BRITTON.

BOOK I.

OF THE AUTHORITY OF JUSTICES AND OTHER OFFICERS, AND OF PERSONAL PLEAS INCLUDING PLEAS OF THE CROWN.

Prologue.

EDWARD[1] by the grace of God, king of England, lord of Ireland, and duke of Aquitaine, to all his faithful people and subjects of England and Ireland, peace and grace of salvation.

Desiring peace among the people who by God's permission are under our protection, which peace cannot well be without law, we have caused such laws as have heretofore been used in our realm to be reduced into writing according to that which is here ordained. And we will and command, that throughout England and Ireland they be so used and observed in all points, saving to us the power of repealing extending restricting and amending them, whenever we shall see good, by the assent of our earls and barons and others of our Council ;[2] saving also to all persons such customs as by prescription of time have been differently used, so far as such customs are not contrary to law.

[1] Edward I.

[2] 'This Preamble or Prologue is divided into two parts ; first,

CHAPTER I.

Of the Authority of Justices.

1. First, with regard to ourselves and our Court, we have ordained, that, inasmuch as we are not sufficient in our proper person to hear and determine all the complaints of our said people, we have distributed our charge in several portions, as is here ordained.

2. We will that our jurisdiction be superior to all jurisdictions in our realm; so that in all kinds of felonies trespasses and contracts, and in all manner of other actions personal or real, we have power to give, or cause to be given, such judgment as the case re-

the regal style, where he says, "Edward &c.:" and then the salutation, where he says, "and we will and command &c.:" affirming a prerogative in his person, that what he thinks right ought to be held to be law; according to the saying, "Quod principi placuit pro lege habetur." Because peace cannot be without law, nor law without a king: who can change the laws and establish others, but not without the assent of the Earls and others of his Council: 'quia ubi voluntas unius in toto dominatur, ratio plurimum succumbit.' (Note in MS. *N.*) This note is cited by Selden as from a MS. in his possession: Diss. ad Flet. p. 468. The passage from the Civil Law, "Quod principi &c." (Inst. lib. i. tit. 2. § 6. Dig. lib. i. tit. 4. l. 1) was imported into English Law by Glanvill, in his Prologue, and was a frequent subject of controversy with subsequent writers. See Bracton f. 107; Fleta 16, 17. See also Selden. Diss. ad Flet. 466.

quires without any other process, whenever we have certain knowledge of the truth, as judge. And the Steward of our household shall take our place within the verge of our household; and his office shall extend to the hearing and determining the presentments of the articles of our Crown, when we shall see good.

3. Further, we will that Justices Itinerant be assigned to hear and determine the same articles in every county and franchise every seven years; and that our Chief Justices of Ireland and Chester have the like power.

4. With respect to the Justices assigned to follow us and hold our place wheresoever we shall be in England, we will that they have cognizance of amending false judgments, and of determining appeals and other pleas of trespass committed against our peace, and that their jurisdiction and record shall extend so far as we shall authorise by our writs.

5. We will that the Earl of Norfolk, by himself or another knight, be attendant upon us and upon our Steward, to execute our commands and the attachments and executions of our judgments and those of our Steward throughout the verge of our house, so long as he shall hold the office of Marshal.

6. In our household let there be a Coroner to execute the business of the Crown throughout the verge and wheresoever we shall be or come within our realm; and let the same person or some other be assigned to assay all weights and measures in every our verge throughout our realm according to our standards; and these two duties he shall not fail to do by reason of

any franchise, unless such franchise be granted in fee farm or in alms by us or our predecessors.

7. In every county let there be a sheriff who shall be attendant on our commands and those of our Justices; and let him have record of pleas pleaded before him by our writs;[1] and under the sheriffs let there be hundredres serjeants and beadles attendant on the sheriffs. And in every county let there be coroners chosen for keeping the pleas of our peace, as shall be authorised in the chapters concerning their office, and let them have record of things relating to their office.

8. Moreover our will is, that there be Justices constantly remaining at Westminster, or at such other place as we shall be pleased to ordain, to determine common pleas according as we shall authorise them by our writs; and these Justices shall have record of the proceedings held before them by virtue of our writs.

9. Also our will is, that at our Exchequers at Westminster and elsewhere our Treasurers and our Barons there have jurisdiction and record of things which concern their office, and to hear and determine all causes relating to our debts and seignories and things incident thereto, without which such matters could not be tried; and that they have cognizance of debts owing to our debtors, by means whereof we may the more speedily recover our own.

10. And we will, that Justices be assigned in every county to have cognizance in such causes of petty

[1] The text may admit of another interpretation. But see c. 28, s. 1, and note there.

assises and other matters, as we shall assign them by our letters patent, of which causes we will that they have record. Let Justices also be appointed to deliver the gaols in every county, once in every pleadable week,[1] while they find anything to do; and let them likewise have record of the pleas brought before them and of their judgments.

11. And although we have granted to our Justices to bear record of pleas pleaded before them, yet we will not that their record be any warrant to them in their own wrong, nor that they be permitted to erase their rolls or amend them or record contrary to the enrollment. And we will that the power of our Justices be limited in this manner, that they go not beyond the articles of our writs, or of presentments of jurors, or of plaints before them made, save that they shall have the cognizance of vouchers to warranty, and of other incidental matters without which the original causes could not be determined. And we forbid, that any have power of amending any false judgment of our Justices, except the Justices who follow us in our Court, who are authorised by us for that purpose, or ourselves, with our Council; for this we specially reserve to our own jurisdiction.

12. We forbid all our Coroners and Justices, and all

[1] The same rule is laid down in c. 12. s. 5, where the expression is *chescune simeyne en tens pledable.* Mr. Kelham interprets this as excluding times prohibited by the church (see book ii. c. 21 s. 1); but the whole passage appears to require further explanation. See Kelham's Britton, p. 8. n. (24.)

others to whom we have given authority of record, that any, except our Steward and our Justices of Ireland and of Chester, without our leave substitute another in his place, to do any act of which he himself ought to make record; and if anything be done before such substitutes, we will that it be of no force, though it should be of abjuration or outlawry.

13. We will also, that in counties and hundreds, and in every freeholder's Court, the Courts be held by the suitors; the like in cities boroughs and franchises, and in sheriffs' Tourns and in view of frankpledge.

CHAPTER II.

Of Coroners.

1. And because our will is, that coroners shall in every county be the principal guardians of our peace, to bear record of the pleas of our Crown, and of their views, and of abjurations and outlawries, we will that they be chosen according as is contained in our statute concerning their election; and when they shall be chosen, we will that in full County they take the oath before the sheriff, that they will lawfully and without demanding any reward make their inquests and enrollments, and do whatsoever belongs to the office of coroner.

2. Also, we will, when any felony or misadventure has happened, or if treasure be found under ground and wickedly concealed, and in case of rape of women,

or of the breaking of our prison, or of a man wounded near to death, or of any other accident happening, that the coroner do speedily, as soon as he is informed of it, give notice to the sheriff and the bailiff of the place, that at a certain day he cause to appear before him, at the place where the accident happened, the four adjacent townships and others if need be, whereby he may inquire of the truth of the casualty. And when he is come, let him swear the townships upon the Holy Evangelists, that they will speak the truth of such articles as he shall demand of them on our behalf. And in this case, and at the sheriffs' tourns, and at view of frankpledge, and in the office of escheators, and in our presence before our Steward, and in the eyre of our Justices, we will that people be sworn though our writ come not.

3. Afterwards, let the coroner with the jurors go and view the body, and the wounds and blows, or if any one hath been strangled or scalded [1] or by other violence come to his end; and immediately after the view, let the body be buried. And if the coroner find the body buried before such view made, let him make an enrollment thereof; but let him nevertheless not fail to have the body disinterred, and view it openly, and have it viewed by the townships.

4. Those who are summoned, and come not to the coroner's inquest, shall be in our mercy at the coming of our Justices at the next assises in that county, if

[1] Perhaps, suffocated,—a sense suggested by Carpentier. Ducange, Gloss. *s. v.* excaldare.

such defaults be entered in the roll of the coroners; so that neither our coroners, nor our escheators, nor any mere inquirers, have authority to amerce any one for any default.

5. When the coroner shall have a sufficient number by whom he may make his inquests, let him in the first place inquire, whether such person was killed by felony or misadventure; and if by felony, whether the felony was committed in or out of a house, or whether in a tavern, or at a wrestling-match or other meeting. Then let it be inquired, who were present at the fact, great and small, male and female; and who are guilty of the fact, and who of aid, or of force, or of commandment or consent, or of knowingly receiving such felons. And if the coroner on the first inquiry suspect concealment of the truth, or that there is need of further inquiry, and that by others, let inquiry be made again and again; but let him not for any contrariety in the verdicts alter or curtail his enrollment in any point. And further, he must inquire of the manner of the killing, and with what weapon, and of all the circumstances.

6. And let the sheriff forthwith cause all those who shall be indicted to be taken, if they be found. If they be not found, let the coroner inquire, who they are who have withdrawn themselves on that account; and let the sheriff forthwith seize their lands into our hand simply, without removing bailiffs or putting in any one on our behalf, until the parties are convicted by judgment or cleared of the felony. Next, let him seize

all their chattels into our hand, and appraise them by good inquest, and that, whether they be the chattels of villains, who have fled and are suspected, or of freemen, and cause the value to be enrolled in the coroner's roll, and the goods to be delivered to the townships to be answered for to us, in case the person indicted shall either refuse to submit himself to justice in our Court, or be afterwards attainted as a felon. Afterwards let it be inquired, whether any of the persons indicted ever by virtue of our writ of menace found surety of our peace to the person killed; and let the names of the mainpernors be enrolled according as shall be found by the verdict.

7. If there be any one who would seek vengeance of the death by appeal of felony, let the male, of what age soever he be, be received before the female; and the next of blood before one more remote. And if the plaintiff is willing to prosecute his appeal within the year and day, let him find in full county two sufficient pledges, distrainable to the sheriff of the county in whose bailiwick the felony was committed, that he will prosecute his appeal according to the law of the land, and thereupon let him be admitted thereto. Then let the coroner enter his appeal and the names of his pledges. Afterwards, let the bailiff of the place where the felony was committed be commanded to have the bodies of the appellees at the next county court to answer to the plaintiff.

8. And if he appeal several, some of the fact and some of the force or accessory facts, to every appeal let

two pledges to prosecute be entered; and let the appeal be entered separately against each person. If the bailiff at the second county court testify that he could not find them, then let it be awarded that the principals appealed of the fact be solemnly demanded that they do come to our peace, to take their trial for the felony whereof they are appealed; and let them be so demanded from county court to county court until they appear or be outlawed. And if the plaintiff makes default at any county court, then let the exigent[1] stand over till our coming into the county or the Eyre of the Justices; and if the plaintiff will resume his appeal, let him on finding other pledges to prosecute be received thereto, so as he pray it within the year and day.

9. But whether those who were appealed of consenting and of accessory facts withdraw themselves or appear, no exigent shall run against them, nor shall they be compelled to answer to the plaintiff before judgment be pronounced in the case of the principal. But if the principal be outlawed, then let exigents be immediately awarded against the accessories. And when any of them is outlawed, or hath withdrawn himself and is suspected, let the coroner inquire of whose tithing or whose mainpast such fugitive was, and make his enroll-

[1] The exigend or exigent is the writ or precept in pursuance of which an absent defendant is *exacted* or required at the county court, with a view to his outlawry. The name and the practice still continue. See Termes de la ley, s. v. Exigent; 3 Blackst. Comm. 283. App. xix.; 4 ib. 319.

ment according to the verdict; and let him inquire of the lands and chattels of every fugitive, and in what place he has had property elsewhere than in his bailiwick. And if they appear before the outlawry of the principal, let them be replevisable, and immediately after outlawry of the principal, let them come and answer to the plaintiff.

10. If the felony was committed out of a dwelling-house, then let the coroner inquire, who first found the body, and let him or them, if there be several, women as well as men, young as well as old, be taken and released by pledges, until our coming into the county or the Eyre of the Justices; and let the coroner cause their names and the names of the pledges to be imbreviated.

11. We forbid every coroner, upon pain of imprisonment and heavy ransom, to make his inquests of felonies accidents or other things belonging to his office, by procurement of friends,[1] or to remove a juror on the challenge of any party, or to take anything by himself or other, or suffer anything to be taken by his clerk or any person belonging to him, for the executing of his office; or to erase, or alter, or practise any kind of fraud in his rolls, or suffer it to be done.

12. If he finds that any one has come to his death by accident, then let him inquire by what accident, whether he was drowned, or fell, or whether he was killed without felony prepensed of any other, or was a

[1] The meaning appears to be: by procuring friends of the parties implicated to make up the jury.

felon of himself; and if he was drowned, whether in the sea, or in an arm of the sea, in fresh water, or in a well, or ditch, and by what occasion he was drowned; also from what vessel he fell, and what things were in such vessel, and to whose hands they came, and of what value they were, and who first found the body. If in a well, then let it be inquired, whose the well was. If by a fall, whether it was from a mill, or from a horse, or a house, or a tree. If from a mill, what things were then moving in the mill, who owned the mill, and the value of the things therein then moving; and likewise of houses, horses, trees, and carts.

13. If the person was killed, then let it be inquired, whether it was done by man or beast or any other thing; if by man, whether by the person himself, or by another; and if by another, whether the misadventure happened by chance, or from necessity to avoid death; if by a beast, whether by a dog or other beast, and whether the beast was set on to do it, and encouraged to such mischief, or not, and by whom, and so of all the circumstances.

14. Of such as are drowned within our realm by falling from a vessel not at sea, our will is, that the vessel and whatsoever shall be found therein be appraised as a deodand and enrolled by the coroner, that is to say, whatsoever was moving; for if a man happens to fall from a ship under sail, nothing can be deemed the cause of his death, except the ship itself and the things moving in it; but the merchandise lying at the bottom of the ship, is not presumed to be the occasion of his

'death, and so in like cases. And of those drowned in 'fountains and wells, we will, as in the other cases, that the coroners admit to mainprise the first finders, and enroll their names and the names of their pledges; and 'of those who have come to their death by carts or mills, and in the like cases, let the coroner make his inquests and enrollments as above directed where persons are drowned.

15. Whenever the coroner takes his inquest on the body of a person feloniously killed, let him cause one or more of kin to the deceased on the side of the father or mother to appear before him in proof of Englishery according to the custom of the country, and enroll their names.

16. We will also that the coroners receive the confessions of felonies made by approvers in the presence of the sheriff, whom we intend to be his controller in every part of his office; and let them cause such confessions to be enrolled. And when any man has fled to church, we will that the coroner as soon as he has notice of it, command the bailiff of the place, that he cause the neighbours and the four nearest townships to appear before him at a certain day at the church where the fugitive shall be; and in their presence he shall receive the confession of the felony; and if the fugitive pray to abjure our realm, let the coroner immediately do what is incumbent on him. But if he does not pray abjuration, let him be delivered to the township to keep at their peril.

17. If the coroner be to take an inquest of rape, let

him carefully inquire into all the circumstances of the force and of the felony, and make enrollment of the presumptive signs, such as stains of blood, and tearing of clothes. If of a wounding, let him inquire with what weapon, and of the length and depth of the wound. Let him likewise enter in his roll all judgments of death given in his bailiwick by any other than our Justices; and in such cases, we will that their rolls be a record. And whereas it is declared above, that coroners ought to make enrollments of appeals of felonies of the death of a man, let them do the like in appeals of rape, robbery, larceny, and in appeals of every other kind of felony.

18. It also belongs to their office to inquire of ancient treasure found in the earth, of wreck of the sea, of sturgeons and whales, as soon as they shall have notice thereof; and to attach and let to mainprise those who have found or made away with them, and to enroll their names, and to secure such findings for our use. And we will that our sheriffs and bailiffs be attendant on our coroners, and execute their precepts.

CHAPTER III.

Of Eyres of Justices.

1. With respect to our coming, and the Eyre of our Justices, we will that general proclamation be solemnly made in the markets cities and boroughs throughout the county, as well within franchises as without, that all the freemen of the county, and four men and the provost of every vill, and all the mainpernors and those who have been let to mainprise throughout the county, appear at a certain day, which shall be forty days distant at least, before us, or such Justices as shall be named in our precept to keep the eyre in the same county: and that all those who claim any franchise in the same county be the same day before us or the same Justices, and that every one show distinctly in writing what franchises he claims; and that all those, who have any complaints to make against our ministers or bailiffs or those of others or any persons whatsoever, be there at the same day, to exhibit such complaints and find pledges to prosecute: and that the sheriff of the county have there all such writs as have been adjourned until the eyre, and all the assizes of novel disseisin, mortdancester, darrein presentment, utrum, and of dower, and all the prisoners and attachments. And meantime we will command our Justices of the bench, that they adjourn all the pleas of the

county and send them before us or such Justices itinerant in that county, so that they be there at the day named.

2. And as to the coming of our Justices, our will is, that as soon as they be come to the place appointed for holding the eyre, they produce the authority they have of us by our letters patent, and cause them to be read in the hearing of the people; and afterwards let him who is first named in the letters, show and declare to the people the occasions and advantages of their coming into that county; this done, let them receive the essoins of the common summons, which shall be immediately determined and adjourned. Then let the essoins of pleas of land be received; and let these be adjudged and the fourth day after adjourned.

3. Next let the letters whereby any persons whatever claim to hold franchises in that county be received, and let their claims be enrolled, and a transcript of the same enrollment be delivered to the sheriff; and as to all such franchises as are not claimed, let the sheriff be commanded to seize them into our hands by way of distress, and be answerable to us for the issues, until those who shall claim them have saved their defaults for not attending the summons; and let them then answer by what warrant they have held them.

4. Afterwards let the Justices take the wands of the sheriff, and of the lords of the franchises, and of all the other inferior bailiffs, and then let the sheriff swear, that he will duly execute the lawful commands of our Justices, and will well conceal the secrets and counsels

of their eyre, so help him God and the Saints. And after this oath is taken, let the wand be delivered back to him. Then let the sheriff present all his officers and bailiffs, clerks and others, by whom the precepts of the Justices and executions of their judgments are to be performed; and let them all take the same oath that the sheriff took, and their wands be delivered back to them.

5. And if there be any archbishop, bishop, abbot or prior, earl or baron, or other, that claims the franchise of return of our writs, let him take the same oath that the sheriff took; or let them take their wands in their hands, and present such bailiffs in their stead as will take the oath for them, and for whose acts they will be answerable as to that which to their office shall belong: and then let the wands be delivered by those lords to their bailiffs. Afterwards let proclamation be made, that all persons belonging to franchises, except the bailiffs, depart unto their own homes until further summons or until a certain day.

6. Next let the bailiffs of the sheriff swear, that they will truly present two or four[1] of their bailiwick, or more or less, who are not appealed of any crime, nor are appellors, and such as shall best know and will

[1] According to the so-called Statute of uncertain date, but probably of the early part of the reign of Edward I, entitled 'de sacramento ministrorum regis,' *two* knights or *prodes homes* were to be chosen by the bailiffs, and twelve knights or *prodes homes* to be chosen of themselves and others of their hundred by the first *two*. According to Bracton and Fleta *four* knights were to be first chosen. Cf. Blackst. Comm. vol. iv. p. 302.

inquire and discover secret acts concerning the breach of our peace. And when the names are given in, let those come and swear, that they will lawfully associate to themselves such others, by whom the truth may best appear. Afterwards, let them, together with those whom they have chosen for the most sufficient, swear, that they will lawful presentment make of such chapters as shall be delivered to them in writing, and that in this they will not fail for any love, hatred, fear, reward, or promise, and that they will conceal the secrets,[1] so help them God, and the Saints. And then let the chapters be read to them, and delivered to every dozen separately.[2]

7. Afterwards, let proclamation be made, that none presume to amerce any man for making default in a court baron or hundred, who shall at that time be before us or our Justices; and that no market be kept within ten miles, except in the town where our Justices shall be, if the town is not able to find sufficient provision for such as shall abide there; and that, if any

[1] This clause of the oath is not in Bracton or Fleta, nor in the statute 'for oaths of the king's officers.' In MS. *N.* a form of oath is given in French nearly resembling that in the text, and concluding, 'mes vostre conseil e de ceste eyre bien e loialmente celeray.'

[2] 'He [*qu.* the Justice] shall then read the articles distinctly *in English*. And that which they shall present, he shall put first in a roll, which shall be their note and shall remain with them. And afterwards of that and the other things, by command and direction of the more prudent of the twelve, he shall make his chief roll.' (Note in MS. *N.*)

person be come who has no business on hand, he shall make his attorney, if he please, and depart home.

8. Afterwards, let the coroners, or their heirs, be commanded to deliver to the Justices their rolls since the last eyre; and we will that the Justices seal them under their seals, and forthwith without any examination deliver the rolls back to them, so that they be every day with their clerks before the Justices, while they have occasion for them.

9. Afterwards, let the presentments upon the chapters delivered to the dozens be received in writing; and let the same be indented, so that the Justices may have one part thereof and the other may remain with the presentors. The chapters which are to be delivered to them are not however of any certain number; for as crimes increase, so much the chapters and other remedies increase. Some of these chapters are concerning counterfeiters, murders, accidents, and other matters, as will appear from the following heads.

CHAPTER IV.

Of the Chapters of the Eyre.

In the first place, let the old articles presented in the last eyre in that county touching breaches of our peace, which then remained undetermined, be inquired of, heard, and determined. Of our mortal enemies abiding in our land presentment cannot properly be made,[1] but accusation and appeal, as will appear in the chapter of appeals.

CHAPTER V.

Of counterfeiting the seal and coin; and of the trial of felons.

1. Let inquiry be made of forgers, and not only of such as counterfeit our seal, but of all those who shall have in any way falsified our seal, as those who have fraudulently hung it to any charter without our leave, or when it has been stolen or robbed or otherwise obtained, have sealed writs therewith without other

[1] This appears to be a correction of Fleta 24 (li. 1. cap. 20. sect. 1), who puts treason as the first article of the eyre. It does not appear among the matters enumerated by Bracton, or in the Capitula Itineris (Stat. incert. temp.) But compare post. c. 30. s. 3.

authority. And also of forgers who have counterfeited our coin, or put more alloy in it than according to the form and usage of our mint ought to be put, or that have coined money, whether good or bad, in our realm without our leave. Likewise of those who have clipped our coin or otherwise impaired it. Of those also who have brought into our realm counterfeit money in any way resembling ours in despite and damage of us and our people.

2. Upon presentment of this felony, we will that the sheriff do cause all those who are indicted of it to be instantly taken, and their bodies kept safely in prison; and that they be brought before us or our Justices; and, to the intent that no one may be unprepared with his answer, let those who are so taken have fifteen days at least, if they pray it, to provide their defence, and in the meantime let them be safely kept. And when they shall appear in judgment before us or before our Justices, let them be there arraigned by the sheriff or other officer on our behalf, and indicted of the felony according to the nature of the presentment. And if they will not put themselves upon their acquittal,[1] let them be put to their penance, until they

[1] That is, if they refuse to be tried by an inquest or jury. This sort of trial appears, in theory at least, not to have been considered valid either in criminal or civil causes, without the consent of the parties. Compare liv. ii. c. 20. § 2. So in liv. iii. c. 23. § 4, the consent of the party is extorted by the alternative of a judgment against him. It has been a question, whether the penance here described, which is referred to in Stat. West. I. c. 12, as *prisone forte et dure*, was introduced by that Statute.

pray to do it; and let their penance be this, that they be barefooted, ungirt and bareheaded, in the worst place in the prison, upon the bare ground continually night and day, that they eat only bread made of barley or bran, and that they drink not the day they eat; nor eat the day they drink, nor drink anything but water, and that they be put in irons.

3. If one indicted of felony alleges clergy, and be found to be a clerk and claimed by the ordinary, let it be inquired how he is suspected; and if the presenters upon inquiry find that there are no certain grounds

Coke contends (2 Inst. 178) that it was previously used in cases of appeals, (see post. c. 24. s. 7.; Fle. 51, § 33), but was extended by that Statute to indictments at the king's suit. Others have observed that no trace of it is to be found in any authorities anterior to the reign of Edward I; and examples have been cited from earlier records, showing that by the practice of the previous reign, the inquest might be taken by jury without the consent of the prisoner, either voluntary or enforced. (See Hale, Pleas of the Crown, vol. ii. p. 321; Kelham's Britton, p. 35.) This might appear to be in some degree confirmed by the general statement of Glanville, that in cases of treason where there was no appellor, but the prisoner was accused by common fame, the truth was to be inquired by inquests and interrogations before the Justices. (Glan. li. 14. c. 1.) On the other hand, it does not appear to have been observed, that Bracton, although he does not mention the particular means employed, expressly refers to a prisoner on trial for felony being forced to put himself upon the inquest *per patriam*. "Istam vero formam inquisitionis per patriam servabunt justiciarii generaliter in omnibus inquisitionibus quæ faciendæ sunt pro morte hominis, ubi quis se posuerit super inquisitionem sive sponte sive per cautelam inductus sive per necessitatem." Brac. 143 *b*.

for suspicion, let the judgment be that he be entirely acquitted; and if he is believed to be guilty, let his chattels be appraised, and his lands taken into our hands, and his body delivered to the ordinary;[1] and if the ordinary deliver him out of prison before due acquittance according to the purgation of clerks, or if he keep him so negligently as to let him escape, or out of malice keep him in such manner as to prevent his coming to his purgation, and be convicted thereof, —in each of these cases let the ordinary be in our mercy.[2] And according as the ordinary shall certify us of the acquittance[3] of those clerks, we will cause restitution to be made them of their goods, if they have not fled from our peace.[4]

[1] If the principal accused refused to put himself on the country, and claimed clergy, the accessories could not be attainted of felony. A case to this effect is cited in the note in MS. *N.* as having occurred at Lincoln. 'The accessory put himself on the country and by Sir John del Ille was commanded to the gallows. But Sir Elias de Preston said "Repeal that judgment, for the principal never put himself, and is not yet attainted." And he was ordered back to prison and afterwards made his fine for ten pounds.' John del Isle was a baron of the exchequer from 23 Ed. I. to 12 Ed. II. (Foss, Judges, vol. iii. p. 270). Elias de Preston is not mentioned in Mr. Foss's work.

[2] 'The amercement shall be 100*s.* at least; and 100*l.* for an escape from prison.' (Note in MS. *N.*)

[3] 'Et sic habet ordinarius recordum in eodem.' (Note in MS. *N.*)

[4] 'Hence the inquest may be had, whether the clerk put himself thereupon or not, for two things; namely, to know for what

4. For we will that Holy Church retain her liberties unimpaired, so that she have cognizance of judging of mere spirituality, of testaments, of matrimony, of bastardy, of bigamy, and in the felonies of clerks, and in the correction of sins, provided the ordinaries take of the laity no money nor the value thereof, nor give judgment of any property except concerning testament and matrimony and mere spirituality, and of the repairs of churchyards and defects in churches, and of mortuaries, and of tithes, without prejudice to us.

5. And if any ordinary, either in person or by his proctor, demands one who is a mere layman, or a bigamist,[1] or of such other condition that he ought not to enjoy the privilege of Holy Church, we will that he be committed to prison and punished by fine; and so of a proctor who presents himself for the ordinary without warrant in writing.

6. If any felons will confess their crimes and accuse others and become approvers, let them be put out of penance, and let their confessions be presently received

cause he ought to be delivered to the bishop, and also for his chattels, whether he has forfeited them by his flight.' (Note in MS. *N*.)

[1] *Bigamus* in the canon law is he that has married two or more virgins successively, or that has married a widow. See Coke, Inst. Pt. ii. p. 273; Blackstone, Comm. vol. iv. p. 163. By the council of Lyons, A. D., 1274, *Bigami* were declared to be 'omni privilegio clericali nudati, et coertioni fori sæcularis addicti,' and forbidden under anathema to assume the tonsure. (Sext. Decr. tit. 12.) This was confirmed in England as to benefit of clergy by the Statute 4 Ed. I, thence called Statutum de bigamis.

and enrolled by the coroner, and from that day forward let them have of the sheriffs three halfpence a day for their support.

7. When persons appealed at the eyre shall appear for trial, and demand judgment, whether they ought to answer concerning an act done before the last eyre and not then presented in that county, in all such cases they shall be put to their answer,[1] because we will not that felonies remain unpunished; and if the article was not presented in the last eyre, the presenters for that hundred in the former eyre shall be in our mercy for the concealment, and any of them found to be living shall be punished by imprisonment and fine.

8. When the defendants have put themselves upon the country, and the jurors are come into court, they may be challenged in the following form. Sir, this man ought not to be upon the jury, because he indicted me, and I presume of him and all those who indicted me, that they still bear the same ill will against me as when they indicted me. And we will that, where a man's life is at stake, this exception shall be allowed. They may also be challenged in many other ways besides this, as shall be shown in treating of exceptions. And when the accused either cannot or will not challenge the jurors, or there are jurors enough unchallenged, to the number of twelve, let them go to the book. If there are not sufficient, let the challenges be

[1] This is mentioned as a valid exception by Bracton, who cites a case of the 9 Hen., III. in affirmance of it. Brac. 116 *b*. 140 *b*. 141; so Fleta 49 (§ 6).

tried; and if the challenges be found true, so that there are not full twelve remaining, let another day be appointed, and let the sheriff summon more.

9. When they are to swear, let them swear one after another, that they will speak the truth of what shall be demanded of them on our part, so help them God and the Saints. And let no falsehood be ever knowingly practised; for they cannot swear in a matter of greater moment, than in that of life and member. Afterwards let the jurors be charged of what fact they are to speak the truth. And then let them go and confer together, and be kept by a bailiff, so that no one speak to them; and if any one does so, or if there be any one among them who is not sworn, let him be committed to prison, and all the rest amerced for their folly in suffering it.

10. If they cannot all agree in one mind, let them be separated and examined why they cannot agree; and if the greater part of them know the truth and the other part do not, judgment shall be according to the opinion of the greater part. And if they declare upon their oaths, that they know nothing of the fact, let others be called who do know it;[1] and if he who put

[1] The statements of the text as to receiving the verdict of a majority, and as to impanelling a fresh inquest in criminal cases require to be examined and compared with other authorities. Section 12 appears to be inconsistent. See a learned note by Mr. Kelham upon this passage in his translation of the first book of Britton, and the authors there cited. The question as to the right of the judge in criminal cases to discharge a jury without

himself on the first inquest will not put himself on a new jury, let him be remanded back to penance till he consents thereto.

11. We will also, that if any man, who is indicted of a crime touching life and limb, and perceives that the verdict of the inquest, on which he has put himself, is likely to pass against him, desires to say that any one of the jurors is suborned to condemn him by the lord, of whom the accused holds his land, through greediness of the escheat, or for other cause by any one else, the Justices thereupon shall carefully examine the jurors, whether they have any reason to think that such slander is true. And often a strict examination is necessary; for in such case inquiry may be made, how the jurors are informed of the truth of their verdict; when they will say, by one of their fellows, and he peradventure will say, that he heard it told for truth at the tavern or elsewhere by some ribald or other person unworthy of credit; or it may happen that he, or they, by whom the jurors have been informed, were intreated or suborned by the lords, or by the enemies of the person indicted, to get him condemned; and if the Justices find this to be the fact, let such suborners be apprehended and punished by imprisonment and fine.

12. And if the jurors are in doubt of the matter and not certain, the judgment ought always in such case to be for the defendant. If they say that he is not guilty of the felony, the award shall be, that he go quit, and

a verdict, has been discussed in modern times in the case of *Regina* v. *Charlesworth*, 1 Best and Smith, 460.

that he have restitution of his lands and of all his goods. And if they find that he is guilty, as he hath offended by treason against us, let him be drawn and condemned to death.

13. In felony of counterfeiting there lies no appeal, except between the accuser on our behalf and the accused, and between the approved, who has confessed the felony, and him whom he has appealed as his accomplice, and between a person found in possession, and another whom he shall vouch to warrant; for in these cases no suit lies, except ours.

14. With regard to false writs or writs disavowed or writs of false judgment, found in any person's possession, we will, that such persons be arrested and detained in prison, until they are warranted, or until those whom they have vouched have either put themselves on their defence or are outlawed; and if the vouchees are outlawed, or if they have vouched such as are not known in the county, then we will, that they either acquit themselves by the county or be put to penance. If they are warranted by those who cannot justify those writs according to the laws and usages of our realm, let judgment be given against the warrantors; and if the vouchee refuses to warrant, then the course of law is such as shall be afterwards mentioned. And with respect to false and clipped money and money counterfeited like our coin, let proceedings be taken according to the statutes concerning our coin, or according to what is laid down concerning false writs found in any one's possession.

CHAPTER VI.

Of Homicides.

1. Let inquiry also be made of homicides and murders; and our will is, that those, who command aid or counsel others to kill, be indicted of this felony as well as the principal actors. And inasmuch as this felony may be committed under colour of judgment through malice of the judge, or under some other pretence, as by false physicians and bad surgeons, and by poison and sundry other ways, our pleasure is, that all those who have committed such secret felonies be indicted; and also those who falsely for hire, or in any other manner, have condemned, or caused to be condemned, any man to death by means of a false oath.

2. According to the presentment of this article let it be commanded, that all those who are indicted be apprehended; and if any one suspected of this crime be dwelling out of the county, let his lands be immediately seized, and his chattels appraised and delivered to the townships; and let him afterwards be put in exigent until he appear or be outlawed. And when any felons appear in judgment to answer of their felony, our will is, that they come barefooted, ungirt, uncoifed, and bareheaded, in their coat only, without irons or any kind of bonds,[1] so that they may not be deprived of

[1] In MS. *N.* the above words, which probably originally stood

reason by pain, nor be constrained to answer by force, but of their own free will; and then, agreeably to the presentment against them, let them be indicted.

3. If the prisoners are found guilty, let their judgment be death for death, and let their movable goods be ours, and their heirs disinherited; we will also have the year and day of their inheritances, of whomsoever they are holden, that they may remain one year and one day in our hands, so that we neither cause the tenements nor the woods to be destroyed or wasted,[1] nor the meadows to be ploughed, as was wont to be done in memory of felonies attainted, such tenements being excepted whereof the felons were not invested or seised in their demesne as of fee; for of such lands as they held for term of life or years, or by fresh disseisin, or in fee farm rendering annually the true value, or in mortgage or on like condition, we will take nothing.

as in the text, are erased and altered, in the same hand as the notes frequently cited, as follows: "en lour peiore cote hors de trop gros fers e hors de trop gros liens." This may serve to show that the practice was not so indulgent as the rule laid down by our author.

[1] It was the opinion of Bracton that the year and day were given to the king in lieu of the right of laying waste the lands of felons. The Great Charter (c. 23) appears implicitly to give up the claim to waste, and to have been so understood by Bracton and the authors of Fleta and Britton (Brac. 129; Fle. liv. i. c. 28, § 6). But both rights were afterwards insisted on (Brac. 129, 129 *b*; Stat. Prærog. Reg. 17 Ed. II.); and such appears to be the present law in cases of murder. See Hawkins's Pleas of the Crown (8th ed.), vol. ii. p. 638.

We will also, that their lands aliened after commission of their felonies, be escheated to the lords of the fees, so that immediately after judgment given it shall be lawful for those lords to demand by our writ of escheat the tenements so aliened.

4. If any man be found killed, and another be found near him with the knife or other weapon in his hand all bloody, wherewith he killed him, the coroner shall be presently fetched, and in his presence the felon shall, upon the testimony of those who saw the felony done, be judged to death. The like when a person is found in a house, or other place where one shall be found killed,[1] and the person found alive is neither hurt nor wounded, and has not raised the hue and cry, and has not charged any with the felony, and shall not be able to do so.

5. We will also, that the heirs of felons, begotten before the felony committed, be disinherited of every inheritance which may fall to them on the part of the blood of the felon attainted by judgment; and heirs

[1] Bracton (137, 137 *b*) mentions the two instances here given, as cases of presumptive guilt, in which there is no need of proof, *seu per corpus seu per patriam*, either by duel or jury; and this, he says, is an old established law, *antique constitutio*. I find no mention either in Bracton or Fleta of judgment of death for homicide before the coroner. Cf. Mag. Char. c. 17. The coroner's presence was required at capital trials in courts of lords. Ante, c. 2. s. 17. In the Year Book 30, 31 Ed. I, app. ii. p. 545, a thief taken with the mainour is adjudged to death, by the custom of Yorkshire, coram quatuor villatis. Compare post c. 16. s. 1.

begotten after the felony committed, shall be excluded from all manner of succession to the inheritance, as well on the part of the mother as on the part of the father; the wives also of felons shall not hold in dower any tenement assigned them by such husbands.

CHAPTER VII.

Of Murder.

Murder is the felonious killing of a person unknown, whereof it cannot be known by whom it was done. And our will is, that for every murder the hundred in which it shall be committed be amerced,[1] and if the act is found to have been done in two hundreds, let both the hundreds be amerced in proportion to the extent of each hundred. And it shall not be adjudged murder, where any of kin to the deceased can be found, who can prove that he was an Englishman and thus make presentment of Englishery; nor, although the person killed was a foreigner, if he lived long enough to accuse the felons himself; nor where any felon shall be apprehended for the fact; nor in case of accident or mischance; nor where any man shall have taken sanctuary for the felony; nor in any case where the felon shall be known, so that the felony may be punished by outlawry or otherwise attainted; nor where two or more persons have feloniously killed each other, although they be unknown or aliens.

[1] 'At 100s.' (Note in MS. *N.*).

CHAPTER VIII.

Of Accidents.

An accident is that which occasions the death of a man without felony, as where people die suddenly by any sickness, or fall into the fire or into the water, and there lie until they are quite dead. A mischance is where a man is killed by a fall from a tree, ship, boat, cart, horse, or mill, or in the like cases, where no felony is committed, and in which there is no need of raising the hue and cry, or making any presentment by the kindred of the deceased or by the township at the next county court, but the coroner's inquest is sufficient. In such mischances, the things which caused the death shall be adjudged to us as deodands, as is mentioned before in the chapter concerning the office of coroner. And where a man is felon of himself, his chattels shall be adjudged ours, as the chattels of a felon, but his inheritance shall descend entire to his heirs.

CHAPTER IX.

Of Treasons.

1. Treason consists of any mischief, which a man knowingly does, or procures to be done, to one to whom he pretends to be a friend. And treasons may be either great or little, of which some require judgment of death, some loss of limb, pillory, or imprisonment, and others lighter punishment, according to the nature of the case.

2. Great or high treason is to compass our death or to disinherit us of our kingdom, or to falsify our seal, or to counterfeit our coin, or to clip it. A person may likewise commit great treason against others in several ways, as by procuring the death of any one who trusts him; as for instance those who poison their lords or others, and those who lead persons into such perils, that they lose life and member or chattels.

3. The judgment in high treason is to be drawn and to suffer death for the felony. The same judgment is incurred by those, who in appeals of felony are attainted of having counterfeited or otherwise falsified the seal of their lord, of whose dependence or homage they are, or of adultery with the wives of their lords, or of violation of the daughters of their lords or the nurses of their children. And if a woman be attainted of any treason, let her be burnt.

4. Where persons are attainted of crimes of this nature at our suit, let them be sentenced for falsifying a seal, if the act be of small consequence, to judgment of pillory only, or to lose an ear; but if the act be of importance and heinous, as touching disherison or lasting damage, they shall then be judged to death. And of the other offence let Holy Church have correction.

CHAPTER X.

Of Arsons.

Let inquiry also be made of those who feloniously in time of peace have burnt others' corn or houses, and those who are attainted thereof shall be burnt,[1] so that they may be punished in like manner as they have offended. The same sentence shall be passed upon sorcerers, sorceresses, renegades, sodomites, and heretics publicly convicted.[2]

[1] As to this punishment for arson by burning, which is not mentioned in Bracton or Fleta, see a record of 5 Hen. III. cited by Sir Samuel Clarke in his edition of the first book of Fleta, c. 18. p. 36 n. (d), and by Mr. Kelham in his notes on the first book of Britton, p. 40.

[2] It seems that as to these offences, though the king's court was in general ancillary to the ecclesiastical tribunal, it sometimes acted independently. 'Burners of corn and houses, wives guilty of treason against their husbands, sorcerers, sodomites, renegates, and misbelievers, run in a leash (currunt en une leesse) as to their sentence of being burned. But the inquirers of Holy

CHAPTER XI.

Of Burglars.

Let inquiry also be made of burglars. Such we hold to be all those who feloniously in time of peace break churches, or the houses of others, or the walls or gates of our cities or boroughs. Infants under age, and poor people, who through hunger enter the house for victuals under the value of twelve pence, are excepted; as are also idiots and madmen, and others, who are incapable of felony; and those, who enter into any tenement of seisin in respect of some right which they think they have, are not held to be burglars. The punishment of such felons is death.

CHAPTER XII.

Of Prisoners.

1. Let inquiry also be made of those who have broken our prison; for to escape from the prison of another is no felony. We will that a prison be accounted

Church shall make their inquests of sorcerers, sodomites, renegates, and misbelievers; and if they find any such, they shall deliver him to the king's court to be put to death. Nevertheless, if the king by inquest find any persons guilty of such horrible sin, he may put them to death, as a good marshall of Christendom (come bon Mareschal de la Chrestieneté).' (Note in MS. *N.*)

a place limited by us within certain bounds for the keeping of the bodies of men, which bounds we forbid on pain of death any one to pass with a felonious intent of escaping; and if any one having such intent is taken, and is attainted of compassing that felonious intent, let him receive judgment of death.[1]

2. If the prisoner was in the custody of any one claiming the wardenship in fee, let the franchise be seized into our hands. And if the prisoner, who made his escape, has escaped from the custody of any one of our officers, let that officer be amerced at 100s. in the eyre of the Justices. And if he who thus escaped was an approver, let the warden be ransomed at our will. If any prisoner escape from the custody of a township, let the township be in our mercy in the eyre of the Justices, according to the custom of the country; and if from the custody of a private person, let such person be amerced; and if any gaoler be suspected of having consented to the escape, let him be taken and indicted for consenting to the felony; and if he be found guilty of consenting, let him have judgment of death.

3. As to prisoners, we will that none be put in irons but such as have been apprehended for felony, or are imprisoned for trespasses committed in parks or

[1] This passage may serve to assist in ascertaining the age of the present book. By the *Stat. de frangentibus prisonam* (23 Ed. I.) it was enacted that none should undergo sentence of life or limb for breaking of prison only. See Introduction by the Editor.

vivaries, or detained for arrears of accounts; and we forbid their being put to any pain or torture otherwise than by law they ought,[1] or that any person be disseised, while in prison, of anything which shall belong to him. Their lands and goods shall be seized into our hand, but without ousting anything; the prisoners and their families shall be supported out of their own goods as long as they remain in prison, and none of their bailiffs shall be removed, nor others put in. And when they have lawfully acquitted themselves, all that was theirs shall be delivered back to them; and if anything belonging to them shall in the mean time have been removed, we will in such case afford our especial aid to recover it and to punish the offenders. But if judgment of death pass upon them, we will that then, and not before, our officers put out their wives and their bailiffs, and cause their chattels and lands to be seized into our hand, and that their movable goods be appraised by inquest of office of the coroner, and delivered to the townships, who shall be answerable to us in the eyre of the Justices.

4. If any person die in prison, our pleasure is, that the coroner go and view the body and take a true inquest of his death, in what way it has happened. And if the inquest find that his death was hastened by

[1] 'Note, that for a felon slain in prison judgment of homicide shall be given. For, though he was lawfully condemnable for the felony, yet it is necessary that it pass by judgment. For we ought not to hold them absolutely felons until the law has condemned them.' (Note in MS. *N.*)

the harsh keeping of his gaolers, or by pain unlawfully inflicted on him, then let the body be buried, and let all those, who are indicted as being the cause of his death, be immediately apprehended and detained as felons homicides.

5. And we will, that in time pleadable our gaols be delivered once in every week of all prisoners deliverable, such being excepted as are not to be delivered without our special command.

6. Prisoners shall in general be answerable to such as shall implead them as long they remain in prison; others shall likewise be answerable to them; and essoins shall be allowed to them, as well as to others, neither shall they lose anything by any default. But prisoners apprehended for felony we will by no means suffer to implead or be impleaded by any one, unless for some greater felony, so that a greater felony be not stifled or covered by a less. But our will is, that such prisoners may allege as an exception in every lesser plea whereof they shall be impleaded, not being the cause for which they have been apprehended, whether the plea be moved against them before their apprehension or after, that they are not bound to answer such pleas, until they are acquitted of the greater cause for which they are detained.

7. We forbid any one to take money, or the value thereof, for receiving prisoners, or to delay receiving them, or to take for the keeping any prisoner more than four pence, on pain of ransom and fine. Of the poor let nothing be taken, and let no prisoner

be longer detained for default in payment of such fees.

*8. And we will, that whatever contracts shall be made in prison by prisoners not taken or detained for felony shall be held valid, unless made under such distress as includes fear of death or torture of body; and in such case they shall reclaim their deed, as soon as they are at liberty, and signify the fear they were under to the nearest neighbours and to the coroner; and if they do not reclaim such deeds by plaint within the year and day, the deeds shall be valid.

9. Those who claim the custody of any prison in fee shall not detain a prover, who has confessed himself to be a felon and appealed others of the felony, beyond a day and a night, but shall send him forthwith to our prison which is in our own hand, on peril of forfeiting the said custody; and no other person shall keep in prison any one apprehended for felony beyond a day and a night, but shall send him forthwith to our prison [1] on pain of ransom. And therefore with respect to this article, let it be inquired, who has imprisoned another or detained him wrongfully in his custody, or in our prison maliciously and wrongfully under colour of

[1] This rule was subject to an exception, where there was a franchise of Infangthef or Utfangthef; for the lord might keep those in his prison whom he could judge in his court. Brac. 122 *b*, 123. The abbot of Peterborough in the parliament of 3 Ed. I. established his right to keep in his own prison twenty-nine prisoners of his liberty appealed of homicide in the county court of Northampton. Chron. Petroburg. p. 21.

judgment; and let such as shall be convicted thereof be punished by imprisonment and by ransom, which shall be greater or less in proportion to the offence.

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*CHAPTER XIII.

Of Outlaws.

1. In the next place, let inquiry be made of felons outlawed, and of such as have abjured the realm for felony, who have returned without our leave; and of those who knowingly receive them. And because it is needful that every one should know the danger of receiving such persons, our will is, that all who are of the age of fourteen years[1] or upwards shall take an oath to us, that they will be faithful and loyal to us, and will neither be felons nor assenting to felons; and that every one be in some tithing and pledged by their tithingmen, except persons in religion, clerks, knights and their eldest sons, and women; and let the obli-

[1] Bracton (124b) and Fleta (p. 40) mention the age of twelve years as the time of taking the oath; and this is in some degree confirmed by the terms of the Stat. Marl. c. 25. The Mirror, however, as printed (p. 13, 283), agrees with our author in fixing the time at fourteen years. Coke (2 Inst. 121, 147) cites both Britton and the Mirror as naming the age of twelve, and says, that where old books mention sometimes fourteen years, it is but misprinted. The mistake, however, if it be one, appears to run through all the manuscripts. Compare Brac. 115 b, where the age of fifteen is mentioned as the time for persons of higher station to take a similar oath.

gation of the pledge be this, that if they do not produce those for whom they are pledged, to be amenable to justice in our Court when required, the tithingmen with the tithings shall be in our mercy. With regard to clerks, knights, persons of religion, and women, our pleasure is that the head of every household be answerable for all his chief domestics, and that they answer for those under them. As to guests, we will that every one answer for his guest that he shall have harboured for more than two nights together, so that the first night he shall be deemed a stranger and uncouth,[1] the second night a guest, and the third night a hoghenhine.[2]

2. And for the maintaining of peace, we will that when a felony is committed, every one be ready to pursue and arrest *the felons, according to our Statutes of Winchester, with the company of horns and voices from township to township, until they are either taken or have been pursued as far as the chief town of the county or franchise. We will also, that every one who flies from our peace forfeit his chattels to us for such flight, if he be suspected of felony, although he be afterwards acquitted of the principal fact. And if it be murder or other felony concerning the death of a man, let such felony be presented at the next county court by one or more townships, and by the first finder and the kindred of the person killed, that is to say, by one or more of kin on the part of the father, or on the

[1] Anglo-Saxon, *uncuò*, unknown.

[2] Anglo-Saxon, *agen hina*, his own hind or domestic.

part of the mother, according to the custom of the county.

3. If one or more be appealed of the death, and others of the force and accessory facts, let the principals be first demanded at three county courts to come and answer concerning the felony, and if they do not come at the fourth court, and are not mainprised to appear at the fifth, they shall be outlawed at the fourth.[1] A woman however cannot properly be outlawed because she is not appointed to any tithing or to the law, but she may be waived, which is equivalent to outlawry.

4. As to the punishment of outlaws in their lifetime for their felonies, their judgment shall be this, that, since they will not be amenable to the law, they be forejudged from all law, and put out of our peace, and be answerable to all, and none to them, and be judged felons, as shall also all those who knowingly receive them or bear them company after their outlawry; and he who shall kill them shall be acquitted of their death, except in cases where they shall offer to surrender themselves or where they might have been otherwise taken; neither in appeals shall they be heard against any man; and if they are taken, and found

[1] The practice has been to proclaim a fugitive at five county courts, so that he is not adjudged an outlaw until the fifth: and Bracton agrees with this practice. He says, however, that the proceeding at the first court is merely a calling of the fugitive, and is not part of the outlawry, and therefore the fifth court is called the fourth. Brac. 125 b.

to be outlawed by record of the roll of the coroner, they shall be hanged, and their chattels shall be ours, and their heirs disinherited of every kind of inheritance.

CHAPTER XIV.

Of Inlawry, or being restored to law.

1. Inlawry in many cases ought to be granted of right, and in others it may be of favour; and, where of favour, the outlaws ought always to carry about them our charter, containing the release of the outlawry before pronounced against them, that they may not fail to be protected by us, when they shall have occasion. But if they have been legally and deservedly outlawed, such release will not avail them to recover any of the lands or chattels which were theirs before the outlawry pronounced against them, or to demand any inheritance or debts, or any manner of remedy for an injury which they shall before have suffered.

2. Inlawry ought of right to be granted in these cases, namely, where a man has been outlawed before the fourth county court, or without suit and without command of the Justices Itinerant after their eyre ended, or without our writ, or where there was not a regular succession of county courts, or if the outlawry was not in the county court, or not in the presence of the coroner; or if the outlaw at the time of pronouncing the outlawry, was under the age of fourteen

years,[1] or out of his right mind, or deaf, or an idiot, or out of our realm, or detained in prison; or if the cause of outlawry be found null, as if the man who was supposed to have been killed be still alive, or if the outlawry was pronounced in any other county than where the felony was committed, or if the outlaw was then in our service in war or castle, or if it be found that the occasion of the outlawry was not felony.

3. In these and other like cases, if the outlaws return and surrender themselves to our prison, and acquit themselves of the principal fact, the Justices shall certify us thereof; and we will immediately, as of right, command by our writs the sheriff of that county and the counties adjoining, that they cause the peace of such outlaws to be proclaimed in cities and in boroughs, in fairs and in markets, and cause it to be solemnly declared that the cause of the outlawry is found to be false, and that the outlaws be restored to their lands and inheritances, saving to us their chattels, if they shall have given occasion of suspicion by flight.

4. We will that those who by malicious contrivance sue any man to an outlawry in any other county than where the principal fact was committed, and are convicted thereof, shall be banished our realm for their malice.

5. And although a person be rightfully and deservedly outlawed, yet it may appear that he was dead before the outlawry pronounced against him; in which

[1] See note to chap. xiii. s. 1. ante, p. 48.

case his heirs shall enjoy their inheritance, because the ancestor did not live to have judgment passed upon him.

6. If it be found that an outlawry was pronounced before the third county court, or that the proceedings in the county court were in any other manner erroneous, let the county be adjudged in our mercy; and if it be found that the outlawry was pronounced in the absence of the coroner, and that the coroner was in fault, let the coroner be punished by imprisonment and fine. The like of abjurations made in his absence, although he send his rolls by his clerk or other person not properly authorised.

7. As to lands and tenements alienated by felons attainted after commission of their felonies, we will, that such alienations be voidable by the chief lords of the fees by means of our writs of escheat.

CHAPTER XV.

Of Rape.

Rape is a felony committed by a man by violence on the body of a woman, whether she be a virgin or not. Of such felonies let inquiry be made; and whoever is attainted thereof, either at the suit of the woman by appeal of felony, or at our suit, shall have the same judgment as for the death of a man, whether the woman have consented after commission of the felony or not, as is contained in our Statutes of Westminster.

CHAPTER XVI.

Of Larcenies.

1. Let careful inquiry also be made concerning robbers,[1] thieves, and such like offenders; as to whom our will is, that if those who rob, or steal the goods of another, amounting to twelvepence or more,[2] be

[1] 'A robber is he who by force in the day or night despoils another of his goods. A thief is he who carries off or steals another's goods in the absence of the owner, or in his presence but without his knowledge.' (Note in MS. *N.*)

[2] In the time of Edward I. the price of a cow varied from 5*s.* to 12*s.*, the price of a sheep from 8*d.* to 3*s.* Wheat varied from 2*s.* to 16*s.* the quarter, and in times of scarcity rose much higher. See Fleetwood's Chronicon Preciosum; and see the provisions as to the assize of bread below, in c. xxxi. Bracton says that stealing a pig is a petty theft (Brac. 105); and we shall see below, in s. 7. p. 61, that stealing a sheaf of corn is so treated. The commentator in MS. *N.* states that three halfpence (iii mailles) a day was a poor living for a man, and gives the following singular reason for 12*d.* being fixed as the limit of petty larceny. 'At three halfpence a day, 12*d.* would be eight days' wages; and as a man going without sustenance for eight days might be expected to die on the ninth, the 12*d.* has regard to the destruction of life, for which offence a man is rightfully put to death.' The same note asserts, that 'in France and many other countries beyond sea, thieves are put to death for less than in England, as for the value of sixpence or one penny.' By the Anglo-Saxon laws no mercy was to be shown to a thief of above the value of

freshly pursued for the same by the owners, or by those out of whose custody the things were stolen or robbed, and the goods are found upon them, they shall be forthwith taken and brought to trial in the court of the lord of the fee, if he has the franchise of infangthief, or in our court in the hundred, or county, or elsewhere ; and the coroner shall be fetched forthwith, and in his presence the sakeber[1] shall be heard in his own person, and if he claims the goods as stolen or robbed and there are lawful people as witnesses to prove it, such robbers shall be immediately adjudged to death.

8*d*. (Leg. Athelst. i. 1. Leg. Hen. I. lix. 20.) But by another law of Athelstan the sum is fixed at 12*d*. (Leg. Ath. v. 1.) Spelman points out the increased severity of the law arising from the change in the value of money. In quantam asperitatem ex rerum temporumque vicissitudine lex antiqua abripitur. Quod enim olim 12*d*. venit, hodie sæpe 20*s*., imo 40, vel pluris est. Nec vita hominis interea carior sed abjectior. (Spelm. Gloss. *s. v.* Laricinium.)

[1] 'Sakbere is he from whom the chattels are stolen, and is so called from *sak* (English) which is *enchesun* in French, and *bere* which is *porteur* in French : as being he who bears the cause to go to the deliverance of the thief.' (Note in MS. *N*.) Compare Spelman, Gloss. *s. v. Sacaburth*, *Sacaber* ; Thorpe's Glossary to ancient English laws, *s. v. Sagemannus*. The former part of the word appears to be the A. S. *Sacu*, Germ. *Sache*, a cause or matter of contention, whence the legal term *sak* for jurisdiction. The latter part of the word is variously derived from the A. S. *beran*, to carry, the A. S. *borh*, a pledge or security, and the old Teutonic *Bar* (A. S. *war*) a man, whence the French and English *Baron*.

2. If they are not taken freshly[1] upon the fact, although the goods are found upon them, they shall be permitted to answer, and then they may demand in what manner the plaintiff intends to proceed against them, and if he answer, 'by words of felony,' then the thief shall be either sent to our gaol or let to mainprise until the next county court or until the next gaol delivery, and there the plaintiff shall make his suit by words of appeal, as will be explained below in treating of appeals. And if the fact was committed out of the lord's jurisdiction, or if the lord has not suitors sufficient to take the inquest, then such felons shall be forthwith sent to our county gaol. The sakeber, if he pleases, may bring an action for his goods, as lost; and then he shall not sue judgment of felony, but of trespass only; but when the sakeber has begun his suit in the form of felony, if he does not prosecute it, we may ourselves proceed to conviction of the felony

3. If the accused has any warrant within our realm, then he may defend himself by voucher; and if he vouches to warrant any person who gave him the thing, or sold it, or otherwise made it over to him, let a day be given him to produce his warrant, if he be not then present; and if he cannot produce him, let him be compelled to appear by the aid of our Court; at which day if he fails to produce his warrant whom he has vouched, where he vouches him at his

[1] The commentator in MS. *N.* explains the word *freschement* as denoting that the sakeber must make his suit the same day.

own peril and without aid of our Court, he shall be obliged to give some other answer, or be put to his penance, and the goods shall be delivered to the person who claims them. And when a person is vouched to warranty by aid of our Court, the sheriff, in whose bailiwick the warrant is expected to be found, shall be commanded to have his body at such a place on a certain day, either to undertake the warranty or to refuse it. If the sheriff returns that no such person is known in his bailiwick, the voucher shall be driven to his answer in chief, or to his penance if he refuse to answer; and if the sheriff returns that the vouchee is not found, then let our writ issue to the same sheriff, to cause him to be demanded from county court to county court until he either appear or be outlawed.

4. If the vouchee comes and enters into the warrant to defend the vouchor in the possession of the thing, let the plea against the principal be suspended, and one commenced against the warrant. And if the warrant makes good his case, then let both the vouchor and his warrant be acquitted, and the plaintiff be adjudged to prison for the reason which shall be given in the chapter of appeals. If judgment be given against the warrant, then the thing challenged shall be adjudged to the plaintiff, and the principal shall be indicted of the felony at our suit, upon presumption of his being an accomplice of the warrant, who is attainted of the felony.

5. If the principal has no one to vouch, he may say that he bought the thing challenged in such a year and on such a day, at such a fair or at such a market, in

the presence of a great number of people, and paid a toll to the bailiffs for it. And if he vouches the testimony of the said bailiffs and others then present, and evidence is given accordingly, or if he puts himself on the country and is acquitted of the felony, and yet the prosecutor has proved that the thing challenged belonged to him, and that it was stolen from him or out of his custody, in such case he must be answerable to the owner, and make him satisfaction, and the judgment shall be, that the claimant recover the thing demanded, and that the person challenged go quit, and lose what what he gave for the thing; and if he can produce no such witnesses, let him acquit himself by the country.

6. If any one be indicted by presentment of robbery, or of larceny, or of cutting of purses, or of receiving of felons, or of enchantment, as those who send people to sleep,[1] or of cheating by selling bad things for good, as pewter for silver, or latten for gold, or of other petty offences of the like nature, our will is that such be apprehended; or, if they cannot be found, they shall be demanded, and their lands and chattels be seized into our hands; and if, when they are tried, they cannot acquit themselves of the felony, whether at our suit or another's, let them be condemned to be hanged,

[1] This seems to give some support to the conjecture, that the experiments of mesmerism and animal magnetism, which have created so much interest in our times, were not unknown in the 13th century. *Endormeurs de genz* are mentioned as offenders in the *Consuet. S. Genov. f.* 34. *MS.* cited in Ducange, Gloss. s. *v. Dormitabilis.* It is possible however that the effect may have been produced by drugs.

or to lose an ear, or to the pillory, according to the greatness of their crime, and according as they have been habitual offenders or not.

7. In small thefts, as of sheaves of corn in harvest, or of pigeons or poultry, let the judgment be this, that if the thieves are not found to be otherwise of bad character, and the thing stolen is under the value of twelve pence, they shall be put in the pillory for an hour in the day, and be not admissible to make oath on any jury or inquest, or as witnesses; and the like as to all those who have been sentenced to undergo such punishments or the punishment of the tumbrel, or to lose a limb. And if these petty thieves are persons of bad character, or if they have offended out of mere wickedness, and not through want, then their sentence shall be to lose an ear, and be rendered infamous for ever, as above mentioned; and if they be found guilty of a second offence, then it shall be in the discretion of the Justices, either to judge them to death or order their other ear to be cut off; and if they are convicted a third time, whether it be for a great or a small crime, and whether at our suit or another's, let them receive sentence of death.

8. As to cutpurses, if they have not been guilty of any other offence, let them be sentenced to the pillory for the cutting of the purse; and if there be anything else stolen by the prisoner under twelve pence or of that value, he shall lose one of his ears, and if the thing exceed the value of twelve pence, then judgment of death shall be passed upon him.

CHAPTER XVII.

Of Abjurations.

1. Concerning those who fly to churches for their crimes, our will is, that the coroner of the place go to them to inquire wherefore they have taken sanctuary, and hear their confessions; and if they will neither confess felony nor come out of church to be amenable to justice, they shall forfeit their chattels on account of their flight, and the coroner shall immediately cause their lands and their chattels to be seized into our hand, and their chattels to be valued and delivered to the township. The admission which they shall make that they are not willing to appear to answer to our peace, shall be entered in the roll, to the intent that they may never be under our peace, until they are acquitted in our Court of the crimes wherewith they shall be charged; the coroner however is not obliged to go, unless he pleases, notwithstanding the fugitive is desirous of confessing felony and praying the favour of abjuration.

2. If the fugitives abide in sanctuary above forty days from the time of the coroner's first going to them,[1] the whole county shall be charged with their custody,

[1] Other authorities seem rather to show that the forty days were to be reckoned from the arrival in the church. See Brac. 136; Fle. 45, and compare Stat. 32 Hen. VIII. c. 12.

and they accounted as felons or as persons out of our peace. And if they confess felony and pray to abjure our realm, and beg the protection of the church until they have provided for and settled their departure, then our pleasure is, that they have such protection for forty days from the day of the coroner's coming to them; and forthwith after the enrollment of their confession, let them be given in charge to the constables of the townships, that they may not in the meantime be allowed to escape out of sanctuary.

3. Let the abjuration be made at the gate or fence [1] of the churchyard, in this manner. Hear this, you coroner and other good people, that I for such an act which I feloniously did, or assented to the doing thereof, will depart from the realm of England, (or the land of Ireland,) and will never return thereto unless by leave of the king of England or his heirs, so help me God and the Saints.

4. Immediately after they shall choose for themselves [2] some seaport, or passage into Scotland out of the realm, as far as which port or passage we admit them to our protection, provided they are not guilty of fraud. And then let them be forbidden on peril of life

[1] *Qu.* Steps. See Ducange Gloss. *s. v.* Scalarium: Roquefort Gloss. *s. v.* Eschallier.

[2] There is a note in the Year Book of 30 Ed. I. that he who wishes to abjure the realm shall take the port assigned him by the Coroner and no other. (Year Book 30 and 31 Ed. I. App. i. p. 509.) See also the Statutes of Wales (12 Ed. I.) c. 5. Bracton and Fleta agree with the text.

and limb to turn aside anywhere out of the high road, until they have left the kingdom, or country, at that port or passage which they have chosen, and no other, with all possible dispatch and without fraud. Let them then go with a wooden cross in their hands, barefooted, ungirded, and bareheaded, in their coat only. And we forbid any one under peril of life and limb to kill them so long as they are on their road pursuing their journey; nor shall they, or any other fugitives, be killed, if they can be taken in any other manner.

5. If such fugitives abide in sanctuary forty days after the coroner's coming to them, they shall be debarred thereafter from the favour of abjuration, and deemed as felons convict, so as to have no right of accusing or appealing any others; and we forbid all laymen under forfeiture of life and limb, and clerks under pain of banishment from our kingdom during our pleasure, to give them any meat or drink after the said forty days, or to have any manner of communication with them.

6. We will and grant, that whenever any one has abjured our realm through fear, and it can be afterwards proved that he was not guilty of the felony which he confessed, he may safely return, saving to every one his suit; and in such cases the heirs of the fugitives shall not be disinherited, but their chattels shall notwithstanding be forfeited by reason of their flight.

7. And our will is, that all abjurations taken by any one, who shall have meddled with the office of coroner

without being authorized thereto by us or our predecessors, shall be held void and may be disavowed and annulled; the like, if the coroner, though authorized, he did not attend in his own person.

8. In abjurations made on account of our game, or other trespasses, let none be disinherited of his lands or tenements, but forfeit his chattels only.

CHAPTER XVIII.

Of Treasure-trove, Wrecks, Waifs, and Estrays.

1. Concerning treasures found concealed in the earth, and concerning wrecks and waifs belonging to us, and sturgeons and whales, and other things found, which of right belong to and are detained from us, let careful inquiry be made, and of the names of those who found them, and to whose hands they have come, and to what amount. For treasure hid in the earth and found shall belong to us, but if found in the sea, it shall belong to the finder; and any person who shall find such treasure in the earth shall forthwith inform the coroner of the district or the bailiffs thereof; and the coroner shall go without delay and inquire, whether any of it has been carried off, and by whom, and save all that can be found for our use; and those who carried it off shall be held to mainprise until the eyre of the Justices; and if our Justices can convict the eloiners of malice, they shall be punished by imprisonment and fine, but if malice be not found, they shall be punished by amercement only.

2. As to things lost and found above ground, if the owner demand them within the year and day, and can prove them to be his property, they shall be delivered to him; so likewise to him who lost the things, provided he can prove the loss; and if the things are not claimed within the year and day, and the finder has caused them to be cried and published in the neighbouring markets and churches, then the finder may keep them.

3. Waifs or estrays, not challenged within the year and day, shall belong to the lord of the franchise, if he be rightfully seised of such franchise; but if the lord did not cause the beast so found to be publicly cried in manner aforesaid, then no time shall run against the owner of the thing or beast, to bar him from replevying it whenever he pleases; and if the lord avow it to be his own, the person demanding it may either bring an action to recover his beast as lost, in form of trespass, or an appeal of larceny, by words of felony; and if the lord by either proceeding be found guilty of a tortious detaining, he shall lose his franchise of estray for ever after.

4. With regard to wreck of sea found, the ordinance of our statutes shall be observed. Sturgeons taken within our dominions shall belong to us, saving to the persons who took them their reasonable costs and expenses; and of whales caught within our jurisdiction the head shall belong to us and the tail to our consort, according to ancient usage.

CHAPTER XIX.

Of the King's Rights.

1. With respect to our seigniories, let inquiry be made of cathedral, parochial, and conventual churches, and of religious houses and hospitals in the county, what are of our advowson; and what ought to be so, but are not; and who has deprived us of them, and how; also what demesnes in the same county we hold in our hands, and what demesnes we and others hold of the ancient demesnes of our crown, and what by escheat and by purchase, and who hold such lands besides ourselves, and what the lands are severally worth according to their true value; and of demesnes which ought to be ours and are not, how they have been aliened, and by whom, and who hold them. So likewise of seigniories and advowsons of churches.

2. Also of hundreds, which ought to be held of us in chief and are not, inquiry must be made how they have been aliened, and by whom, and who now hold them, and from what time, and what is their true value by the year; likewise of the true value of the county, and how much rent the sheriff pays us a year, and how many of the hundreds are in our hands, and what each hundred is worth, and how much the bailiffs annually pay to us or any other for them.

3. Inquiry must also be made of customs and serv-

ices due to us, whether they have been withheld, and by whom, and how long. The like with respect to suits due at our county court, our hundreds, and our manors, and at the tourns of our sheriff, and our views of frankpledge, and at our mills, whether they have been fully performed; and if not, how they have been withheld, and from what time, and by whom; and so of all services which of right are due to us.

4. Inquiry shall also be made concerning escheats, which ought to fall to us by the felony of felons, or by the death of our tenants without heirs, or by any kind of reversion; and concerning the lands of Normans, and of felons who held of us in chief, which have been aliened after the commission of their felonies, and ought to be our escheats, who hold them, and from what time, and how much a year they are worth with their whole profits at the true value; the like as to lands and tenements held of other lords, and aliened by felons after the commission of their felony, without compounding with us for the year and waste.

5. Also concerning earldoms, baronies, knights' fees, grand and petty serjeanties, dismembered without our leave, inquiry must be made how they are held, and who hold them, and of whom, whether of us in chief, or by mesne. Also whether there be anything in arrear to us for any service or profit which of right belongs to us; and whether we have fully had the wardships, marriages, homages, reliefs, and heriots, wherever we ought to have them of right, and if not, by whom they have been withheld from us, and how

long, and what is their yearly value; so of all children, male and female, and widows, whose marriages belong to us, and who have been married without our leave, how often and to whom they have been married, and how much their lands are worth by the year.

6. Let inquiry also be made of all kinds of purprestures made upon us of lands or franchises; and those who shall be presented as deforceors and purprestors by fresh force since proclamation of the eyre, shall be summoned to appear at a certain day to answer for the wrong they have done, and the process against them shall be as in a plea of land by our writs of great and little *Cape*.

7. The deforceors also in the other articles aforesaid shall be summoned. And when any of them appears in court, and pleads that he found his ancestor seised and can prove it, the demand made without our writ shall be stayed, and those who are appointed to prosecute our right, shall immediately apply for a writ of right which is called a *Præcipe quod reddat nobis* against the deforceor; and if the writ be obtained for anything appendant to our crown, such as our ancient demesnes, let no time be limited in the count; and if the tenants desire to put themselves upon an inquest in form of the great assize, let them not be admitted thereto without the consent of us and our council, unless our attoreys in any such case are of opinion that a verdict will pass in our favour; for we are bound to recover such rights of our crown as have been wrongfully aliened; in which rights no man ought to aid him-

self by exception of long tenure, though he may by vouching to warranty, and by reasonable exceptions, as shall be hereafter set forth in treating of exceptions. And if the writ is obtained on our behalf concerning escheats or purchased lands which have been aliened, or other things which are not appurtenant to our crown, in such case the count ought not to go farther back than in a writ of right, and prescription shall run against us as well as against others.

8. Escheats deforced from us, shall be demanded by writ of escheat. And as to suits withheld from us, the proceeding shall be by distress, for this prerogative we claim on account of the great delays which occur in writs of customs and services. With respect to our fees dismembered and held of us by mesne since the last eyre, our will is, that they be taken into our hands, and the sheriff be answerable to us for the issues of them, and they shall not be restored without our leave. And as to wardships and marriages detained from us, we will that proceedings shall be taken immediately without writ, and the penalty provided by our statutes shall be enforced against the deforceors.

9. And we will have it known to all, that if any man dies who held of us by knights' fee, or by grand serjeanty,—whether he held of the ancient demesnes of the crown, or lands escheated, or purchased,—and his inheritance after his death descends among several daughters as one heir, we will have the marriage of all the daughters as often as they shall be to marry; and the like with regard to all widows, whose husbands

held of us in chief; and if it be presented that any one, whether male or female, whose marriage belongs to us, has been married without our leave, let all their lands and the lands of their husbands be immediately seized into our hands, and the sheriff shall answer to us for the issues, and they shall not be restored to them without our leave.

10. As to purprestures our will is, that such as are nusances shall be removed at the costs of those who have made them, and such as may be permitted to remain shall be taken into our hand, and the yearly value thereof enrolled; and according to the discretion of the treasurers and barons of our exchequers, they shall be let at fee farm to those who will give most for them.

CHAPTER XX.

Of Franchises.

1. Let inquiry also be made, what persons in the county claim to have return of our writs, or custody of our gaol, or that the Justices in eyre shall come into their franchises, or to have their own coroners, or chattels of felons, or view of frankpledge, or the franchise of infangthief and outfangthief and gallows, or fairs, or markets, or the execution of pillory or tumbrel, or to have wreck of sea, or to have pleas *de vetito namio* pleaded in their courts, or to have lestage, or amercements of their tenants, or traverse, or toll,

or estray, or murage, or pontage, or cheminage,[1] or warren in his demense lands or in other lands, or to be quit of doing suit at our county court, or at sheriffs' tourns, or at our views of frankpledge, or to be quit of lestage, murage, or pontage, or who claim any kind of liberty more than other people.

2. We will therefore that the presentments upon such articles shall be pleaded in this manner. First, the claimants shall be ordered to appear by reasonable summons, as shall be mentioned in treating of summonses; and then if the summons be attested and they make default, the franchise shall be taken into our hand, the sheriff answering to us for the issues, and so remain in our hand until the claimants appear and answer. And if those who make default have of their own wrong usurped such franchises upon us, they shall be distrained in such manner as shall be mentioned in the chapter concerning attachments in trespass and debt; and when they appear in court, if they cannot clear themselves of the personal wrongs committed against us to our disherison, let it then be awarded, that we recover the franchise, and that they be disinherited of the value thereof, or be in our mercy.

[1] *Murage* was a tax for the repair of town-walls; *pontage*, a toll taken on bridges, or for their repair; *cheminage*, a toll exacted for the use of a way through a forest; *traverse*, a toll paid for passing through the limits of a town or lordship; *lestage* or *lastage*, an impost in fairs and markets, calculated by the last, a measure by which several kinds of solid goods were sold. See Ducange, Glossary; Comyns's Digest, *s. v.* Toll.

3. But if it be found by their answer, that their ancestors died seised, then they shall not be obliged to answer without our writs, unless they choose to do so; but our attorneys shall immediately cause our writs of *Quo warranto* to be issued against them. By such writs they shall first be summoned to come and answer at a day certain, at which if they make default, the franchises shall be taken into our hand, as aforesaid, and so remain without any other summons, until we shall otherwise direct; so that they shall never be permitted to replevy such franchise if they do not answer forthwith. If in their answer they allege long possession, or vouch others to warrant who allege long tenure, in such case judgment shall be stayed for the determination of us and our council, whether such answer be a continuance of the wrong done to our crown, or a title of right in the tenants.

CHAPTER XXI.

Of various wrongs.

1. In the next place let it be inquired what persons have built castles or fortlets or houses of stone, crenellated and defensible; and let those who have so done be summoned to come and answer, and show if they have any license from us or our ancestors for erecting or repairing such fortlets, and if they cannot produce any such license, let them be taken into our hand, either

to be held by us or pulled down, according to our pleasure.

2. Afterwards, let inquiry be made of bridges and causeways, and of common highways destroyed, or otherwise in bad repair, who is bound to repair and amend them; and such as are named in the presentment shall be attached to appear by personal distress. And if it be found on their appearance in court, that any of them hold tenements of us, for the repairing of such ways, let the said tenements be taken into our hand, and the sheriff be charged to answer us for the issues, and to cause the repairs to be done; and where there is no tenement held of us by the performing of such services, our will is, that the persons who are bound to repair the ways, and have not done what they ought, shall be in our mercy, and the sheriff shall be commanded that he cause them to be distrained by their beasts and chattels, and detain the distresses until they have amended the defects, and this as often as it shall be needful.

3. Let inquiry also be made concerning those, who since the first day of the last eyre have erected any gallows, pillory, or tumbrel; and such persons as are indicted thereof shall be compelled by distress to come and answer; and if on their appearing, they can neither show sufficient warrant for what they have done, nor deny that they have done it, let them be awarded to be in our mercy, and let the instruments be pulled down. Let inquiry also be made concerning those, who, not being our Justices or our coroners, have held pleas of felony and of important trespasses committed against

our peace; and concerning those who have held pleas *de vetito namio*, or of debt exceeding forty shillings, or of trespass exceeding the same sum without our writs. And also concerning those who have the franchises of view of frankpledge and of infangthief, and have not the instruments of punishment which belong to such franchises, whereby such franchises have become disused.

4. Let inquiry also be made of those who keep their lands in warrens, other than those lands which they held in their demesne as of fee on the day of granting their charter of warren: or who have used any other franchise otherwise or more largely in any point than is warranted by the tenor of their charter whereby they ought to forfeit the whole for the abuse. Also of those who take fines for leave of beau pleader;[1] and of those who hold pleas of persons not within their jurisdiction, and of all such as have aggrieved the people by distresses contrary to the ordinance of our statutes. Those who are accused thereof, shall be distrained to appear by the sheriff; and if on their appearance in court, they can neither deny the fact, nor justify what they have done, their court and their warrens shall be taken into our hand without replevin.

[1] It was forbidden by Stat. Marl. c. 11, (confirmed by Stat. West. 1. c. 8) that arbitary fines should be imposed in Justices' Eyre, County Court, or Court Baron, *pro pulchre placitando*, that is, for license to amend a defective plea. But when such fines had become settled by custom they were allowed. See Coke Inst. pt. ii. p. 122.

5. Inquiry shall also be made concerning those who have detained felons or provers above a day and a night in prison elsewhere than in our gaol under the custody of our own officers. And if any one has died in prison and been buried without view of the coroner, then let it be inquired who buried him, and of the manner of his death; and those who are indicted and convicted of the first article shall lose their wardenship in fee, and if their offence extends farther, shall be punished more; and as to the other article, the township where such bodies were buried shall be in our mercy, and if there be any felony, let those who shall be indicted answer it.

6. Afterwards let inquiry be made concerning weirs raised in common waters, and concerning waters and highways stopped or straitened or in other manner appropriated, and concerning watercourses diverted; also of walls, houses, marlpits, or ditches, made near the common road to the nusance of passers by, and of those who are guilty of such nusances; and of highways not widened, and of those who have neglected to watch according to the ordinance of our Statutes of Winchester; and of landmarks and boundaries removed; and according to the presentment of these articles, let the abuses be redressed by view of the presentors at the cost of the offenders, and let the guilty be amerced in proportion to the damage they have done and the profit they have received therefrom.

7. Concerning those also who have tortiously dis-

turbed the judgments of our Court, so that execution thereof cannot be made, or have knowingly broken the sequestrations of our officers; and let such be punished by imprisonment or fine.

8. Also concerning lands and tenements alienated in mortmain; and let such lands and tenements be taken into our hand without replevin; and the purchasers also shall be in our mercy and charged with the issues from one year after the purchase, and the sheriff shall be answerable to us for such issues.

9. Let inquiry be made of false weights and measures, and let such order be taken as shall be mentioned in the chapter concerning measures.

10. Let inquiry also be made of clerks who hold pleas of lay people concerning other matters than wills, marriages, or tithes, or who have adjudged any layman in Court Christian to any pecuniary payment, or in any other manner or case than in the articles aforesaid, or who have excommunicated lay people wrongfully, or wrongfully caused them to be apprehended and imprisoned; of those also who have aggrieved others by maliciously serving them with two bills[1] or summonses for the same day at different places; and let all such be punished by imprisonment and fine.

[1] The text here is doubtful. The mention of abuses of ecclesiastical courts immediately preceding lends some support to the reading *bulles*, which appeared in the former printed editions of Britton. Bracton (f. 402 b.) has a form of prohibition issued to an ecclesiastical court from proceeding in a cause concerning an advowson under the authority of a letter of the Pope.

11. Moreover let inquiry be made of those who have taken thefbote,[1] of menders of clothes dwelling out of boroughs or cities;[2] and also of tanners who follow the trade both of a tanner and of a butcher retailing meat;[3] and of those who blanch the skins of beasts which have been stolen, that they may not be known again; also of cooks who knowingly cook stale or stolen meat or any kind of flesh hurtful to the health of man for the purpose of retailing it; also of forestallers; and of those who take up more carts for our use than we need; and of all other offenders against the form of our statutes; also concerning messengers and others, who go about aggrieving the people by representing themselves as in the service of those with whom they

[1] 'Taking thefbote' is explained in a note in MS. *N*, as equivalent to letting thieves escape for reward. In the Statutes of Wales it is thus defined: 'De Thefbote, hoc est de emenda furti capta sine consideratione curiæ Regis.' (Stat. Wall. (12 Ed. 1.) c. 4.) The word appears to have originally signified the legal *bote* or composition for theft; and then to have been applied to the illegal compounding of theft, or taking money to maintain or connive at such offenders. See the Glossaries of Ducange and Spelman; Terms de la ley, *s. v.* Theftbote; Coke, Inst. iii. 134.

[2] 'It is forbidden,' says the commentator in MS. *N.*, that any redubber of clothes or tanner or bleacher of skins (i. e. *Wyttawiares*), shall dwell elsewhere than in cities or boroughs, to avoid the mischief of receiving stolen goods. For a receiver may be the occasion of great wickedness, as is commonly said: Ne is non thef wythouten rescet.' As to whitetawers see Stat. Wall. (12 Ed. I.) c. 4; Cowel's Interpreter, *s. v.* Whitawarii.

[3] This restriction of trade was at a later time established by Statute. Stat. 1 Jac. I. c. 22. s. 3.

are not ; of those also who invent and report rumours and falsehoods concerning us ; of those also who flay or shear sheep ; and of those who have coursed in others' warrens without leave ; also concerning all hamsokens, and blood feloniously shed since the last eyre ; and upon every such presentment, let a speedy remedy be applied with punishment either of life or limb or other penalty.

12. Further, let inquiry be made concerning those who did not appear before us or before our Justices the first day of the eyre according to their summons, and let such be amerced. The like concerning those who alienated their tenements against the eyre, that they might not be summoned upon juries or inquests.

13. Let inquiry also be made of customs used in the county differing from the common law, and what they are, and if there be any repugnant to the common law, let them be prohibited, unless they have been confirmed by us or our predecessors.

CHAPTER XXII.

Of our Officers.

1. Let inquiry be made concerning our escheators and under escheators, and what lands they have seized into our hand in the county since the last eyre ; and of the several lands so seized let a separate inquiry be made of the true value of the profits which every part returned to them or might have returned to others during the time of their possession ; also of waste committed by them in parks and in vivaries, of venison, of fish, and of rabbits and of other destruction done by them in warrens and woods and in other things, and of the value thereof ; and of the chattels found in such tenements or elsewhere and taken by them during the time the lands remained in their custody.

2. Inquiry is also to be made of all their receipts to our use and their own use, how much they have taken for endowing widows, or for suffering them to be endowed, or for permitting heirs being infants to continue with their mothers ; and also for making insufficient extents of land, or for certifying our wardships and our marriages to be less than their real value, or for concealing anything which ought to turn to our profit ; or for procuring or suffering false inquests to pass upon the ages of our wards, or in any other thing, to our prej-

udice ; and let such presentments as shall be made concerning these officers be enrolled and transmitted to the exchequer, and there determined. We reserve however the judgments upon great offences committed by them for our own determination.

3. In the next place let inquiry be made concerning the fees taken and frauds committed by coroners, their clerks, and officers, according to that which is contained in our Statutes of Exeter. Also of sheriffs and other officers, who for reward or entreaty or out of friendship for any man have concealed felonies committed in their bailiwicks, or suffered prisoners to remain unapprehended, whether within franchises or without, or have let to mainprise prisoners who were not bailable, and have detained others who were bailable.

4. Likewise, how many prisoners have escaped out of our prison or from the custody of any others in that county since the last eyre, and who they are, and out of whose custody they escaped, what chattels they had, and what is become of their chattels, into whose hands their lands are come, what they are worth a year, and who has received the profits thereof since their escape, and from what time ; also how many provers have escaped, and out of whose custody, and by whose consent such prisoners have escaped. And for every escape out of the custody of the sheriff, let the sheriff be amerced one hundred shillings, and for the escape of a prover, let him be committed to prison during our pleasure. Let inquiry also be made concerning the defects of gaols, what they are, and who ought to repair

them, and through whose default such escapes have happened.

5. Also concerning sheriffs, their clerks and officers, who have falsely and maliciously made provers appeal innocent people, or hindered them from appealing the guilty; and let such as are guilty of this offence be imprisoned during our pleasure. Also concerning sheriffs who have knowingly let their hundreds to farm to persons of no substance at too high a rent, to the wrongful oppression of the people in divers manners; and let such be amerced.

6. Also concerning sheriffs and bailiffs who have levied money of the chattels of felons, or for the escape of prisoners, or from amercements for defaults made before coroners or escheators or other general inquirers, or for nonprosecution in appeals of felony, or from mainpernors who failed in producing the persons delivered to them on writs of menace, or for not pursuing the hue and cry raised, or for treasure or wreck of sea, or sturgeon or whale found and carried away, which amercements no man ought to levy without our writs of green wax by estreats of our exchequer; and let such offenders be punished by fine.

7. Also concerning sheriffs, who have taken fines and amercements from persons in their bailiwick, that they might not be distrained to become knights,[1] in which

[1] As to the date attributed in the margin above to the so called Statutum de militibus, which has been commonly ascribed to 1 Ed. II., and the whole subject of compulsory knighthood, see a paper by the Editor in the Archæologia, vol. xxxix. p. 216.

case the sheriffs are amerciable; or that have maintained suits or the parties to actions, and have procured false inquests, whereby justice has been hindered, in which case they shall be punished by fine; or that have levied one amercement twice, or of two persons bearing the same name, or have levied more than was contained in the estreats of our exchequer; or if any sheriff has procured the removal of any coroner by obtaining our writs upon false suggestions, in which case they are amerciable; or if any sheriff through malice has kept any man in prison whom he ought to have brought before our Justices at our gaol delivery, and in this case they are to be punished by fine and imprisonment.

8. Or whether any sheriff through malice has taken more cattle for our debt, or another's, than the amount of the debt, or whether he has distrained beasts of the plough, or wethers, or ewes, or household utensils, or riding-horses, or apparel, or things within doors, when other sufficient distress might have been found, and that without doors; and whether any one has caused such distresses to be driven out of the fee,[1] or whether they would not suffer such beasts to be fed and supported by the servants and at the cost of the owners, to the injury of one party and to the advantage of the other; and in these cases they are amerciable; and who have kept such distresses impounded above fifteen days.

[1] It is possible some words may have been lost in this sentence. The rule was, that distresses were not to be driven out of the *county*, or *taken* elsewhere than in the lord's fee. Stat. Marl. (52 Hen. III.) c. 2, 4, 15, Stat. West. I. (3 Ed. I.) c. 16.

9. Of those also who have suffered other pleas to be pleaded in Court Christian besides such as relate to wills, matrimony, and subjects merely spiritual, wherein no money is taken from any of the laity, or have suffered a layman to take oath before the ordinary.

10. It is also to be inquired who have taken fines for redisseisins, or for surcharge of pasture, and for purprestures; and who have accepted annual fees or robes or other bounty for suffering any wrong to be done to us. Also concerning sheriffs or bailiffs, who have summoned more people upon juries and inquests than were necessary, with intent to oppress some of them and take bribes from others for leave to stay at home, or to remove some from the panel and put others thereon; concerning those also who have put persons on juries or inquests who were sick, or disabled by gout, or maimed, or passed seventy years of age, or persons not resident in the county, or persons who live remote and may be supposed to have less knowledge of the truth of the matter in dispute; of such also as have put on the panel persons holding land under forty shillings to do duty out of the county, or under twenty shillings to be on inquests and juries in the county.

11. Let inquiry be also made concerning bailiffs who make scotales,[1] in order to collect money of poor

[1] Scotales (*A. S. scot*, payment, *eale*, ale) appear to have been meetings for drinking, which were in some way made the occasion of extortion by foresters and other bailiffs. See Ducange. Gloss, *s. v.* Scotallium; Capitula itineris (printed among the Statutes of the Realm), c. 45. *var. lect.*; Fleta, p. 28 (§ 102).

people, and concerning such as collect sheaves in harvest and lambs and young pigs, and thus go about begging, and have them fed in their bailiwick, to the grievance of the people.

12. Further let inquiry be made concerning sheriffs who have held their tourn oftener than twice a year; and of their hundreders and others, who have held their views of frankpledge oftener than twice a year;[1] also concerning sheriffs who have answered to us less than they ought for issues forfeited, in which case they are amerciable in double the value of the profit they have made.

13. The like of Justices, sheriffs, hundreders, and others who have courts, and of the stewards and bailiffs of the same, who through malice have procured suits to be stirred up against any to oppress them, or have caused our writs of right to be brought wrongfully in their court, in order to increase their court and the amercements of it; or have amerced people according to their own assessing, or in any other manner than by their peers, beyond the proportion of their offence, contrary to the ordinance of the Great Charter. And of all wrongful payments taken by our officers of traverse or of toll, as of lestage, pontage, murage, or cauşeage, in which case they are amerciable in double the amount of the damages. But as to trespasses of Justices we will that no judgment shall be given without our order.

[1] By the Anglo-Saxon customs hundred courts were held twelve times a year for other business, but twice only for filling up the tithings. (See leg. Hen. I. l. vii. s. 4; l. viii. s. 1.)

14. Also of prises or seizures made by our castellans, and others[1] who take upon themselves to be our takers of victuals or other things; let it be inquired by whom such prises have been taken, and to what damage, and of what people; and in such case our will is, that none be warranted by continuance of seisin to the damage of people, but satisfaction be made to all, nor shall any one make any manner of prises for us, unless he has the authority of our letters making express mention thereof.

15. Of sheriffs also and all other our officers, Justices, coroners, and others, who shall oppress religious communities and other persons, overburdening them by often coming with too great a crowd of people to lodge with them at their cost, or by quartering servants, horses, and dogs upon them, or else by borrowing horses or carts or money of them, or by begging timber or wood or other things for themselves or some of their household or friends; in which case let them be punished by fine.

16. Let inquiry also be made concerning our serjeants and our attorneys assigned to prosecute and

[1] It is remarkable that the word 'purveyor,' which was afterwards in such ill repute, does not appear to have been used at this time, although the abuse of purveyance was at its height. No grievance is more frequently mentioned in the ancient statute-book. By a statute of Edward III. (36 Ed. 3, c. 2) it was enacted that the very name of purveyor (le haignous noun de purveour) should be abolished, and the officers called 'buyers' (achetours.) But the name very frequently makes its appearance in the statutes of subsequent reigns.

defend our rights, whether through favour or otherwise they have permitted or suffered any great lord of the county or other to continue in seisin of any franchise, or any corporeal thing belonging of right to us; and let such be punished by fine. Also concerning those who have remitted, or have caused to be put out of the roll, or have omitted inserting in the roll, fines and amercements belonging to us; let such be ransomed and from thenceforth removed from the Court, and their superiors punished at our will.

17. Also concerning our officers who have maintained any wrong, or have accepted the presentment to any church, of which the advowson was in litigation in our Court, and let such be punished according to the statutes; or who have maintained any plea by champerty or in any other manner; and whether they have hindered justice in any point; and of the fees which they take, and of whom, secretly or openly.

18. Also concerning the clerks of our Court of Chancery, and of the one Bench and the other, and of the Exchequer, who take more than a penny for writing a writ; and of chirographers who take more than four shillings for the chirograph of a fine; and of criers, whether any of them take more than is appointed by our statute; and let such offenders be fined, and expelled the Court, and if their superiors knew of their extortion, and took no measures to correct it, let them be punished at our will. Also concerning the clerks of Justices Itinerant, whether they have taken more than two shillings for delivering the

chapters of the eyre according to the ordinance of our statutes, or whether they have been guilty of any other excesses prohibited by our statutes, or whether any enrollment has been delayed, or any manner of damage or grievance done to any one, on account of damages not allowed to the clerks of our Justices, whoever the Justices may be ; and let them be punished by fine and expelled the Court.

19. Let it be also inquired concerning confederacies between the jurors and any of our officers,[1] or between one neighbour and another, to the hinderance of justice ; and what persons of the county procure themselves to be put upon inquests and juries, and who are ready to perjure themselves for hire or through fear of any one ; and let such persons be ransomed at our pleasure, and their oath never after be admissible.

20. Let it also be inquired of cloth made out of the realm, brought into the county and sold there, not

[1] The commentator in MS. *N* gives the following example of an offence coming under this head. 'In the county of Northampton a sheriff named Sir Robert de Veer in the 30th year of King Edward made a confederacy with several others of the county, that some of them should indict persons, and the others save them, for bribes, according as the same sheriff should arrange the panels. These persons were afterwards called 'the company of the pouch' (les queux furent appelez puis : 'La Compaignie de la pouche).' Sir Robert de Vere here referred to was sheriff of Northampton 29-30 Ed. I., but was not continued in his office as was then usual, possibly on account of the above offence. See the list of Sheriffs in Bridges' History of Northamptonshire, vol. i. p. 5.)

being of the right assize according to the purport of the Great Charter, what quantity of such cloth has been sold since the last eyre, and by whom, and what was the value of the cloth so sold by each merchant separately, and who was appointed by us to seize such cloth into our hand; and let this article be determined in our Exchequer.

21. Let inquiry also be made of wines sold, whereof the tuns did not contain two hundred and forty gallons, and who those are who thus sold them by wholesale; and also of the prisage of wines, how many tuns have been taken to our use since the last eyre, and by whose hands, and whether those wines have been sold to any other than to ourselves without our orders; and let this article also be determined at our Exchequer.

22. In like manner let inquiry be made concerning all sorts of flesh and fish, and of every kind of spice, wax, silk, canvas, cloth, and avoirdupois,[1] and of all manner of prises, which have been taken to our use since the last eyre, and of the value of each prise. And let inquiry also be made concerning our customs of leather and wool, who have collected them, and how many sacks of wool the collectors have permitted to pass without paying custom, and how much the yearly value of every kind of custom belonging to us amounts to; and let these articles likewise be determined at our Exchequer, according to the discretion of the Treasurer and Barons.

[1] This word is said to have been applied to all goods sold by weight. See Ducange, Gloss. *s. v.* averium ponderis.

CHAPTER XXIII.

Of Appeals.

1. Having in part treated of the articles provided for our eyres, by which we desire to punish evildoers and to convict the wickedness of people at our own suit, we will now set forth how felonies and crimes may be punished at the suit of others; and first of appeals. An appeal is a plaint brought by one person against another in a set form of words with intent to convict him of felony. Not every man however can be an appellor; for neither an outlawed person, nor one who has abjured our realm, or been sentenced to death in our Court, nor an approver who has failed of his proof, nor an infant under the age of fourteen years, nor a madman, nor an idiot, nor one deaf, or dumb, nor a leper expelled from common society, nor a person in holy orders, is to be admitted in appeals; yet they may accuse our mortal enemies abiding within our dominions.

2. There are some felonies which concern our suit, and may be prosecuted for us and not by us,[1] as against

[1] I understand this as meaning, that certain crimes affecting the king, as well as certain crimes affecting subjects, may be prosecuted by appeal, but in that case the appeal must be by a subject for the king and not by the king himself. So Bracton says that where, upon failure of an appeal by the death of the

our mortal enemies, and for counterfeiting our seal and our coin; and there are some which concern the suit of others and not ourselves, as of treason committed against any lord, by violating his wife or his daughter or the nurse of his children, or of counterfeiting the seal of his lord. There are also some felonies, where no other execution follows at our suit than such as takes place in trespass, as in mayhems, wounds, and imprisonment; and there are others, where judgment of death ensues, as well at our suit as at another's, as in felonies of the death of a man, rape, arson, robberies, and others.

3. First we must treat of appeals of felonies which may be brought for us, and not by us; as of treason and a compassing designed against our person, to put us, or our consort, or our father, or our mother, or our children, to death, or to disinherit us of our kingdom, or to betray our host, although such compassing be not put in execution. Of which compassing, our will is, that the accusation be laid before ourselves, or some other who shall without delay inform us thereof; and any person shall be permitted to make such accusation;[1]

appellor, the appellee is brought to trial at the king's suit, he cannot defend himself by his body, but must put himself on the country, because the king does not fight, and has no other champion but the country, and, even if he were allowed to fight, he could not use the words *de visu et auditu* necessary in an appeal. Brac. 142.

[1] In case of high treason, a servant or even a bondman might appeal his own lord. This was contrary to the general rule respecting appeals. Brac. 141, 155 *b.*

for no presentment can be made thereof after any great length of time, without the presentors being in some degree implicated either in consent or in concealment.

4. When any person shall offer to prove this crime against one or more, we will cause the body of the accused to be immediately apprehended and brought before us. And when they appear for trial, let the accuser make his appeal for us by some serjeant in this manner. 'John who is here appeals Peter who is there of this, that being in such a place on such a day and year, the same John there heard such a death or such a treason contrived between the same Peter and another, such an one by name, and by such confederacies, and that the said Peter thus acted and thus contrived feloniously as a felon and traitorously as a traitor, he the same John is ready to prove by his body, in any manner the Court shall award that he ought to prove it.' In every felony however battle may be hindered by many circumstances; in which cases it will be necessary to speak otherwise; for if the appellor be maimed, or under the age of fourteen years, or above seventy, or in holy orders, or a woman, or if he can be aided by record, then he shall say thus: 'This the same John is ready to prove, in whatsoever manner the Court shall award that a man, who is maimed, or of such an age, or of such a condition, ought to prove it;' or he may say, 'And of this he vouches record of such or such an one, and of their rolls, to warrant.'[1]

[1] It is not easy to see to what sort of cases this mode of proof

5. We forbid any attorneys to be received either for the appellor or for the appellees, or any essoin to be allowed on one side or the other, in any cases of death.

6. And our will is, that if the appeal be pronounced by the mouth of a serjeant, and be abated on account of its being ill set forth, or through other default of the serjeant, who ought to understand the art of pleading, the serjeant himself shall be amerced one hundred shillings; and if there was secret malice in the act, and *he be convicted thereof, then let him be sent to prison*, and suspended from his office.

7. And as to the defence, the appellee may defend himself in this manner. 'Peter who is here defendeth all the felonies, and all the treasons, and contrivances, and compassings of mischief against the person' of such an one, or such an one, according as he is charged, word by word. And we will that in these appeals, it shall be more necessary for the appellor to set forth the words orderly without any omission, that his appeal may stand, than for the defendant in his defence; and in every felony we allow the defendant to defend the words of the felony generally, without treating him as undefended, so that for default of a word or syllable he be not adjudged undefended, but it shall be suffi-

refers. Possibly to such a case of manifest homicide or petty *treason as is mentioned before*, (*c. vi. s.* 4) where the Coroner's roll may have been held conclusive, no other proof either by battle or by the country being required. See before, p. 37, note and compare Bracton, 137.

cient for him to say, that he is not guilty of such felony as the appellor lays to his charge, and that he is ready to defend the same against him by his body, in such manner as the Court shall award that he ought to do it, or by the country. And in cases of death none shall be held convicted for being undefended, but he shall be put to penance, until he be prepared to answer better, if he has spoken his defence by his own mouth; and if by a serjeant, who is avowed by the appellee, let the serjeant be amerced as above directed, and if he be disavowed, let him be punished by imprisonment and fine, and let the defendant provide himself with a better serjeant.

8. The appellee, having sufficiently defended the substance of the appeal, may then aid himself by exceptions, and first to the jurisdiction of the judge, afterwards to the person of the appellor, then to his own person, and next to the appeal, and lastly to the action, as shall be mentioned amongst exceptions. With respect to the jurisdiction, he may say, that he is not bound to answer in a place where the judge is a party, since in every judgment there ought not to be less than three persons, to wit, a judge, a plaintiff, and a defendant; and in cases where we are party, our pleasure is, that our Court, to wit, the earls and barons in time of parliament, shall be judges. The jurisdiction of the judge being established, he should consider whether he can aid himself by excepting either to the person of the plaintiff or to his own person; and next in abatement of the appeal, which may occur in many

cases, as by omitting to name in the appeal the year, day, or place, or naming one name instead of another, or setting forth the appeal thus, 'This showeth unto you John,' where he ought to say, 'John appeals'; or by closing his appeal by these words, 'and this I will aver,' instead of saying, 'this I offer to prove,' or for variance, the appeal being made before the Justices in one form, and in the coroner's roll in another.

9. If he can by any exception abate the appeal, then our will is that he be acquitted as against this appellor, and the appellor shall be committed to prison, because he has failed to prove that he bound himself to prove; and so it shall be in all appeals of felony, and also where the appellor withdraws himself from his appeal before judgment;[1] and his pledges to prosecute shall also be in our mercy, because they have failed in their engagement. But in these cases we will that moderation be used, inasmuch as such persons proffer themselves to fight in maintenance of our peace.

10. But though it happen that the appellees are thus

[1] In later times an appellor could by release discharge an appeal, (Hale, Pl. Cr. vol. i. p. 9); and Blackstone is of opinion that the chief object of an appeal *at all times* was to compel the defendant to make a pecuniary compensation; and that when the verdict in the appeal was given in favour of the appellor, he might insist upon what terms he pleased as the ransom of the defendant's life, or for a commutation of the sentence. (Blackst. Comm. vol. iv. p. 316.) It will be seen that this opinion, so far as regards appeals for minor offences, is confirmed by our author. See below, ch. xxvi. s. 2.

acquitted as against the plaintiff, it does not therefore follow that they are not guilty of what is laid to their charge; wherefore in such case let it be immediately demanded of them on our behalf, how they will acquit themselves of such slander; and if they say, by the country, then they shall be remanded to prison until a certain day, and in the meantime the country shall be summoned, and according to the verdict of the country charged thereon, judgment shall be given.

11. If the defendant cannot abate the appeal, then it shall be in his election,[1] whether he will defend himself by his body or by the country, and so in all felonies prosecuted by private persons, except in special cases, as of women, persons maimed, and[2] others who neither can nor ought to wage battle.[3] And if he says

[1] In Glanvill's time, the appellee of felony appears to have been bound to defend himself by battle, unless he was excused for age or infirmity, in which case the trial was by ordeal. (Glan. li. 14. c. 1.) The beneficent change which gave the accused the election of purging himself by the country was introduced between the time of Glanvill and Bracton.

[2] The commentator in MS. *N.* adds, that if the appellee, not being actually maimed, is otherwise 'in so poor a state' that his inability to fight is evident, the Court ought not to allow him to be wantonly destroyed; and that lepers are not permitted to wage battle, lest their disease should be communicated to the other combatant. See before, s. 1.

It was one of the privileges of the citizens of London, that they should not be obliged to wage battle. See the Charter of Henry I. in Ancient English Laws, p. 217, and the Charters of Richard I, Henry III., and Edward II., in Liber Custumarum, p.

by his body, and it be in the case of felony at the prosecution of another, then let the matter be examined before battle is joined, whether the cause be trespass or felony, and if trespass, let the appeal be abated by the Justices *ex officio*. But if felony, then let the defendant give security to defend himself, and the appellor security to prove the cause; next let a day be given them to provide themselves with arms, and let the defendant in the meantime remain in prison.

12. When they appear armed in Court, let the plaintiff repeat his appeal word for word as he did before, and the defendant defend himself as before; and afterwards let them take each other by the hand, and let the defendant swear first in this manner, and the appellor afterwards as shall be presently more fully set forth. 'Hear this, you man whom I hold by the hand, who call yourself John by your name of baptism, that I, Peter, did not in such a year, nor on such a day, nor in such a place, compass or propose the death aforesaid, nor did assent to such felony as you have charged me with, so help me God and the Saints.' Afterwards the appellor shall swear thus. 'Hear this, you man whom I hold by the hand, who call yourself Peter by your name of baptism, that you are perjured, inasmuch as on such a day, in such a year, and in such a place, you did propose such a treason or such a death as I have

248, 252, 259. The same immunity was claimed by the citizens of Lincoln (Kelham's Britton, p. 153, note), and the burgesses of Bury. Cron. Joc. de Brakelonda, p. 74.

said against you in the appeal, so help me God and the Saints.'[1]

13. Then let them both be brought to a place appointed for that purpose, where they must swear thus. 'Hear this, ye Justices, that I John (or I Peter) have neither eaten nor drunk anything, nor done or caused to be done for me any other thing, whereby the law of God may be abased, and the law of the devil advanced or exalted.' And thus let it be done in all battles in appeals of felony. And let proclamation be immediately made, that no one, except the combatants, whatever thing he see or hear, be so bold as to stir, or cry aloud, whereby the battle may be disturbed; and whosoever disobeys the proclamation shall be imprisoned a year and a day.

14. Next, let them go to combat, armed without iron and without the slightest armour,[2] their heads uncovered, their hands and feet bare, with two staves tipped with horn of equal length, and each of them a target of four corners, without any other arms where-

[1] Selden observes, that in these oaths the clause *de visu et auditu*, which occurs in Bracton (141 *b*), is omitted, and that this is in analogy to the rule established in civil trials by the Statute of Westminster the first, c. 41. Seldon's Duello, c. vii. See below, p. 91, note; and compare s. 5. p. 84.

[2] These particulars as to the armour and weapons of the combatants in an appeal are not found in Bracton or Fleta. Leather armour appears according to most authorities to have been allowed. Other notices of this curious subject are to be found in Dugdale, Orig. Juridic. 68; Dyer, Rep. 301; Y. B. 1 Hen. VI, 7 *a*; Selden's Duello, c. viii: Archæologia, vol. xxxii. p. 287.

by either of them may annoy the other; and if either of them have any other arms concealed about him, and therewith annoy or offer to annoy his adversary, let it be done as shall be mentioned in treating of battle in a plea of land.[1]

15. If the defendant can defend himself until the stars can be seen in the firmament, and demands judgment whether he ought to combat any longer, our will is, that judgment pass for the defendant, and so in all battles between champions; and in the case of felony the appellor shall be committed to prison. And if the defendant will confess the felony before he is otherwise attainted, and appeal others of consenting to the same, we allow him to be admitted thereto.

16. And if the defendant be vanquished, let the judgment be this, that he be drawn and hanged, or put to such other painful death as we shall direct, and that all his movable goods be ours, and his heirs disinherited; and his children shall be incapable of ever holding land in our realm. And let not any, unless they would be suspected themselves of the felony, presume to intercede for him; and let the accuser, who without delay shall prosecute such felony with good effect, receive from us a notable reward. Appeals may likewise be sued for us in the same manner for counterfeiting our seal and our coin, and also for violating our consort, or our daughters, or the nurses of our children; and in such cases, the judgment is, to be drawn and hanged.

[1] The passage here referred to is not to be found in the work as it exists at present. See Introduction by the Editor.

whether the conviction be upon an indictment at our suit or upon an appeal by another person for us.

CHAPTER XXIV.

Of Appeals of Homicide.

1. Concerning homicides, our will is, that those shall prosecute whom it concerns, to wit, the male nearest in blood of the kindred of him who has been feloniously killed, or one who has done homage to him or been of his household.[1] And their right of action shall last

[1] A woman might bring an appeal of the death of her husband. Mag. Cart. c. 34 Glan. li. 14. c. 3; Brac. 125. (s. 3.) A godson might appeal the slayer of his sponsor. (*Post*, s. 3.) The appellor in earlier times was required to be one who had been actually present at the homicide. (Glan. li. 14. c. 3. Brac. 125, 138, 141, 141 *b*.) There is no intimation in our author that this was considered necessary in his time: and in later times, when appeals were allowed only by the wife or the heir male, it was not required. Staundford Plac. Cor. 59 *b*; Blackst. Comm. vol. iv. p. 314. Coke treats the change as a consequence of the Statute of Gloucester, c. 9, which provided that appeals should not be so lightly abated as they had previously been. Coke, Inst. ii. 317. The case of the champion in civil actions was analogous, the oath *de visu et auditu* (See Glan. li. 2. c. 3.) being abolished by Stat. West. 1. c. 41, on the ground that it only led to perjury. The expression used by the older authors as to the wife's appeal for the death of her husband, 'killed between her arms,' (Bracton, 125, 148 *b*; Fleta 53; Britton, *post*, s. 7.) which implied the necessity of the wife being present at the killing (See Glan. li. 14. c. 3.); was in later times explained to mean, that the wife was 'in seisin' of her husband as his lawful wife at the time of

a year and a day. Every man must commence his appeal in the county where the felony was committed, and the plaintiff at the first county court, when he wishes to bring his plaint, must find two pledges to prosecute, and cause his appeal to be entered in the roll of the coroner, and then continue the same from county court to county court without interruption; and if justice be not done either to the plaintiff or to the appellees, we will that upon reasonable occasion they may by writ out of our Chancery remove the appeal out of the county court before us wheresoever we shall be in England.

2. We forbid that any person be detained in prison for an accessory fact, if he can find mainpernors to answer for him, until conviction of the principal fact, or that any Justice proceed against the persons appealed of the force or accessory causes before conviction of the principal fact, or until those who are appealed of the principal fact are outlawed for their contumacy.

his death. See Coke. Inst. ii. 68, 317; and compare Mirror, c. 3. s. 18. There is another observable change in the law of appeal, probably connected with the change already noticed. In the time of Glanvill and Bracton it would seem that any kinsman was admitted to appeal, although of several appellors the nearer in blood was preferred. (Glan. li. 14. c. 3. Brac. 125.) In our author's time the appeal appears to have been abatable. if there was any person nearer in blood than the appellor, who might have appealed though he did not actually do so. See below, s. 3. But the author of the Mirror states this ground of exception in accordance with the older practice: Sir, cest actor n' avera nule accioun, de sicome il y ad un autre pluis prochein de sank que ad attamé son appeal. (Mirr. c. 3. s. 18.)

And if the person appealed as principal be acquitted of the fact, our will is, that those who are indicted or appealed of the force, or of the receipt, or of commanding, or of other accessory facts, shall be cleared thereof by the same judgment.

3. When the parties appear in judgment, let the plaintiff set forth his appeal; and let the defendant defend the felony, in words agreeable to the form of the Court, and then aid himself by exceptions, as where the appellor is outlawed, or adjudged to death for felony, or has adjured the realm; for in these cases they shall not be bound to answer such appellors. He may likewise abate the appeal several ways, as where the appeal was not commenced within the year and day, or not in the county where the felony appears to have been committed, or for variance between the appeal made there and in the roll of the coroner, or if there is any other male nearer of blood, who has a better right to bring the appeal, or if the plaintiff is not concerned to appeal, not being of the blood of the dead man, nor having been of his homage, nor his fosterchild, nor his mainpast, nor by him lifted from the baptismal font; or if there is homage still subsisting between the plaintiff and defendant; or if the fact alleged is not felony; it may likewise be abated for omission, as if no felony or treason is named in the appeal, or if the breaking of our peace, or other words of the substance of the appeal are omitted, as above mentioned; so likewise for error, as if the name of Reyner is used for Reginald, as will be noticed in treating of exceptions.

4. The appeal may also be abated for want of prosecution by the plaintiff, as when he has sued in the county at two courts, and made default at the third, and this can be proved by the coroner's roll; in which case our will is, that if the defendant can prove the nonsuit in the county to have been made before the date of our writ to remove the appeal, our Justices shall commit the plaintiff to prison for his nonsuit, and his pledges shall be in mercy. But if the appellor die or fall so grievously sick that he cannot carry on his suit, in such case the pledges shall not be amerced for the nonsuit, and we allow that some other person, whose duty it is and who is capable of doing it, shall be permitted to revive the suit and prosecute it until the appellees are either acquitted or condemned. And if any of the appellees surrenders himself before he is outlawed, where the appellor makes default, let him be admitted to bail, as to our suit, until the first gaol delivery, in cases where he is bailable. And although he acquit himself as to our suit, yet the suit of any other, who will prosecute within the year and day, is not thereby taken away.

5. The defendant may also answer by exception to the action in several ways; for he may say that at another time there was an appeal in our Court between the same persons for the same felony, and that he was acquitted thereof before such Justices; and if he avouches this by warrant of record, and the record passes in his favour, he shall be awarded quit, and the plaintiff to prison. Or he may say, that although he

committed the act, yet he did not do it by felony prepense, but by necessity, in defending himself, or his wife, or his house, or his family, or his lord, or his lady, from death; or that he killed the man in defence of our peace, or by some mischance, without any thought of felony; in all which cases, if proved, the appellees shall have judgment of acquittal.

6. If the defendant cannot aid himself by any exception, let it be in his election to defend the felony by his body, if the plaintiff be able to fight, or by the country; and if he will not put himself on his defence, let him be put to penance until he prays to do it. And according to the event of the battle, or of the verdict of the country, judgment shall be given. The punishment of felons who have committed homicide shall be death, with disherison of their heirs, with further punishment if the occasion requires it.

7. As to women, our will is, that no woman shall bring an appeal of felony for the death of any man, except for the death of her husband killed within her arms,[1] within the year and day. For an infant killed within her womb,[2] she may not bring any appeal, no

[1] As to the interpretation of this phrase, see note above, p. 109.

[2] Although neither Glanvill nor Bracton specifically mention an appeal by a woman for the death of her unborn child, the expressions used by them, 'injuria corpori suo inflicta' (Glan. li. 14. c. 3.) 'injuria et violentia corpori suo illata' (Brac. 148 *b*), may include this crime as well as rape. And it is clear from ancient records of the time of John and Henry III, that such an appeal was anciently allowed. (See Sir Sam. Clarke's Note on Fleta, li. i. c. 35, Kelham's Britton, p. 152.) Fleta expressly ad-

one being bound to answer to an appeal of felony, where the plaintiff cannot set forth the name of the person against whom the felony was committed. With regard to an appeal of rape, our pleasure is, that every woman, whether virgin or not, shall have a right to sue vengeance for the felony by appeal in the county court within forty days, but after that time she shall lose her suit; in which case, if the defendant confesses the fact, but says that the woman at the same time conceived by him, and can prove it, then our will is that it be adjudged no felony, because no woman can conceive if she does not consent.

CHAPTER XXV.

Of Appeals of Robberies and Larcenies.

1. With respect to robberies and larcenies, our will is, that if other persons desire to bring an appeal and sue for revenge of such felonies, their right of prosecution shall continue a year and a day, and that appeals be commenced in the counties where the felonies were committed. The appeals may be made in this manner. 'John who is here appeals Peter who is there, that whereas the same John on such a day in such a year had such a horse, which he kept in his

mits it, and gives the form of accusation (Fle. 53, 54.); and the statement in the text may have been intended as a correction of that author. Possibly it was considered that the right of appeal in this case was abolished by Magna Carta, s. 24.

stable' or elsewhere in such certain place, 'the same Peter there came, and the same horse feloniously as a felon stole from him, and took and led away against the peace, and that this he wickedly did, the same John offers to prove by his body as the Court shall award that he ought to do it.' And if the horse was stolen out of his custody, or if he was robbed of it, let him change the words of his appeal according to the sense required; so if the plaintiff be maimed, or in such other condition that battle ought not to be joined.

2 Next let Peter answer and defend the felony by words proper for defence; and then he may either defend himself by exceptions, or by his body if there are no circumstances to prevent the battle, or by the country, or vouch to warranty, if he has any one to call. And if he pleads that the horse was his own, and that he took him as his own and as his chattel lost out of his possession, and can prove it, the appeal shall be changed from felony to the nature of a trespass. In this case let it be awarded that the defendant lose his horse for ever; and the like of all usurpations in similar cases, because our will is that every one proceed rather by course of law than by force.

3. If the defendant vouches to warranty by aid of our Court, and the vouchee comes by aid of our Court, or without such aid, and enters into warranty, the principal plea shall cease, and the appeal begin anew against the warrant, and according to his defence let judgment be given.

4. If the vouchee will not enter into warranty, the

vouchor may say thus. 'Peter who is here, says that Thomas who is there, wrongfully refuses to warrant the same horse against John who is there, who challenges it as his own; and herein wrongfully, inasmuch as the same Thomas sold (or gave or lent) the same horse to him said Peter on such a day and year, in such a place; and that he did so, the same Peter offers to prove by his body, in such a manner as the Court shall award he ought to prove it.' And in this case it behoves the vouchee to defend such contract, either by his body, or by the country, so that judgment of death may pass upon the one who is defeated, and the successful party be allowed to go quit; and the thing challenged shall be delivered to him who challenged it, if he properly prosecuted his suit, otherwise it shall belong to us.

5. And if there be any fraud in the warranty, as if the appellee by collusion vouches to warrant some champion or other strong man, or a clerk, who maliciously and for hire enters into warranty, and the demandant prays leave to lay open the fraud and the malice, as done to make him withdraw himself from the battle for fear of the might of the champion, or for the privilege of the clergy, inasmuch as the vouchee being a clerk intends to purge himself in Court Christian, should he be attainted by the lay Court, let him be admitted thereto; and if the malice be proved, both the warrantee and the warrant shall have judgment of death,[1] and the demandant shall recover his demand.

[1] By this clause a severer punishment is imposed upon the

6. As to larcenies and robberies committed in time of peace, where the offenders were not freshly pursued; the owners of the things shall have their suit by appeal of felony within the year and day as in other felonies; but after that time their right of appeal shall cease, and the suit shall be ours. It is equally so within the year and day, if no other suit is commenced, and so in all manner of felonies. And if the demandants bring their suit in form of trespass, they shall be heard, if they have not before commenced their suit in form of felony, in which case they cannot, by withdrawing from their suit, deprive us of ours. But where they have sued in form of trespass, although our peace may have been broken, we will not prosecute.

7. If any appellee has withdrawn himself, let him be demanded from county court to county court, till he either appear or is outlawed. And when he shall have come into Court, and the appellor shall have appealed him by words of felony, and the appellee defended himself by proper words of defence, let him in the first place consider whether he can aid himself by general exceptions, as to the person of the judge, that he has not authority to hear and determine the appeal, which exception may be true in many ways, as if the act wherewith the defendant is charged was

colluding vouchee than was before in use. According to Bracton and Fleta, the hireling champion was to lose a foot and hand. And according to Fleta, the clerk was to be imprisoned and ransomed. (Brac. 151 *b*; Fle. 55, 56.)

not done within his jurisdiction, and this exception holds good in counties, or where the judge is not authorised thereto by our writ. Or he may except to the person of the appellor, which may also be in sundry ways; or to his own person. If no objection lies against any of the persons, then let him see whether he can aid himself by general exceptions to abate the appeal; and if he cannot, let him then aid himself by exceptions to the action, as that the thing challenged is not of the value of twelve pence; and many other exceptions may be used. If he cannot avail himself of any exception, and has no warrant to vouch, he may lastly defend himself by his body, or by the country. And if he be attainted, let him have judgment of death.

8. The appellor may afterwards proceed against the receivers and the others for aiding and consenting, whosoever they are. And when one man is appealed by several, or several by one, and battles are to ensue, the battles shall not take place at one time, but at different times. Nevertheless the felon's wife may plead, that although she was privy to the crime of her husband, yet she neither could nor ought to accuse him as long as she was under coverture; but this answer must not be allowed in too general a manner to such wives to excuse them from acquitting themselves of the fact, and of the consent, by the country; for it may often happen that the wives of felons hold the persons attacked whilst their husbands kill them, and in such case both of them are guilty of the felony; and as to

the concubines of felons, they shall in no wise be allowed to excuse themselves by coverture. If it appears that any woman who is adjudged to death for this or any other felony be big with child, then execution of the judgment shall be delayed until the child be born.[1]

9. Felons, in this as in all other felonies, may have accomplices, receivers, and abettors, whom they may appeal for the sake of prolonging their own lives; and if they will become provers, then let the coroner go to them, and hear the confession of their own felonies, and cause such confessions to be enrolled, and also their appeals, together with their names and the names of the appellees. And if the provers make the justice of their appeals appear, and have lied in no particular, then they shall have our pardon of life and limb where we shall see meet because they have fought for our peace.[2] But our will is, that from the time any such prover has failed of his appeal, he shall be no more heard against any other whom he has appealed, but all others appealed by him shall be adjudged quit as to his appeal, and the prover shall be condemned to death;

[1] Bracton derives this rule of humanity from the Roman Law, citing a passage in Dig. lib. 48, tit. 19. l. 3.

[2] The commentator in MS. *N.* states that it was considered that an approver had not merited pardon until he had made good his appeal by battle against seven accomplices; and that by some the number was put at nine; and that even then he was not to be permitted to remain in the country, but to be exiled, or to take the cross in the Holy Land. The latter point is confirmed by Bracton: 'Vitam habeat et membra, sed in regno remanere non poterit, etiam si velit plegios invenire.' Brac. 153 *b*.

and if the persons appealed are suspected, let them answer at our suit, and clear themselves of the slander; but if they are of good fame, then we permit them to be let out by sufficient mainprise as to our suit until the eyre of the Justices, or until we shall take proceedings against them. The like liberty shall be granted to those who are indicted of any felony through hatred, and by procurement of their enemies; which hatred shall be convicted by inquest by virtue of our writ *De odio et atia*, saving to every one his suit.

10. As to pigeons, fish, bees, or other wild animals, found in a wild condition, we ordain that no man have judgment of death on account of them; but otherwise if they have been feloniously stolen out of houses, or if they are tame beasts, out of parks. And no appeal shall lie where the damage is under twelve pence, nor in any case which shall be found by examination of the Justices to be rather trespass than felony; as where the appeal is made of a wound, and it appears to be only a bruise or scratch.

CHAPTER XXVI.

Of Appeals of Mayhem.

1. Concerning mayhems, we are content that the maimed shall sue by appeals of felony against the offenders; and when any appellee is convicted of such felony, and brought up for judgment, let the judgment be this, that he lose the like member as he has destroyed of the plaintiff; and if the plaint be made against a woman who has deprived a man of his members, she shall have judgment to lose a hand, being the member wherewith she committed the offence. In this felony no prosecution shall lie at our suit with a view to the judgment of loss for loss; but if the appeal be abated, the felons shall answer for such felonies, and if they are attainted at our suit, they shall be awarded to prison, and ransomed thence for breaking our peace. And our will is, that nothing be deemed a mayhem unless a member be lost, whereby a man is rendered less able to fight; as the loss of an eye, a hand, or a foot, or fracture of the skull bone, or loss of the fore teeth; but the loss of the molar teeth, or of an ear, or of the nose, is not accounted a mayhem, but a disfigurement only.

2. Appeals of felony may also be brought for wounds, and for imprisonment of freemen, and for every other enormous trespass; but for avoiding the perilous risk

of battle, it is better to proceed by our writs of trespass than by appeals; for if variance be found between the appeal as entered in the roll of the coroner and as set forth in the county court, or if there has been any omission, or any interruption of the county courts, or other error, the plaintiff shall be commanded to prison for not having performed what he bound himself to do, and shall make satisfaction to the defendant, and afterwards to us. But if the appeal be maintained, and the defendant have put himself for good or ill on the country, and the jury say that he is guilty, the same judgment shall be given against him as would have been in case he had been vanquished in battle, to wit, wound for wound, imprisonment for imprisonment, and trespass for trespass. But in such cases our will is, that the execution of the judgment be so far mitigated, that the appellees be sent to prison, and there remain in irons till they have made satisfaction to the plaintiffs; and they shall afterwards be punished for breach of our peace.

3. The like judgment shall result where the proceeding is by our writ of trespass. But some trespasses deserve a greater punishment, as trespasses committed in time of peace against knights or other honourable persons by ribalds or other worthless people; in which case our pleasure is, that if a ribald be attainted at the suit of any knight of having feloniously struck him without any provocation from the knight, the ribald shall lose the hand wherewith he offended. We have said, in time of peace, because as to injuries done at tourna-

ments and jousts, or such warlike feats, we will not interpose, unless the acts be done in our presence.

4. Our will also is, that the articles and penalties ordained by us and our council, and proclaimed to be put in force for a certain time with regard to strangers, be observed and executed according to such ordinances.

CHAPTER XXVII.

Of Attachments, and other proceedings in actions of trespass; and of the conclusion of the Eyre.

1. We have already treated of the manner of convicting offenders for breach of our peace by appeals and presentments; we must now show how the breach of our peace is to be convicted by way of trespass. In the first place, when any one has obtained our writ of trespass for a mayhem, imprisonment, or wound, or for anything stolen or robbed or in any other manner wrongfully carried away or detained, or for breaking parks, or for battery, or for other things committed against our peace, or against a bailiff for refusing to render account to his lord, let him begin by delivering his writ to the sheriff; and afterwards let him find two pledges distrainable to the sheriff to prosecute his plaint. And let the sheriff cause the trespassers to be distrained by their cattle or by their chattels, and afterwards adjourn them to be in our Court at the day prefixed according as shall be contained in our writs, to answer to the plaintiffs for

the trespasses contained in the writs; so that every defendant may have notice of his adversary's case.

2. And if the writs are returnable in a franchise, and the bailiffs will not execute our precept unless the plaintiff will find them pledges distrainable to them, in such case the sheriff may make a return in our Court, that he sent to the bailiffs of the person having the franchise of return of writs to do execution, but that they have nothing done; and we will immediately command the sheriff that he omit not by reason of the franchise to enter and do execution. And the plaintiff, if he will, may proceed against the bailiffs to recover his damages; for it would have been allowable for the plaintiffs to have found sureties to prosecute their plaints in our Chancery without prejudice to any one; wherefore the surety found to the sheriff on every writ is sufficient.

3. If the defendants suffer distresses to be taken into the hands of the sheriffs, the sheriffs may return that they have distrained them by such cattle or by such chattels; and if the defendants do not thereupon come into court, then it must be distinguished whether the plaint is in our Court, or elsewhere, as in the county, or in a court baron or other freeholder's court; and if in our Court before us or before our Justices, then we will that no default be adjudged in any plea until after the fourth day. If they do not come within the fourth day, and are not essoined, and the plaintiff offers himself and demands judgment for the default, the great distress shall be awarded, and the sheriff shall be

charged to answer unto us for the issues of the first distress; and the Justice shall adjourn the defendant to be in court on another day; at which day no essoin shall be allowed him, for we forbid the allowing of an essoin in any case after default, until such default be cleared in our Court. And if upon this day the defendants make default, the issues shall be forfeited to us, and the sheriff shall be charged to answer unto us for the same, and these distresses shall be continued from day to day until they appear and answer.

4. If the plea be in any other court than ours, and the defendants have neither appeared nor caused themselves to be essoined, we will not that judgment be delayed until the fourth day; but immediately on the first day let it be awarded by the suitors, that such distresses be detained, and more be seized, and so from court to court. If the sheriff or the bailiff has not executed the precept, let him be in mercy.

5. The same process of distress is to be awarded in defaults after essoins in a writ of trespass committed against our peace; but in an attachment of felony no distress runs excepting against the body, if it can be found. And if in the above cases the sheriff return, that the trespassers have nothing in his bailiwick whereby they may be attached, it shall be awarded that he take their bodies; and if he return that the bodies are not found in his bailiwick, then let it be ordered by our writ of judgment, that they be demanded from county court to county court until they be outlawed, if they do not appear.

6. And when any person who has been distrained shall come into court, and cannot clear his default, let him be straightway adjudged in our mercy for his default; and if there be several defaults, let there be several amercements. And if any one be attached by pledges and make default, let the pledges be summoned to hear their judgment, for not having him in court for whom they were pledged. At which day if they do not appear, or cannot deny their being pledged, they also shall be in our mercy; but if they will deny the plevin, the debate shall be between them and the sheriff.

7. When the defendants have appeared in court, and heard the plaintiffs count against them, and have defended themselves by proper words of defence, they may then aid themselves by exceptions general or special; and first, by exceptions to the judge; afterwards to the person of the plaintiff or to their own person, as shall be mentioned amongst exceptions in the writ of right;[1] or they may except to the writ, as where a writ is sued out into any other county than where the fact is alleged to have been committed, or for a fault, error, or omission therein.

8. If there be no dilatory exception, let them answer to the action; to which they may say that they were previously acquitted of the same trespass, as

[1] The proposed chapter on Exceptions in the Writ of Right is not contained in the Treatise as it now exists: but some further observations upon exceptions to the person may be found in book ii. chap. 18.

against the same plaintiff; and if this be verified by record, let judgment be given accordingly. Or the defendants may say that the parties made accord of this trespass; and if the plaintiff deny it, let the truth be inquired by the country. And if the plaintiffs will not agree to the accord, let the defendants be awarded quit, and the plaintiffs in mercy.

9. With regard to receivers of trespassers, commanders and accessories, there is not as yet any punishment ordained, *except only against the principal trespassers. And if the plaintiff complains of a damage done to himself and to his men, or only on behalf of his men, the defendant may say that every man has a separate action; and in such cases we will that the plaintiffs recover nothing by their plaints beyond the damages which they can reasonably show they have sustained by the loss of the services of their men, who have been beaten or imprisoned, or so treated as to be incapable of service. And their action shall not be brought until after conviction of the trespass committed against the servants.[1]

10. If the sheriff return that the defendant is a clerk, and refuses to submit to his jurisdiction, and that he has no lay fee in his bailiwick whereby he can

[1] According to Bracton, an action might be brought by the master for the insult and disgrace inflicted upon him in the person of his servant, although no loss of service followed; and even though the servant withdrew from his action, or refused to prosecute, the master might himself sue. (Brac. 115.) The change of law is indicative of an increase of personal independence.

be distrained, let his ordinary, as the archbishop or bishop, be commanded by our writ that he cause such a one his clerk to appear. And if he does not produce him at the day named in our writ, let the bishop be summoned to answer why he did not produce him at our precept. And if the bishop neglect our summons let him be attached to come by distress, and if he does not come at the first distress, let the great distress as above said, proceed against him until he shall come; and when he has appeared in court, if he cannot clear his default, let him be amerced.

*11. There are however several actions of trespass which require greater expedition, as trespasses committed against us or our consort, or our children, or against foreign persons, as solemn ambassadors or alien friends, or against our officers, or against merchants, or against those who have taken the cross; in which cases no formality of attachment shall be required, but the bodies of the defendants shall be immediately attached, so that the sheriff shall have them to answer on the first day.

12. There are some actions also pleadable by like distresses as in trespass, where no outlawry ensues, and which are more dilatory by a day, and commence by summons; as a plea of debt, of covenant, in case of warranty of charter, waste, sale, destruction of houses or woods or other freehold, and pleas of naifty, and several others.

13. Whatever may be pleaded in the county court may also be pleaded in the eyre of the Justices; as pleas

de retito namio, of debt, of naifty, of wards, and marriages; also presentments made in the sheriff's tourns and in views of frankpledge; and also pleas concerning false weights and measures, and many others, which are pleadable before our Justices assigned to take assises *in the county, and writs pleadable before our Justices of the Bench at Westminster.

14. If any presentment upon the articles of our Crown remain uncommenced or undetermined, then let the Justices, unless they have a good and reasonable excuse, be punishable at our discretion. When the presentments on the articles of the eyre are determined, the pleas of land shall be immediately adjourned before them to another county; or if the eyre is not to be continued, they shall be adjourned into the Bench, in the presence of the parties. The amercements are immediately to be assessed,[1] and the estreats sent to our Exchequer; the like as to fines and the chattels of felons and fugitives; and the names of the fugitives shall be enrolled in two rolls, whereof one shall remain with the coroners and the sheriff of the county under the seal of the Justices thereto attached, and such persons are to be demanded by their names at the first county court after the eyre, to come and submit to justice in our Court, and so from county court to county court, until they appear or be outlawed. The other roll, together with all the rolls of the eyre, shall be transmitted to our Exchequer, and safely kept in our Treasury.

[1] See before, c. ii. s. 4.

15. If the suitors of the county be attainted of false judgment, or have made any other error in the usage of the law, the county shall be in our mercy. The hundreds also for the defaults of the suitors, and the townships for divers defaults; and the amercements shall be assessed according to our Statutes of Westminster. And afterwards let the sheriff be commanded to aid the presentors by causing the neighbours to raise reasonable contributions towards their expenses.

CHAPTER XXVIII.

Of Distresses.

1. In counties we have a twofold court;[1] one of the pleas of our peace, which is held by our coroners and the suitors, and of which the coroners only have record; we have also a court of the nature of a court baron, in which the suitors are judges, and have no record out of their court, except by consent of the parties. For in their courts neither party may deny what he has before pleaded; but if the plea be removed

[1] This description of the several branches of the county court is somewhat obscure. The twofold division probably applies to the original or ordinary jurisdiction of the county court on the one hand, and the derivative jurisdiction by virtue of the King's writ on the other. The first is again subdivided into the criminal jurisdiction, in which the coroner took part, and the jurisdiction in civil actions commenced by plaint, where the process was similar to that in courts baron. (See *post*, s. 20, and c. 29. s. 1.)

out of the court of such suitors, either of the parties may deny the record. But for that purpose he must have suit ready at hand, to wit, such a one his free man who was present at such court, and saw and heard that the plea was so pleaded, which he is ready to prove by his body, in whatever manner the Court shall award that he ought to prove it. We have also our court there, with the sheriff of the county for our Justice, whensoever we command our sheriffs by our writs, that for purposes of justice they cause any plaint to be brought before them, whereof the sheriff with the suitors bears record.[1]

2. And whereas they may be entrusted with the determination of several kinds of writs, in the first place we will that they understand the nature of the plea of distress; which plea we do not allow any one to determine without our writ. But to the intent that beasts and other distresses may not be too long detained or impounded, and to avoid further damage, we have granted that the sheriff by simple plaints and by pledges may deliver such distresses, and determine the

[1] The sheriff, when sitting by virtue of the King's writ, is treated by our Author as the King's Justiciary, and as having the power of record incident to that office. See before, c. 1. s. 7; and farther on, li. ii. c. 30. s. 8. See also Brac. 117. Hengham Mag. c. iv. pp. 20, 21. It was decided in later times, that the county court, though sitting by virtue of the King's writ of *Justicies*, or *De Nativo habendo*, had not the powers of a court of record. Y. B. 2 H. IV. 24; Brooke, Abr. *Faux Imprisonment*, 30; Dalton, Offic. Vicecom. p. 158 *b*; Jentleman's Case, 6 Coke. Rep. 11.

taking without regard to the *vee*[1] and tortious detaining, if the plea is not removed by our writ into the Bench, because *vee* is an article of the breach of our peace. The substance of this plea consists in two things, to wit, in the taking and in the detaining; and forasmuch as one may take, and another detain, it is necessary that both be named in our writ. And because he who wrongfully detains, does a greater injury than he who wrongfully takes, the principal burden of the answer shall in such case fall upon the detainers. *Naam*[2] is a general term for cattle, chattels, and for all other movable things which may be taken by way of distress.

3. When any one, finding himself aggrieved by a wrongful detaining of his cattle or of his chattels, shall have obtained our writ to his sheriff, and found pledges to prosecute his plaint, let the sheriff immediately go or send some known bailiff to the place where the plaintiff says the distress is detained; and when the sheriff or his bailiff come there, let him demand a view of the beasts or chattels whereof the plaint is made. And if he cannot have a view by reason of disturbance from any detainer, or other person, whereby he cannot discharge the duty of his office, let him immediately raise the hue and cry, and cause all the disturbers to

[1] The *vee* (from the old French *vier* or *véer*, Latin *vetare*) was the refusal to deliver the distress upon offer of surety. See below, s. 6.

[2] *Naam* (Anglo-Saxon, *name*, from *niman*, German, *nehmen*, to take), a seizure, or taking.

be apprehended and kept safely in prison, so that they may not be set at liberty without our leave, for the disturbance of our peace. And if the beasts are shut up within a house or within pound, or if they are driven out of the county, or if the bailiff meet with other disturbance, let him immediately cause beasts of the deforcer to be taken to the extent of double the value by way of withernam,[1] and keep that distress without permitting it to be replevied, until the distress eloined be brought back.

4. If the taker or detainer admit the bailiff to view, and avow the thing distrained to be his property, so that the plaintiff has nothing therein, then the jurisdiction of the sheriff and bailiff ceases. And if the plaintiff is not a villain of the deforcer, let him immediately raise the hue and cry; and at the first county court let him sue for his chattel, as being robbed from him, by appeal of felony, if he thinks fit to do so.

5. When the sheriff and the bailiffs have had the view of the distress without disturbance, the distress shall be delivered to the plaintiff; and the sheriff or bailiff shall give a day to the parties at the next county court. At which day no essoin shall be allowed against the plaintiff, since this suit, like disseisin, is nearly connected with robbery; but if the defendant makes default, the distress shall be adjudged to the plaintiff, and the distrainor in mercy. If the plaintiff does not come at the day nor cause himself to be essoined, and the defendant offers himself and demands judgment of

[1] Withernam, Anglo-Saxon, *wiðer-name*, a counterdistress.

the nonsuit of the plaintiff, let it be awarded that the defendant have the distress returned, and that the plaintiff and his pledges to prosecute be in mercy.

6. When both parties appear in court, the plaintiff shall set forth his plaint, that 'whereas he had his beasts, to wit two oxen,' or two cows, or two horses, or such chattels, according to the nature of the distress, 'on such a day in such a year of our reign, in such a township,' or in such a certain place, 'there came such an one (the detainer) and took the same beasts there found,' or 'caused them to be taken by such a one,' or 'by other persons unknown, and drove them away,' or 'caused them to be driven away, from the same place, to another place, and there came the plaintiff, and demanded to have his cattle quietly, and could not have them, and afterwards tendered security for the sake of peace, and offered pledges to appear in his court or elsewhere to stand to justice, if he had any demand to make against him, and yet he wrongfully against gage and pledge detained them, or caused them to be detained, until the same beasts were delivered by the sheriff; this wrong did he to him, and this distress against gage and pledge wrongfully him refused,'—and if he did him any other injury, it should be assigned,—'to his damages of a hundred shillings,'—or more or less, according to what he shall have suffered,—'against the peace, and if the defendant do deny the same, he has good suit.'

7. Then let the defendant answer, and defend 'the wrong and force, and the breaking of the peace, and the

tortious taking, and the tortious detaining, and the refusal of the beasts aforesaid, and the damage of a hundred shillings,' or more or less as the plaintiff shall have counted against him, 'and this he will defend where and when he ought so to do.'

8. When he has thus defended himself, let him try if he can aid himself by exception against the judge; as for example, if the detaining was not done in the jurisdiction of the judge, and afterwards by exception against the person of the plaintiff, and afterwards against his own person, and then to the writ, as, if the writ was obtained before the day of the taking mentioned in his plaint. Also, if there are several plaintiffs, who are named together in the writ, and they have complained in common where the cause of action is several, the writ fails. He may afterwards aid himself by exceptions to the action; and he may answer to the taking in several ways, and may defend the *vee* by his law; but if the plea is removed out of the county court, this proceeding shall not be allowed to the defendant; but although he can justify the taking, nevertheless he shall answer concerning the *vee* and the tortious detainer, which is an article committed against our peace, of which none may acquit himself by his law, for to refuse gage and pledge is a total renunciation of our peace.

9. Or he may avow the taking and detaining as rightful, 'for that on the same day he found the said beasts in his meadow,' or in his corn or elsewhere, 'to his damage, in such a vill, and he according to the

law and custom of the realm caused those beasts to be driven to his house in the same vill, and there detained them until due amends should be made him for the damage aforesaid, or until pledges should be tendered to him for a reasonable satisfaction, so that he never refused him the beasts in any other manner;' and of this he may tender averment by the county.

10. To this the plaintiff may answer by way of replication, and say that he 'tendered him pledges to make satisfaction, and to appear in his *court, and to make him due amends by the award of neighbours; but he not complying with reason and right, refused him the beasts, as he hath before alleged in his plaint.' To this the defendant may answer by way of triplication, and admit that the plaintiff tendered him pledges, but not distrainable to him; and if the plaintiff cannot prove the contrary, let the distress be awarded back to the defendant, and the plaintiff in mercy for his wrongful plaint.

11. And also as to what the defendant says, that he took the beasts doing him damage, it may be answered by the plaintiff, that he tendered pledges to make amends for his damages, but when the damage was to have been shown, the defendant could not show or assign any damage, and thereof he may tender averment; or he may say that concerning satisfaction for those damages, they referred themselves to the arbitration of such and such persons, who awarded that no damage was done; or that he made him some settled amends for the damages, and thereof found

pledges, and thereupon he may tender averment. And according as the truth shall be found, judgment shall be given for the one or other.

12. When the taking and detaining are made by other bailiffs than ours, and the plaintiff has obtained his writ against the bailiffs jointly with the lords, in such case the lords may either avow or disavow the act of their servants; and the plea shall be pleaded accordingly. *If the writ be obtained against the bailiffs only, in such case we will that each shall answer for his own act, if the act was done in the absence of the lords; but if the lords come before judgment, and are willing of their own accord to warrant the acts of their bailiffs, the lords shall be charged with the acts of their bailiffs, and the bailiffs discharged.

13. Another answer of the defendant may be by avowing the taking and detaining as 'good and rightful, inasmuch as the plaintiff is his tenant and is in arrear for relief,' or suit at his court or other service, 'for the tenement which he holds of him, so that whenever the plaintiff would have performed to him what was in reason due, or to that end would have found reasonable security by pledges, he would have delivered to him his cattle.' To which the plaintiff may reply, that for every taking and detaining for service, three things ought to be assigned in order to render the taking reasonable, to wit, a certain place, out of which the service ought to issue, a certain cause for which the taking was made, and a certain seisin, unless the distrainor can show a deed warranting him to distrain

per my et per tout wheresoever he please, when his rent shall be in arrear, although he have no fee. If the defendant in his defence has omitted any of these three *points, and the plaintiff demands judgment against him as being undefended, judgment shall be given for the plaintiff. And if the defendant counts of any seisin, and the plaintiff denies it, the point shall be verified by the country, and judgment be given according to the verdict.

14. Where the defendant assigns the taking and detaining to be rightful on account of service in arrear, and in particular for relief, the plaintiff may answer that he tendered him his homage, and that he would not then take it; whereupon he may demand judgment whether he was obliged to perform any service to him, or to acknowledge him for his lord, until he had taken his homage and accepted him as his man. And if the plaintiff can aver it, let it be adjudged against the defendant. For relief and other services due from any tenement held by knight's fee, are things accessory to homage, which is the principal, and, the principal ceasing, the accessories ought of right to cease.

15. Another answer of the defendant may be by avowing the taking and detaining as rightful, and assigning it to be for reasonable aid, to make his eldest son a knight, or to marry his eldest daughter. To which the plaintiff may reply, and say, that what he has assigned ought not to avail him, inasmuch as he is not a knight himself, or inasmuch as he has no son or no daughter; or inasmuch as the one or the other

is not yet of age to receive the order of knighthood, or to consent to a husband; or inasmuch as the plaintiff did before pay his reasonable contribution towards such aid to the same *lord. And if one or more of these answers be averred, it shall be adjudged for the plaintiff, unless the defendant can prove the contrary.

16. When the defendants avow the distresses and detainings to be made upon the plaintiffs as upon tenants for arrears of rent or other services, and the plaintiffs disavow them for their lords, let it be awarded that the lords in such case be in mercy, and that the plaintiffs have their cattle quietly delivered to them and recover their damages; and the lords shall have their action to recover the tenements in demesne, according as shall be mentioned in the chapter upon Homage.

17. And if the lords assign that the taking and detaining was for the arrears of some service issuing out of a tenement which the plaintiffs hold, and the plaintiffs be enfeoffed by any to hold of those who are mesne between them and the chief lords, the tenants will then have the right to be acquitted by the mesne tenants, who are their lords, as against the chief lords distraining, according as such mesne tenants are bound by their charters of feoffment. And if they will not acquit them of their own accord, let the plaintiffs be aided by our writs of Warranty of Charter, and of Mesne, and by proclamations, according to the ordinance of our statutes.

*18. When the mesne tenants shall appear in court and enter into warranty and acquittance against the lords, then let the original pleas cease, and the pleas of warranty commence; wherein the mesnes may answer several ways. For they may disavow holding of them, or say that the tenements where they took the distresses are not of their fee; which answers being verified, let it be adjudged for the first plaintiffs against the lords.

19. The mesnes may also aid themselves by exceptions against the tenants; for they may demand whether the plaintiffs have anything whereby they are held and bound to acquittance. And if the plaintiffs cannot produce charter or writing binding them, let it be adjudged against the plaintiffs. But if the pleas were removed out of the county, so as to be before our justices, and their charters have been burned or stolen, and they allege the same in court by way of exception, the truth shall be inquired by the country, and according to the verdict of the inquest, judgment shall pass in favor of the mesnes or of the plaintiffs. Or if any writ of Mesne is obtained against one parcener which ought to be sued out against all the parceners, where all are bound to acquittance as one heir by their common ancestor, the writ is abatable for error in the obtaining of it, and so in all real pleas. And also any mesne may say by way of exception, that he is not bound to acquit his tenant, because the same tenant never performed to him homage, fealty, or other service; and if this be verified, and that the

*default was in the tenant, it shall be adjudged against the plaintiff.

20. Again, the defendant may avow the taking and detaining to be rightful, and assign that he did it by judgment of his court,—and thereof he may vouch his court to warranty,—and in particular for a plaint made against the plaintiff by such an one his neighbour, who found security to prosecute his plaint, to which plaint the same plaintiff was summoned to answer at a certain day, at which day he neither came nor was essoined, wherefore the court awarded at the suit of the plaintiff, that he who now is plaintiff should be distrained to come to the next court, until he would submit himself to justice by law. If the plaintiff, as to the matter alleged, is willing to put himself upon the record of the court, the defendant shall cause the record thereof to be brought into court, and if the record make for the defendant, a return of the cattle shall be awarded to him, and the plaintiff in mercy for his false plaint. But if the record make for the plaintiff, let it be awarded that the plaintiff have his distress free, and recover his damages, and the defendant be in mercy. And if false judgment or erroneous proceedings be found in the record, and the action be in the county, we will not that the sheriff or suitors have cognizance thereof; but he who shall find himself aggrieved shall make his complaint, and cause the proceedings and the record to be brought by our writ before our justices of the Bench at Westminster, and the error shall be there redressed, if any be found therein.

*21. If the plaintiff acknowledge the distress to be made by award of the court of the defendant, he so far admits the taking to be legal; but if he further say that, when he tendered him pledges to appear in his court, and there to submit to justice according to law, the defendant rejected such plevin, and refused to permit him to replevy the distress, and if the defendant deny it, averment shall be made, and according to the verdict, it shall be adjudged for one party or the other.

22. If the plaintiff complain only against one, and has by his plaint made him both taker and detainer, and in evidence of this produces suit; in such case the defendant may deny the taking, and if the suit on examination be found to disagree, let it be adjudged for the defendant, and the plaintiff be in mercy for his false suit. If the suit be found to agree, then the defendant may defend the taking by his law against the plaintiff and his suit; and if he tenders his law to the plaintiff and he refuses it, it shall be adjudged against the plaintiff, and so in the reverse case. If the plaintiff accepts it, a day shall be given to the defendant, that he come that other day to perfect his law with his twelve co-jurors; at which day he may be essoined from making his law, and the plaintiff may also be essoined. But if either make default, it shall be adjudged against the absent party. If the defendant has not fully twelve co-jurors, or any of them are refusable upon good exception, as by the exception that he is a villain, or excommunicated, or has been attainted of

*perjury, or condemned to the pillory, let it be adjudged for the plaintiff, and the defendant in mercy, inasmuch as he has failed in performing his law.

23. If the plaintiff say that the defendant designedly absented himself, in order not to be found where pledges might be tendered to him; or if he say that he tendered pledges to his bailiff, such a one by name, and he would not deliver them, because his lord had forbidden the deliverance; in both these cases defence by law lies, if the plaintiff has his suit agreeing therein. But if he has no suit, or such as do not agree, then it will be unnecessary for the defendant to wage law against the sole word of the plaintiff; but it shall be adjudged against the plaintiff. For we will that none be obliged to wage law against another without proper suit produced upon the point. And if the plaintiff would complain of the bailiff in respect of the refusal, the contest shall be between the plaintiff and the bailiff.

24. Where the defendant avows the taking and detaining to be justifiable on account of service which was in arrear for a tenement in such a vill, which the same plaintiff holds, and whereof he was himself seised or some other his ancestor by the hands of the plaintiff or other certain tenant, since the time limited in assise of novel disseisin, if the plaintiff cannot deny the seisin, let it be adjudged for the defendant. For we will not have it tried by such writ, whether the seisin has been rightful or tortious; but the tenant may procure by our writ, that his lord do not demand of him other

*services or other customs than he ought of right to do to him; so that if he is aggrieved by the possession, it is our will that he shall procure his remedy in the right; and that every writ shall have its proper nature, and one shall not be pleaded by means of another.

25. Another plea of the defendant may be, 'that he took and detained the cattle rightfully, and by reason of a soil which was his several, in the which he found the same cattle feeding several times, and from the which he had often warned the plaintiff to turn them out, and he nevertheless sent them in another time contrary to his prohibition, and he was always ready to deliver them, if the plaintiff had been willing to abstain from doing those wrongs, and thereof to have found surety, whereas the plaintiff never would do so.' To this the plaintiff may reply, that 'the defendant wrongfully took them and wrongfully detained them, because the pasture of the same soil is his common, and his common ought to be where he and his ancestors have always had common, and this he is ready to verify, where and when he ought.' And because he would not deliver the beasts quit, the plaintiff might by means of this writ recover title of common and freehold, where peradventure he had never any right of common, if an inquest were to decide in his favour;[1]

[1] This passage is obscurely expressed. If we understand it as implying that the inquest upon the title to common is taken in the action of replevin, it is contrary to the general rule, that a title to freehold is not to be tried in such an action (see before, s. 24); and is contradicted by the parallel place in Fleta, where

*in such case it is our will that the cattle remain with the plaintiff, and the defendant be in mercy; and if the plaintiff will still be a commoner and claim a freehold of common, the defendant shall have his remedy by our writ of Novel Disseisin if he thinks fit to pursue it.

26. Such as shall be convicted of taking a distress beyond the value of their demand, although they have avowed the cause of their distress to be legal, shall nevertheless be in mercy for the excess. And if any one has made a double distress for one demand, and in particular, after the deliverance of the first distress, pending the plea concerning the first taking, in such case the plaintiff shall be entitled to our writ, to cause his cattle to be delivered, and the distrainor shall be bound by gage and pledge to be before us or our justices at a certain day to answer for such trespass committed against our peace. Whosoever shall be convicted of this offence, damages shall be first awarded to the plaintiff, and afterwards the distrainor shall be punished by imprisonment and fine; or in such cases

it is expressly said, that the sheriff upon such a plea has no power to proceed further. (Fle. 101, § 24.) Yet this construction appears to be adopted by the commentator in MS. *N*, who says: 'par cas poet il recoverir title de franc tenement parmi verdyt en le replegiari, tot seit ceo a tort.' I should rather suppose that the sense of *pur ceo qe* in the beginning of the sentence ought to be repeated, and that the true translation would be, 'And because, on account of the non-delivery of the beasts, the plaintiff might recover title of freehold, &c.; therefore it is our will in such case, &c.'

we will command our sheriffs, *that if they find such trespasses to be committed against our peace, they shall speedily inflict such punishment by imprisonment of the trespassers and by heavy amercements, that others by their example may be corrected in like cases.

CHAPTER XXIX.

Of Debt.

1. In county courts also before our sheriffs and the suitors, and in hundred courts, and in courts of freemen, pleas of trespass and debt may be pleaded without our writs,[1] simply by gage and pledge, provided that neither the goods carried away in trespass nor the debt demanded exceed forty shillings; except trespass of mayhems and wounds, and inprisonment, and batteries committed against our peace. For we will that no one have cognizance or jurisdiction to hold pleas of such complaints, nor of other trespasses for goods

[1] The following note explains some of the disadvantages of proceeding in the inferior courts: 'In pleas commenced by plaint, issue cannot be taken by averment of the country, but only by suit or proof. And although there may be jurisdiction in the county court or in the court of a liberty, extending to ten, twenty, or thirty pounds, still it is more advantageous to plead in Bank by the *præcipe quod reddat*, on account of the *fieri facias* which follows by statute. But the sheriff or bailiff has no power to levy the debt out of the lands and chattels, though he has power to distrain by virtue of execution of judgment.' (Note in MS. *N*.)

carried away beyond the value of forty shillings, or of debts exceeding the same sum, without our writs; which writs shall sometimes be pleaded in the county court, and in franchises, unless removed therefrom by our precept, and sometimes elsewhere before our justices; and we will that great trespasses be pleaded before ourselves.

2. An obligation is a legal bond, whereby a person is bound to give or do anything, and thus it is the parent of an action, and takes its origin from some precedent trespass or contract. *An obligation by contract may arise in many ways by the united consent of the parties; which consent is sometimes naked and without clothing, and sometimes clothed. From a naked obligation no action arises, except by common assent; it is necessary therefore in every obligation that it be clothed. An obligation should be clothed by five incidents, by a material thing, by words, by writing, by unity of will, by delivery, by relation.[1]

3. It is clothed by a material thing, when anything is lent and borrowed, to be restored on a certain day; and by such loans the debtors are bound to restore to the creditors the things borrowed in as good or better condition than they received them, or else their value, unless by accident of fire, water, robbery, or larceny, they have lost them; for against such accidents no one

[1] Our author gives no explanation of the meaning of *joynture*. The word is borrowed from Bracton, where it appears to be used to denote the connection of several contracts relating to the same subject matter. (Brac. 99, 100 *b*; Fle. 128, c. 60, § 2.)

ought to answer for things lost, unless they happened by his own fault or negligence. But if a debtor carries money about him and foolishly shows it among thieves, and is robbed of it, it does not follow that he is not bound to the creditor; because he did not use his diligence to keep the money, for he might have taken better care of it.

4. The second kind of clothing is by words passing between the creditor and debtor, by which they come to an agreement by offers and stipulations.

5. The next incident is by writing, which may be pure and simple, and without day or condition; in which case the creditor may demand the thing presently or whenever he pleases. *But if a day of payment be specified in the writing, the debtor is not bound to pay before the day, and when the day arrives, it is sufficient if he makes the payment any time of the day, for the debtor has the whole day; and likewise it is with regard to a certain year, or a certain month, named in the writing, if no certain day be specified. Also, the writing may be conditional, and will or will not take effect, according as shall be mentioned below concerning conditional purchases. But whatever the conditions may be, no writing or obligation shall be binding as a conditional contract, if the condition be impossible or unlawful. Impossible, as in this case, if you will procure me the moon, I will give you ten shillings. Unlawful, thus, if you kill such a man, I will give you ten shillings. Yet in the negative such conditional obligations would hold good, thus, if you do not pro-

cure me the moon, or if you do not kill such a man, I will give you ten shillings. And if the debtor binds himself in any allowable and innocent penalty, the penalty shall stand, for the debtor was willing when he bound himself thereto, and no injury is done him against his will.

6. The next incident is unity of will and consent; and this is mentioned with reference to those who know not how or are not able to consent, as the deaf,[1] and the mad, and mere idiots, and infants in their tender age, and lunatics and frantic persons during their fury, and *married women, and persons in religion removable by their superiors of the same order,[2] and those who are compelled to bind themselves, and pure villains.[3]

[1] Bracton admits, that a deaf man may contract by writing; so also Fleta. See the passages referred to in the margin above.

[2] Among the statutes of the Benedictine order, confirmed at a council of the heads of the order in England, A. D. 1249, is the following: "Nullus monachus obedientiarius vel claustralis det aliquid vel suscipiat absque licentia sui superioris." (Matth. Paris. Addit. p. 1096.) By the same regulations no prior or other officer or obedientiary was to be appointed for life, but all were to be subject to removal. (ib. 1096, 1098.) See Littleton, Ten. s. 200.

[3] A villain might acquire property real or personal, and his acquisitions enured to the benefit of his lord, if the latter chose to take them; but the villain while in possession could make a good title to a stranger. See li. ii. c. 7. s. 1; Brac. 25 *b*. It follows from s. 25, below, p. 139, that debts and executory contracts could not be enforced against a villain pleading his own villenage. But no reason appears why a contract should not have been enforced by a villain against a third party, if the rule

With such persons no contract or obligation is binding.

The next incident is delivery, which is an induction of the thing into possession with the consent of the creditor, as shall be mentioned concerning such inductions in treating of purchases after gifts.

8. When any one will sue for a debt within the sum of forty shillings, or for any small trespass, first, let him find security to the sheriff to prosecute his plaint, if he will proceed in the county court, or to some bailiff, according as he chooses to proceed in the hundred court, or in a freeholders' court. And let the debtor be summoned to be at the next court to answer the plaintiff upon such demand as he has made against him, so that he have reasonable warning to answer the demand of the plaintiff.

9. Upon the day named in the summons both parties may be essoined; but if the debtors or any persons against whom a plaint of trespass is brought without our writ shall make default whether such default be before essoin or after, it shall be awarded that they be distrained by their cattle or by their chattels to be at the next court. And if they make default another time, it shall be awarded that the first distress *be retained, and a fresh one taken, and so from court to court, and that they may not replevy the beasts, until they find pledges

generally held, that an exception of villenage against the person of the plaintiff could only be pleaded by his lord. Compare below, li. ii. c. 18. ss. 2, 5; Brac. 193 *b*, 196 *b*, 197; Hengham P. c. 8. p. 103; Littleton, Ten. s. 189.

to answer the plaintiff. In plaints of trespass no summons shall be made, but they shall be distrained on the first day. And if the plea be removed before our justices, the grand distress shall take place, and the sheriff be charged to answer for the issues, as above mentioned in the chapter of Attachments.

10. And when the defendants come to have their distresses delivered, let them find pledges to answer at the next court, and to return the distresses if they do not appear, and then let the distresses be delivered. At which day, if they do not appear, let it be awarded that the pledges be summoned to be at the next court, to show why they did not produce those for whom they were pledged according to their undertaking; and whether they come on the day on which they are summoned or not, let them be amerced; and they shall have their recovery against those whom they pledged, for not acquitting them of their suretyship, as they ought to have done. The defendants shall then be distrained again to come and answer to the plaintiff, and these distresses shall remain irreplevisable until they have answered.

11. When any defendant shall be found in court, *after he has been attached, let him immediately answer, or be treated as undefended, whether he has before made default or not; and when he has answered, then and not before let the distress be delivered to him. This shall be done upon presumption of his malice, in that he was not willing before to find pledges to be amenable to justice.

12. When the parties shall have appeared in court, then let the plaintiff open his plaint, and say that 'the defendant wrongfully detains from him and does not render to him twenty shillings, which he lent him on such a day in such a year in such a town, in ready money, and which money he ought to have rendered to him on such a day following in the same year, and the said money did not render, but detained the same wrongfully and to his damage of ten shillings, and if he will deny it,' then the plaintiff may tender suit.

13. To this the defendant must answer and defend the wrong and force, and the debt and the damages. And as an obligation is contracted in divers ways, so likewise it may be defended; hence the debtors may aid themselves in many ways by exceptions. Wherefore let the defendant aid himself by exceptions, if there be any which can avail him. Among the rest, he may demand whether the plaintiff has anything from him, whereby he has bound himself to render that debt; and if he produces a tally, or a suit, and the suit is found to agree, then he may deny the debt by his law, and in that case the proceedings are the same as are before mentioned in the chapter on Distress.

14. If the plaintiff produces a writing, the defendant may answer thereto in several ways; *for he may deny the writing, and tender averment by the country that the same is not his deed. And if the plaintiff prays the averment, then let the truth be inquired by means of the witnesses named in the writing, when there are any or by the country.

15. Or, if the writing be the deed of his ancestor, he may demand judgment of the writing, whether he is bound to answer to that writing for the debt of his ancestor, whereas there is no mention made in the writing of his being obliged to the payment thereof. For in this case we will that none be bound to pay the debt of his ancestor, whose heir he is, to any other but to us, unless he be thereto especially bound by the deed of his ancestor.

16. Or he may say that the writing ought not to affect him, for when he made it he was under the age of ten years ;[1] and if this be verified, let it be adjudged against the plaintiff.

17. Or he may plead, that this writing ought not to affect him, for at the time of it being made he had lost his seal, and caused it to be cried and published at the churches and markets, so that if anything was made under that seal after a certain day on which it was lost, it ought not to affect him; and in such manner he may deny the deed,[2] and thereupon let the

[1] The age under ten years appears to be selected merely as an example of pleading in a particular instance, with no reference to any especial disability connected with that age.

[2] There is an entry in MS. *M.* of an assise of novel disseisin concerning land at Thorley, between William de Gerburg and William de Clifford and others, which appears to belong to the end of the reign of Henry III or the beginning of Edward I, in which this defence is set up against the deed of Arnald de Thorley under which the demandant claimed. The jury found, 'quod prædictus Arnaldus amisit sigillum suum, et si aliqua carta vel scriptum ab illa hora in posterum proferatur sigillatum

truth be inquired by the neighbourhood where the deed is supposed to have been made, and according to the verdict of the country, let him who shall be found to have been guilty of falsehood be adjudged to prison, and punished by fine.

18. And if the deed was not made within our jurisdiction, so that the truth *cannot be inquired by us, the proof shall be left to the plaintiff, so that if he can prove the contract by good witnesses, it shall be adjudged in his favor. These exceptions shall have place in our court and before our justices; for in county courts and other petty courts no one can prove a foreign contract, if it is denied.

19. If there is in the writing any erasure in the number or in proper names, or in the date, or day of payment, or if there be other signs of falsification in it, as diversity of hands or of ink in the writing, or if the seal be so attached that it may be taken off and put on again by contrivance, then the defendant may

prædicto sigillo, quod pro nullo haberetur. Et dicit, quod prædicta carta et scriptum facta fuerunt tempore quo prædictus A. amiserat prædictum sigillum; unde dicit præcise quod licet prædicta carta et scriptum signatum fuit de sigillo suo, unquam de voluntate prædicti Arnaldi facta fuerunt.' Fortunately the demandant had also pleaded an acknowledgment of the deed by Arnald de Thorley before Gilbert de Preston and his companions Justices Itinerant in the county of Hertford, 39 Hen. III, and as to this fact had vouched the rolls of the said Iter. 'And because the said William had put himself as well upon the rolls of the said Iter as upon the assise, the trial was adjourned.' Upon the subsequent day the acknowledgment to Arnald was found upon the rolls, and the plaintiff obtained judgment.

demand judgment whether he is bound to answer to such a defective deed; in which case we will that judgment be given against the plaintiff for the great presumption of fraud.

20. Or he may say that the writing ought not to affect him, because it was made at a time when the defendant was in prison; which answer must either be allowed or disallowed, according as fear or force was used against him in prison, as above mentioned in the chapter upon prisoners. Or he may say that the writing ought not to affect him, by reason that he executed it when he was not in his right senses. This exception shall hold in the case of madmen and those who have lost their memory by sickness or any *other pain; but not in the case of drunkards, or of such as are light-headed, although they may sometimes not be in their right mind.

21. Or he may say, that the deed ought not to affect him, because the plaintiff was once his steward, or his chamberlain, or in other service with him, and on account of the great confidence which he had in him, he delivered him his seal to keep, and while he had it in his custody he caused the said deed to be made without his privity. Inasmuch as he thus in part acknowledges the deed to be his, it shall be awarded for the plaintiff; and let the defendant provide himself for the future with one who will keep his seal safer. And he shall have his action of treason against the plaintiff by appeal of felony, if he pleases; which action must be prosecuted within a year and a day from the time when

he first knew of that writing; or if he will not sue by appeal of felony, he may bring his suit in form of trespass. For if the exception were tried by an inquest, and given against the plaintiff, he would be punished as in form of trespass, and the felony would remain unpunished.

22. Or he may say that the deed ought not to affect him, because it was made on condition, so that if the plaintiff had performed the condition, then he would have been bound to him. *But in proof of this he must show some writing of the plaintiff or enrollment in court of record, in default of which the plaintiff may defend the condition by his law, and recover the demand against the debtor. And if he produce a writing containing the condition, which the plaintiff cannot deny, it shall be tried, whether the plaintiff has performed the condition or not, and this not by rigour of law, but by means of the exception, and according as shall be found concerning the satisfaction of the condition it shall be adjudged for one or the other. For rigour of law would require that one action should not be tried by another, any more than one question can be resolved by another. But if the condition is contained in the writing produced by the plaintiff, in such case there shall not be two causes of action.

23. Or the defendant may allege payment, and show an acquittance.

24. Or, if the debt is demanded against him as a surety, and he demands judgment, whether he ought to answer for the debt so long as the principal debtor

is capable of doing so, this exception shall be allowed to the defendant, if the cause be true. But if the principal debtor and the pledges are bound each for the whole severally, then the exception shall not be allowed, but judgment shall go for the plaintiff, and the surety shall have his action and his recovery over against the principal debtor. And if pledges are jointly bound, and the demand is made severally against one, when there are more than one, and this pledge demands judgment whether he ought to answer severally for the joint obligation, this exception shall be allowed, if the cause be true, and it shall be awarded that the pledge do go without day, and the plaintiff in mercy.

*25. Or he may say that this deed ought not to affect him, because he is the villain of such a one, by reason of his blood and of his tenement, and was of that condition when he made the writing, and whatsoever he has belongs to his lord, so that he has nothing of his own; and he may demand judgment whether he ought to answer to such contract without his lord. And if the plaintiff cannot deny this, it shall be awarded that the plaintiff take nothing by his plaint, but be in mercy, and the villain without day. And if the plaintiff brings his plaint against the lord, and the lord demands judgment whether his villain can bind him, or whether he is bound to answer for the personal act of his villain, it shall also be adjudged against the plaintiff. And the like, in case where a married woman is bound; for we will not that a wife shall have power to bind

her husband, or a villain his lord, or any other his superior, or a parson his church without the bishop and patron, on account of the mischief which might arise therefrom.

26. Or he may say, that he is impleaded or appealed of felony, and if he demands judgment whether he ought to answer in a plea of debt until he is acquitted of the felony, and if the cause be true, and the felony be capital, then we will that the exception be allowed.

27. Or he may say, that he was formerly impleaded for the same debt and by the same person in our court, or in another, where he was acquitted by judgment, and the plaintiff in mercy. And if the plaintiff cannot deny this, or if the parties *put themselves upon proof by the record, let it be adjudged according to the record for one or the other.

28. Or he may plead, that he ought not there to answer concerning this debt, because there is a plea depending concerning the same debt between the same persons in a superior court, or elsewhere in our court. And if the plaintiff cannot deny it, he loses his plaint.

29. Or, if the debt be issuing out of any tenement as an annual rent payable yearly for term of life at least, and the debtor demand judgment whether he ought to answer concerning frank tenement to a plaint or writ of debt without other writ, in such case we will that the plaintiff take nothing, but proceed by writ of annual rent, or by distress.

30. If the plaint is before us or before our Steward, then we will that the debtor answer concerning

every debt for which he shall be found bound to the plaintiff under the distress and jurisdiction of the Steward of our household, wherever the contract was made, whether within our realm or without, and whether the debt be great or small, so as it does not concern frank tenement. And we will that plaintiffs prosecute their plaints before our Steward for such debts without our writs, but by simple plaint only, and by finding surety to prosecute the plaints; and the like of trespasses *and felonies committed within the verge of our household, wheresoever we shall be in our realm; which verge shall comprise a circumference of twelve miles around our dwelling.

31. When any one shall be attached and shall appear in court before our Steward, being impleaded of a debt, which debt he cannot deny, let it be awarded that the plaintiff recover his debt, and damages by taxation of the court; and let the debtor be delivered to the Marshal, to be kept at his peril, until satisfaction be made of the plaintiff's demand and of the amercement due to us for the wrongful detainer. And if any debtor is bound by pledges at the commencement of the attachment, or after, and the debtor does not acquit his pledges according as they are bound for him, let the pledges be immediately distrained to satisfy the plaintiff. Nevertheless let earls and barons found within our verge, and the servants of our household, be summoned for debts, before they are distrained or attached by their bodies, the first out of respect for their persons, and the others out of regard for our

service. And wherever the Marshal is to execute his attachments, and does not find sufficient distress to the value of the demand of the plaintiff, he shall execute the attachments by the bodies, whether the defendants be clerks or laymen, and safely keep the bodies until they submit to the determination of the law, whether the plaints are for debt, or trespass, or felony.

*32. And we will that none be attached by our marshal, except where the debtors are especially bound by their writing to the jurisdiction of our steward. Such as withdraw themselves out of our verge to avoid being attachable by our marshal, shall, wheresoever they are again found within our verge, be answerable for their trespasses or felonies committed within our verge, though not in the same place where they are found. If any one, accused before our steward of a trespass or felony, can prove that the fact was not committed within our verge, or that he was not found within our verge when he was attached, in such cases we will that such exceptions be allowed to the defendant. Execution of the judgments of our steward, and attachments within our verge shall be made by our marshal, and without the verge by our sheriffs and by virtue of our writs.

33. A person may be indebted several other ways besides by money borrowed, as by his own recognizance, or by that of his ancestor, who has acknowledged in our court that he was indebted to another in a certain sum of money to be paid at a certain day, and granted that if he should not pay it, the sheriff should levy it

out of his lands and chattels. And by virtue of such recognizances made in our court, we will that the lands and heirs of *the recognizors remain bound, whether the heirs are especially mentioned as bound in the recognizances or not; and not only the heirs, but the lands and tenements of the recognizors, into whosesoever hands they come.

34. Also, as a person may be indebted for money borrowed, so he may likewise be indebted by reason of any movable thing borrowed and not returned at the day; and of such things the value and damages should be demanded.

35. And what a person cannot demand of his debtors by reason of their deaths, shall be demanded against their executors; which demand need not in every case be made against all the executors, but only against such as administer the goods and chattels of the deceased. There are however some debts, which shall not be pleaded in our court, or in any lay court, as those arising from testament and marriage, that is to say, concerning chattels left in the possession of the testator,[1] and chattels given as a marriage portion.

[1] The annotator in MS. *N.* observes upon this, that will and intention not carried into act are spiritual matters; and that the will and conscience of a testator are so obscure and secret that no earthly judge can be certified thereof. For that the law of this land determines nothing that is not open and certain, as where an intention is carried into effect by an act. 'But the king,' he adds, 'hath sometimes cognizance of devises, not of movable chattels, but of tenements purchased in an enfranchised town, as London or Northampton, which may be devised in like

But as to chattels of the deceased of which he was not possessed on the day of making his will, such as debts owing to him, and chattels in the hands of others, and also chattels promised and due on account of marriage, of these the cognizance shall belong to our court. And if any debtor die without making any testament, *let those into whose hands the goods of the deceased shall come be answerable for his debts, as is laid down in our statutes of Westminster. But if any person who dies shall simply and without any specialty commit his last will respecting the distribution of all his movables to the disposal of some friend, and such last will can be proved, this shall be a sufficient testament.

36. When any debt is recovered in our court, judg-

manner as movable chattels, because burgesses being in trade generally employ (enplaient) the half, or more, of their goods in their houses (herbergage), the purchase whereof they may devise, but not their inheritance. The king hath therefore of necessity cognizance thereof as of a thing annexed to freehold. For though the spiritual judge had cognizance of such tenements so devised, he would have no power of execution, inasmuch as such tenements savour more of freehold, yea and of fee and seigniory (oyl e de fee e de sr'), and testament in such case is in lieu of charter. Wherefore such testaments ought to be solemnly proved in the boroughs, as is customarily done in London, not by proof of the testament, but by proof that the testament hath been proved in court christian, on account of the disherison done by false testaments.' The writer then gives the form of a writ, addressed to the king's bailiffs of Northampton, which differs little from the writ *Ex gravi querela*, which may be seen in Reg. Brev. Orig. 244 *b*; Vet. Nat. Brev. 85 *b*; Fitzh. Nat. Brev. 199.

ment and execution shall be had according to the ordinance of our statutes, and from him who has nothing, nothing shall be recovered.

37. There is also a kind of debt due to persons from their servants who detain from them their property, and refuse to give an account thereof; in which case the plaintiffs shall have remedy according to the ordinance of our statutes. And if any servant allege, by way of exception, that he has given in his accounts to his lord, or to his lord's attorney, and that the lord or the attorney has his rolls and other memoranda relating to the matters whereof he should render account; in such case if he can verify his exception, it shall be allowed, unless the lord redeliver to him his rolls under the servant's seal. In cases where the action is removed into our court on account of an alleged *wrong of the first auditors, we will that whatsoever was allowed before the first auditors shall remain allowed before the second, so that it shall not be the duty of the auditors in our court to determine anything relating to the account, except as to the wrong which the first auditors may have done to the servant. And we will that no one shall be obliged to render an account to any lord, except ourselves, elsewhere than in the neighborhood where he was his bailiff.

38. There are also other personal actions of which sheriffs may take cognizance by virtue of our writs of *Justicies*, concerning torts in contracts, as where a covenant is broken, or concerning account, or to enforce a reasonable aid for knighting the lord's son, or

marrying his daughter, or a right to take water at another's well, or to have a free bull, or free boar, or to have common at a watering-place for his cattle or to take reasonable estovers, or to have a way, or common of fishery, or to enforce an acquittance, or concerning gages damaged or not returned, or charters, or concerning suits detained, or mills wrongfully erected, or houses or folds, or other such nusances; and many other actions, wherein the proceeding is by distress of chattels, and by damages, and the trial is by juries.

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*CHAPTER XXX.

Of the Sheriff's Tourns.

1. There are some articles concerning our Crown and the breach of our peace of which sheriffs may hold plea at other times than on the county days, and in a different place from that where the pleas of the county are held. These pleas are called the tourns of the sheriff, who ought to hold them twice in the year, within every hundred of his county. And that which before the sheriff is called the sheriff's tourn, is in the court of a freeman and in franchises, and in our hundreds, called view of frankpledge, where a more special inquiry is made concerning those whose who are not in any tithing, than is done in the sheriff's tourn.

2. At these tourns all the freemen of the hundred and other landholders being summoned by general summons ought to appear, except clerks, persons in

religion, and women. At which day let the sheriff cause twelve of the most sage, lawful, and sufficient men out of the whole hundred to be chosen, and to swear they will present the truth of the articles hereinafter mentioned. Afterwards the rest shall be sworn by dozens, and by townships, that they will make lawful presentment to the first twelve jurors upon the articles wherewith they shall be charged by them. Next it shall be enjoined them, that if they find any offender, from whom there may be any danger of life or limb, the name of such offender be secretly presented. Afterwards the following articles shall be delivered to the twelve first jurors, who are to be charged upon their oaths that they will lawfully present the wrongs and offences which they *shall find upon inquiry from the townships by means of these articles.

3. Of mortal enemies of the king or queen, of their children, and of those consenting to them; of counterfeiters of the king's seal and of his money; of homicides and murderers; of those who feloniously set fire to the houses or corn of others; of burglars, robbers, and thieves; of breakers of the king's prison; of ravishers of women; of outlaws and abjurors of the realm who are returned; of sorcerers; and sorceresses; of apostates and heretics; of traitors; of poisoners; of cutpurses; of usurers; of salesmen knowingly buying and selling stolen meat; of those who knowingly bleach skins of stolen beasts; and of menders of clothes knowingly buying stolen clothes and turning them into other shapes; of treasure hidden and found in the earth; of hue and

cry wrongfully raised, or duly raised and not pursued; of waters stopped or narrowed or turned from their course; of roads stopped, narrowed, or turned; of boundaries removed or wrongfully altered; of walls, houses, gates, marl-pits, ditches, or other nusances raised or made in any common way to the annoyance of the same way and to the danger of passengers; of petty thieves, who shear or *flay sheep or other cattle in the night to steal their skins; of those who take thefbote; and of those who have made a prison in their houses; or committed hamsoken, or breach of pound; and of offenders in parks or in vivaries; of takers of others' pigeons; of breach of the assise of bread and beer, and of those who buy and sell by weights and measures not according to the assise; of affrays, of brawlers, and of bloodshed; of watches not kept; of the king's highways not widened; of those who have detained approvers in any other prison than in our custody, or other felons elsewhere than in our prison above a day and night; of new franchises, customs, or instruments of correction,[1] set up since the last tourn, in water or land; of waif, or wreck of sea found and retained; of bridges and highways broken, and who ought to repair them; of rights belonging to the king withheld, as wards, marriages, reliefs, demesnes, advowsons of churches, and all kinds of suits; and of those who claim royal franchises and powers of punishment; and of those of twelve years old and upwards in the hundred who have not come to the tourn.

[1] 'Gallows, pillory, tumbrel, or the like.' (Note in MS. *N.*)

4. All these articles shall also be inquired of at the view of frankpledge; and the following articles besides; whether all the headboroughs are come to the view, and whether they have their tithings complete; *of those of twelve years old or upwards, except clerks, and knights and their children, and women, who are not in tithings, and of their receivers, and of whose mainpast they are;[1] of vagrants through the country who are not of any one's mainpast, and are of suspicious character.

5. When the townships have given in their verdict to the first jurors, and they are certified of the truth, let the first jurors immediately go and deliver up their presentment to the sheriff, such as they will abide by without being questioned, and let them exhibit the

[1] The annotator in MS. *N* observes here, that frankpledge was so called, 'because villains and naifs ought not to be in tithings, *secundum quosdam*.' It is not improbable that the term frank, or free, pledge arose from a misinterpretation of the Saxon Friðborh, or pledge of peace. It is true however that the Anglo-Saxon tithings were composed of 'freemen;' (Leg. Cnut. 20; Cart. Will. I. de stat. 14); but the churl was in Saxon nomenclature 'free.' In the laws of William I. it is provided that 'all the villains shall be in frankpledge.' Leg. Will. I. 20. There can be no doubt that the peasants were the principal subjects of this regulation when in its vigour, the military tenants, the *liberi homines* of Norman law, being exempt. See Bracton 124 *b*; Fleta 62 (§ 10). The doubt above mentioned as to the admission of villains seems to show that at the time when it was entertained either the institution of frankpledge was already in decay, or the peasants were in a great measure enfranchised.

presentments for felony privately, and the other presentments openly.

6. If any person indicted of felony be present, he shall be immediately apprehended and carried to our gaol, unless it be any thief or robber in possession of his theft 'handhaving and backbearing,' and the sakeber be present to make his suit, in which case let the evidence be examined, and judgment executed upon him, if the sakeber verifies the thing as his own, or as stolen or robbed out of his custody; and let the punishment be according to the quantity of the thing stolen as before is mentioned. As to such of the persons indicted as shall not be found present, let the persentment be sealed under the seals of the twelve persentors. And the sheriff shall cause them to be apprehended, and keep such as are not bailable safe in prison until the *first gaol delivery, and bail those who are bailable until the same time.

7. What persons are bailable and what not, is mentioned in our statutes. Besides, those persons are not bailable, who are indicted or appealed of compassing our death, as is above said; nor those who are apprehended by the judgment of our justices, as persons convicted of open deceit committed in our court, nor those who are apprehended for redisseisin, nor those who by judgment of our court are committed to prison for arrears of accounts, nor those who are taken for rape of women, or by statute merchant, nor those who are convicted of trespassing in parks and vivaries, or of impeding the execution of judgments of our court, nor

those who have carried off religious women from their convent, nor those who have carried off infants whose marriages belong to others.

8. As to the presentments made of boundaries removed, ways and waters obstructed, and such other personal trespasses, let the trespassers, if they are present, immediately answer thereto; and if they will not, or if they are not present, then let the twelve presentors be commanded immediately to go and remedy such nusances, if they have been done since the last tourn, by restoring matters to their lawful and usual state. And if such jurors have wrongfully aggrieved any persons in their absence by their presentment, in such case the persons *aggrieved shall have an action to be reinstated, by plaint in the county court, or by our writ, if necessary, either against all the twelve presentors jointly, or against any of them severally. And if the plaintiffs cannot make good their plaints, then let the defendants recover their damage, and the plaintiffs be in mercy.

9. Afterwards let all those be amerced who shall be named as trespassers by the presentments, and those also of twelve years and upwards who have not appeared, except prelates, earls, barons, persons of religion, and women, and except also those who are not living or constantly resident in the hundreds, although they may have dwellings there. As to breach of assises, let the proceedings be as mentioned in the next chapter. In views of frankpledge, let the headboroughs be amerced, who shall not have their tithings complete,

there present, unless they are excusable by reason of the death of any one or more. Also let those be amerced who are twelve years old and upwards, and who ought to be in a tithing and have not been, and those also of whose mainpast they are and have been; but if any person be elsewhere in a tithing, it is sufficient.

10. When any one is to be admitted into a tithing, first he shall find pledges to our bailiffs, that he will be amenable to justice in *our court as often as there shall be occasion, and shall take the oath of fealty to us and to our heirs; and let him be delivered to his pledges, and let his name and the names of his pledges be enrolled.

11. Fealty shall be sworn in these words: Hear this you, N., bailiff, that I, P., from this day forward will be faithful and loyal to our lord E. king of England and his heirs, and will bear unto them faith and loyalty of life and limb, of body and chattels, and of earthly honour, and will neither know nor hear of their hurt or damage, but I will oppose it to the best of my power; so help me God and the Saints.

CHAPTER XXXI.

Of Measures.

1. We will that no one have measures in our realm except ourselves, but that every one take his measures and his weights from our standards, as of bushels, gallons, pounds, ells, and other such measures.[1]

2. And we will that the assise of bread be observed in this manner.[2] When the quarter of wheat is sold for twelvepence, the farthing loaf of wastel bread white and well baked shall weigh 6lb. 16*s*.; coket bread of the same corn and the same bolter shall weigh more than wastel by two shillings; bread of a lower price than coket and of another bolter shall weigh more than the wastel by 5*s*.; *simnel bread shall weigh less than the wastel bread by 2*s*., because it shall be twice baked; the farthing loaf of entire wheat shall weigh one and a half of coket; bread of trayt shall weigh two wastels; bread of all corn shall weigh two cokets. When wheat is sold for 18*d*. the quarter, then the farthing loaf of wastel shall weigh 4lb. 10*s*. 8*d*.; when

[1] As to the measures used in England in the thirteenth century, and their respective quantities, see Assisa de Ponderibus (Stat. incert. temp.), Flet. 72, 73.

[2] It should be observed, that the same standard of weight is used for bread and money. The *solidus* or *shilling* (*s*.), is the 20th, and the *denarius*, penny or pennyweight (*d*.), the 240th part of a pound. See below, s. 5.

for 2*s.*, it shall weigh 68*s.*; when for 2*s.* 6*d.*, the weight shall be 54*s.* 4¾*d.*; when for 3*s.*, the weight shall be 48*s.*; when for 3*s.* 6*d.*, the weight shall be 42*s.*; when for 4*s.*, the weight shall be 34*s.*; when for 4*s.* 6*d.*, then 30*s.*; when for 5*s.*, the weight shall be 27*s.* 2½*d.*; when for 5*s.* 6*d.*, it shall be 24*s.* 8½*d.*; when for 6*s.*, the weight shall be 21*s.* 8½*d.*; when for 6*s* 6*d.*, it shall be 20*s.* 11*d.*; when for 7*s.*, the weight shall be 19*s.* 1*d.*; when for 7*s.* 6*d.*, the weight shall be 18*s.* 1½*d.*; when for 8*s.*, the weight shall be 17*s.*; when for 8*s.* 6*d.*, the weight shall be 16*s.*; when for 9*s.*, then 15*s.* 0¼*d.*; when for 9*s* 6*d.*, the weight shall be 14*s.* 4½*d.*; when for 10*s.*, then *13*s.* 8*d.*; when for 10*s.* 6*d.*, the weight shall be 12*s.* 11¼*d.*; when for 11*s.*, then it shall be 12*s.* 4*d.*; when for 11*s.* 6*d.*, then the weight shall be 11*s.* 10*d.*; when for 12*s.*, the weight shall be 11*s.* 4*d.*; so that the weight of the loaf shall be changed for every 6*d.* rising or falling in the quarter of corn.

3. The baker may still gain out of every quarter of wheat threepence, and the bran and two loaves of the value of two sterlings[1] for his oven, three halfpence for the wages of his three servants, and one halfpenny for the wages of two boys, and one halfpenny for salt and for the bolter. We will that if a baker be convicted of false weight,[2] where there is found a deficiency

[1] A sterling appears to be the same as a penny. 'Denarius Anglicanus, qui vocatur sterlingus, rotundus et sine tonsura, ponderabit xxxii. grana frumenti in medio spice.' Assisa de ponderibus. (Stat. incert. temp.); Fleta 72. 73.

[2] Similar varieties of readings to those mentioned in the note

of the weight of one farthing in the weight of two shillings, he shall be amerciable; and for any greater default he shall be set in the pillory.

*4. The assise of beer shall be observed in this manner. When a quarter of wheat is worth from three shillings to forty pence, and a quarter of barley from twenty pence to two shillings, and a quarter of oats sixteen pence, then two gallons of beer shall be sold in cities and boroughs for one penny, and in country places three gallons of beer for one penny; and when three gallons are sold in cities and boroughs for one penny, then four shall be sold without for a penny; and when the quarter of barley shall be sold for two shillings, three gallons of beer shall be worth a penny; thus the market of beer shall rise and fall according to the current price of corn.

5. And whereas we have entrusted one of our officers with the custody of the standards and samples of our weights and measures, we will that this officer shall have jurisdiction and cognizance of false weights and measures throughout our verge, wheresoever we be in our territory, within franchise and without, and to burn such as he shall find false, and to amerce and otherwise punish those who have made use of such weights or measures. We have also appointed him to deliver standards to all those who require them, where-

above are also found in the several copies of the Latin Assisa panis, (Stat. incert. temp.) See Statutes of the Realm, (Rec. Com.) p. 200. See also Fleta 72. The Assisa panis was formerly printed as a statute of the 51st year of Henry III.

of the pound shall weigh twenty shillings of current money; the ell shall be two cubits and two inches; a bushel shall contain two hundred pounds in pence, and a gallon twenty-five pounds. Merchants *nevertheless shall have their weights as far as regards avoirdupois[1] according to their customs.

6. When the officer of the measures is to perform his office, let him do it in this manner. First let him go with his standards from market to market, wherever he shall find any within the verge, and immediately summon the bailiffs to come before him to perform what he shall enjoin them on our behalf. And if they will not come, or if they come and will not be obedient to him, let the franchise of the market be taken into our hand, if it is held by any other than by us; and if they are our bailiffs, let them be punished by imprisonment and fine. If the bailiffs appear as they ought to do, then let them be commanded that they cause to be brought before him all the bushels and half bushels, and quarts, gallons, and half gallons, and all other measures whereby people have bought or sold in the town, and from every baker a loaf of every sort, and all the bakers and brewers of the town, and the taverners, and all those to whom the measures belong, and other good people of the town, by whom he may inquire the truth concerning the articles of his office. And those who are summoned and do not come, if the summons be proved, shall be in mercy. When they are come before him, he shall immediately cause twelve

[1] See above, c. xxii. s. 22, and note there, p. 80.

of the most lawful householders to be sworn, that they will present the truth of the articles wherewith they shall be charged on our behalf.

*7. The articles shall be these: whether the lord of the franchise hath set up a market there of his own authority, or by our warrant, and if by our charter, whether he hath the franchise of view of frankpledge or not, and whether he has the correction of the breach of assise of bread and beer, and whether he has the instruments of punishment appendant to such franchises, as gallows, pillory, and tumbrel. And if it be found that he has no market or franchise by our warrant, the franchise shall be seised into our hand, and the sheriff of the place shall be responsible to us for the issues. Likewise if he has the franchise of view, but no gallows, the view shall be seised into our hands, and also the correction of breach of assise, for want of other instruments of punishment.[1]

8. Afterwards let inquiry be made concerning bakers and brewers,[2] who have baked and brewed out of the right assise, how many times they have been amerced, and how many times sentenced to the pillory, and for what amount of offence they were amerced or put in the pillory; and for every illegal judgment let the

[1] This passage is obscure, and possibly corrupt. The *fourches* or gallows would only be required where the lord had jurisdiction of infangthief.

[2] It will be observed, that the word in the original implies that the trade was carried on by females. So in the Latin Assisa panis (Stat. inc. temp.) the word is *braciatrix*.

franchise be seised into our hands. Let inquiry afterwards be made whether any man or woman has been destroyed in consequence of the instruments of punishment being faulty or out of repair, and if such default be found, the franchise shall be seised into our hands; and if our bailiffs are in fault, they shall be punished by imprisonment and fine.

9. Afterwards let it be inquired concerning taverners, who since the last eyre in the *county have sold wine contrary to the legal assise, and how much their profit above the right assise amounts to; and if they are living, let them be punished by pillory and fined in double the value of their gain. Afterwards let inquiry be made concerning those who buy by one kind of measure, and sell by a false measure of less quantity; and let them be punished as the sellers of wines; and likewise those who shall be convicted of false ells and of false weights; also salesmen and cooks, who make a practice of selling to passers-by bad meat, tainted or diseased, or otherwise dangerous to the health of man. Likewise forestallers, who raise the market price of victuals by their dealings outside the market.

10. Afterwards let the weights and measures be severally examined, and the good ones be restored to the owners, and the false ones burned. And let the bakers and brewers convicted of breaking the assise be punished in proportion to their offence either by amercements or pillory. And let our officer of measures without delay cause the estreats and the enrollment of his proceedings to be delivered to the

Steward of our household, who shall speedily cause such estreats to be levied by the marshal, or by summons out of our Exchequer.

Here ends the subject of pure personalty, and begins that of the condition of villains.

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*CHAPTER XXXII.

Of Villenage.

1. We have above in part treated of the law of free persons; we must now treat of the condition of villains. This condition was of ancient time changed from freedom to bondage by the constitution of nations, and not by the law of nature, as it stood at the time of the flood and earlier, when all things were common to every one, and all men were entirely free, and lived according to the law of nature. But from the increase of mankind and the appropriation of goods which before were common, battles arose in divers places in the world, and to avoid bloodshed and the perilous chances of battle, it was then ordained by the constitution of nations that men should not kill one another, but whenever one could take another in battle, that the person taken should for ever remain a bondman to him who took him, to do with him and all his issue that should proceed from him whatsoever he would, as with his beast or chattel, to give, to sell, and to kill. Afterwards it was ordained, on account of the cruelty of some lords, that no one should kill them, but that their

lives and limbs, as well as those of free men, should be under the protection of kings and princes.[1] Whence the law is this, that whosoever kills his villain, shall bear the same judgment as if he had killed a free man.

2. There is another kind of naifs who are not naifs by ancient birth, but are properly villains,[2] such as *free

[1] 'Although the property of villains is in their lord, yet he may not kill them, inasmuch as life and limb belong to the king, who has in every subject a sort of remote fee by title of seignory (qi ad en chescun homme auxi come un fee sutyl en noun de seignurie). The lord is therefore in the position of a mesne between his bondsman (serf) and the king, and ought to treat his villain in due manner as for his employment, and not for his destruction (pur lui enprower e ne mie dampnier.' Note in MS. *N.*

[2] The annotator in MS. *N.* distinguishes between naifs, villains, and serfs in the following way: 'Naif is he that has come of such lineage that they have been in servitude for several generations (qe tote voirs de eve e de treve unt esté en servage). Villain is he that has come afresh into servitude, from which he cannot depart though he be of a free stock. Serf is he who is not absolutely a villain, nor absolutely free, but is *de facto* in servitude, as a freeman who marries a nief and enters into the villain tenement, and does to his wife's lord the villain customs which belong to the land held in the villenage. Wherefore this freeman and the issue he has by the nief, are serfs *de facto* and freemen *de jure*, and are called serfs for the servitude in which they are. Wherefore if the issue of this freeman remains in servitude, and his issue the same all their lives, and so on to the fourth degree, the fourth will be a villain for ever, and those who come of him.' I do not know any other authority for this last statement, which is inconsistent with the text of Britton, (see below, ss. 3, 19.) but may probably have agreed well with the earlier practice. (See note on sect. 4.) The whole passage,

men who have acknowledged themselves in our court to be villains, or who have been in any manner convicted as villains by plea under our writ of Naifty. Beside those mentioned, there are no other kinds of villains.

3. With respect to those who by reason of any tenement have made redemption of blood [1] or done other villain services, although they and their ancestors have performed such services from one generation to another,[2] if any one sprung from such a stock has fled from his lord, and is demanded by him as his villain, and such fugitive can prove his stock to be free by good inquest of the neighbourhood, and that the lord claiming him was not seised of him and his ancestors

as compared with the other authorities, shows the uncertain and fluctuating condition both of the law on this subject, and of the meaning of the terms employed.

[1] 'Redemption of blood' is the same as *mercheta* or *merchetum*, called in Fleta, *merchetum sanguinis* (Fle. 193), a customary payment made by a tenant for license to give his daughter in marriage. This custom was considered a special mark of tenure in villenage. (Brac. 26, 195, 208 *b*; Littleton, Tenures, ss. 174, 209).

[2] The annotator in MS. *N*, in a note upon Bracton, c. 11, has the following explanation of the expression of the text: 'Unum est genus hominum, qui dicuntur villici sive rustici et nativi ex avo et tritavo; unde Gallice dicitur, vileyn de eyve e de treyve; quia villici sunt personaliter.' It will be seen that the annotator himself uses the phrase in the note last cited. Coke has a different explanation. See Coke Lit. 25 *b*. The same expression is found in the Year Books. Hil. 1 Edw. II. p. 4.; Pasch. 15 Edw. II. p. 464.

as his villains by reason of their bodies, but by reason of the tenement which they held of him in villenage; in such case judgment shall be given against the lords. For justice will not allow that villenage, by any long seisin of a servile tenement, shall make any freeman a bondman; nor, on the other hand, that long seisin of a free tenement shall change the condition of a villain into free estate. So that none can be a villain except by birth, or by recognizance. Nor can one be more a villain than another; for they are all of equal condition,—whosoever is a bondman, is as absolutely a bondman as any other.[1]

4. Nevertheless all who are begotten by villains are not bondmen, for no one begotten by a bondman of a free woman out of *matrimony is a bondman, although

[1] The doctrine that there is no distinction of condition among those not accounted free, appears to have been imported by Bracton or his predecessors from the civil law. 'In servorum conditione nulla est differentia.' (Justin. Inst. li. 1. tit. 3. § 5.) In Anglo-Saxon and early Norman times nothing is more remarkable than the gradations of servitude among the peasants. In Domesday Book the various classes inferior to the liberi homines (villani, bordarii cotseti, &c.) are clearly distinguished from the bondmen or slaves (servi). In Glanvill (li. 5. s. 4.) the word *servitus* is used as equivalent to *villenagium* or *nativitas*, but I think that the term *servus* is not employed, the various expressions being *in villenagium positus nativus* (li. 5. *passim*), and *rusticus* (li. 14. c. 1). In Bracton and Fleta *servus nativus*, and *villanus* appear to be synonymous. This confusion of ancient distinctions was pointed out in the fourteenth century by Andrew Horne in the Mirror of Justices. (Mirror, c. 2. s. 28. p. 169; c. 5. s. 1. pp. 291, 295.)

it happen that the issue be afterwards born within matrimony. Nor shall he be a bondman who was begotten on a bondwoman in matrimony, so as the father be free.[1]

5. Where any one is by birth a bondman, he shall be merely the chattel of his lord to give and sell at his pleasure. But as bondmen are annexed to the freehold of the lord,[2] they are not devisable by testament; and therefore Holy Church can take no cognizance of them in Court Christian, although devised in a testament.

[1] In Glanvill's time the children followed the status of the mother, according to the rule of the civil law: 'Servi sunt qui ex ancillis nostris nascuntner'; (Dig. li. 1. tit. 5. l. 5.) and the free husband, if he adopted his wife's estate, and lived upon a tenement held by her in villenage, forfeited 'his law.' (Glan. li. 5. c. 6.) In the time of Bracton, if the father was a freeholder, and the children were born *in librero toro*, they were free; but if the husband adopted his wife's estate, and the children were born *in villenagio*, they followed their mother's condition. (Brac. 5, 193 *b.*) The more liberal rule stated in the text prevailed in later times. (Littleton, Tenures, s. 187.)

[2] It should not pass without notice, that there is no mention in Breton or in the other earlier authors (so far as I am aware) of the class of bondman described by Littleton as villains in gross. (Littleton, Tenures, s. 181.) Examples may be found of villains being transferred in the thirteenth century from one lord to another without the soil on which they lived; but they were probably held to become annexed to the new manor upon which they were settled. The Mirror agrees with our author in treating villains as always annexed to the freehold. (Mirror, c. 2. s. 28 p. 166.) Servitude, as a personal relation, appears to have been then unknown in England.

6. A villain may recover his freedom several ways, as if his lord enfeoff him of any tenement to him and his heirs, whether he receive his homage or not; for since it is the lord's pleasure that his bondman shall have heirs of his own other than the lord, and that his heirs shall succeed to his inheritance, it sufficiently appears that he intends his bondman have the status of a freeman. A bondman also becomes free if he marries his lady, as well as a nief when her lord marries her; for otherwise so great inconvenience would ensue, that the heir should be villain to himself, and the land should escheat to the chief lord, who would hold the heir as his villain, when perhaps neither he nor any of his lineage were ever so.[1] But if a villain espouses a free woman who has land in fee, their son born in matrimony *is a villain, and his lord shall acquire the land of the mother either by his own entry or by means of his villain, heir to his mother, by assise of Mortdancester, if she does not assign it over in her lifetime, and the son survives her, and she has no other issue which is free. Wherefore when any bondman or bondwoman once becomes free, or is enfranchised by the free bed of his lord or of any other, we ordain in favour of freedom and of matrimony that they and their issue shall for ever be held free, and the husbands be entitled to hold by the courtesy of England, and the wives to dower.

7. We will that villains in all actions be answerable to every one, and every one to them, so that the excep-

[1] That is they were not the villains of *that lord.*

tion of villenage shall only hold good between the lord and his villain,[1] and that only when the lord has been in recent possession of him and of his suit, or at the least has been seised of him as his villain within a year and a day.

8. A bondman may be enfranchised also by the recognizance of his lord, as if his lord has acknowledged him to be free in a court of record. So also if he be waived by the lord, as where the lord has abandoned him. Likewise, by writing of his lord, as if his lord has for himself and his heirs quitclaimed to the bondman and his heirs all manner of right which he had or might have in the person of the naif by reason of the bondage of his blood. *Villains may also recover their freedom by the negligence of their lords, as if any lord suffer his villain to be fugitive for time of prescription limited in our writ of Mortdancester; or to abide within our demesnes without challenge for a year and a day,—a privilege which was heretofore granted to us by common allowance for our profit and for the improvement of our towns. Likewise, if he permit his naif[2] to be ordained clerk, or created a knight,

[1] The principle here stated was of gradual introduction. According to Glanvill a stranger might in some cases except to the competency of a naif to take part in certain legal proceedings even after his enfranchisement. For the lord could make him free as against himself, but not as against third parties. (Glan. li. 5. c. 5.) Compare before c. 29. s. 6, p. 159, and the note there.

[2] 'The lord who permits his villain to be on the level of a freeman (a foer de franc homme) loses the right to his service; or if

at least until they be degraded from their orders ; and so in the case of his naif, if he suffer her to be married to a freeman, she and all her issue shall for ever after be of free estate, as before is said.

9. Where any naif flies from his lord, his lord may pursue him as his chattel, to apprehend and bring him back into his fee wheresoever he shall find him within the year and day. But after that time they shall be deemed free as much as they please, until the lords can recover them by judgment of our court. It is not however necessary for every lord to keep his villain as a prisoner ; but it is sufficient if the lords are in possession of their services, so as to take of some the services due from their tenements, and from others, who hold nothing in villenage, a penny a year for chevage, and one day's work in harvest, or other service, small *or great, according to their ability. So that the lord's right of action to recover his fugitive naif commences when the naif ceases to preform such services and to acknowledge him for his lord.

10. If the lord cannot find the fugitive in his fee, nor bring him to justice within the year and day, we will command the sheriff of the place in whose bailiwick the villain shall be residing, that he ' justly and without delay cause such a one the plaintiff to have such a one his naif and fugitive with all his chattels and all

he suffers him to be his attorney, or juror on an assise (ou assisr) or clerk, or knight, or burgess, and in other cases where the sufferance of the lord shows his intention that the villain should have any reverence out of servitude.' (Note in MS. *N.*)

his suit.' In this plaint no summons lies, but the first process is distress, and the first distress is retained and others taken, if the plea be in the county court, until the defendant appears or is attached by pledges.

11. And because the fugitive may allege freedom, a matter which the sheriff has not jurisdiction to try, we have, in favour of freedom, granted to such fugitives that whenever they find themselves aggrieved by such proceedings of their lords, they shall have peace from such grievances until the eyre of our justices in that county, and that they shall have our writs for that purpose, whenever they wish to obtain them, upon finding pledges to the sheriffs to prove their freedom in the eyre aforesaid ; and that in the meantime they shall have peace.

12. This writ of peace is called the writ *De libertate*, and in favour of freedom the pleadings are sooner dispatched than in a writ **De nativo*, unless the person who purchased the writ fail to appear, upon which he and his pledges shall be in mercy for his nonsuit. If, on the other hand, he prosecutes his suit, and the lord makes default, and the summons be in evidence, let it be awarded that he be free, and the lord in mercy, because he has wrongfully aggrieved him, and let the sheriff be commanded not to permit the lord to aggrieve him for the future. If the lord appears, it then lies on the bondman to prove his freedom, which he may do in divers ways, as appears by the several points, which have been stated in this chapter.

13. In a plea of naifty (as also in pleas of Replegiari

facias, Venire facias, and the like) no essoin is to be allowed to the defendant until after appearance. And if the lord offers himself, and the fugitive makes default, let it be awarded on account of his default, that the fugitive and his pledges be in mercy, and that the plaintiff by the default of the fugitive do make proof of his naifty against the fugitive, so that the fugitive be never afterwards admitted in our court to prove his freedom, and that he be distrained by the grand distress until he appear.

14. If any lord has obtained a writ to remove the plaints by *Pone* to a higher court, before any plaint upon the original writ is commenced in the county court the *Pone* shall thereby be abatable, on account of the false suggestion therein contained, which supposes a plaint to be in the *county court, where in fact no summons was ever made. For before summons or attachment or appearance, a plaint is never in court. And this may be verified by the date of the *Pone* and the day of the summons.

15. And when he is in court, let the plaintiff count against him by himself or his serjeant in this manner: 'John who is here declareth this to you, that Peter who is there wrongfully fled from him, and herein wrongfully, that he is his villain who fled from his land within the term, &c., and of whom he was seised as of his villain until such a year when he fled from him.' Forasmuch as the effect of this writ is to determine the possession as of a chattel, it is not proper to count in this plea by descent nor by resort, nor to touch at

all upon the right[1], no mention being made thereof in the writ. For then there would be a variance between the writ and the declaration, and so the writ would be abatable. And besides, if one could so count, the defendant might then defend the right by battle, or by the great assise, which would be a great inconvenience to the lord. And because proof of naifty is made by suit, he must add thus, 'and if he denies this, he denies it wrongfully, for the plaintiff hath thereof suit good and sufficient.'

16. And immediately let the suit be examined, not only by taking their acknowledgments whether they are villains to the plaintiff, but whether he against whom the plaint is prosecuted was ever upon the land of the plaintiff, and in what manner the plaintiff was seised of him. *And if the suit be found to disagree, in so much is it bad and defective, and the plaint shall be lost.

17. But if the suit agrees, then let the defendant answer thus: 'Peter who is here defends the wrong and force, and the flight from the land of John and the naifty, and will defend the same where and when he ought.'

18. Afterwards he shall aid himself by exceptions to the judge, and then to the person of the plaintiff, and afterwards to his own person; and next by exception to the writ if there is any defect or error; and afterwards to the declaration, if there is any defect, omission, or variance in it; and lastly to the action.

[1] The property, as distinguished from the possession.

19. Thus he may say that 'he is a freeman, and Robert his father was free, and those of the suit were free, until they acknowledged themselves villains; for in the reign of king Richard,' or of some other king, 'it came to pass that a certain knight begot one Theobald, great-grandfather of this same Peter, which Theobald married the nief of the ancestor of the same John, who held land of him in villenage, which Theobald as long as he lived performed the villain services to the tenement appertaining, and died in the same villenage; that from Theobald came Philip, from Philip William, from William Simon, from Simon Robert, from Robert Peter who is here, all of whom performed the services aforesaid by reason of the *villain tenement, and not by reason of their persons, until the time of Robert, father of this same Peter. And if he can prove this by inquest, it shall be adjudged against the plaintiff.

20. The defendant may also aid himself by exceptions against the suit, for he may say that as to one of his kindred he is not admissible in evidence. For if there were three of his male kindred, and five females, or more or less, and he can aver of one of the kinsmen that he was begotten out of matrimony of a free woman, and that the second kinsman who offers himself for suit was begotten in marriage by a freeman although his mother was a nief, notwithstanding he has no exception to make against the third kinsman of the suit, we will that if he demands judgment whether he ought to answer to the suit of a single man, it shall

in such case be adjudged against the plaintiff; because the blood of a man cannot nor ought to be tried by means of women, neither is one male alone without more to be admitted as sufficient suit.

21. Or he may plead that he has done homage to his lord for a tenement; or that his lord has released him from all actions; or that he married his lady; or (if the defendant is a woman) that she was married to her lord or to another freeman. Or he may be aided by other peremptory exceptions, as above is mentioned.

22. If any one pleads that he is a clerk or knight, in such case judgment shall be given against the plaintiff, *who must impute it to his own negligence. And if the clerk or the knight had not leave from the lord to take upon him such order, or those who ordained them to confer the same upon them, then the lord shall have his action to recover against those who ordained them to be knights or clerks such damages as he can reasonably assign. And if such knights or clerks refuse to perform honourable services becoming their station more readily and cheerfully to such natural lords than to others, or behave in any other manner unnaturally to them, in such cases we will that they be degraded; and if this cannot be done, that satisfaction be made to their lords out of their chattels; and if their chattels are not sufficient, let those who ordained them be answerable.

23. Or the defendant may say that the plaintiff is not entitled to an answer, inasmuch as this is an action limited within a certain term (as other actions are),

and inasmuch as neither he nor any of his ancestors were ever within the term seised of him or any of his ancestors, as their villains, he may demand judgment whether he is at this time bound to answer to him. And if this be proved, the plaintiff shall be convicted of false plaint. But to this, as in all other actions, he may reply that such plea ought not to avail the defendant, for that by continual claims he has been *theretofore demanded and his ancestors likewise, by him and his ancestors by other like writs, but by the death of his ancestors or by the king's death those writs abated.

24. Or the defendant may plead that he has resided upon our demesne lands or elsewhere in any of our towns or cities for a year and a day without having been claimed by the plaintiff, and if he demands judgment whether in such case he ought to answer, and can verify this exception, the lord shall be forejudged of his action for his negligence. So also, where the defendant can prove by record of our court that the lord has knowingly suffered him to be upon juries and inquests in our court as a freeman. So, if he can verify by record that he has recovered frank tenement against him by judgment of our court, wherein the plaintiff did not allege any exception of villenage against him.

25. Or he may say that the plaintiff ought not to be answered until he has fully restored to him whatever goods of his he detains from him, or hath detained since he claimed free estate; which plea shall be

allowable by reason of the words contained in our writ, which says, 'with all his chattels and all his suit,' so that the plaintiff in his own writ supposes himself not to be seised of any of the chattels.

26. If judgment is given for the plaintiff, let it be awarded that the plaintiff recover him as his villain with all his suit and *all his chattels and all his acquisitions, and that the villain have no heir other than the lord, and the villain shall remain in our mercy.

Here ends the book of personal pleas, and begins that of real pleas.