

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

nis person or property. The former are said to be founded on contracts ; the latter upon *torts* or wrongs.

7. *What are real actions ?*—118.

Real actions, which concern real property only, are such whereby the plaintiff claims title to have any lands or tenements, rents, commons, or other hereditaments, in fee-simple, fee-tail, or for term of life.

8. *What are mixed actions ?*—118.

They are suits partaking of the nature of the other two, wherein some real property is demanded, and also personal damages for a wrong sustained.

9. *Of what kinds are all civil injuries ?*—118.

Of two kinds : the one without force or violence, as slander or breach of contract ; the other with force and violence, as batteries or false imprisonment.

10. *What are the injuries which affect the personal security of individuals ?*—119.

They are either injuries against their lives, their limbs, their bodies, their health, or their reputations.

11. *What are absolute, and what relative, rights ?*—119.

Absolute rights are such as appertain and belong to private men, considered merely as individuals or single persons ; and relative, which are incident to them as members of society, and connected to each other by various ties and relations.

12. *How may the injuries affecting the limbs or bodies of individuals be committed ?*—120, 121.

They may be committed : 1. By threats and menaces of bodily hurt, through fear of which a man's business is interrupted ; 2. By assault ; 3. By battery ; 4. By wounding ; 5. By mayhem.

13. *What is necessary to complete the injury by threats and menaces ?*—120.

A menace alone, without a consequent inconvenience, makes

not the injury ; but, to complete the wrong, they must be both of them together.

14. *What is the remedy for this ?*—120.

In pecuniary damages, to be recovered by action of trespass *vi et armis* ; this being an inchoate, though not an absolute violence.

15. *What constitutes an assault ?*—120.

An assault is an attempt or offer to beat another, without touching him.

16. *How may the party injured by an assault have redress ?*—120.

Though no actual suffering is proved, yet the party injured may have redress by action of trespass *vi et armis*, wherein he shall recover damages as a compensation for the injury.

17. *What constitutes battery ?*—120.

The least touching of another's person willfully, or in anger, is battery ; for the law cannot draw the line between different degrees of violence, and therefore totally prohibits the first and lowest stage of it.

18. *When is battery justifiable ?*—120.

It is justifiable, or lawful, in some cases : as where one who hath authority, a parent, or master, gives moderate correction to his child, his scholar, or his apprentice. So, if one strikes me first, or even only assaults me, I may strike in my own defence. So, likewise, in defence of my goods or possession, if a man endeavors to deprive me of them, I may justify laying hands upon him to prevent him. Thus, too, in the exercise of an office, as that of churchwarden or beadle, a man may lay hands upon another to turn him out of church, and prevent his disturbing the congregation.

19. *How is battery defined ?*—121.

On account of the causes of justification, battery is defined to be the unlawful beating of another ; for which the remedy is, as for assault, by action of trespass *vi et armis*, wherein the jury will give adequate damages.

20. *What is the plea of son assault demesne?*—120.

That it was the plaintiff's own original assault that occasioned the battery sued for.

21. *What is wounding?*—121.

It consists in giving another some dangerous hurt, and is only an aggravated species of battery.

22. *What is mayhem?*—121.

Mayhem consists in violently depriving another of the use of a member proper for his defence in fight. It is a battery attended with this aggravating circumstance, that thereby the party injured is forever disabled from making so good a defence against future external injuries as he otherwise might have done.

23. *What are the defensive members?*—121.

Among them are reckoned not only arms, and legs, but a finger, an eye, and a fore-tooth, and also some others; but the loss of one of the jaw-teeth, the ear, or the nose, is no mayhem at common law, as they can be of no use in fighting.

24. *What only motive can justify mayhem?*—121.

That of necessary self-preservation.

25. *For which of these injuries may an indictment be brought, as well as an action?*—121.

For assault, battery, wounding, and mayhem; and frequently both an indictment and action are prosecuted.

26. *What are injuries affecting health?*—122.

Injuries affecting a man's health are where, by any unwholesome practices of another, a man sustains any apparent damage in his vigor or constitution; as by selling him bad provisions or wine; by the exercise of a noisome trade, which infects the air in his neighborhood; or by the neglect or unskillful management of his physician, surgeon, or apothecary.

27. *What is the remedy for these wrongs or injuries affecting health?*—122.

For these wrongs and injuries, unaccompanied by force

there is a remedy in damages by a special action of trespass upon the case.

28. *Is mala praxis a misdemeanor and offense at common law?*—122.

It is a great misdemeanor and offense, whether it be for curiosity and experiment, or by neglect; because it breaks the trust which the party had placed in his physician, and tends to the patient's destruction.

29. *What is the action of trespass upon the case?*—122.

It is a universal remedy, given for all personal wrongs and injuries without force; so called, because the plaintiff's whole case, or cause of complaint, is set forth at length in the original writ.

30. *When is the remedy by action of trespass vi et armis, and when by action of trespass upon the case?*—123.

Where an act is done which is in itself an immediate injury to another's person or property, there the remedy is usually by an action of trespass *vi et armis*. But where there is no act done, but only a culpable omission, or where the act is not immediately injurious, but only by consequence and collaterally, there no action of trespass *vi et armis* will lie, but an action on the special case, for the damages consequent on such omission or act.

31. *In what ways are injuries affecting a man's reputation or good name inflicted?*—123-126.

In three ways: 1. By malicious, scandalous, and slanderous words tending to his damage and derogation.

2. By printed or written libels, pictures, signs, and the like, which set him in an odious or ridiculous light, and thereby diminish his reputation.

3. By preferring malicious indictments or prosecutions; which, under the mask of justice and public spirit, are sometimes made the engines of private spite and enmity.

32. *What is scandalum magnatum?*—123.

Words spoken in derogation of a peer, a judge, or other great officer of the realm.

33. *What words are actionable without proving any particular damage to have happened?*—123.

For words that may endanger a man by subjecting him to the penalties of the law, may exclude him from society, may impair his trade, or may affect a peer of the realm, a magistrate, or one in public trust, an action on the case may be had, without proving any particular damage to have happened, but merely on the probability that it might happen.

34. *When is it necessary that the plaintiff should aver some particular damage to have happened?*—123.

With regard to words that do not apparently, and upon the face of them, import such defamation as will, of course, be injurious, it is necessary that the plaintiff should aver some particular damage to have happened; which is called laying his action with a *per quod*.

35. *How is scandalum magnatum redressed?*—124.

By action on the case founded on many ancient statutes; as well on behalf of the crown, to inflict the punishment of imprisonment on the slanderer, as on behalf of the party, to recover damages for the injury sustained.

36. *What words are not actionable?*—124, 125.

Mere scurrility, or opprobrious words which neither in themselves import, nor are in fact attended with, any injurious effects, will not support an action. So scandals, which concern matters merely spiritual, as to call a man heretic or adulterer, are cognizable only in the ecclesiastical court, unless any temporal damage ensues which may be a foundation for a *per quod*. Words of heat and passion, as to call a man a rogue and rascal, if productive of no ill consequence, are not actionable: neither are words spoken in a friendly manner, by way of advice, admonition, or concern, without any tincture or circumstance of ill-will; for, in both these cases, they are not maliciously spoken, which is part of the definition of slander. Neither are any reflecting words, made use of in legal proceedings, and pertinent to the cause in hand, a sufficient cause of action for slander.

37. *When will no action for words lie, even though special damages have ensued?*—125.

If the plaintiff be able to justify and prove the words to be true, no action will lie, for, if the fact be true, it is *damnum absque injuria*.

38. *What are libels?*—126.

Injuries affecting a man's reputation by printing, writing, pictures, signs, or the like, which set a man in an odious or ridiculous light, and thereby diminish his reputation.

39. *What are the remedies for libel?*—125.

The law has given two remedies; one by indictment, and the other by action. The former for the public offense; for every libel has a tendency to the breach of the peace, by provoking the person libeled to break it: which offense is the same (in point of law) whether the matter be true or false; and therefore the defendant, on an indictment for publishing a libel, is not allowed to allege the truth of it by way of justification.

But in the remedy by action on the case, which is to repair the party in damages for the injury done him, the defendant may, as for words spoken, justify the truth of the facts, and show that the plaintiff has received no injury at all.

40. *What is it necessary for the plaintiff to show in actions for libels by signs or pictures?*—126.

It seems necessary always to show, by proper *innuendos* and averments of the defendant's meaning, the import and application of the scandal, and that some special damage has followed.

41. *What remedies does the law allow for malicious indictments or prosecutions?*—126.

The law has given a very adequate remedy in damages, either by an action of conspiracy, which cannot be brought but against two at the least; or, which is the more usual way, by a special action on the case for a false and malicious prosecution.

42. *In prosecutions for felony is it usual to deny a copy of the indictment?*—126.

It is, where there is any, the least, probable cause to found the prosecution upon.

43. *Why is this?*—126, 127.

Because it would be a very great discouragement to the public justice of the kingdom, if prosecutors, who had a tolerable ground of suspicion, were liable to be sued at law whenever their indictments miscarried.

44. *What points are requisite to constitute the injury of false imprisonment?*—127.

Two: 1. The detention of the person; and 2. The unlawfulness of such detention.

45. *Is every confinement of the person an imprisonment?*—127.

It is; whether it be in a common prison, or in a private house, or in the stocks, or even by forcibly detaining one in the public streets.

46. *In what consists unlawful, or false imprisonment?*—127.

It consists in such confinement or detention without sufficient authority

47. *Of what sorts is the remedy for false imprisonment?*—128.

Of two sorts: the one removing the injury; the other making satisfaction for it.

48. *What are the means of removing the actual injury of false imprisonment?*—128.

They are four-fold: 1. By writ of *mainprize*. 2. By writ of *de odio et atia*. 3. By writ of *de homine replegiando*. 4. By writ of *habeas corpus*.

49. *What is the most celebrated writ in the English law?*—129.

The writ of *habeas corpus*; of which there are various kinds made use of by the courts at Westminster.

50. *What is the great and efficacious writ in all manner of illegal confinement?*—131.

The writ of *habeas corpus ad subjiciendum*; directed to the person detaining another, commanding him to produce the body of the prisoner, with the day and cause of his caption

and detention, and to do, submit to, and receive whatsoever the judge or court awarding such writ shall consider in that behalf.

51. *When is this species of habeas corpus a writ of right?*—133

If a probable ground be shown that the party is imprisoned without just cause, and, therefore, hath a right to be delivered, the writ of *habeas corpus* is then a writ of right, which may not be denied.

52. *What is the habeas corpus ad respondendum?*—130.

It is a writ, when a man hath a cause of action against one who is confined by the process of some inferior court, to remove the prisoner, and charge him with this new action in the court above.

53. *What is the habeas corpus ad satisfaciendum?*—130.

It is made use of when a prisoner hath had judgment against him in an action, and the plaintiff is desirous to bring him up to some superior court to charge him with process of execution.

54. *What are the writs ad prosequendum, testificandum, deliberandum?*—130.

These writs of *habeas corpus* issue when it is necessary to remove a prisoner, in order to prosecute or bear testimony in any court, or to be tried in the proper jurisdiction wherein the fact was committed.

55. *What is the common writ ad faciendum et recipiendum?*—130.

It issues out of any of the courts of Westminster Hall, when a person is sued in some inferior jurisdiction, and is desirous to remove the action into the superior court; commanding the inferior judges to produce the body of the defendant, together with the day and cause of his caption and detainer (whence the writ is frequently denominated *habeas corpus cum causa*), to do and receive whatsoever the king's court shall consider in that behalf.

56. *What is it absolutely necessary to express upon every commitment?*—134.

The reason for which it is made.

57. *Why is this?*—134.

That the court, upon a *habeas corpus*, may examine into its validity, and according to the circumstances of the case, may discharge, admit to bail, or remand the prisoner.

58. *What act is generally known as "the habeas corpus act"?*—135.

The Act 31 Car. II., c. 2, which, in its effects, has reduced the general method of proceeding on these writs to the true standard of law and liberty.

59. *What is the satisfactory remedy for the injury of false imprisonment?*—138.

An action of trespass *vi et armis*, usually called an action of false imprisonment.

60. *What is this action of false imprisonment usually accompanied with?*—138.

With a charge of assault and battery also.

61. *In what relations are persons to be considered, as to injuries which affect their relative rights as members of society?*—138, 139.

In the four relations: 1. Husband and wife. 2. Parent and child. 3. Guardian and ward. 4. Master and servant.

62. *What, principally, are the injuries which may be offered to a person, considered as a husband?*—139.

These three: 1. Abduction, or taking away his wife. 2. Adultery, or criminal conversation with her. 3. Beating, or otherwise abusing her.

63. *What does the law always suppose in case of abduction either by fraud and persuasion, or open violence?*—139.

In both cases, it supposes force and constraint, the wife having no power to consent.

64. *What remedy has the husband for this injury?*—139.

He has his remedy by writ of ravishment, or action of tres-

pass *vi et armis*, *de uxore rapta et abducta*, at common law; and the husband is also entitled to recover damages, in an action on the case, against such as persuade and entice the wife to live separate from him without a sufficient cause.

65. *May the husband, by this action, recover the possession of his wife's person?*—139.

No; only damages for taking her away.

66. *What satisfaction does the law give a husband for adultery, considered as a civil injury?*—139.

By the common law, the husband has his action of trespass *vi et armis* against the adulterer, wherein the damages recovered are usually very large and exemplary.

67. *How are the damages for this injury increased or diminished?*—140.

By circumstances, such as the rank and fortune of the plaintiff and defendant; the relation or connection between them; the previous character of the wife, &c.

68. *In what cases must marriage in fact be proved?*—140.

In actions for adultery or criminal conversation, and upon indictments for bigamy.

69. *What is the usual remedy for the injury of beating a man's wife, or otherwise ill-using her?*—140.

If it be a common assault, battery or imprisonment, the law gives the usual remedy to recover damages, by action of trespass *vi et armis*, which must be brought in the names of the husband and wife jointly; but if the beating or other maltreatment be very enormous, so that thereby the husband is deprived for any time of the company and assistance of his wife, the law then gives him a separate remedy by an action of trespass, in nature of an action upon the case, for this ill-usage, *per quod consortium amisit*, in which he shall recover a satisfaction in damages.

70. *What species of injury are incident to the relation between master and servant, and the rights accruing therefrom?*—142.

There are two: the one is, the retaining a man's hired ser-

vant before his time is expired ; the other, the beating or confining him in such a manner that he is not able to perform his work.

71. *What remedies are there in case one man beats, confines or disables another's servant ?—142.*

The servant has his action of battery or false imprisonment ; the master his action of trespass *vi et armis*, as a recompense for his immediate loss.

CHAPTER IX.

OF INJURIES TO PERSONAL PROPERTY.

1. *What injuries may be offered to the rights of personal property in possession ?—144.*

They are liable to two species of injuries : the amotion or deprivation of that possession, and the abuse or damage of the chattels while the possession continues in the legal owner.

2. *Into what branches is this deprivation of possession divisible ?—145.*

Into two branches : the unjust and unlawful taking them away ; and the unjust detaining them, though the original taking might be lawful.

3. *What remedy has the law given for the wrongful taking of goods ?—145, 146.*

In the first place, the restitution of the goods themselves so wrongfully taken, with damages for the loss so sustained by such unjust invasion, is effected by the action of replevin.

4. *When does the action of replevin obtain ?—146.*

Only in one instance of an unlawful taking, that of a wrongful distress.

5. *By what actions is the actual specific possession of the identical personal chattels restored to the proper owner ?—146.*

The action of replevin, and the action of detinue, are almost the only actions by which it may be restored.

6. *What is replevin ?—147.*

The action of replevin being founded upon a distress wrongfully taken, and without sufficient cause, is a re-delivery of the pledge, or thing taken in distress, to the owner, upon his giving security to try the right of the distress, and to restore it if the right be adjudged against him, after which the distrainer may keep it till tender made of sufficient amends, but must then re-deliver it to the owner.

7. *If the distress be carried out of the county, or concealed, what may the sheriff return ?—149.*

He may return that the goods or beasts are eloigned (*elongata*), carried to a distance, to places to him unknown.

8. *What shall the party replevying thereupon have ?—148.*

A writ of *capias in withernam*, in *vetito namio* ; a term which signifies a second or reciprocal distress, in lieu of the first which was eloigned.

9. *Can goods taken in withernam be replevied ?—149.*

Not until the original distress is forthcoming.

10. *Upon action of replevin brought what does the distrainer do ?—150.*

The distrainer who is now the defendant makes avowry, that is, he avows taking the distress in his own right, or the right of his wife, and sets forth the reason for it, as for rent arrere, damage done, or other cause ; or else, if he justifies in another's right, as his bailiff or servant, he is said to make cognizance.

11. *If pending a replevin for a former distress, a man distrain again for the same rent or service, what is the remedy ?—151.*

The party distrained upon is not driven to his action of replevin, but shall have a writ of recaption, and recover damages