

GLANVILLE.

his pleasure, punish both parties, the one for his contempt of Court, and the other for his false claim.

Having got the parties before the Court, the next step was for the demandant to prefer his claim, which was done in a formal manner, very much in the fashion of an old common law declaration. The demand having been made, it was then open to the defendant to deny it if he could, and if he did, he might then either have the question tried by duel or by a proceeding called the grand assize.

In the former case he appointed a champion, if he did not choose to fight himself, and the plaintiff did the like; but before the battle was finally waged further essoins might be cast. Ultimately the parties and their champions appeared in Court and, armed with batons, they proceeded to belabour each other until the stars appeared. If the defendant could hold his ground till then he was successful, and the cause was decided in his favour. If, on the other hand, he or his champion was beaten, he not only had to put up with a battered body but also with the loss of his cause. Lord Coke says that death seldom ensued from such encounters; but it appears from Glanville that the duel was sometimes attended with fatal results; for speaking of the superior merits of the grand assize over trial by battle, he mentions that by the former not only "the severe punishment of an unexpected and premature death is evaded, or at least, the opprobrium of a lasting infamy of that dreadful and ignominious word which so disgracefully resounds from the mouth of the conquered champion."

In the event of defeat the conquered party had to acknowledge his fault or pronounce the word "cravent," which is the disgraceful word to which Glanville refers in the passage above cited; otherwise his left foot was disarmed and uncovered as a sign of cowardice; the de-

feated party, moreover, was fined sixty shillings. There was one merit about this mode of trial, and that was, that it was complete and final, and no appeal could be had from the judgment which followed.

Should, however, the defendant prefer it, he might have the controversy decided by the grand assize. This proceeding, Glanville declares, "is a certain royal benefit bestowed upon the people, and emanating from the clemency of the Prince with the advice of his nobles"; and it certainly had the advantage of saving suitors and their friends the inconveniences resulting from cracked heads. Moreover, under it so many "essoins" were not allowed, as in the case of trial by battle, and it was altogether a more civilized method of procedure.

This mode of proceeding more nearly coincided with our present mode of trial, but there were some very important differences. After the parties were at issue, a writ was issued to four knights requiring them to elect twelve other knights of the neighbourhood, who were to return on their oaths which of the parties had the better right to the land in question. To the election of these twelve knights either party might take exception on the same ground that witnesses were rejected in the Court Christian. The election being completed, the twelve knights were summoned to Court, and on the day fixed they attended, and if none of them knew the truth of the matter, recourse was then had to others, until twelve could be found prepared to swear that one or the other of the parties was entitled. And if some were in favour of the plaintiff, and some of the defendant, then others were required to be added until twelve at least were found to agree in favour of one side. It will thus be seen that the ancient juror was really a witness, and the sum of the matter appears to be, that a plaintiff, before he could succeed upon a grand assize,