

CHAPTER VI.

OF COURTS OF A SPECIAL JURISDICTION.

1. *What are the courts of private and special jurisdiction?—71-83.*

The courts, whose jurisdiction is private and special, confined to particular spots, or instituted to redress only particular injuries, are :

1. The forest courts.
2. Courts of commissioners of sewers.
3. The court of policies of assurance.
4. The court of the Marshalsea and the palace court at Westminster.
5. Courts of the principality of Wales.
6. Court of the duchy chamber of Lancaster.
7. Courts of counties palatine.
8. Stannary courts.
9. Courts of London and other cities.
10. University courts.

2. *Whence is the origin of the several courts within the city of London?—80.*

From the favor of the crown.

3. *What are the jurisdiction and system of the chancellor's courts in the two universities of England?—83, 84.*

They enjoy the sole jurisdiction, in exclusion of the king's courts, over all civil actions and suits whatsoever, when a scholar or privileged person is one of the parties, excepting in such cases where the right of freehold is concerned. By the university charter, they are at liberty to try and determine these causes, either according to the common law, or according to their own local customs, at their discretion.

CHAPTER VII.

OF THE COGNIZANCE OF PRIVATE WRONGS.

1. *By what laws are the ecclesiastical courts guided?—100.*

They are usually guided by the rules of the imperial and canon laws.

2. *What does the common law allow and permit to belong to their jurisdiction?—87.*

The ecclesiastical tribunals subsist and are admitted, in England, not by any right of their own, but upon bare sufferance and toleration from the municipal laws. They must have recourse to the laws of England, to be informed how far their jurisdiction extends, or what causes are permitted, and what forbidden, to be discussed or drawn in question before them.

3. *What is the one uniform rule to determine the jurisdiction of the courts, in England?—88.*

The common law.

4. *Under what heads are reduced wrongs or injuries cognizable by the ecclesiastical courts?—87.*

These wrongs or injuries, viz., such as are offered to private persons or individuals, which are cognizable by these courts, not for reformation of the offender himself or party injuring, *pro salute animæ*, but for the sake of the party injured, to make him a satisfaction and redress for the damage which he has sustained, are reducible under three general heads: 1. Causes pecuniary; 2. Causes matrimonial; 3. Causes testamentary.

5. *When will the courts of common law award a prohibition against proceedings of the spiritual court?—100.*

When the proceedings are manifestly repugnant to the fundamental maxims of the municipal law.

6. *What process have the ecclesiastical courts to enforce their sentences when pronounced?—101.*

No other process than that of excommunication.

7. *Is excommunication two-fold?*—101.

Yes, it is described to be two-fold : the less and the greater excommunication. The less is an ecclesiastical censure, excluding the party from the participation of the sacraments ; the greater proceeds further, and excludes him not only from these, but also from the company of all Christians.

8. *Does the common law aid the ecclesiastical jurisdiction?*—102.

It does, and lends a supporting hand to its authority.

9. *What acts is an excommunicated person, by the common law, disabled from doing?*—102.

He is disabled to do any act that is required to be done by one that is *probus et legalis homo*. He cannot serve upon juries ; cannot be a witness in any court ; nor can he bring an action, either real or personal, to recover lands or money due to him.

10. *What are the jurisdiction and power of courts maritime?*—106.

They have jurisdiction and power to try and determine all maritime causes ; or such injuries which, though they are in their nature of common law cognizance, yet being committed on the high seas, out of the reach of ordinary courts of justice, are therefore to be remedied in a peculiar court of their own.

11. *Must admiralty causes arise wholly upon the sea?*—106.

Yes ; they must be causes arising wholly upon the sea, and not within the precincts of any county.

12. *Has the admiralty court cognizance of any wreck of the sea?*—106.

No ; for that must be cast on land before it becomes a wreck.

13. *Has it jurisdiction of things flotsam, jetsam, and ligan ; and why?*—106.

It has, because they are in and upon the sea.

14. *If part of a contract, or other cause of action, arise upon the sea, and part upon the land, has the admiralty court jurisdiction?*—106.

No ; there the common law excludes the admiralty court

from its jurisdiction ; for, part belonging properly to one cognizance, and part to another, the common or general law takes place of the particular.

15. *Can the admiralty court hold plea of any contract under seal?*—107.

It cannot.

16. *Upon what laws are the proceedings of the court of admiralty founded?*—108.

They have much resemblance to those of the civil law, but are not entirely founded thereon, and they likewise adopt and make use of other laws, as occasion requires.

17. *Does the law of England acknowledge, or pay any deference to, the civil law as such?*—108.

It does not, but merely permits its use in such cases where it judges its determinations equitable.

18. *What injuries are cognizable by the courts of common law?*—109.

All possible injuries whatsoever that do not fall within the exclusive cognizance of either the ecclesiastical, military, or maritime tribunals, are, for that very reason, within the cognizance of the common law courts of justice.

19. *Why is this so?*—109.

It is a settled and invariable principle in the laws of England, that every right, when withheld, must have a remedy, and every injury its proper redress.

20. *How is refusal, or neglect, of justice remedied?*—109.

It is remedied either by writ of *procedendo* or of *mandamus*.

21. *What is the writ of procedendo ad judicium?*—109.

It issues out of the court of chancery, where judges of any subordinate court do delay the parties ; for that they will not give judgment, either on the one side or on the other, when they ought so to do.

22. *What is the writ of mandamus?*—110.

A writ of mandamus is, in general, a command issuing in the king's name from the court of king's bench, and directed to any person, corporation, or inferior court of judicature, within the king's dominions, requiring them to do some particular thing, therein specified, which appertains to their office and duty.

23. *When does it issue?*—110.

It issues in all cases where the party has a right to have anything done, and hath no other specific means of compelling its performance.

24. *What is the writ of prohibition?*—112.

A prohibition is a writ issuing properly out of the court of king's bench, being the king's prerogative writ; but, in some cases, may be had out of the court of chancery, common pleas, or exchequer. It is directed to the judge and parties of a suit in any inferior court, commanding them to cease from the prosecution thereof, upon a suggestion that either the cause originally, or some collateral matter arising therein, does not belong to that jurisdiction, but to the cognizance of some other court.

25. *What if the judge, or the party, shall proceed after prohibition?*—113.

An attachment may be had against them, to punish them for the contempt, at the discretion of the court that awarded it; and an action will lie against them to repair the party injured, in damages.

26. *What if the fact that gave rise to the prohibition be afterward falsified?*—114.

Then the cause shall be remanded to the prior jurisdiction.

CHAPTER VIII.

OF WRONGS, AND THEIR REMEDIES, RESPECTING THE RIGHTS OF PERSONS.

1. *What things are to be considered in treating of the injuries cognizable by the courts of common law?*—115.

The several injuries, with the respective remedies applicable to each particular injury; and the method of pursuing and obtaining these remedies in the several courts.

2. *What is the plain natural remedy for every species of wrong?*—116.

The being put in possession of that right whereof the party injured is deprived.

3. *How may this be effected?*—116.

Either by a specific delivery, or restoration, of the subject matter in dispute to the legal owner; or, where that is not possible, or, at least, not an adequate remedy, by making the sufferer a pecuniary satisfaction in damages: to which the party injured has acquired an incomplete, or inchoate, right the instant he receives the injury, though such right be not fully ascertained till they are assessed by the intervention of the law.

4. *By what instruments is this remedy obtained?*—116.

By a diversity of suits and actions.

5. *Into what kinds are the several suits distinguished?*—117.

The several suits, or remedial instruments of justice, are, from the subject of them, distinguished into three kinds: actions personal, real, and mixed.

6. *What are personal actions?*—117.

Personal actions are such whereby a man claims a debt, or personal duty, or damages in lieu thereof; and, likewise, whereby a man claims a satisfaction in damages for some injury done to