or by others, and sue them at their proper costs, for to have part of the land in variance, or part of the gains." And in *Sprye* v. *Porter*, 7 El. & Bl. 58, it is said to institute champerty there must be a suit pending for the recovery of the property, the subject of the agreement, or a stipulation for the amount of one. When the offender carries out his officious and unlawful interference, by seeking corruptly to influence the Court or jury, or by dissuading a witness from giving evidence, this species of maintenance is termed "Embracery," Russ. on Cr., vol. 1, c. 21. If he further make a common practice of maintaining suits unlawfully the offence is called "Barratry," and the offender "a common barrator." *Ib.*, c. 22.

The offence of maintenance is one which by both the common law and statute law is punishable criminally by fine and imprisonment, and by summary committal if committed in the face of the court; but of recent years resort to criminal proceedings for the redress of such wrongs has been rarely had. Not only is the offender criminally liable, but he is also responsible in damages to the party injured. The offence of maintenance is not *malum prohibitum* merely, but it is *malum in se*, per Lord Eldon, *Wallis* v. *Duke of Portland*, 3 Ves. 502.

The offence is a common law offence, but various statutes have imposed specific penalties for the commission of particular kinds of maintenance. The origin of the statutory enactments upon this subject may no doubt be found in the attempted abuse of legal proceedings, by oppressive combinations to carry them into effect, by those who, previously to the establishment of law and order in the reign of Edward I., accustomed to associate for robbery and violence; see 2 Hume's History of England, 320; and by a statute passed in the 33rd year of Edward I., which is the earliest statute on the subject, persons engaging in the unlawful maintenance or promotion of suits were declared to be conspirators.

The state of society has very much changed since the days of Edward I., Richard II., or even those of Henry VIII., in whose reigns the chief statutory enactments relating to this offence were passed. The interference of the rich and powerful in legal proceedings is now less likely than of old to produce any failure of justice, and both by the course of legislation and of judicial decision, the rigour of the common law and of the more ancient statute law on this subject, has of late years been greatly modified. For instance, the 32 Hen. VIII., c. 9, invalidated the sale of pretended titles where the settler had been out of possession for more than a year before the sale; but its provisions are very considerably modified by R.S.O., c. 100, s. 9, which authorizes the sale of contingent executory and future interests, and of possibilities coupled with an interest in land, whether the object of the gift or limitation of such interest or possibility be or be not ascertained, and of rights of entry present or future, and whether vested or contingent, into, or upon land.

There is another still more ancient statute, 1 Ric. II., c. 9, which invalidates as against the plaintiff in an action, all sales of the land in dispute made by a defendant *pendente lite*, but whether it is affected by R.S.O., c. 100, has not, we believe, been expressly determined. This statute of Richard II. was expressly