

Here the division of the territory was to be in three parts, while

"On me, whose all not equals Edward's moiety," (1) might mean one half, or any other undeterminable part of the King.

In Slade's Case, (2) in the 44th year of Queen Elizabeth, it was first decided that an action on the case would lie for debt, or for causes arising *ex contractu* as distinguished from causes arising *ex delicto*: yet nine years before this right of action was known in England Shakespeare wrote:

"I do not know the matter; he is 'rested on the case." (3)

In seeking the grounds for this arrest we find it in the preceding scene, (4) and it appears to be an action for debt arising *ex contractu*. Such an action was unknown in English law at the time Shakespeare wrote this play in 1593, according to accepted authorities. (5) Moreover, from this scene, it appears that the arrest was made without any original writ, or mesne process, by oral instruction of the creditor to the officer:

"Here is thy fee; arrest him officer." (6)

This could not be done without a *capias ad respondendum*, which would be issued only on causes arising *ex delicto*, or causes arising out of a wrong or trespass, and no such tort is even suggested by the scene. It would not have been a difficult matter for Shakespeare to have arranged the scene to conform to legal practice, and the

(1) "King Richard III.," Act I., Scene 2.

(2) 4 Rep. 83.

(3) "Comedy of Errors," Act IV., Scene 2.

(4) "Comedy of Errors," Act IV., Scene 1.

(5) Furness, Rolfe, Collier, &c.

(6) "Comedy of Errors," Act IV., Scene 1.