Tit. 4.

Of the Municipal Law of Scotland

The Municipal Law of Scotland, Lex Terræ, the Law and Custom of the Land is that which directs to the Knowledge and practice of what is just, ice in Scotland.

The Laws of Scotland were anciently (as those made by Lycurgus to the Lacedmonians) kept in Memory and handed down by oral Tradition. An Abriggement whereof with some little Addition was drawn by Order of K. Kenneth, the Second who translated the Marble Chair in which our Kings were crowned, from Argile to Scone.(a) These are recorded by our Historians (H. Boeth. and also by J. Collier (Ecclesiastical History of G. Britain vol. 1. Book 3 pag. 155, 156. and Lefley de morib. & reb. gest. Scot. p. 71.) and called M'alpin Laws because their Author Kenneth was the Son of Alpin K. of Scotland, Mac in our Ancient Tongue signifying a Son. vid. B. Stilingfleet's Reflections on these Laws in his preface to Orig. Brit. p. 41. 42.

For before the Days of Malcolm Canmoir, so called from the Bigness of his Head (who came to the Crown Anno 1061 and was contemporary with William the Conqueror of England) we had no Sort of written Laws. Craig. Feud. lib. 1. Tit. 8. §. 3. Our Kings gave judgment from a little Mount, whence they could be most conveniently seen and heard by the parties concearned, commonly known by the Name of Mons placiti de Scona the Mute Hill of Scone: Mute or Mote a word of Saxon Extract signifying a plea or Action; whence we say a mute point i.e. a pleadable point. All emergent Controversies of an inferiour Nature, and common Pleas were ended by a Jury of 7. 9. 11. 13. or (as was most usual) 15 honest Men of the Neighbourhood. These were the ordinary Judges of both Law and Fact, and the Majority of their Votes was always acquiesc'd in as as a Definitive or final Sentence. Craig. Feud. lib. 3. Tit. 7. §. 9. lib. 1. Tit. 8. §. 3.

Jury trial

(a) Simon Brecus is said to have brought this Chair from Spain to Ireland, and Fergus I from Ireland to Scotland where it was preserv'd some where in Argile Shire. From thence King Kenneth caused transport it to Scoon a place near the River of Tay. In which chair he and his Royal Successors used to be crown'd till the days of Edward I of England, who having over-run all Scotland conbey'd this fatal chair to Westminster where it is still to be seen. It was call'd Fatal, because of the following uncouth verses engraven thereon.

Ni fallat Fatum, Scoti quocunque Locatum
invenient Lapidem, regnare tenentur ibidem.

Which prediction some think was accomplished when a King of Scotland first mounted the English Throne. Abercromby's Martial Atchievements, pag. 125, & 496.

The Marble Chair