Part 7.

The ways of Determining Civil Controversies in point of right or possession about Estates.

Civil Controversies are Determined, either Extrajudicially without going to Law; or in a Judicial Way, by Action in a court of Justice. [redacted] Bishops & Persons of Law must be present & Judges in a Court of Law; that is, Judges having Jurisdiction: Time not permitted from morning prayer to Certain [redacted] to set forth the judicial Romish or Heliots before the Court of Justice, not is the Borough Judicature in Civil Matters. 7/ For connection Sake to give an account of the Jurisdiction of the Officers relative and subordinate to it, and of the Commissions or Retention of Causes and Valuation Tables &c. With a general Scheme of the Form, and Method of proceeding in these Courts, the Said Matters &c.

Book 1.

Of the Decision of Controversies without suit or going to Law; and Concerning Jurisdiction and Judges.

Chap. 1.

The Decision of Controversies without suit or Going to Law.

Controversies are Determined extrajudicially and without going to Law, either by Act of one of the parties, or by Act of all parties.

Tit. 1.

Extrajudicial Determination of Controversies by Act of one of the parties.

Civil Controversies are Determined by Act of one of the parties, some times without, and some times upon, the precept of a Judge.

Sect. 1.

How persons do themselves Justice without Order for of a Judge.

A Person does himself Justice without order of a Judge 1°/ by exercising his right of Hypothick or Retention of Anothers goods or Writs, till some what due to him by the owner is paid. Glud. Mandataries or Depositaries have right of Retention of things Intrusted to them, till they be Reimbursed of Necessary expences bestowed thereon. Superiors of lands in the Country have a tacit Hypothick in their Vassals lands for their fiar duties. A Seller of such Lands hath a Hypothick for the Immediate last years Rents on the fruits of the Ground; and these not satisfying on the goods upon the ground when that years rent fell due. Heritors of rented houses have a legal pledge for a Year's rent upon inventa et illata. The Repairer of a Ship hath a tacit Hypothick upon her for his expences. Writers have a Hypothick of their Clients papers in their hands till their Accounts of Writing be paid. 2°/ A person may Maintain his Possession

Possession against one who would Summarily and Unjustly turn him out. 3°/ Any person may Remove a Nuisance done to his property, if it can be done without a Riot: As he may open the passage to Waters Unwarrantably stopt or turn them into their Course or Channel from which they were Diverted to the prejudice of his Ground; may Remove Carrion or dung laid near to his door, or Logs or Blocks put in a Common Ways, or in a private way to his own house, and the like offences against the Health and ease of the Kings people. 4°/ One Rights himself without the order of a Judge by poinding Brevi Manu, which is thus far allowed, that a person who finds another mans beasts doing hurt or prejudice to his ground, may detain them till he get satisfaction from the owner of the Beasts, quoties for each beast found in the Skaith, besides the Damages, and his expences in keeping it Act 11 Sess. 2 Parl. J. 1. Which Summary kind of poinding is agreeable to the German Custom, Carpzov. Jurisp. Forens. part 2 Constit. 27 Def. 1. But by the Civil Law No person can at his own hand Distrain anothers beast doing damage upon his ground, but only turn it off l. 39. §1. Ad Leg. Aquil. Sed with us in other Cases even immemorial Custom cannot Warrant Intromission with anothers goods without Authority of a Judge. No person can sibi Jus dicere: Nec est Singulis Concedendum quod per magistratum fieri debet; ne occasio sit majoris tumultus faciendi l. 176 ff. de Reg. Jur. Glud. Immemorial Custom of poinding Brevi Manu for the Non performance of services to the professors of a Neighbouring tenement by labouring their ground and Shearing their Corns, whose Infeftments bore Service used and wont, was not sustained to Defend them in an Action of Spuilzie for so doing 19 feb. 1719. Bradie and others contra Walsor. The English allows such Summary Distress not only for the doing hurt or damage by a Stranger's beasts in another mans ground, without his licence, feeding, treading and other ways spoiling the Corn grass, woods hedging or planting, called Damage feasant, in the Night as well as in the day, least the beasts should escape before they are taken; but allows such Distress for Rent Service behind at the day by the Common Law, without any particular agreement, and for Rent Charge then behind, by force of the Agreement, without any Judicial Authority. These