

as here in the Writ of Right in the Attaint, and in Wager of Law; for the Judgment in every of these Three is final.

**¶ Le mise est joyne.** Mise is a Word of Art appropriated only to a Writ of Right, so called, because both Parties have put themselves upon the meer Right to be tried by Grand Jury, or by Battail; so as that, which in all other Actions is called an Issue, in a Writ of Right in that Case is called a Mise. And in this Sense Littleton taketh it here. But in a Writ of Right, if a collateral Point is to be tried, there it is called an Issue, and is derived of this Word [Missum] because the whole Cause is put upon this Point. It is also taken for Expences, as Misæ & Custagia. And sometimes it signifieth a customary Grant to the King, or Lords Marchers of Wales, by their Tenants at their first coming to their Lands.

33 H. 8. cap. 13.

10 E. 3. 20. 31 E. 3.  
Droit. 11. 22 E. 3. 17.  
18 H. 3. Droit 62. 33 E. 3.  
Ib. 39. Lamb. Explicat.  
verborum, verbo Mancusa.

**¶ Tender di. marke al Roy.** Master Lambard saith, That Mancusa & Marca Saxonice Manucap. 7. Meare Nummus 30 valens denarios. And this Meare now called a Mark, being an old Saxon Word, is the Cause that England most commonly reckoned by Marks. Libra, Saxonice is a Pund, a pondo, which is called so until this Day. Solidus, qui apud nos est pars libræ vicesima, denarios per id temporis continebat quinque, nunc duodecim, and Scilling is a Saxon Word, and with us used to this Day. Penny Saxonice Pen-nig, Latin Denarius, but the Value of these have not been always one.

F. N. B. 3. c. 31 E. 3.  
Droit. 15.

In a Writ of Right of Adowson brought by the King, the Tenant shall not tender the Di. Mark, because Nullum tempus occurrit Regi; and therefore the King shall alledge, that he or his Progenitor was seised, without shewing any Time.

Mirror, ca. 1. sect. 17. c. 3.  
de Attaint, ca. 3. sect. 1.  
Fortescue, ca. 26.  
3 Inst. 163, 222.

**¶ En attaint.** Attincta, is a Writ that lieth where a false Verdict in a Court of Record, upon an Issue joined by the Parties, is given. And of ancient Writers it is called Breve de convictione; and it is derived of the Participle Tinctus or Attinctus; for that if the Petty Jury be attainted of a false Oath, they are stained with Perjury, and become infamous for ever; for the Judgment at the Common Law in the Attaint importeth eight great and grievous Punishments. 1. Quod amittant liberam legem in perpetuum that is, he shall be so infamous, as he shall never be received to be a Witness, or of any Jury. 2. Qd. forisfaciant omnia bona & catalla sua. 3. Quod terræ & tenementa in manus Domini Regis capiantur. 4. Quod uxores & liberi extra domus suas ejicerentur. 5. Quod domus suæ prostrantur. 6. Quod arbores suæ extirpentur. 7. Quod prata sua arentur. Et 8. Quod corpora sua carceri mancipentur. So odious is Perjury in this Case in the Eye of the Common Law, and the Severity of this Punishment is to this End, Ut poena ad paucos, metus ad omnes perveniat, for there is Misericordia puniens, and there is Crudelitas parcens: And seeing all Trials of real, personal, and mixt Actions, depend upon the Oath of twelve Men, prudent Antiquity inflicted a strange and severe Punishment upon them, if they were attainted of Perjury.

But since Littleton wrote, a Statute hath been made in Mitigation of the Severity of the Common Law, in Case when the Petty Jury is attainted, and therefore it is taken by Equity. For where the Statute saith, that the Party grieved shall have an Attaint against the Party which shall have Judgment upon the Verdict, yet an Attaint shall be maintained upon that Statute against the Executors of the Party; Et sic de similibus. [a] But see the Statute and Authorities quoted in the Margent. Only I thought good to observe three Things.

[a] 23 H. 8. cap. 3.  
24 H. 8. Br. Attaint 96.  
20 H. 7. 5. 42 E. 3. 26.  
Glanv. l. 2. c. 3.  
Lib. 8. ca. 9.

First, That no Attaint can be maintained upon this Statute, but between Party and Party.

Secondly, That no Consuance can be granted upon any Attaint, because all Attaints are to be taken, either before the King in his Bench, or before the Justices of the Common Pleas, and in no other Courts, &c.

Thirdly, Consider what Pleas may be pleaded in an Attaint by Force of this Act, and what not.

[b] 19 H. 6. 35. 1 H. 4. 3.  
30 E. 3. 20. 29 E. 3. 12.  
13 H. 4. 4. Stan. 74. 17.  
9 E. 4. 35.  
Vide l. 9. f. 32. b.  
Mirror, ca. 4. Del Office  
des Justices, &c.

**¶ En bataille.** Duellum, Monomachia, and it signifieth in the Common Law a Trial by single Fight, by Battail or Combat, Monomachia. [b] And in the Writ of Right neither the Tenant or Demandant shall fight for themselves, but find a Champion to fight for them; because if either the Demandant or Tenant should be slain, no Judgment could be given for the Lands or Tenements in question. But in an Appeal the Defendant shall fight for himself, and so shall the Plaintiff also; for there if the Defendant be slain, the Plaintiff hath the Effect of his Suit, that is, the Death of the Defendant; the Order and Solemnity whereof you may read in our ancient and later Books. And this the Law did institute, when the Tenant failed of his Witnesses, or Evidences, or other Proofs; and the Presumption of Law is, that God will give Victory to him that hath Right.

Sid. 366.

**¶ Ley gager.** Vadiare Legem, and there is also facere Legem, by making of his Law. That is, to take an Oath, (for Example) that he oweth not the Debt demanded of him upon a single Contract, nor any Penny thereof. And it is called Wager of Law, because of ancient Time