(by Christopher Saint-Germain)
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LAW. The Dialogue in English, between 
a Doctor of Divinitie, and a Student in 
the Lawes of England. (By Christopher 
Saint-German). Newly corrected, with new 
Additions. PRINTED IN CHOICE 
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RARE, EARLY EDITION OF THIS FAMOUS 
TREATISE OF TUDOR LAW, HIGHLY 
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Schroeter Williams
Chesterly 19.5.1956.
THE
DIALOGUE
in English, betwenee
a Doctor of Divinitie,
and a Student in the
Lawes of England.

Newly corrected and
Imprinted, with new
Additions.

LONDON
Printed for the Company of Stationers.
1623
Cum Privilegio.
The first Dialogue in English, betwixt a Doctor of Divinity, and a Student in the Lawes of England, of the grounds of the said Lawes, and of conscience, newly corrected and corrected and eft-foones Imprinted with new Additions.

The Introduction,

Doctor of Divinity that was of great acquaintance and familiaritie with a Student in the Lawes of England, said thus unto him: I have had great desire of long time to know wherupon the Law of England is grounded, but because the most part of the Law of England is written in the French Tongue, therefore I cannot through mine owne studie atteine to the knowledge thereof: for in that Tongue I am nothing expert. And because I have found thee a faithfull friend to me, in all my business, therefore I am bold to come to thee before any other to know thy mind, what be the verie grounds of the law of England as thou thinkest.

St. That would aske a great leasure, & it is also above my cunning to do it. Neuertheless, that thou shalt not thinke that I would wilfully refuse to fulfill thy desire, I shal with good wil doe that
The first Chapter.

that in me is to satisfy thy mind: But I pray thee that thou wilt first shew mee somewhat of other Lawes that pertaine most to this matter, & that Doctors treat of, how Lawes have begun. And then I will gladly shew thee as me thinketh what be the grounds of the Law of England. D & I will with good will doe as thou failest: Wherefore thou shalt understand, that Doctors treat of foure Lawes, the which (as me seemeth) pertaine most to this matter. The first is the Lawe Eternall. The second is the Law of Nature of reasonable creatures, the which as I have heard say, is called by them that be learned in the law of England, the Law of reason. The third is the law of God. The fourth is the Law of Man. And therefore I will first treat of the Law Eternall.

Of the Law Eternall.

Cap. 1.

Inke as there is in every artificer a reason of such like things as are to be made by his craft: so it behoveth that in every governour there be reason and a foresight in the governing of such things as shall be ordered a done by him, to them that he hath the governance of. And forasmuch as almightie God is the creator and maker of all creatures, to the which he is compared as a workman to his works: and is also the governour of all deeds and movings that bee found in any creature: Therfore as the reason of the wisedome of God (as almightie as creatures be created by him) is the realm & foresight
The first Chapter:

light of all crafts and works that have been or shall be, so the reason of the wildestome of God moving all things by wildestome made to a good end, shewmeth the name & reason of a law, and that is called the Law eternall.

And this law eternall is called the first law, & it is well called the first, for it was before all other laws, and all other laws bee derived of it: Whereupon Saint Augustine saith in his 2. Book of Free arbitrement, that in Temporall Lawes, nothing is righteous as lawfull, but that the people have derived to them out of the law eternall. Wherefore every man hath right & title to have he hath righteously, of the right wise judgment of the first reason, which is the law eternall St. But how may this law eternall bee knowne? for as the Apostle Writeth in the 5. Chapter of his first Epistle to the Corinthians, Quix sunt Dei nemo scit, nisi spiritus Dei. That is to say, No man knoweth what is in God, but the spirit of God: wherefore it saitheth that he openeth his mouth against heaven, that attendeth to know it. Doct. This Law eternall no man may know as it is in it selfe, but onely blessed soules that see God face to face. But almighty God of his goodness knoweth of it as much to his creatures as is necessary for the, for else God should bind his creatures to a thing impossible: which may in no wise bee thought in him. Therefore it is to be understood, that 3. manner of ways almighty God maketh this law eternall knowne to his creatures reasonable: First, by the light of natural reason. Secondly, by heavenly revelation. Thirdly, by order of a
The 2. Chapter.

Prince 02 any other securdario governors that hath power to bind his subiects to a law.

And when the law eternall 02 the will of God is knowne to his creatures reasonable by the light of naturall understanding, 02 by the light of naturall reason, that is called the law of reason: and when it is shewed by heavenly revelation in such manner as hereafter shall appeare, then it is called the Law of God. And when it is shewed unto him by the order of a Prince, 02 of any other securdario gouernour, that hath a power to set a Law upon his subiects, then it is called the Law of man, though originally it be made of God. For lawes made by man that hath receivd therto power of God, be made by God. Therefore the said three lawes that is to say, the law of reason the law of God and the law of man, the which have severall names after the manner as they be shewed to man, be called in God, one law eternall.

And this is the law of which it is written, Proverbiorum octavo, where it is said, Per me reges regnant, & legum conditores, inlta discernunt. That is to say, by me kings raigne, and makers of lawes discern the truth: and this sufficeth for this time of the law eternall.

Of the law of reason, the which by doctors is called the law of nature of reasonable creatures.

Cap. 2.

First it is to be understood, that the Law of nature may be considered in two maners, that
that is to say, generally and specially: when it is considered generally, then it is referred to all creatures, as well reasonable, as unreasonable, for all unreasonable creatures live under a certaine rule to them given by nature necessarie loz them to the consideration of their being, but of this Law it is not our intent to treat at this time. The law of nature specially considered: which is also called the Law of reason, pertaineth only to creatures reasonable, that is, man, which is created to the image of God.

And this Law ought to be kept as well among Jews, and Gentiles, as among Christian men, and this Law is alway good and righteous, stirring a inclining a man to good, and abhorring evil. And as to the ordering of the dothes of man it is preferred before the law of God, and it is written in the heart of every man: teaching him what is to be done, and what is to be fled: and because it is written in the heart, therefore it may not be put away, nor it is never changeable by no diversitie of place nor time: and therefore against this law, prescrption, statute, no custome, may not presuaine, and if any be brought in against it, they be not prescriptions, statutes, no customes, but things bred and against Justice, and all other Lawes: as well the Lawes of God, as to the acts of men, as other, be grounded thereupon.

Sir, With the Law of reason is written in the heart of every man, as thou hast said before teaching him what is to be done, & what is to
The 2. Chapter.

be shed, and the which thou sapp'st may never be put out of the heart, what needeth it then to have any other law brought in, to order the acts and deeds of the people?

Do. Though the law of Reason may not be changed nor wholly put away, Nevertheless before the Law written, it was greatly ioe and blinded by cutt conductions, and by many sins of the people, besides our original sin. In so much it might hardly be discerned what was righteous, and what unrighteous, a what was good, and what evil. Wherefore it is necessary for a good order of the people, to have many things added to the law of reason, also by the church, as by secular Princes, according to the manners of the Countrey, and of the people, where such addittions should be exercised. And this law of reason differeth from the law of God in two maners. For the Law of God is given by revelation of God, and this law is given by a natural right of understanding. And also the law of God ordereth a man of it life by a nigh way to the felicity that ever shall endure. And the law of reason ordereth a man to the felicity of this life.

St. But what be the things that the Law of reason teacheth to be done, and what to be fled, I pray thee show me?

Do&. The law of reason teacheth that good is to be loved, and evil is to be fled. Also that thou shalt doe to another that thou wouldest another should doe to thee. And that we may doe nothing against truth. And that a man shall live peaceably with other. That Is—
This is to be done to every man, and also that wrong is not to be done to any man.

And that also a treacherer is worse to bee punished, and such other: of the which follow divers other secundarie commandements, the which be by necessarie conclusions, derived of the first. As of that commandement that god is to bee beloved, it followeth that a man shall love his benefactor: for a benefactor in that he is a benefactor, includeth in him a reason of goodnesse, for else he ought not to be called a benefactor, that is to say, a good boer, but an enuell boer. And so in that he is a benefactor, he is to be beloved in all times, and in all places. And this law also lettereth many things to be done, as that it is lawfull to put away force with force. And that it is lawfull for every man to defend himself and his goods against an unlawfull power. And this law runneth with every mans law, and also with the Law of God, as to the deeds of man, and must be also loydes kept and observed, and shall alway declare what ought to follow upon the general rules of the Law of man, and shall retraine them if they be anything contrary but to it.

And here it is to bee understood, that, after some men, the Law whereby all things were in common, was never of the Law of Reason, but only in the time of extreme necessitie. For they say, that the Law of reason may not bee changed, but they say, it is evident that the Law whereby all things should bee in common, is changed, whereas they

co-
Of the law of God.

Cap. 3.

The Law of God is a certaine law given by revelation to a reasonable creature, shewing him the will of God, willing that creatures reasonable bee bound to doe a thing, or not to doe it, for obtaining of the felicitie eternall. And it is said for the obtaining of the felicitie eternall, to excluc the laws shewed by revelation of God for the political rule of the people, the which be called Judicialls. For a law is not properly called the Law of God, because it was shewed by revelation of God, but also because it directed a man by the nearest way to the felicitie eternall, as beene the laws of the old Testament, that beene called Moralls, and the laws of the Evangelists, the which were shewed in much more excellent manner, than the law of the old Testament was: for that was shewed by the mediation of an Angel: But the Law of the Evangelists was shewed by the mediation of our Lord Jesus Christ, God and man: and the Law of God is alway righteous and just, for it is made and given after the will of God. And therefore all acts and deeds of man, be called righteous and just, when they be done according to the Law of God, and bee conformable to it. Also sometime a Law made by man is called the law.
The 3. Chapter.

Law of God: As when a law taketh his principal ground upon the Law of God, and is made by the declaration of the faith, and to put away heresies, as divers laws Canons, and also divers laws made by the common people sometime do. The which therefore are rather to bee called the Law of God, than the Law of man. Yet nevertheless, all the Lawes Canon bee not the Lawes of God: for many of them be made onely for the politcall rule and conservation of the people. Whereupon John Gerson in the treatise of the Spiritual life of the Soule, the second Lesson, and the third Copolarie, faith thus: All the Canons of Bishops noz their decreas bee not the Law of God: For many of them bee made onely for the politcall conservation of the people. And if any man will lay, Wee not all the goods of the Church spiritual, for they belong unto the spiritualitie, and lead to the spiritualitie; Wee answeere: That in the whole politcall conservation of the people, there bee some specially deputed and dedicated to the service of God, the which most specially (as by an excellencye) are called spiritual men, as religious men are. And other, though they walke in the way of God, yet nevertheless, because their office is most specially to bee occupied about such things as pertaine to the Common-wealth, and to the good order of the people, they bee therefore called secular men or lay men. Nevertheless, the goods of the first may no more bee called Spiritual, than the goods of the other, for they be things more
The 3. Chapter.

temporall, and keeping the body as they doe in the other. And by like reason, Lawes made for the politickall order of the Church, be called many times spiritual, or the Lawes of God. Nevertheless, it is but unproperly. And other be called Civil, of the Lawes of man. And in this point many be oft times declined, and also deceive other, the which judge the things to be spiritual, the which all men know bee things temporall and carnall. These be the words of John Gerson in the place alledged before. Furthermore, beside the Law of reason, and the law of man, it was necessarie to have the Law of God, for four reasons.

The first, because man is ordained to the end of the eternal felicitie, the which excrudes the proportion and facultie of mans power Therefore it was necessarie that beside the Lawes of reason, and the Law of man, hee should bee directed to his end by a Law of God.

Secondly, forasmuch as for the uncertainty of mans judgement, specially of things peculi-. er and seldom falling, it happened oft times to follow divers judgements of divers men, and diversities of laws, and therefore to the intent that a man without any doubt may know what he should do, and what he should not doe: It was necessarie that hee should bee directed in all his doedes by a Law heavenly given by God, the which is so apparant, that no man may sverue from it, as is the Law of God.

Thirdly, man may only make a law of such things as hee may judge upon, and the judgement of man may not bee of inward things, but only
only of out\nward things, and nevertheless it
belongeth to perfection, that a man bee well or-
dized in both, that is to say as well inward as
outward. Therefore it was necessary to have
the Law of GOD, the which should order
a man as well of inward things, as of outward
things.

The fourth is, because as Saint Augustine
lath in the first booke of free Arbitrement, the
law of man may not punish all offences: for if
all offences should bee punished, the common
wealth should be hurt, as is of contracts. For
it cannot be avoided, but that as long as con-
tracts bee suffered, many offences shall follow
thereby; yet they bee suffered for the common
wealth. And therefore that no evil should bee
unpunished, it was necessary to have the Law
of God that should leave no evil unpunished.

Cap. 4.

The Law of man (the which sometime is
called the law politune) is derived by rea-
sion, as a thing which is necessarie and pro-
bably following of the Law of reason, of the
law of God. And that is called probable in that
it appeareth to many, especially to wise men,
to be true. And therefore in every law politune
well made, is somewhat of the Law of reason,
and of the law of God. And to discribe the law
of God  
and the law of reason is the law politune,
so verie hard. And though it bee hard, yet it is
much
michael necessarie in every most all doctrine, and
in all Lawes made for the common wealth. And
that the law of man be just and righteous, and
things bee necessarie, that is to say: welcome
and authozitative. Wzildeome, that he may judge
after reason what is to bee done for the Com-
minnicite, and what is expedient for a peaceable
conversation and necessarie sustentation of
them. Authozitative, that hee have authozitie to
make Lawes, Foz the Law to be derived of li-
gare, that is to say, to bind. But the sentence
of a wise man doth not bind the Comminnicite,
if hee have no rule over them. Also to exercise
good Law bee required these properties, that
is to say, that it be honest, righteous, possible in
tis use, and after the custome of the countrie,
convenient for the place and time, necessarie,
profitable, and also manifest, that it be not capt-
tious by any darke sentence, ne mixt with any
privat wealth, but all made for the common
wealth. And after Saint Bridget in the 4. books
in the hundred twentie nine chapter, "Every
good law is ordained to the health of the soule,
and to the fulfilling of the Laws of God, and
to induce the people to the evil desires, and to
do good works. Also the Cardinal of Cam-
erer writeth, Whatsoever is righteous in the
law of Man, is righteous in the law of God.
Foz every mans Law must be consonant to
the Law of God. And therefore the Lawes of
Princes, the commandements of Prelates,
the Statutes of Comminnicites, ne yet the Ordi-
nance of the Church is not righteous nor ob-
sigaztie, but it be consonant to the law of God.
And of such a Lawe of man that is conso-

nant to the Law of God, it appeareth who

hath right to Lands and goods, and who not:

For whatsoever a man hath by such Lawes of

man, he hath righteously. And whatsoever

is hath against such Lawes, is unrighteously

had.

For Lawes of man not contrarie to the law

of God, nor to the law of reason, must be ob-

served in the law of the soule: and he that de-

spiseth them, despiseth God, and respecteth God.

And furthermore as Gratian saith, because e-

nem men fear to offend for fear of pain: Ther-

fore it was necessary that divers pains should

be ordained for divers offences, as Philistions

ordained divers remedies for severall diseases.

And such pains be ordained by the makers of

Lawes, after the necessity of the time, and af-

ter the disposition of the people. And though

that law that ordained such pains had there-

by a contumistie to the Law of God, (for the

law of God commandeth that the people shall

take away euill from amongst themselves) yet

they belong not so much to the Lawe of

God, but that other paines (standing the

first principles) might bee ordained and ap-

pointed therefor, that is the law that is called

most properly the Lawe Politique, and the Law

of man.

And the Philosopher said in his third booke of

his Ethickes, that the intent of a maker of a law

is to make the people good, and to bring them
to vcrue. And although I have somewhat in

a general shewed this whereupon the Law of
The 5. Chapter.

England is grounded (for of necessity it must be grounded of the said lawes, that is to say, of the law Eternall, of the law of Reason, and of the law of God.) Nevertheless, I prap that thou shew me more specially whereupon it is grounded as thou thinkest, as thou before hast promised to doe.

Ser. I will with good will doe therein that Iphet in mee, for thou hast shewed mee a right, plaine and straight way therto. Therefore thou shalt understand, that the Law of England is grounded upon five principal grounds First it is grounded on the Law of Reason. Secondly, on the Law of God. Thirdly, on Divers general Customs or the Realme. Fourthly, on Divers Principles that are called Maximes. Fifthly, on Divers particular Customs. Sixthly, on Divers Statutes made in Parliaments by the King, and by the Common Counsell of the Realme. Of which grounds I shall speake by order as they be rehearsed before. And first of the Law of Reason.

Of the first ground of the Law of England.

Cap. 5.

The first ground of the Law of England is the Law of Reason, whereas thou hast treated before in the 2. Chap. the which is kept in this Realme, as it is in all other Realmes, as of necessity it must needs be (as thou hast said before.) D. But I would know what is called Law of Nature after the laws of Eng
England. St. It is not viced among them that be learned in the Laws of England to reason what thing is commanded or prohibited by the law of nature, or what not, but all the reasoning in that behalf is under this manner. As when any thing is grounded upon the law of nature, they say, that reason will such a thing be done, and if it be prohibited by the law of nature, they say it is against reason, or that reason will not suffer that to be done. Doct. Then I pray thee show me what they that be learned in the laws of the realm hol to be commanded or prohibited by the law of nature, under such terms and after such manner as is viced among them that be learned in the said laws.

St. There be put by them as be learned in the laws of England two degrees of the Law of Reason, that is to say, the law of reason primary, and the law of reason secondary: by the law of reason primary be prohibited in the Laws of England murder (that is the death of him that is innocent) perjury, deceit, breaking of the peace, and many other like. And by the same law also, it is lawful for a man to defend himself against an unjust power, so he have due circumstance. And also, if any promise be made by man as to the body, it is by the law of reason void in the laws of England. The other is called the law of secondary reason, the which is divided into two branches, that is to say, into the law of secondary reason general, and into a law of secondary reason particular. The law of a secondary reason general, is grounded and derived of the general law, or general customs
The 5. Chapter.
custome of propertie, whereby goods moveable
and immoveable be brought into a certain prop-
erty, so that every man may know his own
thing. And by this branch bee prohibited in
the Laws of England dissellings, trespass in
lands & goods, releaseth, theft, unlawful with-
holding of another mans goods, & such other.
And by the same law it is a ground in the law
of England, that satisfaction must be made for
a trespass, and that restitution must be made
of such goods as one man hath that belong to
another man, the debts must be paid, covenants
fulfilled, & such other. And because dissellings,
trespass in lands and goods, theft, & other, had
not beene knowne, if the law of propertie had
not bin obtained: Therefore all things that be
derived by reason out of the law law of propr-
tie, be called the law of reason secondary gene-
rally, for the law of Property is generally kept
in all countries.

The law of reason seconndarie particular, is
the law that is derived upon divers Customcs
generall and particular, & of divers Maximes
and Statutes obtained in this realm. And it is
called the law of reason secondary particular,
because the reason in that case is derived of
such a law that is onely holden for law in this
realm, and in none other realm.

Doct. I pray the show me some special case
of such a law of Reason secundarie particular
for an example. Sr. There is a Law in Eng-
land, Which is Law of custome, that if a man
take a Distresse lawfully, that he shall put it in
pound ouert, there to remaine till hee bee satis-
fied.
fied of that hee distraits fop. And then there
upon may bee asked this question, that if the
beasts die in pound fop lacke of meat, at whose
perill die they, whether die they at the perill of
him that distraits, oz of him that oweth the
beasts? D. If the law bee as thou sayest, and
that a man fop a hold cause taketh a distrete, e
putte it in the pound Donert, and no Law
compelleth him that distraits to give them
meat, then it fometh of reason that if the di-
Strete die in pound fop lacke of meat, that it
died at the perill of him that oweth the beasts,
and not of him that distraits, for in him that
distraits there can be assigned no default, but
in the other may bee assigned a default, because
the rent was unpaid. Sin. Thou haft given a
true judgement, and who hath taught thee to
doe so, but reason derived of the said general
custome? And the law is so full of fuch secon-
darie reasons derived out of the general Cu-
stomes and Marines of the realme, that some
men have affirmed that at the law of the realm,
is the law of reason. But that cannot be pro-
uced as we seemeth, as I have partly shewed
before, and more fully will shew after. And it
is not much used in the Laws of England, to
reason what law is grounded upon the Law
of the first reason Principale, oz on the Law
of reason secundarie, foz they bee most com-
monly openly knowen of themselves, but for
the knowledge of the Law of reason secunda-
riz is greater difficultie, and therefore therein
dependeth much the manner and forme of ar-
And it is to be noted that all the reasoning of Reason in the Law of England proceedeth of the first principles of the law, or of something that is derived of them: and therefore no man may rightly judge ne groundly reason in the lawes of England, if he be ignorant in the first principles. Also all birds, towles, wild beasts of Forests & warren, & such other bee excepted by the Lawes of England, out of the said general law and custome of property. For by the lawes of the realme no property may be of them in any person, unless they be tame. Neverthelesse the egs of Banks, Herons, or such other as build in the ground of any person, bee adjudged by the said Lawes to belong to him that oweth the ground.

Of the second ground of the law of England.

Cap. 6.

The second ground of the law of England is the law of God, & therefore soz punishment of th' that offend against the Law of God, it is enquird in many courts in this Realme, if any hold any opinion secretly or in any other manner against the true Catholike Faith: and also if any general custome were directly against the law of God, or if any statute were made directly against it: as it were ordained that no almes should be given soz no necessity, the custome & statute were void. Neverthelesse the statute made in the 34. yeare of king Ed. 3. whereby it is ordained that no man under paine of imprisonment shall give any aimes to any
any valiant beggers s may well labour, that they may so be compelled to labour for their living, is a good statute, so it observeth the intent of the law of God. And also by authoritie of this law, there is a ground in the laws of England that he that is Accursed shall maintain no action in the kings court, except it be in very few cases, so that the same excomunication be certified before the kings Justices in such manner as the law of the Realme hath appointed: and by the authoritie also of this ground, the law of England admiteth the spiritual jurisdiction of Dismes and offerings, and of all other things that of right belong unto it, and receiveth also the lawes of the Church duly made, s that exceed not the power of them that made the. Insomuch that in many cases it behoveth the kings Justices to judge after the laws of the church: Do how may that be, that the kings Justices should judge in the kings courts after the law of the Church? so it seemeth that the Church should rather give judgment in such things as it may make lawes of, than the kings Justices. St. That may be done in many cases, whereof I shall for an example put this case. If a writ of right of ward be brought of the bodie &c. And the tenant confessing the tenure, & the nonage of the infant faith, that the infant was married in his auncesbors dates &c, whereupon xii. men be sworn, which give this verdict, that the infant was married in the life of his auncles, and that the woman in the life of his auncles bore a diuorce, whereupon sentence was given that they should be diuorced, and that the
heire appealed, which hangeth yet undiscovered, praying the ayd of the Justice to know whether the infant in this case shall be said married or no. In this case if the law of the Church be that the said sentence of Divorce standeth in his strength & vertue until it be annulled upon the said appeale: That the infant at the death of his ancestor, was unmarried, because the first marriage was annulled by that divorce: and if the law of the church be, that the sentence of the Divorce standeth not in effect till it be affirmed upon the said appeale, then is the infant yet married, so that the value of his marriage cannot belong unto the Lord, and therefore in this case Judgement conditional shalbe given &c. and in likewise the Kings Justices in many other cases shall judge after the Law of the Church, like as the spiritual Judges must in many cases, form their judgment after the kings laws. D. How may that bee, that the spiritual Judges should judge after the kings laws? I pray thee shew mee some certaine case thereof. Stu. Though it be somewhat a digression from your first purpose, yet I will not withslay thy desire, but will with good will put thee a case of two thereof, that thou mayst the better perceive what I meane. If D. & E. have goods jointly, and D. by his last will bequeath his portion therein to C. & makest the said B. his Executor & dieth, and C. alkest the execution of this will in the spiritual court: in this case the Judges there be bound to judge that will to be bold, because it is bold by the laws of this realme. And likewise if a man bee outlawed, and after
By his will bequeath certaine goods to John at
Stile, & make his executors and yce, the king
sealeth his goods & after giueth them againe to
the executors, as after I. at Stile such a creati:
on out of the spiritual court against the execu-
tors, to have execution of the will: in this case
the Judges of the spiritual court must judge if
will to be hald, as the law of the realme is that
it is, and yet there is no such law of forfeiture
of goods by outlawrie in the spiritual law.

Of the third ground of the Law of England.

Cap. 7.

The third ground of the law of England,
ondeth upon divers Generall customes
of old time vied through all the realme,
which have bin accepted and approned by our
soveraigne lord the K. & his progenitores, & all
his subiects: a because the laid customes be ne-
ither against the Law of God, nor the Law of
reason, and have beene alway taken to bee good
and necessarie for the commonwealth of all the
Realme: Therefore they have obtained the
strength of the law, insomuch that he that doth
against them, doth against Justice: and these
be the customes thus properly be called the Com-
mon Law: and it shal alway be determined by
the Judges whether there be any such gene-
rall custome or not, and not by 12. men: and of
these generall customes, and of certaine princi-
ples thus be called Maximes, Which also take ef-
fect by the old custome of the Realme (as shall
appear in the Chapter next following) de-
pendeth most part of the law of this Realme.
The 7. Chapter.

And therefore our suouersigne loyd the king at
his Coronation among other things taketh a
solemne oath, that he shall cause all the customes
of his realme faithfully to be observed. Do. I
pray thee thou seest some of these generall cus-
tomes. Sr. I will with good will, a first I shall
shew thee how the custome of the Realme is
the vert ground of divers Courts in the
Realme, that is to say, of the Thauncery, of the
Bench of the common pleas, and the Exche-
quer, the which bee Courts of record, because
none may sit as Judges in these courts but by
the kings letters patents. And these Courts
have divers authoritie, whereof it is not to
treat at this time. Other Courts there be also
only grounded by the custome of the realm, that
bee of much lesse authoritie then the courts be-
fore rehearsed. As in every shire within the
realm, there is a court that is called the coun-
ty, another that is called the Sherifs Tozne, a
in every manor is a court, it is called a court
baron, and to every faire & market is incident
a Court that is called a court of Pipowders.
And though in some statutes is made mention
sometime of the said Courts, yet nevertheless
of the first institucion of the saide courts, & that
such Courts should bee, there is no statute nor
law witten in the Lawes of England. And
so all the ground and beginning of the saide
courts depend uppon the custome of the realme,
the which custome is of so high authoritie, that
the saide courts ne their authoritie may not be
altered, ne their names changed without Par-
stament.
Also by the old custome of the Realme, no man shall be taken, imprisoned, distrised, nor otherwise destroyed, but he be put to answeere by the law of the land, and this custome is confirmed by the statute of Magna charta cap. 26.

Also by the old custome of the Realme, all men great and small shall do and receive justice in the kings Courts, and this custome is confirmed by the statute of Mai lib. cap. 1.

Also by the old custome of the Realme, the eldest sonne is onely heire to his Ancestors, and if there be no sonnes but daughters, then all the daughters shall be heires. And so it is of sisters and other kinswomen. And if there be neither sonne, daughter, brother, nor sister, then shall the inheritance descend to the next kinnd or kinswoman of the whole blood to him that had the inheritance, of how many degrees soever they be from him. And if there be no heire general, nor speciall, then the land shall escheat to the Lord of whom the land is holden.

Also by the old custome of the realme, lands shall never ascend, or descend, from the sonne to the father or mother, nor to any other ancestor in the right line, but it shall rather escheat to the Lord of the fee.

Also if any Alien have a sonne that is an Alien, and after is made Denizen, and hath another sonne, and after purchaseth lands & dyeth, the youngest sonne shall inherit as heire, and not the eldest.

Also if there be three brethren, & the midddest brother purchase Landes and dyeth without heire of his body, the eldest brother shall inherit as
as heire to him, and not the yonger brother.

And if land in fee simple descend to a man by
the part of his father, 8 he dieth without heire
of his bodie, then the inheritance shall descend
to the next heire of the part of his father. And if
there be no such heire of the part of his father,
then if the father purchase the lands, it shall
go to the next heire of the fathers mother, 8 not
to the next heire of the sonnes mother, but it
shall rather elcheate to the Lord of the fee. But
if a man purchase lands to him 8 to his heires, a
die without heire of his body, as is said before,
the the land shall descend to the next heire of the
part of his father, if there be any, 8 if not, then
to the next heire of the part of his mother.

Also the sonne purchaseth lands in fee, and
dieth without heire of his bodie, the Land shall
descend to his uncle, and shall not ascend to his
father: But if the father have a sonne though
it be many yeares after the death of the elder
brother, yet that sonne shall put out his uncle,
and shall enjoy the Land as heire to the elder
brother for ever.

Also by the custome of the Realme, the child
that is bozne before espousells is Wakkard, and
shall not inherit.

Also the custome of the realm is, that no ma-
ter of goods nowe, chattells real noz personal shall
never go to the heire, but to the executors, or to
the Ordinarie, or administrators.

Also the husband shall have all the chattells
personals that his wife had at the time of the
espousells, or after, and also chattells real if he
puerlie his wife: But if he sell or give away the
The 7. Chapter.

the chattels reale & die, by that sale o? gift the
interest of the wife is determined, & e? elle they
shall remain to the wife, if the ouerlive her hus-
band: also the husband that have all the inheri-
cance of his wife, whereof he was seised in deed
in the right of his wife during the espostels in
for, o? in see eait generall, so? t?arme of itie, if he
have any child by her, to hold as tenant by the
curtails of England, & the wife shall have the
third part of the inheritance of her husband,
whereof he was seised in deed o? in law after the
espostels ap. But in that case the wife at the
death of her husband must be of the age of nine
pere o? above o? els she shall have no dowzie.V.
What if the husband at his death be within the
age of nine yeres ? S. I suppose the she yet have
her dowter: also the old Law & Custome of the
Realmes is, that after the death of euery tenant
that holdeth his land by knightes service, the
Lord shall have the Ward and marriage of the
heir, till the heir come to the age of 21. yeares, &
if the heir in that case be of full age at the death
of his ancestor, she she shall pay to his Lord his
reliefe, which at the commo law was not cer-
taine, but by the Stat.of Mag ch. It is put in cer-
tain that is to say, for euery Whole Knightes fee
to pay £, & and for a Whole Baronete to pay a
T. marks for reliefe, & for a Whole Esquire to
pay a £. £. and after the rate. And if the heire
of such a tenant be a woman, she at the death
of her ancestor be within the age of 14. yeares,
then by the common law she should have him in
2, in such case she shall be in Ward till 16. yeres.

And
The 7. Chapter.

And if at the death of her ancient's heere or of the age of 14. pears or more, she shall be out of Ward, though the land be holden of the king, then she shall pay reliefe as an heire male shall.

Also of lands holden in Scauge, if the ancients die, his heire being within the age of 14. pears, the next friend of the heire to whom the inheritance may not disced that have the Ward of his boide and lands, till he shall come to the age of 14. pears, and then hee may enter. And when the heire cometh to the age of 21. pears, then the gardein shall rend him an account for the profits thereof by him receiv'd.

Also, such an heire in Scauge for his reliefe shall double his rent to the Lord the pear following the death of his ancestors: As if his ancestors held by rent, the heire in the pear following shall pay the rent for his rent, and other rent for his reliefe, and the reliefe he must pay, though he be within age at the death of his ancestors.

Also, there is an old Law and Custome in this Realme, that a feathold by way of seoffement, gift, etc. lease, partall, or without Liewer of seisin be made by the Ward according, though a deed of seoffement be thereof made & delivered: But by way of surrender, parttion, and exchange, a seathold may passe without liewer.

Also if a man make a will of land, whereof he is seised in his demeline as of fée, that will is hold: but if it had fée in seoffees hand, it had beene good. And also in London such a will is good by the custome of the citie if it be enrolled.

Also a lease for terme of pears is but a chattel by
by the law, and therefore it may passe without any liuerie of seisin: but otherwise it is of a
state for term of life for that it is a Freehold in
the Law, and therefore liuerie must be made of
cis the Freehold passeth not.

Also by the old custome of the realme, a man
may distraine for rent service of common right:
and also for a rent reserved upon a gift in taille,
a lease for term of life, or peres, and at will, & in
such case the Lord may distraine the beasts of
tenants, allone as they come upon the ground,
but the beasts of strangers that come in but by
maner of an escape, he may not distrain till they
have been tenant & couchant upon the ground:
but for debt upon an obligation, noz upon a
contract, noz for account, ne pet for arreages of
account, noz for no maner of trespass, repara-
tions, noz such other, no man may distraine.

And by the old Custome of the realme all is-
sues that shall bee copned betwene partie and
party in any court of record within the realme,
except a few Whereof it nedeby not to treat at
this time, must be tried by free & lawful men
of the blinde that bee not of affinitie to none of
the parties: and in other courts that be not of
record, as in the county, court baron, hundred &
such other like, they shall be tried by the oath of
the parties, & not otherwise, before the parties
asent that it shall be tried by the homage. And
it is to be noted that lords, barons, & all peres
of the realme bee excepted out of such trialls if
they will, but if they will willfully bee sworne
therein, some say it is no errour: and they may
if they will have a select out of the Chancery di-
tected.
The 7th. Chapter.

rected to the sherifs, commanding him that he shall not impanel them upon no enquest.

And of this that is said before it appeareth, that the customes soforesaid not other like unto them, whereof be very many in the laws of England, cannot be proved to have the strength of law onely by reason. For how may it bee proved by reason that the eldest sonne shall only inherit his father, and the younger to have no part, or that the husband shall have the whole land for terme of his life as tenant by the curtesy, in such manner as before appeareth, and that the wife shall have onely the third part in the name of the dower, or that the husband shall have all the goods of his wife as his owne, and that if she die living the wise, that his executors shall have the goods, and not the wise; all these and such other cannot be proved onely by reason that it should be so and no otherwise, although they bee reasonable, and that with the custome therein bled sufficeth in the Law, and a statute made against such general customes ought to be oblerued, because they be not merelie the law of reason.

Also the law of property is not the law of reason, but a law of custome, howbeit that it is kept, and is also most necessary to be kept in all realms, and among all people, and so it may be numbered among the generall customes of the realm, and it is to understand that there is no statute that createth of the beginning of the said customes, ne why they should be holden for law, and therefore after them that be learned in the laws of the realm, the old custome of the realm is
is the only and sufficient authority to them in that behalf: and I pray thee now mee what Doctors hold therein, that is to say, whether a custome onely bee a sufficient authority of any Law. Do. Doctors hold that a Law grounded upon a custom is the most surest Lawe, but this thou must alwayes understand therewith that such a custom is neither contrarie to the law of reason, nor the law of God. And now I pray thee now mee somewhat of the Maximes of the law of England, whereof thou hast made mention before in the 4. Chapter. Sw. I will with good will.

§ Of the 4. ground of the law of England.
Cap. 8.

The 4 ground of the law of England standeth in divers principles that be called in the law Maximes, the which have bin alwaies taken for law in this realm, so that it is not lawfull for any that is learned to deny the: for everie one of those Maximes is sufficient authority to himselfe. And which is a Maxime, and which not, shall alwayes be determined by the Judges, and not by such men. And it needeth not to assigne any reason, why they were first received for Maximes, for it sufficeth that they be not against the Law of reason, nor the law of God, that they have alwayes been taken for a law. And such Maximes be not only holden for lawe, but also other cases like unto the, and all things that necessarily follow upon the same, are to be reduced to like lawe, therefore most commonly there be assigned some reasons of
The 8. Chapter.

consideration why such Marimes be reasonable, to the intent that other cases like, may the more conveniently be applied to them. And they be not of the same strength & effect in the law as natural be. And though the general customs of the Realm be the strength & warrant of the said Marimes as they bee of the general customs of the realm, yet because the said general customs be in manner knowne through the Realm, as well to them that be unlearned as learned, and may lightly bee had a knowne, and that with little study; and the Marimes bee only knowne in the Kings Courts, or among them that take great study in the Law of the Realm, and among few other persons: therefore they bee set in this writing for severall grounds, and hee that listeth may so accompt them, or if hee will, hee may take them for no ground, after his pleasure. Of which Marimes I shall hereafter thew thee part.

First there is a Marime, that Escuage un-certaine maketh Knights service.

Also there is another Marime, that Escuage certaine maketh locage.

Also that he that holdeth by Castel gard, holdeth by Knights service, but he holdeth not by Escuage. And that hee that holdeth by c.c.s. to the gard of a castel, holdeth by locage.

Also there is a Marime, that a Discen taketh alway an enricie

Also, that no Prescription in Lands maketh a right.

Also, that a Prescription of rent and profits appender out of land, maketh a right. Also,
Also that the limitation of a prescription generally taken, is from the time that no man's mind runneth to the contrary.

Also that assignees may be made upon lands given in fee, for term of life, or for term of years though no mention be made of assignees: and the same law is of a rent that is granted, but otherwise it is of a warranty and of a covenant.

Also that a condition to avoid a sechold cannot be pleaded without deed, but to avoid a gift of chattell it may bee pleaded without deed.

Also that a release or confirmation made by him that at the time of the release or confirmation made, had no right, is void in the Lawe, though a right come to him after, except it bee with Warrantie, and then it shall bar him of all right that bee shall have after the Warrantie made.

Also that a right or title of action that onely dependeth in action, cannot be given nor granted to none other but onely to the tenant of the ground, or to him that hath the reversion or remainder of the same.

Also that in an action of debt by a contract, the defendant may wage his Law, but otherwise it is upon a lease of Landes for term of years, or at will.

Also if that any exigent in case of felony bee awarded against a man: he hath thereby lost both his goods to the King.

Also if the sonne bee attached in the life of the father, and after bee purchaseth his charter
The 8. Chapter.

of pardon of the king, and after the father dyeth: In this case the land shall escheate to the Lord of the fee, in so much that though hee have a younger brother, yet the land shall not descend to him: so by the attainder of the elder brother the blood is corrupt, and the father, in law, dyed without heire.

Also if an Abbot or Prior alien the Landes of his house and dyeth, in this case, though his successor have right to the lauds, yet he may not enter, but hee must take his action that is appointed him by law.

Also, there is a Maxim in the law, that if a villaine purchase lands and the Lord enter, he shall into the land as his owne: but if the villaine alien before the Lord enter, the alienation is good. And the same law is of goods.

Also, if a man steal goods to the value of twelve pence or above, it is felony, and he shall dye for it. And if it bee under the value of ten pence, then it is but petite larceny, and hee shall not dye for it, but shall be otherwise punished after the discretion of the Judges, except it bee taken from the Person: so if a man take any thing how little soever it bee, from a man’s person feloniously, it is called robberie, and he shall dye for it.

Also, hee that is a resaigned upon an Indictment of Felony shall be admitted in favor of life to challenge execb. Jurozs peremptorily, but if hee challenge any above that number, the Law taketh him as one that hath relisted the Law, because he hath relisted three whole Enquestes, and therefore hee shall dye: but

With
With cause he may challenge as many as he hath cause of challenge to. And further it is to be understood, that such peremptory challenge shall not be admitted in appeal, because it is at the suit of the partie.

Also, the land of every man is in the Law enclosed from other, though it lie in the open field. And therefore if a man doe trespass therein, the спит shall be Quare clausum fregit.

Also the rents, commons of pasture, of turbary, reversion, remainders, not such other things which lie not in manual occupation, may not be given not granted to none other without costing.

Also that he that recovereth debt or damages in the Kings Courts by such an action wherein a Capias lay in the Process, may within a yeare after the recovery, have a Capias ad satisfaciendum to take the body of the defendant, and to commit him to prison till he have paid the debt and damages: but if there lay no Capias in the first action, then the plaintife shall have no Capias ad satisfaciendum, but must take a Fieri facias, or an Elegit within the yeare, or a Scire facias after the yeare, or with in the yeare if he will.

Also, if a release or confirmation be made to him, that at the time of the release made had nothing in the Land ac. the release or confirmation is void, except in certaine cases, as to vouch, and certaine other which need not here to be remembered.

Also there is a Maxime in the law of England, that the King may dispise no man, nor...
The 8. Chapter.

that no man may disseile the King, ne pull any
reversion or remainder out of him.

Also the Kings excellencie is so high in the
law, that no trewhold may be given to the king,
ne bee derived from him, but by matter of Re-
tro.

Also there was sometime a Maxim and a
Law of England, that no man should have a
writ of right, but by speciall suit to the king; fo
a fine to bee made in the Chancerie for it.
But these Maximes be changed by the Stat.of
Magna charta cap. 16. Where it is said thus.
Nulli negabimus, nulli vendemus rectum vel
iustitiam. And by the words Nulli negabimus,
a man shall have a writ of right of course in the
Chancerie without suing to the King for it.
And by the words Nulli vendemus, he shall have
it without fine; so, many times the old Maxi-
times of the Law be changed by Statutes. Also
though it be reasonable, that for the manifold
diversities of actions that be in the Lawes of
England, that there should bee diversities of
Proces, as in the reall actions alter one maner
and in personall actions alter another maner:
Yet it cannot be proved merely by reason, that
the same Proces ought to bee had and none
other; for by Statute it might be alterd. And
so the ground of the said Proces is to bee re-
ferred onely to the Maximes and Customs of
the Realme.

And I have shewed these these Maximes
before rehearsed, not to the intent to shew the
specially what is the cause of the law in them,
for that would take a great respite. But I
have
The 9. Chapter.

have shewed them only, to the intent that thou mayst perceive that the said Marimes & other like, may bee consentently let for one of the grounds of the Laws of England: Moreover there be divers cases, whereof I am in doubt whether they be only Marimes of the law, or that they be grounded upon the law of reason, wherein I pray the let me heare thine opinion.

Do. I pray the shew those cases that thou meanest, and I shall make the answer thereto as I shall see cause.

Hereafter follow divers cases, wherein the Student doubteth whether they be only Maximes of the Law, or that they bee grounded upon the Law of Reason.

Cap. 9.

The law of England is, that if a man command another to do a trespass, & he doth it, that the commander is a trespasser.

And I am in doubt whether that it be one by a Marime of the law, or that it be by the Law of reason.

Also, I am in doubt upon what Law it is grounded, that the accessor shall not be put to answer before the principal &c.

Also, the law is, that if an Abbot buy a thing that commeth to the use of the house, and dieth, that his successor shall be charged. And I am somewhat in doubt upon what ground that

T 3 Law
The 9: Chapter.

Law dependeth.

Also, that hee that hath possession of land, though it be by deceit, hath right against all men, but against him that hath right.

Also, if an action really be luced against any man that hath nothing in the thing demanded, the writ shall abate at the common Law.

Also, that the alienation of the tenant hanging the writ, not his entry into religion, or if he be made a knight, or if she be a woman and take an husband hanging the writ, that the writ shall not abate.

Also, if land and rent that is going out of the same land, come into one mans hand of like estate, and like suttee of title, the rent is exting.

Also, if land descend to him that hath right to the same land beloze, he shall be remitted to his better title if he will.

Also, if two titles be concurrent together, that the eldest title shall be preferred.

Also, that every man is bound to make recompence, for such hurt as his beasts shall doe in the coynce or grave of his neighbour, though he know not that they were there.

Also, if the demandant or plaintiff hanging his writ, will enter into the thing demanded, his writ shall abate. And it is many times verie hard to know what cases of the Law of England be grounded upon the Law of reason, and what upon custome of the Realme; and though it bee hard to discourse it, it is very necessary to be knowne, for the knowledge of the perfect reason of the Law.
law: If any man think that these cases before rehearsed be grounded upon the law of reason, then he may referre them to the first ground of the law of England, which is the law of reason, whereof is made mention in the 5. chapter. And if any man think to that they bee grounded upon the law of custome, then he may referre the to the Maxims of the law, which be assigned to the fourth ground of the Law of England, whereof mention is made in the 8. Chap. as before appeareth.

Do. But I pray that shew me by what authority it is proved in the laws of England, that the cases which thou hast put before in the 8. Chap. and such other which thou collect Maxims ought not to be denied, but ought to be taken as Maxims. For with they cannot be proved by reason as thou agreest thyself they cannot, they may as lightly bee denied as affirmed, vnles there be some sufficient authority to approve them.

Sir. Many of the Customs and Maxims of the Laws of England bee knowne by the bife and the custom of the realme so apparently that it needeth not to have any Law written thereof. For what needeth it to have any Law written that the eldest son shall inherit his father: or that all the daughters shall inherit together as one heire, if there bee no sonne: or that the husband shall have the goods and chattels of his wife that shee hath at the time of the espousals, or after: or that a bastard shall not inherit as heire: or the executors shall have the disposition of all the goods of their
The 10. Chapter.

their testator: and if there be no executors that the Ordinaries shall have it, & the heir shall not meddle with the goods of his ancestor, but if any particular customary helps him.

The other maximes & customs of the law be not so openly knowne among the people, may be knowne partly by the Law of Reason, and partly by the booke of the Laws of England called Yeares and Termes, and partly by divers Records remaining in the R. Courts and in the Treasurie: and specially by a booke called the Register, and also by divers statutes wherein many of the said Customs & Maximes be oft recited, as to a diligent Searcher will evidently appear.

q Of the first ground of the Law of England.

Cap. 10.

The first ground of the Law of England standeth in divers particular customs used in divers counties, towns, cities, and jurisdictions in this realm: where particular customs because they be not against the law of reason, nor the law of God, though they be against the said general Customs or Maximes of the Law, yet nevertheless they stand in effect and be taken for law: but if it rise in question in the kings courts, whether there be any such particular custom or not, it shall bee tried by xii. men, and not by the Judges, except the same particular custom be of Record in
The 10. Chapter.

the same Court. Of which particular Customes, I have hereafter noted some for an example.

First there is a custome in Kent that is called Gentilkind, that all the brethren shall inherit together, as sisters at the Common Law.

Also there is another particular Custom, that is called Barughenglish, where the younger sonne shall inherit before the eldest, and that custome is in Nottingham.

Also there is a custome in the City of London, that freemen there, may by their testament enrolled, bequeath their lands that they becessed of to whom they will, except to Mortmaine. And if they be Citizens and Freemen, that they may also bequeath their Landes to Mortmaine.

Also in Gentilkind, though the Father be hanged, the sonne shall inherit. For their custome is, The Father to the bough, the Son to the plough.

Also in some Countries the wife shall have the halfe of the husbands lands in the name of her dowere, as long as the fourth sole.

And in some countries the husband shall have the halfe of the inheritance of his wife, though he have no issue by her.

Also in some Countries an Infant when he is of age of xv.yeres may make a seoffement, and the seoffement good. And in some Countries when he can meat an eile of cloth.

The 11th Chapter.

Chapter 11.

The first ground of the Law of England standeth in divers statutes made by our Sovereign Lord the King & his progenitors, & by the Lords spiritual & temporal, and the Commons in divers Parliaments, in such cases where the law of reason, the law of God, Customs, Maximes, ne other grounds of the law seemed not to be sufficient to punish evil men, and to reward good men. And I remember not, that I have seene any other grounds of the Law of England, but onely those that I have before remembered. Furthermore it appeareth of that I have said before, that oftentimes two or three grounds of the law of England must bee joined together, or that the plaintiff can open & declare his right, as it may appear by this example. If a man enter into another mans land by force, and after maketh settlement for maintenaunce to defraud the plaintiff from his action: In this case it appeareth that the law unlawful entry is prohibited by the Law of reason, but the plaintiff shall receive treble damages, that is by reason of the statute made in the 3th year of King H. 6. cap. 9. And that the damages haise celled by rij.mē, that is by the custome of the realmie. And so in this case, three grounds of the law of England maintaine the plaintiffs action.

And so it is in divers other cases that need not to be remembred now. And thus I make an end for this time, to speake any further of other grounds of the law of England. D. I thank thee
The 12. Chapter:

Thee for the great paine that thou hast taken therein. Nevertheless, sozasmuch as it appeareth that thou hast said before, that the learned men of the Law of England pretend to bere, that the Law of England will nothing do, ne attempt against the law of Reason, nor the Law of God, I pray thee answer me to some questions grounded upon the Law of England, how as thou thinkest, the Law may stand with reason or conscience in them.

St. Put the case, and I shall make answer therein as well as I can.

§ The first question of the Doctor, of the Law of England and conscience.

Cap. 12.

I have heard say, that if a man that is bound in an Obligation pay the money, but he taketh no acquittance, or if he take one and it happeneth him to lease it, that in that case he shall bee compelled by the Laws of England to pay the money againe. And how may it be said then, that that Law standeth with reason and conscience: soz as it is grounded upon the Law of Reason, that debts ought of right to bee payed, so it is grounded upon the Law of Reason (as it seemeth) that when they be payed, that hee that payed them should bee discharged. Stu. First thou must understand, that it is not the Law of England, that if a man that is bound in an Obligation pay the money without Acquittance, or if hee...
hee take acquittance and leave it, that therefore the law determineth that hee ought of right to pay the moneie enclomes, for that law were both against reason and conscience. But though it is so, that there is a generall Maxime in the law of England, that in an action of debt sued upon an Obligation, the defendant shall not plead that he owerth not the moneie, he can in no wise discharge himselfe in that action, but hee have acquittance of some other writing sufficient in the Law, or some other thing like, witnessing that he hath paid the moneie: that is ordained by the Law to auyop a great inconvenience that els might happen to come to many people: that is to say, that every man by a Nud parol, and by a bare Auerrement should auyop an Obligation. Wherefore to auyop that inconvenience, the Law hath ordained, that as the defendant is charged by a sufficient writing, that so he must bee discharged by sufficient writing, or by some other thing of as high authortie as the Obligation is. And though it may follow thereupon, that in some particular case a man by occasion of that generall Maxime may bee compelled to pay the moneie againe that hee paid before: Yet nevertheless, no default can be thereof assigned in the Law. For like as makers of Law take had to such things as may oft fail, so do much hurt among the people, rather than to particular cases: So in likewise the generall grounds of the law of England, had more what is good for many, than what is good for one singular person one by. And because it should bee a hurt to many.
The 12. Chapter.

If an Obligation should bee so lightly avoided by word, therefore the Law specially prescribes, that hurt under such manner as before appeared, and yet intends not, nor commandeth not, that the money of right ought to be paid again, but setteth a general rule, which is good and necessary to all the people, & that every man may well keep without it be through his own default. And if such default happen in any person, whereby he is without remedy at the common law, yet he may be helped by a Subpena, and so he may in many other cases where conscience serveth for him, that were too long to rehearse now.

Do. But I prap the, thes me under what manner a man may be helped by conscience. And whether he shall be helped in the same court, or in another. &c. Because it cannot be well declared where a man shall be helped by conscience, & where not, but it be first knowne what conscience is, therefore because it pertaineth to the most properly, to treat of the nature and qualitie of conscience, therefore I prap thee that thou wilt make me some briefe declaration of the nature and qualitie of conscience, & then I shall answer to thy question as well as I can.

Do. I will with good will do as thou saiest, and to the intent that thou maist the better understand that I shall say of conscience, I shall first thes thee what Sincerity is, and then what reason is, and then what conscience is; and how these three differ among themselves, I shall somewhat touch.
Sindereff is a natural power of the soul, set in the highest part thereof, moving and steering it to good, and abhorring evil. And therefore Sindereff never sinneth not erreth. And this Sindereff our Lord put in man to the intent that the order of things should be observed. For, after Saint Dionise, the wisdome of God joineth the beginning of the second things to the last of the first things: for Angell is of a nature to understand without searching of reason, and to that nature man is joined to Sindereff, the which Sindereff may not wholly be extincted neither in man, nor yet in damned soules. But nevertheless, as to the use and exercise thereof, it may bee let for a time, either through the darkenesse of ignorance, or for undiscreet declation, or for the hardenesse of obstinacie. First by the darkenesse of ignorance Sindereff may be let, that it shall not murmur against evil, because her beleueth evil to be good, as it is in heretiques, the which, why they die for the wickednesse of their error, beleue that they die for the vertre truthe of the faith. And by undiscreet declation, Sindereff is sometime so overlaid, that remorse or grudge of conscience for that time can have no place. For the hardnesse of obstinacie Sindereff is also let that it may not stirre to goodnesse, as it is in damned soules, that bee so obstinate in evil, that
that they may never be inclined to good. And though Sinceress may be said to that point extinct in damned soules, yet it may not be said that it is fully extinct to all intents. For they always murmur against the evil of the paine that they suffer for time, and so it may not be said that it is universally, and to all intents, and to all times extinct. And this Sinceress is the beginning of all things that may bee learned by speculation or studie, and ministreth the generall grounds and principles thereof: and also of all things that are to be done by man. An example of such things as may be learned by speculation appeareth thus: Sinceress saith that every whole thing is more than any one part of the same thing, a that is a sure ground that never falieth. And an example of things that are to be done, or not to be done: as where Sinceress falieth no evil is to be done, but that goodnesse is to be done and followed, and evil to be fled, and such other.

And therefore Sinceress is called by some men the Law of reason, for it ministreth the principles of the law of reason, the which be in every man by nature, in that he is a reasonable creature.

Of Reason.

Cap. 14.

When the first man Adam was created, bee received of God a double eye, that is
The 14th Chapter.

to lay an outward eye, whereby he might see visible things, and know his bodily enemies and elsehow them. And an inward eye that is the eye of reason, whereby he might see his spiritual enemies that fight against his soul and beware of them. And among all gifts that God gave to man, this gift of reason is the most noble, for thereby man precellect all beasts, and is made like to the dignity of Angels, discerning truth from falsehood, and evil from good. Wherefore he goeth farre from the effect that he was made to, when he taketh not heed to the truth, or when he preeereth evil before good.

And therefore after Doctors, reason is the power of the soul, that discerneth betwixt good and evil, and betwixt good and better, comparing the other; the which also pertaineth vertues, looeth good, and speeth vices. And reason is called righteous and good, for it is conformable to the will of God, and that the first thing, and the first rule that all things must be ruled by. And reason that is not righteous not straight, but that is said culpable, is either because she is deceived with an error that might bee overcome, or else through her pride, or faithless shee enquired not for knowledge of the truth that ought to be enquired. And reason is divided into two parts, that is to say, into the higher part and into the lower part.

The higher part hath heavenly things eternal, and reasoneth by heavenly Lawes or by heavenly reason what is to be done, what
is not to bee done, and what things God comm-
mandeth, and what he prohibiteth. And this
higher part of reason hath no regard to transi-
tory things or temporal things, but that some-
time as it were by maner of counsell, he bring-
geth forth heavenly reasons to order well tem-
poral things. The lower part of reason woz-
eth most to governe well temporal things, and
the groundeth her reasons much upon laws of
men, upon reason of man, whereby the conclu-
deth that that is to bee done, that is honest and
expedient to the commonwealth, or not to bee
done, that is not expedient to the Common-
wealth. And so that reason whereby I know
God and such things as pertaine to God, be-
longeth to the highest part of reason. And the
reason whereby I know creatures, belongeth
to the lower part of reason. And though these
two parts, that is to say, the higher part and
the lower part be one in deed & essence, yet they dis-
fer by reason of their working, and of their of-
lice, as it is of one selfe epe, that sometime loo-
keth upward, and sometime downward.

I Of Conscience.

Cap. 15.

This word Conscience, which in latine is
called conscientia, is compounded of this
prepositius cui, is to say in English, with
and of this noyone scientia, that is to say in Eng-
lish, knowledge, and so conscience is as much to
say, as knowledge of one thing with another
thing, conscience so taken, is nothing els but

D
The 15th Chapter.

an applying of any science or knowledge to some particular act of man. And so conscience may sometime erre, sometime not erre. And of conscience thus take, doctors make many descriptions, whereas one doctor saith, that conscience is the law of our understanding. Another, that conscience is an habit of the mind discerning between good and evil. Another, conscience is the judgement of reason, judging on the particular acts of mankind, which sayings agree in one effect (that is to say) conscience is an actual applying of any cunning or knowledge to such things as be to be done, whereupon it followeth, that by the most perfect knowledge of any law or cunning, so of the most perfect and most true applying of the same to any particular act of man, followeth so most perfect, so most pure, so the most best conscience. And if there be default in knowing of the truth of such a law, or in the applying of the same to particular acts, the error or default in conscience, as it may appear by this example, whereas this midstreth a universal principle, so never erreth, (that is to say) an unlawful thing is not to be done. And the it might be taken by some that every oath is unlawful, because the Lord saith, Mark 5:39, it be not to be done; and yet he saith in no wise: and yet the by reason of the said words will hold that it is not unlawful in no case to swear erreth in conscience, for he hath not the perfect knowledge and understanding of the truth of the said gospel, nor he reduceth not the saying of scripture to other scriptures, in which it is granted that in some case an oath may be lawful, so the cause why
Wby conscience may so erre in the said case, & in other like, is because conscience is formed of a certain proposition or question grounded particularly upon universal rules ordained for such things as are to be done. And because a particular proposition is not knowne to himself, but must appear & be searched by a diligent search of a reason, therfore in search & in the conscience should be formed thereupon may happen to be erroz, & therupon it is said there is erroz in conscience: which erroz cometh either because he doth not assent to that he ought to assent unto or else because his reason whereby he doth refer one thing to another, is deceived. For further declaratió wherof it is to understand that erroz in conscience commeth 7. maner of Wares.

First is through ignorance: & is when man knoweth not what he ought to doe, & then he ought to assie counsel of others, he thinketh most expert in that sciéce, wherupó his doubt risteth. And if he can have no counsel, the he must wholly comit him to God, & he of his goodnes will so order him, that he will saue him fro offece. The second is through negligéce, as when a man is negligent to search his owne conscience, & to enquire the truerb of other. The 3. is through pride, as when he wil not mäken himselfe, ne believe them that be better & wiser than he is. The fourth is through singularity, as when a man followeth his owne wil, & will not conßorme himselfe to other, noz follow the good common wapes of men. The fist is through an inordinat affiction to himselfe, wherby he maketh conscience to follow his desire,
and so he causeth her go out of her right course.

The 6. is through putting off, whereby some person dyeth oft times such things as of reason he ought not to dyed. The 7. is through perplexity, as this is when a man believeth himself to be so betwixt two sins, that he thinketh it impossible, but that he shall fall into the one, but a man can never be so perplexed in deed but through an error in conscience, as if he will put away that error, he shall be delivered: wherefore I pray thee that thou wilt alwaies have a good conscience, and if thou have not, thou shalt alwaies be merry, as if thine own heart reproacheth not, thou shalt alwaies have inward peace. The gladnes of righteous men is of God, as in God, as their joy is alwaies in truth and goodnes. There be many diversitites of conscience, but there is none better than that, whereby a man truly knoweth himself. Many men know many great and high cunning things, and yet know not themselves, and truly he that knoweth not himself knoweth nothing well. Also he hath a good and cleane conscience, that hath puritie and cleanes in his heart, truth in his word, and righteousness in his deed. And as a light is set in a lantern that all that is in the house may be seen thereby, so almighty God hath set conscience in the midst of every reasonable soule as a light whereby he may discern what he ought to do, and what he ought not to do. Therefore for as much as it becometh thee to bee occupied in such things as pertain to the law: It is necessary that thou ever holde a pure and clean conscience, specially in such things as concern restitution:
aton: for the sin is not forgiven but if the thing
that is wrongfully taken be restored. And I
counsel thee also that thou love that is good & fly
that is evil, & that thou doe to another as thou
wouldst should be done to thee, & that thou doe
nothing to other that thou wouldst not should
be done to thee. That thou doe nothing against
truth, that thou live peaceably with thy neigh-
boz, and that thou do Justice to every man as
much as in thee is. And also that in equity ge-
erall rule of the law, thou doe observe & kepe
equite: if thou doe thus, I trust the light of
the lanterne, that is thy conscience, shal never
be extingued, &. But I pray thee shew me what
is that equity that thou hast spoken of be fafe
& that thou wouldest that I should kepe. Do I
will with good will shew thee somewhat thereof.

What is Equity.

Cap. 16.

Equity is a rightwilnes that considereth
all the particular circumstances of the deed,
the which also is tempered with the sweet-
ness of mercie. And such an equity must al-
ways be observed in equity law of man, & in eq-
erie general rule thereof, & that knew he soci,
that said thus, laws court to be ruled by equi-
tie. And the wise man saith, be not overmuch
rightwise: for the extreme rightwilnes is ex-
treme wrong, as who saith, if thou takest that
the words of the law giveth thee, thou shalt 1s-
time do against the law: & for the plainer decla-
ration what equity is, thou shalt understand,

D 3
The 16. Chapter.

that 16h deeds & acts of men, for which laws
but ordained, happen in divers manners infinitely.
It is not possible to make any generall rule of
the law, but that it that fail in some case & there-
fore makers of laws take heed to such things
as may often come, & not to every particular
case, for they could not though they would. And
therefore to follow the words of the law were in
some case both against justice & common welth.
Wherefore in some cases it is necessary to leave
the words of the law, & to follow that reason &
justice requireth; & so to intent equity is or-
dained: that is to say, to temper & mitigate the
rigor of the Law. And it is called also by some
men Epicaia, the which is no other thing but
an exception of the law of God or the law of
reason from the general rules of the law of man.
When they by reason of their generality would
in any particular case judge against the law of
God, or the law of reason, the which exception
is secretly understood in every general rule of
every positive law. And so it appeareth that e-
quity taketh not away the vetric right, but only
that that seemeth to bee right by the generall
words of the law: noz it is not ordained against
the crucinck of the law, for the law in such case
generally taken is good in himselfe, but equity
followeth the law in all particular cases where
right and Justice requireth, notwithstanding
the generall rule of the law be to the contrary:
Wherefore it appeareth that if any law were
made by a man without any such exception expres-
sed or implied, it were manifestly unreasonable
& were not to be suffered: for such cases might
come that he that would observe the law should break both the law of God, & the law of reason. As if a man make a vow that he will never eat white meat, and after it happeneth him to come there where he can get no other meat. In this case it behoveth him to break his vow for the particular case is excepted secretly from his general law by his equity or Ep. cap, as it is said before. Also if a law were made in a city, that no man bader the paine of death should open the gates of the city before the Sunne rising: yet if the citizens before that houre appoynted from their enemies come to the gates of the city, one for saving of the citizens openeth the gate before the houre appointed by the law, yet he offendeth not the law, for that case is excepted from the said general law by equity, as is said before: so it appeareth that equity rather followeth the intent of the law, than the words of the law. And I suppose that there be in like-wise loc like equities grounded by the general rules of the law of the realm. So verily, whereas one is this, there is a general prohibition in the laws of England, that it shall not be lawful to any man to enter into the fasthold of another without authoritie of the owner or the Law: but yet it is excepted from the said prohibition by the law of reason, that if a man drive beasts by the high waie, & the beasts happen to escape into the coprie of his neighbour, he to bring out his beasts that they should doe no hurt, goeth into the ground, & seeth out his beasts, there he shall sustaine that entrie into the ground by the Law. Also notwithstanding the Statute of
of Ed. 3. made the 14. year of his reign, where- 
by it is ordained, that no man by pain of im-
prisonment should give any sumes to any vali-
ant beggar, that is well able to labour: yet if a 
man meete with a valiant begger in so cold a 
weather and so light apparel, if he have no 
clothes he shall not be able to come to any town 
to have succour, but is likely rather to dye by 
the way, he therefore gave him apparel to 
save his life, he shall be excused by the said sta-
tute, by such an exception of the law of reason 
as I have spoken of. Do I know well that as 
though it shall be excepted of the said statute 
by conscience, so over that, if he shall have great 
reward of God for his good deed, but I would 
ask whether the party shall be so discharged in 
the common law, by such an exception of the law 
of reason, or not, for though ignorance unnu-
cible of a statute except the party against God, 
yet (as I have heard) it excuseth not in the 
lawes of the realme, ne yet Chancery, as some 
say, although the case bee so that the party to 
whom the forfeiture is given may not with 
conscience leave it. So Wely, by thy question 
though half put me in a great doubt, wherefoe I 
pray thee give me a respite therin to make the 
an answer, but as I suppose for this time (how-
be it I will not fully affirm it to bee as I say) 
it should seeme that hee should well plead it for 
his discharge at the common Law, because it 
shall be taken that it was the intent of the ma-
kers of the Statute to except such cases. And 
Judges may many times judge after the mind 
of the makers as farre as the letter may suffer 
and
and so it seemeth, they may in this case. And divers other exceptions there be also from other general grounds of the Law of the realm by such equitie, as thou hast remembred before, that were too long to rehearse now. Do. But yet I pray thee shew me shortly somewhat more of thy mind, under what manner a man may be holpen in this realm by such equitie. St. I will with good will shew thee somewhat the rest.

In what manner a man shall be holpen by equitie in the Laws of England.

Cap. 17.

First it is to be understood, there bee in many cases divers exceptions fro the general grounds of the law of the Realm by other reasonable grounds of the same law, whereby a man shall be holpen in the common law. As it is of this general ground, that it is not lawful for any man to enter upon a Descent, yet the reasonablenenes of the Law excepteth from the ground, an infant that hath right, and hath suffered such a Descent, & him also that maketh continuall claim, and suffereth them to enter, notwithstanding & descent. And of that exception they that have advantage in the common law. And so it is likewise of divers Statutes, as of the Statute whereby it is prohibited, & certaine particular tenants that do no wast, yet if a lease for terme of years be made to an infant that is within years of discretion, as of the age of 12 by years, & a stranger do wast, in this case this
Infant shall not be punished for the fault, for he is excepted & excused by the law of reason. And a woman coerture to whom such a lease is made after the coverture, shall be also discharged of fault after her husband's death, by a reasonable maxime and customs of the realm. And also for reparations to be made upon the same ground, it is lawful for such particular tenants to cut down trees upon the same ground to make reparations. But the cause there as I suppose is, for that the mind of the makers of the said statute, shall be taken to be, that that case should be excepted. And in all these cases the parties shall be holp in the same court, & by the common laws: thus it appearseth that sometime a man may be excepted from the rigour of a maxime of the law by another maxime of the Law. And sometime from the rigour of a statute by the law of reason, sometime by the intent of the makers of the Stat. but yet it is to be understood that most commonly, where any thing is excepted from the general customs or maximes of the laws of the Realm, by the law of reason, the party must have his remedy by a writ that is called Subpenna, if a Subpenna Ippeth in the case. But where a Subpenna Ippeth, & where not, it is not our intent to treat of at this time. And in some case there is no remedy for such an equity by way of compulsion, but all remedy therein must be committed to the conscience of the party. Doct. But in case where a Subpenna Ippeth, to whom shall it be directed, whether to Judge, or the party, &c. It shall never be directed to the Judge, but to the party plaintiff or to his Attorney,
tourney, and thereupon an Injunction commanding them by the same under a certaine paine therein to be contained, that he proceed no further at the common Law, till it be determined in the Kings Chauncerie, whether the plaintiff hath title in conscience to recover, or not. And when the plaintiff by reason of such an Injunction ceaseth to ask any further process. The Judges will in like-wise cease to make any further process in that behalfe.

Do. Is there any mention made in the Law of England of any such equities. So of this termes equitie, to the intent that is spoken of here, there is no mention made in the Law of England, but of an Equity derived upon certaine Statutes, mention is made many times often in the Law of England. But that equity is all of another effect that this. But of the effect of this Equity that we now speake of, mention is made many times: for it is oftentimes argued in the Law of England, where a Subpena lyeth, and where not, and daily Wills bee made by men learned in the Lawe of this Realme, to have Subpenas. And it is not prohibited by the Law, but that they may well doe it, so that they make them not, but in case where they ought to be made, and not for Vocation of the partie, but according to the truth of the matter. And the Law will in many cases that there shall be such remedie in the Chauncerie upon divers things grounded by on such Equities, and then the Lord Chaunce-lour must order his conscience after the rules and grounds of the Law of the realme.
in so much that it had not beene inconvenient to have assigned such remedie in the Chancery by such equities for the seuenth ground of the Law of England; but forasmuch as no record remaineth in the kings Court of no such Bill, me of the suite of Subpena or Injunction, that is fined thereupon, therefore it is not set as for a speciall ground of the law, but as a thing that is suffered by the law.D. Then sith the parties ought of right in many cases to bee holpen in the Chancery by such equities: it seemeth that if it were ordained by Statute, that there should be no remedie upon such equities in the Chancery, nor in none other place, but that every matter should bee ordered onely by the rules and grounds of the common Law, that the Statute were against right & conscience. Se. I thinke the same, but I suppose there is no such Statute. Do. There is a statute of that es- lect, as I have heard say, wherein I would gladly heare thy opinion. Se. Show me that Statute and I shall with good will say as me thinketh therein.

Q Whether the Statute hereafter rehearsed by the Doctor, be against conscience. or not.

Cap. 18.

There is a Stat. made in the 4.pere of H. H.4.c.22. whereby it is enacted that judgment given by the Kings courts, shall not be examined in the Chancery, Parliament, nor
chap elsewhere, by which Statute it appeareth that if any Judgement be given in the King's courts against an equity or against any matter of conscience, that there can be had no remedy by that equity; for the judgiment cannot be reformed without examination, and the examination is by the said Statute prohibited, wherefoever it seemeth that the said Statute is against conscience: What is thine opinion therein?

Sr. If judgement given in the King's courts would be examined in the Chancery before the King's Council, or any other place, the plaintiles of demandants shou'd seldom come to the effect of their suit, ne the law shou'd never have end. And therefore to elchew that inconvenience that Statute was made. And though by adventure by reason of that Statute some singular person may happen to have solace: Neverthelasse the said Statute is verti necessarie, to elchew many great vexations and unnatural expenses; that would else come to many plaintiles that have rightwisely recovered in the King's Courts. And it is much more provided for in the law of England that hurt not damages should not come to many, than only to one. And also the said Statute doth not prohibit equity, but it prohibiteth only the examination of the judgement for the elchewing of the inconvenience before rehearsed. And it seemeth that the said Statute standeth with good conscience; in many other cases where a man both doth wrong yet he shall not be compelled by way of compulsion to reforme it, for many times it must be left to the conscience of the party, whether he will re-
The 18. Chapter.

dress it or not. And in such case he is in conscience as well bound to redress it if he will save his soule, as hee were if hee were compellable thereto by the law, as it may appear in divers cases that may bee put upon the same ground. Doth I pray thee put some of these cases for an example. See if the defendant wage his law in an action of debt brought upon a true debt, the plaintiff hath no means to come to his debt by way of composition, neither by Sub pena, nor otherwise, a yet the defendant is bound in conscience to pay him. Also if the grand Jurie in attainder affirme a false verdict given by the petit Jurie, there is no further remedy but the Conscience of the partie. Also where there can bee had no sufficient proue, there can bee no remedy in the Chancery, no more than there may bee in the spiritual Court. And because thou hast given an occasion to speake of conscience I would gladly heare thy opinion where conscience shall be ruled after the law, & where the law shall be ruled after conscience. D. And of that matter I would likewise gladly heare thy opinion, specially in cases grounded upon the lawes of England, for I have not heard but little thereof in time past: but before thou put any case thereof, I would that thou wouldest shew me how these two questions after thy opinion are to be understood.

Of what Law this question is to bee understood: that is to say, where conscience shall be ruled after the Law.

Cap. 19.
The law whereof mention is made in this question, that is to say, where conscience that be ruled by the law, is not as we seemeth to be understood only of the law of reason, or of the law of God, but also of the law of man, is not contrary to the law of Reason, nor the law of God, but that it is superadded unto the so; the better ordering of the commonwealth: for such a law of man is always to be set as a rule in conscience, so that it is not lawful for a man to frame it on the one side, nor on the other, for such a law of man hath not only the strength of man's law, but also the law of Reason, or of the Law of God, whereof it is derived: for Laws made by man, which have received of God power to make Laws, be made by God. And therefore conscience must be ordered by the law, as it must be upon the law of God, but by the law of reason. And furthermore, the Law whereof mention is made in the latter end of the Chapter next before, that is to say, in the question wherein it is asked where the law is to be left & so taken for conscience, is not to be understood of the law of reason, nor of the law of God: for the two laws may not be left, nor it is not to be understood of the law of man, that is made in particular cases, and that is consonant to the law of reason, & to the law of God, and that yet that law should be left for conscience: for of such a law made by man, conscience must be ruled, as it is laid before: nor is it not to be understood of a law made by man, commanding or prohibiting any thing to be done, that is against the law of reason, or the law of God.

For
The 19. Chapter.

For if any law made by him, bind any person to any thing that is against the said laws, it is no law, but a corruption and manifest error. Wherefore after them that be learned in the laws of England, the said question, that is to say, where the law is to be left for conscience, and where not, it is to be understood in divers manners, and after divers rules, as hereafter shall somewhat be touched.

First, many unlearned persons believe that it is lawfull for them to do with good conscience all things, which if they do them, they shall not be punished therefore by the Law, though the law both not warrant them to do that they do, but only when it is done, doth not so for some reasonable consideration punish the that doth it, but leaveeth it only to his conscience. And therefore many persons do oftentimes that they should not do, and keep as their own, that that in conscience they ought to restowe. Wherefore there is the laws of England in this case.

If two men have a wood jointly, as the one of them sellete the wood, and keepeth all the money wholly to himselfe: In this case his fellow shall have no remedy against him by law, for as they when they tooke the wood jointly, put each other in trust, and were content to occupie together: so the Law suffereth them to order the profits thereof according to the trust that each of them put another in. And yet if one toke all the profits, he is bound in conscience to restowe the halfe to his fellow, for as the Law giveth him right only to have the land, so it giveth him right only in conscience.
science to the halfe profits. And yet neverthe-
leas it cannot bee laid in that case, that the law
is against conscience, for the law neither wil-
leth ne commande th that one should take all the
profits, but leaseth it to theire conscience: so
that no default can be found in the law, but in
how that taketh all the profits to himselfe may
bee assigned default, which is bound in consci-
ence to reforme it, if he will save his soule, though
he cannot be compelled thereto by the law. And
therefore in this case & other like, that opinion
which some have, that they may doe with consci-
ence, all that they shall not bee punished for, by
the law if they doe it, it is to bee left for conscience: but the Law is not to bee left for consci-
ence.

Also many men think that if a man have land
that another hath title to, if he hath the right
shall not by the action that is giuen him by the
law to recover his right by, recover damages,
that then he that hath the land is also discharg-
gd of damages in conscience; e that is a great
error in conscience: for though he cannot be com-
pelled to yield the damages by no mans Law,
yet he is compelled thereto by the law of rea-
son, & by the law of God, whereby we be bound
to doe as wee would bee done to, and that wee
should not count our neighbours goods: & there-
fore if tenant in talle be divesed and the diffe-
sor doubt severed, and then the heire in the talle
byingeth a formed & recovereth the land & no
damages, for the law giueth him no damage in
that case, yet the tenant by conscience is bound
to yeeld damages to the heire in talle from the
death
death of his ancestor. Also it is taken by some men, that the law must be left for conscience, where the law both not suffer a man to deny he hath before affirmed in Court of Record, or for that he hath wilfully excluded himself there- for some other cause; as if the daughter that is only heir to her father, will sue in court with her sister that is a bastard, in that case she shall not after he received to say, that her sister is a bastard, in so much that if her sister take half the land with her, there is no remedy against her by the law. And no more there is of diversity in other estopples, which were too long to rehearse now. And yet the party that may take advantage by such an estoppel by law is bound in conscience to forsake that advantage, specially if here were to estopped by ignorance, not by his own knowledge a silent. For though the law in such cases giveth no remedy to him that is estopped, yet the law judgeth not that the other hath right unto the thing that is in variance between them. And it is to be understand that law is to be left for conscience, where a thing is tried and found by verdict against the truth, for in the common law the judgement must be given according as it is pleaded and tried, like as it is in other laws, that the judgement must be given according to that, that is pleaded and proved. And it is to be understand that the law is to be left for conscience, where the cause of the law both cease, for when the cause of the Law both cease, the Law also both cease in conscience, as appeareth by this case hereafter following.
A man maketh a lease for term of life, after a stranger both wait, wherefoe the lease bringeth an action of Trespass, & hath judgement to recover damages, having regard to the treble damages that he shall pay to him in the reversion. And after he in the reversion before action of wait saed dieth, so that the action of wait is thereby extincted: then the tenant for term of life (though hee may sue execution of the said judgement by the law) yet hee may not doe it by conscience, for in conscience hee may take no more than he is hurted by the said Trespass, because he is not charged over, with treble damages to his lessee. Also it is to be understood where a law is grounded upon a presumption, if the presumption be untrue, then the Law is not to be holden in conscience. And now I have shewed thee somewhat of the question, that is to say, where the law haue ruled after conscience, I pray thee shew mee whether there be not like diversities in other laws, berfort lawe and conscience. D. Yes verily, very many, whereof thou hast recited one before, where a thing that is untrue is pleased, and praised, in which case judgement must be given according, as well in the law Civil, as in law Cannon. And another case is, that if the lease make not his In-wentoyp, he shall bee bound after the law Civil, to all the debts, though the goods amount not to so much:And the law Cannon is not against that Law, and yet in conscience the heyp which in the Lawes of England is called an Executour is not in that case charged to the debts, but according to the value of the goods.
Chapter 20

And now I pray thee thew mee some cases where conscience shall be ruled after the Law, &c. I will with god will shew thee somewhat as me thinketh therein.

Here follow divers cases, where conscience is to be ordered after the Law.

Cap. 20.

The eldest sonne shall have a enioy his fa-
tners lands at the common law in consci-
cence, as he shal in the law. And in Burch-
english the younger sonne shall inioy the inhe-
riance, that in conscience. And in Gavel kind
all the soones shall inherit the land together as
daughters, at the common law that in conscience.
And there can be none other cause assigned why
conscience in the first case is with the eldest bro-
ther, in the second with the younger brother, 
in the 3. case with all the brethren, but because
the law of England by rest of divers customs
both sometime give the land whole to the eldest
sonne, sometime to the youngest, sometime to all.
Also if a man of his meere motion make a lease-
ment of two acres of land lying in two severall
shires, a makes heirry of selion in the one acre
in the name of both. In this case the seerbee
hath right but onely in the acre whereof iluerie
of selion was made, because hee hath no title
by the Law: but if both acres had bin in one
shire he had had good right to both. And in these
cases the diversitie of the law maketh the di-
vnersity of conscience.

Also
Also, if a man of his main motto make a settlement of a Manor, a faith not, so have & to hold &c. With the appurtenances; in that case the lessee hath right to the demesne Lands, and to the rents, if there be attornements, &c. to the cou莫 pertaining to the Manor, but he hath neither right to the advowsons appendent; if any be, not to the villeines regardant; but if this term, with the appurtenances, had bin in the deed, the lessee had right in conscience as well to the advowsons and villeines, as to the residue of the Manor: but if the king of his main motto give a Manor with the appurtenances, yet the donee hath neither right in law, nor conscience to the advowsons nor villeines. And the dierstitie of the Law in these cases make the dierstitie of conscience.

Also, if a man make a lease for terms of perennially building to him & to his heirs a certain rent by on condition, that if the rent be behind by cl. dares &c. that then it shall be lawful to the lessee & his heirs to reenter. And after the rent be behind, the lessee asketh the rent according to the law, & it is not paid, the lessee dieth, his heir entrench. In this case his entry is lawful both in law and conscience: but if the lessee had died before he had demanded the rent, and his heir demanded the rent, & because it is not paid his reentrench, in that case his reentrench is not lawful neither in law nor conscience.

Also, if the tenant in dower s<Member> herland &c. before the cause is ripe, the cause in conscience belongeth to her executors, & not to him in the province: but otherwise it is in conscience of
grace and fruits. And the denteritie of the law
makeneth there also the denteritie in conscience.

Also, if a man seised of lands in his demesne
as of fee, bequeath the same by his last will to
another, to his heir, or dieth: In this case he
have notwithstanding the will, hath right to
the land in conscience. And the reason is be-
cause the law judgeth that will to be void, as
it is void in the law, so it is void in conscience.

Also, if a man grant a rent for term of life, he
make a lease of land to the same grantee for term
of life, the tenant alieneth both in fee: In this
case he, in the reversion hath good title to the
land both in law and conscience, and not to the
rent. And the reason is, because the land by the
Alienation is forfeit by the law to him in the
reversion, and not the rent.

Also, if lands be given to two men and to a
woman in fee, and after one of the men enter mar-
ried with the woman, and alieneth the land and
dieth: In this case the woman hath right but
onely to the third part, but if the man and the wo-
man had been married together, before the first
coitement, then the woman notwithstanding
the alienation of her husband, should have had
right in law a conscience to the one half of the
land. And so in these two cases conscience both
follow the law of the Realm. Also if a man
have two sons, one before espousels, and an
other after espousels, and after the father dieth
seised of certain lands: In this case the yonger
sonne shall enioy the lands in this Realm, as
heire to his father both in law and conscience.
And the cause is, because that some boime after
The 20. Chapter.

This by the law of this realm the heir, and the elder son is a bastard. And of these cases and many other like in the laws of England may be formed the Syllogisme of conscience, or the true judgment of conscience in this manner. Sideris ministrum the Maior thus: Rightwisens is to be done to every man, upon which Maior the Law of England ministrum the Minor thus: The inheritance belongeth to the son borne after espousals, & not the son borne before espousals, then conscience maketh the conclusion, & faith, therefore the inheritance is in conscience to be given to the son borne after espousals. And in other cases instinct may be formed by the law of the Syllogisme or the right judgment of conscience: Wherefore they that be learned in the law of the realm, say that in every case, where any law is ordained for disposition of lands & goods, which is not against the law of God, nor yet against the law of reason, that the law bindeth them that be under the law of the Court of conscience, that is to say, inwardly in his soul. And therefore it is somewhat to maruaile that spiritual men have not improved themselves in time past to have more knowledge of the kings laws than they have done, or that they yet doe: for by the ignorance thereof they be of times ignorant of that that should order them according to right and justice, as well concerning themselves as other that come to them for Counsaile. And now for as much as I have answere to thy questions as well as I can: I pray thee that thou wilt shew me thy opinion in divers.
The 21. Chapter.

eases formed upon the law of England where-
in I am in doubt, what is to be holden therein in conscience. Do. Show me thy questions, & I will say as me thinketh therein.

§ The first question of the Student.

Cap. 21.

If any infant that is of the age of xx. yeares, hath reason & wisedome to governe himselfe, setteth his land, & with the mony thereof buyeth other land of greater value than the first was, and taketh the profits thereof, whether may the infant alke his first land against in conscience, as he may by the law. V What thinkest thou in that question? St. Hee saith that so much as the Law of England in this article is grounded upon a presumption, that is to say, that infantes commonly aspere they be of the age of xxi. yeares be not able to govern themselves, that yet so as much as that presumption capseth in this infant, that hee may not in this case with conscience alke the Land againe that hee hath sold to his great advantage, as before appeareth. D. Is not this sale of the infant and the testament made thereupon, if any were, voidable in the law? S. Yes hereby. Do. And if the crosse have no right by the bargain, nor by the testament made thereupon, whereby should he have then have right thereon as thou thinkest? V By conscience as me thinketh, for the reason that I have made before. D. And upon what Law would that conscience be grounded, that thou spea
The 21. Chapter.

spakest of, for it cannot be granted by the law of the Realm, as thou hast said thy selfe. And mee thinkest that it cannot be grounded upon the Law of God, nor upon the Law of reason, for seestments noz contracts be not grounded upon neither of those lawes, but upon the law of man. Sr. After the law of property was ordained, the people might not conveniently live together without contracts, & therefore it seemeth that contracts be grounded upon Law of reason, or at the least, upon the law that is called jus gentium. Do. Though contracts bee grounded upon the Law that is called jus gentium, because they bee so necessary & so general among all people, yet that practith not that contracts be grounded upon the Law of reason: for though the Law called jus gentium bee much necessary for the people, yet it may be changed. And therefore if it were ordained by Statute that there should bee no sale of land, no contract of goods, and if any were, that it should be void, so that every man should continue still lesse of his lands and possest of his goods, the Statute were good. And then if a man against that Statute sold his Land for a remuneration money, yet the seller might lawfully retain his Land according to the Statute. And then he were bound to no more but to repay the money that he received with reasonable expenses in that behalfe. And so in like wise me thinkest that in this case, the infant may with good conscience reenter into his first land: because the contract after the Maries of the Law of the Realm is void, for as I have heard the Maries
The 22. Chapter.

Maxims of the law be of as great strength in the Law as Statutes. And some thinke that in this case the Infant is bound to no more, but only to repay the money to him that he sold his land unto, with such reasonable costs & charges as he hath sustained by reason of the same. But if a man sell his land by a sufficient & lawful contract, though there lack liberie of seisin or such other solemnities of the Law, yet the seller is bound in conscience to performe the contract. But in this case the contract is insufficient, and so me thinketh great diversitie betwixt the cases. Ste. For this time I hold mee contented with thy opinion.

§ The second question of the Student.

Cap. 22.

If a man that hath lands for terme of life, be impannelled upon an Inquest, & thereupon feeth issues & dieth, whether may those issues be intestad upon him in the reversion in conscience as they may be by the law? If they may be intestad by the law, what is the cause why thou dost doubt whether they may be intestad by conscience? For there is a Maxime in the lawes of England, that where two Titles run together, the eldest Title shall bee preferred. And in this case the title of him in the reversion, is before the title of the forfeiture of the issues. And therefore I doubt somewhat whether they may be lawfully intestad. Do. By that reason it seemeth thou art in doubt what the law is in this case,
The 11. Chapter.

Case, but that must necessarily be known, for else it were in baine to argue what conscience will therein.

It is certain that law is such, so it is likewise if the husband so sett issues, and die, those issues shall be leuted on the lands of the wife. D. And if the law be such, it seemeth that conscience is so in likewise, so that it is the law, that for execution of justice every man shall be impanelled when need requireth, it seemeth reasonable, that if he will not appear, that he should have some punishment for his not appearance, so else the law should be clearly frustrate in that point. And the same, as I have heard, is, that he shall lose issues to the king for his not appearance: Wherefoe it seemeth not inconvenient nor against conscience, though the law be, that those issues shall be leuted of him in the reversion, so that the condition was secretly understood in the law, to passe with the lease when the lease was made. And therefore it is for the lesse to beware so to prevent the danger at the making of the lease, or else it shall be adjudged his owne default. And then this particular Martine whereby such issues shall be leuted upon him in the reversion, is a particular exception in the law of England from the general Martine that thou hast remembred before, that is to lay, where two titles run together, that the elder title shall be preferred; so in this case the general Martine in this point shall hold no place, neither in law, nor in conscience, so by this particular Martine strength of general Martine is restrained to every instant, it is to lay, as well in law as in conscience.

The
Chapter 23.

The third question of the Student.

If a Tenant for term of life, or for term of years, do wait, whereby they be bound by the lawes to peeld to him in the reversion treble damages, & so shall fo. the place waiteth whether is hee also bound in conscience to pay those damages, & to resist that place waiteth immediately after the wait done, as he is in the single dammages, or that he is not bound there to till the treble damages, & place waiteth, hee recovered in the king's Court. 1. Before judgement given in the treble damages of the place waiteth, hee is not bound in conscience to pay them, for it is uncertain what he should pay: But if fastisheth that he bee ready till judgement be given to peeld damages according to the value of the wait, but after the judgement given, hee is bound in conscience to peeld the treble dammages, so also the place waiteth. And the same law is in all Statutes Penal, that is to say, that no man is bound in conscience to pay the penalty till it be recovered by the law. S. Whether may he that hath defended against such a statute penal, defend the action & hinder the judgement, to the intent hee would not pay the penalty, but only single damages. D. If the action bee taken rightwisely according to the Statute, and upon a just cause, the defendant may in no wise defend the action, but if he have a true bilatere matter to plead, which should be hurtfull to him, if he pleaded not, though he bee
not bound to pay the penalty till it be recovered,

The fourth question of the Student.

If a man enfeoffe other in certaine land upon condition, that if he enfeoffe any other, that it shalbe lawful for the seffor & his heirs to re-enter, &c. whether is this condition good in conscience, though it be void in the law? D. What is the cause why this condition is void in the law? St. The cause is this, by the law it is incident to every state of fee simple, that hee hath the estate, may lawfully by the law, and by the gift of the seffor, make a seoffement thereof: And then when the seffor restraineth him after, that hee shall make no seoffement to no man against his owne former grantee, & alio against the purtie of the state of a fee simple, the Law judgments the condition to be void, but if the condition had bene, that hee should not have enfeoffed such a man, or such a man, that condition had bin good, for yet hee might enfeoffe other.

D. Though the said condition be against the effect of the state of a fee simple, & alio against the law; nevertheless it is not against the intent that the parties agreed upon, & that at the time of the livery And so as much as the intent of the parties was, if the seoffor enfeoffed any man of the land, that the seoffor should enter, and to that intent the seoffor took the estate and
after brake the intent, it seemeth that the land in conscience should returne to the seffor. s. The intent of the parties in the lawes of England is void in many cases, that is to say if he be not ordered according to the law. And if a man of his meer e motion without any recompence, intending to give lands to another, & to his heires make a deed unto him, whereby he giveth him those lands, to have and to hold to him for ever; intending that by the word (for ever) the seffee should have the land to him and to his heires, in this case his intent is void, and the other shall have the land only for terme of life. Also if a man give lands to another, & to his heires for terme of yeares, intending, that if the seffee dye within the terme, that the his heires should enjoy the land during the terme: In this case his intent is void, for by the law of the Realm all chattels real & personal shall go to the executor, & not to the heir. Also if a man give lands to a man and to his wife, & to the third person, intending that every of them should take the third part of the land as three common persons should, his intent is void, for the husband and the wife, as one person in the law, shall take only the one halfe, & the third person the other halfe; but these cases be alway to be understood when the said estates bee made without any recompence. And so as much as in this principal case the intent of the seffor is grounded against the Law, and that there is no recompence appointed for the seffement, mee thinketh that the seffor hath neither right to the Land by Law, or conscience: for if hee should have it by
The 25. Chapter.

conscience, that conscience should be grounded upon the law of reason, and that it cannot, for conditions be not grounded upon the Law of reason, but upon the maximes & customs of the realm; & therefore it might be ordained by statute that all conditions made upon land should be void. And when a condition is void by the maximes of the Law, it is as fully void by every intent, as if it were made void by statute, and so I thinkth that in this case the testator hath no right to the land in law noz in conscience. D. I am content the opinion stand till we shall have hereafter a better leisure to speak farther in this matter.

The 25. question of the Student.

Cap. 25.

If a line with proclamation be lent as according to the statute, & no claim made within b. percs &c. Whether is the right of a stranger, extracted thereby in conscience, as it is in the law? Do. Upon what consideration was that statute made? Iu. That the right of lands and tenements might be the more certainly known, and not to be so uncertain as they were before that statute. D. And when any law of man is made for a common wealth, or for a good peace and quietness of the people, or for any incommencence or hurt to be saved from the, that law is good, though percase it exting the right of a stranger, and must be kept in the Court of
conscience: for as it is laid before in Ch. 4. By
lawes rightfully made by man, it appeareth
who hath right to the lands & goods, for whatsoever a man hath by such a Law he hath rightly.
And whatsoever he holdeth against such a Law he holdeth unrightfully: and furthmore it is laid there, all the lawes made
by man which bee not conforme to the Law of
God must be observed and kept, & that in con-
science. And he that despiseth the despiseth God,
and he that resiteth th m, resisteth God. Also
it is to be understood, that possessions and the
right thereof is subject to the laws, so that they
therefore with a cause reasonable may be tran-
slated and altered from one man to another, by
the act of the Law. And of this consideration
that Law is grounded, that by a contract made
in faires and marketts, the property is altered except the property be to the King, so that the
bauer pay toll, or do such other things as is ac-
customed there to be done upon such contracts,
and that the bauer knoweth not the former
property. And in the law Cir: there is a like
Law, that if a man have another mans goods
with a title three yeares, thinking that he hath
right to it, he hath the very right unto the thing
and that was made for a Law, to the intent that
the property and right of things should not be
uncertaine, and that variance and strife should
not bee among the people. And so as much as
the said Statute was ordained to give a cer-
tainty of title in the Lands and Tenements
compised in the same: It seemeth that that
line extinguisheth the title of all other, as well in
conscience as it both in the Law. And 1th I have aunswered to thy question, I pray thee let me know thy mind in one question concern- ning tailed lands, and then I will trouble thee no further at this time.

A question made by the Doctor, how certaine recoveries that be vied in the Kings Courts to defeate tailed land, may stand with conscience.

Cap. 26.

I have heard say, when a man that is seiled of lands in the tale, seileth the land. That it is commonly used, that he that dupleth the land, shall soe his suetter, and for the avoiding of the Tale in that behalf, cause some of his friends to recover the said lands against the said tenant in tale; which recovery, as I have beene credibly enformed, shalbe had in this maner: the demaunbantes shall suppose in their wit & declaration, that the tenant hath no en- try, but by such a stranger as the duple that into name & appoint, where indeed the demaunbantes never had possession thereof, noz yet the said stranger. And thereupon the said tenant in tale shall appear in the court, and by assent of 6 partys, shall bouch to warrant one that he knoweth well hath nothing to peeld in value. And the bouches shall appear, & the demaunbantes shall declare against him, and thereupon he that take a day to emparle at the same terme, and at that day by assent and coum of the parties, he shal
shall make default, upon which default because
it is a default in despite of the Court, the de-
mendants shall have judgement to recover a-
against the tenant in taile, and he over in value a-
against the vouches, and this judgement and re-
covery in value, is taken for a bar of the taile
for enu: how may it therefore be taken, that it
law standeth with conscience, that as it seemeth
alloweth a favoureth such fained recoveries?
So, if the tenant in taile sell the land for a cer-
taine summe of mony as is agreed betwixt the
at such a price as is commonly sold of other
lands, and for the suretie of the sale souereth
such a recovery as is aforesaid, what is the
cause that moveth thee to doubt whether the
said contract, or such recovery made thereupon, for
the suretie of the buyer that hath truely paid
his mony for the same, should stand with con-
sience? Do. Two things cause me to doubt
therein, one is for that, that after our Lord had
given the land of Bchest to Abraham and to his
descendants, that is to say, he is to his children in possession alway to continue, he said to Moses, as it appeareth Levit. 25, the land shall not be sold
for ever, for it is mine. And then our Lord as-
signed a certain manner how the land might be
redeemed in the yeare of Jubilee, if it were sold
before: and forasmuch as our Lord would
that the land so given to Abraham and his
children should not be sold for ever, it seemeth
that he doth against the ensample of God, that
alienseth of sealeth the land that is given to him
and to his children, as lands intailed be given.
Another cause is this: It appeareth by the

The 26. Chapter.
commandement of God, that thou shalt not covet the house of thy neighbour &c. And if that concupiscence be prohibited, more stræger then the unlawful taking and withholding thereof is prohibited: and so as much as tailed Land, when the ancestor is dead, is a thing that of right is belonging to his heirs, for that he is heir according to the gift, how may the land with right of conscience be holden from him?

5. Notwithstanding the prohibition of Almighty God, whereby the Land that was given to Abraham & to his seed might not be aliened for ever, yet lands within walled townes might lawfully bee aliened for ever, except the Lands of the Levites, as appeareth in the said Chapter of Leviticus.25. And so it appeareth that the said Prohibition was not general for ever in that place, and that among the lewces. And it appeareth also that it was given only to Abraham and his children, and so it was not generally to all people. And it appeareth also that it extended not but only to the Land of promission, as it appeareth by the words of the said Chapter, where it is said thus: 'and all the region of our possession shall bee sold under the condition of redeeming: Whereby appeareth that Lands in other Countries bee not bound to that condition, and as they bee not bound to that condition, by the same reason it followeth, that they bee not bound to the same succession. Therefore that said Law, that will that the Land given to Abraham and to his seed shall not be sold for ever,'
The 26. Chapter.

bindeth no land out of the land of promission; some men will say, that litten the passion of our Lord was promissgate and knowne, bindeth not there. And to the second reason which is grounded upon the commandement of God: It must needs be granted that it is not lawfull to any man unlawfully to covet the house of his neighbour, and that then more stronger he may not unlawfully take it from him: but then it remaineth for thee yet to proue how in this case this called land that is sold by his auncelto, and whereof a recouerit is had recorded in the kings court, may be said the lands of the here. V. That may be proued by the law of the Realme, that is to say, by the statute of Westminster the second cap. 1. Where it is said thus: The Will of the giver expressly contained in the deed of his gift, shall be from henceforth observed, so that they to whom the tenements bee so given, shall not have power to alien, but that the lands after their death shall remaine to the issue of returne to the donor, if the issue faile: By the which statute it appeareth evidently that though they to whom the tenements were so given, aliened them away, that yet nevertheless they in law and conscience by reason of the said Statute ought to remaine to their heires according to the gift, for it is holden commonly by all Doctors that the commaundements and rules of the law of man or of a positive law that is lawfully made, bind all that be subjects to the law according to the mind of the maker, and that in the Court of conscience.
Sr. Doeft thou think that if a man offend ag
against a statute Penal that he offended in con
science. Admit that he do it not of a willfull dis-
obedience, or that he will not obey the law, for
if he dooe it of disobedience, I thinke he offene-
deth. D. If it be but onely a statute that is
called Popular, it bindeth not in conscience to
the payment of the penaltie, till it be recovered
by the law, and then it both bind in conscience:
but if a statute be made principally to remedie
the hurt of one partie, & for that hurt it giveth
a penaltie to the partie, in that case the offend-
dour of the statute is bound immediately to
repose the damages to the value of the hurt,
as it is upon the Stat. of Wills, but the penal-
tie above the hurt he is not bound to pay till
judgement be given as it is said before: but sta-
tutes by which it is assigned who shall have
right of property to these Lands and Ten-
ements, or to these goods or cattleis, if it bee not
against the law of God, nor against the law of
reason, bind all them that bee subject to the
law, in law and conscience, and such a statute
as the statute of West. 2 Whereof we have trea-
ted before, whereas it must be observed in con-
science.

S. But some hold that the statute of West-
minket the second was made of a singularitie
and presumption of many that were at the said
Parliament, for exciting and magnifying of
their owne blood, and therefore they say that
that statute made by such a presumption bind-
eth not in conscience.

D. It is very pertinent to judge for certaine

that
that the said Statute was made of such presumption as thou speakest of: so] there be many considerations to prove that the said Statute was not made of such presumption, but rather of a bese good mind of all the Parliament, or at the least of the more part there- of, 2 for the common wealth of all the realm: forst in the Kings the which in the said Par- liament was the head, and most chief and principal part of the Parliament (as he is in everie Parliament) cannot be noted to be such intent: so] it is not necessary noe] it was not then in thee, that lands of the Crowne should be entailed: and in spiritual men, ne] pet in cer- taine Burgesses & Citizens of the said Par- liament which at that time had no land, there can be noted no such singularity: no] pet in the Noble men and Gentlemen noe] such other as were of the said Parliament and had Lands and tenements. It is not good to judge in cer- taine that they did it of such presumption, but it is good and expedient in this case as it is in other cases that be in doubt, to hold the sooner way, & that is, that it was made of charitie, to the intent that he not the he res of him to whom the land was given should not fall into extreme poverietie, and thereby happily to run into offence against God. And though it were true as they say, that it was not made of charitie but of presumption and singularitie as they speake of: Neuertheel]esse so] as much as the statute is not against the Law of God noe] against the Law of Reason, it must be ob- served by all them that be Subjects unto that Law
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Law. For as John Gerson in the Treatise that he intituled in Latine ; De vita spirituali animæ, the fourth lesson, and the third copatory, layth that God will that makers of Laws es judge onely of outward things, and refere secret things to him. And so it appeareth that man may not judge of the inward intent of the deed, but of such things as bee apparant and certaine, but it is not apparant that there was any such corrupt intent in the makers of the said Statute: how may it therefore be said that that Law is good or rightwise, that not only suffereth such things against the Statute, but also against the commandement of God? Sc. To that some answeere and say that when the land is sold, and a recouerce is had thereupon in the Kings Court of Record, that it suffiseth to barre the tapple in conscience, foz they say, that as the tapple was first ordained by the Law, so they say that by the Law it is abnullled againe. Do. Be thou thy selfe Judge, if in that case there be like authority in the making of the tapple, as there is in the abnulling thereof: for it was ordained by authortie of Parliament, the which is alway taken for the most high Court in this Realme before any other, and it is abnullled by a false supposell, for that, that they that bee named demanadants should have right to the land, where in truch they had never right thereto; whereupon followeth a false supposell in the spirt, and a false supposell in the declaration, & a boucher to warrant by couyn of such a person as hath no thing to yeeld in value, and thereupon by conin

F 4 and
and collusion of the parties followeth the defaul of the vouchee, by the which default the judgment shall be given. And so all the judgment is derived & grounded of the burre supposeth & coun of the parties, whereby the Law of the realm & hath ordained such a writ of Enter to help them that have right to lands or tenements is defrauded, the court is deceived, the heire is disherited, as is to doubt, the buyer and the seller, their heirs & assignes having knowledge of the taille be bound to restitution, & verily I have heard many times, that after the Law of the Realme such recoveries should be no barre to the heire in the taille, if the law of the realm might be therein indifferentely heard. S. I cannot see but that after the Law of the realm it is a barre of the taille, for when the tenant in taille hath vouche to warranty, & the vouchee hath appeared & entered into the warranty, and after hath made default in despite of the court, whereupon judgement is given for the demandant against the tenant, & the tenant that he shall recover in value against the vouchee; if the heire in the taille should after bring his Formedon & recover the lands entailed, and after the vouchee purchased lands, then should the heire also have execution against him to the value of the lands entailed, as heire to his ancestor; that was tenant in the first action, and so he should have his own lands, and also the lands recovered in value: the more because of the presumption that the vouchee may purchase lands after the judgement, some be of opinion that it is in the law a good bar of the taille. D. I suppose that
that in that case thou hast put, that the bouncee may barre the heire in estate of his recoverye in value, because he hath recovered the first goods. Nevertheless I will take a respite to be adviseth of that recovery in value. And if thou can pet these me any other consideration why the said recoveryes shoule stand with conscience, I pray the let mee heare thy conceit therein, for the multitude of the said recoveryes is so great, that it were great pity that all should be bound to restitution that have lands by such recoveryes, Sith there is none (as far as I can heare) dispose them to releaze. Scu. Some men make another reason to prove that the said recoveryes should be sufficient by the law to avoid the statute of W.E. then and if they bee sufficient therto, they be sufficient in conscience. D. What is their reason therein? S. In the 7. pere of H. 3. ca 4. among other things it is enacted, that all recoverers their heires and assigns, may ad- now and instifie for rents, services, customs by them recovered, as they against whom they recovered might have done. And then they lay that when the Parliament gave to such recoverers authority to adnow and instifie for such rents, customs, and services, as they recovered, that the intent of the Parliament was, that such recoverers should have right to that for the which they should adnow or instifie; for els they lay that it should bee in baine to give them such power, and that the Parliament should else bee taken in manner as spottiers of wrongfull titles, and so they lay that such recoverers by reason of the said statute have right
right by the law. D. That statute as it seemeth was made only to give to the recoverers, a
fozine to now and tustifie which they had not before, though they had recovered upon a good
title. And the cause why they had no tozine to now oz tustifie before the said statute was,
fozainuch as the recoverers did not by the presence of their action, affirm the possession
of him oz them against whom they recovered, nor claimed not by them, but rather disasfirma-
ted and destroyed their estate: And therefore they cannot allege any continuance of their
title by them, as they may that have rents oz services, oz such other of the grant of other
by deed oz by fine. And therefore as it seemeth the most principal intent of the statute was,
that such recoverers should now and tustifie for rents, services and customs, as they should
oz might do that had them by fine, oz deed: not having any respect as it seemeth whether they
recovered against tenant in fee simple, oz in fee taille, oz whether the recoveries were had
upon a rightfull title. And therefore as mce seemeth the said statute neither affirneth noz
disaffirneth the title of recoverers, whereby they doe now: Foz if a man had right before
the recoverie, the right should remaine unto him notwithstanding the said statute, and so
mce seemeth that the title of them that have the land entaped by such recoveries, is nothing
fortified noz affirmed by the said statute, but that they are in the same case as they were be-
foze, what thinkest thou therin? S. This matter is great, for as thou sayest there bee so many
that
that have tailed lands by such recoveries, that it were great pitie and heaueninessse to condemne so many persons, as to judge that they all were bound to restitution. For I think there bee but few in this realm that have lands of any notable value, but that they or their ancestors, or some other by whom they claim, have had part thereof by such recoveries. Insomuch that Lords Spiritual and Temporal, Knights, Squires, rich men and poore, Monasteries, Colledges and Hospitals have such land, so such recoveries have beene used of long time: who may thinke therefore without great heaueninessse, that so many men should bee bound to restitution, and that yet as thou sayest, no man disposeth him to make restitution. And so I am in manner purpured and lost not what to say in this case, but that yet I trust that ignorance may excuse many persons in this behalf. Doct. Ignorance of the deed may excuse but ignorance of the Law excuseth not, but it bee inconsciente, that is to say, that they have done that in them is to know the truth: as to countaile with learned men, and to ask them what the Lawe is in that behalfe, and if they answere them, that they may do this or that lawfully, then they be thereby excusd in conscience. But yet in mans Law they be not thereby discharged, but they that have taken upon them to have knowledge of the Law, be not excusd by ignorance of the Law, ne more are they that have a wilful ignorance, and that would rather bee ignorant than to know the truth. And therefore they will not dispose them to aske
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else any Controversie in it, and if it be of a thing that is against the Law of God, or the law of reason, no man shal bee excused of ignorance, and so there bee but few that be excused by ignorance. S. What then, shall we condemn so many and so notable men? D. Wee shall not condemn them, but wee shall give them their peril. S. Pet I trueth their daunger is not so great that they should be bound to restitution: For John Gerson faith in his said booke called, De vnitate Ecclesiastica, consideratione secunda, Quod communis error facit ius: that is to say, a common error maketh a right, of which wazbs as it seemeth sometruft may be had, that though it were fully admitted the said recoveries were first had upon an unlawfull ground and against the good order of conscience, that pet nevertheless, soz alinuch as they have been bled of long time, so that they have bin taken of divers men that have been right well learned, in maner as soz a law, that the buyers partly be excused, so that they bee not bound to restitution. And moreover, it is certaine that the Statute of Westminster the second, noz none other Statute made by man cannot be of greater value or strength, than was the bond of matrimony that was ordained of God. And though that bond of Matrimony was inviolable, pet nevertheless Moles sufferd a bit of refusal of the lawes, which in Latin is called Libellum repudij, and so they might thereby for sake their wives, as it appeareth Deuoro 27. and therefore like as a dispensation was sufferd against that bond, so it seemeth it may bee a-
gainst this statute. D. As to that reason that thou hast last made of a bill of refusal, let all
purchasers of land hear what our Lord saith in the Gospell of the lower, of that bill of reluc-
sail, Mathew 19. Where he saith thus, For the
hardness of your hearts Moses suffered you to
leave your wines: so at the beginning it was
not so. Of which words Doctours hold com-
monly that though such a bill of refusal was
lawful so that they that refused their wines
therby, should be without paine in the law, that
yet it was never lawful so that it should be
without sin. And so likewise it may be laid in
this case that such recoveries bee suffered for
the hardness of the hearts of Englishmen,
which desire land and possession with so great
greedinesse that they cannot be withdrauen fro
it neither by the law of God nor of the realme:
And therefore the rich men should not take the
possessions of poor men from them by power,
without colour of tytle, that is to say, neither
by open Dilection, nor by the onely sale of the re-
manut in tate, and so to hold them against the
express words of the statute, such recoveries
have bin suffered. And though soz their great
multitude they may happily be without paine
as to the law of the Realme: yet it is to seare
that they bee not without offence, as against
God: and as to the other reason, that a common
error should make a right, those words as wee
seemeth be to be thus understood, that a custom
used against the Law of man shall be taken in
some countries for law, if the people be suffere-
red so to continue. And yet some men call such
a law
a custome an errore, because that the continuance
of that custome against the law was partly an
error in the peoplee, soz that they would not
obey the Lawe that was made by their super-
iors to the contrarye of that Custome: but
it is to be understood that the said recoveries
though they have beene long vosed, may not bee
taken to have the strength of a custome, soz ma-
ny as well learned as unlearned have alway
spoken against them and yet doe. And further-
more as I have heard say, a custome or a pre-
scription in this Realme against the Statutes
of the realm vennale not in the Lawe. Though
a custome in this Realme vennale not a-
against a Statute as to the Lawe, yet it seemeth
that it may vennale against the Statute in con-
science: soz though ignorance of a Statute enve-
seth not in the law, nevertheless it may excisse
in conscience, and so it seemeth that it may do of
a custome. Do. But if such recoveries cannot
be brought into a lawfull custome in the Law,
it seemeth they may not be brought into a Cu-
Some in conscience, soz conscience must alway
bee grounded upon some Lawe and in this case
it cannot be grounded upon the law of reason,
noz upon the Law of God: and therefore if the
Law of man serve not, there is no ground
whereupon conscience in this case may bee
grounded, and at the beginning of such reco-
veries, they were taken to be good because the
Lawe should warrant them to bee good, and not
by reason of any Custome, and so if the reason
of the Lawe will not serve in the recoverye,
the custome cannot helpe, soz an entill Custome
is to be put away. And therefore mee seemeth
that the reconeries bee not without offence a-
against god, though happily for their great mul-
titude, and that there should not be as it were
a subversion of the inheritance of many in this
Realm, as well of spiritual oz temporal, they
be without paine in the Law of the Realm,
except such reconeries as by the common course
of the Law be voidable in the Law by reason
of some ble, oz of some other special matter:
but what paige that is, I will not temerously
judge, but commit it to the goodnesse of our
Lord, whose judgements be verie deepe and
profound, not I will not fully affirmiethat
they that haue lands by such reconeries ought
to be compelled to restitution: but this seemeth
to mee to be good counsell, that euery man here-
after hold that is certain, and leave that is un-
certaine, and that is, that hee kepe himselfe
from such reconeries, and then hee shall be free
from all scrupulousnesse of conscience in that
behalf.

Sui. It seemeth that in this question thou
ponderest greatly the said Statute of Westmin-
ster the second, and that though it be but only
a Law made by man, that yet so farre much as it
is not against the law of reason, nor the Law
of God, thou thinkest thou must be held in
conscience: and over that as it seemeth thou art
somewhat in doubt, whether those reconeries
bee any barre to the heire in the tyme by the
law of the Realm, unless that hee have in va-
luue indeed upon the vouchee, and that thou
wilt thereupon take a respite of thou see wy
The 26. Chapter.

full mind therein, and in likewise thou thinkst as I take it, that those recoveries cannot bee brought into a custome, but that the longer that they be suffered to continue if they be not good by the Law, the greater is the offence against God. And therefore thou pondrest little that custome, but yet thou agreedst that it is good to spare the multitude of them that be past, lest a subversion of the inheritance of many of this estate might follow, and great strife and variance also, if they should be admisst for the time past, except there be any other special cause to avoid them by the Law, as thou hast touched in the last reason: but thou thinkst that it were good, that from henceforth such recoveries should bee clearly prohibited, and not bee suffered to be had in use, as they have beene before, and thou counselest all men therefore to refrain themselves from such recoveries hereafter. Do. Thou takest well that I have sayd, and according as I have meant it. s. Now I pray thee, if I have heard thy question of these recoveries, according to thy desire, that thou wouldest answere me to some particular questions concerning Tailed lands, whereof thou hast at this time given vs occasion to speake. D. Show me these questions, s. I will shew thee my mind therein with good will.

The first question of the Student, concerning tailed lands.

Cap. 27.
The 27. Chapter.

If a distelio make a gift in tail to John a Stile and J. at S. 60 the redeeming of the title of the distelio agreeeth with him that her hall have a certain rent out of the same land to him & to his heirs, 8 for the suretie of the rent it is denied that the distelio hall release his right in the land ec. 8 that such a recoverie as we have spoken of before, halbe had aginst the said J. at St. to the use of the payment of the said rent and of the former tail: whether standeth that recoverie well with conscience or not, as thou thinkest? D. I suppose it doth, 80 it is made for the strength and suretie of the tale, which the distelio might have cleerely defeated and avoided if he would, 8 therelofe I thinke if the said J. at S. had granted to the distelio, only by his deed a certain rent for the releasing of his title, that grant should have bound the heirs in the tale for ever. And then if the distelio for his more suretie will have such a recoverie, as before appeareth, it seemeth that recoverie standeth with good conscience. D. It seemeth that thy opinion is right good in this matter. And also it appeareth that with a reasonable cause, some particular recoveries may stand both with law & conscience to bar a tale.

Q. The second question of the Student concerning tailed lands.

Cap. 28.

If a tenant in talle suffer a recoverie against him of his lands entailed, to the intent that...
the recoverer shall stand thereof, to the 
use of a certain woman whom he intendeth to 
take to his wife, for terms of life, and after to 
the use of the first tale, and after he marrieth 
the same woman, whether he doth that reco-
very with conscience, though other recoveries 
upon bargains and sales did not: Do It see-
merhe yes, for though the statute bee that they 
to whom the tenements be so given, should not 
have power to alien, but that the lands after 
their death should remaine to their issues, or 
turner to the donors, if the issues failed: yet if 
he to whom the lands were so given, take a 
wife, and dyeth seized without heire of his bo-
dy, and the donour enter, the woman shall re-
cover against him the third part to hold in the 
name of her dower, for terms of her life, though 
the tale be determined. And the same law is of 
tenant by the Curteslie, that is to say, of him 
that happeneth to marry one that is an inher-
trix of the land entailed, and they have issue, 
the wife dyeth, and the issue dyeth, he shall hold 
the lands for terms of his life, as tenant by the 
curteslie, notwithstanding the words of the sta-
ute which say that after the death of the re-
maine in tale without issue, the lands shall re-
turn to the donor: and I thinke the cause is be-
cause the intent of the statute shall not be tak-
en, that it intended to put away such titles as 
the law should give, by reason of the tale: and 
so it seemeth that a like intent of the statute 
shall be taken for jointures, for else the statute 
might be sometime a letting of matrimon-
hie; and it is not like that the statute intended
... And therefore it seemeth, that by the only death of the tenant in tail, a Jointure may be made by the intent of the Statute, though the words of the Statute secure not expressly for it; for many times the intent of the letter shall be taken, and not the bare letter, as it appeareth in the same Statute, where it is said, that he to whom the lands be given have no power to alien: yet the same Statute is construed that neither he nor his heires of his body shall have no power to alien; & so men thinketh that such an intent shall be taken here for staying of jointures. St. Truth it is, that sometime the intent of a Statute shall be taken further than the expresse letter strecheth, but yet there may no intent be taken against the expresse words of the Statute, for that should bee rather an interpretation of the Statute, than an exposition: and it cannot bee reasonably taken, but that the intent of the makers of the said Statute was, that the land should remaine continually in the heires of the tail, as long as the tail endureth: and there can no Jointure be made neither by death nor by recouerie, but that the tail must thereby be discontinued, and therefore this case of jointure is not like to the said cases of Tenant in Dower, or Tenant by the Curtelie: for the title of Dower, and of Tenancy by the Curtelie groweth most specially by the continuance of the possession in the heires of the Taile, but it is not so of jointures: and therefore by the only death of the Tenant in the Taile, there may no Jointure bee lawfully made against the expresse words.
The 29. Chapter.

of the Statute. And if there be any made by way of recovery, then it seemeth that it must be put under the same rule, as other recoveries must be of lands entailed.

The third question of the Student concerning tailed lands.

Cap. 29.

If John at Noke being seised of lands in fee of his meer motis make a seoffestment of certaine lands to the intent that the seoffee shall thereof make a gift to the said Jo. at Noke to have to him and to his heires of his bodie, and they make the gift according; And after the said J. at Noke failleth into debt, wheresof he is taken and put in prison, and the seoffee for payment of his debts, hee selleth the same land and for suretice of the buyer he suffereth a recovery to bee had against him in such manner as before appeareth, whether standeth that recovery with conscience or not? D. I would here make a little digestio to ask thee another question of that I make answerere to thine: that is to say, to seeke thy mind how the Law by the which the bodie of the debtor shall be taken and cast into prison, there to remaine til he have paid the debt, may stand with conscience, specially if hee have nothing to pay it with, for as it seemeth if hee will relinquish his goods which in some laws is called in latine Cedere bonis, that he shall not bee imprisoned, and that is to bee understood most specially if hee bee fallen into pa.
povertie, and not through his owne default. 8. There is no law in the realm that the defendant maie in any case Cedere bonis, as me seemeth if there were such a law, it should not bee indifferent, soz as to the knowledge of him that the money is owing to, the debtor might Cedere bonis, is to say, relinquish his goods, and pet retaine to himselfe secretly great riches. And therefoxe that Law in such case semeth more indifferent & righteous that committeeth such a debtor to the conscience of the plaintiffes to whom the money is owing, than the committing him to the conscience of him that is the debtor: soz in the debtor some default may be assigned, but in him to whom the money is owing, may be assigned no default. D. But if he to whom the debt is owing, knoweth that the debtor hath nothing to pay the debt with, and that hee is fallen into povertie by some casualtie, and not through his owne default, doth the law of England hold, that he may with good conscience kepe the debtor still in prison till he be paid? Sc. Nay verily, but it thinketh more reasonable to appoint the libertie and the judgement of conscience in that case to the debtor than to the debtor, soz the cause before rehearsed. And then the debtour, if he knew the truth, is (as thou hast said) bound in conscience to let him goe at libertie though hee bee not compellable thereto by the Law. And therefore admitting it for this time, that the law of England in this point is good and just, I pray thee that thou wilt make answere to my question. Doth. I will with good will, and there.
therefore as me seemeth, forasmuch as it appeareth that the said gift was made of the mere liberty and free will of the said John at Noke, and without any recompence: that therefore it cannot be otherwise taken, but that the intent of the said J. at Noke, as well at the time of the said feoffment, as at the time that he received against the said gift in the table, was, that if he happened afterwards to fall into poverty, that he might alien the said Land to retrieve him with; for how may it be thought that a man will so much ponder the wealth of his heire, that he will forget himself; and so it seemeth that not only the said recover ye standeth with conscience, but also if he had made only a feoffment of the land, the feoffment should be in conscience a good barre of the table; but if the said feoffment and gift had been made in consideration of any recompence of money, or for any matrimonious or such other, then the feoffment of the said J. at N. should not bind his heire, & if he then suffered any recovery thereof, then the recovery should bee of like effect as other recoveries whereof we have treated before, & that which I said it was good to favour rather for their multitude, the for the conscience: and the same law is, that if the son and the heire of the said J. at Noke in case that the said gift was made without recompence, alien the land for poverty after the death of his father, the recovery bindeth not but as other recoveries doe: for it cannot be thought that the intent of the father was, that any of his heires in taile shoid for any necessity disheir all other heires in taile
The 29. Chapter.

It is that should come after him, but for himselfe, mee thinketh it is reasonable to Judge in such manner as I have saide before. St. And though the intent of the said John at N. Boke, when he made the said foecesment, and when he tolke againe the said gift in estate, were that if he fell in need that he might alien: yet I suppose that he may not alien though perchase for the more suretie he declared his intent to be such upon the inviry of seisin: for that intent was contrary to the gift that he freely tolke upon him, and when any intent of condition is declared, or reserved against the state that any man makes, or excepteth: then such an intent of condition is void by the law, as by a case that hereafter followeth will appeare, that is to say, if a man make a foecesment in seisin, upon condition that the seisin shall not alien to any man, that condition is void, for it is incident to every state of the seisin simple, that he that is so seised may alien. And like as in a seisin simple there is incident a power to alien, so in a state tattle there is a secret intent understood in the gift, that no alienation shalbe made. And therefore though the intent of the said Jo. at N. were, that if he fell into povertie that he might sel, and though he at the taking of the gift openly declared his intent to be so: yet the intent should be void by the law as me seemeth, and if it be void by the law, it is also void in conscience, and so the said recovery must be taken in this case to be of the same effect, as recoveries of other lands intailed bee, and in no other manner.
The 30. Chapter.

The fourth question of the Student, concerning Recoveries of Inheritances entailed.

Cap. 30.

If an Annuity be granted to a man to have land co. percieue to the grantee, a to the heires of his bodie, of the costs of his grantor; and after the grantee suffereth a recovery against him in a suit of Enre, by the name of a rent in Dale of a like sum as the Annuity is of, with vouchers & judgment after the common course, and both parties intend that the Annuity shall be recovered, whether shall the recovery bind the heire in taille of his Annuity? D. What if it were a rent going out of Land, of what effect, should the recovery be then? Sc., It should be then of like effect as if it were of land Do. And so it seemeth to be of this Annuity, fo as mee thinketh, a rent, and Annuity bee of one effect, so the one of them shall be paid in ready money as the other shall. S. Turneth, and yet there be many great diversities betwixt them in the law. D. I pray thee shew me some of those diversities. Sc., Part I shall shew thee, but I wot not whether I can shew thee all, but first thou shalt understand that one diversity is this. Equity Rent, be it Rent service, Rent charge, or Rent secke, is going out of land, but an Annuity goeth not out of any Land, but chargeth onely the person, that is to say, the Grantor, or his heires that have Assets by descent, or the house if it be granted by a house
house of Religion to perceive of their cokers. Also of an Annuity there lyeth no action, but only a Writ of Annuity against the grantor, his heires, or successors, and that Writ of Annuity lyeth never against the pernour, but only against the grantor of his heires: but of a rent, the same action may lye, as both of land as the case requireth, and it lyeth sometime of rent against the pernour of the rent, that is to say, against him that taketh the rent wrongfully, and sometime against neither. As of a rent service, Assise may lye for the Lord against the Mage, or the Dilettor, or sometime against the Mage onely, if he did also the dillethin. Also an Annuity is never taken for an aetens, because it is no frehold in the Law, ne it shal not be put in execution upon a Statute Merchant, Statute Staple, &c Elegit, as a rent may. And because the said Writ of Entre lay not in this case of this annuity, s that it cannot be intended in the law to be the same annuity, though it be of like sum with the annuity, ne though the parties assented & meant to have the same annuity recovered by the said Writ of Entre, therefore the said recovery is void in law & conscience. But if such a recovery bee had of rent with a bouncer over, then it shal be taken to be of like effect, as recoveries of lands bee in such manner as we have treated of before.

The first question of the Student concerning tailed Lands.
If lands be given to a man and to his wife in the name of her Joynture, by the father of the husband, to have and to hold to them and to the heirs of their two bodies, begotten, and after they have issue and the husband dieth, and the wife alieneth the land, a against the statute of 11.H.7. suffereth a recovery thereof to be had against her, to the use of the buyer, after her sonae & heir apparent that to her to the tale releaseth to the recovery by line, by a brother dying, having a brother alive, and after the mother dyeth: Who hath right to the land, the buyer, or the brother of him that released? D. What to thine opinion therein, I pray thee show me. I see naught that the buyer hath right, for by the same statute made in the 11.pere of H.7. among other things it is enacted, that if any woman which hath lands of the gift of her husband, or of the gift of any of the Ancestors of the husband suffer any recovery thereof against her, by cousin, that then such recovery shall be void, a that it shall be lawful to him that should have the land after the death of the woman to enter, it to hold so in his first right: provided always that that statute shall not extend where he that should have the land after the death of the woman is agreeable to any such alienation or recovery, so that the agreement be of record. And sozalnuch as the heir in this case agreed to said recovery by line, which is one of the highest Records in the law, it seemeth that the buyer hath right against that heir that agreed, and against
against all that shall bee heir of the talle, and
that not onely by the said recovery, but also by
the said statute, Whereby the said recovery
with assent of the heir is affirmed.D. Though
the buyer in this case have right during the
life of the heir e that released, yet nevertheless,
after his death his heir as it seemeth may law
fully enter: for the agreement whereof the sta-
tute speaketh, must as I suppose either he had
before the recovery, or else at the time of the re-
couery: For if a Title by reason of the said
statute be once devoluted to the heir in the talle,
then the right as mee seemeth cannot be extinct:
oz put away by the onely sine of the heir, no
more than if he had dyed, and the next heir to
him had released to the buyer by sine, in which
case the release could not extinct the right of
the title, noz the right of Errre that is given
by the statute: and so as mee seemeth, his next
heire may therefore enter. S. As I perceive all
thy doubts, is in this case, because the assent of
the heir was after the recovery: for if it had
been at the time of the recovery, as if the heir
had bin vouch'd to warrant in the same recou-
ery, and he had entered, and thereupon the
judgement had bene given, thou agressest wel,
that the recovery should have avoided the talle
for ever.

DoeSor. That is true, for it is in expresse
words of the statute; but when the assent
is after the recovery, then nie thinketh it is
not so, ne that the right of the first talle, which
was received by the said statute, shall not
bee extinct by his sine, no more than it shall in
other
other tale. But I will be advised upon thy opinion in this matter, but yet one thing would I more further upon this Statute, and that is this: Some say, that by this Statute all other recoveries that have bin had over beside these recoveries of Jointures be affirmed: soz they say, that Sith the Parliament at the making of this Statute, knew well that many other recoveries were then bled and had, to defeate Taxes, that it was like that they would so continue, Which nevertheless the Parliament did not prohibit for the time to come, as it did the said Recoveries of Jointures: that it is therefore to suppose, that they thought that they should stand with Law and conscience: but because Jointures were made rather for the saving of inheritance of the husband than to destroy the inheritance, they say that the Parliament thought and adjudged the alienations and recoveries of such Jointures to be against the Law & conscience, and not the Alienations of other lands entailed: soz if they had, they say that the Parliament would have avoided recoveries of tailed lands generally, as well as it did of Recoveries of Jointures. Do. As to that opinion I will answer were thee thus for this time, that though that the makers of the said Statute only put away recoveries of Jointures, and not other recoveries that yet it cannot be taken therefore that their intent was that the other Recoveries should stand good & perfect: for they spake them only of Jointures, because there was no complaint made in the Parliament at that time, but against
against recoveries had of Jointures, and otherwise it seemeth that they intended nothing concerning other recoveries, but that they should bee of the same effect as they were before, and no otherwise. And that will appear more plainly thus: though the makers of the said Statute intended to put away & annul such recoveries as should bee made of Jointures after a certaine day limited in the Statute, that yet they intended not to avoid ne affirmne such recoveries of Jointures as were passed before that time: and if they intended not to avoid ne affirmne the recoveries had of Jointures before that time, then how can it bee taken, that they intended to put away, or affirmne other recoveries that were passed before that time, & not if Jointures, that would not affirmne, ne put away recoveries passed of Jointures before that time? And so, as it seemeth, they intended to spare the multitude of them that were passed of both, and not to comfort any to take them after that time. Sru. I am content thy opinion stand for this time, and I will aske thee another question.

The sixt question of the Student concerning tailed lands.

Cap. 32.

If tenant in tail be disseised, & die, & an assignee collateral to the heire in tait release with a warranty, & die, & the warranty disseised both upon the heire in the tait: whether is he there-
thereby barred in conscience, as he is in the law? 

D. Because your principal intent at this time is to speak of recoveries, nor of WARRANTIES, & also because it hath bin of long time taken for a principal marrow of the law, that it should be a barre to the heires as well that claiming by a fee simple, as by State taile, and for that also that it was not put away by the said statute of W. 2. which ordained the taile, I will not at this time make the an answer of therein, but will take a respite to be advised. Sec. Then I pray the pet Q. we depart, shew me what was the most principal cause that moved thee to move this question of recoveries had of catted lands. 

D. This moved me there to: I have perceived many times that there be many divers opinions of these recoveries, whether they stand with conscience or not, & that it is to doubt that many persons run into offence of Conscience thereby. And therefore I thought to feel thy mind in them, whether I could perceive that it were cleare, that they servd to make the taile in law and conscience, or that it were clearly against conscience so to break the taile, or that it were a matter in doubt: if it appeared a matter in doubt, or that it appeared that the matter were beld clearly against conscience, then I thought to do somewhat to make the matter appeare as it is, to the intent that they that have the rule &charge over the people as well the spiritual men as temporal men, should the rather endeavour them to see it reformed for the commonwealth of the people, as well in bodie as in soul. For when any thing is beld to the
pleasure of God, it hurteth not onely the bo-
dy, but also the soule. And topozall rulers have
not onely care of the bodies, but also of the
soules, that answer for them if they perish in
their default. And because it seemeth by no more
apparent reason that the tailes be not broken,
ne lately avoided by the said recoueries, that
yet nevertheless the great multitude of them
that be pased is right much to bee pondered:
Therfore it were very good to prohibit them
for time to come, to put away such ambigu-
ties and doubts as arise now by occasio of the
said recoueries, and so they be put as snares to
deceive the people, and so will they be as long
as they be suffered to continue. And me thinketh
verily that it were therefore right expedient,
that tailed lands should from henceforth eit-
ther be made so strong in the law, that the taile
should not bee broken by recouery, fine with
proclamation, collateral warranty, noz other-
wise: oz else that all tailes should be made see
simple, so that every man that list to sell his
land, may sell it by his bare seoffement, without
any scruple oz grudge of conscience: then
there should not be so great excesses in the law,
noz so great variance among the people, noz yet
so great offence of conscience as there is now
in many persons. oz. Verily me thinketh that
thy opinion is right good, as charitable in this
behalf: and that the rulers bee bound in con-
science to looke upon it to see it reformed and
brought into good order. And verily by that
thou hast said therin, thou hast brought me into
remembrance, that there be divers like shares...
concerning spiritual matters suffered among the people, whereby I doubt that many spiritual all rulers be in great offence against God. As it is of the point that spiritual men have spoke so much of that priests should not be put to answer before lay men, specially of felonies and murders; and of the statute of 45. E. 3. c. 3. Where it is said, that a prohibition shall lye where a man is sued in the spiritual Court for the God, that is about the age of xe. peres, by the name of Silua Cedua as it hath done before: and they have in open sermons in divers other open communications & counsells causeth it to be open, if notised & known, that they should be all accused that put priests to answer or that maintain the said statute, or any other like to it. And after when they have right well perceived, that notwithstanding all that they have done therein, it hath bin vied in the same points through all the realm, in like manner as it was before, then they have set still & let the matter pass, & so show they have brought many persons in great danger, but most specially the that have given credence to their laying, yet by reason of old custom have done as they did before, the there they left them: but verily it is to feare that there is to themselves right great offence thereby, that is to say, to see so many in so great danger as they say they bee, and to doe no moare to bring them out of it, than they have done for it: if it be true as they say, they ought to sticke to it with effect in all charitie, till it were reformed; and if it be not as they say, then they have caused many to offend that have given credence to
to them, and yet contrarie to their owne conscience do as they did before, as that perseverance would not have offended if such sayings had not bin. And so it seemeth that they have in these matters done either too much, or too little.

And I beseech Almighty God, that some good man may so call uppon all these matters, that we have now communed of, so that they that bee in authority may somewhat ponder them, and to order them in such manner that offence of conscience grow not to lightly thereby henceforth, as it hath done in times past. And hereby he that on the Crosske knew the price of mans soule. Will therfafter alike a right strict account of rulers for every soule that is under them, and that shall perish through their default.

Thus have I shewed unto thee in this little Dialogue, how the Law of England is grounded upon the Law of reason, the law of God, the general Customs of the realme, and upon certaine principles that be called Maximes, upon the particular Customs blazed in divers Cities and countries, and upon statutes which have bin made in divers Parliaments by our Soueraigne Lord the King and his progenitores, and by the Lords Spiritual and Temporal, and all the Commons of the Realme. And I have also shewed thee in the 9. Chapter of this Booke, under what manner the law generall Customs and Maximes of the law may be proved & affirmed if they were denied, & divers other things bee contained in this present Dialogue, which will appeare in the
The 32. Chapter.

the table that is in the later end of the Book, as to the readers will appeare. And in the end of the said dialogue, I have at thy desire shewed thee my conceit concerning Recoveries of tailed lands, and thou hast upon the said recoveries shewed me thine opinion. And I beseech our Lord let them shortly in a good cleare way: for surely it will be right expedient for the well ordering of conscience in many persons, that they be so. And thus the God of peace and love be alway with vs

Amen.
Ere endeth the first Dialogue in English, with new additions, betwixt a Doctor of Divinity, and a Student in the Laws of England. And hereafter followeth the second.

In the beginning of which Dialogue the Doctor answereth to certaine questions, which the Student made to the Doctor before the making of his Dialogue, concerning the Lawes of England and conscience, as appeareth in a Dialogue made betwixt them in Latine the 24. ch. And he answereth also divers other questions, that the Student maketh to him in this Dialogue, of the law of England and conscience. And in divers other Chapters of this present Dialogue is touched shortly, how the Lawes of England are to bee observed and kept in this Realme, as to temporall things aswell in Law as in conscience, before any other Lawes. And in some of the Chapters thereof, is also touched that spiritual Judges in divers cases bee bound to giue their Iudgements according to the kings Law. And in the later end of the Booke the Doctor moueth diuer cases concerning the Lawes of England wherein hee doubteth how they may stand with conscience, whereupon the Student maketh answer in such manner as to the Reader will appeare.
The Introduction.

In the latter end of our first Dialogue in Latin, I put divers cases grounded upon the Lawes of England, wherein I doubted, and yet doe, what is to be had therein in conscience. But forasmuch as the time was then too narrow, I shewed thee that I would not desire thee to make answers to them forthwith at that time, but at some better leisure, whereunto thou lastest thou wou'dst not only shew thine opinion in these cases, but also in such other cases as I would put: whereas I pray thee now (forasmuch as mee thinkest thou hast good leisure) that thou wilt shew me thine opinion therein. Do, I will with good will accomplish thy desire: but I would that when I am in doubt what law of this realm is in such cases as thou shalt put, that thou wilt shew me what law is therein: for though I have by occasion of our first Dialogue in Latin learned many things of the lawes of this realm which I knew not before, yet nevertheless there be many more things that I am yet ignorant in, and that paradisenture in these self cases that thou hast put a intendest hereafter to put: as I laid in the first Dialogue in Latin the 20. Chap. to search conscience upon any case of the law it is in vaine, but where the law in the same case is perfectly knowne. So, I will with good will doe as thou lastest, as I intend to put divers of the same questions, that be in the last Chap. of the said Dialogue in Latin, at some time I intend to alter some of them, and add some new questions to them, as I shall be most
in doubt of. D. I pray thee do as thou said, and I shall with good will either make answer to them forthwith as well as I can, or else take longer respite to be advised, or else paraunaeture agree to thine opinion therein, as I shall see cause. But first I would gladly know why thou hast begun this Dialogue in the English tongue, and not in the Latin tongue, as first cases that thou desirest to know mine opinion in, be, or in French as the substance of the law. S. The cause is this. It is right necessary to all men in this realm, both spirituall and temporal for, the good ordering of their conscience, to know many things of the Law of England that they be ignorant in. And though it had bin more pleasant to them that be learned in the Latin tongue, to have had it in Latin rather than in English: yet nevertheless so much as many can read English that understand no Latin, as some cannot read English, by hearing it read may learn divers things by it, that they should not have learned if it were in Latin: Therefore for the profit of the multitude it is put into the English tongue rather than into the Latin or French tongue. For if it had bin in French, few should have understood it, but they that be learned in the law, and they have least need of it, so as much as they know the law in the same cases without it, & can better declare what conscience will thereupon, than they that know not the law nothing at all. To them therefore that be not learned in the law of the realm this treatise is specially made: for thou knowest well by such studies thou hast
The 1. Chapter.

taken to some knowledge of the Law of the
realm, that is to them most expedient. Doct. It
is true that thou saiest, and therefore I pray
thee now proceed to thy questions.

The first question of the Student.

Cap. 1.

If tenant in tail after possibility of issue ex-
tinct, doe walk, whether doth he thereby obta-
in conscience though he be not punishable of
walk by the law? D. Is the law clear that he
is not punishable for the walk? S. Do verily.
D. And what is the law of tenants for terme
of life, for terme of yeares if they do walk? S.
These be punishable of walk, by the statutes,
and shall paye treble damages: but at the com-
mon law before the statute they were not pu-
nishable. D. But whether thinkest thou that
before the statute they might have done walk
with conscience, because they were not punisha-
able by the Law. S. I thinke not, so as I
take it, the doing of walk of such particular ten-
nant for terme of life, for terme of yeares, of
tenants in Dower, or by the curtesie, is pro-
hibited by the Law of reason, so it seemeth of
reason that when such leases be made, or that
such titles in Dower, or by the curtesie be gi-
ten by the Law, that there is onely given un-
to them the annuall profits of the land, and not
the houses and trees, and the granell to digge
and carrie away, whereby the whole profit of
them in the reversion should be taken away
for ever. And therefore at the common law for want done by tenant in dower, or tenant by the curtelie, there was punishment ordained by the law, by a prohibition of want, whereby they should have pleaded damages to the value of the want. But against tenant for term of life or for term of years, lay no such prohibition, for there was no statute in the law therein, against them, as there was against the other. And I thinke the cause was, soas as much as it was judged a folly in the lesse that made such a lease for term of life, or for term of years, that at the time of the lease he did not prohibit them they should not doe want, and Sith he did not provide no remedy for himself, the law would none prouid. But yet I thinke not that the intent of the law was, that they might lawfully and with good conscience doe want, but against Tenants in dower, and by the curtelie the law provided remedy, & for they had their title by the law.

And verily me thinketh that this tenant in taile as to doing of want, should be like to a tenant for term of life: for he shall have the land no longer than for term of his life, no more than a tenant for term of life shall, and the want of this tenant is as great hurt to him in the reversion of the remainder, as is the want of a tenant for term of life, and if he alien, the bond shall enter for the forfeiture, as he shall upon alienation of a tenant for term of life, and if he make default in a Praecipe quod reddar, the Bond shall be received as he shall bee upon the default of a tenant for term of life:

and
The 1. Chapter.

and therefore me thinke hee shall also be pun-
ishable of Waft, as tenant for term of life, &c.

s. If he alien, the doo:z shal enter as thou faist
because the alienation is to his dsieritance, &
therefore it is a forfeiture of his estate, and that
is by an ancient Maxwell of the Law that gi-
ueth that forfeiture in the selfe case, and if hee
make defaute in a P r e c i p e q freddar, he in the
reason, as thou faist, shal be received, but that
is by the Nature of West. 2. for at the Common
lawe there was no such receit: a as for the Sta-
ture that giveth the action of Waft against a
tenant for term of life, and for term of peres,
it is a statute penal, and shal not be taken by
equitie: a so there is no remedy given against
him, neither by common lawe nor by statute, as
there is against tenant for term of life, & there-
fore he is unpunishable of Wast by the Law. D.
And though he be unpunishable of Wast by the
law, yet neverthelesse me thinke he may not
by conscience doe that, that shal be hurtfull to
the inheritance after his time, sith he hath the
Land but for term of his life, no more than a
tenant for term of life may, for then he would
do as he would not be done unto Fo:z thou a-
great thp selfe, that though a tenant for term
of life was not punishable of Wast before the
Statute, that yet the Law inditcd not that he
ought rightfully and with good conscience doe
Wast. And therefore at this day if a feoffment
be made to the use of a man for term of life,
though there be no actio against him for Wast,
yet he offendeth in conscience if he do Wast, as
Tenant for term of life did soze the Sta-
tute.
tate, when no remedy is against him by the law. Sr. That is true, but there is great divers-
ity between this tenant and a tenant for term of life: for this tenant hath good authority by
the donator to doe want, and so hath not the tea-
nant for term of life, as it is said before; for
the estate of a tenant in tail after possibility
of issue extinct, as in this manner, when lands be
given to a man and to his wife, to the heres
of their two bodies begotten, and after the one
of them dyeth without heres of their bodies
begotten, then he or she that onerluceth, is ca-
led tenant in tail after possibility of issue ex-
tinct, because there can never by no possibility
be any heres that may inherit by force of the
gift. And thus it appeareth that the donor at
the time of the gift, received of the donor estate
of inheritance, which by possibility might have
continued for ever, whereby they had power
to cut downe trees, and to doe all thing that is
want, as tenant in fee simple might. And that
authority was as strong in the law, as it the
lessor that maketh a lease for term of life, by
express words in the lease, that the Lessor
shall not be punishable of want. And therefore
if the donour in this case had granted to the
Donee that they should not bee punishable of
want, that grant had bin void, because it was
included in the gift before, as it should be upon
a gift in fee simple: and so forasmuch as by the
first gift, and by the Luceres of feisin made in:
on the same, the Donors had authority by the
donour to do want; therefore though that one
of those Donors be now dead without issue, so
that
that it is certaine, that after the death of the other, the land shall revert to the donez; yet the authority that they had by the Donor to doe what, continueth as long as the gift, and the lucry of seisin made upon the same continueth. And I take this to be the reason why he shall not have in aid as tenant for terme of life shall, that is to say, for that hee cannot alke helpe of that Marime, whereby it is ordained, that a tenant for terme of life shall have in sayd: for he cannot say, but that he took a greater estate by the lucry of seisin that was made to him, which yet continueth, than for terme of life; and so I think he not bound to make any restitution to him in the reversion in this case, for the Wast. Do. Is thy mind only to prove that this tenant is not bound to make restitution to him in the reversion for the Wast? or that thou thinkest that he may with cleece conscience doe all manner of wast? I intend to prove no more but that he is not bound to restitution to him in the reversion. D. Then I will right well agree to thine opinion for the reason that thou hast made: but if thy mind had bin to have proved that he might with cleece conscience have done all manner of wast, I would have thought the contrary thereof, that the tenant in clee simpie may not doe all manner of wast and destruction with conscience, as to pull down houses and make pastures of cities and townes, or to doe such other acts which be against the commonwealth. And therefore some will say, that tenant in clee simpie may not with conscience destroy his woods & cole pits: whereby a whole coun-
try
trep for there mony have had sue, yet though
he do so, he is not bound by conscience to make
restitution to no person in certain. But now I
pray thee ere thou proceed to the second case,
that thou wilt somewhat shew me what thou
meanest when thou faies, at the common Law
it was thus or thus? I understands not fully
what thou meanest by that term, at the com-
mon Law. St. I shall with good will shew thee
what I mean there by.

What is meant by this term when it is said,
thus it was at the Common Law.

Cap. 2.

The common law is taken threeman of
wares. First it is taken as Law of this
realm of England dissuereed fro all other
Lawes. And under this manner taken, it is
oftentimes argued in the lawes of England,
what matters ought of right to be determined
by the common Law, and what by the Admi-
ralis Court, by the Spiritual Court: And
also if an Obligation beare date out of the
realme, as in Spain, Fraunce, etc. such other,
it is laid in the Law & truth it is, that they
be not pleadable at the common law. Secondly
the common law is taken as the kings courts
of his Benche, etc. of the Common Place, and it
is so taken when a plea is removed out of an-
cient demesne for that the land is Franke fees
pleadable at the common Law, that is to say, in
the Kings court, and not in Ancient demesne.

And
The 3. Chapter.

And hader this manner taken, it is oftentimes pleaded also in bale Courts, as in courts Barons, the county, and the court of Pipothers, and such other, this matter or that sc. ought not to be determined in that Court, but at the Common Law, that is to say, in the Kings Courts sc. Thirdly, by the Common law is understood such things as were law before any that made in that point that is in question, to that that point was holden for Law by the general or particular customs and Maximes of the Realme, or by the law of reason and the law of God, no other law added to them by Statute, no other wise, as is the case before rehearsed in the first chapter, where it is said : that at the Common Law tenant by the currentc and tenant in dower were punishable of Ward, that is to say, that before any statute of Ward made, they were punishable of Ward by the grounds & Maximes of the Law, bid before the statute made in that point. But Tenant for term of life, ne for term of yeares, were not punishable by the said grounds and Maximes, till by the Statute remedy was given against them, and therefore it is said, that at the Common Law they were not punishable of Ward. Do I pray thee now proceed unto the second question.

The second question of the Student.

Cap.3.

If a ma be outlawed & never had knowledge of the suit, whether may the king take all his goods
The 31. Chapter.

goods, & retain them in conscience as he may by the law. What is the reason why they be forfeited by the law in that case? Sec. The very reason, for that it is an old custom and an old Mariner in the law, that he that is Duty lawed shall forfeit his goods to the King, and the cause why that Mariner began, was this: When a man had done a trespass to another, or another offence wherefoere process of blasc lay, and he that the offence was done to, had taken an action against him according to the Law, if he had abated himselfe and had no lands, there had beene no remedy against him: for after the law of England no man shall bee condemned without answere, or that he appeare and will not answere, except it bee by reason of any Statute. Therefore for the punishment of such offenders as will not appear to make answere and to bee indicted in the Kings Court, hath beene hiled without time of mind, that an attachment in that case should bee directed against him returnable in the Kings Bench or the Common place: and if it were returned thereupon that he had nought whereby he might bee attached, that then should goe forthe a Capias to take his person, and after an Alias Capias, & then a Pluries: and if it were returned upon every of the said Capias that hee could not bee found and hee appeared not, then should an Exigent bee directed against him, which should have so long a day of returne, that five Counties might be holden before the returne thereof, and in suerie of the said five Counties, the defendant to bee
The 3. Chapter.

solemnly called, and if hee appeareth not, then for his contumacie and disobedience of the law, the Coroner to give Judgement that he shall bee outlawed, whereby hee shall forfeit his goods to the King, and lose divers other advantages in the Law that needeth not here to bee remembred now. And so because hee was in this case called according to the Law and appeared not, it seemeth that the King hath good title to the goods both in law and conscience.

V. If hee had knowledge of the suit in very deed, it seemeth the King hath good title in conscience as thou laighest. But if hee had no knowledge thereof, it seemeth not so, for the default that is adjudged in him (as appeareth by thine owne reason) is his contumacie and disobedience of the law, and if he were ignorant of the suit, then can there bee assigned to him no disobedience : for a disobedience implies a knowledge of that he should have obred unto.

stu. It seemeth in this case that hee should bee compelled to take knowledge of the suit at his peril ; for Sith hee hath attempted to offend the Law, it seemeth reason that he shalbe compelled to take heed what the Law will doe against him for it, and not onely that, but that he should rather offer amends for his Trespaunce than to tarte till he were sued for it.

And so it seemeth the ignorance of the suite is of his owne default, specially Sith in the Law is set such order that every man may know if he will, what suite is taken against him, and may see the Records thereof when hee will : and so it seemeth that neither the partie nor the
the law be not bounden to give him no knowledge therein. And over this I would some-what more further in this matter thus. That though that action were untrue, and the defendant not guiltie, that yet the goods be escheited to the King, for his not appearance, in law, and also in conscience, and that for this cause: the King as Sovereigne and head of the Law, is bounden of Justice to grant such writs, and such processes as he appointed in the law, to every person that will complaine, be his surmise true or false, and thereupon the King (of Justice) doeth as well to make Processe, to bring the defendant to answer, when he is not guiltie, as when he is guiltie: and then when there is a Maritime in the Law, that if a man be outlawed in such manner as before appeareth, that he shall forfeit all his goods to the King, and makest no exception whether the Action bee true or untrue. It seemeth that the said Maritime moze regardeth the general ministration of Justice, than the particular right of the partie: and therefore the property by the Outlawry, and by the said Maritime obtained for ministration of Justice, is altered and is given to the King, as before appeareth, and that both in law and in conscience, as well as if the action were true. And then the partie that is so outlawed is driven to sue for his remedie, against him that hath so caused him to be outlawed upon an untrue action.

D. If he have not sufficient to make recom- pense, or die before recounte can be had, what remedie is had then? Sc. I thinke no remedie: and
and for a further declarati6 in this case and in such other like cases, where the propertie of goods may be altered without consent of his owner, it is to consider that the propertie of goods is not given to the owners directly by the law of reason, nor by the law of God, but by his law of man, and is suffered by the Law of reason and by the law of God so to be. For at the beginning, all goods were in common, but after they were brought by the law of man into a certain property, so that every man might know his own; and then when such property is given by the law of man, the same law may assign such conditions upon the property as it intebh, so they be not against the law of God, ne the law of reason, and may lawfully take away that it giveth, and appoint how long the property shall continue. And one condition that goeth with every property in this Realm is, it bee that hath the propertie be outlawed according to such process as is ordained by the law, that he shall forfeit the property unto the king. And divers other cases there be also, whereby property in goods shall be altered in the law, and the right in Landes also without assent of the owner, whereof I shall shortly touch some Without saying any authoritie therein, for the more shortly. First by a sale in open market the property is altered. Also goods stolen and sold for the king, or valued, be forfeit, unless appeale o2 indictment be laid. Also if laes, if they be proclaimed, and be not after claimed by the owner within the yeare, be forfeit, and also 2 Deodand is forfeit to whom sooner the prop.
The 3. Chapter.

Partly was before (except it belonged to the R.) & shall be disposed for the soul of him that was claim'd therewith: a fine with a Nonclaimant at the Common law, was a barre, if claimant were not made within a yeare, as it is now by statute if the claimant be not made within 5 yeares. And all these forfeitures were obtained by the law upon certaine considerations which I omit at this time, but certaine it is that none of them were made upon a better consideration than this forfeiture of Attagarre was for if no especial punishement should have bin ordained to offendours that would absent themselves & not appeare when they were sued in the Kings courts, many suits in the Kings courts should have bin of small effect. And such this Marmine was ordained for the execution of Justice, as much done therein by the common law, as policie of man could reasonably devise, to make the party have knowledge of the suit, and now is added thereto by the statute made the 6 yere of H 8. that a Writ of Proclamation shall bee sued if the partie be dwelling in another shire: it seemeth that such Title as is given to the King thereby is in good conscience, especially seeing that the King is bound to make processe upon the surmise of the plaintifie, and may not examine but by pie of the party, whether the surmise bee true or not. But if the partie be returned five times called, whereinde the party was never called (as in the second case of the last Chapter of the said Dialogue in latine is contain'd) then it seemeth the party shall have good remedie by petition to the King, specially...
If he that made the returne be not sufficient to make recompence, or by before recovery can be had. Do. Now sith I have heard thine opinion in this case, whereby it appeareth that many things must be seene, of a sul and a plain declaration can be made in this behalf, and seeing also that the plaine answere were to this case, shall give a great light to divers other cases that may come by such forfeiture: I pray that give me a farther respite ere that I shew thee my full opinion therein, and hereafter I shall right gladly doe it. And therefore I pray thee proceed now to some other case.

The third question of the Student.

Cap. 4

If a stranger doe walk in lands that another holdeth for term of life without allire of the tenant for term of life, whether may he in rester do recover treble damages, and the place walked against the tenant for term of life according to the statute, in conscience, as he may by the Law, if the stranger be not sufficient to make recompence for the walk done? Is the law clere in this case, that he in the reversion walk recover against the tenant for term of life, though that he assented not to the doing of walk? St. Pea verbally, and yet if the tenant for term of life had beene bounden in an obligation in a certaine sum of money that hee would doe no walk, hee should not for his bond by walk of a stranger, and the dixeratia is this.
It hath been said as an ancient maxim in the law, that tenant by the curteys tenant in dower should take the land with this charge, that is to say, that they should do no waste the- seines, nor suffer none to be done: and when an action of waste was given against a tenant for term of life, then was he taken to be in the same case as to the point of waste, as tenant by the curteys, a tenant in dower was, that is to say, that he should do no waste, nor suffer none to be done (for there is another maxim in the law of England, that all cases side unto other cases shall be judged after the same law as other cases be) with no reason of diversity can be assigned why the tenant for term of life after an action of waste was given against him, should have any more favor in the law than the tenant by the curteys, or tenant in dower should: therefore he is put under the same maxim as they be, that is to say, that he shall do no waste, nor suffer none to be done: so it seemeth that the law in this case doth not consider the ability of the person that doth the waste, whether he be able to make recompence for the waste or not, but the attent of the said tenants whereby they have voluntarily taken upon the charge to see that no waste shall be done. D. I have heard that if houses of these tenants be destroyed with sodbane tempest, or with strange enemies, they shall not be charged with waste. So, Truth it is. Do. And I thinke the reason is because they can have no recovery over. Sr. I take note that for the reason, but that it is an old reasonable maxim in the law, that they should
be discharged in these cases, howbeit some will say, that in these cases the law of Reason both discharge them: therefore they say, that if a Statute were made, that they should be charged in these cases of want, & the Statute were against reason, & not to be observed: but yet nevertheless, I take it not so, for they might refuse to take such estate if they would, & if they will take the estate after the law made, it seemeth reasonable that they take it with the condition that is appointed thereto by the Law, though hurt might follow to them afterward thereby: for it is oftentimes seen in the law, that the law both suffer him to have hurt without helpe of the law, that will willfully run into it of his own act not compelled therto, & judgeth it his folly so to run into it, for which folly he shall also be many times without remedy in conscience. As if a man take land for term of life, and bindeth himself by obligation that he shall leave the lad in as good case as he found it, if the houses bee after blowne downe with tempest, or destroyed with strange enemies, as in the case that thou hast put before, he shall be bound to repair them, or else he shall lose his Obligation in law & conscience: because it is his owne act to bind him to it, and yet the law would not have bound him therto, as thou hast said before. Some thinketh, that the cause why the said tenants be discharged in the law in an action of want, when the houses be destroyed by some tempest, or by strange enemies, is by a special reasonable marne in the law whereby they bee excepted from the other general bond before.
The 4. Chapter.

before heerlled, that is to say, they shall at their peril see that no wall shall be done, 8 not by the law of reason: 8 8ith there is no maritime in this case to help this tenant, ne that he cannot bee holpen by the law of reason, it seemeth that he shall be charged in this case by his owne act both in lawe & conscience, whether the Strangers be able to rescipence him or not. D. I doubt in this case whether the maritime that thou speakest of be reasonable or not, that is to say, 8 tenants by the curtelle, 8 tenants in dower were bound by the common lawe, that they should doe no wall themselves, and sure that at their peril to see that no wall should be done by none other. For that law seemeth not reasonable that bindeth a man to an impossibility. And it is impossible to prevent, 8 no wall shall be done by strangers: for it may be sodenly done in the night, that the Tenants can have no notice of, 8 by great power that they be not able to resist: for so me thinketh they ought not to be charged in those cases for the wall, without they may have good remedie over, and then percase the said maritime were sufferable, 8 els me thinketh it is a Maritime against reason. 8. As I have said before no man shall be compelled to take the bond upon him, but he that will take the land, if he willing take the land, it is reason he take the charge as the law hath appointed it: and then if any hurt grow to him thereby, it is through his owne act and his owne assent, for he might have refused the lease if he would. D. Though a man may refuse to take estate for term of life, 8 for term of peres, and a woman may refuse
The 4. Chapter.

So take her Dower, per tenant by the curtesy cannot refuse to take his estate, for immediately after the death of his wife, the possession abides till in him by the act of the law without entry: and I put the case that after the death of his wife, he would secure the possession, and after waste were done by a stranger, whether thinkest thou that he should answer to the waste? I think he should by the law. D. And how standeth that with reason, seeing there is no default in him? S. It was his default, and at his own peril that he would marry an inheirenc, whereupon such daunger might follow. D. I put case that he were within age at the marriage, or that the land descended to his wife after he married her. S. There thou movest a farther doubt than the first question is; and though it were as thou faist; yet thou canst not say, but I there is as great default in him, as is in him in the reversion, s that there is as great reason why he should be charged with the waste, as that he in the reversion should bee disheirited and have no manner remedy, ne yet no profit of the land as the other hath: though the said marriage may be thought very hurt to the said tenants. Yet it is for to be considred as much as may be reasonably, because it heareth much the commonwealth: for it hurterth the commonwealth greatly, when woods & houses be destroyed: and if they should answer for no waste, but for waste done by themselves, there might be wasts done by strangers by commandement, or attend, in such colorable manner, that they in the reversion should never have prove
The 5. Chapter.

of their assent. Do. I am content thine opinion stand for this time, and I pray thee now proceed to another question.

The 4. question of the Student.

Cap. 5

If he that is the verie heire be certified by the ordinarie bastard, & after bringing an action as heire against another person; whether may any man knowing the truth, be of counsel with the tenant and plead the said certificat against the demandant by conscience or not? V. Is the Law in this case that all other against whom the demandant hath title shall take advantage of this certificat, as well as he at whose suit he is certified bastard? Y. Be verily, that for two causes, whereof the one is this. There is an old Maxime in the law, that a mischance shall be rather suffered than an inconvenience; & then in this case if another write should afterward be sent to another Bishop in another action, to certify whether he were bastard or not, parado: venture the Bishop would certify that he were mulier, that is to say, lawfully begotten, & & then he should recover as heire, & so he should in one selfe court be taken as mulier and bastard: for avoiding of which contradiction, the law will suffer no more writs to go soth in that case, & suffereth also all men to take advantage of the certificate, rather than to suffer such a contradiction in the court, which in this law is called an inconvenience, & the other cause is, because this
certificat of the bishop, is the highest trial that is in the Law in this behalfe, but this is not understood, but where bastardie is laid in one that is party to the suit; for if bastardy be laid in one that is a stranger to the suit, as if you, chec pray in ayd of such other, then that bastardy shall be tried by ejm. men, by which trial hee in whom the bastardy is laid, shall not be concluded, because he is not pray to the trial, s may have no attain, but he that is party to the issue may have attain, and therefore he shall be concluded a none other but he: sofozasmuch as the said marman was ordained to elcheue an inconveniency (as before appeareth) it seemeth that every man learned, may with conscience plead the said certificat for avoiding thereof, and give counsel therein to the partie according unto the Law, for else the said inconveniency must needs follow. But yet nevertheless I doe not meane thereby, that the party may after when he hath barred the demandant by the said certificat, retain the land in conscience by reason of the said certificat: for though there be no Law to copell him to relese it, yet I think well that hee in conscience is bound to relese it, if hee knew that the demandant is the very true here, whereof I have put divers cases like in the said Chapter of the first Dialogue in Latine, but my intent is that a man learned in the Law in this case and other like, may with conscience give his counsell according to the law, in avoiding of such things as the law thinketh should for a reasonable cause be escheewed. D. Though hee that doth not know whether hee be bastard
oz not, may giue his causefaile, & also plead the
said certifitc : yet I thinke that he that doth
know himselfe to bee the verie true heire may
not plead it, and that is for two causes: where-
of the one is this: Evie man is bound by the
law of reason to doe as he would be done to, but
I think that if he that pleaded that certifitc
were in like case, he would thinke that no man
knowing the certifitc to bee untrue, might
with conscience plaide it against him, where-
foxe no more may hee plead it against none o-
ther: The other cause is this, although the
certifitc be pleaded, yet is the tenant bounden
in conscience to make restitution thereof, as
thou hast laid thy life, and then in case that he
would not make restitution, then he that plea-
deth the plee, should run thereby in like offence,
foz hee hath hoipen to set the other man in such
a libertie that he may choose whether hee will
restore the Land oz not, and so hee should put
himselfe to teaperdie of another mans con-
science. And it is written Ecclesias: ; Qui amat
periculum peribit unlo, that is, hee that will
fully will put himselfe in teaperdie to offend,
shall perish therein. And therefore it is the sa-
urest way to eschew perils, soz him that know-
eth that he is heire, not to plead it. And as foz
the inconuenience that thou lapest most needs
follow, but the Certifitc bee pleaded : As to
that it may bee aunswered, that it may bee
pleaded by some other that knoweth not that
he is verie heire, & if the case be so far put that
there is none other learned there but hee, then
me thinketh that he shall rather suffer the lord
incon-
Inconveniencethan to hurt his own conscience; for always charity begins in himselfe, and to every man ought to suffer all other offences rather than he himself would offend. And now that thou knowest mine opinion in this case I pray thee proceed to another question.

The 5. question of the Student.

Cap. 6.

Whether may a man with conscience be of counsel with the plaintiff in an action at the common law, knowing that the defendant hath sufficient matter in conscience whereby he may be discharged by a subpoena in the Chancery, which he cannot plead at the common law, or not? Do. I pray thee put a case thereof in certain, for else the question is very general. And I will put the same case that thou puttest in our first Dialogue in Latin, the r. Chapter, that is to say: If a man bound in an obligation pay the money, and taketh no acquaintance, so that by the common law he shalbe compelled to pay the money again, for such consideration, as appeareth in the xv. Chapter of the said Dialogue, where it is shewed evidently how the Law in that case is made by a good reasonable ground, much necessary for all the people, howbeit, that a man may sometime through his own default, take hurt thereby, wherein I pray thee shew me thine opinion. Do. This case seemseth to be like to the case that thou hast next before this, s that he that knoweth the payment to be made doth not as he would be done to, if he give counsel that an action should be taken to have it paid again.
The 6. Chapter.

If he be sworn to give counsel according to the Law, as Serjeants at the law bee, it seemeth he is bound to give counsel according to the Law, for else he should not promise his oath. Do. In these words (according to the Law, is understood the law of God, and the law of reason, as well as the law & customes of the realme, so as thou hast said thy selfe in our first dialogue in latin, that the law of God, and the law of reason, be two speciall grounds of the laws of England, wherefore (as I me thinke) he may give no counsel (saving his oath) neither against the law of God, nor the law of reason. And certaine it is that this article, that is to say, a man shall do as he would be done to, is grounded upon both the said lawes. And first that it is grounded upon the Law of reason, it is evident of it selfe. And in the 6. Chapter of Saint Luke, it is said, Ee prove vultis vel faciant vobis homines, & vos facite illis similiter, that is to say, All that other men should do to you, do you to them, & so it is grounded upon the Law of God, therefore if he should give counsel against the defendant in that case, hee should do against both the said lawes. If the defendant had no other remedy but the common law, I would agree well it were as thou saidst, but in this case he may have good remedy by a Subpena, and this is the way that shall induce him directlie to his Subpena, that is to say, where it appeareth that the Plaintiff shall recover by Law alone. Though the Defendant may be discharged by Subpena, yet the bringing in of his proosethere, will be to the charge of
of the defendant, and also the plaintiff may do or they come in. Also there is a ground in the law of reason. Quod nihil possimus contra veritatem,(that is) we may do nothing against the truth, and that he kneweth it is truth that the money is paid, he may do nothing against the truth, and if he should bee of counsel with the plaintiff, he must suppose and appear that it is the very due debt of the plaintiff, and that the defendant withholdeth it from him un lawfully, which he kneweth himselfe to be untrue: wherefore he may not with conscience in this case be of counsel with the plaintiff, knowing that the plaintiff is paid already, wherefore if thou be contented with this answer, I pray thee proceed to some other question. St. I will with good will.

The 7. question of the Student.

Cap. 7.

A man maketh a sower me to his ville of him or his heirs, and after the sower putteth in his beasts to manure the ground, as the sower taketh the as damages relait, a putteth the in pound, as the sower bringeth an action of trespass against him for entering into his ground &c. Whether may any man knowing the sower be, be of counsel with the sower to avoid the action? D. May he by the common law avoid that action, seeing that the sower ought in conscience to have the profits? S. Yes verily, so as to the common law the whole interest is in the
the feoffor, yet if the feoffor will break his conscience, and take the profits, the feoffour hath no remedy by the common law, but is driven in that case to sue for his remedy by Subpena for the profits, and to cause him to release him against, that was sometime the most common case where the Subpena was sued, that is to say, before the Statute of B. 3, but since the Statute, the feoffor may lawfully make a sequestration. But nevertheless, for the profits received, the feoffor hath yet no remedy but by Subpena as he had before the said statute. And so the supposition of his action of trespass is untrue in every point, as to the common law.

D. Though the act be untrue, as to the law, yet he that sueth it ought in conscience to have that he demandeth by the action, that is to say, damages for his profits, and as it seemeth no man may with conscience give counsel, against that he knoweth, conscience would have done.

E. Though conscience would he should have the profits, yet conscience will not that for the attaining thereof the feoffour should make an untrue furmise. Therefore against the untrue furmise every man may with conscience give his counsel, so in that doing he resisteth not the plaintiff to have the profits, but he withstandeth him that he should not maintain an untrue action for the profits. And it sufficeth not in the law, he yet in conscience as we say, that a man hath right to that he sueth for, but that also he sue by a just means, and that he hath both good right, and also a good and a true conscience to come to his right: for if
The 7. Chapter.

If a man have right to land, as heir to his father, and he will bring an action as heir to his mother that never had right, every man may give counsel against the act, though he know hee have right by another meanes, as so as thee thinketh he may do in dilatations, whereby the partie may take hurt if it were not pleaded, though he know the plaintiff have right: as if the party or the towne be mistak'd, or if the degrees in writs of Entrep be mistak'd, but if the party should take no hurt by admitting of a dilatation, there hee that knoweth that the plaintiff hath right, may not plead that dilatation with conscience: As in a Formedon to plead in Abatement of the writ, because hee hath not made him selfe heir to him that was last tisled, or in a writ of Right for that the demandant had omitted one tended right, as such other, hee may not atten to the casting of an escaon, nor protection for him, if hee know that the demandant hath right, hee may not vouch for him, except it be he knoweth that the tenant hath a true cause of a boucher, & of lien, & that hee doth it to bring him theroeto, as in like wise he may not prap in aid for him, unless he know the prayer have good cause of boucher & lien ouer, or that he know that the prayer hath some-what to plead that the tenant may not plead, as villeine in the demandante, or such other. D. Though the plaintiff hath brought an action that is untrue & not maintenable in the Law, yet the defendant doth wrong to the plaintiff in the withholding of the profits aswell before the action brought as hanging the action, and that
that wrong as it seemeth the counsellor doeth maintain, it also sheweth himselfe to favour the partie in that wrong when he giveth counsell against the action. Sr. If the plaintiff doe take that for a favour & a maintenance of his wrong, he judgeth farther than the cause is given, so that the counsellor doeth no more but giveth counsell against the action, for though he give him counsell to withstand the action for the truth of it, and that he should not confesse it to make thereby a fine to the King without cause, yet it may not be and with reason that he may give counsell to the partie to yeild the profits: and therefore I thinke he may in this case be of counsell with him at the common Law, and be against him in the Chauncerie, and in either Court give his counsell without any contrarietie, or hurt of conscience. And upon this ground it is, that a man may with good conscience be of counsell with him that hath Land by descent, or by discontinuance without title, if he that hath the right bring not his action according to the Law, for the recovering of his right in that behalf.

The seventh question of the Student.

Cap.8.

If a man take distres for debt upon an obligation, 2dly a contract, or any other thing he hath right title to have, but he ought not by the Law to distain for it, e neverthelesse he keepeth
8th the same distress in pound till he be paid of his duty, what restitution is he bound to make in this case? Whether shall he pay $ money because he is come to it by an unlawful means, or only to restore the part to the wrongfully taking of the distress, or for neither, I pray you show me. Do what is the law in this case? S.

That he that is distrained may bring a special action of trespass against him & distraineth, for he took his beasts wrongfully, and kept till he made a fine, & therefore he shall recover the fine in damages, as he shall do for the residue of trespass, for the taking of the monyp by such copulacion to take in the law but as a fine wrongfully taken, though it be his duette to have it. D. Yet though he may so recover, mee thinketh that as to the repayment of the monyp he is not bound thereto in conscience, so that he take no more than right he ought to have, for though he came to it by an unlawful means, yet when $ money is paid him, it is his of right, & he is not bound to repay it, unless it be recovered as thou saidst, then when he hath repaid it, he is as me thinketh restored to his first action: but to the redemption of the beasts, with such damages as such hurt as he hath by the distress, I suppose he is bound to make recompence of the in conscience without copulation, or suit in the law; for though he might lawfully have sued for his duette in such manner as the law hath ordered, yet I agree well that he may not take upon him to bee his owne judge, and to come to his duty against the order of the Law, and therefore if any hurt come to the part by the disorder, he is bound to

restore
restoza it. But I would think it were the more doubt if a man take such a distress for a trespass done to him, and keepeth the distress till amends be made for the trespass; for in that case the damages be not in certains, but be arbitrable either by the assent of the parties or by 12 me: and it seemeth that there is no assent of the parties in this case, specially no free assent, for that he doth by compulsion and to have his distress againe, and so his assent is not much to be pondered in that case, for all his affecting of him that took the distress, as so he hath made himself his own Judge and that is prohibited in all lawses: but in that case where the distress is taken for debt, he is not his own Judge for the debt was indiged in certaine before by the first contract, and therefore some think great diversitie betwixt the cases. 

By that reason it seemeth, that if hee that distresseth in the first case for the debt take any thing for his damages, that he is bound in conscience to restore it againe, for damages be arbitrable, and not certaine no more than trespass is, as we see: meth that both in the case of trespass and debt, he is bound in conscience to restore that he taketh, so though he ought in right to have like him as he receiveth, yet hee ought not to have the money that he receiveth, for hee came to the money by an unfair means, wherefore it seemeth he ought to restore it againe. D. And if hee should bee compelled to restore it againe, should hee not yet (for that he receiveth it once) bee barred of his first action notwithstanding the payment?
5. I will not at this time cleerely answe thee that queistion, but this I will say, that if any hurt come to him thereby, it is through his owne de-fault, for that he would do against the law: but nevertheless a little I will say to thy question, that as mee seemeth when he hath repaid the mony, that he is restored to his first action. As if a man condemned in an actio of trespass pay the mony, and after the defendant reverence the judgement by a worie of Error, and have his mony repaid, then the plaintiff is restored to his first action. And therefore if be that in this case take the mony, restore that he take by the wrongfull distress, or that he ordered the matter so liberally, that the other must not, ne complains not at it, me seemeth he did very well to be sure in conscience: and therefore I would advise every man to bee well ware how he di-straineth in such cases against the law. 1). Thy counsel is good, & I note much in this case that the party may have an actio of trespass against him that di-straineth, so that he is taken in the law but as a wrong doer, & therefore to pay the mony againe is the sure way, as thou hast said before. And I pay thee now thes me for what a man may lawfully di-strain as thou thinkest.

For what thing a man may lawfully di-strain.

Cap. 9.

A man may lawfully di-strain foe a Rent. service, and foe all maner of services, as ho-
mage.
maje, Feallie, Elcuage, suit of Court, relieves, and such other. Also for a rent reserved upon a gift in tail, a lease for term of life, for years, or at will, he reserving the reversion, the secofs for shall distrain of common right, though there be no distress spoken of. But in case a man make a lease for rent reserved and that in fee by Indenture, reserving a rent, he shall not distrain for that rent unless a distress be expressly reserved; and if the secofs be made without a deed reserving a rent, that reserving is void in Law, and he shall have the rent one by one conscience, and shall not distrain for it. And like Law is where a gift in tail or a lease for term of life is made, the remainder due in fee reserving a rent, that reserving is void in law.

Also if a man feiles of land for term of life granting away his whole estate, reserving a rent, that reserving is void in the Law, without it be by Indenture, and if it be by Indenture, yet he shall not distrain for the rent but a distress be reserved. Also for Amercia ment in a Leete, the Lord shall distrain. But for Amercia ment in a Court baron he shall not distrain.

Also if a man make a lease at Michelmans for a peare, reserving a rent payable at the feast of the Incarnation of our Lady and Saint Mich. the Archangel, in that case he shall distrain for the rent due at our Lady day, but not for the rent due at Michelmans, because the term is expired.

But if a man make a Lease at the feast of
Chriftmas fo2 to endure to the feast of Chrift-
mas next following, that is to say, fo2 a yeare
referving a rent at the fofefaid Feast of the
Annuntiation of our Ladye and Saint Mi-
chael the Archangel, there hee fhall distrains
fo2 both the rents, as long as the term continued,
that is to say, till the fofefaid Feast of
Chriftmas.

And if a man have Land fo2 terme of life of
John at Noke, and make th a lease fo2 terme of
peares referving a rent, the rent is behind, and
John at Noke die, thare hee fhall not distrain
because his reversion is determined.

Also if he to whole vse felleth bin felled ma-
keth a lease fo2 terme of peares, fo2 fo2 terme of
life, 02 a gift in tale referring a rent, there the
reversion is good and the fellour fhall dis-
straine.

And if a townefhip be amerced 8 the neigh-
bours by attent a felle a certaine summe upon
every inhabitant, 8 agree that if it be not paid
by the a day, that certaine persons there to af-
ligned fhall distraine: In this cafe the diftres
is lawfull. If Lord and Tenant bee, and if the
tenant do hold of the Lord by fealle and rent,
and the Lord both graunt away the fealle re-
serving the rent, and the tenant attourneth, in
this cafe, hee that was Lord may not distraine
fo2 the rent, fo2 it is become a rent lecke. But
if a man make a gift in tale to another, referv-
ing fealle 8 certaine rent, and after that hee
graunteth away the fealle referring the rent
and the reversion to himselfe, in this cafe hee
fhall distraine fo2 the rent, fo2 the graunt of the
fealle
fealtie is bolde, for the fealtie cannot be seuered from the reversion. Also for heres service the Lord shall distraine, and for heret custome he shall seize and not distraine. Also if a rent be assigned to make a partition or assignement of Dower egall, hee or hee to whom the rent is assigned may distraine; and in all these cases above-aid, where a man may distraine, hee may not distraine in the night, but for damages fea- sant, that is to say, where beasts doe hurt in his ground he may distrain in the night. Also for wastes, for reparations, for accounts, for debts upon contracts, or such other, no man may lawfully distraine.

The 8. question of the Student.

Cap. 10.

If a man do trespasse, and after make his executors, and die before any amends made; whether be his executors bound in conscience to make amends for the trespass if they have sufficient goods there to, though they be no remedy against them by the law to compel them to it? Doct. It is no doubt but they are bound thereto in conscience, before any other deed in charite, that they may do for him of their own devotion. Sr. Then would I wit, if the testator made Legacies by his will, whether the executors be bound to doe first, that is to say, to make amends for the trespass, or to pay the Legacies, in case they have no goods to doe both? D. To pay legacies: for if they should first make
The 10. Chapter.

make recompence for the Trespass and then have not sufficient to pay the Legacies, they should be taken in the law as wasters of their Testators goods: for they were not compellable by no law to make amends for the trespass, because every trespass dyeth with the person, but the legacies they should be compelled by the Law spiritual to fulfill, and so they should be compelled to pay the Legacies of their owne goods, and they shall not be compellrid thereto by no law in conscience: but if the case were that he leave sufficient goods to doe both, then we thinketh they be bound to do both, and that they be bound to make amends for the Trespass, before they may doe any other charitable deed for the Testator of their owne mind, as I have said before, except the funeral expenses that be necessary, which must be allowed before all other things. S. And what the proving of the Testament.

V. The Ordinary may nothing take by conscience therefore, there be not sufficient goods besides for the funerals, to pay the debts, & to make restitution. And in like wise the Executors be bound, to pay debts upon a simple contract, before any other deed of charitie, that they may doe for their Testator of there owne donation, though they shall not be compelled thereto by the Law, &c. And whether thinkes thou that they bee bound to doe first, that is to say, to make amends for the trespass, or to pay the debts upon a simple contract. Do To pay the debts, for that is certaine and the trespass is arbitrarie.

S. Then
Sr. Then for the plainer declaration of this matter and other like, I pray that I show me thy mind, by what law it is, that if a man make executors, and that the executors, if they take upon them, be bound to performe the will, and dispose the goods that remaine for the Testator. D. I think that it is best by the law of reason. S. And me thinketh that it should bee rather by the custome of the Realme. D. In all Countries and in all lands they make Executors. S. That seemeth to be rather by a general custome, after that the law and custome of property was brought in, than by the law of reason; for as long as all things were in common, there were no executors ne wills, ne they needed not them, and when property was after brought in, me thinketh that yet making of executors, and disposing of goods by will, after a mans death, followeth not necessarily thereof: for it might have bin made for a law, that a man should have had the property of his goods one by during his life; that then his debts payed, all his goods to have beene left to his wife and children, or next of his kin, without any legacies making thereof, and so might it now bee ordained by Statute, and the Statute good is not against reason: wherefore it appeareth that executors have no authoritie by the Law of reason, but by the Law of man. And by the old Law and custome of the Realme a man may make executors and dispose his goods by his will, and then his executors shall have the execution thereof, and his heires shall have nothing, but if any particular custome helpe:and
The 10. Chapter.

The executors shall also have the whole possession, and disposition of all his goods & chattels, as well real as personal, though no word be expressly spoken in the will, that they shall have them: and they shall have also actions to recover all debts due to the testator, though all debts & legacies of the testator be paid before, & shall have the disposition of them to the use of the testator, & not to their own use: and so we thinketh that the authority to make executors, and that they shall dispose the goods for the testators by the custom of the Realm: but then I think as thouliest, that by the Law of God they shall be bound to doe the first, that is to the most profit of the soul of their testator: Where the disposition thereof is left to their discretion, and that I agree well, is to pay debts upon contract, & to make amends for wrong done to the testator, though they bee not compelled thereto by the law & custom of the realm, if there be none other debt or legacy that they be bound to pay by the law: but if two several debts be payable by the Law, each which debt they shall do first in conscience, I am somewhat in doubt. D. Let us first know what the common law is therein. S. The common law is, if the testator owe to two men generally by obligation, or by such other manner that an action lyeth against his Executors thereof by the Law, and hee leave goods to pay the one and not both, that in that case hee that can first obtaine his Judgement against the Executors, shall have execution of the whole, and the other shall have nothing, but to which of them
them he shall in conscience owe his favour, the common Law doth reach not. Do. Therein must be considered the cause why the debts began, and then he must after conscience bear his lawful favour to him that hath the clearest cause of debt, and if both have like cause, then in conscience he must bear his favour where is most need and greatest charitable.

Sr. Why the executor is in that case delay that action that is first taken, if it stand not with so good conscience to be paid, as another debt whereof no action is brought, and procure that an action may be brought thereof, and then to contest that action, that he may so hate execucution, and then the executor to be discharged against the other? D. Why may he not in that case pay another without action, and so be discharged in the law against the first?

Sr. No verily, for after an action is taken, the executor may not minister the goods so, but that he leave so much as shall pay the debt, whereof the action is taken: and if he do not, he shall pay it of his own goods, except another recover, and have Judgement against him hanging that action, and that without cost.

D. Then to answer to thy question, I think that by delays that be lawfull, as by Eulogie, Emparliance, or by delatorque plee in abatement of the suit that is true, he may delay it: but he may plead no untrue plea to prejudice the other to his due. But I pray thee, what is the law of legacies, restitution, & debts, upon contracts, that percase ought rather after charitable
to be paid than a debt upon an obligation, what may the fanoz of the Executo doe in these cases? S. Nothing, for they either performe legacies, make restitutions, or pay debts upon contracts, and keepe not sufficient to pay debts which they are compellable by the law to pay, that they be taken as a Deuaflauentur bona testamentores, that is to say, That they have wasted the goods of their teftatiz; and therefore they shall be compell'd to pay the debts of their own goods; so it is if they pay a debt upon an obliga-tion, whereof the day is set to come, though it be the cleere debt, and that be the more charitable to have it paid. D. Yet in that case is hee to whom the debt is already owing, fo beare till after the day of the other obligation is past, then he may pay him without danger. S. That is true, if there be no action taken upon it, and though there be, yet if that action may bee delayed by lawful meanes, as thou hast spoken of before, till after the day, and that an action is taken upon it, then may the executors confesse the action, and then after Judgment hee may pay the debt without danger of the law. D. Is not that confession of the action so done of purpose, a couii in the law? S. No verily, for couii is where the action is untrue, & not where the Executoz beare a lawful fanoz. Do. The Ordinarie upon the accompt in all the case before rehearsed, will regard much what is best for the Testatorz. S. But hee may not drine them to accompt against the order of the common Law.
A Man is indebted to another by a simple contract in 20. &. 8 he maketh his will & bequeatheth 30. &. 10 By Part 2 dyeth, and leaveth goods to his executor only to buyc him with, and to performe the said legacy, and after the said executor deliver the goods of their Testator in performance of the said bequest: Whether is hee to whom the bequest is made, bound in conscience to pay the said debt upon the simple contract, or not? D. Is hee not bound thereto by the Law? S. No verily. D. And what thinkest thou hee is in conscience? S. I think he is not bound thereto in conscience, for he is neither Ordinary, Administrator, nor Executor. And I have not heard that any man is bound to pay debts of any man that is deceased, but hee be one of those three: for the goods that the Testator left to the executors were never charged with the debt, but the person of the Testator where he lived was only charged with the debt, and not his goods, and his executors that represent his estate after his death, having goods there to of the testator, be charged also with the debts, and not the goods. And therefore if an Executor give away or sell all the goods of the Testator, or otherwise wast them, hee that hath the goods is not charged with the debts in Law nor conscience, but the Executor shall bee charged of his owne goods.
The 11. Chapter.

... goods. And in like wise if Jo at Noke owe to A.B. cc. 1. and A.B. owe th to C.D. cc. 1. and after A.B. dyeth inter testate having none other goods but the said cc. 1. which the said John at Noke owe th him, yet the said C. D. shall have no remedy against the said Jo at Noke, for he standeth not charged to him in Law noz conscience. But the Ordinary in this case must commit Administration of the goods of the said A.B. And the said Administrator must leay the mony of the said John at Noke, and pay it to the said C.D. and the said John at Noke shall not pay it himselfe, because hee is not charged therewith to him: and no more mee thinketh in this case, that be to whom the bequest is made, is neither charged to him that the mony was owing to, in the Law noz conscience. Do. Then I newe whe thy mind by what law it was grounded as thou thinkest: Executarys be bound to pay debts before legacies: whether it is by the law of God, or by the law of reason, or by the Law of man, as thou thinkest. I thinke that it is both by the law of reason, a by the law of God: for reason will that they shall doe first that is best for the testator, and that is to pay debts that their testator is bound to pay, before legacies, that he is not bound to. And also by the law of God, they are bound to pay the debts first: for such they are bound by the law of God to love their neighbour, they are bound to do for him that shall be best for him, when they have taken the charge thereto, as Executor doe when they agree to take the charge of the will of their Testator upon.
upon them: and it is better for the testator that his debts be paid (wherefore his soul shall suffer paine) than that his legacies be performed, wherefore he shall suffer no paine for the performing of them.

And that is to bee understood, where the legacy is made of his own fre wil, not where it is made as a satisfaction of any debt. And after the saying of S. Gregorie, the vertue true prove of love is the deed. But this man is not in that case, for he tooke neuer the charge upon him to pay the debts of the Testator, and therefore he is not bound to them in Law not conscience as me seemeth: But rather the executors should have bin ware ere they had paid the legacies, seeing there were debts to pay.

D. The Executors might no otherwise have done in this case, but to pay the Legacies: for the they shoud have been compell'd by the Law to have paid, and so they could not have bin to have paid the debt upon a contract, and therefore they did well in performing of that legacy but he to whom the legacy was made ought not to have taken them, but ought in conscience to have suffer'd them, to have gone to the payment of the debt, and thus he did not so, but toke them where he had no right to them, it seemeth that when he tooke them he tooke with them the charge in conscience to pay the debt: for, by the executors being compellable by the Law to performe that bequest and not pay the debt, therefore when they performed that bequest, they were discharg'd thereby against him that the debt was owing to, in the Law and conscience.
...
pay it againe to the Executours without they paid it ouer, & it were unceartaine to him wheth-
ther they should pay it o? not.

And therefore to be out of peril, it is necess-
sarie that he pay it himself, and then he is sure-
tly discharg'd against all men.

The to. question of the Student.

Cap. 12.

A Man seised of certainiud in his demesne as of fee, hath iue two sonnes and first
seised, after whose death a stranger ab-
teeth, & taketh the profit, and after the eldest son
byeth without issue, and his brother bringeth
an Allis of Mortdaunccestar as sonne and heire
to his father, not making mention of his brou-
ther, and recoureteth the Land with damages
from the death of his father, as he may wel by
the Law: whether in this case is the younger
brother bound in conscience, to pay to the Execu-
cours of the eldest brother, the baine of the
profits of the said Land, that belonged to the
eldest brother in his life, or not? Doct. What is
this opinion therein? That like as the said
profits belonged of right to the eldest brother
in his life, and that hee had full authioritie to
have released as wel the right of the said Land,
as of the said profits, which release should
have beene a clere barre to the younger brother
for ever: That the right of the said dammages
Which
The 12. Chapter.

Which bee in the Law but a chattell, belonging to his executor, and not to the heire: for no man-ner of chattell neither real nor personal shall not after the law of the realm descend unto the heire.

D. Thou saidst in the case next before, that it is not of the Law of reason, that a man shall make executor, to dispose of his goods by his will, and the executor shall have his goods to dis- pose, but by the law of man: And if it be left to the determination of the law of man, that in such cases as the law giveth such chattels unto the Executors, they shall have good right unto them, and in such cases as the Law taketh such chattels from them, they have right-fully taken from them: And therefore it is thought by many, that if a man sue a Writ of right of Ward of a Ward that her hath by his own see, and per hanging the Writ, and his heire sue a Relemonns according to the Stat. of West.:second, and recouereth: that in that case the heire shall enjoy the wardship against the executors, and yet it is but a chattell: and they take the reason to bee, because of the lapde statute, and so might it bee ordered by statute that all Wardes should go to the heires, and not to the Executors: Right so in this case, sith the Law is such, that the younger brother shall in this case have an All of Mortdauncestour as heire to his father, not making any mention of his elder brother, and recover damages as well in the time of his brother, as in his own time: It appeareth that the Law giveth the right of these damages to the heire, and there-
soz no recompence ought to bee made to the executors, as se seemeth; so is not like to a sorte of d Biel, where as I have learned in latime (lith our first dialogue) the demandant shall recover dammages only from the death of his father, if he overuse the Biel: the case is, soz that the demandant, though his Biel overlued his father, must of necessity make his conveyance by his father, and must make himselfe son & heire to his father, & cozen and heire to his Biel: and therefore in that case if the father overlued the Biel, the abatoz were bounden in conscience to restor to se executors of the father the profits run in his time (soz no lawe taketh them from him) but otherwise it is in this case, as se seemeth, se. If the younger brother in this case had entred into the land without taking any assile of Morlancester as he might if bee would, to whom were the abatoz then bounden to make restitution toz those profits as thou thinkest? D. To the executors of the eldest brother: soz in that case there is no lawe that taketh them from them, & therefore the general ground, which is that all chattels shal li gote to the executors, holdest in that case: but in this case that ground is broken and holdest not, soz the reason that I have made before. Soz commonly there is no general ground in the Lawe so sure, but it farleth in some particular case.

The question of the Student.

Cap. 13.

A Man seised of land in sez, taketh a wife, and after alieneth the land, & dyeth, after whose death
The 13. Chapter.

death his wife asketh her dower, or the alieneth refuseth to assigne it unto her, but after the assigneth her Dower again, and he assigneth it unto her: whether is the aliené in this case boisd in conscience, to give the woman damages for the profits for the Land after the third part, from the death of her husband, or from the first request of her Dower, or neither the one nor the other? D. What is the law in this case? Stru. By the law the woman shall recover no damages, so at the Common law the demandant in a writ of Dower, should never have recovered damages: but by the Statute of Merton it is ordained, that where the husband died seised, that the woman shall recover damages, which is understood the profits of the Land after the death of her husband; and such damages as the haste by the forbearing of it: but in this case the husband died not seised, wherefore she shall recover no damages by the law. D. Yet the law is, that immediately after the death of her husband the wife ought of right to have her dower if shee alse it, though her husband die not seised. S. That is true.

Do. And sith shee ought to have her Dower from the death of her husband, it seemeth that shee ought in conscience to have also the profits from the death of her husband, though shee have no remedie to come to them by the law: for we thinketh that this case is like to a case that thou warest in our first Dialogue in Latin, the 17. Chapter: That if a tenant for term of life be dispossessed and dye, and the dispossessor eyeth, and his heir entereth and taketh the profits,
Ets, and after he in the reversion recouereth the lands against the heire, as hee ought to doe by the Law, that in that case hee shall recover no damages by the Law: and yet thou diddest agree, that in that case the heire is bound in conscience to pay the damages to the demaundant, and so wee thinketh in that case, that the seoffee ought in conscience to pay the damages from the death of her husband, seeing that immediately after his death she ought to have her dowry. So. Though she ought to bee indowes immediately after the death of her husband, yet wee can say no default in the seoffee till she demand her dowry upon the ground, and that the tenant be not there to assign it, or if he be there that he will not assign it: for she hath the possession of land whereunto any woman hath title of dowry, hath good authority as against her to take the profits till she require her dowry: for certain woman that demaundeth dowry affirmeth the possession of the tenant as against her: and therefore although she recover by action, shee leaeth the recovery alway in him against whom she recouereth, though he be a disseisor, and bringing not the recovery by her recovery to him that hath right as other tenants for terme of life doe. And for this reason it is that the tenant in a wryt of Dowry, where the husband dyed lepsed, if hee appeare the first day, may say to excuse himselfe of dammages that hee is and all times hath beene ready to paid Dowry if it had beene demaunded: and so he shall not be received to doe in a wryt of Casuall age, neither in the case that thou remembrest above.
The 13. Chapter.

above, for in both cases the tenants be supposed by the writ to bee wrong doers: but it is not so in this case, so so me thinketh it cleare that the tenant in this case shall never be bound by law, notwithstanding his conscience to pay damages for the time passed before the request, but for the time after the request is greater doubt: howbeit some think him bound to pay damages, because his title is good, as is said before, so that it is her default that she brought not her action D. As unto the time before the request I hold me content with thine opinion, so that he assign the dower when he is required, but when he refuseth to assign it, then I think him bound in conscience to pay damages for both times, though he shall none recover by the law. And first as for the time after the refusal, it appeareth evidently that when her default to assign her dower, he did against conscience: for he did not so he ought to have done by the law, ne as he would should have bin done to him, so after he request he holdeth her dower from her wrongfully, and ought in conscience to pay damages therefore. And as to his default that thou assignest in her, that she took not her action, so for his title, for actions need not, but where the party will not do that he ought to do of right. And for that he ought of right to have done so did it not, he can take no advantage: and then as to the damages before the request, me thinketh him also bounden to pay them, so when he was required to assign dower a related. It appeareth that he never intended to pay dower from the beginning, so he is a wrong doer in his own con-
conscience: and moreover if the husband die seised, the law is such, that if the tenant refuse to assign dower when he is required, wherefore the woman brings a suit of dower against him, that in that case the woman shall recover damages aswell for the time before she request as after, ye per he ought not in that case alter thine opinion to have praised any manner of damages if she had bin ready to assign dower when it was demanded, as some thinketh here. So. The case in the case that thou hast put, is for that the statute is general that the demandant shall recover damages, where the husband died seised, & that statute hath bin alway construed, where the tenant may not cap, she is, & hath bin ready alway to assign dower as the demandant shall recover damages from the death of her husband. But in that case there is no law of the realm, & helpe for the demandant neither common law, nor statute: & furthermore though it might be proved by his refusal, & he never inteded from the death of the husband to assigne her dower, yet that proceh not, but that he had good right to take the profits of her third part for the time, aswell as he had of his owne two parts, till request be made, as is above said: I do me thinketh yet notwithstanding the denial, be is not bound to assign damages in this case, but for the time of the request, not for the time before. For this time I am content with thy reason.

Cap. 14.

A man seised of certain land, knowing that another hath good right & title to them, lea

L 3

with
with a fine with Prolamation, to the intent hee would extint the right of the other man, & the other man makest no claimte within the 3. yeares, whether may hee that levied the fine hold the land in conscience as he may do by the law & D. By this question it semeth that thou doest agree, that if he that levied the Fine had no knowledge of the other mans right, that his right should then bee extincted by the fine in conscience. Dr. Peadertie, soz thou diddest shew a reasonable cause why it shoule bee so in our first Dialogue in Latine the 24. Chapter, as there appeareth. But if he that levied a fine and that would extinct the right of another, knew that the other had moze right than hee, then I doubt therem : soz I take thine opinion in our first Dialogue to bee understood in conscience, where he that would extinct former rights by such a fine with proclamation, knoweth not of any former title, but soz his moze surety, if any such former right be, he taketh the remedy that is ordained by the law. Do. whether doest thou meane in this case that thou puttest now that hee that hath right, knoweth of the fine, so willingly letting the fine yeares passe without claimte, soz that hee knoweth not any thing of the fine.

S. I pray thee let mee know thine opinion in both cases, and whether thou thinke that hee that hath right bee barred in either of the said cases by conscience as he is by the Law, soz not. Do. I will with good will hereafter shew thee my mind therein: but at this time I pray thee give a little sparing and proceed.
now for this time to some other question.

13. question of the Student.

Chap. 15.

A man seised of certain lands in fee hath a daughter, which is his heir apparent, the daughter taketh a husband, e they have issue, the father dieth seised, and the husband as soone as he heareth of his death, goeth toward the land to take possession, e before he can come there, his wife dieth, whether ought he to have the land in conscience for term of his life, as tenant by the curtelie, because he hath done that in him was to have had possession in his wives life, so that she might have bin tenant by the curtelie according to the Law, or that he shal neither have it by the law, nor conscience? D. Is it eereely holden in the law that he shal not be tenant by the curtelie in this case, because he had not possession in deed?

S. De verily, and yet upon a possession in law a woman shall have her dower, but no man shall be tenant by the curtelie of Land, without his wife have possession in deed. D. A man shall be tenant by the curtelie of a rent though his wife dye before the day of payment, in like wise of an husband though she die before the annual purchase. S. That is truth for the old custome and maxime of the law is, that he shall be so, but of land there is no maxime that serveth him but his wife have possession in deed. D. And what is the reason that there is such a maxime in the
law of the rent's of the aduowson, neither the
of land when the husband both as much as in
him is to have possession and cannot? Some
assign the reason to be because it is impossible
to have possession in deed of the rent, or of ad-
auowson before the day of payment of the rent,
or before the avoidance of the aduowson.D.And
so it is impossible that he should have possession
in deed of Land if his wife dye so soone that he
may not by possibility come to the Land after
his fathers death, & in her life as the case is. 8.
The law is such as I have shewed thee before.
& I take the verie cause to be, for that there is
a Maxim truly for the rent and the aduow-
son, & not for the lands as I have said before,
& as is laid in the 8. chapter of our 1st Dia-
logue, it is not alway necessary to assigne a
reason of consideration why the Maximes of
the law of England were first ordained & ad-
mittet for Maximes, but it suffiseth that they
have bin alway taken for law, and that they be
neither contrarie to the law of reason, nor to the
law of God as this Maxime is not, & therefor
if the husband in this case be not holpen by con-
science, he cannot be holpen by the law. 9. And
if the law helpe him not, conscience cannot help
him in this case, for conscience must alway bee
grounded upon some law, and it cannot in this
case be grounded upon the Law of reason, nor
upon the law of God, for it is not directy by
those laws that a man shall be tenant by curte-
sie, but by the custome of the rentme. And ther-
fore if the custome help him not, he can nothing
have in this case by conscience: for conscience
never
The first Chapter.

never resieth the law of man, no2 addeth nothing to it, but where the law of man is in it self directly against the Law of reason, or else the Law of God, and then properly it cannot be called a law, but a corruption, or where the general grounds of the law of man worketh in any particular case against the said Lawes as it may doe, yet the law good, as it appeareth in divers places in our first dialogue in Latin, or else where there is no law of man provided for him that hath right to a thing by the law of reason, or by the law of God. And then sometime there is remedy given to execute that in conscience, as by a Subpena, but not in all cases; for sometime it shall be referred to the conscience of the party, or upon this ground (that is to say) that when there is no title given by the common Law, that there is no title by conscience: There be divers other cases, whereof I shall put some for an example. As if a Reconciliation be granted unto one, but there is no attornment: or if a new rent be granted by Word Without deed, there is no remedy by conscience, unless the said grants were made upon consideration of money, or such other. And in likewise where he that is lord of lands in fee simple maketh a will thereof, that will is void in conscience, because the ground serveth not for him whereby the conscience should take effect, that is to say, the Law. And if the tenant make a feoffment of the land that he holdeth by praemiture, and taketh estate againe, and dieth (his heir within age) the Lord of whom the land was first holden by praemiture, shall have no remedy, for the bodie by con
Chapter 16.

Conscience, for the law that first was with him, is now against him, therefore conscience is altered in likewise as the law altereth. And divers and many cases like be in the Law that were too long to rehearse now. And thus me thinketh that if the Law be as thou sayest, the husband in this case hath neither right by the Law, nor conscience.

The 14. question of the Student.

A man in fee to perceive of two acres of land, after the granter enfeoffed the granteef one of the said acres, whether is the whole rent extinct thereby in conscience as it is in the law; D. This case is somewhat uncertain: for it appeareth not whether the grantee enfeoffed him on trust, or that he gave the acre to him of his mere motion, to the use of the said seoffee, or else that the seoffment was made upon a bargain, or if it were but only a seoffment of trust, then I think the whole rent abideth in conscience though it be extinct in the Law. First that it continueth in that case in conscience, for the part that the grantee hath to the use of the grantor it is evident, for he may not take the profits of the land, and it is against conscience that he should take both, as in like wise it abideth in conscience for the acre that remaineth in the hands of the grantor, though it be extinct in the Law: for there was a default in the grantor that hee would make the seoffment to the granteef as well as there
Was in the grantee to take it. And it is no con-
sience that of his owne default he should take
so great auail to be discharged of the whole
rent, seeing that the feuement was made to his
owne use. And if the feuement were made up-
on a bargain & a contract between them, then
it is to see whether they remembred the rent in
their bargain, or that they remembred it not, &
if they remembred it in their bargain & contract,
then conscience must follow the bargain: As
thus, if they agreed that the Grantor should
have the rent after the portion in the other acre,
then by conscience hee ought to have it though
it be extinct in the law: And if they agreed
that the whole rent should be extinct, and made
their price according, then it is extinct in law &
conscience: & if they clereely forgot it & made no
mention of it, or for lacke of cunning toke the
Law to be, that it should continue in the other
acre after the portion, and made their price ac-
cording, pondering only the value of the acre
that was sold, then mee thinketh it both con-
tinue in conscience after the portion: & if the feu-
emeent were made to the use of the grantee, then
it seemeth the whole rent is extinct in law and
conscience. Then take this to be the case, that
is to say, that the feuement was made to the
use of the grantee. D. What is the thine opinion
therein? That the rent should abide in consci-
ence after the portion of the acre remaining in
the hands of the grantor, notwithstanding it be
extinct in the law. D. Then shew me thine opin-
ion in this that I hal aske thee: Of what law
is it that graunts of rent end of such other
profits out of lands may be made, and that they shall be good & effectual to the grantees, whether it is by the law of reason, oz by the law of god, oz by the custom & law of the realm. S. I think it is by the law of reason: soz by the same reason that a man may give away all his lands, he may as it seemeth give away the profits thereof, oz grant a rent out of the land if he will. D. But then by what Law is it that a man may give away his lands? I rowe by none other law but by the custome of the realm, for by statute all alienations & grants of lands may be prohibited, & then that reason proweeth not that grants of the profits of lands of a rent, shoud be good because hee may alien the land: if alienation of land be by custome & not by the Law of reason, as I suppose it is, whereof I have touched somewhat in our first Dialogue in Latin the 19. Chapter. And also if Grants should have their effect by the Law of Reason, then Reason would they should be good by the only word of the Grantor, as well as by his deed. And that is not so, soz without deed the grant of rent is void in law: and so me thinketh that grants have their effects only by the Law of the Realm. Scu. Admit it be so, what meanest thou thereby? D. O. I shall shew thee hereafter, as I shall shew thee the cause why I think the rent is extinct in conscience, as well as in law. And first as I take it, the reason why it is extinct in the law, is because the rent by the first grant was going out of both acres, and was not going part out of the one acre, a part out of the other, but the whole rent was going out of
of both, and then when the grantee of his own folly will take estate in the one acre, whereby that acre is discharged, then the other acre also must be discharged, unless it should be apportioned, and the law will not that any apportionment should be in that case, but rather in so much as the party hath by his own act discharged the one acre, the law discharged also the other, rather than to suffer the other acre to be charged contrary to the same of the grantor: For this rent beginneth all by the act of the partie. And as I have heard it is called, a rent against common right. Wherefore it is not favored in the law, as a rent service is: and then me thinketh that for so much as it is not grounded by the law of reason, that grants of rent should be made out of land, but by custom and law of the realm, as I have said before: that so in like wise it remaineth to the law & custom of the realm, to determine how long such rents shall continue. And when the law judgment such rent to bee void, I suppose that so both conscience also, except the judgment of the law be against the law of reason or the law of God, as it is not in this case. For in this case he that taketh the service meneth hath profit by the service; I knoweth that he hath such a rent out of the land & that this purchase should extinct it, whereby it appeareth that he is a tenant unto the law, whereunto he was not compelled, and that is his owne act and his owne default so to do, which that extinct his whole rent as well in conscience as in law. But if he have no profit of the land, or be ignorant that he hath such a rent out of the
Chapter 16

The land, which is called ignorance of the dead, if he be ignorant that the Law would extinge his whole rent thereby, which is called ignorance of the Law, then mee thinketh it remaineth in conscience after the position. Sc. Ignorance of the law or the dead helpeth not but in few cases in the Law of England. D. And therefore it must be reformed by conscience, that is to say, by the law of reason, for when the general Maxims of the law be in any particular cases against the law of reason, so this Maxim seemeth to bee, because it excepteth not the that be ignorant though it be an ignorance inexcusable, then both it not agree with the law of reason. S. We thinketh that ignorance in this case helpeth little: For when a man beareth any lad oz, takest it of the gift of any other, hee takest it at his peril, so that the title be not good ignorance cannot help, for the buyer must beware what hee buyeth: so in this case if the taking of an acre should extinge the whole rent in conscience, if hee were not ignorant, so mee thinkest it should in like wise extinge it also though he be ignorant of the law of the dead; for every man must be compelled to take notice of his own title, and out of what land his rent is going, so mee thinkest ignorance is but little to be considered in this case. D. If a man buy lad oz, takest it of gift of another, it is reason that he take it with the peril, though hee bee ignorant that another hath right: for it were not standing with reason that his ignorance should extinge the right of another, but in this case there is no doubt of the right of the land...
but all the doubt is how the rent that be espied in conscience, if he that hath the rent take part of the land: S there is great diversity between him that is ignorant in the Law, and him that knoweth the Law; S knoweth so well also that he hath a rent out of the land, and other. For: I put case that he asked counsel of the granteo; himselfe therein, S he saying as he thought, told him that the taking of the one acre should not extinct the rent but to the part, and so he thinketh the Law to be, take the other acre of his gift: Is it not reasonable in that case, that the ignorance should face the rent in conscience? S: Yes, soz there the granteo; himselfe is party to his ignorance, and in manner the cause thereof. D: And me thinketh all is one, if any o- ther had shewed him so, soz if he asked no coun- sal at all, soz mee thinketh it sufficeth in this case that he be ignorant of the Law: soz why, it is more hard in this case to proue the Rent should be extinct in conscience, though he knew it should be extinct in the Law, than to proue that it continueth in conscience after the position if he be ignorant, and thou thy selfe were of the same opinion, as it appeareth in the beginning of this present Chapter: But if the opinion were true, it would be hard to proue but that the said generall Maritime were wholly a- gainst reason, and then it were void, but I have sufficiently answered thereto as mee seemeth, S that it is extinct in the Law, and also in conscience, except ignorance help it to be apportioned And moreover, soz all such as apportionment is suffered in the Law, Where part of the land
The 17th Chapter.

Discedeth to the grantee, because no default can be assigned in him; some think no default can be assigned in him in conscience, when he is ignorant of the Law of the Deed, though such ignorance do not excuse in the law of the realm. I am content with thy opinion in this behalf at this time.

§ The 15th question of the Student.

Cap. 17.

A man granteth a Rent charge cut of two acres of land, and after the grantor, intending to extinct all, the rent, cause the said acre to be recovered against him to his own use in a way of Entry in the Post, in the name of the grantee and of others, after the common course, the grantee not knowing of it, and by force of the said recovery the other demandants enter and do lodging the grantee, so that the grantor is seized of all by the surpnce to the use of the land. Whether is the said rent extinct in conscience, in part, or in all, or no part? D. I am in doubt of the law in this case. In what point? Do. Whether the whole rent be going out of the acre that remaineth in the hands of the grantor, because the grantee commeth to the Land by way of recovery, or that it shall be extinct in law but after the position, because the grantee hath not the acre to his own use, or that the whole
Whole rent shall be extinct in the Law, Sr. The rent cannot be whole going out of the acre that the grantor hath; for this recovery is upon a seamed title, and the grantor because he is bound to it shall be well received to satisfy it. But if the recovery had been upon a true title, then it had been as thus said, if the grantee recover the one acre against the grantor upon a true title, the grantor shall pay the whole rent out of the land that remaineth in his hand; and as to the rent it maketh no matter to the grantee; as to the law in whom the rent be: for the possession without the rent extinguisheth the whole rent as against him in the law, as well as if the possession and rent were both joined together in the grantee.

Do. Then mee thinketh that the said Henry Hart is bound in conscience to pay the grantee the rent after the portion of that acre that was recovered, for it cannot stand with conscience that he should lose his rent, and have no profits of land S. Then, of whom shall he have the other portion of his rent? Do. Is the law clearer that the acre that the grantee hath shall be in this case discharged in the law? S. I take the law so.

Do. And what in conscience? S. As against the grantee, mee thinketh also it is extinct in conscience, for the reason that thou hast made in the 16. Chapter. For it is all one in conscience in this case as against the grantee, whether the recovery were to the use of the grantee or not, specially seeing that the grantor is not privy to the recovery; for the unity of possession
The 18. Chapter.

18 § Cause of extinguishment of the rent against the grantor, both in law and conscience, whereas the vie be. But if the grantor had bin private to the cause of Extinquishment, as he was in the case that I put in the last Chapter, where the grantor encoffed the grantee of one of the acres to the vie of the grantee, there it is not extinct in conscience in that acre that remaineth in the hands of the grantor, though it be extinct in the law, because he was private to the extinguishment himselfe: but he is not so in this case, therefore it is extinct against him in law & conscience. And therefore mee thinketh that the grantee shal in conscience have the whole rent of the said H. art, that caused the said recoverie to be had in his name, for in him was all the default: but it is to be understood, that in all the cases, where it is said before in this chapter, or in the chapter next before, that the rent is extinct in the law, and not in conscience, that in such case, all the remedies that the partie might had have had for the Rent at the common Law by distress, assise, or otherwise, are determined. e the party that ought to have the rent in conscience, shall be driven to sue for his remedy by Subpena, D. I am content with the conceit in this matter for this time.

q The 18. question of the Student.

Cap.13.

A Villeine is granted to a man for term of life, the villeine purcahseth Lands to him and
and to his heirs, the tenant for term of life entrench; in this case by the Law he shall enjoy the lands to him and to his heirs, whether shall he do so in likewise in conscience?

D. Where thinketh it first good to see whether it may stand with Conscience, that one man may claim another to be his villeine, and that he may take from him his lands and goods, and put his body in prison if he will: it seemeth he loueth not his neighbour as himselfe that doth so to him.

St. That Law hath bin so long holden in this Realme and in other also, and hath bin admitted so long in the Laws of this Realme, and of divers other laws also, and hath been attested by Bishops, Abbotts, Priours, and many other men both spiritual and Temporal, which have taken advantage by the said Law, and have leased the Lands and goods of their villeines thereby, and call it their right inheritance so to doe: that I think it not good now to make a doubt, ne to put it in argument whether it stand with conscience or not, and therefore I pray thee, admitting the Law in that behalf to stand in Conscience, thou see thin opinion in the question that I have made.

D. Is the Law cleere that hee that hath the villeine but onely for term of life, shall have his lands that that villeine purchaseth in fee to him, and to his heirs?

S. Pre verily I take it so.

D. I should have take the Law otherwise: soz"
If a Seigniozio be granted to a man for term of life and the tenant attouerne, & after the land escheat, and the tenant for term of life enreeth, he shall have there none other estate in the land than he had in the Seigniozio: as we thinketh that it should be like law in this case, and that the Lord ought to have in the Land, but such estate as he hath in the villeine. \[18\]. The cases bee not alike, for in the case of the escheate the tenant for term of life of the Seigniozio hath the lands in the lieu of the Seigniozio, that is to say, in the place of the Seigniozio, the Seigniozio is clearly extinct: but in this case he hath not the land in the lieu of the villeine, for hee shall have the villeine still as he had before, but he hath the lands as a profic come by means of the villeine, which he shall have in like case as the villeine had them, that is to say, of all goods and chattels he shall have the whole property, and of a lease for term of yeares he shall have the whole term, and for term of life he shall have the same estate, the Lord shall have in the land during the life of the villeine, and of land in fee simple, and of an estate tale that the villeine hath, the Lord shall have the whole fee simple, although he had the villeine but only for term of yeares, so that he enter 02 lease according to the law before the villeine alien, 02 else he shall have nothing.

\[18\]. D.Well, and if the law be so, I think conscience followeth the law therein. For admitting that a man may with conscience have another man to be his villeine, & judgment of the Law in this case (as to determine what estate the
the Lord hath in the land by his entry) is neither against the law of reason nor against the law of God, and therefore conscience must follow the Law of the Realm. But I pray thee let me make a little digression to heare thine opinion in another case somewhat pertayning to the question, and it is this: If an Executor have a villeine, that his testator had for term of yeares, he purchaseth lands in fee, and the executor entereth into the land, what estate hath he by his entry? A Fee simple, but that shall be to the behoife of the testator, & shall be an asset in his hands. Well then I am content with thy concept at this time in this case, and I pray thee proceed to another question. So as much as it appeareth in this case in some other before, that the knowledge of the law of England is right necessarie for the good ordering of the conscience: I would heare thine opinion, If a man mistake the law, what danger it is in conscience, for the mistaking of it. D. I pray thee put some case in certaine therof that thou doubtest in, & I wil with good will shew the my mind therein, or else it will bee some what long or it can be plainly declared, and I would not be tedious in this writing.

The 17. question of the Student.

Cap. 19.

A Man hath a Villeine for terme of life, the villein purchaseth lands in fee as in this case.
of the last Chapter, and the tenant for termes of life entred, and after the Willemine dyeth, he in the resurreccion pretending that the tenant for termes of life hath nothing in the Land, but for termes of life of the Willemine, alsketh countsale of one that sheweth him that he hath good right to the Land, and that he may lawfully enter, and through that countsale he in the resurreccion entred, by reason of the which entry, great suits and expenses follow in the Law, to the great hurt of both parties: What danger is this to him that gave the countsale? D. Whether meanest thou that hee that gave the countsale, gave it willingly against the Law, or that hee was ignorant of the Law; or. That hee was ignorant of the Law: so if hee knew the Law, and gave countsale to the contrarie, I think hee bound to restitution, both to him against whom he gave the countsale, and also to his Client (if hee would not have sued but for his countsale) of all that they be dammished by it.

D. Then will I yet further ask thee this question; Whether he of whom he asketh countsale gave himselfe to learning, and to have knowledge of the Law after his capacitie, or that hee toke upon him to give countsale, and toke no suche competent to have learning: soz if hee did so, I think hee bounden in conscience to restitution of all the costs and dammages that he sustained, to whom hee gave countsale, if hee would not have sued but through his countsale, and also to the other partie. But if a man that hath taken sufficient study
in the law, mistake the law in some point that is hard to come to the knowledge of, he is not bounden to such restitution, for he hath consent in him is: but if such a man knowing the law give counsel against the Law, is bound in conscience to restitution of costs and damages (as thou hast said before) and also to make amends for the untruth.

Ser. What if he ask counsel of one that he knoweth is not learned, and he giveth him counsel in this case to enter, by force whereof he entreteth? Do. Then be they both bound in conscience to restitution, that is to say, the party if he be sufficient, and else the Counselour because he attented and gave counsel to the wrong.

Sr. But what is the Counselour, in that case bounden to him that he gave counsel to? Do &. To nothing: for there was as much default in him that asked the counsel, as in him that gave it, for he asked counsel of him that he knew was ignorant, and in the other was default for the presumption, that he would take upon him to give counsel in that he was ignorant.

Sr. But what if he that gave the counsel, knew not but that he that asked it, had fault in him, that he could and would give him good counsel, and that he asked counsel for to offer well his conscience, howbeit that the truth was, that he could not so doe?

D. Then is he that gave the counsel bounden to offer to the other amends, but yet the other may not take it in conscience.
That were somewhat perilous, for hap-
yp he would take it though he have no right to it, except the world be well amended. D. What thinkest thou in that amendment? 2. I trust every man will do now in this world as they would be done to, speak as they think, restore where they have done wrong, refuse money if they have no right to it, though it be offered them, do that they ought to doe by conscience, though that they cannot bee compelled to it by no Law, and that none will give counsel, but that they shall think to be according to conscience, and if they doe, to do what they can to re-form it, and not to intermit themselves with such matters as they be ignorant in, but in such cases to lend them that give the counsel to other, that they will think be more cunning than they are.

D. I were very well if it were as thou hast said, but the more pure, it is not alway so. And especially there is great defect in givers of counsel, for some for their owne desire and profit give counsel to comfort other to sue that they know have no right, but I trust there bee but few of them; and some for dread, some for favour, some for malice, and some upon considerations, and to have so much done for them an other time to hide the truth. And some take upon them to give counsel in that they be ignorant in, and yet when they know the truth will not withholds that they have misdonne, for they think it should be greatly to their rebate, and such perilous follow not this counsel, that faith that wee have unadvisedly done, let vs with good
goad advise revoke again.S. And if a man give counsel in this Realme after as his learning and conscience gurth him, and regardeth not the Lawes of the Realme, gurth he good counsel: Do. If the Law of the Realme bee not in that case against the Law of God, noz against the Law of reason, he gurth good counsel; For every man is bound to follow the Law of the countrey where he is, so it be not against the said lawes, and so may the cases be, that he may bind himselfe to restitution. Sr. At this time I will no further trouble thee in this question

The 18. question of the Student.

If a man of his meere motion give lands to H.N. and to his heires by Indenture, upon a condition, that he shall pearly at a certaine day pay to Jo. at Stile out of the same land a certaine Rent, and if he doe not, that then it shalbe lawfull to the said Jo. at Stile to enter ac, if the rent in this case be not payed to John at Stile, whether may the said John at Stile enter into the Lands by conscience, though he may not enter by the law? D May he not enter in this case by the Law, Sith the Words of the Indenture be that he shall enter? S. No verily, For there is an anncient Maxim in the Law that no man shall take advantage in a condition, but he that is partie or privie to the condition, and this man is not party nor privie.

Where
Wherefoze he shall have no auuauntage of it.D.
Though hee can have no auuauntage of it as parte, yet because it appeareth evidently that the intent of the giver was, that if hee were not payed of the rent, that hee should have the land: It seemeth that in conscience he ought to have it, though hee cannot have it by the Law.
Sr. In many cases the intent of the party, is hold to all intents, if it be not grounded according to the law: And wherefoze if a man make a lease to another for terme of life, and after of his meere motion hee confirmeth his estate for terme of life to remaine after his death to another, and to his heeres. In this case that remainder is hold in law and conscience, for by the Law there can no remainder depend upon no estate, but that the same estate beginneth at the same time that the remainder doth: And in this case the estate began before, and the confirmation enlarged not his estate, nor giue him no new estate. But if a lease be made to a man for terme of another mans life, and after the lease onely of his meere motion confirmeth the land to the Lessee for terme of his owne life, the remainder over in Fee, this is a good remainder in the law and conscience; and so inee thinketh the intent of the partie shall not bee regarded in this case. Do. And in the first case that thou hast put, mee thinketh though it passe not by way of grant of that, yet shall it passe, as by the way of remainder of the recussion, for every deed shalbe taken most strong against the grantor, and the taking of the deed in this case is an attouement in it selfe. Sr. That can-
not bee, fo; hee in the remainder is not party to the deed, and therefore it cannot be taken by the way of grant of the reversion: fo; no grant can bee made but to him that is partie to the deed, except it be by way of remainder. And therefore if a man make a lease fo; term of life, and after the lease grant to a stranger that the tenant fo; term of life hath the land to him and to his heires, that grant is void if it bee made only of his mere motion without recompense. And in likewise if a man make a Lease fo; term of life, and after grant the reversion to one fo; term of life, the remainder over in fee, and the Tenant attorneth to him that hath the estate fo; term of life only, intending that he only should have advantage of the grant, his intent is void, a both shall take advantage there;f, and the attornment shall be taken good, according to the grant: And so in this case, though the feoffor intended that if the rent were not paid, that the stranger should enter, per because the law giveth him no entrie in that case, that intent is void, e the same stranger shall not enter into the land by law no; conscience kept. What shall then be done with that land as thou thinkest after the condition broken? I think that the seoffor in this case may lawfully reenter, fo; when the attornment was made upon condition that the seoffor should pay a rent to a stranger, in those words is concluded in the law, that if the rent were not paid to the stranger, that the seoffor should reenter: fo; those words upon condition imply so much in the law though it be not expressed.
And then when the feoffor went further & said that if the rent were not paid, that the stranger should enter, those words were void in the law: and so the effect of the deed stood upon the first words whereby the feoffor may re-enter in law & conscience: but if the first words had not been conditionall, I would have holden it the greater doubt. Do, I pray thee put the case there of in certaine with such words as be not conditionals that I may the better perceive what thou meanest therein.

The 19. question of the Student.

Cap. 21.

A man maketh a Feoffement by deed indented, & by the same deed it is agreed, that the feoffee shall pay to A.B. or to his heirs a certaine rent peress at certaine days, & that if he pay not the rent, the it is agreed that A.B. or his heirs shall enter into the land and after the feoffee payeth not the rent, the the question is, who ought in conscience to have this land and rent. Do. Ere we argue what conscience will, let us know first what the Law will there in. Sr. I thinke that by the law neither the feoffor ne yet the said A.B. shall never enter into the land in this case for nonpayment of the rent, for there is no reentry in this case given to the Feoffor for nonpayment of the rent as there is in the case next before, the the entry that is given to the said A.B. for nonpayment thereof is void in the law, because he is estrange to the
the estate, as it appeareth also in the next chapter before. And therefore mee thinketh that the greatest doubt in this case is to see to what use this leasement shall be taken.

Do. There appeareth in this case as thou hast put it, no consideration ne recompence given to the feoffor, whereupon any use may bee derived: and if the case bee so indeed, and that the seoffor declared never his mind therein, to what use shall it then be taken? So I think it shall bee taken to bee to the use of the seoffee as long as he payeth the rent, for there is no reason why the seoffee should bee burdened with payment of the rent having nothing for his labors: ne it may not conveniently be taken that the intent of the seoffor was so except bee expressed it, & then it must bee taken that he intended to recompence the seoffee for the busines, that he should have in the payment over, and by the words following his intent appeareth to bee so, as mee thinketh, for if the rent were not paid, he would that A.B. should enter, and so it seemeth he intended not to have any use himselfe: and thus mee seemeth this case should vairie from the common case of uses, that is to say, if a man seised of land make a leasement thereof, and it appeareth not to what use the leasement was made, ne it is not upon any bargain or other recompence, then it shall be taken to be to the use of the seoffor, except the contrary can be proved by some bargain, or other like, or that his intent at the time of the inerit of servin was expressed that it should bee to the use of the seoffee or of some other, and then it

Hay
Shall goe according to his intent: but in this case me thinketh it shalbe taken that his intent was, that it should first be to the vse of the feoffor, for the cause before rehearsed, except the contrary can be proved, so that knowledge of the intent of the feoffor is the greatest certainty for knowledge of the vse in this case as me seemeth: but when the feoffor goeth further and saith that if the rent be not paid, that then the said A. B. should enter into the Land, then it appeareth that his intent was that the rent should cease, and that A. B. should enter into the Land, and though hee may not by those wordes enter into the land after the rules of the law, and to have fraighthold, yet those wordes seeme to bee sufficient to prove that the intent of the feoffor was that hee should have the vse of the land: for lieth hee had the rent to his owne vse, and not to the vse of the feoffor, so it seemeth hee shal have the vse of the Land that is assigned to him for the payment of the rent. Do Wyt I am somewhat in doubt whether hee had the rent to his owne vse: for the intent of the feoffor might bee that hee should pay the rent for him to some other, or some other vse might bee appoynted thereof by the feoffor. Sr. If such an intent can bee proved, then the intent must be observed: but wee bee in this case to wit, to what vse it shall bee taken if the intent of the feoffor cannot be proved, and then me thinketh it cannot be otherwise taken, but it shall bee to the vse of him to whom it should be paid: for though it bee called a rent, yet it is no rent in Law, ne in the Law he shall never have remedie for it, though it were
The 21 Chapter.

Were assigned to him, and to his heirs without condition, neither by distress, by assise, by writ of Annuitie, nor otherwise, but he shall be sworn to sue in the Chauncerie for his remedy, and then when he sueth in the Chauncerie, he must suumise that he ought to have it by conscience, and that he can have no remedy for it in the law. And then, sith he hath no remedy to come to it but by the way of Conscience, it seemeth it shall be take, that when he hath recovered it that he ought to have it in conscience, or that to his own use, unless the contrary can be proved, and if the contrary can be proved, and that the intent of the seoffor was, that he should dispose it for him as he should appoint, then hath he the rent in use to another use, and so one use should be depending upon another use, which is sedome scene, and shall not be intended till it be proved; and so, sith no such matter is here erzelled, we thinketh the rent shall be taken to bee to the use of him that it is paid to, and the Land in likewise that is appointed to him for payment of the said rent shall be also to his use, how thinkest thou, will conscience term thee therein? Do. I think that so thou takest the Law now, that conscience (in this case) and the Law bee all one, for the Law searcheth the same thing in this case, to know the case that conscience both, that is to say, the intent of the seoffor, and therefore I would move thee farther in one thing. Scu. What is that?

D. That sith the intent of the seoffor shall be so much regarded in this case, why it ought not also
The 22. Chapter.

to be as much regarded in the case that is in the last chapter next before this, where the words be conditional: so give the seoffoz a title to reenter: so me thinketh, that though the seoffoz may in that case reenter for the condition broken, that yet after this entry he shall be seized of the land after his entry to the use of him, to whom the Land was assigned by the said Indenture for lacke of payment of the rent, because the intent of the seoffoz shall be taken to be so in that case as well as in this. And I pray thee let me know thy mind, what ducerlitie thou pouest betweene them. 5. Thou pouest mee now to a narrow ducerlitie, but yet I will answer thee therein as well as I can. D. But first ere thou shew me that ducerlitie, I pray thee shew me how Use began, and why so much Land hath bene put in use in this Realme as hath bin s. I will with good will sup as me thinketh therein.

How Use of land first began, and by what law; and the cause why so much land is put in use.

Cap. 22.

V. Uses were reserved by a secondar power, six of the laws of reason in this manner: where the general custom of property, whereby every man knew his owne good from his neighbours was brought in among people: It followed of reason that such lands & goods as a man had, ought not to be taken from him but by his alien.
A tent or by order of a law: and then such it is to
so
that every man that hath Lands hath thereby
things in him, that is to say, the possession of
the Land which after the Law of England is
called the freehold or the freehold, & the
other is authoritative to take thereby the profits
of the land, whereas it followeth that he that
hath land & intendeth to give one by the pos-
session a freehold thereof to another, & to keep the
profits to himself, ought in reason & conscience
to have the profits, seeing there is no law made
to prohibit, but that in conscience such reser-
vation may be made. And so when a man mak-
eth a sequestration to another and intendeth that
he himself shall take the profits, then the seque-
est is laid settled to his les that to intested him, that
is to say, to the les that he shall have the pos-
session, & sequestration thereof, as in the law, to the in-
tent that the les that take the profits, and by-
der chaste manner, as I suppose, les of land first
began. D. If it seemeth that the reserving of such
les is prohibited by the law, but if a man make
a sequestration and reserve the profits, or any part
of the profits, as the grasse, wood or such other,
that reserving on is void in the law; & me thin-
keth it is all one to say, that the Law judgeth
such a thing if it be done to be void, that the
law prohibiteth that the thing shall not be done;
Sc. Truly it is that such reserving is void in
the law as thou saist, and that is by reason of a
Maxime in the Law that will eth & such reser-
vation of part of the same thing shall be judged
void in the law: but yet the law doth not pro-
hibite that no such reserving shall be made
but
The 22. Chapter.

but if it be made it judgeth of what effect it that be that is to lay, that it shall be void, and so bee that makesth such reservation of endeth no law whereby, ne breaketh no law whereby, and there-foze the reservation in conscience is good: but if it were prohibited by statute that no man should make such reservation, ne hence issue of trust should be made, but such the settlements should bee to the use of him to whom possession of the land is given: then the reservation of such title against the statute should be void, because if were against the law, & yet such a statute should not be a statute against reason, because such titles were first grounded & reserved by the law of reason, but it should prevent the law of reason, & should put away the cōsideration where-upon the Law of reason was grounded before the statute made. And then to the other question, that is to say, why so much land hath beene put in title, it will be somewhat long & paraventure to some tedious to show all the causes particularly; but the verie cause why the title remained to the settlor notwithstanding his own settlement for line, & sometime notwithstanding a recovery against him, is all by one consideration after the cause and extent of the gift, line, or recovery, as is aforesaid V. Though reason may serue that upon a settlement a title may be reserved to the settlor by the intent of the settlor against the forme of his gift, as thou hast saide before, yet I marwell much how an title may be reserved against a fire, that is one of the highest Records that is in the law, and is taken in the Law of so high effect that it should make an end
end of all Strifes, or against a recovery that is obtained in the law for them that be wronged to recover their right by; and me thinketh that great inconvenience a hurt may follow when such Records may to lightly be avowed by a secret intent or else of the parties, or by a hide and base agreement a matter indeed, and specially such a matter indeed may be alleged that is not true, whereby may rise great strife between the parties, a great confusion and certainty in the law: but nevertheless such our intent is not at this time to treat of that matter. I pray this touch shortly some of the cases, why there hath bin so many persons put in estate of lands to the use of other, as there hath bin, for as I do assure you, few men be sole lessees of their own land. 3. There hath been many causes thereof, of which some be cut away by divers Statutes, some remain yet; wherefore thou shalt understand, that some have put their land in feoffment secretly, to the intent they that have right to the Land, should not know against whom to bring their action, and that is somewhat remedied by divers Statutes, that give actions against Parnoys and takers of the profity. And sometime such feoffments or trust have bin made to have maintenance of bearing of their seoffes, which peradventure were great Lords or rulers in the Countrie; and therefore to put away such maintenance, treble damages be given by statute against them that make such seoffments to such maintenance. And sometime they were made to the use of Mortomaine, which might then be made with-
out forfeiture though it were prohibited & the freedom might not be given in Mortmain. But that is put away by the Statute of R. 3. And sometime they were made to defraud the lords of wards, relieves, heriots, and of the lands of their villeines: but those points be put away by divers Statutes made in the time of King H. the 7. Sometime they were made to avoid executions upon Statute Staple, statute merchant, & Recognisance: a remedy is provided for that, that a man shall have execution of all such lands as any person is settled of. to the use of him that is so bound, at the time of execution sued in the 19. year of H. 7. And yet remain feoffments, fines, and recoveries in use of many other causes, in manner as many as there did before the said statute. And one cause why they be yet thus used, is to put away tenancie by the curestie, and rules of Dower. Another cause is for that lands in use shall not be put in execution upon a Statute Staple, statute merchant, no; Recognisance, but such as be in the hands of the Recognizor at the time of the execution sued. And sometime lands be put in use that they should not be put in execution upon a suit of Extendi facias, ad valentiam. And sometime such uses be made, that he to whose use &c. may declare his will thereon, & sometime for sureties of divers covenants in Indentures of marriage, & other bargains, & these 2 last articles, be the chief & principal cause why so much land is put in use. Also lads in use be not assed neither in a Formedo nor in an action of Debe against the heir: ne they shall not be put in execu-
cotton by an Elegy sued upon a recoverie as some men lay: 0 these be the verty chaste causes, as I now remember, why so much Land standeth in vle as there both: e all the said vles be reserved by the inter of the partes understood, or agreed between them, and that many times direct'y against the words of S seottement, line, or recovery, and that is done by the law of reason, as is also said. D. Why not a vle be assigned to a stranger, as well as to be reserved to the seottor, if the seottor so appointed it upon his seottement? Scu. Yes as well, and in like wise to the seottor, that upon a free gift without any bargain or recompence, if the seottor so will. D. What if no seottement be made but that a man grant to his seottor, that from henceforth he shall and sealed to his own vle, is not that vle changed, though there be no recompence? Scu. I think be yes, so there was an vle in this before the gift, which he may as lawfully give away, as he might land if he had it in possession. D. And what if a man being sealed of land in se, grant to another of his mere motion without bargain or recompence, he from thence forth shall be sealed to the vle of the other, is not that grant good? Sc. I suppose that is not good, so as I take the Law, a man cannot commence an vle but by inter of seclin or by a bargain on some other recompence. D. I hold me contented with that thou hast said in this Chapter for this time, & I pray thee shew me what difference thou puttest between those two cases that thou hast before rehearsed in the 30. Chapter and in the 31. Chapter of this.
The 23. Chapter.

The diversitie betweene two cases hereafter following, whereof one is put in the 20. Chapter, and the other in the 21. Chapter of this present Book.

Cap. 23.

The first case of the said two cases is this.

I ma make a seffement by deed indented by a condition, that the lessee shall pay certain rent yearly to a stranger, &c. &c. if he pay it not, that it be lawfull to the stranger to enter into the land. In this case I said before in the 20. Chapter, that the stranger ought not enter, because that he was not yereup unto the condition. But I said, that in that case the lessee ought lawfully to enter by the first words of the Indenture, because they imply a condition in the law, and that the other words (to say) that the stranger should enter, bee void in law a conscience. And therefore I said farther, that when the lessee had rentred, that he was lesse of the land to his owne use, and not to the use of the stranger, though he meant at the making of the seffement, were that the stranger after his entry, should have had the land to his owne use, if he might have entered by the law. And the cause why I thinke that the lessee was lesed in that case to his owne use, I shall shew the afterward. The second case is this, a man make a seffement in fee, and it
to agreed upon the seoffement, that the seoffee shall pay a perely rent to a stranger, & if he pay it not, that then the stranger shall enter into the land. In this case I said as it appeareth in the said ch. Chapter, that if the seoffee paid not the rent: that the stranger should have the bene of the land, though he may not by the rules of the law enter into the land, and the diversities between the cases me thinketh to be this. In the first case it appeareth as I have said before in the said ch. Chapter, that the seoffour might lawfully reenter by the law toz not pay: inent of rent, & then when he entered according, he by that entrie avoided the first inquery of lan: sin, in somuch that after the enentry hee was seised of the land of like estate as hee was before the seoffement: And so remayneth nothing, whereupon the stranger might ground his bene, but onely his bare grante or intent of the seoffor: when he gave the land to the seiff upon condition that hee should pay the rent to the stranger, and if not, that it should be lawful to the stranger to enter: soz the seoffem: ment is unopposed by the enentry of the seoffor as I have said before: and as I said in the last Chapter, as I suppose a nude of bare grant of him that is seised of land, is not sufficient to begin an bie ypD. A bare grant may change an bie as thou thy seife agreed in the last chap: ter, why then may not an bie as well begin upon a bare grant ? S. When an bie is in esse, he that hath the bie may of his mere motion gine it away if hee will without recompence, as he might the land if hee had it in possession.
but I take it for a ground, that he cannot so begin an use with one livery of seizin, or upon a recompence or bargain, that there is such a ground in the law, & it may not so begin it appeareth there: It hath bin alwayh held for law, that if a man make a deed of settlement to another & deliver the deed to him as his deed, that in this case he to whom the deed is delivered, hath no title ne medling with the land aforesaid unless of seizin be made to him, but only that he may enter & occupy the land at the will of the seoffor, & there is no booke saith that the seoffor in that case is seiz'd therof aforesaid livery to the use of the seoffor. And in like wise if a man make a deed of settlement of 2 acres of land that lie in 2. shires, intending to give them to the seoffor & make th livery of seizin in the one shire, & not in the other, in this case it is commonly holden in booke that if a deed be void to the acre where no livery is made, except it lie within that was save only that he may enter & occupy as will, & so a foresaid: & there is no booke that saith that the seoffor should have the use of the other acre, for if an use passed thereby, then were not the deed void to all intents, & yet it appeareth by the words of the deed that the seoffor gave the lands to the seoffor, but for lacke of livery of seizin the gift was void. & so me thinketh it is here without livery of seizin be made according: but in the 2. case of the said 2. cases the seoffor may not reenter for non-payment of the rent, and so the first livery of seizin continued & standeth in effect, and thereupon the said use may well begin and take effect in the stranger of the land.
When the rent is not paid unto him according to the first agreement, And so me thinketh that in the first case the vie is determined, because the liuerpy of leisin, whereupon it commences is determined, & that in the second case the vie of the land takest effect in the granger for not paiement of the rent, by the grant made at the first liuerpy, which yet continueth in his effect, & this me thinketh is the diversitie betweene the cases. Do. Pet not withstanding the reason that thou hast made, me thinketh that if a man feiled of Lands, make a gift thereof by a made promise without any liuerpy of leisin or receipence to him made, and grant that bee shall bee seiled to his vie, that though the promise be void in the law, that yet nevertheless it must hold and stand good in conscience and by the law of reason, for one rule of the law of reason is, that we may do nothing against the truth, and yet the truth is that the owner of the ground hath granted that he shall be seiled to the vie of the other, that grant must needs stand in effect, or else there no truth in the grantor. 5. It is not against the truth of the grantor in this case, though by the grantor bee be not seiled to the vie of the other, but it proveth that he hath granted that the Law will not warrant him to grant, wherefore his grant is void. But if the grantor had gone further and said, that hee would also suffer the other to take the proffits of the lands without let of other interruption, or that hee would make him estate in the land when hee should bee required, then I thinke in those cases he were both in conscience,
by that rule of the law of reason that thou hast remembered, to performe them, if he intend to be bounden by his promise, or els he should goe against his owne truth, and against his owne promise. But yet it shall make no bie in that case, nor he to whom the promise is made shall have no action in the Law upon that promise, though it be not performed, for it is called in the Law a Nude or naked promise. And thus me thinketh, that in the first case of the said two cases, the grant is now avoided in the law by the reentry of the seffor, and that the seffor is not bounden by his grant neither in law nor conscience, but in the second case hee is bound, so that the bie palleth fro him, as I have said before. D. I hold me content with thy content for this time, but I pray thee shew me some What more at large what is taken for a Nude contract, or naked promise in the Lawes of England, and whether any action may lye thereupon, and where not. Sr. I will with good will lay as me thinketh therein.

What is a Nude contract, or naked promise after the Lawes of England, and whether any action may lye thereupon.

Cap. 24.

For it is to be understood, that contracts be grounded upon a custome of the realm, by the law that is called Ius gentium, or not directly by the law of reason, for when all things were in common, it needed not to have contrac-
tract, but after property was brought in, they were right expedient to all people. So a man might have of his neighbor that he had not of his own, and that could not be lawfully but by his gift, by way of lending, concord, or by some lease, bargain, or sale: and such bargains and sales he called contracts, and he made by assent of the parties upon agreement between them, of goods or lands, of money, or for other recompence, but of money bluss, or money bluss is no contract. Also a concord is properly upon an agreement between the parties, with divers articles therein, some rising on one part, and some on the other. As if I at Stile letteeth a Chamber to Henry Hart, and it is farther agreed between them, that the said Henry shall goe to boozd with the said John at Stile, and the said Henry Hart to pay for the Chamber and boozding a certaine summe &c. this is properly called a Concord, but it is also a contract, a good action lyeth upon it. Howbeit it is not much argued in the Laws of England what diversitie is between a contract, a concord, a promis, a gift, a loan, or a pledge, a bargain, a covenant, or such other. For the intent of the law is to have the effect of the matter argued and not the termes. And a nude contract is, where a man maketh a bargain, or a sale of his goods or lands, without any recompence appointed for it: As if I lay to another, I sell thee all my Land, or all my goods, and nothing is assigned that the other shall give or pay for it, this is a Nude contract, and as I take it, it is hold in the law and conscience; and a Nude
03 naked promises is where a man promises another to give him certaine mony either 03 to build an house, 03 to do him such certaine service, nothing is assigned for the mony, for the building, 03 for the service: these be called naked promises, because there is nothing assigned why they should be made, and I thinke no action ipeth in those cases though they bee not performed. Also if I promise to another to keepe him such certaine goods lately to such a time, & after I refuse to take them, there ipeth no action against me for it: But if I take the and after they be lost or impayed through my negligent keeping, there is an action in th. 0. But what opinion hold they that bee learned in the law of England in such promises that be called naked 02 made promises: whether do they hold that they that make the promise, be bounden in conscience to perform their promise, though they cannot be compelled thereunto by the law, 02 not? S. The booke of the Law of England entreat little thereof, for it is left to the determination of Doctors, and therefore I pray thee show me somewhat now of thy mind therein, and then I shall show thee therein somewhat of the minds of doctors, that be learned in the law of the realm. Do, To declare this matter plainly after the laying of Doctors, it would ask a long time, and therefore I will touch it briefly, to give thee occasion to desire to heare more therein hereafter. First thou shalt understand that there is a promise that is called an Adswow, & that is a promise made to God, & hee that doth make such a how upon a deliberate mind intending to per-
for me it, is bound in conscience to do it, though it be only made in the heart without pronouncing of words, and of other promises made to man upon a certain consideration, if the promise be not against the law: as if I promise to give B. or C. because he hath made him such a horse, or hath lent him such a thing, or such other like, I think him bound to keep his promise. But if his promise be so naked, that there is no manner of consideration why it should be made, the I think him not bound to perform it, for it is to suppose that there was some error in the making of the promise: but if such a promise be made to an University, to a city, to the church, to the Clergy, or to some men of such a place, or to the honour of God, or such other cause like, as for maintenance of learning, of the common wealth, of the service of God, or in relief of poverty, or such other, then I think that he is bound in conscience to perform it, though there be no consideration of words of promise, that the grantor hath had or intended to have for it: and in all such promises it must be understood that he that made the promise intended to be bound by his promise, for else commonly after all Doctors he is not bound, unless he were bound so it before his promise: as if a man promise to give his father a cow, one that hath need of it, to keep him from cold, and yet thinketh not to give it him, nevertheless he is bound to give it, for he was bound thereto before. And after some Doctors a man may be excused of such a promise in conscience by casuistry that commeth after the promise, if it be so that it bee 
had knowne of the casuallie of the making of
the promise hee would not have made it. And
also such promises if they shall bind, they must
be honest, full, and possible, and els they are
not to be holde in conscience, though there be
a cause se. And if the promise be good and with
a cause, though no worldly profit shall grow
thereby to him that maketh the promise, but
only a spiritual profit, as in the case before re-
hearsed of a promise made to an University, to
a City, to the Church, or such other, with a
cause as to the honour of God, there is most
commonly holde in that an act of upon those pro-
mises beeth in the Law Cannon. t. Whether
woold thou meanes in such promises made to an
University, to a city, or to such other, a thou
had rehearsed before, or with a cause, as to the
honour of God or such other, that the per-ee
shall be bound by his promise, if he intended not
to be bound thereby, pe or nap. Do. I thinke
nap, or more than upon promises made unto
common persons. t. And then mee thinkest
clearly, that no action can lie against him, upon
such promises, for it is secret in his owne con-
science, whether he intended to, to be bound or
nap. And if the intent inward, in the heart, man's
law cannot judge, and that is one of the causes
why the Law of God is necessary (that is to
say) to judge inward things, and if an action
should lie in the case, in the law cannon, then should
the law Cannon judge by the inward intent of
the heart, which cannot be as we seimeth. And
therefore after divers be learned in the laws
of the realm, all promises shalbe taken in this
money.
manner, that is to say, If he to whom the promise is made, have a charge by reason of the promise which he hath also performed: then in that case he shall have no action for that thing that was promised, though hee that made the promise have no worldly profit by it. And if a man lay to another, heale such a pouze man of his disease, or make an high way, and I shall give thee thus much, and if he doe it, I thinke an action lyeth at the common law. And moreover though the thing that he shall doe bee all spiritual, yet if hee performe it, I thinke an action lyeth at the common Law. As if a man lay to another, fast for me all the next Lent, and I shall give thee twenty pounds, and he performeth it, I thinke an action lyeth at the common Law. And in likewise if a man lay to another, marry my daughter and I will give thee twenty pounds, uppon this promise an action lyeth, if hee marry his daugheer: And in this case hee cannot discharge the promise though hee thought not to be bound thereby, for it is a good contract, and he may have Quid pro quo, that is to say the preference of his daughter for his money. But in those promises made to an University, or such other as thou hast remembred before, with such caules as thou hast shewed, that is to say, to the honour of God, or to the increasc of learning, or such other like, where the parte to whom the promise was made is bound to no new charge, by reason of the promise made to him, but as he was bound to before, there they thinke that no Action lyeth against him, though hee performe not
his promise, for it is no contract, so if his own conscience must be his judge whether he intended to be bound by his promise or not. And if he intended it not, then he offended for his delinquency only; but if he intended to be bound, then if he perform it not, verith is in him, and he proved himselfe to be a lyer, which is prohibited aswell by the law of God, as by the law of reason: And furthermore, many be learned in the Law of England hold, that a man is as much bounde in conscience by a promise made to a common person, if he intended to be bound by his promise, as hee is in the other cases that thou hast remembered of a promise made to the Church, or the Clergie, or to such other; so they say that no truth is in the breaking of the one as of the other, and they say that the untruth is more to bee punished than the person to whom his promises be made. But what hold they if the promise be made for a thing past as I promise thee x1. l. so that thou hast bound the such a house, yea an action there? So they suppose nay, but he shall be bound in conscience to performe it after his intent, as is before said. No. And if a man promise to give another x1 h. in recompence for such a freepass that he hath done him, yea an action there? So I suppose nay, as the cause is for that such promises be no perfect contracts: so a contract is properly where a man for his money shall have by assent of the other party certaine goods or some other profit at the time of the contract or after: but if a thing be promised for a cause his past by way of a recompence, then it is rather an accord.
contract, but then the Law is, that upon such accord the thing that is promised in recompence must be paid, or delivered in hand, for upon an accord there is ther no action. D. But in the case of trespass, whether hold they that he be bound by his promise, though he intended not to bee bound thereby. S. They thinke no, no more, that in the other cases that be put before. Do. In the other cases he was not bound to that he promised, but onely by his promise, but in this case of trespass, he was bound in conscience before the promise to make recompence for the trespass: and therefore it seemeth, that he is bound in conscience to kepe his promise, though he entended not to be bound thereby.

Sr. Though he were bound before the promise to make recompence for his trespass, yet he was not bound to no summe in certaine but by his promise: and because that the summe may bee too much, or too little, and not reas to the trespass, and that the partie to whom the trespass was done notwithstanding the promise is at libertie to take his action of trespass if he will, therefore they hold that he may bee his owne Judge in conscience, whether he intended to bee bound by his promise or not, as he may in other cases, but if it were of a debt, then they hold that he is bound to performe his promise in conscience. Doct. What is in the case of Trespass hee affirmeth his promise with an oath. Sr. Then they hold that he is bound to performe it for furnishing of his oath, though he intended not to bee bound, but if hee intended to be bound by his promise, then they say, that
The 24. Chapter.

an oath ne death not but to enforce the promise, for they say, hee breaketh the Law of reason, which is, that we may doe nothing against the truth, as well as he breaketh his promise that he thought in his owne heart to be bound by, as he doth when he breaketh his oath, though the offence bee not so great by reason of the perversie. Moreover to that thou sayest that upon such promises as thou hast rehearsed before, shall ye an action after the law Cannon, verily as to that in this realme there can no action lie thereon in the spiritual court, if the promise be of a temporal thing, for a prohibition, or a Præmunire facias should lie in that case. V. That is marvellous thre there can no action lie thereon in the Kings court as thou saidst thy selfe. S. That maketh no matter, for though there lie no action in the Kings court, against executors upon a simple contract, yet if they bee sued in that case for the debt in the Spiritual court, a prohibition lyeth. And in like wise if a man wage his Lawe untrue in an action of debt upon a contract in the Kings Court, yet he shall not be sued for the perversie in the Spiritual court, and yet no remedy lyeth for the perversie in the Kings Court: for the Prohibition lyeth not onely, where a man is sued in the Spiritual Court of such things, as the party may have his remedy in the Kings court, but also where the Spiritual Court holdeth plic in such cause, where they be the Kings prerogative, and by the ancient custome of the realme ought none to hold. Doct, I will take advisement upon that thou hast said in this matter, till another time,
time, and I pray thee now proceed to another question.

The 20. question of the Student.

Cap. 25.

A Man hath two sons, one bozne before espourels, t the other after espourels, t the father by his will bequeatheth to his son & heire all his goods, which of these two sonnes shall have the goods in conscience? D As I said in our first dialogue in latin, the last Chap. the doubte of this case dependeth not in the knowing what conscience will in this case, but rather the knowing which of the sonnes shall bee judged heire (that is to say) whether he shall be taken foz heire that is heire by the Spiritual Law, bee that is hezpe by the Law of the Reaine, oz else that it shall bee judged foz him that the father tooke foz heire? Sr. As to that point, admit the Fathers mind not to be known, oz els that his mind was that he should be taken foz heire, that should be judged foz heire by the law, that in this case it ought to bee judged by. And then I pray thee shew mee thy minde therein, for though the question be not directly depending upon the point to see what conscience will in this case, yet it is right expedient for the well ordering of conscience, that it bee knowne after what law it shall bee judged: soz if it ought to be judged after the temporal law who would be heire, the it were against conscience, if the judges in the spiritual Law shoulde D 2 Judge
Judge him for heire that is heire by the spiri-

tuall Law, and I thinke they should bee bound
to restitution thereby, and therefore I pray
they shew mee thine opinion, after what Law
it shalbe judged. D. I thinke that in this
case it shalbe judged after the law of f church,
for it appeareth that the bequest is of goods,
and therefore if any suit shalbe taken upon the
execution of the will for the bequest, it must be
taken in the spirittuall Court, and when it
is depending in the spirittuall Court, I thinke
keth it must be judged after the spirittuall law:
for of the Temporal law they have no know-
ledge, nor they are not bound to know it as I
thinketh, and more stronger not to Judge af-
ter it. But if the bequest had beene of a chattel
reall, as of a lease for terme of yeares, or of a
ward, or such other, then the matter shoul
have come in debate in the kings Court, and
then I thinke the judges there should judge
after the law of the Reall, and that is, that
the pouer brother is heire: and I thinke
the diversitie of the Courts shall make the di-
versitie of judgement. D. Of that might folow
a great inconvenientie as I thinke, for it might
be such a case that both chattels reall, and chat-
tels personal were in the will, the after thine
opinion, the one soune should have the chattels
personal, and the other soune the chattels re-
all, and it cannot be conveniently taken as I
thinketh, but that the fathers will was, that
the one soune should have all, and not bee di-
vided. Therefore I thinke that he shalbe judg-
ed for heire that is heire by the common law:
and
and that the Judges spiritual in this case bee bound to take notice what the common law is, for litle the things that be in variance bee temporal, that is to say, the goods of the father; it is reason that the right of them in this realme shall bee determined by the law of the Realme. 

D. How may that be? for the Judges spiritual know not the law of the Realme, ne they cannot know it as to the most part of it, for much part of the law is in such speech that few men have knowledge of it, & there is no means ne familiaritie of stude between them that learne the said Lawes: so they be learned in severall places and after divers wapes, & after divers manners of teachings, and in divers speeches, & commonly the one of them have none of the Bookes of the other, and to bind the spiritual Judges to give Judgement after the law that they know not, ne that they cannot come to the knowledge of it, seemeth not reasonable. 

They must doe therein as the Kings Judges must doe, when any matter commeth before the that ought to bee judged after the spiritual Law, whereof I put divers cases in our first Dialogue in English the 6. Chapter, that is to say, they must either take knowledge of it by their own study or els they must enquire of the that be learned in the law of the Church, what the law is, and in like wise must they doe. But it is to doubt, that some of them would be loth to aske any such question in such case, or to conselle that they are bound to give their judgemenst after the temporal Law, and surely they may lightly offend their conscience.
D. I suppose that some be of opinion that they are not bound to know the law of the realm; so, verily to my remembrance I have not heard that Judges of the spiritual law are bound to know the law of the realm.

Sr. And I suppose that they are not only bound to know the Law of the Realme, or to do that in them is to know it, when the knowledge of it openeth the right of the matter that dependeth before them, but that they bee also bound to know where and in what case they ought to Judge after it, for in such cases they must take the Kings Law as the Law spiritual to that point, if they are bound in conscience to follow it as it may appeare by divers cases, whereas of one this. Two Jointenants be of goods, and the one of them by his last Will bequeareth all his part to a Straneger: and maketh the other Jointenant his Executour & deceaseth, if he to whom the bequest be made, sue the other Jointenant, upon the legacie as executour &c. Upon this matter shewed, the Judges of the Spiritual Law are bound to judge the will to be void, because it is boide by the Law of the realm, whereby the jointenant hath right to the whole goods by the title of the Surpryson: and is judged to have the goods as by the first gift which is before the title of the will, and must therefore have preterment as the eldest title, & if the Judges of the Spiritual Court judge otherwise, they are bound to restitution: and by like reason the Executours of a man that is outlawed at the time of his death may discharge themselves in the
Spiritual court of the perfoyning of legacies, because they be chargeable to the King, and yet there is no such law of detagagie in the Spiritual Law.

D. By occasion of that thou hast said before I would ask of thee this question: If a Parson of a Church alien a portion of Dimes according as the Spiritual law hath ordain'd, is not that alienation sufficient, though it have not the solemnities of the Temporal Law? I am in doubt therein if the portion be under the fourth part of the value of the Church: but if it be to the value of the fourth part of the Church, or above, it is not sufficient, and therefore was the writ of right of Dimes ordain'd: and if in a writ of right of Dimes it bee judg'd in 6 Kings Court for the patron of the successor of him that alieneth, because the alienation was not made according to the common law, then the Judges of the Spiritual law are bound to give their judgment according to the judgement given in the Kings Court. And in likewise if a parson of a Church agree to take a pension for the tithe of a Mill, if the pension be to the fourth part of the value of the Church or above, then it must be aliened after the solemnities of the Kings Laws, as lands and tenements must, or else the patron of the successor of him that alieneth, may bring a writ of right of Dimes, and recover in the Kings courts: then the Judges of the Spiritual court are bound to give judgement in the Spiritual Courts accordingly, as is aforesaid, Doct. I have heard say, that a writ of right of Dimes is
given by the Statute of West 2, and that specially of Dimes, not of pensions. Where
a Parson of a Church is wrongfully dispersed of his Dimes, and is let by an Indicavit to take
his Dimes in the Spiritual Court, then the parson may have a Writ of Right of Dimes
by the Statute that thou speakest of, for there lay none at the Common Law, for the Parson
had there good right, though he were let by the Indicavit to live for his right. But when that
Parson had no remedy at the Spiritual law, there a Writ of Right of Dimes lay for the
Patron by the common law, as well of pensions as of Dimes, and some lay that in such case it
lay of less than of the fourth part by the common Law, but that I passe over. And the rea-
son why it lay at the common Law, if the Dimes or pensions were above the fourth part

came this: by the spiritual law the aliena-
tion of the parson with his assent of the Bishop
and of the Chapter shall barre the Lace Court
without assent of the patron and is the patron
might ilese his patronage and he not assenting
thereto: for his encumbent might have no re-
medy but in the Spiritual court, and there hee
was barred, wherefose the patron in that case
shall have his remedy by common law where
the assent of the Ordinary and Chapter with-
out the Patron shall not serve, as it is laid be-
fore. But where the encumbent had good right
by the Spiritual Law, there lay no remedy
for the Patron by the Common Law, though
the encumbent were let by an Indicavit, and for
that cause was the said Statute made, and if
The 25. Chapter.

lieth assail by the equity for offerings and pensions, as for Dismes. Then further I would thinke that where the Spirituall Court may hold pite of a temporall thing, that they must judge after the temporall Law, and that ignorance shall not excuse them in that case: for by taking of their office they have bound themselves to have knowledge of as much as belongth to their office, as all Judges be, spirituall, or temporall. But if it were in argument in this case, whether the eldest sonne might bee a Priest because he is a bachelor in the temporall Law, that should be judged after the spirituall Law, for the matter is spirituall. Do not notwithstanding all the reasons that thou hast made, I cannot see how the Judges of the spiritual Law, shall be compelled to take notice of the temporall Law, seeing that the most part of it is in the French Tongue; for if we had that every Spiritual Judge should be compelled to leare the tongue. But if the Law of the Realme were let in such order that they that intend to studie the Law Canon, might first have a light of the law of the Realme, as they have now of the Law Civil, and that some Bookes and treatises were made of cases of consience concerning these two Lawes, as there be now concerning the Law Civil and the law Canon, I would assent that it were right expedient, and then reason might serve the better, that they should be compelled to take notice of the Law of the Realme, as they bee now bound in such Countries as the law Civil is bid to take notice of that Law.
The 26. Chapter.

Sr. Mæ thinketh thine opinion is right good and reasonable, but till such an order be taken, they are bound, as I suppose, to inquire of the that be learned in the common Law, what the Law is, and so to give their judgement according, if they will keep themselves from offence of conscience. And so as thou hast well satisfied my mind in all these questions before, I pray thou now that I may somewhat see the mind in divers articles that he written in divers books for the ordering of conscience upon the Law Cannon and Civil: for me thinketh, that there be divers conclusions put in divers books, as in the Summes called summa Angelica, and summa Rosella, & divers other, for the good order of conscience, that bee against the law of this regime, and rather blind conscience, then do giue any light butoth.

D. I pray thee shew me some of those cases: Sr. I will with good will.

Whether an Abbot may with conscience present to an Aduowson of a Church that belongeth to the house without assent of the Couent.

Cap. 26.

It appeareth in the Chapter, Et agnoscitur de his quæ sunt a Prelatis, the which Chapter is recited in the sum called summa Angelica, in the title Abbas, the ćrēst article, that he may not without any custome, or any special
Assurance to helpe therein. So Truth it is, that there is such a decreall, but they that be learned in the law of England, hold the decreall bindeth not in this Realme, so this is the cause why they doe hold that opinion: By the Law of the realme the whole disposition of lands & goods of the Abbey is the Abbots only for the time that he is Abbot, and not in the Covent: so they bee but as dead persons in the Law, and therefore the Abbot shall sue and be sued only without the Covent, doe homage, salute, atturme, make leales, and present to assemblys only in his owne name, and they say further, that this authority cannot be taken from him, but by the Law of the Realme, and so they say, that the makers of the decreals exceed their power: Wherefore they say it is not to be holden in conscience, no more than if a decree were made that a lease for terme of yeares or at Will made by the Abbot without the convent should be immediatly void, & so they thinke that the Abbot may in this case present in his owne name without offence of conscience, because the saide decreall holdeth not in this Realme Do. But many be of opinion, that no man hath authoritie to present in right and conscience to any benefice with Cure but the Pope, or that he hath his authoritie therein derived from the Pope: so they say that so far as much as the Pope is the Vicar general under God, that hath the charge of the soules of all people that be in the flocke of Christes Church, it is reason that such hee cannot minister to all, hee doth that is necessarie to all people for their soules.
The 26. Chapter.

soules health in his owne person, that he shall asigne deputies for his discharge in that behalfe. And because Patrons claime to present to Churches in this Realme by their owne right, without Title derived from the Pope, they say that they blorge upon the Popes authotitie: therefore they conclude that though the Abbot have title by the law of the Realme to present in this case in his owne name, that yet because that title is against the Popes prerogative, that that title, ne yet the Law of the Realme that maintaineth that title, holdeth not in conscience. And they say also that it belongeth to the lawy Cannon to determine the right of presentment to benefices, for it is a thing spiritual and belongeth to the spiritual jurisdiction, as the deprivation from a benefice both, and so they say the said decreetall bindeth in conscience, though in the law of the Realme it bindeth not. Sr. As to the first consideration I would right well agree, that if the patrons of Churches in this Realme claimed to put incumbents into such Churches as should fall bopd of their Patronage without presenting them to the Bishop, or if they claimed that the Bishop should admit such incumbent as they should present without any examination to be made of his abilitie in that behalfe, that that claime were against reason and conscience, for the cause that thou hast rehearsed: But so as much as the Patrons in this Realme claime no more but to present their Incumbents to the Bishop, and then the Bishop to examine the abilitie of the incumbent, and if he find him, by
by the Examination not able to have care of souls, he then to refuse him, and the patron to present another that shalbe able, and if he be able, then the Bishop to admit him, institute him, and induct him, I think that this calime, and their presentments thereupon stand with good reason and conscience. And as to the second consideration, it is holden in the Lawes of the Realme, that the right of presentment to a Church, is a temporal inheritance, a thing descend by course of inheritance from hetre to heir as lands & tenements shall, & shalbe take as an altes as lands and tenements be: and for the trial of the right of patronages be ordained in the law divers actions for them be wronged in that behalf, as writs of right of Patronage, Assignes of Darrein presentment, Quare impedit, & divers other which alway without time of mind have bin pleaded in the Kings courts, as things pertaining to his Crowne and royal dignite: and therefore they say that in this case his lawes ought to bee obeyed in law and conscience. D. If it come in variance whether hee that is so present ed bee able or not able, by whom shal the ability be tried: St. If the ordinary bee not partie to the action, it shal bee tried by the Ordinary and if hee be party it shal be tried by the Metropolitan. Do. Then the Law is more reasonable in that point then I thought it had beene: but in the other point I will take advantage in it till another time, and I pray that thew me thy mind in this point: If an Abbot name his couent with him in his presentation, both that make the presentation...
hold in the law, or is the presentation good that notwithstanding?

Sri. I think it is not hold therefore, but the naming of them is hold, and a thing more than misdeth. For if the Abbot be disturbed, he must bring his action in his own name without the consent. D. Then I perceive well that it is not prohibited by the Law of England, but that the Abbot may name the convent in his presentation with him, and also take their assent whom he shall present if he will: and then I hold it the surest way, that he so doe, for in so doing he shall not offend neither in Law, nor conscience. So To take the assent of the convent whom he shall present, and to name them also in the presentation, knowing that he may doe otherwise, both in Law and Conscience if he will, is no offence: but if he take their assent, or name the' with him in the presentation, thinking that he is so bound to do in law and conscience, setting a conscience where none is, and regardeth not the Law of the Realme, that will discharge his conscience in this behalf, if he will, so that he present an able man as he may do without their assent, there is an error, and offence of conscience in the Abbot. And in like wise if the Abbot present in his own name, and therefore the Convent saith that he offendeth in conscience, in that he observeth not the law of the Church, for that he taketh not their assent, then they offend in urging him to offend that offendeth not. And therefore the sure way is in this case to judge both the said laws of such effect as they bee, so not to set an offence of
of conscience by breaking of the said decree, which standeth not in effect in this behalf with in this Realme.

If a man find beasts in his ground doing hurt, whether may he by his owne authoritie, take them and keepe them till he be satisfied of the hurt.

Cap. 27.

This question is made in the summne called Summa Rotella, in the title of restitution, that is to say, Restitutio 13. the 9. Article, and there it is answered, that hee may not take them for to hold them as a pledge till he bee satisfied for the hurt: but that hee may take them and keepe them till hee know who oweth them, that hee may thereby learne against whom to have his remedie. Is not the law of the realme so in like wise? St. No verily, for by the Law of the realme, hee that in that case hath the hurt, may take the beasts as a distract, and put them in a pound Duert, so it bee within the same shire, and there let them remaine till the owner will make him amends for the hurt. Do. What calleth thou a pound Duert? So. A pound Duert is not onely such a pound as is commonly made in Townes and Lordships, for to put in beasts that bee distrained, but it is also everywhere where they may bee in lawfull, not making the owner an offender for their bee ing there: And that it bee there alio, that the
The 27. Chapter.

Owner may lawfully give the beasts meat and drinke while they be in pound.

D. And if they die in pound for lack of meat whose seoperdiy is it? Sr. If it be such a pound Dubert as I speake of, it is at the perill of him that oweth the beasts, so that hee that had the hurt shall be at libertie to take his action for the trespaste if hee will: and if it be not a lawfull pound, the it is at the perill of him that distrained, and so it is if he drinke them out of the hire and they die there.

D. I put case that he that oweth the beasts, offer sufficient amends, and the other will not take it, but keepeth the beasts still in pound, may not the owner take them out? Sr. No, for he may not be his owne judge, and if he doe, an action lyeth against him for breaking of the pound: but he must sue a Replieun to have his beasts delivered him out of the pound, and thereupon it shall bee tried by 12 men, whether the amends that was offered were sufficient or not, and if it be found that the offer was not sufficient, then he that hath the hurt shall have such amends as the 12 men shall assesse. D. If it bee found by the 12 men, that the amends were sufficient, shall he that refuseth to take it, have no punishment for his refusal, and for keeping of the beasts in pound after that time? Sr. I thinke no, but that he shall pay damages in the Replieun, because the issue is tried against him.

D. I put case that the beasts after the refusall die in pound for lack of meat, at whose seoperdiy is it then? Sr. At the seoperdi of him that oweth
owed the beasts, as it was besee: for hee is bound at his peril by reason of the wrong that was done at the beginning, to see that they have meat so long as they malbe in pound, un- less the Kings Writ come to delivery them, & he recelseth it: for after that time it will be as his leopard if they die for lacke of meat, & the ba- mages shall bee recovered in an action brought upon the Statute for disobeying the Kings Writ.

Whether a gift made by one under the age of xxv, yeares be good.

Cap. 28.

It appeareth in Summa Anglica in the title donatio prima the 7. Article, that a man before the age of 25. peres may not give; & though it be with the authoritie of his tutor: I do not so likewise at the common Law. The Law of infants to give, or sell their lands and goods in the Law of England is at 21. pere or above, so that after that age the gift is good and berece that age it is not good, by whole silent ioence it be, except it be for his meat, & his drink or a pateil, or that hee doe it as executour, in performance of the will of his testator, or in some other like cases, that neither not to be reh. as here:2 that age must be observed in this realm in law & conscience, not I said age of 25. yeare. Do. I put siete it were ordained by a decree of the Church, that if any man by his will be- queathed goods to another, a willeth that they
The 28. Chapter.

that is delivered to him at his full age, & that in that case 25. peres shall be taken for the full age, shall not that decree be observed & stand good after the law of England's. I suppose it shall not, soz though it belong to the Church to have the probate and the execution of Testament made of goods & chattels, except it be in certain Lordships & seigniories that have the power of prescription, yet the Church may not as me & others determine what shall be the lawful full age for any person to have the goods, soz that belongeth to the King & his laws to determine: & therefore if it were ordained by a Statute of the realm, he should not in such case have the goods till he were of the age of 25. peres, & that Stat. were good & to be observed as well in the spiritual as in the law of the Realm, & if a Statute were good in that case, then a decree made thereof is not to be observed, soz the ordering of age may not be under two several powers, and one property of every good law of man is, that the maker exceed not his authority; & I think that the spiritual judge in that case ought to judge the full age after the law of the Realm, seeing that the matter of the age concerneth temporal goods: & I suppose rather that as the king by authority of his Parliament may ordaine that all wills shall be void, & that the goods of every man shall be disposed, in such manner as by Statute should be assigned, that more stronger he may appoint at what age such wills as bee made shall be performed. D. Thinkest thou then that the King may take away the power of the Ordinary, that he may not call executors to ac-
compt? & I am somewhat in doubt therein, but it seemeth that if it might be enacted by statute that all wills should be void, as is sozelsaid, that then it might bee enacted, that no man should have authotitie, to call none to accomp't to on such wills, but such as the statute shal thereto in appoint, soz he that may do the moze, may do the leste: notwithstanding I will nothing speake determinably in that point at this time, ne I meene not, that it were good to make a statute that all wills should be void, soz I thinke them right expediente, but mine intent is, to prove & the common law may ordaine the time of the full age, as well in wills of temporal things as otherwise, and all that wills shal be made And if it may so do, then much stronger it belongeth to the Kings lawes to interpret wills concern- ing temporal things, as well when they come in argument befoze his Judges, as when they come in argument befoze spiritual Judges, & that they ought not to be judged by severall lawes (that is to sa) by the spiritual Judges in one maner & by the Kings Judges in ano- ther maner.

If a man be conjuict of heresie before the Or- dinarie, whether his goods be forfeited.

Cap. 29.

Yet appeareth in Suma Angelica in the title Donatio prima the 13. article, that he that is an hereticke may not make executioz forz in the law.
The 29. Chapter.

If a man be convict of heresy and abjure, he hath forfeit no goods, but if he be convict of heresie, & be deliuered to lay mens hands, then hath he forfeit all his goods that he hath at that time that he is deliuered to them, though he be not put in execution for the heresie: but his lands he shall not forfeit, except he be dead for the heresie, then he shall forfeit the to the lords of se, as in case of felonie, except they be holden of the Ordinariete, for then the King shall have the forfeiture, as it appeareth by a statute made the second yeere of H.5. cap.7. D. Nece thinketh that as it belongeth onely to the Church to determine heresies, that so it belongeth to the Church, to determine what punishment hee shall have for his heresie, except death, which they may not be judges in: but if the Church decrees, that he shall therefore forfeit his goods, mee thinke that they bee forfeit by that decree: St. Pap. hereby, for they be temporall, and belong to the judgement of the Kings Court, and I thinke the Ordinariete might have set no fine upon one impeached of heresie, till it was ordained by the Statute of H.4. that hee may set a fine in that case if hee see cause, & then the King shall have that fine, as in the said Act appeareth.

Where divers patrons of an Advowson, and the Church voideth, the patrons vary in their presentments, whether the Bishop shall have libertie to present which of the incumbents that he will, or not.
This question is asked in Suma Rosella, in the title Patronus the 9. Article, & there it appeared by the better opinion, he may present whether clerk he will, howbeit he maker of the said sum, saith by the rigors of the law, the Bishop in such case may present a stranger, because the patrons agree not: & in the same chap. Patronus the 15. article, it is said, he must be preferred that hath the most merits & hath the most part of the patrons: and if the number be egal, that the it is to consider the merits of the patron, and if they be of like merit, the may the Bishop command them to agree and to present again. And if they cannot yet agree, then the liberty to present is given to the Bishop to take which he will: & he may not yet present without great trouble, then shall the bishop order the Church in the best maner he can: & if he cannot order it, then shall he suspend the church, & take away the relics to the rebukes of the patrons: and if they will not so be ordered, then must he aske help of the tempozalty: And in the 15. article of the said title Patronus, it is asked, whether it be expedient in such case, that the moze part of the patrons agree, having respect to all the patrons, or that it suffice to have the moze part in comparison of the lesse part, as thus, There be foure patrons to present one clark: the first and second present one, the third present another, and the fourth another, hee this is presented by 2, hath not the moze part in comparison of all the patrons, for they be egal, but hee hath the moze part having respect to
The 30. Chapter.

The other presentments to this question it is answered, that either the presentment is made of the that be of the college, or there is requisite the more part having respect to all the college, or else every man presenteth for himself, as commonly do: ap. if I have the patronage of their patrimonie, or then it sufficeth to have the more part in respect of the other parties, doth not the law of England agree to these diversities? Sr. Robert V. What order then shall be taken in the law of England, if the patrons vary in their presentments? After the lawes of England this order shall be taken: If they be joint tenants, or tenants in common of the patronage, if they vary in presentment, the Ordinary is not bound to admit none of their clerks, neither the more part nor the lesser, or if the 6. months pass or they agree, then he may present by the iaps, but he may not present within 6. months, for if he do, they may agree and bring a Quare imp. against him, or remove his clerks, so to the ordinary shall be a disturber: and if the patrons have the patronage by descent or coperceners, then is the Ordinary bound to admit the clerk of the cidek sister, so, the eldest shall have the presentment in the law, if the will, or then at the next euidance the next sister shall present, and so by turns one sister after another, till all the sisters or their heiress have presented, so the the cidek sister that begin again: and this is called a presenting by turns and it holdeth always between coperceners of an advowson, except they agree to present together, or that they agree by composition to present in some other manner, and if they doe so, the agreeing...
agreement must stand: but this must be always except, that if at the first avoidance that shall after the death of the common ancestor, the king have the ward of the youngest daughter, the king by his prerogative shall have the ppresentment, and at the next avoidance the eldest sister, and so by course. But it is to understand that if after the death of the common ancestor the Church voideth, and the eldest sister presented together with another of the sisters, the other sisters curren one in their owne name or together, that in case the ordinary is not bound to receive one of their clerkes, but may suffer the church to run into the laps, as it is said before: so he shall not be bound to receive the clark of the eldest sister, but where hee presented in her owne name. And in this case where the patrons parte in presentment, the Church is not properly said Litigious, so that the ordinary should be bound at his peril to direct a suit to inquire de iure patronatus: so that scripture saith where 2 present by severall titles, but these patrons present all in one title, therefore the ordinary may suffer it to passe, if he will into the laps: and this manner of presentments must be observed in this realm in law and conscience.

How long time the patron shall have to present to a benefice.

Cap. 31.

This question is asked in Summa Angelica in the title Ius patronatus the 16. Article. 6 there it is answered, that if the patron be a layman that he hath have 4 months, and if he be a

 Clerk.
Clarke, he shall have 6 months. S. And by the common law he shall have 6 months whether he be a lay man or a clarke, and I see no reason why a clarke should have more respect than a lay man, but rather the contrary. D. From what time shall 6 months be ascribed? S. That is, in such manner as the manner of the burial, so it is the church void by death, creation, 0z. cession, the 6 months shall be counted from the death of the incumbent, 0z. from the creation, 0z. cession, whereof the patron shall be compelled to take notice at his peril; s. if the burial be by resignation 0z. depuration, the the 6 months shall begin when the patron hath knowledge given him by the Bishop of the resignation 0z. depuration. D. What if here have knowledge of the resignation 0z. depuration, and not by the Bishop, but by some other, shall not the six months begin then from the time of that knowledge? S. I suppose that it shall not begin till he have knowledge given him by the Bishop. D. An union is also a cause of burial, how shall the six months be reckoned there? S. There can be no union be made but the patrons must have knowledge, and it must be appointed who shall present after the union, s. to say, one of them 0z. both, either jointly 0z. by turns one after another, as the agreement is upon the union, and with the patron is private to the avoidance, and is not ignorant of it, the six months shall be ascribed from the agreement. D. S. I see well by the reason that thou hast made in this Chapter, s. ignorance sometime excuseth in the Lady of England, so2 in
some of the said suopances it shall excuse the patrons, as it appeareth by the reasons above, 
and in some it shall not: Wherefore I pray thee 
show me somewhat where ignorance excuseth 
in the Law of England, and where not after 
this opinion of. I will with good will here- 
after doe as thou lapellst thou put mee in re-
membrance thereof. But I would yet move 
thee somewhat further in such questions as I 
have moved thee before, concerning the diver-
sities between the laws of England and other 
laws: for there be many moc cases thereof,that 
as mee seemeth have right great needes, for the 
good order of conscience of many persons, to be 
reformed, and to bee brought into one opinion 
both among spiritual and tempozall: as it is in 
the case where Doctours hold opinion, that the 
statute of lap men that restrain liberty to give 
lands to the Church shoulde be hopd, a they lap 
say farther, that if it were prohibit by a law that 
no gift should bee made to |ogreiness that yet a 
gift made to the church shoulde be good, for they 
say, that the inferior may not take away the 
authoritie of the superiour: this saying is di-
rectly against the statutes, whereby it is prohi-
bite, that lands shoulde not be given into Mon-
main: a they lap also that bequests a gifts to a 
church must be determined after the law Can-
on, and not after the laws a statutes of lap men, 
and so they regard much to whom the gift is 
made, whether to the Church, oz to make cauf-
wates, oz to common persons, 8 bear more fanoa 
in gifts to the Church than to other: and the 
Law of the Realme beholdeth the thing that is 
given
The 32. Chapter.

GIVEN and pretended, that if the thing that is
given be of lands or goods, that the determina-
tion thereof, of right belongeth in this realm
to the Kings laws, whether it be to spiritual
men or temporal, to the church, or to other, and
so is great division in this behalf, where one pre-
seneth his opinion, and another his, and one this
jurisdiction, and another that, and that as it is to
fear more of singularity than of charity:
wherefore it seemeth, that they that have the greatest
charge over the people, specially to health of
their soules, are most bound in conscience before
other to look to this matter, to doe that in the
is in all charitie to have it reformed, not beholding
the temporal jurisdiction nor spiritual juris-
diction, but the common wealth, a quiete and
of the people: that undoubtedly would shortly
follow, if this division were put away, which
I suppose hereby will not be, but all men within
the realm both spiritual and temporal be of
rized a ruled by one law, as to temporal things:
Notwithstanding so much as the purpose
of this writing is not to treat of this matter,
wherefore I will no farther speake thereof at this
time. Do. Then I pray thee proceed to another
question, that thou fallest thy mind is to do. S. I
will with good will.

If a man bee excommended, whether he may
in any case be aseolied without making
satisfaction.

Cap. 32.

In the summe called Summa Rosella, in the
title Absoluto quarta, the second article, it is
The 32. Chapter.

Said, that he that is excommunicat for a wrong if he be able to make satisfaction, ought not to be assailed but he doe satisfie, y that they offend that do assailable him, but yet nevertheless he is assailable, y if he be not able to make amends, that he must yet be assailable, taking a sufficient gage to satisfie if he be able hereafter, or else that he make another to satisfie if he be able. And these sayings in many things hold not in the Laws of England. D. I say the same, wherein the law of the realme varieth therefore. Sc. If a man be excommunicat in the spiritual court for debt, trespass, or such other things as belong to the kings crown, and to his royalty dignity, there he ought to be assailable without making any satisfaction, for the spiritual court exceedeth their power in that they hold plea in those cases, the party if he will may thereupon have a Pignorire faciat, as well against the partie that sued him, as against the Judge; and therefore in this case they ought in conscience to make abolition without any satisfaction, for they not only offended the partie in calling him to answer before them of such things as belong to the law of the Realme, but also the king; for he by reason of such suits, may lose great advantages, by reason of the suits originals, judiciales, amerciaments, & such other things as might grow to him if suits had bin taken in his courts according to his lawes; and according to this laying it appeareth in divers statutes, that if a man lay violent hands upon a clerke, and beat him, that for the beating amends shall be made in the kings court, and for the laying of
of violent hands upon the Clarke, amends that he made in the Court Christian. And therefore if the Judge in the court Christian would award the party to pay damages for the beating, he did against the statute. But admit that a man be excommunicated for a thing that the spiritual Court may award the party to make satisfaction of, as for the not inclosing of the Church yard, or not appraising of the church conveniently: Then I think the party must make restitution, or lay a sufficient caution if he be able or he be afoiled; but if the party offer insufficient amends, and have his absolution, and the Judge will not make him his letters of absolution, if the excommencement be of Record in the Kings Court, then the king may write into the spiritual Judge, commanding him that he make the partie his Letters of absolution upon paine of contempt: & if the said excommunication be not of Record in the Kings Court, then the party may in such case have his action against the Judge spiritual, for that he would not make him his Letters of absolution: but if he be not afoiled, or if he be not able to make satisfaction, and therefore the Judge spiritual will not afoiled him, what the Kings Lawes may do in this case I am somewhat in doubt. I will not much speake of it at this time, but as I suppose, he may as well have his actio in that case for the not afoiling him, as where he is afoiled, and that the Judge will not make him his Letters of absolution: and I suppose the same law to be where a man is accused for a thing that if Judge had no power to accuse him
him in, as for Debt, Trespass, or such other. Do. There he may have other remedies, as a Præmunire facias, or such other, and therefore I suppose the other action lyeth not for him.

St. The Judge and the party may be dead, & then no Præmunire lyeth, & though they were alive, and were condemned in Præmunire, yet that should not avoid the excommencement: & therefore I think the action lyeth, specially if he be thereby delayed of actions that hee might have in the Kings Court, if the said excommencement had not bin.

Question: Whether a Prælat may refuse a Legacie.

Cap. 33.

It is mooved in the said sum, named Rosella in the title Alienatio 20 the 12. article, whether a prælat may refuse a legacie, wherein divers opinions be recited there, which as mee thinketh have need after the laws of the realme to be more plainly declared. D. I pray thee shew me what the law of the realme will therein. St. I think that every Prælat and sovereign that may onely sue, and be sued in his owne name, as Abbots, Priors, and such other, may refuse any legacie that is made to the house: for the legacie is not perfect till hee to whom it is made assent to take it, for else if hee might not refuse it, hee might be compelled to have lands whereby he might in some case have great losse.
but then if he intend to refuse, he must as soon as his title by the legacie faileth, relinquish to take the profits of the thing bequeathed, or if one take the profits thereof, he shall not after refuse the legacie: but yet his successor may if he will refuse the taking of the profits to save the house from preceding damages, or from arrearages of rents, if any such be; as like law is of a remainder, as is in legacie, so, though in every case of a remainder, as also of a devise, as most men say, the freehold is cast upon him by the law when the remainder or devise faileth: yet it is in his libertie to refuse the taking of the profits, and to refuse the remainder if he will as he might do of a gift of lands, or goods, so if a gift be made to a man that refuse to take it, the gift is void, if it be made to a man that is absent, the gift takesth no effect in him till hee attendeth; no more than if a man devise one to another wasseble, he to whose use the devisein is made, hath nothing in the land, he is no devisee, till hee agree: And to such deviseins a gifts, an Abbot or Bishop may disagree, as well as any other man. But after some men a bishop, of a devise, or remainder that is made to the bishop, and to the Deane and Chapter, noz a Deane and a chapter of a devise, or remainder made to them, yet the master of a colledge of such a devise, or remainder made to him a to his brethren, may not disagree without the Chapter of brethren: for the Bishop of such land as hee hath with the Deane and chapter, no the Deane noz master of such land as they have with the Chapter of brethren may not asmire without the
the chapter a brethren: therefore, some say that if the Deane or master will refuse, or disclaim in the lands that they have by the devise or remainder, that disclaimer without the chapter or brethren is void. And therefore it is held in the law, that if a Bishop be bounched to warrant, & the tenant bindeth him to the warranty by reason of a lease made to him by the Bishop, and by the Deane & the chapter, pleading a rent, that in that case the Bishop may not disclaim in the reversion without the assent of the Deane and Chapter: But yet if a reversion were granted to a Deane & a Chapter, and the Deane refuse, the grant is void. And so it appeareth that the Deane may refuse to take a gift, or grant of lands, goods, of a reversion made to him and to the chapter, and yet he may not disagree to a remainder, or devise, & the devise is because the remainder and devise be cast by him without any assent, whereupon neither the Deane or the Chapter by themselves, may in no wise disagree without the assent of the other: But a gift or grant is not good to them without they both assent, and in such gifts, as I suppose, an Infant may disagree as well as one of full age, but if a woman covert disagree to a gift, and the husband agree, that gift is good. What if the lands in that case of a man and his wife be charged with damages, or be charged with more rent than the land is worth; and the husband die, shall the wife be charged to the damages, or to the rent? St. I think no, if the wife refuse the occupation of the ground after her husband's death, and
and I thinke blame law to be, if a lease be made to the husband and the wife, pleading a greater rent than the land is wort, that the wife after the husbands death may refuse the lease to saue her from the payment of the rent, & so may the succesour of an Abbot. 3. And if the husband in that case ouerline the wife, & the make his executores and die, whether may his executores in like wise refuse the lease? If they have goods sufficient of their testator to pay the rent, I thinke they may not refuse it: but if they have not goods sufficient of their testator to pay the rent to the end of the term, I thinke if they re- linquish the occupation, they may by speciall pleading discharge themselevs of the rent & the lease, & if they doe not, they may lightly charge themselves of their owne goods. And if a lease be made for terme of life, the remainder to an Abbot for terme of life of 3. at S retuming a greater rent than the land is wort, & after the tenant for terme of life deeth, the Abbot may refuse the remainder for the cause before rehearsed : and in case that the Abbot attent to the remainder, whereby he is charged to the rent during the time that he is Abbot, and after he deeth is depose, being the said 3. at S in that case his succesour may discharge him selfe by refusing the occupation of the land, as is es- toysaied: But I thinke that if such a remain- der were made to a Deane, and to the Chap- ter, and the Deane agree without the attent of the Chapter, that in that case the Deane and the Chapter may afterwards disagree to the remainder, and that the act of the Deane
out the assent of the Chapter shall not charge the Chap. in his behalf. And thus it appeareth, though the meaning of the said chapter & article in the said summe be, that a Prelat may not disagree unto a legacte, &c hurting of a house, yet he may after the laws of the realm disagree thereto, where it should hurt his house. And if in a Precipe quod reddat, there be but one tenant be he spiritual or temporal, & he refuse by way of disclaimer, in such case where he may disclaim by the law, there the land shall best in the demandant: & if there be 2 tenants, then it shall best in his fellow, if he will take the whole tenant upon him, & if it shall best in the demandant. But if an Abbot or lay man refuse the taking of the pracies, and show a speciall cause why it should hurt him if he do assent, and he thereby discharged as is said before: in whom the land shall then best it is more doubt, whereof I will no further speak at this time. And thus it appeareth by divers of the cases that be put in this chapter, that hee that is ignorant in the law of the realm, shall lacke the true judgament of conscience in many cases. For in many of these cases that may be done therein by the law, must also be obtained in conscience &c.

Whether a gift made under a condition be void if the soueraigne onely break the condition.

Cap. 34.

IN summa Rotella in the title Alienatio, the 125 article, is asked this question, whether a gift
made under a certaine forme may bee dispoped of or revoked, because the prelates of sovereigne
only did impeke the forme, and it is there answerd, that it may not, soz that the deed of the
Prelate onely ought not to hurt the Church: and if those words (under a maner) bee under
hood of a gift: upon condition as they seeme to bee, then the said solution holdeth not in this
regime neither in law nor conscience.5. What is then the law of England if a man enteforme
an Abbot by deede indented, upon condition, that if the Abbot pay not the Feoffor a certame
somme of money at such a day, that then it Hall bee lawfull to the Feoffor to reenter, and
at that day the Abbot faileth of his payment, may the Feoffor lawfully reenter and pursu
the Abbot?

5. Psa berly, soz he had no right to the land, but by the gift of the Feoffor, and his gift
was conditional; therefore if the condition be broken, it is lawfull by the law of England for
the Feoffor to reenter, and to take his lad again
6 to hold it as in his first estate: by which reens
terie after the laiues of the realme, he disposseth
the first enterie of felvin, and all the mesne acts
done between the first feoffement and the reen-
try: ann it fozeeth little in the Lawe, in whom
the default be that the condition was not per-
formed whether in the Abbot oz in his convent,
oz in both, oz in any other person whatsoever
he bee, except it bee in the feoffor himeselve. And
it is great diereslitie between a cleere gift made
to an Abbot without condition, and where it is
made with condition: soz why it is made with
out condition, the act of the Abbot only shall not by the common law disinherit the house, but it bee in verie fewe cases: but yet upon divers statutes the sufferance of the Abbot only may disinherit the house, as by his cestator, or by leaving of a castle upon a house against the statute thereof made, in which case the house therby shall be the land, and some say that by the common law upon his disclaimer in anodyne, a wise of right of disclaimer utheth, but if the gift bee upon condition, it standeth neither with law nor conscience, that the Abbot should have any more perfect or sure estate than was given unto him: and therefore as the said estate was made to the house upon condition, so that estate may be avoided for not performing of the condition. And I thinke verily that this I have said is to be holden in this realme, both in the Law and conscience, and that the decrees of the Church to the contrarie, bind not in this case. But if the lands bee given to an Abbot, and to his Convent, to the intent to find a lamp, or to give certaine almes to poore men, though the intent be not in those cases fulfilled, yet the secoz, not his heire may not reenter: for hee reentered no reentries by express words, ne in the words, when he said, to the intent to find a Lamp, or to give almes &c. is implied no reentry, ne the secoz, nor his heires shall have no remedy in such cases, unless it bee within the case of the statute of Westm. the secoz, that giveth the Cessawie de Cantaria.
The 35. Chapter.

Whether a covenant made upon a gift to the Church, that it shall not be aliened, be good.

Cap. 35.

In the said summe, called summa Rosella, the said title Alienatio, the 13. article, is asked this question, Whether a covenant made upon a gift to the Church, that it shall not be aliened, be good. And the same question is moved againe in the said summa, called Rosella, in the title Codicio the first article, in summa Angelica, in the title Donatio prima, the 51. & 52. articles, &c. intente of the question there, is whether notwithstanding that the condition be good to some alienations, whether that yet it be good to restraine alienations for the redemption of the bee in captivity under the Insidens, or for the greater advantage of the house: and though the better opinion be there, that the condition may not bee broken for redemption of them that be in captivity, yet it is in maner a whole opinion that it may be sold for the greater advantage of the house: for it is said there that it may not be taken, but that the intent of the giver was so and therefore they call the condition that prohibiteth it to be sold, condition turpis, that is to say, a vile condition, wherefore they regard it not: but verily as I take it, if a condition may restraine any manner of alienation, then it shall as well restraine alienations for the two causes before rehearsed, as for any other causes: and though me thinketh that the condition is good, & after...
Chapter 35

after the laws of the Realm, that upon gifts to the Church restraineth alienations, yet I shall touch one reason that is made to the contrary, that is this: There is a clear reason in the law, that if a seoffement be made to a common person in fee, upon condition that the seoffee shall not alien to no man, that condition is void, because it is contrary to the estate of a fee simple, to bind him that hath the estate, that he should not alien if he list; and some say that an Abbot that hath land to him and to his successors hath as high and as perfect a fee simple as hath a lay man that hath land to him and to his heirs, and therefore they say, that it is as well against the Law of the Realm to prohibit that the Abbot shall not alien, as it is to prohibit a lay man thereof: and though it be therein true as they say, as to the highness of the estate, yet may thinketh there is a great discerbratie between the cases concerning their alienations: for when lands be given in fee simple to a common person, the intent of the Law is that the seoffee shall have power to alien, and if he doe alien, it is not against the intent of the Law; ne yet against the intent of the testator: but when lands be given to an Abbot and to his successors, the intent of the Law is, and also of the giver (as it is to presume) that it should remaine in the house for ever, and therefore it is called Mortmain, that is to say, a dead hand, as who catch that it shall abide there alway as a thing dead to the house. And therefore as I suppose the Law will suffer that condition to be good, that is made to restrain that such Mort-
main should not be aliened, and that yet it may prohibit the same condition to be made upon a secoffement made in se simple to a man & to his heires: for that is the most high, the most free, & the most pure estate that is in the Law. But the Law suffereth such a condition to be made upon a gift in seque, because the Statute prohibits that no alienation should be made thereof. And then, as the Law suffereth such a condition upon gift in Portmain, that is to say, that it shall not be aliened to be good: then it judgeth the condition also according to the words, that is to say, if the condition be general that they shall alien to no man, as this case is, that it shall be taken generally according to the words, and it shall not be taken, that the intent of the giver was otherwise than he expressed in his gift: though percase if he were alive himselfe and the question were asked him whether he would bee contented it should bee aliened for, the case two causers of not, he would say ye, but when he is dead no man hath authority to interpret his gift otherwise than the law suffereth, not otherwise than the words of the gift bee. And if the condition be special that is to say, that the land shall not be aliened to such a man or such a man, then the condition shall be taken according to the words, & then they may bee aliened as for that condition to any other, but to them to whom it is expressly prohibited that the land should not bee aliened to. And if the Lands in that case be aliened to one that is not excepted in the condition, the bee may alien the land to him that is first excepted
Without breaking of the condition, for conditions be taken strictly in the law and without equity. And thus me thinketh, that because the said condition is general, and restraineth all alterations, that it may not have altered neither by the law of the Realm, nor yet by conscience, no more for the said two causes, than it may for any other cause; and this case must of necessity be judged after the rules and grounds of the Law of the Realm, and after no other Law as mee seemeth.

If the Patron present not within 6. moneths, who shall present.

Cap. 36.

In the same sum called Summa Rosella, in the title Beneficium, in principio, it is asked, if the patron present not within six moneths, who shall present, and within what time the presentment must be made. And it is answered there, that if the patron present not within six moneths, that the Chapter shall have six moneths to present, and if the Chapter present not within six moneths, that then the Bishop shall have other six moneths. And if he be negligent, then the Metropolitan shall have other six moneths, and if present not, then the presentment is devoue to the Patriarke: And if the Metropolitan have no superior under the Pope, then the presentment is devoue to the Pope.
The 36. Chapter.

Pope. And so, as it is said ther, the Archbishop shall supply the negligence of the Bishop, if he be not exempt, and if he be exempt, the presentment immediately shall fall upon the Bishop, to the Pope. And as I suppose these diversities hold not in the lawses of the realm. Do. Then I pray thee show mee who shall present by the Lawes of the realm, if the patron do not present within 6 moneths & Sr. Then for default of the patron the Bishop shall present unless the King be patron, and if the Bishop present not within six moneths, then the Metropolitan shall present, whether the Bishop be exempt or not. And if the Metropolitan present not within the time limited by the Law, then there bee divers opinions who shall present, for some say the Pope shall present, as it is said before, and some say the King shall present.

D. What reason make they that say the King should present in that case? Sr. This is their reason, they say that the King is patron paramount of all the benefices within the realm. And they say further, that the King and his progenitors kings of England, without time of mind, have had authority to determine the right of patronages in this Reigne in their owne Courts, and are bound to see their Subjects have right in that behalf within the realm, and that in that case from him there is no appeal. And then they say, that if the Pope in this case should present, that then the King should not only icle his Patronage paramount, but also that he should not sometime bee able to doe right to his Subjects.

D. In
D. In what case were that 15. It is in this case: The Law of the Realm is, that if a benefice fall void, the patron shall present within 6 months, and if he do not, that then the Ordinary shall present, but yet the Law is farther in this case, that if the Patron present before the Ordinary put in his Clerk, that then the Patron of right shall enjoy his presentment, and so it is though the time should fall after to the Metropolitan, or to the Pope; and if the presentment should fall to the Pope, then though A knowson abode still hold, so that the Patron might of right present, yet the Patron should not know to whom he should present, unless he should go to the Pope, and so he should fail of right within the Realm. And if in case he went to the Pope, and presented an able Clerk unto him, and yet his Clerk were refused and another put in at the collation of the Pope, or at the presentment of a stranger, yet the Patron could have no remedy for the wrong within the Realm; for the Incumbent might abide till out of the Realm. And therefore the law will suffer no Title in this case to fall to the Pope. And they say, that for a like reason it is, that the Law of the Realm will not allow an excommunegne that is certified into the King's Court under the Pope's Bulles: For if the partie offered sufficient amends, and yet could not obtain his letters of absolution, the King should not know to whom to write for the letters of Absolution, and the party could not have right, and that the Law will in no
The 36. Chapter.

Wife suffer, Do& The patron in that case may present to the Ordinary as long as the church is void, and if the ordinary accept him not, the Patron may have his remedie against him within this Realm. But if the Pope will put in an Incumbent before the patron present, it is reason that he have the presentment, as we seemeth before the king. S. When the Ordinary hath successed his time, he hath lost his power as to that presentment, specially if the collation bee devote to the Pope. And also when the presentment is in the Metropolitan bee put in the Clerke himselfe, and not the Ordinary: and so there is no default in the Ordinary, though he present not the Clerke of the Patron, if his time be past, and so there is eth no remedie against him for the Patron.

D. Though the Incumbent abide still out of the realme, yet may a Quare impedic lie against him within the realme: and if the Incumbent make default upon the distress, and appear not to show his title, then the patron shall have a suit to the Bishop according to the statute, and so he is not without remedie.

S. But in this case hee cannot besummoned attached, not detained, within the Realme. D. He may be summoned by the church, as the tenant may in a suit of right of Possession.

S. There the advowson is in demand, & here the presentment is only in debate: and so hee cannot be summoned by the Church here no more than if it were in a suit of Annunity, and there the common returne is, quod Clericus est beneficiarius, non habens laicum sed vbi poteat

sum-
summoned. And though he might be summo-
ned in the Church, yet he might neither be at-

tached nor distrayned there, and so the patron

should be without remedie D. And if he were

without remedie, hee should yet bee in as good

case as he should be if the King should present;

for if the title should be giuen to the King, the

Patron had lost his presentment clerly for the
time, though the church abide still void. For

I have heard say that in such presentments

no time after the Law of the Realm runneth

into the King. Sc. That is true, but there the

presentment should be taken from him by right

and by the Law, and here it should be taken

from him against the Law, and there as the

Law could not help him, and that the law will

not suffer Do. Yet me thinketh alway that the

title of the Laps in such case is giuen by the

law of the Church, a not by the temporal law,

a therfore it forceth but little what is temporal

law will in it, as mee seemeth. S. In such coun-

dries where the Pope hath power to deter-
mine the right of temporal things, I think it

is as thou saist, but in this Realm it is not so.

And the right of presentment is a temporal thing,

and a temporal inheritance, therfore I think

it belongeth to the Kings law to determine, is

also to make Laws who shall present after 6.

moneths as well as before, so that the title of

examination of abilitie of nonabilitie bee not

therby taken from the Ordinary. And in like-

wise it is of avoidance of benefices, that is to

say, then it shall be judged by the kings Lawes

when a benefice shall be said void, & when not,
and not by the law of the Church, as when a
parson is made a Bishop, or, accepteth another
benefice without a Licence, or resigneth, is
depined, in these cases the common law saith,
that the benefice is void, and so they should bee,
though a law were made by the Church to the
contrarie; and so if the Pope should have any
title in this case to present, it should bee by the
Law of the Realm. And I have not seene ne
heard that the law of the Realm hath given
any title to the Pope to determine any tempo-
real thing that may bee lawfully determined by
the Kings Court. D. It seemeth by that reason
that thou hast made now, that thou preferrest
the Kings authoritie in presentsments before
the Popes, s that me thinketh should not stand
with the law of God, sith the Pope is the Vic-
car general under God. Sue. That I have said
proeueth not, that for the highest preferment in
presentsments bee is to have authoritie to exa-
mine the abilitie of the Parson that is present-
ted; s for if the preferred be able, it sufficeth to the
discharge of the Ordinary, by whom sooner bee
be presented, and that authoritie is not denied
by the law of the Realm to belong alway to
the spiritual jurisdiction, but my meaning is,
that as to the right of presentsments, and to de-
terminate who ought to present, and who not,
and at what time, and when the Church shall
be judg'd to be void, s when not, belong to the
King and to his lawes: s for else it were a thing
in bane for him to hold pice of Auditors, s
so determine the right of patronage in his owne
courts, and not to have authoritie to determine
the
the right thereof, and those claims létheth not
to be against the Law of God. And some sec-
meth in this case the presentment is given the
King. D. And if the King should have right to
present, then might the Church happen to con-
tinue void for ever, so as we have laid before
no time runneth to the King in such present-
ment. Sr. If any such case happen, if the King
present not, then may the Ordinary set in a de-
puty to serve the cure as he may do when neg-
ligence is in other patrons that may present &
does not : and also it cannot bee thought that the
King which hath the rule and governaunce, over
the people, not onely of their bodies, but also of
their soules, will hurt his conscience and suffer
a benefice continually to stand without a Curat,
no more than he doth in Adowelions that be of
his owne presentment.

Q Whether the presentment and collation of
benefices and dignities, voiding at Rome
belongeth onely to the Pope.

Cap. 37.

In the same sum, called Suma Rosella, in the
title Beneficium primi, in the 13. article, It
is said 8 benefices, dignities, e patronages,
holding in the court of Rome may not be give
but by the Pope: 8 likewise of the Popes ser-
vants and of other that come and goe from the
Court, if they die in places nigh to the Court
within two daies journeyn, all these belong to
the Pope: but if the Pope present not with-
In a month, then after the month they to Whom it belongeth to present, may present by themselves only, or by their vicar general iif they be in far parts: and these sayings hold not in the law of the Realm.

3. What is the cause that they hold not in this realm, as well as in all other realmes? One cause is this: The king in this realm according to the ancient right of his Crowne, of all his abbeys and that bee of his patronage ought to present. And in like wise other Patrons of benefices of their presentment, of the plea of a right of presentsments of benefices within this Realm, belong to the King and his Crowne. And these titles cannot bee taken from the King and his subjects, but by their consent, and the law that is made therein to put away the title, heretofore not in this realm. And over that, before the Statute of 25. E.3. there was a great inconvenience and mischief, by reason of divers provisions & considerations, that the Pope made to the benefices of this Realm, contrary to the old right of the King and other patrons of this Realm, as well to the Archbishopricks, Bishopricks, Deantries and Abbyes, as to other dignities & benefices of the Church: And many times aliens thereby had benefices within the Realms that understood not the English tongue, so that they could not countenance comfort the people, when need required, and by that occasion great riches were conveyed out of the Realm: Wherefore to avoid such inconvenience, it was ordained by the said Statute, that all patrons as well spiritual as temporal should have the presentments.
ments freely: in case the collation or provision were made by the Pope in disturbance of any spiritual Patron, that then for that time the King should have the presentation, as if it were in disturbance of any lay Patron, that then if the patron presented not within the halfe yeare after such disturbance, nor the Bishop of the place within a moneth after the halfe yeare: that then the King should have also the presentation, and that the King should have the profits of the benefices so occupied by provision, except Abbeys and Priories, and other houses that have college and coufe, and there the college so couent to have the profits: and because the statute is general, excepteth no such benefices as shall hold in the Court of Rome, or in such other place as before appeareth, therefore they be taken to bee within the provision of the said statute as well as the benefices that hold within the Realme: and all provisions and executors of the said collations & provisions, and all their attournies, notaries & maintaineurs, shall be out of the protection of the King, shall have like punishment as they should have for executing of benefices holding within the realm. But I cannot see how the said statute may stand with conscience, that so farre restrained the Pope of his libertie, which as mee semeth hee ought in this case of right to have. For because (as I suppose) that patrons ought of right to have their presentations, by that manner as they claime them in this realm, as I have said before, and as in the 26. chapter of this booke appeareth more at large: And also to as much as it appeareth evidently.
The 38. Chapter.

that great inconvenience followed upon the
said provisions, and that the said estatute was
made to avoid the same, which at that time
bath been suffered by the Doce, and hath been
always held in this realme without resitance,
that the said estatute should therefoze stand with
good confidence.

If a house by chaunce fall ypon a horse that
is borrowed, who shall beare the losse.

Cap. 38.

In the said summe called Summa Rosella, in
the title Casus fortuitus, in the beginning is
put this case. If a man lend another a horse,
which is called there Deposium, & a house by
chaunce falleth ypon the horse, whether in that
case hee shall answer for the horse? And it is
answered there, that if the house were like to
fall, that then it can not be taken as a chance, but
as the default of him that had the horse deputed
to him: But if the house were strong, & of
likelyhood and by common presumption in no
daunger of falling, but that it fell by sodaine
tempet, or such other casualtie, that then it
shall bee taken as a chance, and bee that had the
keeping of the horse shal be discharged: though
this diversitie agreeeth with the Lawes of the
Realme, yet for the more plainer declaration
therof, and for the more like cases and chances
that may happen to goods, that a man hath
In his keeping that be not his own, I shall add a little more there to, that may be somewhat necessary as wee thinke therto to the ordering of conscience. For a man may have of another by way of loan or borrowing, money, coxe, wine, and such other things, whereby the same thing cannot be delivered if it be occupied, but another thing of like nature and like value must be delivered for it, &c. such things he that they be lent to, may by force of the loan ble as his owne. And therefore if they perish, it is at his jeopardy, & this is most properly called a loan. Also a man may lend to another a houle, an ore, a cart, or such other things that may be delivered againe, and they by force of that loan may be viled and occupied reasonably in such manner as they were borrowed for, as it was agreed in the time of the loan that they should be occupied, &c. if such things be occupied otherwise than according to the intent of the loan, &c. in that occupation they perish, and what lose or they perish, so it be not in default of the owner, hee that borrowed them shall be charged therewith in law & conscience: & if he that borrowed them occupy the in such manner as they were lent for, &c. in that occupation they perish in default of him that they were lent to, then hee shall answer for them: and if they perish not through his default, then hee that oweth them shall beare the losse. Also if a man have goods to keep to a certaine day, for a certaine recompence for the keeping, hee shall stand charged, or not charged, after as default or not default, hee in him as before appeareth, &c. and so it is if hee have nothing.
The 38. Chapter.

for the keeping, but if he have for the keeping, he make promise at the time of delivery to re-deliver them safe at his peril, then he shall be charged with all chances that may fall. But if he make that promise he have nothing for keeping, I think he is bound to no such casualties but that be willfull & his own default, for that is a nude, or a naked promise, whereupon as I suppose no action lye. Also if a man find goods of another, if they be after hurt or lost by willfull negligence, he shall be charged to the owner, but if they be lost by other casualty, as if they be laid in a house that by chance is burned, or if hee deliver them to another to keep the runner away with them, I think he be discharged: and these diversities hold most commonly upon pledges, or where a man hires goods of his neighbour to a certain day for certain money: and many other diversities be in the law of the Realme, what shall be to the jeopardy of the one, & what of the other, which I will not speake of at this time: And by this it may appear that it is commonly holde in the laws of England if a common carrier go by the water that be dangerous for robbing, or drinck by night, or in other inconvenient time, & be robbed, or if he overcharge a house, whereby the water runeth into the water of other wise, so that the house is hurt or impaired: that he shall stand charged for his misdemeanour, and if he would persease refuse to carry it, unless promise were made unto him that he shall not be charged for no misdemeanour that should bee in him, the promise were void: for it were against reason & against good manners, and
and so it is in all other cases like. And all these diversities be granted by lescherary conclusions derived upon the Law of reason, without any Statute made in that behalf. And peradventure lawses, and the conclusions therein, be the more plaine & the more open. For if any Statute were made therein, I think hereby no doubts a question would rise upon the Statute, than doth now when they be onely argued & judged after the common law.

If a Priest have won much goods by saying of Masse, whether hee may give those goods or make a will of them.

Cap. 39.

In the said law called Summa Rosella in the title Clericus quartus the third article, is asked this question: If a Priest have won much goods by saying of Masse, whether hee may give those goods, or make a will of them? Whereof it is unanswered there, that hee may give them, or make a will of them; specially when a man bequestheth mony for to have Masses said for him: the like law is of such things as a clere Winteth by the reason of an office: For it is laid there, that such things come to him by reason of his owne person:Which sayings I think accord with the law of the realm But for as much as in the said article in divers other places of the said chapter, & in divers other chapters of the said Summe, is put great diversitie betwene such goods, as a Clerke hath by reason of his
church, and such goods as he hath by reason of his person, so that he must dispose such goods as he hath by reason of his church in such manner as is appointed by the law of the Church, so that he may not dispose them so liberally, as he may the goods be come by reason of his owne person, therefore I shall a little touch what spiritual men may doe with their goods after the law of the Realm.

First a Bishop, of such goods as he hath with the Deane and Chapter, hee may neither make gift nor bequest, but of such goods as hee hath of his owne by reason of his church, of gift of his ancestors, or of any other, of his patrimony, hee may both make gifts and bequests lawfully. And an Abbot of the goods of his Church may make a gift, and that gift is good as to the Law: But what it is in conscience, that is after the cause and intent and quality of the gift, for if it be so much that it notably hurteth the house or the coutent, or if hee giveth away the books, or the chances, or such other things as belong to the service of God, he offendeth in conscience, and yet hee is not punishable in the Law, nor by Subpnea after some men, nor in none otherwise but by the Law of the church, as a waster of the goods of his monasterie. But nethertheless I will not fully hold that opinion, as to that that belongeth necessarily to the service of God, whether any remedy may be against him or not, but remit it to the judgement of other. And of a Deane & Chapter, and a Master & brethren of goods that they have to themselves, and also of goods that they have with the
the Chapter 8 brethzen, the same binitfeitie hol
deth, as appeareth before of a Bishop and the
Deane 8 Chapter, except that in the case of a
Walter 8 brethzen the goods shalbe ordered as
shalbe assigned by the foundation. And moreover,
of a Parson of a Church, Vicar & Chantry
Priest, as such other, all such goods as they have
aswell such as they have by reason of the Par
sonage, Vicarage, 8 Chantry, as that they
have by reason of their own person, they may
lawfully gine and bequesth where they will af
ter the common law: And if they dispose part
among the parichioners, a part to the building
of Churches, a part to the Oidharnie, a
part to poor men, as in such other manner, as it is
appointed by the law of the church, they offend
not therein, unless they think themselves bound
den therein by dutie by authentique of the law
of the church, noz regarding the Kings Lawes,
soz if they do so, it seemeth they resist the Oid
naces of God, which hath give power to prin
ces to make lawes: but there as the Pope hath
soveraignty in tempozall things, as he hath in
spiritual things, there some say that the goods
of Ps ekz must in conscience be disposed as is
contained in the saide summe, but that holdeth
not in this Realm: soz the goods of spiritual
men bee tempozall in what manner soever they
come to them, soz must be ordered after the tem
pozall law as the goods of the tempozall men
must be. Howbeit if there were a statute made
in this case as like effect in many points, as the
law of the Church is, I think it were a right
good and a profitable Statute.
The 40. Chapter.

Who shall succeed a Clerke that dyeth intestate.

Cap. 40.

In the said Canon called Rosella in the chapter Clericus quarti the 7. Article, it asked this question, who shall succeed to a Clerke that dyeth intestate? It is answered, that in goods gotten by reason of the church, the church shall succeed. But in other goods his kinsmen shall succeed after the order of the law, if there be no kinsman, then the church shall succeed. And it is said further, that goods gotten by a Canon secular by reason of his church or prebend shall not go to his successor in the prebend, but to the Chapter. But where one that is beneficed is not of the congregation, but he hath a benefice clearly separate, as if he be a parson of a parish Church, or is a prebendary, or an Archdeacon not beneficed by the Chapter, then the goods gotten by reason of his benefice shall go to his successor, not to the Chapter, and none of these sayings hold place in statutes of England. What is then the Law, if a Parson of a Church, or a Vicar in the Country, die intestate, or if a Canon secular be also a Parson and have goods by reason thereof, and also by a Prebend that he hath in a Cathedral Church, or be die intestate, who shall have his goods? S. It the common Law the Ordinary in all these cases may administer the goods, and after he must commit administration to the next
next faithful friends of him that is dead intestate that will desire it, as he is bound to do where lay he's have goods die intestate. And if no man desire to have administration, then the Ordinary may administer, see the debts paid, and he must beware that he pay the debts in such order as is appointed in the common Law: for if he pay debts upon simple contracts before an Obligation, he shall be compelled to pay the debt upon the obligation of his own goods, if there be no goods sufficient of him that died intestate, and though it be suffered in such case that the Ordinary may pay pound and pound like, that is, to apportion the goods among the debtors after his discretion, yet by the rigor of the common Law, he might be charged to him that can first have his judgment against him. And furthermore by that is said aforesaid in the last Chapter it appeareth that if a Bishop that hath goods of his patrony, or a master of a College, or a Deane of goods, that they have of their own only to themselves die intestate, that the Ordinary shall commit administration thereof, as aforesaid, and if they make Executors, then the executors shall have the ministration thereof. But the heires noz the kinsmen by that reason only that they be heires noz of kin to him that is deceased, shall have no medling with his goods, except it be by custom of some countries where the heires shall have their long, or where the children (the debts and legacies paid) shall have a reasonable part of the goods after the custom of the country.
The 41. Chapter.

If a man be outlawed of felonie, or be attainted for murder or felonie, or that is an Alcimus, may be slaine by every stranger.

Cap. 41.

It appeareth in this said Sum called Summa Angelica in the 21. Ch. in the title of Alcimus the 2. Paragraphe, that hee is an Alcimus that will slay men for money at the instance of any man that will move him to it, and such a man may lawfully be slaine, not only by the Judge, but by every private person. But it is said there in the 4. paragraphe, that hee must first be judged by the Law as an Alcimus ere he may be slaine, or his goods seised. And it is said further there in the 2. paragraphe, that also in conscience such an Alcimus may be slaine if it be done through a zeal of justice, and else not. Is not the law of the realm likewise of men outlawed, abused, or judged for felony?

Sr. In the law of the realm there is no such Law, that a man shall be judged as an Alcimus, ne it a man be in full purpose to slay a certain summe of money that he hath received, to slay a man, yet it is no felonie, no murder in the law till he hath done the act: for intent of felony no murder is not punishable by the common Law of the Realm, though it be deadly sinne before God, but in Treason, or in some other particular cases by Statute that intent may be punished. And though a man in such a case kill a man for money; yet it shall not be admitted that he
The 41. Chapter.

hee is an Aciismus. For as it is said before, there is no such terme of Aciismus in the law of the Realme, but he shall in such case be arraigned upon the murder. And if he confess ouplead that he is not guilty, is found guilty by xiz men, hee shall have judgment of life, and of member, and shall forfeit his lands and goods.

And like Law is of an Appesale bought of the murder, if hee stand dumb and will not answer to the murder, hee shall bee attainted of the murder, and shall forfeit his lands and goods. But if he be arraigned of the murder upon an Indictment at the Kings suit, and thereupon standeth dumb and will not answer, there he shall not be attainted of the murder, but he shall have paine lost and bare, that is to say, hee shall be pressed to death, and hee shall there forfeit his goods, and not his lands. But in none of these cases (that is to say) though a man bee outlawed for murder or felony, or bee absurded, or that he bee otherwise attainted: yet it is not lawfull for any man to murder him, or slay him, ne to put him in execution but by authoritie of the Kings Lawes. Insomuch that if a man bee adjudged to have paine lost and bare, and the Officer beheadeth him, or on the contrariwise putteth him to payne lost and bare, where hee should behead him, hee offendeth the law. And if an Officer which hath authority to put a man to death, may not put him to death, but according to the judgement, then meethinketh it should follow that more stronger a stranger may not put such a man to death of his owne authoritie without commandement of
of the Law. But if the judgement bee that hee shall be hanged in chains, & the officer hangeth him in other things and not in chains, I suppose he is not guilty of his death: But some say he shall there make a fine to the king, because hee hath not followed the words of the judgement.

Also if a man that is no officer would arrest a man that is outlawed, absconded, or attainted of murder or felony, as is aforesaid, & he disobeyeth the arrest, & by reason of the disobedience he is named, I suppose the other shall not be impeached for his death; for it is lawfull unto a certe man to take such persons & to bring the forth that they may be ordered according to the law. But if a Capias be directed unto the Sherifl to take a man in an action of debt or trespass, there no man may take the man, but hee have authority from the Sherifl: and if any man attayle of his owne authority to take him, & he resisteth, & in the resisting is slaine, he that would have taken him is guilty of his death.

Q Whether a man shall bee bounden by the act or offence of his servant or officer.

Cap. 42.

In the said summe called Summa Angelica, in the title Dominus iii. Paragraphe, is asked this question, whether a man shall be charged for his household; and it is said that there he shall when the household offended in an office or ministerie
nitely that the Master is the chief officer of, and he hath the work and the profite of the household: For it shall be his discretion that he would chuse such servants, for he ought to appoint honest persons: But it is said there, that it is to be understood civilly, & not criminally, Whereby, as is said there, he that is a governour is bound for the offence of his officers, & that the same is to be holden of a Captaine, that he shall be bound for the offence of his squires, and an host for his guest, and such other. Nevertheless it is said there, that certaine Doctors, there rehearsed, said there, that if the office be an open or publike office, as an office of power, or other like, It sufficeth to bring forth him that offended: But it is otherwise if it be not a publike office, but an host of a Taverner, or other like. But if the household offend not in the office the Lord is not bound as to the Law, but in conscience he is bound if he were in default by not correcting them, for he is bound to correct them both by word and example, and if he find any incorrigible, he is bound to put him away, except that he have presumptions, that if he do so, he will be the worse, and then he may doe that he thinketh best, as he is excused, and else not: For to such persons it is said, Error qui non resistitur, approbatur: (that is to say) an Error that is not resisted, is approved. And though divers of the longings before rehearsed agree with the Law of the Realm, yet all doe not so, and also they that do are to be understood by authority of the law of the realm, & not by the authority alleged in the said Paragraphs.
And therefore I intend to treat somewhat where the Master shall be charged by his servant, or deputy, or by them that be under him in any office, & where not, and then I intend to touch some other things, where the Master after the Lawes of the Realme shall be charged by the act of his servant in other cases not concerning offices, and where not.

First, if a man be committed to ward upon arreances of account, & the keeper of the prison suffereth him to goe at large, then an action of debt shall lie against him. And if he be not sufficient, then it lyeth against him that committed the keeping of the prison unto him, and that is by reason of the Nature of West. the 2. ca. 11. Also if Bailies of Franchises that have Returne of Writs make a falle returne, the partie shall have averrement against it, as well of too little issues as of other things, as well as he shall have against the Sherife, but all the punishment shall be only upon the bailie, & not upon the Lord of the Franchise, and that doth appeare by the Statute made in the first yeare of King Ed. 3. the 1. chapter. But if an undersherife make a returne whereupon the Sherife shall be amerced, there the high Sherife shall be amerced, for the returne is made expressly in his name. But if it be a falle returne whereupon an action of disseit lyeth, in that case it may bee brought against the undersherife. And thereof the Statute that is called Statum de male returnantibus breuia.

Also if the kings Butler make deputies, hee shall answer for his deputies as for himselfe.
As appeareth in the statute made in the 21. pere of King Edward the 3. De proditionibus the 21. Chapter.

Also, in the statute that is called Statutes Scaccariis it is enacted among other things, that no officer of the Exchequer shall put any clerk under him, but such as he will answer for. And soasmuch as the statute is general, it seemeth that he shall answer as well as any in any such clerk as so an oversight.

Also in the 14. pere of King Edward the 3. Chap. 9. it is enacted, that all Gaites shall be appointed again to the Shires, and that the Sheriffs shall have the keeping of them, and that the Sheriffs shall make such undergardians for which they will answer. And nevertheless I suppose that if there be an escape by default of the gaiter, that the king may charge the Gaiter if he will. But it is no doubt but he may charge the Sheriff by reason of this statute if he will. But if it be a willful escape in the Gaiter which is felonie in him, the Sheriff shall not be bound to answer for the felonie, ne none other but the Gaiter himself, and they that assisted to him.

Also if a man have a Sherifewicke, Constableship, or Baylisswicke in see, whereby he hath the keeping of prisioners, if he let any to repente that hee not repenishable, and thereof be attain, hee shall lose the office &c. And if it be an Undersherifte, Constable, or Bayliff, that hath the keeping of the prizon, that doth it without knowledge of the Lozd, hee shall have imprisonment by three pears, and after shall be ransomed at the Kings will, as appeareth.
The 42. Chapter.

In the statute of W.4, the 1, the 15 chap. And so it appeareth, that in this case, hee that is the Lord of the prison, is not bound to answer for the offence of them that have the rule of the prison vnder him, but that they shall have the punishment themselves for their misdemeanors. Also there is a statute made in the 27. yeare of king Ed. 3. the 19. Chap. that is called the statute of the Staple, whereby it is ordained, that no Merchant, nor none other man shall not lose their goods for the Trespas, or forfeit of their servants unless it be by commandement of his Master, or that he offend in the office that his Master hath put him in, or else, that the Master shall be bound to answer for the debt of his servant by the law merchant, as in some place it is said,

Also, it is enacted in the 14. yeare of King Edward the 3. the 8. Chapter, that waspentakes and Hundreds that be severed from the Counties, shall bee adjoined againe unto them, and that if the Sherife hold them in his owne hands, that hee shall put in them such Brallles that have lands sufficient, and those for which hee will answer, and that if hee let them to serme, that they bee let to the auncient serme: but after it is prohibited by the Statue of the 22. yeare of King Henry the 6. the 10. Chapter, That no Sherife shall let his Brallles, nor Waspentakes to serme. And when they be once in the Sherifes owne hands, and the Sherife put in Brallles, they bee but as Underballles to the king, and the Sherife the high ballis, and they in manner the Sherifes servants and put in

only
only by him: And therefore by the said Stat. of
King Ed the 3. he shall answer for them, if
they offend in their office, but if the Sherife
let the to ferme, then though the Sherife offend
the Statute in that doing, yet whether hee shall
see charged for their misdeameano; in the office
of not, is a great doubt in some men, for they
say that this Statute is only to be understood
where the bailiwickes be in the sherifes hands,
but here they bee not so, ne the bailifes bee not
his servants, but his seruants: And therefore
they say, that if the Sherife Shalbe charged for
them, it is by the common Law, and not by the
Statute afoysaid. Also in the 2. yeare of King
Henrie the 6. the 24. Chap. it is enacted, that
Officers by patent in every court of the King,
that by vertue of their Office have power to
make clerkes in the said courts, shalbe charged
& swope to make such clerkes under them, for
whom they will answer. Also the Hospitie-
lers & Templers be prohibit they shal hold no
place that belongs to the Kings Courts, uppon
pain to yield damages to the party grieved, & to
make ransome to the king: that the superiour
that answere for their obediencers, as for their
owne dard. West. 3. cap. 43. Also the Serjeant
of the Cater, shall satisfie all the debt, dama-
ages, and executions that shal be recovered ag-
against any that is puruic, or achatour, under
him that offend against the Statute of Edw.
the 3. & against the Statute of Henrie the 4. in case the puruicour, or a-
chatour bee not sufficient &c. And the partie
plaintife shal have a Scire facias against he said
fere
Sergeant in this case to have execution, as appeareth in the 24. yeare of King Henry the 11. chapter.

Also if a man bee sent to prison upon a Statute merchant by the Wariors, before whom the recognishance was taken, & the Gallows will not receive him, he shall answer for the debt if hee have wherewith, & if not, then he shall answer that committed the Gaile to him, as appeareth in the statute called the Statute merchant.

And if Outragious tolle bee taken in the towne Merchant, if it be the Kings towne let to farme, the King shall take the franchise of the Market into his hands: And if it be done by the Lord of the Towne, the King shall doe in like wise: And if it be done by the Bailiff, not knowing to the Lord, hee shall plead againe as much as hee hath taken, and shall have imprisonment of 40 daies: And so it appeareth that the Lord in this case shall not answer for his Bailiff, West. the 1. cap. 30. And in all the cases before rehearsed, where the Superiour is charged by the default of him that is under him, hee in whose default his Superiour is so charged, is bound in conscience to redoe him that is so charged through his default: except the case before rehearsed of the Hospitlers, for all that the obedientcer hath, is the Superiours if he will take it. And therefore what recompence shalbe made by the obedientcer in that case, is at the will of the Superiour. And now I intend to shew thee some particular cases, where the matter after the laws of 5. realm shall be charged by the act of his servant, bailiff, or deputy, &
Where not, and so toz to make an end of this Chapter.

First, for trespass of batterie, or wrongfull entrie into lands or tenements, ne yet for felony or murder, the master shall not be charged for his servant, unless hee did it by his commandement.

Also if a servant borrow money in his masters name, the master shall not be charged with it, unless it come to his use, that by his assent. And the same law is if the servant make a contract in his masters name, the contract shall not bind his master, unless it were by his masters commandement, or that it came to the masters use by his assent. But if a man lend his servant to a faire or market, to buy for him certaine things, though hee command him not to buy them of no man in certaine, and the serv- ant doeth according, the master shall be charged, but if the servant in that case buy them in his owne name, not speaking of his master, the master shall not be charged, unless the things bought come to his use.

Also if a man lend his servant to the market with a thing which he knoweth to bee defective to be sold to a certaine man, and hee sollefth it to him, there an action lyeth against the master; but if the master biddeth him not sell it to any person in certaine, but generally to whom hee can, and hee sollefth it according, there lyeth no action of deceit against the master.

Also if the servant kepe the masters fire negligently, whereby his masters house is hzef and his neighbours also, there an action lyeth against
against the Master. But if the servant bear fire negligently in the street, and thereby the house of another is burned, there lyes no action against the Master.

Also, if a man desire to lodge with one, that is no common Hosteler, and one that is servant to him that he lodgeth with, robbeth his chamber, his master shall not be charged for that robbing: but if he had been a common Hosteler he should have been charged.

Also, if a man be gardener of a prison, wherein is a man that is condemned in a certaine summe of money, and another that is in prison for Felonie, and a servant of the gardener that hath the rule of the prison under him, wilfully letteth them both escape: in this case the gardener shall answer for the debt, and shall pay a fine for the escape of the other, as for a negligent escape, and the servant one ly shall be put to answer to the felony, for the willfull escape.

Also, if a man make another his general reception, and that reception receiveth money of a creditor of his Master, and maketh him acquaintance, and after payeth not his Master, yet that payment dischargeth the creditor: but if the creditor had taken an acquaintance of him without paying him his money, that acquaintance onely were no barre to the Master, unless he made him receiver by writing, and gave him authority to make acquitances, and then the authority must be shewed. And if the creditor in such case by agreement between the receivour and him, delivered to the
receiver a hose or another thing in compensation of the debt, that delivereth dischargeth not the creditour, but he it be delivered over unto the Master, and he agree to it. For the receiver hath no such power to make no such commutation, but his master give him special commandement thereto.

Also, if a servant thew a Creditour of his master, that his master sent him for his money, and he payeth it unto him, that payment dischargeth him not, if the master did not sent him for it indeed, except that it came after unto the use of the master by his assent.

Also, if a man make a bailiff of a man's, and after the Lord of whom the Manor is holden grant the seigniorie to another; and the bailiff after payeth the rent to the grantee, that payment of the rent counterateth no attornment though it were by fine, he shall not bind his Master, till he attesthe himselfe: but if the Lord of whom the land is holden disputed one of the seigniorie, and the bailiff payeth the rent to the heire of the Lord, that is a good seisin to the heire, though the bailiff had no commandement of his Master to pay it: For it beongeth to his office to pay rents kruice, but not rent charge as some men say.

Also, an encroachment by the bailiff shall not bind the master in auolote, if he had no commanement of the master to pay it. Also if there bez Lord, mesne, and tenant, & the tenant holdeth of the mesne as of his manor of D. the mesne maketh a bailiff, and after the tenant maketh a settlement, the sett Tenneth notice to the bailiff.
and hee accepteth his rent with the arreages, this notice shall not bind the Lord, hee shall not compel him to alter his usufruct; for the office of a bailiff stretcheth not thereto, but hee must have therein a speciall commandement of his Master. Also if a servant ride on his master's horse to doe an errant for his Master into a towne that hath authority to make attachements of goods upon plaints of debt &c. and thereupon a plaint of debt made against the servant, the Master's horse is attached by the Officers, thinking that the horse were his owne, and because the servant appeareth not, the Officers sell the horse as forfeit: in this case the Lord shall have an action of trespass against the officers, & this attachement for the debt of his servant, shall not bind him &c. But that an host or keeper of a Taverne shalbe charged for their guests, unless it bee done by their assent or commandement, I do not remember that I have read it in the laws of England.

43 Whether a villaine, or a bondman may give away his goods

Cap. 43.

T appeareth in the said sum, called Summa Angelica, in § title Donatio prima the 9. Paragraphe, that a bondman, or a religious man, a Monke, ne such others that hath nothing in proper, may not give, but it bee by licence of their superior: but that saying is not, as it is said
I sayd there, to be understood of Religious persons that have lawful ministration of goods, for they give with a cause reasonable, it is good, but without cause they may not.

Also if they by the licence of the prelat with the counsel of the moze part of the Couent abide at Schoole or goe on pilgrimage, they may give as other honest scholes and pilgrimes be reasonably wont to doe; and they may also give almes where there is great need, if they have no time to ask licence.

Also if they be one in extreme necessity, they may give almes though their superiors prohibit them, for then all things bee in common by the law of God. And therefore they be bound for to doe it, as appeareth in the folesaid Summa Angelica in the title Eceemosina, the 6. Paragrace. Doth not the Law of England agree with these diversities? Sui. Foza.

Much as the question is onely made whether a Villaine or a bondman may give away his goods or not: and it seemeth that after the folesaid Sum, in the title which thou hast before rehearsed, that he ne none other that hath no property may not give, whereby it appeareth that the said Summe taketh it, that a bondman should have no property in his goods, and therefore his gift should bee void. I shall somewhat touch what property and what authority a Villaine hath in his goods after the Law of the Realm, and what authority the Lord hath over them. And I will leave the diversities that thou hast remembered before of Religious persons to them that like to treat.
Further therein hereafter.

First if a Vileine have goods either by his owne proper buying and selling, or other-wise by the gift of other men, hee hath as per-fit a property, and also as whole interest in them, and may as lawfully give them away as any free man may. But if the Lord seise them before his gift, then they bee the Lords, and the interest of the vileine therein is determined.

Also if the Lord seise part of the goods of his Vileine in the name of all the goods that the Vileine hath or shall hereafter have, that seizure is good, for all the goods that hee had at the time of the seizure. But if goods come to the Vileine after the seizure, he may lawfully give them away notwithstanding the said seizure.

Also if the Lord claiime all the goods of the vileine, and seitheth no part of them, that seizure is good, and the gift of the vileine is good notwithstanding that seizure.

Also if a man bee bound to a Vileine in an obligation in a certaine sum of money, and the Lord seitheth the obligation, then the obligation is his, but yet he can take no action thereupon but in the name of the vileine: and therefore if the vileine releaseth the debt, the Lord is barred by that release.

Also if a woman be a niece, and shee marrieth a free man, the goods immediately by the marriage be the husbands, and the Lord shall come too late to make any seizure: and if the husband in that case makes his wife his Executer
and dyeth, and the wife taketh the same goods againe as executrix to her husband, yet it shall not bee lawfull for the Lord to take them from her, though she be a niefe as she was before the marriage.

Also if goods be given to a man to the bse of a Willeine, and the Lord seeth those goods, the seisure after some men is good by the Statute made in the 19. pere of K. H. 7. whereby it is enacted, the Lord shall enter into lands whereof other persons be seised to bse of his Willein: and they say that the same Statute shall bee underftood by equitie of goods in bse, as well as of Lands in bse.

Also if a Willeine be made a Priest, yet neuertheless the Lord may seise his goods and lands as he might before: as until the seisure he may alien them and give them away as he might before he was Priest. And in this case the Lord may order him, so that he shall doe him such service as belongeth to a Priest to doe, before any other: but hee may not put him to no labours nor other businesse, but that is honest and lawfull for a Priest to doe.

Also if a Willeine enter into Religion in his yeare of profe, he may dispose his goods as hee might have done before he took the habit upon him.

And in like wise the Lord may seise his goods as hee might have done before, but if hee after make executores, and bee professes, and the executores take the goods to the performance of the will, then the Lord may not seise the goods though the executores have them to the perfo-
mance of the will of him that is his villein, nor
in that case the Lord may not sell his body, ne
put him to no maner of labour, but must suffer
him to abide in his religion under the obedience
of his superioz as other religious persons doe,
that bee not bounden: And the Lord hath no
remedie in that case for loss of his bondman, but
onely to take an action of Trespas against
him that receiveth him into Religion without
his licence, thereupon to recover damages,
as shall be assed by e.j.men. Many other ca-
ses there be concerning the gift of the goods of
a villeine, whereof I shall speake no moze at
this time, for this that I have said sufficeth to
show that the knowledge of the Kings law is
right expedient to the good order of conscience
concerning such goods.

If a Clerke bee promoted to the tytle of his
patrimony, and after felleth his patrimony
and after falleth to pouertie, whether
shall he haue his tytle there-
in or not.

Cap.44.

In the said summe called Rosella, in the title
Clericus quattus, the 24. article it is asked, if
a Clerke be promoted to the tytle of his pa-
trimony, whether hee may alien it at his plea-
sure, a whether in that alienation the solemn-
tie needeth to be kept, that is to be kept in alien-
pations
nations of things of the church: and it is answered there, that it may not bee aliened no more than the goods of a Spiritual beneficce, if it be accepted for a title, and expressly assigned unto him, so that it should goe as into a thing of the church, except hee have after another beneficce whereof he may live. But if it be secretly assigned to his Eccle, some agree it may bee aliened: and in this case by the Lawes of the Realme, it may be lawfully aliened whether it be secretly or openly assigned to the Eccle, for the Ordinary ne yet the party himsell after the old custome of the Realme, have no authority to bind any inheritance by authority of the Spiritual law: and therefore the land after it is assigned and accepted to be his title, standeth in the selfe same case to be bought, sold, charged, or put in execution, as it did before. And therefore it is somewhat to be marreied that Ordinarys will admit such Land for a title, to the intent that hee that is promote should not fall into extreme povertie, or go openly a begging, without knowing how the common law will serve therein; for of mere right all inheritances within this Realme ought to be orderd by the Kinges laws, and inheritance cannot bee bound in this Realme but by law, or some other matter of record, or by seoffement or such other, or at least by a bargain that chaseth an bse. And oner that to assigne a state for terme of life to him that hath a fee simple before, is void in the Lawes of England without it be by such a matter that it worke by way of conclusion of estroppell, and in this case is no such
The 44. Chapter.

Such matter of conclusion: and therefore all that is done in such case in assigning of the said title is void. Also there is no interest that a man hath in any manner, Landes or Tenements for term of life, for term of years, or otherwise, but that he by the law of the Realme may put away his right therein if he will. And then when this man alieneth his Land generally, it were against the law of the Realme that any interest of such a Title should remaine in him against his owne sale: for there is no diversity, whether the assigning of the Title were open or secret, and so the Title is void to all intents. And in like wise if a house of Religion, or any other spiritual man that hath granted a Title after the custom vblade in such titles, sell all the lands and goods that they have, that sale in the laws of England is good as against the title, and the buyer shall never be put to answer to the title. Also some say, that upon the common titles that be made daily in such case, that if he fall to poverty that hath the title, he is without remedy: for they he so made that at the common Law there is no remedy for them, and if he take a suit in the Spiritual court, many men say that a Prohibition or a Præmunire lyeth. And therefore it were good for Ordinaries in such case to counsel with them that bee learned in the Law of the Realme to have such a forme devised for making of such titles, that if need be, would serve them that they bee made unto, or else let them be promoted without any title, and to trust in God, that if they serve him as they ought to doe, he will provide for them
The 44. Chapter: 142

to have sufficient for them to live upon. And beside these cases that I have remembered before, there bee many other cases put in the said sums for the well ordering of conscience, that as me thinketh are not to bee observed in this Realme, neither in Law nor conscience.

Do. Doest thou then thinke that there was default in them that drew the said summes, and put therein such cases and such solutions that as thou thinkest hurt conscience, rather than to give any light to it, specially as in this Realme & St. I thinke no default in them, but I thinke that they were right well and charitably occupied, to take so great paine and labors as they did therein, for the wealth of the people and clearing of their conscience: for they have thereby given a right great light in conscience to all Countries where the law Civil and the Law Cannon bee vied to temporal things. But as for the Lawes of this realme they knew them not, ne they were not bound to know them, and if they had knowne them, it would little have holpen them for the countries that they most specially made their treaties for. And in this country also they be right necessary and much profitable to all men, for such doubts as rise in conscience in divers other maners not concerning the law of the realme. And I maruell greatly that none of them that in this Realme are most bounden to doe that in them is to keepe the people in a right judgement, and in a clearenesse of conscience, have done no more in time pasted to have the Lawe of the Realme knowne than they have done, for
for though ignorance may sometimes excuse, yet the knowledge of the truth, and the true judgment is much better, & sometimes though ignorance excuseth in part, it excuseth not in all: and therefore me thinketh they did very will if they would see see callers on to have that point reformed as shortly as they could. And now because thou hast well satisfied my mind in many of these questions that I have made, I purpose for this time to make an end. Do, I pray thee yet show me orz that thou make an end more of these cases, that after thene opinion bee set in divers booke of learning of conscience, that as thou thinkest for lacke of knowledge of the Law of the Realme, doe rather blind conscience than give a light unto it: for if it be so, then surely, as thou hast said it would be reformed, fo I think verily the Lawes of the Realme in many cases must in this Realme bee observed as well in conscience, as in the judiciall Courts of the Realme. I will with good will shew to thee shortly some other questions, that bee made in the said sum, to give thee another occasion, to see therein the opinions of the said summes, and to see farther therupon how the opinions and the Lawes of the Realme doe agree together. And yet beside these questions that I intend to shew unto thee, there bee many other questions of the said summes, that had as great need to bee more plainly declared according to the Lawes of the Realme, as thole that I shall shew thee hereafter, orz as I have spoken of before: but to the cases that I shall speake of hereafter I will shew thee no thing
thing of my concept in them, but will leave it to other that will of charity take some further paine hereafter in that behalf.

Divers questions taken out of the Student of the summes, called Summa Rosella, and Summa Angelica, which hee thinketh necessarie to be looked vpon, and to bee scene how they stand and agree with the law of the Realme.

Cap. 45

The first question is this, whether a Cu-
stone may brake a law politicke. Summa
Rosella, titulo Consuetudo para 13.

The second is, if a man attainted or banished be restored by the Prince, whether shall that restitution stretch to the goods, Summa Rosella in the title, Damnatus in principio.

Item, if a man be outlawed of felony, abin-
red, or attainted of murder or felony, or he that is an Alcismus may be slain by strangers: and see like matter there, Summa Angel, in the ti-
tle Alcismus para 11.

This question is somewhat answered to, in a new addition, as appeareth before in the 14. Chapter.

Item, whether the master shall bee bound by
the act, or offence of his servant, or officer, Suma

Ang
The 45. Chapter.

Angel. in the title Dominus para. 4.

This question is answered to in an addition, as appeareth before the 45. Chapter.

Item, whether a Willeline may give away his goods. Summa Angelica, in the title Donatio prima, para. 9.

This question is answered to in an addition as appeareth before in the 43. Chap.

Item, whether an Abbot may give &c. Summa Angelica in the title Donatio 1. para. 10. & 30.

Item, whether a Woman couert may give away any goods. And it is unanswered. Summa Angelica, in the title Donatio 1. Parag. 11. that shee may not, without shee have goods beside her dowrie, but onely in alms.

Item, if a man do treason, whether his gift of goods after, before attainer, be good. Summa Angelica, in the title Donatio 1. para. 12. & it seemeth there may, and looke Summa Angelica, in the title Alienatio, para. 24.

Item, if a man willingly make a contract betweene two kinfolke, or other that may not lawfully marrie together, whether he hath forset his goods. Summa Ang. in the title donatio 1. para. 14.

Item, whether the Father may give to the son. Summa angel. in the title donatio prima par. 19. and Summa Rosella, in the title donatio 2. para. 42.

Item, whether a man may give aboue b. T. absque inquisitione. Summa ang. in the title donatio 1. para. 20.

Item, whether a gift that be avoided by an
Ingratitude, Summa Rosella, in the title Donatio 1. parag. 17. & 19. and there it is said, the gift is held by the law of nature, & like Summa Angelica, in the title Donatio prima, Paragraf 42 & 45.

Item, where any gift between the husband and the wife may be good, and it is said yea, when the husband giueth it, Causa remunerationis, Summa Rosella, in the title Donatio 1. para. 32.

Item, if a man make a will, & enter into religion, whether he may after revoke the will, and it is said, that friers within 29 may not, and other may. Summa Rosella, in the title Donatio 1. para. 31. in fine.

Item, if a man giue another a town with all the rights that he hath in the same, whether the patronage &c. and the tithe passe. Summa Rosella, in the title Ecclesia 1. para. 56.

Item, whether all that is bought with the money of the Church be the churches. Summa Rosella, in the title Ecclesia 1. para. 7.

Item, if a gift made to Monastery, may be avoided by that the giver hath children after the gift. Summa Rosella, in the title Donatio 1. para. 43.

Item, if a man buy a thing under the half price, whether he be bound by the Law to restore &c. Summa Rosella, in the title Emptio & venditio, para. 6.

Item, whether a common these, vel comunis depopulator agrorum may sibit, Summa Rosella, in the title Emunitas 2. in principio. Ec ha-
betur ibi in fine, qd licet leges excipiant pluries personas sum per ius canonicum legibus derogat et.

Item, whether a man shall take the Church for great enormituous offences that is not murder, nor felony. Summa Rosella in the title Emunitas 2. Parag. 3. 1 1.

Item, if a man take one in the high way, and draw him out, there beareth him, whether he shall have $ punishment that is ordained for the one strike one in the high way. Summa Rosella in the title Emunitas 2. Para. 6.

Item, whether hee that taketh the Church may after the offence be judged to death. Summa Rosella, in the title Emunitas 2. para. 8.

It is whether the Bishops palllums be latae. Summa Rosella, in the title Emunitas para. 24.

Item, whether the dignitie of the bishop, or Priesthood, or charge bondage Summa Rosella in the title Episcopus in principio.

Item, whether a clerke is bound to pay any impositions, or tailages, for his patrimomie otherwise. Summa Rosella in the title Excommunificatio 1. divisione oct. para. 4. & 5. & 6. & divisione nona, para. 1.

Item, if it were ordained by statute, that if a man sell a. he shall give to the king it. whether a clerke be bound to give it of he sell of his pembro. Summa Rosella, in the title Excommunificatio, 1. divisione nona, para. 2.

Item, if it bee ordained by statute that there shall not bee laid upon a dead person, but such a certaine cloth, or thus many tapers, or candles
delg; whether the statute be good, & it is left for a question. Summa Rosella, in the title Excommunica"rio "diuione 18, para.3, in fine.

Item, if a man make a lease of a mill for term of years, & it is agreed that the lessee shall grind the lessee rent free during the term, after & less for is made an earicoy a duke; & hath greater holthould than before, whether the lessee be bound there ac. Summa Rosella, in the title Familia para.5.

Item, if a master will not pay his servants wages, that hath servied him faithfully, whether that servant may take secretly as much goods of the masters as if he do, whether he be bound to restitution. Summa Rosella, in the title Familia para.6.

Item, things immovable of the church may not be given. Summa Rosella, in the title Feodum parag.1, And see there in principio what Feodum is.

Item, whether the sons bastards, or the sons lawfully begotten shall inherit together, Summa Rosella, in the title Filius para.1.

Item, whether father and mother may succeed to their bastards. Summa Rosella in the title Filius para.4.

Item, whether the father may leave any of his goods to his bastards, Summa Rosella in the title Filius para.5. And Summa Rosella, in the title Societas, para.13.

Item, whether the offence of the father shall hurt the son in tempo? all things. Summa Rosella, in the title Filius.

Item, if a man give all his lands and goods to his children, whether a bastard shall have any part
The 45. Chapter.

part, Summa Rosella, in the title aliis para. 23.

Item, to whom treasure found belongeth, Summa Rosella, in the title furcum para. 11.

Item, if a bare, or other wild beast that is so sore hurt, he may be taken, commeth into another man's ground, whether it be his that oweth the ground, or his that strike him, Summa Rosella, in the title furcum, para. 13.

Item, whether there be in a little thing as well as in a great thing, Summa Rosella, in the title furcum, para. 18.

Item, what part thefe shall have, Summa Rosella, in the title furcum, para. 22.

Item, that if goods of dead men goe to the heires, and of damned men, De terris Summa Rosella, in the title Hereditas, para. 7.

Item, whether a man shall be laid guilty of murder by commandement, counsel, or assent, Summa Rosella, in the title Homicidiu 2. per tum, & like matter is Homicidiu 4 in principio, and in divers other cases.

Item, a man maketh a private contract with a woman, a after hath a child by her, a after mateth another woman, and hath a child, the not knowing the first contract, which of the children shalbe his heire. Summa Rosella, in the title Illegitimus para. 4.

Item, whether the Pope may legitimate one to tempore all things, & to succeed, Summa Rosella, in the title Illegitimus para.

Item, if goods be found that were left of the owner as forsaken, who hath right to them, Summa Rosella, in the title Inuenza para. 2. And make Summa Rosella in the title furcum, para. 17.
And thus I make an end of these questions: for because thou desiredst me in the 31. Chapter, to shew thee somewhat, where ignorance excuseth in the Law of the realm, where not, I will answer somewhat to thy question, and so commit thee to God.


Cap. 46.

Ignorance in the Law (though it be invincible) doth not excuse as to the Law but in few cases: for every man is bound, at his peril, to take knowledge what the Law of the realm is, as well the Law made by Statute as the common Law, but ignorance of the deed, which may be called the ignorance of the truth of the deed, may excuse in many cases. D. I put case that a Statute penal be made, & it is enacted that the Statute shall be proclaimed by such a day in every shire, & it is not proclaimed before the day, & after the day a man offendeth against the Statute, shall be runne in the penalty. I think you, if there be no further words in the Statute to help him, that is to say, that if the proclamation be not made, & no man shall be bound by the Stat. & the cause is this, there is no Statute made in this realm, but by the assent of the Lords Spiritual & Temporal, and of all the Commons, that is to say, by the Knights of the shire, citizens, and burgesses that be chosen by assent of the Commons, which in the parliament represent the estate of the whole Commonwealth.
And every statute there made, is of as strong effect in the Law, as if all the commons were there present personally at the making thereof; and like as there needed no proclamation, if all were there present in their owne person; so the law presume there needed no proclamation, when it is made by their authontie, & the When it is enacted, that it shall be proclaimed: as that is but of the favours of the makers of the statute, & not of necessitie: and it cannot therefore be taken, that their intent was that it should bee doide if it were not proclaimed. Nevertheless some be of opinion, that if a man before the day appointed for the proclamation offend the statute, that he should not in that case be punished, for they say, that the intent of the makers of this statute shall be taken to be, that none should be punished before the day, which is a doubt to some other: But admit it be as they say, that he shall be excused, yet hee is not excused by the ignorance of the Law, but because the intent of the makers excuseth him. D. It is enacted in § 7 yeare of R.2. cap.6. that every Sheriff shall proclaim the statute of Winchester that times every yeare, in every market towne, to thinke the offenders shall not be excused by ignorance, & it saith by those words, that if no proclamation be made, that the offenders may be excused by ignorance. Whence some take the intent of that statute to be, that the people by that proclamation should have knowledge of the statute of Winchester, to the intent, that the forfeiture therein may be taken as well in conscience as in law, and some take the statute to be of
of such effect as thou speakest of, that is to say: that no forfeiture should grow upon the statute of Winchester against them if were ignorant, but proclamation were made according to the said statute of Richard. And if it be so taken, the statute of Winchester is of small effect against most part of the people, for certain it is that the said proclamation is not made: but admit it be as they say, then they that be ignorant be excused by said particular statute, specially made in that case, and not by the general rules of the law: and sometime in divers statutes Penally, they that be ignorant be excused by the selfe statute, as it is upon the statute of Richard the 2. the 13 yeare, the 2. statute, and the last Chap. where it is enacted, that if any person take a benefice by provision that he shalbe banished the realme & forfeit all his goods, and that if he bee in the realme, he avoid within 6. weekes after he hath accepted it, and that none shall receive him if is to banished after the said 6. weeks upon like forfeiture if he have knowledge: and so hee that hath no knowledge is excused by the especiall words of the statute. And in likewise he that offendeth against Mag. Cha. is not excommuniced but hee have knowledge that it is prohibited that hee both. For they bee only excommuniced by the sentence called Sentencia lata super carcas, that doe it willingly, or that doe it by ignorance, & correct not themselves within 25. dopes after they have warning. And sometime they that be ignorant of a statute bee excused from the penalty of the statute, because it shalbe taken that the intent of the makers of the statute,
The 46. Chapter.

Lutte was, that none should bee bound but they that have knowledge; but that any man shalbe discharged in the law by ignorance of the law only, so that he is ignorant. I know few cases except it might be applied to infants that bee in their infancy, & within peres of discretions, if ignorance of the law should excuse in the law, many offenders would pretend ignorance. Do.

Shall an infant that hath discretion, & know-eth good & evil, be punished by a penal statute that he is ignorant in? If the statute be, that for the offence hee should have corporall paine, I thinke hee shall be excusd and have no corporall paine: but I suppose that that is not for the ignorance, for though hee knew the statute, & willingly offended, yet I thinke hee shall have no corporall paine: As where hee plead Innocencie by decd that is found against him, or if hee plead a Record in Absic, and saileth of it at his day; but that is because the law presupposeth that it was not the intent of the makers of the Statute, that he should have that punishment; but if he be of peres of discretion to know good from evil, whether hee shall then be sett the penaltie of a penal statute it is more doubt, for it is commonly held, that if an infant had not bin excepted in the Statute of soverigndome, that the soverigndome should have bound him, so shall his cester, his keeping of a crose against the statute, if he be a gardin of a prison and suffer a prisoner escape, he shall pay the debt because the statutes bee general, & if hee should by the statutes be bond within age, the reason wil hee may by a statute penalize his goods, D.
If an Infant do a murder or felony at such
peares as he have discretion to know the law,
shall he not have the punishment of the law as
one of full ages. I think yes, but that is by an
old Maxime of the law foz eichewing of mur-
ders & felonies, as it is of a trepas: but these
cases run not by the ground of ignorance, but
with what acts Infants shall be punishable or
not punishable, for the tendernesse of their age,
though they be not ignorant. Do. We not pet
Knights & noblemen that are bound most pro-
perly to set their study to acts of chivalrye, for
defence of the realm, & husbandmen that must
vise village & husbandye for the sustenace of the
communalitye, so that may not by reason of their
labour put them in clues to know the Law, dis-
charged by ignorance of the law. No verily,
for such all were makers of the nature, the law
plicumeth that all have knowledge of that that
they make, as it is said before: and as they bee
bound at their peril to take knowledge of the
nature that they make, so be all them that come
after the. And as for knights and other nobles
of the Realme, me leemeth that they should bee
bound to take knowledge of the law as well as
any other within the realm, except them that
give themselves to, the study & exercise of the
law, & except spiritual judges; for in many cases
bee bound to take knowledge of the law of the
realm, as is laid before in Cap. 25. For though
they be bound to acts of Chivalrye, for the de-
fence of the Realme, yet they bee bound also to
the acts of Justice, that (it leemeth) moze the
other bee by reason of their great possessions and

Authority.
The 46. Chapter.

authoritie: and for the well ordering of the expants servants, & neighbors, that many times have need of their helpe, e also because they bee oft called to be of the Kings council, & to general counsels of the realm, where their counsel is right expedient & necessary for the common wealth: and therefore if the noblemen of this realm would see their children brought up in such manner, that they should have learning and knowledge, more than they have commonly used to have in time past, specially of the grounds & principles of the law of the realm wherein they be inherit (though they had not the high counting of the whole body of the law, but after such manner as M. Forresce in his boke that he entitileth the Boke de laudibus legi Anglice, advertiseth the Prince to have knowledge of the lawes of this realm) I suppose it would bee a great helpe hereafter to the ministration of Justice of this realm, a great suretie for himselfe, and a right great gladnesse to all the people: for certain it is, the more part of the people would more gladly heare of their rulers & governours intended to order them with wisdome and justice, than with power a great refinnes. But ignorance of the deepe and many times excuseth in the lawes of England, & I shall shortly touch some cases thereof to shew where it shal excuse, and where it shall not excuse, & then the reader may add to it after his pleasure, & as hee shall thinke to be convenient.

Certaine cases and grounds where ignorance of the deed excuseth in the lawes of England, and where not.
If a man buy a horse in open market of him that in right had no propriety to him, not knowing but that he hath right, he hath good title and right to the horse, and the ignorance shall excuse him. But if hee had bought him out of the open Market, or if hee had knowne that the seller had no right, the buying in open market had not excused him. Also if a man retain another mans servant not knowing that he is retained with him, the ignorance excuseth him both of the offence that was at the common law against the Man that prohibited such retaining of another mans servant, and also against the Statute 33. Ed. 3. Whereby it is prohibit upon paine of imprisonment, that none shall retain no servaunt that departeth within his term, without licence or reasonable cause: for it hath bin alway taken, that the intent of the makers of the said Statute was, that they that were ignorant of the first retaining, should not run in any penalty of the Statute. And the same Law is of him that retaineth one that is Ward to another, not knowing that he is his Ward and his homage be due, and the Tenant after that the homage is due maketh a Fesement, and after the Lord not knowing of the Fesement distraineth for the homage, in that case that ignorance shall excuse him of his damages in a Replevin though he cannot know for the homage: but if hee had knowne of the fesement, hee should have declared damages for the wrongfull taking. Also if a man be bound in an Obligation that hee hath repaire
repair the houses of him that he is bound to by such a certain time, as oft as need shall require, after the houses have need to be repaired, but he that is bound knoweth it not, that ignorance shall not excuse him, for he hath bound himself to it, and so he must take knowledge at his peril: But if the condition had bin that he should repair such houses as he to whom he was bound should assigneth certain houses to be repaired, but he that is bond hath no knowledge of that assignment, that ignorance shall excuse him in the law, for he hath not bound himself to no reparation in certain, but to such as the party will assigneth, if he assigne none, he is bound to none: Therefore if he that should make the assignment is privity to the deed, he is bound to give notice of his own assignment: but if the assignment had bin appointed to a stranger, then the obligor must have taken knowledge of the assignment at his peril. Also if a man buy Lands whereunto another hath title which the buyer knoweth not, that ignorance excuses him not in the law no more than it doth of goods. Also if a servant come with his masters boyle to a Towne that by custome may attach goods for debt, 3 upon a plaint against the servant, an officer of the-towne by information of the partie attacheth the Master's boyle, thinking that it were the servant's boyle, that ignorance excuses him not: for when a man will do an act as to enter into Land, seize goods, take a distress, or such other, he must by the law at his peril see that that he doth be lawfully done, as in this
the case before rehearsed. And in like wise if a Sherif be by a Reprieve, or other beasts, that were distrained, though the party that dy-
strayed new him they were the same beasts, yet an action of trespass speth against him, and ignorance shall not excuse him: soz he shall be compelled by the law, as all officers commonly be, to execute the Kings writ at his peril, according to the tenor of it, and to see that the act that he doth be law fully done. But otherwise it is after some men, if upon a Summons in a Precipe quod reddar, the Sherif by information of the Demandant, summoneth the tenant in another mans Lands, thinking it soz the tenants land, there they lap he shall be excused: soz in that case he doth not seize the land, nor take possession in the land, but only doth summon the tenant upon the land, if the writ commandeth him not that he shall summon the tenant upon his owne land, but generally that he shall sum-
mon him, & knoweth not in what Land, I then by an old Writ time in the law, it is taken, that he shall summon him upon the land in demand: and therefore though he mistake the land and be ignorant of it, yet if the Demandant informe him that that is the Land that he demandeth, that is the way to the Sherif as to his entry for the summoning as they lap, though it be not the tenants. And here I make an end of these questions for this time. Do. I say, the pet 03 we depart take a little more pains in my advice. S what is that? That thou wouldst the so-
me thy mind in divers cases of the Law of the Cen, which (as me [ameth]) had not so celerly
with
The 48. Chapter.

With conscience as they should doe. And therefor I would gladly heare thy conceit therein, how they may stand with conscience. But the cases, 8 I shall with good will say as I thinke to them.

The first question of the Doctor, how the law of England may be said reasonable, that prohbite them that be arraigned upon an Indictment of felony or murder, to have counsell.

Cap. 48.

Me thinketh that the law in that point is horte good and indifferent, taking the law therein as it is. D. Why, what is the law in this point? S. The law is as thou sayst, that hee shall have no counsell: but then the Law is farther, that in all things that pertain to the order of pleading, the Judges shall to instruct him and order him, that he shall runne into no jeoperde by his mispleading: As if he wil pleade that he never knew the man that was finde, or that he had never a peny worth of 6 goods that is supposed that he should sparse, in these cases the Judges are bound in conscience to informe him that he must take the general issue, and plead that hee is not guilitie: for though they be set to bee indifferent betwene the King and the party as to the party and to the principal matter, as they bee in all other matters, yet they bee in this case to see that the partie take no hurt in soyme of pleading in such maters,
ters, as he that shew to be the truth of the matter, and that is a great favour of the law; so in appeals, though the Justices of law do will most commonly help forth the partie, and sometime his Counsel also in the forme of pleading, as they do also many times in common pieces, yet they ought in those cases if they would bud the partie, and his Counsel please at their peril. But they may not doe so with conscience upon indictments as me same: for it were a great unreasonable act in the Law, if it would prohit him that standeth in jeopardy of his life, that he should have no counsel; and then to drive him to please after the strait rules, and formallities of the law that he knoweth not. Do. But what if he be knowne for a common offender, or that the Judges knowe by examination, or by an evident presumption that hee is guilty, hee asketh Sanctuary, or pleadeth mensolmer, or hath some Record to please, that hee cannot please after the forme, May not the Judges in such cases bid him plead at his peril? Sr. I suppose they may not, for though hee be a common offender, or that he be guilty, yet hee ought to have that the Law giueth him, and that hee that have the effect of his pieces, and of his matters entered after the forme of the Law: and also sometime a man by examination, and by witnesse may appeare guiltie that is not: and in like wise there may bee a vehement suspicion that he is guiltie, and yet he is not guiltie, and therefore for such suspicion, or vehement presumptions me thinketh a man may not with conscience bee put from that hee ought to have by
The 4.8. Chapter.

by the law, yet although the Judges knew of their own knowledge: but if it were in appeal, I suppose that the Judges might doe therein as they should think best to be done in conscience: for there is no Law that bindeth them to instruct him (but as they doe commonly to the parties of fault in all other cases) but they may if they will bid them plead at their peril by advice of their counsel: and if the appellee opposes, and have no counsel, the court must assigne him counsel if hee alse it, as they must doe in all other places, that mee thinketh they are bound to doe in conscience, though the appellee were never so great an offender, as though the Judges knew never so certainly that hee were guilty, for the law bindeth them to doe it. And so mee thinketh that there is great diversity becames in indictment as an appeale. And the reason why the Law prohibiteth not counsel in appeale as it doth in an indictment, I suppose is this: There is no appeale brought, but that of common presumption the appellant hath great malice against the appellee: as when the appeale is brought by the wife of the death of her husband, or by the sonne of the death of his father: or that an appeale of robbery is brought for stealing of goods. And therefore if the Judges should in those cases, the wise the let them to instruct the appellees, the appellants would grutch & thinke them partial, and therefore as well for the indemnity of the court, as of the appellee in case that hee bee not guilty, the Law suffereth the appellee to have counsel: but when that a man is indicted at the Kings
Kings sake, the King intendeth nothing but the peace with favour, that is to the rest and quietness of his faithful subjects, & to put away misdoers among them charitably; and therefore he will be contented that his Justices shall help forth the offenders according to the truth, as far as reason and justice may suffer. And as the King will be contented therein, it is to presume that the Council will be contented, and so there is no danger thereby, neither to the Court nor to the partie. And as I suppose for this reason it began that they should have no counsel upon indictmentes, & that hath so long continued that it is now grown into a custome, & into a maxim of the law, they shall none have Do. But if the Judges know of their owne knowledge that the indictment is guilty, and then he pleads thenceforth, or a Record that he was arraigned, and acquitted of the same murthers, or felonies, and the Judges of their owne knowledge know that the plea is untrue, may they not then bid him plead at his peril? S. I think yes, but if they know of their own knowledge that he were guilty of the murder or felony, but that the plea was untrue they knew not, but by conjecture or information, I thinke they might not then bid him plead at his peril.

Q. The second question of the Doctor, whether warranty of the younger brother, that is taken as heire, because it is not knowne but that the eldest brother is dead, be in conscience a bar vnto the eldest brother, as it is in the law.
A

Man seised of lands in fee hath issue two sons, the eldest son goeth beyond the sea, and because a common voice is that he is dead, the younger brother is taken for heire, the father dyeth, the younger brother entereth as heire, and alieneth the land with a Warrantie, a deed without any heire of his body, and after the elder brother commeth againe, and claimeth the land as heire to his father, whether shall he be barred by that Warrantie in conscience as he is in the law? It is a Maxime in the Law, that the eldest brother shall in that case be barred, and that Maxime is taken to bee of as strong effect in the Law, as if it were ordained by Statute to bee a barre. And it is as old a law that such a Warrantie shall bar the heire, as it is that the inheritance of the father shall onely descend to the eldest son. And such the Law los, why then should not conscience follow the Law, as well as it doth in that point, that the eldest son shall have the land. No, for there appeareth no reasonable cause whereupon the Maxime might have a lawful beginning: For what reason is it that the Warrantie of an ancestor that hath no right to land, should bar him that hath right? And if it were ordained by Statute, that one man should have another mans land, and no cause is expressed why he should have it, in that case though he might hold the land by force of that Statute, yet he could not hold it in conscience, without there

were
were a cause why he should have it, those cases hee not like as mee semeth to the forfeiture of goods by an Outlaw, for I will agree for this time, that that forfeiture standeth forth confidence because it is ordained for mini- 
stration of justice, but I cannot perceive any such cause here; and therefore me thinketh that this case is like to the Maritime, that was at the com-
mon Law of wrecke of the Sea, that is to say, if a mans goods had been wrecked upon the sea, that the goods should have been immediately 
s forfeited to the King. And it is holden by all Doctors that the Law is against confidence, expect in certain cases that were too long to 
hear it now. And it was ordained by the Statute of Westminster the 
that if a Dogge or Cat come alive to the land, that the owner, if he keep the goods within a yeere and a day to be his, shall have them, whereby the said Law of 
wreckes or the sea, is made more sufferable that it was before: and some thinketh this case that this warranty is no bar in confidence, though it be a barre in the law. 5. I pray that keep that case of wrecke of the sea in thy remembrance, and put it henceafter as one of thy questions, and thereupon the to mee thy further minde therein, and I shall with good will shew thee my mind: and as to this case that we be in now, me thinketh, the Maritime whereby the warranty shalbe a barre, is good and reasonable, for it semeth not against reason that a man shal be bound, as to temporal things, by the act of his ancestor to whom hee is here: for like as by the law it is ordained, that hee shall have aduantage by the
the same aunceltoz, and have all his landes by
discent if the have any right, so it lemeth that
it is not unreasonably, though the Law soz the
prinicip of blood that is betwone them suffer
him to have a disbaungage by the same aunc-
eltoz: but if the Maxime were, that if any of
his aunceltoz, though hee were not heire to
him, made such a warrantie, that it should be a
bar, I thinkke that Maxime were against con-
sciencie, soz in that case there were no ground,
noz consideration to proue how the said Max-
ime should have a lawfull beginning, Wherefore
it were to bee taken as a Maxime against the
law of reason: but me thinketh it is otherwise
in this case, for the reason that I have made
disposal. 1. If the father bind him and his heires
to the payment of a debt and dye, in that case
the sonne shall not bee bound to pay the debt,
but if he have asettes by discent from his father.
And so I would agree, that if this man have
asettes by discent from the aunceltoz that made
the warrantie, that he should have bin barred:
but else me thinketh it should stand hardly with
consciencie that it should be a barre. etu. In that
case of the obligation, the Law is as thou shalt,
and the case is, soz that the Maxime of the
law in that case is none other, but that hee shall
bee charged if hee have asettes by discent: but if
the Maxime had beene generall, that the heire
should bee bound in that case without any as-
ettes, or if it were ordained by Statute, that it
should bee so, I thinkes that both the Maximz
and the Statute should well stand with consci-
ence. And like law is where a man is vouched as
as before, he may enter as hee that hath nothing by descent, but where hee claimeth the land in his owne right, there the warranty of his ancestor shall bee a bar to him, though hee have no 80ets from the same ancestor, a though it bee said in Ezekiel Ca. 18. That the sonne shall not bee the wickednesse of the father, that is understood spiritually. But as to temporally goods the opinion of Doctors is, that the sonne sometime may bee the offence of his Father Do.

Now that I have heard thy mind in this case, I will take advice taken therein till a better leisure, and will now proceed to another question. I pray thee doe as thou list, and I shall with good will make answer thereunto as well as I can.

The question of the Doctor; If a man procure a collateral warranty, to exting a right that hee knoweth another man hath to land, whether it bee a barre in conscience as it is in the Law, or not.

Cap. 50.

A Man is dissised of certaine land, that dissised also selieth the land &c. Hee being knowing of the dissised, obtaineth a release with a warranty of an ancestor collateral to § dissised hee that knoweth also the right of the dissised, &c. ancestor collateral byeth, after whose death the warranty descendeth upon the dissised, whether the alienation in & case hold the land
The 30. Chapter.

in conscience as he may by the law.5. With the warrantee is disallowed upon him. Whereby he is barred in the law mee thinketh that hee shall also be barred in conscience, and that this case is like to the case in the next Ch. before wherein I have said that (as me thinketh) it is a bar in conscience. D. Though it might be taken for a bar in conscience in that case, pet me thinketh in this case it cannot: for in that case the younger brother entered as heere, knowing none other but that hee was heere of right, an after when he sold the land, the buyer knew not but that hee that sold it had good right to sell it, and so he was ignorant of the title of the eldest brother, & that ignorance came by the default and absence of himsel, that was the eldest brother. But in this case as well the buyer, as he made the collateral warrantee, knew the right of the diseas, and did that they could to extinct the right, and so they did as they would not should have been done to them: & so it seemeth hee that hath the land may not with conscience keep it. S. Though it be as thou saist that all they offended in obtaining of the land collateral warrantee, pet such offence is not to be considered in the law, but it be in diverse special cases: for if such alleging should be accepted in the law, releases, and other writings should bee of small effect, and upon euery light lawsuit, all writings might come in trial, whether they were made with conscience or not. Therefore to avoid that inconvenience, the law will drive the partie to answer onely whether it bee his deede or not, and not whether the deede were made
made with conscience or against conscience, and
though the party may be at a mischief thereof,
by, yet the law will rather suffer the mischief
than the said inconvenience. And like law is if
a woman Courte to dreed of her husband by
compulsion of him leuite a Fine, yet the wo-
man after her husband's death, shall not be ad-
mitted to do the matter in suspending of the
Fine, for the inconvenience that might follow
thereupon. And after the opinion of many men,
there is no remedie in these cases in the Chan-
cerie: for they say that where the common law
in cases concerning inheritance putreth the
partie from any aterment for escheving of an
inconvenience that might follow of it among
the people, that if the same inconvenience should
follow in the Chancerie if the same matter
should be pleased there, that no Subpena should
lie in such cases, as it is in the cases before re-
hearsed: for as much vexation, delay, costs and
expenses might grow to the party if he should
be put to answer were to such aterments in the
Chancery, as if he were put to answer to them
at the common law; and therefore they think
that no Subpena lyeth in the said cases as in oth-
er like unto the. Nevertheless I do not take
it that their opinion is that hee that bought the
land in this case may with good conscience hold
the Land, because he shall not bee compelled by
no law to restore it, but that he is in conscience
and by the law of reason bound to restore it of
otherwise to recompence the party, so as hee
shall be contented, and I suppose verily it is
so: it he will kepe his soule out of peril and.
danger. And after some men to these cases may be resembled the case of a line with nonclaimant that is remembred before in the 14.Chap of this booke, where a man knowing another to have right to certaine land, causeth a line to be levied thereof with proclamation, s the other thereafter per se to passe without claim, in that case he hath no remedie neither by common Law, nor by Subpena, that yet he that levied the line, is bound to restore the land in conscience. And me thinketh I could right well agree that it should be so in this case, and that specially because the party himselfe kneweth perfectly that the said collateral warrantie was obtained by conin against conscience.

The fourth question of the Doctor is of the wrecke of the Sea.

Cap.51.

I Pray thez let me now heare thy mind how the law of England concerning goods that be wrecked upon the sea may stand with conscience, for I am in great doubt of it. S. I pray thee let the first heare thine opinion what thou thinkest therein. D. The Statute of West the s. that speake of wreckes is, that if any man, dog or cat, come alonge into the land out of the Ship or Varge, that it shal not be judged for wrecke, so that if the party to whom the goods belong come within a perce and a day and prove them to be his, that he shal have the or elle that they shall remaine to the king. And me thinketh that
that the said naturce standeth not with consci-
ence, for there is no lawfull cause why the part-
tee ought to forfeit his goods, neithe the King of
Lords ought to have them, for there is no cause of
forfeiture in the partie, but rather a cause of
sorrow & heavines : And so the law seemeth to
add sorrow for sorrow : And therefor doctores
hold commonly, that he that hath such goods is
bound to restitution, and that no custome may
help, for they say it is against the commandement
of God, Leu. 19. Where it is commanded, that a
man should love his neighbour as himselfe, and
that they say he doth not, that taketh away his
neighbours goods : but they agree that if any
man have cost and labouer for the saving of such
goods wrecked, specially for such goods as
would perish if they lay still in the water, as
Sugar, Paper, Salt, Wcals, and such other,
that hee ought to be allowed for his costs & lab-
bour, but he must restore the goods, except hee
could not save them without putting his life in
jeopardie for them, and then if he put his life in
such jeopardy, if the owner by common presumption
had had no way to have saved them, then
it is most commonly holde and that hee may kepe
the goods in conscience : but of other goods that
would not so lightly perish, but that the owner
might of common presumption save them himselfe, 97
that might be saved without any peril
of life, the takers of them be bound to restitution
on the owner, whether he come within the
peace or after the peace:

And me thinketh this case is somewhat like
to a case that I shall put : if there were a Law
The 51. Chapter.

A to a custome in this realm, or if it were ordi-
ned by statute, that if any alien came through
the realm in pilgrimage, and dyed, that all his
goods should be forfeit, that Law should bee a-
gainst conscience; for there is no cause rea-
sonable why the said goods should be forfeit: And no more may thinketh there is of Wrecke,
S. There be two cases where a man shall lose
his goods, no default in him; as where beasts
are away from a man and they be taken by
and proclaimed, and the owner hath not heard
of them within the peace and the day, though
hee made sufficient diligence to have heard of
them, yet the goods were forfeited and no default
in him: so in it is where a man killeth another
With the sword of J at Stile, the sword shall
be forfeit as a Deed and, yet no default is in
the owner: and so thinketh it may be in this
case, and that such the common law, before the
said statute, was, that the goods Wrecked upon
the sea, shall be forfeit to the King, that they bee
also forfeit now after the statute, except they
be saved by following the statute, for the Law
must needs reduce the propriety of all goods to
some man, and when the goods bee Wrecked, it
seemeth the propriety is in no man: but admit
that the propriety remaine still in the owner,
then if the owner perdease would never cleame,
then it should not bee knowne who ought to
take them: and so might they be destroied, and
no profit come of them: Wherefore I thinketh it
reasonable, that the Law shall appoint who
ought to have them, and that hath the Law ap-
pointed to the King as Soveraigne and head
over
over the people. Do. In the cases that thou hast put before of the strag and drodand, there bee considerations why they be foresay, but it is not so here: and mee thinketh that in this case, it were not unreasonable that the Law would suffer any man that would take them, to take and have them to the use of the owner, saving his reasonable expences, and this mee thinketh were more reasonable Law, than to pull property out of the owner without cause. But if a man in the sea cast his goods out of the ship, as foresay, there Doctors hold that every man may take them lawfully that will: But otherwise it is (as they say) if he throw them out for feare that they should overcharge the ship.

S. There is no such Law in this Realm of goods forsaken: For though a man weie the possession of his goods, and faith he foresayeth them, yet by the Law of the Realm the property remained till in him, and hee may seize them after when he will: And if any man in the mean time put the goodses in safeguard to the use of the owner, I thinke hee both lawfully and that he shall be allowed for his reasonable expences in that behalfe, as he shall be of goods found, but he shall have no property in them, no more than in goods found. And I would agree, that if a man prescribe, that if he find any goods within his manor, that hee should have them as his owne, that that prescription were bonde: for there is no consideration how the prescription might have a lawfull beginning, but in this case me thinketh there is. D. wha is that? It is this. The King of the old cus-
The 52. Chapter.

Some of the realm, as the Lord of the narrow sea is bound as it is said to lower the Sea of the Pirates & petit robbers of the sea. And so it is read of the noble King Saint Edgar, that he would twice in the year lower the sea of such pirates: but I mean not thereby that the king is bound to conduct his Merchants upon the sea against all outward enemies, but that he is bound only to put away such Pirates and petit robbers. And because that cannot be done without great charge, it is not unreasonable if he have such goods as he wrecked upon the sea toward the charge. For, on that reason I will take a respite till another time.

The first question of the Doctor, whether it stand with conscience to prohibit a lurry of meat and drinke till they be agreed.

Cap. 52.

If one of the射 men of an enquest know the deep truth of his owne knowledge, and instructeth his fellows with thereof, & they will in no wise give credence to him, & thereupon because meat & drinke is prohibited them, he is judged to that point, that either he must assent to them and give their verdict against his owne knowledge, and against his owne conscience. Or else to lacke of meat: how may the law then stand with conscience that will drinke an innocent  in that extremity, or be either forsworne, or to be famished & die for want of meat. So I take not the law of the realme to be, that the Jurie after they
they be swozne may not eat noe drinke till they be agreed of the verdict: but truth it is there is a Warime, and an old custome in the law, that they shal not eat noz drinke after they be swozne till they have given their verdict. Without the assent & license of the Justices: as that is opzcdined by the law for eschewing of divers inconveniences that might follow thereupon, and that specially if they should eat or drinke at the costs of the parties, and therefore if they doe contrarie, it may be laid in an arrest of the judgment: But with the assent of the Justices they may both eat and drinke: As if any of the Iuors fall sicke before they bee agreed of their verdict so soze that hee may not commune of the verdict, then by the assent of the Justices hee may have meat & drinke, and also such other things as be necessary for him and his fellows also at their owne costs, or at the indifferent costs of the parties if they so agree, or by the assent of the Justices, may both eat and drinke: and therefore if the case happen that thou now speakes of, and that the Jurie can in no wise agree in their verdict, and that appeareth to the Justices by examination, the Justices may in that case suffer them to have both meat and drinke for a time to see whether they will agree, and if they will in no wise agree, I think that the Justices may set such order in the matter, as shall seeme to them by their discretion to stand with reason and conscience, by awarding of a new Enquest, or by letting spee upon them that they shall find in default, or other wise as they shall thinke best by their discretion, like
The 53. Chapter.

as they may doe if one of the Jurie dye before verdict, or any other like casualties fall in that behalf. But what the Justices ought to doe in this case that thou hast put in their discretion, I will not treat of at this time.

q The 6. question of the Doctor, whether the colors that be given at the common Law in Assizes, actions of trespass, & divers other actions, stand with conscience, because they be most commonly feined, and be not true.

Cap. 53.

I pray thee let me heare thy mind to what intent such colors bee given, and why they bee commonly untrue, how they may stand with conscience? S. The cause why such colors bee given is this: there is a Marime and a gown of the Law of England, that if the defendant or tenant in any action plead a pire that amounteth to the general issue, that he shalbe compelled to the general issue, and if he will not, he shalbe condemned to lacke of answer, and the general issue in Assizes, that he that is named the dispense hath done no wrong, no disservice.

And in a writ of Enric in the nature of Assize the general issue is, that he dispensed him not. And in an action of Trespass that he is not guilty, as in every action hath his general issue assigned by the Law, and the Tenant must of necessity either take the general issue, or plead some plea in abatement of the suit, to the jurisdiction, to the partie, or else some barre or some matter by way of conclusion. And therefore if
The 53. Chapter.

At S. in sect H. Hart of land, and a stranger bringeth an assise against the said H. Hart, for the land, whose title he knoweth not. In this case if hee should bee compelled to plead to the point of the assise, that is to lay, that hee hath done no wrong ne no delitation, the matter should be put in the months of 12. lay men, which bee not learned in the law, and therefore better it is that the law bee so ordered, that it be put in the determination of the Judges, than of lay men. And if the said H. Hart in the case before rehearsed, would plead in barre of the assise that Jo at Stile was seised, and enfeoffed him, by force whereof he entered and asked judgment, if that Assise should lye against him, that plea were not good, for it amounteth but to the general issue: and therefore he shall be compelled to take the general issue, or els the Assise shall be awarded against him for lack of answer. And therefore to the intent the matter may be showed and pleaded before the Judges, rather than before the Jurie, the tenants be to give the plaintiffe a colour, that is to say, a colour of action whereby it shall appeare that it were hard full to the tenant to put that matter that he pleaded to the judgement of 12. men: the most common colour that is vied in such case is this, when he hath pleaded that such a man enfeoffed him, as before appeareth, it is vied that he shall plead farther, a lay that the plaintiffe claiming by a colour of a deed of seoffement made by the said seoffor, before the seoffement made to him where no right passad by the deed, entered, upon whom he entered and asked Judgement of the
The 53. Chapter.

the Affile iye against him. In this case because it appeareth to bee a doubt to unlearned men, whether the land passe by the deed without libertie or not, therefore the law suffereth the tenant to have that special matter to bring the matter to the determination of the Judges. And in such case the Judges may not put the tenant from the plea, for they knew not as Judges, but that it is true, so if any default be it is in the tenant and not in the Court. And though the truth bee, that there were no such deed of seoffement made to the plaintiff as the tenant pleaded, yet me thinketh there is no default in the tenant, for he doth it to a good intent as before appeareth. D. If the tenant know that the seoff is made no such deed of seoffement to the plaintiff, then there is a default in the tenant to plead it: for he wittingly saith against the truth, and it is holden by all doctors that ever lie is an offence more of it self, for if it be of malice, and to the hurt of his neighbour, then it is called Mendatium perniciosum, and that is deadly sinne: and if it bee in sport, and to the hurt of no man, not of custom vise, ne of pleasure that he hath in lying, then it is ventall sin, and it is called in latin, mendatium iocosisum: and if it be to the profit of his neighbour and to the hurt of no man, then it is also ventall sin, and it is called in latin, mendatium officiosum: and though it bee the least of those three, yet it is a ventall sin and would bee escheewed. So there was in the midwifes of AEgypt iye when they had refereed the male children of the Hebrewes, saying to the king Pharao, that they
the Hebrews had women that were cunning in the same craft, which of they came had res
served the children alive, where in deed they themselves of pitie and of dread of God restored them, yet Saint Hierome expounded the text following, which faith, that our Lord therefore gave them houses, that is to bee understood, that hee gave them spiritual houses, and that they had therefore eternall reward: and if they sinned by that ype, although it were but venial, yet I cannot see how they should have therefore eternall reward. And also if a man intending to slay another, alse Nine where that man is, is it not better for me to ype, and say, I cannot tell where he is, though I know it, than to say where he is, where- upon murder should follow: Dox. The deede that the Midwives of Egypte did in saving the children, was meritorious, and deserved reward eternall (if they believed in God) & did good deedes believe, as it is to suppose they did, when they for the love of God, refused the death of the Innocents: and then though they made a ype after, Which was but venial sinne, that could not take from them their reward, for a venial sinne both not utterly extint char- itie, but lettech the sernour thereof: and there
fore it may well stand with the wordes of Saint Hierome, that they had for their good deed eternall houses, and yet the ype that they made to be a venial sinne: but neverthelye, if such a ype that is of it selfe but venial, bee affirmed with an oth, it is alway mortal, if he knew it be false that he sweareth. And as to the other
The 53. Chapter.

question, it is not like to this question that was 


have in hand as me seemeth: so, sometime a man 


foe esching of the greater euij may doe a 


lesse euij, and the the lesse is no offence in him, 


and so it is in the case that thou hast put, wher- 


in because it is lesse offence to say, hee wotsteth 


not where he is, though he know where he is, 


than it is to say where he is, whereupon 


murther should follow, it is therefoire no sinne 


to say hee wotsteth not where hee is: for euery 


man is bound to love his neighbour, and if hee 


shew in this case where hee is, knowing his 


death should follow thereupon, it seemeth that 


hee issued him not, ne that hee did not to him as 


he would be done to: But in the case that wee 


be in here, there is no such sinne eschewed: For 


though the party pleadeth the general issue; 


the Jury might find the truth in euery thing, 


and therefore in that hee saith that the plaintiff 


claiming in by the colour of a deed of lessement, 


were nought passeth, entred sa. knowing that 


there was no such lessement, it was a sas in 


him and a venial sinne, as mee thinketh. And 


euery man is bound to suffer a deadly sinne 


in his neighbour, rather than a venial sinne in 


himselfe.

Sr. Though the Jury byds a general issue, may 


find the truth as thou sayst: it, yet it is much 


more dangerous to the Jury to inquiere of many 


points, than to inquiere onely of one point. And 


so as much as our Lord hath giue a command- 


ment to euery man bys to his neighbour: there-


foze euery man is bound to lose as much as in 


him is, by him no occasion of offence come to 


his
his neighbour. And for the same cause, the law hath ordained divers maxims & principles, whereby issues in the King's court may be joined upon one point in certain as nigh as may be, and not generally, least offence might follow thereupon against God, a hurt also unto the Jury, wherefore it seemeth that he loueth not his neighbour as himselfe, ne that he doth not as he would be done to, that offereth such danger to his neighbour, where he may well and conveniently keep it from him, if he will follow the order of the law, & it seemeth that he putteth himselfe wilfully in jeopardy that both it, and it is written Eccles. 3. 

Quam amar periculum, in illo peredebit, that is to say, he that loueth peril, shall perish in it, & he putteth his neighbour in peril to offend, putteth himselfe in the same, and so should he doe mee seemeth that would wilfully take the general issue, where he might conveniently have the speciall matter: and furthermore it is no offence in princes and rulers to suffer contracts, and buying and selling in Markets and Faires, though both perturie and deceipt will follow thereupon, because such contracts be necessarie for the common wealtthe: so it seemeth likewise, that there is no default in the party that pleaseth such a speciall matter to suopde from his neighbour the danger of perturie, yet in the court though they induce him to it, as they doe sometime for the intent before rehearled. And in likewise some will say, that if rulers of cities & communities, sometime for the punishment of felons, murtherters, & such other offenders will (ts the intent they would have them to come
The 54. Chapter.

The truth) say to them that be suspected that they be informed of such certaine defaults, or misdemeanours in the offenders, or that they doe to the intent to have them to confess the truth, that though they were not so informed, that yet it is no offence to say they were so informed, because they do it for the common wealth: for if offenders were suffered to go unpunished, the common wealth would eternally decay and utterly perish.

D. I will take advisement upon thy reason in this matter till another season, and I will now ask thee another question somewhat like unto this, I pray thee let me hear thy mind therein. Sr. Let me hear thy question, and I shall with good will say as I thinke therein.

The 7. question of the Doctor concerning the pleading in Assize, whereby the tenants use sometime to plead in such manner that they shall confess no Ouster.

Cap. 54.

IT is commonly said as I have heard say that when the tenant in Assize pleading that a stranger was seized and enclosed him, and giveth the plaintiff a colour in such manner as before appeareth in the xviith Chapter, that the tenant many times when he hath pleaded thus, and the plaintiff claiming by a colour of a deed of seoffement made by the said stranger, where nought passed by the devise, entred, and
and that then they be to say further upon whom A.B. entered, upon whom the tenant entered, where in deed the said A.B. never entered, he happily there was never no such man: How can this pleading be excited of an horn man and what reasonable cause can be: Why such a pleading should bee suffered against the truth? St. The cause why that manner of pleading is suffered, is this: If the tenant by his pleading confessed an immediate entry upon the plaintiff, or an immediate putting out of the plaintiff, which in French is called an oubter, the if the title were after found for the plaintiff, the tenant by his confession were attainted of the stealing. And because it may bee, that though the plaintiff have good title to the Land, that yet the tenant is no delizio: Therefore the tenante be many times to plead in such manner as thou hast said before, to save themselves from confessing of an oubter, a is if there be any default, it is not in the Court, ne in the Law, for they know not the truth therein till it be tried: and wee thinketh also that there is in this case right little default of none in the tenant nor in his counsel, specially if the counsel know that the tenant is no delizio. But as to that point I pray thou that thou hast taken a respit to bee advised, or that thou shew thy full mind in the question of a color given in Allise, whereof mention is made in the said 48. Chapter: that I likewise may have a like respit, in this case till another time, to bee advised, and then I shall with good will shew that my full mind therein.
D I am content it be as thou saidst, but I pray thee that I may yet add another question to the 2 questions before rehearsed of the colours in a mist, &c. feele thy mind therein, because that soundeth much to the same effect that the other Doe (that is to say) to proue that there bee divers things suffered in the law to be pleaded & bee against the truth; & I pray thee let me hereafter know thy mind in all these questions, & thou shalt then with a good will know mine.

S. I pray thee show me the case that thou speakest of. D. If a man steale a houle secretly in the night, it is said that thereupon he shall be indicted as the kings suit, and it is said that in that indictment it shall be supposed that he such a day, and place with force and armes (that is to say) with stoues, swords, and knives, &c. feloniously stole the houle against the kings peace, & that same must be kept in every indictment, though the felon had neither sword nor other weapon with him, but that he came secretly without weapon. How can it therefore be excused, but that therein is an untruth? It is not alleged in the indictment by matter in deed that he had such weapon, for the forme of an indictment is this.

Inquiratur. 

P dino Regi, si A. rati die & Ani a-pud talè locum vi & armis, videlicet gladijs &c. talem equum talis hominis cepit &c.

And then if the twelve men be only charged with the effect of the bill, that is to say, whether he be guilte of the felonie or not, and whether he be guilte under such manner and forme as the bill specificith or not: and so when they
they say billa vera, they say true as they take the effect of the bill to be. And therefore if there were false Latin in the bill of indictment, & the Jurie faith billa vera, peet their verdict is true: for their verdict stretcheth not to the truth or falsedood of the Latin, but to the seidente, ne to the form of the words, but to the effect of the matter, & that is to inquire whether there were any such felony done by the person or not: and though the bill varie from the day, from & yere, and also from the place where the seidente was done in, so it varie not from the shire that the seidente was done in, and the Jury faith billa vera, they have gave a true verdict, for they are bound by their oath to give their verdict according to the effect of the bill, so not according to the form of the bill. And so is he makes a bow bound likewise to that that by the Law is the effect of his now, and not only to the words of his now. And if a man now never to eat white meat, yet in time of extreme necessity, he may eat white meat, rather than dye, & not break his now, though he affirmed it with an oath: for by the effect of his now, extreme necessity was excpected, though it were not expressly perceived in the words of the now: so likewise though the words of the Bill bee to inquire whether such a man such a day and place did such a seidente, yet the effect of the bill is to inquire whether he did the seidente within the shire or no: & therefore the Justices before Whome such Indictments bee taken, most commonly inforome the Jurie that they are bound to regard the effect of the bill, & not the soyme.

And
And therefore there is no untruth in this case neither in him that made the bill, nor yet in the Jurie, as me seesth. But if the partie that owed the horse bring an action of trespass, and declareth that the defendant took the horse with force and arms, where he took him without force and arms; how may the plaintiff there be excused of an untruth? And if the plaintiff surmise an untruth, what is that to the Court, or to the law, for they must believe the plaintiff, till that that he saith be denied by the defendant. And yet as this case is, there is no untruth in the plaintiff, to say he took the horse with force and arms, though he came never so secretly, without weapon, for every trespass is in the law done with force and arms, so that if he be attainted and found guilty of the trespass, he is attainted of the force and arms: And with the law shudgethe every trespass to be done with force, therefore the plaintiff saith truly that he took him with force, as the law meaneth to be force. For though he took the horse as a felon, yet upon the felonious taking, the owner may take an action of trespass if he will, for every felonie is a trespass and more. And so I have shewed thee some part of my minde to prove that in those cases there is no untruth, neither in the parties, neither in the Jurie, nor in the Law. Nevertheless, at a better leisure I will shew thee my mind more fully then with good will as thou hast promised mee to doe in the case of colours of the Allise, and of the outer, that he before rehearsed.
The question of the Doctor, whether the Statute of xl.v. of Edward the third of Silua cedua stand with conscience.

Cap. 55.

In the 45. yere of the raigne of Ed. I. It was enacted, that a prohibition should lie where a man is impleaded in the court Christian for Dismes of wood of the age of xx. yere 0z above, by the name of Silua cedua; how may that Statute stand with conscience that is so directly against the libertie of the Church, and that is made of such things as the parliament had no authoritie to make any law of. Sc. It appeareth in the said Statute, that it is enacted, that a Prohibition should lie in that case, as it had been to do before that time, and if the prohibition lay by a prescription before the Statute, why is not then the Statute good as a confirmation of that prescription? D. If there were such a prescription before the Statute that prescription was void, for it prohibiteth the payment of Tythes of trees of the age of xx. yere 0z above, and paying of tithes is grounded as well upon the law of God, as upon the law of reason, and against those Lawes lieth no prescription as it is holden most commonly by all men. S. That there was such a prescription before the said Statute, & if a man before the said Statute had bin such in the spirituall court for tithes of wood of the age of xx. yere 0z above, the prohibition lay, as
appeareth in the said statute: and it cannot be thought that a statute that is made by authority of the whole realm, as well of the King and of the Lords spiritual and temporal, as of all the commons, will recite a thing against the truth: 

Furthermore I cannot see how it can be grounded by the law of God, or by the law of reason, that the part should be paid for rich and no other portion but that, but I think that it be grounded upon the law of reason that man should give a reasonable portion of his goods temporal to them that minister to him things spiritual, for every man is bound to honor God of his proper substance, and the giving of such portion hath not bin only bled among faithful people, but also among unfaithful as it appeareth Gene. 17. Where Coze was given to the priests in Egypt of common barns. And S. Paul in his Epistles affirmeth the same in many places, as in his first Epistle to the Cor cap. 9. Where he saith, He that worketh in the church, shall earn of that that belongeth to the Church: And in his Epistle to the Gal. cap. 6 he saith, Let him that is instructed in spiritual things, depart of his goods to him 5 instructed him; And S. Luke cap. 10 saith, That the workman is worthy to have his hire. All which sayings may right conveniently be taken and applied to this purpose, that spiritual men which minister to the people spiritual things, ought for their ministration to have a competent living of them that they minister unto. But that the tenth part should be assigned for such a portion and neither more nor lese, I cannot perceive that
that that should bee grounded by the Law of reason, nor immediately by the Law of God: soz before the Law written there was no certaine portion assigned for the spiritual Ministers, neither the one part, nor the other part, unto the time of Jacob: for it appeareth Gene.28, that Jacob anowed to pay Dimes which was among the Jewes for the one part, if our Lord prospered him in his journey, and if the one part had beene duece before that anowd, it had bin in vaine to have anowed it, and so it had if it had bin grounded by the Law of reason: and as to that is spoken in the Evangelists, and in the new Law of Tythes, it belongeth rather to the giving of tythes in the time of the old law, than of the new Law; as appeareth Mathew 23 and Luke 11. Where our Lord speake eth to the Pharisees, saying, Woe to our Pharisees of the mines, rue, and herbes, so forget the judgement and the charity of God, these it behoveth you to doe, and the other not to omit, that is to lay, it behoveth you to doe Justice, and charity of God, & not to omit paying of tythes though it be of small things, as of mints, rue, herbes, and such others. And also that the Pharisee saith Luke 17 I pay the tythes of all that I have, it is to bee referred to the old Law not to the time of the new Law: Therfore as I take it the paying of Tythes, 03 of a certaine portion to spiritual me for their spiritual ministration to the people hath bin grounded in divers maner: & first before the law written, a certaine portion sufficient for the spiritual Ministers was due to them by the Law of nature, which after
The 55. Chapter.

after them that bee learned in the Lawe of the
Realme is called the law of reason, & that pozi-
tion is due by all lawes. And in the law Writ-
ten, the Jews were bound to give the r. part
to their priests aswell by the said account of la-
cob, as by the law of God in the old Testament
called the Judicially. And in the new law the
paying of the r. part, is by a law that is made
by the Church. And the reason wherefoeze the
r. part was obtained by the church to be payed
for the tithe was this; There is no cause why
the people of the new law ought to pay lesse to
the ministers of the new law, that the people
of the old Testament gave to the ministers of
the old Testament: For the people of the new
Law be bound to greater things than the peo-
ples of the old Law were, as it appeareth Mar.
5. where it is said: Vnlesse your good workes
abound aboue the workes of the Scribes & the
Pharisses, ye may not enter into the Kingdome
of heaven. And the sacrifice of the old Law was
not so honourable as the sacrifice of the new
Law is; soz the sacrifice of the old Law was
only the figure, and the sacrifice of the new Law
is the thing that is figured, that was the sha-
dow, this is the truth. And therefore s Church
upon that reasonable consideration ordainez,
that the r. part should be paide for the sustenance
of the Ministers in the new Law, as it say
for the sustenance of the Ministers in the old
law, so that law with a cause may be increa-
sed or ministred to more position of to lesse as
shall be necessarie for them. Doct It appeareth
Gen,14. that Abrahame gave to Milchelesdeek
dishes,
dismea, and that is taken to be the e. part, and that was long before the law written, \\ntherefore it is to suppose, that her did that by the law of God. 3. It appeareth not by any Scripture 
that he did that by the commandement of God, nor by any revelation: And therefore it is rather 
to suppose that he did part of duty, and part of his own free will, for in that he gave the dis-
 ease as a reasonable portion for the sustenance of Welshisdech and his ministers, he did it by 
the commandement of the Law of reason, as beside appeareth, but that he gave the c. part, 
that was of his free will, & because he thought it sufficient for reasonable: but if he had thought 
the c. part, or the c. part had sufficed, he might have given it, and that with good con-
science. And so I suppose that in the new law, 
the giving of the c. part is by a Law of the Church, and not by the Law of God, unless it 
be taken that the law of the church is the law 
of God, as it is sometime taken to be, but not 
appropriately or immediately, for that is taken 
appropriately to be the law of God, that is con-
tained in scripture, that is to say, in the old te-
ntament and in the new. Dott. It is somewhat 
dangerous to say that ephes bee grounded on-
ly upon the law of the Church: for some men, 
as it is (say, say that mans Law bindeth not 
in conscience, so they might happen to make a 
boldness therby to deny their tithe. 5. I trust 
there be none of that opinion, & if there be it is 
great pitie. And nevertheless they may be com-
pelled in that case by the law of the Church to 
pay their tithe as well as they shold be if paying
of tithes were grounded meerely upon the law of God. D. I thinke well it be as thou saist, and therefore I hold me contented therein. But I pray thee how mee thine minde in thi question. If a whole country prescribed to pay no tithes forzone o2 hay, nor such other, whether thou thinke that that prescription is god. S. That question dependeth much by that that is said before: for it paying of the r. part be by the law of reason, o2 by the law of God, the prescription is void, but if it be by the law of man, then it is a good prescription, so that the Ministers have a sufficient poztion beside. J. John Gerson which was a Doctor of divinitie, in a treatise that he named Regulæ morales, faith, that Dimes be paid to Priests by the law of God. S. The words that he speaketh there of the matter be these, Solucio decimarù sacerdotibus, est de iure divino, quatenus inde sustinrē : sed quod ad tam hanc vel illam assignare, aut in alios reddi- turus comutare, positivi iuris existit, that is there much to say. The paying of dimes to Priests, is of the law of God, s. they may therby be sustai ned, but to assigne this portion o2 s., o2 to change it to other rents, that is by the law positivē, if it should bee taken that by that word Decima- rū, which in English is called dimes o2 tithes, that he meant the r. part, and that that r. part should be paid for tithe by the law of God, then is the sentence that followeth after against that laying : for as it appeareth above, the next faith afterward thus, but to assigne this poztion o2 that, o2 to change it into other rents be- longeth to the law positivē, that is, to the law of
of man, and if the  r. part were assigned by God, then may not a lesser part be assigned by the law of man, for that should be contrary to the Law of God, and so it should be bold. And mee thinke that it is not likely that so famous a clerk would speake any sentence contrary to the law of God, or contrary to that he had spoken before: § to prove he meant not by the terme Decimæ, that decimals should always be taken for the r. part, it appeareth in the 4. part of his worke in the 32. title Leteræ, where he saith thus, No vocatur portio curatis debita propertæa deciminæ, eo quod semper sit decima pars, immo est interdum vicissim aut tricesima: That is to say, the portion due to curates, is not therefore called diximes, for it is always the r. part, for sometime it is the r. or the rxx. part: and so it appeareth that by this word decaimani, he meant in the text before rehearsed a certaine portion, not precisely the r. part, and that the portion should be paid to preists by the laws of God, to sustaine them with, taking as it seemeth the laws of reason in that laying for the law of God, as it may one way be well and conventently taken: because the law of reason is given to every reasonable creature by God. And then it followeth pursuant, that it belongeth to the law of man to assigne this portion or that, as necessity shall require for their sustenance, and then his laying agreeeth well to that that is said before, that is to say, that a certaine portion is due for preists, for their spiritual ministiration by the law of reason. And then it would follow thereupon, that if it were ordained for a law, that all...
paying of tythes should from henceforth cease, 
that every curat should have assigned to him 
such certain portion of land, rent, or annuity, as 
should be sufficient for him, for such ministers 
as should be necessary to be under him, accor-
ding to the number of the people there, or that 
every Parishoner or householder should give a 
certain sum of money to fole. I suppose the law 
were good: that was the meaning of Io. Gen-
son, as it seemeth in his words before rehearsed, 
where he saith, but to change tythes into o-
er rents, is by the law positive, that is to say, 
by the Law of man. And some thinke that if a 
whole Countrie prescribe to bee of both 
tythes of comne & grasse, so that the Spirituall 
Ministers have a sufficient portion beside to 
live upon, that is a good prescription; if they 
should not offend, that in such countrees payed 
no tythes: for it were hard to say, that all the 
men of France, or of the East parts bee dam-
ned, because they pay no tythes, but a certaine 
portion after the custome: therefore certain it 
is, to pay such a certaine portion, alweel they as 
all other be bound, if the church aske it, any ca-
stome notwithstanding. But if the Church 
aske it not, it seemeth that by that not asking, 
the church remitteth it, as an example therof we 
may take of the Apostle Paul, that though he 
might have taken his necessarie living of them 
that he preached to, yet he tooke it not; never-
theless they that gave it him not, did not offend 
because he did not ask it. But if one man in a 
town would prescribe to be discharged of tythes 
of corn & grasse, mee thinke that the prescription
is not good, unless he can prove he recompen-
ceth it in another thing: for it seemeth not rea-
sonable that he should pay tithes for his tythes
than his neighbors do, seeing that the spiritual
ministers are bound to take as much diligence for
him, as they do for any other of his parish: where-
fore it might be said with reason that he should be
colluded to pay his tithes as his neighbors doe,
unless he can prove that he patcht in recompen-
se thereof, more than the r part in another thing.
Nevertheless I leave the matter to his judgment
of other, & then for a further proue, though the
said prescription of not paying tithes for trees
of 20. per. above, were not good, yet that that
of coxe & grasse should be good, some make this
reason: they say, there is no tith but it is either
a predial tith, or a personal tith, or a mixt tith,
& they say, if a tith should be paid of trees were
they be sold, that the tith they were not a predial
tith, for the predial tith of trees is of such trees
as being foost fructs increase perely, as apple
trees, nut trees, pear trees, & such other, where-
of the predial tith is the apples, nuts, pears, &
such other fruits as come to the perely, & when
the fruits are tithed, if the owner after fell the
trees, there is no tith due thereby, for those tithes
may not be paid of one thing, of those tithes, if
is to say, of predial tithes was the commandmee
given in the old law to the Jews, as appea-
reth Leuit. 27. where it is said, Omnes decima
tere, sive de pomis arborum, sive de frugibus,
domini sunt, & illi sanctificatur, that is to say, all
tithes of the earth, either of appies, of trees, or of
graines, be our lords, to him they be sanctified,
and though the said Law speaketh only of apples, yet it is understood of all manner of fruits. And because it saith that all the tythes of the earth be our Lords, therefore calves, lambees, and such other must also be tythed, and they be called by some men prediall tythes, that is to say, tythes that come of the ground, howbeit they call them onlyl Predials mediare, & they be the same tythes that in this writing, bee called miretiches, and the other tythes (that is to say) tythes of apples & coyne, & such other bee called Predials immediate, for they come immediately of the ground, and so do not mire tythes, as evidently appear eth. Do. But what thinkst thou shall be the prediall tythes of ashes, elmes, sa:"lowes, alders, and such other trees as bear no fruits, whereof any profit commeth, why shall not the 10. part of the said thing bee the tythe thereof, if they be cut downe as well as it is of coyne and grasse ? Sr. Fo2, I think that there is to that intent great diversity betweene coyne, grasse, and trees, and that for divers considerations, whereof one is this: The property of coyne & grasse is not to grow over one yere, and if it doe, it will perish and come to naught, and so the cutting downe of it, is the perfection and preservation thereof, and the speciall cause that any increase followeth of the same: And therefore the tenth part of the increase shall be payd as a prediall tythe, and there no deduction shall bee made for the charges of it: And so it is of sheepe and beasts that must bee taken and killed in time, fo2 els they may perish and come to naught: but when trees be fellen, that falling
is not the perfection of the trees, ne it causeth not them increase, but to decay: For most commonly the trees would be better if they might grow still. And therefore upon that that is the cause of that decay & distraction of them, it seemeth there can no prejudical with arise: some one lay that this was the cause why our Lord in the said Chapter of Levit. 27. gave no commandement to tyme the trees, but the fruits of the trees onely. Do. It appeareth in Paralip. 31. that the Jewses in the time of the King Ezechias offered in the Temple all things that the ground brought forth, and that was trees as well as coyme & grasse. &c. It appeareth not that they did that by the commandement of God, and therefore it is like that they did it of their own devotion, and of a sauour that they had above their dutie to the repairing of the Temple, which the King Ezechias had the commanded to be repaired: And so that text produceth nothing that tyme should bee payed for trees: And therefore they lay farther, that truth it is, that if a man to the intent hee would pay no tyme, would wilfully suffer his Coyme and grasse to stand still and to perish, hee should offend conscience thereby: but though hee suffer his trees to stand still continually without selling because hee thinketh a tyme would bee asked, if he fellid them (so that he doe it not of an enuill will of the Curate) hee offendeth not in conscience, ne heer is not bound to restitution therefore, as he should be if it were of coyme and grasse, as before appeareth. And another diversitie is this: In this case of tyme wood, & c. tithe
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of Chapter would serve so little to that purpose that tythes be paid for, that it is not likely that they that made the Law for payment of tithes intended that any tithe should be paid for trees or wood; for the spiritual ministers must of necessity spend daily and weekly, and therefore the tithes of trees or wood that cometh so seldom, would serve so little to the purpose that it should be paid for, that it would not helpe them in their necessitie: So that if they should be driven to trust thereto, though it might helpe him in whose time it should happen to fail, yet it should deceive them that trusted to it in the mean time, and also should leave the Parish without any to Minister to them. D. I would well agree that for trees that bear fruit there should no prediall tith be paid when they be sold (for the prediall tith of them is the fruits that come of them) and there cannot bee two predials of one thing, as thou hast saide. But of other trees that bear no fruit, mee thinketh that a prediall tythe should bee paid when they be sold, and so it appeareth that there ought to bee by the constitution provinciall made by the reverend Father in God Robert Winchelsie late Archbishop of Canterbure, where it is said and declared, that Silva cedua is of cuerle kind of trees that have being in that they should bee cut, oz that bee able to bee cut, whereof wee will, saith he, that the possessor of the said woods bee compelled by the censures of the Church to pay to the Parish Church, or mother Church, the tithie as a reall oz prediall tithie: And so by vertue of that con-
A situation provincial is pedial tyth must be paid of such trees as have no fruit: For I would well agree that the said constitution provincial stretcheth not to trees & beare fruit as though woods be general for all trees (as before appeared.) Sin. I take not the reason why a pedial tyth should not be paid for trees that beare fruit to bee, because two pedial tythes cannot be paid for one thing: For when the tyth is paid of lambes, yet shall tythe be paid of sowll of the same heape (for it is paid for another increase) and so it may bee said that the fruit of a tree is one increase, and the selling another: But I take the cause to bee for the two causes before rehearsed; & also forasmuch as the selling is not properly an increase of the trees but a destruction of the trees, as it is said before. And farther I would heare thy mind upon the said constitution provincial, which will, that tythe should be paid for trees by the possessors of the wood, that if the possessour sell the wood for C. E. and give the buyer a certain time to sell it in, what tyth shall the possessor pay as long as the wood standeth? Do. I thinke none, for thy pedial tythe commeth not till the wood bee selled, and a personal Tythe bee cannot pay, no more than if a man plucke downe his house and sellet eth it, or if he sel all his land, in which cases I agree well he shall pay no tythe neither personal nor pedial. Sin. And then I put case that the buyer sellet eth the wood againe as it is standing upon the ground to another for CC. &. What tythe shall be paid then? Do. A. Then the first buyer shall pay tythe of the surpluage that

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he taketh over the C.E. that he paid as a Personall Tithe. Sc. And then if the second buyer after that cut it downe and sell it when it is cut downe for sell then he paid, what titch shall then be paid?

V. Then shall he that sellith them pay 5 tith for the trees as a Predator tith the Sr. I cannot see how that can bee, for hee neither hath the trees, that the Predator tith should be paid for, if any ought to be paid, nor he is not possesseour of the ground where the trees grow: And therefore if any Predator tith should be paid, it should be paid either by the first possesseour by reason of the words of the said constitution provinciall, Which be, that the titch shall be paid by the possesseour of the wood, or by the last buyer, because hee hath the trees that should bee tithed, and by the first possesseour the titch cannot bee paid as a Predator for hee cut them not downe, ne they were not cut downe upon his bargain, and by the last buyer it cannot be paid neither as a Predator tith, for the said constitution saith, that the possesseour of the woods should be compelled to pay it. And therefore I suppose that the troth is, that in that case no titch shall bee paid, for as to the last seller, hee shall pay no personal tith, for hee gained nothing, as it appeareth before, and no Predator tith shall hee payed, for it should bee against the said prescription, and also the cutting downe is the destruction of trees and not their preservation, as is said before.

V. Then takest thou the said constitution to be of small effect, as it seemeth. S. I take it to be of
of this effect, that of wood above twelve pears it bindeth not, because it is contrarie to the common law, and to the said prescription, that standeth good in the common law: but of wood under xx. pears whereas tithe hath been accustomed to bee paid, the constitution is not against the said prescription, because paying of tithe under xx. pears is not prohibited, but suffered by the said statute: howbeit some say, that by the very rigour of the common Law pyles should not be payed 80. wood under xx. pears, no more than 80. above xx. pears, and that prohibition in that case ipeth by the common law: Nethertheless, because it hath bin suffered to the contrary, and that in many places tythe hath bin paid thereof, I passe it over, but where tithe hath not bin payed of wood under xx. pears, I thinke none ought to be payed at this day in lawe nor conscience: But admit, that the said constitution taketh effect for payment of the wood under xx. pears as of a presitial tythe, yet I cannot see how the tythe thereof should bee payed by the possessour of the wood, if he sell them, but that it should bee payed rather by him that hath the trees, so the constitution is, that the tythe shall be payed as a realy of presitial tythe, and that is the tenth part of the same trees, as it is of cozn. And if a man buye coznne upon the ground, the buyer shall pay the tythe and not the seller, and so it should seeme to be here, and what the constitution meant to declare the contrarie in tythe wood, I cannot tell, unless the meaning were to induce the owners to pay Tythes of great trees when they sell them to their owne ble:
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Which mee thinketh should bee vertue hard to stand without reason, though the said statute had never been made, as I have said before. And furthermore I would here (under correction) move one thing, & that is this; That as it seemeth that they that were at the making of the said Constitution, knew the said prescription, did not follow the direct order of charity therein so perfectly as they might have done: For when they made the said constitution provincially against the said prescription, they set law against custom, and power against power, and in manner the Spiritual against the Temporal, whereby they might well know that great variance suit shou'd follow; And therefore if they had clearly seen that the said prescription had been against conscience they should first have moved the King and his counsell & the nobles of the realm to have assented to the reformation of that prescription, and not to make a law as it were by authority & power against the prescription, and then to threat the people, & make them believe that they were all accursed that kept the said prescription or maintained it. And it is most to stand hardly with conscience to report so many to stand accursed for following of the said statute, and of the said prescription so there doe, and yet to do no more than hath been done to bring them out of it. Do. We thinketh that it is not convenient that laymen should argue the laws and the decrees, or constitutions of the Church, and therefore it were better for them to give crede to spiritual rulers that have care of their souls.
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Coulde than to trust to their owne opinions, and if they would doe so, they such matters would much the more rather ceste, than they will go by such reasonings. sc. In that that belongeth to the articles of the faith, I thinke the people be bound to beleue the Church, for the Church gathered together in § holie Ghost cannot erre in such things as belong to the Catholique faith: But where the church maketh any laws whereby the gods or possessions of the people may be bound, or by this occasion or that may be taken from them, there the people may lawfully reason whether the Lawes binde them or not, for in such Lawes the Church may erre and bee deceived, and receive other, either for singularity, or for covetise, or some other cause; and for that consideration it pertaineth noift to them that bee learned in the Lawe of the realm to know such lawes of the Church, as treat of the ordering of lands or goods & to see whether they may stand with the Lawes of the realm or not: And therefore it is necessary for them to know the Lawes of the Church that treat of Disms, of Executors, of testaments, of Legacies, bastardie, matrimone, and divers other, wherein they bee bound to know when the Law of the Church must be followed, and when the law of the realm; Whereof because it is not our purpose to treat, I leaue to speake any more at this time, and will resloze againe to speake of Tythes, wherein some men say that of Time, Cole, and Lead, no tyme the should bee payed when they be sold by the owner of the ground, because it is part of the inheritance, and
and it is more rather a distraction of the inheritance, than an increase: And therefore they say, that if a man take a Tynne Woxke, and give the Lord the tenth dish according to the Custom, that the Lord shall pay no tythe of that tenth dish, neither peculiar nor personall, but if the other that taketh the Woxke have gains by advantage by the Woxke, it seemeth that it were not against reason, that he should pay a personall Tythe of his gains, the charge deducted. No. I pray thee show me first what thou takest for a personall tythe, and upon what ground personall tythes be paid as thou thinkest, so that one of be mistake not another therein. I will with good will: and therefore thou shalt understand that, as I take it, personall tythes be not paid for any increase of the ground, but for such profit as cometh by the labour of industries of the person, as by buying and selling, and such other, and such personall tythes, as I take it, must be ordered after the Custom, and the Church hath not used to leuc such Tythes of composition, but by conscience of the parties: Neuertheless Raimond saith, that it is good to pay personall tythes, or with the assent of the person, to distribute them to poore men, or Else to pay a certain portion for the whole: But as innocent saith, where the Custom is, that they should bee paid, the people bee bound to pay them as well as peculiar, the expenses deducted. Howbeit in the Church of England they use to use for such personall tythes as well as for peculiar, that is by reason of the constitution provincial, that was made by Robert Winch.
chelfie. By the which it was ordyned, that personal Tythes should be paid of crafts and Merchandise, and of the incre of buying and selling, in likewise of Carpenters, Smiths, weavers, Masons, and all other that work for hire, that they shall pay tythes of their hire except they will give any thing certaine to the bile, or the light of the Church, if it so please the Parson: And in another place the said Archbishop layeth, that of the pawnsage of woods, and such other things as, and of fayings, trees, bees, dores, and of divers other things there remembred, and of crafts, and of buying and selling, of the profits of divers other things there recited, every man should help to use competently in the Church, to the which they be bound to give it of right, no expenses by the giving of the said Tythes deducted or withholden, but only for the payment of tythes of crafts and of buying and selling: And by reason of the said constitutions provincials, sometimes sutes be taken in the Spirituall Court for personal tythes, and thereof many men do murannie, because deductions many times must be referred to the conscience of the parties. And they murannie also why a Law should be made in this realme for paying of Personall tythes, more than there is in other Countries. And here I would gladly move thee farther in one thing concerning such personal tythes, to know the mind thereto, and that is, If a man give to another a horse, and hee sellith that horse for a certaine summe, shall hee pay any tythe of that summe?
Do. What thinkest thou therein? Sr. I think that he shall pay no tythe: for there as I take it the profit commeth not to him by his owne industrie, but by the gift of another, and as I take it, personal tythes be not paid for; curetie profit or advantage that commeth newly to a man, except it come by his owne industrie or labour, and so it both not here. And also if he should pay tythe of that he sold the house for, he should pay tythe for the vertue whole value of the thing. And so I take it, the personal tythes for buying and selling shall never be payed for the value of the thing, but for the dede gaine of the thing: And therefore I take the cases before rehearsed, where a man sellleth his land, or pulleth downe a house, and sellleth the stuffe, that he should there pay not eithe, that it is there to be understood, that he hath not land or house by gift or by descent: for if a man buy land, or buy timber and stuffe of a house, and sell it for a gaine, I suppose that he should pay a personal tythe for that gaine. And this case is not like to a see or annuitie granted for counsel, where the whole see shall be tythed for his charges deducted, or some certaine summe for it by agreement, or there the whole see commeth for his counsel, which is by his owne industrie. But in the other case it is not so, and the same reason as for the personal tythe might be made of trees, when they descend or be given to any man, and he selleth them to another, that he shall pay no personal tythe. Do. Me thinketh that if the house amend in his keeping, & then he sell the house, that then the tythe shall be paid.
of that that the house hath increased in value after the gift, and so it may be of trees, that he shall pay both of that that the trees may be amended after the gift of descent. Then the tythe must be the part of the increase the expenses deducted, and then of trees the charges must also be deducted, for it is then a Patronal tythe, and there is no tree that is so much worth as it hath hurt the ground by the growing: therefore there can no Patronall tithe be paid by the owner of the ground when he letteth them, though they have increased in his time. Nevertheless I will speake no farther of that matter at this time, but will shew thee, that if Tin, Lead, Cole, or trees be sold, that a mixt tythe cannot grow thereby; for a mixt tythe is properly of Cales, Lambes, Digs, and such other that come part of the ground that they be fed of, and part of the keeping, industri, and oversight of the owners, as it is said before: But Tin, Lead, and Cole are part of the ground and of the freehold, trees grow of themselves, and be also annexed to the freehold, and will grow of themselves: and also the mixt tythe must be paid perely at certaine times appointed by the Law, or by custome of the countrie, but it may happen that Time, lead, cole, or trees shall not be felled, or taken in many peres, so it seemeth it cannot be any mixt tithe, so these be some of the reasons, which they would maintaine that that, a prescription to be good, make to prove their intent as they thinke. D. what think they, if a man sell the lots of his Wood, whether any tithe ought there to be paid? S They
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S. They thinke all one lawe of the trees and
of the lops. Do. And if hee ye e to fell the lops
once in ry.02. vb. peare, What hold they then? 
Sr. That is all one. D. And what is the reason
Wby Tate ought not bee payed there aswell
as for wood under rr.peare? Sr. For they say,
that the lops are to be taken of the same condi-
tion as the Trees bee what time sooner they
be felled, and that no custome will serve in that
case against the Statute, no more that it should
do of great trees. D. And what hold they of the
barke of the trees? Sr. Thera in I have not
heard of their opinion, but it seemeth to be one
Law of the lops. Doct. I perceive well by
that thou hast said before, that thy minde is,
that if a whole Countrie prescribe to be quite
of Tythes of trees,coze, and grasse, 02 of any
other tythes, that that prescription is good, so
that the spirittual ministers have sufficient be-
ade to live upon, doest thou meane so? S. Pes
verily. D. And then I would know thy minde,
if any man contrary to that prescription were
sued in the Spirittual Court for Coze and
grasse, 02 any other Tythes, whether a Pro-
hibition should ipe in that case, as it did after
thy minde before the said Statute, where a
man was sued in the Spirittual Court for
Tythe Wood.

S. I thinke nay. D. And why not there, as-
well as it did where a man was sued for the
tythe wood? S. For as I take it, there is great
diversitie betweene the cases, and that for this
cause; There is a Maxim in the law of Eng-
land, that if any suit be taken in the Spiritual
Court
court whereby any goods or lands might be recovered, which after the grounds of the law of the Realm ought not to be sued there, though percase the King’s Court shall hold no plea thereof, that yet a Prohibition should lie, and after when it had continued long that no ejectment were paid of wood, because of the said prohibition, and that after by process of time some Curats began to allege Tithes of wood, contrary to the Law and contrary to the said prece ption, so that variance began to rise between Curats and their Parishoners in that behalf, then for appeasing the said variance the said Statute was made, and that as it seemeth more at the calling on of the spiritualtie, than of the Temporalty; For the Statute doth not expressly grant that the Prohibition in that case of tye of wood should lye so largely as some say it lay by the Law: Howbeit, it doth not restrain the Common Law therein, as it appeareth evidently by the words of the Statute, and so after same men it appeareth before the Statute, and also after the Statute (as I have touched before) that the spiritual Court ought not in that case to have made any process for tithe wood: and therefore if they did, a Prohibition lay by the common Law. And like law is if a spiritual court make process upon such a Legacie as by the law of the realm is void. As it a man bequeath to one another maes hozle, & the spiritual court thereupon maketh Process to execute that legacie, there a Prohibition lyeth: For it appeareth evidently in the libell, if all the truth appeareth in the libell, that
In the law of the realm the legate is holden to all intents: And that bee to whom the legate is made, shall neither have the horse nor the value of the horse. And in likewise if a man sell his land for C. L. and he is sued after in the spiritual court for tithes of the said C. L. There a prohibition shall lye, for it appeareth in that case once in a libell that no tythe ought to be paid, and that the spiritual Law ought not in that case to make any processes whereby the goods of him that sold the land might be taken from him against the law of the Realm. And upon this ground it is, that if a man were sued in the Spiritual Court, now with the statute for a Mortuary, that a Prohibition should lye, for it appeareth in the libell, that with the statute there ought no suit to be taken for Mortuaries: and the same Law is, if any suit were taken in the Spiritual court for a new duty that is of late taken in some places upon leases of Parsonages and Vicarages, which is called Dimission noble, for it appeareth evidently in the libell if any be made thereupon, that no such process ought by the law of the Realm to be made in that behalf. But in the case of Tithe cozne oz grasse, or such other things, wherein thou hast desired to know my mind, there appeareth nothing in the libell but that the suit thereof, of right appertaineth to the Spiritual Law, and so for any thing that appeareth, the partie may be holpen in the Spiritual Court by the prescription: And if the case were so farre put that in the Spiritual Court they would not allow the said prescription, yet I thinke no
prohibition should lye: For though the spiritual \All Judges in a spiritual matter deny \Parties of justice, yet the Kings lawes cannot restrain that, but must remit to their conscience: But if there were some remedy provided in that case, it were well done: For some men say, that in the spiritual Court they will admit no plea against tythes. And also if a composition were made by assent of the Patron and also of the Ordinaries, between a Parson and one of his parishioners, that the Parson and his successors should have so a certaine ground so many quarters of coyme for his tythe perely, after contrary to the composition the Parson in the spiritual Court asketh the tythes as they fall, that in this case no prohibition should lye, ne yet though the case were further put, that the composition were pleaded in the Court & were disallowed, but all resteth in the conscience of the Judge spiritual (as is said before.) Howbeit, because some be of opinion that a prohibition should lye in this last case, therefore I will refer it to the judgement of others: But in the case of prescription, before rehearsed, I take it for the clearer case, that no prohibition should lie as I have laid before. And I beseech our Lord that this matter so much other like thereto, may be so charitably looked upon, that there be not hereafter such divisions ne such diversities of opinions therein, as hath bin in time past, whereby hath followed great costes and charges to many persons in this Realme: And that hath moved mee to speake so farre in this Chapter, and in divers other Chapters in this present book.
booke as I have done: Not intending thereby to give occasion to any person to withhold his & then that of right ought to bee paid,ne to alter the portion therein before accustomed, but that (as me thinketh) they ought to be claimed by the said title as they ought to be pap'd, and by none other. And that it may also somewhat appeare that the said statute of 45.Edw 3. was well and lawfully made, and upon a good reasonable consideration, and that the said prescription is good also, so that no man was in any danger of excommunication for the making of the said statute, nor yet is not for the observing thereof, nor yet of the said prescription, as it is noted by some persons that there should bee. And thus I commit thee unto our Lord, who ever have both thee and mee in his blessed keeping everlastingly. Amen.
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