ximo in.c.i. No.iſtum tex.ibi q̄ð ita eſt intelligēdū ⁊c̄.ex quo clare colligitur quādo feu.itelligatur paternū quoniā illud dicitur eſſe paternū qð fuit illius parētis qui fuit genitor agnatōnis cōis ⁊ eſt iſte melior tex.q̄ꝫ babeaſ alibi ſm doc.tamen ſimileꝫ tex.babemus in.d.c.i.ð natura ſuc.feu.Et ex boc infert Bal.ꝙ in feu.ſucceſſio ſemꝑ aſpicit ſuū ſtipitem ⁊ nō aliū qui nō eſt ſtipes agnationis cōmunis vt dicit probari in boc tex.qð autem dicatur eſſe feu.nouū.dic ꝙ illud qð primo ð nouo acgritur vt probatur in.c.i.j.q te.ſint neceſ.ad probanduꝫ no.feu.inueſti.Et circa p̄dicta vide qð dixi.ſ.in p̄ambulis libri in ſexta diuiſiōe feu.vbi late declaraui qd ſit feu.antiquū qd paternū ⁊ qd nouū. Op.ab extra q: bic nulle ſunt glo.ꝙ imo collaterales nō admittātur ad ſucceſſiōem feu.quoniā aſcēdētes nō admittunſ vt in.d.c.i.j.de natura ſucce.feu.⁊ tamē aſcēdētes vincūt collaterales in ſuccedēdo vt in auc̄.defuncto.C.ad tertul.So.illud operatur natura feu.vt aſcēdētes nō admittanſ de quo dic latius vt ſcripſi.ſ.de bis q feu.da.po.in.§.boc quoqꝫ in ſcða oppoſitōe. Op.ꝙ imo nepotes nō admittātur ſimul cū patruis de.c.lꝫ extra ð voto vbi ad feu.regni nō admittūtur plures.So.ibi loqtur in ſucceſ.regni que nō capit pluralitateꝫ dominoꝝ neqꝫ diuiſionē vt no.in.c.ij bides extra de teſta.de quo dixi latius.j.ð ꝓbi.feu.alie.per fe.in.§.preterea ducatus ⁊.ſ.ð feu.mar.in.c.i. Quero ab extra qd ſi rex cōcedit mibi caſtruꝫ i feu.nomine ⁊ iure antiq feu.poſſidenduꝫ an dato ꝙ ſit nouū aſſumat ſibi vires feu.antiq ⁊ qualitatē.⁊ Bal.in.c.i.in prin.j.ð alie.feu.pa.lꝫ ꝙ ſic per.l.qcūqꝫ.C.ð cōi agro deſer.facit qð dixi.j.ð vaſal.decre.eta.in.c.i.in vltima qōe. Utrū aūt per ſtatutū poſſet fieri noua prouiſio circa ſucceſſiōes feudales vide qð ſcripſi.ſ.de bis q feu.da.po.in.§.boc aūt ⁊.ſ.de ſucceſ.feu.in.§.boc quoqꝫ. Quero an fratres vtrinqꝫ ꝯiuncti excludāt fratreꝫ ex patre tm̄ a feudi ſucceſſione.Et videreſ dicendū prima fronte ꝙ ſic q: eodeꝫ modo ē cautū ð iure cōi ꝑ dictaꝫ auc̄.ceſſante ꝙ ius cōe ſeruare debemus poſtq̄ꝫ nō reperiſ ſtatutū cōtrariū ſm cōſuetudines feudoꝝ vt.ſ.de feu.cogni.in.c.i.Sed tamē boc nō obſtāte tu teneas cōtrariū ꝑ iſtū tex.⁊ ſuadet ratio q: iſti tales veniūt ſolū ex vinculo agnatōis nō aūt virtute alicuius ſanguinis materne.item nō veniūt iure bereditario ſed beneficio dñi vt in.c.i.j.an agna.vel filius ⁊c̄. Agnatus aūt intelligitur etiam frater qui eſt ſolū ex ꝑte patris.ff.ð gradi.l.fi.§.inter agnatos ⁊.C.de legi.bere.in.l.i.⁊ ita tꝫ Jaco.ardi.in ſumma ð ſucce.feu.ſub rubzicella an frater ex vtroqꝫ parēte quem ſeqtur dñs Bal.bic. Quero qd ſi plures nepotes ſupſint ex diuerſis fratribus q ſuccedunt patruo in feu.an voceñ in ſtirpes an in capita.Rñdeo ꝙ in boc ſunt opi.nam Jac.ardi.in ſumma ð ſuc.feu.ſub dicta rubzicella an fratres ex vtroqꝫ parēte ⁊c̄.in.§.ij.tꝫ ꝙ ſuccedūt in capita ſed ſi ad dictā ſucceſſiōem veniunt cū patruo tūc ſuccedūt in ſtirpem.Bal.aūt bic dicit ꝙ ſuccedunt in ſtirpes.⁊ ita dicit ſe cōſuluiſſe ſubiūgens ꝙ iſta queſtio dꝫ determinari ſm ius cōmune.vnde cū ſtatutum ſit vt poſt fratrū filios ſuccedāt vlteriores in capita videſ tacite ſtatutū vt fratrū filij ſuccedāt in ſtirpes ar.in.l.cū pretor.ff.ð iudi.boc idem videſ tenere in.d.c.i.j.ð natura ſuc.in feu.in fi.ſequēdo opi.gl.in dicta auc̄.ceſſante dicēs nō poſſe adberere meliori ratōio q̄ꝫ gloſe.Uerū tamen dic latius ð bac qōne vt ſcripſi.ſ.ð ſuc.feu.i prin.i vltimo notabili.⁊ per Bal.in.l.ij.C.ð ſuis ⁊ legi.bere.⁊.j.ð natura ſucce.feu.in.d.c.i.⁊ bic ⁊ in dicta auc̄.ceſſante.licet ibi videaſ tenere contrariū. Ultimo ad materiā noſtrā vide qð dixi in.§.boc quoqꝫ.ſ.de bis qui feu.da.po.⁊ in dicto ti.ð ſucce.feu.i prin.⁊ in fi.⁊.ſ.i ti.cōſti.feudales lotb.impa.in.c.i.cū ſeq.ti.⁊ qð dixi.ſ.eo.in prin.⁊ in remiſſionibus pluribus ibi adductis ⁊ plene ꝑ Jac.ardi.in ſumma in ti.ð ſucce.feu.ſub rubzicella ð collateralibus cū quattuor rubzicellis ſequentibus ⁊ glo.in.l.quod dicit.ff.ð impenſis.

Si uero do. Supra proxime viſum eſt qualiter agnati collaterales admittūtur ad ſucceſſiōeꝫ feu.paterni ſed q: interdū dubitaſ iter agnatos dicētes feu.eſſe paternū ⁊ dñm vel alios litigātes dicētes eſſe feu nouū.vnde vt p̄dictā dubitatiōem tollat ſubicit bic iſtum.§.quem diuidas in ꝑtes tres.quoniā in prima ꝑte declarat qs probare dꝫ quādo aliqua indicia ſunt ꝙ feu.ſit paternū.In ſecūda ecōtra quando indicia ſunt ꝙ ſit nouū.In tertia tradit doctrinā cui deferēdum ſit iuramētū ꝑ iudicem indefectū probatōis.ſcða ibi ſed ſcio.tertia ibi bonus.Caſus Preſumptio trāſfert onus probandi in aduerſariū.⁊ iudex cauſa cognita indefectū probatōis cōſiderare dꝫ cui potius ſit iuramētū deferēdū.b.d. Premitte pro euidētia caſuꝫ in.§.ſacramētuꝫ.j.ð cōſue.rec.feu.⁊ qð ibi dixi in euidētialibus ⁊ in ſcðo notabili. Iteꝫ premitte ꝙ ſit feu.paternū ⁊ qð ſit feu.nouuꝫ vt dixi.ſ.§.proximo i vltimo notabili. In tex.ibi vel alius vt inueſtitus forte a dño ð dicto feu.tanq̄ꝫ de feu.nouo ⁊ deuoluto vt pꝫ.j.de inueſti.in mari.fac.in.c.i.in.§.i. Ibi beneficiū.i.feu.vt dixi.ſ.in prin.buius capituli. Ibi illius.ſ.defuncti. Ibi dicit ſubaudi ⁊ boc ideo eſt q: p̄ſumptiones erāt ꝙ feu.eſſet paternū. Ibi ſcio.ſ.ego obertus vt declaraui in.c.i.ſuper tex.j.ð eo q ſibi bere.qꝫ ſuis. Ibi pronūciatum ſubaudi q: eo caſu preſumptio erat ꝙ eſſet nouū. Ibi cauſa cognita.que autem veniant in iſta cauſe cognitione no.glo.ſupra de cōtro.inueſti.in prin.ſuper verbo defenſio.⁊ ſupra de cōten.inter do.⁊ vaſal.in prin.⁊ plene dixi in dicto.§.ſacramentuꝫ. Ibi in probatione deficiente ſcilicet plena. Not.ꝙ onus probandi incumbit illi qui magis diſtat a veritate p̄ſumpta facit qð no.glo.fi.i.l.iij.ff.ð ꝓba.

No.ꝙ ad delationem iuramenti indefectū probationis non ē procedendū ex arrupto ⁊ p̄cipitāter.ſed cauſa cognita ⁊ in tali delatione iudex debet babere eqtatem pre oculis quoniā iſta delatio magis innititur eqtati quā rigori vt dixit bic glo.quā multū notabat Pe.de cer.⁊ Bal.Et ex boc eliciebat idem Bal.ſupra ð cōtro.inueſti.in prin.ꝙ iuramētum nō poteſt vnq̄ꝫ deferri indefectū probationis niſi viſo ⁊ cognito qualis ſit iſte defectus ⁊ diligēter examinato facit qð no.i.l.vbicūqꝫ.ff.de interrog.act.⁊ qð babeſ in c.i.de cōfeſ.li.vi.⁊ qð dixi in dicto.§.ſacramētum ⁊ infra de ꝯtro.inter maſ.⁊ fe.in.c. Quero cum glo.i.quare incūbit probatio illi qui allegat feu.eſſe nouū potius quā alleganti illud eſſe ātiquū.Et reſpondet glo.quia p̄ſumptio erat ꝙ eſſet vetus.vnde ſiquis vult allegare cōtrariū ꝙ eſſet nouū debet illud probare ſicut in ſimili videmus ſi aliquis dicat teſtatorem de nouo mutaſſe voluntatem debet illud probare quoniā preſumptio eſt ꝙ teſtator ꝑſeuauerit in diſpōne ātiqua niſi probeſ de nouo illam mutaſſe.l.cum tacitum.ff.de proba.ſic in propoſito noſtro arguendo a ſimili.Et boc voluit iſta gl.vſqꝫ ad ver.⁊ illud itelligo que bene loquitur.

Op.cum dicta glo.cōtra proxime dicta ꝙ imo ideo incūbat ꝓbatio alleganti feu.eſſe nouū ex eo ꝙ aduerſarius feu.poſſidebat ⁊ ideo agenti incūbit probatio.l.ij.ff.de proba. So.dicit gl.ꝙ iſtð eſſet verū p̄ſuppoſito ꝙ vaſal.poſſideret quo cāu eſſet releuatus ab onere probādi niſi forte ip̄e actor fundaſſet intentionē ſuam q: tunc ip̄e poſſidens baberet neceſſe ꝓbare ad excluſionē intentōis agentis.l.ſiue poſſidetis.C.de proba. Ueruꝫ intelligas ea que.ſ.dicta ſunt quādo neuter iſtorū litigātium poſſidebat quo cāu icūbit probatio potius alleganti feu.eſſe nouū quā alleganti illud eē antiquū vt in boc tex.qui ita debet intelligi.Et boc voluit tota iſta glo.vſqꝫ ad fi.que bene loquiſ ⁊ ſtatim latius dicam. Op.cuꝫ glo.ij.qð iſta littera ſibimet aduerſereſ.Naꝫ primo dixit qð ille q dicit eſſe nouū debet illud probare poſtea imediate ſubiūxit ꝙ fuit pronūciatum cōtrariū.So.intellige ꝙ ideo fuit taliter pronūciatū quia p̄ſumptio erat eo cāu pro ip̄o actore ꝙ eſſet nouū ⁊ ideo fuit pronūciatum vt reus allegās illud eſſe paternuꝫ deberet probare. Preſumptio enim boc operatur in vtroqꝫ cāu vt onus probandi transferaſ in eum cōtra quem militat preſumptio.vnde nō ſemꝑ ē deferendū iuramētum poſſidenti ſi ſint preſumptiones alie cōtra ipſum vt infra de cōſue.rec.feu.in dicto.§.ſacramētū ⁊.C.de iureiuran.l.in bonefidei.Et iſta fuit intētio buius glo.vſqꝫ ad verſi.iudici aūt ⁊c̄.licet nō ita clare loquuta ſit. Op.ſubſequēter cū dcā gl.cōtra iſtū tex.in eo qð dat arbitrium iudici in deferēdo.quoniam regula iuris eſt in cōtrariū que diſponit ꝙ actore nō probāte reus debeat abſolui.l.qui accuſare.C.ð edendo.So.intelligas iſtum tex.ꝙ aliqd ſi pro eo pro quo iudex moueſ ad deferendū iuramentū vt probatur in dicto.§.ſacramētum.Ex bis nāqꝫ debꝫ iudex diligenter cōſiderare cui potius ſit deferendū ſcðm eqtatē q̄ꝫ ſemꝑ debet babere ⁊ attendere.l.qð ſi effeſi.ff.de eo qð cer.lo.Et in boc dꝫ ipſe iudex eſſe medius inter vtrāqꝫ ꝑteꝫ prout videmus in ſimili in.l.vbi.C.de cri.fal.nō aūt dꝫ ſe ex arrupto ⁊ incōſiderate regulare tanq̄ꝫ dñs ⁊ ꝑnceps litis ar.j.ð vaſal.decre.eta.in.c.i.⁊ per boc nūc bēs totā expeditā vſqꝫ ad fi.que bn̄ ⁊ notabiliter loqſ facit tex.j.que fuit prima cā be.amit.in.§.ſed q:. Op.ab extra ꝯ id qð bic dicitur vt dño incūbat probatio.quoniā imo videreſ diſtinguendū vtrū quis poſſideat vel nō poſſideat vt ſic nō poſſidēti incumbat ꝓbatio vt.ſ.ð cōtro.inueſti.in.§.cū autem ⁊ ð ꝯten.inter me.⁊ do.ð po:.feu.c.i.So.dic ſm Jac.ð bel.ꝙ aut agnatꝰ poſſidet totū feu.vel ꝑtem vel bꝫ p̄cium vel cambiū ꝑtis ⁊ tūc dñs ꝓbare dꝫ alioqꝫ deferri dꝫ agnato iuſiurandū vt ibi.aut poſſidet dñs