

5.

TESTAMENTS are the legal Declaration of a Man's Intentions, which he wills to be performed after his Death. These are, 1. Written. 2. Nuncupative.

6.

AN EXECUTOR is he, to whom a Man by his Will commits the Execution thereof.

7.

ADMINISTRATORS are, 1. *Durante minore Aetate* of an infant Executor or Administrator. 2. *Cum Testamento annexo*; when no Executor is named, or the Executor refuses to act. 3. General Administrators; in pursuance of the Statutes of EDWARD III. and HENRY VIII.

8.

The OFFICE and DUTY of Executors, (and, in many points, of Administrators also,) are, 1. To bury the Deceased. 2. To prove the Will, or take out Administration. 3. To make an Inventory. 4. To collect the Goods and Chattels. 5. To pay Debts; observing the Rules of Priority. 6. To pay Legacies, either general or specific; if they be vested, and not lapsed. 7. To distribute the undivided Surplus, according to the Statute of Distributions.



BOOK THE THIRD.

Of PRIVATE WRONGS, *or* CIVIL
INJURIES.

CHAPTER I.

Of CIVIL INJURIES; *and their* REDRESS, *by*
the mere ACT *of the* PARTIES, *or the mere*
OPERATION *of* LAW.

1.

WRONGS are the Privation of RIGHT; and are,
1. PRIVATE. 2. PUBLIC.

2.

PRIVATE WRONGS, or CIVIL INJURIES, are an
Infringement, or Privation, of the civil Rights of
Individuals, considered as Individuals.

3.

The REDRESS of civil Injuries is one principal
Object of the Laws of ENGLAND.

4.

This REDRESS is effected, 1. By the mere ACT
of the PARTIES. 2. By the mere OPERATION of
LAW. 3. By BOTH together, or SUIT in COURTS.

5. RE-

5.

REDRESS, by the mere ACT of the PARTIES, is that which arises, 1. From the SOLE ACT of the Party injured. 2. From the JOINT ACT of all the Parties.

6.

Of the first Sort are, 1. Self-Defence. 2. Recaption of Goods. 3. Entry on Lands and Tenements. 4. Abatement of Nuisances. 5. Distress; for Rent, or for Damage. 6. Seising of Heriots; &c.

7.

Of the second Sort are, 1. Accord. 2. Arbitration.

8.

REDRESS, effected by the mere OPERATION of LAW, is, 1. Where a Creditor is Executor or Administrator, and is thereupon allowed to retain his own Debt. 2. In the case of Remitter; where one, who has a GOOD Title to Lands, &c, comes into Possession by a BAD one, and is thereupon remitted to his antient good Title, which protects his ill-acquired Possession.

CHAP. II.

Of COURTS *in general*; and, *first*, of the PUBLIC
Courts of COMMON LAW and EQUITY.

1.

REDRESS, that is effected by the ACT both of
LAW and of the PARTIES, is by SUIT or AC-
TION in the COURTS of Justice.

2.

Herein may be considered, 1. The COURTS them-
selves. 2. The COGNIZANCE of Wrongs, or Inju-
ries, therein. And, of COURTS, 1. Their NATURE
and INCIDENTS. 2. Their several SPECIES.

3.

A COURT is a Place wherein Justice is judicially
administered, by Officers delegated by the Crown:
Being either a Court of Record; or not of Record.

4.

INCIDENT to all Courts are a Plaintiff, Defend-
ant, and Judge: And, with us, there are also usu-
ally Attorneys; and Advocates or Counsel, viz. ei-
ther Barristers, or Serjeants at Law.

5.

Courts of Justice, with regard to their several
SPECIES, are, 1. Of a PUBLIC, or general, Juris-
diction throughout the Realm. 2. Of a PRIVATE,
or special, Jurisdiction.

6. PUB-

6.

PUBLIC Courts of Justice are, 1. The Courts of COMMON LAW and EQUITY. 2. The ECCLESIASTICAL Courts. 3. The MILITARY Courts. 4. The MARITIME Courts.

7.

The general and public Courts of COMMON LAW and EQUITY are, 1. The Court of Piepoudre. 2. The Court-Baron. 3. The Hundred Court. 4. The County Court. 5. The Court of common Pleas. 6. The Court of King's Bench. 7. The Court of Exchequer. 8. The Court of Chancery. (Which two last are Courts of EQUITY as well as LAW.) 9. The Courts of Exchequer-Chamber. 10. The House of Peers. To which may be added, as Auxiliaries, 11. The Courts of Assise and *Nisi prius*.

C H A P.

C H A P. III.

Of the Residue of PUBLIC Courts; and those also of a PRIVATE Jurisdiction.

I.

ECCLESIASTICAL Courts, (which were separated from the TEMPORAL by WILLIAM the Conqueror,) or Courts CHRISTIAN, are, 1. The Court of the Archdeacon. 2. The Court of the Bishop's Consistory. 3. The Court of Arches. 4. The Court of Peculiars. 5. The Prerogative Court. 6. The Court of Delegates. 7. The Court of Review.

2.

The only permanent MILITARY Court is that of Chivalry; the Courts martial, annually established by Act of Parliament, being only temporary.

3.

MARITIME Courts are, 1. The Court of Admiralty. 2. The Court of Delegates. 3. The Lords of the Privy Council, and others, authorized by the King's Commission, for Prize-Causes.

4.

Courts of a PRIVATE or special Jurisdiction are, 1. The Forest Courts; including the Courts of Attachments, Regard, Sweinmote, and Justice-Seat. 2. The Court of Commissioners of Sewers. 3. The Court of the Marshalsea and the Palace Court. 4. The Courts of the Principality of WALES.

L

5. The

5. The Court of the Duchy of LANCASTER. 6. The Courts of the Counties palatine, and other royal Franchises. 7. The Stannary Courts. 8. The Courts of LONDON, and other Corporations:— To which may be referred the Courts of Requests, or Courts of Conscience; and the modern Regulations of certain Courts Baron and County Courts. 9. The Courts of the two Universities.

C H A P. IV.

Of the COGNIZANCE of civil Injuries.

I.

ALL civil Injuries are COGNIZABLE either in the Courts ECCLESIASTICAL, MILITARY, MARITIME, or those of COMMON LAW.

2.

Injuries cognizable in the ECCLESIASTICAL Courts are, 1. PECUNIARY. 2. MATRIMONIAL. 3. TESTAMENTARY.

3.

PECUNIARY Injuries, here cognizable, are, 1. SUBTRACTION of TITHES. For which the Remedy is by Suit to compel their Payment, or an Equivalent; and also their double Value. 2. NON-PAYMENT of ecclesiastical DUES. Remedy: By Suit for Payment. 3. SPOLIATION. Remedy: By Suit for Restitution. 4. DILAPIDATIONS, &c. Remedy: By Suit for Damages.

4. MA-

4.

MATRIMONIAL Injuries are, 1. JACTITATION of MARRIAGE. Remedy: By Suit for perpetual Silence. 2. SUBTRACTION of CONJUGAL Rights. Remedy: By Suit for Restitution. 3. INHABILITY for the Marriage State. Remedy: By Suit for Divorce. 4. REFUSAL of decent MAINTENANCE to the Wife. Remedy: By Suit for Alimony.

5.

TESTAMENTARY Injuries are, 1. DISPUTING the Validity of WILLS. Remedy: By Suit to establish them. 2. OBSTRUCTING of ADMINISTRATIONS. Remedy: By Suit for the Granting them. 3. SUBTRACTION of LEGACIES. Remedy: By Suit for the Payment.

6.

The Course of Proceedings herein is much conformed to the civil and canon Law: But their only compulsive Process is that of Excommunication.

7.

Civil Injuries, cognizable in the Court MILITARY, or Court of Chivalry, are, 1. Injuries in point of HONOUR. Remedy: By Suit for honourable Amends. 2. ENCROACHMENTS in COAT-ARMOUR, &c. Remedy: By Suit to remove them. The Proceedings are in a summary Method:

8.

Civil Injuries, cognizable in the Courts MARITIME, are Injuries, in their Nature of common Law Cognizance, but arising wholly upon the Sea, and not within the Precincts of any County. The Pro-

ceedings are herein also much conformed to the civil Law.

9.

All other Injuries are cognizable only in the Courts of COMMON LAW: of which in the Remainder of this Book.

10.

Two of them are however commiffible by these, and other, inferior Courts; viz. 1. REFUSAL, or NEGLECT, of JUSTICE. Remedies: By Writ of *Procedendo*, or *Mandamus*. 2. ENCROACHMENT of JURISDICTION. Remedy: By Writ of Prohibition.

C H A P. V.

Of Injuries, and their Remedies, at the COMMON LAW; and, first, of Injuries to the Rights of PERSONS.

1.

IN treating of the Cognizance of Injuries by the Courts of COMMON LAW, may be considered, 1. The INJURIES themselves, and their respective REMEDIES. 2. The PURSUIT of those Remedies in the several Courts.

2.

INJURIES, cognizable by the Courts of COMMON LAW, are in general REMEDIED by putting the Party injured into Possession of that Right, whereof he is unjustly deprived.

3. This

3.

This is effected, 1. By DELIVERY of the THING detained to the rightful Owner. 2. Where that Remedy is either impossible or inadequate, by giving the Party injured a SATISFACTION in DAMAGES.

4.

The Instruments, by which these Remedies may be obtained, are SUITS or ACTIONS; which are defined to be the legal Demand of one's Right: And these are, 1. Personal. 2. Real. 3. Mixed.

5.

Injuries (whereof some are with, others without, FORCE) are, 1. Injuries to the Rights of PERSONS. 2. Injuries to the Rights of PROPERTY. And the former are, 1. Injuries to the ABSOLUTE, 2. Injuries to the RELATIVE, Rights of Persons.

6.

The ABSOLUTE Rights of Individuals are, 1. PERSONAL SECURITY. 2. PERSONAL LIBERTY. 3. PRIVATE PROPERTY. (See Book I. Ch. 4.) To which the Injuries must be correspondent.

7.

Injuries to PERSONAL SECURITY are, 1. Against a Man's LIFE. 2. Against his BODY. 3. Against his HEALTH. 4. Against his REPUTATION. — The first must be referred to the next Book.

8.

Injuries to the BODY are, 1. THREATS. 2. ASSAULT. 3. BATTERY. 4. MAYHEM. Remedy: By Action of Trespass, *vi & armis*; for Damages.

9.

Injuries to HEALTH, by any unwholsome Practices, are remedied by a special Action of Trespass, on the Case; for Damages.

10.

Injuries to REPUTATION are, 1. Slanderous and malicious WORDS. Remedy: By Action on the Case; for Damages. 2. LIBELS. Remedy: The same. 3. Malicious PROSECUTIONS. Remedy: By Action of Conspiracy, or on the Case; for Damages.

11.

The sole Injury to PERSONAL LIBERTY is FALSE IMPRISONMENT. Remedies: 1. By Writ of *Habeas Corpus*; to remove the Wrong. 2. By Action of Trespass; to recover Damages.

12.

For Injuries to PRIVATE PROPERTY, see the next Chapter.

13.

Injuries to RELATIVE Rights affect, 1. HUSBANDS. 2. PARENTS. 3. GUARDIANS. 4. MASTERS.

14.

Injuries to an HUSBAND are, 1. ABDUCTION, or taking away his Wife. Remedy: By Action of Trespass, *de Uxore rapta & abducta*; to recover Possession of his Wife, and Damages. 2. CRIMINAL CONVERSATION with her. Remedy: By Action on the Case; for Damages. 3. BEATING her. Remedy:

dy: By Action on the Case, *per quod Consortium amisit*; for Damages.

15.

The only Injury to a PARENT, or GUARDIAN, is the ABDUCTION of their Children, or Wards. Remedy: By Action of Trespass, *de Filiis, vel Custodiis, raptis vel abductis*; to recover Possession of them, and Damages.

16.

Injuries to a MASTER are, 1. RETAINING his Servants. Remedy: By Action on the Case; for Damages. 2. BEATING them. Remedy: By Action on the Case, *per quod Servitium amisit*; for Damages.

CHAP. VI.

Of Injuries to PERSONAL PROPERTY.

1.

INjuries to the Rights of PROPERTY are either to those of PERSONAL, or REAL, Property.

2.

PERSONAL Property is either in POSSESSION, or in ACTION.

3.

Injuries to personal Property in POSSESSION are, 1. By DISPOSSESSION. 2. By DAMAGE, while the Owner remains in Possession.

4. DIS-

4.

DISPOSSESSION may be effected, 1. By an unlawful TAKING. 2. By an unlawful DETAINING.

5.

For the unlawful TAKING of Goods and Chattels personal, the Remedy is, 1. Actual Restitution; which is obtained by Action of Replevin. 2. Satisfaction in Damages; by Action of Trespass, or Trover.

6.

For the unlawful DETAINING of Goods lawfully taken, the Remedy is also, 1. Actual Restitution; by Action of Replevin, or Detinue. 2. Satisfaction in Damages; by Action on the Case, for Trover and Conversion.

7.

For DAMAGE to personal Property, while in the Owner's Possession, the Remedy is in Damages; by Action of Trespass *vi & armis*, or by Action of Trespass on the Case.

8.

Injuries to personal Property, in ACTION, arise by Breach of CONTRACTS, 1. EXPRESS. 2. IMPLIED.

9.

Breaches of EXPRESS Contracts are, 1. By NON-PAYMENT of DEBTS. Remedy: 1st, Specific Payment; recoverable by Action of Debt. 2dly, Damages for Nonpayment; recoverable by Action on the Case. 2. By NONPERFORMANCE of COVENANTS. Remedy: By Action of Covenant, 1st, to recover Damages, in Covenants personal; 2dly, to compel

compel Performance, in Covenants real. 3. By NONPERFORMANCE OF PROMISES, or ASSUMPSITS. Remedy: By Action on the Case; for Damages.

10.

IMPLIED Contracts are such as arise, 1. From the Nature and Constitution of GOVERNMENT. 2. From REASON and the Construction of Law.

11.

Breaches of Contracts, implied in the Nature of GOVERNMENT, are by the NONPAYMENT of Money which the Laws have directed to be paid. Remedy: By Action of Debt; to compel the specific Payment; — or, sometimes, by Action on the Case; for Damages.

12.

Breaches of Contracts, implied in REASON and Construction of Law, are by the NONPERFORMANCE of legal presumptive ASSUMPSITS: For which the Remedy is in Damages; by an Action on the Case, on the implied ASSUMPSITS, 1. Of a *Quantum meruit*. 2. Of a *Quantum valebat*. 3. Of receiving Money to another's Use. 4. Of an *Insimul computasent*, on an Account stated; (the Remedy on an Account unstated being by Action of Account.) 5. Of performing one's Duty, in any Employment, with Integrity, Diligence, and Skill.

C H A P. VII.

Of Injuries to REAL Property; and, first, of DISPOSSESSION, or OUSTER, of the SUBJECT from his FREEHOLD.

I.

INjuries affecting REAL Property are, 1. OUSTER. 2. TRESPASS. 3. NUSANCE. 4. WASTE. 5. SUBTRACTION. 6. DISTURBANCE.

2.

OUSTER is the Amotion of Possession; and is, 1. Of a private SUBJECT. 2. Of the KING, and his Grantees. That of a SUBJECT is, 1. From FREEHOLDS. 2. From CHATTELS real,

3.

Ouster from FREEHOLDS is effected by, 1. ABATEMENT. 2. INTRUSION. 3. DISSEISIN. 4. DISCONTINUANCE. 5. DEFORCEMENT.

4.

ABATEMENT is the Entry of a Stranger, after the Death of the Ancestor, before the Heir.

5.

INTRUSION is the Entry of a Stranger, after a particular Estate of Freehold is determined, before him in Remainder or Reversion,

6.

DISSEISIN is a wrongful Putting out of him that is seised of the Freehold,

7. Dis-

7.

DISCONTINUANCE is where Tenant in Tail, or the Husband of Tenant in Fee, makes a larger Estate of the Land than the Law alloweth.

8.

DEFORCEMENT is any other Detainer of the Freehold from him who hath the Property, but who never had the Possession.

9.

The universal Remedy for all these is Delivery of Possession; and, sometimes, Damages for the Detention. This is effected, 1. By mere ENTRY. 2. By ACTION POSSESSORY. 3. By Writ of RIGHT.

10.

Mere ENTRY on Lands, by him who hath the apparent Right of Possession, will (if PEACEABLE) devert the mere POSSESSION of a Wrongdoer. But FORCIBLE Entries are remedied by immediate Restitution, to be given by a Justice of the Peace.

11.

Where the Wrongdoer hath not only mere Possession, but also an APPARENT Right of Possession, this may be deverted by him who hath the ACTUAL Right of Possession, by means of the POSSESSORY Actions of WRIT of ENTRY, or ASSISE.

12.

A Writ of ENTRYⁱ is a real Action, which disproves the Title of the Tenant, by shewing the unlawful Means, under which he gained or continues

ⁱ See APPENDIX, No. VII. §. 1.

Possession. And it may be brought either against the Wrongdoer himself, or in the Degrees called the *Per*, the *Per* and *Cui*, and the *Post*.

13.

An ASSISE is a real Action, which proves the Title of the Demandant, by shewing his own, or his Ancestor's, Possession. And it may be brought either to remedy Abatements; viz. the Assise of *Mort d'ancestor*, &c: Or to remedy recent Disseisins; viz. the Assise of *novel Disseisin*.

14.

Where the Wrongdoer hath gained the actual Right of POSSESSION, he who hath the Right of PROPERTY can only be remedied by a Writ of RIGHT, or some Writ of a similar Nature. As,
 1. Where such Right of Possession is gained by the DISCONTINUANCE of Tenant in Tail. Remedy, for the Right of Property: By Writ of *Formedon*.
 2. Where gained by RECOVERY in a possessory Action, had against Tenants of particular Estates by their own Default. Remedy: By Writ of *Quod ei deforciat*.
 3. Where gained by RECOVERY in a possessory Action, had upon the Merits.—4. Where gained by the STATUTE of LIMITATIONS.—Remedy, in both Cases: By a mere Writ of RIGHT, the highest Writ in the Law.

C H A P. VIII.

Of the remaining Species of OUSTER.

I.

Ouster of a Subject from CHATTELS real is,
1. From Estates by STATUTE and ELEGIT.
2. From an Estate for YEARS.

2.

Ouster, from Estates by STATUTE or ELEGIT, is effected by a Kind of DISSEISIN. Remedy: Restitution, and Damages; by Assise of *novel Disseisin*.

3.

Ouster, from an Estate for YEARS, is effected by a like Disseisin or EJECTMENT. Remedy: Restitution, and Damages; 1. By Writ of *Ejectione Firmae*. 2. By Writ of *Quare ejecit infra Terminum*.

4.

A Writ of *Ejectione Firmae* or Action of Trespass in Ejectment, lieth where Lands, &c, are let for a Term of Years, and the Lessee is ousted or ejected from his Term; in which Case he shall recover Possession of his Term, and Damages.

5.

This is now the usual Method of trying Titles to Land, instead of an Action real: viz. By, 1. The Claimant's making an actual (or supposed) Lease upon the Land to the Plaintiff. 2. The Plaintiff's actual (or supposed) Entry thereupon. 3. His actual (or supposed) Ouster and Ejectment by the Defendant.

fendant. For which Injury this Action is brought, either against the Tenant, or (more usually) against some casual, or fictitious, Ejector; in whose Stead the Tenant may be admitted Defendant, on condition that the Lease, Entry, and Ouster be confessed, and that nothing else be disputed but the Merits of the Title, claimed by the Lessor of the Plaintiff^k.

6.

A Writ of *Quare ejecit infra Terminum* is an Action of a similar Nature; only not brought against the Wrongdoer or Ejector himself, but such as are in Possession under his Title.

7.

Ouster of the KING, or his Grantees, is, 1. That of a Nature similar to the former, but differing in the Means of it's Remedy; which is, Delivery of Possession, in consequence of an Inquest of Office: Which Process extends also to Chattels personal. 2. USURPATION of Offices and Franchises. Remedy: By Writ of *Quo Warranto*; to seise them into the King's Hands: Or, by Information in nature of such Writ; to oust the Usurper. 3. REFUSAL to ADMIT, or wrongful REMOVAL of, an Officer. Remedy: 1st. By Writ of *Mandamus*, unless Cause; to admit or restore him: To which if a false Cause be returned, the Remedy is by Action on the Case; for Damages. 2dly, By peremptory *Mandamus*.

^k See APPENDIX, No. VIII.

C H A P. IX.

Of TRESPASS, NUSANCE, and WASTE.

1.

TRĒSPASS is an Entry upon, and Damage done to, another's Lands, by one's self, or one's Cattel; without any lawful Authority, or Cause of Justification: Which is called a Breach of his Close. Remedy: Damages; By Action of Trespass, *quare Clausum fregit*: Besides that of Distress, Damage feasant.

2.

NUSANCE, or Annoyance, is any thing that worketh Damage, or Inconvenience: And it is either a PUBLIC and COMMON Nufance, of which in the next Book; or, a PRIVATE Nufance, which is any thing done to the Hurt or Annoyance of, 1. The corporeal, 2. The incorporeal, Hereditaments of another.

3.

The Remedies, for a private Nufance, (besides that of Abatement,) are, 1. Damages; by Action on the Case; (which also lies for special Prejudice by a public Nufance.) 2. Removal thereof, and Damages; by Assise of Nufance. 3. Like Removal, and Damages; by Writ of *Quod permittat prosternere*.

4.

WASTE is a Spoil and Destruction in Lands and Tenements, to the Injury of him who hath, 1. A
Right

Right of Common in the Lands. 2. The Remainder or Reversion of the Inheritance.

5.

The Remedies, for a Commoner, are Restitution, and Damages; by Assise of Common: Or, Damages only; by Action on the Case.

6.

The Remedy, for him in Remainder, or Reversion, is, 1. Preventive: by Writ of Estrepement at Law, or Injunction out of Chancery; to stay Waste. 2. Corrective: By Action of Waste; to recover the Place wasted, and Damages.

CHAP. X.

Of SUBTRACTION, *and* DISTURBANCE.

1.

SUBTRACTION is when one, who owes Services to another, withdraws or neglects to perform them. This may be, 1. Of Rents, and other Services, due by TENURE. 2. Of those due by CUSTOM.

2.

For Subtraction of Rents and Services, due by TENURE, the Remedy is, 1. By Distress; to compel the Payment, or Performance. 2. By Action of Debt; to compel the Payment. 3. By Writ of *Cessavit*; — and 4. By Writ of Right *sur Disclaimer*; — to recover the Land itself

3. For

3.

For Subtraction of Services, due by CUSTOM, the Remedy is, 1. By Writ of *Seſta ad Molendinum, Furnum, Torrale, &c*; to compel the Performance, and recover Damages. 2. By Action on the Case; for Damages only.

4.

DISTURBANCE is the Hindering, or Disquieting, the Owners of an incorporeal Hereditament, in their regular and lawful Enjoyment of it.

5.

Disturbances are, 1. Of FRANCHISES. 2. Of COMMONS. 3. Of WAYS. 4. Of TENURE. 5. Of PATRONAGE.

6.

Disturbance, of FRANCHISES, is remedied by a special Action on the Case; for Damages.

7.

Disturbance, of COMMON, is, 1. INTERCOMMONING without Right. Remedy: Damages; by an Action on the Case; or of Trespass: Besides Distress, Damage feasant; to compel Satisfaction. 2. SURCHARGING the Common. Remedies: Distress, Damage feasant; to compel Satisfaction: Action on the Case; for Damages: Or, Writ of Admeasurement of Pasture; to apportion the Common; — and Writ *de secunda Superoneratione*; for the supernumerary Cattel, and Damages. 3. ENCLOSURE, or Obstruction. Remedies: Restitution of the Common, and Damages; by Assise of *novel Disseisin*,

M

and

and by Writ of *Quod permittat*: Or, Damages only; by Action on the Case.

8.

Disturbance, of *WAYS*, is the Obstruction, 1. Of a Way in gross, by the Owner of the Land. 2. Of a Way appendant, by a Stranger. Remedy, for both: Damages; by Action on the Case.

9.

Disturbance, of *TENURE*, by driving away Tenants, is remedied by a special Action on the Case; for Damages.

10.

Disturbance, of *PATRONAGE*, is the Hindrance of a Patron to present his Clerk to a Benefice; whereof *USURPATION*, within six Months, is now become a Species.

11.

Disturbers may be, 1. The Pseudo-Patron, by his wrongful Presentation. 2. His Clerk, by demanding Institution. 3. The Ordinary, by refusing the Clerk of the true Patron.

12.

The Remedies are, 1. By Assise of *darrein Presentment*; 2. By Writ of *Quare impedit*; — to compel Institution and recover Damages: Consequent to which are the Writs of *Quare incumbravit*, and *Quare non admisit*; for subsequent Damages. 3. By Writ of Right of Advowson; to compel Institution, or establish the permanent Right.

C H A P. XI.

Of the PURSUIT of Remedies, by ACTION in the Courts of COMMON LAW; and first, of ORIGINAL, and PROCESS.

I.

THE PURSUIT of the several Remedies, furnished by the LAWS of ENGLAND, is, 1. By ACTION in the Courts of COMMON LAW. 2. By PROCEEDINGS in the Courts of EQUITY.

2.

Of an ACTION in the Court of COMMON PLEAS (the proper Court for prosecuting civil Suits) the orderly Parts are, 1. The ORIGINAL Writ. 2. The PROCESS. 3. The PLEADINGS. 4. The DEMURRER, or ISSUE. 5. The TRIAL. 6. The JUDGMENT. 7. The APPEAL. 8. The EXECUTION.

3.

The ORIGINAL Writ is the Beginning or Foundation of a Suit, and is either a *Praecipe*^l, where something in certain is demanded; or a *Si fecerit te securum*^m, where nothing is demanded in certain, but only a Satisfaction in general: Both issuing out of Chancery under the King's great Seal, and returnable in Bank during Term-time.

^l See APPENDIX, No. IX. §. 1. ^m See APPENDIX, No. VIII. §. 1.

4.

PROCESSⁿ is the Means of compelling the Defendant to appear in Court; and it includes, 1. Summons, and the subsequent judicial Writs of Attachment (which is sometimes the first or original Process) and *Distringas*, or Distress infinite. 2. The Writs of *Capias ad respondendum*, and *Testatam Capias*; which are mesne Processes: (Or, instead of these, in the King's Bench, the Bill of *Middlesex*, and Writ of *Latitat*: — and, in the Exchequer, the Writ of *Quo minus*.) 3. The *alias* and *pluries* Writs. 4. The Exigent, or Writ of *Exigi facias*, Proclamations, and Outlawry. 5. Appearance, and common Bail. 6. The Arrest. 7. Special Bail, first to the Sheriff, and then to the Action.

CHAP. XII.

Of PLEADINGS, DEMURRER, and ISSUE.

I.

PLEADINGS^o are the mutual Altercations of the Plaintiff and Defendant in Writing; under which are comprized, 1. The Declaration or Count; (wherein, incidentally, of the *Visne*, *Nonfuit*, *Retrahit*, and *Discontinuance*.) 2. The Defence, *Imparlance*, *View*, *Oyer*, *Aid*, *Voucher*, or *Age*. 3. The Plea; which is either a *DILATORY* Plea, (1st, to the Jurisdiction; 2dly, in Disability of the

ⁿ See APPENDIX, No. IX. §. 2, 3, 4, 5.
No. VIII, §. 4. No. IX. §. 6.

^o See APPENDIX,

Plaintiff;

Plaintiff; 3dly, in Abatement :) Or it is a Plea TO THE ACTION; sometimes confessing the Action, either in whole, or in part; (wherein of a Tender, and Set-off;) but usually denying the Complaint, by pleading, 1st, a special Bar; (wherein of Justifications, the Statutes of Limitation, &c;) or 2dly, the general Issue. 4. Replication, Rejoinder, Surrejoinder, Rebutter, Surrebutter, &c. Therein of Estoppels, Duplicity, Departure, Protestation, and other Incidents of Pleading.

2.

ISSUE is where the Parties, in a Course of Pleading, come to a Point affirmed on one Side and denied on the other: Which, if it be a Matter of Law, is called a DEMURRER^p; if it be a Matter of Fact, still retains the Name of an Issue^q, of Fact.

3.

CONTINUANCE^r is the Detaining of the Parties in Court from Time to Time, by giving them a Day certain to appear upon. And, if any new Matter arises since the last Continuance or Adjournment, the Defendant may take Advantage of it, even after Demurrer or Issue, by alleging it in a Plea *puis darrein Continuance*.

^p See APPENDIX, No. IX. §. 6. ^q See APPENDIX, No. VIII. §. 4.

^r See APPENDIX, No. VIII. §. 4. No. IX. §. 6.

C H A P. XIII,*Of the several Species of TRIAL.*

1.

TRIAL is the Examination of the Point put in Issue.

2.

The Trial of an Issue of LAW, or Demurrer, is by the Opinion of the Judges of the Court.

3.

The Trial of an Issue of FACT is, 1. By the RECORD. 2. By INSPECTION. 3. By WITNESSES. 4. By CERTIFICATE. 5. By WAGER of BATTEL, 6. By WAGER of LAW. 7. By JURY.

4.

Trial by the RECORD is had, when the Existence of such Record is the Point in Issue.

5.

Trial by INSPECTION is had by the Court, principally when the Matter in Issue is the evident Object of the Senses.

6.

Trial by WITNESSES (the regular Method in the civil Law) is only used on a Writ of Dower, when the Death of the Husband is in Issue.

7.

Trial by CERTIFICATE is had in those Cases, where such Certificate must have been conclusive to a Jury.

8. Trial

8.

Trial by WAGER of BATTEL, in civil Cases, is only had on a Writ of Right: But, in lieu thereof, the Tenant may have, at his Option, the Trial by the GRAND ASSISE.

9.

Trial by WAGER of LAW is only had, where the Matter in Issue may be supposed to have been privately transacted, between the Parties themselves, without the Intervention of other Witnesses.

CHAP. XIV.

Of the Trial by JURY.

1.

TRial by JURY is, 1. EXTRAORDINARY; as, by the grand Assise, in Writs of Right; and by the grand Jury, in Writs of Attaint. 2. ORDINARY.

2.

The Method and Process of the ORDINARY Trial by Jury^s is, 1. The Writ of *Venire facias* to the Sheriff, Coroners, or Elisors; with the subsequent compulsive Process of *Habeas Corpora*, or *Distringas*. 2. The Carrying down of the Record to the Court of *Nisi prius*. 3. The Sheriff's Return; or Panel of, 1st, special, 2dly, common Jurors. 4. The Challenges; 1st, to the Array; 2dly, to the Polls of

^s See APPENDIX, No. VIII. §. 4.

the

the Jurors; either, *propter Honoris Respectum*, *propter Defectum*, *propter Affectum* (which is sometimes a principal Challenge, sometimes to the Favour,) or, *propter Delictum*. 5. The *Tales de circumstantibus*. 6. The Oath of the Jury. 7. The Evidence; which is either by Proofs, 1st, written; 2dly, parol: — or, by the private Knowledge of the Jurors. 8. The Verdict; which may be, 1st, privy; 2dly, public; 3dly, special.

C H A P. XV.

Of JUDGMENT, APPEAL, *and* EXECUTION,

I.

WHATEVER is transacted at the Trial, in the Court of *Nisi prius*, is added to the Record under the Name of a *POSTEA*: Consequent upon which is the JUDGMENT.

2.

JUDGMENT is the Sentence of Law, pronounced by the Court, upon the Matter contained in the Record.

3.

Judgment may be *ARRESTED*¹ or stayed for Causes, 1. Extrinsic, or *dehors* the Record. 2. Intrinsic, or within it.

¹ See APPENDIX, No. VIII. §. 4.

4.

Judgments are, 1. Interlocutory. 2. Final; which are either complete at first, or incomplete till perfected by a Writ of Enquiry.

5.

COSTS, or Expenses of Suit, are now the necessary Consequence of obtaining Judgment.

6.

Proceedings, in the Nature of APPEALS from Judgment, are, 1. A Writ of ATTAINT; to impeach the Verdict of a Jury; which of late has been superseded by new Trials. 2. A Writ of *Audita Querela*; to discharge a Judgment by Matter that has since happened. 3. A Writ of ERROR^u, from one Court of Record to another; to correct Judgments, erroneous in point of Law, and not helped by the Statutes of Amendment and Jeofails.

7.

EXECUTION is the Putting in Force of the Sentence or Judgment of the Law: Which is effected, 1. Where Possession of the Thing itself is recovered; by Writ of *Habere facias Seisinam, Possessionem, &c.* 2. Where Money only is recovered; by Writ of, 1st, *Capias ad Satisfaciendum^w*, against the Body of the Defendant; or, in default thereof, *Scire facias* against his Bail. 2dly, *Fieri facias^x*, against his Goods and Chattels. 3dly, *Levari facias*, against his Goods, and the PROFITS of his LANDS. 4thly, *Elegit*, against his Goods, and the POSSESSION of

^w See APPENDIX, No. IX. §. 6.

^x See APPENDIX, No. IX. §. 7.

his LANDS. 5thly, *Extendi facias*, and other Proceſs, on Statutes, Recognizances, &c, againſt his BODY, LANDS, and GOODS.

CHAP. XVI.

Of Proceedings in the Courts of EQUITY.

I.

EQUITY, being the Correction of that wherein the Law (by reaſon of it's Univerſality) is deficient, ſhould not therefore interfere where Relief may be had by the ordinary Courſe of Law.

2.

Aequitas ſequitur Legem; and therefore Equity ſhould never weaken the fundamental Rules of Property, eſtabliſhed by the common Law.

3.

Suits in Equity, from the Variety of Circumſtances therein conſidered, muſt neceſſarily be of longer Duration than Suits at the common Law.

4.

The Buſineſs of Equity is almoſt infinite; but is chiefly to give Relief in Matters of FRAUD, ACCIDENT, and TRUST; *ſecundum Conſcientiam, & Arbitrium boni Viri.*

5.

The Proceedings in the Court of Chancery, (to which thoſe in the Exchequer very nearly conform,)
are,

are, 1. Bill. 2. Writ of *Subpoena*; and perhaps, Injunction. 3. Proceſs of Contempt; viz. (ordinarily) Attachment, Attachment with Proclamations, Commiſſion of Rebellion, Serjeant at Arms, and Sequeſtration, 4. Appearance. 5. Demurrer. 6. Plea. 7. Answer. 8. Exceptions; Amendments; croſs, or ſupplemental, Bills; Bills of Revivor, Interpleader, &c. 9. Replication. 10. Iſſue. 11. Depoſitions, taken upon Interrogatories; and ſubſequent Publication thereof, 12. Hearing. 13. Interlocutory Decree; feigned Iſſue, and Trial; Reference to the Maſter, and Report; &c. 14. Final Decree. 15. Rehearing, or Bill of Review, 16. Appeal to Parliament.



BOOK THE FOURTH.

Of PUBLIC WRONGS, or CRIMES and
MISDEMEASORS.

CHAPTER I.

Of the NATURE of CRIMES, and PUNISHMENTS.

I.

IN treating of PUBLIC WRONGS may be considered, 1. The general NATURE of Crimes, and Punishments. 2. The Persons CAPABLE of committing Crimes, and their several DEGREES of Guilt. 3. The several SPECIES of Crimes, and their respective Punishments. 4. The Means of PREVENTION. 5. The Method of PUNISHMENT.

2.

A CRIME, or MISDEMEASOR, is an Act committed, or omitted, in Violation of a public Law, either forbidding or commanding it.

3.

Crimes are distinguished from civil Injuries, in that they are a Breach and Violation of the PUBLIC Rights, due to the whole Community, considered as a Community.

4. PUNISH-

4.

PUNISHMENTS may be considered with regard to,
1. The POWER; 2. The END; 3. The MEASURE;
— of their Infliction.

5.

The POWER, or Right, of inflicting human Punishments, for NATURAL Crimes, or such as are *Mala in se*, was by the Law of Nature vested in every Individual; but, by the fundamental Contract of Society, is now transferred to the sovereign Power: In which also is vested, by the same Contract, the Right of punishing POSITIVE Offences, or such as are *Mala prohibita*.

6.

The END of human Punishments is to prevent future Offences; 1. By amending the Offender himself. 2. By deterring others through his Example. 3. By depriving him of the Power to do future Mischief.

7.

The MEASURE of human Punishments must be determined by the Wisdom of the sovereign Power, and not by any uniform universal Rule: Though that Wisdom may be regulated, and assisted, by certain general, equitable, Principles.

C H A P. II.

*Of the Persons CAPABLE of committing Crimes,
and their several DEGREES of Guilt.*

1.

ALL Persons are CAPABLE of committing Crimes, unless there be in them a DEFECT of WILL: For, to constitute a legal Crime, there must be both a vitious Will, and a vitious Act.

2.

The Will does not concur with the Act, 1. Where there is a Defect of UNDERSTANDING. 2. Where no Will is EXERTED. 3. Where the Act is CONSTRAINED by Force and Violence.

3.

A vitious Will may therefore be wanting, in the Cases of, 1. Infancy. 2. Ideocy, or Lunacy. 3. Drunkenness; which doth not, however, excuse. 4. Misfortune, or Chancemedley. 5. Ignorance, or Mistake of Fact. 6. Compulsion, or Necessity: which is, 1st, that of civil Subjection; 2dly, that of Duress *per Minas*; 3dly, that of choosing the least pernicious of two Evils, where one is unavoidable; 4thly, that of Want, or Hunger; which is no legitimate Excuse.

4.

The King, from his Excellence and Dignity, is also incapable of doing Wrong.

5. The

5.

The different DEGREES of Guilt in Criminals are, 1. AS PRINCIPALS. 2. AS ACCESSORIES.

6.

A PRINCIPAL in a Crime is, 1. He who commits the Fact. 2. He who is present at, aiding, and abetting, the Commission.

7.

An ACCESSORY is he who doth not commit the Fact, nor is present at the Commission; but is in some sort concerned therein, either BEFORE OR AFTER.

8.

Accessories can only be in petit Treason, and Felony: In high Treason, and Misdemeanors, all are Principals.

9.

An Accessory, BEFORE the Fact, is one who, being absent when the Crime is committed, hath procured, counselled, or commanded another to commit it.

10.

An Accessory, AFTER the Fact, is where a Person, knowing a Felony to have been committed, receives, relieves, comforts, or assists the Felon. Such Accessory is usually entitled to the Benefit of Clergy; where the Principal, and Accessory BEFORE the Fact, are excluded from it.

C H A P. III.

*Of Offences against the DIVINE Law, and the
Law of NATIONS.*

i.

CRimes and Misdemeanors, cognizable by the
Laws of ENGLAND, are such as more im-
mediately offend, 1. The DIVINE Law. 2. The
Law of NATIONS. 3. The MUNICIPAL LAW.

2.

Crimes, more immediately offending the DIVINE
Law, are, 1. APOSTACY. For which the Penalty
is Incapacity, and Imprisonment. 2. HERESY.
Penalty, for one Species thereof: The same. 3. Of-
fences against the established CHURCH: — Either, by
REVILING it's Ordinances. Penalties: Fine; De-
privation; Imprisonment; Forfeiture. — Or, by
NONCONFORMITY to it's Worship: 1st, Through
total IRRELIGION. Penalty: Fine. 2dly, Through
protestant DISSENTING. Penalty: Suspended by
the Toleration Act. 3dly, Through POPERY, ei-
ther in Professors of the popish Religion, popish
Recusants convict, or popish Priests. Penalties:
Incapacity; double Taxes; Imprisonment; Fines;
Forfeitures; Abjuration of the Realm; Judgment
of Felony, without Clergy; and Judgment of high
Treason. 4. BLASPHEMY. Penalty: Fine, Impri-
sonment, and corporal Punishment. 5. Profane
SWEARING

SWEARING and CURSING. Penalty: Fine, or House of Correction. 6. WITCHCRAFT; or, at least, the Pretence thereto. Penalty: Imprisonment, and Pillory. 7. Religious IMPOSTURES. Penalty, Fine, Imprisonment, and corporal Punishment. 8. SABBATH-BREAKING. Penalty: Fine. 9. DRUNKENNESS. Penalty: Fine, or Stocks. 10. LEWDNESS. Penalties: Fine; Imprisonment; House of Correction.

3.

Crimes against the Law of NATIONS, animadverted on by the Laws of ENGLAND, are, 1. Violation of SAFE-CONDUCTS. 2. Infringement of the Rights of EMBASSADORS. Penalty, in both: Arbitrary. 3. PIRACY. Penalty: Judgment of Felony, without Clergy.

C H A P. IV.

Of Offences more especially against the KING, and his Government; and, first, of HIGH TREASON.

I.

CRimes, and Misdemeanors, more peculiarly offending the MUNICIPAL Law, are those which especially affect, 1. The KING, and his Government. 2. The COMMONWEALTH. 3. INDIVIDUALS.

2.

Offences, especially affecting the KING, and his Government, are, 1. HIGH TREASON. 2. FELONIES injurious to the Prerogative. 3. PRAEMUNIRE. 4. Other MISPRISONS and CONTEMPTS.

3.

HIGH TREASON may, according to the Statute of EDWARD III, be committed, 1. By COMPASSING or IMAGINING the DEATH of the King, or Queen-confort, or their eldest Son and Heir; demonstrated by some overt Act. 2. By VIOLATING the King's Companion, his eldest Daughter, or the Wife of his eldest Son. 3. By some overt Act of LEVYING WAR against the King in his Realm. 4. By ADHERENCE to the King's Enemies. 5. By COUNTERFEITING the King's great or privy SEAL. 6. By COUNTERFEITING the King's MONEY, or Importing counterfeit Money. 7. By KILLING the Chancellor, Treasurer, or King's Justices, in the Execution of their Offices.

4. HIGH

4.

HIGH TREASONS, created by subsequent Statutes, are such as relate, 1. To PAPISTS: As, the repeated Defence of the Pope's Jurisdiction; the Coming from beyond Sea of a natural-born popish Priest; the Renouncing of Allegiance, and Reconciliation to the Pope, or other foreign Power. 2. To the COINAGE, or other Signatures of the King: As, Counterfeiting (or, Importing and Uttering counterfeit) foreign Coin, here current; Forging the Sign manual, privy Signet, or privy Seal; Falsifying, &c, the current Coin. 3. To the PROTESTANT SUCCESSION: As, Corresponding with, or Remitting Money to, the Pretender or his Sons; Endeavouring to impede the Succession; Writing or Printing, in Defence of the Pretender's Title, or in Derogation of the Act of Settlement, or of the Power of Parliament to limit the Descent of the Crown.

5.

The PUNISHMENT of high Treason, in MALES, is (generally) to be, 1. Drawn. 2. Hanged. 3. Embowelled alive. 4. Beheaded. 5. Quartered. 6. The Head and Quarters to be at the King's Disposal. But, in Treasons relating to the Coin, only to be drawn, and hanged till dead. FEMALES, in both cases, are to be drawn, and burned alive.

C H A P. V.

*Of other Crimes, affecting the KING and
Government.*

1.

FELONY is that Offence, which occasions the total Forfeiture of Lands or Goods at common Law ; now usually also punishable with Death, by Hanging ; unless through the Benefit of Clergy.

2.

FELONIES, injurious to the King's Prerogative (of which some are within, others without, Clergy) are, 1. Such as relate to the COIN : As, the wilful Uttering of counterfeit Money, &c ; (to which Head some inferior Misdemeanors affecting the Coinage may be also referred.) 2. Conspiring or Attempting to kill a PRIVY COUNSELLOR. 3. Serving FOREIGN States, or Enlisting Soldiers for FOREIGN Service. 4. Embezzling the King's ARMOUR or STORES. 5. DESERTION from the King's ARMIES, by Land or Sea.

3.

PRAEMUNIRE, in it's original Sense, is the Offence of Adhering to the temporal Power of the Pope, in Derogation of the regal Authority. Penalty : Outlawry, Forfeiture, and Imprisonment : Which hath since been extended to some Offences of a different Nature.

4. Other

4.

Other MISPRISIONS and CONTEMPTS are, 1. NEGATIVE; viz. 1st, Misprision of TREASON. Penalty: Forfeiture and Imprisonment. 2dly, Misprision of FELONY. Penalty: Fine and Imprisonment. 3dly, Concealment of TREASURE TROVE. Penalty: Fine and Imprisonment. 2. POSITIVE; viz. 1st, MAL-ADMINISTRATION of public Trusts. Usual Penalties: Banishment; Fines; Imprisonment; Disability. 2dly, Contempts against the King's PREROGATIVE. Penalty: Fine, and Imprisonment. 3dly, Contempts against his PERSON, and GOVERNMENT. Penalty: Fine, Imprisonment, and infamous corporal Punishment. 4thly, Contempts against his TITLE. Penalties: Fine, and Imprisonment; or, Fine, and Disability. 5thly, Contempts against his PALACES, or COURTS of Justice. Penalties: Fine; Imprisonment; corporal Punishment; Loss of right Hand; Forfeiture.

CHAP. VI.

*Of Offences against the COMMONWEALTH;
and, first, against the public JUSTICE, and
the public PEACE.*

1.

CRimes, especially affecting the COMMONWEALTH, are Offences, 1. Against the public JUSTICE. 2. Against the public PEACE. 3. Against the public TRADE. 4. Against the public HEALTH. 5. Against the public OECONOMY.

2.

Offences, against the public JUSTICE, are, 1. VACATING RECORDS, and PERSONATING others in Courts of Justice. Penalty: Judgment of Felony, usually without Clergy. 2. COMPELLING Prisoners to become APPROVERS. Penalty: Judgment of Felony. 3. OBSTRUCTING the Execution of Procefs. 4. ESCAPES. 5. BREACH of Prison. 6. RESCUE. — Which four may be either Felonies, or Misdemeanors punishable by Fine and Imprisonment. 7. RETURNING from TRANSPORTATION. This is Felony, without Clergy. 8. Taking REWARDS, to HELP one to his stolen Goods. Penalty: The same as for the Theft. 9. RECEIVING stolen Goods. Penalties: Transportation; Fine; and Imprisonment. 10. THEFTBOTE. 11. BARRETRY, and Suing in a feigned Name. 12. MAINTENANCE. 13. CHAMPERTY. — Penalty, in these four: Fine, and Imprisonment. 14. COMPOUNDING Prosecutions on
penal

penal Statutes. Penalty: Fine, Pillory, and Disability. 15. CONSPIRACY; and Threats of Accusation in order to extort Money, &c. Penalties: The villenous Judgment; Fine; Imprisonment; Pillory; Whipping; Transportation. 16. PERJURY, and Subornation thereof. Penalties: Infamy; Imprisonment; Fine, or Pillory; and, sometimes, Transportation or House of Correction. 17. BRIBERY. Penalty: Fine, and Imprisonment. 18. EMBRACERY. Penalty: Infamy, Fine, and Imprisonment. 19. FALSE VERDICT. Penalty: The Judgment in Attaint. 20. NEGLIGENCE of public Officers, &c. Penalty: Fine and Forfeiture of the Office. 21. OPPRESSION by Magistrates. 22. EXTORTION of Officers.—Penalty, in both: Imprisonment, Fine, and sometimes Forfeiture of the Office.

3.

Offences, against the public PEACE, are, 1. RIOTOUS ASSEMBLIES to the Number of TWELVE. 2. Appearing armed, or Hunting, in DISGUISE. 3. THREATENING by Letters.—All these are Felonies, without Clergy. 4. Destroying of TURNPIKES, &c. Penalties: Whipping; Imprisonment; Judgment of Felony, with and without Clergy. 5. AFFRAYS. 6. RIOTS, ROUTS, and UNLAWFUL ASSEMBLIES. 7. Tumultuous PETITIONING. 8. Forcible ENTRY and DETAINER.—Penalty, in all four: Fine, and Imprisonment. 9. Going unusually ARMED. Penalty: Forfeiture of Arms, and Imprisonment. 10. Spreading FALSE NEWS. Penalty: Fine, and Imprisonment. 11. Pretended PROPHECIES. Penalties:

nalties : Fine ; Imprisonment ; and Forfeiture.
 12. CHALLENGES. Penalty : Fine, Imprisonment,
 and sometimes Forfeiture. 13. LIBELS. Pen-
 ty ; Fine, and corporal Punishment.

C H A P. VII.

*Of the remaining Offences against the
COMMONWEALTH.*

1.

Offences, against the public TRADE, are,
 1. OWLING. Penalties : Fines ; Forfeiture ;
 Imprisonment ; Loss of left Hand ; Transportation ;
 Judgment of Felony. 2. SMUGGLING. Penalties :
 Fines ; Loss of Goods ; Judgment of Felony, with-
 out Clergy. 3. FRAUDULENT BANKRUPTCY. Pe-
 nalty : Judgment of Felony, without Clergy,
 4. USURY. Penalty : Fine, and Imprisonment.
 5. CHEATING. Penalties : Fine ; Imprisonment ;
 Pillory ; Tumbrel ; Whipping, or other corporal
 Punishment ; Transportation. 6. FORESTALLING,
 7. REGRATING. 8. ENGROSSING.—Penalties, for
 all three : Loss of Goods ; Fine ; Imprisonment ;
 Pillory. 9. MONOPOLIES, and COMBINATIONS to
 raise the Price of Commodities. Penalties : Fines ;
 Imprisonment ; Pillory ; Loss of Ear ; Infamy ; and,
 sometimes, the Pains of *Praemunire*. 10. Exercising
 a TRADE, not having served as Apprentice. Penal-
 ty ; Fine. 11. Transporting, or Residing abroad, of
 ARTIFICERS. Penalties : Fine ; Imprisonment ;
 Forfeiture ; Incapacity ; Becoming Aliens.

2. Of.

2.

Offences, against the public HEALTH, are, 1. IRREGULARITY, in time of the PLAGUE, or of QUARENTINE. Penalties: Whipping; Judgment of Felony, with and without Clergy. 2. Selling UNWHOLESOME PROVISIONS. Penalties: Amercement; Pillory; Fine; Imprisonment; Abjuration.

3.

Offences against the public OECONOMY, or domestic Order of the Kingdom, are, 1. Those relating to CLANDESTINE and IRREGULAR MARRIAGES. Penalties: Judgment of Felony, with and without Clergy. 2. BIGAMY, or (more properly) POLYGAMY. Penalty: Judgment of Felony. 3. WANDERING, by SOLDIERS or MARINERS. 4. REMAINING in ENGLAND, by EGYPTIANS. Both these are Felonies, without Clergy. 5. IDLENESS, DISORDER, VAGRANCY, and INCORRIGIBLE ROGUERY. Penalties: Imprisonment; Whipping; Judgment of Felony. 6. COMMON NUSANCES, 1st, in Highways, &c; 2dly, by offensive Trades; 3dly, by disorderly Houses; 4thly, by Cottages; 5thly, by Fireworks; 6thly, by Evesdropping. — Penalty, in all: Fine. — 7thly, by common Scolding. Penalty: The cucking Stool. 7. LUXURY, in Diet, Penalty: Uncertain. 8. GAMING. Penalties: To Gentlemen, Fines; to others, Fine and Imprisonment; to cheating Gamesters, Fine, Infamy, and the corporal Pains of Perjury. 9. DESTROYING the GAME. Penalties: Fines; and corporal Punishment.

C H A P. VIII.

Of Crimes against INDIVIDUALS; *and, first,*
of HOMICIDE.

I.

CRimes, especially affecting INDIVIDUALS, are,
1. Against their PERSONAL SECURITY. 2. Against their PERSONAL LIBERTY. 3. Against their HABITATIONS. 4. Against their PROPERTY.

2.

Crimes against the PERSONAL SECURITY of Individuals, are, 1. By HOMICIDE, or Destroying Life. 2. By other CORPORAL Injuries.

3.

HOMICIDE is, 1. JUSTIFIABLE. 2. EXCUSABLE. 3. CRIMINAL.

4.

Homicide is JUSTIFIABLE, 1. By Necessity, and Command of Law. 2. By Permission of Law; 1st, for the Furtherance of public Justice; 2dly, for Prevention of some forcible Felony.

5.

Homicide is EXCUSABLE, 1. *Per Infortunium*, or by Chancemedley. 2. *Se defendendo*, or in Self-Defence. Penalty, in both: Forfeiture of Goods; which however is pardoned of course.

6.

CRIMINAL Homicide is the Killing of a human Creature without Justification or Excuse. This is, 1. Killing ONE'S SELF. 2. Killing ANOTHER.

7. Killing

7.

Killing ONE'S SELF, or SELF-MURDER, is where one deliberately, or by any unlawful malicious Act, puts an End to his own Life. This is Felony; punished by ignominious Burial, and Forfeiture of Goods and Chattels.

8.

Killing ANOTHER is, 1. MANSLAUGHTER.
2. MURDER.

9.

MANSLAUGHTER is the unlawful Killing of another; without Malice, express or implied. This is Felony, but within Clergy; except in the Case of STABBING.

10.

MURDER is when a Person, of sound Memory and Discretion, unlawfully killeth any reasonable Creature, in Being, and under the King's Peace; with Malice aforethought, either express or implied. This is Felony, without Clergy; punished with speedy Death, and Hanging in Chains, or Dissection.

11.

PETIT TREASON (being an aggravated Degree of MURDER) is where the Servant kills his Master, the Wife her Husband, or the Ecclesiastic his Superior. Penalty: In Men, to be drawn, and hanged; in Women, to be drawn, and burned.

C H A P. IX.

Of other Crimes, affecting the PERSONAL SECURITY and PERSONAL LIBERTY of Individuals.

I.

CRimes affecting the PERSONAL SECURITY of Individuals, not amounting to Homicide, are, 1. MAYHEM; and also SHOOTING at another. Penalties: Fine; Imprisonment; Judgment of Felony, without Clergy. 2. Forcible ABDUCTION, and MARRIAGE or DEFILEMENT, of an Heiress; which is Felony: Also, STEALING, and DEFLOWERING or MARRYING, any Woman-Child under the Age of SIXTEEN Years; for which the Penalty is Imprisonment, Fine, and temporary Forfeiture of her Lands. 3. RAPE; and also CARNAL KNOWLEDGE of a Woman-Child under the Age of TEN Years. 4. BUGGERY, with Man or Beast.—Both these are Felonies, without Clergy. 5. ASSAULT. 6. BATTERY; especially of Clergymen. 7. WOUNDING. Penalties, in all three: Fine; Imprisonment; and other corporal Punishment.

2.

Crimes, affecting the PERSONAL LIBERTY of Individuals, are, 1. FALSE IMPRISONMENT. 2. KIDNAPPING, or, forcibly Stealing away the King's Subjects. Penalties, in both: Fine; Imprisonment; and other corporal Punishment.

C H A P.

CHAP. X.

*Of Crimes affecting the HABITATION, and
PROPERTY, of Individuals.*

1.

Crimes, affecting the HABITATION of Individuals, are, 1. ARSON. 2. BURGLARY.

2.

ARSON is the malicious and wilful Burning of the House, Outhouses, &c, of another Man. This is Felony; in some cases within, in others without, Clergy.

3.

BURGLARY is the Breaking and Entering, by Night, into a Mansion-House; with Intent to commit a Felony. This is Felony, without Clergy.

4.

Crimes, affecting the PROPERTY of Individuals, are, 1. LARCINY. 2. Malicious MISCHIEF. 3. FORGERY.

5.

LARCINY is, 1. SIMPLE. 2. MIXED, or COMPOUND.

6.

SIMPLE Larciny is the felonious Taking, and Carrying away, of the personal Goods of another. And it is, 1. GRAND Larciny; being above the Value of twelve Pence. Which is Felony; in some cases within, in others without, Clergy. 2. PETIT Lar-