

to make good his appeal by his body upon the Body of the Appellee. When A. the Appellee with his left hand took B. the Appellant by the right hand, laying his own right hand upon a Book and swore to this effect: hear this thou who calls thy self B. by the Name of Baptism, that I who call my self A. by the Name of Baptism, on such a day of such a Year did not feloniously kill thy father W. by name as you surmise, nor am I any way guilty of the said felony; so help me God. This being done, he kissed the Book and said, and this I will prove against thee by my body, and this court shall award. Whereafter B. the Appellant took A. the Appellee by the right hand, laying his own right hand upon the Book, and swore to this purpose: hear this thou who by the Name of Baptism calls thy self A. that thou feloniously on such a day in such a Year did kill my father W. by Name so help me God. When he kissed the Book and said, and this I will prove against thee by my body as this court shall award. Where being done, the court appointed them a day and place to fight. Mean while the Appellee was kept in prison till the time prefixed; and the Appellant, unless he was an approver, was dismissed, being finding first to be ready to fight at the time and place. The Marshal apparessed the Combatants upon their own Charges the Night before the Combat, and brought them in to the field before the Justices of the Court where the appeal was depending next morning at the rising of the Sun, bare headed, and bare legged from the knee downwards, bare in the arms to the Elbow, and armed only with Bastons an ell long, and four corners to gots. After proclamation for silence, and that none should presume to disturb the parties, under pain of Imprisonment for Year and day; the Combat began. Wherein if the Appellee owned himself to be Vanquished, he was immediately adjudged to be hanged; but if he could maintain the fight till the stars appeared, he was acquitted of the Appeal if the Appellant owned

owned himself to be Vanquished, the Appellee recovered Damages, and the Appellant lost his *liberam legem*. Trial by battle in Scotland was performed at the Bridge of Stirling. Stat. David. 2 cap. 28 and allowed only for Capital Crimes where the truth could not be otherwise discovered, the person Appalled lay under Suspicion of guilt, and where it was certain there was such a Crime committed, Stat. Robert. 3 cap. 16 *vid. plura apud Martin Golric De quibus Magic. lib. 4 cap. 4 qu. 4 sed. 2. bit. Supra pag. 379.*

We find also some resembling Instances of Extraordinary kind of trial among the Israelites, where a Man charged with adultery, by her husband, was to approve her self not guilty, by Drinking the bitter water of Jealousy without swelling in her belly or Rotting in her thigh. Num. 5. 24. Achans Crime was found out by casting lots, Josua 7. 14. And the Determination of Superiority between the Philistines and the people of Israel, was put upon the issue of David single Combate with Goliath 1 Sam. 17.

Trial by fire or Water or by combat, is called in the canon law *Vulgar purgation*, in opposition to Canonical purgation. Canonical purgation is when in an Ecclesiastical court, a person charged with any offence takes an oath that he is clear of such offence, and brings so many of his honest Neighbours as the Court assigns him, not exceeding twelve to be Compurgators: that is after Inquiry into the life and Manners of the Accused, to swear upon their Conscience, that they believe he hath sworn truly and is innocent. What my Lord Hobart calls a Counterfeit Verdict de Creditate. *vid. Martin Golric lib. 4 cap. 4 qu. 3.* But vulgar purgation is abolished by the canon law as a tempting of god c. 22 can. 2 qu. 4 *Extr. de purgat. Villy. c. licetum & Extr. de purg. canon.* And is long since Disused both in Holland (Stat. H. Alex. 2 cap. 7 § 3. *shenede verb. signif. verb. Machaminum*) and in England (Concordatory. verb. Pataat, Ordeal. Spelman Glossar. Craig Ford. lib. 1 tit. 7 § 12) as a great temptation of God and a presumptuous practice, to require his Divine Majesty on all occasions to work a Miracle, to satisfy us concerning things that may be discovered by ordinary Means. The