I. As to general cuſtoms, or the common law, properly ſo called; this is that law, by which proceedings and determinations in the king's ordinary courts of juſtice are guided and directed. This, for the moſt part, ſettles the courſe in which lands deſcend by inheritance; the manner and form of acquiring and transferring property; the ſolemnities and obligation of contracts; the rules of expounding wills, deeds, and acts of parliament; the reſpective remedies of civil injuries; the ſeveral ſpecies of temporal offences, with the manner and degree of puniſhment; and an infinite number of minuter particulars, which diffuſe themſelves as extenſively as the ordinary diſtribution of common juſtice requires. Thus, for example, that there ſhall be four ſuperior courts of record, the chancery, the king's bench, the common pleas, and the exchequer;---that the eldeſt ſon alone is heir to his anceſtor;---that property may be acquired and transferred by writing;---that a deed is of no validity unleſs ſealed and delivered;---that wills ſhall be conſtrued more favorably, and deeds more ſtrictly;---that money lent upon bond is recoverable by action of debt;---that breaking the public peace is an offence, and puniſhable by fine and impriſonment;---all theſe are doctrines that are not ſet down in any written ſtatute or ordinance, but depend merely upon immemorial uſage, that is, upon common law, for their ſupport.

SOME have divided the common law into two principal grounds or foundations: 1. Eſtabliſhed cuſtoms; ſuch as that where there are three brothers, the eldeſt brother ſhall be heir to the ſecond, in excluſion of the youngeſt: and 2. Eſtabliſhed rules and maxims; as, "that the king can do no wrong, that no "man ſhall be bound to accuſe himſelf," and the like. But I take theſe to be one and the ſame thing. For the authority of theſe maxims reſts entirely upon general reception and uſage; and the only method of proving, that this or that maxim is a rule of the common law, is by ſhewing that it hath been always the cuſtom to obſerve it.

BUT