractari audiri examinari & decidi consueverunt aut de jure debuerunt, who surrendering his patent, in the same termes with particulars of the office, it is granted to Richard Widevil Earl of Rivers, the Kings father in law, for life, and after his death to Anthony Widevil. By the I. statute of 13 Rich. 2. cap. 2. & I Hen. 4. cap. 14. the office and jurisdiction of the court is best describ'd, you may see 37 Hen. 6. fol. 3. & 20. 30 Hen. 6. fol. 5. 6 Hen. 8. fol. 171. b. Brook tit. Prerogative 31. Some Records are extant of the whole formal proceeding by the law of arms in this Court, as specially that of 17 Rich. 2. in the Tower concerning the Castel of Brest, between Hanley and Rockes. Their trials were by

by Battel or Witnesses. Special commissioners have now a good part of this jurisdiction. In 2. part. rot. Patent. 23 H. 6. memb. 20. Tho. Kent. Dr. of law is made *subconstabularius angliae* for life.

20. *Legem mercatoriam.*] that is such as the law of the Staple in stat. 2. 27 Ed. 3. cap. 2. Mention is of it in *Regist. Orig. in Computofol. 135. a. & Fitzb. Nat. Br. fol. 117.* D. indeed the nature of this law is well express by Bartol. in π. tit. *Mandati vel contra l. 29. Sect. quædam* 4. speaking of the Merchants court (which name may well be given to the court of *tee poudroux.*) *Nota*, saith he, *quod in Curia Mercatorum debet judicari de bono & aequo, omissis jaris solemnitatibus.* *Hoc non dico quod debeat intelligi non habito respectu ad jura civilia quod esset contra l. bona fides sit.* Depositi, sed debet intelligi non inspectis solemnitatibus juris, hoc est non inspectis apicibus qui veritatem negotii non tangunt, ut si esset intentata actio directa cum competebat nullis, vel non erat contestatalis & similia. For in common society of Merchants, and mutual contracts, equity and good conscience rather then strict laws is required. *Tryphonius π. tit. Depositi vel contra l. 12. Bona fides quæ in contractibus exigitur, aequitatem summam desiderat.* A special case of this law Merchant is in *Itin. Derb. 2 Edw. 2. Ms.* where *John Compton* brings debt secundum

dum legem mercatoriam upon a tally, against another Merchant, and tenders suit by two witnesses; the defendant wages his law, but the judgement is thus by Ornesby pronounced. John de Compton Marchand port un brie
ciens vers on Rauf. Marchand a demande vi.
marks par un Justices forme selon la ley
Marchand (it had been commenc't by Justicies,
and came out of the common place into the
Eire) a ad mis avant un taille la quelle il ten-
der a prover per it s. p Richard & par Geffrey
que esteyen tal blee mesurer (the debt was due
for corn) a al liberer, mes vous per vostre
ley vous voudrez covrer la quelle cest cozt en
ceo cas ne voet my resceiber & refuses la pve
que il vous tend selon ley Marchand & selon
la nature de sun brie, per que agard cest
court que John rescovre sa debt vers vous
come vers non defendu & ses damages de-
cent sous. See for this matter of suit, *Ad cap. 21.*

Ad C A P. XXXIII.

21. **S**at agentes proinde leges Civiles ad An-
glia Regimen producere.] I confess I
here understand him not. What Kings of
England ever desired the Civil laws of *Rome*?
I have read of a protestation against them in
Par-

Parlament by the King and Lords, which you
may see in Rot. process. & jud. of the appeal of
Thomas Duke of Gloucester, and others, against
Alexander Archbishop of York, Robert de
Veer Duke of Ireland, Michael de la Pole E. of
Suffolk, and Robert Tresilian chief Justice, in
Ricb. 2. Parlamento Westm. 3 Febr. anno II.
where upon default of the appellees, the
appellants desire that the court would pro-
ceed to judgement, sur quoy les dits Roy no-
stre seignoz & seigniors du Parlament pri-
ftronnt deliberation tanq; lendemain le marces
dy prochein ensuant, a quel temps les Justices
& Sergeants & autres sages du ley de roialm &
auxint les sages de la ley Civil feuront charges
de par le Roy nostre dit seigneur, de doner
loial Counseil as seigneurs du Parlament de
duement pceder en la causa de l' appel susdit,
les queur Justices Sergeants & sages de la ley du
roialm & auxint les dits sages de la ley Civil
prisiront ent deliberation, & responderont, as
dits seigneurs du Parlament que ils aboient
vebe & bien entendue le tenoz du dit appell, &
disoient q mesm' l'appele ne fust pas fait ne
affermee solonq; l'ordre que l' une ley ou lautre
requireit, sur quoy les dits seigneurs du Par-
lement prisiront ent deliberation & avisement,
& p assent du Roy nostre dit seigneur & de lour
comun accord estoit declare que en ci haut
etme

crime come est pretendue en cest appelle quest.
touce le person du roy nece dit snyr & lestat de
tout son roialm, perpetre persons que son
peers du roialme, obesque autres, la cause ne
serra aiizoys deduc que en parlement, ne per
autre ley que ley & cours du parlement
q' il appartient as seigneurs du parlement &
lour franchise & libertie d'ancien custume du
parlement destre juges en tneur cas, & de ti-
eur cas a iugger per assent du parlement, pur
assent du roy, & que ensi serra fait en cest cas
par agard du parlement, pur ce que le roialme
d' Engleterre n' estoit devant ces heures ne al' en-
tent du roy nostre dit seignior & seigniors du par-
lement unques ne serra rule ne governe per la ley
Civil, & auxint leur entent nest pas de reule
ou govrner cy haute cause come cest appell
est, que ne serra aiizoys trie ne termine que en
Parlement come dit est, per cours processe
ordre use en aucun court ou place plus bas de-
ins mesme le roialme, queur courts & places ne
sont que executoys d'auciens leys & custumes
du roialme & ordiancias & establishments du
parlements, & feust abise au mesmes les seig-
neurs du parlement par assent du roy nostre
dit seigneur, que cest apperl fait fait & affirme
bien & assets duement & le parcesse d'ycelle
bone & ferme solomnes les leys & cours du
parlement, & pur tel l' agarderoit & aiuggero-

I remember also King Stephen his public
lique edict against the laws of Italy, but re-
member not any story or authority teaching
that any of our Kings would have had them
here used. That of Stephen is related by that
noble and most learned Frier Roger Bacon in his
Compendium Theologiae, or his *Opus minus*
(both those names are of one Ms. book) where
speaking of the Civil laws of Italy, and that
they are abused, and too much affected by
Clergy men, leaving their profession to study
those laws, he thus adds, *Præterea omne reg-
num habet sua jura quibus laici reguntur; ut
jura Angliae & Franciae, & ita fit iustitia in
aliis regnis per constitutiones quas habent sicut in
Italia persuas.* *Quapropter cum jura Angliae
non competant statui clericorum, nec Franciae,
nec Hispaniae, nec Almaniae, similiter nec jura
Italiaeullo modo.* *Quod si debeant clerici uti le-
gibus patriæ, tunc est minus inconveniens ut
Clerici Angliae utantur legibus Angliae & Cle-
rixi Franciae utantur legibus Franciae, quapro-
pter maxima confusio Clericorum est quod hujus-
modi constitutionibus laicalibus subduntur colla.
Rex quidam Angliae Stephanus allatis legibus I-
taliae in Angliam publico edicto prohibuit, ne ab
aliquo retinerentur, si igitur laicus princeps
laici principis alterius leges respliceret, multo
magis omnis clericus deberet respuere leges laico-*

rum. Addo etiam quod magis concordant iure
Franciae cum Anglia & e converso propter vicini-
tatem regnorum & communicationem majorem
gentium istarum, quam Italiae & illarum. Quare
deberent magis clerici Angliae subjicere se legi-
bus Franciae & e converso, quam legibus Lom-
bardiae. This was a kind of invective against
the receiving of the Civil law amongst the
Clergie in any other nation, saving that where-
in it was first bred, that is, the Italian. Our
stories have no mention of this edict of Ste-
phen. But it is in an author of better auth-
ority (in regard of his time) then Frier Bacon,
I mean John of Salisbury living under Hen. 2.
He in his *De Nugis Curialium lib. 8. cap. 22.*
speaking of such as too prophanelly medled
with what the Clergy had to do, goes on with
alios vidi qui legis libros deputant igni nec scin-
dere verentur si in manus eorum pervenirent jura
vel Canones. Tempore Regis Stephani a regno
iussæ sunt leges Romane quas in Britanniam do-
mus venerabilis patris Theobaldi Britanniarum
primatis asciverat. Ne quis etiam libros retine-
ret edicto regio prohibitum est, & vicario nostro
indictum silentium. Sed, deo faciente, eo magis
virtus legis in aluit, quo eam amplius nitebatur
impietas infirmare. Whereas Frier Bacon takes
it clear that he prohibited the Civil laws, this
John of Salisbury (a man of great place and
autho-

authority both with the King and Pope) seems to affirm it onely of the Canon law. For he remembers it as an offence to the Church. Indeed in Archb. *Theobalds* time, both the Canons and Civil law began to be publisch, and its like enough that he might bring in *Fuo's* or *Gratian's Decree*. *Fuo's* was written in time of Hen. I. and *Gratian's* under King *Stephen*. That *Theobald* was before Abbot of *Bec* in *Normandy*, and went to *Rome* for his Pall, and so, it seems, brought those laws home with him in 3 *Stephani Regis*. Its marvail that our stories are so silent of this of King *Stephen*. But see the Monks *sub anno 1139.* and specially, *Gnil. Malmesb. hist. Novell. 2. fol. 10. b.* touching the councel of *Winchester*, where the ground of his Prohibition perhaps shews it self.

Ad C A P. XXXIV.

2. **Q**ued Principi placuit.] That is *Ulpian's* in *tit. de Constit. Princip. l. i.* *Quod Principi placuit legis habet vigorem, utpote cum lege Regia, quæ de imperio ejus lata est, populis ei & in eum omne suum imperium & potestatem conferat.* The same is in *Instit. tit. de Fure nat. Sect. sed & quod*, and thence have the Greek lawyers their ὅμηρός οὐ πολεμεῖ Βασιλεῖ Νόμοῖς

Sci, as *Hermenopulus* a Judge of *Theffalonica* cap
expresses it, *Procheir. lib. a. tit. a.* and the Em- in c
peror is in *Near. Diairax. 105. cap. 2.* titled Pop
Nόμος ζωντανός, a living law. The two Codes in E
of *Theodosius* and *Justinian*, the *Gregorian* and vi.
Hermenian Codes, the *Nearæ Diairaxeis* or
Authentiques, and the rest of the *Novellæ* are
nothing but Constitutions by the Emperors, to
whom the State of *Rome* permitted all by the
lex Regia that was before in the people of
Rome.

Ad C A P. XXXIX.

23. **P**rolem a te matrimonium.] This point
of Civil law, is text in *C. cit. de Naturæ
ralibus lib. 10. cum quis. Quomodo* (saiens Ju-
stianian) non est iniquissimum infam stirpem se-
cundæ posteritatis priorem quasi iustam exclu-
dere, cum gratias agere fratribus suis posteriori
debeant, quorum beneficio ipsi sunt justi filii, &
nomen & ordinem consecuti. For the birth of
the first is often cause of the marriage follow-
ing. But it is limited by some Doctors, that
the woman be before *inconcubatus*, *infamilia
retensa*, that there be *indubitatus affectus sicut
in uxore, &c.* as you may see in *Bartol. ad finem
tr. de Concubinis. Mynsinger. ad Institut. de Nup-
tialis Sect. Aliquando. Gorbofred. ad Novet. 89.*

cap.

nica cap. 15. The Canon law agrees with the Civil
Em- in this matter, as is shown in an Epistle of
tled Pope Alexander 3. to the Bishop of Excester
odes in Exi. tit. *Qui filii sunt legit. c. 6. Tanta est*
and vis.

Ad CAP. XL.

24. **S**i bonus est bastardus.] yet see *Tiraquell de Nobilitate* cap. 15. & *Pontus Heurensis* his collection touching Bastards at the end of his *De veteri Belgio*, and you shall find, that most of the brave spirits and able, of the former times, are in the catalogue of famous Bastards. Remember *Europides* in his *Andromach.*

† *Nobis te, saies he, nonnos yvnsior auctorites.*

† Many
Bastards
are better
than legi-
timates.

Ad CAP. XL.

25. **P**artus semper sequitur ventrem.] That is in respect of being free or bond. In *liberali causamatri* non patris inspicitur conditio, C. tit. de lib. causa l. 28. avi & l. 42. placuit & *de rei vendic.* l. 7. Partum, where the DD. dispute this point. But in matter of honor, or, as it were, hereditary office their law is otherwise, as you may see in C. tit. de *Decurionibus*

onibus l. 22. eos. l. 36. Exemplo l. 44. nullus
& tit. de Murilegulis l. 15. qui aut. But the
true reason was upon this ; that where mar-
riage or *jura connubii* could not be, there al-
wayes *partus sequebatur ventrem*, in regard no
legal father was of such a birth, and the *jura*
connubii extended before Christianity receiv'd
only to free men. Ulpian in his *Tituli*, tit. de
bis, qui in potestate sunt hath these words,
which are more worth then all the barbarous
Doctors comments. *Connubio interveniente,*
liberi semper patrem sequuntur ; non interveni-
ente *connubio*, matris conditioni accedunt, excep-
to eo qui ex peregrino & cive Romana, peregrinus
nascitur : quoniam iex Mensia (from whom
that law is so called I remember not) ex altu-
rato peregrino natum deterioris parentis condi-
tionem sequi jubet. Ex cive Romano & Latina,
Latinitus nascitur, & ex libero & ancilla, ser-
vus, quoniam quum his casibus connubia non
sunt, *partus sequitur matrem*. For his speech
of a Roman's marrying with an Italian woman
(not a Roman) believe it not without exami-
nation of such story as you may find collect-
ed in Carol. Sigon. de antiqu. jure Civ. Rom.lib.
I. cap. 9. and others dealing with that subject.
But clearly its true generally, that where *jura*
connubii were not, there the *Roman* law makes
the issue follow the mother, as the law of na-
ture

ture requires, which the same Ulpian saith
 the also in π. tit. de statu hominum l. 24. lex. in
 ar- which title l. 19. Celsus agrees with what we
 al- have transcribed from Ulpian. And the mar-
 no- riages with bond persons, were always ac-
 ura- counted but *contubernia*, and not *connubia*,
 v'd and they were stiled *contubernalis*, not *conjuges*,
 de as appears in π. tit. de legatis 3. l. 41. *uxorem*
 ds, *Sext.* 2. *Codicillis*, & C. tit de incest. *nuptiis* l.
 ous 3. *cum ancillis*.

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

Ad C A P. XLIV.

27. **P**roximis de eorum sanguine.] The Civil
 law first gave the wardship (of males
 till xiv. of females till xii.) to the *adgnati*, or
 those qui per *masculos conjunguntur*, and this
 was by the laws of the xii. tables, as appear-
 eth π. tit. de legitimis Tutoribus l. I. *Instit.* de
 legit. tutelas But the difference 'twixt *adgnati*
 and *cognati* both in inheritance, as also in ward-
 ships, Justinian took away in *Authent.* 118.
 cap. 5. and this is that which is here spoken of,
 and so is that law at this day.

28. *Ex parte matris.*] This matter of so-
 E 3 cage

cage wardship is grounded upon that ancient ground, held to this day regularly. Nunquam custodia alicujus de jure alicui remanet de quo habetur suspicio quod possit vel velit aliquod jus in ipsa hereditate clamare. Glanvil hath it lib. 7. c. II. & Bracton lib. 2. c. 37. Sect. 6. which is the same in substance in Littleton Sect. 123. and Breton cap. 66.

29. *In actibus bellicis.*] For, the ground and cause of Knight service wardships, was in this, that the Lords of whom the infants held, might bring them up till full age, and instruct them in military performances, that so they might be better able to do their services by which they held; which because they could not do in their infancy, the profits of the land was, as at this day, taken by the Lords to supply the defect of service. Neither is this custome of Wardship so new, as *Randolf Higden* in his *Polychronicon*, or rather some others not understanding him, ignorantly make it, by supposing the beginning of it here under Hen. 3. Clearly Wardships were before and from the Normans, at least. See the *Grand Custumier*, and *Glanvil lib. 7. cap. 9.* Neither, if *Higden* himself had understood thole words in his Chronicle which he took out of a former, written by another Monk of *Chester*, which I have seen, had any authority there been for

Henry

Henry the thirds beginning them. His words are these, *sub anno 1224. and 6 Hen. 3. Magnates Angliae concesserunt Regi Henrico Wardas bæredum & terrarum suarum quod fuit initium multorum malorum in Anglia.* An old Chronicle in that inestimable Library of Sir Robert Cotton, written by another of Higdens covert, under the same year; *Magnates Angliae reddiderunt Wardas suas Regi quod fuit initium malorum.* This Monk knew what he said, and used the word *Wardas* chiefly for Forts, Castels, Honors, and the like, by which the possessors preserved their safety in those troublesome times. For at Northampton all such were rendered to the King by the Nobility, upon the exactation of Hubert de Burgo chief Justice, as both Matthew Paris, and Florilegus express in these words, *reddiderunt singuli castella, municipia, honores & custodias Regi quæ ad coronam suam spectare videbantur.* Perhaps *custodiae* might here comprehend the wardship too of some heirs: But if so, yet they were such as some great men possest by reason of ancient tenures, and the King would then have, with the Castels, and Fortresses by others held, that he might enjoy them with their inheritances, as part of security against the Barons. No such intent is in any of the elder Monks, as some would extract out of Poly-

chronicon. Neither was that given of Wardships to the King, other then as if the Nobility should now give all their Wards to the King; supposing that the story were chiefly of giving Wardships of body and land in the common sense of *Wardæ*, as *Higden* misreports it. But for the true understanding of that in story, take *Rot. Fin. 6 Hen. 3. memb. 4.* where a recital is *provisum est de consilio Archiepiscopi Cant. & Episcoporum Anglia & H. de Burgo Justitiarii nostri & Comitum & Baronum nostrorum quod à die scilicet Barnabæ Apostoli proximo præterito caperentur in manum nostram omnia dominica nostra, &c.* and hereupon writs go into all Shires, to seise into the Kings hands all such lands, castles, forts, manors, &c. But for the antiquity of Wardships in Britain, both *England* and *Scotland*; See also *Hed. Boet. l. 11. Buchanan Rer. Scot. l. 6. & 10. & leges Malcolmi 2.*

Ad C A P. XLVI.

30. **D**'odecim denariorum valorem excedat.] So is it understood in the statute of *West. I. cap. 15.* that speaks of Inditement of petit larceny que n'amount ouster le value de xit. deniers. And therewith agrees *Itin. Canc. 8 Ed. 2. tit. Corzone 404. 406. & 415.* But

But by Breton cap. 15. value of xii. d. without more, makes it capital felony. So are also opinions in 18 *Affis.* pl. 14. 22 *Affis.* pl. 30. See Stamford lib. I. cap. 15.

Ad C A P. LXVII.

31. **I**N universitatibus.] Indeed the study of the common law hath not place in our Universities of Oxford or Cambridge, because another University (the Innes of Courts) is appointed for it. Yet the statutes of the University of Cambridge, *Earum legum* (says Doctor Cowell in his Epistle before his *Institutiones*, as he calls it, of the laws of England) *quas habet patria nostra, imperitos nos esse prohibent, ut differentias exteri patriique juris sic cognoscamus.*

Ad C A P. XLVIII.

A .^{ee}

32. **G**allica.] Touching this, *Ingulphus* Abbot of Crowland, at the conquest, thus: *Ipsum etiam idioma (Normanni) tantum abhorrebant, quod leges terræ, statutaque Anglicorum regum lingua Gallica tradarent: & pueris etiam in scholis principia literarum grammatica gallice, ac non Anglice traderentur, modus etiam scribendi Anglicus omitteretur & modus*

*modus Gallicus in chartis & in libris omnibus
admitteretur.* And Robert Holcot a learned
Dominican Friar in *lect. xi. super Sapientiam.*
*Narrant historie quod cum Willielmus Dux
Normannorum regnum Anglie conquisivisset,
deliberavit quomodo linguam Saxoniam posset
destruere & Angliam & Normanniam in idio-
mate concordare, & ideo ordinavit quod nullus in
Curia regis placitaret nisi in Gallico, & iterum
quod puer quilibet ponendus ad literas addisceret
Gallicam & per Gallicam Latinam, quae duo us-
que hodie observantur. He saies the French
continued till his time. For he died in the
great plague 24 Ed. 3. But by Statute of 36
Ed. 3. cap. 15. it was altered, which is the
Statute this author speaks of.*

Ad C A P. LI.

33. **A**D *Pervisum.*] This Chancer remem-
bers in his Sergeant.

ASergeant at law ware and wise,
That often had been at the *Pervise.*

It signifies an afternoons exercise or Moot, to
the instruction of young Students, bearing the
same name originally (I guess) with the *Par-
vis* in Oxford, as they call their sitting Gene-
rals

ials in the schools in the afternoon; which ingeniously I confess, I first learned out of Mr. Wake his *Musæ Regnantes* pag. 125. where he divides the *Quodlibets* or *Disputationes Magnæ*, which are their exercises of Regent-Masters in the forenoon, from *Parvæ*, that is, Scholars exercise in the afternoon. *Has* (are his words) *quia iis inferiores, Parvas, jam etiam corrupto nomine, Parvisias dicere consuevimus.*

F I N I S.

Radulphi

de

H E N G H A M

Edwardi Regis 1.

Capitalis olim Justitiarii
Summæ.

Magna *Hengham*, & Parva, vul-
go nunc upatæ, nunc primùm
ex vet. Codd. Mss. in lu-
cem prodeunt.

L O N D O N,

Printed by John Streater, Eliz. Flesher and
H. Cwyford, Assignes of Rich. Atkyns
and Edward Atkyns, Esquires.

Cum Gratia & Privilegio Regiæ Majestatis.



Ad Lectorem.

HAut importunum est, ut de Scriptore isthoc jam nunc publici juris facio, de *Opere* ipso, de *Sermone* denique Aristarchis satis inviso, & instar portenti (ut reliquus fere, quo jus Anglican' conscribit') habito, paucula prælibentur. Ex iis erat RADULPHUS de HENGHAM *Justitiarii* qui, quod lites suas fecissent postulati, & repetundarum damna-
ti, non modo gravissime an' xvi. Edwardi primi, cum in Angliam ex Aquitania remearet, multabantur, sed etiam ordinem amit-
tebant.

Ad Lectorem.

tebant. Privatis, sive Centumviralibus, judiciis, hac tempestate, præerat, judex primarius (quem *Capitalem Justitiarium de Communi Banco* phrasí dicimus forensi) *Thomas de Weylond*; Publicis Radulphus, *Capitalis Angliae Justitiarius* vulgo nuncupatus. Uterq; ordine summotus. Radulphus vii. c. libris luebat. verum Thomas ille bonis omnibus exutus exulabat, quod veteri etiam jure Romanorum erat nonnunquam repetundarum pœna, uti ad legem Julianam docet Julius Paullus. Hic autem, postquam in principis redierat gratiam, summus judiciorum privatorum suffectus est præfectus. Et hunc & illum ita memorat vetustus annalium scriptor,

Thomas

Ad Lectorem.

Thomas de Weylond en banc p̄nnes nome
Per agard de court, le reign ad forture
Sir Raufe de Hengham ad tant dispute
Due du Banc le Roy perdue ad le s̄e.

Plura de iis, cæterisque, sub id
tempus, *Justitiariis* pœnæ obno-
xiis, habes apud rerum Anglicarum
confarinatores vernaculos.
Ex eadem ortus esse videtur fa-
milia, ex qua *Willielmus* filius
Adæ de Hengham & *Richardus*
de Hengham; qui in pago Nor-
folciensi, plerunque Thetfordiæ,
Justitiarii ad assisas capiendas &
ad Gaolam deliberandam, sub ini-
tiis Henrici tertii, in * Archivis
sæpius memorantur. Obiit anno
salutis reparatæ c. 10. e. c. ix. hoc
est anno Edwardi secundi secun-
do; quod ex actis publicis trans- 8.
* Rot. Pa.
II Hen. :
Memb. II
& alibi ei
dem Rot. e
ctus. II
H. 3. memb

Ad Lectorem.

actionum, quas **Fines** appella-
mus, cognoscitur. Marmori ejus
sepulchralli, in D. Pauli ædibüs,
restant inscripti, literis fugien-
tibus, versiculi hi miseri.

*Per versus patet hos, Anglorum quod jacet hic flos
Legum qui tutæ dictavit vera statuta,
Ex Hengham dicitus Radulphus vir benedictus.*

Summas hasce, **Magnam Heng-**
ham, & **Parvam Hengham**
vocant. Utraque in jus vocandi
seu vadandi, excusationum, &
exceptionum, in actionibus ma-
xime *de Recto*, *de Dote*, & *de Af-
fisa*, formulæ & verba solennia
continentur, quæ tametsi ævo
nostro vix sint in usu, praxi ni-
mirum juris alio plerunque ver-
gente, inde tamen colligas licet
quanta

Ad Lectorem.

quanta fuerint apud priscos Juris Anglicani peritos autoritate, quod in optimæ notæ Codd. vett. statt. Mss. ambas velut agendi normulas olim à pragmaticis circum ferebantur. Accedit etiam, quod quisquis ille fuerit qui *Magnam Chartam* & quæ sequuntur Latine & Francice conscripta in notissimo illo juris encyclopediæ, primum Anglico donaverit idiomate, has etiam Radulphi, ut lectore ante alia dignas, transtulerit, alteramque **Michele Hengham** alteram **Luttle Hengham** inscripsérat. Manuscriptum exemplar illius versionis ætatem Edwardi sive II. sive III. redolentis, penes est virum CL. multijugæ item eruditio-

Ad Lectorem.

tionis, & vetustatis peritissimum
Franciscum Tate JC^{um}. Stylus
scriptoris, vel potius ipsa styli
vocabula, ambæ velut agendi
normulæ satis sunt à latinitate
aliena, uti & veteres fere qui re-
stant autores, constitutiones,
atque acta publica juris Angli-
cani. Cæterum, cum ante Nor-
mannos Anglice, tempestate ve-
ro citeriori, Francice, actiones
heic intenderentur, & solennes
pro tribunali disputationes ha-
berentur, sermo autem Latinus
casu accederet; id fere necessum
est eveniret eis, qui sive publicis
actis sive privatim conscriptis
libris, jus Anglicanum Latio do-
nare sermone sunt adgressi, quod
olim Theophilo Antecessori, Con-
stantino

Ad Lectorem.

stantino Harmenopulo, autori
Basilicon, Athaliatæ, Blastari,
Photio, Theodoro Balsamoni ac
ejusdem farinæ aliis accidit, qui
jura Romanorum & Civilia &
Pontificia Græce, in Orientalis
Imperii usum, verterunt, ut nimi-
rum quamplurimi vocabula me-
re Latina Græco in contextu, mu-
tatis tantummodo elementis, re-
tinerent, cujusmodi sunt

Ιντερδικτον

δεκορέμ βονορέμ, Αδελίγια ἀγωγὴ, Βονορέμ ρεπ-
τορέμ, δεβόδω μάλω, Δευνοφρικίοσθ, Ιηρέμ, ιτοῖ-
νες, ἐμιάγκυπτοιδειν, Ιευεροῖταις, φιδενκομισθὲμ,

pro *Interdictum de quorum Bonorum, Ædilis actio, Bonorum rap- torum, de Dolo malo, De inoffi- cioso, In rem, Ipso jure, emanci- pare, universitas, Fidei commis- sum, atque id genus sexcenta alia*

Ad Lectorem.

passim occurrentia. Minime enim ignari erant, non tam anticismos in oratione, nec græcas voces in nominum versione sectari se debere, quam Juris peritorum quorum Responsa, atque imperatorum quorum Sanctiones interpretarentur, mentem servare. Ridiculum est, pharmacum à poculi materie aestimare. Insanum, Decembri eò repudiane lacernam, quod non ex lana sit sive Apula, sive Attica, sive Lemesteriana: id quod faciunt ferme ii, qui ob orationis barbariem res ipsas rejiciunt: quod optime olim notavit magnus Plutarchus longe etiam charissimus Musarum alumnus, in eos, qui rebus seu docendis seu dicendis sermonis puri-

Ad Lectorem.

puritatem fastidiosi anteferunt.
Inter ea autem scripta forsitan hæc
Radulphi fuerint censenda, quæ
in antiquariorum loculis servata
non tam reconditum quid aut in-
auditum docent, quam ideo ma-
xime desiderantur, ut quæ, quan-
ta, & cuiusmodi doceant, cum ni-
mirum magna præ se ferant no-
mina, studiosorum votis inno-
tescat. Nec tamen desunt Radul-
pho, quæ valorem ei concilient.
Absque illo esset & Henrico de
Bractona (qui etiam plurima,
nec tamen quæ scitu digna om-
nia heic habentur, nec tam certo
formularum ordine, tradidit) haut
pauca de Excusationibus præ-
sertim & vadimoniiis desertis
(**E**ssoins & **D**efaults in fo-

Ad Lectorem.

ro vocant) prorsus forent in-
cognita. Cæterum his fruere quis-
quis es lector, & Vale. Ex ædi-
bus Interioris *Templi Prid. Cal'*
Augusti. c. i. d. XVI.

Radulphi



Radulphi
de
H E N G H A M
Summa Magna.

LIET ordo placitandi in Curia Domini Regis, secundum leges & consuetudines regni a Primiceriis nostris protinus retro statutas equus & justus ac in omnibus acceptabilis extiterit, Hoc tamen, quod idem ordo in forma communis scripturæ non registratur, quamplurimos ipsum scire conantes aliquantisper impedit & retardat. Nam si mens humana singula corde tenus, quod absurdum est, memorare valeret, sequeretur tunc quod scribere nil aliud esset quam laborem laboribus anticipare. Et quia frequenter scriptura & propere rememorat ea quæ per labilitatem ingenii saepius subcidunt & vacillant, Ego non ad instruendum aliquem super hujusmodi legibus regni, verum ad materiandum futuris correctoribus quædam introductiva, non serie
qua

qua debui sed qua scivi, proposui compilare. Cernentibus ea supplicans, ut opera huic apposita, in scientiam acquietent operari & excusent *Brevia* siquidem Regis de placito terræ; & qualiter & quibus *dilatationibus* potest tenens differre litem, ante communem *apparitionem* in Curia, & Quomodo debet Petens opponere, & respondere tenens; In quibus casibus potest denegari *visus* terræ & in quibus Non; & natura exceptionum tam *dilatoriарum* quam *peremptoriарum*, videlicet ante visum terræ factarum & post; & Modus *Gyrograffandi* si per finem factum lis decidatur necnon & exceptiones contra ipsum finem; ac *Quædam Exemplaria* discussionem hujusmodi placitorum juvantia suis locis continentur inferioris. Et de Jurisdictione *Curiæ Baronis & Comitatus* cum lis a tali Curia translata fuerit.

C. A. P. I.

Breve de Recto cum suis Branchiis.

Edwardus dei gratia, &c. Henrico Hussey sacerdotem. Præcipimus tibi quod sine dilatione plenum rectum teneas Rich. le Jay de una Cartata terræ cum pertinentiis in H. quam clamat tenere de te per liberum servicium unius d. per annum pro omni servizio quam I. de B. ei deforciat. & nisi feceris, vicecomes de Sussex faciat, ne

re.
p- viplius inde clamorem audiamus pro defectue
& p- eti. T.&c. vel sic unde W.de O. quatuor aeras
ito & B. de O. quinque aeras & tu ipse decem aeras
o- erra, &c. Et unde I. de O. unam medietatem &
ap- R. de P. aliam medietatem terrae ei deforciat.
e- Et nisi feceris, &c. vel sic.

ui- Rex tali salueme. præcipimus tibi quod sine di-
& c- stitione plenum rectum teneas Richardo le Jay de
am mesuagio uno molendino decem acriis terræ, x.
cet acriis pasturæ, x. acr. basci & xx. marisci
dus cum pertinentiis in H. quæ clamat tenere de te-
tur ber liberum servitium unius denarii per annum
ac ro omni servicio, unde W.de M. duas partes uni-
odi us mesuagii & unius molendini, decem aeras ter-
fe- rie, decem aeras prati, x. aeras pasturæ & x. aeras
ni- marisci, Et W. de B. tertiam partem unius
sa- mesuagii unius molendini x. acr. terra x. aeras
one rati, x. aeras pasturæ, x. aeras marisci eidem de-
ru- forciat. & nisi, &c. vel sic.

re. Rex tali salutem. Præcipimus tibi quod sine
lilatione plenum rectum teneas R. le Jay de xx.
uris terræ & mediet. unius mesuagii & unius
nolendini cum pertinentiis in H. quas clamat per-
inere ad liberum tenementum suum quod de te
met in eadem villa per liberum servitium unius
ibre Piperis vel Cumini per annum pro omni
service, unde W.de I. decem aeras terræ & me-
diatatem unius mesuagii & W.de E. x. acr. ter-
re & medietat. unius molendini ei deforciant. &
am nisi, &c. vel sic.

Bex

Rex tali salutem. Precipimus tibi quod si dilatatione plenum rectum teneas Ric. le Jay de acris terræ &c. acris prati &c. acris pasturæ c pertinentiis in H. quas clamat esse rationabil partem suam quæ eum contingit de libero tenemento quod fuit E. de N. patris vel matris, fratre vel sororis, avunculi vel amitæ, consanguinei consanguineæ suæ in eadem villa & tenere de per liberum servitium, &c. quas W. de. C. ei forciat. vel quas clamat esse de rationabili pars sua quæ eum contingit de libero tenemento quod fuit E. de N. patris vel matris, &c. in ead villa & tenere de te, &c.

Et si terra, quæ petitur, pertinet ad eam quæ tenetur sub eodem servicio, tunc sic. Quam clamat pertinere ad liberum tenementum quod de eo tenet in eadem villa per liberum servitium, &c. quam talis ei deforciat, &c.

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

Rex Custodi Archiepiscopatus vel Episcopatus salutem. Precipimus vobis, &c. quas clamat tenere de predicto Archiepiscopatu vel Episcopatu per liberum servitium, &c. quod O. ei deforciat, &c. & nisi, &c. vel sic, Regis Ballivis I. Lincolniensis Episci vel Ballivis G. de Clare Com. Glocestriae vel Ballivis I. filio Alani Comiti de Arundel salutem. Prae-

mus vobis quod sine dilatione, &c. tali de xx.
cris terræ cum pertinentiis in N. quas clamat
enere de prædicto Episcopo vel prædicto Comite,
el de prædicto filio Alani, &c. quas M. de N. ei
eforciat. & nisi, &c. vel sic.

Rex venerabili in Christi patri I. eadem gra-
a Lincolnensi Episcopo, salutem. mandamus
vobis quod sine dilatione, &c. A. de N. de x. acris
terram cum pertinentiis quas clamat tenere de vobis
per liberum servitium, &c. quas E. ei deforciat,
& nisi, &c. Vicecomes, &c. vel sic. Rex Ballivis
uis Wintoniæ s. Præcipimus vobis, &c. A. de N.
de uno mesuagio cum pertinentiis in W. quod
clamat tenere de Nobis in liberum Burgagium
vel maritagium.

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

Rex Majori & Vicecomi London S. præcipi-
mus vobis, &c. A. de N. de uno mesuagio cum per-
tentiis in London quod clamat tenere de nobis
per liberum servitium, &c. quod O. ei deforciat,
Ne amplius, &c. vel sic.

Rex A. de N. S. præcipimus tibi, &c. de qua-
nor virgatis terræ, &c. quas clamat tenere de te
per liberum serviciam unius Austurconis vel u-
nius esperuarii forii, vel unius libræ piperis vel
Cummini per annum, vel per liberum servicium
sequendi curiam tuam de N. de tribus septimanis
in tres septimanas vel per liberum servitium por-
tandi

randi brevia infra regnum Angliae, vel infra
lem comitatum, vel sequendi Comitatum tali
vel hundredum pro omni servicio.

Hic non dicatur, per annum.

Sunt autem hujusmodi brevia infinita sec
dum diversitatem eorundem servitorum &
nentium, quod non est opus inserere. vel sic.

Rex tali salutem. Præcipimus tibi, &c. de
stura ad centum oves, &c. vel ad x. oves in
quam clamat pertinere ad liberum tenementu
suum quod de te tenet in eadem villa per libera
servitium, &c. ne amplius, &c. vel sic.

Rex tali salutem. Præcipimus tibi, &c. u
de tribus carucatis terræ, &c. quas clamat tenu
re de te per servitium unius Militis, vel inventio
tibi duos homines equites vel pedites ad eundem
tecum cum arcu & sagittis in exercitum p
tantum tempus, vel servitium decem solidorum
quando XL. solidi capiuntur de scuto, vel per ser
vitium unde decem carucatae terræ, vel tot H
dae terræ faciunt feodum unius militis pro omni
servicio.

Hic non dicitur, per annum.

Breve de recto de dote semp debet dirigi ha
tedi viri vel ejus custodi, si haeres infra astatet,
extiterit, nisi tenementum illud devenierit in
manus capitalis domini pro defectu haeredum;
quia tunc debet dirigi capitali domino, ut ini
tius patet suo loco.

C A P. II.

Quæ placita pertinent ad Majorem Curiam
Domini Regis, & quæ ad Vicecomites pro-
vinciarum pertinent placitanda.

COnstat quod placita de Crimine læse
Majestatis, ut de Nece vel seditio-
ne personæ domini Regis vel regni vel exerci-
tus, homicidio, raptu, Incendio, roberia, pace
domini Regis fracta, criminis falsi, & si quæ
sunt similia, ubi scilicet imminet periculum
vitæ & membrorum, ad Curiam domini Re-
gis Majorem pertinent audienda & determi-
nanda. Placita vero de furtis, melletis, bute-
fio, plagiis, verberibus, transgressionibus, ubi non
agitur de pace domini Regis fracta, ad Vi-
cecomites pertinent audienda & determinanda.
De placito vero terræ, similiter potest vice-
comes cognoscere, quemadmodum quando
placitum aliquod divertitur a Curia Baronis
propter defectum ipsius Curiae, & quando
convenitur ipse tenens in Comitatu absolute,
ex quo dominus feodi non potest ex officio
facere hanc Assissam in Curiam suam venire,
videtur quod non defuit petenti de recto,
quando non falsat. Tunc ipse petens supplica-
bit capitali domino ut remittat ei Curiam su-
am,

am, Et tunc potest ire bene ad *Comitatum* si
vehit, Et hac est cautela necessaria.

C A P. III.

De jurisdictione *Curie Baronis* & qualiter pro-
cedendum est in eadem.

Quodlibet autem breve de *Recto*, pra-
terquam breve *parvum secundum consu-
tudines manerii*, debet esse patens, & prae-
cipue in capite clausum, & debet deferri in *Cu-
ria* ipsius *Baronis* de quo ipse petens clamat
tenere terram petitam. Potest autem petens
si voluerit in *Curia* illa prosequi loquela
suam usque ad discussionem litis per narrati-
onem narratam, vel feriationem duelli. Sed
si tenens posuerit se in *Magnam assissam domi-
ni Regis* in *Curia* illa, remanebit loquela illa
hoc modo. Tenens ille adibit *Curiam* &
habebit breve Regis ad vicecomitem loci,
per quod breve idem vicecomes prohibebit di-
ecto domino feodi ne teneat placitum in *Cu-
ria* sua, nisi diellum fuerit inde vadiatum,
eo ordine quo rex mandat quando huiusmo-
di placitum deducitur in *Comitatum*. Et te-
nens semper gaudebit essoniis suis tam de ma-
lo veniendi quam de malo lecti. Tamen in ad-
optione potentis erit, si voluerit in eadem
Curia

Curia tam diu deducere placitum suum, vel non. Qui si voluerit abinde recedere, adeat ballivum Regis & probet sacramento suo vel per duos testes Curiam domini sibi de recto defecisse, & sic, velit nolit dominus ipsius Curiae, etiā in viro ipso tenente, potest hujusmodi loquela sic transferri ad comitatum. Et quid si Curia ipsius Baronis non defecerit ipsi petenti de recto, qui sic transstulerit loquelandam ad Comitatum? Certe dominus illius Curiae, si voluerit, potest retrahere loquelandam in Curiam suam, & eam ibi terminare ordine prædicto; Dum tamen sufficienter probare poterit Curiam suā de recto dicto petitione defecisse. Videtur autem quod idem Domin⁹ Curiae potest adeo simpliciter procedere in hujusmodi probatione, sicut potest dictus petens in probatione falsandi curiam suam. In Majori autem Curia domini Regis, potest idem Dominus facere consimilia; tamen raro contingit. Parvum enim seu nullum dominis curiarum in hujusmodi placitis tenendis proficuum ascribitur. Et sciendum quod in Curia Baronis non debet Attornatus aliquis admitti sine brevi domini Regis. Potest equidem dominus alicuius curiae si voluerit ex gratia per literas suas patentes scribere dōino regi quod remisit ei curiam suam, si tantum diligat ipsum petentem; qua litera porrecta in Cancellariaz

domini Regis, petens ipse habebit suum *præcippe de recto*, directum vicecomiti, per quod præcipiet tenenti quod reddat terram petitam, & nisi tenens hoc fecerit & ipse petens fecerit ipsum vicecomitem securum de clamore suo prosequendo tunc summoneatur ipse tenens quod sit ad certum diem in Banco. Et sic ante aliquem ingressum litis in curiam comitatus vel Baronis, potest hujusmodi loquela vel placitum primo die diverti ad *Curiam domini Regis Majorem.*

C A P. IV.

Qualiter procedendum est in Comitatu post *Curiam Baronis* alicujus falsatam. Breve de Pace. Recordum Comitatus. Falsum iudicium in Comitatu. Sectatores.

Probato siquidem ea solennitate qua decet, quod si *Curia Baronis* defecerit hujusmodi petenti de recto potest ipse petens in eadem curia prosequi loquelam suam si voluerit in omni eventu, usque ad diffinitam discussionem litis. Hoc tr. excepto, si tenens posueri tse in magnam assisam domini Regis super repetita. Et si tenens sic se posuerit, ad proximum sequentem Comitatum gaudere potest essonio, ita quod in secundo comitatu protendat in pleno comitatu breve de pace quod vocatur

pro^o

prohibemus. Tunc remanebit loquela ad petitionem tenentis usque dum venerint *Justitiarii ad omnia placita.* Ex hoc liquet quod nec dominus alicujus feodi, nec vicecomes regis, qui major est in jurisdictione, possit aliquem liberum hominem ad corporale sacramentum ponere sine brevi domini Regis: quod si facere possent, & tam dominus ille quam vicecomes ex officio sibi commisso hujusmodi *magnas assisas caperent suis locis.* Caveat rursus reus sibi qui se sic in illam assisam regalem posuerit quod dictum breve *de pace* deferat ad proximum comitatum vel secundum, salvato tñ. per eßonum primo Comitatu post talem positionem. Quod si non fecerit, ad calumniam potentis per præcisam amissionis defaltam, se ipsum ac perpetuam ejus successionem privare judicabitur de petitis. Hanc vero defaltam habet Comitatus determinare & inde Recordum in omnibus * Cu-^{* al. brevi}
 riis reportare, quicquid erit in Comitatu in hu-^{vibus.}
 jusmodi placito ante positionem in magnam assisam vel duelli vadiationem. Etiam, si appartenibus partibus quereletur & respondeatur, sive loquela per non tenuram vel per quemcunque * biperti jocum cavilletur lis illa, dum-^{* al. bipar-}
 modo detur dies ad proximum Comita-^{tum}
 tum partibus, ad petitionem potentis, per breve quod dicitur *pone*, potest transferri

negotium, sive placitum illud fuerit coram justitiariis in Banco vel Itinerantibus in ipso Comitatu, Et sic annihilabitur processus inde habitus, & stat breve. Petens autem quicunque fuerit moderata gratia potest habere pone. Supponendum est n. quod procrastinatio petitionis non praetendat occupanti, verbi gratia si Peterem a te fundum hodie mihi restui, quod me procurante differtur, possit a casu tibi occupanti proficere. ideo quia pone re aliquam loquela extra comitatum ubi celerior litis habetur determinatio quam in banco, & quia presumitur quod petens petitionem maturare debet. Et sic patet, quia prorogat quod congerere debet petens, ex gratia cursoria conceditur sibi Pone, Tenenti autem nequaquam, nisi ex gratia majori, & causa speciali, utpote, si vicecomes loci fuerit de stipite consanguinitatis vel aliqua affinitate sive particeps in petitione petentis, vel aliquantis per rei offensa separaverit vicecomitem a tenente. Ex dicta causa sive aliqua alia rationabili interveniente innuitur tenenti dictum Pone. A vicecomite vero praefixo die litigantibus in Comitatu, ad primum comitatum, potest tenens facere defaltam. Caveat tn. quod infra xv. dies terram suam replegiet, quod si non fecerit, seisinam perpetuam, nisi aliunde recuperet, amittet, vel ad primum Comitatum

potest effoniari de malo veniendi, & ad secundum facere defaltam & ad tertium de malo lecti. Effonium autem de malo lecti semper sequitur effonium de malo veniendi, & non contra. Tamen vicecomes ex officio suo mittere debet quatuor milites de eodem Comitatu ad videndum infirmum, eo ordine quo faceret si placitum esset in Banco; & ideo præcipietur ei hoc idem facere per breve de Judicio. Ipsi quoque milites, secundum quod infirmus surgere aut languorem capere elegerit, præfigant ei diem quindenæ, vel unius anni & unius diei. Breve ad videndum infirmum.

Rex vicecomiti salutem. Mitte quatuor legales milites de Comitatu tuo usque N. ad I, qui languidus est ad videndum utrum infirmitas quæ se effoniavit de malo lecti versus B. de placito terræ quod est inter eos in Comitatu tuo, sit languor necne. Et si sit languor tunc ponant ei diem a die visus sui in unum annum & unum diem apud Turrim London præfato B. inde responsurus, vel sufficientem per se mittat responsalem. Et si non sit languor tunc ponant ei diem a die visus sui in xv. dies quod tunc sit ad proximum Comitatum tali præfato B. inde responsurus vel sufficientem &c. Et dic quatuor militibus illis quod tunc sint tibi ad testificandum visum illum & quem diem ei posuerunt, & habeas ibi nomina militum & hoc breve.

Ante visum terræ petitum & factum, potest tenens effoniari de *malo lecti*, & post visum similiter, praecedenti semper effonio de *malo veniendi*. Sed tantum unus languor capi potest ante visum vel post, pro voluntate tenentis, & non plus, quamvis effonium de *malo lecti* in Majori Curia domini Regis, utpote ad Bancum vel in Itinere Justitiariorum, jaci debet tertio die ante diem placiti præfixum & per duos effoniatores. Et hoc in præsentia Constabularii Castris, civitatis, vel Burgi ubi hujusmodi placita tenentur, qui inde Recordum portat coram eisdem Justitiariis vel coram Majore hujusmodi civitatis si Castrum non habeatur, nec per consequens Constabularius. Quia frequenter evenit quod comitatus tenentur in silvis, & Campestribus foris villis & alibi, videtur n. quod calumnatio effonii de *malo lecti* non projecti ante tertium diem, nec per duos testes locum non tenet; quia in talibus locis nulla residet talis persona quæ talia recordare vel testificare posset vel deberet. Tamen si hujusmodi placitum fuerit coram Justitiariis de Banco vel Itinerariis, debet ex consuetudine & jure hujusmodi effonium jaci ad Castrum Comitatus vel Burgi coram Constabulario vel ad Turrem Londoniæ pro Banco, vel alibi in Itinere Justitiariorum propter hujusmodi reseantiam. Idem

dico

dico de *Curia Baronis*. Non n. tenens ignorat à quo domino tenet & cui feodo est annexus. Per duos autem effoniatores solemnizati debet tale effonium, ut unus per effonium excusat infirmum, & alius propter priorem excusationem in effonio de *malo veniendi*, in hoc effonio quasi iterato de una & eadem ægritudine, testimonium perhibeat. Et idem jaci debet tertio die ante diem litis, propter computationem dierum in anno bissextili, ut cum detur dies languido à die visus sui in unum annum & unum diem per ipsum diem integrum ante tertium diem, ante diem litis possit salvari dies excrescens in anno bissextili, & computari in integritate anni, quo dictum effonium projectum fuit, Teste *confilio domini Henrici Regis*, ac brevi suo inde directo Justitiariis suis de Baco anno regni regis *Henrici LIII*. Effonium autem de *ultra mare* de jure locum non tenet nisi in prima excusatione jaceatur, & hoc intelligito nisi reus iter arripuerit versus ultra mare prius quam summonitionem receperit; si n. reciperetur hujusmodi effonium de ultra mare post effonium de *malo veniendi*, vel summonitionem saltem, frequenter accideret quod ipse reus maliciose hoc faceret ad sprogandum jus petentis. Et ideo locum tenet in prima excusatione litis. Quia ex quo implacatus ille iter arripuerit ante summonitionem

receptam, videtur quod non constabat ei servi
 dies de placito prædicto. Et quid si reus de
 tra mare effoniatus tali die effonii projecti,
 erit in regno? Certe si petens hoc eodem die berr
 calumniat, ad aliū diem placito præfixum dum
 modo hoc sufficienter probare poterit, reo fatio
 adjudicabitur pro defalta. Interest autem Ju
 stitiariorum inquirere hujus rei veritatem,
 Vicecomes autem in suo comitatu similiter fa
 ciat, aut probationem illius petentis recipiat
 sexta manu. Comperto siquidem ipsum reum
 in die dicti effonii projecti extitisse in regno,
 reus ille amittet seisinam terræ petitæ per de
 faltam. Effonium de servicio D. Regis semper
 admittitur & locum tenet ad alium diem, dum
 modo porrigitur breve domini Regis de war
 ranto effonii prædicti. Et si reus non porri
 gat cadit illud breve in defaltam amittendi sei
 sinam terræ. Et si placitum fuerit de captione
 averiorum cadit in misericordiam tanquam in
 defensus, & petens habebit per judicium re
 tornum averiorum. Quando dominus Rex
 et in exercitu, reo secum existente, & hoc
 liquet in Cancellaria domini Regis warrantum
 habebit, Sed si rege non existente in exercitu
 miserit aliquem talem in servicio suo, si hoc
 in rotulis Cancellariæ non inseratur oportet
 quod aliquis miles compatriota ipsius sacra
 mento testificetur ipsum reum esse tali die in

et ei servicio domini Regis antequam breve de ser-
vicio suo concedatur. Si n. sine rita examina-
tione concedatur tale breve, ordo juris cre-
die berrimæ perverteretur. Nam in quocunque
statu esset lis hujusmodi sive post vel ante po-
repositionem in magnam assisam aut duelli vadia-
tionem, per talem warrantum posset jus pe-
tentis retardari & casualiter imperpetuum.
Et ideo tali solemnitate fiat hujusmodi war-
rantatio. De plerisque autem placitis potest
Comitatus ferre recordum. Ut cum quis aliquæ
implacitaverit in Comitatu per breve domini
Regis de Consuetudinibus & serviciis, & ipse
reus dedicit in pleno comitatu ipsi petenti hu-
jusmodi servicia petita, & ipsum disadvoget
pro domino. Tunc dominus ille posteritate
dierum petierit per breve domini Regis de
Rebus de petendo tenementum illud de quo de-
dicta sunt hujusmodi servicia petita, habendum
in dominico pro servizio sic dedito. Si reus
ille hoc in responsione negaverit, sive in eo-
dem comitatu id neget, sive in Majori Curia,
habet comitatus in hac causa ferre recordum.
Et si Comitatus sic recordatur, petens recupe-
rabit de prædicto tenente seisinam perpetuam,
& si Comitatus è contrario recordetur, pe-
tens amittet clamum imperpetuum. De his
portat Comitatus Recordum. De positionibus
in magnam assisam, duelli vadiatione, defalcis
post

poet defaltam, utpote post visum terræ factum
ut in defaltis; si reus postquam se posuerit in
magnam assam ad proximum comitatum no-
tulerit breve domini Regis de pace quod vo-
catur *prohibemus*; vel effoniatus fuerit ac
proximum comitatum post hujusmodi posi-
tionem & ad secundum non deferat dictum bre-
ve, & in singulis placitis terræ ubi tenens amittet
per defaltam. Et in *utlegariis*, & in pro-
secutione *appelli sine brevi*, vel *cum brevi*, habet
comitatus portare recordum in eodem comita-
tu, & in *majori curia* domini Regis. Tamen si
reus fecerit defaltam in eodem comitatu post
visum terræ factum, & ad calumniam ipsius
petentis summonitus esset ille reus ad audiendū
judicium suum, & deferat suum pone ad
amovendam loquela illinc coram *Justitiariis de Banco*, quod per assignationem causarum
superius expressarum facere possit ex gratia
speciali, generaliter sunt reincipienda omnia
retroacta in comitatu ante positionem in mag-
nam assam vel duelli vadiationem, & cum
per pone venerit loquela ad *Bancum* in pra-
dicta defalta post visum, comitatus non por-
tat recordum. Singula placita sine brevi de-
ducta in *Comitatum*, extra comitatum carent
Recordo ipsius comitatus. Et omnia placita
deducta in *Comitatum* per breve transferri
possunt per breve coram *Justitiariis de Banco*,

vel

vel *Itinere*, & non è converso, Quia in ipsomet
Pone semper sic dicitur ; Pone ad petitionem pe-
tentis loquela quo est in Comitatu tuo per
breve nostrum de recto, &c. Tunc igitur sequi-
tur ex verbo illo [per breve nostrum] quod si
petens non agat per breve, quod nulla est ibi
loquela, Hoc autem dico ad adnullandam
opinionem Rusticorum ruralium qui frequen-
ter ex impetuoso garritu, ut appareant quod
non sint, sustinent è converso. Sin autem
placitum fuerit in Comitatu sine brevi vel cum
brevi, executiones Judiciorum habitorum in
comitatu fient fieri & debent per Ballivos do-
mini Regis ejusdem comitatus, Quemadmo-
dum sive per narrationem narratam, sive per
defaltam post defaltam adjudicetur ipsi petenti
seisina de petitis, ex præcepto vicecomitis po-
nat dictus Ballivus petentem in hujusmodi
seisinam, nec oportet ipsum Petentem querere
aliud breve ad hoc faciendum. Quia vicecomes
ex judicio comitatus in hoc casu naturam &
tenorem tam parvi Cape quam magni ex officio
sibi commisso habet sine brevi. Ideo Judicia
siquidem comitatus pronunciari debent per
aliquem *Sectatorem* ipsius comitatus. Et cum
aliquotiens evenit, quod quis queratur do-
mino Regi de falso judicio redditio in ipso Comi-
tatu, non intelligatur, si comperiatur ipsum
judicium falsum esse, quod vicecomes inde pu-
niri

niri debet, immo comitatus, id est, *communitas comitatus*, unde expedit hujusmodi ~~se~~^{* al secca-} toribus tale respondere quale pro justo poterint advocare, Si autem vicecomes possit reddere hujusmodi judicium, quandoque praetextu lucri, vel causa ignorantiae deviare, quod si sic ficeret, indebitum esset & ini- quum * prosequentibus hujusmodi causam im- pingere. Et alia subest causa. Sunt n. non nulli vicecomites adeo simplices quod non habeant unde respondere possint de misericordia assignata quando convinentur de tali judicio in curia. Et ideo statuitur quod *totus Comitatus* reddat judicium. Caveant nunc de iuste procedere. Semper intelligendum est quod quilibet *summonitio* fieri debet per *bonos summonitores*. Videamus ergo quid & quale sit officium summonitorum.

C A P. V.

De officio *summonitorum*. Lex vadiata. Esso- nia.

Cum ordo placitandi in *Curia Baronis & Comitatus* per breve domini Regis directo superius in parte exprimatur, nunc cum hujusmodi loquela in pleno comitatu per breve quod vocatur *pone adjornata* fuerit in

Ban-

Bancum, opus est docere quomodo ipsi petens & tenens de cætero debent procedere. Cursorium est autem, quod quandocunque petens fecerit defaltam, tenens eat quietus sine die. Et tam petens quam plegii sui de prosequendo in misericordia. Et ideo de tenente & ejus defensionibus loquamur. Primo de placito at terminato ad *Bancum* foris *Comitatum p Pone*. In primo die potest petens effoniari de malo veniendi ab initio & gaudere eodem effonio, sed non decet propriam commoditatem differre. Duo boni *summonitores* adibunt tenentē dicendo sic. *Nos A. & B. summonemus te quod sis tale die apud London, coram Justitiariis de Banco responsurus tali de tanto terræ cum pertinentiis in N. & specificare debent quantitatem. In judicando autē effonio semper respicienda sunt brevia originalia & status placitorum; ne forte per iterationem effonii nimis differatur petitio petentis seu per machinosam cautelam prosequantis aliquid hujusmodi effonium. Sed si tale effonium irritum fuerit convertatur in defal-
sam. Et ideo Justitiarii sic faciunt ad evitan-
dum periculum & errorem. Et si *summonitores* non faciunt officium suum ut prædictum est, tunc non conceditur secundum legem terræ. Et hoc idem dico, quod si summonitio non sit secundum legem terræ post terram captam in manum Domini Regis, replegiare eam po-
test*

test reus & omnino disadvcando omnia essa
nia cujuscunque generis vel naturæ fuerint &
defendere summonitionem sic. Sic defaut
ne pope eo fere. Car si ne su pas somons se
loun ley de terre, & ceo sup p[re]st afere quam
ke cest Court agard que fere deberoye. E
tunc debent summonitores, si sint boni, esse pra
sentes ad testificandum summonitionem suam.
Et nisi se repræsentent ad testificandam sum
monitionem, licet illam decenter fecerint non
sunt boni summonitores. Et tunc adjudicabi
tur reus ad legem suam xiij. manu quam face
re potest secure, si non sit summonitus secun
dum legem terræ. Et hæc est cautela necel
saria. Et si summonitores sint boni, adhuc dico
potest reus esse ad legem contra eos, licet falso.
Et summonitores non portant recordum in hac
causa ad destruendum legem Rei. Ista autem
ultima lex potest vadiari ad salvandum autum
nalia aut Redditum assisum. Et potest reus re
trahere se de lege & esse in misericordia, & au
tumnalia lucrari. In omnibus autem curiis &
singulis placitis potest fieri hæc cautela. Qui
rite summonent & eandem summonitionem te
stantur, vocantur boni summonitores per legem
terræ & non aliter. Licet vero præsentia te
nentis ex consuetudine regni debet in curia
domini Regis usque ad quartum diem expecta
ri, intra quam tenens non adjudicabitur pro
defalcta,

esso defalta, caveat tamen tenens quod effonium suum primo die jaceatur, aut calumniari potest & in defaltam reduci. Attamen secundo die possunt aliquando effonia intrari in rotulo: quanquam ex gratia Justitiariorum quandoque propter nimietatem effoniorum primo die non possunt intrari.

C A P. VI.

Modus effoniandi & reddendi effonia & dies communes in brevi de Recl. Effoniatores. Attornati.

Modus effoniandi talis est. *Talis versus* talem de placito terrae per talem. & sic irrotulabitur. Modus reddendi effoniorum talis est. Dicat Prænotarius clamatori. *Exige* effoniatorem Richardi le Fay. respondeat effoniatore. Ecce Adsum. Iterum Prænotarius ubi est W. Hassé, ac si diceret, petens, qui similiter dicat Ecce adsum. Tu effoniatore Richardi affida habendi hic marrantum tuum à die sancti Michaelis in xv. dies, & tu Willielme serva eundem diem. Affidatis in manibus vel super virgam clamatoris recedant utriusque si velint. Potest autem tenens effoniatus, ante redditionem effonii, apparere si voluerit, & respondere pententi si voluerit. Et si ipse tenens inventus fuerit

* lege plau- rit juxta * plebiscitum, ante quam reddatur te-
citum. sonum ad calumniam petentis, coeretur re-
spondere petenti, velit nolit, de capitali pla-
cito. Et sic per propriam fatuitatem posse
in prima tali apparitione amittere dilatione
statutas. Sunt etiam *dies communes* dati, e
consuetudine regni, in omnibus placitis &
cundum diversitatem naturarum brevium. I
hoc autem brevi *de recto* generaliter denta
duo dies per annum tantum. Et ratio quare
isto brevi assignantur pauciores dies per annum
quam in aliis brevibus; quia de quovis potest
dissilire ad istud, & non est converso. Istud
stirps est aliis, ita quod quicquid per ipsius
rita determinatione concluditur stat imperpe-
tuum. Et ideo per hanc moderatam dilatio-
nem parcitur tenenti. Caria namque dominus
Regis neminem vult decipere. De diebus om-
nibus in hoc brevi sic distinguo. si breve primo
venerit ad sestum Sancti Michaelis de Octabis
& Quindena Sancti Michaelis ad jornetum a die
Paschæ in xv. dies. De tertia septimana, in
III. septimanas Paschæ, De mense in mensam
& quinta septimana in quintam septimanam.
De Crastino] Animarum in Crastinū Ascen-
sionis domini. De crastino Sancti Martini in
crastinum Sanctæ Trinitatis, de quindenam San-
cti Martini in quindenam Sanctæ Trinitatis,
ultra quod quindenam Sancti Martini in hoc
ter-

termino non recipietur breve. Et si breve ve-
nerit ad terminum Sancti Hillarii hoc ordine
respondeat ei terminus Sancti Johannis Bap-
tistæ & è converso. Pascha n. Sanctus Micha-
el, Johannes & Hillarius in hac regula conver-
tibiliter se habent in omnibus brevibus & pla-
citis. *Essoniator* autem, absente vel præsente
adversario suo, tantum potest facere quan-
tum *Attornatus* omni die, nisi eo die quo o-
portuerit partes litigare. Litigare autem pro
domino suo non potest *essoniator*. Sed si petens
essoniatuſ fuerit vel cōpareat, *essoniator* tenen-
tis bene potest capere diē versus eū adeo be-
ne sicut dominus suus vel ejus *attornatus*, vel si
petens fecerit defaltam, idem *essoniator* in red-
ditione *essonii* potest calumniare defaltā, & sic
per calumniam suā petens perdet breve suum,
& plegii sui in misericordia, & tenens & *essonia-*
tores quieti sine die. Et si reus deficiat in red-
ditione *essonii* petentis, revera *essoniator* ille
potest sequi defaltā versus eum & habere bre-
ve de judicio ad capiendam terram in manum
domini regis per *magnum Cape* aut per *Par-*
vum de habendas seifina vel de *attachiando* seu
istringendo secundum qualitatē & diversita-
tem brevium & dierum, adeo bene sicut potest
dominus suus vel ejus *attornatus*. Aliter au-
tem posset talis defalta transcurrere impunita
frequenter ad damnum cuiuspiam & in illufi-

onem regiae dignitatis. Quando autem effonia-
tor sequitur defaltam pro domino suo vel pro
suo attornato, certum nomen ejus irrotulabi-

* Ita codi-
ces queis
utimur. tur in Rotulatione defaltæ illius, propter * te-
nerem statum ipsius effoniatoris qui in hoc casu
tam solemnis efficitur in potestate. Quando
autem attornatus sequitur defaltam pro do-
mino suo, non sic fit; nisi dubitetur de fraude
attornati.

C A P. VI.

De Attornatis faciendis.

POst igitur effonium redditum, potest reus
apparere in Curia & facere attornatos. Se-
curum est n. ei facere duos attornatos pro peri-
culo infirmitatis, seu mortis, vel etiam fraudis
in quocunque statu esset lis illa. Ambo reus
& petens possunt facere attornatos & debent
fieri per hæc verba. *Talis ponit loco suo* talem
versus talem de placito terra. Et si prius fece-
rit attornatos quos amovere voluerit, sic. *Ei*
amovet tales quos prius, &c. Possunt autem per
breve domini Regis de Cancellaria tam pro
reco quam pro petente admitti Attornati. Et si re-
us aut petens infirmentur in provincia, & non
possunt venire ad curiam coram Justitiariis,
nec ad Cancellariā domini Regis ad faciendos
attornatos, cum oporteat de necessitate faci-
entem

entem attornatos personaliter in Curia præsentem esse, tunc ad procurationem volentis facere attornatos, mittat Cancellarius aliquem notum clericum de Cancellaria ad infirmum coram quo faciat attornatos. Et Cancellarius quando eos recepit, mandabit Justitiariis per breve domini Regis de hujusmodi attornati receptione. Et quando dominus Rex ex gratia sua dat alicui potestatem recipiendi hujusmodi attornatos, tunc sic. *Rex dilecto & fideli suo tali salutem. Sciatis quod dedimus vobis potestatem recipiendi attornatos tales, quos loco suo attornare voluerit, ad lucrandum vel perdendum in loquela quæ est coram Justitiariis nostris apud Westmonasterium per breve nostrum, inter præfatum talem petentem & talem tenentem de tanto terræ cum pertinentiis in N.* Et ideo vobis mandamus quod, cum Attornatos illos reperieritis, de nominibus eorundem attornatorum constare faciatis, remittentes nobis hoc breve, &c. Si autem petens sive reus languidus fuerit, potest habere breve domini Regis de attornato faciendo sic. *Rex vicecomiti saltem. Mitte quatuor legales milites de comitatu tuo usque N. ad F. qui languidus est ad videndum quem Idem F. loco suo attornare voluerit ad lucrandum vel perdendum in loquela quæ est in comitatu tuo coram Justitiariis nostris Itinerantibus de tanto terræ cum pertinentiis in N. & dic quatuor militibus*

tibus illis quod sint coram Justitiariis nostris tali die ad testificandum quem idem F. in prefata loqua loco suo attornare voluerit, &c. Justitiarii similiter in provincia possunt recipere atturnatum & hoc significare sociis suis per breve suum, & stabit atturnatus. Reus autem in nullo placito quod determinari poterit per legem, non potest facere atturnatum propter imprisonmentum quod subsequitur: quia non debet quis imprisonari pro delicto alterius. Ex quo illud est personale delictum, nec per consequens facere debet pro eo legem, nec cum reus fecerit atturnatum, oportebit petentem se effoniare versus illum Atturnatum, immo versus principalem, Attornatus autem si fuerit effoniandus, semper nomine suo effonietur & non in nomine principalis.

C A P. VIII.

*Secundus dies placiti. Defalcat. Magnum Cape.
Parvum cape. Non Plebne. Legis vadatio.*

Secundo die placiti potest reus facere defalcat. tam si velit ex consuetudine regni, dum tam effoniatus fuerit primo die ordine monstrato. Petens autem expectans quartum diem ipso die offerat se liti sic versus ipsum re-

um in hæc verba. Richardus le Jay se profre vers Will. Huse de play de terre. & tis ent jour par son essoneur jekes oze, & ceo est buy le quert iour, dont nous demandons judgment de sa defaute. Cujus præsentatio sic irrotulabitur. Richardus le Jay op. se 4. jus die versus Willielmum Husse per attarnatum suum de placito terræ cum pertinentiis in H. quam clamat jus suum versus eum & ipse non venit & habuit diem per essonium suum hic ad hunc diem. Judicium. prædicta terra capiatur in manum domini regis, & diem captionis scire faciat Justitiariis Post nostris per literas suas sigillatas vicecomes, &c. oportet. Et ipse summoneatur quod sit hic tali die coram & summonas Justitiariis nostris. Et tunc exibit istud breve quod vocatur magnum cape. [Rex vicecomiti Williel- salutem. Cape in manu nostram per visum le- mum galium hominum de comitatu tuo unam Caruca- quod sit, tam terræ cum pertinentiis in H. quam Ri- &c. inde chardus le Jay, in curia nostra coram Justitia- responsu- riis nostris apud Westmonasterium clamat ut jus ostensu- suum versus Willielmum Husse, pro defectu ip- rus quare suis W. & diem captionis scire facias Justitiariis non ser- nostris apud Westmonasterium tali die * & habeas uaverit ibi nomina eorum per quorum visum hoc feceris, diem si- &c. Quotquot fuerint deforciatores in brevi tum per effoniatores suos, &c. Ne tamen in Codd. mss. queis uitimur aliter legitur hoc breve quam in contextu descripsimus, quæ sequuntur satis docent ita locum hunc esse supplendum sive Henghami verb sint sive institia.

nominati, toties repetatur *le Cape* sigillatim super unumquemque deforciatorem. & tunc irrotulabitur proffrum suum sic. & versus *Willielmum de tanto terra*, &c. Et sic de singulis. Duo verba in hoc *cape* notabilia sint, *re-*
osten- *sponsurus* & *osten-* *surus*. *Responsurus* refert ad
rus quare capitale placitum, *Ostensurus* ad defaltam sa-
non fer- nandam cui? scilicet domino Regi. Quia ex
vauerit diem sibi hoc defalta si terra debite replegiatur, nemo
datam lucratur nisi dominus Rex. Et ideo sic dicitur
per effo- quare non servaverit, &c. Si autem reus primo
natores die fecerit defaltam, tunc in hoc brevi de ca-
quia illo piendo terram in manum domini Regis * omis-
die] & tatur hoc verbū *Ostensurus* quia illo die nullo
que se- modo comparavit nec per consequens habuit
quuntur. alium diem sed *osten-* *surus* quare non fuit coram
Verum *Fustiariis nostris* sicut *summonitus* fuit. Istud
que sig- *cape* vocatur *magnum cape* ad differentiam alte-
nis [] rius brevis de judicio de placito terrae quod in-
cludun- cipit per *Cape*, non pro eo quod scilicet major
tur non est in subsequentia vel effectu, sed quod plures
satis in- articuli continentur in eo quam in subsequenti
tegra sunt, nec brevi quod dicitur *parvum Cape*, verbi Gratia.]
in omni- In simplici defalta ab initio post summonitio-
bus co- nem & effonium ad jornatum si quis reus de-
dicibus fecerit, ut prædictum est, capietur terra in ma-
Radul- phum agnoscent autorem. Sed relegatur lector sive ab autore ipso
phum sive ab exscriptoribus nonnullis ad summam & omnino pro anni
agnoscunt & dicitur *Fait assavoir*, omissis annuo brevi de *Magno cape*
que dicitur & que sunt id genus cætera uti diximus sic signata.

num D. Regis per *magnum cape*. Sed reo defi-
ciente postquā comparaverit in Curia, capie-
tur terra in manum domini Regis per *parvum*
cape pro defectu rei qui summonebatur ad audi-
endum judicium suum & ex hoc petens conse-
quetur seisinam de terra petita. Caveat rur-
sus sibi reus deficiens quod infra xv. dies ter-
ram suam captam in manum domini Regis *re-
plegiet*, quod si non fecerit, ad calumniam pe-
tentis proximo die placiti amittet seisinam te-
ræ, sicut per defaltam post defaltam, & per
magnum cape returnatum fiet hujusmodi pro-
batio, scilicet fiat collatio de die captionis in-
dorsato a retro brevis illius returnati a vice-
comite, & de replegiatione. Si districto com-
poto comperiatur terram non esse replegiatam
infra xv. dies post captionem, amittet seisinam
per defaltam. Et de hoc servit hoc verbum,
Et diem captionis, &c. Et ista defalta vocatur
gallice **pon Plevine**, & æquipollet natura-
liter *defalcta post defaltam*. In quibus utrisque
defaltis, & defalta post primā summonitionem,
defalta post visum, defalta post vaditationem
duelli, defalta post positionem in magnam assi-
sam, defalta post warrantū vocatum & defalta
si non miserit certum responsalē post consum-
mationem languoris, semper reus amittet sei-
sinam. Terra siquidem capta in manum domi-
ni Regis per visum, non potest replegiari nisi
coram Justitiariis vel in Cancellaria & hoc man-

dabit dominus Rex Justitiariis per breve suum, tamen ubi cuncti inventus fuerit aliquis de tali officio privilegiatus, sive fuerit hic coram quo dependeat placitum sive alius coram quo terra sic capta replegiabitur, ille mandabit sociis suis diem *replegiationis*. Sed non oportet eum in propria persona terram suā *replegiare*. Quilibet n. extraneus pro noto, & ē contra terram alterius potest *replegiare*. Sciendum est autē quod *vicecomes* nequitiā in officio sibi commissam potest facere multipliciter. verbigratia si reo non summonito, testetur & indorsebit *vicecomes* in brevi remisso ipsum esse summonitū, unde *magnum cape exivit*. & si iterū in *magno cape* testetur captionē terrae quae non capiebatur & diem captionis prætextu cuiusdā fraudis, unde dicta terra non fuit replegiata, eo quod reus inde nihil scivit, & petens precise se capit ad defaltam *non plevinæ*. Et quid si testetur ultimam summonitionem quae est in *le cape* reo non summonito, & petens per defaltam recuperet seisinam, cum de jure nullam potuit facere defaltam, ex quo summonitus non fuit; sciendū est quod post defaltam irritare potest per dedicere primam summonitionem per *legem* se **xii. manu.** Captio tamen ut sanetur defaltam *non plevinæ*, per *legem* dedici non potest. Nam si reus vellet dedicere captionem oportet prius evincere fraudem captorum dictæ terræ per vi-
sores dictæ captionis. & hoc ad impediendam
ulti-

uum, ultimam summonitionem contentam in *le capo* per quod reus recuperavit seisinam dictæ terræ petitæ non potest dedici *per legem*. Quia testificatum fuit die quo petens recuperavit leisinā terræ petitæ cum reus non fuerit ibidem, & licet affūisset non expediret ei dedicere summonitionem, cum non posset respondere de capitali placito nec posset vadiare *legem* de non summonitione contra summonitores qui tunc non fuerunt ibi, & sic recuperata seisinam petitis reus non haberet partem adversam cui respondere deberet nec diem placiti unde posset aliquid dicere vel *legem vadiare*. Hic nullum habetur remedium nisi dare domino regi de suo pro sic, quod faceret venire summonitores ad attingendum hujusmodi falsitatem, & ita posset recuperare dictam terram suam. Et licet summonitores testantur adversus ipsum reum secundum *Henricum de Bathoria*, reus potest tunc dedicere *per legem se xii*. manu contra summonitores de non summonitione quam testantur se fecisse & eorum testimonium infirmare, & licet reus perdat per defaltā *non plevinae* vel p defaltam post defaltam, habet tamen recuperare pro hoc per breve *de recto*. Effonia siquidē de *ultra mare de servitio domini Regis & malo veniendi*, si terra capiatur in manum domini regis quod debita hora replegietur, possunt infirmari, p dedicere primam summonitionem & sic de novo reincipiēdū est. Et si terra capiatur

atur in manum domini Regis & debite replegiatur, tunc potest in apparentia rei petens effoniari.

C A P. IX.

Placiti Tertius dies. Essonii calumniatio. Fourcher. Plebne. Recovery sur default. Breve de Scias. Parvum & magnum cap. Essoniorum formulæ. De malo lecti. Langor. Quatuor milites missi ad infirmum. Default puis essoin de mal de lit, & auters defaults. Visores. Utew de terre.

Tertio die apparente petente, si reus effoniatur proculdubio effonium illud disallocabile est, quia non potest reus effonium gaudere, donec prima sanetur defalta postquam terra sua capta fait. Et si sit effoniatus perdit seisinam terræ ut per defaltam post defaltam. Facto autem attornato rei sequenti die placiti ambo attornatus petentis & reus effoniabuntur, attornatus autem rei nequaquam. Si reus effoniatur & attornatus suus non vel tunc petens ad alium diē potest calumniare effonium illius rei vel non. Certe secundum *Henricum de Bathonia* non. Hora enim hoc faciendi jā præteriit. Petens autē seu attornatus suus vel ejus effoniator in redditione effonii illi⁹ potuit hoc fecisse & allocaretur de jure. Hic autem probatur de jure

ple-
s es-
ure quod quandoque auferatur quod differtur.
licet tamen generaliter dicatur quod differtur
non auferatur. Calunia enim effonii p*rojecti* die
pambulo hodie * devoluta in *casu* petentis, quia ** al. lo-*
expedit debitum tempus calumniandi hodie *cum non*
locum non tenet. Hic autem disputari potest tenetia
quod effoniator in casu plus facere potest quam ore pet.
atturnatus. Si autem vir & mulier invenian-
tur in uno brevi, quemadmodum si terra petita
fuerit hereditas ipsius mulieris vel data cum ea
in liberum maritagium, seu est questus illorum
viri & mulieris conjunctum, alter eorum primo
die potest effoniari, & alter deficere. Congruit
tamen viro primo effoniari in hoc casu. Quid
erit tunc de defalta mulieris? Terra ca-
pietur in manum domini regis aut deerit ordo
juris. Et quid si replegietur hora debi-
ta? Et hoc comperiatur per indorsamen-
tum brevis vicecomitis; Die dato effonio
ipsius viri amitteturne terra petita per
defaltam ipsius mulieris? Cum habeat virum
sine quo de jure conjunctum non habet respon-
dere, Certe licet vir praecebat mulierem gene-
raliter, & in ore suo stet verbum mulieris, si
terra petita fuerit de hereditate ipsius mulieris
videatur quod debeat amitti. Sed si fuerit talis
terre questus viri & mulieris conjunctum,
vel si donetur cum ea in liberum marita-
gium, ubi vir tantum habeat in terra illa quan-
tum

tum mulier aut plus, non amittatur tunc per defaltam illam. Non enim convenit quod qui pro alterius contumacia puniatur. Quid enim tunc de defalta ipsius mulieris? Resummonatur una cum viro suo quod tunc sit ad alium diem

* Locus quia hic ordo de viro primitus effoniato * inter plerisq; mulierem primitus effoniata converti non potest. Exempli test. Caveant vir & mulier coniunctim implacabili citati quod semper in effonio alterius alter compareat quamdiu furcare possint, &, cum ultima non possint, concurrant eorum effonia in suis locis. Alter autem illorum tantum unum effonium de malo lecti habere potest. Hæc autem omnia dico de pluribus participibus ubi terra impertita est seu tenementū videlicet de furcatione effonii & de defaltis inde provenientibus;

* Marl numerantur in parte in * statutis dōini Henrici bridge Regis. Si autē plures participes fuerint in brevi cap. 14. currat ordo communis. * Et cum istæ erant dilata-

* Desunt tiones tempore quo ista summa erat composita quæ his signis ** ubi plures erant participes tenentes p̄ quos jure hinc dicta petitio ultra quam debuit prorogabatur,

stacta illustris rex Edwardus filius R. Henrici in pri- sunt, mo parlamento suo decrevit in præmissis sicut plerisq; exempli plenius patebit in * sexagesimo articulo cōstitu-

* West. I. tionum illarum. Effonium autem de ultra mare c. 43. si rite jaceatur semp exposcit inducias XL. die run ad minus. Et semp debet precedere effonium de malo veniendi & non ē contra. Tertio die

die placiti post captionem terræ per defaltam
quam tenens fecit die præcurso, aut tunc ipse
tenens defuit aut apparet. Sive autem appa-
reat sive non ad proffrū petentis inspiciat præ-
notarius indorsamentum vicecomitis a tetro
brevis p̄ quod terra capiebatur. Et si reperia-
tur non esse replegiatam infra xv. dies post
captionē tunc petēs offerat se liti sic. Richard
Jay se p̄f̄re vers William Huse de play de ter-
re. A tel jour fu la terre p̄rise in la main le
rey p̄ sa defaut de non plevine de tout outre.
Ita offerre se debet, si tenens fuerit præsens; &
si se teneat ad defaltam, quod secure facere po-
test, hoc modo irrotulabitur proffrum suum.
Richardus le Fay aut per se, aut per attornatum
opñlit se iiii. die versus Willielm. Huse de pla-
cito unius carucatae terræ cum pertinentiis in H.
quam clamat ut jussuum versus eum. & ipse non
venit & alias fecit defaltam ita quod præceptum
fuit vicecomiti quod caperet prædictam terram in
manum domini Regis & quod diem, &c. &
ipse suum, &c. quod esset hic ad hunc diem. Et
vicecomes mandavit diem captionis & quod sum-
monitus fuit, &c. & ideo consideratum est quod
prædictus Richard⁹ recuperet seisinam suam ver-
sus eum per defaltam & W. in misericordia. Et
si tenens fuerit præsens tale erit breve petentis
de Judicio quod vocatur Scias. Rex vicecomiti
salutem. scias quod Richardus le Jay in Curia
nostra coram Justitiariis nostris apud Westmona-
sterium

sterium recuperavit seisinam suam versus Willi-
 alia
 um Huse de una carucata terre cum pertine-
 ut su
 tiis in H. pro defectu ipsius Willielmi. Et id
 ipse
 tibi præcipimus quod prædicto Richardo de pred-
 hoc
 età carucata terre cum pertinentiis plenaria
 cepi,
 seisinam habere facias sicut prædictum est, &c. E-
 quo
 si tenens defecerit post apparitionem, tunc ei
 fru
 ibit parvum cape sic. Rex vicecomiti salut'. Ca-
 nost
 in manum nostram unam carucatam ter' cum per-
 aut
 tinentiis suis in N. quam Richardus le Jay
 mon
 Curia nostra coram Justitiariis nostris apud West
 nian
 monasterium clamat ut jus suum versus Williel-
 liel
 um Huse pro defectu ipsius Willielmi, Et sum-
 monetas per bonos summonitores prædictum Williel-
 mū quod sit coram Justitiariis nostris apud West
 monasterium tali die ad audiendum Judicium
 suum. Et habeat, &c. Tunc autem ad prox-
 tale
 im diem reo præfente petens habebit dicti
 tor,
 breve *Scias* per quod adjudicetur ei seisina, E-
 vos
 quid si vicecomes ad alium diem per magnan-
 itate
 cape non coperit terrā in manum domini Regi
 ut præceptum fuit ei, nec miserit breve ac-
 bancum; Erit ne ipse tenens inde perdens, au-
 derogabitur in aliquo ipsi petenti? Respōdeo,
 Con
 Tenens ob hoc non est puniendus. Nam licet
 sequ
 contumax extiterit vicecomes, negligentia vi-
 cecomitis non debet ei impingi. Petens autem
 infi
 amittet unum diem. Et cadet hac negligentia vi-
 Con
 vicecomitis in detrimentum vicecomitis sic.
 guo
 Rex vicecomiti salutem. Præcipimus tibi siem
 ann
 alias

alias tibi præcepimus quod capias per visum, &c.
ut supra in magno Cape & in fine sic. Et tu
ipse tunc sis ibi ad audiendum judicium tuum de
hoc quod prædictam terram in manum nostram non
cepisti nec prædictum Willielmum summonuisti
quod esset coram Justitiariis, &c. nec breve no-
strum quod inde tibi venit præfatis justitiariis
nostris ad præfatum diem non misisti, sicut tibi
præceptum fuit. Et habeas, &c. Terra
autem post primam vel iteratam captionem ut
moris est, replegiata, tenens potest secure effo-
niari de malo lecti, quod quidem effonium sic
irrotulabitur. Richardus le Fay versus Wil-
lielmum Huse de malo lecti de placito terræ per
talem & talem, & sic reddi debet exige effonia-
tor' Richardi l' Jay ubi est Willielm⁹ Huse, &c.
vos effoniatores Richardi le Jay quia non constat
utrum domin⁹ vester velit se capere ad languorem
necne, vobis non datur certus dies. Sed tu Williel'
sequere breve ad vicecomitem ad faciend⁹ venire
infirmum. Rex vicecomiti salutem. Mitte qua-
ntor legales milites de comitatu tuo usque N. ad
F. ad videndum utrum infirmitas qua Williel-
mus Huse in Curia nostra coram Justitiariis no-
stris apud Westmonasterium se effoniavit de malo
lecti versus Richardum le Jay de placito terræ in
Comitatu Sussex, sit languor necne. Et si sit lan-
guor tunc ponant ei diem à die visus sui in unum
annum & unum diem apud Turrem London quod
tunc

tunc sit ibi responsurus vel sufficientem pro se mittat responsalem & si non sit languor tunc ponant ei diem coram Justitiariis nostris a die visus sui in xv. dies quod tunc sit ibi responsurus vel sufficientem pro se mittat responsalem. Et dic quatuor militibus illis quod tunc sint coram praefatis Justitiariis nostris ad praeatum diem ad testificandum visum illum & quem diem ei posuerint. Et habeas ibi nomina militum & hoc breve teste tali Justitiario, &c. ex quo autem placitu capitale est coram Justitiariis de Banco quare debet visores ponere languido diem apud Turrim London cum non sedent ibi Justitiarii? Solutio in hoc brevi. mittatur legales milites sic dicitur si sit languor tunc ponant ei diem a die visus sui in unum annum & unum diem, & quia milites illi non habent certum diem videre infirmum, per consequens non potest constare quem diem praefigent languido. Ergo cum constare non potest adhuc de certo die ponendo a visoribus quia accidet alter, possit istu lessonium jacere in fine vel quasi in fine alicuius termini, sicut frequenter, & forte infirmus deberet videri tali hora quod oporteret ei praefigere diem tempore vacationis; Et in vacationibus nullus in Banco residet privilegiatus quod possit vel debeat admittere responsalem languidi cum surrexerit; Ideo ad Turrim London ut dictum est adjornetur Ian-

languidus respondere coram *Constabulario*
Turris London qui ibi residet per totum annum
 qui ipsum languidum adjornabit quod
 respondeat coram *Justiciariis de Banco* proximo
 die placiti. Et idem *Constabularius* testificari
 debet coram *Justiciariis in Banco* praesente
 languido, vel responsali suo. Et quid
 si languidus ille, die a visoribus præfixo ad
 Turrim non venerit nec responsalem miserit? Hoc revera testificato coram *Justiciariis*
 in *Banco* ab ipso *Constabulario*, ad proffrum
 petentis reus ex rigore juris amittet seisinam
 hoc modo, Richard le Jay se professe
 vers William Huse de play de terre. William
 se fust essonier de mal de lyt a teu jour
 per cely e cely. Richard fuit un brieſ au
 viscont a fere le veu de iv. chevalers de
 conte les queux le virent e jour assisterent
 per languoꝝ quil p̄t a la Tour de Londres
 soloan le usage d' Engleterra. E il ne vnt
 pas e ceo est bien testmoigne per le Conſtable
 de la tour que en ceo casse port record & testmoignage, d'ont nous demandons
 Judgement de ſe defaute tout outre.
 Et tunc petens habebit *parvum cape*, ad
 capiendam terram in manum domini Regis &
 ad summonendum reum ad audiendum
 judicium suum. Et ſic recuperabit
 petens in hoc caſu. Et licet reus com-

paruerit in Curia vel in Banco in hac calumnia actoris, & non servaverit diem ad Turrim, tunc ad consimile proffrum pertens ipse recuperabit seisinam per breve scias propter præsentiam rei qui in absentia sua judicari non debet. Quia cum reus ita defecerit quod debeat seisinam amittere si præsens fuerit exibet scias, si absens, parvum cape. Istud autem effonium de malo lecti non jacet nisi in hoc brevi patenti vel clauso scilicet præcipe in capite. Tamen secundum Henricum de Bathonia jacet in brevi de consuetudinibus & serviciis & post vadiationem duelli vel positionem in magnam assisam & non ante. Si sorores tres vel quatuor vel plures vel pauciores rex efficiantur conjunctim, Hæ omnes gaudere possunt hoc effonio, tamen una tantum pro singulis capiat languorem. Ex quo tunc generaliter oportet quod duo effoniatores jaceant hoc effonium pro unico reo, & istæ quatuor sorores vindentur esse quasi quatuor rex, quæ si sigillatim per duos effoniatores debent hoc effonium jactari pro illis? Solutio. Jus permittit unam pro se & reliquis sororibus languere, ad cujus languorem cessabit placitum versus sorores complices usque ad diem a visoribus perfixum. Ergo

go cum per languorem unius reliquæ in hoc casu excusari possint, Quænam illarum debet capere languorem? Et primis equidem visa à militibus languebit. Et quid si digregentur? id est si inventæ non fuerint in una villa, & prima secunda & tertia velint surgere, tunc quarta ultimo visa à militibus capiet languorem. Dico autem per languorem ultimo visæ cessabit placitum ac si omnes concordarent. In fine autem languoris an ista languida si appareat die a visoribus præfixo debeat ne pro se & aliis respondere? vel responsalem mittere ita, quod in ore aliarum sororum responsio non jacet; in hoc casu si presens fuerit languida, dico quod oportet illas comparare. Et quicquid respondebit illa quæ languebat tenebitur pro constanti. Et si miserit responsalem, aliæ sorores bene possunt absente. Esto tunc quod per collusionem inter patentem & languidam vel responsalem ejus habitam, recognoscatur jus petentis in respondendo ad exheredacionem trium sororum hujusmodi per cuius recognitio nem petens recuperet seisinam hic nisi per remedium Curiæ attingatur illa collusio & Curiæ deceptio, ad restitutionem trium sororum hujusmodi nullum habetur

tur recuperare nisi per breve de recto.
Quicquid autem dico de sororibus junctis
in uno brevi dico de viro & muliere con-
junctis & de participibus ubi terra imper-
tita est. Die autem praefixo tenenti à vi-
soribus debent visores apparere in Curia
ad testificandum visum suum, quia ex eo-
rum testimonio procedendum est. Vide-
licet si testentur se vidisse infirmum
tali die, & per districtum compotum
liqueat tunc infirmum illum missis re-
sponsalem suum die ab eis visoribus
praefixo, de quibus visu & responsali ita
in Curia computandum est ut supra in ca-
pitulo de ordine placitandi in Curia Ba-
ronis, penitus liquet quod admittendus
est responsalis ejusdem. Et si non venerit
tenens nec responsalem miserit, Et hoc
testificato à visoribus & comperto per
certum compotum qad non servavit di-
em ab eisdem praefixum ut suprascribitur,
offerat se petens & obtinebit seisinam per
parvum cape vel per scias. Et ad prostrum
petentis calumniantis defaltam rei sic in-
trabitur defalta illa. *Richardus le Fay petit*
versus Willielmum Huse unam carucatam
terræ cum pertinentiis in H. Ut jus suum,
&c. & alias se effoniavit de malo veniendi
scilicet tunc & habuit diem per effonium suum

in Octabis, &c. ad quem diem W. effoniavit se de malo lecti ita quod præceptum fuit vicecomiti quod mitteret quatuor legales milites apud, &c. ad videndum utrum infirmitas, &c. esset languor vel non. Et si esset languor tunc ponerent ei diem à die visus sui in unum annum & unum diem apud Turrim London quod tunc esset ibi vel per se vel per sufficieniem responsalem, &c. Et si non esset languor tunc ponerent ei diem hic, &c. vel sufficieniem, &c. Et Willielmus non venit nec responsalem misit. Ideo consideratum est quod Prædictus Richardus recuperet seismam suam versus eum per defaltam ipsius W. & ipse in misericordia & prædictus Richardus sequatur breve suum ad vicecomitem. Et quid si Willielm. non compareret per se vel per attornatum suum secundo saltem die sibi dato per effoniatores suos? tunc post effonium de malo lecti proculdubio petens secure & precise se capiet ad defaltam illam sic dicens. Willielmus fecit defaltam primo die placiti eo quod solemniter vocatus non comparuit, unde idem petens petit iudicium de defalta rei precise. Reus tamen replicando requirere debet a petente utrum velit se tenere precise ad defaltam illam vel ad capitale placitum. Oportet quod si se teneat ad defaltam il-

Iam quod de toto renunciet capitali placito & è converso. Nam inconsuetum est quod quis in Curia domini Regis duplice remedio sive baculo in uno casu simul & semel gaudeat sive pugnet. Si autem petens requisitus se teneat ad defaltam illam præcise, reus potest sic dicere, quod nullam fecit defaltam quod venit ad Bancum primo die placiti, & obtulit se versus prædict. perentem de placito prædicto & ibi morabatur quoisque publico proclamatum fuit per servientem de Banco qd. omnes effrentes se ibid. ad placitandum de quibuscumque placitis, exceptis placitis unde magna assisa arrainata fuit vel duellum vadatum, sine occasione recederent in Crastinum. Et dicit quod si solemniter vocatus fuerit per servientem de Banco hoc fuit pestquam clamatum fuit sicut prædictum est. Ista siquidem allegatio super hac defalta penitus dependet à recordo Justitiariorum. Et si Justitiarii recordarentur ipsum servientem ita ut dictum est publice clamasse proffrum in Banco, Reus eat inde sine die & petens amittet clamium illa vice & tenens in misericordia. quia præcise se tenuit ad defaltam. Et si Justitiarii recordarentur quod non fuit publice clamatum proffrum in Banco sicut prædictum est, & quod omnibus

nibus horis primi diei placiti usque ad horam nonam prædictus reus solemniter vocatus non comparuit nec sufficientem pro se misit responsalem, consideratum est quod prædictus petens recuperet seisinam versus eum per defaltam & tenens in misericordia. Sequatur autem petens breve suum. Caveat autem calumniator hujus defalta quod sit certus de recordo justitiariorum in hoc casu. In defalta quoque post effusionem de malo lecti, post visum terræ factum, post positionem in magnam assiam & post vadiationem duelli, reus amittere seisinam per absentiam primi diei. Si visores illi non venerint ad testificandum visum suum, quid erit? semper distringantur donec venerint. Primo per vadios & salvos plegios sic. Rex vicecomitis salutem. Pone per vadios & salvos plegios A. B. C. D. visores infirmitatis talis quod sint coram Justitiariis nostris, &c. ad testificandum, &c. Quare autem debent primo attachiari cum non summoneantur ut videtur? quia in hoc brevi Mitte quatuor legales milites &c. continetur versus finem istud verbum quod valet summoneas; Et dic quatuor militibus illis qui visui illi interfuerint quod sint &c. Et sic licet pateat quod non summoneantur, sunt quasi summoniti. Et

ideo primo attachiantur per plegios ratione illius verbi in brevi contenti scilicet & dic. Secundo si non venerint ad prosecutionem potentis, sic. *Rex vicecomiti, salutem. Pone per vadios & meliores plegios A. B. C. D. &c.* Et tunc sunt primi plegii in misericordia. Tertio per corpora eorum; Et tunc sunt tam primi plegii quam secundi in misericordia. Quarto per terras & catalla ita quod vicecomes habeat corpora & quod manum non apponant, & quod vicecomes respondeat de exitibus & interim taceat tenens. Si autem tenens ad diem sibi datum à visoribus non venerit Personaliter sed responsalem pro se miserit, admittendus est & ejus responsalis audiendus, quicunque fuerit responsalis ille dummodo æratem habuerit. Veruntamen si determinative respondeat, utpote si debeat judicium fieri & loquela terminari, ut de duello vadato vel de magna assisa summonita, vel aliquo alio modo unde loquela debeat terminari; Tunc debet judicium illud poni in respectu quoisque per milites de novo missos per breve domini Regis ad tenentem scatur ab eo si advocaverit responsalem suum prædictum an non. Quod si non fecerit revertantur illi quatuor milites & id testen-

tur coram Justitiariis de Banco & tunc procedendum est eodem modo ac si reus personaliter comparuisset & respondisset. Et si negaverit responsalem & ejus responsum dedixerit, tunc erit manifesta defalta rei, sicut s^ep^e contingit, & debet ad calumniam petentis judicari & inde petens breve *Scias* habebit. Ista siquidem defalta, sicut omnes aliae, * per effionium locus de servitio domini Regis, habitu in ples- speciali waranto, salvari potest. Dato si- risque quidem quod reus omisso hoc effionio de malo lecti, in adoptione sua erit quod app- depra- pareat hodie & petat visum terrae sic.
 Richard le Jay se proffre per son attorney vers William Huse, de play dr terre. Dicat Willielmus vel ejus * accurnatus vetes ci Will- * al. lama encontre Richard. Ceo vous monstre nar- Richard que ci est sc. Et Willielmus respondet tor, ut ita. Toute force defend William que ci est & in non- demande le oyer de bries. Lecto autem & au- nullis. dito brevi sic. Pous emperlerons a vos con- gies. In regressu autem ejusdem rei sic. Toute force defend William a son issir e si f. t il uncoze a son entrer, sc.

C A P. X.

De Exceptionibus Visu petendo.

Modo videndum est de naturis exceptionum. Sunt quædam dilatoria & quædam peremptoriae. Excepio dilatoria cassat breve, & non perimit jus. Peremptoria perimit jus & cassat breve. Harum quoque exceptionum quædam sufficientia ante visum terræ ad cassandum breve, quædam post visum nihil operantur: quia nulla dilatoria locum habet post visum.

* Desunt in non-nullis. [* nisi exceptio non tenetur quæ proponi debet post visum.] Nescit enim reus petitionem petitoris prius, & facto visu affirmatur breve, ita quod per dilatoriam cassari non potest, nisi tantum per non tenuram. Ideo omissis hic peremptoriis antequam petimus visum, proponamus dilatorias quæ tales sunt. *Vitium scripturæ, Rasuræ literæ in hoc brevi patenti, Error nominis pro nomine, Agnominis pro agnomine, unius villæ pro alia, & quando breve impetratur extra naturam sui ipsius, & consimiles cassant breve ante visum.* Excusis autem istis exceptionibus, aut tenent locum aut non. Si tenent tunc ad præsens consumitur breve. Nec oportet

portet tunc plus facere, si non teneant
ocum, nisi petere visum. De visu petendo
quoniam sic. Tors & force defendit. que
est & demand vno de la terre oze apermeis-
ies. Concedetur, & irrotulabitur sic. Ri-
bardus le Jay petit versus Will. Huse unam
arueratam terrae cum pertinentiis in H. ut
us sum, & Willielmus venit & petit inde
sum & habeat; dies datus est ei & fiat visus
er hoc breve. Rex vicecomiti salutem. Prae-
missus rili quod sine dilatione habere facias
Vil. Huse visum de una carucata terra cum
pertinentiis in H. quam Rich. le Jay in curia
ostra coram Justitiariis nostris apud Westmo-
nasterium clamat ut jus suum versus eum. &
icas quatuor milibus illis qui visui illi in-
fruerint quod sunt coram praefatis Justitia-
riis nostris apud Westmonasterium tali die,
& testificandum visum illum, & habeas ibi
mina militum &c. Opus est amodo ex-
timere in quibus casibus potest denegari
suis terræ & in quibus non. Videlicet
autem ad hoc breve & consimilia.
Constat quod in hoc brevi & in aliis bre-
ibus per quæ potest deveniri ad duellum
ad magnam assisam, visus generaliter
acet, si petatur ante duelli vadationem,
et positionem in magnam assisam, tamen
plures fuerint tenentes successivè, per
voca-

vocationem ad warrantiam, nullus habebit visum nisi primus tenens. & quoniam potest tam primus tenens quam successor vocati visum amittere? sic. A. petit visum B. unam carucatam terrae cum pederantibus, &c. ut jus suum: & B. venit & inde ad warrantiam C. qui summonebat venit. & antequam warrantizat vel petit visum. Non jacet revera. Quia ~~ad~~ ^{cum} inculpaverit C. sic **A tort ip deforce** pars in garantie, ac. Juris ordo vult quod respondeat ad cartam suam vel ad cartam ~~an~~ i cessorum suorum, si in carta illa specificatur terra illa petita. Et licet vocator potest habuerit cartam, vocatus debet bene scire de qua terra cepit homagium & servitum. Et vocantis. unde cum warrantizaverit, potens petit eandem terram quam warrantio ^{quod} zavit, & ideo non jacet visus. Et illud idem dicendum est de decem tenentibus si ⁱⁿ tia. warranto in warrantum fierent tenentes nam *Campiones* tamen si ad duellum vel ad me H. nam assidam pervenerint, habeant visum in post duelli vadacionem vel positionem in ius magnam assidam. Et dicetur eis quod intra diem sibi dictam terram illam videant & per hoc pro sacramento suo quod facient secundum quod perpendi potest in formam ad sacramenti eorundem. Et possunt quidam ve

huius accidere de championibus in quibus de-
 omegabitur eis visus terræ. De visu quidem
 cessabendo in placitis *intrusionis, dotis, & hu-*
bitusmodi, suis locis tractabitur inferius. Ge-
 generaliter autem intellige quod ubi tenens
 & potest vocare ad warrantiam, potest ha-
 nondere visum, nisi fuerit in casibus quibus-
 vel plam specialiter exceptis, ut si mulier petat
 ija ~~alio~~ ^{tempore} petens non habeat visum de tene-
 parmentis unde vir obiit sefatus, tamen po-
 espotest vocare ad warrantiam & in brevibus
 an*de ingressu* ubi fit mentio de gradibus, ibi
 scia conceditur visus. * veruntamen non po-
 or potest ibi vocare ad warrantiam extra lineam ^{* varia-}
 sed tantum respondere ad ingressum. ^{tim se}
 viii. Et potest aliquando haberi visus ubi non ^{habent}
 , & potest vocari ad warrantiam ut in brevi
 ram ^{quod permittat.} Periculum est autem ante
 id visum vocare ad warrantiam, verbi gra-
 si ^{et} tia. Quidam petiit versus quendam u-
 entiam carucatam terræ cum pertinentiis in
 m^o H. & tenens ille habuit duas carucatas
 visum in eadem villa, petens vero non habuit
 em in jus nec ad unam nec ad aliam. Ipse te-
 nens cum non potuit esse certus quid ab eo
 peteretur, antequam visus inde sibi fieret,
 venit antequam visum petiit & vocat inde
 ad warrantiam C. qui summonitus fuit,
 uide venit & petiit sibi ostendi per quod
 debeat

debeat ei warrantare qui protulit quod aci
dam cartam per quam antecessores ipsius
G. & hæredes sui debeat warrantare ion
nam carucatam terræ in eadem villa & terra
tenens dicit quod non petit dictam caro
tam terræ sed aliam, & tenens cum hoc
dit voluit respondere de capitali placito
petens petit judicium si, post warrantum
vocatum, possit tenens respondere de cap
itali placito, & consideratum fuit quid n
Sea quod ille quietus de warrantia, &
petens recuperat se in suam versus tenem
tangiam indefensum & tenens in misericor
dia. coram Henrico de Bathonia.

C A P. XI.

Quartus dies placiti. Essonium de servi
domini Regis.

Quarto die, remisso per vicecomitem
brevi, per quod visus terræ factus fu
it auctore se liti offerente, prænotarius in
spiciat indorsamentum brevis vicecomitis
& si reperiatur per nomina militum qui
sui interfuerunt quod visus terræ factus
fuit, tunc ad proffrum petentis clamabitur
reus qui die illo juste si velit essoniari potest
de malo veniendi, quod quidem essonium

jac

quaci & reddi debet quemadmodum superius est expressum. Et quid si habita collusione inter tenentem & vicecomitem visus & terra factus non fuerit nec breve remis-
 carum? procul dubio ita procedendum est er-
 noc ^{ea} vicecomitem in hoc casu ut superius di-
 cito ^{cum} distinguitur, quando vicecomes per collusio-
 nem omittit exequi magnum cape, nec ibi
 e cap- nec hic propter negligentiam vicecomitis
 nd n, reus debet puniri, nec petens promoveri.
 Esto autem quod reus nullo modo venerit
 ad hunc diem. quid juris? petens offerat se
 iii. Richard le Fay se proffre vers William
 Huse de play de terre. William aboit view de
 terre a teu jour, e la view est testmontage
 per les quatre chivalers queux a la view fue-
 rent, e il ne vien pas, d'ont nes demando-
 mous judgment de sa default. Quæ defalca sic
 intrabitur. Rich. le Fay obtulit se quarto die
 versus Willielm. Huse, de placito unius
 carucatae terræ cum periuentiis in H. quam
 clamat ut jus suum versus eum, & Willielmus
 petit visum terræ à die &c. & habuit diem
 hic post visum terræ factum ad hunc diem, &
 qui v per quatuor milites qui visui illi interfuerunt,
 factu testificatur hic nunc. & prædictus Willielmus
 non venit, & ideo consideratum est quod præ-
 dicta terra capiatur in manum domini Regis
 & ipse summoneantur quod sit hic tali die ad

audiendum *judicium suum*. & tunc exhibe
 parvum cape quod supra scribitur. Et sa-
 endum quod isto die & aliis diebus prate-
 ritis & futuris, absentia rei salvari potest
 ut prædictum est, dum tamen reus ille ex-
 cusetur per effonum de *servitio domini Re-*
gis, & inde prætendat tali breve. Rex Ju-
 stitiariis suis de Banco, salutem. Sciat
 quod Willielmus de H. fuit coram nobis tali
 die apud N. per præceptum nostrum, ita quo
 eo die interesset non posuit loquela quæ si
 coram vobis per breve nostrum de recto ini-
 R. petentem & ipsum Willielmum tenentem
 de una carnata terra cum pertinentiis in H.
 & ideo vobis mandamus quod prædictus
 Willielmus propter absentiam suam illius
 diei non ponatur in defalcatione, nec in aliquo
 sit perdens, quia diem illum quoad hoc si
 warrantavimus, &c. Dato siquidem quod
 reus sequendo hujusmodi prædictum bre-
 ve defecerit die ei dato de brevi illo post
 visum terræ factum gratia dilationis faci-
 endæ, quid hoc proficeret ei? Ex quo au-
 tem ut de plano constat, possit prorogari
 hujusmodi loquela de uno termino in a-
 liam & in casu lucrari autumnalia aut
 redditus assisus aut utrumque & petens
 possit interim decedere, & sic breve &
 processus irruentur de toto, ideo, quia
 causa

cauti sunt homines, frequenter fit talis dilatio ex lege & principis beneficio.

C A P. XII.

Quintus dies placiti. Capere languorem semel tantum licet.

Quinto die placiti postquam reus effoniatus fuerit de malo veniendi post viuum terræ factum, si reus ille hoc die sibi dato per effonium, nullo modo veniret, quid juris? Petens se offerat liti sic, Richard le Fay se proffre vers Will. Huse de play de terre. William fuit essoin a teujour puis beu de terre fete, & aboit iour jeskes oye & il ne vient pas, d'unt nus demandomous iudgment de sa defaulte. Ista siquidē defalta aperta est per quam petens recuperavit seisinā, & sic irrotulabitur. Richard⁹ le Fay optulit se 1v. die versus W. de Huse per talem de placito unius carucatae terre cum pertinentiis in N. quam clamat ut suum versus eum. Et ipse non venit, & habuit diem per effonium suum postquam comparuit in Curia & petiit visum terræ. Judicium, predicta terra capiatur in manum domini Regie, & ipse summoneatur quod hic sit & ali die ad audiendum judicium suum, & tunc exhibe-

parvum cape pro petente. Ex quo autem in jure permittitur quod in placito terræ, ubi agatur de proprietate recti, ut in hoc brevi & suis branchiis, post effonium de *malo veniendi* generaliter sequitur effonium de *malo lecti*, per hanc regulam, cum ante visum terræ (ut supra in capitulo de 4. die) per idem effonium cæperit languorem, tamen intelligatur quod languor captus sit commoditas & exitus effonii de *malo lecti* in litis prorogatione, Quid juris? Regula data, quod post effonium de *malo veniendi* generaliter subsequitur effonium de *malo lecti* semper se tenet, sed semel potest reus tantum capere languorem & non plus, & si reus effoniet se hodie de *malo lecti* & prius cæperit languorem, dabitur ei dies per effonium suum ad proximum diem placiti, & omittentur mittendi quatuor milites, quia non potest reus capere languorem plusquam semel. Et quia reus aliter, ut dictum est, ut sentio, non potest dedicere demandam potentis quantum ad hunc diem, nisi aliquis respondeat, transeat per hoc effonium hodie & die sequenti. Ad alia decurramus.

C A P. XIII.

Sextus dies placiti. Woucher. Recoberie & counterpleas sur ceo. Woucher d'enfant. Warrantia ex Dedi. ex homagio & servitiis receptis. Age.

SExto die placiti si reus se effonianus de malo lecti defecerit, currat lex communis contra eum sicut faciendum tertio die ut superius quando fecit defaltam post languorem. Si autem reus appareat hodie, quid faciendum est? Si habeat warrantum estne bonum quod vocet hodie vel non? Distinguendum est. Si iste reus ita recenter feoffatus fuerit vel antecessor ejus ab ipso warranto vel antecessore suo qui nihil sciat vel possit dicere à se ipso contra tenentem, ut per quietum clamium vel hujusmodi, Tunc vocet hodie ad warrantiam si quem habuerit. Sed si aliquid actum fuerit inter ipsum reum & petentem vel antecessores eorum per quod petens excludi debet ab actione sua, id proponat tenens, utpote si habet quietem clamium ab ipso petente, vel si alias in Curia lis decidatur per aliquem finem inter eos, vel quod non possit respondere sine

participibus , vel quod non teneat totam terram petitam, si ita sit, & alia similia bonum est proponere antequam vocet ad warrantiam. Si autem reus vocare voluerit ad warrantiam cum petens locutus fuerit per verba curiæ, reus defendet vim & injuriam & dicet. *Ieo bouche a garrant p
aid de cest court B.* & dicit hoc verbum p
Iaid de cest court quia vocator non potest facere vocatum venire ad Curiam autoritate sua propria, & tunc petens habebit hoc breve ad faciendum warrantum venire. *Rex vicecomiti saltem. Summoneas
per bonos summonitores B. qd. sit coram Justitiariis nostris apud Westmonasterium tali die
ad warrantizandum W. unam carucatam
terræ cum pertinentiis in H. quam Richardus
le Jay, in Curia nostra coram Justitiariis
nostris clamat ut jus suum versus prædictum
W. & unde idem W. in eadem curia nostra
vocat prædictum B. ad warrantum versus
eum, & habeas ibi summonitores & hoc breve.
Ad quem diem tenens potest effoniari de
malo veniendi sic. *W. qui vocat B. ad warrantum versus Richardum le Jay de placito
terræ per talem.* Warrantus autem vocatus
apareat, sed nihil faciendum eo die quia
non habet partem adversam , licet prin-
cipaliter sequitur effonium illud, & tunc
reddat*

reddat effonium tenentis. Dabitur petenti idem dies ut effoniatori & consimiliter warranto vocato unus & idem dies. Ad quem diem warrantus potest effoniari de malo veniendi, sic, B. quem W. vocat ad warrantum versus R. de placito terræ per tallem. Quo die tenens non appareat sed dabitur sibi & petenti & effoniatori vocati unus & idem dies. Nec plus fiat illodie quia primus tenens jam substituit sibi aliud tenentem per vocationem suam. Data autem die per illud effonium potestne warrantus effoniari de malo lecti necne? de cætero non potest, nisi post vadiationem duelli vel positionem in magnam assisam. Vocatio autem ad warrantum sic debet irrotulari. *Richardus le Fay petit versus W. de Huse unam carucatam terræ cum pertinentiis in H. ut jussum, &c.* & Willielmus venit & vocat inde ad warrantum per auxilium Curie B. & habuit diem, &c. & si B. vocatus venerit & vocat alium, tunc sic. *Richardus petit versus B. quem W. vocat ad warrantum & qui ei warrantizet unam carucatam terræ, &c. ut jussum, &c.* & quotquot fuerint warranti vocati, tot successive effonia jactari debent. Et primus reus post singulorum apparitionem semper potest effoniari de malo veniendi; si autem warrantus defecerit post

essonum, capiatur de terra ipsius ad valentiam in manum domini Regis per magnum cape. Rex vicecomiti salutem, Cape in manum nostram per visum legalium hominum, &c. de terra B. ad valentiam unius carucatae terrae cum pertinentiis in H. quam Rich. le Jay in Curia nostra coram Justitiariis nostris apud Westmonasterium clamat ut jus suum versus W. Huse, & unde idem W. in eadem Curia vocat predictam B. ad warrantum versus eum pro defectu ipsius W. & diem captionis, &c. omnia ut supra in magnum cape in prima defalta tenentis post primumessonum. Hæc defalta intrabitur sic. Willielmus Huse obtulit se quarto die versus Richardum le Jay de placito unius carucatae terrae cum pertinentiis in H. quam Richardus le Jay in Curia nostra coram Justitiariis nostris apud Westmonasterium clamat ut jus suum versus eum. & ipse non venit. & habuit diem peressonum suum ut supra. Judicium. de terra predicti Richardi capiatur in manum domini Regis ad valentiam, &c. ad quem diem si warrantus defecerit Richardus recuperabit seisinam versus eundem W. & W. versus B. per æquipollentiam statim & sine difficultate per Scias, & hoc e:it de pluribus warrantis vocatis successive. Si primus vocatus defecerit pente-

tens per defaltam recuperabit seisinam suam versus primum tenentem & primus tenens versus primum vocatum & ille versus secundum & sic de singulis. **Warrantus** autem vocatus potest per exceptiones diversas derogare jus potentis, sicut & tenens, & ponere se in *magnam assisam*, vel defendere jus suum per *duellum in omni eventu*, sive determinare negotium per diversas responsiones, utpote per *finem in Curia domini Regis finem duelli*, per *quietam clamiam factam*, exceptionem *Bastardie*, & consimilia quatenus viderit expedire. Esto quod reus vocet ad warrantiam & reo effsoniato, appareat warrantus, dico qd. warrantus non potest intrare in warrantia sine suo vocatore, & sic per effsonium ipsius rei dabitur dies ipsi vocato. Ad quem diem apparente vocatore ille vocatus facit defaltam. **Quid juris?** Petens autem dico sequetur defaltam illam. Versus quem? Certe versus vocatum ad warrantiam & non versus vocatorem. Quia vocator ubi & quando debuit vocavit & post vocationem suam effsonium habuit, & die sibi dato debitè comparuit, unde constat quod nullus deliquit nisi vocatus ad warrantiam. **Quæro tunc cuius naturæ debeat esse defalta.** **Utrum de-**

beat exequi per magnum cape aut per parvum, per parvum cape fiat hujusmodi executio, non pro eo quod vocatus intravit in Curiam sine responsione facienda (ut praedictum est in warrantia intrare non potest sine suo vocatore,) sed quod die sibi dato in effsonium vocatoris defecerit precise. Et ideo exeat super ipsum parvum cape provocatore & petens recuperabit seisinam versus eum de petitis. Et sciendum quod vocatus non potest habere visum terrae quod debet bene scire unde vocatur ad warrantiam. Et generaliter accidit quod vocator prius habet visum. Caveat rursus is qui vocat ad warrantiam qd. non vocet minorem; nisi habeat cartam de feoffamento in manibus per quam vocat. Quod si non fecerit amittit pro se & haeredibus suis seisinam imperpetuum. Tamen ex officio suo Justitiarii possunt sibi facere gratiam si voluerint. Quum autem supradictum est quod effsonium de malo veniendi generaliter sequitur effsonium de malo lecti; inde quero si vocatus ad warrantiam postquam effsoniatus fuerit primo die de malo veniendi possit, se effsoniare de malo lecti. Consequenter non potest, antequam warrantizet, sed post potest. Esto quod duæ sorores tanquam unus haeres, una videlicet

major & altera minor vocentur ad warrantiam. Quid juris? appareant ambæ in Curia & minor se alleget esse infra ætatem & petat custodem & habebit. Major autem non respondebit, sine sorore minori. Et remanebit loquela illa sine die usq; ad ætatem minoris prædictæ. Et cum minor major fuerit, resummonetur loquela in eodem statu in quo dimissa fuit. Idem dico de quibuslibet participibus terrarum, de quibus quidam sunt minores & quidam majores. Ex juris ordine siquidem habemus qd. minor non *habet legem*, id est quod non potest facere *legem*, & hoc sequitur quod non habet essonum de *malo veniendi*, nec per consequens de *malo lecti*. Quid erit tunc cum aliquis minor implacetur, possit gaudere hujusmodi essonio an non? si minor ille feoffatus fuerit infra ætatem, sive reus sit, sive per reum vocatus ad warrantiam, ad evitandum dilationes suas non amittat propter teneritatem ætatis suæ quia per feoffamentum jam efficitur major in hoc casu & habeat essoniam sua supradicta. Qum autem pleriq; sentiunt minus instructi in legibus terrarum qd. warrantia non jacet in Chartis, ubi hæc clausula *Ego & bæredes mei warrantizabimus* non inseritur, opus est inde certitudinem exponere,

ponere. In qualibet simplici charta de feoffamento per hoc verbum *dedi* quamvis plus de warrantia non specificatur, teneatur donator & ejus hæredes warrantizare si ad horam vocati fuerint, nisi in feoffamento i. in carta aliquod speciale huic contrarium apponatur. Sic contigit inter A. & B. coram R. de Thurkelby unde postea fuit duellum vadiatum & arrainatum. Non autem dico quod assignati donatoriis debeant per illud verbum *dedi* warrantizare hujusmodi feoffato; nisi specificetur in charta donatoris, quod ille & hæredes & assignati sui debeant warrantizare. verbi gratia. Si hujusmodi donator antequam feoffasset istum qui modo vocat ad warrantiam habuisset tres acras terræ, de quibus unam dedit isti de quo loquor & postea residuas duas C. vel D. nulla mentione facta in carta primi feoffati quod assignati dicti donatoris debeant warrantizare. licet, dico, tertia acra annexa fuerit prædictis duabus acris, non tenetur assignatus ille warrantizare. Et quid si donator talis penitus donaverit & fuerit ita debilis quod non habeat unde warrantizet, cum vocatus fuerit ut sæpe contingit. In hoc casu nihil scio consulere, nisi quod ille feoffatus adquirat sibi confirmationem a Capitulo

ali Domino si fieri posset. Et si capitalis dominus illud confirmaverit & vocatus fuerit inde ad warrantiam, oportet quod warrantizet, licet non nominet donatorem tali dico ratione. Iste capitalis dominus de quo tenementum illud tenetur, cum se obligaverit ad hoc, per confirmationem suam, omnia verba in dicto feoffamento contenta tam *le dedi* quam *le confirmavi* una cum dicto donatore simul firmat conjungens & obligans fortiter seipsum ad pactionem tenendam dicto feoffato quasi pro defectu ipsius donatoris. Licet autem superius in hoc capitulo dicatur quod minor respondere non debeat si implacatus fuerit, nec warrantizare cum vocatus fuerit, antequam pervenerit ad ætatem, non debeat nisi in minore ætate feoffatus fuerit, dico in eadem ætate respondat. In actione siquidem dotis respondat minor semper, sive petatur ab eos, sive in dote petenda si vocatus fuerit ad warrantiam. Sed ista lex videtur esse contraria illi quæ supra scribitur quæ dicit quod minor respondere non debet donec pervenerit ad ætatem nisi in minori ætate feoffatus fuerit. Petitio siquidem dotis non præjudicat proprietatem juris hæredis a quo petitur dos. Quia cum mu-

lier

lier petat dotem i. tertiam partem hæreditatis, hæres ipse manifestatur, & quod ei decedente pars tertia revertatur ad duas, & quod hic non jacet hujusmodi exhædatio hæredis. Et si mulier expectaret & tatem minoris poterit interim in fata cedere, & sic per consequens semper dotem amittere, statuitur ex jure quod minor in hoc casu respondeat. Si quis autem vocaverit minorem ad warrantiam non habens in promptu cartam vel aliud per quod ipse minor si major esset respondere deberet sine ulteriore dilatione ad calumniam minoris amittet ab eo petita. Dato siquidem quod sorores sint participes alicujus hereditatis de quibus una tantum vocata fuerit ad warrantiam quæ se nihil teneret affereret nisi in propartia & peteret judicium desicut vocata sola fuit ad warrantiam sine participe; Distinguendum est utrum terra partita esset inter participes illas necne. Si impertita fuerit, dicta responsio tenet locum, si vero partita & illa quæ sola vocata fuerit ad warrantiam de proparte sua receperit homagium & servitium vocantis, respondeo quod sine participibus respondere non debet non habet locum, sed debet warrantizare præcise, nisi aliud de novo proponat versus ipsum.

VOC

vocantem. Adhuc autem de warrantia sic
definio. Waltersus petit versus Thomam u-
nam carucatam terræ cum pertinentiis in H.
& versus R. tantum ut jus suum, & unde qui-
dam B. antecessor suus fuit seisitus in dominico
suo ut de feodo & jure tempore, &c. & Tho-
mas venit & vocat inde ad warrantiam quen-
dam G. qui præsens est & petit sibi ostendi
per quod beat eæ warrantizare & dicit
quod tenet dictum tenementum de ipso G. &
ei inde fecit homagium, ita quod ipse est in
seisina de homagio & similiter de servitio suo
scilicet de tali redditu assiso & similiter de
seisa ad Curiam suam ibi de tribus septima-
nis in tres septimanas. Et prædictus Tho-
mas quæsus si habeat aliquam cartam vel
instrumentum de dicto G. vel ab antecesso-
ribus suis per quod teneatur prædictam ter-
ram ei warrantizare, dicit quod non, & dicit
quod non debet ei warrantizare ut sibi vi-
detur ratione homagii tantum desicut nihil
ostendit neque cartam neque instrumentum
aliquid per quod teneatur ei warrantizare,
tum quia in Cancellaria domini Regis nun-
quam conceditur aliquod breve de warran-
tia nisi expresse fiat mentio quod is qui vocat
ad warrantiam habeat cartam illius quem
vocat vel alicujus antecessoris ipsius, tum
quia nec prædictus Thomas nec antecesso-
res

res sui inde fuerint seisiti ab eo, nec ab antecessoribus suis. Dicit enim quod quidam Richardus le Jay feoffavit quendam Widonem avum predictæ Thomæ cuius bæres ipse de predicto tenemento per predictum servitum per annum. Et idem Richardus dedit cuidam Willielmo avo predicti G. cuius bæres ipse est homagium & servicium Widonis de predicto tenemento, ita quod idem Wido sponte & voluntate sua atturNAVIT se de predicto servicio Willielmo, & postea descendit predictum servicium ipsi G. jure hereditari, & dicit quod quando recepit homagium de predicto Thoma recepit illud salvo jure cujuscunque, eo quod audivit quod Walterus qui modo petit vendicabat iure in predicta terra, ea ratione quod antecessores sui & antecessores predicti Thomæ exierunt de duobus fratribus & idem Walterus exiit de fratre antenato ut asserebat & disicut idem G. cepit homagium & servicium suum salvo jure uniuscujusque, Judicium si debeat ei warrantizare ratione predicti homagii tantum versus ipsum Walterum qui clamat esse propinquior bæres de eodem stipite & eadem linea parentelæ. Adhuc autem videtur quod non debeat ei warrantizare ratione predicti homagii tantum. Hac ratione homagium non obligat nec

ntr.
R.
ne
se e:
vitt.
dedic.
nijus
ido.
Wi.
e de
de:
ha:
bo:
llad.
ivit.
ju:
ffo:
xie:
eru:
di:
isum
iam
dic*ti*
rum
dens
hac
var-
tan-
igat
nec

nec excludit aliquem ab actione nisi tan-
tum personam illius quæ illud homagium
recepit. Verbi gratia. Si quis cepit
homagium de aliquo tenemento, ratione
cujus homagii excluditur quod non po-
test in vita sua tenementum illud petere
in dominico, & si jus haberet in eodem,
hæredes sui non excluderentur ratione
dicti homagii quin bene possint tenemen-
tum illud petere in dominico si voluerint.
Et si idem G. warrantizaret prædicto
Thomæ prædictam terram & eandem ter-
ram per considerationem Curiæ domini
Regis postea amitteret versus prædictum
Walterum, tunc teneretur facere prædicto
Thomæ Exchambium ad valentiam præ-
dictæ terræ, absque hoc quod idem G.
nec hæredes sui aliquid possint recupera-
re versus prædictum *Thomam* & hæredes
suos de prædicto exchambio in perpetu-
um. Et sic contingeret quod hæredes ip-
sius G. excluderentur ab agendo de præ-
dicto exchambio, per prædictum homa-
gium quod idem G. cepit, quod mani-
feste est contra rationem prædictam. Ex-
cussis quæ in præsenti recoluntur quoad
vocationem warranti & quoad exceptio-
nes dilatorias de *peremptoriis* loqui con-
gruit isto loco. Ad primum autem distin-
guendum

guendum est utrum fuerit principalis reus
aut per vocationem substitutus qui respon-
dere debet, quia utriusque competit ex-
ceptiones futuræ quæ tales sunt & vigent
sigillatim. *Prescriptio temporis* probata
excludit petentem & hæredes suos ad acti-
onem quæ talis est in hoc brevi, si dicatur
quod is de cuius seisia petit actor non
fuerit in seisia rei petitæ * Tempore
Regis Henrici patris Regis Edwardi nunc,
peremptorie discinditur actio actoris.

* al. ultra
tempus
Regis Ri-
chardi
avureuli
Regis
Henrici,
&c.

Radulphi de Hengham

Summæ magnæ

Finis.

*Deesse videntur plurima; sed ita finiunt
omnia, quæ vidisse nobis contigit, exem-
plaria.*

S U M-

SUMMA PARVA

Radulphi de Hengham.

C A P . I.

De Essoniis.

NOtandum quod quinque sunt essonia. Primum videlicet de *ultra mare*. Secundum autem de *terra Sancta*. Ista duo jacent in principio placitorum & non alibi. Et nisi veraciter proponantur, vertenda sunt in defaltas, & quomo-
do Essoniatus de *ultra mare* vertitur in
defaltam, queratur in statuto primo West-
monast. cap. 44. Induciae primi essonii
40. dies, Induciae secundi unius anni &
diei. Et continuo postea jacet essonium
de *malo veniendi* & non è converso. Ter-
tium de *malo veniendi*, cuius adiornamen-
tum est quindecem dies, & jacet in quo-
libet placito ante apparentiam & post ;
exceptis quibusdam casibus, ut in brevi-
bus *Assisarum*, *Attinctorum*, & *Furata-*
rum de Utrum. Et intelligendum est qd.
post apparentiam, nec Actori nec Reo

L

competit

competit istud effonium, nec Reo alicubi
in disseisina. Quæratur authoritas in primo
Stat. Westmonast. cap. 42. & in secundo Stat.
Westm. cap. 32. Item nec in *appello* de morte
hominis jacet istud effonium ut in secundo
Stat. Westm. cap. 16. Item in quolibet pla-
cito in quo allocatur istud effonium post-
quam partes descenderint in inquisicio-
nem, non jacet, nisi semel, & hoc ad proxi-
mum diem post inquisitionem adjudica-
tam. Et post alias apparentias subsequen-
tes non remanebit per istud effonium in-
quisitio capienda. Item post diem datum
prece partium non jacet istud effonium; ut
in casu quo partes concedunt venire sine
effonio. Quæratur authoritas utriusque in
secundo Stat. Westm. cap. 31. Item post diem
datum de die in diem quod habet fieri in
eodem termino non jacet continua post
defaltam in actione Reali. non competit
in personali. non jacet continua post mag-
nam distictionem, nec post magnum capi,
nec postquam præceptum est vicecomiti
quod faciat aliquem venire, vel quod ha-
beat corpus alicujus, vel quod capiat ali-
quem, vel postquam mandatum fuerit E-
piscopo, quod ficeret venire clericum su-
um. In casu etiam quando vir & uxor
vel duo tenentes in communi implaci-
tantur,

tantur, non habebant de cætero nisi unicum effonium, quia si unus se effoniaverit & alter comparuit ad alium diem ille qui comparuit non potest se effoniare quia sunt in statu quasi unius personæ. quaratur autoritas in primo Stat. Westm. Cap. 43. & in Stat. Glocest. Cap. 10. Et istud solum effonium & non aliud tam jacet attornato quam principali personæ. Ita tamen quod si quis effoniaverit seipsum & non attornatum suum, non allocabitur ei effonium suum. Esi duos habuerit attornatos vel plures, & unum & non alium effoniaverit, vel si plures habuerit & miserit unum effoniatorem, non allocabitur ei effonium. Sed videtur instantiam recipere, in casu quo lex vadiata fuerit per attornatum, postquam attornatus se non poterit effoniare, quia post legem vadatam dictum est per Justitiarios attornato quod faciat venire dominum suum in propria persona sua ad faciendum legem. *Quartus* effonium est de *malo lecti*, cuius adjornamentum est in *morbo transeunti* sicut adjornamentum de *malo veniendi*, secundum discretionem Justitiariorum, & in *languore* unius anni & unius diei a die visus sui apud *Turrim London*. Et habet istud effonium quas-

dam proprietates quas non habent alia ced
essonias, videlicet quod alia essonia in ip-
so primo die placiti proferri debent, istud
in tertio die præcedenti. Item in aliis e-
soniis sufficit unus essoniator, in isto exi-
guntur duo essoniatores. Item alia esso-
nia jacent sine essonio præcedenti im-
mediate, istud essonium non jacet nisi
immediate præcedat essonium de *malo
veniendi*. Præterea in aliis essoniis datur
certus dies, sed in isto essonio dicitur es-
soniatoribus qd. eant sine die, & jacet so-
lummodo in omni breve *de recto*, ante
apparentiam & post, exceptis quibus-
dam casibus, scilicet in brevi in quo non
jacet *daellum*, vel *magna assisa*, ut inter
eos qui per eundem sanguinem & eun-
dem descensum clamant. Item in aliis
brevibus de recto, quum placitum fuerit
in eodem comitatu, non jacet nisi causa sit
vera; quia si convincatur falsa, vertetur in
defaltam. Quæretur autoritas in *secundo
Stat. Westm. cap. 19.* *Quintum* essonium
est de *servicio domini Regis* & jacet in
quolibet placito & loco, exceptis quatu-
or casibus, videlicet *Novæ disseisinae*, *cl
Dote unde nihil habet*, *ultimæ præsentati
nis*, & in *Appello de morte hominis*. In
quibus non jacet, eo quod Rex non con-

alii cedit protectionem suam in casibus illis
& aliis casibus in quibus nullum jacet effo-
nium. Et solummodo allocabitur istud effo-
nium si ad diem datum proferatur war-
rantum Regis, & licet istud effonium
videatur allocatum esse eo quod adjor-
natur, non tamen adjornatur sine condi-
tione sicut alia effonia, quia si ad diem da-
tum non proferatur warrantum, sequitur
pæne talis. qui non habet warrantum in
actione reali, vertetur in defaltam. in acti-
one personali condemnabitur ad expen-
sas. queratur auctoritas in Stat. Glocest.
cap. 8.

C A P. II.

Brevia de Dote.

SCiendum quod tria sunt brevia de
dote unde nihil habet, videlicet unum
breve de communi dote quod est tale.
Præcipe A. quod juste, &c. reddat B. quæ
fuit uxor C. rationabilem dotem suam quæ
eam contingit de libero tenemento quod fuit
prædictæ C. quondam viri sui in tali villa
unde nihil habet, &c. Et per istud breve
petitur tertia pars tenementi quod fuit
viri sui die quo eam desponsavit & po-
stea. Et aliquando medietas de socagio,

& tamen non de omnibus sed de antiquis
& de his de quibus mulieres dotali con-
sueverint secundum consuetudinem cer-
tae patriæ. Et istud breve aliquando est
clausum ut in casu quando nihil habet, &
aliquando patens, quando aliquid habet
& aliquid deficit. In quibus casibus u-
num & aliud locum habent. Invenietur
in Provisione de Merton cap. I. in su-
pradicte brevi clauso adjudicari debent
damna mulieri de tenementis de quibus
vir obiit seisisitus. De tenementis vero a-
lienatis per virum de quacunque dote
petita per breve patens non adjudican-
tur *damna*. Aliud est breve de dote nomi-
nata, quando vir dotat uxorem suam, &
hoc aliquando de minori quam de tertia
parte, & de hoc tenebit se contentam. Et
aliquando de tertia parte in certo loco &
si non excedit tertiam partem remanebit
illa certa dos. aliquando autem de majori
& remanebit ei quousque admensuratur
& reddatur ei per breve de admensuratio-
ne dotis; & in hoc brevi sicut in aliis adju-
dicantur *damna*. Et est breve de dote no-
minata tale. *Præcipe D. quod juste, &c.*
reddat *P. que fuit uxor C.* tale manerium
de quo *prædictus C.* eam dotavit nomina-
tissim ad ostium ecclesiaz quando eam respon-
savit

quis
con-
cer-
o est
, &
ab et
s u-
etur
su-
pont
ibus
o a-
dote
can-
mi-
, &
certia
Et
o &
ebit
jori
etur
tio-
dju-
no-
fo.
ium
ina-
bon-
avit

savit, &c. Aliud est breve quando filius dotat uxorem suam de tenementis patris sui & de voluntate patris sui quod aliquando est de certo tenemento nominato; aliquando de tertia parte omnium tenementorum patris sui, quo similiter damna adjudicantur, & est breve tale. Precipe A. quod juste, &c. reddat B. que fuit uxor C. tale manerium vel tertiam partem tenementorum de quo vel de qua praedictus C. eam dedit aut de assensu & voluntate E. patris ipsius C. ad ostium ecclesie &c.

C A P. III.

Exceptiones contra Brevia de Dote.

Exceptiones contra praedicta brevia, & maxime contra primum potest objici quod demandans dotem suam habere non debet, eo quod praedictus C. quondam vir suus die quo eam desponsavit vel unquam postea non tenuit tenementum unde petit dotem in dominico ut de feodo. Et per hoc non excluditur, quin habebit dotem de tenemento quod per virum suum vel antecessorum dimissum fuit ad terminum ante desponsationem & remansit in manu terminarii usque

ad obitum viri, quia licet commodum rei fuit terminario, tamen feodium & dominicum remansit p̄enes virum. Item in omnibus brevibus prædictis potest objici quum vir suus commisit feloniam, ob quam fuit *suspensus*, *velagatus* vel alio modo *morti damnatus*, vel *demembratus*, vel apud *Dover infalistatus*, vel apud *Southampton submersus*, vel apud *Winton demembratus* vel *decapitatus* ut apud *Portsmouth*, in mari superundatus sicut in aliis partibus portuum. nec recolo in aliis casibus in quibus homo habetur pro felone, nisi in casu ubi quis movet guerram contra Regem, vel Regnum, ita quod abjuravit regnum, vel in fugiendo tanquam publicus latro fuit decollatus. Item quod inter ipsam & virum suum *dvirtium* fuit celebratum. Item si vir suus amiserit tenementum unde illa dotem petit per judicium excepto judicio per defaltam, de quo dicitur in secundo Stat. Westmonast. cap. 4. Item amittit uxor dotem in casu de quo dicitur in iisdem statutis cap. 38. Item si minor existens in custodia alicujus ducat uxorem sine assensu domini sui, & in minori ætate obierit, dotem amittit. Secus est si expectet ætatem. Item uxor quæ propter minorē

rem ætatem suam, vel propter minorem
ætatem viri sui non potest *dotem deservire*
ab actione dotis excluditur, excepto ta-
men si a minori dotetur ex voluntate pa-
tris, quia licet sit inhabilis secundum jus
commune, voluntas tamen patris, quæ fir-
matur secundum conventionem, facit ha-
bilitatem. Alia vero exceptio est, si ob-
jiciatur quod *non fuit viro legitime despon-
sata, &c.* Sed istius exceptionis discussio
pertinet ad episcopum & ordinarium, &
secundum ejus responsionem procedatur
ad judicium. Sed quid erit si pro una
muliere petente dotem, cui objecta fuerit
prædicta exceptio, scribatur episcopo, &
per responsum episcopi mulier illa recu-
perabit dotem, & post modum venerit
alia mulier petens dotem de dono ejus-
dem mariti, & similiter objiciatur quod
non fuit viro legitimo matrimonio copu-
lata, & ordinarius scribat Regi quod ul-
tima est uxor legitima, & quod deceptus
fuit in priore casu matrimonii? Dato
hoc, stabitur posteriori mandato Odi-
narii. Sic contingit de *Albraða & Ali-
cia de Hengham*. Alia est exceptio, quod
si petat dotem de muliere dotata dicitur
quod de *dote non debet dotem habere*, sed
intelligendum est quod illa exceptio non
repellit quamlibet mulierem ab actione
vel

vel a petitione dotis. Quia contingit in casu. *Radulphus* habens unam carucatam terræ dicit uxorem & dotat eam & postmodum dat filio suo unam virgatam terræ qui dicit uxorem & dotat eam, mortuo filio *Radulphi*, uxor filii dotata est de tertia parte virgatæ terræ, mortuo *Radulpho* uxor *Radulphi* petit dotem de toto. Si objiciatur ei quod de cote non debet habere dotem, non allocabitur ei exceptio illa, quia in priori contractu matrimonii inter *Radulphum* & uxorem suam acquisitum fuit jus uxori prædicti *Radulphi* de toto, nec debet ei præjudicare secundus contractus inter filium *Radulphi* & uxorem suam post dotatam. Secus est si *Radulphus* obierit ante filium suum & dotem suam recuperaverit de tenemento quod *Radulphus* dedit filio suo & similiter de tenementis quæ remanserunt prædicto R. post illud donum, si postmodum prius mortuo R. prædicto, & postmodum filio *Radulphi*, veniat uxor filii & petat dotem versus uxorem *Radulphi* quæ jus habuit in toto, obstat ei illa exceptio, quod de dote dotem non habebit, &c.

C A P. IV.

De usu concedendo.

UT sciatur in quibus casibus visus ter-
ræ concedatur sciendum est quod
in omnibus brevibus quæ incipiunt *Præ-*
cipe tali quod reddat aliquid quod actor
petit tenere ad minus ad vitam, vel ad ter-
minum vitæ alterius, ut in brevibus de re-
ão & ingressu, & consanguinitate, de for-
ma donationis, de Escheata, & similibus in
quibus tenetur in dominico, visus conce-
ditur ; exceptis quibusdam casibus. Quia
per hoc quod dicitur ad terminum vitæ
excluditur breve de custodia. Per hoc qd.
dicitur breve de Recto de tenementis, ex-
cluditur breve de consuetudinibus & ser-
viciis, & breve de Recto de advocatione ec-
clesiae, in quo visus non conceditur, si tan-
tum sit una ecclesia in villa in brevi con-
tentia. Et si plures sint ecclesiae & nomi-
netur ecclesia talis sancti, si plures eccle-
siae de illo sancto in eadem villa non ha-
beantur. Per hoc quod dicitur tenens in
dominico, excluditur warrantus sine quo
tenens se non posse dicit respondere. ex-
ceptis quibusdam casibus, &c. Cujusmodi
sunt

sunt commune breve de dote unde nihil
habet de tenementis unde vir suus obiit
seisitus. Item breve de dote assignata,
quando filius dotat uxorem ex voluntate
patris, & alii sunt casus expressi ex statutis
Westmonast. secundi cap. 53. Per hoc
quod dicitur *Præcipe quod reddat tene-*
mentum, excluditur breve de nuper obiit in
quo visus non conceditur, licet tenemen-
tum per illud petatur. Alia sunt pluria
brevia in quibus visus conceditur, nec ta-
men sit Mentio quod *aliquis reddat tali,*
sed quod permittat, &c. Sicut in omnibus
brevibus *de ingressu,* quæ proveniunt &
originem habent a brevibus *novæ disseini-*
na de communia pasture, & omnibus aliis
de quibus sit mentio in *ultimo statuto*
Westmonast. cap. 39. Item in omni-
bus aliis brevibus *de ingressu de fossato de*
stagno, &c. de quibus jacet assisa, exceptis
quibusdam casibus pasture. Quia si pe-
tatur communia ubique in villa de qua
sit mentio, non est necesse concedere vi-
sus, sed si in aliquo loco petatur & in ali-
quo loco non, necessario habet conde-
ditur. Unum est breve de recto quod non est
de forma supradictorum brevium, scilicet
*Quo jure in quo * conceditur visus,* si
actor dicat Reum nullo modo commu-
nicare

* No 1-
nullis
mss. non
conce-
ditur.

nicare in terris suis, sicut dictum est de Pastura. Sunt alia brevia quæ ad Vicecomitem pertinent placitanda quæ aliquando ponantur coram Justitiariis ut de *Domo, muro, porta, gurgite, in quibus propter nocumentum, visus conceditur;* & de quibusdam consimilibus, ut de *mercato, feria, Ovili* non conceditur visus quia non est necessarius.

C A P. V.

De brevibus *Affisarum.* & primo de brevi
nive *Disseisinae.*

Sciendum est de quibus jacet *Affisa,* & quibus sit modis disseisina, & quibus personis competit, & contra quos. De quibus; sciendum est quod de tenementis cuiusmodi sunt *terra, pratum, Boscs,* *Pastura, Vastum, Piscaria separalis,* ad minus versus deforcentes, *Gurgites & alia* quæ numerantur in secundo statuto Westmonast. cap. 29. Quæ in seisina aliquius sunt aliquo titulo in feodo, vel ad minus ad terminum vitæ, & hoc aliquando ad vitam possessoris, de quo non fit distinctio. Aliquando ad vitam dimittentis super quo distinguitur, vel dimittens nihil aliud habuit quam ad terminum vitæ

vitæ ut Rector ecclesiæ, tenens in dotem, & consimilibus in quibus casibus transferatur liberum tenementum in possessorem, vel dimittens habens feodum transfert in possessorem ad vitam dimittentis, reservata reversione heredibus vel aliis, in quo casu aliquorum opinio est qd. liberum tenementum non transfertur. Jacit & de Fossa prostrato, vel levato, stagno prostrato vel exaltato, sœpe prostrata, levata, vel exaltata, via obstructa, vel arctata, aqua diversa, pro cursu aquæ ad nocumentum arctato. Quædam sunt consimilia ad nocumentum levata, de quibus non datur Assisa, sed pertinent ad vicecomitem placitanda, veluti Domus, Virgultum, Porta, ovile, molendinum, Gurses, & Furnus. Quædam & hiis similia quæ sunt ad nocumentum, quæ coram Justitiariis sunt placitanda, ut feria mercatum.

C A P. VI.

De titulis. *Hæreditaria successione, feoffamento & Eschaeta.* quomodo acquiritur liberum tenementum.

ET quod dicitur supra de titulo, scendum est quod veri tituli sunt Successio hæreditaria, feoffamentum [perquisitam i-

tulo feoffamenti] Eschaeta. Sed in quibusdam horum casuum, major exigitur seisia, ad liberum tenementum perquendum, & in quibusdam minor. Ut in successione vero hæredi per pedis positionem adquiritur liberum tenementum, quia posito pede adquiritur liberum tenementum de toto tenemento quod annexatur tenemento in quo pes ponitur, vel cui illud tenementum annexatur. Non sic est de hærede non vero, veluti de vero Bastardo vel nato ante matrimonium, vel alio de longiore sanguine. Licet ante adventum veri hæredis stet in hæreditate per magnum tempus, videlicet per dimidium anni vel amplius, & postea verus hæres eum ejiciat, non propter hoc timere cōportet verum hæredem breve novæ disseisinæ quia possessio non veri hæredis seisia vel adquisitio dici non debet sed potius *Intrusio*. Si autem contingat quod post mortem alicujus intrat verus hæres, & aliis qui verus non est, & similiter morantur in possessione per magnum tempus, & postea verus hæres ejiciat non verum, non competit non vero actio vel remedium per disseisinam. Sed si non verus ejiciat verum, vero hæredi competit actio, quia cum ambo essent in seisia, seisia dicitur

dicitur illius qui majus habet. De titulo liberi tenementi per acquisitionem per feoffamentum, multa sunt consideranda. Quia cum aliquis feoffat alium non tam cito transfertur liberum tenementum in feoffatum sicut superius dictum est in successione hereditaria. Quia primo videndum est utrum feoffator feoffat alium, absque alterius præjudicio, in quo casu per bonam transmutationem adquiritur feoffato liberum tenementum; de his maxime de quibus se dimisit ad plenum, nullo sibi reservato præter servicium. Et si forte in præjudicium alterius fiat feoffamentum, non tam cito adquiritur liberum tenementum feoffato, ut in casu quo feoffator se facit medium inter Capitalem Dominum & feoffatum, ubi oportet quod plena & pacifica fiat seisina feoffato antequam competit actio ei versus feoffatorem, contra quod tamen potest subveniri per finem factum, vel per Recognitionem factam coram rege vel Justitiariis, quarum virtute acquireret feoffatus liberum tenementum, non obstante contradictione capitalis domini. Et similiter si uxor dotata, vir tenens per legem Angliæ, vel aliter ad terminum vitæ, vel per feodium talliatum, in supradictis tenuris feoffato

offato requiritur longa seisia & pacifica
antequam adquiratur ei liberum tene-
mentum. Et in hujusmodi feoffamentis
multa alia consideranda, videlicet remota
absentia illius cuius interest; tempus quo
ad ipsum devenire possit notitia, potestas
eius resistendi & multa alia. Similiter de
Villano alienante villenagium, & *Ballivo*
alienante tenementum in custodia sua exi-
stens, in quibus casibus, de brevi seisia,
non adquiritur liberum tenementum. In
titulo per *Escheatam*. Adquisitio qua^e al-
quando adquiritur Capitali Domino per
feloniam tenantis & in aliis casibus his
similibus, ut in reversione post feodum
taliatum de jure, & quod alicui competit
per formam donationis, de facili adqui-
ritur liberum tenementum ratione rever-
sionis ad personam à qua vel cuius ante-
cessoribus exivit tenementum, cessante
successione revertendi, vel per formam
donationis alicujus remansurum. Sed in
istis duobus casibus, diversa exigitur veri-
ficatio in judicio. Quia in reversione ra-
tione feodi taliati vel doni sub conditio-
ne non exigitur quod clamans reversio-
nem scriptum aut aliquid aliud ostendat
ad intentionem suam probandam, quam
patiam; eo quod carta doni pñes ad-

quisitorem ex consuetudine remanet & non p̄nes donatorem. Et ideo tenementum sine ostensione cartæ ad donatorem reverti potest. In alio casu quando debet remanere extraneæ personæ non * continuo. junctæ post mortem alicujus, necesse habet petens ostendere finem vel cartam de forma doni. Et cum dicitur supra quod titulus liberi tenementi tripliciter adquiritur, non propter hoc credat aliquis quin alia via adquiritur alicui liberum tementum, attamen per aliquem colorem oportet quod supponatur prædictis titulis. verbi gratia. Quidam ingreditur per disseisinam quæ nullum facit titulum ; postea disseisitus remittit & quietum clamat totum jus suum. Jam habet disseisor titulum liberi tenementi per quietam clamantium disseisiti ubi prius non habuit, & sic æquipollit quieta clamantia feoffamento. *Præscriptio* similiter & *præsumptio* fit aliquando loco tituli. verbi gratia. Aliquis ingreditur per disseisinam & disseisitus ætatis & suæ potestatis permittit disseisitorum per magnum tempus tenere ipsum non ejiciendo nec versus ipsum impetrando actionem ; quare præsumitur, ex quo per tantum tempus stetit in seisia per aliquem titulum clamavit tenere. Et propter

ter hoc si post magnum tempus ejiciatur, competit remedium per breve *nove disseisinae*. Mulieri etiam dotatæ, sive tenenti per legem Angliæ, competit remedium per breve novæ disseisinae, si ejiciantur, quia donum viri in dote est quoddam genus perquisitionis. Similiter adquiritur tenementum ad terminum vitæ viri ducendo mulierem, cujus hæreditas tenementum est; & sub eodem genere comprehendendi potest. Quorundam tamen ingressus cum ceperit per prædictos titulos vel sub colore eorumdem titulorum, nunquam alicui facit liberum tenementum. Et illis, quibus dimititur aliquod tenementum ad voluntatem, vel ad terminum annorum, licet a tam magno tempore tenuerint, cujus dimissio non poterit haberi in memoria, nunquam adquiritur liberum tenementum, nisi per consequens factum videlicet per feostamentum aut quietam clamantium illius cui fuit liberum tenementum. Et hoc intellege qd. liberum tenementum non adquiritur illi cui supradicto modo facta fuit dimissio, sine facto illius cujus fuit liberum tenementum. Sed aliquando contingit qd. hujusmodi tenentes ad voluntatem vel ad terminum feoffant alios de facto, & de jure non possunt, & tñ. per eorum feoffamentum,

tum, adquiritur feoffatis liberum tenementum, quod nunquam evenit per factum illorum qui nullam habent tenentiam. Et quod dicitur supra de felonie, sciendum quod *felones* sunt *suspensi*, *atlagati*, & alii de quibus dicitur hic & supra in cap. de Dote * secundo.

* Tertio;
uti hac
distingui-
tur editi-
one.

C A P. VII.

Quibus modis fit disseisina.

Sciendum, quod, cum quis tenens re-aliter ejicitur de tenemento. Item absens, cum ingredi voluerit, ejicitur & repellitur. Item cum * manuopus alicujus impeditur per * superfluosam, & hoc in tenemento diu ante appruato, vel de tenemento de novo appruando. Verbi gratia. Si qui vastum suum non prius appruatum redigat in culturam, salva tenentibus & vicinis sufficiente pastura cum libero ingressu & egressu, cum inceperit appruare impediatur, impeditor pro disseisitore habetur. Item in pascendo alterius separale fit disseisina ut in ultimo statuto Westmonast. cap. xxix. Item aliquando continuando possessionem, à qua adjudicatur. Verbi gratia. Divortium cele-

celebratum est inter virum & mulierem, si post divortium vir teneat se in hereditate perquisita in maritagio mulieris, statim cum post divortium manuoperetur disseisor est. Item intrando per judicium quod non ligat. verbi gratia. A. impletat B. de tenementis C. & fit judicium de tenementis C. cum tria exigantur ad judicium scilicet *Actor, reus, & Judex*, & in isto judicio deficiat unus trium, videlicet verus tenens qui dicitur reus, ille qui recuperat pro disseisitori habetur. Eodem modo si in Curia Comitis *Glocestriæ* recuperatur tenementum alicujus qd. est de feodo Comitis *Warreniæ*; quia defuit ibi Judex, ille qui recuperat pro disseisitori habetur. Et tamen illa judicia non peccant in forma, quia verus est ibi processus sed substantialia deficiunt. Non sic est in falsis judiciis quæ habent sua substantialia, scilicet actorem, reum & judicem (& his non existentibus fit iniquum judicium) quia istud judicium ligat quoisque infirmetur, & solummodo competit recuperare per breve de *falso judicio* & non per breve *nova disseisina*. Item dicitur in casu disseisor quando non per factum fit sed per advocationem in Curia. Et hoc est cum ille qui dimisit

terram ad terminum posuerit se in tene-
mentum ante terminum finitum & termi-
narius eum ejiciat, si ille qui dimisit ter-
ram ad terminum impetraverit *breve novæ
disseisinae* versus terminarium, clarum est
quod si terminarius dicat se nihil habere
nisi ad terminum & convincatur per assi-
sam quod terminarius ejectus ante termi-
num finitum vim vi repellendo se repo-
suerit, impetrator nihil per assisam recu-
perabit. Sed si falso coram Justiciariis
clamaverit feoffamentum, & contrarium
convincatur per illam falsam clamatio-
nem factam in exhaerationem illius qui
tenementa ei dimisit, habeatur pro dissei-
sitore. Eodem modo si terminarius eje-
ctus impetraret *breve novæ disseisinae* versus
eum qui ad terminum ei dimisit, convi-
cto quod nihil aliud habuit quam termi-
num, per suam falsam clamationem, a-
mittat terminum suum. Et est disseisina
de redditu in omni casu, cum tenementum
aliquod alicui obligatur in aliquo reddi-
tu, sive de eo sive de alio teneatur & di-
strictio * recusetur vel replegietur.

C A P. VIII.

Quibus Personis competit *assisa*. Excep-
tiones item *dilatoriae* & *peremptoriae*.
De vocando in *auxilium*. per eundem
descensum.

Sciendum est, qd. quibuscunque liberis & in statu liberorum existentibus, qd. dicatur pro hiis qui in * *nayvitate* procreati sunt, & cum a magno tempore fugerint & ad remota loca extra *astrum* se transtulerint & tenementa perquisierint, si ab illis ejiciantur, competit eis remedium per breve *nova& disseisinae*, & contra veros dominos, quia quoisque nativos in servitatem per judicium redigerint, ad tenementa seisienda manum apponere non possunt. *Villanis* quidem in *Astro commorantibus* non competit hujusmodi remedium versus veros dominos non magis de *perquisito*, quam de *villenagio*. Si tamen de *villenagio* vel de *perquisitis* ejiciantur, per extraneos competit eis remedium per breve *nova& disseisinae*; quia in hoc casu *villanus* non quoad verum dominum sed quoad extraneos pro libero habetur. Eodem etiam modo *Sokemannus* de *antiquo domino*, licet contra dominum vel *vicinum*

*al. na-
tivitate.

de eodem socagio placitare non possit nisi per *parvum breve de recto clausum*, versus tamen extraneum si eum ejiciat, competit ei remedium per breve novæ dissensiaræ. Competit etiam liberis a magno tempore in servitutem redactis, illis videlicet quorum patres & avi & quicunque antecessores a tempore quo currit *breve de recto* in servitutem redacti fuerint. quamdiu enim in *astro* morantur competit eis remedium ad liberum * statum rehabet dum per breve *Ne Vexes*. Et si a tenemento ejificantur non competit eis aliud remedium quam per breve *novæ dissensiaræ*. Sciendum est, quod contra quamlibet personam, dum tamen verus nominetur tenens, quo in brevi non nominato, nihil impetranti acquiritur. Competit etiam aliquando viro contra uxorem in casu in quo uxor profuga alienat tenementum viri sui, vel etiam tenementum uxoris. Contra impetrantem competunt exceptiones aliquando *dilatoria* aliquando *peremptoria* brevis. Dilatoria; veluti sententia *excommunicationis*. excipitur etiam contra impetrantem quod nihil habet nisi ratione uxor, vel contra clericum qui nihil habet nisi ratione ecclesiæ suæ, de qua non fit mentio in brevi, vel quod *Villanus* vel *Sokman*

* al. tene-
mentum.

ni-
sus
etit
næ.
po-
cet
te-
re-
diu
re-
en-
ne-
ud
a.
er-
re-
hil
li-
uo
ui,
ra
li-
riæ
x-
ra
ne
et
n-
hs

nnis est, de quorum discussione dicitur supra. Item excipitur contra virum & uxorem, si disseisina facta fuerit mulieri ante matrimonium & conquerantur ambo disseisiri. Cassatur etiam breve si erratum sit in *non-minibus personarum, villæ, aut Comitatus.* Similiter si dominus questus fuerit se disseisiri de redditu & convincatur quod seisisitus fuerit de redditu per manus villanorum, super quo jacet breve *nivæ disseisine* de tenemento in dominico potius quam de redditu. *Peremptoria brevis;* eo quod alias assisa transivit; ad quod requiritur quod de eodem tenemento inter easdem personas de eodem tempore. Item si quis clamat liberum tenementum sive exprimat titulum sive non, & recognoscatur per assissam quod jure successionis intravit, & pendet inter eos placitum in Curia Christianitatis de *Bastardia*; quamdiu fuerit placitum in Curia Christianitatis remanebit placitum in Curia Regis in suspenso; Competit etiam exceptio *quietæ clamantiae, felonie præjudicatae, exchambii & consimiles, &c.* In brevibus *assisarum* & iuonibus aliis brevibus generaliter locum habet ista exceptio, videlicet si tenens dicat quod *nihil clamat nisi cum uxore sua conjunctim.* Et hoc tripliciter, vel qd. fuerint simili-

similiter seoffati, & tunc habet necesse ostendere cartam, vel qd. invenit uxorem suam seisitam, antequam eam desponsavit, vel quod tenementum petitum uxori suæ descendit jure hæreditario post despensionem. Item alia est exceptio ad casandum breve, videlicet si tenens dicat se nihil clamare nisi ad voluntatem talis, vel se esse villanum alicujus, vel tenere de villegagio tali; quo comperto vel recognito caslatur breve. in quo casu vel oportet petentem intrudere se in tenementum si potest, vel impetrare aliud breve super dominum ipsius tenantis & super tenentem. Item potest excipi quod tenens nihil clamat nisi ratione custodie talis minoris infra ætatem, qui in brevi non nominatur. Replicatio contra istam exceptionem potest esse quod antecessor illius minoris non obiit inde seitus, nec die quo obiit habuit aliud in tenemento petito. Si tenens dicat quod antecessor illius minoris jus habuit in tenemento illo, & iterum alia proponatur replicatio quæ vera est quod antecessor illius minoris aliquod habuit, sed id quod habuit dimisit ad plenum eidem petenti per seoffamentum, tunc ulterius distinguendum est, ex quo tenens cognovit antecessorem minoris aliquod habuisse

habuisse, &c. si antecessor illius minoris
obiiit, &c. vel non quod fieri non potest,
sine brevi in quo minor nominetur. quia
dato quod *assisa* transferit contra mino-
rem, minor cum ad ætatem pervenerit
non posset facere *attinētam*, quia fuit
neutra pars in brevi priori, & sic cas-
tatur breve. Alia est exceptio dilatoria
quando reus dicit se *non posse respondere*
sine suo particepe; quod est in casu quan-
do hæreditas descendit duabus sorori-
bus, aut pluribus vel exitui unius vel am-
barum, & postquam hæreditas partita
fuerit, si unus hæredum de parte sua im-
placitus fuerit, excipere possit qd. tenet
in pro parte cum tali cohærede sine quo
non potest respondere, & in hoc casu præci-
piatur qd. hæredes summoneantur ad re-
spondendum cum ea si voluerint. Et si ad
diem venerint & respondere voluerint cum
particepe audiantur & tunc procedat pla-
citum versus eos, tanquam versus unum te-
nentem. Et si forte ad diem datum non ve-
nerint nec effoniato rem miserint, vel for-
te ad diem datum per effonium non vene-
rint, respondeat tenens solus. Sed sane in-
telligatur quod illa exceptio locum habet
quando res petitur per jus quod compete-
re posset actori ante mortem communis
antecessoris. Quia si quis petat per aliquod
jus

jus quod ei competere posset per factum cohæredis post participationem hæreditatis, satis clarum est quod in hoc casu non habebit auxilium participis. Quia potest esse quod cohæredes rem unam litigiosam vendiderint, vel excambiaverint, vel per judicium per malam defensionem amiserint, vel per feloniam foris fecerint antequam cohæres de re litigiosa fuerit implacatus. In quo casu dicendum est quod de nihilo non est auxilium petendum. Dictum est qualiter petitur auxilium participis quando cohæredes implacitantur de tementis. Sed contingit aliquando quod se-
etæ Cariæ, Jurisdictiones, libertates, servitia, & consuetudines veniunt in judicium inter querentem & unum de participibus tenentem minerium vel tenementum ad quod spectant hujusmodi *se-
tæ, jurisdictiones, libertates, servitia & consuetudines*, in quo casu tenendum est quod sicut tenens habere debuit auxilium participis de *principali*, ita habebit de *accessorio*. Dum tamen illud accessorium ad annum proficuum extendi posset. Hoc observato tamen de hujusmodi supradictis quæ fuerunt in possessione communis antecessoris antequam hæreditas fuerit partita & quæ ad unicum hæredem per extentam proficui devenerunt.

int. Et sic excluditur objectio. In casu,
cum unus heretum levaverit in justas exactio-
nes & consuetudines de propria sua inju-
nione in quo casu non erit auxilium parti-
otest pis petendum. Alius est casus, quo tenens
osam acit quod non potest sine alio respondere,
per delicet cum Rector implacitatus fuerit
e jure ecclesiæ sua dicit quod *invenit ec-
cliam suam se sitam* & quod non potest
pla- ne patrono & loci Dioceſano respon-
d de ere, in quo casa præcipiatur patrono &
tum oci dioceſano summoneri. Et si venerint
ipis el non venerint vel diem datum per es-
ene- nium suum non servaverint, servetur
se- rocessus supradictus. Alius est casus
tia, onſimilis quando tenens per legem An-
ter ia dicit quod *tenementum petitum fuit
uxoris sue de qua procreavit quandam
ad alam sine quo non debet respondere.* Sum-
monebitur tunc ille & post summonitio-
em servetur processus supradictus. Sed
ifferunt iſti duo casus ultimi a superio-
bus, quia si tenens in iſtis duobus casi-
bus ultimis amittat rem petitam, nullum
sit suum recuperare supra episcopum,
de tronum, aut heredes, sed in superioribus
of- iſibus de participibus tenens observato
am o ordine, si amiserit, recuperabit super
um pharedem per processum ulterius pro-
ne- cedendi.
UFB

cedendi. Sed unam proprietatem habent omnes isti casus supradicti quod sive coheredes sive patronus sive hæres hæreditatis ræqua tenetur per legem Angliae fuerint infra astatem, generaliter remanebit loquela usque ad astatem hæredis. & per hoc quod dicitur supra *quod rector invenit ecclesiam suam se sitam*, satis excluditur dubitatio si rector de suo perquisito vel de sua intrusione aliquid appropriat ecclesiæ sua, in quo casu non potest auxilium patroni aut Diocesani sui petere. Sed est casus quando mulier dotata implacitatur de dote sua, in quo casu distinguendum est utrum petatur versus eam tenementum vel tenemento annexum, ut *jurisdictio vel servitia* & hæjusmodi in valorem partis dotis suæ extensæ. In primo casu vocare potest ad warrantiam tanquam warrantum dotis suæ. In secundo casu cum non jaceat vocare ad warrantiam, habet dicere quod non potest sine hærede respondere, & tunc summonebitur hæres ad respondendum sicut prædictum est si voluerit, in quo casu servabitur processus supradictus. Et in utroq; casu si uxor pro defectu warranti hæredis amiserit, recuperabit mulier exambium, non tamen ad plenum valorem rei amissæ. Cujus ratio bene patet

subti-

aben subtiliter intuenti. In assisa mortis antecessoris & in aliis brevibus post visum terræ jacet exceptio de non tenura ; quæ sic debet proponi. dicit B. quod non debet A. ad breve suum responderi eo quod non tenet integrum terram versus eum petitam, eo quod talis inde tantum tenet, & talis tantum inde tenet, quo comperto per inquisitionem vel recognitionem cassabitur breve. Replicatio contra istam exceptionem. B. tenuit die quo breve fuit impetratum & hoc in feodo vel in dominico vel si illa tenuit de B. ad terminum annorum vel in villenagio vel ad voluntatem , quo comperto , vel recognito, stabit breve. Et sciendum quod in brevibus *Affiarum* potest proponi ista exceptio cum aliis exceptionibus tangentibus verba brevis. Sed in aliis brevibus si proponatur cum effectu, cum ea non possunt proponi alia exceptiones sed secundum quod per eam competum fuerit, fiat judicium & hoc diversimode. quia in brevibus *Eschaetæ*, de ingressu, forma donationis, & consanguinitatis, & aliis in quibus non jacet duellum vel magna assisa, si inquisitio facit pro excipiente, tunc cassabitur breve & sic est dilatoria. Si pro parte adversa recuperabit petens tenementum, salva tamen tenenti actione per breve de recto,

Et

Et si in brevi de recto proponatur ista exceptio cum effectu adimit ei jus contra quem transivit. Proponitur aliquando exceptio huic similis, cum non sit, sic dicendo quod tenens versus quem petuntur viginti, non tenet viginti eo quod tenet nisi decem. in quo casu si non possit dicere quis teneat residuum oportet respondere de eo quod tenet. Tam in brevibus assisarum quam in aliis brevibus jacent exceptiones dilatoriae sic dicendo. Tu petis versus A. tantum & versus B. tantum, ac si uterque sciret suum separale & ipsi tenent in communi, quo comperto eodem modo erit ut supra. Et est alia exceptio in assisa mortis Antecessoris sic. tu petis de morte A. & verum est A. obiit seisisus sed post ejus mortem intravit B. filius vel soror vel neptis vel consanguinea & de sicut non petis seisinam ultimi seisisi peto iudicium, quo comperto cassabitur breve sed fallit hoc casu. in casu scilicet in quo non intrat verus haeres, licet habeatur pro consanguineo, de cuius seisia non cassabitur breve, pro eo maxime quod si ipse inventus esset tenens & seisisus potius haberetur pro injusto deforciatore quam pro vero tenente. Item quidam pro ratione feoffamenti quod defunctus ei fecit, post mortem defuncti ingreditur

greditur tenementum & sub colore feoffamenti est seisitus, licet feoffamentum sic vacuum, venit post verus hæres & ejicit sic seisitum, per quod tenementum recuperabitur per breve *nove disseisinæ*, & postmodum verus hæres per *assisam mortis antecessoris* sui petat, & excipiatur contra eum quod seisitus fuit post mortem antecessoris sui, replicare poterit quod illa seisina adnullari poterit vel adnullata fuerit per *assisam novæ disseisinæ* per exceptionem, quo compertò non valebit sua exceptio. Item duo quo cohæredes sunt, unus antecessor, & unus ingreditur in tota hæreditate & ejicitur postmodum, si nomine amborum perquiratur breve mortis antecessoris, & excipiatur quod unus ipsorum fuit seisitus post mortem antecessoris, non propter hoc cassabitur hoc breve, pro eo quod & sunt quasi unus hæres & per factum unus, non adnullabitur actio amborum cum ambo non fuerint seisiti. **Alia** est exceptio in brevi mortis antecessoris dicendo, *tu petis tenementum de morte talis patris sui & bene cognosco quod obiit seisitus & post mortem ejus ego intravi, ut filius suus, nepos, & sumus de eodem sanguine & clamamus per eundem descendens unde peto judicium.* Proposita ex-

ceptione prædicta, prædictis verbis, nisi in contrarium objiciatur *bastardia* vel *diversitas consanguinis* cassatur breve, & revertetur ad *breve de Recto*, in quo non jacet duellum nec magna assisa. Sed quid erit si tenens vocet ad warrantum, & warrantus postquam warrantizaverit vel ulterius alium vocaverit ad warrantum? postquam warrantizaverit, cassabitur breve per eundem descensum. Et similiiter si tenens per legem Angliae dicat quod nihil clamat nisi ratione hereditatis uxoris sua. Et haeres postquam summonitus fuerit cassat breve per eundem descensum. Et si postmodum petens perquirat breve de *Recto*, nunquid poterit tenens defendere se per duellum vel per magnam assissam, cum non sit de sanguine petitionis? certe non, quia ex quo alias warrantus suus cassavit breve per exceptionem ejusdem descensus, in *brevi de recto*, non magis defendit se per duellum vel per magnam assissam, quam defenderit ille qui prius cassat si compertus fuisset tenens.

Summæ Parvæ

Radulphi de Hengham

Finis.

NOTES

NOTES UPON *Sir Ralph de Hengham.*

Pag. 1. *Primiceriis.*] he means Protonotaries. The word is often in Constitutions of the time of the declining Empire; as, *Primicerius Sacri cubiculi*, *Lampadario-rum*, *Officiorum Palatinorum*, and the like. Mongst them was *Primicerius Notariorum*, that is, the Emperors Chief Notary. *Altissat. ad Cod. 12. tit. 7. Primicerius, Notarius principis dicitur, & honore inter Notarios primus, sicut sequens dicitur secundicerius. Kīegs n. cerām significat κίνησις tabulam signatam, in qua antiqui scribebant. Ab his juscemodi igitur tabulis dicti sunt primicerii. Those primicerii Notariorum in Rome, although discharg'd from their office, yet remain'd in equal degree of honour with the Proconsuls, as appears in a Constit. of Gratian Theodosius, and Valentinian in Cod. Theodos. lib. 6. tit. 10.*

Pag. 2. *Modus Cyrograffandi.*] It seems by this, that either we have not all his first copy, or else he never finisht what he here promises. For we have no more of it.

Pag. 5. *f. filio Alani Comiti de Arundel.*] By mariage of a *Fitz-Alan* with the heir female of the *D' Aubignies* Earl of *Arundel*, came that surname which is here, as a word literally signifying, turn'd into Latine, by *Filius Alani*. It was usual in those elder times to do so. As to express *Champernoun*, by *de Campo Arnulphi*, 7 Ed. 3. fol. 35. a. & 49. b. and the rolls have commonly *Filius Petri*, *Filius Herberti*, *de Bello monte*, *de Bello fago*, *de S. Leodegario*, *de Monte Canisio*, *de Monte forti*, *Morino mari*, for *Fitz-Peter*, *Fitz-Herbert*, *Beaumont*, *Beanfage*, *S. Leiger*, *Mount-Chensy*, *Mount-fort*, *Mortimer*, and such more. So in 29 Edw. 3. fol. 30. b. *Colle* beside *Somershamb*, and *Colle* *juxta Somershamb* (although *Colle* indeed appear'd in the record to be in *Somershamb*) are held all one, in expressing the name of that place. In 30 Edw. 3. fol. 2. b. *Villa de Penefracto* is *Pomfreit*, in a precept, and in 38 Edw. 3. fol. 28. *Beward* is taken in the name of the Prioresse of *Newark*, as a name signifying a new work.

But

But in 25 Ed. 3. fol. 38. a. *Apud villam Sancti Petri* is disallowed for *apud Petreston*, though one interpret the other: and the case of P. II Ed. 3. tit. *quid juris clamat 2.* in the ms. is, that *John de Brayford* brought the writ against *Isabel Peverell*, grounded upon the Note of a Fine, whereby *Gilbertus filius Stephani* had granted the reversion of the manor of *Wolward* which *Isabel* held for life, to *John* in fee; and *Parning* took exception to the note and writ, because this *Gilbert*'s fathers name was *Richard Fitz-Esteven* which *Richard* gave the manor in tale to *Isabel*, &c. all that is stood on in the argument, is that of the name; and in the ms. occurs also icy fust dit que tout fust il vilaghe per tel nome que il ne sereit pas p tant atteint, &c. & aussi il fust endite per tel nome que ho me ne irreit pas de ly arrester, &c. and so *Sornar* (as in the print) gives judgement against the Conuse. This case is remembered in II Assis. p. 4. And by II Edw. 3. tit. *Estoppel 228.* *Filius Thomae* in Latin cannot be a surname; But, that it's a good plea, to shew that the party so design'd had a Father of another name, it's held 40 Ed. 3. fol. 22. a. 44 Ed. 3. fol. 12. b. and the law hath been lately so taken, as

you see in *Osbornes case Rep.* 10. fol. 232. b.
For other authority, how *Filius* may be un-
derstood either as part of a name, as for a le-
gitimate son, or as a note of only natural re-
lation, see 38 Ed. 3. fol. 22. a. 39 Ed. 3. fol.
11. a. & 25. a. 3 Hen. 4. fol. 14. a. 30 *Affis.*
pl. 51. per Seton 14 Ed. 3. tit. *Estoppel* 173.
13 Rich. 2. tit. *Bretefe* 645. 10 Edw. 4. fol.
12. a. *Cursons case.*

Ib. Eadem gratia Lincolniensis Episcopo] nothing is more usual of that time, than to find Bishops, Abbots, Priors, & the like, to have *Dei gratia* in their titles. But later ages hath appropriated it to Kings. *Lewes* 11. of *France* would not endure, that *Francis* then Duke of *Bretagne* should use it. See *Bodin de Republica lib. I. cap. 10*, and others noted in the *Titles of Honor*, pag. 116,

Pag. 6. In liberum Burgagium] as free *socage* in the country of lands, so free *Burgage* in Boroughs, and cities, is the tenure of houses, regularly, and they are the two base tenures in regard of *Knight service*. *Burgagium*, *socagium*, and *Feodum militare* make usually *Braeton's* tripartite division. See him *lib. 4. tract. de Affis. mort. antecessoris cap. 14.* and in *cap. precedent. 3.* of *Burgage*: *Revera terminatum est quod posse legari, ut catallum tamen hereditas quam perquis*

perquisitum per Barones Londoniæ & Bur-
genses Oxoniæ, & ideo verum est quod in
Burgis nou jacet Assisa mortis antecessoris.
that must be understood only of such Bo-
roughs as had by custome their lands de-
visable. see **Burgages debisables** in *Stat.*

II Ed. 1. Acton Burnel, Bract. fol. 272.
a. and Thorpe 21 Ed. 3. fol. 21. b. Trades-
men that held these burgages are the *Burgenses*
intended in *Stat. Merton cap. 7.* where an
heir of a Gentleman (a tenant by Knights ser-
vice) is disparaged, if maried to *Burgensis* or
Villanus; i. either tradesman, or husband-
man.

Ib. vel Maritagium.] Although *Hengham*
liv'd and wrote after *Westm. 2.* yet this, as
other examples of his *writs of right* are,
is of elder time than the *statut. Bracton fo.*
329. a. hath this very writ in substance, as
of his time, & thither must *liberum ma-*
ritagium be refer'd. For clearly since the
stat. of Westm. 2. a *writ of Right* would not
lie for lands held in *Frankmariage*.

Ib. Nec pro omni servitio] But *Bracton's*
writ with that tenure hath expressly *Pro om-*
ni servitio.

Ib. Portandi brevia.] Now *brevia* is ap-
propriated to the signification of the Kings
writs. Understand it in this tenure

(which is mentioned also in *Bracton* fol. 328.b. and *Regist. Orig.* fol. 2.b.) for letters of message and the like. For because the Kings Writ was a short letter of command, therefore had it the name of *Breve*. So *Bracton lib. 5. de Except. cap. 17. Sect. 2.* and, in the Civil law, both *Breve* & *Brevis* are in like sence, you may see *C. tit. de convenientiis fisci debit. l. 5. de apochis public. l. 1. & tit. 42. lib. 1.* restored by *Guthfred*. Very often also for letters, *Breves* and *Brevia* occurre in *Theodosius* his Code, *Cassiodore's* Precedents, *Symmachus* his Epistles, other of that time. The later Grecians call'd it *Béβιον* & *Bεπτίον*, yet those are as antient as *Julian* and *Eusebius*, who use them; and those, which wrote them, they called *Bεβιάτορες*, or *Breviatores* which I read in *Justinian's Aus. b. 105. cap. 2. si autem sect. 4.* and an old Glossarie of the law Interprets *Béβιον* by *in cōsilio*. Letters of presentation given by an Earl in 45 Edw. 3. tit. Exchange 10. are titled *Brief de presentatione*.

Pag. 7. *Quando xl. solidi cap. de scuto.*] So in *Bracton* also is the service exprest. But the *Register* fol. 2. a. hath a note that makes this forme obsolete. Now it shoulde be, *per servitium quartæ patris annis feodi*

milites, &c. Escuage is here apparently meant. Neither had the ancients any more particulars in denoting it, neither by them was it restrained to warre against the *Scots* or *Welsh* only, as by later authority it seems to be, where only *Scotland* & *Wales* are spoken of, as in *Littleton*, *Fitzk-Nat. Br.* fol. 83. *C. Regist. Orig.* fol. 88. a. 19. *Rich. 2. tit. Gard* 165. *Plored. Comm c.* *Rice Thomas* fol. 129. b. and elsewhere. In the Red book of the Exchequer, *Alexander Archdeacon of Shrewsbury* under *Hen. 3.* relates an Escuage of two marks out of every Knights fee in 7 *Hen. 2.* for the enterprise against *Toulouse*; in 8 *Hen. 2.* one marke for the same purpose; in 18 *Hen. 2. xx. s. pro exercitu Hibernie*, and others he hath for warre in *Normandy* *Poitiers* elsewhere under *Rich. 1.* and *King John*. And that they were such as are now understood in our tenure by escuage, will more openly appear in *Rot. Claus. 16. Johannis meml.* 24. in *dorse*, where the *Scutagiae Pictaviae* are at large in a catalogue; as, *Willus de Cintibrigia, quia habuit milites suos cum domino Rege in Pictavia, habet scutagium*. And there is also *Mandatum est Domino Petro Win-toniensi Episcopo* (he was then chief Justice of

of England) quod habere faciat Willielmo Comiti Arundell Scutagium de 16. feodis militum que Robertus de Tateshale qui est in Custodia sua de Domino Rege tenet in capite s. de scuto 3. marcas, which paslage I sufficiently understand not. If Tate/hale were in ward to the Earl (as so it must be taken) either by the Kings grant or otherwise, why should he pay escuage? if his land held in capite were to him by descent, how came the Earl to the wardship? except by grant. Admit he had it by purchase, why should the Earl have the Escuage? except by way of liberate from the Kings bounty. Very many of other escuages are there; as, *Henricus de Tayden habet Scutagium de feodo 6. militum ad opus filii sui qui est in Pictavia. Robertus de Cardman de 60. & 14. feodis militum pro filio suo qui fuit in Pictavia. Thomas Pannel habet auxilium 50. libraram Turonensium de libere tenentibus suis & aliis de insula de Geresey.* But for the default of tenants non coming to the army, a place in the Leiger book of Abingdon, in the hands of my noble and much deserving friend, that best furnish'd Antiquary Sir Robert Cotton, is worth observation. *Est juxta Abendune Burgum* (are the words) *unius militis mansio*

que Lea vocatur. Hanc Willielmus Regis Camerarius de Londonia tenebat. This William held it of the Abbey, and by Knight-service; In 2 Hen. 1. forces were levied to encounter Robert Duke of Normandie, when Faritius Abbot of Abingdon requir'd of William his tenant to find him a man for the army, as his tenure bound him to do, but William denied it, whereby the Abbot was driven by other means to supply the number of his part. The Abbot afterward tamdiu (as the book saith) in præsentia sapientum, hanc rem ventilari fecit, ut ille neutrum negaret, imo fateri sic esse vera ratione cogeretur. Unde cum lege patriæ decretum processisset ipsum exortem terræ merito deberi fieri, interpellatione bonorum qui intererant virorum redditus terram illam illi. And so the tenant under fair conditions had his land again. This Lea is now called Bestles-Lea, and is of the possessions of the Fettiplaces.

Ib. Unde decem carucatae, &c.] This form also is disallowed by the Register. But when it was in use, no particular quantity of the service was express, because the land by reference to a Knights fee shewed its own services. Bracton lib. 5. tract. 1. cap. 2. ubi quantitas feodi exprimitur

mitur in quantitate terra petite, non ponitur aliquod servitium, quia in quantitate feodi ostenditur quantitas servitii. It being all one in substance to say that one holds 4 carves, whereof 8 make a Knights fee, and that he holds so many acres or carves per servitium dimidii feodi militis. Caves and Hides are uncertain quantities, yet by that name division was anciently made in levying Hidage and Carucage. See what is noted in *Titles of Honor* p. 270. & seq. and in *Codice Abingdonie* pag. 42. Goffredus de Ver Albrici filius gives to the Abbey some possessions, *Cum duarum hidarum duodecies 20. acriarum terra disternitata*, & Hen. I. gives to Maurice B. of London, duas hidias de duodecem 20. acris: so that there 240 acres is taken for a hide. In the Monks ever with one consent almost, it is always a Plough land. And S. Dunstan in the year 163. gives *terrae pariem septem Aratrorum quod Anglice dicitur septem hidias*. It's in *Cod. Chart. Arch. Cant.* Thus should Hida and Carucata be all one; for, Carucata speaks the Plough. Charou in French so signifying, as Littleton also notes. But by ancienter authority Caruca is not a Plough, but Chariot, or such like, as *carna cum junctura legata*,

anda

andæ quoque legatæ, which is found in *Jul. Paul. Recip. Sentent. lib. 3. tit. 7.* where the old Interpreter hath *Carpentium* for *Caruca*. In like fense is *Caruca* in *Martial*, *Pliny*, and others, and to pag. 143. touching being compel'd to oath without warrant of the King. See the Case of T. 35 Ed. 1. recited in *Titles of Honor*, p. 263. It seems, when *Hidge* or *Carucage* was granted, the Commissioners for levying it (with aid of Jurors) used in every shire to assesse how much should be in certain reckon'd for a *Hide* or *Carve*. As in 9 Ric. 1. when an aid of five shillings, of every *Carve* in the land, was to be levied, *qui electi fuerant & constituti ad hoc negotium regis faciendum, statuerunt per aestimationem legalium hominum, ad uniuscujusque Carucae Wainagium centum acres terræ.* Here 100 acres were for that purpose a *Hide*. See *Roger de Hoveden* fol. 442 & 443. Neither is any difference betwixt *Carucata* and *Carucae wainagium*. For, *wainagium* is *sulth*, as it's Englisch in the ancient English of *Magna Charta*, or *gatnage*, as it's called *Westm. cap. 17.* See *Bracton* fol. 37. a. 4 Ed. 2. tit. *Aboway* 200. and especially *Lowes case in Rep. 9. fol. 123. b. & seq.*

Pag. 8. *Seditione personæ Domini Regis.*] Bracton fol. 118. b. *Si aliquid egerit vel agi procuraverit ad seditionem domini Regis vel exercitus sui, &c.* so Glanvil, l. I. cap. 2.

Ib. *Vite & membrorum.*] Judgment de vite & de membre is used for Judgment of death, or punishment capital, in Stat. Westm. 2. cap. 38. 3 Edw. 3. fol. 19. a. pl. 34. in 18 Ed. 3. fol. 32. a. pl. 5. 13 Ed. 3. tit. *Utrarie* 49. and elsewhere often. But anciently also part of it is taken for judgement of loss of life, & part for loss of member only, as in Westm. I. cap. 15.—*pur le quel un ne doit perdre vte ne membre.* And Bracton speaking of punishments lib. 3. tit. de Actionibus cap. 6. saith, *sunt quædam quæ adimunt vitam, vel membrum,* and the like hath he in tract. de Corona cap. 36. *majora crima aliquando ultimum inducent supplicium aliquando membrorum truncationem.* One flying to a sanctuary by the laws of William I. had paix de vite & de membre, as the words of it are in the book of Crowland. And *amissio membrorum* was a special punishment of Rape before Westm. 2. as you may see in Bracton l. 3. tract. de Corona cap. 28. He was condemned, lost his Eyes and his Stones; but by Glanvil before Bracton, it appears it was death, lib. 14. cap. 6.

But

But, that the judgement de vie & de memb're
in Westm. 2. cap. 38. was only judgment to
be hanged, and meant, about that time, to be
so, is plain by the book attributed to Bre-
ton c. 14. where the author hath reference
to the stat. of Westm. 2. made in 13 Edw. I.
which observe also for another purpose.
It's commonly affirm'd, with one consent,
that John le Breton Bishop of Hereford
under Hen. 3. and Ed. 1. wrote that book.
But its clear that this John the Bishop was
dead ten years before the stat. of Westm. 2.
here cited. For he died in 3 Edw. I.
which the storie of Florilegus the Monk
of Westminster enough justifies, yet, that
no scruple in that may remain, its to be
prov'd also by infallible record. In Rot.
Pat. 3 Ed. I. memb. 203. the conge d'aller,
for choise of a new Bishop there, relates
quod cum ecclesia vestra Herefordensis
pastoris solatio per mortem bona memoriae
Johannis nuper Herefordensis Episcopi fit
destituta, alium volis eligendi in Episco-
pum, &c. this was 23 Maii; and in memb.
19. of the same roll, the royal assent is gi-
ven to the choise of Thomas de Cantilupo
successor to John le Berton being dead.
All this is most certain: and it is as cer-
tain, that, about that time, was a Judge of
this

this name, for in Rot. Clas. 51 Hen. 3.
mem. 12. *Mandatum est Richardo de*
Ewell & Hugoni de Turri Emptori Gar-
derolæ domini Regis quod habere faciat di-
lēctis & fidēilīus suis Johanni le Breton
& Henrico de Monteforti Justitiaris suis
Rebas suas integras prout cæteris Justitia-
riis domini Regis invenire consuevit, quam-
dū steterint in Officio domini Regis, and the
Durs. Rot. Pat. of that year hath most fre-
quent mention of John le Breton, & Henry de Bracton for Judges of special assizes.
He is sometimes called *Bretoun*, then *Bri-*
ton, and also *Breton*; and *Florilegus* sub an-
no 1275. *Obit hoc anno Johannes Bre-*
toun episcopus Herefordensis, qui admo-
dum perius in iuribus Anglicanis, librum
de eis conscripsit, qui vocatur le Bretoun.
That there was a Judge of that name, and
that about that time one of that name
was Bishop of *Hereford*, here appears
plainly; and that a book of common law
called *le Bretoun* was written, and by
the Bishop, if you believe the Monk, and
the consent of late writers which speak of
it. But what book ever the Bishop wrote,
it cannot be this we have now left under
that name, unless you will allow that
one dying in 3 Edw. I. could cite a stat-

of

of 13 Edw. I. as our Breton doth in this of
 pe, or the statute of 6 Edw. I. of Cessavit at
Glocester, as he doth in his chapter de purchase
 conditionel, or the stat. of *Winchester* of 13
 Edw. I. as he does touching high waies, in his
 chapter de plusoꝝ torts. Some other author
 then, then the Bishop of *Hereford*, must be
 sought for that volume. This, by the way. For
 Judgment de membꝝ, anciently it was in Ap-
 peales of *Mayhem*. to this day the count is fe-
 lonice, but nothing but damages are now recov-
 erable, nor was the Law otherwise under Ed.
 3. as appears by 22 *Affis.* pl. 82. 41 *Affis.* pl.
 16. and other books. But before that time, the
 party attainted lost membꝝ pur membꝝ as it's
 said 18 Ed. 3. fol. 20. a. pl. 31. with which a-
 grees Breton cap. 25. where is added si la plaint
 soit faite de femme que abera folle a home ses
 membꝝ, en tel case perdrer le femme la une
 meit per judgment, come le membꝝ d'ont el
 abera trespassé. and if a Knight were struck by
 a Ribaud per felonie sans desert de chivaler, the
 Ribaud (saith the book) was to lose his hand,
 and it appears in *Glanvil lib.* 14. cap. 1. and
Bract. lib. 3. tract. de *Corona* cap. 24. that the
 tryals of Mayhem were by duell or Ordells, as
 of capitall offences. See *infra pag.* 87. where if
 the husband had been, by judgment, demem-
 bratus, the wife lost her dowre, and, for par-
 ticulars,

ticulars, see there more, and the notes. By K.
Knouts laws cap. 50. Adulterie in the woman
 was punisht by losse of Nose and Ears, to which,
 it seems, reference is in that of *William I.* his
 laws in the ms. *Ingulphus*, *si femme est judgee*
a mortu a defactum des membres *Si seitt ence-*
inte, that justice should not be executed till she
 be delivered, which in judgment of death is law
 at this day. and in *Fleta lib. I. ca. 38.* for pe-
 tit larcenies, or cutting of purses with nothing
 in them, the Pillorie and loss of Eares was the
 punishment. See *10 Hen. 3. tit. Corzone 434.*
 And, in *Fleta lib. 2. cap. 5.* of every common
 whore following the Court, the Marshal, at the
 first apprehension, was to exact 4. d. at the se-
 cond, to bring her before the Steward, who was
 to take her name and forbid her the Court; at
 the third, *considerabitur quod amputetur ei tres-*
sorium, & *quod tondeatur*; at the fourth, *am-*
putentur ei superlabia, *ne de cætero concupiscatur*
ad libidinem. At this day, saving for striking in
 the presence of the King or his Courts, no loss
 of member is in use by course of common law.
 Ancient and late examples are of punishment of
 such striking by loss of the right hand, in *22*
Ed. 3. fol. 13. a. 19 Edw. 3. tit. Judgment 174.
39 Assis. pl. I. 33 Hen. 4. Br. tit. Paine 16.
Stamford fol. 38. a. & 2 & 3 Elizabeth. Dy. fol.
188. b. By late statutes, for some offences the
 hand

hand, or eares, are to be cut off.

Ib. *Curiam Regis Majorem.*] He calls that *Curia Major* here, which hath consans of all capitall offences, and in his following chapters the same name he uses for the Court, whither, by *Pone*, a suit in a writ of right is to be remov'd, that is clearly the *common pleas.* and *Bracton* fol. 105. hath *loquela a comitatu transferri potest ad magnam curiam*, where often to him *Magna Curia* is the common pleas plainly. so doth he use the same title in fol. 362. Sect. 14. and often elsewhere. But it seems that to *Hengham*, *Major Curia* is no singular name for any one Court, but for any of those of the Kings highest Courts, which have the name in regard of all inferior. and the subject which he speaks of with it, may designe what Court he means. as here, that he means the Kings bench, or *Aula Regia* (as *Bracton* calls it fol. 105. b. Sect. 2.) appears by the crimes recited afterward, when he talks of a *Pone* to remove the suit of a writ of right into *Major Curia*, there it must be the common pleas. and it seems in pag. 16. he takes the name expressely as well for the Court of *Justices in Eire*, as for the *Common pleas.* Note the words: *Quamvis effonium de malo lecti in majori Curia Domini Regis, utpote ad Bancum vel in Itinere Justitiariorum jaci debeat tertio die, &c.*

Ib. *Placita vero de furtis.*] How the law hath been since taken touching pleas of the Crown to be *Viscontie,* is taught in *Stamford lib. I. cap. ulto & lib. 2. cap. 14.* No capital offence was, by this opinion, to be heard and determined in the County. For though he name *Furta* here, it seems he means not that theft which is capital, but as *Furtum* is in the Civil Law, so he understands it. that is, only for wrongfull taking away goods, as the word *Roberie* is used in *Westm. I. cap. 37.* And all other kind of felonious taking our author comprehends before, in *Roberia;* which in those times express also all felonious taking, or *Furtum* in that sence, as it's now used. witness *Bracton* cited by *Stamford* fol. 27. b. yet in *Glanvil lib. I. cap. 2.* *Furtum* is excepted to the Sheriffs Court, as out of such offences *qua ultimo puniuntur suppicio aut membrorum truncatione.* It's no doubt but *Hengham*, in writing this, had regard to *Glanvil.* as it may appeare by the same words in both. so had *Bracton* speaking of this matter, *lib. 3. tract. de Corona* fol. 154. b. *Ad vicecomitem pertinent huiusmodi placita in Comitatu. Cognoscere quidem potest de medletis, plagiis, verberibus, & consimilibus, nisi querens adjectat de pace domini Regis fracta, vel feloniam apponat. Extunc n. se vicecomes non debet intromittere, sum boe tangat personam ipsius domini Regis*

Regis & coronam suam. But, he sayes, the Coroners were to introl Appeals of capital offences, and present them in the Eire. So that in those times by Bracton's opinion, if one had sued criminally in the County, and concluded *contra pacem domini Regis, &c.* the Court had not jurisdiction, but if *contra pacem vicecomitis*, then it had, so is his difference there, and pag. 145. b. For in the one case, Judgment de vie ou de membre, or imprisonment was to follow, in the other only amerciament or *pena pecuniaria*, as he calls it. But see this Author pag. 21. where he speaks of Appells sine brevi. Appeals then might be taken or commenced, but not determined, in the County, if they were *de pace Regis fracta*. So it seems. See Stat. Mag. Chart. cap. 17. which belongs hither. Neither is it amiss to remember a judgment given in the time of Hengham, and before him in 30 Edw. I. nor from the matter here spoken of. It is in P. 30 Ed. I. ms. fol. 280. a. where the Sheriff of Yorkshire is commanded que il fust bener le appel Ion de Morton ensemblement obz Ion de Thouthorp attachz per sun appel. obz tote les choses meme le appel touchans devant Justices en Bank per b're de la Chancellerie. Le quel ret oyna son b're que il avoit maunde au Meze & a Bayliffes de la ville de Everwike, &c. les quaux responsent que Ion de

Merton appela Jon de Thouthorp que if ly as-
seyly a saut purpense le demaine prochein de-
vant la feste de saint Nicholias en la ville de
Everwike en Steyngate e illenkely robba de
un tabbard pris de trets sous e de dousse denters
d'argent contra la pees, &c. Demand fut au
Meyze la maistere del attachment, e syl y fut
Meinoure, & per queu garrant ils tenent teu
maner de play, il dist que Jon de Morton leua la
mene sur Jon de Thouthorp e trova pleges de
fuer son appel au Coroners de la ville p que
eus le attacherent e le pristent e tinoyrent le
play en lur Gyldhall de cest appele per usage de
la Cyte usee de tens d'ont il ne ad memorie a
tener sans bze e sans Meynovere ou pulfre, &c.

*Et quia secundum legem & consuetudinem regni,
Major & Coronatores alicujus Civitatis hujusmo-
di appellum coram eis audiire non possunt, & termi-
nare, nisi eorum cognitio per Chartam domini Regis
vel progenitorum ejus vel per breve domini Regis
de hujusmodi appello coram eis audiendo & termi-
nando specialiier sit concessa, cum ea ad dominum
Regem ratione juris sui Regii & non ad alium, in
Regno Regis, pertineant, Consideratum est quod
appellum predictum coram ipsis Majori & Coro-
natoribus habitum, tanquam coram eis qui nul-
lam in hujusmodi casu habent jurisdictionem ad-
nuncetur & pro nullo habeatur. Et quia predicti
Major & Coronatores nullam in Curia hic manu-*

opus

opus vel pelsum proferunt nec Idem Johannes de Morton solempniter vocatus appellum prædictum in Curia hic prosequitur, V isum est Curiae quod ad sectam domini Regis versus prædictum Johannem de Thouthorp in Curia hic non est procedendum. Et ideo prædictus Johannes de Thouthorp inde sine die. Et ad judicium de prædictis Majo- re & Coronatoribus qui appellum illud tenuerunt sine warranto. These are the words of my report very anciently written. I transcrib'd it all, because divers things are in it specially observable. *in Atraction of the Sines ver-*

Ib. Melletis.] Glanvil &c, Bracton have de Medletis, for sudden affraies or dislikes. the word is so us'd too in *Regiam Majest.* l. 1. ca. 3. and hence is our chaunce medley, corrupted from *Chaud melle*, which signifies hot or sudden debate, whence, in Scotland, *Chaud melle* is oppos'd against *Fozethought felony*, as *Manslaugh-ter* with us, 'gainst *Murder*. See Skene ad citat. loc. & de verb. signific. But chance medley is in Stamford otherwise. Skeen interprets *Chaud melle* by *Rixa* in the Civil law.

Ib. Hutesio.] Although clamor & *Hutesium* or *Huesium* is for huy and cry in our law, yet it seems here its a word made from *Huin* i. scolding, brawling, contention, whereby the peace of the Country was disturbed. For all the rest here spoken of are offences, amongst which

you cannot well reckon *Huy and cry*. although
of that the Sheriff had power to determine, if
it grew in question 'twixt the appellant and ap-
pellée *utrum appellans butesum levaverit*, *Bract.*
lib. 3. fol. 145. b. Sect. 2.

Ib. ubi non agitur de pace domini Regis fracta]
He means when the plaintiff or appellant did not
complain of the Kings peace broken, but only
of the peace of the Sheriff. So *Bracton* teaches
the law of that time, that if, for the like, suits
were in inferior Lords courts, the conclusion
was *contra pacem Domini*, if in the Court of a
corporation, *contra pacem ballivorum*, if in the
Sheriffs, *contra pacem Vicecomitis*. Neither
means *Hengham* that those offences were not in
themselves *contra pacem Regis*, but that in the
suit commenced in the Sheriffs Court the Kings
peace broken might not be complained of,
which well agrees with, and explaines the law
now, that, without writ, the Sheriff cannot
hold *plea de transgressionibus contra pacem domi-
ni Regis*, as it appears in *Fitzb. Na. Br. fol. 47. A.*

Pag. 9. hanc Assisam,] supposing the mise to
be put on the grand assise.

Ib. falsat.] that is, by oath prove that the
Lords Court hath failed him of right. the two
following chapters have more of it. and see
Bracton lib. 5. fol. 329 & 330. where the falsi-
fying (as it was call'd) of the Lords Court is by
oath

oath taken by the demandant, with two others in the Lords Court, or at his manor house, but *Hengham* allows it by the oath only of the party, this *Bracton* stiles *defalta probata*. Touching this obsolete usage, a case of 11 Hen. 2. is worth observation. It's related in *Roger de Hoveden* pag. 283. when *Thomas Becket* desired the King, he might, with his leave, go visit Pope *Alexander*, then commorant in *France*, the King answered him, *Tu prius respondebis mihi de injuria quam fecisti Johanni Marischallo meo in Curia tua. Conquestus n. erat Regi idem Johannes quod, cum calumniatus esset in Curia Archiepiscopi terram quendam de illo tenendam jure hereditario, & diu inde placitasset, nullam inde potuit assequi justitiam, & quod ipse Curiam Archiepiscopi falsificaverit secundum consuetudinem regni, cui Archiepiscopus respondit, nulla Justitia defuit Johanni in Curia mea, sed ipse (nescio cuius consilio an propriæ voluntatis motu) attulit in curia mea quendam Loper & juravit super illum, quod ipse pro defectu Justitiae à Curia mea recessit, & videbatur Justitiariis curiae meæ, quod ipse injuriam mihi fecit, quia sic a Curia mea recessit, cum statutum sit in regno vestro, Quod qui curiam alterius falsificare voluerit oportet eum jurare super sacrosancta evangelia. Rex quidem, non respiciens ad verba haec, juravit, quod ipse haberet de eo justitiam & judicium.*

Judicium. Et Barones curiæ Regis judicavunt eum esse in misericordia Regis, & quamvis Archiepiscopus niteretur judicium illud falsificare, tamen prece & consilio Baronum posuit se in misericordia Regis de D. libris & invenit ei fiducie jussores. That *Loper* was a Church book of the time, and it is what in a Constitution of Robert Winchelsey is call'd *Troperium* in Lindw. Provinc. constit. tit. de Eccles. ædific. c. nt Parochiani. Of this falsifying, more in *Breton* fol. 275. according to *Bracton*. and the *serviens domini Regis* in *Bracton* appears to be Bailiff of the hundred or some such minister.

Pag. 10. vel per duos, &c.] If you read, &c. then agrees he with *Bracton* and *Breton*.

Pag. 11. non debet *Autumnatus* aliquis.] examine it by *Breton* cap. 126. fol. 286. a. Stat. Merton cap. 10. *Regist. Orig.* fol. 26 & 27. *Temps Ed. I.* tit. *Attorney* 105.

Pag. 12. *Breve de Pace.*] Mention is of this course *Temp. Ed. I. tit. 20* fol 45. and precedents are of the writ in *Glanvil lib. 2. cap. 8.* and *Bracton* fol. 331. Sect. 5. See also *Breton* fol. 277. b. & *Regist. Orig.* fol. 7. b.

Ib. *Justitiarii ad omnia placita.*] Justices in Eire; which were in some like nature to the now Justices of assise, but had not their circuits so often. The beginning of them was in 22 Hen. 2. which was by example after followed. See

Hove-

Hoveden Pag. 313. & 337. & Gervas. Tilburiens. in Dialogo de scaccariis. But it seems great delay of justice might so have been. For the Eires were not very frequent, and by some, the distance of them was vii. years. So saies Scrope in Temps Edw. 3. fol. 143. a. and see fol. 149. a. Aldenham. Glan. il speaks not of them in this case, it being not in use in the infancie of Eires, to have the prohibemus referred to them. succeeding time brought in that ; and about Ed. 3. the Eires were left.

Ib. ad corporale sacramentum ponere, &c.] Braeton fol. 106. a. Non potest aliquis Baro, vicecomes vel alius de liberis tenementis cognoscere, nec tenens tenetur respondere sine praecepto vel warranto domini regis, nec possunt aliquem de hujusmodi ad sacramentum sine warranto compellere. See Stat. Marl. cap. 23. 44 Ed. 3. fo. 19. b. & 39 Ed. 3. fol. 35. b.

Pag. 14. * Congerere.] it may be, contrabere was the word of the Author.

Pag. 16. non plus, quamvis.] read Non plus. Quamvis, &c.

Ib. alibi videtur n.] Whatsoever alibi should be (some copies having tales, some talas) continue it with videtur quod cal. &c. the reason is plain.

Pag. 17. Turrim Londen.] Refer hither Braeton fol. 345. & 359. a. and 3 Hen. 3. tit. Essoine
186.

186. and the reason of day given at the Tower,
see in *Hengham Pag. 45.*

Ib. Anno bissextili.] The foure excrescent quadrants of a day in the Julian year were and are at the end of every four years space, put into one day, which added to the 365. of the common year makes 366. for the leap or bissextile year. the addition was not to the end of the year, but the day is so intercalated in *Febrary*, that it falls to be joyn'd with the vi. *Kalends of March*, which being every fourth year so made of two dayes joyn'd, denominated their year with *bissextus*, because *eo anno bis dicitur sexto Kal. Martias.* That ordinance of the Leap year after spoken of, is dated *apud Windesore 10. die Maii anno regni nostri 54.* by *Hen. 3.* in the old statutes. See for this matter *Bracton* fol. 344. b. and 359. b. in the Roman Civil law, the like account was of the intercalated day, and it with that wherewith it was joyn'd was as one day. *Ulpian in π. tit. de minoribus l. 3. denique Sect. 3.* *Proinde si in bissexto natus est, five priore five posteriore die, Celsus scripsit nihil referre. Nam id biduum pro uno die habetur, & posterior dies Kalendarum intercalatur.*

Pag. 27. Reddenti effon.] More largely of that in *Bracton* fol. 351 & 352.

Ib. Affidatis in manibus.] read *affidati.* The Affidavits here are taken in *manibus vel super virgam*

virgam clamatoris. For that in manibas see Brandon speaking of falsifying the Lords Court fol. 329. b. *Vadiata probatione defalcta in manum servientis domini Regis.*

Pag. 28. duo dies per annum.] but see stat. of Dies Communes in banco, and 8 Edw. 4. fol. 4. b. where that is affirmed for a good statute law.

Pag. 29. lin. 18. vel compareat.] read & comp.

Pag. 33. l. 4. delicto alterius. Ex, &c.] read delicto alterius, ex, &c. What he means by this, appears not clear enough. Of Pleas determinable per legem now, none is whereupon imprisonment should follow. In elder times indeed Leygager (if you take legem here for that) was a tryal in many actions which now admit it not. as in attachment upon a prohibition 24 Ed. 3. fol. 39. a. & see 28 Ed. 3. fol. 100. a. 18 Ed. 3. fol. 4. a. 2 Ed. 3. fol. 8. b. 48 Ed. 3. fol. 6. a. and in Placit. Affis. apud Northampt. 31 Hen. 3. Coram Rogerio de Thurkeby & sociis suis Rot. II. in dorso Gervase de Bernake brings a writ of Mesne against Peter de Bernake, and the tenant confesses cause of acquittal, but saies the demandant was not distrained through his default, which plea is tryed by his law. And in a roll in the Tower indorsed Circa 34 Hen. 3. Rot. 7. in a writ de Fine fact by Matthew de Stratton against Ralph Mautanner about a Common, in the count the

the defendant was charged with using the common otherwise then the fine would; he pleads he did not use it otherwise. *Et offert se defendere contra ipsum & sectam suam sicut curia consideraverit.* Ideo consideratum est quod vadet ei legem **xii.** manu. & veniat cum lege sua a die sancti Hillarii in xv. dies & plegii de lege Willielmus Branthe & Willielmus filius Roberti. Postea a die Paschæ in **III.** septimanas vnit prædictus Radulphus & fecit legem suam; ideo Consideratum est quod prædictus Radulphus inde sine die & Matthæus in misericordia. Thus different were ancient times from the present. But what had this Leygager to do with imprisonment spoken of in this Author? Quære. Or doth he mean by *legem*, the arraignment or criminall offences, which being not capitall are punished by imprisonment? *Poni ad legem* is a usuall phrase in old rolls, especially in that of **31 Hen. 3.** now cited, for one to be arraigned, or put to answer to criminal offences.

Pag. 34. Non plebne.] This is remedied by the stat. of **9 Ed. 3. cap. 4.**

Pag. 37. secundum Henricum de Bathonia.] A Justice of **Hen. 3.** his time is obvious in the rolls, of that name. But this point of *Leygager* against the testimony of the summoners is in *Henry de Bracten fol. 334. b.* He cites him again **Pag. 38. 47. & 60.**

Pag. 48. *velint surgere.*] i. have *licentiam* *surgendi*, whereof more speciall matter is in Bracton fol. 355. 3 Hen. 3. tit. *Essoine* 186. 14 Hen. 3. *Essoin* 190. & vide *Regist. Orig.* fol. 8. ¶ 9. He that was *essoind de malo lecti* might not rise before his being seen by the 4 Knights, which if he did, and were not found in his bed when they came to make their view, his *essoin* was turned into a default, of which also is a notable case of 16 Rich. 1. in the book of *Crowland*, where *Henry de longo Campo Abbot*, though being in possession, yet sued the Prior of *Spalding* for entring upon his Marsh *contra pacem Regiam*. the Prior pleads, he enter'd as into his own fee simple, and offers 40. marks for the grand assise. and the mise is joyn'd so. The Abbot is *essoind de malo lecti*. The writ goes out to the 4. Knights to make the view. while one is coming to view him he rises, and comes towards the Court. the Knight certified he could not find him in his bed. whereupon judgment was given after long consideration *quod Abbas Crowlandiae qui se effoniavit contra Priorum de Spalding de malo lecti apud Crowland, & illic non est inventus in lecto, quando visus deberet de eo fieri, amitteret ad tempus seisinam.* Note, *seisin* was upon his default given to the defendant in the suit. The whole plea and story of it is long, but most worthy the reading, to instruct

in

in the Courts, Courses of that time, and specially in processes sent out by the L. Chief Justice of *England*, in his own name, sitting with the Justices in *Banco*. Divers whole writs from the King beyond Sea, and from the Chief Justice at home, are in it, and the whole is very understandingly related.

Pag. 52. ad horam nonam.] See 16 Ed. 2. tit. action sur le case 47. where so much of the day as is from nine of clock is taken for half a day:

Quere.

Pag. 58. Cepit homagium & servitium vocantis.] That homage and other services was cause of warranty anciently, authorities are frequent, *Temp. Ed. I. tit. Garranty 90. 47 Hen. 3. Itin. Cornub. Eod. tit. 99. & Woucher 270 Temp. Ed. I. tit. Age 129. 13 Ed. I. tit. Pet. quæ servicia 23. Breton cap. 70. & 68. Bract. lib. 4. tract. de Mort. Antecessoris cap. 1. & De warrant. lib. 5. cap 2. Sec. 4. Stat. de Bigamis cap 6. and this author cap. 13. although now only homage ancestrell be cause of warranty.*

Ib. Et hoc pro sacramento suo.] see *Glanvil. lib. 2. cap. 3. and Westm. I. cap. 41.*

Pag. 59. ad warrantiam.] the latine of that time is rather *ad warrantum*, and so afterward it is often printed. the copies being indifferent.

Ib. Quod permittat.] but, in *Hen. 3.* his time voucher

spe- voucher was allowed in a quod permittat, as ap-
 Ju- pears 12 Hen. 3. Itin. Norff. Woucher 282. &
 with 33 Ed. I. tit. Woucher 272.

rom Pag. 69. duellum in omni eventu] that is Com-
 tice bat a tout oultrace i. battaile to the utmost, ac-
 der- cording as the law requires, so pag. 12. supra, he
 tit. hath prosequi in omni eventu, to follow the suit
 day to the utmost. Is not tout attrencha in the de-
 ay : fenses corrupted form tout oultrace? See Nov.
 Narrat. fol. 3. a. 2 Ed. 3. fol. 64. a. Basset.

an- Pag. 71. Cartam de feoffamento] Of the an-
 use cestor of the enfant, whose heire he is. For o-
 ent, therwise the tenant failes in the voucher of an
 in. enfant. See Bracton lib. 5. tract. de warrantia cap.
 Ed. 2. Sect. 2. 43 Edw 3. fol. 3. &c.

23. b. Habere legem is here to be able to take a legal
 ort. oath, and facere legem (as at this day) to take it.
 3. See in the Notes to Fortescue, of legem terræ. By
 use Bracton also fol. 340. b. an enfant cannot have
 vil. these essoins quia jurare non potest nec effonium
 nat warrantizare. see 38 Edw 3. fol. 8. b. 32 Ed. 3. tit.
 er Per quæservitia 9. 26 Ed. 3. fol. 63 & 64.

Pag. 72. tenetur donator & ejus bæredes] so must
 you read. so was the law in feoffments before the
 statute of Quia emptores, &c. when a tenure was
 reserved to the seoffers. See Stat. de Bigamis cap.

6. 13 Ed. I. apud West. tit. **Garranty** 92. & 13 Ed. I. tit. **Woucher** 290.

Pag. 73. *residuas duas C. vel D.*] It's supposed by this, that the other land, of which the feoffor is feis'd at the feoffment might be bound by the warranty comprehended in the deed. So also was the law taken in 16 Hen. 3. in the case of *Alice de Ware* reported by *Bracton* fol. 382. a. being (it seems) the same with 17 Hen. 3. tit. **Recovery en value** 25. and see 32 Ed. I. tit. **Woucher** 292. But it's plain now, no land is bound but what the feoffor or his heire hath at the time of the **Woucher**, or **Warranty de chartres** brought.

Pag. 79. *Tempore Regis Henrici*] But that in the margin (as some copies are) agrees with the law of Westm. I. cap. 39. wherein the writ of right was limited to *Richard I.* his time, which limitation continued till 32 Hen. 8. cap. 2.

Pag. 83. *in quo non jacet duellum, &c.*] See 18 Hen. 3. tit. **Droit** 62. & 13 Ed. I. eod. tit. 51. **Stat. de Mag. assis. eligenda, & Hengham** pag. 115.

Pag. 85. *si non excedet tertiam*] for, by the ancient opinions, onely a third part might be assign'd *ad ostium ecclesiae*. So *Glanvil. lib. 6. cap. I. Bracton lib. 2. de acq. rer. dom. cap. 39.* & tract. de act. Dotis, fol. 315. a. *Bretton cap. 113.* But see 9 Hen. 3. tit. **Dower** 190. & *Fitzh. Nat. Br.* fol. 150. P.

Pag. 87. *infalstatus.*] It appears that several customes of places, made in those dayes, capital punishments several. But, what is *infalstatus*? in regard it's of a custome us'd in a Port Town, I suppose it was made out of the French word *Falaize*, which is fine sand by the water side, or a bank of the Sea. in this sand or bank it seems their execution, at Dover, was. In this place the copies vary, no one having all the punishments. but for the rarity of the remembrance, I took out of the divers copies all these. The old English translation here helps not.

Ib. vel apud Winton demembratus] that is of his Eyes and Stones. For, such was anciently the punishment of Felons in *Winchester*, as also in *Wallingford*. One authority justifies both, in 45 Hen. 3. Berk. *Coram Gilberto de Preston & sociis suis in Oct. Purif. B. Mariae Rot. 29* the Jurors of the Borough of Wallingford give in quod nullus de natione istius Burgi pro quocunque facto quod fecerit, debet suspendi, immo secundum consuetudinem istius Burgi debet Oculis & Testiculis privari, & tali libertate usi sunt a tempore quo non extat memoria, and so they there say one Benedict Hervey was lately so punisht. *Et, que-
siti Furatores, si tali libertate usi sunt*, dicunt quod a tempore Henrici avi domini Regis nunc usi fuerunt eadem libertate per Cartam ejusdem D. Regis quam eis fecerunt, per quam eis concessit omnes

libertates quas Civitas Winton habet, &c. They challenged this liberty from a Charter of Hen. 2. who gave them all such liberties as Winchester had.

Ib. Decapitatus.] See Regist. Orig. fol. 165. a. & Fitzb. Nat. Br. fol. 144. H. of beheading for Felony.

Ib. ubi quis movit Guerram, &c.] See 8 Ed. 3. fol. 388. a. 7 Hen. 4. fol. 32. b. & 47. a. 15 Ed. 3. tit. Petition 2 Plowd. Comm. fol. 263. a. the saddlers case in Rep. 4. fol. 57. b. Stamford fol. 189. and Park. Sect. 391.

Pag. 88. Item si minor, &c.] By this, and what Glanvil hath lib. 7. c. 12. it appears that in those times greater prejudice was often to the heirs of both sexes, by marriage without their Lords consent, then the law since burdens them with.

Ib. dotem defervire] that is demereri. By such uncertainty, without limitation of years, those old Authors judg'd of a womans dower; so Bratton l. 2. c. 39. Breton. c. 109. And by the Roman law non potest videri nuptia que virum pati non potest. insomuch that if a legacie be given to a young girle, to be paid quando nupserit, if she take a husband before she be viri potens, the legacy is not yet due, by expresse text in π. tit. Quando dies legatis vel fidei comis. cedat l. 30. quod pupilla. So in the Reg. Majest. of Scotland

land lib. 2 cap. 17. a woman loses her dower si
sit ita juvenis, quod non potest habere rem, hoc est,
coire cum viro suo. But in our year books divers
cases are of later time touching a certainty of
years, and now it is taken usually (as Littleton
saies) she must be above nine. Besides the com-
mon Authorities, see *Fleta lib. 5. cap. 22.* and for
the two cases of this matter, in *7 Edw. 2. tit.*
Dower 147. and *12 Edw. 2. tit. eod. 159.* they
are worth more observation in the report at
large, which is extant in our Inner Temple Li-
brarie. the first is between Symond and Benster
fol. 107. a. the second is *fol. 163. b.* where Berry
saies expressly, that it lies in the discretion of
the Judges, whether she deserve dower or no.

Ib. requiritur longa seisinā & pacifica.] for in
those times the law was taken, both that long
seisin so added a title to a disseisin, that the dis-
seisee might not enter, and also, by some, that
short seisin of one that had right to enter, gave
him not so much freehold that he might have
his assise against a disseisor. so it appears in *12*
Hen. 3. Itin. Staff. tit. Assise 428 & 429. 30 Ed.
1. Itin. Cornub. tit. Attaint 76. Bracton fol. 160
& 161. Hengham pag. 98. But see *Breton chap.*
42. to which (that we may observe the opinions
of that time) adde a case, adjudged before our
Author, upon this point of *Longa* or *brevis sei-*
sinā, and reverst in the Kings bench. In *33*
Ed.

Ed. I. ms. fol. 59.b. John le fiz Aveline brought a Mort d' ancestor before Sir Ralph de Hengham and his compaignous, of the death of John le Clark, his uncle, against Edmond of London gardien of the House of Saint Thomas of Acres. the tenant pleads pluis daccrain seisin in Aveline mother to the demandant, who was seised after the death of the uncle. Issue upon this is joyn'd, and the Assise taken; they find que apres la mort mesme celuy Ion le Clark mene cest Aveline tant come le corps fust en la here entra q l'eins fust reclamant come heir Ion & p un demy hour de jour dormirra tan que sur l' emporter du corps, ou ele se voleit estre l'eins tenus vtent le tlt Emon & la oska, so are the words in my copie, very anciently written. and to Sir Ralph and his companions (saies the book) it seemed that cele petite seisin & en tems ne fust nul, and so they adjudged that the demandant should recover. But by writ of error, and upon the very point, that judgment was reverst quia sola (as the report is) pedis positio vero heredi seisinam contulit, cy agard la court que Edmond reeit la seisin ie. & ses dammages, & ett Ion son rescouerit per autre voiz sil boile. And this reversal agrees well with what our Author hath in the beginning of this chapter. Lee 3 Ed. 3. in Vet. Nat. Br. fol. 126.b. in Dum fuit infra etatem. But now it's plain law, that the least time is enough

nough for seisin to him that hath right to enter, as in 8 *Affis.* pl. 25. 26 *Affis.* pl. 42. and elsewhere. The true meaning of *transfertur liberum tenementum in feoffatum, &c.* in *Stat. Westm.* 2. cap. 29. may be had out of this old opinion. see *infra* pag. 99.

Pag. 103. *extra Astrum.*] All this passage, in the same words, is in *Fleta lib. 4. cap. 2.* whereby, *Astrum* must be taken for the Lords dwelling house; or such like. See the customes of Kent, in partition, there *le astre demozra al pune,* &c. pag. 574. The elder times had also *homo Astrarius* for a housholder (as I ghesse) or in such like signification. *Bracton lib. 2. cap. 36.* Sect. 7. speaking of payment of reliefs; *Esto quod heres sit astrarius, vel quod aliquis antecessor restituat heredi in vita sua hæreditatem & se dimiserit, videtur quod nullo tempore jacebit hæritas.* as if he had said, suppose the heir be housholder, or, as tenant to the Lord in life of his ancestor, &c. and in *Fleta lib. 1. cap. 47.* *Frithborge est landabilis homo astrarius.* and *extra astrum* in them, is to *Bracton, extra potestatem dominorum fol. 165 & 166.*

Pag. 104. *Sokemannus.*] This also is in *Fleta lib. 4. cap. 2.* and agrees with that which is called *Tractatus de antiquo dominico,* and in a very old English translation of the statutes is titled a statute, being indeed only some Lawyers answer (or in

in the nature of Civilians *Consilia* or such like
to questions propos'd touching ancient demesne.
But the Law in the year books is clear, that
any reall actions or favoring of the realty, at
ent demesne is a good plea. See *Braction* fol. 2
& *Bretton* cap. 66. *de Gardes.*

FINIS.

UBIB