Thomas Smith, De Republica Anglorum [abridged and modified]

THE SECOND BOOKE

OF THE PARLIAMENT AND THE AUTHORITIE THEREOF.

Chap. 1.

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

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

THE FORME OF HOLDING THE PARLIAMENT.

Chap. 2.

The Prince sendeth foorth his rescripts or writtes to every duke, marques, baron, and every other Lorde temporall or spirituall who hath voice in the parliament, to be at his great counsell of Parliament such a day, (the space from the date of the writ is commonly at the least fortie dayes):
he sendeth also writtes to the Sherifes of every shyre to admonish the whole shire to choose two
knightes of the parliament in the name of the shyre, to heare and reason, and to give their advise
and consent in the name of the shire, and to be present at that day: likewise to every citie and
towne which of ancientie hath bin wont to finde burgesses of the parliament, so to make election
that they might be present there at the first day of the parliament. **The knights of the shyre be
chosen by all the gentlemen and yeomen of the shyre, present at the day assigned for the
election: the voice of the absent is counted for none. Yeomen I call here (as before) who may dispende
at the least xl. s. of yearely rent of free lande of his owne. These meeting at one day, the two who have the more of their voices be chosen knightes of the shire for that parliament: likewise by the pluralitie of the voyces of the citizens and
burgesses be the burgesses elected. The first day of the parliament the Prince and all the
Lordes in the robes of parliament do meete in the highe house, where after prayers made, they that be present are written, and they that be absent upon sicknes or some other reasonable cause (which the prince will allowe) do constitute under their hande and seale some one of those who be present as his procurer or attorney to give voice for him, so that by
presence or attorney and proxye they be all there, all the princes and barrons and all archbishops
and bishops, and (when abbots were) so many abbots as had voice in parliament. The place
where the assembly is, is richly tapessed and hanged, a princely and royal throne as appertaineth
to a king, set in the midst of the higher place thereof. Next under the prince sitteth the
Chancellor, who is the voyce and orator of the prince. On the one side of that house or chamber
sitteth the archbishops and bishops, ech in his ranke, on the other side the dukes and barons. In
the midst thereof uppon woolscakes sitteth the Judges of the realme, the master of the roules,
and the secretaries of estate. But these that sit on the woolscakes have no voice in the house, but
onely sit there to aunswere their knowledge in the law, when they be asked if any doubt arise
among the Lordes. The secretaries to aunswere of such letters or thinges passed in counsell
whereof they have the custodie and knowledge: and this is called the upper house, who giveth
their consent and dissent ech man severally and by himselfe, first for himselfe, and then
severally for so many as he hath proxies or letters, when it commeth to the question, saying
onely content or not content, without further reasoning or replying. In this meane time the
knightes of the shires and burgesses of the parliament (for so they are called that have voice in
parliament, and are chosen as I have said before, to the number betweixt iij. C. and iiiij. C.) are
called by such as it pleaseth the prince to appoint, into an other great house or chamber by name,
to which they aunswere and declaring for what shyre or towne they aunswere: then they are
willed to choose an able and discreet man to be as it were the mouth of them all, and to speake
for and in the name of them, and to present him so chosen by them to the prince: which done
they comming al with him to a barre, which is at the nether ende of the upper house, there he first
praiseth the prince, then maketh his excuse of unabilitie, and prayeth the prince that he would
command the commons to choose another. The chancellor in the princes name doth so much
declare him able, as he did declare himselfe unable, and thanketh the commons for choosing so
wise, discreete and eloquent a man, and willeteth them to go and consult of lawes for the common
wealth. Then the speaker requireth certaine requests of the prince in the name of the commons, first that his majestie would be content that they may use and enjoy all their liberties and priviledges that the common house was wont to enjoy. Secondly that they might franckely and freely saye their mindes in disputing of such matters as may come in question, and that without offence his Majestie. Thirdly that if any should chauce of that lower house to offend or not to do or say as should become him, or if any should offend any of them being called to that his highnes court: That they might (according to the ancient custome) have the punishment of them. And fourthly, that if there came any doubt, whereupon they shal desire to have thadvice or conference with his Majestie or with any of the Lordes, that they might doe it: All which he promiseth in the commons names that they will not abuse, but have such regarde as most faithfull, true and loving subjectes ought to have to their prince.

For all that commeth in consultation either in the upper house or in the neather house, is put in writing first in paper, which being once read, he that will, riseth up and speaketh with it or against it: and so one after another so long as they shall thinke good. That doone they goe to another, and so an other bill. After it hath bin once or twise read, and doth appeare that it is somewhat liked as reasonable, with such amendment in wordes and peradventure some sentences as by disputation seemeth to be amended: In the upper house the Chauncelor asketh if they will have it engrossed, that is to say put into parchement: which doone, and read the third time, and that eftsoones if any be disposed to object disputed againe among them, the Chauncelor asketh if they will goe to the question: and if they agree to goe to the question, then he sayth, here is such a lawe or act concerning such a matter, which hath beene thrise read here in this house, are ye content that it be enacted or no?

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

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

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

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

Thus no bill is an act of Parliament, ordinaunce, edict or law, untill both the houses severallie have agreed unto it, after the order aforesaide, no nor then neither. But the last day of that Parliament or session the Prince commeth in person in his Parliament robes, and sitteth in his state: all the upper house sitteth about the Prince in their states and order in their robes. The speaker with all the common house commeth to the barre, and there after thankes given first in the Lordes name by the Chaunceller &c. and in the commons name by the speaker to the Prince, for that hee hath so great care of the good governement of his people, and for calling them together to advise of such things as should be for the reformation, establishing and ornament of the common wealth: the Chaunceller in the Princes name giveth thankes to the Lords and commons for their paines and travailes taken, which he saith the Prince will remember and recomppence when time and occasion shall be and then sayeth that the Prince hath well viewed and wayed what hath been moved and presented and debated amongst the Lords and them and thereupon will show his mind that the doings might have perfect life and accomplishment by his princelie authoritie, and so have the whole consent of the Realme. Then one reade the title of everie act which hath passed at that session, but only in this fashion: An act concerning such a thing, &c. It is marked there what the Prince doth allowe, and to such he sayth: Le roy or la roynne le veult. And those be taken nowe as perfect lawes and ordinances of the Realme of Englande and none other, and as shortlie as may be put in print, except it be some private cause or lawe made for the benefit or prejudice of some private man, which the Romanwere wont to call privilegia. These be onelie exemplified under the seale of the Parliament, and for the most part not printed. To those which the Prince liketh not, he answereth, Le roy or la roynne saduise and those be accounted utterly dashed and of none effect.

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OF THE MONARCH KING OR QUEENE OF ENGLANDE.

Chap. 3.

The Prince whom I nowe call (as I have often before) the Monarch of Englande, King or Queene, hath absolutelie in his power the authoritie of warre and peace, to defie what Prince it shall please him, and to bid him warre, and againe to reconcile himselfe and enter into league or truce with him at his pleasure or the advice onely of his privie counsell. His privie counsell be chosen also at the Princes pleasure out of the nobilitie or baronie, and of the Knightes, and Esquiers, such and so many as he shal thinke good, who doth consult daily, or when neede is of the weightie matters of the Realme, to give therein to their Prince the best advice they
can. The Prince doth participate to them all, or so many of them, as he shall think good, such legations and messages as come from forren Princes, such letters or occurientes as be sent to himselfe or to his secretaries, and keepeth so many ambassades and letters sent unto him secret as he will, although these have a particular oth of a counsellor touching faith and secrets administr'd unto them when they be first admitted into that company. So that heerein the kingdom of England is farre more absolute than either the dukedom of Venice is, or the kingdom of the Lacedemonians was. **In warre time, and in the field the Prince hath also absolute power, so that his worde is a law, he may put to death, or to other bodilie punishment, whom he shall thinke so to deserve, without processe of lawe or forme of judgement.** This hath beene sometime used within the Realme before any open warre in sodden insurrections and rebellions, but that not allowed of wise and grave men, who in that their judgement had consideration of the consequence and example, as much as of the present necessitie, especiallie, when by any means the punishment might have beene done by order of lawe. **This absolute power is called marciall lawe,** and ever was and necessarilie must be used in all campes and hostes of men, where the time nor place do suffer the variance of pleading and processe, be it never so short, and the important necessitie requireth speedie execution, that with more awe the souldier might be kept in more straight obedience, without which never captaine can doe anie thing vaileable in the warres.

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

To be short the prince is the life, the head, and the authoritie of all things that be done in the realme of England. And to no prince is done more honor and reverence than to the King and Queene of Englande, no man speaketh to the prince nor serveth at the table but in adoration and kneeling, all persons of the realme be bareheaded before him: insomuch that in the chamber of presence where the cloath of estate is set, no man dare walke, yea though the prince be not there, no man dare tarrie there but bareheaded. This is understood of them of the realme: For all strangers be suffered there and in all places to use the maner of their countrie, such is the civilitie of our nation.
THE CHIEFE POINTES WHEREIN ONE COMMON WEALTH DOITH DIFFER FROM ANOTHER. Chap. 4.

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

OF PLEAS OR ACTIONS

Chap. 9.

Pleas or actions criminall be in English called pleas of the crowne, which be all those which tende to take away a mans life or any member of him, for his evill deserving against the prince and common wealth.

And this name is given not without a cause. For taking this for a principle that the life and member of an Englishman is in the power onely of the prince and his lawes, when any of his subjectes is disspoyled[1] either of life or member, the prince is endamaged thereby, and hath good cause to aske accompt, how his subjectes should come to that mischiefe. And againe for so much as the prince who governeth the scepter, and holdeth the crowne of Englande hath this in his care and charge, to see the realme wel governed, the life, members and possessions of his subjectes kept in peace and assurance: he that by violence shall attempt to breake that peace and assuredace, hath forfeited against the scepter and crowne of England: and therfore not without a cause in all inquisitions and inditementes, if any be found by the xij. men to have offended in that behalfe, straignt the prince is saide to be partie, and he that shall speake for the prisoner shall be rebuked, as speaking against the prince. Neverthelesse it is never defended, but the prisoner and partie defendant in any cause may alleadge for himselfe[2] al the reasons, meanes and defences that he can, and shall be peaceable hearde and quietlie: But in those pleas or[3] pursitures of the crowne, procurer or advocate he gettes none, which in civill and pecuniarie matters (be it for land, rent, right, or possession, although he plead against the prince himselfe) is never denied.
Pleas civil be either personall or reall, personall as contractes or for injuries: reall be either possessorie to aske, or to keepe the possession, or in rem, which we cal a writte of right. For that which in the civill lawe is called actio or formula, we call writ in English: so the Greekes called it worde for word grafh and in our barbarous latine we name it breve.

OF THE CHIEFE TRIBUNALS, BENCHES OR COURTES OF ENGLANDE.

Chap. 10.

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

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

Chap. 11

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

That is onely foure times in the yeare which they call termes ….Nay (saith Cato) for my part I had rather wish that all the waies to the place of pleading were cast over with galthrops, that the feete of such as love so well pleading, should feele as[9] much paine of those prickes in going thither as their heads of[10] of the sunne in tarrying there: he ment that they were but idle, what heads, busie bodies, and troublesome men in the common wealth that did so nourish pleading: good labourers and quiet men could bee content to ende their matters at home by judgement of their neighbours and kinsfolke without spending so their money upon procurers and advocates whom we call attornies, Sergeantes,[11] and generallie men of lawe. Those he accounted profitable citizens, who attended[12] their honest labour and businesse
at home, and not stande waiting and gaping uppon their rolles and processe in the lawe: those[13] other by his judgement, it made[14] no matter what mischiefe they had..... So he that putteth up his bill in the chauncerie, after that he hath declared the mischiefe wherein he is, hath this[16] as in the solemne form.[17] And for so much as in this case hee is without remedie in the common lawe, therefore he requireth the chauncellor according to equitie and reason to provide for him and to take such order as to good conscience shall appertaine. And the court of the chauncerie is called of the common people the court of conscience, because that the chauncellor is not strained by rigour or forme of wordes of lawe to judge but ex aequo and bono, and according to conscience as I have said. And in this court the usual forme of pleading and proper[18] of Englande is not used, but the forme of pleading by writing, which is used in other countries according to the civill lawe: and the tryall is not by xii men, but by the examination of witnesse as in other courtes of the civil lawe.

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

Chap. 12.

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

These doe sit at such daies as be terme, which may be called Dies legitimi juridici or fasti, in their distinct places as I have said before. There they heare the pleading of all matters which doe come before them: and in civill matters where the pleading is for money or land or possession, part by writing, and part by declaration and altercation of the advocates the one with thother, it doeth so proeceede before them till it doe come to the issue, which the latines doe call statum causæ, I doe not meane contestationem litis, but as the Rhetoritians doe call statum, we doe most properly call it the issue, for there is the place where the debate and strife[8] (as a water held in a close and darke vessel can issue out and be[9] voided and emptied) and no where else: that stroke well stricken is the departing of all the quarelles. Issues or status in our lawe bee ordinarily two facti and juris.


Chap. 14.

The Romans had to execute the commaundements of the magistrates Lictores, viatores, accensos. The civill lawe sith that time hath other names, termes, and officers (as ____).[2] The execution
of the commandementes of the magistrates in England is ordinarily doone by the sherifes. The sherife (which is as much to say as the Reeve or Bayly of the shire) is properly word for word Questor provinciæ: he[3] is he that[4] gathereth uppe and accompleth for the profittes of the shire, which[5] come to the exchequer. The exchequer (which is fiscus principis, or œrarium publicum, and I cannot tell in what language it is called Scaccarium, some thinks that it was first called statarium, because that there was the stable place to account for the revenues of the crowne, aswell that which came of the patrimony which we cal the demeasnes: as that which commeth of other incident acquisitions be they rentes, customes, tenthes, quinziesmes, taxes, subsidies, wheresoever the Prince of his court be according to the time and occasion) this[6] was a place stable, continual and appointed for to reckon and account.

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

The sherife also is readie by himselfe or by his undersherife to serve aswell the Justices of peace in their quarter sessions as the Justices called Itinerantes in their great assises, when they come to[19] the shire, which is twise in the yeare, to dispatch and voide all[20] actions criminall and civil depending at the common law, and which be come nowe to the issue. He hath also the charge of all the prisoners committed to the prison which we call the gaole, and when any is condemned to die, it is his charge to see the sentence executed. To be short, he is as it were the generall minister and highest for execution of such commandementes according to the lawe as the Judges do ordaine, and this is ynough for the sherife.


Chap. 19.

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

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

These meetings of the Justices of peace foure times in the yeare, be called quarter sessions or
sessions of enquirie, because there is nothing determined there[18] touching the malefactors, but
onely the custodie of them: and this kinde of proceeding which is by inquisition of the xij men
within themselves, and their owne consciences, or by denunciation of him that putteth in his bill
to the xij, is called at the kings suite, and the king is reckoned the one partie, and the prisoner the
other. The Justices of the peace doe meete also at other times by commandement of the Prince
in[19] suspition of warre, to take order for the safetie of the shire, sometimes to take musters of
harnes and able men, and sometime to take orders for the excessive wages of servaunts and
labourers, for excesse of appareil, for unlawefull games, for conventicles and evill orders in
alehouses, and tavernes, for punishment of idle and vagabund persons, and generally as I have saide, for the good governement of the shire, the Prince putteth his confidence in them. And commonly every yeare, or each seconde yeare in the beginning of summer or afterwandes, (for in the warme time the people for the most part be more unrulie) even in the moste[20] calme time of peace, the Prince with his counsell chooseth out certaine articles out of penall lawes alreadie made for to represse the pride and evill rule of the popular, and sendeth them downe to the Justices, willing them to looke upon those pointes, and after they have mette together and consulted among themselves, howe to order that matter most wisely and circumspectly, whereby the people might be kept in good order and obedience after the lawe, to divide[21] themselves by three or foure: and so each in his quarter to take[22] order for the execution of the saide articles.

CERTAINE ORDERS PECULIAR TO ENGLAND, TOUCHING PUNISHMENT OF MALEFACTORS.

Chap. 24.

For any felonie, manslaughte, robberie, murther, rape, and such capitall crimes as touch not treason and Iæsam maiestatem, we have by the Lawe of England no other punishment, but to hang till they be dead: when they be dead, everie man may burie them that will, as commonly they be. Heading, tormenting, demembring, either arme or legge, breaking upon the wheele, empailing, and such cruell torments, as be used in other nations by the order of their law, we have not: and yet as few murthers committed as any where: nor it is not in the Judges or the Justices power, to aggravate or mitigate the punishment of the Lawe, but in the Prince onely and his privie Counsell, which is marvellous seldom done. Yet notable murtherers many times by the Princes commaundement, after they be hanged with corde till they bee dead, bee hanged with chaines while they rotte in the ayre. If the wife kill her husbande, shee shall bee burned alive. If the servaunt kill his master, hee shalbee drawen on a hurdle to the place of execution: it is called petit treason. Impoisoners, if the person die thereof, by a new lawe made in King Henrie the eights time shalbe boyled to death: this[1] mischiefe is rare and almost unknown in England. Attempt[2] to impoison a man, or laying await to kill a man, though he wound him daungerously if[3] death followe not, is no felony by the lawe of Englanede, for the Prince hath lost no man, and life ought to be given we say, but for life only. And againe, when a man is murdered, all be principals and shall die, even he that doth but hold the candel to give light to the murderers. For mitigation and moderation of paines, is but corruption of Judges, as we thinke. Likewise, torment or question which is used by the order of the civill lawe and custome of other countreis to put a malefactor to excessive paine, to make him confesse of him selfe, or of his felowes or complices, is not used in England, it is taken for servile. For what can he serve the common wealth after as a free man, who hath his bodie so haled and tormented, if he be not found guiltie, and what
amends can be made him? And if he must die, what crueltie is it so to torment him before? Likewise, confession by torment is esteemed for nothing, for if he confesse at the judgement, the tryall of the xii goeth not upon him: If he denie the fact, that which he saide before hindereth him not. The nature of English men is to neglect death, to abide no torment: And therefore he will confesse rather to have done any thing, yea, to have killed his own father, than to suffer torment, for death our nation doth not so much esteem as a mean torment.