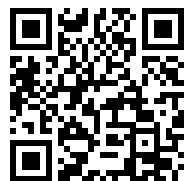

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THE
✓ F O U R T H P A R T
OF THE
Institutes of the Laws of England.

CONCERNING
THE JURISDICTION OF COURTS.

Proverbs 22. 28. *Ne transgrediaris antiquos terminos quos posuerunt patres tui.*

Terminos propriæ potestatis egressus in aliam messem perperam mittit
falces suam.

Authore EDUARDO COKE, MILITE, J. C.

Hæc ego grandævus posui tibi, candide lector.

London :

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M.DCC.XCVII.

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The EPILOGUE.

DEO,

D E O,
P A T R I Æ,
T I B I.

P R O Æ M I U M.

IN the two former parts of the Institutes, we have principally treated *de communibus placitis*, and of those two great pronouns [*meum & tuum.*] In the third we have handled *placita coronæ*, and criminal causes. But because *rerum ordo confunditur, si unicuique jurisdictio non seruetur*, we in this fourth and last part of the Institutes are to speak of the jurisdiction of the courts of justice within this realm.

Jurisdictio est auctoritas judicandi sive jus dicendi int' partes de actionibus personarum et rerum secundum quod deducta fuerunt in judicium per auctoritatem ordinariam seu delegatam: And again, ^b *Jurisdictio est potestas de publico introducta cum necessitate juris dicendi.* It is derived of *jus*, and *ditio*, i. *potestas juris*.

^c *Curia* hath two severall significations, and accordingly it is severally derived. It signifieth the kings court, where his royall person, and his honourable household doe reside, and is all one with *palatium regium*, and is derived ἀπὸ τοῦ κωπίου, of the lord, because the sovereign lord resideth there. It also signifieth a tribunall, or court of justice, as here it doth, and then it is derived à *cura, quia est locus, ubi publicas curas gerebant.*

Of jurisdictions some be ecclesiasticall, and some civill, or temporall: of both these some be primitive, or ordinary with-

Regia.

Jurisdictio quid?
Braët. 1.5. f. 400.
401.
Brit. fo. 1. & 32.
Fleta li. 6. ca. 36.
unde, &c.
^b Lib. 10. f. 73. a.
En le case del
Marshalsea.

^c *Curia quid?*

Fectus.

A P R O E M E.

out commission; some derivative, or delegate by commission. Of all these, some be of record, and some not of record; some to enquire, hear, and determine, some to enquire only; some guided by one law, some by another; the bounds of all and every severall courts being most necessary to be known. For as the body of man is best ordered, when every particular member exerciseth his proper duty: so the body of the commonwealth is best governed when every severall court of justice executeth his proper jurisdiction. But if the eie, whose duty it is to see, the hand, to work, the feet, to go, shall usurp, and inroach one upon anothers work: as for example, the hands or feet, the office of the eie to see, and the like; these should assuredly produce disorder and darknesse, and bring the whole body out of order, and in the end to destruction. So in the common wealth (justice being the main preserver thereof) if one court should usurp, or inroach upon another, it would introduce uncertainty, subvert justice, and bring all things in the end to confusion.

Now when I considered how much it would tend to the honour of the kings majesty, and of his laws, to the advancement of justice, the quiet of the subject, and generally to the good of the whole common wealth (no king in the Christian world having such tribunals, and seats of justice, as his majesty hath, which, God willing, in this treatise we shall make to appear) that all the high, honourable, venerable, and necessary tribunals, and courts of justice within his majesties realms and dominions, as well civill as ecclesiasticall, might be drawn together, as it were, in one map, or table, (which hitherto was never yet done) that the admirable benefit, beauty, and delectable variety thereof might be, as it were, *uno intuitu* beholden, and that the manifold jurisdictions of the same might be distinctly understood and observed. We having (as else where we have said) collected some materials towards the raising of this great and honourable building, and fearing that they should be of little use after my decease, being
very

In the preface to
the first part of
the Institutes.

A P R O E M E.

very short, and not easily of others to be understood, if I should have left them as they were.

Out of the duty that I owe to his most excellent Majesty, and my zeal, and affection to the whole common wealth, I have adventured to break the ice herein, and to publish more at large those things which in our reading we had observed concerning jurisdiction of courts. I confesse it is a labour of as great pains, as difficulty: for as in an high and large building, he that beholds the same after it is finished, and furnished, seeth not the carriages, scaffolding, and other invisible works of labour, industry, and skill in architecture: so he that looketh on a book full of variety of important matter, especially concerning sacred laws, after it is printed and fairly bound and polished, cannot see therein the carriage of the materials, the searching, finding out, perusing, and digesting of authorities in law, rols of parliament, judicall records, warrants in law, and other invisible works, *tam laboris, quam ingenii*: yet I was the rather encouraged thereunto, both because I have published nothing herein, but that which is grounded upon the authorities and reason of our books, rols of parliament, and other judicall records, and especially upon the resolution of the judges of latter times upon mature deliberation in many cases never published before; wherewith I was well acquainted, and which I observed and set down in writing, while it was fresh in memory.

* *Mireris quos
nervos minuent.*

There be amongst the kings records divers and many rols, whereof you shall find little or no mention (that we remember) in our books, viz. *Rot. Parliament. Rot. Placitorum Coronæ, Rot. Placitorum Parliament. Rot. Claus. Rot. Bre-vium, Finium, Inquisitionum, Liberationum, Rot. Cartarum, Eschaetriæ, Pat. Rot. Ordinationum, Rot. Franciæ, Scotiæ, Vasconiæ, et Almanicæ, Rot. Romana, Rot. Judæorum, Rot. Ragman, Brangwin, Rot. Contrariensium* (and the reason of the naming of this roll thus, was for that Thomas earl of Lancaster (a man singularly beloved) taking part with

↑

A P R O E M E.

with the barons against king E. 2. in hatred of the Spencers, it was not thought safe for the king, in respect of their power and greatnesse, to name them rebels or traitors, but *contrarients*) and some others. In this and other parts of our Institutes we cite divers records out of many of these rols: Herein, as in the rest of our works, you shall observe, that in the course of our reading we took all in our way, and omitted little or nothing, for there is no knowledge (seemeth it at the first of never so little moment) but it will stand the diligent observer in steed at one time or other.

And thus for all our pains, wishing the benevolent reader all the profit, we (*favente Deo, et auspice Christo*) begin with the high, and most honourable court of parliament.

OF

OF THE
HIGH AND MOST HONOURABLE
COURT OF PARLIAMENT.

C A P. I.

Of what Persons this Court consisteth.

THIS court consisteth of the kings majesty sitting there as in his royall politick capacity, and of the three estates of the realm: viz. of the lords spirituall, archbishops and bishops, being in number 24, who sit there by succession in respect of their counties, or * baronies parcell of their bishopricks, which they hold also in their politick capacity; and every one of these when any parliament is to be holden, ought, *ex debito justitiæ*, to have a writ of summons. The lords temporall, dukes, marquisses, earls, viscounts, and barons, who sit there by reason of their dignities which they hold by descent or creation, in number at this time 106: and likewise every one of these being of full age ought to have a writ of summons *ex debito justitiæ*. The third estate is the commons of the realme whereof there be a knights of shires or counties, citizens of cities, and burgesies of burghes. All which are respectively elected by the shires or counties, cities and burghes, by force of the kings writ *ex debito justitiæ*, and none of them ought to be omitted: and these represent all the commons of the whole realme, and trusted for them, and are in number at this time 493.

See the first part of the Institutes, sect. 164. for the ancient and latter names of parliament, and the antiquity thereof.

Modus tenendi, Parl. cap. 2.

* All the bishopricks of England be of the kings progenitors incorporation, to have succession and foundation, *tenendum per comitatum seu baroniam*, and were of ancient time donative, and these bishops are called by writ to

the parliament as other lords of parliament be. Rot. Clause 9 H. 4. m. 1. Glanvil. lib. 7. ca. 1. vers. finem. Bract. lib. 5. fo. 412. 427. a. 10 H. 4. 6. 21 E. 3. 60. 17 E. 3. 40. 48. 73. Dicetus deane of London. a 5 R. 2. cap. 4. stat. ult. fo are they ranked. Prov. 11. 14. *Salus ubi multa consilia*. Rot. Parl. 7 H. 4. nu. 2. *Multorum consilia requiruntur in magnis*.

Of what Number.

In the beginning Romulus ordained an hundred senators for the good government of the common wealth: afterwards they grew to 300, and so many were of the house of commons in Fortescues time; who treating with what gravity statutes are made, saith; *Dum non unius, aut centum solum consulorum virorum prudentia, sed plus quam trecentorum electorum hominum, quali numero olim senatus Romanorum regebatur, ipsa statuta edita sunt.*

Festus.

Fortescue, cap. 18. fo. 40.

IV. INST.

B

Erant

Cicero, lib. 1.
Epist. famil.

Erant autem senatores majorum gentium, et senatores minorum gentium, ex patriciis et nobilibus electi, hii ex populo.

Rot. Parl. 7 H. 5.

[2]

Rot. Parl.
50 E. 3. Bonum
Parliamentum.

And it is observed that when there is best appearance, there is the best successe in parliament. At the parliament holden in the seventh year of the reign of H. 5. holden before the duke of Bedford, gardian of England, of the lords spirituall and temporall, there appeared but thirty in all: at which parliament there was but one act of parliament passed, and that of no great weight. In *anno* 50 E. 3. all the lords appeared in person, and not one by proxie. At which parliament, as it appeareth in the parliament roll, so many excellent things were sped and done, as it was called *bonum parliamentum*.

* 14 H. 8. 3.
per Fineux Hol-
lent. chron.
34 H. 8. 956,
957. Dier
38 H. 8. 60, 61.
2 & 3 E. 6. ca. 36.
a 28 E. 3. ca. 6.
Regist. 177.
F. N. B. 164. k.
Pl. R. 232.
Stanf. Pl.
Cor. 49.
b For this dis-
tinction, see the
second part of
the Institutes,
Mag. Cart. verb.
[per pares.]
tc. 29. a.

And the king and these three estates * are the great corporation or body politick of the kingdome: and do sit in two houses, viz. the king and lords in one house, called the lords house, and the knights, citizens and burgeesses in another house, called the house of commons.

* For this word [commons] see the statute of 28 E. 3. whereby it is provided that the coroners of counties shall be chosen in full county *per les commons de mesme les counties*. Commons are in legal understanding taken for the frank tenants or freeholders of the counties. ^b And whosoever is not a lord of parliament and of the lords house, is of the house of the commons either in person, or by representation, partly coagmentative, and partly representative.

But of ancient time both houses sat together. In 8 H. 4. an act of parliament concerning the succession of the crown intailed to H. 4. whereunto all the lords severally sealed, and Sir John Tebetot the speaker in the name of the commons, put to his seale.

Note, that in the letters to the pope by all the nobility of England at the parliament holden in 28 E. 1. the conclusion is this, *In cuius rei testimonium sigilla nostra tam pro nobis quam pro tota communitate præd. regni Angliæ præsentib. sunt appensa*. Hereby I gather, that at this time the commons had no speaker, but both houses sat together, for if the commons had then had a speaker, they would have appointed him to have put to his seale for them, as in 8 H. 4. they did. Certain it is, that at the first both houses sat together, as it appeareth in the treatise *De modo tenendi parliamentum*. Vide Rot. Parl. 5 E. 3. nu. 3. and in other places in the same roll, and in 6 E. 3. in divers places it appeareth that the lords and commons sat together, and that the commons had then no continuall speaker, but after consultation had, they agreed upon some one or more of them that had greatest aptitude for the present businesse to deliver their resolution, which wrought great delays of proceeding, and thereupon the houses were divided, and the surest mark of the time of the division of them is, when the house of commons at the first had a continuall speaker, as at this day it hath.

Of ancient time
both houses sat
together.

Rot. Parl. 50 E. 3.
nu. 8.

After the division the commons sat in the chapter house of the abbott of Westminster.

And this court is aptly resembled to a clock which hath within it many wheels, and many motions, all as well the lesser as the greater must move: but after their proper manner, place, and motion;

tion; if the motion of the lesser be hindered, it will hinder the motion of the greater.

The Names.

'This court is called by severall names, as anciently [*witenage mote*] *conventus sapientum; parliamentum*, of which we have spoken in another place; *comitia*, à *coendo*, quia *coeunt ibi deliberaturi de* ^a *arduis et urgentibus negotiis regni, et statum, et defensionem regni, et ecclesie Anglicanæ concernentibus.* ^b *Commune concilium regni,* ^c *generale concilium regni, et* ^d *concilium regni, and assisa generalis, and assisa ab assidendo, as assisa de Clarendon 22 H. 2.*

Upon some of the records and rols of the parliament it is written,

*Perlege quæ regni clarissima conciliorum
Sunt monumenta, aliter nil præter somnia cernis.*

^e And Virgil writing of the parliament of the gods used the same word of *concilium* in the same sense.

*Panditur interea domus omnipotentis Olympi,
Conciliumq; vocat divum pater, atq; hominum rex, &c.*

Tacitus in *vita Agricolæ* in the time of the Britons calleth it *conventus, à conveniendo.*

Ingulphus, who died before 1109, saith, *Rex Eldredus convocavit magnates, episcopos, preeres, et optimates ad tractandum de publicis negotiis regni.*

Tully calleth it, *Confessum senatrum, à confidendo.*

Parliaments in Scripture.

And the like parliaments have been holden in Israel, as it appeareth in the holy history. *Convocavit David omnes principes Israel, duces, tribunos, et præpositos turmarum, tribunos, centuriones, et qui præerant substantiis et possessionibus regis, filiosque suos, cum eunuchis, et potentes, et robustissimos quosque in exercitu Jerusalem.* And when they were all assembled, the king himself shewed the cause of calling that parliament. *Audite me fratres mei et populus meus, cogitavi ut ædificarem domum in qua requiesceret arca fœderis domini, et ad scabellum pedum Dei nostri, et ad ædificandum omnia præparavi, &c.*

^b And the like parliament did king Solomon son of king David hold. *Congregavit Solomon majores natu Israel, et cunctos principes, tribunos, et capita familiarum de filiis Israel in Jerusalem, &c.* ^c There was also a parliament holden in the time of the judges. *Convenit univrsus Israel ad civitatem quasi homo unus eadem mente, et uno consilio, &c.* And that parliament builded on such unity, had blessed successe.

Of this court of parliament the king is *caput, principium et finis.* And as in the naturall body when all the sinews being joyned in the head do join their forces together for the strengthening of the body, there is *ultimum potentie*: so in the polituque body when the king and the lords spirituall and temporall, knights, citizens, and burgessees, are all by the kings command assembled and joyned together

See the first part of the Institutes, sect. 164. ubi supra.

^a Breve parliam.

^b Brevia originalia de vasto, &c.

^c W. 1. in exordio.

^d Glanvil, lib. 8. cap. 10. & lib. 13. cap. 32.

Lib. 9. cap. 10. Bracton lib. 3.

tract. 2. cap. 3.

^e Æneidos 10. concilium deorum.

[3]
34 H. 6. 40. a. Prior.

1 Chron. ca. 28.

Preparation.

Actus activorum sunt in patiente disposito, saith the philosopher.

^b 2 Chron. ca. 5.

2.

^c Judges 20. 11.

Conventus.

Modus tenend. parl.

gether under the head in consultation for the common good of the whole realm, there is *ultimum sapientiæ*.

What Properties a Parliament Man should have.

Rot. parl. anno
3 H. 6. nu. 3.

It appeareth in a parliament roll, that the parliament being, as hath been said, called *commune concilium*, every member of the house being a counsellor, should have three properties of the elephant; first, that he hath no gall: secondly, that he is inflexible, and cannot bow: thirdly, that he is of a most ripe and perfect memory: which properties, as there it is said, ought to be in every member of the great councill of parliament. First, to be without gall, that is, without malice, rancor, heat, and envy, in *elephante melancholia transit in nutrimentum corporis*. Every gallish inclination (if any were) should tend to the good of the whole body, the common wealth. Secondly, that he be constant, inflexible, and not to be bowed, or turned from the right, either for fear, reward, or favour, nor in judgement respect any person. Thirdly, of a ripe memory, that they remembering perils' past, might prevent dangers to come, as in that roll of parliament it appeareth. Whereunto we will adde two other properties of the elephant, the one, that though they be *maximæ virtutis, et maximi intellectus*, of greatest strength, and understanding, *tamen gregatim semper incedunt*, yet they are sociable, and goe in companies; for *animalia gregalia non sunt nociva, sed animalia solivaga sunt nociva*. Sociable creatures that goe in flocks or heards are not hurtfull, as deer, sheep, &c. but beasts that walk solely, or singularly, as bears, foxes, &c. are dangerous and hurtfull. The other, that the elephant is *philanthropos, homini erranti viam ostendit*, and these properties ought every parliament man to have.

Virg. Georg.
Illum non populi
facies, non
purpura regum
Flexit.

Aristotle. Bar-
tholomæus.

* [4]

Of Records of Parliament.

* Mich. 5 E. 1.
in communi
banco. Rot. 100.
Linc. Pasch.
19 E. 1. Rot.
145. Abbot de
Selby. Pasch.
28 E. 1. coram
rege rot. between
the King and
Venables in
Quare Impedit.
Mich. 3 E. 2.
coram rege rot. 6.
and many others
where the causes
and reasons, pro
et contra have
been set down,
&c. 6 E. 3. fo. 5.
per Herle.
3 E. 4. 2. b. 7. a.
19 H. 6. 63. a.
per Fray.
22 E. 4. 18. per
Huffey, &c.

The reason wherefore the records of parliament have been so highly extolled, is, for that therein is set down in cases of difficulty, not only the judgment, or resolution, but the reasons, and causes of the same by so great advice. * It is true * that of ancient time in judgements at the common law, in cases of difficulties either criminall, or civill, the reasons and causes of the judgement were set down in the record, and so it continued in the reigns of E. 1. and most part of E. 2. and then there was no need of reports: but in the reign of E. 3. (when the law was in his height) the causes and reasons of judgements, in respect of the multitude of them are not set down in the record, but then the great casuists and reporters of cases (certain grave and sad men) published the cases, and the reasons and causes of the judgements or resolutions, which from the beginning of the reign of E. 3. and since we have in print. But these also, though of great credit, and excellent use in their kind, yet far underneath the authority of the parliament rolls, reporting the acts, judgements, and resolutions of that highest court.

Huffey. rot. par. 19 E. 1. rot. 12. Margery Weylands case. Nota quia op-

The

The Summons of Parliament.

The king *de advisamento concilii* (for so be the words of the writ of parliament) resolving to have a parliament, doth out of the court of chancery send out writs of summons at the least forty days before the parliament begin: every lord of parliament, either spirituall, as archbishops, and bishops, or temporall, as dukes, marquesses, earls, viscounts and barons; peers of the realm, and lords of parliament ought to have severall writs of summons.

Prov. 13. 16. Sapiens omnia agit cum consilio. Vide infra. These writs of summons you shall find in former times in the close rol, for they are not in

the Register, and in that rol are the writs *De expensis militum, civium et burgenfium, et procuratorum cleri*, and these are in the Register also.

Temporall Assistants.

And all the judges of the realm, barons of the exchequer of the coif, the kings learned councill, * and the civilians masters of the chancery are called to give their assistance and attendance in the upper house of parliament, but they have no voices in parliament; and their writs differ from the writs to the barons: for their writs be, *Quod interfutis nobiscum et cum cæteris de consilio nostro* (and sometimes *nobiscum* only) *super præmissis tractaturi, vestrumque consilium impensuri*; but the writ to the barons is, *Quod interfutis cum prælatis, magnatibus et proceribus super dictis negotiis tractaturi, vestrumque consilium impensuri*.

* Regist. 261. F. N. B. 229. a. ib. called attendants.

Spirituall Assistants. Procuratores Cleri.

And in every writ of summons to the bishops, there is a clause requiring them to summon these persons to appear personally at the parliament, which is in these words, *Præmonientes decanum et capitulum ecclesiæ vestræ Norwicensis, ac archidiaconos totumque clerum vestræ diocesis. quod iidem decani et archidiaconi in propriis personis suis, ac dictum capitulum per unum, idemque clerus per duos procuratores idoneos plenam et sufficientem potestatem ab ipsis capitulo et clero divisim habentes prædicti die et loco personaliter interfut ad consentiendum hiis quæ tunc ibidem de communi consilio dicti regni nostri divina favente clementia contigerit ordinari*: and the bishop under his seal make certificate accordingly. And these are called *procuratores cleri*, and many times have appeared in parliament as spirituall assistants, to consider, consult, and consent, *ut supra*, but had never voices there, because they were no lords of parliament. Some have thought, that because the clergy were not party to the election of the knights, citizens, and burgeses, that these *procuratores cleri* were appointed to give their consent for them, but then they should have had voices, which questionlesse they never had. And by the words of the writ it was to consent to those things which by the common councill of the realm should happen to be ordained, so as their consent was only to such things as were ordained *de communi concilio regni*, and that there might be an act of parliament without them: and in many cases multitudes are bound by acts of parliament which are not parties to the elections of knights, citizens, and burgeses,

Mod. tenend. parl. ca. 2. Rot. Claus. 8 E. 2. m. 15. Dorf. Ib. 5. E. 2. m. 15. Ib. 11 F. 3. parti. m. 1. Ib. 22 E. 3. part 2. m. 3. Ib. 36 E. 3. m. 16. Rot. par. 18 E. 3. nu. 1. 3 R. 2. 11 R. 2. 21 R. 2. Procuratores Cleri. reg. 261. a. F. N. B. 229. a. Procuratores de Clero. In fascicul. literarum procurat. &c. 13 H. 4. & 5 H. 5. See hereafter sit. Proxies.

as all they that have no freehold, or have freehold in auncient demesne, and all women having freehold, or no freehold, and men within the age of one and twenty years, &c. And it appeareth by the treatise *de modo tenendi parliamenti*, &c. that the proctōrs of the clergy should appear, *cum presentia eorum sit necessaria* (which proveth that they were voicelesse assistants only) and having no voices, and so many learned bishops having voices, their presence is not now holden necessary.

12 E. 3. bre'
480. 31 E. 3.
bre' 342. 32 E. 3.
Bre' 291.
7 H. 6. 27.
21 E. 4. 15.
For these regular lords of parliament, and when they ceased, see hereafter, pa.
7 E. 4. bre' 163.
7 H. 6. 29.
11 E. 3. bre' 473.

It is to be observed that in the writs of parliaments to the bishops (being lords ecclesiasticall secular) they are named by their Christian names and name of their office; as, *Rex, &c. reverendissimo in Christo patri Johanni eadem gratia archiepiscopo Cantuar.* or *rex, &c. reverendo in Christo patri Johanni episcopo Norwicenf.* &c. But if the surname be added it makes not the writ vicious.

But the abbots and priors being lords of parliament, religious and regular, might be named by the name of their office only, as *Rex dilecto sibi in Christo abbati Sancti Edmondi de Bury, &c.*

A duke, a marquise, an earl, and viscount are regularly named by their Christian names, and the names of their dignities, and rarely (yet sometimes) by their surnames; nor are they named by their knighthood, if they have any, but rarely. If a baron be a knight, he is regularly named by his Christian name, surname, and by *miles* or *chivalier*, and his barony. If he be no knight, then he is named by his Christian name, and the name of his barony; but if the surname be added, it maketh not the writ vicious. And this holdeth as well where the baron taketh his dignity of a place, as where he taketh it of his surname; but where the surname is dignified, there to make a formall writ, it is good to add the place of his barony.

Of ancient time the temporall lords of parliament were commanded by the kings writ to appear, *In fide et homagio, quibus nobis tenemini*, and in the reign of E. 3. *in fide et ligeancia*, and sometime, *in fide et homagio*, but at this day constantly in *fide et ligeancia*, because at this day there are no feodall baronies, in respect whereof homage is to be done, which in 21 E. 3. was the true cause of this alteration.

The ecclesiasticall barons secular or regular were commanded by the kings writ to be present, *in fide et dilectione, quibus nobis tenemini*, as the bishops are at this day.

We find in the rols of parliament a writ in anno 23 R. 2. and successively in every parliament untill and in the fift year of H. 6. amongst the barons that came to the parliament, it is said *magistro Thomæ de la Warre*, and some say that the addition of *magister*, was to distinguish him from them that were knights: as in the roll of 1 E. 4. amongst the barons it is said, *Johanni de Audely armigero*, for that the rest of the barons (saving himself) and the lord Clynton were *chivaliers*. And others doe hold that he was of the clergy before the dignity descended to him, and in that respect he was called *magister*.

In the roll of 5 H. 5. and in many succeeding rols we find *baro* applied to the lord of Greystock, as *Radulpho baroni de Greystock*, and *Jehanni baroni de Greystock*, and to few other.

11 E. 3. tit. bre.
473.

In many rols we find the barons that were knights, named *chivaliers*, wherein we observed, that they liked to be called *chivaliers* rather

rather than *milites* after the legall word (for *equus auratus* is not used in law.) For example, in anno 1 E. 4. *Edmundo Grey de Ruthin chivalier*, &c. and under subscribed thus, *milites omnes, exceptis Johanne de Audeley armigero, et Johanne domino de Clynton*. And in 3 E. 4. all the barons (saving the lord Scales) have the additions of *h'valiers*, and subscribed thus, *Equites aurati omnes præter dominum Scales*. And in 7 E. 4. all the barons have the addition of *chivaliers*, and therefore subscribed thus, *equites aurati omnes*. Hereby and by many others it appeareth that the barons, if they were knights, were so named; and that they were not named *chivaliers* unless they were knights. But in the reign of H. 8. and since, barons are named *chivaliers* in the writ of summons, though they be no knights.

[6]

Baner legally *banerium*, *vexillum*, *banerher*, *unde banerherius* or *banerius*, i. *laro*, *vexillarius major*, et *banerettus* a diminutive of *banerius*, *vexillarius minor*. A baron is called *banerherius* or *banerius* of the banner, (being the ensigne of his honour) serveth for a guide and direction: so the baron observing the end of his nobility should be an example and guide to others, as well in war as in peace, in all notable habilities and vertues, and so of the baneret: both the baron and the baneret hath one kinde of baner: for the baneret is created in the field in the kings host, and (amongst other things) by cutting the sharp point of his pennon, and making it a banner. i. *vexillum baronis*: so as the baneret hath' the baner, but not the dignity of the baron. And this doth notably appear by the case in 22 E. 3. the very words of which resolution I will first set downe, and then the effect. *Un fuit challenge pur ceo que il fuit a baner, et non allocatur: car fil soit a baner, et ne tient per barony, il serra in assise*. That is, one was challenged because he had the banner and was a baneret, *et non allocatur* by the rule of the court, because albeit he had the banner, yet *ne tient per barony*, that is, he was no baron of parliament.

De Baneretto, et unde.

22 E. 3. 18. tit. Challenge, 119.

Nota seriem temporis, John Coupland a valiant leader in anno 20 E. 3. neer Durham, at Nevils Castle, took in *aperto prælio*, David the second, king of Scots; for which king E. 3. created him knight baneret, and gave him lands and livings, and in 22 E 3. the case in law fell out.

For this order of knighthood see Camdens *Britannia* 124, and for this case of Sir John Coupland, Camden in *Linc.* pag. 618. See 35 H. 6. fo. 46. There the challenge was that he was a baneret a lord of parliament. See 48 E. 3. 30. 48 *Aff. pl. ultimo*. Lib. 6. fo. 55. But Sir John Coupland was not the first baneret that England had, as * some have thought, and was with us before the reign of E. 3. for in *pelle exitus anno 8 E. 2. in scaccario Johannes de Cromlewele banerettus*. And *ex compoto garderobæ anno 9 E. 2. Nicholous de Gray* was declared by writ of E. 2. to be *de familia regis taxquam banerettus*, both for his precedency and fallery.

* Speed. See hereafter, pag.

For summoning of the commons a writ goeth out to the lord warden of the Cinque Ports for the election of the barons of the same, who in law are burgeses, and to every sheriffe of 52 counties in England and Wales for the choise and election of knights, citizens, and burgeses, within every of their counties respectively.

The Beginning of the Parliament.

Rot. parl. 3 H. 6.
nu. 1.

H. 6. sat in parliament when he was 3 or 4 years old, and so did he in the 6th and 8th years of his reign. The royall person represented two wayes.

Rot. pat. an. 24 E. 3. m. 18.
The patent of the guardianship.

See Rot. parl. 25 E. 3. nu. 10.

* [7]
Rot. parl. 5 H. 5.
nu. 1.

† 8 H. 5 cap. 1.
in print.

Not. Quia in presentia majoris cessat potestas minoris And the letters patents of this office is with a *quandis in partibus transmarinis moram fecerimus*, &c. ut sup. Rot. parl. 3 E. 4.

Rot. 1. 13. 14. Like letters patents to the earl of Warw. in the same parliament. nu. 15.

Parl. 28 Eliz.

See an excellent president hereof, Rot. clauf. anno 8 E. 2. 7. Sept.

m. 26. & 1 pars p. ut an. 8 E. 2.

m. 26. with a commandement of attendance.

Simile 30 E. 2. 2 part pat. m.

2c. 13 E. 3. nu. 1. Stat. 2. in absentia 22. diani

Angl. 2.

At the retorne of the writs the parliament cannot begin but by the royall presence of the king either in person or by representation. By representation two wayes, either by a gardian of England by letters patents under the great seale when the king is *in remotis* out of the realme: or by commission under the great seale of England to certain lords of parliament representing the person of the king, he being within the realme in respect of some infirmity.

† The patent of the office of a gardien of England reciteth his speedy going beyond sea, or *in remotis*, or urgent occasions and the cause thereof. *Nos quod fax nostra tam in nostra absentia quam presentia inviolabiliter observetur, et quod fiat communis justitia singulis conquerentibus in suis actionibus et querelis, de fidelitate dilecti et fidelis nostri Edwardi ducis Cornubiæ, et comitis Cestrice filii nostri primogeniti plenarie confidentes, constituimus ipsum custodem dicti regni nostri ac locum nostrum tenent' in eodem regno quam diu in diebus transmarinis partibus moram fecerimus, vel donec inde aliud duxerimus.* (And this is that *capitalis justiciarius* mentioned in Mag. Carta, cap. 11. when the king is *extra regnum*) with a clause of assistance. But yet if any parliament is to be holden there must be a speciall commission to the gardien, to begin the parliament, and to proceed therein: but the *teste* of the writ of summons shall be in the gardiens name.

• A parliament was holden *in quinti quinto*, viz. anno 5 H. 5. before John duke of Bedford, brother and lieutenant to the king, and gardien of England, and was summoned under the *teste* of the gardien or lieutenant. [† It is enacted, that if the king being beyond the seas, cause to summon a parliament in this realme, by his writ under the *teste* of his lieutenant: and after such summons of parliament gone out of the chancery, the king arriveth in this realm: that for such arrivall of the same king such parliament shall not be dissolved, but the parliament shall proceed without new summons.]

† In 3 E. 4. a parliament was begun in the presence of the king and prorogued untill a further day: and then William archbishop of York the kings commissary by letters patents held the same parliament and adjourned the same, &c. The cause of the said prorogation was, for that the king was enforced to go in person to Gloucestershire to repress a rebellion there.

As hath been said, the kings person may be represented by commission under the great seale to certain lords of parliament authorizing them to begin the parliament, and both the gardien and such commissioners do sit on a forme placed neer to the degrees that go up to the cloth of estate.

And in 28 Eliz. the queen by her commission under the great seale bearing date the 28 of October anno 28, reciting that she for urgent occasions could not be present in her royall person, did authorize John Whitgift archbittop of Canterbury, William baron of Burgbley lord treasurer of England, and Henry earle of Derby lord steward of the household then being, *ad inchoandum, &c. tenendum, &c. et ad procedendum, &c. et ad faciend' omnia et singula, &c. nec non ad parlamentum edicendum et prorogandum, &c.*

whi

which commission is entred in *hæc verba* in the Journall Book in the lords house, and in the upper part of the page above the beginning of the commission is written, *domina regina representatur per commissarios, viz. &c.* the 29 day of October, the said commissioners sitting on a forme before the cloth of estate, after the commission read, adjourned the parliament until the 15 of February following, &c. And this parliament began the 29 of October, and not the 15 of February, wherein the printed book is mistaken, for then the parliament begun, and was prorogued.

Thus much shall suffice, when the kings person shall be represented.

But when the parliament shall not begin at the day of the returne, but for certaine urgent causes then to be prorogued until another day, and then to be holden before the king, there is a ready way for the effecting thereof, and that is by writ patent under the whole great seale, reciting the writ of summons, and to bear *teste* before the retorne thereof, and signed above with the kings signe manuell, and directed *prælatis, magnatibus, proceribus hujus regni, ac militibus, civibus, et burgenfibus convocatis et electis ad hoc parlamentum pro quibusdam causis et considerationibus, &c.* to prorogue the parliament to a certaine day, and at the retorne of the summons, this writ being read in the upper house before certaine of the lords of parliament, and of the commons there assembled, and prorogation made accordingly, the parliament is prorogued; and this was so done in *anno 1 Eliz.* the retorne of the summons of parliament being the 9 of October, and by such a writ it was prorogued until the 25 of February following, at what time in judgement of law the parliament did begin, and was holden, and not on the 9 of October, as it was adjudged. A like prorogation was made by the queens like writ of the parliament holden *anno 5 Eliz.* at both which dayes of prorogation, the parliament did hold before the queen her selfe, until the dissolution of the same, which writs are entred in *hæc verba* in the Journall Book.

Prorogued by writ patent.

Dier. 3 El. 203. a. And herein the printed book of statutes erreth, for here the parliament begun not.

What is to be done the first Day of Parliament.

*[8]

On the first day of the parliament, the king or most commonly the lord chancellor or keeper of the great seale in the presence of the lords and commons, do shew the causes of the calling of his high court of parliament, but the king * may appoint any other: as many times, the chiefe justice of England, and sometime ^a some other, as may appear in the parliament rols, only one I will transcribe.

^b At this day Sir Henry Green the kings chiefe justice (although the lord chancellor were present) in the presence of the king, the lords and commons, declared the causes of the parliament ^c in English, viz. For redresse of matters touching the church, for observation of the peace, for the affairs of Scotland, for the inhauncing of the price of wooll, &c. ^d But at the next meeting Simon Langham bishop of Ely shewed the causes of parliament, and in

22 E. 3. Sir William Thorpe chiefe justice. ^a 17 E. 3. nu. 79. 8. Sir Bart. de Burgherft. 25 E. 3. nu. 16. 27 E. 3. nu. 2. 28 E. 3. nu. 1. 29 E. 3. nu. 1. Sir William Sharvill chiefe just. 45 E. 3. nu. 8. Sir Robert Thorpe chiefe justice 47 E. 3. nu. 2. Sir Jo.

Knivet chiefe justice. 50 E. 3. nu. 2. Sir Jo. Knivet chief justice. 51 E. 3. nu. Ashton the kings chamberlain. ^b Parl. 36 E. 3. nu. 1. Simon Langham b. of Ely chancellor. ^c And so was it done ever after. 5 R. 2. nu. 2. The causes of parliament were in ancient time shewed in the chamber de peint, or St. Edwards chamber. ^d Parlia. 27. E. 3. nu. 1.

the

the end, he did in the kings name require the commons to make choice of a learned and discreet man to be their speaker: and when a bishop was lord chancellor, he took a text of scripture which he repeated in Latin, and discoursed upon the same. But when a judge was lord chancellor, he took no text, but in manner of an oration shewed summarily the causes of the parliament.

The Election of the Speaker.

It is true the commons are to chuse their speaker: but seeing that after their choise the king may refuse him, for avoiding of expence of time and contestation, the use is (as in the *conge de essier* of a bishop) that the king doth name a discreet and learned man whom the commons elect: but without their election no speaker can be appointed for them, because he is their mouth, and trusted by them, and so necessary, as the house of commons cannot sit without him: and therefore a grievous sicknesse is a good cause to remove him, as in 1 H. 4. John Chenve speaker chosen and allowed, was for sicknesse, so as he could not serve, discharged, and Sir John Doreward chosen in his place: and so was William Sturton, after he was chosen and allowed speaker, removed for grievous sicknesse, and Sir John Doreward chosen in his place. At the parliament holden in 15 H. 6. Sir John Tirrell knight was chosen and allowed speaker, and for grievous sicknesse removed, and William Beerly esq; chosen in his place, &c.

But sicknesse is no cause to remove any knight, citizen or burgesse of the house of commons: so note a diversity between the speaker, and any other of the house of commons, and this diversity being not observed begat an error by some opinion in 38 H. 8. tit. Parliament, Brook 7. for continuall experience is to the contrary.

The Presentment of the Speaker.

When the commons have chosen their speaker, the person elected standing in his place disabling himselfe to undergoe so weighty a charge, as in his discretion he thinks fit; desires them to proceed to a new choise: which being denied, and he set in the chaire, then he prayeth them to give him leave, that he may disable himselfe to the king: after this they present him to the king in the lords house; where after he hath disabled himselfe to speak before the king, and for the whole body of the realme, and made humble suit to the king, lest by his insufficiency the businesse of the realme may be hindred, to be discharged, and a more sufficient man to be chosen: if he be allowed by his majestie, then he maketh a protestation consisting on three parts: first, that the commons in this parliament may have free speech, as of right and by custome they have used, and all their ancient and just priviledges and liberties allowed to them. Secondly, that in any thing he shall deliver in the name of the commons (if he shall commit any error) no fault may be arrected to the commons, and that he may resort again to the commons for declaration of their true intent, and that his error may be pardoned. The third is, that as often as necessity

Sicknesse cause to remove the speaker.

1 H. 4. nu. 62.
63. Rot. parl.
1 H. 5. nu. 9,
10, 11.
Rot. parl. 15 H.
6. nu. 10. & 27.

Sickness no cause to remove a member of the house of commons.
38 H. 8. parl.
Br. 7.

What the speaker shall do when he is chosen.

The king may allow of his excuse, and disallow him, as Sir John Popham was.
28 H. 6. nu. 6.
The protestation of the speaker.

Cap. 1. The High Court of Parliament.

*9

necessity for his majesties service, and the good of the common wealth shall require, he may by the direction of the house of commons have access to his royall person.

* This is in the parliament rols called a protestation in respect of the first part, the nature whereof is to be an exclusion of a conclusion, and herein that the house of commons be not concluded, to speak only of those things which the king or lord chancelor, &c. hath delivered to them to be the causes of the calling of this court of parliament, but in a parliamentary course of all other arduous and urgent business, which principally consist in these five branches, as it appeareth in the writs of summons to the lords spirituall and temporall, viz.

And so in succeeding times called

Rot. par. 1. R. 2. nu. 15. &c.
Rot. Parl. 2 H. 4. nu. 8. Sir Arnold Savage speaker. 5 H. 4. nu. 8. 7 H. 4. nu. 11. Sir Jo. Tibetost speaker. and ibid. nu. 30. 1 H. 5. nu. 7. 2 H. 5. nu. 10. a protestation.

The Matters of Parliament.

1. Touching the king. 2. The state of the kingdome of England. 3. The defence of the kingdome. 4. * The state of the church of England: and 5. The defence of the same church. And this appeareth by expresse words in the parliament writ in these words: *Pro quibusdam arduis urgentibus negotiis, nos, statum, et defensionem regni nostri Angliæ, et ecclesiæ Anglicanæ concernentibus quoddam parlamentum nostrum, &c. teneri ordinavimus, &c.* And these words [the state and defence of the kingdome] are large words, and include the rest. And though the state and defence of the church of England be last named in the writ, yet is it first in intention, as it appeareth by the title of every parliament: as for example, * To the honour of God and of holy church, and quietnesse of the people, &c.

Now for as much as divers lawes and statutes have been enacted and provided for these ends aforesaid, and that divers mischiefs in particular, and divers grievances in generall concerning the honour and safety of the king, the state and defence of the kingdome and of the church of England might be prevented, an excellent law was made anno 36 E. 3. which being applyed to the said writs of parliament doth in few and effectuall words set downe the true subject of a parliament in these words. For the maintenance of the said articles and statutes, and redresse of divers mischiefs and grievances which daily happen, a parliament shall be holden every year, as another time was ordained by a * statute.

Before the conquest parliaments were to be holden twice every year, *Celeberrimus autem ex omni satrapia bis quotannis conventus agitur.* King E. 1. kept a parliament once every two year for the most part, and now it is enacted, that a parliament shall be holden once every year.

The Romans vanquished our ancestors the ancient Britains, for that they assembled not, they consulted not in common with them, nor common counsels, as Tacitus in vita Agricolaë saith. *Nec aliud adversus validissimas gentes pro nobis utilius, quam quod in * commune non consulunt. Rarus ad propulsandum commune periculum conventus: ita dum singuli pugnant, universi vincuntur.* But to return to the matters of parliament.

Rot. parl. 9 H. 4. An act intituled. *Indemnitie des seigniors et commons*, not printed.

* See W. 1. anno 3 E. 1. in the preamble, the state of the realme, and of holy church. And the 2 part of the Institutes, W. 1. cap. 1. and in the preamble. * 36 E. 3. 50 E. 3. &c.

36 E. 3. cap. 10. Parliaments ought to be holden once in a year.

* 4 E. 3. cap. 14. Inter leg. Edgar cap. 5.

Tacitus in vita Agricolaë, pag. 306.

* Nota, Commune concilium. Conventus.

And

4 H. 3. c. 8.

* Neq; timida
prob. tas, neque
improba forti-
tudo rei publicæ
est utilis.

The like writ to
all the other
counties, saving
in Wales they
have but one
knight and one
burgesse.

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² Nota, ad fa-
ciendum et con-
sentiendum.

And every city
two citizens, and
out of every
burgh two bur-
gesses.

³ Nota, super ne-
gotiis antedictis.

And it is enacted and declared by authority of parliament in *anno*
4 H. 8. That all suits, accusations, condemnations, executions,
fines, americiaments, punishments, corrections, charges, and im-
positions at any time from thenceforth to be put, or had upon any
member, either of that present parliament, or at any parliament at
any time after that act to be holden, for any bill, * speaking, rea-
soning, or declaring of any matter or matters concerning the par-
liament, to be communed, or treated of, be utterly void and of
none effect. Which latter branch is generall. Now what matter
or matters concern the parliament appear before. And this claufe of
the act of 4 H. 8. is declaratory of the ancient law and custome of
the parliament.

And this doth not only appear by the writs directed to the lords
of parliament, but by the writs for election of the commons. For
example. The writ to the sheriffe of Norfolk for election of the
knights, citizens, and burgeses within that county is, *Rex vicecomi-
tati Norff. salutem. Quia nos de avisamento et assensu concilii nostri pro
quibusdam arduis et urgentibus negotiis, nos, statum, et defensionem regni
nostri Angliæ, et ecclesiæ Anglicanæ concernentibus quoddam parliamen-
tum nostrum apud, &c. teneri ordinaverimus, et ibidem cum prælati-
bus, magnatibus, et proceribus dicti regni nostri colloquium habere et tracta-
tum: ipsi vicecom. Norff. præcipimus firmiter injungend^o, quòd facta
proclamatione in proximo comitatu tuo post receptionem ejusdem brevis, duos
milites gladiis cinctos, &c. elegeri faceret, &c. ² ad faciendum et con-
sentiendum hiis quæ tunc ibidem de communi concilio nostro Angliæ (sa-
vente Deo) contingerent ordinari^b super negotiis antedictis, ita quòd pro
defectu potestatis hujusmodi, seu propter improvidam electionem militum,
civium et burgensium prædict^o dicta negotia nostra infecta non remanerent
quovismodo.* And this power extendeth equally to all knights, ci-
tizens and burgeses of parliament.

What the Speaker shall doe after his Allowance.

After the commons with their speaker are come from the lords
house, and that the speaker is set in the chair, then he desireth
the commons, that seeing they have chosen him for their mouth,
that they would favourably assist him in their arduous and im-
portant affairs, and that he will do them the best service he
can with all diligence and faithfull readinesse, or to the like ef-
fect.

The Writs of Summons of Parliament, which are to be found in the close Roll from time to time.

Seeing the summons of parliament (as hath been said) is by the
kings writs, which tend to the beginning of the parliament, it shall
be necessary to speak somewhat of those writs. And it is to be
observed, that the substance of those writs ought to continue in
their original essence without any alteration, or addition, unless it
be by act of parliament. For * if original writs at the common
law can receive no alteration, or addition, but by act of parliament,
à multo fortiori, the writs for the summons of the highest court of
parliament can receive no alteration or addition, but by act of par-
liament

* Bract. l. 5. f.
413. Britton,
122. 227. Fleta,
li. 2. ca. 12.
W. 2. ca. 25.
1. pt. of the Inst.
sect. 101. Epist.
ad lib. um.

liament. Where * the writs of fummons issued out of the chancery, and were returnable in the court of parliament, the return thereof could not be altered, and returnable into the chancery, but by act of parliament. And because the words of the writ for election of knights, &c. were, *duos milites gladiis cinctos, &c.* it required an act of parliament, that notable esquires might be eligible.

Walsingham saith, that in *anno Domini* 1404. which was *anno* 6 H. 4. in the writs of the fummons of parliament, there was added by the king a commandment in the writ, that no lawyer should be returned knight or burgeffe, (but the historian is deceived, for there is no such clause in those writs, but it was wrought by the kings letters by pretext of an ordinance in the lords house, in 46 E. 3.) But at the next parliament in 7 H. 4. at the grievous complaint of the commons, being interrupted of their free election by those letters (which were letters of justice and right) it is, amongst other things, enacted, that elections * should be freely, and indifferently made notwithstanding any prayer, or commandment to the contrary, i. *sine prece*, by any prayer or gift, *et sine precepto*, without commandment of the king by writ, or otherwise, or of any other which was a clofe, and prudent false, not only for that fore, but for all other in like case, and is but an act declaratory of the ancient law and custome of parliament.

c 7 H. 4. ca. 15.
Rot. par. 5 R. 2.
nu. 1, 2, &c.
they be now returned into the chancery, and kept in the office of the clerk of the crown there.
d 23 H. 6.
ca. 15.

Parl. 6H.4. This was called *indocum parlamentum*, lack-learning parliament.
Rot. par. 46 E. 3. nu. 13. 5 R. 2. c. 4. 7 H. 4. ca. 15. See hereafter more of this matter, in this chapt. pa. and who be eligible, &c.

* Nota.
W. 1. ca. 5.
3 E. 1.

Petitions in Parliament.

On the first day of the parliament, after the commons be departed to choose their speaker, then are certain justices assistants, and civilians masters of the chancery attendants, viz. four justices, and two attendants appointed to be receivers of the petitions of England, Ireland, Wales, and Scotland, and that those that will deliver their petitions, are to deliver them within six days following. At that time there are other justices and civilians attendants, viz. three justices and two attendants appointed to be receivers of petitions for Gascoign and other * places beyond the seas, and of the isles, and that they deliver their petitions within six days, &c.

Then are appointed of the nobility lords of parliament and bishops, viz. six of the nobility, and two bishops to be triers of the said petitions for England, Ireland, Wales, and Scotland, they together, or four of the prelates and lords aforesaid, calling to them the kings learned counsell, attendants in parliament when need should be, and to sit in the chamber of the treasury. The like appointment of the nobility and bishops to be triers of the petitions for Gascoign, and other places beyond the seas, and of the isles, and a place appointed for their sitting, calling to them the kings learned counsell when need should be. For petitions to be preferred into the lords house in parliament for the countries and places aforesaid, this was the ancient constant law, and custome of the parliament continued until this day. Wherein these three things are to be observed. First, the extent of the jurisdiction of the parliament of England. Secondly, that for expediting of causes, there should be receivers of all petitions, both of judges of the realm for their knowledge in the laws of the realm, and of civilians attendants, who might prepare and in-

form

[11]

Receivers of petitions of England, Ireland, Wales, Scotland.

* Gascoign, Guyan, Poitiers, Normancy, Anjou, &c.

Triers of petitions.

form the triers, being lords of parliament, of the quality of those petitions. Thirdly, that there should be of the lords spirituall and temporall triers of those petitions to try out whether they were reasonable, and good and necessary to be offered and propounded to the lords.

Of petitions in parliament some be of right, some of grace, and some mixt of both: some preferred by the lords spirituall, some by the lords temporall, some by the commons, some by the lords and commons. *Extra parlamentum nulla petitio est grata, licet necessaria; in parlamento nulla petitio est ingrata, si necessaria.* ^a All petitions ought to contain convenient certainty and particularity, so as a direct answer may be given to them.

^b Petitions being timely preferred (though very many) have been answered by the law and custome of parliament before the end of the parliament. This appeareth by the ancient treatise, *De modo tenendi parlamentum, &c.* in these words faithfully translated in a fair and ancient manuscript, for bills and petitions. The parliament ought not to be ended while any petition dependeth undiscussed, or at the least, to which a determinate answer is not made.

And in the parliament rols, there is a title towards the end of the parliament. The petition of the commons, &c. with their answer entred and recorded in the roll of parliament. ^c And one of the principall ends of calling of parliaments is for the redresse of the mischiefs and grievances that daily happen. ^{*} Innovations and novelties (sometimes termed in rols of parliament novelties) in parliamentary proceedings are most dangerous, and to be refused. ^d And sometime the king doth answer the petition of the commons by the assent of the prelates, counts, barons, and commons themselves, such unity hath been for the common good in parliaments in former times.

Appointment of Committees of Grievances, &c.

The commons being the generall inquisitors of the realm, have principall care in the beginning of the parliament to appoint days of committees, viz. of grievances (both in the church and common-wealth) of courts of justice, of priviledges, and of advancement of trade. These committees when they meet, they elect one of them to sit in the chair in likeness of the speaker: the committee may examine and vote the questions handled by them, and by one, whom they appoint, report their resolution to the house, and the house, sitting the speaker, to determine the same by question.

^a Bracton. Gravus est æternarum quam temporalem lædere majestatem. And it appeareth by the statute of 36 E. 3. cap. 10. That it is one of the principall ends of the parliament to redresse grievances. And the words of the writ of parliament be, *De arduis et urgentibus negotiis statum et defensionem ecclesiæ Anglicanæ concernentibus.*

^{*} [12]

Absents,

Absents, Proxies.

Any lord of the parliament by licence of the king upon just cause to be absent, may make a proxy: and in the bundle of proxies *anno* 5 H. 5. it appeareth, that in those days a spirituall lord in parliament might have made his proxie to the procurators of the clergie, or to any other clerk, but at this day he cannot make it but to a lord of parliament: but a knight, citizen, or burgesse of the house of commons cannot by any means make any proxy, because he is elected and trusted by multitudes of people.

21 E. 4. 50.
The ancient record, *De modo tenendi parl. &c. vers. finem optime.*

Of the ancient Treatise called Modus tenendi Parliamentum.

Now for antiquity and authority of the ancient treatise, called *modus tenendi parliamentum, &c.* whereof we make often use in this part of the Institutes; certain it is, that this *modus* was rehearsed and declared before the Conqueror at the time of his conquest, and by him approved for England, and accordingly the Conquerour according to *modus* held a parliament for England, as it appeareth in 21 E. 3. fo. 60.

See the second part of the *Inft. Mag. Cart. ca. 2. pag. 7, 8.*
See the first part of the Institutes *sect. 164. fo. 110.*
See the 2. part *Inft. pa. 8.* the charter of king H. 1. at his coronation having relation to *modus tenendi parl.*
See also the charter of king John *anno 17. Math. Par. 246. per antiquum relevium, viz. barres comitis pro comite integro 100 l. barres baronis pro baronia integra 100 marc. et barres militis de feodo militis integro, 5 l.* See *Mag. Cart. ca. 2.*
* It is justly called *antiquum relevium*, because it is according to the proportion of this ancient *modus*.

After king H. 2. had conquered Ireland, he fitted and transcribed this *modus* into Ireland in a parchment roll, for the holding of parliaments there, which no doubt H. 2. did by advice of his judges, being a matter of so great weight and legall. This *modus* in the parchment roll transcribed as aforesaid, by H. 2. remained in Ireland, and in *anno* 6 H. 4. was in the custody of Sir Christopher Preston knight, a man of great wisdom and learning, which roll king H. 4. in the same year, *de assensu Johannis Talbot chivalier* his lieutenant there, and of his counsell of Ireland, exemplified for the better holding of the parliaments there; and in the exemplification it expressly appeareth that H. 2. did transcribe this *modus*, as is aforesaid.

This *modus* was seen by the makers of the statute of Magna Carta, *anno* 9 H. 3. ca. 2. concerning the reducing of the * ancient reliefs of entire earldomes, baronies, and knights fees according to such proportions as is contained in the *modus*, which they could not have done so punctually, if they had not seen the same, whereof you may read more at large in the first part of the Institutes, *sect. 103. fo. 76. Verbo Relief.* And some part of this *modus* is cited in the parliament roll, *anno* 11 R. 2. and other records of parliament, and upon diligent search we can find nothing against it. But many very ancient copies you may find of this *modus*, one whereof we have seen in the reign of H. 2. which containeth the manner, form, and usage of Gilbert de Scrogel marshall of England, in what manner he occupied and used the said room and office in all his time, and how he was admitted, &c. at the coronation of H. 2. and of his knight marshall, and other inferior officers, &c. and adjoined thereunto, and of the same hand is this *modus*, as fit for him to know.

But lest it might be said to me, as it was once said to an oratour, who having spoken much in commendation of Hercules: it was demanded

demanded of one that stood by, *Quis vituperavit? ad quod non fuit responsum.* But now let us return to proxies.

At the parliament holden an. 1 Eliz.

[13]

A lord of parliament by licence obtained of the queen to be absent, made a proxy to three lords of parliament, *Coniunctim et diuifim dans eis potestatem tractandi, tractatibusque auxilium et consilium impendendi, atque statutis et ordinationibus, quæ inactitat' contigerint, consentiendi, ita quod non sit melior conditio occupantis.* And one of the procurators gave consent to a bill, and the two others said, not content. And first it was by order of the lords debated amongst the judges and civilians attendants, and conceived by them that this was no voice, and the opinion was affirmed by all the lords of parliament *seriatim.* Another question was moved at that time; that if a lord of parliament make a proxy, and after come into the lords house of parliament, and sit there without arguing, consenting or speaking any thing: and it was conceived by the judges and civilians, that this sitting there without saying any thing was a revocation in law of his proxy; *à fortiori*, if he moved, or spake to any matter there propounded, and their opinion was resolved by the lords *seriatim.* And these were the proxies of the bishop of Bathe, the lord Howard chamberlain, and of the lord Windesore.

Lib. Sap. 17. 12.
Mat. Par. pa.
233-

King John in the 13 year of his reign being in extream fear of both the pope and the French king, and especially of his own subjects (and what is fear, saith Solomon, but a betraying of the succours that reason offereth?) sent ambassadours to Admirallus Murmelinus great emperour of Turkey Sir Thomas Hertington and Sir Ralph Nicholson knights, and Sir Robert of London clerk, *nuntios suos secretissimos*, to offer to be of his religion, and to make his kingdome tributary to him, and he and his subjects to be his vassals, and to hold his kingdome of him. But that infidell great prince, as a thing unworthy of a king, to deny his religion, and betray his kingdome, utterly refused to accept. King John in the 14 year (the next year) of his reign by his charter 15 May, by the threats and perswasion of the popes commissary Pandulphus surrendered his kingdomes of England and Ireland to pope Innocent the third, *cum communi consilio baronum* (as he inserted therein) and that thence forward he would hold his crown as feodary to the pope, paying for both the said kingdomes 1000. marks. Whereupon doing homage and fealty to the pope by the hand of Pandulphus, and taking off the crown from his head surrendered it to the pope by Pandulphus, at whose feet he laid also the royall ensignes, his scepter, sword and ring: all which was afterward accepted, approved, and ratified by the pope, by his bull which was called *Bulla aurea.*

Rot. Cl. an.
3 E. 1. m. 9. in
Schedula.

Gregorius papa petiit à rege E. 1. per literas annum censum 1000 merc. Rex respondet se sine prælatis et proceribus regni non posse respondere, et quòd iurejurando in coronatione sua fuit restrictus, quòd iura regni sui servaret illibata, nec aliquid quod diadema tangat regni eiusdem absque ipsorum requisiti consilio faceret.

Rot. par. 40 E. 3.
nu. 8. an act
never yet printed.

In anno 40 E. 3. the pope by his ambassador demanded of the king homage for the kingdome of England and land of Ireland, and the arerages of 1000 marks by the year, granted by king John to pope Innocent the third and his successors, and threatened that if it were not paid, the pope was resolved to proceed against the king. Whereupon the king in the same year calleth his court of parliament

ment, and in the beginning of that parliament (saith the record) *Fuit monstre a les prelates, dukes, countes, barons, les chivaliers des counties, citizens et burgeses en le presence le roy per le chancellor, coment' ils avoient entendue les causes del summons del parliament en generall, mes la volonte le roy fust que les causes fussent monstres a eux en especiall, lour disoit coment le roy avoit entendue que le pape per force dun fait quel il dit que le roy Johan fesoit au pape de luy faire homage pur le realme d'Engleterre et la terre d'Irland et que per cause du dit homage qil luy devoit paier chesteun an perpetuelment mille mars, est en volonte de faire proces devers le roy et son roialm pur le dit service et cens recoverir; de coi le roi pria as dits prelates, dukes, countes et barons leur avys et bon conseil, et ce qil enferroit, en case que le pape vorroit proceder devers luy, ou son dit roialme per celle cause: et les prelates requeroient au roy quils se purroient per eux seul aviser et respondre lendemain, queux prelatz le dit lendemain adeprimes per eux mesmes, et puis les autres dukes, countes, barons et gentz respondirent et disoient, que le dit roy Johan ne nul autre purra mettre lui, ne s'n roialme, ne son people en tiel subjection sanz assent et accorde deuz: et les communes sur ce demandez et avisez respondirent en mesme le manere; sur qui feust ordeine, et assenti per commune assent en manere quensuyt. En se present parlement tenuz a Westm' Lundy prochein apres la invention de la seinte croice lan du reign le roy Edward quarantisme, tant sur l'estat de seinte eglise, come des droits de son roialm et de sa corone maintenir, entre autres choses estoient monstrez coment ad este parlee, et dit que le pape per force dun fait quele il dit que le roi Johan, iadis roy d'Engleterre fesoit au pape au perpetuite de luy faire homage pur le roialme Dengleterre et la terre de Irland, et per cause du dite homage de luy rendre un annuel cens: ad este en volonte de faire processe devers le roi pur les ditz services et cens recoverir; la quele chose monstree as prelates, ducs, countes, barons, et la commun' pur ent avoir leur avys et bon conseil, et demandee de eux ce que le roi enferra en case que le pape vorroit proceder ou rien attemper devers lui ou son roialme per celle cause? Queux prelates, ducs, countes, barons et communes en sur ce plein deliberation responderont et disoient dune accorde, que le dit roy Johan ne nul autre purra mettre luy ne son roialme ne son people en tiel subjection sanz assent de eux, et come piert per plusieurs evidences, que si ce feust fait, ce feust fait sanz leur assent, et encontre son serement en sa coronacion, et outre ce le ducs, countes, barons, gentz et communes accordarent et grantarent que en case que le pape se afforceroit ou rien attemperoit per proces, ou en auter manere de fait de constreindre le roi ou ses subjects de per fait: ce quest dit q'il voet clamer telle partie qils resistront et contresterront ove toute leur puissance.*

This noble and prudent king took the fairest and surest way to give satisfaction, whereof the pope being certified, the matter ever since hath rested in quiet.

* It is declared by the lords and commons in full parliament, upon demand made of them on the behalf of the King, that they could not assent to any thing in parliament, that tended to the disherison of the king and his crown, whereunto they were sworn. See hereafter in the case of Ireland.

Lex et Consuetudo Parliamenti.

By the ancient law, and custome of the parliament a proclamation ought to be made in Westminster in the beginning of the parliament, that no man upon pain to lose all that he hath, should
 IV. INST. C during

I have thought good to transcribe it in proprio idioma.

[14]

No king can put himself nor his realm, nor his people, in such subjection without assent of the lords and commons in parliament, and therefore it k. John had done it by the common council of his barons as his charter purporteth, yet it bound not, for that it was not done in parliament by the king, the lords and commons: and albeit it might (as here it appeareth, it cannot be done without authority of parliament) yet it is *contra legem et consuetudinem parliamentis* to doe such a thing, as by the next record in 42 E. 3. appeareth. * Ro. par. 42 E. 3. nu. 7. *Lex et consuetudo parliamenti.*

7 E. 2. *Stat. de defensionibus per stand. arma.*

2 E. 3. ca. 3.
Rot. par. 6 E. 3.
nu. 1.
13 E. 3. nu. 2.
14 E. 3. nu. 2.
15 E. 3. nu. 2.
17 E. 3. nu. 3.
18 E. 3. nu. 2.
20 E. 3. nu. 1.
25 E. 3. stat. 1.
nu. 58. 25 E. 3.
stat. 2. nu. 5. &c.
Privy coat or
armour.
Games or plays.
Rot. par. anno
13 E. 3. nu. 5.
& 8.
* See hereafter
pa.

during the parliament in London, Westminster, or the suburbs, &c. wear any privy coat of plate, or goe armed, or that games or other playes of men, women, or children, or any other pastimes or strange shews should be there used during the parliament: and the reason hereof was, that the high court of parliament should not thereby be disturbed, nor the members thereof (which are to attend the arduous and urgent businesse of the church and commonwealth) should not be withdrawn.

* It is also the law, and custome of the parliament, that when any new device is moved on the kings behalf, in parliament for his aid, or the like, the commons may answer, that they tendred the kings estate, and are ready to aid the same, only in this new device they dare not agree without conference with their countries; whereby it appeareth, that such conference is warrantable by the law and custome of parliament.

And it is to be observed, though one be chosen for one particular county, or borough, yet when he is returned, and sits in parliament, he serveth for the whole realm, for the end of his coming thither, as in the writ of his election appeareth, is generally, *ad faciendum et consentiendum hiis quæ tunc et ibidem de communi consilio dicti regni nostri (favente deo) contigerint ordinari super negotiis prædictis: i. pro quibusdam arduis et urgentibus negotiis nos, statum, et defensionem regni nostri Angliæ et ecclesiæ Anglicanæ concernentibus*, which are reheared before in the writ.

And as every court of justice hath laws and customes for its direction, some by † the common law, some by the civill and canon law, some by peculiar lawes and customes, &c. So the high court of parliament *suis propriis legibus et consuetudinibus subsistit*. It is * *lex et consuetudo parliamenti*, that all weighty matters in any parliament moved concerning the peers of the realm, or commons in parliament assembled, ought to be determined, adjudged, and discussed by the course of the parliament, and not by the civill law, nor yet by the common laws of this realm used in more inferiour courts; which was so declared to be *secundum legem et consuetudinem parliamenti*, concerning the peers of the realm, by the king and all the lords spirituall and temporall; and the like *pari ratione* is for the commons for any thing moved or done in the house of commons: and the rather, for that by another law and custome of parliament, the king cannot take notice of any thing said or done in the house of commons, but by the report of the house of commons: and every member of the parliament hath a judiciall place, and can be no witnesse. And this is the reason that judges ought not to give any opinion of a matter of parliament, because it is not to be decided by the common laws, but *secundum legem et consuetudinem parliamenti*: and so the judges in divers parliaments have confessed. And some hold, that every offence committed in any court punishable by that court, must be punished (proceeding criminally) in the same court, or in some higher, and not in any inferiour court, and the court of parliament hath no higher.

Upon his petition exhibited to the king, wherein the question was, whether the power which he had raised was high treason, &c. which petition (saith the king) let be delivered to the justices by them to be considered. Whereupon the lords made protestation, that the order thereof belonged to them, which was to them allowed, and they resolved it to be no treason.

† [15]
Lex et consuetudo parliamenti.

Ista lex ab omnibus est quærenda, a multis ignorata, a paucis cognita.

Fleta, lib. 2. cap. 2.

* Rot. par. 11

R. 2. nu. 7.

See the first part of the Institutes, sect. 3. verb. *En la ley*.

Rot. par. 2 H. 4. nu. 11.

Rot. parl. 3 H. 6.

In le countee de Marshalls case.

Rot. par. 27 H. 6.

nu. 18. the earle of Arundels case.

Rot. parl. 31 H. 6.

nu. 26, 27, 28. baron Florps case.

5 H. 4. nu. 22.

The earle of Northamberlands case.

Vide rot. parl.

9 H. 4. *Interim nity des signiors et commons.*

And

And because we have a case in 3 E. 3. 19. concerning the law and custome of parliament, we have thought good to set down the record of that case *de verbo in verbum*, and then to examine the report of the said case, and the opinion there delivered, wherein we shall desire the learned to consider well the statute of 5 R. 2. stat. 2. cap. 4. and thereupon to consider what (as that statute speaketh) hath been done of old times, &c. And how that act saith done, and not said.

Johannes episcopus Winton in misericordia pro pluribus defaultis. Idem Johannes episcopus attachiat' fuit ad respond' domino regi, de eo quare cum in parlamento regis apud novam Sarum nuper tent' per ipsum dominum regem inhibitu[m] fuisset, ne quis ad dictum parlamentum summonitus ab eodem recederet sine licenc' regis: idem episcopus durante parlamento prædict. ab eodem sine licentia regis recessit in regis contemptum manifestatum, et contra inhibitionem regis suprædictum. Et unde idem dominus rex per Adam de Fincham, qui sequitur pro eo, dicit, quod prædictus Johannes episcopus fecit ei transgress' et contemptum prædict. &c. in contempt. regis mille librarum. Et hoc offert verificare pro domino rege, &c.

*Et prædictus episcopus in propria persona sua venit, et defendit omnem contemptum et transgress' et quicquid, &c. et dicit, quod ipse est unus de paribus regni, et prælatus sacros. ecclesie, et eis in est venire ad parlamentum domini regis per summonitionem et pro voluntate ihesus domini regis cum sibi placuerit, * et dicit, quod si quis eorum deliquerit erga dominum regem in parlamento aliquo, in parlamento debet corrigi et emendari, et non alibi in minor' cur' quam in parlamento: per quod non intendit, quod dominus rex velit in cur' hic de hujusmodi transgr. et contempt. factis in parlamento responderi, &c. Et super hoc datus est eis dies coram rege à die sanctæ Trin. in quindecim dies ubicunq; &c. salvo rationibus. Ad quem diem præd. episcopus venit in propria persona sua, et datus est ei dies coram domino rege a die sancti Mich. in 15 dies ubicunq; &c. in eodem statu quo nunc, &c. salvo rationibus suis. &c. Ad quem diem venit prædict. Adam qui sequitur, &c. Et similiter prædictus episcopus in propria persona sua. Et prædictus Adam pro prædicto domino rege dicit, quod cum placeat ei parlamentum suum tenere pro utilitate regni sui de regali potestate sua facit illud summoneri ubi et quando, &c. pro voluntate sua, et etiam facit prohiberi existentibus tunc ad parlamentum. ne quis eorum abinde recedat contra prohibitionem suam, &c. absq. licentia, &c. Et si quis eorum abinde recedat contra prohibitionem, &c. in contempt. regis, &c. bene liceat ipsi domino regi sumere secliam erga hujusmodi delinquentes in quacuna placet sibi, &c. Et ex quo dominus rex pro voluntate sua parlamenta sua tenet, &c. petit iudicium pro ipso domino regi, si idem dominus rex duci debeat, seu compelli ad prosequend' in hac parte alibi contra voluntatem suam, &c.*

Et prædictus episcopus dicit ut prius, quod cum aliquis deliquit in parlamento, ibidem debet corrigi et emendari, &c. et licet aliquis summonitus esset veniendi ad parlamentum, et non venisset ibidem, debet puniri, per quod non intendit, quod dominus rex velit alibi responderi quam in parlamento, &c. Et super hoc datus est eis dies usq; in crâ. animarum ubicunq; &c. in eodem statu quo nunc, &c. Ad quem diem venit prædict. Adam, qui sequitur pro domino rege, quam prædict. episcopus in propria persona sua. Et datus est eis dies coram domino rege in octab. Sancti Hilarii ubicunq; &c. salvo rationibus suis, &c. Ad quem diem prædict. episcopus venit, et datus est ei dies ulterius coram domino

Pasch. 3 E. 3' coram rege rot. 9. in Dor. South. Nota, that this was by writ original.

The declaration.

The plea of the bishop to the jurisdiction of the court.

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• Nota hoc.

This is the allegation of the kings attorney.

The B. maintains his former plea to the jurisdiction.

rege in octab. Pur. beatæ Mariæ ubicunq', &c. Ad quem diem venit tam prædictus episcopus, quam Johannes de Lincoln' qui sequitur pro domino rege, et datus est eis dies ulterius coram domino rege à die Paschæ in quinque septimanas ubicunq', &c. Salvis rationibus, &c. Ad quem diem venit tam præd. episcopus in propria persona sua, quam prædict. Johannes de Lincoln, qui sequitur pro dicto domino rege, &c. Et datus est eis dies ulterius a die Sancti Michaelis in 15 dies ubicunq', &c. salvis sibi rationibus suis hinc in dicend' &c.

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And this is all that is in the record, whereby it appeareth that the plea of the bishop to the jurisdiction of the court after divers dayes given did stand, and was never over-ruled agreeably to the said resolutions in former times, that judges were not to determine matters concerning the parliament, as is aforesaid. Touching the report of the said case, thus far forth it agreeth, that this contempt cannot be punished in any other court than in the kings bench: so as the question is only for that court. It appeareth that the reporter never saw the said record, only took it by the care of that which was spoken in court (a dangerous kind of reporting, and subject to many mistakings, for seldome or never the right case is but) as in this case it fell out. For first, where the record saith, that the parliament was holden at Sarum, the report is of a parliament holden at Salop. 2. The report saith, that John B. of Winchester was arraigned, which implieth that he was indicted, &c. where he was sued by originall writ. 3. The inhibition made by the king alledged in the record, is not in the report. 4. Concerning the sudden opinion of Scrope in this report: by his opinion the parliament it selfe could not have punished this contempt: for he saith, *Ceux q. sont judges de parlement, sont judges de leur piers, mès le roy nad my pier in son terre demesne, pur q. il ne poct p. eux estre judge, donques aïlors que cy ne poct estre judge*, whereas without question the parliament might have punished this contempt: and concludeth with a rule at the common law, that the king may sue in what court it pleaseth him. But matters of parliament (as hath been often said) are not to be ruled by the common law: and it seemeth that the rest of the judges were against Scrope, for the plea was never over-ruled, as by the record it appeareth.

Vide per indictamenta termino Paschæ 1 & 2 Ph. et Mar. coram rege rot. 48. Informations preferred by the attorney generall against 39 of the house of commons for departing without license contrary to the kings inhibition in the beginning of the parliament; whereof 6 being timorous burgessees *ad relinendam vexationem* submitted themselves to their fines, but whether they paid any, or very small, we have not yet found. And * Edmond Plowden the learned lawyer pleaded, that he remained continually from the beginning to the end of the parliament, and took a travers full of pregnancy: and after his plea was *sine die per demise le roign.*

If offences done in parliament might have been punished elsewhere, it shall be intended that at some time it would have been put in ure. Vid. the first part of the Institutes, sect. 108.

Now the said informations anno 1 & 2 Ph. and Mar. against 39 of the house of commons follow in these words. *Pasch 1 & 2 Ph. and Mar. regis et reginæ. Midd. ff. memorand' quod Edwardus Griffyn ar' attornat' domin. regis et reginæ generalis, qui pro eisdem domino rege et domina regina sequitur, venit hic in cur' dictorum dominorum re-*

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Mich. 3 & 4 Ph.
& Mar. rot. 36.
inter plac. regis
et reginæ.

Edw. Griffin.

gis et reginæ coram ipsis rege et regina apud Westm' die Sabbathi proxim' post quind' Pasch. isto eodem termino, et dat cur' hic intelligi et informari. Quod cum ad parliamentum dominorum regis et reginæ nunc tent' apud West' annis regnorum suorum primo et secundo inhibitum fuit per ipsos dominum regem et dominam reginam in eodem parlamento, quod nullus ad idem parliament' summonitus, et ibidem interessens, ab eodem parlamento absque speciali licentia dictorum d. minorum regis et reginæ, et cur' parliament' prædict' recederet, seu seipsum aliquo modo absentaret. Quidam tamen Thomas Denton de in com' Oxon' ar' Henricus Cary de gent' Richardus Warde de in com' ar' Edmund. Plowden de Tybmeshe in com. Berks ar- miger, Henricus Chiverton de in com. ar. Robertus Browne de in com. Johannes Courke de in com. Johannes Pethebrige de in com. Johannes Melherwes de in com. Johan. Courtney de in com. Radulphus Michel de in com. Thomas Mathero de in com. Richardus Brasfy de in com. Thomas Messye de in com. armig'. Petrus Frechwell de in com. miles. Henricus Vernon de Sydbeiy in com. Derby armig. Willielmus Moore de villa Derb. in com. Derb. gen. Willielmus Banibrigge de in com. Johannes Eveleigh de in com. gen. Nich. Alamps de Dartmouth, alias Clifton Harnys in com. Devon gen. Richardus Phelipps de in com. ar. Anthonius Dylvington de in com. Andreas Hoorde de in com. Christopherus Hoell de in com. Dorf. gen. Johannes Mannocke de in com. gen. Thomas Phelipps de in com. Johannes Hamond de in com. Johannes Phelipps de in com. Willielmus Randall junior, de in com. Johannes Myne de in com. Hugo Smyth de in com. gen. Rogerus Gerrard de in com. gen. Radulphus Scroope de in com. gen. Thomas Moore de Hambled. in com. Buck. gen. Willielmus Reade de in com. ar. Henricus Manrock de in com. ar. Joh. Maynarde de villa Sancti Albani in com. Herf. ar. Nich. Debden de in com. gen. et Philip. us Tirtolhyt de in com. ar' qui summoniti fuerunt ad dictum parliamentum, et in eodem parlamento comparuerunt, ac ibidem interfuerunt mandat' et inhibitionem dominorum regis et reginæ supradict' parvi pendentes, ac statum reipublicæ hujus regni Angliæ minime curantes aut ponderantes post a secul. 12 die Januarii annis regnorum dictorum dominorum regis et reginæ nunc primo et secundo supradictis, et durante parlamento prædicto ab eodem parlamento sine licentia dictorum dominorum regis et reginæ et cur' suæ prædict. contemptuose recesserunt in ipsorum dominorum regis et reginæ ac mandat' et inhibitionis suorum prædict' curiæq; prædict. contempit' manifestum, ac in magnum reipublicæ statum hujus regni Angliæ detriment', nec non in perniciosum exemplum omnium aliorum, &c. Unde idem atornatus dominorum regis et reginæ petit ad satisfactionem cur' in præmiss. et debiti' legis process. vers. eod. m. Thomam Denton, Henricum Cary, Richardum Warde, Edm. Plowden, Henricum Chiverton, Robertum Browne, Joh. Courk, Joh. Pethebridge, Joh. Melherwes, Joh. Courtney, Radulph. Michel, Thomam Mathero, Richardum Brasfy, Thomam Massye, Petrum Frechwell, Henricum Vernon, Will. Moore, Will. Banibrigge, Joh. Eveleigh, Nich. Alamps, Richardum Phelipps, Anthonium Dylvington, Andream Hoorde, Christopherum Hoell, Johannem Mannock, Thomam Phelipps, Johan. Hamond, Joh. Phelipps, Williel-

Inhibitum fuit.

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Mandatum et inhibitionem.

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munum Randall, Joh. Myne, Hugonem Smith, Rogerum Gerrard, Radulphum Scroope, Tho. Moore, Will. Read, Henricum Mannock, Johan. Maynard, Nicholaum Deblen, et Phil. Tyrwhyt fieri ad respondend. domino regi, et dominae reginae de contemptu praedicti. &c.

Mich. 3 & 4 Ph.
& Mar. ro. 36.
inter plac. regis
et reginae.

Et modo scilicet die Veneris prox' post crast' animarum isto eodem termino coram domin. rege et domina regina apud West' ven' praedicti Edm. Plowden per Andream Tuffr' attorney suum; et habit' audit' informationis praedictae die, quod ipse non int' dicit quod dominus rex et domina regina nunc ipsum Edmunda' pro praemissis vel al'quo praemissorum impetere seu occasi' nare velint aut debent: Quia dicit quod ipse ad dies' parliamenti' in informatione praedicti' se officiat' interfuit et praesens fuit, ac in eodem parlamento continue remansit, viz. a principio ipsius parlamenti usq; ad finem ejusdem. Atq; hoc quod ipse idem Edmund. Plowden dicto 12 die Januarii, an. primo et secundo supra dicti' durans' parliamenti' praedicti' ab eodem parlamento sine licentia dictorum dominorum regis et reginae, et cur' suae praedicti' contemptuose recessit in i' forum dominorum regis et reginae ac mandat' et inhibitionis suorum praedicti' curiae; praedicti' contempt' manifesti, ac in magnum reipublicae stat' hujus regni Angliae detriment', nec non in perniciosum exemplum omnium aliorum modo et forma prout per informac' praedicti' vers' cum supponitur. Et hoc paratus est verificare prout cur. &c. unde pet' judicium: et quod ipse de praemissis per cur' hic dimittatur, &c.

Nota, the pregnancy of this travers.
Sine die per demise le roync.

Per deanniss
1 & 2 Ph. &
Mar. Rot. 48.

Midd. Ve. fac' Thomam Constable de Grimsbye in com. Lincoln. ar. Hen. Leigh, de in com. Francisc. Farnham de Querne in com. Leic. ar. Li. lo. Mic. 2 & 3 Ph. regis et Mar. reginae. Joh. Holcroft. sen. de in com. milit. Will. Bromley de in com. ar. Tho. Somerset de in com. ar. Georg. Ferrers de Markyat' in com. Hertf. gen. Nich. Powtrel de Exinton in com. Not' ar. F. Hill. 3 & 4 Ph. & Mar. Tho. Moyle de in com' Kanc' milit. Tho. Waters de in com. ar. Will. Tylcoock de civit' Oxon' gen. Li. lo. Hil. 2 & 3 Ph. & Mar. Tho. Balkden de Wechynzleigh in com. Sur. milit. Li. lo. Mic. 2 & 3 Ph. & Mar. Math. Craddock de villa Staff. gen. Li. lo. Hil. 2 & 3 Ph. & Mar. Georgium Lye de villa Salop. gen. Cess. process. per mandat' attorney dominorum regis & reginae, quia ulterius profequi non vult vers' ipsum Geo. Lye. Joh. Hoord de Bridgenorth in com. Salop. gen. F. Mic. 5 & 6 ih. & Mar. Joh. Alsop de villa de Ludlowe in com. Salop. gen. Will. Lawrence de civ. Winton. gen. Li. lo. Mich. 2 & 3 Ph. & Mar. Robert Hudson de civ. Winton gen. Li. lo. ut antea. Edm. Rowse de Norwich in com. Suff. mil. Rob. Coppinge de Norwich in com' Suff. ar. Joh. Harman de hospicio dom. regis et dom. reginae gen. Will. Crowck de Wellowe in com' Somers. ar. Tho. Lewes de villa de Wels in com' Somers. gen. Li. lo. Hil. 2 & 3 Ph. & Mar. Wil. Godwyn de Wels praed' in com' Somers. gen. F. Mich. 3 & 4 Ph. & Mar. Joh. Ashburnham de Ashburnham in com' Suff. ar. Li. lo. Mic. 2 & 3 Ph. & Mar. Walt. Reynum de civ' Cicestr' in com' Suff. gen. Li. lo. Tr. 2 & 3 Ph. & Mar. Wil. Moodyere de Slindon in com' Suff. gen. F. Tr. 4 & 5 Ph. & Mar. Joh. Roberts de in com' Suff. gen. utlegat. &c. Wil. Pellet de Steininge in com' Suff. gen. F. Pasch. 2 & 3 Ph. & Mar. Rich. Bowyer de Arundell in com' Suff. gen. Li. lo. Mic. 3 & 4 Ph. & Mar. Will. Danby de in com. Westmerl. gen. Rob. Griffyth de civ' Novae Sarum in com' Wilts, draper. Li. lo. ut supra. Joh. Hooper de civ. Novae Sarum in com' Wilts, gen. Li. lo. Mic. 2 & 3 Ph. & Mar. Wil. Clark de in com. Grif. Curtyis de

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de Bradstock in com' Wilts gen. Li. lo. ut supra, &c. Tho. Hil de Denyses in com. Wilts gen. F. Hil. 2 & 3 Ph. & Mar. Edw. Umpton de London gen. Li. lo. Mic. 2 & 3 Ph. & Mar. Tho. Parker de in com' Joh. Reade de London gen; F. Hil. 2 & 3 Ph. & Mar. Arth. Allen de civ' Bristol merch. Egid. Payne de civ. Bristol gen. Wil. Hampshire de London gen. Li. lo. Mic. 3 & 4 Ph. & Mar. et Pet. Taylor de Marlborow in com' Wilts, taylor. Li. lo. Mic. 3 & 4 Ph. & Mar. resp. regi de quibusdam transgress. et contempt. unde impetit' sunt.

Mid. Ve. fac' cr' Trin Edw. Braxden de civ' Wigorn. gen. Georg. Newport de Droitwich in com' Wigorn. gen. Wil. Wigstone de Wolfstone in com' War. mil. Li. lo. Mic. 2 & 3 Ph. & Mar. Radulph. Browne de Woodlowes in com. War. gen. Li. lo. Mich. 3 & 4 Ph. & Mar. Joh. Harforde de civ' Covent. gen. Cess. process. &c. Nich. Frythe de in com' Rich Rayleton de in com. Marc.

Wyrley de civ. Lichfield, gen. Walt. Jobson de villa de Kingst: n super Hull. Jac. Brenne de in com. gen. Joh. Payton de in com. Kanc. ar. Joh. Chewy de in com. Kanc. armigerum Willielmum Oxenden de in com. Kanc. armigerum. Tho. Keys de in com. Kanc. gen. Wil. Hannington de in com. Kanc. Joh. Tyffars de in com.

Nich. Cryse de in com. Kanc. ar. Edw. Herbert de Starwley in com. Salop ar. F. Hil. 4 & 5 præd. Ph. & Mar. &c. Rich. Lloyd de de in com. Kanc. gen. Joh. de Knylle de in com. ar. Hen. Jones de in com. mil. Meredith Gains de in com. gen. et Rich. Bulkeley de in com.

mil. Resp. regi de quibusdam transgr. et contempt. unde impetit' sunt. Et postea, scil. termino sanct. Trin. annis 4 & 5 Ph. & Mar. pro eo quod sufficienter hic in cur' testatum est quod prædict. Joh. Harford habuit licentiam recedere à parlamento. &c. Ideo Edw. Grifsyn ar. a. nonat. dominorum regis et reginæ generalis qui pro ipsis rege et regina in hac parte sequitur, dicit quod ipse ulterius in hac parte vers. præfatum Joh. Harford prosequi non vult. Ideo cess. hic. process. vers. eum omnia, &c.

Cess. process. vers. Georgium Lye. Sine die per demise le Royné. Per cont' rott' de annis 1 & 2 Ph. and Mar. rot. 48.

Non prof. vers. Harford tantum.

Sine die per demise le Royné.

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And to deal clearly, this is all that we can find concerning this matter. Thus you may observe, that the poor commons, members of the parliament, in diebus illis, had no great joy to continue in parliament, but departed. But now to proceed.

Of Writs of Error in Parliament.

If a judgement be given in the kings bench either upon a writ of error, or otherwise, the party grieved may upon a petition of right made to the king in English, or in French (which is not *ex debito justitiæ*, but for decency, for that the former judgement was given *coram rege*) and his answer thereunto, *fiat justitia*, have a writ of error directed to the chief justice of the kings bench for removing of the record in *præsens parlamentum*, and thereupon the roll it self, and a transcript in parchment is to be brought by the chief justice of the kings bench into the lords house in parliament: and after the transcript is examined by the court with the record, the chief justice carrieth back the record it self into the kings bench, and then the plaintife is to assign the errors, and thereupon to have a *scire fac'* against the adverie party, returnable either in that parliament, or the next; and the proceeding thereupon shall be *super tenorem recordi*,

The house of the lords is a distinct court for many purposes. 22 E. 3. fo. 3. Regist. 17. lib. Intr. Raft. 284.

cordi, et non super recordum. All this, and many more excellent matters of learning are contained in the records following; whereof a light touch is hereafter given, the records at large being too long here to be rehearsed. And the proceeding upon the writ of error is only before the lords in the upper house, *Secundum legem et consuetudinem parliamenti.*

Rot. par. post festum Sancti Hil. anno 18 E. 1. rot. 8.

Rot. par. 4 E. 3. nu. 13. Rich. earl of Arundels case. Ib. 28 E. 3. nu. 11, 12. Mortimer earl of Marches case. See Pasch. 28 E. 3. coram rege rot. 37 Wigorn. the same case. 33 H. 8. ca. 20. 29 Eliz. ca. 2. rot. par. 7 R. 2. nu. 20. 8 R. 2. nu. 14.

Queritur Guilielmus de Valencia contra consilium regis, i. Justic' eorum rege, pro injusto judicio tanzen' allocationem Dionisie filie Guilielmi de monte Caniso ut hered': sed dominus rex ratum habet eorum factum, et judicium redditum est contra Guilielmum de Valencia.

If a nobleman had been erroneously attainted of treason, &c. he might have had his writ of error in parliament, notwithstanding the statute of 33 H. 8. ca. 20. for that must be intended of lawfull records of attainder: but if the attainer be established by authority of parliament, then he must exhibit his petition in parliament to be restored of grace. But now by the statute of 29 El. ca. 2. it is ordained, that no record of attainder of high treason that then was, for the which the party attainted had been executed for the same treason should be reversed for error: but this extendeth only to attainders of high treason, and not to any attainer of high treason after that act, nor to any high treason before, for the which the party was not executed.

The prior and covent of Montague by their petition declare, that Richard Seimour had obtained an erroneous judgement against the said prior in the kings bench, upon a judgement given in the common place upon a fine for the mannor of Titenhull in the county of Somerset, &c. And the principall error was for denying of aid of the king where it was grantable, and that hanging a writ of right, the said Richard sued a *scire fac.* And commandment was given to the chancelor of England, that he should make a writ of possession and seison to be had, and other processe upon that judgment to be made: in this record you shall observe excellent pleading.

Rot. par. 13 R. 2. nu. 15. Sir Thomas Methams case.

Error in parliament upon a judgment in an appeal of death upon an acquittal of the defendant, and inquiry of the abettors, &c.

And (that we may observe it once for all) when one sueth in parliament to reverse a judgement in the kings bench, he sheweth in his bill which he exhibiteth to the parliament some error or errors, whereupon he prayeth a *scire facias.*

Rot. par. 50 E. 3. nu. 48.

The bishop of Norwich sheweth that an erroneous judgment was given against him in the common place for the archdeaconry of Norwich belonging to his presentation, and prayed that those errors might be heard, and redressed there: whereunto answer was made, that errors, by the law, in the common place are to be corrected in the kings bench, and of the kings bench in the parliament and not otherwise.

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* Rot. par. 15 R. 2. nu. 23. & 18 R. 2. nu. 11, 12, 13, 14, 15. This parliament of 18 R. 2. is not mentioned in the printed book, because no act passed at this parliament. See 2 H. 4. nu. 40.

1 R. 2. nu. 28, 29. 2 R. 2. nu. 31. A writ of error in parliament between William Mountacute earl of Sarum, and Roger of Mortimer earl of March of a judgment in the kings bench.

* The dean and chapter of Litchfield recovered in the common place against the prior of Newport Pannel: the prior by writ of error reverseth the judgment in the kings bench: the dean and chapter by writ of error in parliament reverseth the judgment in the kings bench, and affirmeth the judgment in the common place,

and

and a commandment given to the chancellor, that the judgement in the common place be executed by proceffe by him to be made.

^b John Sheppy complains of a judgement in the kings bench in a writ of error.

^b Rot. par. 15 R. 2. nu. 22.

^c Error in parliament between William Mountacute earl of Salisbury, and Roger de Mortimer earl of March, for the castle, town, and honour of Denbeigh, &c. upon a judgment given in the kings bench, and had a *scire fac'* returnable the next parliament.

^c 21 R. 2. nu. 25.
2 H. 4. nu. 13.

^d William Seward alias Chedde complaineth, that where he by that name was presented and inducted to the parsonage of Wotton Under Egge in the county of Glouc', and thereof continued the possession by the space of four years, untill the king by untrue suggestion presented Sir John Dawtry to the parsonage of Underhegge in that county, where there was no such parsonage called Underhegge, as the said William pleaded in a *quare impedit* brought by the king in the kings bench; upon which writ the king recovered by the default the parsonage of Underhegge, and not Under Egge, whereby upon a writ sent to the bishop of Worcester, the said William was put from his parsonage of Under Egge: for which mistaking and error, the judgment for the said John in full parliament was reversed, and a writ awarded to the said bishop for the restitution of the said William.

^d Rot. par. 1 H. 4. nu. 97.

The record and judgment given in the kings bench for the king, against Edmond Bassett for certain lands, &c. was for divers errors reversed in parliament, and restitution of the premisses with the mean profits restored to the said Edmond.

Rot. par. 15 R. 2. nu. 24. & 2 H. 4. nu. 38.

In error in parliament between Roger Deyncourt, and Ralph de Adderlye for a judgement given in the kings bench for the manor of Anlye in com' Warr'. Sir William Gascoign chief justice delivered a copy of the record and proceffe, word for word, under his hand, &c. to the clerk of the parliament, &c.

5 H. 4. nu. 40.

In error in parliament between Richard Quatermayns and William Hore, &c. upon an erroneous judgement given in the kings bench in an action of trespassse, and the plaintiff entred his atturney of record to proceed therein.

Rot. par. 3 H. 5. nu. 10.

John Beauchamp lord Abergaveny complained in parliament upon an erroneous judgment given upon a verdict in the kings bench in a *scire fac'* upon a recognizance in the chaucery for keeping the peace. In the record whereof are excellent points of learning, as well touching the recognizance, as the proceffe, and issue.

Rot. par. 10 H. 6. nu. 51. & 11 H. 6. nu. 40.

Error in parliament, Pasch. 31 H. 6. upon a judgment given in an assize in the kings bench, *et intratur super marginem, rot. mittitur in parlamentum per Johannem Fortescue termino Pasche anno 31 H. 6.*

Rot. par. 31 H. 6.

And to omit many others, to descend to some of latter times, Richard Whalley recovered in assise by verdict against divers tenants, who brought a writ of error in the kings bench, where the judgment in the assise was affirmed, the tenant complained in parliament for error in the kings bench.

Rot. par. 23 El. Dier 23 El. f. 373.

Error in parliament upon complaint of Sir Christopher Heydon knight of a judgment in a writ of error in the kings bench, between the said Sir Christopher plaintiff, and Roger Godsalve and others defendants,

Rot. par. 12 Jac.

pendants, upon a judgment given for the said Roger, &c. against the said Sir Christopher in an assise before justices of assise, wherein the judgement in the assise was affirmed in the kings bench, whereof the complaint was made, *sed non prevalet*.

In case of treason, &c. the lords spirituall make their procurors. The peers are judges of treason, &c. during the parliament, &c. Rot. par. 5 H. 4. nu. 11, 12. Rot. par. 21 R. 2. sub tit. Plac. Coronæ, &c. Rot. par. 31 H. 6. nu. 49.

A peer of the realm being indicted of treason, or felony, or misprision of treason, may be arraigned thereof in parliament, a lord steward being appointed, and then the lords spirituall shall make a procurator for them; and the lords, as peers of the realm, during the parliament are judges, whether the offence be treason, &c. that is supposed to be committed by any peer of the realm, and not the justices, as it appeareth in the earl of Northumberland's case, rot. parl. 5 H. 4. nu. 11, 12. See in the parliament holden 21 R. 2. *sub titulo Pl. Coronæ*, in a roll annexed, &c. before the steward of England and other lords temporall, Richard earl of Arundels case. Rot. parl. 31 H. 6. nu. 49. Thomas earl of Devon was arraigned of high treason before Humphry duke of Buckingham steward of England *hac vice*, and was acquitted by his peers, 10 E. 4. fo. 6. b. Stanf. Pl. Coron. 153. b.

Of Judicature.

¶ Vide placita in parliam. anno 33 E. 1. rot. 33. Nicholaus Segrave adjudge per prælatos, comites, barones et alios de concilio. At the parliament at York anno 12 E. 2. *Constitucratum est per prælatos, comites, barones, et communiatem Angliæ*. The lord Audeleys case. At the parl. at Westm' 15 E. 2. Hugh le pier adjudge per les seignours et commons. Rot. parl. 42 E. 3. nu. 20. Sir John at Lee adjudged by the lords and commons. Rot. par. 50 E. 3. 2. parte, A pardon to the lord Latimer of a judgement in parliament. Rot. parl. 50 E. 3. nu. 34. Lo. Nevils case.

Now order doth require to treat of other matters of judicature in the lords house, and of matters of judicature in the house of commons. And it is to be known, that the lords in their house have power of judicature, and the commons in their house have power of judicature, and * both houses together have power of judicature: but the handling hereof according to the worth and weight of the matter would require a whole treatise of it self; and to say the truth, it is best understood by reading the judgements and records of parliament at large, and the journals of the house of the lords, and the book of the clerk of the house of commons, which is a record, as it is affirmed by act of parliament in anno 6 H. 8. ca. 16.

The lord Audeleys case. At the parl. at Westm' 15 E. 2. Hugh le pier adjudge per les seignours et commons. Rot. parl. 42 E. 3. nu. 20. Sir John at Lee adjudged by the lords and commons. Rot. par. 50 E. 3. 2. parte, A pardon to the lord Latimer of a judgement in parliament. Rot. parl. 50 E. 3. nu. 34. Lo. Nevils case.

See Rot. clauf. 1 R. 2. m. 5. 8. 38, 39. *A tresage councill le roy, les seignours et commons, &c.* Rot. parl. 1 H. 4. nu. 79. it is no act of parliament but an ordinance, and therefore bindeth not in succession. Rot. par. 2 H. 5. nu. 13. error assigned that the lords gave judgement without petition or assent of the commons. Rot. par. 28 H. 6. nu. 19. and many others in the reign of king H. 6. king E. 4.

And of latter times, see divers notable judgements, at the prosecution of the commons, by the lords at the parliaments holden 18 and 21 Jac. *regis*, against Sir Giles Mompesson, Sir John Michel, viscount S. Albone lord chancellor of England, the earl of M. lord treasurer of England, whereby the due proceeding of judicature in such cases doth appear.

Thomas

Thomas Long gave the maior of Westbury four pound to be elected burgeffe, who thereupon was elected. This matter was examined and adjudged in the house of commons, *secundum legem et consuetudinem parliamenti*, and the maior fined and imprisoned, and Long removed: for this corrupt dealing was to poyson the very fountain it self.

Arthur Hall a member of the house of commons for publishing and discovering the conferences of the house, and writing a book to the dishonor of the house, was upon due examination, *secundum legem et consuetudinem parliamenti*, adjudged by the house of commons to be committed to the Tower for six months, fined at five hundred marks, and expelled the house.

Munckton stroke William Johnson a burgeffe of B. returned into the chancery of record, for which upon due examination in the house of commons, it was resolved that *secundum legem et consuetudinem parliamenti*, every man must take notice of, all the members of the house returned of record at his peril: but otherwise it is of the servent of any of the members of the house; for there he that striketh, &c. must have notice. And the house adjudged Munckton to the Tower, &c.

If any lord of parliament, spirituall, or temporall, have committed any oppression, bribery, extortion, or the like, the house of commons, being the generall inquisitors of the realm (comming out of all the parts thereof) may examine the same, and if they find by the vote of the house, the charge to be true, then they transmit the same to the lords with the witnesses and proof.

Priviledge of Parliament.

And now after judicature, let us speak somewhat of priviledge of parliament: experience hath made the priviledges of parliaments well known to parliament men, yet will we speak somewhat thereof.

Magister militie Templi petit quod distringat (catailla unius de concilio) tempore parliamenti pro reddito unius domus in London: rex respondet, non videtur honestum, quod illi de concilio suo distinguantur tempore parliamenti, sed alio tempore, &c. Whereby it appeareth that a member of the parliament shal have priviledge of parliament, not only for his servants, as is aforesaid, but for his horses, &c. or other goods distreinable.

Querela Comitis cornubiæ, versus Bgonem de Clare et priorem sancte Trinitatis: London, quod ipsi t. m. p. re parliamenti i. sum comitem in medio aula Westm' ad invocationem ipsius Bgonis citaverunt, quod compareret coram archiepiscopo Cantuar', &c. Ipse prior venit et Bogo similiter, et ponunt se in gratiam, misericordiam, et voluntatem regis de alto et basso, ob quod mandantur turri London: postea venit dictus Bogo et finem fecit domino regi: pro prædicta transgressione per duas mille marcas, &c. et quoad prædict' comitem respondeat comiti 1000. li. pro transgressione sibi facta, &c. et prædictus prior mittitur ibidem ad faciend' secundum quod thesaurarius ei dicit ex parte dni. regis.

And yet the serving of the said citation did not arrest, or restrain his body, and the same priviledge holdeth in case of *sub pænâ*, or other proccesse out of any court of equity.

In the book of the house of commons at the parliament holden 8 Eliz. Ownloe speaker, fo. 19.

23 El. lib. fo. 14. Popham attorny generall speaker.

Ib. 2. Aprilis. 1. Mariæ. Vid. 11 H. 6. c. 11. 5 H. 4. ca. 6.

[24]

See Rot. parl. 8 H. 6. nu. 57.

Vide inter leges Edw. Confess. c. 3.

Petitiones coram domino rege ad parliamentum post festum Sancti Mich. anno 18 E. 1. fo. 7.

Plac. coram rege et ejus concilio ad parliamentum suum post festum Sancti Hil. anno 18 E. 1. fol. 1. Vide inf. to E. 3. mor: hereof concerning serving of a citation.

REN

Rot. parliam.
anno 8 E. 2. in
Dorf. cl. 8 E. 2.

Res mandavit justiciariis suis ad assisas, jurat', &c. capiend. assignat' quod superfedant captioni eorundem ubi comites, barones et alii summuniti ad parliamentum regis sunt partes, quamdiu dictum parliam. duraverit.

Ibid. m. 33 & 22.

De non procedendo ad capiend' assisas versus illos, qui ad parliamentum regis apud Eborum venerunt.

In Scacc' ex Originali de anno 10 E. 3/ ro. 27. No.

* That is, in court of parliament.

*Res omnibus balivis et fidelibus suis ad quos, &c. salutem. Sciatis, quod cum curiæ nostræ in quibus * negotia regni nostri dedecantur ubiq; adeo liberæ sint et exemptæ, et à tempore quo non extat memoria libera et exemptæ fuerunt, quod nec aliqua forum ecclesiasticum concurrentia in eisdem curiis nostris fieri seu exequi, nec aliqui easdem curias nostras ad aliqua forum ecclesiasticum contingencia faciendum vel exequendum ingredi debeant, vel consueverunt aliquibus temporibus retroactis, ac magister Henricus de Harewedon clericus, Edmundus de Lukenore et Johannes de Wallingburgh de eo quod ipsi nuper in cancellaria nostra in præsentia venerabilis patris I. Cantuariensis archiepiscopi cancellarii nostri quasdam citationes sive monitiones dilecto clerico nostro Johanni de Thoresby, ne non provocaciones, appellaciones et instrumenta publica super citationibus seu monitionibus prædictis in nostri contemptum et coronæ nostræ ac regiæ dignitatis nostræ præjudicium, et contra libertatem et exemptionem prædict' fecerunt per inquisitionem in quam se inde in curia nostra coram dilecto cancellario nostro et aliis de concilio nostro posuerunt convicli fuissent et ea occasione personæ nostræ mancipati in eadem ad voluntatem nostram moraturi. Nos de gratia nostra speciali ad requisitionem Philippæ reginæ Angliæ consortis nostræ charissimæ perdonavimus eidem Henrico, Edmundo et Johanni imprisonment prædictum; ita tamen quod nobis satisfaciant de redemptione sua occasione præmissorum, et quod super citationibus, monitionibus, provocacionibus, appellacionibus seu instrumentis prædict' in dicta cancellaria nostra sic factis processum aliquem non faciant, nec quicquam quod in nostri vel juris coronæ nostræ præjudicium cedere possit attemptent vel attemptare faciant de cætero quovis modo. In cujus, &c. Teste rege apud turrin London 15 die Aprilis, ex originali de anno 10 E. 3. Rot. 27. Not.*

Citationes. This John de Thoresby was then clerk of the parliament.

[25]

* Rot. parl. anno 17 E. 4. nu. 36. Vid. 21 E. 4. fol. 38, 39. Rot. parl. ann. 8 H. 6. nu. 57. Vide infra. pa.

* Priviledge of parliament in informations for the king, generally the priviledge of parliament do hold, unlesse it be in three cases, viz. treason, felony, and the peace.

Of Statutes, or Acts of Parliament.

^a Vid. 14 R. 2. nu. 15. & 13 H. 4. nu. 25. ^b 4 H. 7. 18. b. p. tous les justices. 7 H. 7. 14 & 16. 11 H. 7. 27. 2. Brook prerogative 134. Fortescue fo. 20. cap. 18. Dier 1 Mar. 92.

There is no act of parliament but must have the consent of the lords, the commons, and the royall assent of the king, and as it appeareth by ^a records and our ^b books whatsoever passeth in parliament by this threefold consent, hath the force of an act of parliament.

The difference between an act of parliament, and an ordinance in parliament, is, for that the ^c ordinance wanteth the threefold consent, and is ordained by one or two of them.

^c Rot. parl. 25 E. 3. nu. 16. &c. 39 E. 3. 12. 22 E. 3. 3. 8 H. 6. cap. 29. Dier 4 Mar. 144. 39 E. 3. 7. Thorp male erravit. Rot. parl. 37 E. 3. nu. 39. 1 R. 2. nu. 56. diversity between acts of parliament and ordinances. 2 R. 2. stat. 2. nu. 28.

I have

I have read of a restitution in blood, and of lands of one William de Lafenby by the king, by the assent of the lords spirituall, and commons, (omitting the lords temporall) this we hold to be an ordinance, and no act of parliament. And when the clergy is omitted and the act made by the king, the lords temporall, and commons. See the rols of parliament and authorities following, viz. Rot. parl. Pasch. 15 E. 2. the case of the Spencers. 3 R. 2. cap. 3. in print: Our soveraigne lord by the common consent of all the lords temporall, and at the petition of the commons, &c. 7 R. 2. cap. 12 accord. 11 R. 2. nu. 9, 10, 11. See 1 H. 5. c. 7. 21 R. 2. nu. 9. & 10. 6 H. 6. nu. 27. 7 H. 8. Kelw. 184. the opinion of the justices agreeable with the said acts of parliament. And note the mutability in this particular case of the Spencers, of this high court of parliament. The judgement by parliament in 15 E. 2. against the Spencers, was in the same year by act of parliament repealed: that repeal was repealed by authority of parliament in 1 E. 3. that repeal of 1 E. 3. was repealed by act of parliament in 21 R. 2. and that of 21 R. 2. was repealed by authority of parliament in 1 H. 4. And so the judgement against the Spencers standeth in force.

^d 13 H. 4. nu. 20.

^e Repeal 1 E. 3. cap. 2. stat. 1. 15 E. 3. tit. Petition. F. 2. See Rot. par. an. 1 H. 4. part 5. m. 36. the life of Man given to the king by the lords temporall and commons. ^f Repeal. 1 H. 4. cap. 3.

The Division of Acts of Parliament.

Of acts of parliament some be introductory of a new law, and some be declaratory of the ancient law, and some be of both kinds by addition of greater penalties or the like. Againe, of acts of parliament, some be generall, and some be private and particular. All acts of parliament relate to the first day of parliament, if it be not otherwise provided by the act.

33 H. 6. fol. 17.

The severall Formes of Acts of Parliament.

In ancient time all acts of parliament were in form of petitions. And for the severall forms of acts of parliament, see the princes case in the 8 book of Reports. Now for the reading, committing, amending, ingrossing, voting, and passing of bills in either house, and touching conferences with the lords, and for the priviledge of any member of either houses, and of their servants more then hath been said, they be so ordinary and well known, and in such continuall practice, as it were but expence of time to treat any more of them. And for that many times the rols of the parliament have not been truly ingrossed, at the request of the commons certain of them are to be appointed, who should be at the ingrossing of the rols of parliament.

Dier 3. Mar. 131. lib. 8. fo. 1. the princes case. Concerning the ingrossing in rols of acts of parliament. Rot. parl. 7 H. 4. nu. 65.

[26]

In former Times Acts of Parliament were proclaimed by the Sheriffes.

When I read the case of preunire in 39 E. 3. upon the statute of 27 E. 3. of provisors against the bishop of Chichester, and observing that serjeant Cavendish of counsell with the bishop objected two things: first, that the act whereupon the writ was grounded,

grounded, was no statute. Secondly, that if it were a statute, it was never published in the county: whom Sir Robert Thorpe chiefe justice answered. Although proclamation be not made in the county, every one is bound to take notice of that which is done in parliament: for as soon as the parliament hath concluded any thing, the law intends, that every person hath notice thereof, for the parliament represents the body of the whole realm: and therefore it is not requisite that any proclamation be made, seeing the statute took effect before. This gave me to understand, that albeit it was not required by law that statutes should be published in the county; yet seeing in those days and long after, the use of printing came not into this realm; the use was (as it appeareth by Cavendishes speech) that they should be published in the county, to the end that the subjects might have expresse notice thereof, and not to be overtaken by an intendment in law, which gave me occasion to search and inquire how this usage was, and how long it continued. And in the end I found, that at every parliament the acts that passed were transcribed into parchment, and by the kings writ directed to the sheriffe of every county of England, and commandement given to him, that all the said statutes in all places through his whole bayliwick, as well within franchise as without, where he should finde most fit, that he not only should proclaime them, but to see that they should be firmly observed and kept. And the usage was to proclaim them at his county court, &c. and there to keep the transcript of the acts, that who so would, might reade or take copies thereof. And this writ was sometime in Latine and sometime in French, as in those dayes the statutes were enacted in Latin or in French. But an example of the one, and of the other will more illustrate this matter.

John Moore.
Printing was invented in Meath in Germany, anno domini 1441. and came to us in the reign of H. 6. See Bodin De Methodo historiz. li. 7. Una typographia cum omnibus omnium veterum inventis certare facile potest. Polydor Virgil de invent. rerum lib. 2. cap. 7. Cardan. de varietate rerum lib. 3. cap. 64.

*Edwardus Dei grat' rex Angliæ et Franciæ, et dominus Hiberniæ vic' Norff. salut. Quædam statuta p. nos, prælatos, comites, barones, et alios magnates ad parlamentum nostrum tentum apud Eborum in cro. Ascensionis ultim' præterit' ordinavimus et stabilivimus, prout sequitur, and recite the severall statutes verbatim. And then the writ concludeth. Et ideo tibi præcipimus, quod statuta illa et omnes articulos in eisdem contentos in singulis locis in baliva tua, tam infra libertates, quam extra, ubi expedire videris, publice proclamari et * firmiter teneri et observari facias. Teste, &c.*

At the parliament in anno 10 E. 3.

* Nota that the sheriffe that hath custodiam comitatus, should see the statutes within his county to be kept.

At the parliament an. 1. R. 2.

Richard p. la grace de Dieu roy Dengleterre et de France, et seignour d'Ireland a nostre viscount de Norff. salut. Sachez que al honneur de Dieu, et reverence de saint esglise et pur nurrer peace, unitie, et concord in tous parts deins nostre realme, le quel nous desirons mult entierement, del assent des prelatz, dukes, counis et barons de mesme nostre realme, al instance et speciall request des communs de nostre realme assemblez a nostre parliament tenuz a Westm. a la quinzim de S. Michael lan de nostre reigne premier avons fait ordeiner et stablier certaine statuts en amendement et relievement de mesme nostre realme, et en la forme que sensuist. Primement est assentuz et establie, que saint esglise ait et enjoye se tous les droitures, &c. rehearing all the statutes that passed at that parliament. And the writ concludeth thus. Et pur ceo vous mandons que tous les statuts faces crier et publier, et firmament tener p. my vostre buillie solonq; la forme et tenor de icel, et ceo ne lesses en aucun manuer. Done p. testmognans de nostre grand seale al Westm. le premier jour de Fevrier lan de nostre reigne primer. And the like writs continued untill

untill the beginning of the reign of H. 7. long time after printing within the reign of H. 6. (as hath bin said) came unto us.

Prorogation, Adjournment, Continuance, and what maketh a Session of Parliament.

[27]

The passing of any bill or bills by giving the royall assent thereunto, or the giving any judgement in parliament doth not make a session, but the session doth continue untill that session be prorogued or dissolved: and this is evident by many precedents in parliament ancient and late.

The parliament of 14 E. 3. began at Westminster the Wednesday after Mid Lent: the first Monday of the parliament, the ninth part of their grain, wooll, and lambe, &c. was granted to the king, on condition that the king would grant their petitions in a schedule beginning. These be the petitions which by the commons and lords was drawne into a forme of a statute, and passed both houses, and the royall assent thereunto, and the same exemplified under the great seal. After this the parliament continued, and divers acts made, and petitions granted, and in the end that parliament was dissolved.

Rot. parl.
14 E. 3. stat.
primo. nu: 7, 8,
9. &c.

In the parliament holden anno 3 R. 2. it is declared by act of parliament that the killing of John Imperiall ambassador of Jenoa, was high treason, *crimen lese majestatis*, and yet the parliament continued long after, and divers acts of parliament afterwards made, and petitions granted: and in the end the parliament dissolved.

Rot. parl. 3 R. 2.
nu. 18. &c.

In the parliament begun the first day of March, anno 7 H. 4. on Saturday the 8 day of May it was enacted by the king, the lords spirituall and temporall, and the commons, that certain strangers by name, who seemed to be officers to the queen, should by a day depart the realm, and proclamation thereof in kinde made by writ, by authority of parliament, which parliament continued, and divers other acts of parliament made, and petitions answered: and on the 22 day of December 8 H. 4. dissolved.

Rot. parl. 7 H. 4.
nu. 29. &c.

The parliament begun 7 November, and on the first day of the parliament it was resolved by all the judges, that those that were attainted of treason, and returned knights, citizens, or burgeses of parliament, that the attainders were to be reversed by authority of parliament before they could sit in the house of commons: and that after the attainders reversed, both the lords, and those of the house of commons might take their places, for such as were attainted could not be lawful judges, so long as their attainders stood in force: and thereupon the attainders were reversed by act of parliament, and then they took their places in parliament, and the parliament continued, and divers acts made.

Rot. parl. 1 H. 7.
nu.
1 H. 7. fo. 4. b.

* The bill of queen Katharine Howards attainder passed both houses about the beginning of the parliament, whereunto the king sitting the parliament by his letters patents gave his royall assent, and yet the parliament continued untill the first day of April, and divers acts of parliament passed after the said royall assent given. Divers more might be produced, but these shall suffice. So as albeit bills passe both houses, and the royall assent given

* Rot. par.
33 H. 8. begun
the 26 day of Ja-
nuary, and con-
tinued till the
first of April fol-
lowing.
On the 22 of Fe-
bruary the queen
was beheaded in
the Tower, sit-
ting the parlia-
ment.

*Prorogo à porro
& rogo, unde
prorogatio.*

*Adjournar, unde
adjournare, et ad-
journalmentum, ſſt
ad diem dicere, or
diem dare.*

Rot. parl. 23 H. 8.

24 H. 8. nu. 1.

25 H. 8. nu. 1.

26 H. 8. nu. 1.

27 H. 8. nu. 1.

&c. 2 & 3 E. 6.

nu. 1. 3 & 4 E. 6.

nu. 1. &c.

1 Mariae ſeff. 2.

28 Eliz. nu. 1.

&c. And in

every of them it

is ſaid [and there

continued untill ſuch a day;]

and yet in them divers adjournments were. See the

Journall Book in the lords houſe. *Ultimo Junii 14 Eliz. Cuſtos magni ſigilli ex mandato domine regine adjournavit præſens parliament' uſq; in feſtum omnium ſanctorum.* And in the parliament in anno

39 Eliz. *Cuſtos magni ſigilli ex mandato domine regine* (the queen being abſent.)

given thereunto, there is no ſeſſion untill a prorogation or a diſſolution.

The diverſity between a prorogation and an adjournment, or continuance of the parliament, is, that by the prorogation in open court there is a ſeſſion, and then ſuch bills as paſſed in either houſe, or by both houſes, and had no royall aſſent to them, muſt at the next aſſembly begin again, &c. for every ſeverall ſeſſion of parliament is in law a ſeverall parliament: but if it be but adjourned or continued, then is there no ſeſſion: and conſequently, all things continue ſtill in the ſame ſtate they were in before the adjournment or continuance.

And the title of divers aſts of parliament be, At the ſeſſion holden by prorogation, or by adjournment and prorogation, but never by continuance or adjournment *tantum*. And the uſual form of pleading is, *ad ſeſſionem tantam, &c. per prorogationem*.

[28]

We have been the longer and more curious for the clearing of this point for two reaſons, 1. For that the adjournment or continuance (as before it appeareth) is much more beneficiall for the common-wealth for expediting of cauſes, then a prorogation. 2. In reſpect of a claufe in the aſt of ſubſidie in the parliament holden in *anno 18 Jac. regis*, which is but declaratory of the former law, as by that which hath been ſaid appeareth.

When a parliament is called and doth ſit, and is diſſolved without any aſt of parliament paſſed, or judgement given, it is no ſeſſion of parliament, but a convention.

In the 18 year of R. 2. at a parliament holden before the duke of York (the king being in his paſſage to Ireland) the petitions of the commons were answered: and a judgement given in the kings bench for the prior of Newport-pannell, againſt the dean and chapter of Lichfield was reverſed, but no aſt of parliament paſſed, and therefore this parliament is omitted in the print; but it is no queſtion but it was a ſeſſion of parliament, for otherwiſe the judgement ſhould not be of force: and many times judgements given in parliament have been executed, the parliament continuing before any bill paſſed.

Rot. parl.
18 R. 2. which
began 15 Hilarii.

The Houſe of Commons is a diſtinct Court.

Nota, the houſe of commons is to many purpoſes a diſtinct court, and therefore is not prorogued, or adjourned by the prorogation or adjournment of the lords houſe: but the ſpeaker upon ſignification of the kings pleaſure by the aſſent of the houſe of commons, doth ſay: this court doth prorogue or adjourn itſelf; and then it is prorogued or adjourned, and not before. But when it is diſſolved, the houſe of commons are ſent for up to the higher houſe, and there the lord keeper by the kings commandement diſſolveth the parliament; and then it is diſſolved, and not before.

And the king at the time of the dissolution ought to be there in person, or by representation: for as it cannot begin without the presence of the king either in person or by representation (as before it hath been said) so it cannot end or be dissolved without his presence either in person or by representation. *Nihil enim tam conveniens est naturali æquitati, unumquodq; dissolvi eo ligamine quo ligatum est.*

It is declared by act of parliament, that the kings letters patents under his great seale, and signed with his hand, and declared and notified in his absence to the lords spirituall and temporall, and commons assembled in the higher house of parliament, is, and ever was of as good strength and force, as if the kings person had been there personally present, and had assented openly and publickly to the same.

Bracton.

33 H. 8. cap. 2. a. royall assent by letters patents. *Dier. 1 Mar. 93. Commissiõ au 4 Seignors, &c. doner royall assent, & indorcement fait. Soit fait come est desire.*

Of Subsidies and Aides granted by Parliament.

Subsidie is derived of the verb *subsidiari*, which signifieth to be ready to help at need, *unde subsidium*, which signifieth aide and help at need, so properly called, when souldiers were ready to help the forward of the battell: and aptly was the word so derived, aswell because that which we call now *subsidia*, subsidies, were anciently called *auxilia*, aides, granted by act of parliament upon need and necessity: as also, for that originally and principally they were granted for the defence of the realm, and the safe keeping of the seas, &c. *Communia pericula requirunt communia auxilia.*

This word [*subsidia*] is common, as well to the English, as to the French. Concerning subsidies hear what a stranger truly writeth. *Reges Angliæ nihil tale, nisi convocatis primis ordinibus, et assentiente populo, suscipiunt. Quæ consuetudo valde mihi laudanda videtur; interveniente enim populi voluntate et assensu crescit robur, et potentia regum, et major est ipsorum autoritas, et feliciores progressus.*

Ph. Cominesus, Lib. 5. fo. 233.

Subsidies taken in their generall sense for parliamentary aides are divided into perpetuall and temporary: perpetuall into three parts, viz. into *custuma antiqua, sive magna, custuma nova sive parva*, and into custome of broad cloth. Temporary, whereof there are three kindes, viz. 1. Of tonnage and poundage of ancient time granted for a year or yeares incertainly, and of latter times for life. 2. A subsidie after the rate of 4s. in the pound for lands, and 2s. 8d. for goods. And 3 for an aide called a fifteenth. And of these in order.

[29]

Custuma antiqua sive magna.

Custuma antiqua sive magna was by act of parliament granted to king E. 1. his heirs and successors for transportation of three things, viz. wools, woolfels, and leather, viz. for every sack of wool containing thirty six stone, and every stone fourteen pound, half a mark; and for three hundred woolfels half a mark, and for a last of leather thirteen shillings four pence, to be paid as well by strangers as by English. *Praelati, magnates, et tota communitas consenserunt quandam novam consuetudinem nobis de lanis, pellibus et coriis*

See hereafter, ca. 11. Verb. de nous Customes, &c. R. t. finium an. 3 E. 1. Rot. par. 3 E. 1. m. 1. dat. 10 Novemb. which which was in the end of the year, for he began his

IV, INST,

D

dimid

reign 17 Nov.
Confirmat. car-
tarum Vet.
Mag. Cart. 2 part
fo. 36. a.
* Int. brigia de
term Mich.
26 E. 1. In offi.
remem. regis.
* 12 H. 4. nu. 45.
6 H. 6. nu. 11.
12 E. 4. ca. 3.
7 E. 4. nu. 30.
1 E. 6. ca. 13.
1 Mar. cap. 18.
1 Eliz. ca. 19. &
3 Jac. regis ac-
cord.

*dimid' marc', de 300. pellibus dimid' marc', et de lasta coriorum unam
marcam.* In the statute called *Confirmaciones cartarum anno 25 E. 1.*
there is a saving in these words, *Save a nous, et nous heires la custome
des leynes, peals et quires grant' per le communalz du realm.* See also
the like in the preamble: * *Salva tamen nobis et heredibus nostris
custuma lanarum, pellium et coriorum per communitatem dicti regni nobis
prim' concess.*

* Note it is said in divers records, *per communitatem Anglie nobis
concess'*, because all grants of subsidies or aides by parliament doe
begin in the house of commons, and first granted by them: also
because in effect the whole profit which the king reapeth dole
come from the commons.

Custuma parva et nova.

Custuma is de-
rived of the
French word *cou-*
stum, i. tributum
seu vestigal.
Rot. cart 31 E. 1.
nu. 44. called
Carta merca-
toria. This was
questioned rot.
ordnat. anno 5 E. 2.
but allowed of in parliament, anno 1 R. 3. 9 E. 3. ca. 1. 27 E. 3. stat. Steph.
cap. 26. F. N. B. 227. d. 259. a.

In the 31 year of E. 1. the merchant strangers in consideration
of certain liberties and priviledges granted to them, and a release
to them of all prises and takings, gave to the king and his heirs,
three shillings four pence, *ultra antiquam custumam ut prius concess.*
So as where the subject paid a noble, the stranger paid ten shil-
lings, &c. See the statutes of 1 H. 7. ca. 2. 11 H. 7. cap. 14.
22 H. 8. cap. 8.

Customs of what Things, ex antiquo.

1 El. Dier 165.

And it is to observed, that of ancient time no custome was by
English or stranger, but for wools, woofsels, and leather. Hereby
it appeareth how necessary the knowledge of ancient records, and
of the true originall of every thing is.

Of wools dra-
ped into cloth
no custome was
due.

In the reign of E. 3. a great part of the wools for the which
such custome was granted, and paid, as is aforesaid, was draped
into broad cloth: whereupon question grew, whether upon the
transportation of the cloth, into which the wool was draped,
custome should be proportionably paid, having regard to the
quantity of the wool so converted into cloth: and it was resolved,
that no custome should in that case be paid, because the wool by
the labour and industry of man was changed into another kind of
merchandize: wherewith the king held himself satisfied, and so it
appeareth in the kings own writs and records enrolled in the ex-
chequer.

The first act of parliament that gave any subsidy of cloth, was
in anno 21 E. 3. (not printed) viz. fourteen pence of lieges, and
one and twenty pence of strangers, for every cloth of assise, and
two shillings four pence of lieges, and three shillings six pence of
strangers for every cloth of scarlet, &c. *Vide inter original' de
scaccario, 24 E. 3. rot. 13.* And the reason of granting the
said subsidies of broad cloth was, *Quia jam magna pars lanae regni
nostri in eodem regno pannificitur, de qua custuma aliqua. non est soluta.*

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Int. Orig. de
Scaccario.
24 E. 3. rot. 13.

per quod proficium quod de custumis et subsidiis lanarum, si extra dictum regnum ducerentur, percipere debemus, in multo diminuatur, &c. And yet if in any case the king might by his prerogative have set any imposition, he might have set one in that case, for that, as it appeareth by that record, by making of cloth the king lost his customes of wool: and therefore for further satisfaction of the king for the custome of wool; at the parliament holden in anno 27 E. 3. a subsidy was granted to the king his heirs and successors, (* over the customes thereof due) viz. of every whole cloth of assise not ingrained, four pence, and for the half of such a cloth, two pence, and of every cloth ingrained five pence, and of the halfe two pence half penny, and of every cloth of scarlet six pence, and of the half three pence; and the alnegers fee is granted to him by act of parliament, viz. for the measuring of every cloth of assise of the seller a half penny, and of half a cloth a farthing for his office, and no more, nor shall they take any thing for a cloth that is lesse; and that he take nothing of the alnage of any cloth but only of such cloth as is to be sold. And both in this act, and in some acts, in the reign of H. 3. *consuetudines et custumæ*, which are englished, customes, are taken for the subsidies that were granted by parliament, for verily those were ancient and right customes or subsidies. And in the statute of 11 H. 4. customes and subsidies are used as *synonymes*.

Ib. 27 E. 3. rot. 4. See the second part of the Institutes, Mag. Cart. cap. 30. p. 60.

By 27 E. 3. stat. 1. & ca. 4. Custome of cloth.

• Viz. the subsidies granted in anno 27 E. 3.

The alnegers fees of the subject granted by parliament.

Mag. Cart. ca. 30. Consuetudines.]

stat. de Scaccario. 51 H. 3.

Custum. des Leynes.

11 H. 4. ca. 7.

Butlerage.

Butlerage is a custome due to the king of two shillings of every tun of wine brought into this realm by strangers: but Englishmen payeth it not.

In libro rubeo in scaccaria in custodia rememoratoris regis, fol. 265. the grant of king John to the merchants of Aquitain trading for wines thence into England of divers liberties, viz. *De libertatibus concessis mercatoribus vintariis de ducatu Aquitanie, reddendo regi et hæredibus suis 2. s. de quolibet dolio vini ducti per eisdem infra regnum Angliæ vel potestate regis.*

Lib. rubeus in Scacc. fo. 265. Vid. 6 E. 3. fo. 5 & 6. the archb. of Yorks case.

All merchant strangers in consideration of the grant to them by the king of divers liberties and freedoms, *Concesserunt quod de quolibet dolio vini quod adducunt vel adduci facerent infra regnum, &c. solvent nobis et hæredibus nostris nomine custumæ duos solidos, &c.*

Rot cartarum anno 31 E. 1. nu. 44. called Carta mercatoria.

Prisage.

Prisage is a custome due to the king of the wines brought in by the merchants of England of every ship having twenty tuns or more, two tuns, viz. one before the mast, and the other behind, paying twenty shillings for each tun; and this is called *certa prisæ*, and *recta prisæ*, and *regia prisæ*, as in the record ensuing appeareth, and hereof merchant strangers are discharged, *per cartam mercatoriam*, 31 E. 1. ubi supra.

Fleta li. 2. ca. 27. Rot. pat. 40H. 3. Rot. par. 28 E. 1. pro Math. de Colymbar'.

Memorandum quod rex habet ex antiqua consuetudine de qualibet nave mercatoris vini 6. carcat' applican' infra aliquem portum Angliæ de viginti doliis duo dolia, et de decem doliis unum de prisæ regia pro quodam certo ab antiquo constituit' solvend'.

P. Rec. 20 R. 2. Vid. Tr. 33 E. 1. rot. 124. Prisæ vinorum in Hibernia.

Hereby it appeareth that prisage is due by prescription, and that it was a certainty of ancient time ordained to be paid.

43 E. 3. ca. 3. &
1 H. 8. ca. 5.

Concerning the
alning of new
draperies.

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It is called butlerage because the kings chief butler doth receive it, and prisage, because it is a certain taking or purveyance for wine to the kings use.

In Hilary tearm, anno, 2 Jac. regis, upon a suit made to the king by the duke of Lenox, question was moved concerning new draperies, as frizadoes, bayes, northern cottons, northern dozens, clothrash, durances, perpetuanoes, fustians, canvas, sackcloth, worsteds, and stuffs made of worstead yarn, whether the king might grant the alnaging of them with a reasonable fee, or whether they were within the said statute of 27 E. 3. And these questions were by the kings commandment in this Hilary Term referred to all the judges of England to certifie their opinions concerning the suit to the lords of his privy councill; who upon often hearing of the cause, and mature deliberation, and conference amongst themselves, in the end in Trinity term following with one unanimous consent, certified in writing in these words following, viz. To the lords and others of his majesties most honourable privy councill. Our duties to your lordships remembred. May it please the same to be advertised, that according to your letters in that behalf, we have heard the matter touching the fearn of the alnage, and measurage, that is sought to be granted by his majesty of sundry kindes, as well of new made drapery, as of other stuffs made within this realm. And upon hearing as well of some of the part of the master of Orkney, as of others, both of the behalf of the duke of Lenox and master Shaw, have informed our selves touching the same. And for our opinions we are resolved, that all new made drapery made wholly of wool, as frizadoes, bayes, northern dozens, northern cottons, cloth rash, and other like drapery, of what new name soever, for the use of mans body, are to yeeld subsidy and alnage according to the statute of 27 E. 3. and within the office of the ancient alnage, as may appear by severall decrees in that behalf made in the exchequer in the time of the late queen. But as touching fustians, canvas, sackcloth and such like made meerly of other stuff then wool, or being but mixed with wool, we are of opinion, that no charge can be imposed for the search or measurage thereof, but that all such patents so made are void, as may appear by a record of the 11. year of H. 4. wherein the reason of the judgment is particularly mentioned, which we held not amisse to set down to your lordships, which is thus, The same king H. 4. granted the measurage of all woollen cloth and canvas that should be brought to London to be sold by any stranger or denizen (except he were free of London) taking one half penny for every piece of cloth so measured of the seller, and one other half penny of the buyer, and so after the rate for a greater or lesser quantity, and one penny for the measuring of 100. els of canvas of the seller, and so much more of the buyer. And although it were averred that two other had enjoyed the same office before with the like fees, viz. one Shering by the same kings grant, and one Clytheroe before by the grant of king R. 2. yet, amongst other reasons of the judgment, it was set down and adjudged, that the former possession was by extortion, and coercion, and without right, and that thoe patents were *in oneracionem, oppressionem et de-*

See Rot. parl.
50 E. 2. nu. 142.
Cogware Ker-
seys.

See hereafter,
cap. 67.

See Rot. parl.
9 H. 4. nu. 34.
Kendall clothes,
&c. 11 H. 4. c. 2.
enact. 11 H. 4.
nu. 26. for rem-
nants of cloth,
&c. 11 H. 4. c. 7.
stat. 2.

pauperacionem

pauperationem populi domini regis, et non in emendationem ejusdem populi,
 &c. and no benefit to the king, and therefore the patents void.
 And as touching the narrow new stufte made in Norwich and
 other places with worstead yarn, we are of opinion that it is not
 grantable, nor fit to be granted, for we cannot find, that there was
 ever any alnage upon Norwich worsteads. And for these stufifs,
 if after they be made and tacked up for sale by the makers thereof,
 they should be again opened to be viewed and meafured, they will
 not well fall into their old plaits to be tacked up as before, which will
 be (as is affirmed) a great hinderance to the sales thereof in grosse,
 for that they will not then appear to be so merchandizable, as they
 were upon the first making of them up: and even so we humbly
 take our leaves. Serjeants Inn, the 24. of June. 1605. Which
 certificate being read by the lords of the privy councill (I being
 then attorny generall and present) was well approved by them all,
 and commandment given, that it should be kept in the councill
 chest to be a direction for them to give answer to all suits of that
 kind.

And it is to be observed, * that acts of parliament that are made
 against the freedome of trade, merchandizing, handycrafts, and
 mysteries, never live long.

37 E. 3. ca. 5. 6.
 38 E. 3. ca. 2.
 lib. 11 fo. 54.
 de Taylers de
 Iptwich.

Good Bills or Motions in Parliament seloome die.

[32]

It is an observation proved by a great number of presidents, that
 never any good bill was preferred, or good motion made in parli-
 ament, whereof any memoriall was made in the Journall Book,
 or otherwise, though sometime it succeeded not at the first, yet
 hath it never died, but at one time or other hath taken effect;
 which may be a great encouragement to worthy and industrious at-
 tempts, as taking some few examples for many, which I have
 quoted in the margin.

Bills, motions.
 8 E. 2. nu.
 17 E. 3. nu. 49.
 1 R. 2. nu. 82.
 4 R. 2. nu. 36.
 9 R. 2. nu. 44.
 1 H. 4. nu. 121.
 2 H. 4. nu. 83.
 2 H. 4. nu. 70.
 11 H. 4. nu. 47.
 1 H. 5. nu. 23.
 7 H. 5. nu. 18.

1 H. 6. nu. 41. 7 E. 4. nu. 20. *Acts of Parliament.* 2 E. 3. cap. 2. 25 E. 3. ca. 5. 4 H. 4.
 ca. 22. 1 H. 5. cap. 1. 15 H. 6. ca. 14. 1 R. 3. ca. 3. 21 H. 8. cap. 5. 23 H. 8. cap. 4.
 26 H. 8. cap. 3. 31 H. 8. ca. 1. 32 H. 8. cap. 32. 2 E. 6. cap. 8 & 13. 1 & 2 Ph. & Mar.
 cap. 13. Vide *Infra*, cap. 8. pa.

The Subsidy of Tunnage and Poundage.

By the subsequnt records you shall observe 13. things. 1. The
 grant of poundage only. 2. Of tunnage and poundage, 3. Seve-
 rall rates, sometimes 6. d. 8. d. 12. d. for poundage. 4. Some-
 times 2. s. 18. d. 3. s. 5. *Hac vice*, 1, 2, 3, 4. years, for life. 6. To
 merchants, &c. 7. To have intermission and to vary, lest the
 king should claim it as a duty. 8. Expressed upon free gift.
 9. Upon condition to keep the seas, and for commerce. 10. That
 is ever the consideration and cause of the grant. 11. Granted
 without retrospect. 12. Sometimes double of strangers. 13. Cloth
 excepted, that it be not subject to tunnage and poundage. 31
 H. 6.

* Of poundage only, and 6. d. in the pound, for two years upon
 condition, &c.

The Records.
 47 E. 3. nu. 12.

D 3

6. d. for

^b 6 R. 2. nu. 13.

^c 7 R. 2. stat. 1.

^d 5 R. 2. nu. 40.

^e R. 2. nu. 11.

^f 10 R. 2. nu. 18.

^g 11 R. 2. nu. 12.

^h 13 R. 2. nu. 20.

ⁱ 14 R. 2. nu. 12.

^k 17 R. 2. nu. 12.

^l 2 H. 4. nu. 9.

^m 4 H. 4. nu. 28.

ⁿ 6 H. 4. nu. 9.

^o 8 H. 4. nu. 9.

^p 9 H. 4. nu. 27.

^q 11 H. 4. nu. 45.

^r 13 H. 4. nu. 10.

^s 1 H. 5. nu. 17.

^t 3 H. 5. nu. 50.

^u 2 H. 6. nu. 14.

^v 3 H. 6. nu. 17.

^w 9 H. 6. nu. 14.

^x 23 H. 6. nu. 16.

^y 31 H. 6. nu. 8.

& cap. 8.

* Nota.

^z 4 E. 4. & 12 E. 4.

ca. 3. in print.

^{aa} Rot. par.

1 H. 7. not

printed, for he

had many sub-

sidies, but print-

ed none.

^{ab} Rot. par. 1 H. 8.

not printed.

Vid. 6 H. 8.

ca. 14. in print.

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1 E. 6. ca. 13.

1 Mar. cap. 18.

1 Eliz. cap. 19.

1 Jac. ca. 33.

* Rot. par.

11 H. 4. nu. 45.

13 H. 4. nu. 10.

A book of rates
or values.

^b 6. d. for poundage, and 2. s. for tunnage of wine, *hac vice*.

^c 6. d. of every pound of merchandize, and 2. s. of every tun of wine, upon condition, &c. *hac vice*.

^d Sometime to have intermission, and to vary, lest the king should claim as duties.

^e for tunnage of wine 3. s. and 6. d. for poundage for one year.

^f 3. s. for tunnage of wine, 12 d. for poundage, *hac vice*.

^g 6. d. for poundage, and 18 d. for tunnage of wine for three years.

^h 8. d. for poundage and 2. s. for tunnage of wine.

ⁱ 12. d. for poundage, and 3. s. for tunnage of wine for three years.

^k 12. d. for poundage, and 3. s. for tunnage of wine for severall times upon condition, sometime for one year. In these and most of the former granted upon condition for due employment ^l of their own good will, and so entred, and the king to have a certain sum ^m more expressly.

ⁿ 12. d. for poundage, and 3. s. for tunnage of wine for four years.

^o The like subsidy is granted to the king for his life upon conditions, &c. which was the first grant of tunnage and poundage for life, which was a leading grant, as hereafter appeareth.

^p The subsidy of poundage only for two years.

^q Tunnage of wine and poundage granted for severall years.

^r Tunnage and poundage, *ut prius* of denizens, double of strangers.

^s Tunnage of wine and poundage granted to H. 6. for life with an exception of all woollen * cloth: and here cloth was first excepted, and was a leading exception in all subsequent acts.

^t Tunnage of wine and poundage granted to E. 4. for life with no retrospect, but for the time to come.

^u At the parliament holden *anno* 1 H. 7. a like act was made for the grant of the subsidies of tunnage and poundage to him for his life.

^v And the like subsidy was granted to king H. 8. at the parliament holden *anno* 1. of his reign for his life.

The like grant was made to E. 6. queen Mary, queen Eliz. and king James for their severall lives, and in all these it is affirmed, that the like grants were made by act of parliament to king H. 7. and king H. 8.

The consideration of the grant of the subsidies of tunnage and poundage is ever, as is aforesaid, expressed in the grant, for the keeping and safeguard of the seas, and for intercourse of merchandize safely to come into this realm, and safely to passe out of the same. And this pertaineth properly to the office of the lord admirall to see the consideration of the act to be performed.

* They are granted of the free good will of the subjects, and so expressly set down in the parliament roll.

In king James his reign, when I was a commissioner of the treasury, these subsidies granted for life amounted to one hundred and threecore thousand pounds *per annum*, and so letten to farm. The values of the merchandize for the which the subsidy of poundage is paid, do appear in a book of rates in print, whereby the merchant

chant knows what he is to pay. The subsidy of tunnage of wine is certain in these acts by the contents of the vessels: and none of these acts doe extend to any other liquid merchandize imported or exported, but unto wines only: and seeing nothing is more incertain then the continuance of the values of merchandizes wherefore the subsidy of poundage is paid, it were good at every grant of them to set down the rates in a schedule annexed to the bill.

Subsidies temporary and usuall at his Day.

Subsidies temporary and usuall at this day. And this is when the commons in parliament freely grant to the king an aid to be levied of every subject of his lands or goods after the rate of 4.s. in the pound for lands, and 2.s. 8.d. for goods, and for aliens for goods double, to such ends and for such considerations, and to be paid at such times, as by the acts thereof (which are usuall and frequent) doe appear. And in former times in this kind of subsidy, this order was observed, that over and above the subsidy of tunnage and poundage, the commons never gave above one subsidy of this kind, and two fifteens, (and sometime lesse) one subsidy amounting to seventy thousand pounds, and each fifteen at twenty nine thousand pounds, or near thereabouts; nor above one subsidy, which did rise to twenty thousand pounds, the clergy gave not.

At the parliament holden in 31 Eliz. the commons gave two subsidies, and four fifteens, which first brake the circle.

In 35 Eliz. three subsidies and six fifteens.

In 39 Eliz. three subsidies and six fifteens.

In 43 Eliz. four subsidies and eight fifteens, &c.

In 21 Jac. *regis*, three subsidies and sixe fifteens in shorter times then had been before.

In 3 Car. *regis*, five subsidies in shortest time of all.

And it is worthy of observation how quietly subsidies granted in forms usuall and accustomed (though heavy) are borne; such a power hath use and custome: on the other side, what discontents and disturbances subsidies framed in new molds doe raise, (such an inbred hatred novelty doth hatch) is evident by examples of former times:

As that of 4 R. 2. a new invention of subsidies of the kings subjects of either sex by the poll, &c. for the furnishing of the earl of Buckingham for his going into France, whereupon a strong and a strange rebellion ensued, wherein three great and worthy officers were by the rascall rebels barbarously and wickedly murdered, viz Simon Sudbury archbishop of Canterbury, chancelour of England, the prior of S. Johns of Jerusalem, treasurer of England, and Sir John Cavendish chief justice of England.

In 4 H. 7. another like new found subsidy was granted, which raised a rebellion in the north, in which the noble earl of Northumberland a commissioner in that subsidy, was by the rebels cruelly and causelessly slain.

In anno 16 H. 8. to furnish the king for his going in his royall person into France, a new device for getting of mony was set on foot, which made the headlesse and heedlesse multitude to rise in rebellion,

Rot. Par. 4 R. 2.
nu. 15.
5 R. 2. nu. 32.

Hollensh Chron.
769.

[34]
Hollensh. Chron.
891.

rebellion, untill Charles Brandon the noble duke of Suff^r quieted, and dispersed them.

Rot. par. 9 E. 3.
nu. 5.

At the parliament holden in 9 E. 3. when a motion was made for a subsidy to be granted of a new kind, the commons answered, that they would have conference with those of their severall countries and places, who had put them in trust, before they treated of any such matter.

9 H. 6. nu. 15.
10 H. 6. nu. 50.

Vide 9 H. 6. nu. 15. Every knights fee to pay 20 s. and so according to the value under or over, and so of the clergy for lands purchased since 20 E. 1. And all other having 20 l. lands not holden as is aforesaid, 20 s. &c. This whole subsidy for certain doubts the king utterly released, so as there is no mention made of the same: but hereof thus much shall suffice.

Sæpe viatorem nova, non vetus orbita fallit.

Of Fifteens, Quinzims, &c.

Fifteens, Quinzim or Talk, or Quinta decima.

A fifteen is a temporary aid granted to the king by parliament, which without further inquiry is certain, and therein differeth from the subsidy, which is ever uncertain, untill it be assessed.

Second part Inf.
Mag. Carta cap.
ultimo.

The fifteen of ancient time was the fifteenth part of goods moveable, but in 8 E. 3. all the cities, boroughs, and towns in England were rated certainly at the fifteenth part of the value at that time generally upon the whole town, whereof you shall read more at large in the second part of the Institutes, in the last chapter of Magna Carta, verb. *Quintam decimam partem bonorum mobilium.*

Of Tenths.

There is *decima pars* of the laity, and for the most part of cities and boroughs by their goods (*Vid.* 1 R. 2. nu. 26.) which proportionably is, *secundum decimam quintam partem.* That which we call tax, tallage, tenth, and fifteen, the Saxons called *geldinn**, we use the word changing *g* to *y*, for *gelding, yeilding, &c.*

* Doomsday.
Norff. in Wanelunt, i. Wayland,
& ibid. in Frestebing, in Mafsiegham, &c.

No * subsidy before the end of the parliament, because it is to accompany the pardon.

* Rot. par. 11 R. 2. nu. 11. This is contained in the act of subsidy, and so an act of parliament: and accordingly subsidies, &c. have been granted, as in the book of statutes appeareth.

Of Acts of Parliament of Confirmation of Letters Patents.

Rot. par. 2 H. 5.
nu. 20. 1 H. 6.
nu. 23. 3 H. 7. to
the queen. 6 H. 8.
to the duke of
Suff.

We have read of particular acts of confirmation of letters patents; but the first of lands, &c. that was the more generall, was the statute of 31 H. 8. ca. 13. of monasteries (to make those lands the more passable) but after that, generall acts of confirmation of letters patents have been very frequent.

How

How the Lords give their Voices.

In the lords house, the lords give their voices from the puiſne *lord ſeriatim* by the word of [content,] or [not content.]

A bill was preferred at the parliament holden in *anno* 6 H. 6. that no man should contract or marry himself to any queen dowager of England without speciall licence and assent of the king, on pain to lose all his goods and lands. The bishops and clergy assented to this bill, by the word of [content,] as far forth as the same swarved not from the law of God and of the church, and so as the same imported no deadly sin. At this time there were besides the archbishops and bishops, 27 abbots and 2 priors, (albeit in troth the number was many times uncertain, as in the close roll it appeareth) which severally held *per baroniam*, and were lords of parliament, and so continued untill they were dissolved in the reign of H. 8. The entry of the said act of 6 H. 6. in the roll is: It is enacted by the king, lords temporall, and commons, that no man should contract or marry himself to any queen of England, without the speciall license and assent of the king, on pain to lose all his goods and lands. The bishops and clergy assented to this bill, as far forth as the same swerved not from the law of God, and of the church, and so as the same imported no deadly sinne.

Rot. par. 6 H. 6. nu. 27.

[35]
How many lords (spirituall in former times.

This is holden to be an act of parliament: first, for that the assent of the clergie could not be conditionall. Secondly, it was not against the law of God nor of the church, nor imported any deadly sinne to make this law by authority of parliament, as it appeareth by *Magna Carta*, cap. 7. which had by 32 acts of parliament been confirmed, and many others.

This law was made after the marriage of queen Katherine dowager of H. 5. with Owen ap Meredith ap Gr no (descended of the princes of Wales) by whom she had issue Edmond of Hadham aforesaid, earle of Richmond, and Jasper of Hatfeild, after earl of Pembroke, and duke of Bedford.

How the Commons give their Voices.

The commons give their voices upon the question, by *yea* or no, and if it be doubtfull, and neither party yield, two are appointed to number them; one for the *yea*, another for the *no*: the *yea* going out, and the *no* fitting: and thereof report is made to the house. At a committee, though it be of the whole house, the *yeas* go of one side of the house, and the *noes* on the other, whereby it will easily appear which is the greatest number.

Pl.com. 126. mis. taketh it, and that the clerk number them.

How Parliaments succeed not well in five Cases.

It is observed by ancient parliament men out of record, that parliaments have not succeeded well in five cases. First, when the king hath been in displeasure with his lords, or with his commons. 2. When any of the great lords were at variance between themselves. 3. When there was no good correspondence between the lords

lords and the commons. 4. When there was no unity between the commons themselves. 5. When there was no preparation for the parliament before it began.

^a For the 1: so essentiall is the kings good will towards his commons, that it was one of the petitions of the commons to the king, that he would require the archbish. and all others of the clergy to pray for his estate, for the peace and good government of the land, and for the continuance of the kings good will towards his commons: whereunto the thrice noble king assented with these effectfull words, The same prayeth the king: and many times the like petitions for the lords. ^b How the king in all his weighty affairs had used the advice of his lords and commons, (so great a trust and confidence he had in them.) Alwaies provided, that both lords and commons keep them within the circle of the law and custome of the parliament.

^c For the second: at the parliament holden in 4 H. 6. what variance was there between the duke of Gloc. and the b. of Winchester, and their friends on either side: the successe was, that little was done in any parliamentary course at that parliament, and that little was of no moment.

^d At the parliament holden in the third year of H. 6. the great controversie was between John earl marshall, and Richard earl of Warwick with like successe.

^e The like controversie between William earle of Arundell and Thomas earl of Devon, for superiority of place, with like event. And many more might be cited. ^f And alwaies in the beginning amity was made between the grandees of the realm by shaking of hands and kissing, and sometime by ^g submission.

For the third, when it was demanded by the lords and commons what might be a principall movie for them to have good successe in parliament, it was answered, *Eritis insuperabiles, si fueritis inseparabiles. Explosum est illud diverbium; divide, et impera, cum radix et vertex imperii in obedientium consensu rata sunt.*

For the fourth, unity between the commons themselves. It is most necessary in both these, and agreeable to the parliament in the book of Judges. *Quasi homo unus, eadem mente, uno consilio.*

For the fifth, the summons of parliament is by forty dayes or above before the sitting, to the end that preparations might be had for the arduous and urgent affairs of the realme: and that both the king, according to the example of king David, and likewise the nobles and commons should prepare; for *preparate meditationes sunt semper saniores et meliores quam proparate*, wherein both houses may greatly expedite the businesse of the common-wealth in parliament, if they will pursue the ancient custome of parliament, viz. in the beginning thereof to appoint a select committe to consider of the bills in the two last parliaments that passed both houses, or either of them, and such as had been preferred, read, or committed, and to take out of them such as be most profitable for the common-wealth.

^a Rot. parl. 37 E. 3. nu. 2. and the writ to the clergie, *De grande pro rege & regno*, which was usuall in those dayes.

^b Rot. parl. 43 E. 3. nu. 7. 25 E. 3. nu. 15. 50 E. 3. nu. 2.

^c Rot. par. 4 H. 6. nu. 12. See the acts of that parliament.

^d Rot. par. 3 H. 6. nu. 1. & 10.

^e Rot. parl. 27 H. 6. nu. 18.

^f Rot. par. 2 H. 4. nu. 14.

^g H. 4. nu. 18. 20.

^a Rot. Parl. 21 R. 2. by the count of Arundell to the duke of Lancast. 4 H. 6. nu. 12.

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Rot. parl. anno 11 H. 4. nu. 10. the king desired this unity. 20 Judicium.

¹ Chron. cap. 28.

The Honour and Antiquity of the Parliament.

For the honour and antiquity of the parliament, see the first part of the Institutes, sect. 164. verb. *Veigne les burgeses*, and in the preface to the ninth book of my Reports, fo. 1, 2, 3, 4, &c. whereunto you may adde, *Int' leges Edwardi regis, ca. 8. de decimis ecclesie reddendis, sect. de apibus vero, &c. Hec enim predicavit beatus Augustinus, et concessa sunt a rege baronibus et populo.* A grant by express act of parliament. *Vide infra, cap. 79. pag.*

7 H. 6. 28. lib. 13. fo. 14
Inter leges Edwardi regis, ca. 8.

The Power and Jurisdiction of the Parliament.

^a Of the power and jurisdiction of the parliament, for making of laws in proceeding by bill, it is so transcendent and absolute, as it cannot be confined either for causes or persons within any bounds. Of this court it is truly said: ^b *Si antiquitatem spectes, est vetustissima, si dignitatem, est honoratissima, si jurisdictionem, est capacissima.*

^a See 13 Eliz. cap. 1.
39 H. 6. 15.
Vide infra. ca. 79.
^b Fortesc. ca. 18.
^c Virgil.

^c *Huic ego nec metas rerum, nec tempora pono.*

Yet some examples are desired. ^d Daughters and heirs apparant of a man or woman, may by act of parliament inherit during the life of the ancestor.

^d Rot. par. 12 E. 4. nu. 20, 21, 22. the case of the wives of the duke of Clarence and Gloucester.

^e It may aduige an infant, or minor of full age.

^f To attain a man of treason after his death.

^g To naturalize a meere alien, and make him a subject borne.

^h It may bastard a childe that by law is legitimate, viz. begotten by an adulterer, the husband being within the foure seas.

^e 12 F. 4. nu. 34. duke of Buckingham.

To legitimate one that is illegitimate, and born before marriage absolutely. And to legitimate *secundum quid*, but not *simpliciter*. As to take one example for many.

^f 21 R. 2. nu. 27. Sir Ro. Plesington.
31 H. 6. cap. 1.

ⁱ John of Gaunt duke of Lancaster had by Katherine Swinford before marriage, four illegitimate children, viz. Henry, John, Thomas, and Joane. And because they were borne at ^k Beaufort in France, they were vulgarly called Henry de Beaufort, &c. John before the 20 year of R. 2. was knighted, and Henry became priest. ^l At the parliament holden 20 R. 2. the king by act of parliament in forme of a charter doth legitimate these three sonnes, and Joane the daughter: and the charter beginneth thus. *Rex, &c. charissimis consanguineis nostris nobilibus viris ^m Johanni militi:*

^g This is usuall in many parliaments.

ⁿ *Henrico clerico: ^o Thomæ ^p domicello, ac dilectæ nobis nobili mulieri ^q Johannæ Beaufort domicellæ germanis præcharissimi avunculi nostri, Johannis ducis Lancastrie natis ligeis nostris salutem, &c. Nos dicti*

^h Rot. par. 5 & 6. E. 6. the 10. marquise of Winchester's case.

riage between Blanch of Artois, and Edmond first earle of Launce. ^r Rot. pat. 20 R. 2. membr. 7.

^s This John in anno 21 R. 2. was created earle of Somerset, and marquise Dorset. But in 1 H. 4. the marquiship was taken away by parliament. ^t This Henry was after bishop of Winchester, cardinall of S. Ewseby, and chancellor of England. ^u This Thomas was in 21 R. 2. created earle of Dorset. ^v For domicellus, &c. See Lambes inter. leges Edw. fo. 139. b. *Nos indiscrete domicellus de pluribus dicimus, quia baronum filios vocamus domicellos, Angli vero multos, nisi natos regum.*

ⁱ Rot. pat. anno 20 R. 2. m. 6.

^w Joane was first married to Ralph the first earle of Westmerland, and after to Robert Ferrers lord of Owicley.

^k Beaufort came to the house of Lanc. by marriage

avunculi

* Nota.

avunculi nostri genitoris vestri precibus inclinati, vobiscum qui (ut asseritur) defectum natalium patimini, ut hujusmodi defectu (quem ejusque qualitate quascunq; presentibus habere volumus pro sufficienter expressis) non obstante ad quaecunque honores dignitates, (* excepta dignitate regali) preheminentias, status, gradus, et officia publica et privata tam perpetua quam temporalia, atq; feudal' ac nobil' quibuscunque nominibus nuncupantur, etiamsi ducatus, principat', comitat', baronia, vel alia feuda fuerint, etiamsi mediate, vel immediate vel à nobis dependant seu teneantur, præfici, promoveri, eligi, assumi et admitti, illaq; recipere, retinere, perinde libere et licite valeatis, ac si de legitimo thoro nati existeretis, quibuscunque statutis seu consuetudinibus regni nostri Angliæ in contrarium editis seu observatis (quæ hic habemus pro totaliter expressis) nequaquam obstantibus; de plenitudine nostræ regalis potestatis, ac de assensu parliamenti nostri tenore presentium dispensamus, vosque et vestram quolibet natalibus restituimus, et legitimamus. In cujus rei testimonium. Teste rege apud Westm. 9 die Febr. Per ipsum regem in parlamento.

In this act are divers things worthy of observation. 1. The names whereby they were legitimated. 2. That this legitimation was not *simpliciter*, but *secundum quid*: for they were legitimated and made capable of all dignities, except the royall dignity: so as this legitimation extended not to make them or their posterities inheritable to the crown, but to all other dignities. 3. That before their legitimation, they were not created to any of their dignities.

4. The briefe and artificiall penning of this legitimation, with generall words, as if the particularity were expressed, and with a brief *non obstante*, and with as little blemish as may be. 5. And hereby it appeareth, that * H. 7. being son of Edmond of Hadham earle of Richmond, and Margaret his wife, daughter and heir of John de Beaufort duke of Somerset: which Margaret lineally descended from the said John de Beaufort, legitimated and made capable of all dignities, as is aforesaid, *excepta regali dignitate*, that the best title of H. 7. to the crown, was by Elizabeth his wife, eldest daughter of E. 4. yet before this marriage the crown was by act of parliament intayled to H. 7. and to the heirs of his body, the right of the crowne then being in the said Elizabeth, eldest daughter of E. 4. 6. In this act the said Thomas before his legitimation could not be called esquire, and therefore he hath this addition of * *domicello*, either derived of the French word *domoicell*, which signifieth a young souldier not yet knighted, or signifieth nobly born. And note, Johan. the daughter, had the addition of de Beaufort and *domicella* in that sense also.

^b And albeit I finde an attainder by parliament of a subject of high treason being committed to the tower, and forth-coming to be heard, and yet never called to answer in any of the houses of parliament, although I question not the power of the parliament, for without question the attainder standeth of force in law: yet this I say of the manner of the proceeding, *Auferat oblivio, si potest; si non, utcumque silentium tegat*: for the more high and absolute the jurisdiction of the court is, the more just and honourable it ought to be in the proceeding, and to give example of justice to inferiour courts. But it is demanded, since he was attainted by parliament, what should be the reason that our historians do all agree in this, that he suffered death by a law which he himself had made. For answer hereof, I had it of Sir Thomas Gawdye knight,

* Nota, pro corona.

Rot. parl. anno 1 H. 7. not in print.

7 H. 4. cap. 2. the like to H. 4. the right of the crowne being then in the descent from Philip daughter and heir of Lionel duke of Clarence.

Vid. 1 H. 7. 12, 13. 25 H. 8. cap. 22. repeal by 28 H. 8.

cap. 7. & 1 Mar. parl. 1. cap. 1. See 13 Eliz. ca. 1. in principio.

* See Hovenden, pag. 608. for this word *domicel*.

^b Rot. parl. 12 H. 8.

The attainder of Tho. Cromwell earle of Essex.

knight, a grave and reverend judge of the kings bench, who lived at that time, that king H. 3. commanded him to attend the chiefe justices, and to know whether a man that was forth-coming might be attainted of high treason by parliament, and never called to his answer. The judges answered, that it was a dangerous question, and that the high court of parliament ought to give examples to inferiour courts for proceeding according to justice, and no inferior court could do the like; and they thought that the high court of parliament would never do it. But being by the expresse commandement of the king, and pressed by the said earle to give a direct answer: they said, that if he be attainted by parliament, it could not come in question afterwards, whether he were called or not called to answer. And albeit their opinion was according to law, yet might they have made a better answer, for by the statutes of Mag. Cart. ca. 29. 5 E. 3. cap. 9. & 28 E. 3. cap. 5. No man ought to be condemned without answer, &c. which they might have certified, but *facta tenent multa, quæ fieri prohibentur*; the act of attainder being passed by parliament, did bind, as they resolved. The party against whom this was intended, was never called in question, but the first man after the said resolution, that was so attainted, and never called to answer, was the said earl of Essex; whereupon that erroneous and vulgar opinion amongst our historians grew, that he died by the same law which he himself had made. The rehearfall of the said attainder can work no prejudice, for that I am confidently perswaded, that such honourable and worthy members shall be from time to time of both houses of parliament, as never any such attainder, where the party is forth comming, shall be had hereafter without hearing of him.

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^a *Nunquid lex nostra judicat hominem, nisi prius audierit ab ipso, et cognoverit quid faciat?* Doth our law judge any man, before it hear him and know what he doth? ^b It is not the manner of the Romans to deliver any man to die, before that he which is accused have the accusers face to face, and have licence to answer for himself concerning the crime laid against him.

^c *Ait Josua ad Acab, fili mi, da gloriam Domino Dco Israel, et confutere mihi quid feceris, ne abscondas.*

^d *Interrogatus Levita maritus mulieris interfectæ quomodo tantum scelus perpetratum esset, &c.* And the conclusion is after hearing and discerning the cause, consider, consult, and then give sentence.

^e And as evil was the proceeding in parliament against Sir John Mortimer, third son of Edmond the second earl of March (descended from Lionell duke of Clarence) who was indicted of high treason for certain words, in effect, that Edmond earl of March should be king by right of inheritance, and that he himself was next rightfull heir to the crowne after the said earl of March; wherefore if the said earl would not take it upon him, he would; and that he would goe into Wales, and raise an army of 20000. men, &c. which indictment (without any arraignment or pleading) being meerly faigned to blemish the title of the Mortimers, and withal being insufficient in law, as by the same appeareth, was confirmed by authority of parliament: and the said Sir John being brought into the parliament without arraignment or answer, judgement

^a Lex divina. John 7. v. 15. Deut. c. 17. v. 10. & ca. 19. v. 15. Mat. Par. 18 Johannis 273.

Inciivile videtur et contra canones esse in hominem absentem non vocatum, non convictum nec confessum ferre sententiam.

Hereof see paulo post

^b Acts 25. 16. Gen. 3. 9. Dixit dominus, Adam, ubi es? Vile Gen. 18. 21. Ezechias 11. 7, 8.

^c Praxis sanctorum Josua 7. 19. 22, 23. &c.

^d Jud. 20. 3.

^e Rot. nar. 2 H. 6. nu. 18.

judgement in parliament was given against him upon the said indictment; that he should be carried to the tower of London, and drawn through the city to Tiborn, and there hanged, drawn and quartered, his head to be set on London bridge, and his four quarters on the four gates of London, as by the record of parliament appeareth.

The Proceeding in Parliament against Absents.

The ancient law and custome of the parliament was, that when any man was to be charged in parliament with any crime or offence, or misdemeanour, the kings writ was directed to the sherif to summon and injoin the party to appear before the king in the next parliament. For example.

Placita in parlamento domini regis, anno E. 1. 33. Northampton.

Dominus rex mandavit vic' quod assumptis secum quatuor de discretioribus et leg' militibus com' sui in propria persona sua accederet ad Nicholaum de Segrave, et ipsum in presentia predictorum militum summon' et ex parte domini regis firmiter ei injungeret quod esset coram domino rege in proximo parlamento suo apud Westm' in primo adventu domini regis ibidem ad audiendam voluntatem ipsius domini regis super hiis, que tunc ibidem proponere intenderet vers' eum, et ad faciendum et recipiendum ulterius quod curia domini regis consideraret in premissis. Et vic' modo mandavit quod assumptis secum Thoma Wale, Waltero filio Roberti de Daventry, Roberto de Gray de Wollaston, et Radulpho de Normavill quatuor milit', &c. in propria persona sua accessit apud Stowe ad manerium predicti Nicholai, et in presentia eorundem militum summon' predictum Nicholaum, et ei firmiter injunxit quod esset coram domino rege in isto parlamento nunc juxta formam et tenorem mandati preed'. &c.

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Placita coram domino rege, Pasch. 33 E. 1. Rot. 19. Oxon.

Amaricus de Sancto Amando, magister Johannes de Sancto Amando Willielmus de Monte Acuto, Richardus Atcherw constabularius castri Oxon, Rich. de Hurle, Thomas de Carleton capellanus, Johannes de Ros, Johannes de Trenbrig, Willielmus Atterwale frater ejus, et Philippus de Wigenton attachiat' fuerunt per vic' in castro Oxon' per precept' domini regis responsur' eidem domino regi in parlamento suo in crastino sancti Mathæi apostoli anno regis sui xxxviii. super quibusdam criminibus et transgressionibus infra scriptis, et inde per manucaptionem sufficient' adjuvat' coram ipso domino rege hic ad hunc diem, scilicet a die Pasche in xv. dies, &c.

Or a writ might be directed to the party himself, when any complaint was made against him, *De injuriis, gravaminibus, aut molestationibus*, to appear in his proper person before the king and his council, &c. As for example:

Placita coram rege apud Cantuar' de termino Pasch. anno regni regis E. 1. 30. Confimile breve ubi supra eidem Roberto de Burgherth ad festam majoris et baronum quinque portuum.

Dominus rex mandavit breve suum Roberto de Burgherth in hæc verba. Edwardus Dei gratia, &c. Dilecto et fideli suo Roberto de Burgherth constabular' castri sui Dover et custod' suo quinque portuum, salutem. Quia dilectus nobis in Christo abbas de Faversham et Robertus de Gurne balius suus ejusdem villæ ex am concilio nostro apud Eborum existente de diversis injuriis, gravaminibus et molestationibus eis per vos volutar' et absq' causa rationabili multipliciter illatis graves querimonias deposuerant, petentes instanter ut eis super hoc fieri faceremus remedium opportunum; propter quod dedimus eis diem coram nobis et concilio nostro à die Pasche in xv. dies, &c. ad querelas suas predictas tunc ostendend', et ad satisfaciend'.

ciend' super hoc ulterius et recipiend' quod iustitia suaderet; vobis mandamus, quod in propria persona vestra sitis coram nobis et concilio nostro ad diem prædict' præfatis abbati et balivis suis super præmissis respons' factur' et receptor' quod curia nostra consideraverit in hac parte, et ab injuriis, gravaminibus, molestationibus et districtiõibus indebitis præfatis abbati et balivis suis interim inferendis penitus desistendo. Et habeatis ibi hoc breve. Teste me i. so. a. ud. Einlisc. m. xxx. die Januarii, anno regni nostri xxx. Virtute cujus brevis prædict' Robertus venit, et breve illud protulit ad diem in eodem contentum. Et prædict' abbas venit et querelas suas protulit in quodam rotulo scriptas, et quas in curia hic querelando ostendit et legere fecit, de quibus prima est hæc, &c.

Now they which absent themselves shall be proceeded withall, vide 50 E. 3. nu. 37. Adam Buries case, 2. parte patent. 21 R. 2. nu. 15, 16. Rot. Par. 17 R. 2. nu. 28. 11 H. 4. nu. 37, 38. 15 H. 6. nu. 4. 33 H. 6. fo. 17. Sir John Pilkingtons case.

And where by order of law a man cannot be attainted of high treason, unlesse the offence be in law high treason, he ought not to be attainted by generall words of high treason by authority of parliament (as sometime hath been used) but the high treason ought to be specially expressed, seeing that the court of parliament is the highest and moit honourable court of justice, and ought (as hath been said) give example to inferiour courts.

There was an act of parliament made in the 11 year of king H. 7. which had a fair flattering preamble, pretending to avoid divers mischiefs, which were, 1. To the high displeasure of almighty God. 2. The great let of the common law, and, 3. The great let of the wealth of this land: and the purvien of that act tended in the execution contrary, *ex diametro*, viz. to the high displeasure of almighty God, the great let, nay the utter subversion of the common law, and the great let of the wealth of this land, as hereafter shall manifestly appear. Which act followeth in these words:

The king our sovereign lord calling to his remembrance that many good statutes and ordinances be made for the punishment of riots, unlawfull assemblies, reteinders in giving and receiving of liveries, signs and tokens unlawfully, extortions, maintenances, imbracery, excessive taking of wages contrary to the statutes of labourers and artificers, the use of unlawfull games, inordinate apparell, and many other great enormities and offences, which been committed and done daily contrary to the good statutes, for many and divers behoofull considerations severally made and ordained, to the displeasure of almighty God, and the great let of the common law, and wealth of this land, notwithstanding that generally by the justices of the peace in every shire within this realm in the open sessions is given in charge to enquire of many offences committed contrary to divers of the said statutes, and divers enquests thereupon there straitly sworn, and charged before the said justices to enquire of the premisses, and therein to present the truth which any letted to be found by imbracery,

25 H. 8. ca. 12. Eliz. Barton, and others. And see the act of the attainer of the lord Cromwell, anno 32 H. 8. ubi supra.

A mischievous act with a flattering preamble in 11 H. 7.

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11 H. 7. ca. 3.

main-

maintenance, corruption and favour; by occasion whereof the said statutes be not, nor cannot be put in due execution: for reformation whereof, for so much that before this time the said offences, extortions, contempts, and other the premisses might not, nor as yet may be conveniently punished by the due order of the law, except it were first found and presented by the verdict of twelve men thereto duly sworn, which for the causes afore rehearsed will not find nor yet present the truth: wherefore be it by the advice and assent of the lords spirituall and temporall, and the commons in this present parliament assembled, and by authority of the same enacted, ordained and established, that from henceforth as well the justices of assize in the open sessions to be holden afore them, as the justices of peace in every county of the said realm, ^a upon information for the king before them to be made, have full power and authority ^b by their discretion to hear and determine all offences and contempts committed and done by any person or persons against the form, ordinance, and effect of ^c any statute made and not repealed, and that the said justices upon the said information have full power and authority to award and make like processe against the said offenders and every of them, as they should or might make against such person or persons as been present and indicted before them of trespassse done contrary to the kings peace, and the said offender, or offenders duly to punish according to the purport, form, and effect of the statutes. Also be it enacted by the said authority, that the person which shall give the said information for the king shall by the discretion of the said justices content and pay to the said person or persons against whom the said information shall be so given his reasonable costs and dammages in that behalf sustained, if that it be tried or found against him, that so giveth or maketh any such information. Provided always, that any such information extend not to treason, murder, or felony, nor to any other offence, wherefore any person shall lose life, or member, nor to lose by nor upon the same information any lands, tenements, goods or chattels to the party making the same information. Provided also that the said informations shall not extend to any person dwelling in any other shire, then there, as the said information shall be given or made, saving to every person or persons, cities, and towns, all their liberties and franchises to them and every of them of right belonging and appertaining.

^a Upon information without any indictment.

^b By their discretion, and not *secundum leg. m. & consuetudinem Angl.* as all proceedings ought to be.

^c Obsolete statutes and all, and specially such as time had so altered from the originall cause of the making thereof, as either they could not at all, or very hardly be observed and kept.

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But it extended to a praemunire, mispision of treason, &c.

By pretext of this law Empson and Dudley did commit upon the subject untufferable pressures and oppressions, and therefore this statute was justly soon after the decease of H. 7. repealed at the next parliament after his decease, by the statute of 1 H. 8. ca. 6.

1 H. 8. ca. 6.

A good caveat to parliaments to leave all causes to be measured by the

the golden and streight metwand of the law, and not to the incertain and crooked cord of discretion.

It is not almost credible to foresee, when any maxime, or fundamentall law of this realm is altered (as elsewhere hath been observed) what dangerous inconveniences doe follow, which most expressly appeareth by this most unjust and strange act of 11 H. 7. for hereby not only Empson and Dudley themselves, but such justices of peace (corrupt men) as they caused to be authorized, committed most grievous and heavy oppressions and exactions, grinding of the face of the poor subjects by penall laws (be they never so obsolete or unfit for the time) by information only without any presentment or triall by jury being the ancient birthright of the subject, but to hear and determine the same by their discretion, inflicting such penalty, as the statutes not repealed imposed: these and other like oppressions and exactions by or by the means of Empson and Dudley and their instruments, brought infinite treasures to the kings coffers, whereof the king himself in the end with great grief and compunction repented, as in * another place we have observed.

This statute of 11 H. 7. we have recited, and shewed the just inconveniences thereof, to the end, that the like should never hereafter be attempted in any court of parliament. And that others might avoid the fearfull end of those two time-servers, Empson and Dudley. *Qui eorum vestigia insunt, eorum exitus perhorrescant.*

See the statute of 8 E. 4. ca. 2. the statute of liveries, an information, &c. by the discretion of the judges to stand as an original, &c. This act is deservedly repealed.

Vide 12 R. 2. cap. 13. Punishment by discretion, &c. Vide 5 H. 4. ca. 6. 8. See the * Commission of sewers. Discretion ought to be thus described. *Discretio est discernere per legem quid sit justum.* And this description is proved by the common law of the land, for when a jury doe doubt of the law, and desire to doe that which is just, they find the speciall matter, and the entry is, *Et super tota materia, &c. petunt discretionem justiciariorum,* and sometime, *advisamentum et discretionem justiciariorum in premissis, &c.* that is, they desire that the judges would discern by law what is just, and give judgement accordingly.

See the 2. part of the Institutes, W. 1. ca. 26. See the preface to the 4. part of the Reports. The danger ensuing by alteration of any of the maximes of the law.

* In the chapter of the Court of Wards and Liveries.

* Lib. 5. fo. 100. Rooks case. Lib. 10. fo. 128. &c.

Pl. com. 348. Barnards case.

Acts against the Power of the Parliament subsequent bind not.

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An article of the statute made in 11 R. 2. cap. 5. is, that no person should attempt to revoke any ordinance then made, is repealed, for that such restraint is against the jurisdiction and power of the parliament, the liberty of the subject, and unreasonable. And likewise the last will and testament of king R. 2. under the great seal, privy seal, and privy signet, whereby he devised certain mony, treasure, &c. to his successors upon condition to observe all the acts and orders at the parliament holden in anno 21 of his reign, was holden unjust and unlawfull, for that it restrained the soveraign liberty of the kings his successors.

Sundry lords of parliament (but no bishops) or six of them, and certain knights of shires of the commons or three of them are authorized by authority of parliament to examine, answer, and plainly

1 H. 4. nu. 144. 21 R. 2. nu. 20. repealed by 1 H. 4. ca. 3. 1 H. 4. nu. 48. Vid. 7 H. 4. nu. 37.

21 R. 2. ca. 16. 21 R. 2. nu. 44.

IV. INST.

E

determine

determine all the petitions exhibited in that parliament, and the matters contained in the same by their good advice and discretion, &c. The high power of a parliament to be committed to a few is holden to be against the dignity of a parliament, and that no such commission ought to be granted.

1 H. 4. nu. 70a

2 H. 4. ca. 22.
Vide 21 R. 2.
nu. 44.

An act in 11 R. 2. ca. 3. that no man against whom any judgment, or forfeiture was given should sue for pardon or grace, &c. was holden to be unreasonable without example, and against the law and custome of parliament, and therefore that branch by authority of parliament was adnichaled, and made void.

26 H. 8. ca. 1.
Acts of parliament ought to be plainly, and clearly, and not cunningly and darkly penned, specially in criminall causes.

Also I find that in times past the houses of parliament have not been clearly dealt withall, but by cunning artifice of words utterly deceived, and that in cases of greatest moment, even in case of high treason, as taking one example for a warning in like cases hereafter.

King H. 8. after the clergy of England had in their convocations acknowledged him supream head of the church of England, thought it no difficult matter to have the same corroborated and confirmed by authority of parliament, but withall secretly and earnestly desired that the impugners and deniers thereof, though it were but by word, might incur the offence of high treason, and finding the one, that is, the acknowledgement of his supremacy likely to have good passage, and having little hope upon that which he found to effect the other concerning high treason, sought to have it passe in some other act by words closely cowched, though the former act of supremacy had been the proper place. * And therefore in the act of recognition of his supremacy it is enacted, that he should have annexed and united to the crown of this realm the title and stile thereof: † and afterwards towards the end of the parliament, a bill was preferred whereby many offences be high treason, and thereby it is enacted, That if any person or persons by ^a word or writing, ¹ practise or attempt any bodily harm to the king, the ^b queen or their heirs apparent, ² or to ^c deprive them or any of them, of their dignity, ^d title, or name of their royall estates, ³ or that the king should be an ^e heretique, schismaticque, tyrant, infidell, or usurper of the crown, &c. that every such person so offending should be adjudged traytors, &c. So as now by this latter act, he that by word or writing attempts to deprive the king of the title of his royall estate is a traytor, but the former act had annexed to the crown the title of the stile of supremacy, and therefore he that should by word or writing attempt to deprive the king thereof should be a traytor. And ^f upon this law of 26 H. 8. ca. 13. for denying of the kings supremacy divers suffered death as in case of high treason, whereas all laws, especially penall, and principally those that are penall in the highest degree ^g ought to be so plainly and perspicuously penned, as every member of both houses may understand the same, and according to his knowledge and conscience give his voice. ^h *Erit autem lex honesta, justa, possibilis, secundum naturam et secundum consuetudinem patriæ, temporisque conveniens, necessaria et utilis, manifesta quoque, ne aliquid per obscuritatem incautum captione ^o contrudat, nullo privato commodo, sed pro communi civium utilitate conscripta, ideo in ipsa constitutione ista consideranda sunt, quia cum leges institutæ fuerint non erit liberum arbitrium judicare de ipsis, sed oportebit judicare secundum ipsas,* which be excellent

26 H. 8. ca. 1.

† 26 H. 8. ca. 13.

* By word, &c. this by construction referres to the 2. clause.

† Shadowed with the queen or prince.

‡ Deprive, an obscure word.

§ Note this word [title] in the former act.

¶ Parker b. of Cant. *Lib. de Ansignitate Brit. Eccl. fac. Clerus animo toto obstupuit, nondum enim quid sibi hic novus vellet titulus, aut quorsum tenderet, prospexit, &c.*

‡ But this act lived not long, for twice it was repealed, viz. by 1 E. 6. c. 12. & 1 Mar. c. 1.

§ What qualities laws ought to have.

¶ Idior. 2. Ety-mol.

[43]

cellent rules for all parliaments to follow. But the statute of 5 Eliz. ca. 1. hath concerning the * supremacy dealt plainly and perspicuously as by the same appeareth.

5 Eliz. ca. 1.
* Exod. 4. 16.
Tu, i. Moses oris
ei, i. Aaron, in
hiis quæ ad deum

pertinent, &c. Exod. 32. 15, 16. *Moses custos utriusque tabule.* Numb. 10. 1, 2. *Moses custos utriusque tabule.* Joshua 24. 1. *Congregavit Joshua, &c. 28. dimisit.* 1 Chron. 15. 4. 1 Chron. 16. 43. *Rex David.* 2 Chron. 5. 2. *Rex Solomon.* 2 Chron. 29. 15. *Sec. Ezekias.* Nota. 1 Sym. 15. 17. *Et ait Samuel ad Saul, nonne cum parvulus esses caput in tribubus factus es?* and the tribe of Levi was one. 1 Maccab. 14. 44. See hereafter ca. 74.

And albeit it appeareth by these examples, and many other that might be brought, what transcendent power and authority this court of parliament hath, yet though divers parliaments have attempted to barre, restrain, suspend, qualifie, or make void subsequent parliaments, yet could they never effect it, for the latter parliament hath ever power to abrogate, suspend, qualifie, explain, or make void the former in the whole or in any part thereof, notwithstanding any words of restraint, prohibition, or penalty in the former: for it is a maxime in the law of the parliament, *quod leges posteriores priores contrarias abrogant.*

Subsequent parliaments cannot be restrained by the former.
43 E. 3. ca. 1.
11 H. 7. ca. 1.
28 H. 8. ca. 17.
1 E. 5. ca. 11.
lib. 4. t. 46. the
B. of Cant. case.

Acts of Parliament enrolled in other Courts.

For the better observation of any act of parliament enacted for the commonwealth, or of a petition of right, or judgment in parliament, or the like, and to encourage the judges that the same may be duly executed, the same may be inrolled in the courts of justice in this manner. The tenor of the record must be removed into the chancery by writ of *certiorari*, and delivered into the kings bench by the hands of the chancelor or lord keeper, and sent by mittimus to the court of common pleas, and by like mittimus into the exchequer, and the king by his writ may command any court to observe and firmly to keep such an act of parliament, as it appeareth by these two precedents. *Ex Rotulo Claus. anno 28 E. 1. m. 2. Dors. Rex thesaurar' et baronibus suis de scaccar' salutem. Quia volumus quod Magna Carta domini Henrici quondam regis Angliæ patris nostri de libertatibus Angliæ quam confirmavimus et etiam innovavimus in omnibus et singulis articulis suis firmiter et inviolabiliter observetur. Vobis mandamus quod cartam prædictam in omnibus et singulis suis articulis quantum in vobis est coram vobis in dicto scaccario observari faciatis firmiter et teneri. T. R. apud Dunfres 23. die Octobris.*

Int. placita parl.
18 E. 1. rot. 18.
Ibid. 20 E. 1.
Magnum placitum int. com.
Gloc' & com.
Heref. & Essex
irr. rot. claus.
an. 28 E. 1.
in Dors. irr. le
Magna Carta.
Pasch. 33 E. 1.
rot. par. Nich.
Segraves case,
rot. 22.
Tr. 12 E. 2.
ro. 60. de irr.
Petition in parliament, al banke le rey.

Rex justic' suis de banco salutem: Cum in alleviationem gravaminum quæ populus regni nostri occasione guerrarum hæcenus toleravit, ac in emendationem status ejusdem populi, nec non ut ex hoc se exhibeat ad nostra servicia promptiorem, nobisque in agendis nostris libentius subsidium faciat in futurum, quosdam articulos eidem populo plurimum (annuente domino) profuturos de gratia nostra speciali duxerimus concedendos. Vobis mandamus quod dictos articulos quos vobis mittimus sigillo nostro consignatos coram vobis in banco prædicto quantum in vobis est juxta vim, formam et effectum eorundem observari faciatis firmiter et teneri. T. R. apud Dunfres 30. die Octobris.

Every Member of the Parliament ought to come.

§ R. 2. stat. 2.
c. 4. rot. 1. ar.
31 H. 6. nu. 46.
fines were set, &c.
If any of the
lords or com-
mons come not,
&c. they shall
be fined.

Every lord spirituall and temporall, and every knight, citizen, and burgesse shall upon summons come to the parliament, except he can reasonably, and honestly excuse himself, or else he shall be amerced, &c. that is, respectively, a lord by the lords, and one of the commons by the commons.

By the statute of 6 H. 8. ca. 16. no knight, citizen or burgesse of the house of commons shall depart from the parliament without licence of the speaker and commons, the same to be entred of record in the book of the clerk of the parliament, upon pain to lose their wages.

[44]
Vi. 3 E. 3. 18.
sup. If any of the
lords or com-
mons depart, &c.
they shall be
fined. 1 & 2 Ph.
and M. rot. 48.
at sup.
• 5 R. 2. stat. 2.
ca. 4.

If a lord depart from parliament without licence, it is an offence done out of the parliament, and is finable by the lords: and so it is of a member of the house of commons, he may be fined by the house of commons. Vide 1 & 2 Ph. and Mar. coram rege. Rot. 48. divers informations by the attorney general for departing without licence, *ut supra*.

* The punishment of sheriffes for their negligence in returning of writs, or for leaving out of their returns any city or borough which ought to send citizens and burgesse.

Advice concerning new and plausible projects and offers in Parliament.

See before pa. 14.
rot. par. 13 E. 3.

When any plausible project is made in parliament to draw the lords and commons to assent to any act (especially in matters of weight and importance) if both houses do give upon the matter projected and promised their consent, it shall be most necessary, they being trusted for the common-wealth, to have the matter projected and promised (which moved the houses to consent) to be established in the same act, lest the benefit of the act be taken, and the matter projected and promised never performed, and so the houses of parliament performe not the trust reposed in them. As it fell out (taking one example for many) in the reigne of H. 8. On the kings behalfe the members of both houses were informed in parliament, that no king or kingdome was safe, but where the king had three abilities. First, to live of his own, and able to defend his kingdome upon any sudden invasion or insurrection. 2. To aide his confederates, otherwise they would never assist him. 3. To reward his well deserving servants. Now the project was, that if the parliament would give unto him all the abbies, priories, friories, nunneries, and other monasteries, that for ever in time then to come, he would take order that the same should not be converted to private use: but first, that his exchequer for the purposes aforesaid should be enriched. Secondly, the kingdome strengthened by a continuall maintenance of 40 thousand well trained souldiers with skilfull captains and commanders. Thirdly, for the benefit and ease of the subject, who never afterwards (as was projected) in any time to come should be charged with subsidies, fifteenths, loanes, or other common aides. Fourthly, lest the honour of the realme should receive any diminution of honour by the dissolution of the said monasteries.

nafteries, there being 29 lords of parliament of the abbots and priors (that held of the king *per baroniam*, whereof more in the next leaf) that the king would create a number of nobles, which we omit. The said monasteries were given to the king by authority of divers acts of parliament, but no provision was therein made for the said project, or any part thereof; * only *ad faciend' populum* these possessions were given to the king his heirs and successors to do and use therewith his and their own wils, to the pleasure of almighty God, and the honour and profit of the realme.

Now observe the catastrophe; in the same parliament of 32 H. 8. when the great and opulent priory of Saint Johns of Jerusalem was given to the king, he demanded and had a subsidie both of the clergie and laity. And the like he had in 34 H. 8. and in 37 H. 8. he had another subsidie. And since the dissolution of the said monasteries he exacted divers loanes, and against law received the same.

27 H. 8. de monasteries, &
31 H. 8. cap. 13.
32 H. 8. cap. 14.
27 H. 8. ca. 28.

32 H. 8. ca. 23.
50.
34 H. 8. cap. 16.
& 27.
37 H. 8. cap. 24.

Whom the King may call to the Lords House of Parliament.

If the king by his writ calleth any knight or esquire to be a lord of the parliament, he cannot refuse to serve the king there in *communi illo concilio*, for the good of his country. But if the king had called an * abbot, prior, or other regular prelate by writ to the parliament to the common councill of the realme, if he held not of the king *per baroniam*, he might refuse to serve in parliament, † because *quoad secularia*, he was *mortuus in lege*, and therefore not capable to have place and voice in parliament, unlesse he did hold *per baroniam*, and were to that common councill called by writ, which made him capable: and though such a prelat regular had been often called by writ, and had *de facto* had place and voice in parliament, yet if *in rei veritate* he held not *per baroniam*, he ought to be discharged of that service, and to sit in parliament no more.

* For that the abby of Leicester was founded by Robert Fitz-Robert earle of Leicester (albeit the patronage came to the crowne by the forfeiture of Simon de Mountford earle of Leic.) yet being of a subjects foundation, it could not be holden *per baroniam*, and therefore the abbot had no capacity to be called to the parliament, and thereupon the king did grant, *quod idem abbas et successores sui de veniendo ad parlamenta et concilia nostra vel hæredum nostrorum quieti sint et exonerati imperpetuum.*

^b *De jure et consuetudine Angliæ ad archidiaconatum Cantuariensem, &c. abbates, priores, aliosq; prælatos quoscunque per baroniam de d. mino rege tenentes pertinet in parliamentis regis quibuscunque ut pares regni prædicti personaliter interesse, ibiq; de regni negotiis ac aliis tractari consuetis cum cæteris dicti regni paribus ac aliis ibidem jus interessendi habentibus consulere et tractare, ordinare, statuere, et diffinire, ac cætera facere quæ parliamenti tempore ibid. immuniunt faciend'.*

No man ought to sit in that high court of parliament, but he that hath right to sit there: for it is not only a personall offence in him that sitteth there without authority, but a publick offence to the court of parliament, and consequently to the whole realme. But all the cases above said, and others that might be remembered touching this point, as little rivers, do flow from the fountain of *modus tenendi parlamentum*, where it is said. *Ad parlamentum sum-*

Rot. Claus. in dorf. 10 H. 7. 20 Septemb. Writs to divers *ad ordinem militie de balneo suscipiend. juxta antiquam consuetudinem in creatione usitatam.* * Of regular prelates that hold *per baroniam.*

† [45] And so was it adjudged in the parliament at York, an. 12 E. 2. in the case of the abbot of S. James extra Northamp. Stanf. pl. cor, 153. 2. ² Rot. pat. an. 26 E. 3. part. 1. m. 22. see Rot. claus. in dorf. 11 E. 3. part. 2. m. 11 *Religiosi que teignont per barony sont tenuus de venier au parliament.* Vid. eod. 13 E. 3. part. 2. m. 28 & 1. ^b Rot. pat. 11 R. 2. part. 1. m. 2. artic. 34.

Modus tenendi parl. ca. 2.

This is *infra* explained by the assise of Clarendon.

monevi et venire debent ratione tenuræ suæ omnes et singuli archiepiscopi, episcopi, abbates, priores et alii majores cleri qui tenent per comitatum vel baroniam ratione hujusmodi tenuræ, et nulli minores, nisi eorum præsentia necessaria vel utilis reputetur, &c.

One rare and strange creation of a lord regular of parliament we cannot passe over, which was, that king H. 8. in the fifth year of his reign, by his letters patents under the great seale, did grant unto Richard Banham abbot of Tavestock in the county of Devon, being of his patronage, and to the successors of the said abbot, *ut eorum quilibet, qui pro tempore ibidem fuerit abbas, sit et erit unus de spiriualibus et religiosis dominis parlamenti nostri, hæredum et successorum nostrorum, gaudend' honore, privilegio et libertatibus ejusdem.*

By that which hath been said, it appeareth that this creation of a regular lord of parliament was voide, for that the abbot was neither *baro*, nor had *baroniam*, &c. And if the king might create abbots or priors lords of parliament in this manner, by the same reason he might create deans and archdeacons lords of parliament, which without question he cannot.

10 H. 2. cap. 11.
Mat. Par. 97.
Assise de Clarendon.

By the act of parliament of 10 H. 2. called the assise of Clarendon, it is declared, *Ut pars consuetudinum et libertatum antecessorum regis, viz. Henrici primi et aliorum, quæ observari debent in regno et ab omnibus teneri, viz. archiepiscopi, episcopi, et universæ personæ regni, qui de rege tenent in capite habeant possessiones suas de rege sicut baroniam, et inde respondeant justiciariis et ministris regis, et sequantur et faciant omnes consuetudines regias, et sicut cæteri barones debent interesse judiciis curiæ regis cum baronibus, quousq; perveniantur * ad diminutionem membrorum vel ad mortem.* So as by this act a tenure of the king in chiefe was in equipage with a barony.

Rot. parl. 11 &
21 R. 2.

Cart. libertat. a
rege Johanne
anno 17 regni
sui conc. ff. Mat.
Par. 343.

And king John by his great charter of liberties made anno 17 of his reigne, granteth, *Quod faciemus summoneri archiepiscopos, episcopos, abbates, comites, et majores barones regni singulatim per literas nostras.* Out of this clause we are to observe these things: First, that these barons called here *majores*, were lords of parliament, and called thereunto by the kings writs. Secondly, that they were called *majores* comparatively, and that was in respect of others which were called *barones minores*, or *nobiles minores*, and were freeholders that * hold by knights service and escuage. i. *Servitium scuti*, of three sorts, viz. *milites, armigeri, et geniosi*, knights, esquires, and gentlehomes, or gentlemen. These *barones minores* were lords of manors, and had not the dignity of lords, but had courts of their freeholders, which to this day are called court barons, *curiæ baroniar'*. Of this baron it is said in that law made by king Edward before the conquest: *Barones qui suam habent * curiam de suis hominibus, videant ut sic de eis agant, quatenus erga deum reatum non incurrant, et regem non offendant.*

[46]

* Nota, a knights fee is the service of a knight, that is of a man with arms, or of war. Hereof see the second part of the Instit. cap. de Militibus. 1 E. 2. Inter leges Edw. cap. 21. lb. ca. 9. * 1. Curiam baronia. Glou. li. 8. cap. 11. acc. Bracl. li. 3. 154. b. Camd. Brit. 121.

Baro à bar, Germanica lingua liberum et sui juris significat. 1. which agreeth well with that which hath been said. 2. That *baro major* was called *baro major regni*. 3. That every greater baron was severally summoned by the kings writ, which continueth to this day.

The Fees of the Knights, Citizens, and Burgesſes of Parliament.

First, for the knight of any county it is 4s. *per diem*, and ſo it hath been time out of mind, which is particularly expreſſed in many records. but let us take one in *hæc verba*. *Johannes Shordich unus militum comitatus Middleſex venientium a: parliamentum tenet apud Weſtm' in cro. animarum ultim' præterit' habet allocationem 4 li. et 4s. pro 21 diebus pro expenſis ſuis veniendo ad parliamentum prædicti ibid. morando, et exinde ad propria redeundo, capiendo per diem 4s. Teſte rege apud Weſtm' 24 die Novemb. anno 46.* Every citizen and burgeſſe is to have 2s. *per diem*, *ut ſupra, mutatis mutandis*.

^a Nota the writ *de expenſis militum*, &c. doth comprehend the ſumme according to the abovesaid computation, and a commandement to the ſheriffe to levie the ſame ^b *de communitate comitatus prædicti tam infra libertates, quam extra.* (*Civitatibus et burgis de quibus cives et burgenſes ad parliamentum noſtrum, &c. venerunt duntaxat exceptis.*) The like writs to the ſheriffes *de expenſis civium et burgenſium*, to levie the ſame in cities and boroughs.

^c An. 1 R. 2. nu. 11. the commons petitioned in parliament, that all perſons having lay fee might contribute to the charge of the knights, and to all tallages. The king answered, [The lords of the realm wil not loſe their old liberties,] note the writ is *de communitate*.

^d Alſo there is a writ in the Register *de expenſis militis non levandis ab hominib' de antiquo d'nico, nec ab nativis.* ^e Other diſcharges *de expenſis militum*.

^f For the wages of the knights of the ſhire of Cambridge ſee the ſtatute of 34 H. 8. cap. 24. *Conſimile pro iſula de Ely, &c.*

^g H. 4. an. 14. of his reign summoned a parliament *cro. Purificationis*, and he decaſed 20 Martii following, ſo as the parliament was diſſolved by his decaſe. Thereupon it was a queſtion, whether the knights and burgeſſes ſhould have their wages ſeeing nothing paſſed in that parliament. And it was reſolved, that if upon view of the kings ^h records any like preſidents may be found, allowances of their fees ſhal be made. ⁱ Alſo the clergy were contributory by reaſon of their benefices to the expences of the procurators of the clergy.

^k But chaplains which are maſters of the chancery and attendants at the parliament, ſhal not be contributory by reaſon of their benefices to the expences of the clergy, as by the Register *ubi ſupra* appears; and this was by an act of parliament made in ^l 4 E. 3. which in generall words is recited in the writ directed to the arch-deacon for their diſcharge.

Indorſi clauſ. an. 46 E. 3. nu. 4. Rot. clauſ. 7 R. 2. nu. 1. de expenſis milit. Regiſt. fo. 192. a. 2cc' Diota. Veniendo, morando, redeundo, per diem 4s. Par. 51 E. 3. nu. 45. 35 H. 8. cap. 11. See the ancient treatiſe, *De modo tenendi parl.*

^a Regiſt. f. 192. a. See the ſtat. of 12 R. 2. ca. 12. and ſee 23 H. 6. ca. 11. how the ſheriff ſhall levie the ſame.

See 8 R. 2. tit. Avowrie 260. what the common law was.

^b Nota, de communitate. Vid. ſup. pa. 1. For the legall underſtanding of this word commune.

^c Rot. par 1 R. 2. nu. 11. d Regiſt. 261. 7 H. 6. 35. b. F. N. B. 14 E.

^e Regiſt. 191, 192. 12 R. 2. ca. 12.

^f 34 H. 8. ca. 24. 9 H. 6. nu. 46.

^g Rot. par. 1 H. 5. nu. 26. ^h Nota, for preſidents.

ⁱ Regiſt. 261. F. N. B. 229. a. ^k Vid. ſup. pa. 4, 5. ^l Parl. an. 4 E. 3. apud Winton,

Who be eligible to be a Knight, Citizen, or Burgesse of Parliament.

See the stat. of
5 R. 2. cap. 4.
Vid. sup. pa. 49.
5. Rot. brev.
7 R. 2.
[47]
Dors. clauf.
7 R. 2. m. 19.
& 37.

A knight baneret being no lord of parliament is eligible to be knight, citizen, or burgesse of the house of commons being under the degree of a baron, who is of the lowest degree of the lords house. But Thomas Camois was not only a knight baneret, but a baron and lord of parliament in anno 7 R. 2. and served in that parliament as a baron of the realme, and therefore as of a thing notorious he was discharged. One under the age of 21 years is not eligible, neither can any lord of parliament sit there untill he be of the full age of 21 years.

Vi. stat. de
1 Mat. cap.

An alien cannot be elected of the parliament, because he is not the kings liege subject, and so it is albeit he be made denizen by letters patents, &c. for thereby he is made *quasi, seu tanquam ligens*: but that will not serve, for he must be *ligens revera*, and not *quasi, &c.* And we have had such an one chosen and disallowed by the house of commons, because such a person can hold no place of judicature: but if an alien be naturalized by parliament, then he is eligible to this or any other place of judicature.

39 E. 3. 35. 36.

But it is objected that Gilbert de Umphrevill earle of Andgos in Scotland, was called by the kings writ to the parliament in 39 E. 3. by the name of Gilbert earle of Andgos: and in a writ of raviishment of ward brought against him, by the name of Gilbert Umphrevill chivaler, he pleaded to the writ, that he was earle of Andgos not named in the writ: and for that he was summoned to every parliament by the name of the earle of Andgos, and the king sent to him a writ of parliament under the great seale, as to a peer of the land, by judgement of the court the writ did abate. We have searched for the truth of this case, and do finde it in the plea rolls in this manner.

Richard de Umphrevill baron of Prodhowe and Redesdale in the county of Northumberland, had issue Gilbert, who after the death of his father was a baron of this realm, and in the reign of H. 3. married with Mawde daughter and heir of the earl of Andgos in Scotland, who by her had issue Gilbert, who was earle of Andgos as heir to his mother, and baron of Prodhow and Redesdale as heir to his father: he sat in parliament upon summons by writ in 27 E. 1. 28 E. 1. 30 E. 1. 35 E. 1. 1 E. 2. and 2 E. 2. by the name of Gilbert earle of Andgos. Robert his sonne sat in parliament, anno 12 E. 2. by the same name of dignity, and so forth, all E. the seconds reign. And Gilbert his sonne sat in parliament in 6 E. 3. and in every parliament following untill. and in 4 R. 2. by the same name. And in Gilbert his sonne (who deceased in anno 15 H. 6.) that surname of Umphrevil ceased. Hereby it appeareth that the said Richard Umphrevil and his posterity, from whence soever they originally descended, were liege Englishmen: for if they had been aliens, they could not have enjoyed the lordships of Prodhowe, Otterborne, Harbottle, and Redesdale in England, nor the barony of Kime in Lancashire, which the two last Gilberts enjoyed. And note, the booke in 39 E. 3. concludeth, Gilbert

All this doth
appear in the
rolls of parliament
in all the
several times.

These two were
commonly called
the earls of
Kime.

Cap. I. The High Court of Parliament.

47

Gilbert Umphrevil was summoned to the parliament under the great seale, *come un pier del realme.*

A bishop elect may sit in parliament as a lord thereof.

Hil. 18 E. 1.
fo. 4. nu. 105.

Of Knights, Citizens and Burgeses of Parliament.

None of the judges of the kings bench, or common pleas, or barons of the exchequer that have judicall places can be chosen knight, citizen, or burgesse of parliament, as it is now holden, because they be assitants in the lords houte; and yet you may reade in the * parliament roll, an. 31 H. 6. that Thorp baron of the exchequer was speaker of the parliament. But any that have judicall places in the court of wards, court of duchie, or other courts ecclesiasticall, or civill, being no lord of parliament, are eligible.

* None of the clergy, though he be of the lowest order, are eligible to be knight, citizen, or burgesse of parliament, because they are of another body, viz. of the convocation.

A man attainted of treason or felony, &c. is not eligible: for concerning the election of two knights, the words of the writ be, *Duos milites gladiis cinctos magis idoneos, et discretos eligi fac.* And for the election of citizens and burgeses, the words of the writ be, *Duos, &c. de discretioribus et magis sufficientibus,* which they cannot be said to be, when they are attainted of treason or felony, &c.

Maiors and bailiffes of townes corporate are eligible against the opinion in Brook, *anno* 38 H. 8. tit. Parliament.

Any of the profession of the common law, and which is in practice of the same, is eligible. For he which is eligible of common right cannot be disabled by the said ordinance in parliament in the lords house in 46 E. 3. unlesse it had been by act of parliament: and if it had been by authority of parliament, yet had the same been abrogated by the said statutes of 5 R. 2. stat. 2. cap. 2. and 7 H. 4. cap. 15. which are generall lawes without any exception, as hath been said.

At a parliament holden at Coventry *anno* 6 H. 4. the parliament was summoned by writ (and by colour of the said ordinance) it was forbidden, that no lawyer should be chosen knight, citizen, or burgesse, by reason whereof this parliament was fruitlesse, and never a good law made thereat, and therefore called *indoctum parliamentum*, or lack-learning parliament. And seeing these writs were against law, lawyers ever since (for the great and good service of the common-wealth) have been eligible: for as it hath been said, the writs of parliament cannot be altered without an act of parliament: and albeit the prohibitory clause had been inserted in the writ, yet being against law, lawyers were of right eligible, and might have been elected knight, citizen, or burgesse in that parliament of 6 H. 4.

By speciall order of the house of commons the attorney generall is not-eligible to be a member of the house of commons.

At the parliament holden 1 *Caroli regis*, the sheriffe for the county of Buckingham was chosen knight for the county of Norff. and returned into the chancery: and having a *subpena* out of the chancery served upon him, at the suit of the lady C. *pendente parliamentis*, upon motion, he had the priviledge of parliament allowed

* Rot. par.
31 H. 6. nu. 26,
27, 28.

Note, he could not be speaker unless he were knight of the shire, &c. in the book of burgeses of the house of commons.

* Alex. Nowels case, who after was deane of Pauls being a prebend. 1 Mar.

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Rot. par. 46 E. 3.
nu. 10.

5 R. 2. stat. 2.
ca. 4. 7 H. 4.
ca. 15.

Rot. Claus. anno
6 H. 4.

See before pa. 10.
4 Petty acts passed at this parliament of little or no effect, as by the same appears.

Rot. parl. 50 E. 3.
nu. 83. an ordinance that no sheriffe should be justice of peace, &c. bound not the subiect until a statute made 1 Mar. c. 8.

allowed unto him by the judgement of the whole house of commons.

Who shall be Electors of Knights, Citizens, and Burgeses, how and when: and of Elections.

Who shall be electors, and who shall be chosen, and the time, place, and manner of election, and therein the duty of the sheriffe, you may reade in the positive lawes of 7 H. 4. cap 15. 11 H. 4. cap. 1. 1 H. 5. cap. 1. 8 H. 6. cap. 7. 10 H. 6. ca. 2. 23 H. 6. cap. 15. 6 H. 6. cap. 4. &c. which need not here be particularly rehearsed.

5 Eliz. cap. 1. No knight, citizen or burgesse can sit in parliament before he hath taken the oath of supremacy.

Vide Rot. clauf. 7 R. 2. 7 Octobris in dorf. Sir Thomas Moreville elected one of the knights for the county of Hertford, *ibid.* James Berners chosen to serve in parliament, and both of them discharged. See the record.

No election can be made of any knight of the shire but between 8 and 11 of the clock in the forenoone: but if the election be begun within that time, and cannot be determined within those hours the election may be made after.

For the election of the knights, if the party of the freeholders demand the poll, the sheriffe cannot deny the scrutiny, for he cannot discern who be freeholders by the view: and though the party would wave the poll, yet the sheriffe must proceed in the scrutiny.

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If the king doth newly incorporate an ancient borough (which sent burgeses to the parliament) and granteth that certain selected burgeses shall make election of the burgeses of parliament, where all the burgeses elected before, this charter taketh not away the election of the other burgeses. And so, if a city, &c. hath power to make ordinances, they cannot make an ordinance that a lesse number shall elect burgeses, for the parliament then made the election before: for free elections of members of the high court of parliament are *pro bono publico*, and not to be compared to other cases of election of maiors, bailiffes, &c. of corporations, &c.

Ro. par. 5 H. 4.
nu. 38.

If one be duly elected knight, citizen, or burgesse, and the sheriffe returne another, the returne must be reformed, and amended by the sheriffe: and he that is duly elected must be inserted: for the election in these cases is the foundation, and not the return.

By originall grant or by custome, a selected number of burgeses may elect and binde the residue.

Concerning Charters of Exemption.

The king cannot grant a charter of exemption to any man to be freed from election of knight, citizen, or burgesse of the parliament (as he may do of some inferiour office or places) because the elections of them ought to be free, and his attendance is for the service of the whole realme, and for the benefit of the king and his people, and the whole common-wealth hath an interest therein: and

Pafch. 5 E. 3.
fo. 19. tit. Co-
ron. F. 161.

and therefore a charter of exemption that king H. 6. had made to the citizens of York of exemption in that case, was by act of parliament enacted and declared to be void. And though we finde some presidents that lords of parliament have sued out charters of exemption from their service in parliament, yet those charters are holden to be void: for though they be not eligible, as is aforesaid, yet their service in parliament is for the whole realme, and for the benefit of the king and his people, of which service he cannot be exempted by any letters patents. And if he hath *lesam phantasmiam*, or be extremely sick, or the like, these be good causes of his excuse in not comming, but no cause of exemption, for he may recover his memory and health, &c. So as the said presidents were grants *de facto*, not *de jure*: for if the king cannot grant a charter of exemption from being of the grand aluse in a writ of right, or of a jury in an attainr for the mischiefe that may follow in those private actions, *à fortiori*, he cannot grant any exemption to a lord of parliament: for his service in parliament is publick for the whole realme. But if any lord of parliament be so aged, impotent, or sick, as he cannot conveniently without great danger travell to the high court of parliament, he may have license of the king under the great seale to be absent from the same during the continuance or prorogation thereof: but if the rehearfall be not true, or if he recover his health, so as he become able to travell, he must attend in parliament. Or without any such license obtained, if he be so aged, impotent, or sick, as is aforesaid, and yet is amerced for his absence, he may reasonably and honestly excuse himselfe by the statute of 5 R. 2.

After the precept of the sheriffe directed to the city or borough for making of election, there ought *secundum legem et consuetudinem parliam.* to be given a convenient time for the day of the election; and sufficient warning given to the citizens or burgeses that have voices, that they may be present: otherwise the election is not good, unlesse such as have voyces doe take notice of themselves and be present at the election.

Any election or voyces given before the precept be read and published, are void and of no force: for the same electors after the precept read and published may make a new election and alter their voyces, *secundum legem et consuetudinem parliamenti.*

Thus much have we thought good to set down concerning knights, citizens, and burgeses, because much time is spent in parliament concerning the right of elections, &c. which might more profitably be employed *pro bono publico.*

Now to treat more in particular (as it hath been much desired) of the lawes, customes, liberties and priviledges of this court of parliament (which are the very heartstrings of the common-wealth, whereof we have remembred some: and you may see some * few other examples in the margent too long here to be rehearsed) † would take up a whole volume of it selfe: certain it is, as hath been said, that *curia parliamenti suis propriis legibus subsistit.*

All the justices of England and barons of the exchequer are assistants to the lords to informe them of the common law, and there-

Seigniors & commons. 1 H. 5. nu. 9. cap. 1. 4 H. 8. ca. 8. vers. *finem.* a general law. 6 H. 8. c. 6. in the preamb.

29 H. 6. cap. 3.
Rot. par. 1 part.
11 E. 3.
Rot. pat. 4 part.
1 E. 4. m. 15.
pro. Do. Beauchamp.
Rot. pat. 2 E. 4.
part 2. m. 2.
pro Dom. Vesey.

39 E. 3. 15.
34 H. 6. 25.
35 H. 6. 43.

5 R. 2. c. 4.
stat. 2.

See before pag.
24, 25.

* 16 R. 2. rot.
claus. in dorf.
rot. par. 11 R. 2.
nu. 7.
1 H. 4. nu. 143.
2 H. 4. nu. 11.
2 H. 4. ca. 1.
Rot. par. 9 H. 4.
Indemnity des

2 Rot. parl.
5 H. 4. nu. 12.
23 H. 6. nu. 45.
27 H. 6. nu. 18.
31 H. 6. nu. 26,
27. Lamb. inter
leges Edw. Con-
fessoris, ca. 3.
Ad synodos, ad
capitula venien-
tibus, sine sum-
moniti sunt, sine
per se quid agen-
dum habuerint, sit summa pax.

unto are called severally by writ. * Neither doth it belong to them (as hath been said) to judge of any law, custome, or priviledge of parliament. And to say the truth, the lawes, customes, liberties, and priviledges of parliament are better to be learned out of the rols of parliament, and other records, and by presidents and continuall experience, then can be expressed by any one mans pen.

Per varios actus legem experientia fecit.

Multa multo exercitamentis facilius, quam regulis percipies.

Consultations in Parliament for Maintenance of the Navie.

Rot. par. 45 E. 3.
nu. 32.
The decay of the
navy.

The kings navy
exceeds all
others.

* Patricius,
lib. 5. De insti-
tutione reipub-
licæ.

Of the burgeses
of parliament.
About 300 ses-
sions of parlia-
ment since the
conquest.

In many parliaments consultations have been had for the main-
tenance of the navie of England, and remedies provided against de-
cay of the same: as taking one example for many. In the parlia-
ment holden in anno 45 E. 3. the commons amongst their petitions
do affirme, that the decay of the navy doth arise by three causes.
First, for that sundry mens ships are seised for the king, long be-
fore they serve, whereby the owners are driven at their charges to
find their mariners, to their undoing. Secondly, for that mer-
chants, the nourishers of the navy, are oft restrained in their ship-
ping, whereby mariners are driven to seek other trades and livings.
Thirdly, for that the maisters of the kings ships do take up masters of
other ships as good as their selves are, whereby the most of those
ships do lye still, and the mariners enforced to seek new livings:
whereof they prayed remedy. To this petition of right the kings
royall answer was, That he would provide remedy.

The kings navy exceeds all others in the world for three things,
viz. beauty, strength, and safety. For beauty, they are so many
royall palaces: for strength (no part of the world having such iron
and timber as England hath) so many moving castles and harbi-
cans: and for safety, they are the most defensive wals of the realm.
Amongst the ships of other nations, they are like lions amongst silly
beasts, or falcons amongst fearfull fowle.

In the reign of queen Elizabeth (I being then acquainted with
this businesse) there were 33 besides pinnaces; which so garded and
regarded the navigation of the merchants, as they had safe vent for
their commodities, and trade and traffick flourished. A worthy
subject for parliaments to take into consideration, and to provide re-
medy as often as need shall require. For navigation, see Gen.
6. 14. Sapient 14. 6. * *Remp. quasi navem existimare debemus,
quæ omnium manibus officioq; indiget, &c.* A leak in a ship is
timely to be repaired: for as it is in the naturall body of man,
so it is in the politick body of the common-wealth. *Non mor-
bus in plebis; sed morbi neglecta curatio corpus interficit.* And thus
much for consultations in parliament concerning the navy of Eng-
land.

See the first part of the Institutes. Sect. 164. verb. [*Vaigne les
burgeses al parliament.*] And there have been since the con-
quest about 300 sessions of parliament, whereof divers are not
printed.

In perusing over the rols of parliament we find first divers acts of parlia-

parliament in print that are not of record in the roll of parliament. Secondly, many acts of parliament that be in the rolls of parliament, and never yet printed. Thirdly, divers clauses omitted in the print which are in the parliament roll. Fourthly, more in the print than in the record. Fifthly, many variances between the print and the roll. Sixthly, statutes repealed or disaffirmed, and yet printed, &c. Seventhly, whole parliaments omitted out of the print. Eighthly, whole parliaments repealed, or a great part.

And of every of these taking some examples; for to handle all at large would require a whole treatise, which (we having broken the ice) some good man and lover of his country (we hope) will undertake to wade thorow.

As to the first, these are in print, and not of record, * 20 E. 3. the oath of the judges. 27 E. 3. cap. 4, 5, 6, 7, 8. concerning the Alneger and Galcoigne wines. 37 E. 3. cap. 7. touching silver vessell. 37 E. 3. cap. 19. of hawkes. 2 R. 2. cap. 5. of newes. Vid. 11 R. 2. 11. 2 R. 2. cap. 3. of fained gifts. 7 R. 2. cap. 15. against maintenance. 9 R. 2. cap. 3. of error and attain. 11 R. 2. cap. 4, 5, & 6. not of record. 13 R. 2. cap. 11. touching clothes. 13 R. 2. cap. 19. concerning salmons. 13 R. 2. cap. 2. touching pilgrims. 13 R. 2. cap. 15. concerning the kings castles and gaoles. 14 R. 2. ca. 7. concerning tinne. 17 R. 2. cap. 8. of unlawfull assemblies. 17 R. 2. cap. 9. concerning salmons. 27 H. 6. cap. 3. touching employments, &c.

As to the second: these acts of parliament are of record, and not in print. an. 11 E. 3. the creation of the duke of Cornwall, &c. by authority of parliament. 3 R. 2. nu. 39. concerning justices of peace, a profitable law for them. 8 R. 2. nu. 31. concerning the jurisdiction of the constable and marshall. 20 R. 2. concerning the legitimation of the children of John of Gaunt duke of Lanc. by Kath. Swinford. 5 H. 4. nu. 24. a commision or act of parliament for arraying and mustering of men. 8 H. 4. nu. 12. clergy exempted from arraying and mustering of men. 11 H. 4. nu. 28. against bribery and brocage in great officers, judges, &c. 11 H. 4. nu. 63. concerning attornies, &c. 6 H. 6. nu. 27. that a queen of England dowager, shall not contract her selfe or marry without the kings license. 9 H. 6. nu. 25. concerning fees of privy counsellors, and other head officers. And very many others.

As to the third: in these acts of parliament divers clauses are omitted out of the print, which are in the parliament roll. 36 E. 3. cap. 3. in the act of purveyors, &c. in the clause of the penalty, the steward, treasurer, and controller are expressly named, but omitted in the print. 2 R. 2. stat. 2. cap. 4. in confirmation of liberties, &c. saving the kings regality, is omitted. 13 R. 2. cap. 1. concerning presentations of the king, the last clause, concerning ratifications of the king, is omitted. 13 R. 2. cap. 2. touching provisions. 14 R. 2. cap. 4. nu. 9. concerning regrators of wools, high prices omitted in the print. 17 R. 2. cap. 4. of malt, leaveth out Hertfordshire. 2 H. 5. cap. 3. nu. 38. concerning enquests. 2 H. 5. ca. 1. nu. 30. concerning justices of peace. 9 H. 4. cap. 8. nu. 43. concerning provisions. 8 H. 6. nu. 50. cap. 10. concerning proces during the kings will, omitted in the print.

As to the fourth: in these there is more in the print than in the record.

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To the first.
* See the third part of the Institutes, *De corrupto iudice.*

To the second.
See the Princes case, lib. 8. fo. 15

To the third:

To the fourth.

record. 9 H. 4. cap. 8. nu. 43. touching provisions. 2 H. 5. stat. 2. cap. 3. nu. 38. touching jurors, &c.

To the fifth.

The fifth: In these the print vary from the record in some material thing. Generally in all the statutes made concerning provisions, or other the usurpations of the pope, the biting and bitter words are left out in the print. As to take an example or two. Vi. 38 E. 3. in print. cap. 1, 2, 3, 4. and in the roll, nu. 9. &c. 3 R. 2. cap. 3. in print. Rol. nu. 37. &c. the bishops being lord chancellors. 9 R. 2. nu. 1. the print mistake the beginning of the parliament, viz. Monday after S. Luke, for Friday. 9 H. 4. cap. 2. nu. 26. concerning attornies, &c. A roll of parliament intituled 14 E. 4. where it should be 13 E. 4. 9 H. 5. cap. 2 & 3. printed as perpetuall in some books, where they were to endure but untill the next-parliament:

To the sixth.

The sixth: statutes pretended to be enacted, and after disaffirmed, and yet printed. 5 R. 2. cap. 5. stat. 2. touching inquiries of heresies. Anno 6 R. 2. nu. 52. disaffirmed by the commons, for that they protested it was never their meaning to be justified, and to binde themselves and their successors to the prelates no more then their ancestors had done before them. Robert Braibroke bishop of London was then lord chancellor. By this and that which followes, it appeareth how necessary it was in those dayes to have some of the commons to be (as hath been said) at the ingrossing of the parliament rolls, as appeareth rot. parl. anno 6 H. 4. nu. 56. 7 H. 4. nu. 65. &c. *et modo tenend'* parl. cap. 8. 2 H. 4. cap. 15. disfavoured by the commons, and yet the pretended act printed 2 H. 5. cap. 6. against preachers, disfavoured the next parliament by the commons, for that they never assented, and yet the supposed act printed.

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Rot. par. 11 H. 4.
nu. 12. vide
7 H. 4. nu. 11.

To the seventh.

The seventh: whole parliaments omitted out of the print, wherein there be many notable things to be observed. an. 3 E. 2. a parliament holden at Westm. 3 Sept. Dorf. clauf. 2 E. 2. m. 14. & 22. annis 4 E. 2. *apud London.* 5 E. 2. *apud Westm.* 6 E. 2. ib. *bis.* 7 E. 2. ib. 8 E. 2. *apud Eborum.* 11 E. 2. *apud Westm.* 16 E. 2. *apud Rippon, et postea apud Eborum.* an. 6 E. 3. a parliament holden at Westminster the Monday after the feast of S. Gregory. anno 8 E. 3. a parliament holden at York the day before the feast of S. Peter *in cathedra.* anno 11 E. 3. at Westm. whereat the prince was created duke of Cornwall, &c. an. 13 E. 3. holden at Westm. in 15 Mich. 22 E. 3. at Westm. the Monday next after the week in the midst of Lent. 29 E. 3. a parliament holden at Westm. the day after S. Martin. 40 E. 3. at Westm. the Monday after the invention of the crosse. 7 R. 2. at Westm. the Friday after the feast of S. Mark, &c.

To the eighth.

^a Where the printed book suppose that there was another parliament in anno 16 E. 3. whereby the former statute was repealed, the truth is, the parliament was holden at Westm. 15 Patch. anno 17 E. 3.

The eighth: whole parliaments repealed and made void by subsequent parliaments. 1 H. 4. cap. 3. repealed. 21 R. 2. which had repealed the parliament of 11 R. 2. and reviveth the same. By 39 H. 6. cap. 1. a parliament holden at Coventry anno 38 H. 6. is wholly repealed. Rot. par. 12 E. 4. nu. A whole parliament holden anno 49 H. 6. *et readeptionis regni sui primo,* is repealed and reversed. ^a Vide the parliament of 15 E. 3. repealed. rot. parl. anno 17 E. 3. nu. 23. For there it is agreed that the statute of 15 E. 3. shall be utterly repealed, and lose the name of a statute, as contrarie to the laws and prerogative: and for that some articles there made are

rea-

reasonable, it is agreed, that such articles and others agreed in this parliament shall be made into a statute by the advice of the justices.

^b Many records of parliament can hardly be understood, unless you joine thereunto the history of that time. For example: ^c the cardinall of Winchester, uncle of the king, declareth in open parliament, that he being in Flanders, in his journey to Rome, returned back of his own will to purge himselfe of a bruit, that he should be a traytor to the realm, whereof (no accusation being against him) he was easily purged by the duke of Gloc. protector, by the kings commandement. But adde the history thereunto, that the cardinall having certain of the kings jewels in gage, meant to have them brought after him: but these jewels being arrested and stay'd at Sandwich by the kings commandement, and the bruit hereof comming to the cardinals eare (he being therewith exceedingly troubled) for the recovery of them, returned in post to the parliament. Now after he was purged of the bruit of supposed treason; touching the said jewels stayed at Sandwich to the great hindrance of the cardinall, as he complained. It was on a motion on his behalfe, ordered that the cardinall should pay to the king six thousand pound more for them, and lend to the king thirteen thousand pound, which was done.

^b Histories
somer time ex-
plaine records of
parliament.
^c Rot. parl.
10 H. 6. nu. 14.

This appeareth
in the same par-
liament nu. 15.

And for a conclusion hereof, and of this chapter of the high court of parliament, it is to be remembred, that by the statute of 42 E. 3. cap. 1. all statutes are repealed that are against Magna Carta, or Carta de Foresta.

See hereafter cap. 75. how and in what manner parliaments be holden in Scotland. And cap. 77. how and what manner parliaments be holden in Ireland, and how bills shall passe there, never before this time published, as we know.

Parliaments in
Scotland.
In Ireland.

C A P. II.

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Of the Councell Board, or Table.

THIS is a most noble, honourable, and reverend assembly of the king and his privy councell in the kings court or palace: ^a with this councell the king himself doth sit at his pleasure. These councellors, like good centinels and watchmen, consult of, and for the ^b publique good, and the honour, defence safety, and profit of the realm. *A consulendo, secundum excellentiam*, it is called the councell table. ^c private causes, lest they should hinder the publique, they leave to the justices of the kings courts of justice, and meddle not with them: they are called *concilium regis privatum, concilium secretum, et continuum concilium regis*. ^d The num.

^a Rot. clauf.
12 E. 3. parte 2.
m. 19. 39 E. 3.
fo. 14. rot. pat.
1 R. 2. parte
m. 16. 8 H. 4.
nu. 76. &c.
Rot. par. 2 H. 6.
nu. 15.
^b Pro bono pub-
lico.
^c 20 E. 3. ca. 1.
25 E. 3. ca. 1.
stat. 4. 42 E. 3.
ca. 3.

Rot. par. 1 R. 2. nu. 87. 112. Rot. par. 7 H. 4. nu. 41. 11 H. 4. nu. 14. 23. 47. ^d Rot. par. 50 E. 3. nu. 10. 12. 1 R. 2. nu. 4. Rot. pat. 1 parte, m. 10. Rot. parl. 7 H. 4. 31. 41. 66, 67. 1. parte of the Institutes, sect. 164. rot. clauf. 16 E. 2. m. 5. in Do f. Hen. de ballo mento vero de magno et de secreto concilio regis jurat.

ber

ber of them is at the kings will, but of ancient time there were twelve, or thereabouts. Of the diversity of the kings severall counceils, you may read in the first part of the Institutes, sect. 164.

See Rot. pat. 42 E. 3. parte 1. m. 13. *de concilio regis.*

King E. 3: would have his counsellors to have four properties. 1. That he be *parcus sui*, knowing that he would never be provident for him, that would not be a good husband for himself. 2. That he should not be *cupidus rei alienæ*, no covetous, nor greedy man, for *ei nihil turpe, cui nihil satis*. 3. That he should be *avarus reipublicæ*, covetous for the kings treasure and commonwealth: and 4. That he *super omnia sit expertus*; in what place the king shall employ him, that he be expert; for great offices are never well managed by deputy, where the officer himself is but a cipher.

Stanf. 72. F.
Senatores sunt partes corporis regis.
Rot. par. 3 H. 6. nu. 3.
c Inas ca. 46.

To these counsellors all due honour and reverence is to be given, for they are incorporated to the king himself, and bear part of his cares, they are his true treasurers, and the profitable instruments of the state. Such honour was given to counsellors of state in ancient time, * that if one did strike in a senators or counsellors house, or elsewhere in his presence, he was fined.

f Alvredusc. 15.
Hugh Spencer the father, and Hugh the son evill counsellors.

f See Vet. Mag. Cart. fo. 51. 2. parte. Hugh Spencer the father, lord Spencer earl of Winchester, and the kings chamberlain, and Hugh his son earl of Gloc' were adjudged in parliament to be exiled, &c. amongst other articles, six were. First, for that they by their evill covin would not suffer the grandees of the realm, nor the kings good counsellors to speak with or come neer the king, or to give him good counsell, or that the king might speak with them, but only in the presence or hearing of the said Hugh the father, and Hugh the son or of one of them, and at their wil, and according to such things as pleased them. Secondly, for giving evill counsell to the king, not to answer the petitions of the great men and others, but at their pleasure. Thirdly, that they, to attain by their malice and covetousnesse to the disheritance of the great men of the realm, and destruction of the people, put out good and covenable ministers, which had their places by assent, and put in others false and evil of their covin, that they should not cause right to be done. And sherifs, escheators, constables of castles, and others in the offices of the king, not covenable for the king, nor for the people they did make, and caused justices to be made not conufants in the laws of the land, to hear and determine things touching the great men and people of the realm, &c. And so, that which ought to be for the maintenance of the peace, and of good men, and punishment of evill, was turned to the disheritance of the great men, and destruction of the people. Fourthly, that they falsely and maliciously did counsell the king to raise horse and arms, &c. in destruction of the good people, against the form of Magna Carta, and so by their evill counsell would have moved war within the realm, to the destruction of holy church, and of the people, for their proper quarrell. Fifthly, for defeating by their evill counsell that which the king had granted in his parliament by his good counsell, by the assent of the peers of the land, to the dishonour of the king, and against right and rea-

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Magna Carta.

son. Sixthly, they would not suffer the king to take reasonable fines, &c. upon alienations, &c. Read the whole.

Hereby it appeareth that one or two ought not to be sole counsellors, and to make a monopoly thereof: for true it is that Homer saith.

*Haud quaquam poteris tu fortiter omnia solus,
Namque aliis divi bello pollere dederunt,
Huic saltandi artem, voce huic, citharaque canendi.
Inferuitque sagax alii sub pectore magnus
Jupiter ingenium, at multis est utilis ille.*

* The duty of a privy counsellor appeareth by his oath, which consisteth on these articles or parts.

1. That he shall as far forth as cunning and discretion suffereth, truly, justly and evenly counsell and advise the king in all matters to be commoned, treated, and demeaned in the kings councill, or by him as the kings counsellor.

2. Generally in all things that may be to the kings honour and behoof, and to the good of his realms, lordships and subjects, without partiality, or exception of persons, not leaving, or eschewing so to do for affection, love, meed, doubt, or dread of any person or persons.

3. That he shall keep secret the kings councill, and all that shall be commoned by way of councill in the same, without that he shall common it, publish it, or discover it by word, writing, or in any otherwise to any person out of the same councill, or to any of the same councill, if it touch him, or if he be party thereof.

4. That he shall not for gift, meed, nor good, ne promise of good by him, nor by mean of any other person receive or admit for any promotion, favouring, nor for declaring, letting, or hindring of any matter or thing to be treated or done in the said councill.

5. That he shall with all his might and power help and strengthen the kings said councill in all that shall be thought to the same councill for the universal good of the king and his land, and for the peace, rest, and tranquillity of the same.

6. That he shall withstand any person or persons of what condition, estate or degree they be of, that would by way of feat, attempt, or intend the contrary.

7. And generally that he shall observe, keep and doe all that a good and true counsellor ought to doe unto his sovereign lord.

By force of this oath and the custome of the realm he is a privy counsellor without any patent or grant during the life of the king that maketh choice of him.

It is enacted that all the kings counsellors and other head officers there named shall have yearly out of the exchequer such fees by way of reward as are there expressed.

Every privy counsellor hath a voice and place in the court of star-chamber, as in the chapter of the court of star-chamber appeareth.

For the better performance of which oath, king H. 8. would wish that his counsellors would commit simulation, diffimulation

Inst. IV.

F

and

Homer.
See the articles against cardinal Woolsey, hereafter cap. Chancery, pa. Art. 9, 10. 15.

• Utilis sed non solus.

* Ro. par. 11 H. 4. nu. 14. Nota. Vid. Vet. Mag. Cart. parte 1. fo. 165, juramentum consiliariorum. Vide Fleta lib. 1. ca. 17. Nota, vide inf. 5.

Rot. par. 11 H. 4. nu. 28.

Nota, supra 2.

Rot. par. 9 H. 6. nu. 25.

and partiality to the porters lodge when they came to sit in coun-
cell.

[55]

Of the President of the Councill.

Principalis con-
siliarius.
Capitalis consi-
liarius.
You shall have
what we have
observed by our
own reading, of
others learn that
which is here
wanting.

There is, and of ancient time hath been a president of the
councill, who was sometime called *principalis consiliarius*, and
sometime *capitalis consiliarius*, Rot. par. 9 E. 2. comes *Lancast'*.
50 E. 3. 1 R. 2. 1. pars. pat. nu. 22. 1 H. 6. nu. 26, 27. *dux*
Bedf. Rot. pat. 1 H. 6. parte 3. *dux Gloc'*. Rot. parl. 10 H. 6. nu.
9. *dux Gloc'*. See rot. parl. 11 H. 6. nu. 19. rot. parl. 22 H. 6.
dux Eborum. Rot. pat. 13 E. 4. part 1. *Johannes Russel episcopus Rossen'*
et postea Lincoln' presidens consilii. Int' record curiæ stellat', *Johannes Fisher*
episcopus Ross' *presidens consilii* 12 H. 7. A. 25 H. 8. usq; 37 H. 8.
Carolus Brandon dux Suff' in *libro pacis*, rot. parl. 1 E. 6. Pawlet.
In the Journall book of parliament. 5 E. 6. & 7 E. 6. *dux Nor-*
thumb. 1 & 2 Ph. and Mar. comes *Arundel*, &c.

Acts of parliament naming the presidents of the councill, 21 H.
8. cap. 20. 31 H. 8. ca. 10. 34 H. 8. ca. 1.

This office was never granted but by letters patents under the
great seal *durante beneplacito*, and is very ancient: for John bishop
of Norwich was president of the councill in *anno 7 regis Jo-*
hannis, Holl. fo. 169. Math. Paris 205. and Math. Westm': *dormi-*
vit tamen hoc officium regnante magna Elizabetha.

21 H. 8. ca. 20.
Vid. rot. parl.
50 E. 3. nu. 12.

The lord president is said in the statute of 21 H. 8. ca. 20. to
be attending upon the kings most royall person, and the reason of
his attendance is, for that of latter times he hath used to report to
the king the passages, and the state of the businesse at the councill
table. See 50 E. 3. *ubi supra.*

Lord Privy Seal.
See rot. parl.
50 E. 3. nu. 10.
& nota bene.

Next to the president of the councill, (as more fully appeareth
in the chapter of presidency) sitteth in councill, &c. the lord
privy seal, who besides his oath of a privy counsellor taketh a
particular oath of the privy seal, which consisteth on four parts:
1. That he, as far forth as his cunning and discretion suffereth,
truly, justly, and evenly execute, and exercise the office of the
keeper of the kings privy seal to him by his highnesse committed.
2. Not leaving or eschewing so to do for affection, love, meed,
doubt, or dread of any person or persons. 3. That he shall take
special regard, that the said privy seal in all places where he shall
divert unto, may be in such substantiall wise used and safe kept,
that no person without the kings speciall commandment or his as-
sent, or knowledge, shall move, seal, or imprint any thing with the
same. 4. Generally, he shall observe, fulfill, and doe all and every
thing, which to the office of the keeper of the kings privy seal
duly belongeth, and appertaineth.

The oath of the
Lo. Privy Seal.

This is an office of great trust and skill, that he put this seal to
no grant without good warrant, nor with warrant, if it be against
law, undue, or inconvenient, but that first he acquaint the king
therewith.

27 H. 8. ca. 21.

Upon the lord privy seal are attendant four clerks of the privy
seal: now how, and in what wise, the kings grants, writings, and
leases, shall passe the three seals, viz. the privy signet, the privy
seal,

seal, and the great seal, and the duties of the clerks of the privy signet, and privy seal, and what fees shall be paid, and where none at all, &c. and many articles concerning the passing of the kings grants, &c. you may read in the statute of 27 H. 8. a law worthy of observation. And of this act you may read Lib. 8. fo. 18. b. in the Princes case. This officer is named in the statutes of 2 R. 2. ca. 5. and 12 R. 2. ca. 11. * clerk of the privy seal. In rot. parl. 11 H. 4. nu. 28. *Garden del privy seal*; and in the statute of 34 H. 8. ca. 4. lord privy seal. This seal is called by severall names. By the statute of 11 R. 2. cap. 10. it is provided that letters of the signet, nor of the kings secret seal shall be from henceforth sent in damage or prejudice of the realm, nor in disturbance of the law. Vide Mir. ca. 3. §. *Exception al power de judge.*

27 H. 8. ca. 12.

* An humble name of a great officer, and in whose acts ranked amongst the grantees of the kingdom.

See the 2 part of the Instit. Artic. super Cart. ca. 6.

[56]

F. N. B. 85. a. See artic. super Cartas, ubi supra. lib. 8. ubi supra.

9 R. 2. nu. 14. and 11 H. 4. nu. 28. not in print. 3 E. 6. ca. 9. repealed.

In the statute of *Articuli super Cartas*, cap. 6. 28 E. 1. it is called the little seal, and likewise in the statute of 2 E. 3. cap. 8. it is so called. Regist. fo. 186. *parvum sigillum*. 50 E. 3. nu. 185. F. N. B. 180. Fleta, lib. 2. cap. 12. §. *Est int. Sc. Custos privati sigilli*, clerks of the signet, *clerici signetti* are named in the said act of 27 H. 8. &c. and are four in number attendant upon the kings principall secretary who always hath the keeping of this seal or signet, for sealing of the kings privy letters: these four clerks sit at the secretaries board. He that desireth to read more of the duty of privy counsellors, and how, and for what causes they are to be punished, if they offend; let him read the parliament roll of the 50 year of E. 3. nu. 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, &c. 34, 35, &c.

Acts of parliament concerning the kings privy councill, 25 E. 3. ca. 4. stat. 4. 28 E. 3. cap. 31. 42 E. 3. cap. 3. in print. 9 R. 2. nu. 12. 11 H. 4. nu. 28. 13 H. 4. cap. 7. 3 H. 7. cap. 14. 3 E. 6. cap. 5. 21 Jac. ca. 3. concerning warrants of assistance, &c. 3 Caroli. ca. 1. in the petition of right, concerning loans, &c. imprisonment, &c. martiall law, soldiers, &c.

See hereafter pa. in the chapter of the Chancery in the articles against cardinal Woolsey, artic. 9, 10, 15, &c. concerning privy counsellors.

It appeareth by the writs and records of parliament, that the high court of parliament is resolved to be holden by the king *per advisamentum consilii sui*, that is, by advice of his privy councill.

Orders of parliament for the privy councill, and other things concerning them in the rols of parliament. 50 E. 3. nu. 10. 12. 15. 21. 34. 42 E. 3. nu. 27. Sir John Lees case. 1 R. 2. nu. 87. 112. Rot. pat. 1 R. 2. parte 1. m. 16. 2 R. 2. stat. 1. nu. 49. Rot. parl. 1 H. 4. nu. 2. 7 H. 4. nu. 31, 32, 33. 41. 66, 67, 68, &c. 11 H. 4. nu. 14. 13 H. 4. nu. 3. 1 H. 6. nu. 30, 31, 32. 2 H. 6. nu. 15, 16, 17. 8 H. 6. nu. 27, 28. certain articles to the number of eighteen touching the order of the kings councill (amongst which the eleventh is, that all offices and benefices of the kings gift, such as had served him or his father, should be preferred thereunto) are established by the king, the bishops and lords. 9 H. 6. nu. 25. 11 H. 6. nu. 19. Six articles, whereof the last was, that a roll should be made of such as at any time had served in the wars, or otherwise, to the end they should be preferred to

offices and benefits. 12 H. 6. nu. 4. *De intendentiis consiliariorum.*
31 H. 6. nu. 30. Vide Rot. pat. 32 H. 6. parte 1. m. 22.

Acts of councill concerning the same. Rot. *finium.* 20 E. 3. m. 8. rot. clauf. 4 H. 4. in dorf. m. 13. clauf. 25 E. 3. m. 10. pat. 19 R. 2. parte 2. m. 8. clauf. 20 E. 3. parte 1. m. 26. The clerks of the councill are attendants upon the lords and others of the privy councill. Concerning the clerks of the councill and their duty, see rot. parl. *anno* 1 H. 6. nu. 32. 2 H. 6. nu. 17. &c.

Of these acts of parliament, orders in parliament, and acts of councill we have referred you (for avoiding of tediousnesse) to the originals. *Qui ambulat fraudulenter revelat arcana, qui autem fidelis est celat, &c.*

Prov. 11. 13.

Tobie 12. 7.

Valerius lib. 4.
Regulæ.

Ovid.

Vegetius lib. 3.
de re militari.

Præsumus in
Epist.

• Curtius.

Piinie.

Tacitus.

Bonum est abscondere sacramentum regis, opera autem dei revelare honorificum.

Nihil magis optandum, quam ut rerum gerendarum consilia, quoad ejus fieri poterit, quam maxime occulta sint.

*Eximia est virtus præstare silentia rebus,
Ac contra gravior culpa tacenda loqui.*

Nulla sunt meliora consilia, quam quæ ignoraverit adversarius antequam facias, &c. Quid fieri debeat, tractato cum multis; quod facturus sis, cum paucissimis ac fidelissimis, &c. Consilia nisi sint abscondita, exitum raro prospiciunt.

Consilia callida et audacia prima fronte læta, tractatu dura, eventu tristia.

*In consiliario imprimis requiritur temperantia, quia * morandis, quam gerendis rebus aptiora ingenia illa ignea.* And it is certain that men of fiery and furious spirits easily become factious.

In consiliario principis tria maxime requiruntur, libertas, fides, et veritas: libertas consilii est ejus vita et essentia, qua cepta, consilium evanescit.

Privatæ res semper officere, officientque publicis consiliis, pessimum veri affectus et judicii venenum sua cuique utilitas.

[57]

*Tu civem patremque geris, tu consule cunctis;
Non tibi, nec tua te moveant, sed publica vota.*

All which, and much more are comprehended within the oct^h above said.

Some rules of counsell, which in councill we have observed, we will adde. First, that it is safest to give a king counsell, when he demandeth it. Secondly, the truest and best counsell is ever given to a king, when the question is so evenly propounded, as the counsellor knoweth not which way the king himself inclineth. Thirdly, that * *præpropera concilia sunt raro prospera*: for resolution should never goe before deliberation, nor execution before resolution. Fourthly, when upon debate and deliberation it is by the councill table well resolved, the ^a change thereof upon some private information is neither safe nor honourable, ^b nor that after resolution timely execution be delayed. Fifthly, it is a mean of prosperous successe when the question is debated with a few, not that he should rely upon them, but that thereby the state of the question may be wel understood, to the end the same may be plenary and fully propounded to the whole board. Sixthly, ^c good counsel is the soul of the state. Seventhly, when counsellors doe hide or disguise

• Book of Judg. 19. ver. ultimo. Consider, consult, and then give sentence.

^a Seneca. Non semper in uno gradu, sed in una via, non semitat, sed aptat.

^b Salust. Priusquam incipias, consulto, & ubi consulueris mature factio opus est.

^c 11 H. 4. nu. 14.

Cap. 4. The Court of the High Steward of Engl.

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disguise the truth, it is full of danger both to the king and to themselves. Eighthly, violent courses are like to hot waters that may do good in an extremity, but the use of them doth spoil the stomach, and it will require them stronger and stronger, and by little and little they will lessen their own operation. Lastly, such fear as doth not fall *in constantem virum*, is an enemy to good counsel: for what is fear, but a betraying of such succours, as reason (and counsell) should afford.

^d Malum confilium consultori peffimum. Rot. clauf. 18 H. 3. nu. 19. Segraves case. Rot. par. 50 E. 3. nu. 24. Segnior Latimers case. ^e Sap. 12.

No lord of parliament takes any place of precedency in respect he is a privy counsellour. But under that degree such place a privy councillor shall take, as is set down *in serie ordinum tempore* H. 7. hereafter remembred in the chapter of Precedency.

C A P. III.

[58]

Of the Power and Authority of the Protector and Defender of the Realm and Church of England during the Kings tender Age.

SEE Rot. parl. anno 1 H. 6. nu. 26. & 27. 2 H. 6. nu. 16. 6 H. 6. nu. 22, 23, 24. 8 H. 6. nu. 13. 11 H. 6. nu. 19. 32 H. 6. nu. 71. where you shall finde his authority, place, and precedency well expressed and described.

The surest way is to have him made by authority of the great counsell in parliament.

See Hollingsheds Chronicle, pa. 1069. which may give you occasion to search for the records of such protectors as are there heard.

C A P. IV.

The Court of the High Steward of England, intituled, *Placita Coronæ coram Thom. Duce N. Seneschallo Angliæ.*

HIS stile is *seneschallus Angliæ*. This office is very ancient, and was before the conquest. For I reade in an ancient and authentick manuscript, intituled *authoritas seneschalli Angliæ*: where putting an example of his authority, saith: *Sicut accidit Godwino comiti Kancie tempore regis Edwardi antecessoris Willielmi ducis Normandiæ pro hujusmodi male gestis et consiliis suis (per seneschallum Angliæ) adjudicatus et forisfecit comitivam suam.*

His stile. The antiquity of his office. Nota, then a judge of the peers of the realm. 1 H. 4. 1. 13 H. 8. 13. Cust. de Norm. cap. 10.

In the time of the Conqueror William Fitz-Eustace was steward of England. And in the reign of William Rufus and H. 1.

F 3

Hugh

Hugh Grantsmenel baron of Hinkley held that barony by the said office.

Of ancient time this office was of inheritance, and appertained to the earldome of Leiceſter, as it alſo appeareth by the ſaid record: *Senefchalcia Angliæ pertinet ad comitavum de Leiceſter, et pertinet ab antiquo.* That is, that the earldome of Leiceſter was holden by doing of the office of ſteward of England. Other records teſtifie that it ſhould belong to the barony of Hinkley. The truth is, that Hinkley was parcell of the poſſeſſions of the earle of Leiceſter, for Robert Bellogmont earle of Leiceſter in the reigne of H. 2. married with Petronil daughter and heir of the ſaid Hugh Grantsmenel baron of Hinkley and lord ſteward of England, and in her right was ſteward of England. And ſo it continued, untill by the forfeiture of Simon Mountfort it came to king H. 3. who in the 50 year of his reign, created Edmond his ſecond ſon earle of Leiceſter, baron of Hinkley, and high ſteward of England, which continued in his line untill Henry of Bullinbroke * ſon and heir of John of Gaunt duke of Lancaſter and earl of Leiceſter, who was the laſt that had any eſtate of inheritance in the office of the ſteward of England. Since which time it was never granted to any ſubject, but only *hac vice*. And the reaſon was, for that the power † of the ſteward of England was ſo transcendent, that it was not holden fit to be in any ſubjects hands: for the ſaid record ſaith, *Et ſciendum eſt quod ejus officium eſt ſupervidere, et regulare ſub rege, et immediate poſt regem rotum regnum Angliæ, et omnes miniſtros legum infra idem regnum temporibus pacis et guerrarum, &c.* and proceedeth particularly with divers exceeding high powers and authorities, which may well be omitted, becauſe they ſerve for no preſent uſe.

* Rot. par. 21 R. 2. nu. 4. Int. placita corronæ John of Gaunt duke of Lanc. and earl of Leiceſter, ſteward of England. His authority *hac vice*: and therefore he is not mentioned in the ſtatute of 31 H. 8. ca. 10. concerning the placing of great officers.

† [59]

^b Herewith agreeth the cuſtom. of Norm. cap. 10. fo. 17. Hollenſh. Chron. pa. 866.

^c His authority (*hac vice*) limited.

^d See the ſecond part of the Inſtitutes, Mag. Cart. cap. 29. 1 H. 4. cap. 1.

^e He is ſole judge by the common law, and can make no deputy.

^f Stanf. pl. cor. 152. 1 H. 4. fo. 1. 13 H. 8. fo. 11. b.

^g His rule.

^h His further authority.

^e And albeit their power and authority have been ſince the reign of H. 4. but *hac vice*, yet is that *hac vice* limited and appointed. As when a lord of parliament is ^d indicted of treaſon or felony, then the grant of this office under the great ſeal is to a lord of parliament, reciting the indictment, *Nos considerantes quod juſtitia eſt virtus excellens et altifſimo complacens, eaq; præ omnibus uti volentes, ac pro eo quod officium ſeneſchalli Angliæ, cujus præſentia pro adminiſtratione juſtitie et executione ejuſdem in hac parte facien' requiritur, ut accepimus, jam vacat: de fidelitate, ſtrenuitate, provida circumſpeſtione, et induſtria veſtris plurimum confidentes ordinavimus et conſtituimus vos ex hac cauſa et cauſis ſeneſchallum noſtrum Angliæ ad officium illud cum omnibus eidem officio in hac parte debitis et pertinentibus *hac vice gerend', accipiend', et exercend', dantes et concedentes vobis tenore præſentium plenam et ſufficientem poteſtatem et autoritatem, ac mandatum ſpecialite indiſtamentum prædiſt.* &c. So as it appeareth, that this great officer is wholly reſtrained to proceed only upon the recited indictment. And he to whom this office is granted, muſt be a lord of parliament, and his proceeding is to be ^g *ſecundum leges et conſuetudines Angliæ*, for ſo is his commiſſion. And hereof you may reaſe more at large in the third part of the Inſtitutes, cap. High Treaſon. ^h Alſo at every coronation he hath a commiſſion under the great ſeale *hac vice*, to hear and determine the claimes for grand ſerjeanties and other honourable ſervices to be done at the coronation for the ſolemnization thereof: for which purpoſe the high ſteward doth hold his court ſome convenient time before the coronation.*

nation. See a president hereof before the coronation of king R. 2. John duke of Lancaster then steward of England, (who in claymes before him was stiled *treslonorable seignior le roy de Castle et Leon, et seneschal D'anglitterre*) and held his court in *Alba Aula apud Westm. die Jovis proxime ante coronationem. Quæ quidem coronatio habita et solemnizata fuit die Jovis sequente, viz. 16 Julii anno 1 R. 2.*

The first that was created *hac vice* for the solemnization of the coronation of H. 4. was Thomas his second son. ¹ And upon the arraignment of John Holland earl of Huntingdon, the first that was created steward of England *hac vice*, was Edward earl of Devon.

Rot. parl. 37 H. 6. nu. 49. Thomas Courtney earl of Devon was arraigned of high treason before Humphrey duke of Glouc. *hac vice* steward of England, and acquitted. And so was ^k the lord Dacres of the north arraigned of high treason before Thomas duke of Norff. *hac vice* steward of England and acquitted by 20 peers.

When he sitteth by force of his office he sitteth under a cloth of estate, and such as direct their speech unto him, say, Please your grace my lord high steward of England. The stile of the said John of Gaunt was, *Johannes filius regis Angliæ, rex Legionis et Castellæ, dux Aquitaniæ et Lancastriæ, comes Derbiæ, Lincolnæ, et Leicestriæ, seneschallus Angliæ.* And in respect his power before it was limited was so transcendent, I finde no mention made of this great officer in any of our ancient authors, the Mirror, Bracton, Britton, or Fleta. It seemeth they liked not to treat of his authority. Neither do I finde him in any act of parliament, nor in any book case before 1 H. 4. and very few since: which hath caused me to be the longer in another place to set forth his authority and due proceeding upon the arraignment of a peer of the parliament, by judicial record and resolution of the judges, agreeable with constant experience.

For the etymologie and signification of (*seneschallus*) see the first part of the Institutes: and though it hath severall derivations, yet as being applied to England, it is properly derived from *sen*, that is justice, and *schale*, that is, governour or officer, that is, *præfector seu officarius justitiæ.* And this agreeth well with his authority and duty to proceed (as hath been said) *secundum leges et consuetudines Angliæ.*

It is to be observed, that as the peers of the realm that be triors or peers, are not sworne, so the lord steward being judge, &c. is not sworn: yet ought he according to his letters patents to proceed *secundum legem et consuetudinem Angliæ.*

ⁱ V. 1 H. 4. fo. 1. Therefore Tho. Walsingham, p. 363. and others who affirme that he was beheaded at Pleshy in Essex by the commons, do erre.

^k Term. Pasch. 26 H. 8. of justice Spilmans report.

See the third part of the Institutes, cap. Treason.

[60]
First part of the Instit. 102. 78.

C A P. V.

The Honourable Court of Star-Chamber, *coram Rege et Concilio suo*: Of ancient Time, *coram Rege in Camera*, &c.

That it is an eminent court proved by records and acts of parliament.

^a 22 Lib. ass. pl. 52.

^b Rot. pat. 1 part. m. 12. Fraud and falsehood.

^c Rot. pat. 1 part. m. 13. Falshood in an officer and raising of a record.

^d Rot. clauf. 41 E. 3. m. 8. in dorf. Vid. rot. pat. 2 R. 2. 1 part. m. camera stellata. for raising.

12 R. 2. cap. 11. dev. le council.

^e Rot. clauf. 41 E. 3. Cambd. Brit. 130.

^f Rot. clauf. 16 R. 2. in dorf. m. 11.

^g Pat. 6 H. 5. & consimile anno 7 H. 5. pro manerio de Fish-erwicke in Com. Norff.

IN^a the 28 year of the reign of E. 3. it appeareth, that the returns *coram nobis*, are in three manners, *coram nobis in camera* (which, it is said, was afterwards called *camera stellata*.) 2. *Coram nobis ubicunque fuerimus in Anglia*, which is the kings bench; and *coram nobis in cancellaria*. And of all the high and honourable courts of justice, this ought to be kept within his proper bounds and jurisdiction.

^b In 38 E. 3. *coram rege et concilio*, John Redland complained of Robert Spinke for delivery of prisoners upon false suggestion made to the king: upon hearing the cause, the defendant was acquitted, the plaintife imprisoned.

^c In 39 E. 3. Ralph Brantingham one of the chamberlains of the exchequer complained before the king and his councill of Richard Cesterfield clerk deputy of the kings treasurer, in the receipt for divers allowances, payments, &c. unduly made, and for raising of records, &c. Upon the hearing of the cause by the whole councill, the defendant was acquitted, and the plaintife removed from his office. and committed to prison.

^d The abbot de Bruera, and Ragge his monk sentenced *coram rege et concilio*, for raising of letters patents, and inserting other words: and the letters patents by sentence cancelled.

^e In anno 41 E. 3. in a bill of complaint exhibited to the king by Elizabeth the widow of Nicholas Awdeley plaintife, against Jane Awdeley defendant, who appeared before the kings councill, viz. the chancellour, treasurer, justices, and others assembled *en la chambre des estoies pres de la receipts*.

^f A suit depending before the king and councill between the abbot of Saint Austen of Canterbury and others concerning wrecks, &c. The abbot brought his action at the common law against the parties, who being thereupon arrested and imprisoned, the sheriffe was commanded by the kings writ to deliver them, and to forbear to serve any other proces against them; and the reason there yeilded is notable, *Quia non est juri consonum, aut honestum, quod aliquis de hiis que coram nobis et concilio nostro in discussione pendunt, alibi inde interim placitari debeat, aut apparere*.

^g A suit depending before the king and his councill, between W. G. of the one part, and H. S. of the other part: a sequestration is ordered for the preservation of the things in question.

In

^a In 17 H. 6. an inrolment of a confession of John Ford of Lon. mercer before the lord treasurer and others of the kings counsell in the star chamber for the * fraudulent packing and transporting of wooll, with a writ to the sheriffe of London to set him on the pillbry.

^b Rot. clauf. 17 H. 6.

The abbot of Westminster exhibited his bill to the king against the sheriffes of London for arresting and drawing out with force a privileged person out of the sanctuary of S. Martins le grand belonging to the said abbey: which matter after due proceedings being heard in the court of star-chamber before the lords and others of the kings counsell, and Hodey and Newton chief justices, which justices determiniing, that by law the party ought to enjoy the privilege of sanctuary, the sheriffes were grievously fined in the star-chamber by particular name: which sentence the lord Dier, as he hath reported under his own hand, saw upon a reference to him and justicè Southcote out of the star chamber, Trin. 11 *regine Eliz.* concerning the sanctuary of Westm. for Hampton and Whitacres being in for debt. And the lord Dier made this note with his own hand. *Nota, per le star-chamber.* And this is a notable proof of the jurisdiction of the court for fining, &c. That the bill was exhibited to the king, and that the two chief justices then did sit, and were judges (amongst others) in that court.

Anno 29 H. 6. Trin. 1. Eliz. Dier. manuscript not imprinted.

For divers riots, extortions, oppressions, and grievous offences by divers persons done against the kings peace and lawes, to divers of his liege people, commandement hath been given by the kings writs under the great seale (which continue untill this day) to appear before the king in the chancery, or before him and his counsell at certain dayes to answer to the premisses, which commandement hath been many times disobeyed. Provision is made by that act for the punishment of such disobedience, as by that act appeareth. True it is, that this act was but temporary, yet it affirmeth so much as before hath been said,

Stat. de 31 H. 6. cap. 2. Vide Rot. parl. 1 H. 6. nu. 41.

Anno 35 H. 6. A writ of *certiorari* was directed: *Thomæ Kent clerico concilii: volentes certis de causis certiorari super tenorem cuiusdam actus Pasch. ultime præterito apud Westm. in camera stellata concernent Johannem ducem Norff.* And see there proces of rebellion against the laid duke.

Ex bundello brevium regis. 35 H. 6.

Robert Davers a counsellor at law by bill exhibited to the king, &c. for defamation of raising a record. And the said Robert by the kings counsell in *camera stellata* was acquitted, and John Broket that made the rasure sentenced.

Rot. clauf. 11 H. 6.

The kings counsell assembled in the star-chamber. The lord Cromwels case.

Rot. clauf. 28 H. 6.

An order in the star-chamber for the duke of Yorks counsell to have accessè to him, because called into the chamber by privy seale, &c.

Rot. pat. 32 H. 6. m. 20.

An exemplification of a complaint by Richard Heron against John Prout, *coram rege et consiliariis suis in camera stellata*, for a great misdemeanour concerning wools.

Pat. 3 E. 4. part. 1.

Anno 8 E. 4. proceeding by English bill, answer, replication, &c. *coram rege et concilio.*

Rot. petit. 8 E. 4.

Anno 20 E. 4. a sentence in the star-chamber for turbulent and undue elections between the abbot of Bury and the inhabitants.

Rot. pat. 20 E. 4. part. 2.

We

We have omitted many other records, but because they be of like nature we have contented our self with these. And now we will consult with our book cases, and reports of law: wherein either *coram rege et concilio*, or *coram rege et concilio in camera stellata*, is named.

Book cases and reports of law.

39 E. 3. fo. 14. 19 aff. pl. 1. 40 aff. 38. 13 E. 4. 9. *in camera stellata*. Vid. 27 E. 3. cap. 13. 21 E. 4. 71. *in camera stellata*. 2 R. 3. fo. 2. & 11. *in camera stellata*. 1 H. 7. 3. *in camera stellata*. This court in ancient times sat but rarely, for three causes. First, for that enormous and exorbitant causes which this court dealt withall only in those days rarely fell out. Secondly, this court dealt not with such causes, as other courts of ordinary justice might condignely punish, *ne dignitas hujus curiæ vilesceret*. Thirdly, it very rarely did sit, lest it should draw the kings privie council from matters of state, *pro bono publico*, to hear private causes, and the principall judges from their ordinary courts of justice.

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3 H. 7. ca. 1.

That which now is next to be considered in *serie temporis* is the statute of 3 H. 7. the letter whereof followeth:

21 H. 8. ca. 20.
The president of the kings council added.

It is ordained that the chancelour and treasurer of England, and the keeper of the kings privy seal, or two of them, calling to them a bishop and a temporal lord of the kings most honourable privy counsell, and the two chief justices of the kings bench and common place for the time being, or other two justices in their absence, upon bill or information put to the said lord chancelour or any other against any person for unlawfull maintenance, giving of liveries, signs and tokens, and reteyners by indentures, promises, oaths, writings or otherwise, imbraceries of his subjects, untrue demeaning of sberifs in making of pannels, and other untrue returns, by taking of mony, by injuries, by great riots, and unlawfull assemblies, have authority to call before them by writ or privy seale the said misdoers, and they and other by their discretion, by whom the truth may be known to examine, and such as they find therein defective, to punish them after their demerits, after the form and effect of statutes thereof made in like manner and form as they should, and ought to be punished, if they were thereof convicted after the due order of law.

Camden Brit.

Camera stellatae auctoritatem prudentissimus princeps Henricus septimus ita parlamentaria adauxit et constabilivit, nonnulli primum instituisse falso opinantur.

Upon this statute and that which formerly hath been said, these six conclusions do follow. The first conclusion is, that this act of 3 H. 7. did not raise a new court: for there was a court of star-chamber, and all the kings privy council judges of the same. For if the said act did establish a new court, then should those four or any two of them be only judges, and the rest that they should call to them should be but assistants, and aidants, and no judges: for the statute of 31 E. 3. cap. 12. which raiseth a new court, and before

fore new judges, is introductory of a new law, by having conu-
 fance of error in the exchequer, which shall be reversed in the ex-
 chequer chamber before the chancelour and treasurer, or calling
 to them two judges, there the chancelour and treasurer are only
 judges in the writ of error, and so in the like. But it is clear that
 the two justices in the star-chamber are judges, and have voices, as
 it hath been often resolved, and daily experience teacheth. And
 further to clear this point, if the justices should be but assistants
 and no judges in the star-chamber, for that they are to be called,
 &c. then, and for the same reason should neither lord spirituall nor
 temporall, nor other of the privy councill be judges, nor have
 voices in the court of star-chamber. And therefore the sudden opi-
 nion in 8 H. 7. and of others not observing the said distinction be-
 tween acts declaratory of proceedings in an ancient court, and acts
 introductory of a new law in raising of a new court, is both con-
 trary to law, and continuall experience.

8 H. 7. 13.
 Flow. Com. 393.

The second conclusion is, that the act of 3 H. 7. being in the
 affirmative is not in some things pursued. For where that act di-
 recteth that the bill or information should be put to the lord chan-
 celour, &c. all bills and informations in that court are constantly
 and continually directed to the kings majesty, as they were before
 the said act; and it is a good rule, that where the act of 3 H. 7. is
 not pursued, there (if there be many judiciall presidents in another
 sort) they must have warrant from the ancient court; and yet it is
 good (as much as may be) to pursue this act, there being no greater
 assurance of jurisdiction then an act of parliament. And where
 there be no such presidents, then the statute as to the judges must
 be pursued: and that was the reason that in default of others, Sir
 Christopher Wray chief justice of England for a time was made lord
 privy seal to sit in the star-chamber, *ne curia deficeret in justitia ex-*
hibenda.

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Thirdly, that this act being (as hath been said) in the affirma-
 tive, and enumerating divers particular offences, albeit (injuries)
 is a large word, yet that court hath jurisdiction of many other, as
 is manifest by authority, and daily experience, and this must of
 necessity be in respect of the former jurisdiction.

Fourthly, this act in one point is introductory of a new law,
 which the former court had not, viz. to examine the defendant,
 which being understood after his answer made, to be upon oath
 upon interrogatories, which this ancient court proceeding in crimi-
 nall causes had not, nor could have but by act of parliament, or
 prescription, the want whereof especially in matters of frauds and
 deceits (being like birds closely hatched in hollow trees) was a mean
 that truth could not be found out, but before the statute the answer
 was upon oath.

Fifthly, where it is said in this act, And to punish them after
 their demerits after the form and effect of statutes made, &c. The
 plaintife may choofe whether he will inform upon such statutes as
 this act directeth, or for the offence at the common law, as he might
 have done before this act, which proveth that this act taketh not
 away the former jurisdiction.

6. Lastly, that the jurisdiction of this court dealeth not with any
 offence, that is not *malum in se*, against the common law, or *malum*
prohibitum, against some statute.

It

It is to be observed that neither the statutes of 37 E. 3. ca. 18. 38 E. 3. cap. 9. 42 E. 3. ca. 3. 17 R. 2. ca. 6. nor any other statute taketh away the jurisdiction of any settled court of justice, neither is the court of star-chamber named in any of them, and yet was it a court then and before that time.

Divers speciall acts of parliament have been also jurisdiction to this court, viz. 12 R. 2. ca. 11. 2 R. 2. cap. 5. 13 H. 4. cap. 7. 33 H. 8. cap. 1. 4 & 5 Ph. and M. cap. 8. 5 Eliz. ca. 9, 10. & cap. 14. 27 Eliz. cap. 4.

And seeing the proceeding according to the laws and customes of this realm cannot by one rule of law suffice to punish in every case the exorbitancy and enormity of some great horrible crimes and offences, and especially of great men, this court dealeth with them, to the end that the medicine may be according to the disease, and the punishment according to the offence, *Ut pœna ad paucos, metus ad omnes perveniat*, without respect of persons, be they publique or private, great or small.

As for oppression, and other exorbitant offences of great men, (whom inferior judges and jurors (though they should not) would in respect of their greatnesse be affraid to offend) bribery, extortion, maintenance, champerty, imbracery, forgery, perjury, dis-persers of false and dangerous rumours, news, and scandalous libelling, false and partiall misdemeanours of sherifs and bailifs of liberties, frauds, deceits, great and horrible riots, routs, and unlawfull assemblies, single combats, challenges, duels, and other hainous and extraordinary offences and misdemeanours; but ordinary, and such offences as may be sufficiently and condignly punished by the proceeding of the common laws, this court leaveth to the ordinary courts of justice and dealeth not with them, *ne dignitas hujus curiæ vilesceret*, as before is said.

The proceeding in this court is by bill or information, by examination of the defendant upon interrogatories, and by examination of witnesses, and rarely *ore tenus*, upon the confession of the party in writing under his hand, which he again must freely confesse in open court, upon which confession in open court, the court doth proceed. But if his confession be set down too short, or otherwise then he meant, he may deny it, and then they cannot proceed against him but by bill or information, which is the fairest way.

The informations, bills, answers, replications, &c. and interrogatories are in English, and ingrossed in parchment, and filed up. All the writs and processe of the court are under the great seal: the sentences, decrees and acts of this court are ingrossed in a fair book with the names of the lords and others of the kings councill and justices that were present and gave their voices.

In an information in this court by the attorny generall against Sir Stephen Procter, Birkenhead and others for conspiracy against, and scandall of the earl of Northampton, and Edward lord Wootton two of his majesties privy counsell: at the hearing of which cause there sat eight in court, and four of them condemned the defendant: and the lord chancelour, the two bishops, and the chancelour of the exchequer acquitted him. And the question was, whether the defendant should be condemned or no: and herein it was moved by the kings learned counsell, that when the voices be equal,

The jurisdiction
of this court

Camden Brit.
130. *In camera
stellata tractantur
criminalia, per-
juria, imposturae,
delicta malis, ex-
cessus, &c.*

For proceeding,
ore tenus, see be-
fore ro. clauf.
17 H. 6. John
Fords case.
Rot. clauf.
42 E. 3. the ab-
bot of Brueries
case, &c. *In no-
scriis ordo est or-
dinem juris non
servare.*

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Pasc. 12 Ja. Reg.

equall, that in that case, of which part the lord chancellor was, on that side it should be decreed, without regard, whether it was for the plaintiff or defendant: and it was resolved, that regularly *et de communi jure*, in respect of the equality of the voices no sentence could be given in that case, as it holdeth in the high court of parliament, and all other courts, according to the old rule, *paribus sententiis reus absolvitur*. And therefore the presidents of this court were to be searched; for except presidents could make a difference between this court and others, the defendant could not be sentenced. Whereupon the court referred this question to the two chief justices, that they calling unto them the kings learned counsell to view presidents, whether by the custome of this court the common rule in other courts is altered. Before whom in the presence of the kings learned counsell two presidents were produced for proof of the said custome, viz. one Termino Hil. anno 39 Eliz. between Gibson plaintiff, and Griffith and others defendants: wherein the complaint was for a riot. And upon hearing of the cause eight sat in court, and four gave their sentence that the defendants were guilty, and the other four, whereof the lord chancelour was one, did acquit the defendants, and no sentence of condemnation was ever entred. But the justices took it, that that president tended not to prove any such custome, for it agreed with the rule in other courts. Another president was shewed, Termino Hil. 45 Eliz. in an information by the queens attorny generall against Bathern and others for forging of a will, &c. Upon the hearing of the cause, the presence consisting of eight, whereof four gave sentence against the defendant for forgery, and to be punished according to the statute of 5 Eliz. the other four, whereof the lord chancelour was one, found him guilty of a misdemeanour, and not of the forgery, and imposed a fine of five hundred pound only, and imprisonment, and that was entred according to the lord chancelours voice. But no rule of court was shewed for entering thereof in that manner: so as it appeared not that it was ever moved, or debated in court, and in that case all concluded against the defendant, and it is but one president. Now whether this one, being such a one as it is, and so late, be sufficient to alter the generall law and course of all other courts, I leave to the judgment of this honourable court: and sentence was never given against Sir Stephen Procter agreeable to the generall rule in other courts. See Rot. parl. 8 H. 6. nu. 28.

Lawrence Hide and Henry Hide esquires, exhibited a bill of complaint against George Coriet and others upon the statute of 32 H. 8. cap. 9. for unlawfull maintenance; and complained for three severall leases for certain years of the parsonage of Dynton in the county of Wilt. whereof the lessor nor any of his ancestors were in possession within a year before, &c. and pursued the statute: upon which part of the bill (for the bill concerned riots and other things) the defendant demurred in law, and the causes of the demurrer were. First, that by the said act this court had no jurisdiction of this cause upon this statute, because that the act which is introductory of a new law did not give jurisdiction to this court, but the suit must be in the courts of the common law upon this act, which (said they) also appeared, in that in the remedy given by the act in this clause, *In which action, bill, plaint,*

Erodus fo. 172.

Hil. 39 Eliz. in camera stellata, Gibsons case.

Hil. 45 EL. in camera stellata, Batherns case.

Mic. 36 & 37 EL.

or information no *essoign*, *protection*, *wager of law*, or *injunction* shall be allowed, and that no *essoign*, &c. did lie in this court. The second objection was, this court had no power to give the plaintiff remedy to have execution in this court of the penalty given by this act. Whereunto upon great advisement it was answered and resolved. As to the first: that the statute did give jurisdiction to this court, for it is one of the kings courts, &c. intended in the act: and the statute of 3 H. 7. declareth that this court hath jurisdiction of maintenance, and this act of 32 H. 8. doth adde but a greater penalty: and as to the clause of *essoign*, &c. it must be construed *reddendo singula singulis*, &c. for as no *essoign*, &c. lieth in this court, so no *injunction* is awarded in the court of common pleas, &c. As to the second: it was resolved that this court had power in this case to grant execution of the penalty inflicted by this act, as in a like case had been done, in the case of James Taverner. And both these points had formerly been resolved in this court, 14 Maii. 27 Eliz. between Robert Bradshaw esquire plaintiff, and Robert Charnock esquire defendant, upon this statute, and the case decreed accordingly, and a commission awarded out of this court, to enquire of the value, &c. And for these causes by the rule of the whole court, the demurrer was over-ruled, and the defendant ordered to answer.

Dier Mich. 6 &
7 Eliz. fo. 236.

Dier 15 El. 323.
in camera stellat'. Taverners
case. Pasc.
27 El. in camera
stellata.
Charnocks case.

This court sitteth twice in the week in the term time, viz. on Wednesdays, and Fridays, except either of those dayes fall out to be the first or last day of the terme, and then the court sitteth not, but it constantly holdeth the next day after the terme ended: but if any cause be begun to be heard in the terme time, and for length or difficulty cannot be sentenced within the term, it may be continued and sentenced after the term.

The dignity of
this court.

The judges of
this court.

It is the most honourable court, (our parliament excepted) that is in the Christian world, both in respect of the judges of the court, and of their honourable proceeding according to their just jurisdiction, and the ancient and just orders of the court. For the judges of the same are (as you have heard) the *grandees* of the realm, the lord chancellor, the lord treasurer, the lord president of the kings council, the lord privy seal, all the lords spirituall, temporall, and others of the kings most honourable privy council, and the principall judges of the realm, and such other lords of parliament as the king shall name. And they judge upon confession, or deposition of witnesses: and the court cannot sit for hearing of causes under the number of eight at the least. And it is truly said, *Curia cameræ stellatæ, si vetustatem spectemus, est antiquissima, si dignitatem, honoratissima*. This court, the right institution and ancient orders thereof being observed, doth keep all England in quiet.

Camb. ubi supra.

Albeit the stile of the court be *coram rege et concilio*, yet the kings council of that court hear and determine causes there, and the king in judgment of law is always in court. As in the kings bench the stile of the court is *coram rege*, and yet his justices who are his council of that court doe hear and determine, and so *coram rege in cancellaria*, and the like.

^a See the 1. part
of the Institutes.
sect. 164. Verb.
*vaine les Bur-
geses al parla-
ment.*

4 E. 3. 2. 3 aff.
pl. 15.

So this court being holden *coram rege et concilio*, it is or may be compounded of ^a three severall councils. That is to say, of the lords and others of his majesties privy council, always judges with-
out

out appointment, as before it appeareth. 2. ^b The judges of either bench and barons of the exchequer are of the kings council for matter of law, &c. and the two chief justices, or in their absence other two justices, are standing judges of this court. 3. The lords of parliament are properly *de magno concilio regis*, but neither these, being not of the kings privy councill, nor any of the rest of the judges or barons of the exchequer are standing judges of this court.

^b 39 E. 3. 5.
19 E. 3. Judgment. 174.
W. 1. ca. 1.
17 E. 2. Stat. de Templariis.
16 R. 2. Stat. de Procuratoribus.
43 Aff. pl. 15.
Regist. 124, 125.
191. 27 H. 6. 5.

2 R. 3. 10. ^c 27 Aug. 5 H. 4. in the exchange between the king and the earl of Northumberland, in turris. 37 E. 3. ca. 18. &c. Note the parliament is called *commune concilium*.

It is now, and of ancient time hath been called the chamber of the ^d stars, the ^e star-chamber, the ^f starred chamber, in respect the roof of the court is garnished with golden stars. Some have imagined that it should be called the star-chamber, because *crimina stellionat* are there handled: others of this Saxon word *steeran*, to steer or rule as doth the pilot, because this court doth steer and govern the ship of the common-wealth. Others, because it is full of windows: but the true cause of the name is, because, as is aforesaid, the roof is starred. In all records in Latin, it is called *camera stellata*.

The name of this court.

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^d 41 E. 3. ubi sup.
^e In many of the records before cited.
^f 25 H. 8. ca. 1. Lambard.
Sir Tho. Smith. lib. 2. ca. 4.

The process in this court is *suppna*, attachment, process of rebellion, &c. all under the great seal.

The process.

Officers of the court sworn.

In this court there is the clerk of the councill, which is an office of great account, and trust, for he is to receive, endorse, enter, keep, and certifie the bills, pleadings, records, orders, rules, sentences and decrees of the court: and I find that in former times men of great account have had that office in this court: as to give you a little taste thereof: king H. 6. by his letters patents, 15 July *anno regni sui* 22. granted the same to Thomas Kent doctor of the law for his life, calling him *clericum concilii nostri*, and soon after swore him of his privy councill. King H. 7. *anno* 1. of his reign, granted the same office to John Bladefwell doctor of laws for term of his life: but hereof this little taste shall suffice.

Lastly, it remaineth to be seen what jurisdiction this court hath in punishment, and where, and in what cases this court may inflict punishment by pillory, papers, whipping, losse of ears, tacking of ears, *stigmata* in the face, &c. (For it extendeth not to any offence that concerns the life of man or obruncation of any member, the ears only excepted, and those rarely and in most hainous and detestable offences.) But herein the surest rule is, that seeing it is an ancient court, the presidents of the court are to be followed, and the rather for that the court consisteth of such learned and honourable judges. And novelties without warrant of presidents are not to be allowed: generally some certain rules are to be followed, especially where no presidents are extant in the case. * *Quod arbitrio iudicis relinquitur, non facile trahit ad effusionem sanguinis*: for generall acts of parliament which inflict punishment, viz. *sur for-seiture de corps et de avoir, &c.* these are expounded not to extend to life, or member, but to imprisonment, &c.

Ecclesiasticus 20. 8. *Qui potestatem sibi sumit injuste, adiatur.*
* See statut. de moneta temp. E. 1. 35 E. 1. de Carlisle.
20 E. 3. ca. 4. Vid. 23 El. ca. 2. And note where he shall lose his ears for defamation of the queen.

See the first part of the Institutes, sect. 745. verb. Felony. *Major*

jore pœna effectus, quam legibus statutus est, non est infamis. Pœna gravior ultra legem posita estimationem conservat. Confessus in jure pro judicio habetur, cum quodammodo sua sententia damnatur. Cum conscientie sponte mitius est agendum.

In hac curia non agitur de delictis ordinariis, ne dignitas hujus curie vilesceret.

Quicquid judicis auctoritati subjicitur, novitati non subjicitur.

[67]

C A P. VI.

A Court for Redresse of Delayes of Judgements in the Kings great Courts.

24 E. 3. cap. 5.
stat. 1.
Rot. parl. 2 R. 2.
nu. 63. confirm-
ed by parliament.

Judgements de-
layed.

* Nota, by good
advice of the
chancellor,
treasurer, and
justices.

Good accord.

Vide Regist.
fo. 124. b.
Rex Johanni de
B. Militi, &c.

THIS court is raised by the statute of 14 E. 3. which followeth in these words.

Item, Because divers mischieves have happened of that, that in divers places, as well in the chancery, as in the kings bench, the common bench, and in the exchequer, before the justices assigned, and other justices to hear and determine deputed, the judgements have been delayed, sometimes by difficulty, sometimes by divers opinions of the judges, and sometime for some other cause: it is assented, established, and accorded, that from henceforth at every parliament shall be chosen a prelate, two earls, and two barons, which shall have commission and power of the king to hear by petition delivered unto them the complaints of those that will complaine them of such delayes and grievances made, and they shall have power to do come before them at Westminster, or elsewhere, where the places or any of them shall be, the tenor of records and proceses of such judgements so delayed, and to cause the same justices to come before them, which shall be then present to hear their cause and reasons of such delayes: which cause and reason so heard by * good advice of themselves, the chancelor, treasurer, the justices of the one bench, and of the other, and other of the kings counsell, as many and such as shall seem convenient, shall proceed to take a good accord, and make a good judgement: and according to the same accord so taken, the tenor of the same record, together with the judgement which shall be accorded, shall be remaunded before the justices, before whom the plea did depend; and that they shall give judgement according to the same record: and in case it seemeth to them that the difficulty be so great, that it may not well be determined without assent of the parliament, that the said tenor or tenors shall be brought by the said prelate, earles, and barons in the next parliament

parliament, and there shall be a final accord taken what judgement ought to be given in this case, and according to this accord it shall be commanded to the judges before whom the plea did depend; that they shall proceed to give judgement without delay.

Before the making of this statute delay of judgements was forbidden both by the common law, and by acts of parliament. By the common law. 1. It is required, that *plena et celeris justitia fiat partibus, &c.* not *plena* alone, nor *celeris* alone, but both *plena et celeris*. All writs of *præcipe quod reddat*, are, *Quid juste et sine dilatione reddat, &c.* All judicial writs are *sine dilatione, &c.* 2. There did and yet doth lye a writ *de procedendo ad judicium*, when the justices or judges of any court of record, or not of record, delayed the party plaintiff or defendant, demandant or tenant, and would not give judgement: and thereupon an *alias plur'*, and an attachment, &c. doth lye. And the words of the writ be, *Quia redditio judicii loquela que est coram vobis, &c. de quadam transgressione eidem A. per præfat' B. illata, ut dicitur, diurnam cepit dilationem ad grave damnum ipsius A. sicut ex querela sua accepimus, vobis præcipimus quod ad judicium inde reddendum cum ea celeritate quæ secundum legem et consuetudinem regni nostri procedas, &c.*

3. Likewise when justices or judges of any court of record, or not of record gave judgement, and delayed the party of his execution, the party grieved may have a writ *de executione judicii*; by which writ the justices or judges are commanded, *Quod executionem judicii nuper redditi, &c. de loquela quæ fuit, &c. per breve nostrum, &c. sine dilacione fieri fac'*. And thereupon an *alias, plur'* and attachment, &c. do lye.

4. By the meeting together upon adjournment of the cause out of the court, where the cause dependeth, &c. All the judges, &c. which now we call an exchequer chamber cause, warranted by the common law and ancient preidents before this statute: and the frequent use of this court of exchequer chamber hath been the cause that this court upon the act of 14 E. 3. hath been rarely put in ure.

5. By the kings writ comprehending *quod si difficultas aliqua interfit*, that the record should be certified into the parliament, and to adjourne the parties to be there at a certain day. *Si obscurum et difficile sit judicium, ponantur judicia in respect' usque magnam curiam*. An excellent record, whereof you may read in the parliament holden at Westminster the Tuesday after the translation of Becket, anno 14 E. 3.

Secondly, by acts of parliament. *Nulli vendemus, nulli negabimus, nec differemus justitiam vel rectum.*

That it shall not be commanded neither by the great-seale, nor by the little-seale, nor by letters, nor any other cause to delay right: and albeit such commandement come, &c. that by them the justices surcease not to do right in no manner. *Vide* 2 E. 3. cap. 8. 14 E. 3. cap. 14. 18 E. 3. stat. 3. 2 R. 2. a statute not in print, Rot. parl. nu. 51. whereby it is enacted, that no justice shall stay justice for any writ, letter of the great-seal or privy-seal, or other commandement whatsoever against the laws and statutes before

IV. INST.

G

that

Regist. 137. a.
F. N. B. 23. c.
And so upon counsels granted.

Regist. fo. 22.
F. N. B. 153. b.
&c. Cust. de
Norm. cap. 27.

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Diurna dilatio.

Regist. fo. 18.
F. N. B. fo. 20. a.
&c.

See hereafter, ca. Exchequer and Exchequer Chamber.

2 E. 3. fo. 7.
Ellys Callers case. Bract. lib. f. ca. 2. rot. parl. 14 E. 3. nu. ult. Sir Geoff. Stanton's ca. e.

Mag. Cart. ca. 29.

2 E. 3. fo. 3. per Aldham. 14 E. 3. jour. 24. 18 E. 3. 47. 57. 31 E. 3. an. 161. 39 E. 3. 37. 11 H. 4. 5. 76. 9 H. 6. 58. b. 5 E. 4. 132. Fortesc. cap. 6. F. N. B. 240. d.

• Regist. fo.
F.N.B. 240. d.

that time made, Rot. par. 2 H. 4. nu. 64. anno 5 H. 4. nu. 33. all which are declaratory of the common law. * And upon the said act of 2 E. 3. a writ is framed, directed to the justices, by which they are commanded, *Quod ad justitiam partibus, &c. faciend' virtute alicujus mandati de magno sigillo, et parvo sigillo vobis directi seu dirigendi nullatenus supersedeatis, &c.* And thus much for the common law and acts of parliament.

This statute of 14 E. 3. cap. 5. consisteth of two generall parts, viz. the preamble and the body of the act. In the preamble three things are to be observed. 1. That (notwithstanding the provision of the common law) mischiefs do happen by delay of judgements. 2. It enumerateth in what courts these delays do happen, viz. in the chancery, in the kings bench, the common bench, and the exchequer, the justices assigned, and other justices to hear and determine deputed. 3. It declareth how these delays have grown, viz. sometime for difficulty of the matter in law, sometime in diversity of opinion of the judges, and sometimes for some other cause, that is, by commandements, letters, or messages of the king or great men, &c. In the body of the act we have collected many observations. 1. That at every parliament there shall be chosen a prelate, two earls, and two barons, (for one bishop, two earles, and two barons.) viz. At this parliament were chosen, 1. John Stratford archbishop of Canterbury, (a man famous for learning, loyalty, and vertuous living.) 2. Rich. Fitzalan earle of Arundel, a man of great wisdom, prowes, and integrity. 3. William Clynton earle of Huntingdon, and admirall of England, a man lately before advanced for his singular valour, wisdom, and vertue. 4. The lord Wake of Lidel. and 5. Ralph lord Bassett of Drayton, two of the most renowned barons of England. *Quos omnes honoris causa nomino.*

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2. This act doth appoint that the prelate, two earls, and two barons are to have a commission and power of the king under the great seal (and none of them can be absent) which commission is to endure untill the next parliament.

3. This commission and power consisteth on ten parts. 1. *Ad audiendum*, to hear the petition delivered to them, the complaints of those that will complain to them of such delays or grievances made. 2. *Ad venire faciend'* to do come before them at Westminster, or elsewhere, the tenor of the records and proceses of such judgements so delayed; and this is to be done by the kings writ of *certiorari*. 3. *Ad venire faciend'*, to cause the same justices to come before them. 4. *Ad audiend' suas rationes et causas talium dilationum*, to hear their reasons and causes of such delays which ought to be entred of record. 5. Which causes and reasons so heard, *ad procedendum*, to proceed to make a good accord. 6. But this must be done not only by themselves, but by the good advice of certain assistants appointed by the act, viz. the chancelour, treasurer, the justices of the one bench and the other, and other of the kings councill, as many, and such as they shall think convenient. 7. *Ad capiendum*, to take a good accord of the assistants. 8. *Ad faciendum*, to make a good judgement. 9. *Ad remandandum*, to remaund before the justices, before whom the plea did depend, the tenor of the said record, together with the judgement that so shall be accorded.

corded. Lastly, that those justices shall presently give judgement according to the said record.

A commission granted in 18 E. 3. grounded upon this statute, and referring to the same being enacted, as there it appeareth, at a parliament holden *die Mercurii proxim' post medium quadragesimæ anno 14 E. 3. regni Angliæ et Franciæ primo*, there being two parliaments in that year, which you may reade, being worthy of observation, for it is a good exposition of this act.

4. It is further provided by the said act of 14 E. 3. that in case it seemeth to them, that the difficulty is so great, that it cannot well be determined without assent of parliament, that the tenor or tenors shall be brought by the said prelate, earls, and barons unto the next parliament, and there shall final accord be taken what judgement shall be given in this case.

* It is better that the demandant be delayed, then the tenant disinherited, or that the law be altered. Shard. We cannot nor will delay any man in respect of our oath.

† The justices ought to delay no man in the name of the king where the king hath no right. The demandant shall not be legally delayed twice for one cause.

‡ Delay in a *quare impedit*, though it be by effoign, is a disturbance. *§ Semper fur est in mora. ¶ In circuitu impii ambulant.*

§ In divers cases the party grieved shall have an action for unjust delay.

¶ *Tolle moram, semper nocuit differre paratis*

But seeing neither the common law, nor any of the acts of parliament do extend to ecclesiasticall courts, it is then demanded, what if an inferiour ordinary will refuse, or delay to admit and institute a clerk presented by the right patron, to a church within his dioces, or the like: or delay, or refuse to give sentence in a cause depending before him. It is answered, that the archbishop of the province may grant his letters under his seale to all and singular clerks of his province, to admonish the ordinary, within nine dayes to performe that which by justice is desired, or otherwise to cite him to appeare before him or his officiall at a day in those letters prefixed, and to cite the party that hath suffered such delay, then and there likewise to appeare, and further to intimate to the said ordinary, that if he neither perform that which is enjoyned, nor appear, he himselfe without further delay will performe the justice required. Or in the former of the said cases, the party delayed may have his *quare imp.* but that is thought not to be so speedy a remedy.

Rot. pat. 18 E. 3. 2 part.

Rules concerning delays.

18 E. 3. 54. a.

13 H. 4. 4.

24 E. 3. 64. a.

b 4 E. 3. 2. a.

22 H. 6. 39. per

Newton.

10 E. 3. 57.

40 E. 3. 22. &c.

c 4 E. 3. 14.

6 E. 3. 4.

d Bracton.

e Psal. 12. 9.

f 44 F. 3. 4.

18 E. 3. 12, 13.

20 H. 6. 10.

21 E. 4. 22, 23.

F. N. B. 96. f.

97. b.

g Ovidius.

h This is called

duplex querela,

necessary to be

known for find-

ing of institu-

tions, &c.

C A P. VII.

The Court of Kings Bench, *coram Rege.*

Lib. 3. cap. 7.
fa. 105. b.

Fa. 108. a.

• Nota.

• A greater prohibition.

Liber niger in
Scaccario, cap. 4.

• Note this word
• See Britton,
f. 1. speaking
of the king, Et
pur ceo que nous
ne s'effions in
cours proper per-
son a tier & ter-
miner ceas querels
del peuple. Avou-
mus partie nostre
e charge en plusieurs
partis come est or-
daine, &c.

20 E. 3. cap. 1.

• Stat de Marl.

52 H. 3. ca. 1.

Vi. 4 H. 4.

ca. 22.

• 24 H. 3. cap. 2.

in effect.

• Bract. lib. 1.

ca. 5. fol. 3. b.

• 20 E. 3. cap. 1.

speaking in the

Kings person.

BRAC^TON doth make in few words a notable expression of this court. *Habet rex plures curias in quibus diversæ actiones terminantur, et illarum curiarum habet unam propriam, sicut au- lam regiam, et justiciarios capitales qui proprias causas regias terminant, et aliorum omnium, per querelam, vel per privilegium, sive libertatem.* And soon after speaking of the justices of this court saith: *Item justiciariorum quidam sunt capitales, generales, perpetui, et majores à latere regis residentes, qui omnium aliorum corrigere tenentur injurias, et errores.*

And Britton saith: *In droit des justices que sont assignes de nous suer et tener nostre lieu ou q. nous seons en Anglitterre. • Voloins que eux ciant coufans de amender faux judgements et de terminer appeales et auters trespasses faitz enconter nostre peace, et * enconter nostre jurisdiction, et leur record se esteant solong; ceo que nous mandorons per nostre bre.*

Fleta in describing this court saith: *Habet et rex curiam suam et justiciarios suos tam milites quam clericos locum suum tenentes in Anglia, coram quibus, et non alibi nisi coram semetipso et concilio suo vel auditoribus specialibus falsa judicia et errores justiciariorum revertuntur et corriguntur: ibidem etiam terminantur brevvia de appellis, et alia brevvia super actionibus criminalibus et injuriarum contra pacem regis illatarum impetrata, et omnia, in quibus continetur ubi tunc fuerimus in Anglia.*

In the Black Book of the exchequer, it is thus said of the chief justice of this court: *capitalis justitia præsidet primus in regno.* Out of these three ancient authors we observe these six conclusions.

First, where Bracton saith, *Habet rex plures curias in quibus diversæ actiones* • terminantur; hereby, and in effect by • Britton, and this conclusion followeth, that the king hath committed and distributed all his whole power of judicature to severall courts of justice, and therefore the judgement must be *ideo consideratum est per curiam.* And herewith do agree divers acts of parliament and book cases, some whereof, for illustration, we will briefly remember; and leave the judicious reader to the rest.

• *Provisum, concordatum et concessum est, quod tam majores, quam minores justitiam habeant et recipiant in curia domini regis.* • That the lawes ecclesiastical and temporall were and yet are administered, adjudged, and executed by sundry judges, &c. • *Expedit etiam magistratus reipublicæ constitui, quia per eos qui juredicendo præsumt effectus rei accipitur; parum est enim jus in civitate esse, nisi sint qui possunt jura gerere.*

• For the pleasure of God and quietness of our subjects as to save our conscience, and to keep our oath, by the assent of our great men and other of our councill, we have commanded our justices, that they shall from henceforth do even law and execution of right to all our subjects, rich and poor, without having regard to any person, without letting to do right for any letters or com- mandement

mandement which may come to them from us, or from any other, or by any other cause.

Agreeable to that great canon of the law *anno 3 E. 1.* which we have translated into Latin: *Rex præcipit quòd pax sacrosanctæ ecclesiæ et regni jostidè custodiatur et conservetur in omnibus, quòdque justitia singularis tam pauperibus quam divitibus administratur, nulla habita personarum ratione.* See the second part of the Institutes, W. 1. cap. 1.

8 H. 4. the king hath committed all his power judicial, some in one court, and some in another, so as if any would render himselfe to the judgement of the king in such case where the king hath committed all his power judiciall to others, such a render should be to no effect. And 8 H. 6. the king doth judge by his judges (the king having distributed his power judiciall to severall courts) and the king hath wholly left matters of judicature according to his lawes to his judges.

And albeit it be enacted that the delinquent shall be fined at the will of the king, *Non dominus rex in camera sua, nec aliter nisi per justiciarios suos (finem imponit) et hæc est voluntas regis, viz. per justiciarios et legem suam, unum est dicere.*

The second conclusion is, that in those dayes this court of kings bench did follow the court: and therefore Bracton calleth it *aulam regiam*, because they sat in the kings hall. Britton calleth the justices of this court, *justices assignes de nous suer*: and Fleta, *ubi tunc fuerimus in Anglia.*

The third is, that it is called the kings bench, and the pleas thereof *coram rege*: because in this court (as Bracton saith) those *capitales justiciarii proprias regis causas terminant*, and therefore the king himselfe cannot be judge in *propria causa*.

The fourth is, that under these words [*proprias causas*] are included three things. First, all pleas of the crowne; as all manner of treasons, felonies, and other pleas of the crown which *ex congruo*, are aptly called *proprie cause regis*, because they are *placita coronæ regis*. Secondly, regularly to examine and correct all and all manner of errors in fact, and in law, of all the judges and justices of the * realm in their judgements, processe, and proceeding in courts of record, and not only in pleas of the crown, but in all pleas, reall, personall, and mixt, (the court of the exchequer excepted, as hereafter shall appear.) And this is *procurium quarto modo* the king in this court: for regularly no other court hath the like jurisdiction, and therefore may be well called *propria causa regis*. and these two be of high and sovereign jurisdiction. * Thirdly, this court hath not only jurisdiction to correct errors in judicial proceeding, but other errors and misdemeanours extrajudiciall tending to the breach of the peace, or oppression of the subjects, or raising of faction, controversy, debate, or any other manner of misgovernment; so that no wrong or injury, either publick or private, can be done, but that this shall be reformed or punished in one court or other by due course of law. As if any person be committed to prison, this court upon motion ought to grant an *habeas corpus*, and upon returne of the cause do justice and relieve the party wronged. And this may be done though the party grieved hath no priviledge in this court. It granteth prohibitions to courts temporall and ecclesiasticall, to keep them within their proper jurisdiction. Also this court may baile any person for any offence

W. 1. 22. 3 E. 1.
cap. 1.
Fleta lib. 1.
ca. 29.

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8 H. 4. fo. 19.

8 H. 6. 20 & tit.
Grant. F. 5.

2 R. 3. fol. 12.

Of these you may read in Glanvil. lib. 1. cap. 2. Sec. & lib. 10. cap. 18. and in the third part of the Institutes per totum, & Stanf. per totum.

* And in Ireland of errors in the kings bench there. lib. 7. fo. 18. F. N. B. 22. 34 Ass. 7. 39 E. 3. Error 88. ^a Lib. 11. fo. 98. Jam. Baggescafe Vid. 10 E. 3. ca. 3. Mar-shallea.

whatsoever. And if a freeman in city, burgh, or town corporate be disfranchised unjustly, albeit he hath no priviledge in this court, yet this court may relieve the party, as it appeareth in James Bagges case, *ubi supra, et sic in similibus*.

F. N. B. 89. 92.
 Tr. 19 E. 3.
 coram rege
 rot. 56. Linc.

b 2 part of the
 Institutes, Mag-
 na Carta, cap. 11.

Fourthly, this court may hold plea by writ out of the chancery of all trespasses done *vi et armis*, of replevins, of * *quare impedit, &c.*

b See the second part of the Institutes, the 11 chapter of Magna Carta, *Communia placita non sequantur curiam nostram*.

Fifthly, this court hath power to hold plea by bill for debt, detinue, covenant, promise, and all other personall actions, *ejectione firme*, and the like, against any that is in *custodia mareschalli*, or any officer, minister, or clerk of the court: and the reason hereof is, for that if they should be sued in any other court they should have the priviledge of this court: and left there should be a fayler of justice (which is so much abhorred in law) they shall be impleaded here by bill though these actions be common pleas, and are not restrained by the said act of Magna Carta, *ubi supra*. Likewise the officers, ministers, and clerks of this court priviledged by law in respect of their necessary attendance in court, may impleade others by bill in the actions foresaid. And all this appeareth by Bracton, who lived when Magna Carta was made, *ubi supra*: where he saith, *Et aliorum omnium per querelam vel per privilegium sive libertatem*. And continuall experience concurreth with antiquity herein.

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See the second
 part of the In-
 stitutes, ubi
 supra, 27 H. 3.
 coram rege.
 rot 9.
Hus & Haut,

H. P. captus per querimoniam mercatorum Flandriæ et imprisonatus offert domino regi hus et haut in plegio ad standum recto, et ad respondendum prædictis mercatoribus, et omnibus aliis qui versus eum loqui voluerint, &c. This plea was after the statute of Magna Carta, anno 9 H. 3. Of these words *hus* and *haut*, two French words. *Hus* signifying an elder-tree, and *haut* the staffe of a halbert, &c. I leave the conjecture that some have made thereof to themselves: we think it was then common bail changed now to *Do* and *Ro*, and the rather for this word [*offert*.] And it is observable, that then putting in baile at one mans suit, he was in *custodia mareschalli* to answer all others which would sue him by bill, and this continueth to this day. If any person be in *custodia mareschalli, &c.* be it by commitment, or by latitat', bill of Mid' or other proces of law, it is sufficient to give the court jurisdiction: and the rather, for that the court of common pleas is not able to dispatch all the subjects causes, if the said actions should be confined only to that court. And seeing none but serjeants at law can practise in the court of common pleas, it is necessary that in this court of kings bench apprentices and other counsellors of law might by experience inable themselves to be called serjeants afterwards; otherwise serjeants must want experience, which is the life of their profession. And the proceedings in that court for so long time, and under so many honourable judges and reverend sages of the law, hath gotten such a foundation, as cannot now without an act of parliament be shaken. And the errors in the kings bench cannot be reversed (but in certain particular actions by the statute of 27 Eliz. cap. 8. wherein the jurisdiction of the court is saved) but in the high court of parliament, as before in the chapter of the court of parliament appeareth.

31 H. 6. 10. b.
 44 judge.

Sixthly,

Sixthly, if a writ in reall action be abated by judgement in the court of common pleas, and in a writ of error the judgement is reversed in this court, and the writ is adjudged good, this court shall proceed upon this writ, and is not restrained by Magna Carta, *ubi supra, ne curia domini regis deficeret in justitia exhibenda.*

This court may hold plea in assise of *novel disseisin* without any patent, for it is *querela* and not *placitum*, and so not within these words *communita placita*, as it hath been expounded and warranted by continual experience.

A *scire fac'* to repeal a patent of the king may be brought in this court. And where Fleta saith, *Nisi coram semetipso et concilio suo, vel auditoribus specialibus falsa judicia ac errores justiciariorum revertuntur*: It is to be known that all the common law errors in the court of exchequer (being the proper court of the king for his revenue and profit) were examinable before commissioners appointed by the kings writ under his great seal, which Fleta here calleth *auditores speciales*. But now by the statute of 31 E. 3. the chancelour and treasurer taking to them the justices and other sage persons, such as to them seemeth to be taken, shall examine the errors in the exchequer, &c.

^a In ancient time, when pleas were holden in parliament, when the parties descended to issue, the record was adjourned into the kings bench to be tried there.

^b See the statute of W. 1. against preposterous hearings in this court, and the exposition of the same in the second part of the Institutes.

^c By the statute of *Artic' super Cart.* the chancelour and the justices of the kings bench were to follow the court: but notwithstanding both the chancery and the kings bench were at this time settled courts during the severall terms * of the year, as by infinite records both before and after this statute doth appear. So as at this time they did not attend in the kings court, but when they were called yet were accounted as parcell of the kings household as long as they followed the court; but this cumbersome attendance wholly ceased in the reign of E. 3. and yet the lord chancelour would have had his purveyance, as if he had continued still as one of the household, untill he and all others, but those of the kings, queens, or princes household only, were restrained by act of parliament. 34 E. 3. cap. 2.

times and termes the court of chancery did sit.

3 H. 7. 22.
14 H. 7. 14.
23 E. 3. 46.
11 H. 4. 49. in
nativo habenda.

F. N. B. 177.
30 Aff. 35. Aff.
de mord.

3 H. 4. 7.

See more hereof
in the chapter of
the Exchequer.
31 E. 3. cap. 12.

^a Rot. par.
18 E. 3. nu. 97.
Placit. int. Jo.
de novo Borgo &
Regman, &c.

^b W. 1. cap. 14.
Against prepos-
terous hearings.

^c Art. sup. cart.
28 E. 1. cap. 5.
Glan. temp.
H. 2. lib. 2. ca. 6.
& lib. 17. ca. 2.
*Coram justiciis
domini regis in
banco sedentibus.
Vid. adjudicat'
coram rege in
every terme,
from 1 E. 2. do-
ring all his reign
in every severall
term in theyears.
And in all those*
34 E. 3. ca. 2.

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Also upon perusal of the records in the reign of H. 3. from the beginning of his reign untill the ending of it, this court sat in the term time where the other courts of justice did sit. And the pleas were stiled to be holden *coram rege* as to this day they are: and this appeareth by Fitzh. Abridgement, in the titles of Corone, of Brief, of Wast, &c. and by Bracton who in many places voucheth judgments in the reign of H. 3. in terms *coram rege*. And this appeareth also in elder times: but hereof thus much shall suffice to prove, that at the making of the said act of 28 E. 1. and long before, this court in term times sat with the kings other courts, and specially for pleas of the crown, &c, and that the said act

And so did the
chancery both of
them being to
some purposes
but one court as
it appeareth in
the chapter of
the court of
chancery.

is to be intended, that the chancelour and the judges of this court should attend the king and follow the court when they were required:

It is truly said that the justices *de banco regis* have supream authority, the king himself sitting there as the law intends. They be more then justices in eire.

The justices in this court are the sovereign justices of oier and terminer, gaol-delivery, conservators of the peace, &c. in the realm. See the books in the margent, you shall find excellent matter of learning concerning the supream jurisdiction of this court.

In this court the kings of this realm have sit in the high bench, and the judges of that court on the lower bench at his feet; but judicature only belongeth to the judges of that court, and in his presence they answer all motions, &c.

The justices of this court are the sovereign coroners of the land, and therefore where the sherif and coroners may receive appeals by bill, *à fortiori* the justices of this court may do it.

So high is the authority of this court, that when it comes and sits in any county, the justices of eire, of oier and terminer, gaol-delivery, they which have conufance, &c. doe cease without any writing to them. But if any indictment of treason or felony in a foreign county be removed before certain commissioners of oier and terminer in the county where this court sits, yet they may proceed, because this court (for that this indictment was not removed before them) cannot proceed for that offence. But if an indictment be taken in Midd. in the vacation, and after this court sit in the next term in the same county (if this court be adjourned) then may speciall commissioners of oier and terminer, &c. in the interim proceed upon that indictment, but the more usual way is by speciall commission. And all this was resolved by all the judges of England at Winchester term, *anno 1 Jacobi regis*, in the case of Sir Everard Digby and others: and so had it been resolved, Mich. 25 & 26 Eliz. in the case of Arden and Somerville, for this kind of speciall commission of oier and terminer: and here-with agreeth Pl. Com. in the earl of Leic' case, *anno 1 Mar. reginae*.

And so supream is the jurisdiction of this court, that if any record be removed into this court, it cannot (being as it were in his centre) be remaunded back, unlesse it be by act of parliament. And this appeareth by the judgment of the parliament in *anno 6 H. 8.* but by the authority of that act indictments of felonies and murders removed into the kings bench may by the justices of that court be remaunded, and this court may send down as well the bodies of all felons and murderers, as their indictments into the counties where the same murders or felonies were committed or done, &c. in such manner, &c. as if the indictments had not been brought into the kings bench. But the justices of the kings bench of their own authority may grant a *nisi prius* in case of treason, felony, and other pleas: for there they send but the transcript of the record, and not the record itself, as shall be said in the chapter of Justices of *nisi prius*. But if the justices of the kings bench doe perceive that any indictment is to be removed into that court by practise or for delay, the court may refuse to receive the same, before it be entred of record, and remand the same back again for justice to be done.

By the statute of 2 H. 4. the clerk of the crown of this court, if

four score

9 El. Dier 187.
27 Aff. p. 1.

7 E. 4. 18.
4 H. 7. 18.
14 H. 7. 21.
li. 9. fo. 118. a
& b.
Segnior Sanchez case.

17 E. 3. 13. 2.
Jib. 4. fo. 57. in
the Sadlers case.
Pl. Com. 262.
21 Aff. 12.
27 aff. 1. 28 aff.
52. 21 H. 7. 29.
Pasch. 12 E. 3.
coram rege,
Ro. 99. Chicheff.
W. 1. cap. 3.
lib. 9. fo. 118.
ubi supra.

Hil. 1 Jac. Sir
Walter Raleighs
case, &c.
Pl. Com. fo 388.
count de Leic'
case acc'.

22 E. 3. 6. b.
24 E. 3. 73.
29 aff. 52.
Stanf. pl. cor. 15.

6 H. 8. cap. 6.
It extendeth on-
ly to felonies
and murders.

[74]

See before cap.
Parliam. pag. 21.
when a writ of
error is sued of a
judgment, *coram
rege*, they pro-
ceed *super tenorem
recordi*, and the
record it self
remaineth in this
court.

2 H. 4. cap. 100

fourcore or an hundred men be indicted of felony or trespassse, of one felony, or one trespassse, and they plead to an issue, as not guilty, the said clerk ought not to take for the *venire fac'*, nor for the entering of the plea but two shillings only, and not two shillings for every one, which act is made in affirmance of the common law. So if one man be indicted of two severall felonies or trespassses, and is acquitted, he shall pay but for one delivrance.

26 Aff. p. 47.

Out of this court are other courts derived, as from one fountain severall springs and rivers, in respect of the multiplicity of causes, which have increased. *Jurisdictio istius curiæ est originalis seu ordinaria. & non delegata.* The justices of this court have no commission, letters patents or other means to hold pleas, &c. but their power is original and ordinary. They were called anciently * *justiciæ, justiciarii, locum tenentes domini regis. &c.* The chief justice, * *justitia Angliæ, justitia prima, justiciarius Angliæ, justiciarius Angliæ capitalis, and justiciarius noster capitalis ad placita coram nobis terminand'.* To observe the changes of these names, and the reason and change thereof, is worthy of observation.

Designatio justiciariorum est à rege, jurisdictiono vero ordinaria à lege.

* Glanvil lib. 1. ca. 6, 13. &c. sæpenumero.

† Lib. nigro in scaccario. par. 1. ca. 4.

Never in any legal record (which we have seen) they were called *summi justiciarii.*

Rot. cart. 45 H3, 13 Aug.

Before the reign of H. 1. the chief justice of this court was created by letters patents, and the form thereof (taking one example for all) was in these words.

Capitalis justiciarius Angliæ,

Rex. &c. archiepiscopis, episcopis, abbatibus, prioribus, comitibus, baronibus, vicecomitibus, forestaris, et omnibus aliis fidelibus regni Angliæ. salutem. Cum pro conservatione nostra, et tranquillitatis regni nostri, et ad justitiam universis et singulis de regno nostro exhibendam constituerimus dilectum et fidelem nostrum Philippum Basset justiciarium Angliæ quamdiu nobis placuerit capitalem. Vobis mandamus in fide qua nobis tenemini firmiter injungentes, quatenus in omnibus quæ ad officium justiciarii prædicti, nec non ad conservationem pacis nostræ et regni nostri eidem dum in officio prædicto steterit, plenius sitis intendentes. Teste rege, &c.

Herein 6 things are to be observed. 1. That the creation of his office was by letters patents. 2. That this officer was originally instituted for three things. 1. *Pro conservatione nostra.* 2. *Tranquillitatis regni nostri.* 3. * *Ad justitiam universis et singulis de regno nostro exhibendam.* The third thing to be observed is, that he was stiled *justiciarius Angliæ capitalis.* 4. That Philip Basset was constituted chief justice of England, and after made knight, for he was not knight at the making of the letters patents. This Philip was of Welledby in the county of Northampton, and was excellently learned in the laws of the realm; he was younger brother of baron Basset of Draiton Basset in the county of Staff. 5. That he was constituted *quamdiu nobis placuerit.* Lastly, the clause of attendance, and the persons that are to give attendance, &c. to him, are very remarkable. This Philip Basset was the last of this kind of creation by any like letters patents, and he died chief justice neer to the end of the reign of H. 3. king E. 1. being a wife and prudent prince knowing that *cui plus licet quam par est, plus vult quam licet,* (as most of these *summi justiciarii* did) made three alterations, 1. By limitation of his authority. 2. By changing *summus justiciarius,* to *capitalis justic'* 3. By a new kind of creation, viz. by writ, lest, if he had continued his former manner of creation, he

* This was the original jurisdiction of this court.

might

and yet remained as snares upon the subject, so as the subject might justly say with Tacitus, *Prius vitis laboravimus, nunc legibus*. 3. Concealors, *heiluones*, that endeavoured to swallow up cathedrall churches and the ecclesiasticall possessions of church-men, and the livings of many others of the kings subjects. Lastly, the multitude of attornies, more then is limited by law, is a great cause of increase of suits.

^a But now on the other side, to shew what great hope there is, that suits in law shall decrease, for that in effect all the particular causes of the increase of them are taken away, which we have thought good to remember.

^b For the first, the statute of 35 Eliz. cap. 3. hath remedied part, but the statute of 21 Jac. ca. 2. hath given a plenary salve for the whole mischief, whereof you may read at large in the third part of the Institutes, cap. 87. against concealors, *turbidum hominum genus*.

^c For the second, by the statute of 21 Jac. cap. 4. Informations, &c. upon penall statutes are to be heard and determined in their proper counties, and not in the courts at Westminster, whereby the vexatious swarm of informers, who are best trusted where they are least known, are vanished and turned again to their former occupations. ^d Concerning attornies, the number are set down, and that they ought to be learned and vertuous, and as I understand, the judges at this time have this matter in consideration. But besides these, there are some other statutes made for avoiding and decreasing of vexatious suits. As an ^e act in 21 Jac. regis, cap. 16. for limitation of actions and avoiding suits in law, a good and beneficiall law. Another act at the same parliament, cap. 13. for the further reformation of jeofails, * a good law for ending of suits.

Another at the same parliament, cap. 8. to prevent and punish abuses in procuring of processe of *superfedeas* of the peace and good behaviour, out of his majesties courts at Westminster, &c. whereby infinite vexations, troubles and charges of the subjects are prevented. Another at the same parliament, ca. 23. for avoiding of vexatious delays in causes by removing of actions and suits out of inferiour courts, wherein the former abuse was vexatious, grievous, and chargeable to the subject. A branch of an act at the same parliament, cap. 16. for pleading of tender of amends in an action of trespassse, *quare claus. fregit*, for a trespassse by negligence, or involuntary, wherein the defendant maketh no title, &c. an excellent and necessary law for avoiding of trifling and vexatious suits, especially in champion countries. An act at the same parliament, cap. 2. against monopolies and new projects, &c. a great quiet for the time to come. *Anno 3 Caroli Regis, nunc*, cap. 1. The petition of right concerning the rights and liberties of all the subjects of this realm for their repose and quiet. Lastly, the repeal of so many obsolete penall statutes is a great mean of diminution of suits.

For the above said generall causes, viz. peace and plenty, long may they happily by the goodnesse of God continue without abuse within this realm.

The kings bench hath authority for great misprisions and offences, to adjudge and inflict corporall punishment, as pillory, papers, and the like: whereof you may read many presidents in the third part of the Institutes, pag. 219, 220.

C A P.

^u See the preambles of the stat. of 4 H. 4. ca. 18.

^v 33 H. 6. ca. 7. Diminution of suits.

^w Possessions of monast. and chantries, &c. 35 El. ca. 3. 21 Ja. cap. 2. Concealors.

^x 21 Jac. ca. 4. Informers. See the third part of the Inst. cap. against vexatious relations informers &c.

^y Attornies, Rot. par. 20 E. 1. rot. 4. *De apprenitiis et attornatis*. 15 R. 2. nu. 28. 4 H. 4. ca. 18. 33 H. 6. ca. 7. See Rot. parl. 13 H. 4. nu. 63. not in print.

^z 21 Jac. ca. 16.

* [77]

See the 3 part of the Inst. cap. against Monopolists and Projectors.

¹ Car. regis c. 1. 21 Jac. ca. 28. 3 Car. ca. 4.

C A P. VIII.

The Court of Chancery.

CERTAIN it is, that both the Brittain and Saxon kings had their chancelors and court of chancery, the only court out of which originall writs doe issue: as taking some few exam- ples before the conquest.

Edward the Confessor had Reinbald his chancelor. This Edward granted many mannors, lands, &c. and franchises to the abbot of Westminster. and endeth his charter thus. *Ad ultimum, cartam istam sigillari iussi, et ipse manu mea propria signum crucis impressi, et idoneos testes annuari præcedi*: and amongst those witnesses this you shall finde *Swardus notarius ad vicem Reinbaldi regie dignitatis cancellarii hanc cartam scripsi et subscripsi*. He had also Lefrick to his chancelor.

King Etheldred also had a worthy name, and a worthy man to his chancelor. *Rex Etheldredus statuit atque concessit quatenus ecclesiam de Elye ex tunc et semper in regis * curia cancellariæ ageret dignitatem, &c.* This king began his reign, *anno domini 978*, which albeit it was void in law to grant the chancelorship of England in succession, yet it proveth that then there was a court of chancery.

King Edgar had Adulph: king Edred had Thurkettle: king Edmond the same: king Athelstane Wolfine their chancelors, &c.

For further proof that there was a court of chancery before all these kings time, out of which writs remediall issued, as they doe to this day: hear what the Mirror saith, *Le primer constitutions ordenus per les viels roys, &c. ordein fuit que chescun eyt del chancery le roy brief remedial a son pleint sans difficultie*. Hereby it appeareth that in the reign of king Alfred there was a court of chancery out of which writs remediall issued, which was not then instituted, but affirmed to be a court then *in esse*, and enacted that out of that court writs remediall should be granted without difficulty, which law continueth to this day. And thus much touching the court of chancery before the conquest: and therefore * Polydor Virgill, who affirmeth this court to come in with the Conqueror, *perperam erravit*.

In a charter to the abbot of Westminster by William the Conqueror, and amongst the witnesses it is written thus, *Ego Mauritius regis cancellarius favendo legi, et sigillavi*. Arfastus bishop of Northelmham in Norff, who translated his see to Thetford, was also chancellor to the Conqueror.

Cancellarii Angliæ dignitas est, ut secundus à rege in regno habeatur, ut altera parte sigilli regii, quod et ad ejus pertinet custodiam, propria sig- net mandata, &c.

Omnia brevia de pace, &c. irrotulari debent in rotulo cancellariæ.

Fleta saith, *Est inter cætera quod lam officium quod dicitur cancellaria, quod uno provido et discreto, ut episcopo vel clerico, magnæ dignitatis debet committi simul cum cura magni sigilli regni, cujus substitui sunt cancellar'*

The antiquity of this court.

26 E. 3. ass. p. 24. and the preface to the third book of Reports. History of Ely, Hugo Petroburghensis, Leland. Fortesc. cap. 37.

In the second book of the History of Ely, written in the reign of king Stephen soon after the conquest. Curia Canc. Nota.

Mirror ca. 1. §. 3. & vide ca. 5. §. 8. *pur le enrolment de pardon le roy in le chancery en temps le roy Alfred.* King Alfred began to reign anno dom. 872, and was father to king Edward senior, father of the said Athelstane. * Error Polydori.

Fitz. Stephen. tempore H. 2. in the end of Stows survey of Lond. Bracton fo. See Glanv. li. 12. ca. 1. & 5. &c. Fletali. 2. ca. 12.

cancellar' omnes in Anglia, Hibernia, Wallia, et Scot' omnesque sigilla regis custodientes ubique præter custodem sigilli privati. Cui affocietur clerici honesti, circumspècti domino regi jurati, qui in legibus et consuetudinibus Anglicanis notitiam habeant pleniorẽ, quorum officium sit supplicationes et querelas conquerentium audire et examinare, et eis super qualitatibus injuriarum ostensarum debitum remedium exhibere per brevia regis.

W. 2. 13 E. 1.
c. 1. 13 E. 1.
ca. 23, 24.

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1 part Instit.
sect. 101. Epist.
lib. 9.
Vid. postea
ca. 10. of the
court of com-
mon pleas.

Ubi non est sci-
entia, non est
conscientia.
17 E. 3. fo. 11.
14. 23. 37.

Rot. parl. 45 E. 3.
Rot. 22. nu. 15.

Rot. par. 5 R. 2.
nu. 20.

Breve de forma donationis in reventere satis est in usu in cancellaria.

In cancellaria et in registro cancellariæ.

For the antiquity and authority of this book of the register of the chancery, see the first part of the Institutes, *verb. per le Register*, and in the epistle to the ninth book of my Commentaries.

But to proceed (omitting many others) Robert Parting took the state and degree of a serjeant at law in 3 E. 3. and became the kings serjeant, and for his profound and excellent knowledge of the laws, in Trin. term 14 E. 3. was 24 Julii by writ created chief justice of England: in which office he remained untill the 15 of December following, on which day he was made lord treasurer of England. In that office he remained untill the 15 year of the reign of the same king, and then was constituted lord chancelour. This man knowing that he that knew not the common law, could never well judge in equity (which is a just correction of law in some cases) did usually sit in the court of common pleas, (which court is the lock and key of the common law) and heard matters in law there debated, and many times would argue himself, as in the report of 17 E. 3. it appears.

In the 30 year of E. 3. Sir Robert Thorpe chiefe justice of the common pleas (not Sir William Thorpe chiefe justice of England, convicted of fordid bribery) a man of singular judgement in the laws of this realm, was constituted lord chancelour of England. And in the parliament *anno* 45 E. 3. a grievous complaint was made by the lords and commons, that the realme had bin of long time governed by men of the church in disherison of the crown, and desired that lay men only might be principall officers, &c.

After the decease of Sir Robert Thorpe 5 Julii *anno* 46 E. 3. Sir John Knivet knight, chief justice of England, a man famous in his profession, was made lord chancellor of England, who deceased in *anno* 50 E. 3. &c.

In perusing the rolls of parliament in the times of these lord chancelours, we finde no complaint at all of any proceeding before them. But soone after, when a chancelour was no professor of the law, we finde a grievous complaint by the whole body of the realm, and a petition that the most wise and able men within the realm might be chosen chancelours, and that he seek to redresse the enormities of the chancery. But leaving many other records to their proper places hereafter, we will conclude this point concerning the antiquity and jurisdiction of this court with the opinion of all the judges of the realm in 9 E. 4. in a suit in the court of exchequer against the clerk of the hamper in the chancery upon his account in the exchequer, where it was holden by all the justices in the exchequer chamber, that all the courts of the king have been time out of memory, so as a man cannot know which of them is the ancientest court. And justice Young the plaintife demanded of the justices, what if the chancelour command me upon a payne, *that*

that I shall not sue him? To whom Billing the chief justice answered, you are not bound to obey it, because that commandment is against law: but seeing that toucheth upon the jurisdiction of the court, let us in the next place handle that point.

The Jurisdiction of the Court.

In the chancery are two courts, one ordinary, *coram domino rege in cancellaria*,^a wherein the lord chancellor or lord keeper of the great seal proceeds according to the right line of the laws and statutes of the realm, *secundum legem et consuetudinem Angliæ*.^b Another extraordinary according to the rule of equity, *secundem æquum et bonum*. And first of the former court.

^c He hath power to hold plea of *scire fac'* for repeal of the kings letters patens, of petitions, *monstrans de droits*, traverses of offices, partitions in chancery, of *scire fac'* upon recognisances in this court, writs of *audita querela* and *scire fac'* in the nature of an *audita querela* to avoid executions in this court; ^d downments in chancery, the writ *de dote assignanda* upon offices found, execution upon the statute staple, or recognisance in nature of a statute staple upon the act of 23 H. 8. but the execution upon a statute merchant is returnable either into the kings bench, or into the common place, and all personall actions by or against any officer or minister of this court in respect of their service or attendance there. ^e In these if the parties descend to issue, this court cannot try it by jury, but the lord chancellor or lord keeper delivereth the record by his proper hands into the kings bench to be tried there; because for that purpose both courts are accounted ^b but one, and after triall had to be remanded into the chancery, and there judgement to be given. But if there be a demurrer in law, it shall be argued and adjudged in this court. Nota, the legall proceedings of this court be not inrolled in rolls, but remaine *in silaciis* being filed up in the office of the pety-bag. ^e Upon a judgement given in this court a writ of error doth lie returnable into the kings bench: ^d the stile of the court of the kings bench is *coram rege* (as hath been said) and the stile of this court of chancery is *coram domino rege in cancellaria, et additio probat minoritatem*. And in this court the lord chancellor or the lord keeper is the sole judge: and in the kings bench there are four judges at the least.

This court is *officina justitiæ*, out of which all originall writs and all commissions which passe under the great seal go forth, which great seal is *clavis regni*, and for those ends this court is ever open.

Of this court Fleta *ubi supra*, saith, *Dicuntur brevia cum sint formata ad similitudinem regulæ juris, quæ breviter, et paucis verbis intentionem proferentis exponunt, sicut regula juris, rem quæ est breviter enarrat: non tamen ita debet esse bre. quin rationem et vim intentionis contineat. Et sunt quædam brevia formata sub suis casibus, et quædam de cursu quæ consilio totius regni sunt approbata. quæ quidem mutari non poterunt absque eorundem contraria voluntate. Sunt et brevia ex eis sequentia quæ dicuntur judicialia, et sæpius variantur secundum varietatem placitorum proponent' et respondent', petentis et excipientis et secundum varietatem responsorum. Sunt et quædam quæ dicuntur magistralia et sæpius variantur secundum diversitatem casuum, factorum et querelarum, et quorundam quædam*

^a 8 E. 4. 5.
⁹ E. 4. 15.
¹⁴ E. 4. 7.
^b Stan. præc. ca. 20. fo. 65. b.
Pl. com. fo. 72.

^c Rot. par. 8 H. 4. nu. 122. 2 R. 3. 1.

^d R. gift 297.
F. N. B. 263.
Stanf. præc. ca. 20.
Rot. par. 18 E. 7. nu. 41, 42.

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^a 13 E. 2. coram rege, rot. 5 L. London.

^b 20 E. 3. 61.
24 E. 3. 65. 75.

^c 18 E. 3. 25. 17. aff. 24.
¹⁴ Eliz. Dier 315.
Pl. com. 393. a.
^d In par. Tr. 9. H. 6. rot. 5. int. placita regis.

Officina justitiæ.

Fleta lib. 2. ca. 12. Bract. li. 5. fo. 413.
Britton ca. 84.
Fleta lib. 6. ca. 35. & 86.

quædam sunt personalia, et quædam realia, et quædam mixta, secundum quod sunt actiones diversæ vel variæ, quia tot erunt formulæ brevium, quod sunt genera actionum, quia non potest quis sine brevi agere, præcipue de libero tenemento suo, quia non tenetur quis respondere sine brevi, nisi gratis voluerit, et cum hoc fecerit quis, ex hoc ei non injuriabitur: volenti enim et scienti non fit injuria. De eadem autem re, plures alicui competere poterunt actiones, ordine autem, ut convenit, observato. Breve quidem regis in se nullam debet continere falsitatem, nec aliquem errorem: apparere debet vel in prima sui figura non vitiosum, maxime si fuerit patens sive apertum, quia originalia quædam sunt clausa, et quædam aperta. Et sive aperta, sive clausa, apparere non debent abrasa, nec abolita: et si inveniatur abrasio, tunc refert quo loco, à quo, et quando. Quo loco? videlicet utrum in narratione facti vel juris. Si autem in narratione facti, cadet coram justic' quasi suspectum. Facta enim et nomina mutari non debent, sed jura ubique scribi possunt. A quo? utrum videlicet per clericum cancellar' cui autoritas data fuerit, vel ausu tenerario per alium, sicut clericum justic', vel vic' ad procuracionem alicujus partis: quo casu omnes agentes et consentientes tanquam falsarii puniantur. Item quando? videlicet utrum hoc fiat antequam bre. in curia resuscitatum et publicatum, vel post. Si autem post, erit breve suspectum et cadet, si à tenente fuerit hoc calumpniatum. Fiant autem brevina judicialia in cancellaria ex recognitionibus et contractibus habitis et in rotulis cancellariæ irrotulatis et ex recordo cancellario et clericis sibi associatis per hac constitutionem concessio. Quia de hiis quæ recordata sunt coram cancellar' domini regis, et ejus justic' qui recordum habent et in rotulis eorum irrotulantur, non debet fieri processus placiti per summonitionem, vel attachiament', effensia, visus tre. et alias solemnitates cur' sicut fieri consuevit ex contractibus, et conventionibus factis extra curiam. Observandum est de cæterò quod ea quæ inveniuntur irrotulata coram hiis qui recordum habent vel in finibus contenta, cum sint contractus sive conventiones vel obligationes sive servicia aut consuetudines recognitæ sive alia quæcumq; irrotulata quib' cur' regis sine juris et constitutionis offensia auctoritatem præstare potest' talem de cetero habeat vigorem, quod non sit necesse de hiis placitare in posterum, sed cum venerit querens ad curiam domini regis, si recens sit cognitio, vel finis, vix infra annum per bre. levatus, statim habeat bre. de executione illius recognitionis factæ: et si forte à majore tempore transacto facta fuerit illa recognitio, vel finis levatus: præcipiatur vic' quod scire fac' parti de qua fit queremonia, quod sit ad certum diem, offens. si quid sciat dicere quare hujus irrotulata vel in fine contenta executionem habere non debeant. Et si ad diem venerit, et nihil sciat dicere quare executio fieri non debeat, præcipiatur vic' quod rem irrotulata vel in fine contentam exequi fac'. Eodem modo mandetur ordinario in suo casu, observato nihilominus quod inferius dicitur in statuto de medio qui per judicium aut recognitionem est obligatus. Ex hac quidem constitutione oriuntur bria. judicialia in cancellaria sicut coram ipsis justic'. Ipsi autem collaterales et socii cancellarii esse dicuntur præceptores, eo quod bria. causis examinatis remedialia fieri præcipiunt, et hoc quoque cum sine denar' ad opus domini regis, et quoque sine fine, eo quod omnia bria. non sunt omni tempore æquipollentia. De brevibus autem coram justic' ad primas assisas cum in partes illas venerint, fines capere non consueverunt, eo quod ad tempus itineris justic' ligat constitutio Magnæ Cartæ quæ talis est; Nulli justitiam negabimus, vendemus, vel differemus: sed non inhiabitur quin fines capiantur pro brevibus possessionum, et actionum personalium, pro seclerore justitia habenda; qui quidem pro qualitatibus et quantitatibus

portionum

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portionem concessi in eis. Item brevibus imbreuiabuntur, et in rotulis cancellariæ irrotulantur. Qui quidem rotuli singulis annis ad scaccar' liberabuntur, et fines hujus extrahuntur et per summon' scaccarii leventur. Clausula vero finis talis est, Et cape securitatem à præfato tali de 40 solid. ad opus nostrum pro hoc brevi. Verba autem extrahi' de scaccario sunt hæc. De A. de B. pro brevi habend' dimi marc' vel amplius prout finis factus fuerit. Conceduntur aliquando conquerentib' ob favorem paupertatis quod ubi præsumi potest sic quod plegios invenire non possunt de profecquend' clamorem suum quod securitatem præsent vic' per fidei interpositionem suam, non tamen in actionibus personalibus hoc concedendum est. Habet et rex clericos in officio illo expertos et legales qui formulas brevium cognoscunt, qui approbanda admittunt et defectiva omnino repellunt, quib' omnia bria. priusquam ad sigillum proveniunt cum deliberatione distincte et aperte in ratione, dictione, litera et syllaba examinare injunctum est. Et sciendum quod nullum bre. nisi per manus eorundem ad sigillum debet admitti. Habet etiam sex clericos suos prænotarios in officio illo, qui cum clericis memoratis familiares, &c. esse consueverunt et præcipue ad viduum et vestitum qui ad bria. scribenda secundum diversitates querelarum sunt intitulati. Et qui omnes pro viduo et vestitu de proficuo sigilli in cuiuscunque usus pervenerit debent honeste inveniri. Sunt etiam nihilominus clerici juvenes et pedites quibus de gratia cancellar' concessum est pro expeditione populi bria. facere cursoria, dum tamen sub advocacione clericorum superiorum fuerint qui eorum facta in eorum receperint pericula. Et in quolibet bri. debet scribentis nomen inbreviari qui warrantizare poterint in peccatores si necesse fuerit. Et ne præfati clerici superflua petant stipendia pro scriptura sua, constitutum est quod tam clerici iustic' quam cancellar' de solo denario pro scriptura unius brevis se teneant contentos.

And this court is the rather alwayes open, for that if a man be wrongfully imprisoned in the vacation, the lord chancelour may grant a *habeas corpus* and do him justice according to law, where neither the kings bench nor common pleas can grant that writ but in the term time; but this court may grant it either in term time or vacation. So likewise this court may grant prohibitions at any time either in terme or vacation; which writs of prohibition are not retornable: but if they be not obeyed, then may this court grant an attachment upon the prohibition retornable either in the kings bench or common place.

* The author of that book speaking of the court of chancery, and of the jurisdiction it then had, saith, *Curia cancellariæ regie est curia ordinaria pro brevibus originalibus emanandis, sed non placitis communibus tenendis.*

Divers acts of parliament give authority to the lord chancelour to heare and * determine divers offences and causes in the court of chancery, which is ever intended in this court proceeding in Latin, *secundum legem et consuetudinem Angliæ*, and the defendant shall not be sworn to his answer, nor examined upon interrogatories, and upon issue joyned it shall be tried in the king's bench, *ut in similibus casibus solet.* But our purpose is not to enumerate all these statutes, for our aim is principally at the generall jurisdiction of this court.

The officers and ministers of this court of common law doe principally attend and doe their service to the great seal, as the * twelve masters of the chancery, whereof the master of the rols is

* *New Tales, or Novæ Narrationes*, written about the beginning of E. 3. 27 E. 3. cap. 13. 2 R. 3. fo. 3. 13 E. 4. Dier 12 El. 288. a resolve.

* [82]

Officers and ministers of this court. See the 2 part of the Inst. W. 2.

c1. 24. verb. Clerici de Cancellaria. chief clerks.

* In the parliament rol of 5 R. 2. nu. 23. they are called

the chief, who by their original institution, as it is proved before, should be expert in the common law, to see the forming and framing of original writs according to law, which are not of course; whereupon such are called in our ancient authors *brevia magistralia*. The clerk of the crown, the clerk of the hamper, the sealer, the chafe wax, the controller of the chancery, twenty four cursitors for making writs of course or formed writs according to the register of the chancery, the clerk of the presentations, the clerk of the faculties, the clerk examiner of letters patents, the clerks of the petition bag, and the six attornies. The proceffe in this court is under the great seal according to the course of the common law.

Having spoken of the court of ordinary jurisdiction, it followeth according to our former division, that we speak of the extraordinary proceeding according to the rule of equity, *secundum equum et bonum*, wherein we will pursue our former order.

Albeit our ancient authors, the Mirror, Glanvill, Brafton, Britton and Fleta doe treat of the former court in chancery, and of original writs and commissions issuing out of the same, yet none of them do once mention this court of equity. We have also considered what cases in this court of equity have been reported in our books, and we find none before the reign of H. 6. and in that kings time, and afterwards plentifully, we then turned our eyes to acts of parliaments and parliament rolls.

^a Some have thought that the statute of 36 E. 3. gave the chancellor his first authority for his proceeding in course of equity, by which it is enacted, That if any man think himself grieved contrary to any of the articles above written, or others contained in divers statutes, will come to the chancery or any for him, and thereof make his complaint, he shall presently have there remedy by force of the said articles and statutes, without elsewhere pursuing to have remedy. But certainly this act giveth the chancellor no power to proceed in course of equity, but that he grant to the party grieved original writs which are called remedial grounded upon any statute for his relief, and there is no statute that gives the party grieved remedy in equity. Lastly, the last words of the act, without elsewhere pursuing to have remedy, doe manifest that the meaning of the makers of the act is to direct the party to be relieved by the common law, by actions upon these statutes, and not elsewhere.

In the parliament holden 13 R. 2. the commons petitioned to the king, That neither the chancellor nor other counsellor doe make any order against the common law, nor that any judgment be given without due proceffe of law. Whereunto the kings answer was, The usages heretofore shall stand, so as the kings royalty be saved: In the same parliament another petition was, That no person should appear upon a writ *De quibusdam certis de causis*, before the chancellor or any other of the councill, where recovery is therefore given by the common law: whereunto the kings answer is, The king willeth as his progenitors have done, saving his regality.

In the parliament holden in 17 R. 2. it is enacted at petition of the commons, That forasmuch as people was compelled to come before the kings councill, or in chancery, by writs grounded upon untrue suggestions, that the chancellor for the time being presently after

Of the antiquity of this court of equity.

Henry Beaufort son of John of Gaunt bishop of Winch. cardinal of St. Eusebius, lord chancellor in the beginning of the reign of H. 6. and in that kings reign John Kemp cardinal of S. Rufeline archbishop of York, lord chancellor.

See Rot. parl. 28 H. 6. nu. 10. & 35 H. 6. fo. 3. ^a 36 E. 3. cap. 9.

Rot. par. 13 R. 2. nu. 30.

17 R. 2. ca. 6.

after that such suggestions be duly found and proved untrue, shall have power to ordain and award dammages according to his discretion * to him which is so travelled unduly as is aforesaid. This act extendeth to the chancelor proceeding in course of equity, and extendeth not to a demurrer in law upon a bill, but upon hearing of the cause upon these words in the act [duly found and proved] and this is the first parliament that I find touching this matter. And in the roll of the same parliament, I finde the first decree in chancery that ever I observed, the effect whereof was: John de Windfor complaineth and requireth to be restored to the manners of Rampton, Cottenham and Westwick with their appurtenances in the county of Cambridge, the which were adjudged to him by the kings award, then in the possession of Sir John Lisley, and now withholden by Sir Richard le Scrope, who by champerty bought the same: the cause was this. Upon a petition of Windfor against Lisley they both compromitted the matter to the kings order, the king committed the same to the councell, they after digesting of the same made a decree for Windfor under the privy seal, they send warrant to the chancelor to confirm the same, which was done under the great seal by a special injunction to Lisley, and to write to the ssherif to execute the same. After this, Lisley by petition to the king requireth that the same may be determined at the common law, notwithstanding any former matter: the king accordingly by privy seal giveth warrant to the chancelor to make a *superfedeas*, the which was done by privy seal, after which Sir Richard Lescrope bought the same. Upon the ripping of the whole matter, this sale was thought no champerty, whereupon it was adjudged, that the said Windfor should take nothing by his said suit, but to stand to the common law, and that the said Sir Richard should goe without day.

The commons petitioned that no writs or privy seals be sued out of the chancery, exchequer or other places to any man to appear at a day upon a pain, either before the king and his councell, or in any other place, contrary to the ordinary course of the common law: whereunto the king answered: that such writs should not be granted without necessity.

Amongst the petitions of the commons you shall find this, that all writs of *subpœna* and *certis de causis*, going out of the chancery and the exchequer may be enrolled, and not granted of matters determinable at the common law, on pain that the plaintiff doe pay by way of debt to the defendant forty pound: whereunto is answered, the king will be advised.

It is enacted, to endure untill the next parliament, that the exception (how that the party hath sufficient remedy at the common law) shall discharge any matter in chancery. At the next parliament you shall find a petition in these words. No man to be called by privy seal or *subpœna* to answer any matters but such as have no remedy by the common law, and that to appear so by the testimony of two justices of either bench, and by indenture between them and the plaintiff, which plaintiff shall always appear in proper person, and find surety by recognizance to prosecute with effect the matters of the bill only, and to answer dammages if the same fall out against the plaintiff.

H 2

But

7 E. 4 fo. 14.

Rot. par. 17 R. 2. nu. 10. William Courtney son of Hugh earl of Devon, was then bishop of Cant. and lo. chancelor when this decree was made.

Champerty.

Rot. par. 2 H. 4. nu. 69.

Rot. par. 3 H. 5. nu. 46. Edmond Stafford archb. of York, was lord chancellor at this time.

Rot. Par. 9 H. 5. nu. 25.

Rot. Par. 1 H. 6. nu. 41.

Never good petition in parliament dieth, but first or last will take effect.

Vid. sup. ca. 32. 15 H. 6. ca. 4.

But in *anno* 15 H. 6. for a perpetuall law, and for the true jurisdiction of this court it is enacted in these words.

30 H. 6. fo. 26.
4 E. 4. 8. 14 E. 4.
1. 16 E. 4. 9. b.
18 E. 4. 13.
6 E. 4. 10. b.
7 H. 7. 12.
Fortesc. ca. 34.
Rot. par. 14 E. 4.
nu. 5. William.
Shetfords case
Doct. & Stud.
cap. 18. 24. 50.
31 H. 6. ca. 2.

Item, forasmuch as divers persons have before this time been greatly grieved by writs of *subpœna*, purchased for matters determinable by the common law of his land, to the great damage of such persons so vexed, in subversion, and impediment of the common law aforesaid; our sovereign lord the king will, that the statutes thereof made shall be kept after the form and effect of the same. And that no writ of *subpœna* be granted from henceforth till surety be found to satisfie the party so grieved and vexed for his damages and expences, if so be that the matter may not be made good, which is contained in the bill. In *anno* 31 H. 6. cap. 2. there is a proviso in these words. Provided that no matter determinable by the law of this realm shall be by the said act determined in other form then after the course of the same law in the kings courts having determination of the same law.

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Trin. 2 Jac.

Tr. 2 Jac. *regis*, upon suit made to the king for erecting of a new office for taking of surety according to the said act of 15 H. 6. cap. 4. the king referred the cause to Popham chief justice, who upon conference with the judges in Fleetstreet, resolved that the surety was by force of that act to be by obligation, and to be made by the party grieved himself, because it concerneth his damages and costs, and the court was to set down the form and sum of the obligation, and in the end the suit prevailed not.

• Pasch. 29 El.
in Scaccario
Woods case.
V. de 7 El. Dier
238. Seignior
Shadois case.

• Pasch. 29 Eliz. in *scaccario*, in Woods case adjudged upon the statute of 2 E. 6. cap. 13. for the like reason that the forfeiture for non-payment of tithes shall goe to the party grieved.

*Reasons, 1. à
majori ad minus.*
Rot. par. 2 R. 2.
nu. 18.
Rot. par. 13 R. 2.
nu. 10.

1. Rot. par. 2 R. 2. nu. 18. the high court of parliament relieveth but such as cannot have remedy but in parliament.

2 *Regula.*

The parliament for matters determinable at the common law doth remit the parties thereunto.

3.

2. *Nunquam decurritur ad extraordinarium, sed ubi deficit ordinarium.*

3. Whereas matters of fact by the common law are triable by a jury of twelve men, this court should draw the matter *ad aliud examen*, that is, to judge upon deposition of witnesses, which should be but evidence to a jury in actions real, personall, or mixt.

37 H. 6. 14.
27 H. 8. 18.

This court of equity proceeding by English bill is no court of record, and therefore it can bind but the person only, and neither the state of the defendants lands, nor property of his goods or chattels.

Trin. 2 Jac.
100. in *scaccario*.
Sir Thomas
Miltthorps
case.

Egerton lord chancelour imposed a fine upon Sir Tho. The-miltthorp knight, for not performing his decree in chancery concerning lands of inheritance, and estreated the same into the exchequer: and upon proccesse the party appearing pleaded that the fine was imposed by the lord chancelour for not performance of his decree, and that he had no power to assesse the same. The attorny generall confessed the plea to be true, *et petit advi-samentum curiæ*, concerning the power of the chancelor in this case,

case, and upon debate of the question in court, and good advice taken, it was adjudged that the lord chancellor had no power to assesse any such fine, for then by a mean he might bind the interest of the land where he had no power, but of the person only, and thereupon the said Sir Thomas Themilthorp was discharged of the said fine.

Afterward the said lord chancellor decreed against Waller certain lands, and for not performance of the decree imposed a fine upon him, and upon processe out of the court of chancery extended the lands that Waller had in Midd. &c. whereupon Waller brought his assise in the court of common pleas, where the opinion of the whole court agreed *in omnibus*, with the court of exchequer.

Waller's case.

The lord chancellor or the lord keeper is sole judge both in this court of equity, and in the court concerning the common law; but in cases of weight or difficulty he doth assist himself with some of the judges of the realm, and no greater exception can be taken hereunto then in case of the lord steward of England being sole judge in triall of the nobility, who also is assisted with some of the judges.

The Judge of this court of equity, &c.

For this court of equity the ancient rule is good. Three things are to be judged in court of conscience: covin, accident, and breach of confidence.

All covins, frauds, and deceits, for the which is no remedy by the ordinary course of law.

Accident, as when a servant of an obligor, morgageor, &c. is sent to pay the money on the day, and he is robbed, &c. remedy is to be had in this court against the forfeiture, and so in the like.

The third is breach of trust and confidence, whereof you have plentifull authorities in our books.

The case in the chancery between the earl of Worcester and other plaintiffs, and Sir Moyl Finch and Eliz. his wife defendants was this. The queen being seised of the mannor of Raveston and of certain lands in Stokegoldington, (which the plaintiff pretended to be a mannor either in right or reputation) granted by her letters patents the mannors of Raveston and Stokegoldington to the said Sir Moyl, and John Awdelye, and their heirs: but this was upon confidence, that they should grant the mannor of Raveston to Sir Thomas Heneage and Anne his wife, and to the heirs of Anne: and the mannor of Stokegoldington to Sir Thomas and Anne, and the heirs of Sir Thomas. Sir Moyl and Awdelye by deed indented and inrolled *termino Trin. 1588. 30 Eliz.* in this court for a thousand pound bargained and sold to Sir Thomas Heneage and his wife the mannors of Raveston and Stokegoldington, and the scite of the priory of Raveston in the county of Buck. and all other their lands, tenements and hereditaments in Raveston, Weston, Pidington, and Stokegoldington, in the county of Buck. To have and to hold the mannor of Raveston and the scite of the said priory, and all the premisses in Raveston, Weston, Pidington, and Stokegoldington (other then the said mannor of Stokegoldington) to the said Sir Thomas and dame Anne, and the heirs of the said dame Anne: and to have and to hold the said mannor of Stokeg. to the said Sir Thomas and dame Anne, and to the heirs of Sir Thomas. Sir Thomas had issue by

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Mich. 42 & 43
El. in Cancellar.
Sir Moyl Finches
case.

the said dame Anne the said Elizabeth one of the defendants his only child, and afterwards the said dame Anne died: the defendant alleaged that Sir Thomas was disseised of Stokegoldington, and the plaintiff denied it. And after Sir Thomas by deed indented and inrolled, bargained and sold the mannor of Stokegoldington to the plaintiff for payment of his debts and died: and for payment of his debts, they exhibited their bill against Sir Moyl, and the said Eliz. his wife, for the said mannor of Stokegoldington, and the lord chancellor decreed it for the plaintiff. And upon a petition preferred by the defendants to queen Elizabeth, she referred the consideration of the whole case to all the judges of England: and after hearing of the counsell of both parts on severall days, and conference between themselves, these points for rules in equity were resolved. First, that if there were any disseison, that nothing passed to the plaintiff either in right or equity, for the disseisor was subject to no trust, nor any *subpœna* was maintainable against him, not only because he was in the *post*, but because the right of inheritance or freehold was determinable at the common law and not in the chancery, neither had *cesti que use* (while he had his being) any remedy in that case. Secondly, it was resolved by all the justices, that admitting that Sir Thomas Heneage had a trust, yet could not he assign the same over to the plaintiff, because it was a matter in privity between them, and was in nature of a *chose* in action, for he had no power of the land, but only to seek remedy by *subpœna*, and not like to *cesti que use*, for thereof there should be *possessio fratris*, and he should be sworn on juries in respect of the use, and he had power over the land by the statute of 1 R. 3. cap. and if a bare trust and confidence might be assigned over great inconvenience might thereof follow by granting of the same to great men, &c. Thirdly, when the land descended to Elizabeth one of the defendants, as heir to her mother, and the trust descended to her from her father, the trust was drowned and extinguished. Fourthly, when any title of freehold or other matter determinable by the common law come incidently in question in this court, the same cannot be decided in chancery, but ought to be referred to the triall of the common law where the party grieved may be relieved by error, attain, or by action of higher nature. And when the suit is for evidences, the certainty whereof the plaintiff surmiseth he knoweth not, and without them he supposeth that he cannot sue at the common law: It was resolved that if the defendant make no title to the land, then the court hath just jurisdiction to proceed for the evidence; but if he make title to the land by his answer, then the plaintiff ought not to proceed, for otherwise by such a surmise, inheritances, freeholds, and matters determinable by the common law shall be decided in chancery in this court of equity. And thus were these points resolved by Sir John Popham, Sir Edmund Anderson, Sir William Periam, and Walmeslye, Gawdye, Fenner, and Kingesmill justices, and Clark and Savill barons of the exchequer, and all this amongst other things they certified under their hands into the chancery, and thereupon the former decree was reversed. And in debating of this case it was resolved by the two chief justices, chief baron, and divers other justices, that if a man make a conveyance, and expresse an use, the party himself or his heirs shall not be received to averre a secret trust, other then the expresse limitation of the use, unlesse such trust

A disseisor subject to no trust.

A trust cannot be assigned over. 22 El. Dier fo. 369. pl. 50.

Matters determinable by the common law cannot be decided in chancery.

Suit for evidence.

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trust or confidence doe appear in writing, or otherwise declared by some apparent matter. And Popham said, that covin, accident, and breach of confidence were within the proper jurisdiction of this court.

Mich. 39 & 40
El. in Cancellar'.

Thomas Throckmorton esquire exhibited a bill in this court against Sir Moyl Finch knight, claiming a lease of the manors of R. and S. for many years to come, and shew clear matter in equity to be relieved against a forfeiture pretended by Sir Moyle for breach of a condition where there was no default in the plaintiff, &c. Unto which bill the defendant pleaded this plea, that for the triall of the forfeiture of which lease, he made a lease for years to one priviledged in the exchequer, who brought an *ejectioe firme* against the plaintiff, and upon pleading a demurrer in law, the lessee had judgment to recover against Thomas Throckmorton (now plaintiff in chancery :) whereupon Thomas Throckmorton brought a writ of error in the exchequer chamber, where upon due proceeding the judgement was affirmed, and demanded judgment, if after these judgements given at the common law he ought to be drawn to make any further answer in this court of equity. And Egerton lord chancelor delivered his opinion in court, that the defendant should answer to the bill : and forasmuch as the case was of great consequence, the consideration of the demurrer was by the queen referred to all the judges of England : before whom the counsell of Throckmorton said, that the intent of the lord chancelor was not to impeach the said judgments, but confessing the said judgments, to be relieved upon matter in equity : as if a man hath (as he is advised) two matters to aid him, matter at the common law, and matter in equity, and being impleaded at the common law, doth by advice of his counsell assay the common law, where his adversary prevaileth against him, and hath judgment accordingly, yet in this case the party may, confessing the judgment, sue to be relieved upon a collateral matter in equity : and thereupon they shewed some presidents in time of H. 8. E. 6. &c. and one in the point between Ward and Fulwood. But upon great deliberation it was resolved by all the judges of England, that the plea of Sir Moyl Finch was good, and that the lord chancelor ought not to examine the matter in equity after the judgement at the common law : for though the lord chancelor (as hath been said) would not examine the judgment, yet he would by his decree take away the effect of the judgment : and for the presidents, they were grounded upon the sole opinion of the lord chancelor, and passed *sub silentio*. But that such a course should be permitted, it should be not only full of inconvenience, but directly against the laws and statutes of the realm, against which no president or prescription can prevail ; * which you may read at large in the third part of the Institutes, cap. Premunire. Which resolution of the judges was signified by Popham chief justice to the lord chancelor, and thereupon no further proceeding was against Sir Moyle Finch, but his plea stood.

* 27 E. 3. cap. 1.
4 H. 4. cap. 22.
&c. in the pre-
amble. Doct. &
Stud. 30. W. 2.
ca. 5.
Vid. Pasch.
5 E. 4. coram
rege rot. 35. Sir
Simon Norres
case.
Nota.
Mich. 37 & 38
El. in Cancellar,

In a case depending in chancery by English bill between Mears plaintiff and Saint-John and his wife administratrix of John Alnion defendant, the case was this: that the intestate took the profits of the lands of the plaintiff being within age by force of a trust reposed in him by the father of the plaintiff by his last will, the

H 4 yearly

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yearly value of which lands was fourscore pounds *per annum*, and the intestate took the profits from the 23 year of queen El. untill the 33 year of her reign, and with parcell of the profits purchased lands in fee which descended to his heir, and left assets to his administratrix one of the defendants to satisfie the plaintiff, all debts paid. The question was, whether in this case the administratrix might not be charged in equity for the said mean profits: and Sir Thomas Egerton master of the rolls said, that he had seen a case in chancery in *anno* 34 H. 6. resolved by all the judges of England remaining in the Tower, that where the feoffees to use took the profits of the land, and received the rents, and made their executors, and died leaving assets to satisfie all debts over and above the said rents and profits, that the executors should be charged to satisfie *cessi que use* for the said rents and profits, and accordingly it was decreed in Mears case against the defendant: but whether the heir should be contributory or no, it was doubted.

Pasch. 32 El. in
Cancellaria.
Withams case.
Eborum.
Vide 7 E. 4. 14.
& 18 E. 4. 11.
& 12.

Withams case in the chancery was, that a term for years was granted to the use of a feme sole, she took husband and died, whether the husband should have the use, or the administrators of the feme, was referred to the judges; and by them it was resolved, that the administrators should have it, and not the husband, because that this trust of a feme was a thing in privity, and in nature of an action, for which no remedy was but by writ of *subpana*. And so it was resolved by the justices in Waterhoufes case, Hil. 8 Eliz. *Eborum*, for the trust runneth in privity in this case, and a husband should not be tenant by the curtesie of an use, nor the lord of the villain should have it at the common law.

Trin. 28 El. ad-
judge in the
kings bench, in
Peacocks case.

A man possessed of a term for years in lands, by his last will devised the same to one and the heirs of his body begotten, made his executors and died, the devisee entrench by the assent of the executors, hath issue and aliens the term and dieth: this alienation barreth the issue, for a term for years cannot be entayled. And afterwards *anno* 31 Eliz. in a case depending in chancery between Higgins and Milles it was certified by the lord Anderson and justice Walmesley (to whom it was referred) that no estate taile could be of a term, and that the alienation of the devisee did bar the issue.

31 Eliz. between
Higgins and
Mills in Cancellaria.

Mic. 26. &
27 El. coram
rege.
Perrots case.
10 H. 6. 15. in
London by pre-
scription.
Nota this resolu-
tion is against
the court of re-
quests. See here-
after, cap. 9.

In a premunire between John Perrot plaintiff, and T. M. H. W. and others defendants, it was resolved by Sir Christopher Wray chief justice, and the court of kings bench, that the queen could not raise a court of equity by her letters patents, and that there could be no court of equity but by act of parliament, or by prescription time out of mind of man. But the queen might grant power *tenere placita*, or *consans de plea*, for all must judge according to one ordinary rule of the common law, but otherwise it is of proceedings extraordinary without any certain rule.

These cases which upon so great and mature deliberation have been resolved by the judges of the realm, and whereunto we were privy and well acquainted with, we have thought good to report, and publish for the better direction in like cases hereafter.

How he is created.
Camden, p. 131.

He is made lord chancellor of England, or lord keeper of the great seal, *per traditionem magni sigilli sibi per dominum regem*, and by taking his oath, *forma cancellarium constituendi regnante Henrico secundo fuit appendendo magnum Angliæ sigillum ad collum cancellarii electi*.

Some have gotten it by letters patents, ^a at will, and ^b one for term of his life; but it was holden void, because an ancient office must be granted, as it hath been accustomed.

^c It is enacted and declared, that the common law of this realm is and always was, and ought to be taken, that the keeper of the great seal of England for the time being hath always had, used, and executed, and from thenceforth may have, take, use, and execute the same and the like place, authority, pre-eminence, jurisdiction, execution of laws, &c. as the lord chancellor of England for the time being lawfully used, &c.

And so it appeareth in 18 E. 3. nu 41. that the lord chancellor, or lord keeper for the time being ought to have consufance.

^a I finde that king H. 5. had two great seals, one of gold, which he delivered to the bishop of Dureime, and made him lord chancellor of England, and another of silver, which king Henry the 5 delivered to the bishop of London to keep.

^b *William de Ayremin garden des rolles del chancelar' et ses compaignics gardens del grand seale.* At this time was Robert Burnel bishop of Bath and Wels chancellor of England.

^c It is to be observed, that where divers ancient statutes speak of the chancellor and of his lieutenant, it must of necessity be intended of such a lieutenant, as the law doth allow of, and that cannot be of a deputy, for the chancellor cannot make a deputy, but *locum tenens* is to be taken for one that holdeth the place, or hath equal authority of the chancellor, and that is *custos magni sigilli*; and this agreeth with the judgement of the said parliament in 5 Eliz. But all questions are now taken away by the said act of 5 Eliz. and at this day there being but one great seale, there cannot be both a lord chancellor and a lord keeper of the great seale at one time, because both these are but one office, as it is declared by the said act.

It is said before, that the chancellor by his ordinary power may hold plea of *scire fac'* to repeal the kings letters patents under the great seal being always inrolled in this court, which we (to make a true derivation of his name) shall now particularly touch. This writ of *scire fac'* to repeal letters patents doth lye in this ordinary course of justice in three cases. The first, when the king by his letters patents doth grant by severall letters patents one and the self same thing to several persons, the former patentee shall have a *scire fac'* to repeal the second patent. Secondly, when the king granteth any thing that is grantable upon a false suggestion, the king by his prerogative *jure regio* may have a *scire fac'* to repeal his own grant. Thirdly, when the king doth grant any thing, which by law he cannot grant, he *jure regio* (for advancement of justice and right) may have a *scire fac'* to repeal his own letters patents. Now the judgement in all these three cases is, *Quod predictæ litteræ patentis dicti domini regis revocentur, cancellentur, evacuentur, annullentur, et vacuæ, et invalidæ, pro nullo penitus habeantur, et teneantur; ac etiam quod irrotukamentum eorundem cancelletur, cassetur, et adnihiletur, &c.* Hereof our lord chancellor of England (for forein chancellours, it may be, have not like authority)

^a 35 H. 6. 3. B. of Winch. 1 H. 6. nu. 16.

^b Cardinal Woolsey.

^c 5 El. ca. 12.

Rot. par. 18 E. 3. nu. 41.

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^a Rot. par. 1 H. 6.

nu. 13, 14.

13 R. 2. nu. 7.

Vide Camden ubi supra.

^b Stat. de forma mittendi extract.

in scaccarium,

anno 16 E. 1.

vet. Mag. Carta,

2 part. fo. 47. b.

^c An. 27 E. 1.

de libertatibus perquirendis.

Vet. Mag. Carta,

part 1. fo. 126, &c.

2 part fo. 57, &c.

Cancellarius unde.

6 E. 4. 9.

Dier 3 Eliz. 137.

2 E. 3. 7.

17 E. 3. 59.

21 E. 3. 47.

Lib. 2. fo. 14. &c.

is called *cancellarius*, à *cancellando*, i. à *digniori parte*, being the highest point of his jurisdiction to cancell the kings letters patents under the great seale, and damming the inrolment thereof, by drawing strikes through it like a lettice.

And all this which hath been said concerning the office of the lord chancelour, or lord keeper is included within his oath, which followeth in these words, and consisteth upon six parts. He shall sweare,

1. That well and truly he shall serve our soveraigne lord the king and his people in the office of chancelour (or lord keeper.)

2. That he shall doe right to all manner of people, poore and rich, after the lawes and usages of the realm.

3. That he shall truly counsel the king, and his counsell he shall layne and keep.

4. That he shall not know nor suffer the hurt or disheriting of the king, or that the rights of the crowne be decreased by any means as far as he may let it.

5. And if he may not let it, he shall make it clearly and expressly to be known to the king, with his true advice and counsell.

6. And that he shall do and purchase the kings profit in all that he reasonably may, as God him help, and by the contents of this book.

Articles against Cardinall Woolsey.

Now for as much as the articles exhibited to king H. 8. 1. *die Decembris anno 21* of his reign, by the lords and others of his privy councill (whereof Sir Thomas More lord chancelour was one) and by two of the principall judges of the realm against cardinall Woolsey, do in divers of the articles concern the jurisdiction of the chancery, (viz. the 20 and 26 articles, &c.) and other titles of this fourth part of the Institutes, we have thought good justly and truly to transcribe from the very originall, under the proper hands of the lords and others of the privy councill, and of the said judges, (which we have seen and had in our custody) and have compared this transcript with the originall it selfe, and have (because they are of great weight and use to many purposes) transcribed it *de verbo in verbum*, without omission of any thing, as matters of that nature ought to be: and the rather, for that in our Chronicles they are very untruly rehearsed: and before this time (that we finde) the true articles were never printed.

Constrained by necessity of our fidelity and conscience, com-
plaine and shew to your most royall majesty, we your graces humble, true, faithfull, and obedient subjects: that the lord cardinall of York, lately your graces chancelour, presuming to take upon him the authority of the popes legat *de latere*, hath by divers and many fundry wayes and fallions committed high and notable grievous offences, misusing, altering, and subverting the order of your graces lawes: and otherwise contrary to your high honour, prerogative, crown, estate, and dignity regall, to the inestimable great hinderance, diminution, and decay of the universall wealth of this your graces realm. And it is touched summarily and particularly in certain articles here following, which be but a few in compari-

son

The Lord chancellors oath.

^a Rot. Par.

^b 10 R. 2. rot. 8.

The oath recited.

Vid. rot. parl.

^c 1 H. 4. 1. nu. 28.

^d Because he

hath power of

judicature, as is

aforsaid.

^e 10 R. 2. rot.

par. nu. 8.

^f H. 4. nu. 10.

^g 15 E. 3. nu. 10.

^h 15. 37. 41, 42.

ⁱ Laine is an

ancient French

word, and signi-

fieeth to hide.

^k Rot. par.

^l 10 R. 2. nu. 6, 7,

8. &c. the case of

Mich. de la Pole

Chancelour of

England.

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Vid. artic. 20,

21, 26, 38-41.

^m 42. 44. 46.

son of all his enormities, excesses, and transgressions committed against your graces lawes.

That is to say :

1. First, where your grace and noble progenitors within this your realm of England, being kings of England, have been so free, that they have had in all the world none other soveraigne, but immediate subject to Almighty God in all things touching the regality of your crown of England, and the same preeminence, prerogative, jurisdiction, lawfull and peaceable possession your grace and your noble progenitors have had, used, and enjoyed, without interruption or business therefore by the space of 200 years and more: whereby your grace may prescribe against the popes holiness, that he should not, nor ought to send or make any legat, to execute any authority legatine contrary to your graces prerogative within this your realme. Now the lord cardinall of York being your subject and naturall liege borne, hath of his high, orgallous, and insatiable minde, for his own singular advancement and profit, in derogation, and to the great imblemishment and hurt of your said regall jurisdiction and prerogative, and the long continuance of the possession of the same, hath obtained authority legatine: by reason whereof he hath not only hurt your said prescription, but also by the said authority legatine, hath spoyled and taken away from many houses of religion within this your realm much substance of their goods. And also hath usurped upon all your ordinaries within this your realme much part of their jurisdiction, in derogation of your prerogative, and to the great hurt of your said ordinaries, prelates, and religious.

The soveraignty, prerogative, regall jurisdiction, and freedom of the crowne of England.

Prescribe.

Cardinall of York.

Authority legatine.

Spoyled many houses of religion.

Usurped upon ordinaries.

2. Also the said lord cardinall being your ambassadour in France, made a treaty with the French king for the pope, your majesty not knowing any part thereof, nor named in the same; and binding the said French king to abide his order and award of any controversy or doubt should arise upon the same, betwixt the said pope and the French king.

Ambassadour.

3. Also the said lord cardinall being your ambassadour in France, sent a commission to Sir Gregory de Cassalis under your great seale in your graces name, to conclude a treaty of amity with the duke of Ferrare, without any commandment or warrant of your highnesse, nor your said highnesse advertised or made privy to the same.

Ambassadour.

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4. Also the said lord cardinall, of his presumptuous minde, in divers and many of his letters and instructions sent out of this realm to outward parts, had joyned himself with your grace, as in saying and writing, The king and I would ye should do thus. The king and I do give unto you our hearty thanks. Whereby it is apparent that he used himself more like a fellow to your highnes, then like a subject.

The king and I.

5. Also where it hath ever been accustomed within this realm, that when noble men do sware their household servants, the first part of their oath hath been, that they should be true liege men to the king and his heirs kings of England: the same lord cardinall caused his servants to be only sworn to him, as if there had been no soveraign above him.

Oath.

6. And also whereas your grace is our soveraign lord and head, in whom standeth all the surety and wealth of this realm; the same lord cardinall knowing himselfe to have the foul and contagious

gious

Great pocks.

gious disease of the great pocks broken out upon him in divers places of his body, came daily to your grace, rowning in your eare and blowing upon your most noble grace with his perilous and infective breath, to the marvellous danger of your highnesse, if God of his infinite goodnesse had not better provided for your highnesse. And when he was once healed of them, he made your grace to believe, that his disease was an imposthume in his head, and of none other thing.

Provision.
Premunire.

7. Also the said lord cardinail by his authority legatine, hath given by prevention the benefices of divers persons, as well spirituall as temporall, contrary to your crown and dignity, and your lawes and statutes therefore provided: by reason whereof he is in danger to your grace of forfeiture of his lands and goods, and his body at your pleasure.

Counsellour.
Forein ambaf-
sadors.

8. Also the said lord cardinall taking upon him otherwise then a true counsellour ought to do, hath used to have all ambassadours to come first to him alone, and so hearing their charges and intents, it is to be thought he hath instructed them after his pleasure and purpose before that they came to your presence, contrary to your high commandment by your graces mouth to him given: and also to other persons sent to him by your grace.

Letters sent from
beyond sea.
First to him.

9. Also the said lord cardinall hath practised so, that all manner letters sent from beyond the sea to your highnesse, have comen first to his hands, contrary to your high commandment by your own mouth, and also by others sent to him by your grace: by reason whereof, your highnesse nor any of your counsell had knowledge of moe matters but of such as it pleased him to shew them: whereby your highnesse and your counsell have been compelled of very force to follow his devices, which oftentimes were set forth by him under such crafty and covert meanings, that your highnesse and your counsell have oiten times been abused: insomuch that when your counsell have found and put divers doubts and things which afterwards have ensued, he to abuse them used these words, [I will lay my head that no such thing shall happen.]

Foreign intelli-
gence to him,
&c.

10. Also the said lord cardinall hath practised, that no manner person having charge to make espiall of things done beyond the sea, should at their returne come first to your grace, nor to any other of your counsell, but only to himself: and in case they did the contrary, he punished them for their so doing.

Licenses to
transport grain
and victuall.

11. Also the said lord cardinall hath granted licences under your great seal, for carrying out of grain and other victualls after the restraint hath been made thereof, for his own lucre and singular advantage of him and his servants for to send thither as he bare secret favour, without your graces warrant or knowledge thereof.

Ambassadours
resident with
other princes.

12. Also the said lord cardinall used many years together, not only to write unto all your ambassadours resident with other princes in his own name, all advertisements concerning your graces affairs being in their charge, and in the same his letters wrote many things of his own mind without your graces pleasure known, concealing divers things which had been necessary for them to know: but also caused them to write their advertisements unto him. And of the same letters he used to conceal for the compassing of his purpose

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pose many things both from all your other counselours, and from your self also.

13. Also where good hospitality hath been used to be kept in houses and places of religion of this realm, and many poore people thereby relieved, the said hospitality and relief is now decayed and not used: and it is commonly reported that the occasion thereof is, because the said lord cardinal hath taken such impositions of the rulers of the said houses, as well for his favour in making of abbots and priors, as for his visitation by his authority legatine. And yet neverthelesse taketh yearly of such religious houses, such yearlie and continual charges, as they be not able to keep hospitalitie as they were used to do: which is a great cause that there be so many vagabonds, beggers, and thieves.

Hospitality in houses of religion decayed.

Impositions.

Yearly charges,

14. Also where the same lord cardinal said before the suppression of such houses as he hath suppressed, that the possessions of them should be set to ferme among your lay subjects after such reasonable yearly rent as they should well thereupon live, and keep good hospitalitie: and now the demesne possession of the same houses since the suppression of them hath been surveyed, met, and measured by the acre, and be now set above the value of the old rent. And also such as were fermors by covent seal, and copieholders be put out and amoved of their fermes, or else compelled to pay new fine contrary to all equitie and conscience.

Suppression of houses.

Reasonable rents.

Above the value,

New fine.

15. Also the said lord cardinal sitting among the lords and other of your most honourable privie counsell, used himself, that if any man would shew his minde, according to his duty, contrary to the opinion of the said cardinal, he would so take him up with his accustomed words, that they were better to hold their peace than to speak, so that he would heare no man speak but one or two great personages, so that he would have all the words himselfe, and consumed much time with a fair tale.

Abused the privie counsell.

All the words himselfe.

16. Also the said lord cardinal by his ambition and pride hath hindred and undone many of your poore subjects for want of dispatchment of matters, for he would no man should meddle but himself, infomuch that it hath been affirmed by many wise men, that ten of the most wisest and most expert men in England were not sufficient in convenient time to order the matters that he would retain to himselfe. And many times he deferred the ending of matters, because that suiters should attend and wait upon him, whereof he had no small pleasure, that his house might be replenished with suiters.

Ambition and pride.

Want of dispatch.
No man to meddle but himselfe.

Suters to attend.

17. Also the said lord cardinal by his authority legatine hath used, if any spirituall man having any riches or substance, deceased, he hath taken their goods as his own, by reason whereof their wills be not performed: and one mean he had to put them in fear, that were made executors, to refuse to meddle.

Taken the goods of spirituall men deceased.

18. Also the said lord cardinal constrained all ordinaries in England yearly to compound with him, or else he will usurp halfe, or the whole of their jurisdiction by prevention, not for good order of the diocesses, but to extort treasure: for there is never a poore archdeacon in England, but that he paid yearly to him a portion of his living.

All ordinaries, &c. to compound with him.

19. Also the said lord cardinal hath not only by his untrue suggestion to the pope shamefully slandered many good religious houses,

Slandered religious houses to the pope.

- By authority of his bull suppressed 30 houses of religion. houses, and good vertuous men dwelling in them, but also suppressed by reason thereof above thirty houses of religion. And where by authority of his bull he should not suppress any house, that had mo men of religion in number above the number of 6 or 7, he hath suppressed divers houses that had above the number. And thereupon hath caused divers offices to be found by verdict untruly, that the religious persons so suppressed had voluntarily forsaken their said houses, which was untrue, and so hath caused open perjury to be committed, to the high displeasure of Almighty God.
- Caused divers offices to be found untruly. Perjury. 20. Also the said lord cardinall hath examined divers and many matters in the chancery after judgement thereof given at the common law, in subversion of your lawes, and made some persons restore againe to the other party condemned that, that they had in execution by vertue of the judgement at the common law.
- Examined matters in chancery after judgements [92] 21. Also the said lord cardinall hath granted many injunctions by writ, and the parties never called thereunto, nor bill put in against them: and by reason thereof, divers of your subjects have been put from their lawfull possession of their lands and tenements. And by such means he hath brought the more party of the suiters of this your realm before himself, whereby he and divers of his servants have gotten much riches, and your subjects suffered great wrongs.
- Injunctions. 22. Also the said lord cardinall to augment his great riches hath caused divers pardons granted by the pope to be suspended, which could not be revived, till that the said lord cardinall were rewarded, and also have a yearly pension of the said pardon.
- His servants rich. 23. Also the said lord cardinall not regarding your lawes nor justice, of his extort power hath put out divers and many fermors of his lands, and also patentees of the arch-bishoprick of York and the bishoprick of Winchester, and of the abbey of St. Albons, which had good and sufficient grant thereof by your lawes.
- The popes pardons. 24. Also the same lord cardinall, at many times when any houses of religion have been void, he hath sent his officers thither, and with crafty perswasions hath induced them to compromit their election in him. And that before he named or confirmed any of them, he and his servants received so much great goods of them, that in manner it hath been to the undoing of the house.
- Oppression. 25. Also by his authority legatine, the same lord cardinall hath visited the most part of the religious houses and colleges of this your realm, and hath taken from them the twenty fifth part of their lively-hood, to the great extortion of your subjects and derogation of your lawes and prerogative, and no law to bear him so to do.
- Elections of abbots, priors, &c. 26. Also when matters have been near at judgement by proces at your common law, the same lord cardinall hath not only given and sent injunctions to the parties, but also sent for your judges, and expressly by threats commanding them to defer the judgement, to the evident subversion of your lawes, if the judges would so have ceased.
- Visited. Extortion. 27. Also whereas neither the bishop of York nor Winchester, nor the abbey of S. Albons, nor the profit of his legation, nor the benefit of the chancery, nor his great pension out of France, nor his wards, and other inordinate taking could not suffice him, he
- Injunctions. Threatned judges. hath
- Pension out of France.

hath made his sonne *Winter* to spend seven and twenty hundred pounds by the year, which he taketh to his own use, and giveth him not past two hundred pounds yearly to live upon.

His son Winter.

28. Also where the said lord cardinall did first sue unto your grace to have your assent to be legat *de latera*, he promised and solemnly protested before your majestie, and before the lords both spirituall and temporall, that he would nothing do nor attempt by the vertue of his legacie, that should be contrary to your gracious prerogative or regalitie, or to the damage or prejudice of the jurisdiction of any ordinary, and that by his legacie no man should be hurted nor offended: and upon that condition, and no other, he was admitted by your grace to be legat within this your realm: which condition he hath broken, as is well known to all your subjects. And when that he made this promise, he was busie in his suit at Rome to visit all the clergy of England both exempt and not exempt.

Legat *De latera*.
His promise.
Nothing against prerogative or regality.
Or to the prejudice of ordinary jurisdiction.

Breach of promise.

29. Also upon the suit of the said lord cardinall at Rome to have his authority legatine, he made untrue surmise to the popes holiness against the clergie of your realm: which was, that the regular perions of the said clergie had given themselves *in reprobum sensum*; which words S. Paul writing to the Romans applyed to abominable sinne: which slander to your church of England shall for ever remain in the register at Rome, against the clergy of this your realm.

Untrue surmise to the pope of the clergy.

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Oppression and extortion.

30. Also the said lord cardinall had the more part of the goods of doctor Smith late bishop of Lincoln, bishop Savage of York, master Dalbye archdeacon of Richmond, master Tonyers, doctor Rothall late bishop of Durham, and of doctor Foxe late bishop of Winchester, contrary to their wils, and your laws and justice.

Extortion of ordinaries.
Indictments of extortion of ord. removed into the chancery.

31. Also at the oier and terminer at York, proclamation was made that every man should put in their bills for extortion of ordinaries, and when divers bills were put in against the officers of the said lord cardinall of extortion, for taking twelve pence of the pound for probatation of testaments, whereof divers bills were found before justice Fitzherbert and other commissioners, the said lord cardinall removed the said indictments into the chancery by *ce-tiorari*, and rebuked the said Fitzherbert for the same cause.

Made debate between the nobles of the realm.

32. Also the said lord cardinall hath busied and endeavored himself by crafty and untrue tales to make dissention and debate amongst your nobles of your realm, which is ready to be proved.

Purveyance for him.
Purveyance at the kings price, Vid. inf. 35, 36.

33. Also the said lord cardinals officers have divers times compelled your subjects to serve him with carts for carriage, and also his servants have taken both corn and cattle, fish, and all other victuall, at your graces price, or under, as though it had been for your grace, which is contrary to your laws.

Keeping great estate in court.

34. Also the said lord cardinall hath misused himself in your most honourable court, in keeping of as great estate there in your absence, as your grace would have done if you had been there present in your own person.

Purveyance. Prerogative in purveyance.

35. Also his servants by vertue of your commission under your broad seal by him to them given, have taken cattel and all other victuall at as low a price as your purveyors have done for your grace by your prerogative, against the laws of your realm.

Purveyance.

36. Also where it hath been accustomed that your purveyors for your

your honourable household, have had yearly out of your town and liberty of S. Albons three or four hundred quarters of wheat, truth it is, that since the lord cardinal had the room of the abbot, that your said purveyors could not be suffered by him and his officers to take any wheat within the said town or liberty.

Injunction not to sue for pardon for causes in the star-chamber.

A great presumption.

Oppression.

Legh of Adlington.

The card. kept Larkes daughter and had by her two children.

Clerk of the market.

Prices of victuals.

Pulled down the prices, &c.

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The cardinals hat in the kings coin of groats, &c.

37. Also he hath divers times given injunctions to your servants that have been for causes before him in the star-chamber, that they, nor other for them should make, labour by any manner way, directly or indirectly, to your grace to obtain your graces favour or pardon; which was a presumptuous intent for any subject.

38. Also the said lord cardinal did call before him Sir John Stanly knight, which had taken a farm by covent seal of the abbot and covent of Chester, and afterward by his power and might contrary to right committed the said Sir John Stanly to the prison of Fleet by the space of a year unto such time as he compelled the said Sir John to release his covent seal to one Leghe of Adlington, which married one Larks daughter, which woman the said lord cardinal kept, and had with her two children. Whereupon the said Sir John Stanly upon displeasure taken in his heart made himself monke in Westminster, and there died.

39. Also on a time your grace being at S. Albons according to the ancient custome used within your verge, your clerk of the market doing his office, did present unto your officers of your most honourable household the prices of all manner of victuals within the precinct of the verge. And it was commanded by your said officers to set up the said prices both on the gates of your honourable household, and also within the market place within the town of S. Albons as of ancient custome hath been used. And the lord cardinal hearing the same, presumptuously, not like a subject caused the aforesaid prices which were sealed with your graces seal, accustomedly used for the same, to be taken off and pulled down in the said market place, where they were set up: and in the same places set up his owne prices sealed with his seale, and would if it had not been letted in semblable manner, used your seal standing upon your gates. And also would of his presumptuous mind have openly set in the stocks within your said town your clerk of your market. By which presumption and usurpation your grace may perceive that in his heart he hath reputed himself to be equal with your reall majesty.

40. Also the said lord cardinal of his further pompous and presumptuous mind hath enterprised to join and imprint the cardinals hat under your arms in your coin of groats made at your city of York, which like deed hath not been seen to be done by any subject within your realm before this time.

41. Also where one Sir Edward Jones clerk parson of Crowley in the county of Buck' in the eighteenth yeer of your most noble reign let his said parsonage with all tithes and other profits of the same to one William Johnson by indenture for certain years, within which years, the dean of the said cardinals colledge in Oxenford pretended title to a certain portion of tithes within the said parsonage, supposing the said portion to belong to the parsonage of Chichelly, which was appointed to the priory of Tykeford lately suppressed, where (of truth) the parsons of Crowley have been peaceably

peaceably possessed of the said portion out of the time of mind. Whereupon a *subpoena* was directed to the said Johnson to appear afore the lord cardinall at Hampton-court, out of any term, with an injunction to suffer the said dean to occupy the said portion. Whereupon the said Johnson appeared before the said lord cardinall at Hampton-court, where without any bill, the said lord cardinall committed him to the Fleet, where he remained by the space of twelve weeks, because he would not depart with the said portion. And at the last upon a recognisance made that he should appear before the said lord cardinall whensoever he was commanded, he was delivered out of the Fleet; howbeit as yet the said portion is so kept from him that he dare not deal with it.

Subpoena.

42. Also where one Martin Decowra had a lease of the mannor of Balsall in the county of Warwick for term of certain years, an injunction came to him out of the chancery by writ upon pain of a thousand pounds, that he should avoide the possession of the same mannor, and suffer Sir George Throckmorton knight to take the profits of the same mannor to the time the matter depending in the chancery between the lord of S. Johns and the said Decowra were discussed. And yet the said Decowra never made answer in the chancery, ne ever was called into the chancery for that matter, and now of late he hath received a like injunction upon pain of two thousand pounds contrary to the course of the common law.

Injunction.

43. Also whereas in the parliament chamber, and in open parliament communication and devises were had and moved, wherein mention was an incident made of matters touching heresies, and erroneous sects, it was spoken and reported by one bishop there being present, and confirmed by a good number of the same bishops, in presence of all the lords spirituall and temporall then assembled, that two of the said bishops were minded and desired to repair unto the university of Cambridge for examination, reformation, and correction of such errors as then seemed and were reported to reign amongst the students and scholars of the same, as well touching the Lutherane sect and opinions, as otherwise. The lord cardinall informed of the good minds and intents of the said two bishops in that behalf, expressly inhibited and commanded them in no wise so to doe. By means whereof, the same errors, as they affirmed, crept more abroad and took greater place; saying furthermore that it was not in their defaults, that the said heresies were not punished, but in the said lord cardinall, and that it was no reason any blame or lack should be arrected to them for his offence: whereby it evidently appeareth that the said lord cardinall besides all other his hainous offences, hath been the impeacher and disturber of due and direct correction of heresies, being highly to the danger and perill of the whole body, and good christian people of this your realm.

Heresies and erroneous sects.

44. Finally, forasmuch as by the aforesaid articles is evidently declared to your most royall majesty, that the lord cardinall by his outrageous pride hath greatly shadowed a long season your graces honor, which is most highly to be regarded, and by his insatiable avarice and ravinous appetite to have riches and treasure without measure, hath so grievously oppressed your poor subjects with so manifold crafts of bribery and extortion, that the common-wealth of this your graces realm is thereby greatly decayed and impover-

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rished. And also by his cruelty, iniquity, affection, and partiality, hath subverted the due course and order of your graces laws to the undoing of a great number of your loving people.

Please it your most royall majesty therefore of your excellent goodnesse towards the weal of this your realm and subjects of the same, to set such order and direction upon the said lord cardinall, as may be to the terrible example of other to beware so to offend your grace, and your laws hereafter. And that he be so provided for that he never have any power, jurisdiction or authority hereafter to trouble, vex, and impoverish the common-wealth of this your realm, as he hath done heretofore, to the great hurt and dammage of every man almost high and low, which for your grace so doing, will daily pray, as their duty is, to almighty God for the prosperous estate of your most royall majesty, long to endure in honor and good health, to the pleasure of God, and your hearts most desire. Subscribed the first day of December the 21 year of the reign of our sovereign lord king Henry the 8.

T. More. T. Norffolk. Charl. Suff. Tho. Dorset. H. Exon. John Oxinford. H. Northumberland. G. Shrewsbury. R. Fitzwater. T. Rocheford. T. Darcy. W. Mountjoy. William Sandys. William Fitzwilliam. Henry Guldeford. * John Fitz James.

* Anthony Fitz Herbert.

So these articles began to be subscribed by Sir Thomas More lord chancellor, and ended with the two judges of the law.

There be in this court many officers, ministers, and clerks of the court, the principall whereof is the * master of the rols, anciently called *garden des rolles*, *clericus rotulorum*, *custos rotulorum*. And this is an ancient office, and grantable either for life, or at will, at the pleasure of the king. ^b The house annexed to his office, is called *domus conversorum*, so called because ^c king H. 3. founded this house to be a house of Jews as should be converted to the true religion of Jesus Christ, and there should have maintenance and allowance, which continueth to this day. King E. 3. anno 15 of his reign, by letters patents annexed this house to the office of *custos rotulorum*, and this office is grantable by letters patents: for the more assurance whereof, and of divers things worthy of observation, we have thought good to set down an act of parliament concerning this matter in these words.

* King E. 3. by his charter anno 51 of his reign did grant after the death of William Burfall then keeper of the rols and of the same house of converts of the kings grant to the keeper of the rols for the time being, and annexed it to the said office *imperpetuum*, and further granted that after the decease of the said William, the chancellor or keeper of the great seal after the voidance of the said office of keeping of the rols to institute successively the keepers of the rols, *in dicta domo conversorum, et custodes illas ponent in possessione ejusdem, &c.* This charter was confirmed by act of parliament, as by that which followeth appeareth.

* *A nostre tresdoute H. le roy et son honorable conseil en cest parliament supplie son petit clerke William de Burfall gardeiner des rolles de la cancellarie, et gardeiner de la maison des converses de Londres quele est de vostre honorable patronage que come le dit William a ses tresgrandes custages et reparille la chappelle de les edifices du dit maison, et nostre seigneur le roy darcine (que dieu assoil) par maintenanc de la dit chappelle*

• Chief justice of England.

• Sir Anth.

Fitzh. a justice of the court of common pleas.

^a He was not called master of the rols, untill 11 H. 7. ca. 20. but never so called in any letters patents of this office.

^b Fortesc. ca. 24.

^c See the charter

of erection by king H. 3.

Holling. 1287.

Vid. Rot. pari.

18 E. 1. nu.

There were

above fourscore

converts in

18 E. 1. and

petitioned in

parliament for

more relief.

^c Rot. pat. 11 Ap.

51 E. 3. which

you may read at

large in Hol-

lingh.

pa. 1281. 1282.

^d Ex bundello

petic. parl. anno

1 R. 2.

Garden des rolles

de la chancery et

de la maison des

converses de Lon-

dres.

Nota the master

of the rols or

keeper is garden

of the house of

converts of the

patronage or gift

of the king.

et meason a la prier du dit William grantia par luy et ses heires per ses letters patens que le dit meason de conversee apres le decease du dit William demerera a tous jours as gardein' de dits rolles par le temps esteants ranque come ils seront en le dit office sans certain forme comprise en letters susdites, please a nostre dit seignior le roy et seigniors deu parliament confirmer la dit grant et les letters patens issint ent faitz, et les choses comprises en yecls en ouier de charitie. Whereunto full assent was given by authority of parliament.

After which act of parliament John de Waltham gardein or keeper of the rols obtained of R. 2. in the sixth year of his reign letters patens, whereby the king granted to him et successoribus suis custodibus rotulorum the said house of converts; and the reason hereof seemeth to be, for that in the said charter of 51 E. 3. sibi et successoribus suis wanted. This John of Waltham was in 12 R. 2. bishop of Salisbury, and after treasurer of England. Hereby it appeareth what estate the master of the rols hath in domo conversorum. And this house is the place where the rols of the chancery are kept, and are so called because they are written in parchment, and made up in bundels of rols, that is to say, of charters, letters patents, commissions, deeds enrolled, recognifances, &c.

Rot. pat. 6 R. 2.

These records since the beginning of H. 7. remain in the rols, and all before were transmitted into the Tower, and there remain.

Also for further manifestation hereof, we have thought good to set down a letters patens of this office in the 25 year of H. 6. and the rather for that it was granted *authoritate parlamenti*, in these words, *Henricus Dei gratia rex Angliæ, et Franciæ, et dominus Hiberniæ, omnibus ad quos præsentis lre. pervenerint. Sciatis quod cum nos tertio decimo die Novembris, anno regni nostri decimo septimo constituimus dilectum clericum nostrum Johannem Stopenden custodem rotulorum et librorum cancellariæ nostræ cum omnibus ad officium illud spectantibus, percipiend' in eodem officio feoda, commoditates, et proficua consuetu, quamdiu nobis placuerit. Et ulterius dederimus, et concesserimus eidem Johanni custodiam domus nostræ conversorum præfato officio pro inhabitatione dicti custodis per progenitores nostros quondam reges Angliæ ab antiquo depositæ, et annexæ: habendum et tenendum custodiam illam cum omnibus juribus et pertinentiis spectantibus ad eandem, prout in lris. nostris patentibus inde confectis plenius continetur. Nos bonum et gratuitum servicium quod dilectus clericus noster Thomas Kirkby nobis ante hæc tempora multipliciter impendit, indiesque impendere non desistit merite contemplantes, ac de fidelitate, circumspectione et industria ipsius Thomæ plenius confidentes, constituimus ipsum Thomam custodem rotulorum et librorum cancellariæ nostræ cum omnibus ad officium illud spectantibus, percipiendo in eodem officio feoda, commoditates, et proficua consuetu à tempore quo officium illud per cessionem seu alio modo quocunque proximo vacare contigerit, quamdiu nobis placuerit. Et ulterius dedimus et concessimus, ac p. præsentis damus et concedimus eidem Thomæ custodiam dictæ domus nræ. conversorum præfato officio pro inhabitatione ejusdem custodis per dictos progenitores nros. ab antiquo (ut præmittitur) dispositæ et annexæ. Habend' et tenend' eidem Thomæ custodiam illam cum omnibus juribus et pertinentiis spectantibus ad eandem quamdiu ipsum Thomam dictum officium custodis rotulorum et librorum prædictorum habere et tenere sive occupare contigerit. Et quod expressa mentio de vero valore annuo officii prædicti et cæterorum præmissorum seu alicujus eorum, aut de aliis donis seu concessionibus per nos præfato Thomæ ante hæc tempora factis in præsentibus facta non existit,*

Clericus noster
custos rotulorum
et librorum can-
cellar' nostræ
cum omnibus ad
officium illud
spect'. Custodia
domus nostræ
conversorum.

Custos rotu-
lorum, &c.

existit, aut aliquibus actibus sive ordinationibus in contrarium editis sive ordinatis, aut aliqua alia causa, re, seu materia in aliquo non obstantibus. In cujus rei testimonium has lras. nras. fieri fecimus patentes. Teste meipso apud Maidston vicefimo nono die Martii, anno regni nri. vicefimo quinto. Autoritate parliamenti.

[97]

* Belonging anciently to his office.
See the statute of 14 H. 8. cap. 8.

Of latter times in the grant of this office he is stiled *clericus* * *parvæ bagæ, custos rotulorum, et domus conversorum.*

The master of the rols hath *in jure officii*, the gift of the offices of six clerks in the chancery.

In the absence of the lord chancellor he heareth causes and giveth orders.

See in the third part of the Institutes, cap. Præmunire.

C A P. IX.

The Court of Requests.

HAVING spoken of the court of chancery, swayed and governed by the lord chancelour, or keeper of the great seale: it shall be fit in this place to treat of the jurisdiction of the court of requests, wherein the lord privie seale at his pleasure, and the masters of requests doe assemble and sit. And the originall institution hereof was, that such petitions as were exhibited to the king, and delivered to the masters of the requests, should be perused by them, and the party directed by them to take his remedy according to their case, either at the common law, or in the court of chancery. And thereupon they were called *magistri à libellis supplicium*: and in this respect this meeting and consultation was called the court of requests, as the court of audience and faculties are called courts, albeit they hold no plea of controverfie.

See hereafter the Courts of Audience and Faculties. pa.

Cassaneus 7 part. fo. 136. b.

Those which in former times would have this court to be a court of judicature, took their aime from a court in France, which is called *curia eorum quos requestarum, i. supplicationum palatii magistrorum vocant, apud quos causa eorum tantum agitur, qui regis obsequiis deputati, vel privilegio donati sunt: hujus curiæ judices octo sunt.* But others taking this jurisdiction to be too narrow, contend to have it extend to all causes in equitie equall with the chancery, and their decrees to be absolute and uncontrollable. But neither of these are warranted by law, as shall evidently appear.

See before cap. Chancery. Perrots case, pag. 87. See the articles against cardinal Woolfy, p. 89. See Hals Chronicle ubi supra. and Guines learned preface to his reading in

In the reign of H. 8. the masters of requests thought (as they intended) to strengthen their jurisdiction by commission, to hear and determine causes in equity. But those commissions being not warranted by law (for no court of equity can be raised by commission) soon vanished, for that it had neither act of parliament, nor prescription time out of minde of man to establish it.

* Mich. 40 & 41 Eliz. In the court of common pleas, upon

the Inner Temple, about 16 El. * Tr. 40 El. in communi banco inter Stepney et Lloyd. Rot. 1157. See Hals Chron. 8 H. 8. fo. 59. agreeth with the law.

a bill

a bill exhibited in the court of requests against Flood, for default of answer an attachment was awarded against Flood under the privie seale, to Stepney then sheriffe of Carnarven, who by force of the said writ attached Flood, and would not let him go, untill he had entred into an obligation to the sheriffe to appear before his majesties counsell, in the court of requests: upon which obligation the sheriffe brought an action of debt for default of appearance, and all this matter appeared in pleading. And it was adjudged upon solemne argument, that this which was called a court of requests, or the white hall, was no court that had power of judicature, but all the proceedings thereupon were *coram non judice*, and the arrest of Flood was false imprisonment, so as he might avoid the bond by dures at the common law, without aide of the statute of 23 H. 6. ca. 10.

The punishment of perjury in the court of Whitehall by the statutes of 33 H. 8. cap. 9. and 5 Eliz. cap. 9. doth not give it any jurisdiction of judicature, no more than the statutes that give against a gaoler an action for an escape, or punisheth a gaoler of his owne wrong for extortion, an officer of his own wrong shall be punished by the statutes in that case provided, and yet the statutes thereby make them no lawfull officers: for it is one thing to punish, and another to give authority. So it was justice in the parliaments to punish perjury in the Whitehall, although the court were holden by usurpation, and so before it appeareth to be by the judgement in Stepneys case. See Beverlyes case, lib. 4. 123, 124. and the case of the orphans of London, lib. 5. fo. 73. where it is called the court of requests, taking the same to be according to the originall institution. And as gold or silver may as currant money passe even with the proper artificer, though it hath too much allay, untill he hath tried it with the touchstone: even so this nominative court may passe with the learned as justifiable in respect of the outside by vulgar allowance, untill he advisedly looketh into the roots of it, and try it by the rule of law: as (to say the truth) I my self did: but *errores ad sua principia referte, est refellere*, to bring errors to their first, is to see their last.

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The author of the book of diversity of courts written in 21 H. 8. doth not so much as mention any such court: nor the Doctor and Student who wrote in 23 H. 8. treating of matters of equity never mentioneth any such court: nor in any of the reports of H. 8. or of any other before him, we finde any mention made of any such court. Herein, as in all other things, we have dealt clearly and plainly, upon what authorities and reasons we have grounded our opinion: and when we undertook to write, we resolved to publish nothing *reluctante conscientia*, which we (by Gods speciall grace) have performed, without any spark of contradiction, or respect of any private whatsoever: that charge ever sounding in mine care, that is given to all that take upon them to write, *Ne quid falsum audeant, ne quid verum non audeant*. And although the law be such as we have set down; yet in respect of the continuance that it hath had by permission, and of the number of decrees therein had, it were worthy of the wisdom of a parliament, both for the establishment of things for the time past, and for some certaine provision with reasonable limitations (if so it shall be thought convenient

Error, qui non resistitur, approbatur.

Regula.

nient to that high court) for the time to come : *et sic liberavi animam meam.*

[99]

C A P. X.

The Court of Common Pleas.

Mag. Cart.
ca. 11.

Bracton lib. 3.
fo. 105. b.

• Ut sup.
fo. 108. a.

Britton fo. 2.
Vide Plea lib. 2.
cap. 2. & lib. 1.
cap. 54.

See the second
part of the Inti-
tutes Mag. Cart.
cap. 11.
Vid. 17 E. 3. 50.
Quare incumbravit, and in the
chapter of the
kings bench
here before.
• Vid. sup.
p. 79.

BY the statute of Magna Carta, cap. 11. it is provided, *Quiddam communia placita non sequantur curiam nostram, sed teneantur loco certo. Habet rex etiam curiam, et justiciarios in banco residentes, qui cognoscunt de omnibus placitis, de quibus auctoritatem habent cognoscendi, et sine warranto jurisdictionem non habent nec coercionem. Et paulo post. Sunt etiam alii justiciarii * perpetui, certo loco residentes, sicut in banco, loquelas omnes de quibus habent warrantum terminantes, qui omnes jurisdictionem habere incipiunt prefesto sacramento.*

Oustre ceo voilons q. justices demorgent continualment a Westminster, ou ailleurs la, ou nous voudrons ordeiner, a pleader comunes pleas solong; ceo que nous les manderons per nous breifes; issint que des parols deduces devant eux per nous breifes eyent record.

Out of these, three things are to be observed; first what shall be said *communia placita*. They are not called *communia placita* in respect of the persons, but in respect of the quality of the pleas. Regularly pleas are divided into pleas of the crown, and into common or civil pleas. Pleas of the crown are treason and felony, and imprisonment of treason and felony, &c. This court is the lock and the key of the common law in common pleas, for herein are real actions, whereupon fines and recoveries (the common assurances of the realm) do passe, and all other real actions by original writs are to be determined, and also of all common pleas mixt or personal: in divers of which, as it appeareth before in the chapter of the Kings Bench, this court and the kings bench have a concurrent authority.

• Robert Parning the kings serjeant at law 24 July 14 E. 3. was created chief justice of England, in which office he remained until the 15 of December following, and then he was made lord treasurer of England; in which office he continued until the 15 year of E. 3. when he was made lord chancelour of England: and while he was lord chancelour, he would come and sit in this court being the lock and key of the common law, as is aforesaid: and there debate matters in law of greatest difficulty, as it appeareth in the report of the year of 17 E. 3. fo. 11. 14. 23. 37. &c. knowing assuredly, that he that knowes not the common law, can never rightly judge of matters in equity: whereof at that time very few matters were depending before him in chancery.

2. These words of Bracton, [*sine warranto jurisdictionem non habent,*] are well expounded by Britton, that that warrant is by the kings writs, *solong; ceo que nous les manderons per nous breifes*. So as regularly this court cannot hold any common plea in any action, real, personal, or mixt, but by writ out of the chancery, and returnable into this court.

3. That

3. That in certain cases this court may hold plea by bill without any writ in the chancery, as for or against any officer, minister, or privileged person of this court.

Also this court without any writ may upon a suggestion grant prohibitions to keep, as well temporall as ecclesiasticall courts, within their bounds and jurisdiction, without any originall or plea depending: for the common law which in those cases is a prohibition of it self stands in stead of an originall, whereof there be infinite presidents in this court. And Sir Thomas Egerton lord chancelour Mich. 7 Jac. regis called Fleming chief justice and all the judges of the kings bench, and Tanfeild chief baron, and the rest of the barons of the exchequer, of whom the chancelour demanded whether the court of common pleas had authority to grant any prohibition without writ of attachment or plea depending: who upon mature deliberation unanimously resolved, that this court might grant prohibitions upon suggestions without any writ of attachment or plea depending for the reason aforesaid, and according to a multitude of presidents. The justices of the common pleas were not called, because they had often resolved the point before. So as now this point concerning the jurisdiction of this court for granting of prohibitions upon suggestions, where there is neither writ of attachment, nor plea depending, is in peace, being resolved by the justices of the bench and of the common pleas, and by the barons of the exchequer.

4. This court upon an adjournment upon a forein voucher may hold plea likewise upon other foreign pleas, and upon generall bastardy, *Né unques accouple in loiall matrimony, &c.* for none but the kings courts, and no inferiour court shall write to the bishop. So likewise upon ancient demesne pleaded, &c.

The chiefe justice of the common pleas is created by letters patents. *Rex, &c. Sciatis quod constituimus dilectum et fidelem E. C. militem, capitalem justiciarium de communi banco. Habendum quamdiu nobis placuerit, cum vadiis et feodis ab antiquo debitis et consuetis. In cujus rei testimonium has literas nostras fieri fecimus potentes. Teste, &c.*

And each of the justices of this court hath letters patents. *Sciatis quod constituimus dilectum et fidelem P. W. militem unum justiciariorum nostrorum de communi banco, &c.* But none can be constituted judge of this court unlesse he be serjeant at law of the degree of the coife, and yet in the letters patents to them made, they are not named serjeants.

The jurisdiction of this court is generall, and extendeth throughout all England.

For the antiquity of this court see before in the chapter of the kings bench adjoining thereunto, 6 E. 3. where a fine was levied in this court 6 R. 1. and in 39 E. 3. a plea in this court in 1 H. 3. And that I may speak once for all the justices of the kings bench, or of this court of the common bench, that they observe the ancient rule of law, *Nemo duobus utatur officiis*, for none of them can take any other office, or any fee, or reward but of the king only. And it were behoovefull to the common-wealth and advancement of justice and right, and preferment of well deserving men, if the like course were holden concerning all offices, as well ecclesiasticall as temporall and civill: and that no man following the example of the

8 R. 2. Attachment for prohibition ultimo.
9 H. 6. 61.
10 E. 2. action for lestat. 34.
[100]

See the second part of the Institutes all these points.

So called the common bench in respect of the common pleas there holden.

See the second part of the Institutes, Mag. Cart. cap. 12.
6 E. 3. 52.
39 E. 3. 24.
18 E. 3. stat. 3.

reverend judges should enjoy two offices. For severall offices were never instituted to be used by one man.

Term. Trin.
anno 19 E. 1. in
communi Banco,
ro. 146. Rotel.
in l'hesaur.

The jurisdiction of this court for punishment of their officers and ministers. *Petrus de Luffenham indictatus quod ipse in curia hic à die Sancti Hillarii in 15 dies anno regni regis nunc 19, falso et maliciose delevit adjornationem ejusdem essoin ad diem illum intrati de com' Rotel. pro Roberto Attehale de South-Luffenham petente et Radulph. de Kirkeby tenent' de placito terre, &c. Et questus qualiter se velit inde acquietare, dicit quod in nullo est inde culpabilis, et de hoc ponit se super juram' de sociis in cur' hic. Et qui jurati dicunt super sacramentum suum, quod prædictus Radulphus prædictis die et anno fuit in cur' hic, et dixit prædicto Petro quod prædictum essoinum fuit adjornat' et prædictus Petrus intravit infra bancum et rotulos de essoin', et cum perpendisset quod le aff. fuit appositum molivit ipse pollicem suum et inde frotavit super le aff. quousq' illud fere omnino delevit ut sic faceret prædictum Robertum amisisse breve suum, &c. Ideo considerat' est quod prædictus Petrus committitur gaolæ de Fleete custodiend' per unum annum et unum diem pro falsitate et deceptione prædictis, et tunc redimendus pro voluntate domini regis, &c. Et sciend' quod liberatus fuit gaolæ die Mercurii prox' ante festum Sanctæ Margaretæ virginis hoc anno, &c. Postea die Veneris prox' ante festum Sanctæ Margaretæ virginis anno 20 deliberatus est prædictus Petrus, et inhibitum est ei, quod nihil habet nisi vestes pendentes in dorso, admittitur ad dimid' marc. per 20 li. Wil. de Okeham, ista tamen quod si quid plus sufficit, &c. Justic' reservant eis potestatem, &c.*

[101]

Mch. 19 E. 1. in
banco rot. 191.
Northampton.

*Et quia prædictus Johannes de Vpton in cur' hic recognovit quod hoc anno in æstate concessit quod prædictam defaltam emitteret, et pro illa concessione recepit 20s. in autumpno, et postea ad prædictam tertiam septimanam Sancti Michaelis idem Johannes remisit prædictam defaltam, per quam prædictus Willielmus recuperasse potuit prædictum ten' in fraudem et deceptionem prædicti Willielmi; ideo ipse pro falsitate prædicta committitur gaolæ de Fleet commoraturus per annum et diem, &c. per formam * statuti, &c. Postea post annum et diem, &c. prædictus Johannes venit et deliberatus est secundum statutum, &c. et inhibitum est ei, &c. et finioit pro una marca.*

Eodem rot. nu.
210. London.

Bene examinatur fraus de brevi in jur' per vic' return' termin' Trin' et per quendam alium panellum ejusdem mutatum et contrefectum, unde contrefactor per jur' eji culpabilis, et adjudicatur gaolæ de Fleete per annum et diem. Et quia scriptor ejusdem brevis licet de falsitate et malitia non fuit particeps, nec aliquid mali fecisse putavit, &c. Custoditur, &c. et fixem fecit per unam marcam.

Hil. 20 E. 1. in
banco rot. 109.
Northampton.

Et quia Rogerus de Langeport attorney est malæ famæ, et defatigavit cur': ideo committitur gaolæ, &c. Et questus rotulis de indictamentis attorneyum, &c. compertum est quod idem Rogerus indictatus fuit, quod ipse fuit conversans in cancell' et socius Adæ de Pontefractio, qui falsavit sigillum domini regis, et falsa brevicia composuit, &c. Et questus qualiter se velit acquietare, dicit quod clericus est, et non potest in curia hic domino regi inde respondere. Et quia nullus ordinarius ipsum petit, &c. nec ipse Rogerus aliter se velit inde acquietare, ideo ipse committitur gaolæ quousque, &c. Et mittitur ad turrim London, &c.

The officers of this court are many, viz. Custos brevium, tres prothonotarii, three prothonotaries; clericus warrantorum, clerk of the warrants; clericus argenti regis, clerke of the kings silver; quatuor exigendarii, exigenters; quatuordecem salazararii, filazers; clericus juratorum,

ratorum, clerk of the juries; clericus effoniorum, clerk of the es-
soignes: clericus utlagariorum, clerke of the outlawries: this be-
longs to the office of the attorney generall, who exerciseth it by de-
puty.

In former times great abuses have been by attornies of this
court, by suing out a judiccial proces without any originall: which
when it hath been found out, it hath beene severely punished;
for many inconveniences thereupon doe follow. For example, in
20 H. 6. an attorney of the common place had made a *capias* di-
rected to the sberiffe of York, whereof there was no originall; at
which day of the retorne an attachment was awarded by the court
against the attorney to answer the deceit, whereupon he was taken
and examined, and confessed it, and thereupon by the court he was
committed to the Fleet, imprisoned for a moneth, and that his
name should be drawn out of the roll of attornies, and never
should be attorney either in this court or any other, and thereunto
he was sworne. Note the severity of this judgement doth shew the
heynousnesse of the offence.

An attorney sued out an *habere facias seisinam* against one, by
force whereof the true tenant was put out of his freehold, where
in truth there was no record of any recovery: the party grieved
brought an action of deceit against the attorney, and recovered da-
mages, and the attorney imprisoned.

*Memorandum quod magister Johannes Lovell qui fuit custos rotulorum
et brevium domini regis de banco per manus suas proprias liberavit Jo-
hanni Bacon clerico de mandato domini regis in hæc verba. Edwardus,
&c. Dilecto clerico suo Johanni Lovell salutem. Cum commiserimus
dilecto clerico nostro Johanni Bacon custod' rotulorum et brevium nostror-
um de banco; habendum quam diu nobis placuerit: vobis mandamus
quod eidem Johanni rotulos et brevia prædicta quæ sunt in custodia vestra
ex commissione nostra per chirographum inde inter vos et ipsum consiciend'
sine dilatione liberetis custod' in forma prædicta. T. me ipso apud Ste-
benheth 17 Aprilis anno regni nostri 20.*

*Super quo prædictus Johannes liberavit dicto Johanni Bacon rotulos
et brevia de termino Sancti Michaelis anno 17, usque hunc terminum, et
similiter rotulos de esson'. Et scripta dedita et suspecta cum talleis de-
dicti, una cum' comptis dedita, ac etiam 160 nos' finium, duas ligulas
de recordis sine die, et 14 certificat' episcoporum.*

20 H. 6. 37. 2.
W. 1. cap. 29.

[102]

17 E. 3. 51, 52.
Nota, he may be
punished for the
crime, and the
party grieved
may have his
action.

Pasch. 20 E. 1. in
banco, rot. post.
135.

C A P. XI.

[103]

The Court of Exchequer.

THE authority of this court is of originall jurisdiction without
any commission. Of this court Britton speaking in the kings
person saith. ^a *Volons nous que a nous eschekers a Westm' et ai-
lors eyent nous* ^b *treasurers, et nous* ^c *barons illonques jurisdiction et re-
cord de choses que touchent leur office a oier et determiner tous les causes
que touchent nous debts, et auxi a nous fees, et les incident choses, sans
les queux tiels choses ne purront estre tries, et que ilz eyent pouer a co-
nuster*

^a Britton fo. 2. b.
^b Nota treasurers
in the plurall
number.

^c Of ancient |
time they were
barons and peers
of the realm, lib.
nigro. scaecar'
pâte 1. ca. 4.
See the 14 chap.
of Mag. Cart.
and the exposi-
tion of the same.

mustier de dettes que lon doit a nous dettors per ou nous puissions plus tost aprocher a nre. dett.

• Et fo. 29. b.

• *En droit des purprestures veillons nous que le noiffances soient oustes aux costages des purprestours, et les sufferables soient prise in nostre maine a la value per an soit inrolle, et solomque le discretions des tressors et des barons de nous eschequers soient arenes a ses farm a eux que plus voilent doner.*

• Et fo. 38. b.

• *Et soit auxi enquis de nos customes de quirs et de leyms qui les oant coilles, et combien les coillours onni bien suffert de passer de sachés de leyms faucus payer custome, et combien eit valu la custome chesteun an en chesteun manniere de custome a nous appartenant et ceux articles soient termines a nostre eschequer selonc la discretion de nos barons.*

See the Custom of Normandy, cap. 5. & 6. touching the exchequer there, both of another jurisdiction, and of other judges, and officers, then our court of exchequer is.

Mirror ca. 7.
§. 14. De la place del Eschequer.

Leschequer est un place quarre que solement est ordeine par le prou le roy ou deux chivaliers. 2 Clerks, ou 2 homes, lres. sont assignes par oier et terminer les torts faits al roy et a sa corone en droit de ces fies et ces franchises, et les accounts des bayliffs, et des receivers de deniers le roy et des administrators de ces biens per la vieue de une souverain que est tressorer de Anglitterre. Les deux chivaliers soloient estre appeles deux barons par afferer les amerciements de counties, et des barons et des tenants counties et baronies cy que nul ne fuit afferre forsque per ces piers.

A celle place estoit assigne un seale ove garden par faire ent acquittance de chesteun peyment que avoir le voloit, et de sealer les bres. et les estrets south core verte issant de celle place par le prou le roy. En celle place sont auxi chamberleines et plusors auters ministers que ne touch my molt a la ley.

Et ca. 1. § 3.

• This was in respect of the tenure, for all earldomes and baronies were holden in capite.
20 E. 3. ass. 120.
26 ass. 37.

*Ordeine fuit leschequer in manner come ensuist, et les paines peoniels de countees et barons en certein, et auxi de tenants, counties et * baronies dismemlies et que ceux amerciements fussent afferred per les barons del eschequer, et que lein envoast les estrets de lour amerciements al eschequer ou que ilz fussent amercies en la court le roy.*

† Artic. sup. Cart. cap. 4.
28 E. 1. Stat. de Roteland.
10 E. 1. reg. 187.
‡ Fleta li. 2. ca. 2.
§ Ockam.

† *Onstet ceo nul common plea ne soit deformes tenus en leschequer encounter la forme de la grand charter.*

‡ *Fleta (for Bracton treateth not of this court) saith. Habet et rex curiam suam et justiciarios suos residentes ad scaccarium. And this is all I finde in him.*

This court is divided into two parts, viz. judiciall accounts, called *scaccarium computorum*, and into the receipt of the exchequer.

[104]

§ *Una origo utriusque scaccarii, superioris scilicet, et inferioris, sed quicquid in superiori computatur, in inferiori servitur.*

Before we observe any thing out of these ancient authors and acts of parliament, it shall be necessary to set down the great officers, the judges, and other officers and ministers of this court, as they be at this day.

Fiscus in one sense is taken for the exchequer, properly it is *sporta* a hamper, wherein the confiscations, seffements, and other moneys of the king were carried into the treasury.

The officers of this court.
Rot. par. 13 R. 2. nu. 6. & 7.

1. *Dominus thesaurarius Angliæ*: which office he hath at this day by the delivery of a white staffe, at the kings will and pleasure. In former times he had this great office by delivery of the keys (golden keys) of the treasury: when treasure failed, the white staffe

staffe served to rest him upon it, or to drive away importunate suiters.

2. *Theſaurarius ſcaccarii*, anciently called *arcarius ab arca*, and this office he hath by letters patents. For both these offices he hath 365. l. fees, robes out of the wardrop 15. l. 7. s. 8. d. in toto 380. l. 7. s. 8. d. * Hugo Pateſhull was first treasurer of the exchequer, and after *ſummus theſaurarius*.

Cancellarius ſcaccarii, that keepeth the seal. See Pl. com. 321. *Leſchequer ad chancelor et ſeale; et les bres. uſuall in le chancery in leſchequer, &c. ſont plus anciens que le regiſter*. See of the chancelor of the exchequer hereafter in the court of the exchequer chamber,

Capitalis baro et barones alii.

Subtheſaurarius ſcaccarii, anciently called *locum tenens theſaurarii*. *Petrus de Willebye locum tenens theſaurarii, anno 30 E. 1. et plures alii* he nameth the two praisers of all the goods seized or not customed, and ordereth whether the party shall have been at the price or not, he appointed the steward, cook and butler for the provision of the star-chamber: he in the vacancy of the treasurer doth all things in the receipt, that the treasurer doth. In the statute of 39 El. ca. 7. and 43 El. in the subsidy of the clergy he is called undertreasurer of England. Concerning this matter I finde of record this writ following.

Edwardus rex Angliæ et dominus Hiberniæ baronibus et camerariis suis de ſcaccario ſuo, ſalutem. Quum pro eo quod venerabilis pater W. archiepiſcopus Eborum nuper theſaurarius ſcaccarii prædicti, circa diverſa negotia in partibus borealibus eſt occupatus, quo minus intendere poſſit ad ea quæ ad officium illud in dicto ſcaccario pertinent exercenda, conſtituimus venerabilem patrem Johannem Wintonienſem epiſcopum tenentem locum theſaurarii ſcaccarii prædicti, quouſque de officio illo aliter duximus ordinandum, percipiendo in eodem officio (dum illud ſic tenuerit) ſeodum conſuetum, prout in literis noſtris patentibus præſato epiſcopo inde conſectis plenius continetur. Vobis mandamus quod ipſum epiſcopum ad officium admittatis et ei in his quæ ad officium prædictum pertinere intendatis in forma prædicta. Teſte Edwardo filio noſtro primogenito cuſtode regni noſtri, apud Hereford ſexto die Novembris, anno regni noſtri viceſimo.

The office and duty of the lord treasurer of England doth appear by his oath, which standeth upon eight articles.

1. That well and truly he shall serve the king and his people in the office of treasurer.
2. That he shall doe right to all manner of people, poor and rich, of such things as concern his office.
3. The kings treasure he shall truly keep and diſpend.
4. He shall truly counsell the king.
5. The kings counsell he shall * layn and keep.
6. That he shall neither know nor suffer the kings hurt, nor his diſheriting, nor that the rights of the crown be decreased by any mean, as far forth as he may let it.
7. And if he may not let it, he shall make knowledge thereof clearly and expreſly to the king with his true device and counsell.
8. And he shall doe and purchase the kings profit in all that he may reasonably doe: which in effect agreeth with the oath of the lord chancelor, as you may read *ubi ſupra*.

Vide rot. pa. 19 E. 3. part 1. for this office.

* Math. Paris 18 H. 3. pa. 391. & 19 H. 3. anno dom. 1234. And so was Tho. Wimondham, anno dom. 1258, 50 H. 3.

Rot. brevium, 20 E. 2.

* Archbishop treasurer of the exchequer.

b Nota in dicto ſcaccario.

c Undertreasurer.

d Treasurerſhip of the exchequer granted by letters patents.

Custos regni.

Vid. the lord chancelors oath in the chapter of the Chancery.

* Lain is an old French word, to hide.

Imprimis

Forma constitutionis thesaurarii Angliæ.

Imprimis post sigillationem patentium de illo officio vocetur in curia cancellariæ, coram domino cancellario genibus flexis facit sacramentum, ut superius scribitur, et deinde sigillatum crit breve regis directum baronibus et camerariis de scaccario de attendenc' recitans effectum dictarum literarum patentium. Et inde recesserit dictus dominus cancellarius ad curiam scaccarii et ibidem (dicto thesaurario stante) ad barram legantur literæ patentes prædicti et similiter prædictum bre. et vocatus est idem thesaurarius ad locum suum per dictum dominum cancellarium accipiens cessum, et liberatæ erunt tunc et ibidem claves officii thesaurarii, et omnes officarii sub se recedent cum ipso thesaurario in thesaurum et dantes ei attendenc'. This we have transcribed de verbo in verbum in eisdem verbis.

Vid. Rot. Cartarum anno 17 H. 3.

Hil. 25 El. coram baronibus.

Note the statute speaketh of the chancelor and treasurer generally which is intended of the treasurer of England, in *dig-niori sensu*.

See lib. 1. fo. 17. Sir William Pelhams case.

* Note hereby it clearly appeareth that the treasurer and barons of the exchequer are keepers of the records judiciall of the exchequer. Vide 9 E. 3.

The lord treasurer of England hath also granted to him by letters patents under the great seal, *thesaurariam scaccarii regis Angliæ*, which of ancient time was a distinct office by itself. The office of the treasurer of the exchequer did principally take care of the green wax, fees, and tenures, as it is said; he hath also with the barons the custody of records as by the insuing record appears.

In an information of intrusion in the exchequer against Brace, judgment was given for the queen against Brace, who brought a writ of error directed to the lord chancelor and lord treasurer, and they made a warrant under their seals to the barons to bring the record before them. And Manwood chief baron objected against both the writ and the warrant, for that the statute of 31 E. 3. c. 12. that giveth this writ of error is generall, that the lord chancelor and lord treasurer shall cause to come before them the record and proesse of the exchequer, and in as much as no speciall writ was given by the statute, therefore the writ ought to be directed to them that have the keeping of the record according to the course of the common law. * And for that the treasurer of the exchequer and barons have the keeping of the records of the exchequer, the writ of error ought to have been directed to them, and that the lord chancelor and lord treasurer of England are judges in this case, and not the treasurer of the exchequer. And upon search of presidents all the writs of error from the making of the statute untill 7 Eliz. were directed to the treasurer of the exchequer, and barons to bring the record before the lord chancelor and lord treasurer: but in 7 El. and since divers writs have been directed as this writ was, &c. But it was resolved by the lord chancelor, lord treasurer, and the two chief justices assistants, that the writ ought to be directed to the treasurer of the exchequer and barons that have the record in their custody according to the ancient course and presidents, and thereupon this writ abated.

Here four things are to be observed. 1. That albeit the barons, as hath been said, are the sole judges, yet the treasurer of the exchequer is joyned with them in keeping of the records, whereof the barons are judges, for they are parcell of the kings treasure. 2. That writs of error are to be directed to them that have the custody of the record wherein any judgment is given; as a writ of error to reverse a judgment in the court of common pleas, shall be directed to the chief justice only who hath the custody of the body of the record wherein the judgment is given, but the originall writ and warrant of atturny are not in his custody. 3. That albeit the lord treasurer is also treasurer of the exchequer, yet the writ of error

ror

ror is directed to him as treasurer of the exchequer, and the barons, to have the record before himself as treasurer of England and the chancellor. 4. That at the making of the statute of 31 E. 3. that giveth the writ of error, the offices of treasurer of England and the treasurer of the exchequer were in severall hands, as by the writs of error brought soon after appeareth. Before the said statute of 31 E. 3. the errors in the exchequer were sometimes examined in parliament, and sometimes before commissioners by force of the kings writ under the great seal.

Par 18E. 3. nu. 40 &c. Vid. 1R. 2. nu. Sir William de la Pools case. Mich. 33 & 34 E. 1. coram Rogero de Hegham & aliis iudiciariis, &c.

It was petitioned in parliament in 22 E. 3. nu. 25. that erroneous judgments in the exchequer might be reversed in the kings bench, but it succeeded not.

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Vide term. Pasch 14 E. 3. a writ directed to the treasurer and barons calling to them such justices as they should think fit, to examine the record, &c. of the judgement in the exchequer, &c. for the countesse of Kent against the abbot of Ramsfey, upon which judgement the abbot brought his writ of error. Fitzherbert for another purpose abridgeth the case, tit. *scire fac.* 122.

Hil. 11 E. 3. in libro rubeo in *scaccario* fo. 322. the case of John de Lecestre chamberlaine of the exchequer, a notable president to the like effect. *Leges, quia optime.*

Nota in the act of 31 E. 3. that is called the councill chamber, which now is called the exchequer chamber, because there was the assembly of all the judges being the kings councill for deciding of matters in law.

The chamberlaines of the exchequer. For these officers see in the first part of the Inst. lib. 2. cap. Grand' Serjeanty, sect. 153. the office mentioned in the letters patents is, *officium unius camerariorum de recept' scaccarii, sive officium unius camerariorum de scaccario*, and is granted for term of life to be exercised by him or his deputy. To this office belong the office of one of the dorekeepers of the receipt.

1 part of the Institutes, cap. Grand serjanty, sect. 153.

Contrarotulator. Of so great regard is the right use of the pipe, as there is a controller thereof, which no other office in this court hath. And the chancelour of the exchequer is the controller of the pipe.

Rememeratores. 3. viz. *regis, thesaurarii, et primorum fructuum.*

Clericus pipe. Of this officer somewhat is necessary to be said. The originall institution of this court was taken from a conduit or conveyance of water into a cisterne: for as water is conveyed from many fountains and springs by a pipe into a cisterne of a house, and from thence into the severall offices of the same: so this golden and silver stream is drawne from severall courts as fountains of justice, and other springs of revenue reduced and collected into one pipe, and by that conveyed into the cisterne of his majesties receipt, &c. Therefore all accounts and debts to the king are delivered and collected out of the offices of the kings remembrancer, and treasurers remembrancer, &c. and drawn down and put in charge in the pipe. So as whatsoever is in charge in this roll or pipe, is said in law to be duly in charge. The clerk of the pipe in the patent of his office, is called *ingrossator magni rot. in scaccario.*

See the stat. of 5 R. 2. c. 14. stat. 1. 26 Ass. p. 60. Duly in charge.

Also the treasurers remembrancer is by his office to charge and enter from the originall into the annuall, otherwise called the great

The annual or great roll.

roll,

Duly in charge.
The roll of re-
venues.

roll, all *fee-farme* rents and other rents whatsoever upon leases of lands within the survey of this court: and whatsoever is in charge in this roll is said to be duly in charge. Also he ought to keep another roll, commonly called a roll of reversions, as of grants of lands and offices in taile, for life or years *absque computo, aut aliquid inde reddendo*, to the end, as often as need shall require, writs may be granted to enquire whether the issue be spent, the lessee dead, &c.

9 Auditors.
1 H. 7. 4. a.
7 El. Dier. 23 B. b.
Sir Rich. Lees
case.

There be five auditors of the kings revenues within the survey of this court, and their office is to take the accounts of the kings receivers, sheriffs, escheators, collectors, and customers, and to audite and perfect them. But an auditor cannot allow any license or grant, for the auditor knoweth not whether the license or grant be good or no: but upon petition it ought to be allowed by the barons who know the law, *et sic de similibus*. Neither can the auditor put any thing in charge, for his office is (as hath been said) but to take and audite accounts: for the words of his patent be, *Concessimus B. officium unius auditorum seaccarii nostri quod I. S. nuper habuit et occupavit: habendum et tenendum prædictum officium præfato B. quam diu se bene gesserit in eodem per se vel sufficientes deput suum*. Nay, though the barons do order upon sight of any record or evidence, that any thing shall be put in charge, this is used to be done to bring it in question, but it is not in law accounted to be duly in charge (untill it be recovered, received, and accounted for of record: for it is not judicially done, because it may be done in the absence of the party. Neither can any auditor make a *super*, but of that that hath been received and accounted for before.

Quamdiu se bene gesserit.

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Auditor of the prefts take and audite the accounts of Ireland, Barwick, the mint, and of any money imprested to any man.

Auditor of the receipts. First, he is a kinde of filacer, for he sleth the tellers bills and entreth them. Secondly, he is a remembrancer, for he giveth to the lord treasurer a certificate of the money received the week before. Thirdly, he is an auditor, for he maketh debentures to every teller before they pay any money, and taketh and auditeth their accounts. Besides all these he keepeth the black book of receipts, and the lord treasurers key of the treasury, and seeth every tellers money locked up in the new treasury.

Green wax.

Forinsec' oppositor, the forein opposer, he doth oppose all sheriffes and bailiffs of liberties of their green wax: under these words [green wax] are included fines, issues, and amerciaments, recognizances for the peace, recognizances for appearance in any other court, and good behaviour, and such like incertainties cerasied in several streets into the office of the lord treasurers remembrancer, who delivereth the same to the clerk of the extreats to be put into proces. And because the extreats annexed to the writ are under a seale in green wax, they are vulgarly called greenwax. But felons goods, waifes, straves, outlawes goods, deodands, and such like, are within the sheriffes accounts, with which the escheator was wont to deale.

42 E. 3. cap. 9.
7 H. 4. cap. 3.

Clericus extrætorum, clerk of the extreats, his office is partly touched before.

4 H. 5. cap. 2.

Here it may be demanded what the meaning of these words (of estreats that sowne not) is. The act of 4 H. 5. cap. 2. being originall

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ginall in French, is *in proprio idioma*, *Des estreats nient seroem*, which by turning the two single *v v* into a *w* was first made *seroem*, and afterwards *seruue*. Now *seroem* properly signifieth to be remembered, and such casualties, as are not to be remembered run not in demand, that is, are not leviabie.

Clericus nihilorum maketh a roll of all such summes as the sheriffe upon proces for the greenwax return *nihil*, and delivereth that roll into the office of the lord treasurers remembrancer to have execution done of it for the king. See the statute of 5 R. 2. cap. 13. stat. 1. concerning those returns of *nihil* and the discharge thereof.

See the stat. of Rotel. ver. si. nem.

Clericus placitorum, clerk of the pleas. In this mans office all the officers and privileged persons in this court are to sue and be sued. Of this matter more hereafter.

Mareschallus, marshall. To this officer the court committeth the keeping of the kings debtors during the sitting of the term, to the end they may provide to pay the kings debts, or else to be further imprisoned. Such offices as are found *virtute officii*, and brought into the exchequer, are delivered to him, to be delivered over to the lord treasurers remembrancer. He also appointeth auditors to sheriffs, escheators, customers, and collectors for taking their accounts.

Stat. de 51 H. 3. stat. 5.

Clericus summonitionum, clerk of the summons.

Deputati camerarii duo, called under-chamberlains of the exchequer: they cleave the tallies written by the clerk of the tallies, and read the same, that the clerk of the pell and the controllers thereof may see their entries be true: they also search for all records in the treasury.

Secundarii rememoratoris regis duo.

Secundarii rememoratoris thesaurarii duo.

Secundarii pipe duo.

In the other part of the exchequer which is called the receipt. Concerning the course of the receipt of the exchequer, see Rot. Claus. 39 E. 3. m. 26.

Rot. claus. 39 E. 3. memb. 26.

The two chamberlaines. Of the duty of these officers see in the first part of the Institutes. Vide 51 H. 3. stat. 5. 14 E. 3. cap. 14.

First part of the Instit. Sect. 157.

Clericus talliarum. There be two kind of tailes or tallies, the one is called a talley of a debt, and the other is called a talley of reward; of both which you may read in divers acts of parliament.

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a 1 R. 2. cap. 5.
b 27 H. 8. ca. 11.
31 H. 8. cap. 16.
2 E. 6. cap. 4.

Clericus pellis, clerk of the pele. His duty is to enter every tellers bill into a roll, called *pellis receptorum*. His duty also is to enter in another roll payments called *pellis exitus*; and by what warrant the payment was made.

Numeratores, 4 tellers. The office of a teller consisteth in four duties. 1. To receive monies due to the king. 2. To give to the clerk *pellis receptorum* a bill thereof, whereby he may be charged. 3. To pay to all persons monies by warrant of the auditor of the receipt. 4. They make yearly and weekly books of their receipts and payments, which they deliver to the lord treasurer.

Junctores talliarum duo.

Deputati camerarii duo.

Custos thesauria.

Tabellarii

Tabellarii ordinarii 4.

Scribæ duo.

Officarii decimarum et primitiarum.

Parl. 5 R. 2.
ca. 16. stat. 1.

By the statute of 5 R. 2. for making a commission in the exchequer the clerk shall not take for his fee above 2 s. only; nor for a record of *nisi prius* with the writ but 2 s. only, as afore this time was wont to be done and used.

Vid. in the office of the kings remembrancer. Mich. 26 H. 6. rot. 46.

See in the end of a book containing many little books, as Fitzherberts justice of peace, *Carta feod'*, &c. the fees of the officers of the exchequer.

The duties of the kings remembrancer.

But it shall be necessary to set down the duties of the kings remembrancer, and of the lord treasurers remembrancer.

The office of the kings remembrancer consisteth principally in eight duties. His first is to write proces against collectors of customs, subsidies, and fifteens. 2. He entreth in his office all recognizances before the barons, and taketh bonds for any of the kings debts, for observing of orders, or for appearances, and his duty is to make out proces upon every of them. 3. He maketh proces upon informations upon penall statutes, all which informations are entred in his office. 4. He maketh bills of composition upon informations upon penall statutes, 5. He taketh the stalment of debts and entreth them. 6. The clerk of the star-chamber certifieth into his office the fines set in the star-chamber; this officer maketh a record thereof, and draweth them down into the pipe. 7. Into this office ought to be delivered to be safely kept, all assurances, conveyances, and evidences, whereby any lands, tenements, hereditaments, or other things are granted to the king. 8. Also there is a court of equity holden in the exchequer chamber by English bill: all the bills and proceedings thereupon are entred in the office of this officer. See the statute of 5 R. 2. cap. 14. stat. 1.

The duties of the lord treasurers remembrancer.

The office of the lord treasurers remembrancer principally consisteth in eight duties. 1. His duty is to preserve the broad-spreading and fruitfull tree of tenures so many wayes beneficial to the crown, and the jurisdiction of the court of wards, which sometimes were within the survey of this court, but since taken from it. He maketh out proces for the kings revenue by reason of the tenures of the king (wards excepted.) 2. He maketh proces *feri fac'* and extent for debts due to the king either in the pipe, or with the auditors. If a clerk of this court make any writ of proces for a debt which hath been paid and the tallies thereof joyned and allowed, he shall lose his office, and be imprisoned until he hath satisfied the party so much as by the discretion of the treasurer and barons he is endamaged. 3. He maketh proces against all sheriffs, escheators, receivers, and bayliffs, to bring them to account. 4. To make an entry of record, whereby it appeareth whether sheriffs and other accountants pay their proffers due at Easter and Michaelmas. 5. He maketh another entry of record, to the end it may be known whether sheriffs and other accountants keep their dayes of prefixion. 6. The green-wax is certified into his office, and are by him delivered to the clerk of the exchequer, as hath been said. 7. There ought to be brought into this office all the accounts of customers, controllers, and all other accounts to make thereof in this office an entry of record, to avoid all

See hereafter in the chapter of the court of Wards. 1 R. 2. cap. 5.

all delay and concealment in the kings busines. 8. See the statute of 5 R. 2. cap. 14. stat. 1.

Concerning these officers there is an excellent law made in 5 R. 2. whereby it is enacted. [that from henceforth no baron of the exchequer, clerk of the pipe, remembrancer, opposer, controller, clerk of the pleas, and clerk of the foreign summons, auditor, or other chief officer of the exchequer be made, unlesse he be well learned in the law, or otherwise very skilfull in the courses and usages of the exchequer.] Here is the heartising of this court, for albeit the lawes and orders thereof be most excellent, yet the benefit thereof consist in good and skilfull officers and ministers.

Rot. Parl. 5 R. 2. nu. 105. and worthy to be printed.

These things being understood, let us now peruse our ancient authors, for out of the old fields must come the new corne.

Eyent nous treasurers. Hereby it appeareth being in the plurall number. that there be two treasurers, whereof we have spoken before. There is also a treasurer of the kings chamber, *thesaurarius cameræ regis*, which is not accountable in the exchequer, but to the king himself. If the king appoint some whom he trusts to take his account, this is esteemed to be done by the king himself, *Qui per alium facit, per ipsum facere videtur.*

Rot. parl. 3 H. 6. nu. 47.

Et nous barons illoques jurisdiction. * All judiciall proceedings according to law in the exchequer, are *coram baronibus*, and not *coram thsaurario et baronibus*: but the court of equity holden in the exchequer chamber, is holden before the lord treasurer, chancellor, and barons. Of this court we have given a touch before, and shall treat more hereafter. Note the judiciall proceedings before the barons are in rols, but they are not numbred as in other courts.

28 H. 6. 11, 12. 5 R. 2. ca. 9. stat. 1. 20 E. 3. cap. 2.

The court of equity in the exchequer Chamber.

See hereafter cap. 13. pa. 118. Rols not numbred.

The oath of the barons. See the statute of 20 E. 3. cap. 2.

The oath of the barons of the exchequer expressing their duties consisteth upon ten articles. 1. That well and truly he shall serve in the office of baron of the kings exchequer. 2. That truly he shall charge and discharge all manner of people, as well poor as rich. 3. That for highnesse nor for riches, nor for hatred, nor estate of no manner of person or persons, nor for any deed, gift, nor promise of any person the which is made to him, nor by craft, nor by ingen he shall let the kings right. 4. Nor none other persons right he shall disturbe, let or respite contrary to the lawes of the land. 5. Nor the kings debts he shall put in respite, where that they may goodly be levied. 6. That the kings need he shall speed before all others. 7. That neither for gift, wages, nor good deed, he shall * layne, disturbe, nor let the profit or reasonable advantage of the king in the advantage of any other person, nor of himself. 8. That nothing he shall take of any person for to do wrong or right, to delay or to deliver, or to delay the people that have to doe before him; but as hastily as he may them goodly to deliver without hurt of the king, and having no regard to any profit that might thereof to him be therein, he shall make to be delivered. 9. Where he may know any wrong or prejudice to be done to the king, he shall put and do all his power and diligence that to redresse, and if he may not do it, that he tell it to the king: or to them of his councill, which may make relation to the king, if he may not come to him. 10. The kings councill he shall keep and layne in all things.

* Layne, i. to conceale or hide.

IV. INST.

K

Ln

Triall by record.

Mic. 27 & 28
El. in scaccar.
inter Leroigne
et Savil.

33 H. 6. 19. 51,
52.

[110]

For triall by records, vid. Mich. 32 & 33 E. 1. coram Rege. Robertus archiep. Cant. &c. Hil. 8 E. 2. coram rege, Cornwall. Walterus episc. Exon, &c.

22 E. 3. nu. 17.

51 E. 3. nu. 27.

5 R. 2. cap. 9.
Course of the
exchequer a-
gainst law, &c.

* That is, by his attorney: and therefore the admittance of an attorney in these cases, is not *ex gratia curiæ* (as is said in the common pleading) but *ex debito j. s. l. i. x.*

In the exchequer at the suit of the king in an information of intrusion of lands, wherein issue is joyned, which may be tried by the country; yet where the king hath a direct record or records for the manifestation of his title, the kings attorney may pray that the triall may be by records, whereof you may reade a notable case, Mich. 27 & 28 Eliz. in the exchequer where the case was, that in an information of intrusion into certain lands, &c. against Savil, the issue was whether certain lands belonged to a house or no, and upon a tryall by record judgement was given against Savil. Afterwards Savil the defendant died, and his sonne and heir brought a writ of error in the exchequer chamber, where it was holden; that this kinde of tryall by records was before the statute of 33 H. 8, cap. 39. the words whereof be, That all and every triall and trials of all manner of suits, bills, plaints, informations, &c. and issues in the court of exchequer, shall be made and tried by due examination of witnesse, writings, proofes, or by such other wayes or means, as by the court of exchequer shall be thought expedient; and that every such judgement, decree or decrees, shall be good, perfect, and in full strength, force, and effect in law, to all intents, constructions and purposes. And yet, notwithstanding the generality of these words, if a judgement be given upon a triall by record, a writ of error doth lie thereupon; because, as to that point, this act is but in affirmance of the common law.

It was petitioned in parliament, that remedy might be found, that no accountant in the exchequer do run in issues before he be warned. The kings answer was, the proces therein shall be first a *venire fac*, then a *disfringas*, and after a writ out of the chancery to the treasurer and barons.

It was also petitioned in parliament, that such as owe to the king may upon their account be allowed of all such lones, as be due unto them, or to any of his ancestors: whereunto the king answered, the treasurer and barons shall make allowance of due debts.

So great care was taken by the court of exchequer (which is the centre of the kings revenue and profit) that no man might sue or plead for their discharge of any debts, account, or other demand, without having expresse commandement by writ or letter of the great seal. But by the statute of 5 R. 2. it appeared, that the parties ought to have been received thereunto, according to the law, without any such writ or letter: and that the obtaining of such writs or letters was to the great disquietnesse, mischief, and delay of the parties impeached, and no advantage to the king. And where before that time no plea could be allowed in the exchequer by attorney, but in proper person: by the said act it is ordained that the barons of the exchequer shall have full power to hear every answer of every demand made in the same: so that every person that is impeached or impeachable of any cause by himself or by * any person, shall be received in the exchequer, to plead, sue, and have his reasonable discharge without carrying or suing any writ or other commandement whatsoever. So as by this act both these mischiefs are provided for. And out of this act this generall conclusion may be justly collected, that such course of the exchequer as tendeth to the disquietnesse, mischief, and delay of the subject, and no advantage to the king, is against law, and ought not to be allowed.

And

And it is to be observed, that Britton doth joyn in this clause, the treasurers and barons.

And into the exchequer chamber or the like, all cases of greatest difficulty in the kings bench or common pleas, &c. are, and of ancient time have been adjourned and there debated, argued, and resolved by all the judges of England and barons of the exchequer. See more of this court *infra*, cap. 13. pagin. 121.

Tempore regis Jobannis, the abbot of Crowlands case. Justiciarii hæc audientes surgentes de banco, cum

baronibus scaccarii et domini regis fidelibus illic residentibus colloquium, &c. Rot. in scaccario de Crowland. Pl. Coronæ coram justic' itinerantibus apud Turrim London. an. 4 E. 1. Rot. Claus. 13 E. 1. infra. p. 121. Hil. 32 E. 1. coram rege Wigorn. Mic. 6 E. 2. in communi banco Despencers case. Mic. 11. E. 6. coram rege, case of the burgessees of Great Yarmouth.

A oier et terminer tous les causes que touchent nous debts. Here debts are taken for all manner of duties due to the king:

4 H. 6. 12. b.
5 E. 4. 7.
7 E. 4. 14. b.
16. b.

Et auxi a nous fees. Here the tenures of the king (wherof we have spoken before) are expressed. And albeit there be many tenures of the king both in *capite*, and by knights service of some honor or mannor, &c. yet there be many more by the error or negligence of sollicitors, by suing out of licences or pardons of alienation, where in troth the manors or lands were not holden of the king in *capite*.

But Mich. 39 & 40 Eliz. it was resolved by all the judges of England, when I was attorney generall: that if a man purchase a license or pardon, and after being called into the exchequer do plead the license or pardon, that neither the purchase nor pleading is any conclusion, but the tenure may afterwards upon another alienation be traversed or denied. For the words of the license or pardon be, *Quæ de nobis tenentur in capite (ut dicitur;)* for neither the charge in this case is direct being grounded upon a license or pardon, nor the plea; for the license or pardon is pleaded, as it is, *ut dicitur*: and therefore neither the one nor the other doth conclude. But if he in his plea doth by expresse words (with a *bene et verum est, &c.*) confesse a tenure, in *capite*, and in discharge thereof plead the pardon or license in discharge thereof, there is a conclusion wrought: and so are the books to be intended: which resolution I heard and observed, and have reported it for advancement of truth and right.

Mich. 39 & 40
El. per tous les
justices.

[III]

Concerning licenses of alienation, and the short pleading of licenses and pardons, there is a profitable statute made *anno* 18 Jac. *regis*, and another *anno* 1 Jac. cap. 26. concerning orders of the exchequer.

46 E. 3. 33.
29 Aff. 38.
7 E. 6. Estoppel.
Br. 222. pl.
com. 398.

18 Jac. cap.
1 Jac. reg. ca. 26.

Et les incident choses sauns les queux, &c. Quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsa esse non potest.

Et que ils eyent power a comister des detts que lendoit a nous dettors per ou nous puiffons plus tost approcher a nostre dett. This is the ancient prerogative of the king as it appeareth in our books.

20 E. 3. ley 52.
8 H. 5. 4.

The king brought an action of debt in this court against a prior alien. The prior had proces against A who detained goods from him, without which he could not answer the king. A came and claimed the goods as his tithes as parson of D, the prior claimed the tithes as parson of S; and thereupon issue taken for the king triable in the exchequer.

38 Aff. p. 20.

If he that is in execution will in this court confesse himself debtor to the king, where he is no debtor of record, he shall be

1 R. 2. cap. 12.

remanded to the first prison, and after the creditor be satisfied, then to be committed to the Fleet untill he hath paid the summe confessed.

Solong; le discretion des treasurers et barons, &c. sciens arents a searme a eux que plus voilent doner. To the end that no lands in the kings hands, which ought to be to the kings profit, should be without a farmor that should yeild a rent to the king, the treasurer in certain cases, and with certain cautions ought to make a warrant to the great seal for demising thereof, that is to say, not only of lands extended, of lands during the vacation of any abbey, and of lands seised for an alienation without license, and before 23 H. 8. of land in ward, or the like upon uncertainties, but also of the demans of the crown out of lease, &c.

In original.
Anno 16 E. 4.
rot. 13.
Nota herein five things.
1. Per manu-
captionem.
2. Commisimus.
3. Custodiam.
4. Yielding a
rent.
5. Provisio, quod
si quis alius plus
dare voluerit.
Nota Britton
sup. *A eux que
plus voilent
doner.*
See 27 H. 8.
cap. 11.

The lease will be best expressed by an example, first of lands extended. *Rex omnibus ad quos, &c. salutem. Sciat's quod per manu- captionem Walteri Mathew de Westm' in com' Mid. yeoman, et Nich. Whisfeild de eadem, yeoman. Commisimus Rico. Foster, custodiam unius shopæ, 30 acr' terræ, 3 acr' prati, et 4 acr' pasturæ cum pertin' in Stanford in com' Lincoln, quæ fuerunt Silvani Southorpe, quæ in manus regis Edwardi nuper regis Angliæ tertii pro 138 li. 6 s. 8 d. in quibus idem Silvanus prefato nuper regi tenebat, seisis fuerunt, et in manibus nostris ea de causa adhuc existunt. Habendum à festo Sancti Michaelis anno regni nostri 13 usque finem 10 annorum ex tunc proxime sequen' et plenarie complendorum. Reddendo inde nobis per annum in custodia prædicta 25 s. prout nobis respensum est, ad festa Paschæ, et Sancti Michael' per æquales portiones. Provisio semper quod si aliquis alius dare voluerit de incremento per annum pro custodia prædicta sine fraude vel malo ingenio, quod tunc dictus Richardus tantum pro ea lem solvere teneatur, si custodiam prædictam habere voluerit. In cuius rei, &c. Teste R. apud Westm. 7 die Novemb. anno regni nostri decimo sexto.*

Note by many presidents the lord treasurer may make a warrant to grant the lands extended, either for years, or *quam diu in manibus nostris fore contigerit.*

Rot. pat. 5 H. 6.

[112,]
11 H. 6. 23. b.
8 H. 6. 34. Br.
Leafe 71.
Register 295.
See for this word
Commisimus.
Vide 27 H. 8.
ca. 1. a speciall
provisio for the
10. treasurer.
* 32 H. 6. ca. 5.
17 R. 2. ca. 5.
4 H. 4. cap. 18.
Dier fo. 303.

The lord treasurer made a warrant to the lord chancelour to demise to John Pempons land parcell of the dutchy of Cornwall for the term of fifteen years in the like form of words as the before recited lease was. This lease was pleaded in 11 H. 6. and though the lease was by the words of *commisimus*, and *commisimus custodiam terræ, &c.* yet in pleading the lessee pleaded a demise of the land it self, and there allowed to be good, which is worthy of observation.

Vide in original' in scaccario de anno 21 & 22 H. 7. rot. 4. et ibid. 23 H. 7. rot. 12. many such leases. But of ancient time, as it appeareth by Britton, both the treasurer and barons did demise, &c. * Letters patents of the alnage shall passe only by the lord treasurers warrant. And the gift of the office of the escheator be- long to his office. Vide in the chapter of the Court of Escheator.

By the statutes of 8 H. 6. cap. 16. and 18 H. 6. cap. 6. it appeareth that the chancelor or treasurer had power to make leases in certain cases of wards lands: but that is altered by the statute of 32 of H. 8. of erection of the court of wards. * Note the statute of 18 H. 6. ca. 1. extends only to the kings warrant, and not to the warrant of the lord treasurer.

See in the chap-
ter of the Court
of Wards.
* Vid. pl. co'.
491.

It

Cap. II. The Court of Exchequer.

* It is to be observed, that when in any act of parliament or other record the treasurer is named for demising, or other intermeddling with any of the kings revenue, it is to be intended of the treasurer of the exchequer.

De nous customes de quirs et leynes, &c. What these customes were appeareth in the second part of the Institutes, by the statute of confirmation *cartarum*, the last branch, and the exposition upon the same, whereby it appeareth that the king had no custome but such as was granted to him by act of parliament.

L'escheker est un place quarre. It is foursquare and the carpet that sometime lay upon it had wrought in it the form of a chesse board, and thereupon it was called the exchequer: and about the end of the reign of E. 1. this court was new built, and therefore in 2 E. 3. it was called the novel eschequer, and it was new built upon this occasion. Both the parts of the eschequer were of an ancient building, and weak; fourscore and one persons (whereof the abbot of Westminster and forty eight of his monkes were part) brake into the receipt, and feloniously robbed the king of a hundred thousand pounds, *ad damnum inestimabile*, saith the record. All these fourscore and one were indicted of this felony, and committed to the tower of London, &c. and this was the occasion of the new building of both these parts of the eschequer.

Qui solement est ordain par le prove le roy. Here is a short, but an effectual description of the jurisdiction of this court, that is, for the profit of the king. This profit is either immediate, or mediate: ^a immediate, as of lands, rents, franchises, hereditaments, debts, duties, accounts, goods, chattels, and other profits, and benefits whatsoever due to the king. ^b Mediate, as first, the privilege of the officers, and * ministers of the court: for two things doe principally support the jurisdiction of a court, viz. the just preservation of the dignity of it, and the due attendance of the officers and ministers of the same to sue and be sued in this court. 2. ^c By *quo minus*. 3. It extendeth (as hath been said) to the debtor of the kings debtor. 4. To prisoners in this court to be sued here. 5. To accountants that have entred into their account, except ^d collectors of duties, they shall not be sued by bills, neither if he be sued in any other court, shall he have the privilege of this court.

Ou deux chevaliers, et 2 clerks, ou 2 homes lettres. 2. *Chivaliers* be hereafter explained. 2 *Clerks, ou 2 homes lettres*, the one is intended to be the baron of course, the other the clerk of the pipe.

† *De ses fees et franchises.* Of fees, that is tenures, whereof we have spoken before. Franchises, being flowers of the crown, are notorious and known.

Et les accounts, &c. All accounts to the king ought to be made upon oath, and it is best for the king to have the accounts to be taken in this court, for accounts taken by commission are little for

intrusion ou trans. & 217. c. terræ taile. Vid. 32 H. 8. cap. 39. 16 Eliz. Dier 328. ^c 14 E. 3. brev. 789. 20 E. 3. Ley 52. 2 H. 4. 9. 8 H. 5. 6. 10. 8 H. 5. Ley 66. 11 H. 7. 26. Pl. Com. 322. Lib. 6. fol. 18. ^d 1 R. 3. cap. 14. 5 R. 2. cap. 10. stat. 1. the barons shall hear, &c. without any writ, letter or commandment. 4 H. 4. cap. 9. 7 H. 4. cap. 11. concerning commissions. 13 Eliz. cap. 9. Sewers. 14 E. 3. cap. 12. Weights. 13 R. 2. cap. 2. No recognisance by bond in double.

* Hil. 18 E. 1. f. 9. nu. 128.

Second part of the Inst. Confir. Cart. Vid. supra cap. Parl. p. 29.

Mirror. Ockham.

2 E. 3. 25. rot. par. 31 E. 1. m. 12. Dorf.

Note, the robbery of the king of his treasure is *damnum inestimabile*.

^a 2 E. 3. 25. Jeffery Sharlago case. 14 E. 3. tit. Scire fac' 122.

44 E. 3. 27. Reg. gift. 187. b.

Prohibit. 38. aff. p. 20. rot. par. 1

1 R. 2. nu. 64. 2 H. 4. 11.

rot. par. 2 H. 4. 101. *Dar' off' nobis intelligi.*

Rot. par. 11. H. 4. 54. 56. 64. *ibid.*

13 H. 4. 32. 8 H. 5. Ley 66.

20 E. 3. Ley 52. 32 H. 6. 24.

5 E. 4. 4. b. 7 E. 4. 30.

21 E. 4. 44. 45. &c. 8 H. 6. 34.

36 H. 6. 26. li. 5. f. 62. action sur le case. 11 H. 7. 26.

^b Stat. de Rutland. 10 E. 1.

* Register 187. F. N. B. 90. f. Information de

^c 14 E. 3.

^d Register 187. F. N. B. 90. f. Information de

e Stat. de Rutland. 10 E. 1.

f Ro. par.

21 E. 1. rot. 3.

§ 5 R. 2. ca. 11.

h Rot. par.

3 H. 6. nu. 47.

18 H. 3. nu. 110.

Bracton lib. 3. fo. 116. b. See the 2 part of the Inst. Mag. Cart. ca. 14.

Artic sup. Cart. ubi supra. Stat. de Rotland. 10 E. 1. acc. • Pl. com. 209.

Glanv. lib. 9. cap. 11. &c.

the kings benefit. • The keeper of the wardrobe is to make his account once in the year in the exchequer. † Once in the year the treasurer of Ireland shall account in the exchequer of England. § The accounts of the exchequer to be more shortly heard, made, and ingrossed, &c.

h The treasurers of the kings chamber are only accountable to the king, and not in this court of exchequer, but yet the king, by the advice of some whom he may trust in secret doth take account thereof, as before is said.

Vide recordum et processum contra Petrum de Rivalles alias Petrum de Oriall, thesaurarium et camerarium regis totius Angliæ et Hiberniæ, et custodem omnium forestarum, et omnium portuum maris de compoto redditus de officiis prædictis, et de judicio contra ipsum reddito per defaultam, quia venire recusavit, nisi salvo regis conductu, quod rex denegavit, quasi insolitum et indebitum.

Per le view of un soveraign que est treasurer Dengleterre. Of this great officer we have spoken before.

Le 2 chivaliers soloient ee. 2 barons, &c. And herewith agreeth Bracton, *Comites vero vel barones non sunt americiandi, nisi per pares suos secundum modum delicti, et hoc per barones de scaccario vel coram rege.*

En cel place sont auxi chamberleins, et plusors autres ministres, que ne touch my molt a la ley. Hereof we have spoken before.

Nul common plea ne soit disformes tenuis in leschequer enconter le form del grand charter. Upon this act four severall opinions have been conceived. • 1. That this court might originally have holden plea of all common pleas; and this they think to prove by the title of Glanvils book, which taking it altogether is this, *Traçtatus de legibus, &c. tempore Henrici 2. compositus, justitiæ gubernacula tenente illustri viro Ranulpho de Glanvilla, juris regni et antiquarum consuetudinum eo tempore peritissimo, et illas solum leges continet et consuetudines, secundum quas placitatur in curia regis ad scaccarium coram justiciariis ubicunque fuerint.* 2. Others think that at the making of Magna Carta, the court of the exchequer was parcel of the kings bench, which they infer upon the words of this act, No common plea shall be holden in the eschequer against the great charter, in which charter *curia nostra* is only intended of the kings bench. 3. That in Magna Carta, to which this statute refers, there is no restraint, and therefore this statute of artic' super cartas restraineth not. 4. That the ordinance of Rutland is no statute, but made by the king for the order of this court. In the second part of the Institutes, in the exposition of Magna Carta, cap 11. we have spoken nothing of this matter, but thought good to referre it to this act being his proper place.

As to the first: it appeareth by the said ancient authors, and by the authority of our books, that the institution and jurisdiction of this court have been only for the kings businesse and profit, &c. as hath been said. For the title of Glanvils book: first, it was never of his own making, for he would never have given himselfe such high and superlative titles, as *Illustri viro juris regni, &c. eo tempore peritissimo.* 2. He that added the title speaketh of three courts, viz. 1. *In curia regis.* 2. *Ad scaccarium.* 3. *Coram justiciariis ubicunque fuerint.* For the first, viz. in curia regis, he intendeth justice in cire, &c. for example, *Inquiverunt purprestura vel in capitali curia, vel coram justiciis regis ad tales inquisitiones faciend' in diversis*

versas regni partes transmissas per juratam patriæ five vicent'. 2. *Ad scaccarium*, this court he doth mention but once (that I remember) in all his book in these words. *Si vero dominus rex aliquam custodiam alicui commiserit, tunc distinguitur utrum ei custodiam pleno jure commiserit ita quod nullum eum inde reddere computum oporteat ad scaccarium*, which agreeth with the originall institution and jurisdiction of the court concerning the profit of the king. 3. *Cram justiciariis ubicunque fuerint* is the kings bench, whereof Glanvil was chief justice, and of the pleas in that court is in effect the sum of his treatise.

Lib. 7. cap. 10.

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As to the second: 1. Glanville who wrote in the reign of H. 2. doth (as hath been said) name the exchequer as a distinct court for the accounts to be made to the king. 2. In the * black book of the exchequer dedicated to H. 2. of the observations of the exchequer, it is said, *Nulli licet statuta scaccarii infringere, vel eis quavis temeritate resistere, habet in hoc commune cum ipsa domini regis curia, in qua ipse in propria persona jur. discernit, nec recordationi nec sententiæ in eo latæ liceat alicui contradicere.* Whereby it appears that the kings bench and exchequer were distinct courts in the reign of H. 2.

* The author of this book is Gervasius Tiliburienfis a learned man and an officer of the exchequer cap. 1.

To the third, our statute is intituled *articuli super cart'* that is, articles upon *Magna Carta et Carta de Foresta*: to as the sense of this act is, that the exchequer should hold no common plea no more then the kings bench: for the form of the great charter is, *Quod communia placita non sequantur curiam nostram.* Secondly, our statute is but an affirmation of the common law concerning the jurisdiction of this court, and this doth expressly and notably appear in the Register in these words. *Rex thesaur' et baronibus de scaccario salutem. Cum secundum legem et consuetudinem regni nostri communia placita coram vobis ad scaccarium predict' placitari non debeant, nisi placita illa nos vel aliquem ministrorum nostrorum ejusd. m scaccarii specialiter tangant, &c.* Here it is to be observed that this writ of prohibition is not grounded upon the statute of *artic' super cart'* or any other statute, but upon the common law and custome of the kingdom, which concerning the jurisdiction of this court doth in *omnibus* agree with our ancient authors and year-books, wherein you shall observe an admirable harmony and consent in so many successions of ages.

Regist. 137. b.

This is a statute proved by the title thereof, and for that it is entered in the parliament roll, and in the Register 137. b. it is called *statutum de Rotland.*

Now it is good to know, how the law commonly called *respondeat superior*, holdeth in this court and in other courts, and first by the records of this court, and then by acts of parliament.

Memorandum quod allocutio prefato Willielmo morantur nuper vic' super levatione 40. s. extracl' in magno rotulo de anno 12 in Kane' sub nomine William Herlixan unius coronatorum com' Kane' pro falso returno. Idem Willielmus vic' dic' super sacramentum suum quod prefatus Willielmus Herlixan non habet terr' vel ten'ta, bona, seu catalla in balliva sua, nec habuit unde dic' denar' levari possint. Et quia ipse coronator electus erat per comitatum juxta formam statuti, &c. ita quod in defectu ejusdem coronator' totus comitatus ut elector et superior, &c. habeant regi respondere, præcip' nunc vic' quod de terris et tenementis hujusmodi totius comitatus in balliva sua fieri fac' prædic' xl. s. et eos habeat hic in tro. clausi Pasche super proffrum suum regi solvend'. Ad quem diem vic' non re-

Stat. de Rotland. 10 E. 1. Vid. Pl. Com. 221. per 2 barons. Regist. 137. b. Respondeat superior, Int' præcept' de termino Sancti Hil. anno 14 E. 3. exparte remem. regis rot. 9. in scac' Coronator.

Yorn' brove. Ideo sicut alias in cro' Sancti Johan' Baptiste. For more presidents in the exchequer of this kind, see Mic. 17 R. 2. rot. Mic. 19 H. 8. rot. 4. Eborum. Pasch. 30 H. 8. rot. 30. Wiltes. Mich. 5 E. 6. rot. 130, &c. Stat. de 52 H. 3. de fac-cario.

How it holdeth in other courts. Vid. 11 E. 2. tit. Det. 172; where the sherifs be removable as in London for their insufficiency, *respondeat superior*, that is, the maior and comminalty of London.

45 E. 3. 9, 10. *Prior datife et removeable suffer eschape, r'spondeat superior.* 14 E. 4. *Pur insufficiency del bailie dun libertie respondeat dominus libertatis.* Vid. 44 E. 3. 13. 50 E. 3. 5. 14 H. 4. 22. 11 H. 6. 52. 30 H. 6. 32. W. 2. cap. 2. *Si non habeat bali-vus unde reddat. reddat superior.*

a H. 6. esp. 10.

There is a generall statute concerning all the courts of the king, worthy of observation in these words.

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Item, To the intent that better and more sure government be had within the courts of our lord the king for his profit, and ease of his people, which have to pursue, and doe in the same. It is ordained and established that all the officers made by the kings letters patents royall within the said courts, which have power and authority by vertue of their offices of old times accustomed, to appoint clerks and ministers within the same courts, shall be charged and sworn to appoint such clerks and ministers, for whom they will answer at their perill, which be sufficient, faithfull, and attending to that which pertaineth to them in performance of the businesse, as well of the king as of his people.

20 E. 3. ca. 2. Hereby it appeareth that to them belongeth doing of right and reason in legal proceedings.

In the same manner we have ordained in the right of the barons of the exchequer, and we have expressly charged them in our presence, that they shall doe right and reason to all our subjects, great and small, and that they shall deliver the people reasonably and without delay of the businesse which they have to doe before them, without undue tarrying as hath been done in times past.

Mich. 13. Ja. In Banke le roy in prohibition. 8 H. 5. 4. 45 E. 3. Decus tantum. 12.

It was resolved in the case of auditor Povic, that if A be indebted to B, and B is indebted to the king, that the king by his prerogative may levie his debt upon A: but this levying ought to be of an immediate, and not of a mediate debtor to the debtor of the king. As if A be indebted to B, and B to C, and C to the king, the king cannot levy his debt of A, for then it might be levied *in infinitum, quod reprobatum in jure*, and this appeareth in our books.

Li. 5. fo. 89, 90.

For assignment of debts made to the king, see in my Reports.

7 Jac. cap. 15.

By the statute of 7 Jac. no debt shall be assigned to the king his heirs or successors by or from any debtor or accountant to his majesty, his heirs or successors, other then such debts as did before grow due originally to the kings debtor.

No obligation, recognizance or statute made for saving harmlesse or performance of covenants, &c. though it be forfeited, or for any cause, other then a due debt, can be assigned to the king by any of his debtors. These assignments of debts to the king are not favoured

voured in law when the kings immediate debtor is able to pay his debt; for by the assignment at the kings suit the body, lands and goods of the debtor to the kings debtor are liable to the king, whereas at the subjects suit, he could have had but his body only by *capias ad satisfaciend'*, or his goods only by *feri fac'*, or half his lands and goods by *elegit*. By the statute of 1 R. 2. a penalty is provided for him who confesseth a debt to the king (that is not debtor to the king of record) to delay the execution of others.

1 R. 2. ca. 72.

The barons of the exchequer are the sovereign auditors of England, for if a man assign auditors to a bailif or receiver to account, and the auditors will not allow just and reasonable allowances but commit the bailif or receiver to prison. such prisoner may have an originall writ of *ex parte talis* returnable before the treasurer and barons of the exchequer, &c. for his relief in that behalf.

Fletali. 6. ca. 64.

2 E. 3. 12.

14 E. 3. ac-

count 74.

8 E. 4. 16.

F. N. B. 229. f.

Regist. 137.

Rot. clauf. anno

4 E. 3. m. 2.

Upon the accountant in the exchequer of B. Fulham the kings butler, he demanded allowance of certain parcels of wines given by the king to certain persons by word of mouth without writing, and it was disallowed by the rule of the court.

Upon the account in the exchequer of Richard Bury keeper of the wardrobe, he demanded allowance for certain vessels of gold and silver and certain jewels given by the king *ore tenus* to Isabell queen of England, and others to Philip queen of England confort of the king, *et non allocatur*, by the like rule of the court: for the gifts by word in both these cases are void, which with Petilians case that followeth are good rules to establish the law in a case wherein there hath been variety of opinions in our books.

Rot. clauf. anno

4 E. 3. m. 19.

35 H. 8. Prærog.

B. 61. 14 E. 4.

2. 2.

Hil. 6 E. 4. rot. 14. in *scaccario inter brevia in dorf*. Petilians case. A warrant under the signet is not sufficient to issue any treasure of the king out of the receipt, but it must be under the great or privy seal.

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If the barons doe not allow unto an accountant before them such just demands as he maketh, he may have a writ *De allocatione faciendâ*, directed to the treasurer and barons commanding them to allow the same,

Regist. 192. a. b.

& 193.

Of a Liberate for payment of a pension or debt, &c.

A *liberate* is an originall writ issuing out of the chancery, and is directed to some officers that have of the kings mony in his hands to pay over a pension, debt, or duty. And it is not called a *liberate* by reason of any such word contained in the writ, (as for the most part writs are) for the words be *quod solvas* or *solvatis*, but it is so named *ab effectu*. But such a writ cannot be directed to the kings fermor to pay a pension, &c. because, though the ferm or rent be behind, yet it is not the kings untill it be paid, and all the writs in the Register are directed as is aforesaid to officers, as to the treasurer and chamberlain, to a customer, &c. The form of the writ appeareth in the Register 192, 193. And there it appeareth that there be two kinds of writs of *liberate*, one dormant or currant and continuall, and another *hac vice* and particular. And it is sometimes accompanied with a writ of allowance, as there you may read.

If

If the officer have sufficient in his hands to pay, &c. at the time of the *liberate* delivered to him, he is become debtor (by act of law) to the party, for which he may have an action of debt: but after the *liberate* issued out, and before the delivery, the king may discharge the officer of the kings money in his hands. And if the king decease before the delivery of the *liberate*, the officer hath no warrant to pay it.

If the officer at the time of the delivery of the *liberate* have of the kings money to pay but part, and not the whole, the writ is no warrant to him to pay part. See 21 H. 6. tit. det. 43. 27 H. 6. 9. 37 H. 6. 24, 25. 9 E. 4. 12. 14. 1 H. 7. 8. 2 H. 7. 9. F. N. B. 121. f. *br. tit. Taile deschequer.*

Vid. Mag. Cart. cap. 22. *Liberationem antiquitus status', id est, precium antiquitus statutum.*

The course of the eschequer is, that as soon as a sheriff or escheator enter into his account for issues, amerciaments and mean profits, to mark upon his head *O. Ni.* which is as much as to say, *oneratur, nisi habeat sufficientem exonerationem*, and presently he is become the kings debtor, and a *debet* set upon his head, and thereupon the parties *peravaile* are become debtors to the sheriff or escheator, and discharged against the king.

Dier 7 El. 238.

The ancient course of the eschequer hath been, that if in an information of intrusion into lands or tenements the defendant plead not guilty, he shall lose the possession; and it is said that the reason of this course is, first for that regularly the kings title appeareth of the record, and therefore the defendant may take knowledge thereof, and the rather for that in every information of intrusion it is specified of whose possessions the lands, &c. were: but if the defendant plead not guilty, the kings learned councill cannot know the defendants title, to provide to answer the same, as the defendant may doe to the kings title.

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C A P. XII.

A Court to enquire of, and certifie unlawfull and untrue Accounts in the Exchequer.

6 H. 4. cap. 3.
See rot. parl.
6 H. 4. nu. 59.
for the print
swarveth from
the record.

THIS court sitteth by commission under the great seal by force of the statute of 6 H. 4. directed and sent, together with the tenour of the account, to the most lawfull and discreet persons in the counties, where the accountants be officers, to enquire and certifie the profits which the sheriffs, escheators, alnagers, controllers, and other the kings officers have received, &c. by them upon their said accounts deceitfully concealed, &c. and being attainted of the said frauds and deceits, they shall forfeit treble the value, and their bodies to prison, untill they have made fine and ransome to the king, after the discretion of the judges.

But (as hath been said before) it is certain, that it is ever most for the kings benefit that accounts be yearly taken in the exchequer, and

Cap. 13. The Court, &c. in the Exchequer Chamber. 117

and not by commission: and to that end an ordinance was made in the parliament holden anno 21 E. 1. in these words: *Dominus rex vult et præcipit, quod de cætero singularis annis semel in anno compositas Vasconie et Hibernie per constabularium Burdegaliæ, et thesaurarium Hibernie reddantur ad scaccarium Angliæ, et ibid. audiantur per thesaurar' et barones suos.* A fortiori of accounts within the realm.

Rot. parl. anno 21 E. 1. Rot. 3. Vide rot. parl. 28 E. 1. Nich. de Clere thesaurarius Hibernie.

And of the court of the exchequer we will end with an old verse ingraven in stone in the exchequer wall,

Ingressus Jani, rediturus es æmulus Argi.

The chief baron is created by letters patents, and the office is granted to him *quamdiu se bene gesserit*, wherein he hath a more fixed estate (it being an estate for life) then the justices of either bench, who have their offices but at will: and *quamdiu se bene gesserit* must be intended in matters concerning his office, and is no more then the law would have implied, if the office had been granted for life. And in like manner are the rest of the barons of the exchequer constituted, and the patents of the attorney generall, and solicitor are also *quam diu se bene gesserit*.

See Lit. 1 part of the Instit. sect.

C A P. XIII.

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The Court of Equity in the Exchequer Chamber.

THE judges of this court are the lord treasurer, the chancelour, and barons of the exchequer. Generally, their jurisdiction is as large for matter of equity, as the barons in the court of the exchequer have for the benefit of the king by the common law: for all the proceedings both in this court of equity, and of that by the common law ought to be, as hath been said, for the profit or benefit of the king, or touching the king: and if in either court they hold any plea, which is not for the profit or benefit of the king, or which toucheth not the king, there lyeth a prohibition, which, as is aforesaid, appeareth in the Register: for all are said *communia placita* which are not *placita corone*.

Art cler. cap. 4. Regist. fol. 187. b. stat. de Rotland. cap. ultimo.

By the statute of 33 H. 8. cap. 39. they have full power and authority to discharge, cancell and make void, all and singular recognizances and bonds made to the king for payment of any debt or summe of money, or for performance of conditions, &c. upon shewing the acquittance, &c. or any proof made of payment and performance. Also to cancell and make void by their discretion all recognizances made for any appearance or other contempt. And that if any person of whom any such debt or duty is demanded, alledge, plead, declare, or shew in the said court sufficient cause and matter in law, reason and good conscience in barre or discharge of the said debt or duty, and the same matter sufficiently prove in the said court: then the said court shall have power and authority to judge and allow the said proof, and clearly acquit and discharge

Cancell.

Cancell.

Matter in law, reason and good conscience.

118 The Court, &c. in the Exchequer Chamber. Cap. 13.

Lib. 7. fo. 18.
 Sir Thomas Cecil's case, and resolved by English bill in the exchequer chamber. See there divers presidents.
 * Lib. 7. fo. 20. ubi supra.
 Et lib. 3. fo. 12. Sir Wil. Herberts case. Inheritance. Freehold.

such person and persons. Also lands chargeable to the kings debts in the seisin and possession of divers and sundry persons, the same shall be wholly and * intirely, and in no wise severally liable to the payment of the said debt and duty: but in the said act of 33 H. 8. all manner of estates, rights, titles, and interests, as well of inheritance as freehold, other then joyntures for term of life, are excepted.

By the said act of 33 H. 8. speciall jurisdiction is given to the court of augmentation, when title is pretended to any manners, lands, tenements, or hereditaments, bargained, sold, or exchanged by the king, upon which letters patents there is or shall be reserved any annual rents or farms, paiaible in the court of augmentations, and divers other clauses which gave to the court of augmentation jurisdiction. But the court of augmentation is but in shew annexed to the court of the exchequer, and not *de jure*, as hereafter it appeareth in the chapter of the Court of Augmentations. And therefore this court of exchequer chamber cannot claime any jurisdiction given and appropriated to that court, for that the court of augmentations is dissolved.

I. S. holdeth lands of the king by fealty and a yearly rent, and maketh a lease thereof for years to A. B pretends that I. S. leased the same to him by a former lease; albeit there is a rent issuing out of these lands to the king, yet neither A nor B can sue in this court by any priviledge in respect of the rent, for that the king can have no prejudice or benefit thereby, for whether A or B doth prevaile, yet must the rent be paid: and if this were a good cause of priviledge, all the lands in England holden of the king by rent, &c. might be brought into this court.

But if Black acre be extended to the king for the debt of A as the land of A, and the king leaseth the same to B for years, reserving a rent: C pretends that A had nothing in the land, but that he was seised thereof, &c. this case is within the priviledge of this court, for if C prevaile the king loseth his rent.

The king maketh a lease to A of Black acre for years reserving a rent and A is possessed of a term for years in White acre, the king may distrain in White acre for his rent, yet A hath no priviledge for White acre, to bring it within the jurisdiction of this court.

Note reader, where our books say, that the king may distrain for his rent in all the other lands of his tenant, of whomsoever the same be holden, it is thus to be understood, that the other lands must be in the actuall possession of the kings tenant, for he cannot distrain in those lands in the possession of his tenant for life, tenant for years, or at will.

Some are of opinion that a court of equity was holden in the exchequer chamber before the statute of 33 H. 8. And then it must be a court of equity by prescription: for we find no former act of parliament that doth create and establish any such court: and if it be by prescription, then judiciall presidents in course of equity must guide the same: as to the jurisdiction, certain it is that there hath been of ancient time an officer of the exchequer called *cancellarius scaccarii*, of whom amongst other officers of the exchequer Fleta saith thus: *Officium vero cancellarii est sigillum regis custodire simul cum controrotulis de pisco regni.* And the Mirror saith, *Perjure est per la ou il fuit chancelor del eschequer uca a tiel a faire*

32 E. 3. tit. Aid.
 Leroy. 1.
 35 H. 6. 56.

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44 E. 3. 45.
 13 E. 4. 6.
 8 H. 5. 4.
 Pl. com. 323. a.
 This prerogative holdeth not only in case of rent, service, but in case of a rent charge, and rent secke.

Cancellarius scaccarii.
 Mirror. cap. 2.
 § 13. & cap. 5.
 § 7.

luy acquittance de tant que avoit pay al eschequer de la dett le roy south le seale del eschequer ou delay a faire acquittance de tiel jour tanq. a tiel jour, &c. His ancient fee is 40 marks. Livery out of the wardrobe 12 li. 17 s. 4 d. in toto 39 li. 10 s. 8 d. See 25 H. 8. cap. 16.

* The exchequer hath a chancelour and seal, and the writs usuall in the chancery in the exchequer to seafe land, are more ancient then *prevog. regis.*

• Pl. com. 32 r.

Hereupon it is collected, that seeing there hath been time out of minde of man a chancelour of the exchequer, that there should also be in the exchequer a court of equity.

Where some doe vouch 22 E. 4. tit. Petition 9. for the naming of the chancelour of the exchequer in granting of writs of search to the treasurer and chancelour, the book is false printed, for it should be the chamberlaines and treasurer of the exchequer: for no writ of search is directed to the chancelour, &c. but to the treasurer and chamberlain of the exchequer, who have the custody of the records, &c.

^a We find a petition of the commons in 2 H. 4. that no writs or privie seals be sued out of the chancery, exchequer, or other place, to any man to appear upon a pain, &c. to answer, &c. contrary to the ordinary course of the common law: whereunto the king answered, that such writs should not be granted without necessity.

^a Rot. par.

² H. 4. nu. 69.

^b Anno 3 H. 5. the commons petitioned that ail writs of *subpœna* and *certis de causis* going out of the chancery and the exchequer might be inrolled, and not granted of matters determinable at the common law on pain of 40 li. The kings answer was, That he would be advised.

^b Rot. parl. anno

3 H. 5. nu. 46.

^c 7 H. 6. 44.

6 H. 7. 15.

8 H. 7. 13.

lib. 1. fo. 11.

Ver. N. B.

^e Rot. clauf. in.

Dorf. an. 13 E. 1.

in schedula pend.

Et si contingat

quod, &c. Vide

supra, pag. 110.

31 E. 3. cap. 8.

31 Eliz. cap. 1.

27 Eliz. cap. 8.

31 Eliz. cap. 1.

Cp. pl. Intr.

fo. 2. 24. 37.

^c So as in the exchequer there are these seven courts. 1. The court of pleas, 2. The court of accounts, 3. The court of receipt, 4. The court of the exchequer chamber being the assembly of all the judges of England for matters in law, 5. The court of exchequer chamber for errors in the court of exchequer. 31 E. 3. cap. 8. and 31 Eliz. cap. 1. 6. A court in the exchequer chamber for errors in the kings bench. 27 Eliz. ca. 8. 31 Eliz. ca. 1. Co. pl. Intr. fo. 2. 24. 37. and 7. This court of equity in the exchequer chamber.

C A P. XIV.

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Of First-fruits and Tenths Ecclesiasticall.

A Court of the first-fruits and tenths was raised, officers constituted, of chancelour, treasurer, kings attorney, two auditors, and two clerks: authority given them to compound for first-fruits, bonds taken therefore should be of like force as a statute staple: but this court was dissolved by queen Mary parl. 1. sess. 2. cap. 10.

Stat. de 32 H. 8.

cap. 45.

Rot. par. 47 E. 3.

nu. 30.

7 H. 4. nu. 41.

acc.

These were granted to the crown by the statute of 26 H. 8. cap. 3. But all the clergy were exonerated and discharged thereof afterwards, anno 2 & 3 Ph. and Mar. cap. 4.

26 H. 8. cap. 3.

2 & 3 Ph. and Mar.

cap. 4.

The

1 Eliz. cap. 4. observe the alteration and alteration.

The statute of 26 H. 8. revived, and first-fruits and tenths of the clergy reunited to the crown by anno 1 Eliz. cap. 4. But no court is revived, but first-fruits and tenths to be within the rule, survey, and government of the exchequer, and created a new office, and officer, viz. a remembrancer of the first-fruits and tenths of the clergy, who taketh all compositions for the said first-fruits and tenths, and maketh proces against such as pay not the same.

25 H. 8. cap. 5. 1 Eliz. cap. 4.

First-fruits, or annates, *primitiæ*, are the first-fruits after avoidance of every spirituall living for one whole year (except vicarages not exceeding 10 li. and personages not exceeding 10 marks) but all are to pay tenths.

Ecclesiasticall livings were sometimes valued by a book of taxation made in 20 E. 1. which remaineth in the exchequer, and by another taxation in 26 H. 8. which also remaineth in that court. And according to this latter taxation are the values of ecclesiasticall livings computed for the first-fruits and tenths. What pope first imposed first-fruits, untill a historians do agree, I will not trouble my self.

What we finde of record concerning first-fruits, we will summarily relate.

Walf. an. Dom. 1316. Trivet. Ranulphus Cistrensis, li. 7. c. 42. Polyd. Virg. lib. 8. cap. 2. Platina. Fox, &c.

b The king forbiddeth H. P. the popes nuntio to collect first-fruits, &c.

2 E. 3. Rot. clauf. m. 4.

c That the popes collector be willed no longer to gather the first-fruits of benefices within this realm being a very novelty, and that no person do any longer pay them.

1 Parl. 1 R. 2. nu. 66.

d The commons do petition that provision may be made against the popes collectors for levying of the first-fruits of ecclesiasticall dignities within the realm. The answer of the king in parliament is, There shall be granted a prohibition in all such cases where the popes collectors shall attempt any such e novelties.

Rot. par. 4 R. 2. nu. 44.

f Upon complaint made by the commons in parliament, the king willeth that prohibitions be granted to the popes collectors for receiving of first-fruits.

Note they were not so ancient with us, as is pretended.

Rot. par. 6 H. 4. nu. 50.

g Against first-fruits by arch-bishops and bishops to the pope of Rome, terming it a horrible mischief and damnable custome.

6 H. 4. cap. 1.

h It is enacted, that the popes collectors should not from thenceforth levy any money within the realm for first-fruits of any ecclesiasticall dignity by any provision from Rome upon pain of the statute of provisors: but this is omitted out of the print of 9 H. 4. cap. 8.

Rot. par. 9 H. 4. nu. 43.

19 E. 3. tit. Jurisdiction. 22.

i The bishop of Norwich had in 19 E. 3. by prescription time out of minde of man first-fruits within his dioces of all churches after every avoidance. But these also were given to the crowne

26 H. 8. cap. 3.

k by the statute of 26 Hen. 8. cap. 3.

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Tenths ecclesiasticall, *decimæ*, these are the tenth part of the value of all ecclesiasticall livings yearly payable to the king, his heirs and successors by the said statute of 26 H. 8. and 1 Eliz. to be valued as is abovesaid.

Num. 18. 26. &c. Vi. Jerom. in Eze. ca. 44. v. 28. &c.

These the pope (as the canonists hold) pretended to have *de jure divino*, as due to the high priest by pretext of these words, *Præcipe Levitis atq; denuncia, cum acceperitis à filiis Israel decimas quas dedi vobis, primitias earum offerte Domino, id est decimam partem decimæ, ut reputetur vobis in oblationem primitiarum tam de arcis, quam de torcularibus et universis quorum accipietis primitias offerte Domino, et date*

date ea Aaron sacerdoti. But the parliaments in 25 H. 8. and 26 H. 8. were not of opinion that these tenths did belong to the bishop of Rome; as by the severall preambles thereof appeareth, which we have added; for that we have endeavoured to shew through all this work the severall claims or pretences of every thing whereof we have treated. And king Philip and queen Mary yeilded not these tenths to the pope, but (as hath been said) by authority of parliament discharged the clergy thereof: which they would never have done, if they had taken them to be due to the pope *de jure divino*. And the bishop of Norwich could not have prescribed to have first-fruits within his dioces, if they had been due to the pope *de jure divino*: and the rather, for that Anthony de Becke, for whom the prescription was made, was a reiteiner to the court of Rome, and made bishop of Norwich by the pope.

19 E. 3. tit. Jurisdiction, ubi sup.

C A P. XV.

The Court of Augmentations of the Revenues of the Crowne of England.

THIS court was erected by authority of parliament in *anno* 27 H. 8. consisting of a chancelour, treasurer, attorney, solicitor. And all lands, &c. belonging to monasteries, and purchased lands were within the survey and governance of this court. This court could not be erected but by parliament, because a chancelour and a court of equity were constituted. More hereof in the next chapter.

27 H. 8. cap. 27.

C A P. XVI.

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The Court of Generall Surveyours of divers of the Kings Lands with Power to make Leafes for Twenty-one Years erected by Act of Parliament in 33 H. 8.

33 H. 8. cap. 39.

BOTH these courts king H. 8. by his letters patents *anno regni sui* 38 dissolved, and erected a new court of augmentations by his letters patents. The dissolution was holden void, because they were created by authority of parliament. Vid. the rehearfall of the statute of 7 E. 6. cap. 2. and the erection was also void for the cause aforesaid. And thereupon the said letters patents, as well for the dissolution of the former, and for the erection of the new court of augmentations were confirmed and established by the said act of 7 E. 6.

Brañ. Nihil tam conveniens est naturali æquitati, unumquodque dissolvi eo ligamine quo ligatum est. 7 E. 6. cap. 2. 1 Mar. cap. 10.

Queen Mary according to the power given to her for dissolution of

of the said court by act of parliament holden the fifth of October in the first year of her reigne, did afterwards by her letters patents, bearing date 23 *Januarii* in the same year dissolve the said court of augmentations; and the next day following by other letters patents united the same to the exchequer, which was utterly void, because she had dissolved the same before: so as she pursued not her authority.

Dier 4 Eliz. 16.
So resolved by
all the judges.

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C A P. XVII.

The Honourable Court of Chivalry before the Constable and Marshall.

The stile of the court.

The judges.

43 E. 3. fo. 3.
See the first part
of the Institutes.
sect. 745. many
other authorities
cited.

The name.

1. part of the
Institutes, sect.
102 & 153.

The place.

The jurisdiction.

Rot. par. 8 R. 2.
nu. 31. not in
print. 13 R. 2.
stat. 1. ca. 2.
Rot. par. 8 H. 6.
nu. 38.
* The judges,
vide infra.
1 H. 4. cap. 14.

* Nota declared.

The power and jurisdiction.

ROT. Pat. 12 H. 4. m. This court is called *curia militatis* and rot. parl. 2 H. 6. nu. 9. the marshall court.

The judges of this court are the lord constable of England and the earl marshall of England, and this court is the fountain of the marshall law. And the earl marshall is both one of the judges, and to see execution be done.

Constable or *custable* is compounded of two Saxon words, *cuning* per contractionem *kinge*, and *stable*, id est. *columen*, quasi *columen regis*, anciently written *cuningstable*. *Marshall* anciently written *marsecalc*, likewise of two Saxon words, viz. *mare* for *equus*, and *stalc* curator, quasi *curator eorum*: for the marshall *marischallus*; and the derivation thereof, see the first part of the Institutes, sect. 102. fol. 74. sect. 154. fo. 106. section 745. fo. 391.

This court of chivalry was anciently holden in the kings hall. The jurisdiction is declared by the statute of 13 R. 2. stat. 1.

Because the commons doe make a grievous complaint, that the court of the * constable and marshall have incroached to them, and daily doe encroach contracts, covenants, trespasses, debts and detinues, and many other actions pleadable at the common law, in great prejudice of the king and of his courts, and to the great grievance and oppression of his people, the king willing to ordain a remedy against the prejudices and grievances aforesaid, hath * declared in this parliament by the advice and assent of the lords spirituall and temporall the power and jurisdiction of the said constable in the form that followeth.

To the constable it appertaineth to have consufance of contracts and deeds of arms, and of war out of the realm, (1) and also of things that touch war within the realm, which cannot be determined or discussed by the common law, with other usages and customes to the same matters pertaining, which other constables have heretofore duly and reasonably used in their time, joyning to the same that every plaintiff shall declare plainly his matter in his petition afore that any man be sent for

to

to answer thereunto. And if any will complain that any plea be commenced before the constable and marshall, that might be tried by the law of the land, the same complainant shall have a privy seal of the king without difficulty directed to the said constable and marshall to surcease in that plea, till it be discussed by the kings counsell, if that matter ought and of right pertaineth to that court, or otherwise to be tried by the common law of the realm of England, and also that they surcease in the mean time.

See the third part of the Institutes, cap. High Treason, pag. 26. Rot. pat. 25 E. 3. parte 1. m. 16. 1 H. 4. between the lord Morly and the earl of Sarum, the record whereof we have seen. Rot. pat. 2 H. 4. parte 1. m. 7. between Kighly and Scroop. Rot. pat. 3 H. 4. Ballesthuys case. Rot. Vascon. 9 H. 5. nu. 14. Bullemers case. Rot. parl. 21 R. 2. nu. 19. &c. Rot. parl. 2 H. 6. nu. 9. Holl. Chron. 424. 3 H. 4 Sir John Annesleys case. See this case Walsing. pa. 237. *Duellum percussum. Ibidem* 8 R. 2. 446. John Walthes case. For this case of Walth, see Walsing. pa. 311. and Stowes Annals 477. Howes Chron. 8 H. 6. 371. between John Upton and John Down. Vide Stowes Survey of London 385. See this case, rot. pat. 8 H. 6. parte 2. m. 7. Annals 609. Stow. *ibid.* anno 25 H. 6. *anno domini* 1446. between John Davye and William Catur his master, Annals 655. *ibid.* 386. battell joyned between Thomas Fitz-Thomas prior of Kilman and James Butler earl of Ormond; but when it came to the point the king forbad it. Vide Rot. parl. 2 H. 6. nu. 9. John lord Talbot lieve-tenant of Ireland accused the earl of Ormond of high treason before the earl of Bedford constable of England in his marshals court, the king did abolish the accusation.

What judgment shall be given when either party is vanquished, see the articles of the duke of Glouc' constable of England about the beginning of the reign of R. 2. The law of arms is, that the appellant being overcome shall incurre the same punishment, that the defendant ought to have done if he had vanquished.

See an ancient manuscript in French entituled *Modus faciendi duellum coram rege. Bone foy et droit et ley de arms voet que l'appellant encourage mesme peyne que le defendant devoit, sil soit corruet et discomfit.* * And this seemeth to be consonant to the law of God.

This manuscript treateth both of the jurisdiction and manner of the proceeding before the constable and marshall, and for that it is long, and I doubt not but copies thereof are in many hands, I have not inserted it here.

There are many in forain parts that have written of combats, &c. in Latine, French, and Italian. As Alciat, Lancelottus, Contadus, Johannes de Lignano, Mutio Justino Politano, Berandler, Beutheus, Desdigueres, &c. to whom we refer the reader, for that it is safe to follow the acts of parliament concerning the jurisdiction of this court, and such presidents as have been before the constable and marshall in the marshals court within this realm.

(1) *Out of the realm.*] This is to be understood in any forain part beyond the seas, in *partibus exteris et transmarinis*. For upon the sea the admirall hath jurisdiction, which admirall (our English

IV. INST.

L

Neptune)

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* Deut. 19. 18. And the judges shall make diligent inquisition, and if the confuser be found false, and that he hath given false witness against his brother, then shall you doe to him, as he had thought to doe to his brother, and thou shalt put evil away from the middle of thee.

Neptune) cannot meddle with any thing beyond the seas upon the land, and the constable and marshall have no consufance of any thing done upon the sea.

26 H. 8. ca. 13.
35 H. 8. cap. 2.
5 E. 6. cap. 11.

Where by these acts it is provided, that all treasons, misprifion of treasons, or concealment of treasons committed out of this realm of England, should be inquired of, heard and determined in the kings bench by good and lawful men of the same shire where the said bench shall sit, or else before such commissioners and in such shire, as should be assigned by the kings commission by good and lawful men of the same shire, in like manner and form to all intents and purposes as if such treasons, &c. had been done within the same, &c. None of these acts doth take away the jurisdiction of the constable and marshall, where one accuseth another of high treason done out of the realm: for of such an accusation of one against another of any high treason done out of the realm the constable and marshall should have consufance thereof: because high treason is not triable by jury according to the course of the common laws of the realm in that case for want of proof, as by all the presidents aforesaid it appeareth. Neither doth the said act of 35 H. 8. or 5 E. 6. take away the statute of 28 H. 8. cap. 15. for tryall of treasons done upon the sea, albeit they be done out of the realm. See hereafter cap. 23. and the third part of the Institutes, cap. of Piracy, pa. 111, & 112. and there was no doubt conceived of the triall of them. See the preamble of the statute of 35 H. 8. and of 5 E. 6.

See 1 E. 6. ca. 12.
& 5 E. 6. ca. 11.
in the 3 part of
the Inst. p. 24.

See 5 El. ca. 5.

* Vid. Regi. 129.
F. N. B. 114. b.
Note remedy by
the common
law for wrong
done beyond the
sea.

† [125]
Rot. par. 8 R. 2.
nu. 31. not
printed.

Rot. par. 5 R. 2.
nu. 39. Bennet
Wilmots case.
6 H. 7. 5. Simile.
* Regul. 6 H. 7.
4. 5.

Breve Vic' Lon-
don pro listis &
barris, &c. pro
guello fac'.
Lex armorum.
Pro duello, &c.
See the articles
set down by
Tho. of Wood-
stock duke of
Glouc' constable
of England,
about the begin-
ning of the reign
of R. 2.

* If any merchant English be spoiled, or his goods taken from him beyond sea by any merchants strangers, and the English merchant cannot upon suit attain † to justice there, he shall have upon testimony thereof a writ out of the chancery to arrest the merchants strangers if they come into England or their goods, &c. untill they be satisfied. See hereafter the chapter of Admiralty.

Before this act at a parliament holden in the 8 year of R. 2. it was enacted, that no plea which should concern the common law should be tried before the constable and the marshall.

No addition either of persons or of jurisdiction can be added to this court, unlesse it be by act of parliament, * for ancient courts ought to be exercised according to the ancient and right institution.

In the appeal aforesaid between Upton and Down in 8 H. 6. after battell joyned, the kings writ out of the court of chancery issued to the sherifs of London, as we find it entred and recorded in the great book of the abby of Bury fo. 87. as followeth.

Rex vic' London salutem: precipimus vobis firmit' injungentes quod quasdam listas et barras de meremio fortes et satis sufficientes pro quodam duello inter Johannem Fyton appellansem et Johannem Down defendensem, secundem legem armorum die Lunæ prox' futur' apud Westsmithfield in suburb' civitatis prædictæ Deo dante perficiend' contra diem prædictum nostris sumptibus et expensis erigi, construi, et fieri fac' in omnibus prout in ultimo duello ibidem facto fact' fuerunt, et quod terra infra listas prædictas cum sabulo sufficiente et equalit' cooperatur, ita quod aliqui lapides grandes aut arena infra easdem listas minime inveniantur quovismodo: et de omnibus et singulis secūnarum summis quas circa præmissa applicaveritis, nos vobis in compoto vestro ad seaccarium nostrum

per

per presens mandatum nostrum, debitam allocationem habere faciemus, &c.

By this writ we observe 4. things. 1. That sheriffs ought to make the lists, &c. 2. The manner how they are to make them. 3. That they ought to make them by the kings writ. 4. That they are to be made at the kings charges.

See mod' fac' duellum coram r'ge.

By the statute of 1 H. 4. all appeals of things done within the realm shall be tried and determined by the good laws of the realm, &c. And that all appeals made of things done out of the realm shall be tried and determined before the constable and marshall of England for the time being, and that no appeal be pursued in parliament.

1 H. 4. cap. 14.

Rot. par. 11 H. 4. nu. 24.

They proceed according ^a to the customes and usages of that court, and in cases omitted, according ^a to the civil law, *secundum legem armorum*. And therefore upon attainders before the constable and marshall of England for the time being no land is forfeited, or corruption of blood wrought.

^a 13 H. 4. fo. 45. *By the civil law, &c.*

^a 37 H. 6. fo. 3. Fortesc' cap. 32. fo. 38.

For records, book-cases, and other authorities in law as well for the exposition of the said statutes, as for the jurisdiction and proceedings of this court, ^b see the first part of the Institutes, sect. 102. and 745. and peruse the authorities there cited. See also the petition of right, 3 Car. cap. 1.

^b 11 H. 4. nu. 24. All statutes made touching the courts of the constable and marshall and admiral of England shall be observed. Vide rot. par. 5 H. 4. nu. 24. An act not in print touching a commission for arraying and mustering of men, which at this day is of force, and no other. Vide 8 H. 4. nu. 12. Clergy exempt out of that. See also 14 E. 3. stat. 2. nu. 53. a commission of lieutenantancy. See hereafter amongst the ecclesiasticall courts, tit. Appca.

It is to be observed that after sentence pronounced in this court of chivalry in case of arms the party grieved may appeal to the king, whereof you may read a notable record, Rot. pat. 13 R. 2. parte 3. Note also a speciall rol, an. 14 R. 2. intituled *rot. process' in curia militari in causa armorum, int' Ric'um le Scoop chivalier, et Robertum Groeener chivalier*.

And for this cause (amongst others) ^c the heralds are attendants upon this court. Of these heralds there be *tres reges*, viz. *Garter rex armorum, Clarenceux rex armorum ex parte australi. Norroy rex armorum ex parte boreali, et sex alii heraldi*. These English heralds are messengers of war and peace, skilfull in descents, pedegrees, and armories; they marshall the solemnities at coronations, they manage combats before the constable and marshall, and upon request they solemnize the funeraks of noble, honourable, reverend, and worshipfull parsonages. ^a They were first incorporated by king R. 3. and afterwards newly incorporated by king Philip and queen Mary. Their learning and faithfull dealing in descents and pedegrees upon just proof may be a mean to quiet many controversies about the titles of honors, dignities, and inheritances.

^c Saxonicè Ep'hold i. honore. Vid. Glover 82, 83.

^b In the Prophet Ezechiel it is thus written: *Dicit dominus deus, et erit manus mea super prophetas, qui vident vana, et divinant mendacium: in concilio populi mei non erunt, et in scriptura domus Israel non scribentur.*

Upon these latter words divines doe hold, *Quod mos erat in Israel, quod unaquæque familia genealogiam ejus scriberet, in qua dinoscatur*

Vid. Glover 82, 83.

^c Saxonicè Ep'hold i. honore.

norem tenens, Latine faciales. 5 E. 4. 6. b. Pl. Com. 12. b. ^a Rot. pat. 1 R. 3. rot. pat. 2 & 3 Ph. and Mar. 18 July: their colledge is in the parish of S. Bennet in Castle Binarid awrd granted to the corporation of the heralds by letters patents bearing date 18 July 1555. anno 2 & 3 Ph. and Mar. ^b Ezech. 13. 8, 9. Psalm. 69. *Dilectantur de libro viventium, et cum justis non scribantur.* 1 Eld. ca. 2. 62. *Hi quæserunt scripturam genealogiæ suæ et non invenerunt, et ejectioni sunt.*

Vid. Glover 82, 83.

^c Saxonicè Ep'hold i. honore.

quilibet de qua tribu erat, et de qua familia, et quæ hereditas ejus esse deberet, et ille qui penitus destrueretur non scriberetur.

• Discharged of subsidies.

• These heralds are discharged of subsidies, tols and other charges of the common-wealth, by letters patents of E. 6. anno 3. of his reign.

• Regist. 287. b. F. N. B. 247. c.

• Or in the kings bench or other court.

Nota, pro barone. Vid. 8 H. 6. 9, 10. 14 H. 6. 2. lib. 6. fo. 53. b. c. Countes de Rutlands case.

See the first part of the Institutes for degrees, and creations of nobility, and triall thereof, Sect. 9. fo. 16. and Sect. 95. fo. 69. whereunto you may adde a notable writ in ^d the Register, when a baron or any higher degree of nobility is sued in the • court of common pleas, and processe awarded against him by *capias* or *exigent*, then may he sue out this writ.

Rex justiciariis suis de banco salutem. Mandamus vobis, quod si G. T. miles coram vobis ad sectam alicujus per actionem personalem implacitatus existit, talem processum et non alium versus ipsum in actione prædicta fieri faciatis, qual' versus dominos, magnates, comites sive barones regni nostri Angliæ qui ad parlamentum nostrum de sommonitione nostra venire debent aut eorum aliquem secundum legem et consuetudinem regni nostri Angliæ fuerit faciend', quia prædict' G. T. unum baronum regni nostri prædict' ad parlamenta nostra de sommonitione regia venientium recordari, &c.

to E. 2. Camden Brit. rot. cart. 23 H. 3. nu. 32. 34. Almarick earl of Leic' Math. Par. pag. 647.

The barony of Edmond de Eincourt commonly Deincourt of Langley in Lincolnshire originally created by writ, had long continued in his surname, and having no issue male, desirous that his surname, arms, and barony, all which he held in fee simple might continue, by humble suit importuned king E. 2. for that he conceived, *Quod cognomen suum et arma post mortem suam deleverentur, et corditer contestabat ut post mortem ejus in memoria haberentur, ut de maneris et armis suis fessaret quemcumque voluerit*: and in the end he obtained his suit by the kings letters patents under the great seal, and afterwards about 19 E. 2. he assigned according to the kings grant his surname, arms, and possessions. For we find in the close rolls that the said Edmond baron of Eincourt sat in parliament until and in 18 E. 2. and that after his decease his assignee sat in parliament in 1 E. 3. by the name of William de Eincourt, and in his heirs males the dignity, surname, and possessions continued • until 21 H. 6. and then his heir male together with the name and dignity ceased.

• Inquisit' 21 H. 6. post mortem Wilhelmi domini de Eincourt.

Hil. anno 31 El.

And I did hear the baron of Burghley lord treasurer deputy to the earl of Shrewsbury then earl marshall of England, in hearing of the cause by the queens commandement between Edward Nevil and lady Mary Vane daughter and heir of Henry lord of Aburgavenny for the right of the barony of Aburgavenny, vouch a record in the reign of E. 4. That the lord Hoe, who bare for his ensigns of honor quarterly silver and sable, having no issue male, by his deed, under his seal granted his name, arms and dignity over. but having not the kings licence and warrant, the same was in parliament adjudged to be void.

Our heralds are constituted by letters patents, and have many ceremonies done unto them at their creation, but those ceremonies are not of the essence of their office, but the letters patents only: and so was it adjudged in the kings bench in the reign of Queen Elizabeth. in the case of Dethick king of arms. But thus much of heralds upon this occasion shall suffice; and now let us return to our equiftable and marshall.

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In ancient laws before the conquest, you shall read *de heretochiis* or *heretoziiis*, i. *duelloribus exercitus*, ab hepe exercitus et toecu, ducere. *Heretochiis* agreeth with either of these great officers, *constabularius* or *marischallus*: *isti vero eligebantur per commune concilium pro communitate regni per provincias et patricos in pleno folknote.*

This office of the constable of England was afterwards of inheritance by the tenure of the mannors of Harlefield, Newman, and Whitenhurst by grand serjeanty, in the line of the Bohuns earls of Hereford, and Essex, and afterwards of right in the line of the Staffords and dukes of Buckingham as heirs generall to them: at the last by the opinion of * all the judges it was lawfully descended to Edward duke of Buckingham, who was attainted of treason, in anno 13 H. 8. whereby this office became forfeited to the crown, and since that time both in respect of the amplitude of the authority both in war and peace, and of the charge, it was never granted to any subject, but now of late *hac vice.*

For the office of the earl marshall, see the first part of the Institutes, sect. 102. & 135.

The effect of the grant of this office of constable of England is in very few words, viz. *officium constabularii Angliæ una cum omnibus feodis, proficiis, commoditatibus, et emolumentis quibuscunque officio prædicto qualitercunque pertinentibus, et ab antiquo debitis et consuetis.* And by no means we are to follow the irregular president of the grant thereof by king E. 4. in the 7 year of his reign to Richard Wideville earl Rivers and lord of Grafton and De la mote for his life: which patent you shall find rot. pat. anno 7 E. 4. part 1. and is directly against the common law and the statutes concerning the jurisdiction of this office: and therein to over-reach all the good and wholesome laws made for the declaration of the jurisdiction of this great office, power was given to the earl Rivers to have conuifance in case of high treason, and other causes and affairs, *que in curia constabularii Angliæ ab antiquo, viz. domini Guilielmi Conquestoris progenitoris regis, seu aliquo tempore citra, tractari, audiri, examinari, et decidi consueverunt, seu de jure debuissent fore debent, et diversa alia perperam.* And therefore by no means the same or the like is to be drawn into example.

For grants of this great office of constable of England, see the presidents, and by that which hath been said choose the best. Rot. pat. 1 H. 4. parte 1. *Henrico comiti North pro vita.* Rot. pat. 4 H. 4. parte 2. *Johanni filio regis, ad placitum.* Rot. park 1 H. 6. nu 23. *Duci Glouc' ad placitum.* Rot. pat. 1 H. 6. parte 2. *Johanni duci Bedford pro vita.* Rot. pat. 8 H. 6. parte 1. *Richardo duci Eborum in absentia Johannis ducis Bedford.* Rot. pat. 25 H. 6. parte 1. *Johanni vicecom' de bello monte.* Rot. pat. 28 H. 6. parte 2. m. 22. *Henrico com. Northumbr. ad placitum.* Rot. pat. 29 H. 6. parte 1. *Edmundo duci Somerset ad placitum.* Rot. pat. 1 E. 4. parte 3. m. 188. *Johanni com. Wigorn'.* Rot. pat. 7 E. 4. parte 1. *Johanni domino Tiptoft.* Rot. pat. 7 E. 4. *Ubi supra Richardo com' Rivers.* Pat. 8 E. 4. parte 1. Pat. 9 E. 4. *Georgio duci Clarence'.* Pat. 9 E. 4. parte 2. *Richardo duci Glouc'.* Pat. 10 E. 4. parte 1. * *Johanni Tiptoft comiti Wigorn. pro vita.* Pat. 16 E. 4. parte 1. *Ricardo duci Eborum. Henricus Stafford dux Buckingham jure hæreditario.* Pat. 1 R. 3. *Thomas dominus Stanley. Edwardus dux Buck' jure hæreditario.*

This great office hath been usually granted, as by the presidents
L 3 aforesaid

Int' leges Edwardi regis. Lamb. 136. Hovenden annal. cap. 35. De Heretochiis. Cf ancient time eligible. Lambard ubi sup. Hovend. ubi sup.

* See 11 El. Dier 235. fo resolved in 6 H. 8.

Hic omnium inmanifestus: but the debts of cruelty are never unpaid, respice finem.

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aforefaid appeareth, *exercendum per se vel per sufficientes deputatos suos, seu per sufficienti deputatum suum.*

There is also an office of *subconstabularius* granted to Thomas Kent doctor of laws. Pat. 23 H. 6. parte 2. Simile pat. 22 E. 4. m. 2.

There is also *clericus constabulariæ Angliæ, et promotor causarum et negotiorum regiam majestatem tangen'*. This office was granted to Thomas Appulston with a fee of five marks. Pat. 8 E. 4. parte 1.

Concerning the grants of the office of earl marshall of England: for this office ever passed by the grants of the king, and never belonged to any subject by reason of tenure, as the stewardship, and constableness of England some time did.

Ro. Cart.
20 R. 2. m. 1.
n. 3.

• This is the first stile that ever came in any patent.

Ro. Cart. 9 R. 2.
nu. 17.

Rex, &c. sciatis quod cum nos nuper de gratia nostra speciali concesserimus dilecto consanguineo nostro Thomæ comiti Nottingham officium mareschalli Angliæ: habendum ad totam vitam suam Nos jam de ulteriori gratia nostra concessimus prefato consanguineo nostro officium prædictum • una cum nomine et honore comitis mareschalli. Habendum sibi et hæreditibus suis masculis de corpore suo excurrentibus cum omnibus feudis, proficiis et pertinentiis quibuscunque dicto officio qualitercunque spectantibus imperpetuum. Hiis testibus, &c. Dat' 12 Junii anno regni sui 20.

This charter of creation is confirmed by act of parliament. The former grant before recited, yet shorter then this, was made anno 9 R. 2.

For other grants of this office in Rot. Cartarum, pat. & parl. See Rot. Cart. 1 Johannis parte 2. nu. 85. Rot. Cart. 9 E. 2. nu. 32.

Vide Rot. Pat. {
1 H. 3. m. 14. 16.
22 R. 2. parte 1. m. 12.
1 H. 4. parte 2. & 5. m. 6.
1 R. 3. parte 1. m. 12.
1 H. 7. parte 3.
2 H. 8. parte 2.
25 H. 8. parte 2.
1 E. 6. parte 2. m. 19. & 22.
19 J. 3. parte 13. nu. 5.

Vide Rot. Parl. {
3 H. 6. m. 181.
1 Mariæ, nu. 34.
1 R. 2. m. 4. & 3.
20 R. 2. nu. 33.
Parl. 21 E. 1. rot. 1. *Quæ pertinent ad officium comitis mareschalli, &c.*

Pat. 22 E. 4.
m. 2.

There was also *vicemareschallus*, which office was granted to Tho. Grey *hac vice*.

Vide *lib. nigr. de scaccario*, concerning the offices of the constable and marshall, *et lib. rubro fo. 36.*

See also the marshall of England, Fleta lib. 2. cap. 4, 5. and Britton *in principio libri*.

See Mich. 13 E. 2. *in scaccario pro feudis constabularii Angliæ.*

Hil. 5 E. 3. *in scaccario certificatio facti regi pro officio mareschalli.*
1 E. 3. fo. 16. 2 E. 3. fo. 12. 48 E. 3. 3. Rot. parl. 2 R. 2. nu. 47. 5 R. 2. tit. Triall. 54. Rot. par. 5 H. 4. nu. 39. Keylwey 172. Stanf. Pl. Cor. 65. Fortescue ca. 32. fo. 38. 5 Mar. Br. tit. Battell 15.

Heresita

Hereſita ſignifieth a ſoldier hired and departing without licence, derived of *here*, *exorcitus*, and *ſiten*, to depart.

If any ſoldier have covenanted to ſerve the king in his war, and appear not at the time and place appointed, there lyeth by the common law an original writ of *capias conductos ad proficiendum*, directed to two of the kings ſerjeants at arms to arreſt and take him whereſoever he may be found, and to bring him *coram concilio noſtro* with a claufe of aſſiſtance: but of this matter ſee the third part of the Inſtitutes, cap. [Soldiers that depart, &c.] See 3 Car. the petition of right concerning martiall law, and the commiſſion to lieutenants, &c.

Regiſt. fo. 191. a,
& Par. 5 E. 3.
nu. 18.

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To conclude with ſome ſhort touch concerning right of war. *Si quando acceſſeris ad expugnandam civitatem, offeres ei primum pacem: and ſee there many things concerning right of war. Quis rex iturus committere bellum adverſus alium regem, non ſedens prius cogitat ſi poſſit cum decem millibus occurrere ei qui cum viginti millibus venit ad ſe, alioquin illo adhuc longe agente legationem mittens rogat ea quæ pacis ſunt.*

Deut. 20. 10. &c.
Luc. 14. 31.

Haud facile vincitur qui de ſuis et adverſarii copiis vere poterit judicare. Qui colloquium offert, ſemper pavescit, he that offereth parly is ever afraid. *Nulla ſunt meliora conſilia quam quæ ignoraverit adverſarius antequam facias.*

Tacitus.
Vegetius de re militari.

Nullum bellum eſt juſtum niſi aut pro rebus petitis geratur, aut ante denunciatum ſit, et indictum.

Cicero offi'.

Jure gentium non licet indiſtas inimicitias exercere et bellum gerere, priusquam ille à quo injuria ſit orſa moncatur illicitam injuriam reſarcire, et ab injuria abſiſtere.

Camden.

Juſtum autem bellum eſt quod tria hæc habet, authorem, cauſam, finem.

Lipſius.

Semper in prælio hiis maximum periculum, qui maxime timent.

Saluſt.

Longa belli præparatio celerem dat victoriam.

Veget. et Seneca.

Ideo ſuſcipienda ſunt bella, ut ſine injuria in pace vivatur.

Cicero ubi ſup.

In republica maxime conſervanda ſunt jura belli.

Ariſt. 10.

* *Olim veteri lege armorum cives et burgenſes militiam tractare prohibiti fuerunt.*

* Vid. 24 E. 3.
tit. coron.

We vouch *Vegetius* for his own honor and worthineſſe, and for that *Fortescue*, fo. 70. b. citeth him.

C A P. XVIII.

The Court of the Marshalsea.

The name.
 1 part of the In-
 structions, §. 102.
 & 135.
*The antiquity and
 honor.*
 4 H. 6. 8. L.
 5 E. 4. 229.
*Wherefore it is
 called the court of
 the marshalsea.*

FOR the derivation of *marescallus et mareschalcia*, see before in the next preceding chapter of the court of the constable and marshal, that they be derived from two Saxon words which we conceive tendeth much for the proof of the antiquity and honor of our nation, seeing other nations have the same officers and offices; and in respect their name is derived from the language of our ancestors, it is like they took the same from us.

Albeit in this court the steward and marshal of the household are judges, and the steward hath the precedency, yet the court is called the court of marshalsea for three causes. First, he is not only a judge, but seeth that execution (which is the life of the law) be done. Secondly, his office is in force both in time of peace, and in time of war. Thirdly, though the constable hath the precedency of the marshal of England, yet the court holden before them is called the marshal court for the causes aforesaid. See before in the chapter of the constable and marshal, see also rot. par. anno 8 H. 4. nu. 82. that the court of the marshal can hold no plea but such as were holden in the reign of E. 1.

*The jurisdiction of
 this court is origi-
 nal and ordi-
 nary.*
 4 H. 6. 1.

For the jurisdiction of this court, and within what precinct, see in my Reports, lib. 10. fo. 68, 69, &c. *Le case del marshalsea*, Lib. 6. fo. 20, 21. Michelbornes case. 7 H. 4. 15. in Calvins case. Lib. 4. fo. 46, 47. Swifts case. See parl. 30 E. 1. rot. 2. All inquisitions concerning any citizen of London shall be taken in London.

Hil. 20 R. 2.
 coram rege rot.
 58. Midd.

Pertinet ad marescallum cur' hic venire fac' juratores super felones captos cum manuopere in aula regis.

This court hath his foundation from the common law of England.

W. 1. ca. 26.
 f. ca.

This marshal by the statute of W. 1. can take no fee for doing of his office but only of the king, but such fees as latter acts of parliament have given him, he may take. See the third part of the Institutes, cap. Extortion.

For the fees of the marshal of the kings house, and of staffe bearers, and servitors of bills, see the statute of 2 H. 4. cap. 23.

Rot. par. 17 E. 3.
 nu. 31.

To conclude this chapter with an act of parliament not in print. It is enacted that every person arrested into the marshalsea, may tell his own tale, and that the officers doe not passe the verge. See par. 50 E. 3. nu. 91. 162.

C A P. XIX.

The Counting-house of the Kings Household,

Domus Compotus Hospitii Regis.

IT is commonly called the green cloth, in respect of the green-cloth upon the table, wherat the honourable officers hereafter mentioned do sit, viz. the lord steward, the treasurer of the kings house, the controller of the kings house, the master of the household, the cofferer, and two clerks controllers continually sitting in this counting-house for these purposes. First, for daily taking the accounts for all expences of the said household. Secondly, for making of provisions for the said household, according to the laws and statutes of the realm. Thirdly, for making of payment for the same accordingly. Fourthly, for the good government of the kings servants of household. Fifthly, the cofferer is to pay the wages to the kings servants beneath the staires, and the lord chamberlaine above the stairs of the kings household. Vide 39 Eliz. cap. 7. and he is to account in the exchequer for about 40000 li.

33 H. 8. cap. 44

See *Fleta de officio thesaurarii hospitii regis, &c.* Habet enim rex alios clericos in hospitio suo, et thesaurar' garderobæ suæ quæ est locus clericis tantum assignatus, quæ in Francia camera clericorum appellatur. Huic enim thesaurario cur' expens' regis et familiæ suæ committit', q. cum clerico provido sibi associato pro controlatore recordum habet ut in huius officium suum contingunt.

Fleta lib. 2. ca. 13. Thesaurarius, Garderobæ.

Officium thes. garderobæ est pecuniam, jocalia exemna. regi facta recipere et recepta regisque secreta custodire, et de receptis expens' facere rationabiles, expensarumque particulas inbreviare, et de particulis comp' reddere ad scaccarium singulis annis in festo Sanctæ Margaretæ absque sacro præstando, eo quod de consilio regis est juratus, et unde primo debet distinte et aperte comp' reddere de omnibus recept' separatim per se in uno rotulo. In alio autem rotulo de expensis cotidianis de quibus sen' audiverit comp', simul cum thes. et consocio suo. Item de necessariis expens. in quibus emptiones equorum, carisagia et plura alia continent'. Item de donis. Item de oblationibus et elemosynis. Item de vadiis militum. Item de vadiis balistar'. Item de feod' forinssecis. Item de præstit' et accomodat'.

Compotum reddere.

De consilio regis juratus. Modus compoti.

Item de expens. garderobæ in quib' emptiones pannorum, pelure, cere speru tele, et hujusmodi comprehenduntur. Item de jocalibus. Item de expens. forinssecis, in quibus diversi onerant' in compot' reddend. Item de nunciis. Item de falconar'.

Thes. autem memoratus convenire debet singulis noctibus sen. hospitii, camerar' controlatorem et clericum ejus, cofferarium, mar' aulæ et hostiar' milites, mar' servientem et duos hostiar' aulæ et hostiar' cameræ servientes, assistentem servulorum, pincernam, panetr' pistorem et clericum eorundem officiorum, q. de expens. dietæ, viz. panis, vini, et cervis. pichiorum, ciphorum, salis, fructus, casei et hujusmodi respondebit.

Convenire singulis noctibus. Coffrarius.

Item

Magistri Cocorum clericus Coquinæ.

Item duos magistros cocorum, lardenar', poletar', scutellar', falsar' et clericum coquinæ qui de eislem officiis pro omnibus in eorum præsentia de expens. illius dietæ reddit rationem, quorum omnium præsentia necessaria est. Item elemosinar', janitor' servientem ad custodiam summæ et caretæ deputatam et clericum de marescalcia cum marescall' fractore equorum, qui quidem clericus de expens. feni et aven' litere fracture equorum et harnese pro equis et carellis ac de vadiis servient' scutiferarum clericorum et garc' respondebit, cuj' interest scire tam de hiis qui de novo erunt admissi ad vad' regis, quam de vagantibus et in hiis vadia minuere et augere. Vadia autem absentibus sine speciali præcepto regis nisi obsequio reg' fuerint minime concedunt', præsentia autem coronatoris regis necessaria erit in pleno composito, compositi auditores super foro frumenti et aven. instruet et edocet qualis' proclamat' in eisdem partibus per quod melius scire possint quot panes obolati fieri debent de quar' frument. quibus omnibus congregatis audire debent expens. et rationabilem composit' illius dietæ.

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Mareschalli autem de supervenientibus debent inferiori mar' testimonium perhibere. Hostiarius miles hostiariis aliis de numero ferculorum lardenar', coco, camerar', hostiario camer' regis, et sic quibus alii et sic audiat' compositus de tota dicta.

And then followeth a description of the duties of the severall officers abovesaid, worthy the reading.

Artic. sop. Cart. cap. 2.

The cofferer is in Fleta called *coffrarius* of the coffer: because he should have money in his cofer to pay wages, &c. as is aforesaid. It is enacted by the statute of 28 E. 1. cap. 2. That all purveyours shall account in the * household, or in the wardrobe. Rot. par. 28 E. 3. nu. 34. no purveyour arrested shall be brought before the councell, &c. but take his remedy by the common law. See the third part of the Institutes, cap. Purveyours.

* Counting house having the greencloth. Rot. par. 28 E. 3. nu. 34.

* See the statutes concerning purveyours, anno 36 E. 3. cap. 2, 3, 4, 5, 6, &c. But observe that there is left out of the print the pain on the steward, treasurer, controller, and other officers of the household at the kings will, for not executing the statute; which omission hath made those of the greencloth the bolder.

• 36 E. 3. ca. 2, 3, 4 &c.

At that parliament it was also enacted, that the kings cariages should be made in as easie manner as might be, and that in the summer, and other times convenient, as in August (which is also left out of the print.) For the kings cariages see Mag. Cart. cap. 21. and the exposition upon the same in the second part of the Institutes.

Rot. par. 36 E. 3. nu. 18.

For the Wardrobe, vide 15 E. 2. rot. *per se.* 1 E. 4. ca. 1. clerk of the wardrobe, Rot. parl. 7 H. 7. the expences of the kings household and wardrobe. 1 H. 8. an act concerning the great wardrobe. 3 H. 8. the assignment for the kings wardrobe. 39 Eliz. cap. 7. master of the wardrobe, whose office is accountable to the exchequer. See W. 1. cap. 44. what issues the kings justices are to estreat into the wardrobe: more of the wardrobe, Rot. clauf. 33 E. 1. m. 3. rot. *liberationum*, 11 E. 2. m. 4. To conclude, see Rot. clauf. 18 E. 4. m. 13. where it appeareth that letters and writings concerning matters of state, which were not fit to be made vulgar, were inrolled in the wardrobe, and not in the chancery, as leagues were and ought to be, as it appeareth in 19 E. 4. 6. And thus much of the wardrobe being mentioned in Fleta.

Vid. infra cap. 26.

The officers of the counting-house never held plea of any thing.

C A P.

C A P. XX.

The Court of the Lord Steward, Treasurer, and Controller of the Kings Household, concerning Felony by compassing or Conspiracy to kill the King, or any Lord or other of the Kings Councill, &c.

THEY have jurisdiction by act of parliament, to enquire, heare, and determine the said offence, as particularly and at large appeareth in the third part of the Institutes, cap. Felony, by compassing, or conspiracy to kill the king, &c.

3 H. 7. cap. 24.
3 part of the Institutes cap. Felony by compassing or conspiracy to kill the king, fo. 67.

C A P. XXI.

The Court of the Lord Steward of the Kings House, or in his Absence of the Treasurer, and Controller of the Kings House, and Steward of the Marshalsea.

THEY have jurisdiction by act of parliament to enquire of, hear, and determine all treasons, misprision of treasons, murders, manlaughters, bloodshed, and other malicious strikings, whereby blood shall be shed in any of the palaces and houses of the king, or in any other house where the king in his royall person shall be abiding. And by that act the * limits and bounds of the kings palaces or house, or the house where the royall person is abiding, are particularly and expressly set forth and described. In this and like cases we refer you to the statute it selfe, for *compendia sunt dispensanda*.

33 H. 8. cap. 22.
See the statute for the triall and manner of proceeding.
Rastall pl. 124.
See the third part of the Institutes, cap. Misprision, fol. 229.
* Vide 28. ca. 12.

C A P. XXII.

The Court of the Admiralty proceeding according to the Civill Law.

Articuli Admiralitatis.

Articuli Admiralitatis.
The articles of the admiralty. The proces and proceedings in this court are in the name of the lord admirall.

The complaint of the lord admirall of England to the kings most excellent majesty against the judges of the realme, concerning prohibitions granted to the court of the admiralty *11 die Febr. penultimo die termini Hilarii, anno 8 Jac. regis*: the effect of which complaint was after by his majesties commandement set downe in articles by doctor Dun judge of the admiralty; which are as followeth, with answers to the same by the judges of the realme: which they afterwards confirmed by three kinds of authorities in law. 1. By acts of parliament. 2. By judgements and judiciall proceedings: and lastly, by Book cases.

The title of the complaint.

Certain grievances whereof the lord admirall and his officers of the admiralty do especially complain, and desire redresse,

1 Objection.

THAT whereas the consufance of all contracts and other things done upon the sea belongeth to the admirall jurisdiction, the same are made triable at the common law, by supposing the same to have been done in Cheapside, and such places.

The answer.

The description and limitation of the (sea) wherein the lord admirall hath jurisdiction.

By the lawes of this realm the court of the admirall hath no consufance, power, or jurisdiction of any manner of contract, plea, or querele within any county of the realm, either upon the land or the water: but every such contract, plea, or querele, and all other things rising within any county of the realm, either upon the land or the water, and also wreck of the sea ought to be tried, determined, discussed, and remedied by the lawes of the land, and not before, or by the admirall nor his lieutenant in any manner. So as it is not materiall whether the place be upon the water *infra fluxum et refluxum aque*: but whether it be upon any water within any county. Wherefore we acknowledge that of contracts, pleas, and querels made upon the sea, or any part thereof which is not within any county (from whence no triall can be had by twelve men) the admirall hath, and ought to have jurisdiction. And no president can be shewed that any prohibition hath been granted for any contract, plea, or querele concerning any marine cause made or done upon the sea, taking that only to be the sea wherein the admirall hath jurisdiction, which is before by law described to be out of any county. See more of this matter in the answer to the sixth article.

W^hca

When actions are brought in the admiralty upon bargains and contracts made beyond the seas, wherein the common law cannot administer justice, yet in these cases prohibitions are awarded against the admirall court.

2 *Objection.*

Bargains or contracts made beyond the seas wherein the common law cannot administer justice (which is the effect of this article) do belong to the constable and marshall; for the jurisdiction of the admirall is wholly confined to the sea, which is out of any county. But if any indenture, bond, or other specialty, or any contract be made beyond sea for doing of any act or payment of any money within this realm, or otherwise, wherein the common law can administer justice, and give ordinary remedy; in these case neither the constable and marshall, nor the court of the admiralty hath any jurisdiction. And therefore when this court of the admiralty hath dealt therewith in derogation of the common law, we finde that prohibitions have been granted, as by law they ought.

The answer.
See hereafter in the proofs by judgements and judicial presidents.

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Whereas time out of minde the admirall court hath used to take stipulations for appearance and performance of the acts and judgements of the same court: it is now affirmed by the judges of the common law, that the admirall court is no court of record, and therefore not able to take such stipulations: and hereupon prohibitions are granted to the utter overthrow of that jurisdiction.

3 *Objection.*

The court of the admiralty proceeding by the civill law is no court of record, and therefore cannot take any such recognisance as a court of record may do. And for taking recognisances against the lawes of the realme, we finde that prohibitions have been granted, as by law they ought. And if an erroneous sentence be given in that court, no writ of error, but an appeale before certain delegates do lye, as it appeareth by the statute of 8 Eliz. *reginae*, cap. 5. which proveth that it is no court of record.

The Answer.

8 Eliz. cap. 5.

That charter-parties made only to be performed upon the seas are daily withdrawn from that court by prohibitions.

4 *Objection.*

If the charter-party be made within any city, port town, or county of this realm, although it be to be performed either upon the seas, or beyond the seas, yet is the same to be tried and determined by the ordinary course of the common law, and not in the court of the admiralty. And therefore when that court hath incroched upon the common law in that case, the judge of the admiralty and party suing there have been prohibited, and oftentimes the party condemned in great and grievous damages by the laws of the realm.

The Answer.

That the clause of *non obstante statuto*, which hath foundation in his majesties prerogative, and is currant in all other grants, yet in the lord admirais patent is said to be of no force to warrant the determination of the causes committed to him in his lordships patent, and so rejected by the judges of the common law.

5 *Objection.*

Without all question the statute of 13 R. 2. cap. 3. 15 R. 2. cap. 5. and 2 H. 4. cap. 11. being statutes declering the jurisdiction of the court of the admirall, and wherein all the subjects of the realm have interest, cannot be dispensed with by any *non obstante*, and therefore not worthy of any answer: but by colour thereof, the court of the admiralty hath contrary to those acts of parliament incroched upon the jurisdiction of the common law,

The Answer.
13 R. 2. cap. 3.
15 R. 2. cap. 5.
2 H. 4. cap. 11.

to

to the intolerable grievance of the subjects, which hath oftentimes urged them to complain in your majesties courts of ordinary justice at Westm. for their relief in that behalf.

The Objection.

To the end that the admirall jurisdiction may receive all manner of impeachment and interruption, the rivers beneath the first bridges, where it ebbeth and floweth, and the ports and creeks are by the judges of the common law affirmed to be no part of the seas, nor within the admirall jurisdiction: and thereupon prohibitions are usually awarded upon actions depending in that court, for contracts and other things done in those places; notwithstanding that by use and practise time out of mind, the admirall court have had jurisdiction within such ports, creeks, and rivers.

The Answer.

The like answer as to the first. And it is further added, that for the death of a man, and of mayhem (in those two cases only) done in great ships, being and hovering in the maine streame only beneath the points of the same rivers nigh to the sea, and no other place of the same rivers, nor in other causes, but in those two only, the admirall hath cognisance. But for all contracts, pleas, and querels made or done upon a river, haven, or creek, within any county of this realm, the admirall without question hath not any jurisdiction, for then he should hold plea of things done within the body of the county, which are triable by verdict of twelve men, and meerly determinable by the common law, and not within the court of the admiralty according to the civil law. For that were to change and alter the laws of the realm in those cases, and make those contracts, pleas, and querels triable by the common laws of the realm to be drawn *ad aliud examen*, and to be sentenced by the judge of the admiralty according to the civil laws. And how dangerous and penall it is for them to deal in these cases, it appeareth by judiciall precedents of former ages. See the answer to the first article.

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The 7 Objection.

That the agreement made in *anno domini* 1575, between the judges of the kings bench and the court of the admiralty for the more quiet and certain execution of admirall jurisdiction is not observed as it ought to be.

The Answer.

The supposed agreement mentioned in this article hath not as yet been delivered unto us, but having heard the same read over before his majesty (out of a paper not subscribed with the hand of any judge) we answer, that for so much thereof as differeth from these answers, it is against the laws and statutes of this realm: and therefore the judges of the kings bench never assented thereunto, as is pretended, neither doth the phrase thereof agree with the terms of the laws of the realm.

The 8 Objection.

Many other grievances there are, which in discussing of these former will easily appear worthy also of reformation.

The Answer.

This article is so general, as no particular answer can be made thereunto, only that it appeareth by that which hath been said, that the lord admirall his officers and ministers principally by colour of the said void *non obstante*, and for want of learned advice have unjustly inroached upon the common laws of this realm, whereof the marvail is the lesse, for that the lord admirall, his lieutenants, officers, and ministers have without all colour inroached and intruded upon a right and prerogative due to the crown, in that they have

have seized, and converted to their own uses goods and chattels of infinite value taken by pirates at sea, and other goods and chattels which in no sort appertain unto his lordship by his letters patents, wherein the said *non obstante* is contained, and for the which he and his officers remain accountable to his majesty. And they now wanting in this blessed time of peace causes appertaining to their naturall jurisdiction, they now inroach upon the jurisdiction of the common-law, lest they should sit idle and reap no profit. And if a greater number of prohibitions (as they affirm) hath been granted since the great benefit of this happy peace, then before in time of hostility, it moveth from their own inroachments upon the jurisdiction of the common law. So as they do not only unjustly inroach, but complain also of the judges of the realm for doing of justice in these cases.

Touching our proceedings in granting of prohibitions concerning any of the said articles, two things are to be considered of. First, the matter; and secondly, the manner. For the matter nothing hath been done therein by your majesties courts at Westminster, but by good warrant of law and former judiciall president. And for the manner, we have granted none in the time of vacation, nor in the term time in any of our chambers, nor in the court in the terme time *ex officio*, but upon motion made in open court by learned counsell, and after a day prefixed, and warning given to the adverse party, and upon reading of the libell in open court, and hearing of the counsell learned of such of the parties as were warned and did attend.

The said answers are proved and confirmed (as is aforesaid) by three kind of authorities in law. First, by authority of the high courts of parliament. Secondly, by judgments and judiciall presidents. Thirdly, by book-cases, and the authority of our books.

Concerning the acts of parliament: it is enacted by the statute made in 13 R. 2. ca. 5. That the admirals and their deputies shall not meddle from henceforth with any thing done within the realm of England, but only with things done upon the sea, according to that which hath been duly used in the time of the noble king Edward grandfather of king R. 2. By the which it is manifest, that the jurisdiction of the court of admiralty is only confined to things done upon the sea, which the adverse party yielded, but claimeth by a colour of a *non obstante*, &c. which is utterly void, as hath been said.

By the statute of 15 R. 2. cap. 3. it is enacted and declared, That the court of the admirall hath no manner of conusance, power nor jurisdiction of any manner of contract, plea or querell, or of any other thing done or rising within the bodies of the counties, either by land or by water, and also of wreck of the sea, but all such manner of contracts, pleas, and querels, and all other things rising within the bodies of the counties as well by land as by water, as is aforesaid, and also wreck of the sea shall be tried, terminated, discussed, and remedied by the laws of the land, and not before, nor by the admirall nor his lieutenant in no manner. Nevertheless of the death of a man, and of a mayhem done in great ships, being and hovering in the main stream of the great rivers only beneath the points of the same rivers, and in no other place

1 By acts of parliament.
13 R. 2. cap. 5.

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15 R. 2. ca. 3.

Nota, the lord admirall hath greater jurisdiction in case of the death of a man, and mayhem, then in other cases.

of the same rivers, the admirall shall have conufance. This latter claufe giveth the admirall further jurisdiction in cafe of death and mayhem, (with neither of which we ever medled) but in all other happening within the Thames, or in any other river, port, or water, which are within any county of the realm, (as all rivers and havens be, as hereafter shall manifestly appear) by expresse words of this act of parliament, the admirall or his deputy hath no jurisdiction at all. Wherein it is to be observed, how curious the makers of this statute were to exclude the admirall of all manner of jurisdiction within any water which lyeth within any county of the realm.

2 H. 4. cap. 11.

The statute of 2 H. 4. cap. 11. enacteth, That the said act of 13 R. 2. cap. 5. be firmly holden and kept, and put in due execution, and further at the prayer of the commons that as touching a pain to be set upon the admirall or his lieutenant, that the statute and common law shall be holden against them, and the party grieved shall recover his double dammages. By which act it appeareth, that the statute of 13 R. 2. is but an affirmation of the common law, as shall also manifestly appear hereafter.

Which three acts cannot be dispensed withall by a *non obstante*, as hath been said before, but remain in full force, and hath been put in due execution in all ages.

27 El. cap. 11.

The statute of 27 Eliz. cap. 11. describeth particularly the limits of the lord admirals jurisdiction in these words. All and every such of the said offences before mentioned, as hereafter shall be done on the main sea, or coast of the sea, being no part of the body of any county of this realm, and without the precinct, jurisdiction and liberty of the cinque ports, and out of any haven or pier, shall be tried and determined before the lord admirall, &c. So as by the judgment of the whole parliament the jurisdiction of the lord admirall is wholly confined to the main sea, or coasts of the sea being no parcell of the body of any county of this realm.

5 El. cap. 5.

And by these four acts of parliament all the said objections that have been made, or can be made against the proceedings of the kings courts at Westminster (being grounded on the same) are fully answered. And we will conclude this first part with the saying of God himselfe. Almighty God (as he himself out of a whirlwind spake) hath shut up the sea within certain dores and bounds, *Quis conclusit ostiis mare, quando erumpebat, quasi de vulva procedens: circumdedit illud terminis meis, et posui vectem et ostia, et dixi, Usque huc venies, et non procedes amplius, et hic confringes tumentes fluctus ejus.*

Job 38. S. 10. 11.

2. By judgements and judicial presidents.

Concerning the second kind of proof, viz. by judgments and judicial presidents, every of them in all successions of ages in *serie temporis*, taking some in every age for many that might be cited.

Regist. Origin. fo. 129. F. N. B. 114.

Register Origin. fo. 129. F. N. B. 114. If goods be taken from an English man in Spain beyond the sea, and the party cannot obtain justice there, he shal have a writ to the sherif to arrest the body of the offenders, and to seise of their goods to the value: which proveth that the admirall cannot hold plea thereof, for that the party hath remedy by the common law, and the admirals power is only *super altum mare*.

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Hil. 6 H. 6. Rot. 303. in Banc.

Hil. 6 H. 6. rot. 303. in the court of common pleas between John Burton plaintiff, and Bartholomew Put defendant, the case was this upon the said statutes. The said Bartholomew sued the said

said John Burton in the admirall court before Thomas duke of Exeter then admirall of England, for that the said John Burton with force and arms the second day of September, anno 1 H. 6. three ships of the said Bartholomew with his prisoners and merchandizes to the value of 960 marks, 5 s. 5 d. *cb.* in the same ships being did take and carry away, supposing by his libell the same to be taken away, *super altum mare*, upon the high sea. Although the taking aforesaid was *infra corpus comitatus in Bristow* (the said ships lying in the haven of Bristow) and not upon the high sea, contrary to the form and effect of the said statutes; the parties descended to an issue, which was found for the plaintiff and damages assessed for the plaintiff to 700. l. And it appeareth by the record, that this being the first case that we can yet find that received judgment in the court of common pleas upon the said statutes, the same depended in advisement and deliberation eight terms: and then the record saith, *Et super hoc audito tam recorda quam veredicto prædicto, et per curiam plenius intellecti: consideratum est quod præd' Johannes Burton recuperet vers' præfat' Bartholomæum damna sua prædicta occasione attachamenti, prosecutionis, et vexationis, quam misarum et custagiorum ad septingentas libras per juratores præd' superius assessi in duplum per statutum, &c. quæ damna in duplo se extendunt ad mille et 400. l. et idem Barth. pœnam decem librarum erga dominum regem nunc per idem statut' incurrat, et capiatur, et querens remittit 400. l.* Upon which judgment four things are to be observed. First, that it is *contemporanea expositio*, being made within twenty years of the making of one of the said statutes, and *contemporanea expositio est optima*. Secondly, that albeit the said three ships with the prisoners and merchandizes in them lay in the haven, *inter fluxum et refluxum aquæ*, and *infra primos pontes*, yet that the haven is *infra corpus comitatus*, and that for taking of the ships and the prisoners, and merchandizes in the same no suit ought to be in the admirall court, but at the common law. Thirdly, that the court of admiralty hath no jurisdiction but *super altum mare*, which is not within any county, for the record saith, that the said three ships with the prisoners and merchandize in the same, did lye *infra comitat' Bristolicæ, et non super altum mare*, as the plaintiff in the admirall court supposed the same to be. Lastly, that judgment so solemnly, and with such advisement given, if it were alone, were sufficient to give full satisfaction in this point: for *judicium est tanquam juris dictum*, and *judicium pro veritate accipitur*. But to proceed.

In Portu;

Pasch. 12 H. 6. rot. 124. a like action brought by Robert Cupper upon the said statutes in the court of common pleas (reciting the said three statutes) against John Rayner of Norwich, for that the said Rayner did sue the said Cupper in the court of admiralty before John countee of Huntingdon and Ivery lieutenant to John duke of Bedford admirall of England, for that Rayner having a ship in *portu aquæ Fernemuthæ infra corpus com' Noiff.* ready for a voyage to Zealand the said Cupper entered the said ship lying in the said haven, and took away divers goods in the same being, *asserendo per prædictum placitum res illas super altum mare emerfisse, ac si res illæ super altum mare emerfissent, cum non ibi, sed apud Fernemutham contra formam statutorum præd'*, which also proveth that the haven is within the body of the county,

Pasch. 12 H. 6. rot. 124. in banc.

In Portu.

IV. INST.

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In the same terme in the same court a like action between John Widewell and the said John Rayner, rot. 123. which with many others being to one effect we omit.

* Mich. 31 H. 6. rot. 315. in banc. Hil. 2. Ph. & Mar. rot. 130. Cr. a prohibition upon a charter-party. Hil. 17 Elix. rot. 410. Cr. Spencers case, and infinite others upon charter-parties.

* Mich. 31 H. 6. rot. 315. between William Hore, and Jeffery Unton for a suit in the court of admiralty before Henry duke of Exeter, admirall of England, concerning a contract of fourscore pounds upon a charter-party of affrait of a ship of the said Jeffery called the Trinity of Harflew to goe from the port of Pole * towards the parts of Ireland, *cum contractus ille apud novam Sarum infra corpus comitatus, et non super altum mare factus et junctus fuit, contra formam statutorum præd.* The defendant pleaded to issue, which was found against him, and dammages assessed to a hundred marks, and costs to forty pound; and thereupon judgment is given by the court, that he should recover his dammages *in duplo*, according to the statute, &c. Which judgment directly proveth, that if a charter-party or any other contract be made within city, town, or county of the realm, though the performance thereof be to be done and performed upon the high sea, yet the admirall hath no jurisdiction, because it may be tried by the common law, as by the said record it appeareth. But where the whole is to be done *super altum mare*, and no part of it *infra corpus comitatus*, the admirall hath jurisdiction.

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32 H. 8. ca. 14.

The statute of 32 H. 8. c. 14. concerning freights of ships giveth to the lord admirall or his deputy power to make certificate concerning the ships of aliens in ports, &c. And if the lord admirall or his deputy be not resiant, then it giveth power to the customer and controller, or their deputy to make certificate; but without question this giveth no power to the lord admirall to hold plea of freights of ships more then he had before, no more then it doth to the customer and controller, to whom equall power is given by the act to make certificate concerning the ships of aliens, &c. in the absence of the lord admirall or his deputy, as to the lord admirall or his deputy being present; and yet no man will affirm, that the customer and controller can hold plea of freights.

Mich. 38 H. 6. rot. 36. cr.

Mich. 38 H. 6. rot. 36. cr. A premunire brought by John Cassy esquire, *Qui tam, &c.* against Richard Beuchamp, Thomas Paunce esquires, and others upon the statute of 16 R. 2. for suing in *curia Romana vel alibi*, of matters belonging to the common law. For that the defendant did sue the plaintiff in the admirall court before Henry duke of Exeter, that the said John Cassye did take and carry away certain jewels *super altum mare, ubi idem Johannes Cassye bona illa apud Stratford at Bowe infra corpus comitatus Midd' et non super altum mare cepit*, which is so evident, and of so dangerous consequence, as no application shall be made thereof.

Book of entries. fo. 23.

In the book of entries fo. 23. tit. Admiralty, it appeareth that the taking of a ship called the Trinity of London lying upon the river at E. in the county of Kent is not *super altum mare*, but *infra corpus comitatus Kantie*. And therefore a suit for the taking of that ship lying there in the admirall court before John earl of Huntingdon admirall of England appeareth to be against the said statutes, and yet no question that taking was *infra fluxum et refluxum maris, et infra primos pontes*.

Book of entries. ubi supra.

9 H. 7. A premunire brought for a suit in the admirall court before John earl of Oxford for taking and carrying away *quandam naviculam*

naviculam apud Horton Key at Southlyn, &c. supposing the same to be *super altum mare*, where it was *infra corpus comitatus*.

Mich. 16 H. 8. rot. 140. The river of Thames at Belinggate is not within the jurisdiction of the admirall, but *infra corpus comitatus*.

Mich. 16 H. 8. rot. 140.

35 H. 8. A prohibition to John Dudley knight, viscount Lisle for holding plea in the court of admiralty for a contract made in *riuo Thamesiæ*, supposing the same to be *super altum mare*, where in truth it was in *riuo Thamesiæ apud B. in com' Essex*, which notwithstanding was *infra fluxum et refluxum aquæ, et infra primos pontes*.

Book of entries, ubi supra.

Hil. 36 H. 8. rot. 38. cr. The like prohibition *inter Wheeler et Warner, eodem termino rot. Inter Tooby et Lewoes*, a prohibition for a contract made at Danfike, in *partibus transmarinis*. And in 2 Jac. regis, the whole court of common pleas, because the libell supposed the act to be done in *partibus exteris et transmarinis*, granted a prohibition.

Hil. 36 H. 8. rot. 38. cr.

Hil. 2 Jac. regis. In communi Banc. int' Theodor Tomlinson Quer' et Philipps Def. Tr.

38 H. 8. rot. 126.

Trin. 38 H. 8. rot. 126. between Crane and Bell a promise made at Dertmouth, that a ship called the *Mary Fortune* should passe safely without taking and surprising, &c. which ship was after taken by the Spaniards *super altum mare* is not determinable in the court of the admiralty, for that albeit the taking was upon the high sea, yet the promise was made upon the land, whereupon an action doth lye at the common law.

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Tr. 3 & 4 Ph. and Mar. rot. 799. between Lawrence Masfherode, and Richard Wyn, a prohibition out of the court of common pleas to the court of the admiralty, William lord Howard then lord admirall being.

Tr. 3 & 4 Ph. & Mar. rot. 799. in banco.

Tr. 3 & 4 Ph. and Mar. rot. 811. the like prohibition granted out of the same court to the court of admiralty between Robert Inne plaintiff, and Roger Garland defendant.

Eodem termino rot. 181. in banc.

Hil. 4 & 5 Ph. and Mar. rot. 831. the like prohibition.

Hil. 4 & 5 Ph. & M. rot. 831.

Many are the presidents in the reign of the late queen Eliz. in the court of common pleas, the kings bench and exchequer, which we purposely omit, and insist rather upon the more ancient, yet one or two we will remember concerning things happening beyond sea, whereupon an action did lye at the common law agreeable with the president in the reign of H. 8.

Mich. 39 & 40 Eliz. rot. 3158. A prohibition out of the court of common pleas for a suit in the admirall court upon a bill under the parties hand and seal for French crowne, for that the bill was made beyond sea.

Mich. 39 & 40 El. rot. 3158.

And Mich. 3 Jac. a prohibition was granted in the like case to the admirall court by the court of eschequer, for Sir John Swinarton having the priviledge of that court for a matter rising beyond the sea. And divers prohibitions granted also in the like case in the kings bench.

Mich. 3 Jac. in scaccar'.

For causes of actions which are transitory done out of the realm, an action may lye at the common law, but if the cause be criminall or locall done beyond sea, then before the constable and marshall only.

See in the chapt. of the Court of the Constable, and Marshall.

Concerning the last manner of proof, viz. by book-cases and authorities of our books.

3. By book cases and authorities in law!

M 2

In

In the Register the most ancient book of the law, fo. F. N. B. fo. 87. I. & 88. F.

Temps E. 1. A-
vowry 192. in
communi banc.

In temps E. 1. tit. Avowry 192. a replevyn was brought for the taking of a ship in the coast of Scarborough in the sea, and for carrying the same from thence into the county of N. Muford the plaintiff counteth of a taking in the coast of Scarborough, which is neither town nor place, out of which a jury may be taken, for that the coast is four miles long, and also of a thing done in the sea, this court hath no conufance, for certain judgement is given thereof to mariners. Berry chief justice of the common place; the king willet, that the peace be as well kept on the sea, as on the land, and we find that you are come hither by due processe, and therefore ruled him to answer. Out of which four things are to be observed. First, that it is called the sea which is not within any county from whence a jury may come. Secondly, that the sea (being not within any county) is not within the jurisdiction of the court of common pleas, but belongs to the admirall jurisdiction. Thirdly, that when the ship came within the river, then it is confessed to be within the county of Northumberland. Lastly, that when a taking is partly on the sea, and partly in a river, the common law shall have jurisdiction.

3 E. 2. tit. Co-
ron. 399.

8 E. 2. tit. coron. 399. It is no part of the sea, where one may see what is done of the one part of the water, and of the other, as to see from one land to the other, that the coroner shall exercise his office in this case, and of this the country may have knowledge; whereby it appeareth that things done there are triable by the country (that is, by jury) and consequently not in the admirall court.

43 E. 3.
Vid. 5 E. 3. 3.
tit. Replevin. 41.

43 E. 3. Norff. as the said lord Dier voucheth the record in Mich. 15 & 16 El. saying (*quod vidi*) the case was, that the abbot of Ramsey was seised of the mannor of Braucafter in Norf. bordering upon the sea, upon sixty acres of marsh of which mannor the sea did flow and reflow; and yet it was adjudged parcell of the abbots mannor, and by consequence within the body of the county unto the low water mark.

Pasch. 17 El. in
scaccario.

[141]

And it was adjudged Pasch 17 El. in the exchequer, Digges being plaintiff, that the land between the flowing and reflowing of the sea belonged to the lord of the mannor adjoining, as the lord Dier doth there report.

48 E. 3. 3.

48 E. 3. 3. If a mariner makes a covenant with me to serve me in a ship upon the sea, yet *si lower ne soit pay*, it shall be demanded in this court by the common law, *et ne per la ley de mariner*.

46 E. 3. tit. Co-
nufans 36.

46 E. 3. tit. Conufans 36. An action of trespassse was brought for taking of a ship in the haven of Hull against certain persons; the maior and bailiffes of Hull demanded conufance by the charter of the king granted unto them, that the citizens and burgeses of Hull should not be impleaded *alibi de aliquibus transgressionibus, conventionibus et contractibus infra burgum, &c. quam infra burgum*. And the conufans was granted; which proveth that the haven of Hull where the ship did ride was *infra burgum de Hull*, and by consequence *infra corpus comitatus*, and determinable by the common law, and not in the admirall court.

7 R. 2. Tres-
passe in Sta-
thom pl. 54.

7 R. 2. tit. *trespasse in Stathom*, pl. 54. In trespassse for a ship and certain merchandize taken away (which trespassse must of necessity

cessity be alledged in some town and county in some river or haven) the defendant pleaded, that he did take them *in le haut mere* *ove les Normans queux sont enemies le roy.* And it is ruled a good plea, which concurrith with the other books.

7 H. 6. 22. 35. An action lieth at the common law for forestalling, &c. in a port or haven, for that it is *infra corpus comitatus*, and triable by the common law; and by consequence the admirall hath no jurisdiction there.

19 H. 6. 7. The statute doth restraine that the admirall shall not hold plea of any thing rising within any of the counties of the realm, but executions he may make upon the land. And therefore where it is said in 22 Ass. pl. 93. that every water, which flows and refloes, is an arme of the sea, yet it followeth not that the admirall shall have jurisdiction there, unlesse it be out of every county, or else such a place whereof the countrey cannot take knowledge, as it appeareth in the book of 8 E. 2. before cited. But of this more hereafter.

Fortescue, cap. 32. fo. 38. *Nam si quæ super altum mare extra corpus cujuslibet comitatus regni illius fiant quæ postmodum in placito eoram admirallo Angliæ deducantur per testes, illa juxta legum Angliæ sanctiones terminari debent*, which proveth by expresse words that the jurisdiction of the admirall is confined to the high sea, which is not within any county of the realm.

2 R. 3. fo. 12. *Hibernici sunt sub admirallo Angliæ de re facta super altum mare*, which agreeth with the former, viz. that the jurisdiction of the admirall is *super altum mare*.

Stanford, lib. 1. pl. cor. fo. 51. b. If one be slaine upon any arme of the sea, where a man may see the land of the one part and of the other, the coroner shall inquire of this, and not the admirall, because the Country may take conufance of it, and doth vouch the said authority of 8 E. 2. whereupon he concludeth in these words. So this proveth, that by the common law before the statute of 2 H. 4. &c. the admirall had no jurisdiction but upon the high sea, which only authority were sufficient to overrule all the said questions. For hereby appeareth, that the jurisdiction of the admirall is only confined by the common law to the high sea; and agreeth with all the former book cases and acts of parliament.

4 & 5 Ph. and Mar. Dier 159. b. By the libell in the admirall court the cause is supposed to commence *sur le haut mere et infra jurisdictionem del admiralty ubi revera facta fuit in tali loco infra corpus comitatus et non super altum mare.* Whereby it also appeareth, that the lord admirals power is confined to the high sea.

Paſch. 28 Eliz. in the kings bench the case was; that a charter-party by deed indented, was made at Thetford in the county of Norfolk, between Evangelist Constantine of the one party, and Hugh Gynne of the other part, by the which Constantine did covenant with Gynne that a certain ship should saile with merchandizes and goods of Hugh Gynne to Muttrel in Spaine; and there should remain by certain dayes, &c. Upon the breach of which covenant Gynne brought an action of debt of 500 l. upon a clause in the same charter, and alledged the breach of the covenant, for that the ship did not remain at Mutterel in Spaine by so many dayes as were limited by the covenant. Whereupon issue was

taken and tried before Sir Christopher Wray chief justice of England, and found for the plaintife: and in arrest of judgement it was shewed, that this issue did rise out of a place totally and meerly in a forein kingdome out of the reahne, from whence no jury of twelve men could come, and therefore the triall was insufficient. But it was adjudged by Sir Christopher Wray, Sir Thomas Gawdy, and the whole court of kings bench after great deliberation that the plaintife should recover 500 li. besides his damages and costs, for that the charter party whereupon the action is brought was made at Thetford within this realme, and that the triall being in the same place where the action was brought was sufficient.

Mich. 30 & 31
Eliz. coram rege.

And the like case was after adjudged in the same court, Mich. 30 & 31 Eliz. in an action upon the case upon an assumpsit grounded upon an instrument called a policy, commonly made between merchants for assurance of their goods, whereby the undertaker did assume that such a ship should saile from Melcome Regis in the county of Dorset unto Abvile in France safely without violence, &c. and declared that the said ship in sailing towards Abvile, that is to say, in the river of Somne in the realme of France was arrested by the French king, &c. whereupon issue was taken and tried, where the action upon the assumpsit was brought, and againe the validity of the triall newly questioned, and in the end resolved and adjudged as before; which judgement proves, that where part of the contract or other thing is made in any place within any of the counties of the realm, though the performance thereof be upon the high sea, the triall and determination of the whole act belongeth to the common law, and consequently the court of the admiralty ought not to deale therewith.

These answers being delivered to king James, *magna est veritas et praevaluit.*

The kings prerogative of the sea, &c.

The antiquity of the court of admiralty long before the reign of E. 3. in whose days some have dreamed it began.

Now for the great prerogative and interest that the king of England hath in the seas of England, and for the antiquity of the court of the admiralty of England, and of the name of the admirall, we have seen an ancient and a notable record, intituled, *De superioritate maris Angliæ et jure officii admiralitatis in eodem.* * So much whereof as we finde in *archivis regis*, we will transcribe, *de verbo in verbum*, as it is in the record it self.

* In archivis in Turri London.

This cause was handled in or about the 22 year of E. 1. as by divers parts of the record it appeareth:
Admirall of the sea of England.

Time out of minde.
Laws, statutes, and ordinances.

A vous seigneurs auditors deutes per le rois de Engleterre et de France a redresser les damages faits as gents de leur roialmes et des autres terres subgits a leur seignuries per mer. et per terre en temps de pees et de trewes. Monstrent les procureurs de prelates et nobles, et del admirall de la mier d'Engleterre et de cominalties des cities et des villes, et des merchants, mariners, messagiers, et pelerins et des tous autres du dit royaume d'Engleterre et des autres terres subgits a la seignurie du dit roy d'Engleterre et dailleurs sicome de la marine de Genue, Casteloigne, Espagne, Alemaigne, Seland, Hogland, Frise, Dennemarch, et Norway et de plusieurs autres lieux del empier, que come les roys d'Engleterre per raison du dit royaume du temps dont il ny ad memoire du contraire eussent est en paiceable possession de la souveraine seignurie de la vier d'Engleterre et des isles esteants en cyele per ordinance et establicement des loiz, estatuts, et defenses.

et des vesseaux autrement garnies

garnies que vessels de merchandise et de seurte prendre et sauve gardes doner en tous cas que mestier serra et par ordinance entre tout manere des gents taunt dautre signurie come de leur propre de tous autres faitz necessaires a la garde de pees, droiture et equitie par elonques passants et per souveraigne garde et toute manere de conissance et justice haulte et basse sur les dites lois, estatuts, ordenances et defences, et pur tous autres faits queux a le government de souveraigne seignurie appartenir purrent es lieux avandits. Et A de B admirall de la dit mier deputez per le roy d'Engliture, et tous les autres admirals par mesme celui roy d'Engliture et ces ancesters iades royes d'Engliture eussent est en paisible possession de la dit souveraigne garnie ove la conissance et justice et tous les autres appartenances avanditiz forprise en case dappele et de querele fait de eux a leur souveraignes roys d'Engliture de defalte de droit ou de malvais judgement, et especialment par empchement metre et justice faire seute prendre de la pees de tout manere de gents usants armes en la dit mier ou menans niefs autrement appareillies ou garnies que nappertient au nief de marchants et en tous autres points en queux homme poit avoir reasonable cause de suspicion vers eux de robbery, ou des autres mesfaitz. Et come le maistre de niefs du dit roialme d'Engliture en absence des dits admirals eussent este en paisible possession de conistre et juger des tous faits en la dite mier entre tous manere de gents selone les lois estatuts et les defences, franchis et costumies.

Et come en le primer article de lalliance nadgaires fait entre les dites rois en les traites sur le darreine pees de Paris soient comprises les paroles que sensuient en une sedule annexe a yeste.

Primerment il est traite et accorde entre nous et les messagers et les procurours de fardinz en nom des dits roys que yceux roys serrent lun a lautre desores en avant bons verrois et loyaux amys et eydans cointre tout homme sauve lesglise de Rome en tiels manere que si escun ou plusours quicunques ilz fussent voloient deponcter, empescher, ou troubler les dits roys en franchises et liberties, priveledges es droits, es droitures, ou es costumies de eux et de leur roialmes quils serrent bons et loyaux amys et eydans cointre toute homme que puisse venire et morir a defendre, garder et maintenir les franchises, les liberties, les priveleges, les droitz, les droitures, et les costumies de susdites, except le dit roy d'Engliture monsieur John duc de Brehan en Brabant et ses heires descendus de lui et de la fille le roy Dengliture, et except pur le dit nostre seignior le roy de France excellent prince Dubert roy d'Allemaigne ses heires roy d'Allemaigne, et mounseigneur Johan counte de Henan en Henan, et que lun ne serra en consaile ne en aide ou lautre perde vie, membre, estiate ne honour temporel. Monsieur Reymer Grimbold maistre de la navie du dit roy de France que se dit estre admirall de la dit mier deputez per son seignior avandit pur sa guerre cointre les Flemings apres le dite alliance faite et affirmee cointre le forme et la force de mesme lalliance et lintention de ceux qui la firent loifice del admirall en la dite mier Dengliture par commission du dit roy de France torseusement emprist et usa un an et plus en pernant le gents et marchants du roialme d'Engliture et daillours per la dite mier passants ouesque leur biens et les gents ainsi prises livera a la prison de son dit seignior le roy de France leur biens et marchandizes a les rescivoirs per mesme celui roy de France a ceo deputez en les ports de son dit roialme come a luy forfait et acquis sif amener per son judgement et agard, et la prise et detenue des dites gents ove leur dites biens et marchandises et son dit judgement, et agard sur la forfaiture de eaux et acquist ait justifie devant vous seigneurs auditors en escripts per my lantortite de sa dite commission

De Botertort, admirall of the sea.

Note for the antiquity of the admirall of England. The said De Botertort was admirall of the sea coasting upon Yarmouth in Norfolk (right over against France) and of that station in anno 22 E. 1.

The league between E. 1. and the French King.

Margaret the third daughter of E. 1. was married to John the duke of Brabant an. dom. 1290, & 18 E. 1. Monsieur Reymer Grimbold master of the French navie.

The admirall of
England to
whom the conu-
sance appertain,
&c.

mission sur l'admiralte avantdite per lui ainsi usurpe et per une defense comunement fait per le roy d'Engleterre per my son poer lelonc la forme de le tiers article de l'alliance avantdite qui contient les paroles desuscripts en requerant que de ceo il en fuisse quitz et absolus en grand damage et prejudice du dite roy d'Engleterre et des prelots et nobles et autres desusnoms. Purquoy les dits procurours et les noms de leurs ditz signions a vous seignours auditors avantditz pyent que delivrance devee et hastine des dites gents ovesq; leur biens et marchandises ainsi prises et detenucs faicets estre fait al admirall du dit roy d'Engleterre a qui la conissance de ceo apertient de droit sicome dessus est dit ainsi quilz sauns disturbance de vous et d'autre puisse de ceo conoistre et faire ceo que apertient a son office avantdit. Et que le dit monsieur Reymer soit condempne et distreint a faire due satisfaction a tous les dits damages seavant come il purra suffire et en sa defalte son dit seignior le roy de France per que il estoit deputez al dit office, et que apres devee satisfaction faitz as dits damages le dit monsieur Raymer soit si dument punis par le blemissement de la dite alliance, que la punission de luy soit as autres exemple par temps a venir.

Item in alio rotulo annexo.

Admirall of
England.

Item, a la fin que venes et considerez les formes des proces et les lettres ordenees per les consailles le aiel nostre seignior le roy, &c. especialment a retenir et maintenir le souverain que ses dits auncesters roys d'Engleterre soloyent avoir en la dite nier d'Engleterre quant al amendement declaration et interpretation des loiz per eux faites a gouverner tous maneres des gents passants per la dite nier. Et primerement a son admirall et as maistrs et mariniers des viers de Cwic ports d'Engleterre, et des autres terres annexes a la corone d'Engleterre emendant a sa armee en la dite nier pur retenir et maintenir la garde des l'is avantditz, et la punission de tous faitz al encountre en la nier susdite.

Item in alio rotulo de articulis super quibus justitarii domini regis sunt consulendi de anno regni regis E. 3. 12.

E. 1. avus E. 3.

Item ad finem quod resumatur et continuatur ad subditorum prosecutionem forma procedendi quondam ordinata et inchoata per arcum domini nostri regis et ejus consilium ad retinendum et conservandum antiquam super veritatem maris Anglie, et nos officii admiralitatibus in eodem quoad corrigendum, interpretandum, declarandum et conservandum leges et statuta per ejus antecessores Anglie reges dudum ordinata ad conservandum pacem et justitiam inter omnes gentes nationis cujuscunque per mare Anglie transcentes, et ad cognoscendum super omnibus in contrarium attemptatis in eodem, et ad puniendum delinquentes et damna passis satisfaciendum. Quae quidem leges et statuta per dominum Richardum quondam regem Anglie in redivit suo a terra sancta correctae fuerunt, interpretata et in insula Oleron publicata et nominata in Gallica lingua. La ley Olyronn.

R. 1.
Insula de Olyron
in Gallia.

[145]

See this charter
in the epistle to
the 4 book of
Reports.

And long before this king Edgar in his charter saith thus: *Mihi concessit propitia divinitas cum Anglorum imperio omnia regna insularum oceanii cum suis ferocissimis regibus usque Norwegiam ac maximum partem Hiberniam*

*Hiberniæ cum sua nobilissima civitate de Dublinæ Anglorum regno subjū-
gare, &c.*

We have also found a record in 10 E. 3. in these words.

*Rex dilecto et fideli suo Galfrido de Say admirallo flote sue navium
ab ore aquæ Ihamesiæ versſ. partes occidentales, salytem. Cum nuper
vobis per litras nostras mandaverimus quod vos una cum quibusdam na-
vibus de quinque portibus nostris quas de guerra pro obsequio nostro muniri
et parari mandavimus supra mare proficisceremini ad obviand' et resistend'
quibusdam galcis in diversis partibus exteris provisit et hominibus arma-
tis munitis que ad partes domini nostri ad gravand' nos et gentes nostras,
vel ad partes Scotiæ in inimicorum nostrorum ibidem succursum divertere
ut accepimus proponebant. Et quia jam nobis ab aliquibus est relatum
quod galciæ hujusmodi usque ad numerum viginti et sex ad partes Britan'
et Norman' noviter accesserunt et ibidem adhuc se tenent ad mala, ut
creditur, contra nos et nostros que poterunt perpetrand', vel ad succurrend'
dictis nostris, ut prædicitur, inimicis. Nos advertentes quod progeni-
tores nostri reges Angliæ domini maris Anglicani circumquaque et etiam
defensores contra hostium invasions ante hæc tempora extiterunt, et pluri-
mum nos tæderet, si honor noster regius in defensione hujusmodi nostris (quod
absit) deperiat temporibus, aut in aliquo minuatur, cupientesque hujus-
modi periculis auxiliante domino obviare, ac salvationi ac defensionī
regni et populi nostrorum providere, malitiamque hostium nostrorum re-
sistari: vobis in fide et ligeancia quibus nobis assignati estis, et sicut
de vobis specialiter confidimus, mandamus firmiter injungendo quod sta-
tim visis præsentibus et absque ulteriori dilatione naves portuum præ-
dictorum, ac alias naves que jam paratæ existunt supra mare teneatis,
&c.*

Rot. Scotiæ
10 E. 3. m. 16.

And because the reader by this record shall discern, that of ancient time there were several admirals (for the wisdom of those dayes would not trust one man with so great a charge, nor any man to have a certain estate in an office of so great trust). I will briefly give the reader such light thereof as I have found of record.

*Rex commisit Galfrido de Lucy maritimam Angliæ custodiend' quam-
diu domino regi placuerit, &c.*

Rot. pat. annō
8 H. 3.

*Rex commisit Richardo Aquillum marinam regis Norf. et Suff. &c.
quamdiu nobis placuerit.*

Rot. pat. annō
9 H. 3.

*Petrus de Rival capitaneus Pictanie habet ad totam vitam suam cus-
todiam omnium portuum et totius costeræ marinæ Angliæ, excepto portu de
Dovor, qui est in custodia Huberti de Burgo.*

Rot. Car.
15 H. 3.

*Willielmus de Leybourne constituitur capitaneus nantarum et marina-
riorum de regno et potestatis regis, quamdiu regi placuerit.*

Rot. Vascon.
22 E. 1. m. 8.

Willielmus de Leybourne admirallus Angliæ.

Rot. pat. 23 E. 1.

Willielmus de Leybourne capitaneus marinariorum, &c.

2 parte pat. annō
25 E. 1. m. 14.
Clauf. in Dorſi
m. 18.

To let you know what we have observed in those times: there were also two other, the one had the government of all the fleet from the mouth of the Thames westward, and the other from the mouth of the Thames northward.

*Johannes Botetort custos regis portuum maritimorum versſus partes or-
reales. 25 Martii.*

2 parte pat.
25 E. 1. m. 9.

*Nicholaus Kyriell constituitur admirallus flote omnium navium ab ore
aquæ Ihamesis tam quinque portuum, quam aliorum portuum et locorum
per costeram maris versſus partes occidentales, quamdiu regi placuerit.
Iste rege apud Turrim London 8 Decembris.*

1 parte pat.
10 E. 2.

R. bertie

Clauf. 15 E. 2.
pat. 15 E. 2.
Teſte. rege apud
Ebor. 19 Maii.

Robertus de Leyborn admirallus quarundam navium regis ſup' mare occidentali.

Robertus Battayli admirallus flotæ navium ab ore aquæ Thameſis de ſingulis portibus verſus auſtrum.

Johannes Perbrome conſtituitur capitaneus, et admirallus flotæ navium magnæ Geremuhe et omnium aliorum locorum ab ore aquæ Thameſis per coſteram maris verſus partes boreales, quâmdiu, &c. Teſte rege apud Stamf. 21 Aprilis.

2 parte pat. anno
1 E. 3. m. 21.

Wavroſius de Valloignes conſtituitur capitaneus et admirallus flotæ navium ab ore aquæ Thameſis tam quinque portuum quam alicum portuum et locorum per coſteram maris verſus partes occidentales, quâmdiu, &c. ut ſupra.

2 parte clauf.
12 E. 3. in Dorf.

Petrus Bard admirallus navium ab ore aquæ Thameſis verſus partes occidentales. 18 Auguſti.

Thomas de Drayton admirallus ab ore aquæ Thameſis verſus partes boreales. 18 Auguſti.

And ſo in the reigns of R. 2. H. 4. H. 5. H. 6. But in theſe and in former times there was a great admirall of England, vid. ſupra pa. 142, 143, 144.

Rot. pat. anno
24 H. 6. 25 Oct.
13 E. 4.

The king did by charter conſtitute John Holland duke of Exeter and Henry his ſon to be *admirallos Angliæ, Hiberniæ, et Aquitaniæ, pro termino viæ.*

This charter being of a judiciall office and granted to two, we hold to be void: for ſuch ancient offices muſt be granted as they formerly have been. This duke is he that is mentioned in the former records, who being a great peer of the realm endeavoured to inroach upon the common law, but the ſubjects by courſe of law were defended and recompens'd.

Rot. parl. 7 H. 4.
nu. 19, 20. &c.
26. & 142.
9 H. 4. nu. 19.

The merchants, mariners, and owners of ſhips undertook the ſafeguard of the ſeas for the ſubſidies of tunnage and poundage, &c. and that merchants ſhould name two perſons, the one for the ſouth part, the other for the north part, who by commiſſion ſhould have the like power as other admirals have had touching the ſame.

Addition of ſome Records of Parliament.

21 H. 4. nu. 24.
Rot. par. 17 R. 2.
48. 4 H. 4.
nu. 47. 11 H. 4.
nu. 62.

All ſtatutes made concerning the court of the admirall ſhall be obſerved.

Sundry towns of the weſt part prayen remedy againſt the officers of the admiralty for holding plea of matters determinable by the common law, the which they pray may be revoked: the kings answer was, The chancellor by the advice of the juſtices upon hearing of the matter ſhall remit the matter to the common law, and grant a prohibition.

7 R. 2. nu. 14.

The earl of Northumberland admirall of the north, and the earl of Devon' admirall of the weſt, to receive the ſubſidy of tunnage and poundage, and to keep the ſeas.

Addition of Books

2 part Inſtit.
§ 459. & 677.
11 H. 4. fo. 21.

See the firſt part of the Inſtitutes, ſect. 459. and ſect. 677. where Littleton ſpeaketh of a man out of the realm, or beyond ſea,

sea, and adde thereunto the notable case in Mich. 11 H. 4. fo. 11. pl. 85. Sovingles case, the defendant in an appeal of death being outlawed, brought his writ of error, and assigned for error, that at the time of the outlawry, and before, he was in the kings service upon the sea in the company of the lord Berkley then admirall, and had a writ unto him to certifie.

Lord Berkeley
admirall.

6 R. 2. tit. Protection 46. 7 R. 2. tit. Trespasse Statham. 10 H. 7. fol. 7. a. Vide 18 H. 6. nu. 52. where the owner of a ship shall answer for hurt done by his ship, though he be not party thereunto.

Vid. Lacies case, Cr. 25 El. li. 2. fo. 93. Vid. li. 5. fo. 106, 107. and 108. Sir Henry Constables case. Lib. 6. fo. 47. Dowdales case, Brook, tit. Error 177.

See certain statutes, viz. 27 E. 3. cap. 13. Stat. Staple. 31 H. 6. cap. 4. 2 R. 3. cap. 6. 28 H. 8. cap. 16.

It appeareth by the former records, that the admiralty is sometime called *admiralitas*, sometime *admirallatus*, and sometime by other names, as *admirallus*, *capitanens* or *custos maris*, or *marinae*, or *maritaniae*, or *flotæ navium*, that is, of the navy floating on the sea. *Ley marine*, *ley des mariners*.

The name.

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The officer is called admirall indifferently both in English and in French. We name him in Latin *admirallus*, and the court *curia admiralitatis*, derived of *amir*, *id est*, *præfectus*, et *ἀμιρ* i. *marinus*, *præfectus marinus*, *admiralius*, *admirallus*, *admiralli curia res maritimas tractat*: in hac numerantur *admirallus Angliæ*, *locum tenens et iudex*, *scribæ duo*, *serviens curiæ viceadmiralli Angliæ*.

Camden.

Hæda or *hithe*, i. *portus* a haven, as *Queen-hithe*, *Lamb-hithe*, &c. *Hafne courts*, now haven or port courts, *hable*, i. *portus*.

To conclude, the king of Englands navy doth excell the shipping of all other forain kings and princes: for if you respect beautifull stateliness, or stately beauty, they are so many large and spacious kingly and princely palaces. If you regard strength and defence, they are so many moving impregnable castles, and barbicans, and were teamed of old the wals of the realm. When our English navy is among the ships of other nations, it is like lions *inter pecora campi*, and like a falkon *inter phasianos*, *perdices*, et *alia volatilia timida cæli*.

Besides, no part of the world have such timber for building and repairing of ships as our king hath.

C A P. XXIII.

The Court of the Commission under the Great Seal by Force of the Statute of 28 H. 8. cap. 15.

The commissioners. THIS court must be holden *coram admirallo Angliæ, seu ejus locum tenente*, and 3 or 4 such other substantial persons, as shall be named by the lord chancellor for the time being.

The jurisdiction. Their jurisdiction is to hear and determine all treasons, felonies, robberies, murders, and confederacies committed or done upon the sea, &c.

To be heard and determined by the common law. These offences shall be heard and determined according to the course of the common law, and therefore some of the judges of the realm are ever in this commission.

Concerning the mischief that was before the making of this statute, and how the said act hath been formerly expounded; you may read plentiful matter in the third part of the Institutes; cap. Piracy.

The processes and proceedings herein are in the name of the king: see before cap. Chivalry, p. 124. that the statute of 35 H. 8. cap. 2. nor that of 5 E. 6. c. 11. taketh not away this act of 28 H. 8. concerning treasons; Note, that in all the commissions granted for the execution of this act of 28 H. 8. since the said acts of 35 H. 8. 5 E. 6. power and authority is given to hear and determine all treasons, &c. done upon the sea.

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C A P. XXIV.

Of Port-mootes, *alias* Port Courts, *alias* Port-mote Courtes.

A Portmote is a court kept in haven towns, or ports, and thereof taketh his name *curia portus, &c.*

Portus est locus in quo exportantur et importantur merces, a portando. And they are *portæ regni* the * gates of the realm, * *Hitha* and *heda* often in Domesday is taken for a haven or port, anciently written *hafne* and now haven, by changing the *f* into *v* as is usuall.

Every haven is within the body of the county, &c. whereof see before plentiful matter in the chapter of the court of the admiralty proceeding according to the civil law. See 43 Eliz. cap. 15.

* See in the chapt. of the Courts of the Forest.

* Hereof cometh in London Queenhithe, and in Lambith Easthithe, &c.

C A P.

C A P. XXV.

The Power and Authority of Commissioners and others for the maintaining and erecting of Beacons, Signes of the Sea, or Light-houses, and Sea-marks, and concerning Watches,

See the 3. part of the Inst. cap. Building, p. 204.

BEACON, this word is derived of the Saxon word *beacon*, i. *speculum*, unde *speculantur adventus hostium*, and is often called *signum speculatum*, and *bechan* in the Saxon language is *signum dare*, and we use the word to becken to at this day.

Beacon.

Before the reign of E. 3. there were but stacks of wood set upon high places, which were fired when the comming of enemies were descried, but in his reign pitch boxes, as now they be, were in stead of those stacks of wood set up, and this properly is a *beacon*.

Light-houses, *ignes speculatorii, seu monitorii, seu lumen maritimum, seu pharus, unde versus,*

Light-houssa.

Lumina noctivagæ tollit pharus æmula lunæ.

* ἀνο τῷ φάρῳ, ἰδ' ἐστ', lucidum.

These light-houses are properly to direct seafaring men in the night when they cannot see marks, and these are also *signa speculativa*.

Sea-marks, as steeples, churches, castles, trees, and such like for direction of seafaring men in the day time, and these are called *signa marina, or speculatoria, or signa nautis*, whereof Virgill in *Eneids*.

Sea-marks.

*Hic viridem Æneas frondenti ex ilice metam
Constituit * signum nautis pater, unde reverti
Sciverit, et longos ubi circumflectere cursus, &c.*

* Id est insignium.

So as you may divide *specula* or *signa speculatoria*, or *signa nautis* into three branches, viz. into beacons, light-houses, and sea-marks.

At the common law none but the king only could erect any of these three, which ever was done by the kings commission under the great seal, as taking some few examples for many.

De signis super montes per ignem faciend'.

De signis super montes faciend'.

*Rex assignavit * Henricum Epu. Norwic' et b Willielmum comitem Suff. et alios, &c. (inter alia) ad signa speculatoria super montes in com' Norf. ponend'. Et similes commissiones in aliis comitatibus.*

Vide Rot. claus. 1 R. 2. m. 41. in dors' pro vigiliis et ignibus speculatoriis, et monitoriis.

He that is desirous to see more of beacons, &c. and watching of the same, let him read the *c* act of 5 H. 4. which is an act of parliament, and Dors' pat. anno 28 H. 6. parte 2. m. 21. in *com' Kane' et memb. 13. pro com' Norf. pro signis, anglice beacons, et vigiliis. Et Dors' pat. anno 1 E. 4. parte 3. &c.*

But of latter times by the letters patents granted to the lord admirall

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Rot. Scotie.
10 E. 3.
Rot. Claus. Vasc'
10 E. 3.
Rot. Franc'
47 E. 3. m. 20.
a Henricum
Spencer, he of a
soldier became a
bishop.
b William Ufford
comes Suff.
c Rot. par. 5 H. 4.
nu. 24. not in
print worthy to
be read.

mirall he hath power to erect beacons, seamarks, and signs for the sea. &c.

§ Elis. cap. 13.

Pasc. 1 Jac. It was resolved by the two chief justices, attorney, and solicitor, that this act extended as well to light-houses in the night, as to beacons, &c. by the day.

By the act of 8 Eliz. it is provided and enacted, That the master, wardens and assistants of the Trinity house of Deptford strand (a company of the chiefest and most expert masters and governors of ships) shall and may lawfully from time to time at their will and pleasure, and at their costs, make, erect, and set up such and so many beacons, marks, and signs for the sea in the sea-shoars, and uplands neer the sea coasts, or forelands of the sea only for seamarks, as to them shall seem most meet, whereby the dangers may be avoided, and ships the better come to their ports. And all such beacons, marks and signs so by them to be erected shall be continued, renewed and maintained from time to time at the costs and charges of the said master, wardens and assistants. An excellent law, that this power and authority was given to them which had greatest skill, seeing they were works for the safety of the realm, and safeguard of the lives of seafaring men, and that these works should be erected, and made, and continued by them at their own costs and charges, because they knew to goe the nearest way.

Convict of out-lawry.

Beconagium signifieth money due or payable for the maintenance of beacons, or the watching of the same. What punishment they incur which take down, fell, or otherwise cut down any seamarks, see the said act of 8 El. *ubi supra*, wherein it is to be observed, that if the person offending be not able to pay the penalty therein inflicted, he shall be deemed convict of outlawry, *ipso facto*, to all constructions and purposes: the like whereof we have not observed in any other statute.

Wardwite, *alias warwite*, or *ward penny*, to be free from contribution of money to watches and wards.

We have out of an ancient manuscript transcribed this ordination that followeth, which in the county of Norf. hath been ever observed, and it is very probable, that the like hath been done by like authority in other maritime counties.

Norf.

Ordinatio pro vigill^o observand^o in com^o prædict^o à Lynne usque Yermouth.

Robertus de Monte alto and Tho. de Bardolfe fat in parliament; 14 E. 2. as barons of the realm, as appeareth in the parliament rolls.

• 5 H 4. cap. 3. Watches to be made upon the sea coast by the number of the people, in the places, and in manner and form as they were wont to be.

*Hæc igitur autoritate mandati nos Robert de Monte alto et Thomas de Bardolfe mandamus vic^o Norf. quod venite faciat coram nobis apud Norwic^o die Mercurii in fest^o decollationis Sancti Johannis Baptist^æ prox^o futur^o omnes milites, omnes capit^o constabul^o hundred^o, et constabul^o vill^o et duos homines de discreti^o cujuslibet villæ ubi portus vel applicat^o navium in balliva sua tam infra libertat^o quam extra in com^o prædict^o ad consulend^o, formand^o, auxiliand^o qualiter et quomodo die^o custod^o securius pro salvatione partium illarum fieri possit, et ad faciend^o quod ex parte dom. regis super præmissis injungitur. Ad quem diem nos die^o Robert^o et Thomas personaliter accessimus ibidem, ac milit^o, capit^o constabul^o hundred^o, constabul^o vill^o cum omnibus hominibus vill^o ubi applicat^o navium exist^o de portu Lynne et de portu Yarmouth coram nobis ibidem compar^o, et asseruerunt, quod valde necesse esset pro salvat^o totius patriæ quod vigill^o fiant in ¶ locis periculosis sicut * antiquo more fieri solebant juxta mare. Et quod omnes homines corpor^o valid^o de com^o Norf. contribuent^o ad ill^o faciend^o, per quod ordinat^o*

† [150]

- ordinat' et consens' eorum concordat' est quod duæ vigill' per sex homines de corpore potenti tam per dies quam per noctes fieri in hundred' de Freebrigg'e, viz. apud Wolverton, et apud Clencherne, eo quod dict' hundred jung' se mari à Wisbiche usque Derfingham per 14 leucas. Et quod quilibet vigilans capiet per diem et per noctem pro vadiis suis 3 d. Et quod hundred de Clackclofe adjung' eidem hundred' de Freebrigg'e ad contribuend' ad vigill' illa faciend' viz. pro qualibet septiman' 4 s. 6 d. et idem hundred. de Freebrigg'e 6 s. pro septiman'. Et sciend' est 77. vill. continentur in dict' hundredo quæ assignantur ad dict' vigill' faciend'.*
- Fiat etiam una vigill' apud Southlymne in Clymchern, &c.*
- Item quod una vigill' fiet in hundred' de Smythdon apud Thornham per sex homines, eo quod dictum hundred' jungit se mari de Derfingham usq; Deepedal femm per 12 leucas. Et quod hundred de Southgrenhoe et Landiche adjung' eidem hundred' de Smythdon ad contribuend' ad vigill' ill' faciend', viz. hundredo de Southgrenhoe 3 s. 6 d. per septiman' et hundred. de Landiche 4 s. per septiman', et hundred. de Smythden. 3 s. Et continent' in dict' hundred' 79. vill' ad vigill' illa faciend'.*
- Et fiat una vigill' in hundred' de Gallowe apud Burnham per 4. homines, eo quod dict' hundred. jungit se mari de Deepedale usque Holkham per 3. leucas. Et hundred. de Brothercrosse adjungit' eidem hund' ad contribuend. ad vigill' ill' faciend', viz. hundred' de Brothercrosse 3 s. per septim' et idem hundred. de Gallowe 4 s. per septim.' Et sciend' est 45. vill' sunt in dict' hundred' ad vigill' illa faciend'.*
- Item fiet un' vigill' in hundred' de Northgrenhoe apud Holkham per 6. homines, eo quod dict' hundred' jungit se mari, a Holkham usque Marston per 6. leucas. Et hundred' de Weyland, Giltcrosse, Grimshoe, et Ersham adjung' eidem hundred' ad contribuend' ad vigill' illa faciend', viz. Weyland 2 s. per septim', Grimshoe 2 s. per septim', Giltcrosse 2 s. per septim', et Ersham 2 s. per septim', et idem hundred' de Northgrenhoe 2 s. per septim'. Et sciend' est quod 76 vill' sunt in dict' hundred' ad vigill' ill' faciend'.*
- Item fiet unum vigill' in hundred' de Holt apud Waborrn per sex homines, eo quod dict' hundred' jungit se mari à Marston usque Sheringham per 7 leucas. Et hundred. de Eynsford et Hemsteead adjung' eidem hundred. de Holt ad contribuend' ad vigill' faciend', viz. Eynsford 4 s. per septim', Hemsteead 3 s. 6 d. per septim' et idem hundred' de Holt 3 s. per sept. et sciend. est quod 70 vill. sunt in dict' hundred' ad vigill' ill' faciend'.*
- Item fiet unum vigill' in hundred. de Northerpingham in duobus locis, viz. apud Runton et Trimmingham per 5 homines, eo quod dict. hundred. jung. se mari à Sheringham usque Munstye becke per decem leucas, et hundred. de Southerpingham et Mitford cum vill. infra libert' adjung. eidem hundred. ad vigill' illa facienda, viz. Southerpingham 6 s. 8 d. per sept. Mitford 3 s. 6 d. per sept. et Northerpingham 12 s. 6 d. per sept. Et sciend' est quod 77. vill' sunt in hundred. præd. ad vigill. ill. faciend'.*
- Item fiet unum vigill. in hundred. de Tunsted apud Bastrick per sex homines, eo quod dict. hundred' jungit se mari à Munstley usque Walcote per 4 leucas. Et hundred. de Humbleyard et Fowrthoe adjung. eidem hundred. ad contribuend. ad vigil. ill. faciend', viz. Humbleyard 3 s. per sept. Fowrthoe 3 s. per sept. et Tunstead 4 s. 6 d. per sept. et sciend. est quod 76 vill. sunt in dict. hund. ad vigil. ill. faciend'.*
- Item fiet unum vigil. in hundred. de Happing in duobus locis, viz. apud Happiboroto per 4 homines et apud Wastusham per 4 homines, eo quod dict.*
- Freebrigg'e.
Clackclofe.
Smythdon.
Southgrenhoe, Landiche.
Gallowe.
Brothercrosse.
Northgrenhoe.
Weyland.
Giltcrosse.
Grimshoe.
Ersham.
Holt.
Eynsford.
Hemsteead.
Northerpingham.
Southerpingham.
Mitford.
Tunstead.
Humbleyard.
Fowrthoe.
Happing.

dict. hund. jungit se mari à Walcote usque Wimbesdale in loco periculoso per 6. leucas. Et hundred. de Taverham, Depwade, Shropham et Disse adjung. eidem hund. de Happing ad contribuend. ad vigil. ill. faciend. viz. hund. de Taverham 2 s. per sept. Depwade 3 s. per sept. Shropham 5 s. per septim. et Disse 2 s. per sept. et dict. hund. de Happing 2 s. per sept. Et sciend. est quod 60. vill. sunt in hund. prædict. ad vigil. ill. faciend.

Eaststegge.
Weststegge.

Walsham.
Blowfeild.
Loddon.
Clavering.

Item fut unum vigil. in hund. de Eaststegge et Weststegge in tribus locis, viz. apud Winterton per 6 homines, apud Saltroos haven per sex homines, et apud Fordham per sex homines, eo quod dict. hund. jungit se mari à Wykeldock usque Banton in Misford in loco periculoso per 7 leucas. Et hund. de Walsham, Blowfeild, Loddon, et Clavering adjung. eidem hund. ad contribuend. ad vigill. illa faciend. viz. Walsham 4 s. 6d. per sept. Blowfeild 4 s. 6d. per sept. Loddon 5 s. 6d. per sept. Clavering 5 s. 6d. per sept. Weststegg 2 s. per sept. Eaststegg 2 s. per sept. Et sciendum est quod 102 vill. sunt. in dict. hund. ad vigil. ill. faciend.

Signa.
Fierbares.

*Præcept. est omnibus capital. constabul. de hund. adjung. mari in loca prædict. in forma prædicta hac instant. die dominica prox. futur. et similiter præcept' est eisdem capital. constabul. et omnibus aliis subconstabul. hundred. totius com. quod sine dilatione levari et reparari fac. signa et ferbares super mont. altior. in quolibet hund. ita quod tota patria per illa signa quotiescunque necesse fuit premuniri posset, et quod ipse constabul. capital. per aviziam. constabul. villarum et aliorum proborum hominum agist. fac. fideliter denar. pro vad. vigil. in hundred. prædict. instant. quod. ordinat. solvend. de septimana in septim. ita quod defect. in vigil. prædict. nullo modo inveniatur per eorum defect. et similiter quod omnes qui agist. sunt ad arma et potent. ad portanda arma, et omnes illi qui loco potent. ad arma sua portanda assignat. sint providi et parati sint indicia nocte ad veniend. solemniter distincti. et aperte in præsent. domini Walteri de Norwic. episcopi juxta nos assiden. ibidem cur. * cācar. totius com. Norf. coram nobis vn. fecimus proclamar. Et similiter præcept. est vic. quod levat. fac. denar. agist. in hundred. prædict. pro costis et vad. præd. solvend.*

* **Vigiliarium.**

For watches, and against night-walkers, see the statute of Winch.
13 E. 1. cap. 4. 5 E. 3. cap. 14. Vid. 5 H. 7. 5.

Vide Lamb. inter leges Edouardi regis, fo. 136. b. et inter leges Willelmi regis, fo. 125. a.

Dorf. Claus.
8 H. 4. m. 8.
& 10.

Quod homines de Larkesfield, Filbarow street, Newchurch, et Worth in com' Kanc' tenentur facere vigalias in Romney Marsh.

C A P. XXVI.

De Conservatore seu Custode Treugarum, i. Induciarum et salvoorum Regis Conductuum,

And incidently of the Office, Authority, and Priviledge of Ambassadors; and of Leagues, Tréaties, and Truces.

By the statute of 2 H. 5. robbery, spoyling, breaking of truces, and safe conducts by any of the kings liege people and subjects within England, Ireland, and Wales, or upon the main sea, was adjudged and determined to be high treason: but this branch concerning high treason is repealed by the statute of 20 H. 6. But by the said act of 2 H. 5. for the better observation of truces and safe conducts, *conservator induciarum et salvoorum regis conductuum* was raised, and appointed in every port of the sea by letters patents: his office was to enquire of all offences done against the kings truces and safe conducts upon the main sea (out of the counties, and out of the liberties of the cinque-ports) as admirals, of custome, were wont.

It concerneth the jurisdiction of divers courts, and especially of the said court before mentioned upon the said statute of 28 H. 8. and of the court of the admiralty, to know the rights of leagues and ambassadors, as far as the lawes of England extend unto, for of them we will only treat.

All leagues or safe conducts are, or ought to be of record, that is, they ought to be inrolled in the chancery to the end the subject may know, who be in amity with the king, and who be not: who be enemies, and can have no action here; and who in league, and may have actions personall here. * In all treaties, the power of the one party and the other ought to be equall.

A league may be broken by leavying of war, or by ambassadour or herald.

Bryan held opinion in 19 E. 4. *ubi supra*, that if all the subjects of England would make war with a king in league with the king of England without the assent of the king of England that such a war was no breach of the league. See the statute of 2 H. 5. cap. 6. in the preamble.

In the duke of Norf. case Hil. 14 Eliz. the question was, whether the lord Herise and other subjects of the king of Scots, that without his assent had wasted and burnt divers towns in England, and proclaimed enemies, were enemies in law within the statute of 25 E. 3. the league being between the king and the Scot: and resolved that they were enemies.

And in the bishop of Rosses case, ann. 13 Eliz. the question being, *An legatus, qui rebellionem contra principem ad quem legatus concitavit.*

IV. INST.

N

legati

2 H. 5. ca. 6. stat. 1.

20 H. 6. cap. 11.

19 E. 4. 6. b.
18 H. 6. cap. 4.
20 H. 6. cap. 1.
Vide supra.
p. 132.
* Regula.

19 E. 4. ubi supra. See the third part of the Instit. cap. Treason. verb. League. 2 H. 5. cap. 6. Hil. 14 Eliz.

Hil. 13. Eliz.

legati privilegiis gaudeat, et non ut hostis pœnis subjaceat. And it was resolv'd that he had lost the privileige of an ambassador, and was subject to punishment.

Hil. 12 Jac.

Samuel Palache affirming himselfe to be the subject and ambassador of Mula Sedan king of Moroccho to the states of the United Provinces, to treat and negotiate with them of divers matters between them; and they of the United Provinces having accepted him for an agent or legat. And the last of June 1611, there being enmity between the king of Moroccho and the king of Spaine, the king of Moroccho made a commission to the said Samuel to take Spaniards and their goods. The 25 of October 1613, the king of England gave him letters of safe conduct as a publick minister sent to the states of the United Provinces. 3 Martii 1613, the states licens'd him to leave men to furnish his ships, &c. In June 1614 he took a carrell of the Spaniards at the Canaries laden with sugar, and another ship there also laden with hides, of the goods of Spaniards; and after, with distresse of wind, he with the said prizes was driven to Plimouth, there being at that time league both between England and Spain, and between England and the United Provinces, and wars between Spain and the United Provinces. And against this Samuel the Spanish ambassador here in England complain'd at the councill table, and charg'd him with piracy. The said Samuel and his company being arrested, and the goods seised, the Spanish ambassador pray'd that he might proceed against him as a pirat upon the said statute of 28 H. 8. cap. 15. The lords of the councill refer'd the consideration of this request to the chiefe justice of England being present at the table, and to the master of the rols, and Sir Daniel Dun judge of the admiralty, to consider of the case, and to direct a course of justice therein indifferently. And the said referrees heard the councill learned both in the common and civill lawes on both sides on two severall dayes in this terme: and after conference between themselves, and with others, these points were resolv'd. First, that at this day there could be no ambassador without letters of credence of his * soveraigne, to another that had soveraigne authority. *Legatus per literas de sua legatione fidem facere debet, si exigantur, et commonitorium, s. instructions privas*, for the ambassador himself for his direction.

Secondly, that of ancient time ambassadors were called *oratores*.

* Nulli nisi absoluti principes et qui majestatis jura habent, legatos constituere possunt.

Virgil.
Idem, 11
Æneid. Legati
responsa ferunt.
Idem, 12
Æneid. Nuntius
hæc Idmon
Pbryc mea
dicit tyranno
Haud placitura
refer.

*Jamq; oratores aderant ex urbe Latina
Velati ramis olei—*

And afterwards they were called *legati à legando*, *nuntii à nuntiando*, and afterwards *ambassadors* or *embassatores*, and sometimes agents: for *omnis legatus est agens*, but *omnis agens* is not *legatus*: for if he be sent from a king or absolute potentate or state to a king or absolute potentate or state to treat between them, although he in his letters of credence be termed an agent or *nuntius*, yet he is an ambassador or legat.

Thirdly, it was resolv'd, that ambassadors ought to be kept from all injuries and wrongs, and by the law of all countries, and of all nations they ought to be safe and sure in every place, in so much that it is not lawfull to hurt the ambassadors of our enemies: and herewith

herewith agreeth the civill law. And if a banished man be sent as ambassador to the place from whence he is banished, he may not be detained or offended there, and this also agreeth with the civill law.

The case (which we have seen reported) in the reign of H. 8. was this: there being amity between king H. 8. and the French king, and enmity between H. 8. and the pope, R. Pole a rebell and traitor to the king of England flyeth to Rome, whom the pope being in amity with the French king sendeth as ambassador to him: the king of England demandeth his rebell of the French king, notwithstanding he was sent as ambassador, *sed non prevailuit*. And it is truly said, whosoever said it, *Quia veritas à quocunque dicitur à Deo est, fuit semper etiam apud Gentiles (qui nul'am tenebant veræ fidei rationem) inviolabile nomen nunciæ et legati, etiamsi ab hostibus mitterentur semper salvi, et hodie apud Saracenos et Turcos, à quibuscunque tunc destinantur legationes et literæ, etiamsi illis ad quos deferantur molestæ sint et injuriosæ*. But if a forein ambassador being *prorex* committeth here any crime, which is *contra jus gentium*, as treason, felony, adultery, or any other crime which is against the law of nations, he loseth the priviledge and dignity of an ambassador as unworthy of so high a place, and may be punished here as any other private alien, and not to be remanded to his soveraigne but of curesie. And so of contracts that be good *jure gentium* he must answer here. But if any thing be *malum prohibitum* by any act of parliament, private law or custome of this realme, which is not *malum in se jure gentium*, nor *contra jus gentium*, an ambassador residing here shall not be bound by any of them: but otherwise it is of the subjects of either kingdome, &c.

Pasch. 36 Eliz. Henry de Vale and other Frenchmen imported divers manufactures, as cloth of tiffue, cawles, points, &c. Whereupon Tomlinson and other good merchants of London exhibited divers informations upon the statute of 19 H. 7. which prohibit the same; of whom the Frenchmen complained at the councill table, and it was resolved by the lord treasurer Burghleigh and the whole councill, that it was no breach of the league between this kingdom and France, for that in the articles of the league the lawes of either kingdome be excepted: and therefore if Tomlinson the subject being a French merchant should trade into France, he must observe the laws and customes of France.

Fourthly, it was resolved, that admit the said Palache was no ambassador, notwithstanding because there was enmity between the king of Spain and the king of Morocco, he could not be indicted as a pirat before commissioners upon the said statute of 28 H. 8. Because that one enemy cannot be a felon for taking of the goods of another enemy. And the words of the said act be, [that the commissioners by force of the said act shall proceed, as if the offence had been committed upon the land, and according to the course of the common law.]

See 2 R. 3. by all the justices, that this is no felony, which case is in his parts remembered hereafter. For it is very observable what the law of England is in that case. It was holden by some of the civilians, that albeit the Spaniard could not proceed against him *criminaliter*, upon the said act of 28 H. 8. yet the goods being *in solo a nunciæ*, that is, in the soile of the king of England, who was in league

L. fi. F. de Lega. In aut. de sanctiss. § Rerum Col. 9.

* See the third part of the Institutes, cap. High Treason, verb. *Overi juri*. pa. 14. Tempore H. 6.

Pasch. 36. in scac.

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19 H. 7. cap. 21.

2 R. 3. fo. .

Trin. 2. Jac. coram rege.

league with both, that the Spaniard might proceed against Palache, *civilliter* in the admirall court: but that was resolved to the contrary by Popham chiefe justice, and the whole court of the kings bench Trin. 2. Jac. to be against the law of England in that case: where the case was this, that where the king of England was in league with the king of Spain, and with those of Holland, &c. and there was enmity between the king of Spain and those of Holland, &c. and one of Holland upon the high sea *in aperto praelio* took the goods of a subject of Spain, and brought them into England, *infra corpus comitatus*, and for that the goods were *in solo amici*, the Spaniard whose goods were taken libelled for them *civilliter* in the admirall court. It was resolved by the whole court of the kings bench upon conference and deliberation, that the Spaniard had lost the property of the goods for ever, and had no remedy for them in England. And relyed principally upon the book in 2 R. 3. *ubi supra*, being of so great authority: for by that book, he that will sue to have restitution of goods robbed at sea, ought by law to prove two things. First, that the soveraigne of the plaintife was at the time of the taking in amity with the king of England. Secondly, that he that took the goods was at the time of the taking in amity with the soveraigne of him whose goods were taken: for if he which took them was in enmity with the soveraigne of him whose goods were taken, then was it no depredation or robbery, but a lawfull taking, as every enemy might take of another: all which appeareth in the said book. See the statutes of 27 E. 3. and 31 H. 6. well expounded in 2 R. 3. *ubi supra*. Vide 7 E. 4. 14. 13 E. 4. 9. 22 E. 3. fo. 23. concerning this matter. And for that there was enmity between the king of Spain and those of Holland, therefore it could not be depredation, but a lawfull taking. It was also resolved by the court of the kings bench, that the goods so taken being within this realm, viz. *infra corpus comitatus*, in *solo amici*, that if the Spaniard sue for them *civilliter* in the court of the admiralty, that a prohibition should be granted, and that it should be determined by the laws and statutes of England, and not by the civill law.

27 E. 3. ca. 13. & cap. 17.
31 H. 6. cap. 4.
7 E. 4. fo. 14.
13 E. 4. 9.
22 E. 3. 16, 17.
Regit. 129.
F. N. B. 114.
Prohibition.
Nota.

With this resolution of the kings bench doctor Taylor an Englishman, and solicitor for the king of Spain, was at the first much offended, but when he had taken advice and understood the reason of the resolution, he was well satisfied.

Lib. 5. fo. 106.

If a shipwrack be on the sea, yet if any of the goods come to land within this realm, the admirall shall not have jurisdiction, but it belongeth to the common law.

See the third part of the Institutes, cap. Treason: what offence it hath been, and what it is at this day to kill a foreign ambassador: and see there 3 R. 2. John Imperials case, ambassador of Genoa. It appeareth in the holy history, viz. in the first booke of the Chronicles, that injury and disgraces offered to king Davids ambassadors which he sent to Hanon king of the Moabites, *ad consolanda ei supra mortem patris sui, grandem etiam contumeliam sustinuerunt*, &c. was a just cause of warre by David against the Moabites, and was severely revenged, as by the holy history it appeareth.

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1 Chro. 19. 2. &c.

There be four kindes of leagues. 1. *Fœdus pacis*. and that a Christian prince may have with an infidell. *Si fieri possit, quod x nobis est, cum omnibus hominibus pacem habeatis*. 2. *Fœdus congratulationis* sive

Rom. 12. 18.
Gen. 14. 13. &c.
Abrah. cum rege Sodem.

sive consolationis. And this may a Christian prince make with an infidell as David did with Hanon: *ubi supra.* 3. *Fœdus commutationis mercium sive commercii.* And this also may be made with an infidell, as king Solomon did with Hiram an infidell, and Josua did with the Gibionites. 4. *Fœdus mutui auxilii,* and this cannot be done with an infidell or an idolater. Jehosaphat king of Juda, made *fœdus mutui auxilii* with Achab king of Israel, an idolater: for Achab said to Jehosaphat, *Veni mecum in Ramoth Gilead. Cui ille respondet, Ut ego et tu, et sicut populus tuus, sic et populus meus tecum erimus in bello:* in which warre Achab was slain, and Jehosaphat was in extreame danger. And after, as the text saith, *Reversus est autem Jehosaphat rex Judæ in domum suam pacifice in Jerusalem, cui occurrit * Jehu filius Hanani, et ait ad illum, impio prebes auxilium, et hiis qui oderunt dominum amicitia jungeris, et ideoque iram quidam domini mereris.* And the laws of England concerning these four leagues are as you perceive grounded upon the law of God.

But here ariseth a question, that seeing *fœdus pacis,* or *fœdus commercii* may be stricken between a Christian prince and an infidell pagan and idolater, and those leagues are to be established by oath, whether the infidell or pagan prince may swear in that case by false gods, seeing he thereby offendeth the true God by giving divine worship to false gods. This very doubt was moved by Publicola to S. Augutine, who resolveth the same thus: he that taketh the credit of him that sweareth by false gods not to any evill but good, he doth not joyn himselfe to that sinne of swearing by devils, but is partaker with those lawfull leagues wherein the other keepeth his faith and oath. But if a Christian should any way induce another to swear by them, herein he should grievously sin. And seeing the leagues in these cases are warranted by the word of God, *et per praxin sanctorum in sacra scriptura,* all incidents thereunto are permitted: for *per praxin sanctorum* the practise of holy men in scripture, may often time be collected how the commandments in it are to be understood, and *praxis sanctorum* appeareth before.

And it is to be observed that of ancient time, and untill latter dayes no ambassadour came into this realme before he had a safe conduct. For as no king, &c. can come into this realm without a licence or safe conduct, so no *prorex,* &c. which representeth a kings person can doe it. For safe conducts see the writs in the Register *de salvo conductu,* and the statutes of 15 H. 6. 18 H. 6. and 20 H. 6. with all incidents thereunto. And king H. 7. that wise and politique king would not in all his time suffer lieger ambassadors of any foraine king or prince within his realm, nor he any with them, but upon occasion used ambassadors.

* Every ambassador ought to have four qualities, expressed in this verse

Nuncie, sis verax, tacitus, celer, atque fidelis.

And of him another saith.

*Fœderis orator, pacis via, terminus iræ,
Semen amicitia, belli fuga, litibus hostis.*

William de la Pole duke of Suff. by the commons was charged (amongst other things) with this, that he procured the king, in his presence only without any other of the councill, to have secret conference with the French ambassadors, &c. for the which

Josua cap. 9.
2 Kings 5. 1. &c.
& 34. 35.
2 Chron. 18.
Jeremy 15. 4.
See 1 Mac. 8.
19, 20. & cap. 10.
2 Chron. 19. 2.
& cap. 20. 35.
&c.
• The prophet of God.

Aug. Epist. 154.
ad Publicolam.

August. lib. de mendacio cap. 15.
Praxis sanctorum interpres præceptorum.

Rot. paul. 9 H. 6. nu. 12. and long after.
See lib. 7. Calvinus case, *De rege Manne.*
Regist. fo. 25, 26.
15 H. 6. cap. 3.
18 H. 6. cap. 8.
20 H. 6. cap. 1.
1 H. 7. fo. 10.
Legate of the pope sworne, &c.
* Four qualities ought to be in an ambassadour.

Rot. pl. 28 H. nu. 28.

(amongst other things) he was banished, &c. as by the record appeareth.

1 Decemb.
21 H. 8.

See these articles
before in *hac*
verba, cap.
Chancery,
artic. 2, 3, 9,
10, 12.

* Cardinall Wolfey was charged with these notable high and grievous offences (amongst others) viz. That he being the kings ambassador in France made a treaty with the French king for the pope, the king not knowing any part thereof nor named in the same, and binding the French king to abide his order and award, if any controversie or doubt should arise between the said pope, and the said French king.

Also that the said lord cardinall being the kings ambassador in France sent a commission to Sir Gregory de Cassalis under the great seal in the kings name to conclude a treaty of amity with the duke of Ferrare without the kings commandement or warrant, nor the king advertised nor made privy to the same.

Also the said lord cardinall taking upon him otherwise then a true privy councillor ought to doe, hath used to have all ambassadors to come first to him alone, and to hear their charges and intents, &c.

Also the said lord cardinall used many years together not only to write to all the kings ambassadors in forain parts with other princes in his own name all advertisements concerning the kings affairs being in their charge, and in the same letters wrote many things of his own mind without the kings pleasure known, concealing divers things which had been necessary for them to know, but also caused them to write their advertisements to him, and of the same letters he used to conceal, for the compassing of his purpose, many things both from the kings council and the king himself.

The difference between a league and a truce is, that a truce is a cessation from warre for a certain time: a league is an absolute striking of peate.

• A truce.
Rot. Franc.
19 E. 3. m. 10.
part 1.
• See the truce
at large, lib. par.
fo. 5.

• A league.
rot. par. 4 H. 5.
nu. 14.
• 9 E. 4. 2. 2.
• 39 H. 6. 39.
• Ro. pat. 35 E. 5.
part 2. m. 24.
claus. 10 H. 4.
m. 15. *nuntius*
pape.

Rot. claus.
14 H. 3. m. 1.
rot. claus.
12 R. 2. m. dorf.
• R. pat.
17 R. 2.
part 1. m. 23.
Rot. Franc.
12 H. 6. m. 2.
Rot. pat.
12 H. 6.
12 part. m. 6.

• Of a truce we have read in anno 19 E. 3. to this effect. *Rex post initas inductas cum Francorum rege per mediationem b Romani pontificis, copias suas bellicas demum reduxit, postea deprehendens prefat' regem Franc' hostilia contra ipsum moliri, et nuntios prefati pontificis simulata pace dissidium fovere, premissa omnia per literas patentes exponenda iuxit, et bellum cum prefato rege resumpsit.*

• A league and alliance was made between king H. 5. his heirs and successors, and Sigismund king of the Romans his heirs and successors kings of the Romans, and was confirmed by act of parliament. The instrument whereof is very long, but not so long as effectually and worthy of observation.

• It is said in 9 E. 4. that a league made between two kings (without naming of successors) doth not extend to successors, although by our law *rex non intermoritur*.

• Justice Ashton is of opinion, that no ambassador ought to be sent to the pope, but there may be many presidents to the contrary, for besides his spirituall jurisdiction he is a temporall prince, whereof see a president among many others, ^f Rot. pat. 35 E. 3. parte 2. memb. 24. and likewise the pope sent ambassadors into England, who were sworn not to attempt any thing prejudiciall to the king or kingdom.

• And that we may give some taste of every kind: in times past the king of England sent ambassadors to generall counceils, as taking one

one example of that sort for many. *Ad concilium Basiliens' sub Eugenio papa, quorum destinati sunt per regem ambasciatores et oratores episcopi * Robertus London', Philippus Exoniens', Johannes Roffinis', Johannes Baiocens' et Bernardus Aquarens' Ed'us comes Moriton, abbas Glastron' et beate Mariæ Eborum, prior Norwici, Henricus Bromflet miles, (dominus Vescie) Thomas Browne legum doctor decanus Sarum, Johannes Colleville miles, et alii.* Their authority was in these words. *Dantes et damus eis et ipsorum majori parti potestatem et mandatum tam generale quam speciale nomine nostro et pro nobis in eodem concilio interessendi, tractandi, communicandi, et concludendi tam de hiis quæ reformationem ecclesiæ universalis in capite et in membris, quam in hiis quæ fidei orthodoxæ falcimentum, regumque ac principum pacificationem concernere poterunt, nec non de et super pace perpetua, guerrarumve abstinentia inter nos et Carolum † adversarium nostrum de Francia, ac etiam tractandi, communicandi, et appunctuandi, consentiendi insuper, et si opus fuerit, dissentiendi hiis quæ juxta deliberationem dicti concilii inibi statui, et ordinari contigerit. Promittentes et promittimus bona fide nos ratum, gratum, et firmum perpetuo habiturum totum et quicquid per dictos ambasciatores, oratores, et procuratores nostros, aut majorem partem eorundem actum, factum, seu gestum fuerit in præmissis, et in singulis præmissorum, et hoc idem cum de et super hiis certiorati fuerimus quantum ad nos et Christianum principem attinet, executioni debitæ curabimus demandar'. In cujus rei testimonium has literas nostras fieri fecimus patentes. Dat' sub magni sigilli nostri testimonio in palatio nostro Westm' 10 die Julii.*

We have expressed this ambassage the more particularly, for that, to this council also I find that Henry Beauford (son of John of Gaunt by Katherin Swinford) bishop of Winchester and cardinall of S. Eusebye addressed himself and had licence to transport and carry with him 20000 l. of gold and silver (mute, but moving ambassadors) notwithstanding the statutes of 9 E. 3. cap. 1. and 5 R. 2. cap. 2. &c. For the form of a safe conduct (which is called *de salvo conductu*) see the Register. And for the effect and validity thereof, see the statutes of 15 H. 6. cap. 3. 18 H. 6. cap. 4. 20 H. 6. cap. 1.

Recordum et process' contra Petrum de Rival thesaurarium et camerarium tunc Angliæ et Hiberniæ, et custod' omnium forestarum et omnium portuum maris, &c. de compoto regi reddito de officiis prædictis et de judicio contra ipsum reddito per defaltam, quia venire recusavit, nisi salvo conductu, quod rex denegavit quasi insolitum et indebitum.

What reward legats have had in former times you may read, Rot. liberat. 11 H. 3. m. 13. Rot. clauf. 11 H. 3. m. 11. in dorf. Rot. liberat. 3 E. 1. m. 9. Eodem rot. 1 E. 1. m. 2. Rot. alman. 11 E. 3. per totum rotulum.

See Beda in his history of England, Lib. 1. cap. 11. hereafter cap. 75. Of Scotland, *in fine*, the danger of unwise and uncertain leagues.

* Robert Gilbert doctor of divinity. John Langdon doctor of divinity died at this council. *Nicolaus Abbas Glastron, Willielm. Abbas beate Mariæ Eborum.* The letters of the pope whereby generally counceils are called, you may read in Mat. Par. anno dom. 1245. pa. 886.

† [157]

Rot. pat. anno 11 H. 6. parte 1. m. 10 & 12. & anno 12. part. 2. m. 13. 9 E. 3. ca. 1. 5 R. 2. ca. 2. Safe conduct. Reg. fo. 25, 26.

Anno 18 H. 3

C A P. XXVII.

The Court of the Justices of Assize, and *Nisi Prius*.

Glanvil lib. 13. cap. 32, 33. &c. Brañ. lib. 4. fo. 164. b.

Britton fo. 106. b. 112. 118.

Fleta li. 4. cap. 1. & 5. Mirror ca. 2. § 15.

Stat. Wallize in Vet. Mag. Car. 2 part. fo. 12.

26 ass. p. 24. * F. N. B. 177.

Reg. See the 1 part of the

Int. sect. 442. Mag. Car. ca. 30.

39 H. 6. 19. b. mard.

When justices of assize by patent first began.

† The patent of the justice of assize.

a *J. sic' nosros ad assisas.*

H. reu to belong commissions of assize of writs of admittance, and of *si*

ron omnes, &c. F. N. B. 177.

Register, and a writ to the sheriff to bring before them *omnia*

brevia assis' jurat' et certificat' &c.

b *Jurat'* when the recognitors are turned in *juratam.* 19 E. 2.

all. 418. 29 ass. 78. &c.

c Certificat. hereof you may read in F. N. B.

and the Register. d Nota.

e W. 2. ca. 25.

FOR the writ of assize, whereof the justices take their name; in all ancient authors, it is called *assisa novæ disseisinæ*, or *petit brief de novel disseisin*. Of which writ Brañton saith. *Recognitio assise novæ disseisinæ multis vigiliis excogitata et inventa fuit recuperandæ possessionis gratia, ut per summarian: cognitionem absque magna juris solemnitate, quasi per compendium, negotium terminetur.* And the Mirror saith, that for expedition of justice, and ousting of decayes, it was ordained by Ranulph de Glanvill; but I finde the writ more ancient, as it appeareth in 26 Ass. pl. 24.

At the common law assises were not taken but either in * bank, or before justices in eire, and this was a great delay to the plaintiff, and a great molestation and vexation of the recognitors of the assize. For remedy whereof, it is enacted by the statute of Magna Carta, *Quod recognitiones de nova disseisina, et de morte antecessoris non capiantur nisi in suis propriis comitatibus, et hoc modo nos si extra regnum facere capitales justiciarii nostri, mittent justiciarios nostros per unumquemque comitatum semel in anno, qui, &c. capiant comitatibus illis assisas prædictas.* By force of this act, these three conclusions are to be observed. First, that no assize can be returnable in the kings bench, or common bench, unless the disseisin be done in the county where the benches sit respectively, or if both benches sit in one county, then the plaintiff hath election to make it returnable in which bench he will. Secondly, that the justices of both benches in that case have jurisdiction originally and ordinary without any patent. Thirdly, that upon the said act of Magna Carta letters patents to justices of assize were framed for the taking of assises in the proper counties in these words.

† *Rex, &c. dilectis et fidelibus suis R. M. uni justic' suorum de banco, et I. L. uni justic' suorum ad placita coram nobis tenend' assign' salutem. Sciatis quod constituimus vos justiciarios nostros una cum hiis quos vobis associaverimus, ad omnes a assisas, b jurat', c certificat' coram quibuscunque justic' tam per diversa brevina domini Johannis nuper regis Angliæ patris nostri, quam per diversa brevina nostra in com' nostris South' Willes. Dor'. Somerset' Devon' et Cornub' ac in civitate Exon' arranian' capiend'. Et ideo vobis mandavimus, quod ad certos dies et loca quos vos ad hoc provideritis, assis', jurat', et certificationes illas capiatis; d facturi inde quod ad justitiam pertinet secundum legem, et consuetudinem regni nostri Angliæ. Salvo nobis amerciamenis inde provenient'. Mandavimus enim vicecomitibus nostris com' et civitat' prædictæ, quod ad certos dies et loca quos eis scire factis assis', jurat' et certificat' illas una cum brevibus origin' et omnibus aliis ea tangen' coram vobis venire fac'. In cujus rei testimonium, &c.*

* By this writ the seisin and possession was recovered, and became most frequent. *Quia non est aliud breve in cancellaria, per quod*

querentes habent tam festinum remedium, quam per assisam. ^f And after the statute of W. 2. was made and thereby it was provided, *quod assignentur duo justiciarii jurati, coram quibus, et non aliis, capiantur assise, &c. ad plus ter per annum.*

^g *Dominus rex, &c. præcepit, quod de cætero assignentur octo justiciarii circumspecti et discreti ad assisas, jurati, et certificati capiend' per totum regnum Angliæ, viz. and divideth the realm into eight parts, and to every part assigneth two justices.*

But divers acts of parliament have given unto justices of assise authority in many cases.

^b *Per lestatut' de finibus cap. 3. justiciarii ad assisas capiendas assignati deliberent gaolas in com' illis tam infra libertates quam extra de prisonariis quibuscunque.* ^c Appeals of murder, robbery and rape may be commenced before justices of assise. ^d Power given to justices of assise to try the appeals of approvers. ^e *Justiciarii ad assisas capiend' assignati non compellant juratores dicere præcise.*

^f Justices of assise shall enquire for non-returning, and false returns of sherifs.

^g Justices of assise may hear and determine of conspirators, false informers, and wicked procurers of dozens, enquests and juries at the complaint of any without writ, and without delay, and of confederacies and champerties and maintainers, bearers, and alliances by bond, &c. ^h Of defaults of sherifs, escheators, bailifs, and other officers.

ⁱ Justices of assise may enquire of defaults, &c. of punishment of victuallers, &c. which sell at unreasonable prices.

^k They have power to hear and determine riding and going armed, &c. and to punish justices of peace, sherifs, baillies, and others for not doing their office in that case.

^l They may hear and determine treason in counterfeiting of money, &c. ^m They shall do execution of the statute of 13 H. 4. of riots done in their presence upon pain of an hundred pound.

ⁿ And by the statute of 2 H. 5. commissions shall be awarded to enquire of the default of justices of assise, and of justices of peace in that behalf.

^o They shall enquire of, hear, and determine all offences contrary to the statute of 23 H. 6. concerning sherifs, under-sherifs, and their clerks, coroners, stewards of franchises, bailifs, and keepers of prisons for extortion, and for letting to bail such as were not bailable, or for denying of bail to them that ought to be bailed, &c.

^p Justices of assise shall take bail of him that is acquitted of murder within the year to answer to the appeal of the party, 5 Eliz. cap. 5. of Informers. 5 Eliz. cap. 4. of Labourers.

^q Justices of assise of gaol-delivery, and of the peace, shall enquire of the default of coroners.

^r Justices of assise, &c. shall enquire of false making of leather. ^s Of amending of high-ways. ^t Of hunters in parks. ^u Of unlawfull taking of fishes. ^x Of forgery of false deed. ^y Against deceit in linnen-cloth. ^z Against perjury. ^a Of usury and many other things.

^b Justices of assise twice in the year ought to proclaim the statute of 32 H. 8. and other statutes against unlawfull maintenance, champerty, imbracery, and unlawfull retcyners. ^c They ought to proclaim

^f W. 2. ca. 30. vid. 4 E. 3. cap. 2.

^g Ro. par. 21 E. 1. rot. 3. De justiciariis assignatis.

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^b 27 E. 1. stat. de finibus cap. 3. To deliver gaols.

^c 22 E. 4. 19.

^d Stat. de Appellatis. an. 28 E. 1.

^e W. 2. cap. 30.

^f W. 2. cap. 39.

^g 2 E. 3. cap. 5.

^h Artic. sup. Car. 28 E. 1.

ⁱ 4 E. 3. c. 11.

^j 7 R. 2. c. 15.

Regist. 186. 188.

^k 4 E. 3. ca. 12.

Of maiors and baylifs, que ne

feribe wines.

^h 20 E. 3. ca. 6.

ⁱ 23 E. 3. ca. 6.

^k 2 E. 3. ca. 3.

de Northampton, 1 R. 2. ca. 7.

Of unlawful maintenance.

^l 5 H. 5. ca. 7.

^m 13 H. 4. cap. 7.

ⁿ 2 H. 5. cap. 8.

^o 23 H. 6. ca. 10.

^p 33 H. 8. ca. 9.

for shooting.

^q 3 H. 7. cap. 1.

^r 1 H. 8. 8. ca. 7.

^s 18 El. cap. 9.

^t 18 El. cap. 10.

^u 5 El. cap. 3.

^x 5 El. cap. 5.

^y 5 El. cap.

^z 1 El. ca. 14.

^a 5 El. ca. 9.

^b 13 E. cap. 8.

^c 32 H. 8. ca.

^d 33 H. 8. ca. 9.

proclaim the statute of unlawfull games in their circuit. See the Custom of Normandy, cap. 19.

W. 2. c. 30. See the 2 part of the Inst. the exposition of this act. Vid. Fleta l. 4. c. 5. Vid. Hil. 32 E. 3. m. 5. See the authority of justices of nisi prius, in libro meo. fo. 54. b. the pl. begun, *Et auxint en nisi prius grant devant Stouf.*

Now concerning justices of *nisi prius*, they were first instituted by the statute of W. 2. of issues joyned in the common bench, and kings bench; and their authority is annexed to the justices of assize, and is by force of a judicial writ, and therefore we have joyned them under one title. And this appeareth in the judicial writ of *nisi prius*, which is:

The writ of nisi prius.

Rex vicecomiti salutem. Præcipimus tibi quod venire fac' coram justiciariis nostris apud Westm' in octab. Sancti Michaelis, vel coram justiciariis nostris ad assisas in com' tuo per formam statuti nostri inde provis' capiend' assignatis, si prius die Lunæ prox' ante festum, &c. apud, &c. venerint 12. tam milites quam alios, &c.

Reg. judic. 48.
75. W. 2. ca. 30.
6 E. 6. Dier 77.
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7 R. 2. ca. 7.

And by the said act the justices of *nisi prius* have power to give judgment in assize of *darrein presentment* and *quare impedit*.

By the statute of 7 R. 2. *nisi prius* shall be granted as well in the exchequer as elsewhere.

18 El. ca. 12.

Of issues joyned in the kings bench, common bench, and exchequer, the chief justices, or chief baron, or in their absences two other justices or barons of the said severall courts, as justices of *nisi prius* for the county of Midd. within the terme, or four days after shall severally try, &c. and that commissions, and writs of *nisi prius* shall be awarded, &c. It is to be observed that there is but a transcript of the record sent to the justices of *nisi prius*.

9 El. Dier 261.

27 E. 1. de finibus. F. N. B.
241. e.
Stat. de York.
12 E. 2. c. 3. & 4.
2 E. 3. ca. 16. &
4 E. 3. cap. 2.
14 E. 3. ca. 16.

By the statute of 27 E. 1. *de finibus*, ca. 4. it is provided, *Quod inquisitiones et recognitiones capiantur tempore vacationis coram aliquo justiciario de utroque banco, coram quibus placitum deductum fuerit.* See the statutes of York, 2 E. 3. cap. 16. 4 E. 3. ca. 2. and the statute of 14 E. 3. cap. 16. which statute doth provide that *nisi prius* may be taken in every plea real and personall before two, so that one be justice of one of the benches, or the chief baron or serjeant sworn, without any regard where the plea depended, and this standeth yet at this day. Vid. 42 E. 3. cap. 11. 19 H. 6. fol. 47. 33 H. 6. fol. 14. 16 H. 7. fol. 14. 5 Mariæ Dier fol. 163.

Rot. clauf.
10 E. 2. m. 10.

Concordatum fuit per totum concilium regis, quod nullus vicecomes aut coronator fiat justiciarius ad assisas capiend', gaolas deliberand', transgress' audiend' et terminand', seu ad aliquod aliud officium justic' faciend', eo quod debent esse intendentes aliis justiciariis. Which act is declaratory of the common law, for that (as by the reason yeelded in the act it appeareth) these offices be incompatible, the one being attendant unto, and within the controulment of the other.

F. N. B. 240. e.
Stanf. 156.
Nisi prius in case of felony and treason. 4 E. 3. cap. 11.

14 H. 6. cap. 1. Justices of *nisi prius* have power in all cases of felony and treason to give judgment as well where the prisoner is acquitted, as where he is attainted, and to award execution.

24 E. 3. f. 23.
rot. par. 37 E. 3. nu. 18. F. N. B. 241. a.

Where the king is a party, a *nisi prius* may be granted, if the kings attorney assent unto it.

10 E. 4. fo. 14.
22 E. 4. 18.
3 Mar. Dier 120,
121. & 131.

In appeal of murder, robbery, and rape brought in the kings bench, if the parties be at issue, a *nisi prius* may be granted before justices of assize. 25 E. 3. 30. 14 E. 3. *Nisi prius* 16. 22 E. 4. 19. 21 H. 7. 36. 9 El. Dier 261. 42 E. 3. c. 11. 8 H. 5. 6. But it is to be observed, that if the appellee be acquitted before justices

justices of *nisi prius*, they have power to acquit, &c. and give judgment, as is aforesaid.

^c They may also enquire and judge of the abettors and damages by the statute of W. 2. cap. 12. and not by the said act of 14 H. 6. And so it is if the appeal be brought before the justices of assise, they have also power to enquire and judge, *ut supra*.

^d These justices of *nisi prius* were instituted for two causes, viz. 1. *Propter intolerabilem jacturam juratorum, et in exonerationem juratorum.* 2. *Ad celerem justitiam in ea parte exhibendam.*

Inquisitiones et juras in placito terræ capiendæ quæ magnæ non sunt examinationes, capiuntur in patria, &c.

And hereupon a prohibition is grantable to justices of assise, *Quod non caperent in patria inquisitiones quæ magna indigent examinatione.*

By the originall institution of justices of assises and of *nisi prius*, the tryall should be before two at the least, and it were much for the advancement of justice and right, to have the law put in due execution, for *plus vident oculi quam oculus*, and specially in pleas of the crown concerning the life of man, in regard whereof they shall be worthy of greater allowance.

Before the justices of assise in *pays* a forain plea, viz. villenage was pleaded, for tryall whereof the record was removed into the common bench, and there a *venire fac* was awarded, and retorne, *servie*, and a *habeas corpus* with a *nisi prius* was prayed. And it was objected that the issue was not joyned in bank, nor judgment to be given there, and yet in the end the prayer was granted, as in a certificate, upon an assise a *nisi prius* shall be granted: ^a and so it is upon a forain voucher, receipt shall be granted, and a tryall by a *nisi prius* had.

^b The justice of *nisi prius* may grant a *tales de circumstantibus*, either when but one or more appear of the principall pannell, or where eleven doe appear: and all the jury may be of the *tales de circumstantibus*, as it was upon a *tales* at the common law.

^c Where the king is party, a *nisi prius* is grantable for the king, but not for the party without assent of the kings atturny, and so are the books to be intended.

^d In attaint the plaintiff craved a *nisi prius*, and because one of the petit jury was prisoner in Newgate, and came in ward and pleaded, and was remanded, and if a *nisi prius* should be granted he should lose his challenges, the court denyed to grant any *nisi prius* otherwise a *nisi prius* may be granted in an attaint.

^e In trespassse between the duke of Exeter and the lord Cromwell, the councill of the duke moved for a *nisi prius*, and for that the duke was a prepotent prince in that country, and the *venire fac* being returned, there was a great rout in the hall, so as if a *nisi prius* should be granted great mischief might ensue, therefore no *nisi prius* was granted.

More you may read of the writs of assise and of *nisi prius* in our books, that which hath been said concerning the jurisdiction may suffice. It is commonly called a writ of *nisi prius*, but the words of the writ are *Si prius, &c.* And albeit the authority of justices of assise (as it hath appeared) hath by act of parliament been exceedingly enlarged both in dignity and multitude of causes, yet they retain their first and originall name, albeit assises are in these days very

^c See the 2 part of the Inst. upon this act of W. 2. cap. 12.

^d 27 E. 1. stat. de finibus. cap. 4. Regist. 186.

W. 2. cap. 30.

Regist. 186.

14 E. 3. ass. Br. 413. & tit. Ass. Fitzh. 110.

Dier manuscript. H. 1. 11 Eliz. 26 ass. p. 3.

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* 7 H. 4. 45. 8 E. 4. 16.

F. N. B. 183. h.

^a 18 E. 3. 1.

49 E. 3. 21.

3 H. 4. 18.

^b 35 H. 8. cap. 6.

23 El. Dier 376.

4 & 5 Ph. & Mar.

cap. 7. 14 El.

c. 9. 18 El.

cap. 12. Vid.

8 Eliz. Dier 145.

^c 25 E. 3. 39.

18 E. 3. 58.

14 E. 3. Nisi

prius 16. 24 E. 3.

23. 21 H. 7. 34.

F. N. B. 140.

Stanf. pl. cor.

156. a. b.

^d 44 E. 3. fo. 2.

44 ass. p. 20.

8 H. 4. 23.

21 E. 3. 17.

6 ass. p. 7.

^e 15 E. 3. Nisi

prius 22. simile.

21 E. 3. ibidem

21.

^f 32 H. 6. 9.

22 E. 3. 16.

F. N. B. 241. a.

Dier 4 El. 215.

very rarely taken before them. See in the chapter of Justices of Peace powers and authorities lately granted to justices of assise and justices of *nisi prius*.

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C A P. XXVIII.

Justices of Oier and Terminer.

THE authority of justices of oier and terminer is by commission. Of commissions of oier and terminer there be two sorts, one generall, so called because it is generall, in respect of the persons, the offences, and the places where the offences are committed, the which commission followeth in these words.

For generall commissions, see 42 ass. pl. 5. 2 R. 2. cor. 47. pl. com. 390. Countee de Leic' calc.

Hereupon they are called justices of oier and terminer.

*Elizabeth Dei gratia Angliæ, Franciæ, et Hiberniæ regina, fidei defensor, &c. Charissimis consanguineis suis Willielmo marchioni Winton, Henrico comiti Southi, &c. ac dilectis et fidelibus suis Rogero Marwood uni justic' suorum de banco, Johanni Jefferay uni justic' ad placita coram nobis tenend' assign', Johanni Arundell militi, &c. Johanni S. John, Humf. Walronde, William Pool, Petro Edyecombe, Thomæ Morton, &c. Salutem. Sciatis quod assignavimus vos et tres vestrum, quorum aliquem vestrum vos præfat' Rogerum Marwood et Johannem Jefferay unum esse volumus justiciarios nostros ad inquirendum per sacramentum proborum et legalium hominum de com' nostris Salthi' Willes. Dorset, Somerset, Devon. et Cornub. et eorum quolibet, ac aliis viis, modis, et mediis quibus melius sciveritis, aut poteritis tam infra libertates quam extra, per quos rei veritas melius sciri poterit de quibuscunque prodicionibus misprisionibus prodicionum, insurrectionibus, rebellionibus, murdris, felonis, homicidiis, interfectionibus, burglariis, raptibus mulierum, congregationibus et conventiculis illicitis, verborum prolationibus, coadjutationibus, misprisionibus, confederationibus, falsis allegantiis, transgressionibus, riotis, routis, retentionibus, escapis, contemptibus, falsitatibus, negligentis, concealamentis, manurentiis, oppressionibus, cambipartiis, deceptionibus, et * aliis malefactis, offensis, et injuriis quibuscunque, nec non accessar' erundem infra com' prædict' et eorum quemlibet, tam infra libertates, quam extra per quoscunque et qualitercunque habit', fact', perpetrat' sive commisi'. Et per quos vel per quem, cui vel quibus, quando, qualiter, et quomodo, ac de aliis articulis et circumstantiis præmissis, et eorum aliquod vel aliqua qualitercunque concernen. Et ad easdem prodiciones et alia præmissa (hac vice) audiend. et terminand. secundum legem et consuetudinem regni nostri Angliæ. Et ideo vobis mandamus quod ad certos dies et loca quos vos, vel tres vestrum, quorum aliquem vestrum ex vobis præfat. Rogerum Marwood et Johannem Jefferay unum esse volumus, ad hoc provideritis diligenter super præmissis faciatis inquisitiones, et præmissa omnia et singula audiatis et terminetis, ac ea faciatis et expleatis in forma prædicta * facturi inde quod ad justitiam pertinet secundum legem et consuetudinem regni nostri Angliæ. Salvo nobis amerciamenti et aliis ad nos inde spectantibus. Mandavimus enim vicecomitibus nostris com' prædict. quod ad certos dies et loca, quos vos vel tres vestrum, quorum aliquem vestrum*

* Nota, these generall words.

* Notr.

*ex vobis præfat. Rogerum Marwood et Johannem Jefferay unum esse volumus, eis scire feceritis venire fac' coram vobis, vel tribus vestrum, quorum aliquem * vestrum vobis præfat' Rogerum Marwood et Johannem Jefferay unum esse volumus, tot et tales probos et legales homines de ballivis suis tam infra libertates, quam extra per quos rei veritas melius sciri poterit et inquiri. In cujus rei testimonium has literas nostras fieri fecimus patentes, Teste me ipsa apud Westm' 27 die Junii anno regni nostri decimo octavo.*

2 Particular commissions of oier and terminer so called in respect of the persons of the offences, or of the places, whereof you shall finde five presidents in the Register: † 1. Against the bishop of Winchester and his ministers. 2. *De nave fracta*, if the goods ought to be taken for wreck. 3. Of divers oppressions, &c. extortions, &c. by the kings ministers. 4. Of oier and terminer for the prior of Daventry. And 5. for the king in time of vacation, which you may reade there.

* Concerning commissions of oier and terminer ten conclusions are to be observed. 1. That oiers and terminers shall not be granted, but before the justices of the one bench or the other, or the justices errant, and that for great or horrible trespasses, of the kings especial grace, according to the statute in the time of his grandfather.

c And in the Register there is a *superfedeas, quia non enormis transgressio*, which word (*enormis*) is in the statute of W. 2. *ubi sup.*

d To commissioners of oier and terminer a writ of *superfedeas* was delivered, *quia enormis transgressio non est, ideo supersedant*, for it was not but for cutting down of trees. e And afterward a writ of *procedendo* under the great seal of later date was delivered to them to proceed *secundum legem et consuetudinem Anglie non obstante aliquo mandato, &c.* by vertue whereof, notwithstanding the former writ, they did proceed by advice of all the justices. For a writ of *superfedeas* is one thing, and an absolute repeale or countermand of the commission it selfe is another. A *superfedeas* is but to stay, or forbear the proceedings, * that is, *super advisamentum sedere*, and is not *mes un surcesse de adojement*. And such may the cutting down of trees be, as it may be *enormis transgressio*, and therefore notwithstanding a *superfedeas* the cause may proceed by a writ of *procedendo*. But after an absolute repeale or countermand by the king of the commission it selfe, the commissioners cannot proceed after by force of any *procedendo*, but there must be a new commission.

The second conclusion is, that commissions are like to the kings writs, such are to be allowed which have warrant of law and continuall allowance in courts of justice. For all commissions of new invention are against law until they have allowance by act of parliament. f Commissions of *newell inquiries* are declared to be void: g commissions to assay weights and measures (being of new invention) are declared to be void, and that such commissions should not be after granted. So as a commission is a delegation by warrant of an act of parliament, or of the common law, whereby jurisdiction, power, or authority is conferred to others. *Sapientis judicis est cogitare tantum sibi esse permissum, quantum commissum et creditum.* And it is a good rule for all commissioners to hold the like, and ever to keep themselves within their commission.

† Regist. 125, 126, 127.
F. N. B. 110, 111. For particular commissions see 42 aff. pl. 12. 34 aff. p. 8. 29 E. 3. 30, 31. Rot. clauf. 18 H. 3 m. 15. de Petro de Rivall.
* 2 E. 3. cap. 2. 34 E. 3. cap. 1. To be named by the court and not the party. See the statute of 42 E. 3. cap. 4. which extends to Enquiries.
d 4 H. 4. cap. 9. Vide. rot. parl. 50 E. 3. nu. 51. for commissions of inquiry what persons ought to be named: f) note a diversity between commissioners of enquiry, and of oier and terminer.
b W. 2. 13 E. 1. cap. 29.
c Regist. 124, 125. 2 E. 3. cap. 2.
d 12 Aff. p. 27. Vide Br. com. 12. and oier and terminer 4. Regist. 124, 125.
* S. p. sed. unde. f 15 E. 3. cap. 1. g 18 E. 3. cap. 4.

Rot. par. 2 H. 4.
nu. 22.

The commons do petition, that certaine commissions lately sent to cities for the making of certaine boats and bullingers being done without assent of parliament, might be repealed. The king doth answer, That after conference with the lords; reasonable answer should be made. And that these commissions took no effect, appeareth in this, that no further complaint was thereof made, and no such commission was ever after granted.

Rot. parl. 5 H. 4.
nu. 39.

At the petition of the commons, the king granted that one Bennet Wilman, who was imprisoned, to answer before the constable and marshall of England, should be tried according to the common laws of this realm, notwithstanding any commission to the contrary. And thereupon a writ was accordingly directed to the justices of the kings bench, as there it appeareth. Of these kindes many more authorities might be cited, but let us return to our justices of oier and terminer.

Vid. 42 aff. p. 5.

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42 Aff. p. 12.
Vi. F. N. B.
110. b. Register
125. &c.

In the reign of E. 3. the justices were so carefull, that no innovation should creep in concerning commissions of oier and terminer, that certain justices having their authority by writ, where they ought to have had it by commission, though it were of the forme and words that the legall commission ought to be, John Knivett chief justice by the advice of all the judges resolved, that the said writ was *contra legem*. And where divers indictments were before them found against T. S. the same, and all that was done by colour of that writ was damned.

3 Mar. Br. com-
missions 23.

The third conclusion is, that justices of oier and terminer cannot proceed upon any indictment, but upon indictments taken before themselves, for their authority is, *ad inquirend', audicnd', et terminand'*.

Vide 29. aff. 33.

The fourth conclusion, that justices of oier and terminer may upon an indictment found proceed the same day against the party indicted. But against this there seems to be great authority: for in Kelwey fo. 159. b. it is thus said. *Mem. que en breisfe de oier et terminer. P. 9 H. 8. sur le insurrection in Londres il fuit determine clerement per tous justices Dengleterre, que justices d'oier et terminer ne puir inquire un jour, et mesme le jour determine, nient plus que justices de peace; mes justices de gaol delivrey et justices in eire poien bien.* It may be that he that set down this case took it upon trust, for it agreeth in effect *totidem verbis* with the Chronicle in 9 H. 8. fo. 843. and it is erroneous in divers main points. 1. That the oier and terminer was by writ, where it was and ought to be by commission, as hath been said. 2. That justices of oier and terminer cannot enquire one day, and determine in the same day, which without question they may do: for proof whereof we will cite some few records in stead of many.

Hil. 2 H. 4
rot. 4.

Thomas Marks bishop of Carlisle before commissioners of oier and terminer was indicted, tried, and adjudged all in one day, for high treason.

1 H. 8. Sir Rich.
Empsons case.
Northampton.

Die Lunæ post festum Sancti Michaelis, anno 1 H. 8. before Fisher, Brudnell, Palmes, &c. commissioners of oier and terminer, Sir Richard Empson was indicted of high treason and tried all in one day. And we desirous to see the entry, upon not guilty pleaded, it is thus: Ille inter diei dominum regem et diei Rich. Empson militem in instanti diem ad horam primam post meridiem, &c. apud castrum de Northampton venerunt, &c. qui nec, &c. ad recognosc', &c. Ad quos

quos quidem diem horam, et castrum de Northampi' venit coram præfat' justic' præd' Rich. Empson, &c.

2 Dec' anno 3 E. 6. at Westm. before Richard Lister, Edward Mountague, Roger Cholmeley, Edmond Merton, William Portman, and Humfrey Browne, and other commissioners of oier and terminer, Robert Bell was indicted of high treason and tried the same day, 10 Dec' anno 3 E. 6. before Sir William Portman and other justices of oier and terminer at Reading in the county of Berks Thomas Bonham was indicted of high treason and tried the same day, 4 Augusti 10 Eliz. John Felton was before commissioners of oier and terminer in London indicted of high treason, and tried the same day by the advice of all the judges of England.

• Nota, the award in the roll by the justices of oier and terminer to the sheriffe to returne a jury, is not sufficient; but there ought to be a precept to the sheriffe, under the seals of the commissioners for the returning of a jury, but otherwise it is in the kings bench.

• The third error in the said case of 9 H. 8. that justices of peace cannot inquire and try the same day, which without question they may, for they are speciall justices of oier and terminer: and wherefore justices of oier and terminer should not try the same day, as well as justices of gaole-delivery, and justices in eire, no found reason can be given.

• The fifth conclusion is, that if any offence be prohibited by any statute, and name not in what court it shall be punished; or if the statute appoint that it shall be punished in any court of record: in both these case it may be heard and determined before justices of oier and terminer. And so it seemeth to me if * the statute appoint the penalty to be recovered in any of the kings courts of record, according to the opinion of Catlyn, Sanders, and Whiddon; for the court of oier and terminer is the kings court of record.

The sixth conclusion is, that the king may make a commission of association directed to others to joyn with the justices of oier and terminer, and a writ of admittance to the justices of oier and terminer to admit the others into their society, which writ is close. There is also a writ of *Si non omnes* directed to the justices of oier and terminer and to their associates: the formes of all which you may read in the Register *ubi supra*, and in F. N. B. *ubi supra*. And in all these commissions and writs, the justices are directed with this rule, *Faeturi quod ad justitiam pertinet secundum legem et consuetudinem Angliæ*, which is a true mark of a lawfull commission.

The seventh. If the justices sit by force of the commission, and do not adjourne the commission, it is determined.

The eighth. Justices of oier and terminer, or justices of peace, cannot assigne a coroner to an approver; for it is not within the commission of either of them, but justices of gaole-delivery may do it.

The ninth. Justices of oier and terminer shall send their records and proces determined, and put in execution to the exchequer at Mich. every year to be delivered there to the treasurer and chamberlains, &c. to keep them in the treasury.

The tenth. None of these commissioners, or of assise, or gaole-delivery, or of the peace, or other of the kings commissioners are countermanded by any new commission, unlesse the new commission

• And with this constant experience agreeth 4 H. 5. tit. Enquest. 55.

• 22 E. 4. cor. 44. holden for no law.

• Vide *Legatus de* 5 E. 6. cap. 14. Of forestallers, ingrossers, and regrators. 31 H. 8. ca. 9. Of unlawfull games. 7 Eliz. Dier 236. See many statutes wherein justices of oier and terminer are expressly named.

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Commissions Br. 12.

9 H. 4. corom. 457. Stanf. pl. co. 143. c.

9 E. 3. cap. 54

34 Aff. p. 8. L. 5 E. 4. fo. 12. 10 E. 4. fo. 7. 20 H. 7. 3.

Kelwey 116.
Br. commiss. 6.
19 Eliz. Dier 355.
Vi. infra pag.
169. The sta-
tute of 2 & 3

Ph. and M. cap. 18. for cities or towns corporate being no counties, but it extendeth not to commissioners of oier and terminer.

1 E. 6. ca. 7.

And a right profitable statute is made concerning this matter, viz. That no proces or suit before any justices of assise, gaole-delivery, oier and terminer, justices of the peace, or * other of the kings commissioners, shall not in any wise be discontinued by the making or publishing of any new commission or association, or by altering of the names of any of the said justices or commissioners, but that the new justices and commissioners may proceed in every behalfe, as if the old justices and commissioners had still remained and continued not altered.

* Nota, the general words.

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C A P. XXIX.

The Courts of Special Justices of Oier and Terminer, of and concerning, 1. Purveyours. 2. Misdemeanours of Villaines, &c. 3. Sums of Money collected for Houses of Correction, &c. 4. Colledges, Hospitals, and charitable Uses.

And first of Purveyours.

36 E. 3. cap. 4.
Of purveyours.

Buyers of victuall, &c.
Takers of carriage.

THIS court is raised by the statute of 36 E. 3. whereby it is enacted, That commissions shall be made to two good men and lawfull of every county, and the third to be of the kings house. So that if any of the three come not, the two shall proceed to enquire of the behaviour and acts of the said buyers and takers, and how much the said buyers have taken and bought; and how much carriage: and to heare and determine the contempts, outrages, and trespasses in that behalfe, as well at the kings suit, as of every man that will complaine of them.

These commissions are to be granted *ex merito justitie*, and cannot be denied. And it is to be observed, that the action or suit given by the said act is not popular; for either the king only is to have it, or the subject only that will complaine.

And for better information to be made to the said justices of the things aforesaid, the steward, treasurer, and controller of the two houses, (viz. of the king and queen) at every quarter or halfe year shall certifie into the chancery the parcels taken in every towne, and of every person; and the chancelor shall send the said certificate

certificate to the justices which shall be so assigned. And that this act extend and hold place as well against the purveyors of the great horses of the said two houses, as against the buyers or takers before named.

2. *Concerning Misdemeanours, &c. of Villains.*

See the statute of 1 R. 2. cap. 6.

1 R. 2. cap. 6.

3. *Of and for Sums of Money collected for Houses of Correction, or for the Poore, &c.*

This court is raised by the statute of 39 Eliz. cap. 4. as by the same appeareth, wherein this is to be observed, that their proceedings, judgements, and executions shall remain good and available in law, without any redresse to be had by suit in any other court.

39 Eliz. cap. 4.
1 Jac. cap. 7.

See the Second part of the Institutes the exposition of these statutes.

4. *Concerning Colledges, Hospitals, or Almes-houses, or for charitable and lawfull Purposes and Uses.*

It is lawfull for the lord chancelour or lord keeper of the great seale, and for the chancelour of the duchy of Lancaster (for lands within the county palatine of Lancaster) to award commissions under the great seale, or seale of the county to the bishop of the dioces and his chancelor, and to other persons of * good and sound behaviour, to enquire by the oathes of twelve lawfull men, &c. as by all other good and lawfull means of all and singular colledges, hospitals, and other places, founded or ordained for the charitable reliefe of poore, aged, and impotent people, maimed souldiers, schooles of learning, orphans, or for such other good, charitable, and lawfull purposes and intents. And also of lands, tenements, and hereditaments, leases, goods and chattels given or appointed for the like lawfull and charitable uses. As also for reparation of highwayes, of bridges, and seabanks, for maintenance of free-schooles and poore scholars, and of orphans and fatherlesse children, and such like good and lawfull charitable uses. And to enquire of the abuses of misdemeanours, mis-employments, falsities, defrauding the trusts, alienations, and misgovernments, &c. And after such inquiry made upon hearing and examining thereof to set downe such orders, judgements, and decrees as the said good and charitable uses may be truly observed in full, ample, and most liberall sort, &c. Which orders, judgements, and decrees (not being contrary to the orders, statutes, and decrees of the donors or founders) shall stand * firme and good, according to the tenor and purport thereof: which orders, judgements, and decrees are to be certified under the seals of the commissioners respectively, either

39 Eliz. cap. 6.
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* No person interested, &c. to be a commissioner.

Colledges in both universities, of Westm. Easton, or Winchester, and cathedrall churches, &c. are excepted. It extends not to lands in cities or towns incorporate where there is a speciall governour, &c. Nor to any colledge, hospitall, or freechoole, which have speciall visitors, &c. But this exception extends not to leases, goods or chattels.

* The party grieved may complain to the lord chancelour or lord keeper, or to the chancelour of the said duchy, for their redresse therein, &c. and they have power to judge, &c. according to equity.

into the chancery of England, or of the county palatine of Lancaster.

It is to be observed that when any act of parliament doth authorise the lord chancellor or lord keeper to make or grant any commission under the great seale, that he may make or grant the same without any further warrant, because the king is party to the act of parliament, and there cannot be a greater warrant to the lord chancellor, &c. then the act of parliament.

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C A P. XXX.

Justices of Gaole Delivery.

Their Authority is by Commission in these Words.

The commission of gaol-delivery.
Note, they are called the kings justices.

* Their commission extends only to them that are in prison.

^a Nota.

ELIZABETH, &c. *Dilectis et fidelibus suis AB. CD. &c. Salutem. Sciatis quod constituimus vos, tres, et duos vestrum, quorum aliquem vestrum vos præfat' AB. &c. unum esse volumus, justiciarios nostros ad gaolam nostram castri nostri de C. de * prison' in ea exist' hac vice deliberand. Et ideo vobis mandamus quod ad certum diem quem vos, tres vel duo vestrum (quorum vos præfat' AB. &c. unum esse volumus) ad hoc provideritis, conveniatis apud castrum prædict' ad gaolam illam deliberand' * facturi inde quod ad justitiam pertinet secundum legem et consuetudinem regni nostri Angliæ. Salvis nobis amerciammentis et aliis ad nos inde spectantibus. Mandavimus enim vic' nostro com' nostri M. quod ad certum diem quem vos, tres, vel duo vestrum (quorum vos præfat' AB. et CD. unum esse volumus) ei seive feceritis, omnes prisonis ejusdem gaolæ et eorum attachiamenta coram vobis, tribus, vel duobus vestrum, (quorum aliquem vestrum ex vobis præfat. AB. et CD. unum esse volumus) ibidem venire fac. In cujus rei testimonium has literas nostras fieri fecimus patentes. Teste, &c.*

See the second part of the Instit. stat. de Glouc' cap. 9.

^b 4 E. 3. cap. 2.
¹⁷ R. 2. cap. 9.

^c Thrice in the year, and oftner if need be.

^d Nota, few but effectually words.

^e 4 E. 3. cap. 2.

^f 4 E. 3. cap. 2.

³ Mar. Br. Commissions. 23.

² R. 3. coron. 47.

⁴ H. 5. enquest
55.

^b By the law of the land, *ne homines diu detineantur in prisona*, but that they might receive *plenam et celerem justitiam*, this commission was instituted, and by this commission gaols ought to be delivered ^c thrice in the year, and oftner if need be.

Their authority is by this commission, which consisteth in ^d few words. *Constituimus vos justiciarios nostros ad gaolam nostram castri nostri de C de prisonibus in ea existentibus hac vice deliberand.* ^e These justices ought to be, *bone gentis et sages auters que des places*, &c.

Upon this authority and by statutes given unto them, thirteen conclusions do follow.

1. ^f Justices of gaole delivery may arraign any man that is in prison in that gaole upon an indictment of felony, trespass, &c. before justices of peace, though it were not found before themselves, which (as hath been said) justices of oier and terminer cannot do. Justices of peace shall deliver their indictments to the justices of gaole delivery.

2. They shall take a panell of a jury returned by the sheriffe, without making any precept to him, as justices of oier and terminer (as hath been said) ought to make, and the reason of the difference

difference is, because a generall commandment is made to the sheriffe by the justices of gaole delivery to return juries against their comming: but if they have a speciall commission, otherwise it is by Hankeford.

3. They may deliver suspects for felony, &c. by proclamation, against whom there is no sufficient evidence produced to the great inquest to indict them, &c. which justices of oier and terminer, or justices of peace cannot do.

2 R. 3. coron. 47.

4. They may inquire and take indictments of felony, &c. of prisoners before them, and proceed upon them. And so was it resolved in an appeal of murder brought by Apharry against Morgan, who pleaded that he was *auterfoitz* indicted and convicted of the same felony, and had his clergy before justices of gaole delivery, and pleaded over to the felony (and the plea allowed.) And so may justices of oier and terminer doe, which is to be observed by the judicious reader, for both of them have authority to enquire, heare, and determine of such as be prisoners in the gaole: and in that case they have a concurrent authority.

Pafch. 29 Elis. coram rege, inter Apharry and Morgan in appeal, 9 H. 7. 9. 2 R. 3. coron. 47.

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5. If a man be indicted before justices of peace, and thereupon outlawed, and is taken and committed to prison, the justices of gaole delivery may award execution of this prisoner.

15 H. 7; 5. b.

6. They may assigne a coroner to an approver, and make proces against the appellee in a forein county.

Stat. de Appellat. 28 E. 1. Stanf. pl. cor. 143. c.

7. * They may punish those that let men to baile or mainprise, which are notailable by law, or suffer them to escape.

* 27 E. 1. stat. De finibus cap. 3. 4 E. 3. cap. 2. 1 & 2. Ph. and Mar. cap. 13. 1 E. 6. cap. 7. Treason, &c.

By the statute of 1 E. 6. it is provided in these words.

And be it, &c. That in all cases where any person or persons heretofore have been, or hereafter shall be found guilty of any manner of treason, murder, manslaughter, rape, or other felony whatsoever; for the which judgement of death should or may ensue, and shall be repried to prison without judgement at that time given against him, her, or them so found guilty, that those persons, that at any time hereafter shall by the kings letters patents be assigned justices to deliver the gaole where any such person or persons found guilty, shall remain; shall have full power and authority to give judgement of death against such person so found guilty and repried, as the same justices before whom such person or persons was or were found guilty might have done, if their commission of gaole delivery had remained and continued in full force and strength.

8. Here by the judgement of the whole parliament this conclusion doth follow, that justices of gaole delivery, according to the generality of the words of their commission, may deliver the gaole of prisoners committed for high treason, which we prefer before any private opinion, especially concluding with a *quere*.

27 E. 1. de finibus. cap. 3. See 28 E. 1. De Appellatis, the recital. V. 2 R. 3. cor. 47. case de Colingborne.

9. * Justices of gaole delivery shall send their records and proces determined, and put in execution to the exchequer at Michaelmas every year to be delivered there to the treasurer and chamberlains, &c. to keep them in the treasury.

Stanf. pl. cor. 57, 58. & 182. a. * 9 E. 3. cap. 5. 14 H. 7. fo. 15. b. 13 H. 4. fo. 10. Dier fo. 99.

10. ^b Justices of gaol delivery may receive appeals of robbery and murder by bill, but the appellees must be in prison before them.

3 H. 7. cap. 1. Stanf. pl. cor. * 2 E. 3. cap. 2.

11. ^c To these justices commissions of association, and writs of admittance,

admittance, and *si non omnes* (as hath been said of the justices of oier and terminer) are directed.

4 6 R. 2. cap. 5.

12. 4 Justices of gaole delivery shall keep their sessions in the principall and chief towns of the counties where the shire courts of the same counties be holden.

2 & 3 Ph. and Mar. cap. 18.

• 11 H. 6. cap. 6.

13. By the statute of 2 & 3 Ph. and Mar. it is provided, that all commissions of the peace or gaole delivery to any city or towne corporate not being a county of it selfe, shall stand and remaine, the granting of any like commission of the peace or gaol delivery in any shire, lathe, rape, riding, or wapentake, being of a latter date, to the contrary notwithstanding.

See in the chapter of oier and terminer *conclusione* 9. more concerning justices of gaole delivery. Vide 44 Ass. pl. 21.

See authorities lately granted to justices of gaole delivery in the chapter next ensuing of justices of peace,

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C A P. XXXI.

Justices of Peace.

SIR Anthony Fitz-Herbert, one of the justices of the court of common pleas, and divers others have written of the jurisdiction and power of justices of the peace, both in the court of the sessions of peace, as without; to whose labours I refer the reader.

And it is such a forme of subordinate government for the tranquillity and quiet of the realm, as no part of the Christian world hath the like, if the same be duly executed.

Before the conquest, *De pace violata.*

4. H. 7. cap. 12.

To the former treatises are necessary to be added certain acts of parliament made in the 21 year of our late soveraigne lord king James, and certain caveats, additions, and observations necessary to be known. *De pace violata; vide int' leges Alwedi, cap. 36. Edwardi cap. 6.*

But as a preface to all that shall be said of the office and duty of justices of peace, we will begin with that which is enacted by the statute of 4 H. 7. as a necessary caveat to all justices of peace, viz. The king considereth that a great part of the wealth and prosperity of the land standeth in that, that his subjects may live in surety under his peace in their bodies and goods: and that the husbandry of this land may increase and be upholden, which must be had by due execution of lawes and ordinances, chargeth and commandeth the justices of the peace to endeavour them to do and execute the tenor of their commission, the said lawes and ordinances ordained for subduing of the premises, as they will stand in love and favour of his grace, and in avoiding the pains that be ordained, if they do the contrary. And over that he chargeth and commandeth, that every man, what degree or condition that he be of, that let them in word or deed to execute their said authority in any manner or forme abovesaid, that they shew it to his grace; and if they do it not,

not, and it come to his knowledge by other then by them, they shall not be in his favour, but taken as men out of credence, and be put out of commission for ever. And over this he chargeth and commandeth all manner of men, as well the poore as the rich, which be to him all one in due ministracion of justice, that is hurt or grieved in any thing, that the said justice of peace may heare, determine, or execute in any wise, that he so grieved make his complaint to the justice of the peace that next dwelleth unto him, or to any of his fellowes, and desire a remedy; and if they he have no remedy, if it be nigh such time as his justices of assises come into that shire, that then he so grieved shew his complaint to the same justices; and if he then have no remedy, or if the complaint be made long afore the coming of the justices of assise, then he so grieved come to the kings highnesse or to his chancelour for the time being, and shew his grieve: and his said highnesse then shall send for the said justice to know the cause why his said subjects be not eased, and his lawes executed. Whereupon if he finde any of them in default of executing of his lawes in these premises, according to his high commandment, he shall doe to him so offending to be put out of the commission, and furthermore to be punished according to his demerits. And over that his said highnesse shall not let for any favour, affection, cost, charge, nor none other cause, but that he shall see his lawes to have plain and true execution, and his subjects to live in surety of their lands, bodies and goods according to his said lawes, and the said mischiefs to be avoided, that his subjects may increase in wealth and prosperity to the pleasure of God.

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And where the words of the said act be: and further to be punished according to his demerits. These words are so to be understood, that he shall be punished in an ordinary course of justice by way of indictment upon this act, for his contempt, &c. and not by any absolute power, as hath been often observed.

It is to be observed, that when justice Fitzherbert and some others did write of the authority of justices of peace, the commission of the peace stood overburdened and incumbered with divers statutes, some whereof were before, and some since repealed: and with some, whereas there was none such, and stuffed with many vain and unnecessary repetitions, and many other corruptions crept into it by mistaking of clerks, &c. For amendment and correction whereof (being a matter of so great importance) Sir Christopher Wray chief justice of England, Mich. 32 & 33 Eliz. assembled all the judges of England, and upon perusal had of the former commission of the peace, and upon due consideration had thereupon, and often conferences between themselves, they resolved upon a reformation of the former, with divers additions and alterations both in matter and method, as it now standeth at this day: and there needeth yet another reformation of that also; for since that time divers statutes then in force have been repealed, and divers have expired. As for example, all the statutes of liveries inquirable by justices of peace are repealed by the statute of 3 Car. cap. 4. saving the statute of 1 R. 2. cap. 7. inquirable before justices of assise, *vide supra*, pa. 159. Also the statute of 27 H. 8. cap. 22. that the owner of any scite or precinct, &c. of any dissolved religious house under the value of 200 l. *per annum*, for the keeping

Compare the old with the new commission, and the reformations, additions, and alterations will appear. Mich. 32 & 33 El. the commission of the peace reformed by the judges of England. 21 H. 4. ca. 30. 8 H. 6. ca. 4. 8 E. 4. ca. 2, &c. 27 H. 8. ca. 22. 5 El. ca. 2.

13 R. 2. ca. 8.

4 H. 4. ca. 25.

39 El. ca. 2.

4 H. 7. ca. 19.

7 H. 8. ca. 1.

27 H. 8. cap. 22.

5 E. 6. cap. 5.

5 El. ca. 2.

of honest and continuall household thereupon, and inquirable by justices of peace is repealed by 21 Jac. *regis* cap. 28. And the statute of 13 R. 2. cap. 8. and 4 H. 4. cap. 25. for taking by any inholders in gain above a half penny in a bushell of oats over the common price in the market, and inquirable by justices of peace be also repealed by the said act of 21 Jac. Likewise the statute of 39 El. cap. 2. concerning husbandry and tillage, which being but a probationer for a time, was discontinued 21 Jac. And the statutes concerning houses of husbandry and tillage in 4 H. 7. 7 H. 8. 27 H. 8. 5 E. 6. and 5 Eliz. are all repealed by 21 Jac. and divers others, &c.

It is a good rule therefore for all judges and justices whatsoever, that have jurisdiction by any statute which at the first was temporary, or for a time, to consider well before they give judgement, whether that statute have been continued or made perpetuall: and if it were at the first made perpetuall, whether it be not repealed or altered by any latter statute. *Erudimini qui iudicatis terram.* See in the second part of the Institutes the exposition upon the statute of 22 H. 8. ca. 5.

42 E. 3. cap. 9.

W. 1. cap. 19.

7 H. 4. ca. 3.

Justices of peace may enquire if estreats be not shewed by sheriffs, &c. to the party indebted and totted. A necessary law for the case of the subject.

Rot. par. 28 E. 3.

nu. 17.

37 E. 3. nu. 18.

50 E. 3. nu. 64.

Concerning the nomination of justices of peace, see the statutes of 12 R. 2. cap. 2. 2 H. 5. stat. 2. cap. 1. 18 H. 6. ca. 11. whereunto you may add, that before all these another act not in print was made in 28 E. 3. as well for their nomination, as how and by whom they shall be discharged. Certain it is that he, that is named in the commission of peace under the great seal to be a justice of peace is a lawfull justice of peace.

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21 Jac. reg. ca. 4.

At the parliament holden *anno* 21 Jac. *regis*, there was an excellent law made, entituled, An act for the ease of the subject concerning informations upon penall statutes, which act for that it principally concerneth justices of peace, is here inserted *in hæc verba* as followeth.

This was the ancient and prudent policy of parliament (as before it hath appeared) that justice might be administered and tried in their proper counties, and not to be drawn up to the courts at Westminster for the causes in this preamble expressed.

Whereas the offences against divers and sundry pœnall laws and statutes of the realme may better, and with more ease and lesse charge to the subject, be commenced, sued, informed against, prosecuted and tried in the counties where such offences shall be committed. And whereas the poor commons of this realm are grievously charged, troubled, vexed, molested, and disturbed by divers troublefome persons, commonly called relators, informers, and promoters, by prosecuting and enforcing them to appear in his majesties courts at Westminster, and to answer offences supposed by them to be committed against the said pœnall laws and statutes, or else to compound with them for the same.

^a Of this kind of men, it was formerly truly said, *Hæc genus hominum semper vitabitur, et tamen semper in civitate retinebitur.* But this law consisting of seven parts remedied all the former inconveniences, and the abuses of these troublefome persons.

1. For remedy whereof be it enacted by the authority of this present parliament, that all offences hereafter to be committed against any penall statute, for which any common informer or promoter may lawfully ground any popular action, bill, plaint, suit or information ^b before justices of assise, justices of nisi prius, or gaol-delivery, justices of oier and terminer, or justices of the peace in their generall, or quarter sessions, shall after the end of this present session of parliament be commenced, sued, prosecuted, tried, recovered and determined by way of action, plaint, bill, information or indictment before justices of assise, justices of nisi prius, justices of oier and terminer, and justices of gaole-delivery, or before the justices of peace of every county, city, borough, or town corporate, and liberty, ^c having power to enquire of, heare and determine the same within this realm of England or dominion of Wales, wherein such offences shall be committed, in any of the courts, places of judicature, or liberties aforesaid respectively, only at the choice of the parties, which shall or will commence suit, or prosecute for the same, ^d and not elsewhere, save only in the said counties, or places usuall for those counties or any of them

^b Nota before justices of
1. Assise.
2. Nisi prius.
3. Gaol delivery.
4. Oier & term.
5. Peace.

But the greatest care for the due execution of this act will belong to the justices of peace, whereof there be many learned in the laws.

^c Note this act giveth justices of peace no new power in cases where former acts gave them none, and so of the rest of the justices here named.

^d So as they cannot be som-

menced, &c. in any of the kings courts at Westminster.

2. ^e And that like proceffe upon every popular action, bill, plaint, information or suit, to be commenced, or sued, or prosecuted after the end of this present session of parliament by force of, or according to the purport of this act, be had and awarded to all intents and purposes as in an action of trespassse *vi et armis* at the common law.

^e By this branch proceffe of outlawry doth lye upon every popular action, a necessary clause for execution of justice.

3. ^f And that all and all manner of informations, actions, bils, plaints, ^g and suits whatsoever hereafter to be commenced, sued, prosecuted, or awarded either by the attorny generall of his majesty, his heirs, or successors for the time being, or by any officer or officers whatsoever for the time being, or by any common informer, or other person whatsoever in any of his majesties courts at Westminster, for or concerning any of the offences, penalties, or forfeitures aforesaid, shall be void, and of none effect, any law, custome, or usage to the contrary thereof notwithstanding.

^f This clause was added that the kings majesty should be bound expressly by this act, that no information in the courts at Westminster should be exhibited by the kings attorny generall, by any common informer, or other person whatsoever. Note the generality of these words.

^g Note, the king expressly named.

4. And be it further enacted by the authority aforesaid, that in all informations to be exhibited and in all bils, counts, plaints, and declarations in any action or suit to be commenced against any person or persons, either by, or on the behalf of the ^h king or any other for or concerning any offence committed, or to be committed against any penall statute, the offence ⁱ shall be laid and alleaged to have been committed in

^h Shall be laid in the proper county.

This clause is

but in affirmance of the true institution of the common law, for *vicini viciniore facta prajumuntur scire*, and for these informers they were best trusted, where they were least known. This is a very beneficiall clause for every defendand to take hold of.

* [17 2]

the said county where such offence in truth was committed and not elsewhere. And if the defendant to any such information, action or suit, pleadeth that he oweth nothing, or that he is not guilty, and the plaintiff or informer in such information, action or suit upon evidence to the jury that shall try the issue, shall not both prove the offence laid in the said information, action or suit, and, that the same offence was committed in that county, then the defendant and defendants shall be found not guilty.

5. And be it further enacted by the authority aforesaid, that no officer or minister in any ¹ court of record shall receive, file, or enter of record any information, bill, or plaint, count, or declaration, grounded upon the said penall statutes or any of them, which before by this act are appointed to be heard and determined in their proper counties, untill the informer, or relator hath first taken a ² corporall oath before some of the judges of that court, that the offence or offences laid in such information, action, suit, or plaint, was or were not committed in any other county, then where by the said information, bill, plaint, count or declaration the same is, or are supposed to have been committed, and he beleeveth in his conscience the offence was committed ¹ within a year before the information or suit within the same county, where the said information or suit was commenced, the same oath to be there entred of record.

6. And be it also enacted by the authority aforesaid, that if any information, suit, or action shall be brought, or exhibited against any person or persons for any offence committed, or to be committed against the form of any penall law either by, or on the behalf of the king, or by any other, or on the behalf of the king and any other, it shall be lawfull for such defendants to plead the generall * issue, that they are not guilty, or that they owe nothing, and to give such speciall matter in evidence to the jury that shall try the same, which matter being pleaded had been a good and sufficient matter in law, to have discharged the said defendant or defendants against the said information, suit, or action; and the said matter shall be then as available to him or them to all intents and purposes as if he, or they had sufficiently pleaded, set forth, or alleaged the same matter in bar, or discharge of such information, suit, or action.

Provided alwayes that this act or any clause contained therein shall not extend to any information, suit, or action, grounded upon any law or statute made against popish recusants, or for, or concerning popish recusancy, or against those that shall not frequent the church and heare divine service, nor

† That is in any of the courts before justices of assise, and other justices named in the first part of this act.

* The informer must take an oath before his information, &c. be received.

A beneficiall clause also for the defendant.

† Note, within a year before the information.

Vide 7 Jac. ca. 5.
21 Jac. cap. 12.

The reasons of this clause were,
1. For that in the courts aforesaid, specially before justices of peace, there are not such skilfull prothonotaries and clerks for good pleading as were in the kings courts at Westminster; and therefore the makers of this law provided that the defendant might plead the generall issue.
2. For the ease and benefit of the subject, great charges growing

by speciall pleading. 3. For avoiding of demurrers upon strict, and nice points of pleading.
4. For avoiding of writs of error, which often are brought in respect of speciall pleading.

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to any information, suit, or action for maintenance, champetry, or buying of titles, nor to any suit, or information grounded upon the statute made in the first year of the reign of our soveraign lord the king, of a subsidy granted to the king, of tunnage, poundage, wool, &c. nor for or concerning the concealing or defrauding the king, his heirs or successors of any custome, tunnage, poundage, subsidy, impost, or prisage, or for transporting of gold, silver, ordinance, powder, shot, munition of all sorts, wool, woollens, or leather, but that such offence may be laid or alleadged to be in * any county, at the pleasure of any informer, any thing in this act to the contrary notwithstanding,

* This proviso referreth only to the county, &c. So as no information, &c.

grounded upon any of the statutes in this proviso mentioned can be commenced, &c. in any of the kings courts at Westminster but before the justices of assise, justices of nisi prius, or gaol delivery, justices of oier and terminer, or justices of peace.

There was another mischief which lay heavy upon the subject, whereof advantage might be taken by any informer, which was not provided for by this act, viz, divers former statutes, which in respect of the alteration of times lay as snares upon the people, and at this day could not be performed. For example; that a yard of broad-cloth of the finest making scarlet grayned, or other cloth grayned, what colour soever it be, should not be sold above the value of 16s. a broad yard, &c. Which act and many other acts of parliament of like nature, and other obsolete laws to a very great number were at this parliament utterly repealed, and made void. We advise therefore the justice of peace (for to him we principally direct our speech, though it concern the rest of the justices before named) seriously to read over that act, where all those obsolete laws are particularly mentioned and repealed, and therefore no information, &c. can be commenced, &c. upon any of them.

4 H. 7. cap. 8.

21 Jac. ca. 18.

At the same parliament also anno 21 Jac. regis, an other good and profitable law was made concerning justices of peace and others, the tenor whereof is as followeth.

The Title. *An Act to enlarge and make perpetuall the Act made for ease in pleading against troublesome and contentious suits prosecuted against Justices of the Peace, Maiors, Constables, and certain others his Majesties Officers for the lawfull execution of their office, made in the 7. year of his Majesties most happy reign.*

21 Jac. ca. 17.

Whereas an act intituled, an act for ease in pleading against troublesome and contentious suits prosecuted against justices of the peace, malors, constables, and certain others his majesties officers for the lawfull execution of their office made in the seventh year of his majesties most happy reign of England, was made to continue but for seven years, and from thence to the end

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7 Jac. regis ca. 5.
That act extended to
1 Justices of
peace.

2 Maiors or
balliffs of cities or
towns corporate.
3 Headborows.
4 Portreves.
5 Constables.
6 Tithingmen.
7 Collectors of
subsidies and fif-
teenths, and not
to any officer not
named in that act.

end of the next parliament, after the said seven years which by experience hath since been found to be a good and profitable law. Be it therefore enacted by the kings most excellent majesty, the lords spirituall and temporall, and the commons in this present parliament assembled, and by the authority of the same, that the said act shall from and after the end of this present session of parliament be perpetuall, and have continuance for ever.

Made perpetuall.

This act of
21 Jacobi ex-
tendeth to
1. Churchwar-
dens.
2. All persons
called sworn-
men executing
the office of
churchwardens.
3. All overseers
of the poor.
4. All others in
their aid and as-
sistance, and not
to any other of-
ficer or person
not named in
this act.

And be it further enacted by the authority aforesaid, that all churchwardens, and all persons called 'sworn-men executing the office of the churchwardens, and all overseers of the poor, and all others, which in their aid or assistance, or by their commandment shall doe any thing touching or concerning his or their office, or offices, shall hereafter be enabled to receive and have such benefit and help by vertue of the said act, to all intents, constructions, and purposes, as if they had been specially named therein.

And whereas notwithstanding the said statute, the plaintiff is at liberty to lay his action which he shall bring against any justice of peace, or other officer in any forain county, at his choice, which hath proved very inconvenient unto sundry of the officers, and persons aforesaid, that have been impleaded by some contentious and troublesome persons in countries far remote from their places of habitations.

This branch ex-
tendeth to
1 Actions upon
the case.
2 Trespasse.
3 Battery.
4 False impris-
onment.

Be it therefore further enacted by the authority aforesaid, that if any action, bill, plaint, or suit upon the case, trespassse, battery, or false imprisonment shall be brought after the end of this present session of parliament against any justice of peace, maior, or baylif of city, or town corporate, headborow, portreves, constable, tything-man, collector of subsidy or fifteens, churchwardens, and persons called sworn-men executing the office of churchwarden, or overseer of the poor, and their deputies, or any of them, or any other which in their aid, or assistance, or by their commandment, shall do any thing touching or concerning his or their office or offices, for or concerning any matter, cause or thing by them or any of them done by vertue or reason of their or any of their office or offices, that the said action, bil, plaint, or suit shall be laid within the county where the trespassse or fact shall be done and committed, and not elsewhere And that it shall be lawfull to and for all and every person, and persons aforesaid, to plead thereunto the generall issue, that he or they are not guilty, and to give such speciall matter in evidence to the jury which shall try the same, as in or by the said former act is limited or declared. And that if upon the tryal of any such action, bill, plaint, or suit, the plaintiff or plaintiffs therein shall not prove to the jury which shall try the same, that the trespassse, battery, imprisonment,

The actions
aforesaid shall
be laid in the
proper county.

To plead the ge-
nerall issue.

imprisonment, or other fact, or cause of his, her, or their such action, bill, plaint, or suit was, or were had, made, committed, or done within the county where such action, bill, plaint, or suit shall be laid, that then in every such case, the jury which shall try the same, shall find the defendant and defendants in every such action, bill, plaint, or suit, not guilty, without having any regard or respect to any evidence given by the plaintiff or plaintiffs therein touching the trespassse, battery, imprisonment, or other cause, for which the same action, bill, plaint, or suit is, or shall be brought: and if the verdict shall passe with the defendant or defendants in any such action, bill, plaint, or suit, or the plaintiff or plaintiffs therein become nonsuit, or suffer any discontinuance thereof, that in every such case the defendant or defendants shall have such double costs, and all other advantages and remedies, as in and by the said former act is limited, directed, or provided.

The plaintiff upon the evidence must prove that the cause of action was done or had in the proper county.

See also another act the same parliament, *anno 21 Jacobi regis*, 21 Jac. ca. 15. intituled,

An Act to inable Judges and Justices of the peace to give restitution of possession in certain cases.

Be it enacted by the authority of this present parliament, that such judges, justices, or justice of the peace, as by reason of any act or acts of parliament now in force are authorized, and inabled upon inquiry to give restitution of possession unto tenants of any estate of freehold, of their lands, or tenements which shall be entred upon with force, or from them withholden by force, shall by reason of this present act have the like and the same authority and ability from henceforth (upon indictment of such forcible entries, or forcible withholdings before them duly found) to give like restitution of possession unto tenants for term of years, tenants by copy of court-rol, guardians by knights service, tenants by elegit, statute merchant and staple of lands, or tenements by them so holden, which shall be entred upon by force, or holden from them by force.

See 8 H. 6. cap. 9. and 31 El. cap. 11.

1. Judges or justices of the kings bench. 4 H. 7. 18 b. 7 E. 4. 18. 2. Justices of the peace. 8 H. 6. cap. 9. lib. 9. f. 118. b. 2 H. 8. Kelw. 159. Not justices of oier and terminer, nor any other justice. In stead of disseisin which was formerly in the indictment, now it shall be said, *ejesit, expulit, et amovit, or detinuit.* This act extendeth to Tenant by elegit.

- 1. Tenant for years. 2. Tenant by copy, &c. 3. *Guardens en chevairy.* 4.
- 5. By statute merchant. 6. By statute staple, which no former act extended unto.

In termino Pasch. 6 E. 1. Coram rege prima fuit institutio justiciariorum pro pace conservanda.

Rot. parl. 18 E. 1. fo. 3. nu. 41. *Homines de Chesershire qui onerati sunt de servientibus pacis sustentandis, petunt exonerari de oneribus statuti Winton, &c. Rex non habet consilium mutandi consuetudines, nec statuta sua revocandi.*

The lord chancelor and others of the privy councell doe remove divers justices of peace for that they were retaying to the archbishop, &c.

Dorf. clauf. an. 8 R. 2. m. 5.

See

Rot. par. 3 R. 2.
nu. 39.

Regula.

See a profitable and good law for justices of peace in the parliament roll, and not in print.

But let us return to the duty of a justice of peace, for *melius est recurrere quam male currere*.

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One or more justice or justices of peace cannot make a warrant upon a bare surmise to break any mans house to search for a felon, or for stoln goods, for they being created by act of parliament have no such authority granted unto them by any act of parliament: and it should be full of inconvenience, that it should be in the power of any justice of peace being a judge of record upon a bare suggestion to break the house of any person of what state, quality, or degree soever, and at what time soever, either in the day or night upon such surmises. But if the party suspected be indicted, then the sheriff by force of the kings writ may demand the party indicted to be delivered; and that not done, he may break open the house, &c. and apprehend the felon, for that the kings writ is a *Non omittas propter aliquam libertatem*: but if the kings processe be in debt, trespass, &c. at the suit of a party, there the sheriff by force of the kings writ cannot break open the house of the subject. And so is the book in 13 E. 4.

13 E. 4. 9.
20 E. 4. 6. b.
He may enter
into the house
the door being
open. See lib. 5.
f. 91, 92. See
maine case.

fo. 9. which saith; it was holden, that for felony or suspicion of felony a man may break the house to take the felon, and two reasons are yielded in the book. 1. Because it is for the common weale to take them. 2. Because the king hath an interest in the felony, and in such case the writ is a *Non omittas propter aliquam libertatem*; but otherwise it is for debt, or trespass, the sheriff or any other cannot break the house to take him. And yet it is to be understood, that if one be indicted of felony, the sheriff may by processe thereupon after denyall made, &c. break the house for his apprehension, or upon hue and cry of one that is slain or wounded, so as he is in danger of death, or robbed, the kings officer that pursueth may (if denyall be made) break a house to apprehend the delinquent: but for justices of peace to make warrants upon surmises, for breaking the houses of any subjects to search for felons, or stoln goods, is against Magna Carta, *Nec super eum ibimus, nec super eum mittemus, nisi per legale iudicium parium suorum, vel per legem terræ*: and against the statute of 42 E. 3. cap. 3. &c. And we hold the resolution of the court, viz. of Brudnell, Pollard, Broke, and Fitzherbert in 14 H. 8. to be law, that a justice of peace could not make a warrant to take a man for felony, unlesse he be indicted thereof, and that must be done in open sessions of the peace. For the justice himself cannot arrest one for felony, unlesse he himself suspect him, (as any other may) and by the same reason he cannot make a warrant to another. And all this appeareth in that book, and is agreeable with our former books, in 42 Ass. p. 5. & 12. & 24 E. 3. tit. Com. Br. 3. and with reason, for this warrant to take a felon should be in nature of a *capias* for felony, which cannot be granted before indictment, nor after indictment, but in open court. And this is the reason wherefore justices of peace before indictment could not have let any charged with felony or suspicion to bail, or mainprise, because justices of peace are judges of record, and ought to proceed upon record, and not upon surmises. *Sed distinguenda sunt tempora, et concordabis leges*: for since the statutes of 1 & 2 Ph. &

7 E. 3. 16.
29 E. 3. 9.
2 E. 4. 8. 9 E. 4.
26.

Mag. Cart. c. 29.

* Read the stat.

14 H. 8. f. 16. a.

Vid. 1 R. 3. ca. 3.
3 H. 7. ca. 3.
1 & 2 Ph. and M.
ca. 13. & 2 & 3
Ph. and Mar.
c. 10.

1 & 2 Ph. & Mar.

Mar. cap. 13. and 2 & 3 Ph. & Mar. cap. 10. (the words whereof be, That the said justices, or one of them being of the quorum, when any such prisoner is brought before them for any manslaughter, or felony, shall take examination, &c.) if any person be charged with any manner of felony, and information be given to a justice of peace of the felony or suspicion of felony, and searcheth that the kings peace may be broken in apprehending of him, the said justice may make a warrant to the constable of the town to see the kings peace kept in the apprehending and bringing of the party charged with or suspected of the felony before him, and the party that giveth the information of his knowledge or suspicion to be present and arrest the delinquent; and in this manner it is implied and intended by the said statutes for the prisoner to be brought before them: and this (as we take it) agreeth with the common use and observance ever since those statutes. And this agreeth also with the said book in 14 H. 8. that a justice of peace may make his warrant for the salvation of the peace, meaning to assist the party that knoweth or hath suspicion of the felony. But in this case neither the constable, nor any other can break open any house for the apprehension of the party suspected or charged with the felony, for it is in law the arrest of the party that hath the * knowledge or suspicion, who cannot break open any house: but if the * door of the house be open, he may enter into the same, and arrest the party. Thus much upon reading of some that have written of the office of justices of peace, we have thought good to adde. For though commonly the houses or cottages of poore and base people be by such warrants searched, &c. yet if it be lawfull, the houses of any subject, be he never so great, may be searched, &c. by such warrant upon bare surmises.

* Concerning bailment and mainprize, and what offenders were baileable by the common law, you may reade in the second part of the Institutes, W. 1. ca. 15. Now something is necessary to be added in respect of some variety of opinions touching the true diversity and signification of bailment, mainprize, *fidelijsuff.* surety, pledges, *plevin, plevina, replevin*, borough, and the like. And first of baile.

Some derive this word from the French word *bailler, id est, tradere*, to deliver, because the prisoner is delivered out of prison; but it cannot be so derived: for the entry is, *traditur in or per ballium*, and then the sense (or non-sense) should be, he is delivered into delivery. But this word *ballium* is truly fetched from the French noun *bail*, that signifieth a gardian, keeper, or gaoler: * and herewith agreeth Bracton, who saith, *Non erit ulterius per ballium dimittendus*. And againe, *Per ballium dimittatur usque adventum justitiariorum, alioquin remaneat in prisona*: and in the same page, *tradas in ballium 12 probis hominibus*. We reade not in Britton of this word baile, but of some other words hereafter following, *Que plevissent corps de home ceux ne sont my proprement pledges mes sont manpernors pur ceo que ilz supposent que ceux plevisable sont livers a eux per baile corps pur corps*.

* There bailment is called a living prison.

† A man arrested or imprisoned (and bailable) for felony shal be bailed before it appeareth whether he be guilty or no. But if a man be convicted by verdict or confession, &c. he is not bailable, because

2 H. 7. 3. &
15. 4 H. 7. 2. 3.
5 H. 7. 4. 10 H.
7. 17. 20 H. 7.
12. 7 E. 4. 20.
8 E. 4. 3. b.
10 E. 4. 17.
9 E. 4. 26.
11 E. 4. 4. 13 E.
4. 9. 7 H. 4. 35.
17 E. 4. 5. 27 H.
8. 23. a. Dier
7 Eliz. 236. b.
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* 20 E. 4. fo. 6.
17 E. 4. 5. a.
Lamb. fo. 188,
189.

* *Baile and mainprize.*
See the second part of the Institutes, W. 1. ca. 15. fol. 472, &c. Glanv. li. 14. ca. 1. W. 1. cap. 15. 27 E. 1. stat. de finibus cap. 3.

Of bail and bailment,

* Bracton lib. 3. fol. 123. And herewith agreeth the Register. fo. 133. b. Fleta lib. 1. ca. 26. Mirror ca. 2. § 14.

* Cust. de Norm. b 24 E. 3. 33. 25 E. 3. 42. b. mainprize 1. 3 E. 3. cor. 354. 2 Eliz. Dier. 179. F. N. B. 246. c.

because it appeareth that he is guilty. So, if upon examination a man confesseth a felony, if the mittimus be for felony confessed, he cannot be bailed.

c 33 E. 3. main-
prise 12.

d This agreeth
with the former
etymologie.

e 36 E. 3. ib. 13
ac 4 H. 6. 8.

22 H. 6. 59.

32 H. 6. fo. 4.

ac 39 H. 6. 27.

21 H. 7. 33.

• Vid. infra †.

f 36 E. 3. ubi
sup. Br. Main-
prise 89.

• By Shard there is a diversity between bail and mainprise; for the entry of the bail is, that such an one *traditur in ballium*, in which case they be his ^d gardians: and if they suffer him to escape, they shall answer for it.

• And where it is said there, *Et per quosdam ilz ferra pende*, it was spoken but in * *terrorem*, and thereupon a *quere* is made of it. And that it was no felony in ancient time, hear what the Mirror saith. It is abusion to think that such pain should be awarded to the bail, as to the principals which made default, where they were but aner- ciable in that case.

f And where any man is delivered in *ballium*, he may safely be kept by his bail for their indempnity, because the court of justice doth deliver him unto them to be safely kept.

The manner of the severall entries of the bail is worthy of ob- servation, because it is only attained unto by observation of presi- dents, and the course of courts.

And first in case of bailment for felony by the common law, those that do bail him are severally bound to the king by recogni- sance in a certain summe, that the prisoner shall appear at a cer- tain day, &c. *Et ultra quilibet eorum corpus pro corpore, &c.*

The bail of a felon before two justices of the peace, where- of one to be of the quorum by the statutes of 1 & 2 Ph. & Mar. & 2 & 3 Ph. & Mar. is for the felon in double, and for each of the bail in single. As for example: if the felon be 40 li. the bail is 20 li. a piece. And herein to observe in effect three things. 1. *Ad comparandum* at the next gaole delivery. 2. *Ad standum recto de feloniam prædictam*. 3. *Ad respondendum dicto do- mino regi, &c.* See the second part of the Institutes, the statute of Marlebridge, cap. 27. if the party bailed *propter privilegium cle- ricale respondere noluerit, non amercentur illi quibus traditus fuit in bal- lium*. There must be also a *liberate* in that case to the gaoler, if the felon be formerly committed to prison, to deliver him out of prison.

21 H. 7. 20. b.
per Fineux.
F. N. B. 251. d.

See Lamb.
fo. 352, 353.
F. N. B. 251. f.

Nota, amercentur.

• Vid. supra †.

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25 E. 3. 39.

3 E. 3. tit. cor.

40 Aff. 42.

3 E. 1. cap. 15.

27 E. 1. stat. de

finibus, cap. 3.

Hil. 18 H. 8.

Bendl. This bail

is determined by

the judgment,

if the principall

be then there.

Before the said statutes of 3 E. 1. cap. 15. 27 E. 1. cap. 3. and 1 & 2 Ph. and M. cap. 13. If any person had been let to bail that was notailable: by law this amounteth to a negligent escape, and shall be punished as a negligent escape of a felon shall be, that is, to be fined at 5 li. But by the statute of 1 & 2 Ph. and Mar. the justices of gaole delivery shall in that case set what fine upon the justices of peace, &c. they shall think fit. Upon a *capias*, and a *cepi corpus* returned, the entry is *traditur in ballium 8 die Maii anno 16 regis H. 8. Jo. Long, &c. usq; diem Mercurii prox' futur', et sic de die in diem, et termino in terminum, quousq; placitum prædictum terminetur, viz. quilibet eorum corpus pro corpore*.

If A be in *custodia mareschal'* in the kings bench, and a bill of debt be brought against him; and the defendant finde B for his bail, B entreth a recognisance to the plaintife with this condition precedent, *Quod si contigerit præd' defendentem debiti' et damna illa præfato querenti minime solvere, aut se prisonæ mareschalli ea occasione non reddere*, that then he would satisfie the same.

21 H. 7. 40. b.

Nota, in these personall actions the baile is only bound, and their

§

their recognisance is general, and of no certain summe, as it is in case of felony: and against him that is by bail in the kings bench, any stranger in the same term may sue him by bill in any personall action; otherwise it is if he were by mainprise *de die in diem*. But if A be outlawed in any personall action, and taken by force of a *capias utlegatum*, and plead any plea triable by the country in avoidance of the outlawry, as that he was commorant in another county, &c. In this case A shall be bailed, and the entry is, *Super hoc, T. B. et B. T. manuceperunt præfat. A habendum corpus ejus hic, &c. et sic de die in diem in quemlibet diem placiti, quousque placitum prædictum terminetur, et judicium inde redditum fuerit, viz. quilibet eorum corpus pro corpore: et prædictus A assumpsit pro seipso essendi tunc hic ad quemlibet diem placiti prædicti subpæna 40 li. &c. si contingat ipsum A. ad aliquem diem, &c. defaultum facere, aut seclam suam in hac parte non prosequi.* Note, wheresoever the principall is bound, it is in a certain summe.

9 E. 4. 2. a.
See before cap.
of the kings
bench.

Here the bail are
bound in no sum
but corpus pro
corpore, the
principall in a
certain sum.

And where some do hold, that in all cases when any statute enacteth that the body of the delinquent shall be committed to prison at the will of the king, he cannot be let to mainprise before the kings will be known; the rule is good if it be rightly understood; for he cannot in that case by force of any such statute be imprisoned, before he be indicted, convicted, and judgement given, and then he cannot be bailed or letten to mainprise, because his offence appeareth, as hath been said.

Stanf. pl. cor. 77.
b.

And the case there cited in 24 E. 3. upon the statute of 2 E. 3. cap. 3. for going armed in Westm. hall, &c. the book saith, that Thomas Figgot *chivaler fuit arraine per Shard, &c.* which proveth that he was indicted, arraigned, and legally proceeded with, neither was his armour forfeited before conviction. And note, that the said act in that case giveth the forfeiture of his armour, and imprisonment: and therefore in that case he shall not be fined: but Sir Thomas Figgot might have been bailed before conviction.

24 E. 3. 33. Sir
Tho. Figgots
case.

In the next place we are to speak of mainprise, *manu captio*, which deriveth it self, and signifieth a taking into the hand.

Of mainprise.

Every bail is mainprise, (for those that are bail take the person bailed into their hands and custody) but every mainprise is not a bail, because no man is bailed but he that is arrested, or in prison: for he that is not in custody or prison cannot be delivered out, as before it appeareth. But a man may be mainperned which never was in prison, and therefore mainprise is more large then bail. As in an appeal of felony, the defendant wage battell, &c. and a day appointed, &c. the plaintife shall finde mainprise, &c. to appear, &c. And yet he never was in prison or under custody. And * sometime these mainperners are called pledges. Also if A be in execution for debt, &c. at the suit of T, and sueth a *scire fac'* upon a release or the like, the entry is, *Et super hoc prædictus A. dimittitur per manu capt' E. D. E. F. qui eum manuceperunt, ad habendum corpus ejus hic ad præfatum terminum, et sic de die in diem, &c. quousque inde judicium redditum fuerit. Et si pro prædict. T. transierit, exequatur, viz. quilibet sub pæna 40 li. quas quilibet recognovit, &c. ad opus ipsius T. levare, &c. si contigerit ipsum A. ad aliquem diem placita defaultari facere, seu idem placitum cum effectu minime prosequi, vel se ab executione judicii, si pro præd. T. reddatur versus ipsum A. faciend. retrahere, &c.* And this is properly in the entry said, by mainprise, and no baile, because it is for the plaintife in the *scire fac'* who was in execution.

17 E. 3. fo. 2.
17 Ass. p. 1.
5 E. 3. a. 1. 32 E.
3. Mainprise 23.
* 9 H. 4. 3.
1 H. 6. 6.
30 E. 3. 20.
26 E. 3. 12.
11 H. 4. 43.
12 R. 2. conu-
sance 37.
8 H. 6. 30.

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* Register.
 F. N. B. 249, 250.
 Braç. lib. 3. 154.
 * 33 E. 3. main-
 prise 12. 36 E. 3.
 ib. 13. 1 R. 2. tit.
 bill 9. 9 E. 4. 12.
 7 H. 8. 4.
 31 H. 6. 10.
 32 H. 6. 4.
 39 H. 6. 37.
 21 H. 7. 33. 2.
 Vid. 4 H. 6. 8.
 per Cokeine.
 Of pledges.
 Glanvil li. 10.
 c. 5. Stat. de offic.
 cor. 4 E. 1. Plegii
 de prosequendo.

¶ F. N. B. 31. f.
 & 195. h.
 17 E. 3. 75. b.
 Lib. 8. 61. &
 lib. 5. 49. 2.
 Braç. li. 4.
 f. 254. a.
 * Regula.
 c Regist. 288.
 F. N. B. 19.
 18 E. 4. 9.
 d Vid 2 H. 6.
 f. 15. 2 part of
 the Inst. W. 2.
 cap. 2.
 e 31 E. 3. main-
 prise 21.
 42 E. 3. 7. acc'
 f 12 El. Dier
 288. 20 E. 3.
 pledges 11.
 9 E. 4. 27.
 2 H. 4. 17.
 18 E. 4. 9.
 2 H. 7. 1. 17.
 § See Mag. Cart.
 cap. 8. 2 part of
 the Institutes.

Surety, Securitas.
 b Regist. F. N. B.
 85. See the third
 part of the Instit.
 cap Fugitives.
 1 a H. 7. fo. 2.
 13 H. 7. 10. b.
 k 13 H. 7. fo. 10.
 b. 14 H. 7. 8. per
 Bineux & Trem.
 These words are
 well explained.
 Hil. 30 Eliz. co-
 2491 rege infra.

cution. Now for as much as every bail is a mainprise (as hath been said) bail is oftentimes termed in our books by the name of mainprise as before it hath partly appeared, and as it appeareth in the writ *de manucaptione*. 38 E. 3. fo. 14. 11 H. 6. 31. 50 E. 3. 11. 1 H. 7. 1. And in divers acts of parliament, Acton Burnell 11 E. 1. 4 E. 3. cap. 2. 23 H. 6. cap. 10. 1 & 2 Ph. and Mar. cap. 13.

Lastly, there is a manifest diversity between *de die in diem*, and a bail: for he that is by mainprise *de die in diem* no bill can be main-tainable against him: otherwise it is against him that is by bail *per cursum curiæ*.

Plegii and *plegiatio* are derived of the French word *pleige*, which signifieth one that undertaketh for another, a surety, *fidei jussor*. Now as every bail is a mainprise, so every bail and mainprise is *ex vi termini plegiatio*: which see in Glanville for the act of suretyship. But in legall understanding it is taken, first for the pledges which the demandant or plaintife finde in such writs as begin *Si A* (i. *querens*) *fecerit te securum de clamore suo prosequendo, &c.* And these are called *plegii de prosequendo*, and the reason of these were, for the answering of the king of the americiation if the demandant or plaintife were barred or nonsuit, &c. so cautious were the founders of our law, that the king should ever be answered of such duties as belonged to him: but the writ of the king, queen, or of an infant, shall not comprehend that clause, *si fecerit te securum, &c.* because they shall not in those cases be amerced. But it is observable, that the tenant or defendant shall finde no pledges: and yet if judgement be given against him he shall be amerced, &c. for *melior est conditio possidentis et rei, quam actoris*.

Pledges may be found in the chancery, or may be entred at any time hanging writ or bill by the discretion of the justices, upon gaging deliverance by the avowant he shall finde pledges *de liberatione illa facienda*.

There be also *plegii de retorno habendo* by the statute of W. 2. of pledges come *plevin, replevyn, replegiari, &c.* See the statute of Marlebridge, ca. 27. that *traditus in ballium, replegiatus, et per plegios* is all one and *synonyma*.

When the defendant commeth in by cap. or exigent he shall not finde pledges but mainprise.

He that sueth by bill shall finde pledges *de prosequendo in fine bile*, which have been controverted in books.

We have hitherto spoken of pledges in a judiciall course. There be also voluntary pledges, as you may reade in Fleta, lib. 2. cap. 5. 32 E. 3. *monstrans des faitz*. 179. 42 E. 3. 11. 44 E. 3. 21. 48 E. 3. 20. 22 Eliz. Dier 270. F. N. B. 137. c.

Surety comprehendeth all the former. And note, there is a surety by the common law, and surety by statute. By the common law, as in a writ *de securitate invenienda ne exeat regnum, &c.* There is surety of the peace, and surety of the good behaviour *de bono gestu*. The surety of the peace cannot be broken without some act, as an affray, or battery, or the like. But the surety *de bono gestu* consisteth chiefly, that a man demean himself well in his port and company, doing nothing that may be cause of the breach of the peace, or of putting of the people in fear or trouble; and that it doth not consist in observation of things that concern not the peace,

peace, as in not well doing his art or occupation. Thus far is the authority of the book in 2 H. 7. by the resolution of all the justices assembled for that purpose. But in mine opinion; the reporter *male se gessit* in the last words of the case.

¹ At a generall sessions holden at Bridgewater in the county of Sommerfet, *anno* 28 Eliz. one William King with sureties was bound by recognisance to appear at the next generall sessions of the peace in the same county, *et quod interim f. bene gereret exgā distam dominam reginam, et cunctum populum suum.* And after at the next sessions, William King appeared and was indicted for slanderous words spoken since his binding, viz. for saying at one time to Edw. Kyrton, esq; Thou art a pelter, thou art a liar; and hast told my lord lies, and I will make thee a poor . . . And he was further indicted, that since the said recognisance, *clausum cujusdam Johannis Wich, vi et armis fregit et intravit et averia et catalla ipsius Johannis in clausu prædicto depascit' illicite vexavit et chafavit.* And afterwards at another time he said to the said Kyrton, Thou art a drunken knave: which indictment was removed into the kings bench. And hereupon two questions were debated divers times both at the barre and the bench: First, admitting that all that is contained in the indictment to be true, whether any therein was in judgement of law a breach of the said recognisance: The second; for how much the said indictment was good in law. As to the first it was resolved, that neither any of the words, nor the trespassse, were any breach of the good behaviour, for that none of them did tend immediately to the breach of the peace, for though the said words (especially thou art a liar, &c. thou art a drunken knave) are motives and mediate provocations for breach of the peace, yet tend they not immediately to the breach of the peace; as if William King had challenged Kyrton, or sent him a challenge to fight with him; or had threatened Kyrton to beat or wound him, or the like: these tend immediately to the breach of the peace, and therefore are breaches of the recognisance of the good behaviour. And this diversity was justly collected upon the coherence and context of the statute of 34 E. 3. whereby justices of peace are assigned for keeping of the peace, and to restrain the offenders, rioters, and all other barattors, and to chastise them according to their trespassse and offence; and to inquire of pillors and robbers, in the parts beyond the seas, and be now come again, and go wandring and will not labour, &c. (And thus much for punishment of offences against the peace after they be done: now followeth an expresse authority given to the justices, for prevention of such offences before they be done.) viz. * And to take of all them that be not of good fame, (that is, that be defamed and justly suspected that they intend to break the peace,) where they shall be found sufficient surety and mainprise of their good behaviour towards the king and his people (which must concerne the kings peace, as is also provided by the word subsequent) to the intent that the people be not by such rioters troubled or indamaged, nor the peace blemished, nor merchants nor other passing by the highwayes, disturbed, nor put in the perill that may happen of such offenders. For the trespassse, &c. Although every wrongd full trespassse is, *quare vi et armis et contra pacem*, yet these force and arms, or *contra pacem* implied in law are not taken to be such as shall

¹ Hil. 30 Elis. coram rege.

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34 E. 3. cap. 2.

* This was the first statute that gave this expresse authority to justices of peace.

IV. INST.

P

make

make a breach of the good behaviour; because they are trespassers upon the land or touching goods or chattels, and not the person of a man.

21 E. 4. 10.

As to the second point it was holden, that the indictment concerning the words was void and *coram non iudice*, and good only for the trespass, *quare clausum*, &c. But if there be any just cause of breach, he ought to have a *scire fac'* upon the recognisance.

21 H. 6. 26.

In an account, if a *capias ad computand'* be awarded against the defendant, and thereupon he is outlawed, and rendreth himself to the prison of the Fleet, and auditors be assigned to him, before whom they be at issue, and the auditors bring the record into the common place, and the defendant found surety in 200 li. to appear in proper person every day *pendente placito*; and if the issue passe against him, that he rendreth himself to prison.

^a 45 E. 3. Surety 24.
Register 291. b.
Nota.

F. N. B. 79 g.
2 H. 7. 1. 4. &c.
36 H. 6. 23.
3 H. 4. 9.
^b 6 E. 4. 8.
12 E. 4. 4. ^a
5 H. 7. 3. ^a
13 H. 7. 17. ^a
^c 3 H. 7. 3.

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See F. N. B.
151. g.

^a A fine *sur consance de droit* was levied to an infant, and because the infant ought to pay the fine to the king, he found *securitatem de fine solvendo*.

There is also a writ *de securitate pacis, et de bene gerendo*.

^b In *homine replegiando* the defendant avow for that the plaintiff is his villain regardant. The plaintiff said that he is free, and thereupon they were at issue, the plaintiff prayed that he might gage deliverance. And it was awarded that he should have deliverance of his goods, and finde no surety that the avowant should have the goods again if it were found for him. But note when the avowant be at issue upon the villenage, ^c then the plaintiff shall find surety to sue *cum effectu*.

Surety; by statutes: see the statute of W. 1. cap. 20. *De malefactoribus in parvis* in the second part of the Institutes in the exposition of the same: the statute of Glouc, cap. 4. and W. 2. cap. 21. for finding of surety in a *cessavit*. See also the second part of the Institutes in the exposition thereof.

The statute of W. 2. c. 4. *Et statut. de defensione juris, anno 20 E. 1.* of finding of surety by tenant by receipt. See the second part of the Institutes the exposition of the same. And many other whereof we need not to make mention; only this is observable, that when any statute doth require pledges or surety to be found, they ought to be sufficient, for insufficient pledges are no pledges in judgement of law; and surety cannot be *ex vi termini* unless it be sufficient.

W. 2. ca. 29.
Mag. Cart.
cap. 26.
^a Reg. 133, 134.
28 E. 3. cap. 9.
Stanf. pl. cor.
77. g.
See Hil. 32 E. 1.
coram rege rot.
71 & 79.
Regist. 268. b.
F. N. B. 250. a.
Bract. li. 3.
f. 154. 28 E. 3.
cap. 9.

It appeareth by W. 2. cap. 29. that the ^a. writ *de odio et atia* concerning the bailment of prisoners is grounded upon Magna Carta. And it is holden by some, that writ is not now in use, but is taken away by the statute of 28 E. 3. But this writ is revived again by the statute of 42 E. 3. cap. 1. whereby it is enacted that if any statute be made against *Magna Carta*, or *Carta de Foresta*, it is enacted to be void. See more of this matter in the second part of the Institutes, Mag. Cart. cap. 26. which were unnecessary here to be rehearsed. This writ *de odio et atia* is omitted by Fitzh. in his N. B. Concerning the writ *de manucapione*, one kind thereof directed to the sheriff is a writ grounded upon, and rehearsing the statute of W. 1. cap. 15. and how that before him by a certain inquisition of office A B standeth indicted *de quodam latrocinio cuiusdam equi*, &c. Now in as much, as by the statute of 28 E. 3. he cannot

cannot take such inquisitions by force of any writ or commission, therefore that writ *de manucaptione* ceaseth. But the writ of *manucaptione* may be directed to other justices, as to the justices of the forest, justices of peace and to others: for the statute of 28 E. 3. extends only to sheriffs, and to sheriffs only upon taking of inquisitions. But a writ of *manucaptione* may in other cases be directed to the sheriff. Vide the statute of 4 E. 3. cap. 2. for the court of the marshalsea, F. N. B. 25. I.

For the writ of *homine replegiand'*, see the Register, fo. 133. F. N. B. 66. E. Hil. 43 E. 3. *coram rege* rot. 110. Suffex. Mich. 5 H. 4. rot. 26. *Devon' per breve regis in duobus com'* William Scuttes case. 11 H. 4. 15. F. N. B. 68. c. cap. in Witherham.

So odious was unjust imprisonment, or unjust deteyning of any freeman in prison, as in ancient time there lay a writ *de pace et imprisonmento*, &c. *ubi liber homo*, &c. *uno modo propter injustam captionem, et alio modo propter injustam detentionem*, &c. And there you may read the form of the writ of appeal, *de pace et imprisonmento*, which we have the rather remembred, that it may be observed what severall remedies the law hath allowed for the relief and ease of the poor prisoner. But the readiest way of all is by *habeas corpus* in the term time, or in the vacation out of the chancery, as you may read at large in the second part of the Institutes, Mag. Carta cap. 29. and statut. de Gloc. c. 9. and the exposition upon the same.

The clerk of the crown, clerk of the peace, and clerks of assise shall certifie briefly a transcript of such attainder, outlawry or conviction as is had for any kind of felony before justices of oier and terminer, justices of gaol delivery, and justices of peace before the king in his bench, there to be and remain of record, &c. See the statute, a very necessary law for the plea of *anterfois attain* or convict for ousting of clergy, &c. and for escheats and forfeitures to the king.

For the better understanding of this act of parliament, it is to be understood, that such attainders of outlawry and convictions of felony before any of the justices named in this act, as are certified, or delivered into the kings bench, are under the custody of the clerk of the crown of that court, and for that cause he is named in this act.

See the statute of 9 E. 3. cap. 5. by which it is ordained and established, that justices of assise, gaol delivery, and of oier and terminer, shall send all their records and processes determined, and put in execution to the exchequer at Mich. every year once to be delivered there, and the treasurer and chamberlains, &c. shall keep them in the treasury as the manner is, so that the justices always doe first take out the estreats of the said records and processes against them to send to the exchequer, as they were wont before.

By the statute of 11 H. 4. ca. 3. justices assigned (*id est*, justices of assise) shall cause to be delivered into the kings treasury all the records of assises, mordancestor, and of certifications before them determined every second year.

All indictments and presentments in the sheriffs turn, or law days shall

Regist. 80. a.
Regist. 133. b.
F. N. B. 250. k. l.
& 251. a. b. c.

Regist. 79.
F. N. B. 250.
d. f. i.
See Bract. li. 3.
121. 154. Fleta
li. 2. ca. 2.

Bract. li. 3.
fo. 145. Britton
fo. 49. Fleta,
li. 1. ca. 40.
Mirror ca. 2.
§. 11. *la appeal de
imprisonment.*

34 H. 8. cap 14.
This is expound-
ed to be *reddendo
singula singulis
respective*. Vide
8 E. 4. 18.

a Vid. Dier 8 EL
253. 254. upon
another branch
of this act.

b 14 H. 7. 20. per
Kob c. Br. Judg. 8.
to be understood
of the kings
bench.

14 H. 7. 15. b.
per Mordaunt.

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11 H. 4. cap. 3.
13 H. 4. er-
ror 91.

3 E. 4. cap. 3.
Vid. 4 E. 4 f 31.
8 E. 4. fo. 3.

shall be delivered to the justices of peace of the same county, at their next sessions of peace to award proceſſe, &c.

3 H. 7. ca. 1.
lib. Intr. Raſt.
43.

After the murder or manſlaughter found before the coroners they ſhall deliver their inquiries afore the justices of the next gaol delivery.

3 H. 7. ca. 1.

If any perſon be murdered in the day, and the murderer eſcape untaken, the townſhip ſhall be amerced, and the coroner hath power to enquire thereof upon view of the body, and the justices of peace have power to inquire of ſuch eſcapes, and to certiſie afore the king in his bench.

W. 1. an. 3 E. 1.
cap. 1.

Pax } Eccleſiæ.
} Terræ.
Juſtitia pacis
mater & nutrix.

And (that we may ſay ſomewhat of every thing) forasmuch as the charge to be given at the ſeſſions of the peace conſiſteth on two parts, laws eccleſiaſtical for the peace of the church, and laws civil or temporall for the peace of the land, it ſhall be very fit to lay, as a foundation of the charge, that excellent law eſta bliſhed by authority of parliament, which we have tranſlated into Latin. *Imprimis rex vult, et præcipit quod pax ſacroſanctæ eccleſiæ, et terræ ſolide cuſtodiatu r et conſervetur in omnibus, quodque juſtitia ſingulis, tam pauperibus, quam divitibus adminiſtratur, nulla habita perſonarum ratione.*

Fiſt of all, the king willeth and commandeth that the peace of holy church, and of the land be well kept and maintained in all points, and that common right (*i. juſtice*) be done to all, as well poor as rich, without reſpect of perſons.

Hereupon the charge to conſiſt upon two parts. 1. Of laws eccleſiaſtical, and 2. Of laws civil, or temporall, with an exhortation to doe juſtice.

1 Mar. cap. 12.
3 & 4 E. 6. ca. 5.
Though the body of theſe acts be repealed, yet the axioms rehearſed in the preamble ſhall continue for ever.

Or an other axiome or principle of the law may be the foundation of the charge. *Imprimis intereſt reipublicæ, ut pax in regno conſervetur, et quæcumque paci adverſentur provide declinentur.*

It is moſt neceſſary in a commonwealth to provide, that tranquillity and peace be continued in the realm, and that all things being contrary thereunto may by foreſight be eſchewed.

* Or that of 32 H. 8. There is nothing within this realm that conſerveth the ſubjects in more quietneſſe, reſt, peace, and good concord, then the due adminiſtration of his laws.

* 32 H. 8. cap. 9.

Or the like, ſee the third part of the Inſtitutes, in Epilogo.

C A P, XXXII.

A Court of Inquiry of the Defaults of the Justices of Peace, Justices of Assise, Sherifs, and Under-Sherifs, touching the Execution of the Statute of 13 H. 4. cap. 7. concerning Riots, Assemblies, and Routs.

THIS court is raised by the statute of 2 H. 5. and is a court only of inquiry, and to certifie the inquests incontinent into the chancery, as by the said statute more at large appeareth. 2 H. 5. cap. 8.
See 19 H. 7.
c. 13.

C A P. XXXIII.

Justices in Eire.

THEY were originally instituted for the good rule of the subjects, and for the ease of the countries, and that such as had franchises might claime them.

See the 2 part of the Inst. W. 1. cap. 27. Bracton lib. 3. fo. 116. Britton fo. 1. 2 E. 3. fo. 27. Kelw. fo. 143.

They were called *justiciarii in itinere*, or *itinerantes*, in respect of other justices that were *residentes*. In the black book in the exchequer, cap. 8. they are called *justiciarii deambulantes, et perlustrantes*. See Vet. Mag. Cart. 2 part. fo. 72. *Artic', et sacramenta in itinere*.

Regif. F. N. B. 243. k. 14 H. 7. 29. 15 H. 7. 5.

Their authority was by the kings writ in nature of a commission, they had jurisdiction of all pleas of the crown, and of all actions reall, personall, and mixt: they rood from seven years to seven years (but now by the statute of 27 H. 8. ca. 24. all justices in eire must be by letters patents under the great seal.) In what county soever they came, all other courts during the eire ceased, and all those pleas in that county, or rising there before any other, the justices in eire might proceed upon as the others might have done. For example: a writ was directed to the justices of the common pleas to adjorn, and send all the pleas of that county which were in the court of common pleas before the justices in eire to be determined before them, &c. And if judgment had been within that county, the justices in eire might award execution without a *scire fac'*. See the first part of the Institutes, sect. 514. and read the ancient books and other authorities there quoted for their antiquity and jurisdiction, and the causes wherefore they vanished away. But the other justices of eire, viz. of the forest, continue to this day according to their originall institution. See the chapter of the Court of the Forest. See also the second part of the

Institutes, Marlbridge 24, 25, 27. W. 1. cap. 18. & W. 2. cap. 10. and the exposition of every of them.

What franchises and liberties ought to be claimed before justices in eire, see lib. 9. fol. 24. the case of the abbot of Strata Marcella.

The stile of their court was, *Placita de juratis et assis et coron. de itinere Johannis de Vallibus et sociorum justic' itiner' apud Ockham in com' Rutland in crastino epiphaniæ Domini, anno regni regis Edw. 14.*

These justices in eire did hold their courts, as hath been said, from seven years to seven years, and first they began with pleas of the crown, for saith Bracton, *Imprimis incipere debent de placitis coronæ, in quibus terminantur actiones criminales tam majores quam minores.* And one could not be indicted for any thing, concerning the pleas of the crown, done before the last eire: for so it appeareth by Bracton, *Non erit querendum de placitis illis coronæ quæ emerferunt ante aliud iter justiciariorum, et quæ coram eis proposita non fuerunt.* And by Fleta, *Ex capitulis de veteribus placitis coronæ alias presentatis et nondum terminatis, solet exceptio quibusdam indictmentis oriri, quod de novo indictmento de factis ante ultimum iter imposito non tenetur respondere; et si non sit allocabilis, sequitur quod juratores hundredi puniendi sunt de conclamento, vel de perjurio convincendi.*

And it were to be wished that in criminall causes at the kings suit, there were a limitation of time, specially in cases concerning the life of man. The common law in appeals at the suit of the party hath in those cases limited a time, viz. that they must be brought within the year and the day after the offence committed: and the reason thereof was, that the cause might be tryed, whiles it was fresh in memory, and that such as could testifie were living.

Vid. Hil. 15 E. 1. in banco rot. 56. they could adjorn into another county.

The justices in eire might inquire of the deeds of justices of gaol delivery.

Bracton saith, *Et si post intervallum accusare velit, non erit de jure audiendus, nisi docere potest se fuisse justis rationibus impeditum.* And Bracton also saith, that after the charge given the justices in eire, *debent transferre se in locum secretum, et convocatis ad se quatuor, vel sex, vel pluribus de majoribus de com' qui dicuntur * busones com' ad quorum nutum dependent vota aliorum qualiter à d'no. rege et concilio suo sit provisum, quod omnes tam milites quam alii qui sunt 15 annorum et amplius jurare debent, &c.*

* *Busones* sive *busones*, of the French word *bouffon*: for as it is in the proverb, *He that beareth the purse ruleth the roast*, which agreeth with Bractons description here, *Ad quorum nutum dependent vota aliorum.* So vulgarly called, which also Bracton insinuateth, when he saith, *Qui dicuntur busones.* It is misprinted, and should be 12 annorum, 2 for 5. See the 2 part of the Inst. Mag. Car. ca. 7. & 35.

Br. Jurisd. 116. 27 aii. 1. F. N. B. Fleta li. 1 ca. 10. § *Ex capitulis vers. finem.*

So great was the authority of justices in eire, that if they came into the county where the justices of the court of common pleas sat, the jurisdiction of that court during the eire ceased, but they yielded to the kings bench.

See cap. Itineris, Vet. Mag. Cart. part. 1. fo. 150. 151, &c.

See Hovenden, ann' D'ni. 1176. Vid. Hil. 13 R. 2. pl. 2. Of proceedings before them.

*Rex justiciariis suis prox' itinerantibus in com. N. salutem. Quia per * commune concilium regni nostri Angliæ provisum est, quod qui-*

Regist. 19. b. * *z. W. 2.* c. 10. Nota the Register is a good exposition of this statute. See the 2 part of the Inst. W. 2. cap. 10.

libet

libet liber homo libere possit facere attornatum ad libertates suas vendicandas, exigendas, prosequendas, et defendendas; vobis mandamus, quod attornat' quem A per literas suas patentes sui loco attornare voluerit, ad libertates suas vendicandas, exigendas, prosequendas, et defendendas coram vobis in itinere vestro in com' prædicto, loco ipsius A sine difficultate ad hoc recipiatis, &c.

See also another writ in the Register, *ubi supra*, *De clamore admittend' in itinere, &c.*

C A P. XXXIV.

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The Court of Justices of Trailbaston.

THESSE justices sat by force of the kings commission of oier and terminer grounded, as some hold, upon an ordinance made by king E. 1. and the lords at a parliament holden in anno 33 E. 1. for the hasty proceeding. And therefore they were called justices of trailbaston, because they proceeded as speedily as one might draw, or trail a staffe. They say upon the said ordinance in the same year, viz. 33 E. 1. a commission of oier and terminer *vocat' trailebaston secundum ordinationem inde fact' in parlamento de anno 33 E. 1.* By this it appeareth, as some have conceived, that this commission was builded upon an ordinance in parliament, and not upon an act of parliament.

33 E. 1. in Dorf. pat. parte 1.

Others say that this commission was grounded upon an act of parliament in anno 33 E. 1. intituled, *Statutum quod vocatur Ragman de iusticiariis assignatis.* See the statute, and that the ordinance mentioned in the commission of 32 E. 1. is the statute *Ragman*, statutes being often called by the name of ordinances, for every statute is an ordinance, *sed non è converso.*

Vet. Mag. Cart. 2 parte fo. 28.

But let us now consider what light our books have given us, the statute being somewhat obscure and dark.

In Trin. 2 E. 3. we read this case. William de B. sued a writ of error returnable in the kings bench upon a judgement given in a plea of land at the suit of John Hodey, which was pleaded by bill before justices of trailbaston, where because the justices of trailbaston did send only the record of the plea, they were commanded to send the transcript of their commission, and the bill also with the pannell, the which they did, and again the record also. In which case you may observe these five conclusions. First, it was assigned for error, that John Hodey made his plaint of certain land against William de B. being present in court before the justices of trailbaston, and he was put to answer without making of processe against him, and therefore they erred in receiving the plea without processe, &c. *sed non allocatur.* Secondly, for the justices of trailbaston be in their case as justices in eire; and in eire when the party puts in his bill against another which is present in court, the justices in eire ought to receive it. Thirdly, another error was assigned, that it appeared by the record, that

2 E. 3. fo. 27.

presently the justices of trailbaston took an inquest *de circumstantibus*, which came not in by processe to give their verdict, and also it appeared by the record, that the twelve gave their verdict, *super sacramentum suum*, without saying *de consensu partium*; *sed non allocatur*. For in trailbaston and in eire certain men are made to come by whom those justices doe inquire *ex officio*, that is, without processe, whereunto the parties which have pleaded to issue agree to be tryed by them, the court erreth not if they take an enquest of them, and it is not found of record, that William de B. did dissent: and as to the other point, the court shall intend an assent where there appeareth no dissent. Fourthly, the errors assigned being no errors, the court did search for errors, and to affirm the judgment or to reverse it. And the court did find in the first record which was sent, that William de B. *dicit quod in nullo est inde culpabilis, et de hoc ponit se super patriam*, where John de Hodey which was plaintiff did not joyn with him, *et prædictus querens similiter*, which joyning was in the second record certified; but for that, that record came in without warrant, and the first record certified is the record in law, thereupon the former judgement was reversed. Fifthly, that no error was assigned, that the justices of trailebaston had no lawful jurisdiction, but a writ of error brought upon their judgement, whereby, and by all the context of this case their jurisdiction was affirmed, the judges of the kings bench having, as is aforesaid, a transcript of their commission. Also they had jurisdiction in case of indictment of death, and so allowed, but appeals of felony were excepted in the said statute.

2 E. 3. 28.

14 E. 3.

Vide Dorf. Pat. anno 14 E. 3. part 3. m. 8. & 2. A commission of trailbaston was granted to Robert Parning treasurer and others in London, Middlesex and Surrey, and like commissions were granted in other counties.

Rot. parl. 1 R. 2. 101.

A petition was exhibited by the commons in full parliament, who prayed that no manner of eire or trailbaston might be holden during the warres, or 20 years, &c. but it was not granted.

But *præcipitatio est noverca justitiæ*: and both in respect of the precipitation and of some reference to the next parliament by the statute of Ragman, this commission wholly long since vanished, and is left out of the Register as not to be put in execution. But the commission of oier and terminer there remaineth as necessary and usefull for the punishment of horrible and enormous offences. See before the chapter of Oier and Terminer.

C A P. XXXV.

The Court of Wards and Liveries raised by Authority of Parliament.

FIRST, the king our said soveraigne lord by the authority aforesaid, ordaineth, maketh, establisheth, and erecteth a certaine court commonly to be called for ever The Court of the Kings Wards: which court by authority aforesaid continually and for ever shall be a court of record, and shall have one seale to be graven and made after such form, fashion, and manner, as shall be appointed by the kings highnesse, and shall remaine and be ordered, as hereafter shall be declared.

The statute of 32 H. 8. cap. 46. *The court of the kings wards.* A court of record. by the statute of 33 H. 8. cap. 22. the office of the liveries is annexed to the

court of wards. So as now it is in the court of wards and liveries.

Also be it enacted by authority aforesaid, that all wards which the kings highnesse now is, or hereafter shall be intitled to have, with their mannors, lands, tenements, rents, remainders, reversions, services, and all other hereditaments whatsoever they be, as well in possession as reversion, and all revenues, issues, and profits of the same, and every part thereof, for the time the same shall be, or ought to be in the kings possession, shall be in the order, survey, and governance of the said court, and the ministers of the same, in manner and forme, as by this act is declared and limited.

See the first part of the Institutes. sect. 441. All wards, mannors, lands, &c.

In the order, survey, &c.

Also that the said master of the wards for the time being shall have full power and authority to award under the seale to be appointed to the said court in the kings name such proces and precepts with reasonable pains to be therein limited, as be now commonly used in the court of the kings duchy chamber of Lancaster being at Westm. against every person or persons whatsoever they be, for and concerning the interest, right and title of the kings majesty, his heirs and successors, of in or for any wards lands, tenements, rents, account, receipt, services, or other cause in any wife touching or concerning any thing appointed by the order of the said court, or any part thereof, for and on the behalfe of our said soveraigne lord the king, or to or for any debt, rising and growing by occasion of the same.

Proces.

Duchy chamber.

In any wife touching or concerning, &c.

Debt.

Also be it enacted by the authority aforesaid, that the said attorney, receiver general, and auditors shall diligently from time to time attend upon the said maister in the said court for the hearing and ordering of matters and causes in the same court for the time of four terms in the year usually kept for the

Attend.

By the said act of 33 H. 8. the surveyour is added, and to take place before the attorney.

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Indebted.

No proces out the exchequer for or concerning any ward, &c.

Widowcs.

Idcots.

Naturall fools.

To let and set.

the law at Westm. and procure with all diligence, that all rents, fermes, profits, casualties, improvements, and other emoluments of the wards mariages, ideots, and all mannors, lands, tenements, and hereditaments being in the survey and governance of the said court, shall be truly and justly paid, and answered to the said receiver generall of the said court to the use of the kings highnesse without concealing any part thereof. And shall also cause and procure processe to be made against such as shall be indebted to the kings highnesse and their sureties of and for any part thereof, from time to time, as the time and case shall require without any delay.

Also be it enacted by the authority aforesaid, that all manner of proces that shall be made out of the kings exchequer to or against any person or persons for any ferme, rents, issues or profits concerning the premisses or any part thereof, or any other thing limited in this act to be in the survey, order, and governance of the said court, and the ministers thereof, shall be clearly void and of none effect to all intents and purposes.

Also be it enacted by the authority aforesaid, that the said master by the advice of the said attorney, receiver generall, and auditors, or three of them, whereof the said master to be one of them, shall have authority by this act to survey all the kings widows, and to treat, commune, and conclude as well with all and every of the kings widows that now be, or hereafter shall be, and that have married themselves without the kings license, or that hereafter shall happen to marry themselves without the kings license, for their reasonable fines to be made to the kings use, and to tax and assesse the same by their discretion according to the statute of *Prærogativa Regis*: the same fines to be paid to the receiver generall of the wards lands, as the same may appear yearly in his account.

Also be it enacted by the authority aforesaid, that the said matter by the advice of the said attorney, receiver generall and auditors, or three of them, shall have authority by this act to survey, govern and order all and singular ideots and naturall fools now being in the kings hands, or that hereafter shall come and be in the kings hands. And also to survey and order all the mannors, lands, tenements, and other hereditaments whatsoever, now being in the kings hands, or in the hands of any other person or persons to their uses, or to the use of any of them, that hereafter shall come and be in the kings hands, his heirs and successors in the right of any of them by reason of his graces prerogative royall: and also by the advice of the said attorney, receiver generall, and auditors, or three or two of them, to let and set the mannors, lands, and tenements to the kings use for the time of the kings interest for such rent and fine, as by their discretion shall be thought convenient; the finding and keeping of the said persons their wives and children, and the reparations of their houses and lands always to be considered in the doing thereof; the same rents and fines reserved

reserved to the kings grace to be paid always to the hands of the receiver generall of the wards lands for the time being, as the same may appear in his account, and be recorded in the court of wards.

And also be it enacted by the authority aforesaid, that the said master for the time being shall have power and authority to take recognisances of all and every person and persons that shall be called into the court of wards and liveries to answer to any matter alledged against them in the said court, to make their daily appearance in the said court, to answer to such matters as to them then and there from time to time shall be alledged. And that all such recognisances of what summe soever they be, shall be as good and effectuell in the law to all intents and purposes, as recognisances taken in the kings high court of chancery, or elsewhere before any judge of record within this realm. And that the said master for the time being with the advice of the court, or of such member of the same as then shall be present, so that they be two beside the said master, shall have full power and authority to moderate such recognisances as be or shall be there forfeited, and to set fines for the same to the kings use under the summes contained in the said recognisances; the said fines to be levied by like proces of *scire facias*, as by the statute made in the 27 yeare of our soveraigne lord the kings reigne is given to the chancelour of the court of augmentations of the revenues of his graces crown. And that the said master for the time being with the advice aforesaid shall have power and authority to commit to ward any person or persons for his or their disobedience, contempt, or other offence made, or to be made triable within the kings court of the wards and liveries, and upon the said matters ordered or decreed there, to deliver them from prison, and to cancell and make void all recognisances and obligations taken or hereafter to be taken in the same court to the kings use when and as often as the said master, with the advice of the said court or three of them, shall see and perceive the matters and causes, for the which any such recognisances or obligations hath or hereafter shall happen to be taken, to be finished and ended, and the kings grace his heirs and successors, or the party thereupon satisfied, without any other warrant for the same.

And also shall have full power and authority to hear and determine all and all manner of debts, detinues, trespasses, accounts, reckonings, wafts, deceipts, negligences, defaults, contempts, complaints, riots, quarrels, suits, ltrifes, controversies, forfeitures, offences, and other things whatsoever they shall be, which shall hereafter grow, be moved, stirred, procured, pursued, or arise in, for, or upon any matter, cause, or other thing * assigned, committed, or appointed to the severall directions, orders, and governances of the same courts, or any

Called by proces.

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To moderate recognisances.

The authority of the courts of exchequer, wards and ducby. A clause of the Statute of 33 H.8. cap. 39.

* Assigned.

of

of them, or for or upon any manner of thing or things which may or shall touch or in any wise concern the same, wherein the king shall be only party, And also all manner of states for tearme of years between party and party concerning the premisses, and to correct and punish by their discretions all and every person and persons which before them shall be convicted of any of the premises according to the nature, quality, or quantity of his or their offence or offences, cause or causes, matter or matters (all and all manner of treasons, murders, felonies, estates, rights, titles, and interests as well of inheritance as freehold, other then joyntures for term of life, only excepted and always foreprised.)

Before we descend to the severall parts and branch of these acts, it shall be expedient for advancement of truth to handle and clear two questions. First, when wards became due to the kings of England, by what title, and upon what reason. Secondly, who had the charge of the kings wards; how they were disposed of, and in what court this revenue was answered before the reign of H. 8.

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Polydor lib. 16.
pag. 288.

Excogitato novo
vestigalis genere
a Ulro concesserunt.
b Quarum rex
esset dominus.

The first contains three things. Time, title, and cause. And in all these three Polydor, and such as follow him, do erre. For Polydor saith that *Henricus 3. anno domini 1219. qui avitum regnum civili bello, ac disensionibus vastatum, opibus spoliatum, atque prope confectum paulo ante adeptus erat, cum rei domesticæ inopia pressus, non posset sine auxilio suorum, Asiaticum bellum juvare, vitamque regiam decenter degere, principes soluto prius tributo, pro eo bello gerendo postea excogitato novo vestigalis genere, ut regem suum ea inopia levarent, a ulro concesserunt, ut quoties quispiam eorum, qui possessiones haberent b quarum rex esset dominus, ante moreretur quam liberi quos fecisset hæredes vigesimum alterum agerent annum, tum eatenus tam ipse hæres quam patrimonium in potestate atque tutela regis foret, et ille patrimonii huiusmodi proventus caperet, quoad hæres ad eam ætatem perveniret: quia apud Anglos more majorum per vetusto conservandarum facultatum causa, filius matu grandior fit solus hæres, vel filia si mares liberi nulli sint. Egit rex gratias omnibus generatim pro munere, ac ut ne id humanitatis in oblivionem iret, deinceps istiusmodi nobilium hæredum tutelas ut rem sibi vix utilem accuratissime suscepit. Sed illud beneficium nequaquam ipsi nobilitati postremo bono fuit, quando cæteri reges qui secuti sunt, non habita ratione, quod à principibus olim in Henricum duntaxat collocatum fuisset, ut qui pauper esset decentius personam regiam per illud sustineret sibi etiam perpetuatum voluerunt. Quid, quod ita res curæ omnibus fuit, ut non modo reges, sed reliqui locorum domini in hæreditates nobilium defunctorum eodem modo invaserint, id quod etiam nunc fit, et lege certa observatur. Unum istud institutum est tandem aliquando corrigendum, quippe quod quantum uni vel alteri commodi, tantum aliis incommodi offert: sane ita usu venit, ut populorum quibus hæreditates veniunt tutela sæpe à locorum dominis ad tempus sicut dictum est, illorum tutoribus per auctionem vendantur, quo fit factò lucro, ab ea educandorum puerorum cura vacui sint, et qui emunt, eniunt autem tam nobiles, quam homines novi, si modo plus dederint, ea præsertim de causa redimant, ut pupillos nobilium suis liberis matrimonio conjungent. Idq; sæpissime faciunt, antequam illi pubescant, quo simul vivendo, cum primum per ætatem liceat, urgente voluptatum*

luptatum titillatione invicem commisceantur, ut ne postea, cum adoleverint, jam mutui polluti nuptias repudiare queant, qui sic sese ab ineunte etate libidinibus dedecorantes interdum non homines, sed ob virium infirmitatem plane homunciones gignunt à majoribus degenerantes. Atqui nobilitas cum primis eo damnum facit longe ingratissimum quod homines humili loco nati per ejusmodi connubia sanguinem cum ea facient, contaminantque in dies singulos ejus vetustum genus, et pupilli ipsi à sinu matrum per emptionem erepti parum interdum honestis in aliena domo insituantur. Oritur vel hinc res alia indigna de qua nunc tacere libet, istorum enim conjugum gratia admodum modica aliquoties existit cum ante etatem, et aliquando contra voluntatem nobiles fœminæ, virique plebeis copulati perraro inter se ament. Prætereo et illud, quantum patrimoniam nobilium, causa hujusce tutelæ lacerentur à novis possessoribus; qui suis avare commoditatibus servientes pecus omne non modo tondent, sed deglubunt egregie. Atque hoc est principum munus, quod regias opes maxime adauxit.

Herein Polydor hath erred in all three. For first, where he affirmeth for the time, that this *novum vestigialis genus* was excogitated, and granted to king Henry the third anno domini 1219. which was in the third year of his reign, Glanvil who wrote in the reign of H. 2. treateth of wardships due to the king and other lords: to the king in these words. *Notandum tamen quod si quis in capite tenere debet, tunc ejus custodia ad dominum regem plene pertinet, sive alios dominos habere debeat sive non, quia dominus rex nullum potest habere parem, multo minus seniore, &c.* And he treateth *ubi supra* of wardships then due, (which holdeth law till this day) and speaketh nothing of the beginning of them.

King John in the seventeenth year of his reign made a great charter, and granted *concilio baronum, quod custos terræ hæredis qui infra etatem fuer' non capiat de terra hæredis nisi rationabiles exitus, et rationabiles consuetudines et rationabilia servitia, et hæc sine destructione et vasto hominum vel rerum. Et si nos commiserimus custodiam alicui talis terræ vicecomiti vel alicui alii, qui de exitibus terræ illius nobis debent respondere, et ille destructionem de custodia fecerit vel vastum, nos ab illo capiemus emendam, et terra committatur duobus legalibus et discretis hominibus de feudo illo, qui similiter nobis respondeant, sicut prædictum est. Custos autem quamdiu custodiam terræ habuerit, sustentet domos, parcos, vivaria, stagna, molendina, et cætera ad illam terram pertinentia de exitibus terræ ejusdem. Et reddat hæredi, cum ad plenam etatem pervenerit, terram suam totam inflauratam de carucis, et omnibus aliis rebus, ad minus secundum quod illa recepit.*

2. Where Polydor saith, *Utro concesserunt ut quoties, &c.* he affirmeth that it came from the grant of the subject to the king. The truth is, that all tenures by knights service, which since the conquest draweth ward and marriage (for reliefe was due before) were either created and reserved by the king, or before of 18 E. 1. *quia emptores terrarum* by the subjects of the realm. If by the king, it is either of the person of the king, *ut de corona*, which we call *in capite*, or of some honour or manor. If by a subject, either of his person or of an honor or manor. And all these tenures have been created according to this rule, *cujus est dare, ejus est defendere*. And all the lands in England originally moved from the king, and are holden of him mediately or immediately.

The other part taketh the end of the creation of these tenures by knights service, which were originally created for the defence

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Lib. 7. cap. 9, 10.
And Ockham
who wrote tem-
pore H. 2. treat-
eth also of ward-
ships and liveries.

Matth. Paris
pag. 246.

1 part of the In-
stitutes. sect. 103.

Polydor saith,
that this *novum
vestigialis genus*
was granted to
the king.
1 part of the
Inst. sect. 1.

Britton fo. 162.
h. Lib. Rub.

The charter of king Kenulfus, anno dom. 821. The like charter of king Ethelred to a knight called Athelweg, anno dom. 995.

The charter of king Ethelred. 1001.

Braeton l'b. 2. fo. 36, 37. &c. 1 part of the Institutes sect. 103. Verb Chivaler. Castle.

Comming of enemies.

Ditome.

Regist. fo. 2. Domesday tit. Cestrefc.

of the realm by his own subjects, which is more safe then to trust to foreigners. But hereof you may reade at large in Littleton, sect. 95, 96. & 103. and Li. Rub. *Maxime enim princeps domesticos, quam stipendiarios bellicis apponere casibus.*

This tenure which now is called escuage, or *servicium scuti*, was of ancient time named *expeditio hominum cum scutis*, as you may reade in the charter of king Kenulphus, who *anno domini 821 et regni sui 25* granted to the abbot of Abbandon many manors and lands, and reserved *quod expeditionem duodecim virorum cum tantis scutis exerceant, antiquos pontes, et arces renovent, &c.* Of all other services and charges he and his successors were discharged.

*In nomine excelsi tonantis, cujus nutu et misericordie à pio patre præditus, ego Ethelred rex totius insule cum consensu et licentia optimatum meorum aliorumque meorum fidelium dabo, et libenti animo concedo Clofice. quandam ruris particulam, hoc est, 20 mansos in loco quem ruricola vocitant at yceantun in hereditatem perpetuam, et semper liber permaneat notis et ignotis, magnis et modicis, ad habenda et tradenda qualicumque. voluerit relinquat ob omni tributo et * servicio regali, nisi constructione pontis, et arcis ædificatione, et hostium expeditione. Actum est autem hoc mea concessionis donum anno dominicæ incarnationis 1001. &c.*

In the book of Domesday you shall finde it thus recorded.

Sudrie.

Episcopus Baioc'

Ille qui tenet de Wodardo reddit ei 50 s. et servicium unius militis, and in divers other places. And in Domesday mention is often made of *drenches* or *drenges* which is as much to say as *tenentes per servicium militare*.

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Many others of this kind might be cited to prove that prudent antiquity ever provided by reservation of tenure (amongst other things) for the defence of the realm against the invasion of enemies.

All our ancient authors treat hereof. See the first part of the Institutes, sect. 103. and see the Grand Custumer of Normandy, cap. 33. &c. fo. 49.

You have heard before *de regali servicio*, before the conquest, but that *regale servicium* (which was knight service) drew unto it relief, but neither wardship of the body or of the land, as hath been said. It is true that the Conqueror in respect of that royall service as a badge of the conquest took the wardship of the land and the marriage of the heirs within age of such tenants, but this extended not to the tenures of the subjects by knights service, as it appeareth by Braeton: *Dicitur regale servicium, quia spectat ad dominum regem, et non alium, et secundum quod in conquestu fuit adinventum; et hujusmodi servicia persolvuntur ratione tenementorum, et non personarum, quia ex tenementis proveniunt, ut si dicatur faciendo inde forsecum servicium, vel regale servicium, sive servicium domini regis, &c.* So as the Conqueror provided for himself, but other lords at the first by special reservation since the conquest provided upon gift of lands for themselves: *Regis ad exemplum totus componitur orbis*, wherein that which we had from the Conqueror we freely confesse, and that which the Normans had from us, we have truly related in other places.

The good king H. 1. son of the Conquerour finding that the wardship of the body and lands of his tenants by knight service exacted

Olanvil. l. 7. c. 9. 10. *Ockham in diversis locis.* Mirror cap. 165. Braeton lib. 2. fo. 36. a. 85. Britton fo. 162. 28. 95. Fleta l. 1. ca. 8.

Braet. l. 2. fo. 36. Ubi supra. The tenure (as before it appeareth) was not then invented, but the fruits of the tenure of the king, viz. wardship and marriage, which was Braetons meaning.

exacted by his father was both grievous and unjust, by his great charter anno primo regni suo, reciting *Quod regnum suum oppressum erat injustis exactionibus, &c.* (and particularly *tempore patris sui*) did grant (amongst other things) *Quod si uxor cum liberis remanserit, dotem suam et maritagium habebit dum corpus suum legitime servabit, et eam non dabit nisi secundum velle suum, et terræ et liberorum custos erit sive uxor, sive alius propinquior, &c.* To be shord by that golden charter, *omnes malas consuetudines, quibus regnum Angliæ injustè opprimebatur, inde abstulit, et legem regis Edovardi reddidit.* These were called king Edwards laws, not that king Edward made them, *sed quia ex tribus legibus, sc. Anglorum, Danorum, et Merciorum unam legem communem edidit. Vide Ranulph' Cestriens. Lib. 1. cap. 50.*

And where some have objected that wardship is a badge of servitude, for that in the writ of *nativo habendo*, one of the explees (amongst others) is *capiendo redemptionem ab eo pro filiis et filiabus maritandis et aliis villanis servitiis.* That is, taking ransome of him for the marriage of his sons and daughters, and other villain services. To this it is answered, that the king for mariage of his wards taketh no ransomes, but such moderate sums of money, as in respect of the quality and state of the ward, he, or she, all circumstances considered, is able to pay, and in regard thereof, he hath the protection of the court of wards during minority: but if ransomes should be taken, it should not only be against the right institution of wardships before remembred, but also a badge of servitude: and therefore by the statute of Magna Carta, of H. 3. cap. 4, 5, 6. (seeing the crown had a long possession of the wardship of the body and lands of the kings tenant by knights service) it was provided, first, that the king or his grantee or committee should not take of the lands of the heir * but reasonable issues, reasonable customes and reasonable services, without destruction, &c. (and all unreasonable and excessive things are against the common law, *excessivum omne in jure reprobatur.*) Secondly, shall keep up the houles and other inheritance of the heir, and deliver to the heir all his lands stored with ploughs and all other things (woods and all) at least as he received them: whereby it appeareth, that the value of the marriage should be so reasonable, as the heir should not at his full age be enforced for payment thereof to sell either lands or goods. Thirdly, that if the heir be married, that he be advanced thereby, and not disparaged.

John earl of Oxford being the kings ward married without the kings licence, for the which, both for the contempt, and for the duty to the king for so marving, he was fined at three thousand pounds, which was not the value of his lands by one year: and yet he petitioned in parliament to be pardoned of part thereof, which was thought reasonable. And certainly the reasonable rating of wardships of the body and lands is both according to the laws of the realm, and a mean of increase of the kings revenue.

As to the third: there were of ancient and latter times masters or keepers of the kings wards for the kings best advantage, and the profits and revenue thereof were answered in the kings court of exchequer: as taking one example or two in stead of many for both the points.

* *Rex commisit Randulpho de Nova villa episcopo Cicestr. et Stephano de Segrave custodiam omnium eschaetorum suorum qui accidunt per totum regnum*

* Note, reasonable thrice repeated, that it might be observed.

Rot parl.
15 H. 6. nu. 19.
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* Rot. finium.
14 H. 3. m. 9.
Hereof see Mat.
Par. anno domini
1232. 16 H. 3.
Of Hubert de
Burgo, & Ste-
phen Segrave.
See also Int. rot.
finium, anno
3 E. 1. m. 4. rot.
pat. 3 E. 1. m. 33.
rot. finium,
13. E. 1. m. 24.

regnum Angliæ, tam in wardis, quam in omnibus aliis eschaetis quæ regi accidere possint, et respondend' inde ad seaccarium.

Rot. pat.
25 H. 6. parte 2.
m. 24.

See the statute of 51 H. 3. *statut' de seaccario.* Sheriffs shall be keepers of the kings wards, and answerable for the issues thereof in the exchequer.

See the first part of the Institutes, li. 2. par totum.

What care there was of ancient time to preserve the free of pious, honourable, and profitable tenures of the king, and for profit especially tenures in *capite* and by knights service, and that the king should be truly answered of wardships, and other fruits and profits due unto him by reason thereof, it notably appeareth by the articles inquired by the justices in eire, and by our ancient books.

Capit. Itineris in Vet. Mag. Cart. 157, 158. Bracl. lib. 3. 116. b. Britton fo. 28. Fleta l. 1. ca. 20.

De eschaetoribus et subeschaetoribus in seignia domini regis facientibus vastum, vel destructionem in parcis, boscis, vivariis, vel warrenis infra custodias sibi commissus per dominum regem, quantum et de quibus, et à quo tempore. Item de eisdem qui occasione hujusmodi ceperint bona defunctorum, vel hæredum in manu domini regis injuste, donec redimerentur ab eis, et quid, et quantum pro hujusmodi redemptione, et quid ad opus suum inde retinuerint, et à quo tempore. Item de eisdem qui minus sufficienter terras alicujus in favorem ejusdem, vel alterius cujuscumque cui custodia terrarum illarum dari, vendi vel concedi debuerit, in deceptionem domini regis, et ubi, et quando, et quid inde ceperint, et à quo tempore. Item de eisdem qui prece, precio, vel auxilio, vel favore consenserint, vel consuluerint quod custodiæ domini regis venderentur pro minore precio, quam vendi deberent secundum verum valorem, vel maritagia ad dominum regem spectantia. Et si aliquo modo conclaverint custodias domini regis, vel maritagia hæredum, vel tenentium de rege in capite, vel maritagia dominarum, viduarum maritatarum sine licentia regis, et si quid propter hoc ceperint et quantum, et à quo tempore. Item de hiis qui reservaverint ad opus proprium custodiam, vel maritagium per leve precium, sive per conclavementum factum versus dominum regem, et cujusmodi damnum rex inde habuerit, et à quo tempore. Item cujusmodi seiserint terras, et per quantum tempus eas in manu domini regis tenuerint. Item de terris captis in manu domini regis, quæ capi non deberent, et postea restitutas per præceptum domini regis cum perceptis, utrum percepta restituerint ad mandata domini regis, vel non. Et de omnibus prædictis factis et commissis infra viginti et quinque annos proxime prædictos prædicti justiciarii se intromittant. Et omnes illi qui sentiunt se super hiis gravatos, et inde conqueri voluerint, audiantur, et fiat eis super hoc justicia, et ipse justiciarius pro hiis quæ dominum regem contingunt diligenter inquirent, &c.

Vet. Mag. Carta 160, 161. Inter capit. Eschaetrie.

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Primo et principaliter inquiretur de feodis militum, et advocacionibus ecclesiarum ad dominum regem pertinentibus, viz. quot sunt, et quæ sunt tenementa, et quantitas tenuræ, et per quæ servicia.

Item, si feoda illa integra sint vel demembrata, non habendo respectum ad tempus. Item si demembrata, per quem, quando, cui, qualiter, quomodo, et quantum valent per annum. Item si tradantur alicui ad terminum vitæ, vel annorum, sine licentia regis, tunc cui, quando, qualiter, et quomodo, et quantum valent per annum. Et si tenentur per medium, per quem medium.

Item de tenentis quæ tenentur de rege in capite, vel teneri debent, si aliquis faciat se medium inter dominum regem, et verum tenentem suum, tunc queratur ubi, quando, qualiter, et quomodo, et ad quod damnum regis, vel si modo tenuram mutaverint.

Item de aliis qui tenent de corona per magnam serjantiam, vel parvam, antiquum dominicum domini regis, socagium, feodi firmam, vel per aliquod servicium, si iidem tenentes aliquod alienaverint, vel demembra-

Verint, cui, quando, quantum, qualiter et quomodo, sive sint de aliquo honore, sive de corona, et de valore annuo. Et si aliquis, qui de rege tenuerit per antiquum dominicum vel focagium, mutaverit tenuram suam, et ad damnum regis, cui, ubi, quando, qualiter, et quomodo, et ad quod damnum regis, et quantum hujusmodi tenementum valet per annum.

Item si aliquis conclauerit aliquem redditum, sive aliquod seruicium, seu aliquas consuetudines domino regi debitas, tunc quis, quando, qualiter, et quomodo, et quæ seruicia, et quem redditum, et quas consuetudines, et quæ tenementa tenent de quibus debentur hujusmodi seruicia, et quantum valent per annum, et ad quod damnum regis hujusmodi conclamenta sunt.

Item, de hæredibus quorum custodia et maritagium pertinent ad dominum regem, et dominus rex ea habuerit, quando deberet habere. Et si aliquis hujusmodi hæredum ingressus fuerit sine autoritate curiæ, et absque legitima ætatis suæ probatione si infra ætatem, et si plenæ ætatis, absque faciando regi homagium, vel aliud seruicium quod ei debet. Et tunc quis sit illic hæres, quo tempore intravit, et post mortem cujus, et per quod seruicium illa hæreditas teneatur et quantum valet per annum.

Item de viduis similiter quarum maritagium pertinet ad regem, si se maritauerint sine licentia regis, cui, quando, cujus consensu, et ad quod damnum regis, et quantum tenementa valent quæ tenent in dotem de primo marito suo.

Item de hæredibus qui deberent esse in custodia regis, et quis custodiam usurpauerit super regem, et à quo tempore, et quantum tenementa quæ tenent valent per annum.

Item si aliquis hujusmodi hæredum cujus antecessor de rege tenuit in capite, sive de aliquo hærede in custodia regis existente, maritatus fuerit sine licentia regis, tunc cui, quando, et per cujus consensum, et quantum terræ illæ valent per annum, et quantum cepit pro maritagio.

Item si dominicæ terræ domini regis in isto wapentagio sunt in tali statu sicut esse deberent, vel si trahuntur ad firmam, si dimittantur secundum valorem annuum earundem, et si custodes, vel firmarii vastum vel destructionem, ventilationem seu exilium fecerint in eisdem, vel in terris existentibus in manu domini regis per custodiam, vel alio modo, quis, ubi, quando, &c.

Yea so precious was immediate tenures of the king, as you read in the parliament roll in 18 E. 1. in these words.

Gilbertus de Unphrewill petit licentiam quod possit feoffare Gilbertum filium suum primogenitum, et Margar. uxorem ejus de manerio suo de Overton, tenend' de ipso Gilberto patre durante tota vita ipsius patris, et post ejus decessum de capitalibus dominis feodi. Respons. Rex non vult aliquem medium. Ideo non concessit.

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Rot. par. 18 E. 1.
fo. 4. nu. 52.
Note the form
of this tenure.

14 E. 3. ca. 13.
stat. 1.

By the statute of 14 E. 3. if the heir of the kings tenant in chief, &c. be found within age, and the next friends of the heir, towhom the inheritance cannot descend, shall come and offer them to take the said lands, yeelding the value to the king till the age of the heir, as far forth as other will yeeld without fraud; by accord between the chancelor and the treasurer, they shall have commission to keep the said lands by good and sufficient surety till the age of the said heir, and to answer the king the value. In this act this treasurer is intended of the treasurer of the exchequer. See before in the chapter of the court of exchequer.

Amongst the petitions of the commons, they pray that the said statute of 14 E. 3. may be observed, which the king granted.

Rot. par. 1 R. 2.
nu. 79. Rot. par.
50 E. 3. nu. 118.

IV. INST.

Q

It

* Ro. par. 22 E.
4. nu. 6. not
in print.

* It is provided by act of parliament in *anno* 22 E. 4. that where sundry of the kings tenants holding of him immediately, as of his duchy of Lanc', by sundry recoveries, fines and feoffments in use, defeated the king of wardships of body and lands: it is enacted, that the king and his heirs shall have the wardship and custody of the body and lands of every such person being within age, to whose use the fee simple or fee tail of any hereditaments so holden shall grow as heirs by the death of any of his auncelors, and if they be of full age to have relief notwithstanding any such conveyance.

Ibidem nu. 17.

An exact provision is made for writs to be granted out of the chancery for the embesiling of any such heir upon pursuit of the attorny of the duchy.

4 H. 7. ca. 17.
A general law.
Note the severall
pennings of these
two severall acts.

By the statute of 4 H. 7. it is provided that the lord of *cessi que use*, no will being declared, &c. shall have a writ of right of ward for the body and land, and the heir of *cessi que use* being of full age at the death of his auncelors shall pay relief. And the heir of *cessi que use* shall have like action of waste, as if the auncelors had died seised, &c.

Dier, 1 & 2 El.
fo. 174. b.

Upon this statute, a case that had in Mich. 1 & 2 Eliz. depended undiscussed thirty years, as the lord Dier reports, but not in the court of wards, (for that court had not then had so long continuance) but in the chancery and the court of wards it had so long continued, though in 7 H. 8. it had been resolved by all the judges in the exchequer chamber, that *cessi que use* of lands in fee by knights service in *capite*, and of lands holden of another lord in socage dying seised of the use of both, his heir within age, and no will by him declared, that the prerogative shall hold place: which resolution if it had been published in print, the tedious and chargeable suit had not so long continued.

Lib. 4. fo. 55.
&c. Vid. 2 E. 6.
cap. 8. Li. 7.
fo. 45. Li. 8.
168, 169.
See the 2. part
of the Init. cap.
the statute of
2 E. 6. cap. 8.
See 50 E. 3.
nu. 184.
See hereafter
1 H. 8. cap. 12.
This proclamation
we have.

Now for traverses, *Monfrans de droit*, &c. to be relieved against offices found for the king, you may read at large in our books, and especially in the Sadlers case in the fourth book of our reports, which being the birthright of the subject for his relief against a false office found, cannot be denied upon just cause shewed, but not to be used for delay. This was the offence of Sir Richard Empson and Edmund Dudley privy counsellors to king H. 7. and masters of his forfeitures (a new and unaccustomed office) who causing secret and false offices (as shall appear hereafter) to be found, the parties grieved were denied to have their traverse, *Monfrans de droit*, &c. which king H. 7. a little before his death being far gone into a consumption, with great remorse of conscience amongst other things repented, and by proclamation under the great seal in print (amongst other things published in these words.

See the statute
of 1 H. 8. ca. 12.
in ratifying
hereof.

And that none of his subjects ne make no doubt nor difficulty in all causes leessfull to make traverses, for his highnesse will expressly, and straightly chargeth and commandeth his chancelour and treasurer that they not only admit such traverses but also grant the fermes, where the case shall require, according to the true course of his laws.

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Hereupon many men were admitted to their traverses, and many on the other side were without remedy: for by the practice of Empson and Dudley, many were not onely denied to traverse, but
inforced

inforced upon such false offices to sue out their generall liveries, whereby they were concluded, and could not by law be admitted to their traverse.

King H. 8. in the first yeare of his reigne intending to give remedy against secret offices, doth by act of parliament provide, * That every escheator and commissioner shall sit in convenient and open places, according to the statute heretofore made: and that the said escheators and commissioners shall suffer every person to give evidence openly in their presence, to such inquests as shall be taken before any of them, upon paine of xl. li.

And by the preamble and other parts of this act of 1 H. 8. the sinister and unjust dealing of the said Empson and Dudley, concerning the finding of officers, are pourtrayed out, whereby the kings subjects then of late had beene sore hurt, troubled, * and wronged, and some disherited by nine other wayes. 1. In causing untrue offices to be found. 2. In returning of offices that never were found. 3. In changing of the offices that were truly found. 4. That escheators and commissioners were men of no livelihood, but indigent and unworthy persons, ready to serve turnes, and having nothing to lose, or to make satisfaction to the party grieved. 5. That jurors were returned for the finding of offices of no hability, or behaviour. 6. That the escheator or commissioner, when the jury were agreed of their verdict, would not receive the same, but therein use delays. 7. That the clerk of the petit bag, &c. would refuse to receive, and file such inquisitions as were found and offered to them. 8. The like of the officer in the exchequer, of offices returnable into the exchequer. 9. The clerke of the petit bag would refuse to transcribe the offices, &c. into the exchequer. For all which, and the other two before named, remedy is provided by this act, as by the same appeareth. At the same parliament for the redresse of parties grieved for suing out of liveries, another act is made, intituled, An act concerning untrue inquisitions procured by Empson and Dudley, in these words.

Shewen to your discret wisdomes, that where divers and many untrue inquisitions by the procurement of Richard Empson knight, and Edmund Dudley, have beene had and taken within this realme, as well before commissioners assigned by letters patents of the late king, king Henry 7. as before his escheators, as well by vertue of writs of the said late king, as by vertue of their office, by the which inquisitions sometime parcell of the said lands contained in the said inquisitions, and sometime the whole lands there founden holden of the said late king in capite, where in troth the said lands contained in the said inquisitions, nor no parcell of them was holden of the said late king in capite, ne of any of his progenitors: to the which inquisitions the parties then grieved by the same, could not, nor might not take their traverse to the same according to the law of the land, but were inforced and constrained to sue their * livery of the same out of the hands of the said late king,

1 H. 8. cap. 8.
3 H. 8. cap. 2.
34 E. 3. cap. 13.
36 E. 3. cap. 13.
23 H. 6. 17.
* By the procurement of Empson and Dudley offices were found in secret places, and men were denied to give in evidence for proof of their rights and tenures.
* See before cap. Of the high court of parliament.

1 H. 8. cap. 12.

* This is intended of a generall livery.

General livery
concludeth.

* Mich. 7 Jacobi
resolved by the
two chiefes jus-
tices, and the
chief baron, and
the court of
wards, in Hol-
mes cases.

1. That the suing
of a generall
livery concludeth
the heire, as
here it appeareth
by this act of
parliament, but
otherwise it is of
a speciall livery,
for that, as to
the tenure, is
but, *ut dicitur*.

2. That this con-
clusion or estop-
pel continueth
but during the
life of the heire
that sueth the
generall livery;
for jurors are
sworne *ad veri-
tatem dicend'*, and
are not bound
by estoppels.

3. That by suing
of livery, and

the death of the heire, the office is executed, and hath taken his full effect, and therefore the estop-
pel expireth therewith, and after the office cannot be traversed. Vide 46 E. 3. fol. 12. 44 Ass.
p. 35. *Nota dictum Moxbray, ibidem. Si un tiers de roy, &c. 1 H. 4. 6. 33 H. 6. fol. 7. per Laicon.*
Observe well the remedies provided by this particular act, &c. whereby the common law is affirmed.

See the first part
of the Institutes,
sect. 441. See
before cap. of
the high court
of parliament.

whereby they were, and be * concluded to say, that the said
lands be holden of the king in chief, to their great losse and
hindrance, where in truth they were not holden of the said
late king, ne of any his progenitors. Wherefore be it enact-
ed, ordained and established * by the king our soveraigne lord,
the lords spirituall and temporall, and by the commons in this
present parliament assembled, and by the authority of the same,
that every person and persons having possession of the said lands
contained in the said inquisitions, or any part thereof, may
be admitted to have their traverse to the said untrue inquisitions,
notwithstanding any livery sued in the time of the said late
king, king H. 7. And that it be further enacted by the same
authority, that any livery sued of the same in the time of the
said late king, ne any thing contained in the same livery, be
any conclusion after the course of the common law, or in any
wise hurtfull or prejudiciall to any person or persons, that shall
happen to tend their traverse to the said office, but that they
and every of them shall be admitted to their traverse to the
said inquisitions, and to have like advantage in the law, as
though no livery had beene sued of the same in the time of
the said late king, and this at the reverence of God, and in
the way of charity, &c. Provided always, that they, or any
of them which shall tend their traverse to any of the said in-
quisitions in any manner and forme as is aforesaid, shall not
be restored to any mean issues or profits of lands and tene-
ments comprised in the said inquisitions.

Now touching liveries which in those days were generall, what
a world of troubles the subjects suffered for missing of livery in
respect of pretended omissions, and the like, what charging the
subjects with values not found by any office, nor appearing by any
melius inquirendum with mean rates where none were, or for longer
time, then they were due, and the like, and these not recovered by
course of law, but sending for the parties by pursuivants, and by
their awfull countenance mixt with menaces and threats, drew
them to compositions: which, and other like oppressions and in-
justice, filled king H. 7. cofers; for by the close roll in anno 3 H. 8.
it appeareth, that the king left in his cofers fifty and three hundred
thousand pounds, most part in foreine coine, which in those dayes
was not of least value. Notwithstanding king H. 8. at his parla-
ment holden in anno 5 of his reigne, cap. 7. moved for a subsidie,
and was denied it; whereupon an act was made for taking out of
generall pardons, as a meane to bring money to the king. But I
periwade my selfe the reader will inquire what became of these two
wicked men, Empson and Dudley. The answer is, that first they
were severally indicted as followeth.

*Juratores presentant quod Richardus Empson nuper de London miles,
nuper consiliarius excellentissimi principis Henrici nuper regis Angliæ septimi,*

mi, 10. die Maii, anno regni dicti nuper regis vicefimo, ac diversis vicibus antea et postea apud London, &c. Deum præ oculis non habens, sed ut filius diabolicus imaginans honorem, dignitatem, et prosperitatem dicti nuper regis, et prosperitatem regni sui Angliæ minime valere, sed ut ipse magis singulares favores dicti nuper regis adhibere • unde magnatenu fieri potuisset, et totum regnum Angliæ secundum ejus voluntatem gubernare, falso, deceptivè, et proditorie legem Angliæ subvertens, (inter alia) idem Ricardus dictis die et anno a;ud London in parochia et ward præd' &c. diversas falsas inquisitiones, et officia de intrusionibus et alienationibus, de maneriis, terris, et tenementis, diversis ligeis ipsius nuper regis inveniri procuravit et excitavit, quod ipsi maneria, terras et tenementa in inquisitionibus illis specificat' de domino rege in capite vel aliter tenerent, cum ita non fuit, ac postea cum dicti ligei dicti nuper regis ad inquisitiones illas sic fact' traversas in curia ipsius nuper regis secundum legem Angliæ tendere et allegare voluissent, iidem ligei ad traversas illas admitti non potuissent, sed se debitis et legitimis traversis ad officia prædict' faciend' custodiavit et retardavit, quousque ipsi cum dicto Ricardo diversas magnas et importabiles fines et redemptiones, tam pro commodo ipsius nuper regis, quàm pro singulari commodo ipsius Ricardi fecer', in magnam depauperationem eorundem ligeorum. Et quod prædictus Ricardus dict' die et anno in parochia et warda prædict', ac diversis vicibus antea et postea, diversos ligeos dict' nuper regis de dicto domino rege diversa maneria, terras, et tenementa per servic' milit' tenent', et mort' antecessor' suis ipsis infra ætatem existent', et in custodia dict' nuper regis ratione tenueræ suæ, cum ad ætates legitimas pervenerunt, et debitam liberationem maneriorum, terrarum, et tenementorum suorum secundum formam et legem Angliæ, ac secundum cursum cancellariæ ipsius nuper regis prosequi voluissent, ad hoc recipi non potuissent, sed ad hoc faciend' totaliter negat' et exclus' fuerunt, quousque ipsi cum prædict' Ricardo diversas magnas et importabiles fines et redemptiones, tam pro commodo ipsius regis, quam pro commodo ipsius Ricardi fecer', in magnam depauperationem eorundem ligeorum ejusdem nuper regis. (And the conclusion of the indictment is,) Per quod plures et diversi populi dicti nuper regis hiis gravaminibus et injustis extortionibus multipliciter torquebantur, in tantum quod populi dicti nuper regis versus ipsum regem multipliciter murmurabant, et malignabant in magnum periculum ipsius nuper regis regni sui Angliæ, ac subversionem legum et consuetudinum ejusdem regni.

True it is, that in this indictment (*proditorie*) was used but for aggravation, and as a preparative to greater offences, for in the same yeare they were both indicted of high treason both by the common law, and act of parliament, and in the 2. yeare of H. 8. they lost both their heads. And albeit in some respects the speciall livery is for the benefit of the heyre, yet the fees and charges are so great, and the bonds and covenants, &c. so many, so intricate, and dangerous, as it were worthy to be redressed, for the ease and quiet of the fatherlesse, and widow, (being no benefit to the king, but to fill the purses of clerkes and officers) by authority of parliament; and the rather, for that speciall liveries were of ancient time, as short as the charges thereof; whereof you may reade a notable president, when wardships and liveries were in their cradles, which followeth in these words.

Richardus Dei gratia rex Angliæ, dux Normanniæ, Aquitaniæ, comes Andegaviæ, archiepiscopus, episcopus, abbatibus, comitibus, baronibus, justiciariis,

Q 3

* Ambitio.

Proditorie legem Angliæ subvertens.

Falsas inquisitiones et officia, &c.

Ad traversas admitti non potuissent.

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Pro singulari commodo ipsius Ricardi.

Ad debitam liberationem admitti non potuissent.

The residue of the indictment concerning other exorbitant oppressions and grievances, are worthy to be read, but concerne not the matter in hand.

Quorum vestigiis qui insunt, eorum exitum perhorrescant.

Vide in the history of Henen den, pag. 446. 2. R. 1.

^a Nota, concessio is a sure word in omnem eventum, and will answer to a livery.

^b This Geffery Fitzpeter was after chiefe justice of England.

^c This William de Mandevile was earle of Essex.

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justiciariis, vicecomitibus, et omnibus ballivis, et fidelibus suis, ad quos præsens charta pervenerit, salutem. Sciatis nos^a concessisse, et præsentis charta nostra confirmasse dilecto et fideli nostro^b Galfredo filio Perri, et Beatrixe de Sayeo uxori ejus, tanquam justo et propinquiori hæredi, totam terram comitis^c Willielmi de Mandevile, quæ et jurè hæreditario pertinebat, cum omnibus pertinentiis, et libertatibus, et liberis consuetudinibus suis. Quare volumus, et firmiter præcipimus quod prædicti Galfredus et Beatrix uxor sua, et hæredes eorum habeant et teneant de nobis et hæredibus nostris totam prædictam terram cum pertinentiis suis sicut prædictus comes Willielmus de Mandevile eam melius, et liberius, et honorificentius, et integrius, et quietius habuit unquam et possedit, in bosco, et plano, viis, semitis, pratis, pascuis, pasturis, aquis, vivariis, stagnis, piscariis, molendinis, turbariis, in advocacionibus ecclesiarum, in custodiis valetorum, et donationibus puellarum, et in omnibus aliis locis et aliis rebus. Hiis testibus Waltero Rothomagensi archiepiscopo, Johanne Eboracensi episcopo, Rogero de Prætelis dapifero nostro, Richardo de Karvile, Bertrano de Verduno, Radulpho filio Godfredi camerario nostro. Datum per manum magistri R. mali catuli clerici nostri, anno regni nostri secundo, xxij. die Januarii apud Messanam.

Now are we arrived at the said act of parliament in anno 32 H. 8. wherein, and in the statute of 33 H. 8. besides the exposition of the severall texts, we will observe what alterations these two acts have made.

Ordaineth, maketh, establisheth, and erecteth a court, &c.] Herein three things are to be observed. 1. That this new court could not be erected without an act of parliament. 2. That when a new court is erected, it is necessary that the jurisdiction and authority of the court be certainly set downe. 3. That the court can have no other jurisdiction, then is expressed in the erection, for this new court cannot prescribe.

Pasch. 6 Ja. the bishop of Salisbury case.

Pasch. 6 Ja. the case betwene the king and the bishop of Salisbury, referred to the two chiefe justices and chiefe baron, by the lords of the honourable order of the garter, was this. King E. 4. by his letters patents in French, bearing date 10 Octobris, anno 15. of his reigne, reciting, that where there was no office of the chancellor of the garter, that there should be such an office of the chancellor of the garter, and that none should have it but the bishop of Salisbury for the time being: we will and ordaine, that Richard Beauchampe, now bishop of Salisbury, should have it for his life, and after his decease, that his successors should have it for ever. And amongst divers other points it was resolved unanimously, that this grant was void, for that a new office was erected, and it was not defined what jurisdiction or authority the officer should have, and therefore for the incertainty it was void. Which being reported to the lords, they were well satisfied therewith, and thereupon the office was granted to Sir John Herbert the kings secretary.

A court of record.] Where it is to be noted, that albeit the proceeding in this court be in English, yet it is a court of record by expresse words of the act.

And shall have also a seale, &c.] This is also necessary to a court.

That all wards, &c.] This clause extendeth as well to the counties palatines of Lancaster, Chester, and Duresme, as to any other the

the parts of the realm of England, but in severall manners. For as to the wards within the realm of England (out of the said counties palatines) the writ for the finding of the office, &c. issueth out of the chancery of England, returnable in the chancery of England. And as to the wards in the counties palatines of Lancaster and Duresme, the writ likewise issueth out of the chancery of England, but is returnable into the chancery respectively of these two counties palatine, and the chancelors thereof are to transcript them into the court of wards.

^a But for wards in the county palatine of Chester, no writ issueth out of the chancery of England, but it ought to be found by force of a writ or commission out of the chancery there in the exchequer, and transcribed by the chamberlain of that county palatine into the court of wards. ^b *Nos dum hæredes in custodia nostra existunt, indemnes et sine exheredatione conservare tenemur.*

^c And by this clause of this act of 32 H. 8. the power that the lord chancellor and treasurer had for letting of wards lands, &c. is taken away.

^d By the statute of 18 El. it is enacted, that all inquisitions and offices to be found before any escheator or commissioners, by virtue of any writ or commission, or otherwise within the said county palatines of the said duchie of Lancaster, Chester, and Duresme, or any of them, shall be returned by the said escheators or commissioners within one month next after the taking of any such office or inquisition into such place or places, and to such office and offices, as heretofore they have usually been accustomed to be certified and returned into, upon paine to forfeit for every default xl. li. to the use of our said sovereign lady, her heirs and successors. And that the clerk of the said duchy of Lanc^e, the vicechamberlain of the said earldome of Chester, and the chancelour of the said county palatine of the said bishoprick of Duresme, or other the said officers or ministers within the said counties palatines, or their deputy or deputies, and every of them for the time being having authority to receive any such office or inquisition, to whose hands any such office or inquisition shall come to, shall certifie, or cause to be certified under his or their hands in parchment the true transcript of every such office or inquisition taken before any of the said escheators or commissioners unto the master of the said court of wards and liveries, in such like manner, form and sort, as is limited and appointed to the clerks of the petit bag in her highnesse said court of chancery to transcript the same, upon pain to forfeit for every such default 5. li. to the use of our said soveraigne lady, her heirs and successors: which transcript so to be certified shall there remaine of record in like manner and form to all intents and purposes, as the transcripts of other offices already certified into the said court by the clerks of the petit bag in her majesties high court of chancery, are used: any custome, statute, act, proviso or provisoes heretofore had, made, or used to the contrary in any wise notwithstanding.

The statute of 32 H. 8. for erection of the court of wards extended only to wards: but the statute of 33 H. 8. annexeth to this court liveries also. Now in what cases the heire shall be in ward or sue his livery, either by the common law, or by the statutes, and specially of 32 H. 8. and 34 H. 8. &c. and of all incidents

V. Rot. parl. 9 R. 2. 13. the resolution of all the judges of Engl. what right the duke of Lancaster had to the wardship of Isabel the heire of Tho. of Lathom whom Sir John Stanly had married, for the manor of Lathom holden of him in chiefe as of his county palatine. V. 26 H. 8. 9. b. ^a 14. Eliz. Dier. 303. ^b Mich. 26 E. 1. coram rege. Buck William de Laudares case. c 8 H. 6. cap. 16. 18 H. 6. cap. 6. ^d 18 Eliz. cap. 13.

dents to the same, you shall reade plentifull matter both in the first part of the Institutes, cap. Efcuage, and cap. Service de Chivalier : and also in the books of my Reports.

Which the kings highnesse, &c.] Although successors be not here named, (yet kings highnesse) being spoken in his royall and politick capacity, which never dieth, doth extend to his successors : otherwise this court had been dissolved by the demise of H. 8.

¶ Mich. 7 E. 1. in banco.

Rot. 126. Warw. Abbot of Malm-sburies case.

¶ Sec 33 H. 8. cap. 22. A proviso for the duchy of Lancaster.

¶ 14 Eliz. Dier. 303.

¶ Mich. 14. H. 8. *Quens per Brud-pel, Brook et Fitz.* in Keyways report. And so was it holden Trin.

40 Eliz. by Pop-ham, Anderlon, and Peryam, upon a case referred to them by the lords of the counsell, between the eade of Derby and the heirs generall.

¶ See more hereof in the chapter of the court of the duchy of Lancaster.

And Pl. com. fo. 214. & 215.

¶ Pl. com. fo. 115. 116. in Townsends case.

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¶ See the first part of the Inst. sect. 1.

See Pl. Com. fo. 295. Carils case.

See Mag. Cart. cap. 5. The stock of goods shall be restored to the heir. O'nevil, fo. 54. Fletch. 1. 1.

Ed. 1. 1.

¶ All the justices in Ireland certified, *Quod homagium tantum dat secundum consuetudinem terræ Hiberniæ custod' et maritag', licet servitium militare non debeat.*

¶ *Intituled to have.*] That is by office to be found.

With their manners and lands, &c.] This clause extendeth only to the inheritances of the ward, and not to any of his goods or chattels, debts or duties, &c. but hereof more shall be said hereafter in his proper place,

In the order, survey and governance of the said court.] ¶ The generall words of this act extend not into Ireland, for that is a divided and distinct kingdome, and hath a proper seale. ¶ Nor to the Ile of Man, because it is no part of the realm of England, and out of the power of the chancery of England, and not to be bound by our parliament of England, but by speciall name.

And that the master of the said wards] By this clause the master only hath power to award proces.

Such proces and precepts with reasonable pains therein limited, as be now commonly used in the court of the duchy chamber of Lancaster being at Westm.] ¶ Note, the duchy of Lancaster was created a county palatine by act of parliament in anno 50 E. 3. *Adeo plene et integre sicut comes Cestriæ infra eundem com' Cestriæ dignoscitur obtinere.* And hereupon the court of wards is well warranted to be a court of equity, and accordingly from the erection hereof it hath proceeded.

¶ *For or concerning the title of the kings majesty.*] This is evident.

And that the master of the court of wards for the time being shall make and appoint all and singular particular receivers, feodaries, and surveyors in every shire, and also fees for the execution of the same under the seale of the same office in such wise as the same officers may be alwayes removable at the discretion of the said court.]

Feodarius or *feudatarius* is derived a *feodo seu feudo*, which in one sense signifieth a * feignory or tenure: his office consisteth principally in three things. 1. And principally to be skilfull in the knowledge of the kings tenures within his office out of records and authentick books. 2. At the finding of offices to doe his uttermost endeavour to manifest the truth concerning the kings tenures. 3. After the office found to survey the wards lands, and rate it.

Or other cause in any wise touching or concerning any thing appointed to the order of the said court, for, and on the behalfe of our soveraigne lord the king.] By this clause, if the heir within age and in ward have any goods and chattels, debts, duties, or other thing due unto him, an information may be exhibited by his majesties attorney of this wards for his majettie on the behalfe of the heir: for this doth touch or concern the value of the wardship of the body, which is appointed by this act to the order and survey of this court, for the

value

value of the marriage is hereby advanced. But if the heire at the death of his ancestor be of full age, seeing the primer season is certain, no suit can be in this court for any goods, chattels, debts, &c. belonging to the heir of full age: * for this doth not in any wise concern any thing appointed to the order of this court, viz. neither the wardship of the body, or of the lands of the heire.

• Prærogativa regis, cap. 3.

Also be it enacted that the said attorny, receiver generall, and auditors, &c.] The judges of this court are the master, the surveyor, the attorny, receiver generall, and the auditors of that court. For the words of the statute of 32 H. 8. are, That the said attorny, receiver generall, and auditors, shall diligently from time to time attend upon the said master in the said court for the hearing and ordering of matters and causes, &c. and the statute of 33 H. 8. hath added the surveyour in the second place in that court: and albeit *honoris causa*, they are to attend on the master, as the chief and principall officer of the said court, for so he is stiled by both the said statutes: yet such attendance is for the hearing and ordering of matters and causes, &c. which maketh them judges. And see the oath of the surveyour which proveth his office to be judiciall: for by the statute of 33 H. 8. his oath is *inter alia*,) That he shall minister equal justice to rich and poore, &c. and that he take no gift or reward for any matter depending, &c. in that court. And the like oath in effect taketh the attorny, the receiver generall and auditors, by the said act of 32 H. 8. And so it was resolved in auditor Curles case when Robert earle of Salisbury was master of the wards and lord treasurer of England.

Hil. 7. Jac. li. 11. fo. 2. & 3. in auditor Curles case.

See the statute of Lincolne 29 E. 1. Stanf. *Præ. regis*, ca. *Refeifer*. See a notable case upon that statute within three years after the making thereof. Hil. 32 E. 1. *coram rege*. Northampton Jordan Twinewikes case,

At the parliament holden 18 *Jacobi regis* it was moved on the kings behalfe, and commended by the king to the parliament for a competent yearly rent to be assured to his majesty, his heirs and successors, that the king would assent that all wardships, primer seasons, reliefs for tenures *in capite*, or by knights service should be discharged, &c. Wherein amongst certain old parliament men these thirteen things did fall into consideration for the effecting thereof.

1. That it must be done by act of parliament, and otherwise it cannot be done.
2. That all lands, tenements, rents, or hereditaments, holden of the king, to be holden by fealty only, as of some honour, and such rent, as is now due.
3. That all lands holden of subjects, bodies politick or corporate, by knights service to be holden by fealty, and such rent as is now due; for if lands should be holden of them by knights service, the same might come to the king.
4. All subjects, bodies politick and corporate to be disabled to take any lands, tenements, rents, or hereditaments of the king, his heirs, or successors by any other tenure, then by fealty only, and yearly rent, or without rent of some honour.

5: No subject, bodies politick or corporate to create by any license, or any other way or means, any other tenure then by fealty

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fealty and rent, or without rent upon any estate in fee-simple, fee-tayl, or otherwise.

* First search must be made what the king hath been answered for these, &c.

6. In respect of the said discharge and freedome of the subjects and their posterities, and that they shall be also discharged thereby of fines and licenses of alienations, respect of homage and reliefs: * a competent rent to be assured to the king, his heirs, and successors of greater yearly value then he or any of his predecessors had for them all, which rent is to be inseparably annexed to the crown, payable at the receipt only.

7. A convenient rent to be assured to the lords for every knights fee, and so ratably.

8. Commissions for the finding out of the tenures of the king, and the subject to be returned, &c.

9. Ideots and madmen to be in the custody of some of their kindred, &c. and not of the king, his heirs or successors.

10. The court of wards to be dissolved with pensions to the present officers.

11. Provision to be made for regulating of gardien in focage, and that the ancestor may appoint gardiens, &c. and that no gardien shall make a grant to the king.

12. Provision to be made that bishops shall continue lords of parliament, notwithstanding their baronies be holden in focage.

13. That the act shall be favourably interpreted for discharge of all wardships, &c.

* *Spes est vigilantis somnium.* Hope is the dreame of a waking man.

Which motion, though it proceeded not to effect, yet we thought good to remember it, together with these considerations; * hoping that so good a motion tending to the honour and profit of the king and his crown for ever, and the freedom and the quiet of his subjects and their posterities, will some time or other (by the grace of God) by authority of parliament one way or other take effect and be established.

Psal. 46. 9. & 67. 6.

And we will conclude this chapter with holy scripture: *Deus est pater orphanorum, et iudex viduarum.* And again, *Deus custodit advenas, pupillum, et viduam suscipiet.* And lastly, in Deuteronomy 27. 19. *Maledictus est qui pervertet iudicium advenæ, pupilli, et viduæ.*

Deut. 27. 19.

C A P. XXXVI.

The Court of the Duchy Chamber of Lancaster at Westm'.

FORASMUCH (as it hath been said) the court of wards hath some reference to this court of the duchy, we thought it fit to treat of this court of the duchy next after the said court of wards, for that it may give somelicht thereunto. Now for that the county of Lancaster is a county palatine, it shall be necessary to shew the beginning and erection thereof.

King Edward the 3. created John his fourth son earl of Richmond, anno domini 1355, he 19 Maii anno domini 1359 married Blanche youngest daughter of Henry duke of Lancaster (the second duke that England saw.) Duke Henry died of the plague, anno 35 E. 3. At the parliament holden anno 36 E. 3. the king in full parliament did gird his son John with a sword, and set on his head a cap of furre, and upon the same a circle of gold and pearls, and named him duke of Lancaster, and thereof gave to him, and to his heirs males of his body, and delivered him a charter.

In full parliament, anno 50 E. 3. the king erected the county of Lancaster a county palatine, and honoured the duke of Lancaster therewith for term of his life in these words.

Edwardus Dei gratia, &c. Sciatis quod si nos debita consideratione pensantes gestus magnificos cunctorum qui nobis in guerris nostris laudabiliter et strenue seruerunt, ipsos desideremus honoribus attollere, Et pro viribus juxta merita præmiare, quanto magis filios nostros, quos tam in sapientia, quam in gestu nobili alios præcellere conspiciamus, et qui nobis locum tenuerunt, et tenere poterunt potiore, nos convenit majoribus honoribus et gratiis prærogare? considerantes itaque probitatem strenuam, et sapientiam præcellentem charissimi filii nostri Johannis regis Castellæ et Legionis, ducis Lancastriæ, qui laboribus et expensis semper se nobis obsequiosum exhibuit pro nobis pluries in necessitatibus intrepide se guerrarum discriminiibus exponendo, et volentes eo pretextu, ac desiderantes eundem filium nostrum aliquali commodo et honore ad præsens (licet non ad plenum prout digna merita exposcunt) remunerare; ex certa scientia nostra, et læto corde a de assensu prælatorum et procerum in instanti parlamento nostro apud Westm' convocat' existent' concessimus pro nobis et hæredibus nostris præfato filio nostro quod ipse ad totam vitam suam habeat infra comitatum Lancastriæ cancellariam suam, ac breviam sua sub sigillo suo pro officio cancellarii, deputando, consignando justiciarios suos tam ad placita coronæ, quam ad quæcunque alia placita communem legem tangentia, tenenda, ac cognitiones eorundem, et quascunque executiones per breviam sua et ministros suos faciendas. Et quæcunque alia libertates et jura regalia ad comitatum palatinum pertinentia, adeo libere et integre sicut comes Cestriæ infra eundem comitatum Cestriæ dignoscitur obtinere, &c.

But it appeareth by the book of 26 E. 3. 59. b. that the said Henry duke of Lancaster had the like grant; for there in a præcipe

3

Rot. pat. anno 29 E. 3.

Rot. par. 36 E. 3. nu. 36, 37. Rot. pat. anno 36 E. 3.

Rot. pat. anno 50 E. 3. See the 2. pt. of the Inst. Mag. Cart. c. 31. 32 H. 6. fo. 13. the king may make a county palatine by his letters patents without parliament.

a De assensu prælatorum et procerum.

12 E. 4. 16. b 5 things to be observed for erecting a county palatine.

1 Cancellaria. 2 Brevia sub sigillo suo.

3 Justiciarios suos tam ad placita coronæ quam alia placita, &c.

4 Quæcunq; alia jura regalia ad com' palatinum pertinentia.

5 Adeo libere et plene prout comes Cestriæ.

See 19 H. 6. 12. 21 E. 4. 8. c 26 E. 3. 59. b.

the tenant vouched, and that he might be summoned in the county of Lanc', and the vouchee challenged, because in the county of Lancaster the kings writ did not run, *sed non allocatur*, but a writ sent to the duke or to his lieutenant to summon the vouchee in the same manner as it should be done in Chester. Vid. 39 E. 3. Voucher 198.

Divers have counties palatines that are not earls, as shall appear hereafter.

* [205]

* 20 H. 7. 6. 8.

27 H. 8. cap. 24.

Pasch. 12 Eliz. Dier, 288, 289.

27 H. 8. cap. 24.

37 H. 8. ca. 19.
36 H. 6. fo. 33.
9 H. 7. fo. 12.

* 22 H. 6. 48.

^b 27 E. 3. 84.

21 H. 7. 33.
39 H. 6. 21, 22.
19 H. 6. 12.

32 H. 6. 25.

19 E. 3. trial 66.

45 E. 3. visne 50.

^c 9 E. 3. cap. 4.

8 Aff. 27. 10 E.

3. 41. 19 H. 6.

12. 53. 21 E. 4. 8.

a. & b. 27 E. 3. 84.

46 E. 3. visne 53.

Per tous les justices. 10 H. 4. 40. 10 H. 6. 15, 16. Per Martyn. 8 H. 6. 3. per Strange. Lib. Int. Rastall fol.

It is called *comitatus palatinus*, a county palatine, not à comite in respect of the dignity of an earl, but à comitatu, and à palatio regis, because the owner thereof, be he duke or earl, &c. hath in that county *jura regalia*, as fully as the king * had in his palace, from whence all justice, honors, dignities, franchises and privileges, as from the fountain, at the first flowed. Neither by this charter was the duke of Lancaster created count palatine, but the county was made a county palatine. The power and authority of those that had counties palatines was king-like, for they might pardon treasons, murders, felonies, and outlawries thereupon. They might also make justices of eire, justices of assise, of gaol delivery, and of * the peace. And all originall, and judicill writs, and all manner of indictments of treason and felony, and the processe thereupon were made in the name of the persons having such county palatine. And in every writ and indictment within any county palatine, it was supposed to be *contra pacem* of him that had the county palatine. But these and some others are taken away from them that have such counties palatines, and annexed to the crown, and all writs to be made in the kings name, but the teste is in the name of him that hath the county palatine: and they shall have forfeitures of lands and goods for high treason, which forfeiture accreweth by the common law. But for treasons or forfeits given after the erection of the county palatine by any act of parliament, they shall not have them.

Justices of assise, of gaol delivery, and of the peace are and ever since the erection of the county palatine of Lancaster have been made and assigned by commission under the seal of the county palatine of Lancaster.

In the county palatine of Lancaster fines are levied with three proclamations, &c. before the justices of assise there, or one of them, and all recoveries to be had of any lands or tenements in the county palatine are to be had in the court of that county palatine, and cannot be had at Westminster.

* In trespassse in the county palatine of Lancaster, the defendant pleaded a forain release, the court prefixed a day to the parties in bank, the record must be removed by *certiorari* in chancery, and by *mittimus* into the bench, there to be tryed.

^b If issue be joynd in the kings bench, or common bench tryable in the county palatine of Lanc', it shall be tryed in the county of Lanc' and remaunded hither.

^c Where a release or other special deed is pleaded in bar in any court at Westminster, within a franchise where the kings writ runneth not, it shall be tryed where the writ is brought. See the books quoted in the margent. And in this variety of opinions I hold the law to be, that this statute of 9 E. 3. extends not to

Per tous les justices. 10 H. 4. 40. 10 H. 6. 15, 16. Per Martyn. 8 H. 6. 3. per Strange. Lib. Int. Rastall fol.

cases

cases when any other issue is joyned tryable in the county palatine or other franchise: and I ground my opinion upon the resolution of all the judges of England in the exchequer chamber, in anno 32 H. 6. 25. See 39 H. 6. 21, 22. 21 H. 7. 33. 21 E. 4. 33, 34, 35, 36.

Vid. lib. Intr. fo. 81, 82. pl. 8. Henry Parayes case in debt, in camera Guildhall civitatis London.

^d King H. 4. by his charter by authority of parliament, anno primo of his reign, doth sever the possessions of the duchy, &c. from the crown: and that which John of Gaunt held for life, is established for ever, and ^e specially by the statutes of 1 E. 4. and 1 H. 7. hereafter mentioned: and this separation H. 4. made, for that he knew he had the duchy of Lancaster (*par multis regnis*) by fure and indefeible title: and he could not be both *rex* and *dux*, but specially that his title to the crown was not so assured, for that after the decease of R. 2. the right of the crown was in the heir of Lionell duke of Clarence, second son of E. 3. John of Gaunt father of H. 4. being the fourth son: and therefore he intended not, that by the law of the crown the duchy should go with the crown, and that he should be seised thereof in right of the crown, as the king afterwards was of the possessions of the duchy of York, earldome of March, and others.

Humphrey de Bohun earl of Hereford, Essex and Northampton being the first and last earl of that name, and seised of large possessions in England and Wales, had issue two daughters: * Eleanor the eldest married to Thomas duke of Glouc', and Mary married to the Earl of Hertford.

It is enacted that all the manners and hereditaments which descended to H. 5. after the decease of the said Mary his mother, as son and heir unto her, should be dissevered from the crown of England, and annexed to the duchy of Lancaster, and to be of the same nature, as by the kings letters patents established by parliament there appeareth; where you may read of many franchises and liberties belonging to the duchy.

* Here it is to be observed, that albeit these possessions descended to king H. 5. as heir to his mother, yet he was thereof seised *in jure coronæ*, and therefore this act dissevereth them from the crown.

^b The duchy of Lancaster as separated, &c. is by act of parliament assured to E. 4. and his heirs kings of England. By this act all intails of the duchy, or of any land annexed thereunto are cut off, and by this made fee simple to E. 4. and his heirs kings of England. In an act of parliament without question this limitation of a fee simple is good. See the whole act.

^c It is enacted that H. 7. should have, hold, and enjoy to him and his ^e heirs for evermore the county palatine of Lancaster, and all honors, &c. By which act also all former intails are cut off, and in this state doth the duchy stand at this day. ^d All lands, &c. parcell of this duchy given to the king by the statute of monasteries, chanteries are still within the survey of the duchie. Within the county palatine of Lancaster the duke having *jura regalia*, his jurisdiction and priviledges therein were very great.

^d Rot. pat. 1 H. 4. intituled Carta regis H. 4. *De separatione ducatus Lancastrie a corona auctoritate parlamenti anno regni sui primo.*
^e Rot. par. 1 E. 4. Pl. com. 219. b.

* Vide Rot. par. 1 H. 6. Partition recited an. 9 H. 5. between H. 5. and the said Eleanor.

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Rot. par. anno 2 H. 5. nu. 30.
3 H. 5. nu. 15. confirmed, and that no land should passe of duchy, but under the duchy seal.
2 & 3 Ph. and Mar. cap. 20.
^a See the 1. part Inst. sect. 8.
^b Rot. par. 1 E. 4. nu. 26.
Pl. com. 222.
Vid. li. 5. fo. the Princes case.
^c Rot. par. 1 H. 7.
^e Nota his heirs without saying (kings of England) as E. 4. did. 21 E. 4. 60. Vid. Dier 1 E. 163. b.
^d 32 H. 8. cap. 20. 1 E. 6. ca. 14. 1 E. cap. 31.

The

• Rot. par. 9 R. 2. nu. 13.
28 H. 8. Brook Livery 55. Livery within the county palatine, but not of a tenure without.
26 H. 8. 9.

Vid. 33 H. 8. c. 39. 22 H. 8. c. 20. 3 E. 6. ca. 1. *custos rotulorum*.
f 2 & 3 Ph. and Mar. ca. 20.
a1 E. 4. 60. 71. Pl. com. 219.

Vid. 33 H. 8. cap. 39. which see before in the chapter of the court of wards.
See 27 H. 8. ca. 11. there also is a chancellor of the county palatine.

Nil. rE. 6. Brook Travers. 53.

† [207]
* *In hoc erratum est*, as it appeareth in Pl. com. ubi supra.
† It is found for the king, for he is not duke.
Hulmes case, Mich. 7 Jac. in curia ward. Travers de office estoppel per fuer de livery.

• The duke of Lanc' complaineth by mouth to the king, bishops, and lords in full parliament; that where after the death of Thomas of Lathome who held the manor of Lathome in the county of Lanc' of the said duke in chevage, whereby the manor was seised into the hands of the said duke of Lancaster according to his county palatine of Lancaster, yet notwithstanding John Stanley knight as in the right of Isabell his wife daughter and heir of the said Tho. had entered, and taken the profits of the said manor without any livery or other suit made in the chancery of the said duke, for which he prayed remedy. After which, upon full advice of the justices of both benches, and others of the kings learned councill, it was declared in the said parliament, that the entry of the said John into the manor, as aforesaid, was unlawful, and that the said John ought to make suit by petition, or otherwise in the chancery of the said duke for the livery of the said manor in such case to be sued for.

Of the franchises and liberties belonging to the county palatine of Lanc. you may read rot. par. 2 H. 5. *ubi supra*.

f Lands to be annexed to this duchy under the great seal shall be as good, as if it had been annexed by parliament.

See the statute of 5 El. cap. 23. concerning writs of *significavit*, and *excommunicato capiendo*.

Lands within the county palatine should passe by the dukes charter without livery of seison or attornment, but of lands parcell of a manor annexed to the duchy without the county palatine, there ought to be livery of seison, and attornment of tenants, and in the same degree is it in the kings case. The reason hereof is, for that the county of Lanc' was a county palatine, and the duke then had *jura regalia*.

The proceeding in this court of the duchy chamber at Westm' is as in a court of chancery for lands, &c. within the survey of that court by English bill, &c. and decree; but this chancery court is not a mixt court as the chancery of England is, partly of the common law, and partly of equity, as hath been said. See before in the chapter of the Court of Chancery.

The processe is by privy seal, attachment, &c. as in the chancery.

The officers of this court be the chancellor, the attorney, the receiver generall, clerk of the court, the auditors, surveyors, the messenger. There is an attorney of the duchy in the chancery, and another in the exchequer. There be four learned in the law assistants, and of councill with the court.

Where by office a tenure is found of the king *ut de ducatu Lancastriae*, and in truth † it is not so, there needeth no traverse, for the king hath the duchy * as duke and not as king, and a man shall not traverse, but where it is found † for the king: *sed aliter utitur in diebus nostris*, as it appeareth in the case following.

Le roy (in droit de son duchie de Lanc') seignior, Rich. Hulme seise del manor de Male in le countie de Lanc' tenus del roy come de son dit duchie per service de chivalry mesne, et Robert Male (seise des terres in Male tenus del mesne come de son dit manor per service de chivalry) ten'. Rich. Hulme morist; apres que mort, anno 31 H. 8. fuit trouve que il morist seise del dit mesnaltie, et que ceo descend al Edmonde son friz. deins age, et trouve le tenure avantdit, &c. et durant le temps que il fuit in
ard

gard Robert Male ten' morist : apres que mort anno 35 H. 8. fuit trouve per office que Robert Male morist seise del dit tenancy per availle, et que ceo descend alson fitz et heire deins age, et que le dit tenancy fuit tenu del roy come del dit duchy per service de chivalrie (ou in veritie ceo fuit tenu del Edmonde Hulme adonques in gard in le roy come del dit mesnalsie,) per que le roy seisist le gard del heire le ten', et puis 4 Jac. regis nunc apres le mort de Rich. Male que fuit lineal heire del dit Robert Male, per un auter office trouve fuit que le d't Rich. morist seise del dit tenancy, et ceo teignoit del roy come de son duchy per service de chivalry son heire deins age, sur ceo Rich. Hulme cousin et heire del dit Rich. Hulme, ad preferre un bill destre admit a son travrs de cest darrein office trouve in anno 4 Jac. Le question fuit, le quel loffice trouve in 35 H. 8. soit alcun estoppel al dit Hulme a traverser le darrein office, ou si le dit Hulme serra chaise primerment a traverser loffice de 35 H. 8. Et fuit objet que il doit primerment traverser loffice in 35 H. 8. come in le case de 26 Ed. 3. fol. 65. que si 2. fines sont levy de terre in ancient demesne, le seignior de que la terre est tenu, doit aver briefe de discent a reverser le premier fine, et in ceo le 2 fine ne serra barre. Et que le premier office estoppera cy longe come ceo remaine in force. Aque fuit responde et resolve per les 2 chief justices, et chief baron, et le court de gards, que le trover dun office nest pas ascun estoppel, car ceo nest que enquest d'office, et le party give avera travers a ceo come ad estre confesse, et pyr ceo sans questiun ceo nest pas estoppel; mes quant office est trouve fausement que terre est tenu del roy per service de chivalrie in capite, ou in verity la terre est tenu del auter seignior, ou del roy mesme in socage, si le heire sua generall livery, est tenu in 46 E. 3. 12. per Mowbray et Percy que il navera sute apres d'averre que la terre nest pas tenu del roy, &c. mes ceo nest forsque estoppel al heire mesme que sua la livery et ne concludera son heire : car issint dit Mowbray mesme, expremment in autiel case in 44 Ass. pl. 35. que estoppel per suer de livery estoppera solement mesme le heire durant son vie : et in 1 H. 4. fo. 6. b. la le case est mysse de expresse confession et suer de livery per lissue in tail sur faux office, et la est tenu que les jurors sur novel diem clausit extremum apres le mort de tiel heire sont alarge selonque leur conscience a trover que la terre nest pas tenu, &c. car ilz sont jure ad veritatem dicendam, et leur trover est appel veredictum, quasi dictum veritatis : quel reason auxi serve quant le heire in fee simple suisst livery sur faux office que les jurors apres son mort doivent trover selonque le verity, issint est dit in 33 H. 6. fo. 7. per Laicon que si 2 soers sont trouve heires, dont lun est bastard, silz joine in sute de livery, cesti que joine ove le bastard in livery ne alledgera bastardy in l'aut', mes nul livre dit que lestoppel indurer' plus longement que durant son vie. Et quant livery est sue per un heire, le force et effect del record de cest livery est execute et determine per son mort et pur ceo le estoppel expirer' ove le mort le heire ; mes ceo est destre intend dun generall livery, car speciall livery ne concludera omnino, come appear apres. Les parols de generall livery, quant le heire est trouve de pleine age, sont. Rex escaetori, &c. Scias quod cepimus homagium I. filii et hæredis B. defuncti de omnibus terris et tenementis quæ idem B. pater suus tenuit de nobis in capite die quo obñt, et ei terras et tenementa reddidimus. Et ideo tibi præcipimus, &c. eidem I. de omnibus terris et tenementis prædict', &c. plenam seisinam habere fac', &c. Et quant le heire fuit in gard a son plein age, le briefe de livery dirra. Rex, &c. Quia I. filius et hæres B. defuncti, qui de nobis tenuit in capite, ætatem suam coram te sufficient' probavit, &c. cepimus homagium ipsius. I. de omnibus terris et tenementis quæ idem B. pater suus tenuit de nobis in capite die

26 E. 3. fol. 65.

46 E. 3. 12.

44 Ass. pl. 35.

1 H. 6. b.

33 H. 6. fol. 7.
per Laicon.

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die quo obiit, et ei terras et tenementa reddidimus : et ideo tibi præcipimus, ut supra. *Quel breif est le sute del heire et pur ceo coment que toutes les parols del breif sont les parols le roy (come tout les breifs le roy sont) et coment que le breif de livery est generall, de omnibus terris et tenementis de quibus B. pater I. tenuit de nobis in capite die quo obiit, sans direct affirmac' que aucun mannor in particulier est tenu in capite, et nient obstant que ceo nest forsique prosecution dun breif le roy, et nul judgment sur ceo; uncore intant que generall livery est foundue sur loffice, et per loffice fuit trove que divers tetres et tenements fuer' tenus del roy in capite, a cest cause le fuer de cest breif concluder' le heire solement que fuist le livery, et apres son mort les jurors in novel breif de diem clausit extremum sont alarge, come est avandit, et si cesti jury trove fausement tenure del roy, auxi le segnior de que la terre est tenu poe'travers cest office, ou si terre soit tenu del roy, &c. in socage, le heire poe'travers cest darrein office, car per ceo il est greve solement, et ne travers le primer office, et quant le pier fuist livery et mort, le conclusion est execute et passi, come est dit adevant. Et nota la est un speciall livery, mes ceo procede de grace le roy, et nest pas sute. le heire, et le roy poe'traverse ceo. ou al plein age devant ætate probanda, &c. ou al heire deins a. e, come appiert in 21 E. 3. 40. et ceo est generall, et ne affirm directement aucun tenure come le generall livery fist, mes ove un, ut dicitur, et pur ceo nest aucun estoppel sans question, et al common ley speciall livery poe'traverse grant devant aucun office trove, mes ore per lestatut de 33 H. 8. ca. 22. est parvien, That no person or persons having lands or tenements above the yearly value of 5 l. shall have or sue any livery before inquisition or office found before the escheator or other commissioner, mes per un expresse clause in mesme la lre, livery may be made of the lands and tenements comprised or not comprised in such offices. Issint si office soit trove dascun parcell, &c. ceo suffist, et si le terre trove in loffice nexcede 20 l. donques le heire poe'traverse generall livery apres office ent trove, come est avandit; mes si la terre nexcede 5 l. per annum, donques generall livery poe'traverse sue sans office ent trove per garrant del master de gardis, &c. Vid. Dier 23 El. 377. que le roigne, ex debito justitiæ, nest lye a cest jour puis le dit act de 33 H. 8. a graunter speciall livery, mes est a son election a graunter speciall livery, ou a chaser le heir a un generall livery.*

21 E. 3. 40.
46 E. 3. 33.
46 Aff. p.
47 E. 3. 21.
29 Aff. p. 8.
33 H. 6. 50.
21 H. 6. 23.
37 H. 8. B. ef.
toppell 218. 7 E.
6. ibid. 222.
Sec 4. part. Inf.
cap. Pardon.
Mich. 39 & 40
El. fol. 397.

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Fuit auxi resolve in cest case que loffice de 35 H. 8. ne fuit pas traversable, car son travers demesne prouvera que le roy aver' cause daver gard per cause de gard, et quant le roy vient al possession per faux office ou aut' meane sur pretence dun droit, ou in veritie il nad tiel droit, uncore si appiert que le roy ad aucun autre droit ou interest a aver et tener la terre, la nul traversera cest office ou tittle le roy, pur ceo que le judgement in le travers est, Ideo consideratum est quod manus domini regis à possessione amoveantur, &c. Que ne doit estre quant appiert al court que le roy ad droit ou interest daver la terre, et ove ceo accord. 7 H. 4. fol. 33. in le countee de Kents case; et que apres generall livery sue per le heir de Robert Male le office ne poe'traverse per son heir: Et issint auxi fuit resolve per lassistants del court de gardis in Scursfelds case in curia wardourum. Tr. 8 Jacobi.

What leases may be made of lands, &c. within the survey of the duchy of Lancaster; see the ordinances of the court of duchy concerning leases to be made, &c. anno 20 H. 6.

See also Dier Mich. 6 & 7 Eliz. the resolution of all the judges concerning leases made by the chancellor of the duchy chamber.

And

Mich. 6 & 7
Eliz. Dier 232.
27 H. 8. ca. 11.

Which case we have rehearsed in the same language wherein we reported it when it was fresh in memory, and never hitherto was published.

And if the lease either in possession or reversion be made under the duchy seal, *Quod dominus rex de advisamento et assensu concilii ducatus Lancastria dimisit, &c.* the lease is good, although in truth the chancellor made it, and put to the seale of the duchy. For such leases under the duchy seal, or under the seal of the county palatine of lands within the same, are of as great force as lands of the crown under the great seale.

Albeit by speciall provision and construction, to a grant of lands and tenements parcell of the duchy of Lancaster that lye out of the county palatine, there must be livery of seisin and attornment, as the case requireth, yet the grant under the seal of the duchy is matter of record in respect of the dignity of the person of the king, and needeth no delivery to make it a deed (as deeds between subjects ought to have) and if the same be denied, *non est factum* cannot be pleaded, but *nul tiel record*.

And if the king by his letters patents under the seal of the duchy doth grant a reversion expectant upon an estate for life or years of lands parcell of the said duchy lying out of the county palatine, the reversion doth passe maintainant to the patentee by force of the letters patents: but he shall not have an action of waste, or distraine before attornment. * For this case is like to the case of a fine between subjects, which is matter of record: and so the kings letters patents under the duchy seal are as high a matter of record (if not higher then a fine.) And this tendeth both to the honour of the king and the safety of such as purchase such reversions of the king, that the state of the reversion should passe by those letters patents: otherwise if the patentee dye before attornment, the letters patents should be void, and the validity of the king's grant should depend upon the pleasure of the lessee, and many inconveniencies should thereupon follow. And all this appeareth by that great and grave resolution of the case of the duchy of Lancaster reported by Mr. Plowden, that no statute now in force doth separate the duchy from the person of the king, nor to have the person of the king separate from the duchy, nor to make the king duke of Lancaster having regard to the possessions of the duchy, nor to alter the quality of the person of king H. 7. but only that the king should have to him and to his heirs the said duchy separate from the other possessions; in which case the duchy at the least is joynd to the person of H. 7. and to his heirs, and the person of the king remain as it did before, for nothing is said to the quality of the person of the king, nor to the alteration of his name. And the person of the king shall not be infeebled because the duchy is given to the king and his heirs, but remain alwayes of full age, as well to gifts and grants by him made, as to administration of justice: whereupon it was resolved; that leases made by E. 6. being within age of lands, either within the county of Lancaster or without parcell of the duchy (the royall and politick capacity of the king being not altered) were not voidable by his nonage: a just resolution, and tending to the safety and quiet of purchasers and farmers, and proveth directly that the royall and politick capacity of the king being not altered (as to these possessions) the letters patents of the king of these possessions under the duchy seale are of record: and we finde no opinion in our books, or any thing in any record, that we remember, against this. So as the law concerning this point is, that for grants

IV. INST.

R

2 Provisoos.
2 & 3 Ph. and
M. cap. 20.
37 H. 8. cap. 16.

21 E. 4. fo. 60.
Rot. par. 1 H. 4.
nu. 81.

Vide Cartam H. 4. de desperatione ducat. Lanc. à corona auctoritate parl. anno regni sui 1.

Rot. parl. 3 H. 5. nu. 15.

Rot. parl. 1 E. 4. nu. 26.

Rot. parl. 1 H. 7. nu. 2. sess. 1.

2 & 3 Ph. and Mar. cap. 20.

P. 10 H. 4. fo. 7. non omittas, &c. per prerogati.

Rot. parl. 2 H. 7. nu. 30.

23 H. 6. nu. 17.

12 E. 4. nu. 7, 8.

Dier Mic. 6 & 7

Eliz. ubi supra.

* Lit. sect. 580.

1 part of the Inst. fo. 320.

Plowd. Com.

221. b.

Vide Rot. parl.

1 H. 4. nu. 81.

accord.

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of reversions by letters patents under the kings seal of the duchy of Lancaster, there must be attornment for lands out of the county palatine to make a privy, as in case of a fine for the action of waste or distresse: but of lands within the county palatine, the reversions passe by letters patents under the seal of the county palatine, both for the estate and for the privy of the action and of the distresse: and yet the seal is as high a matter of record in the one case as in the other. And herewith agreeth the continual practise in the court of the duchy of Lancaster. For if a reversion be granted under the duchy seal in fee or in tayl, &c. of the lands of this duchy expectant upon a lease for years, life, &c. a writ in English is usually granted in the kings name under the duchy seal reciting the grant, and commanding the particular tenant to attorn: or if it be of a manor in possession, a writ likewise in English is usually granted commanding the tenants generally to attorn.

Wide 27 H. 8. cap. 11. for the severall seales. 23 H. 8. cap. 3. Com. of sewers under the seal of the duchy, and they be commissions of record.

27 H. 8. cap. 16.

Dier ubi supra.

Pl. com. 222.

The seal of the duchy of Lancaster remains with the chancelor at Westm. And the seal of the county palatine remains always in a chest in the county palatine under the safe custody of the keeper thereof. All grants and leases of lands, tenements, offices, &c. in the county palatine of Lancaster shall passe under that seal and no other: and all grants and leases of lands, tenements, offices, &c. out of the county palatine and within the survey of the duchy, shall passe under the seal of the duchy, and no other: otherwise such grants and leases shall be void by the apparent intention of the act.

See also pl. com. 222. notable matter concerning leases made of lands within the survey of this court, the king being within age, &c. resolved and decreed to be good.

This county palatine was the youngest brother, and yet best beloved of all other, for it had more honors, manors, and lands annexed unto it, then any of the rest, by the house of Lancaster, and by H. 8. and queen Mary, albeit they were descended also of the house of York, viz. from Eliz. the eldest daughter of E. 4.

* Rialties, franchises, liberties, &c. Rot. parl. 2 H. 5. nu. 30. not in print, and established and confirmed Rot. parlam. anno 3 H. 5. nu. 15.

* For the great roialties, franchises, liberties, priviledges, immunities, quietances, and freedoms, which the duke of Lancaster had for him and his men and tenants, see rot. parl. *die Lunæ post octab. Sancti Martini an. 2 H. 5.* all which are established, ratified and confirmed by authority of parliament, necessary to be known by such as have any of these possessions.

C A P. XXXVII.

Of the County Palatine of Chester.

SEEING the erection of the county palatine of Lancaster hath reference to the county palatine of Chester, we have thought good to entreat of it in this place, for that one giveth light to the other.

* We have spoken of the county of Lancaster raised to a county palatine by act of parliament. We shall now speak of a county palatine created by prescription.

† We find that Hugh Lupus sonne of the viscount of Avenches in Normandy by his wife William the Conquerours sister was the first hereditary earle of England created by his uncle the Conquerour earl of Chester, and in the stile of a conquerour; *Totumq; hunc comitatum tenendum sibi et * heredibus ita libere ad gladium, sicut ipse rex tenebat Angliam ad coronam, dedit.* † To this earldome is annexed the county of Flint in Wales.

This is the most ancient and most honourable county palatine remaining in England at this day, * with which dignity the kings eldest sonne hath been of long time honoured.

By this general grant this Hugh earl of Chester had *jura regalia* within the county, and consequently had *comitatum palatinum* without any expresse words thereof, and by force thereof he created eight Cheshire barons, which was the first visible mark of a county palatine. That is to say, Robert Fitz-Hugh baron of Malpas, Richard de Vernon baron of Scibroke, William Walbank baron of Nantwich, William the son of Nigil baron of Halton, Hamond de Masly baron of Dunham, Gislebert de Venables baron of Kinderton, Hugh the sonne of Norman baron of Hawardyn, and N. baron of Stockport. By the said generall grant he had not the patronage and tenure of the bishoprick of Chester, for thus I reade in the Book of Domesday made in the time of this Hugh earl of Chester. *Cestreshire. Tenet episcopus ejusdem civitatis de rege, quod ad suum pertinet episcopatum; totam reliquam terram comitatus tenet Hugo comes de rege.*

* Britton saith, *Voilons nous que justices errant soient assignes de les chapters oier et terminer en chescun countye, et en chescun franchise de 7 ans en 7 ans, et autiel poer voilout que nous * chief justices de Ireland et Cestre eyent.*

* Within this county palatine, and the county of the city of Chester, there is, and anciently hath been a principall officer called the ^f chamberlain of Chester, who hath, and time out of minde hath had the jurisdiction of a chancelour; and that the ^g court of exchequer at Chester is and time out of mind of man hath been the ^h chancery court for the said county palatine, whereof the chamberlain of Chester is judge in equity. He is also judge of matters ⁱ at the common law within the said county, as in the court

13 E. 3. Vouch.
18. 49 E. 3. 9.
19 H. 6. 12.
36 H. 6. 33, 34.
12 E. 4. 16.
* A man may have a county palatine by prescription. 2 E. 4. 17, 18. 22.
12 E. 4. 16.
21 R. 2. ca. 9.
Regist. 17. a.
† This Lupus did bear azur a head of a wolf crafed, argent.
* In Fee simple.
† 21 R. 2. cap. 9.
* 21 R. 2. cap. 9.
17 E. 4. ca. 1.

These barons had within their severall courts *consensus de omnibus placitis et querelis in curia comitis motis, exceptis placitis ad gladium ejus pertinentibus*, which you may see at large, Rot. Inspec. Pat. ad. 18 H. 6. parte 2. m. 34.
c Brit. t. 1. b. 27 H. 8. cap. 5.
d Chief Justice of Chester.
e 27 H. 8. c. 5.
f Chamberlain of Chester.
g Court of exchequer.
h Chancery court.
i At the common law.

* A mixt court. of Chancery at Westm; for this court of chancery is a * mixt court.

† Vice chamberlain.

‡ The justice of Chester.

There is also a † vice-chamberlain, which is the deputy of the chamberlain. And there is within the same a justice called ‡ the justice of Chester, who hath jurisdiction to hear and determine matters of the crown, and of common pleas. Of fines and recoveries levied and suffered as well within the county palatine of Chester as of the city of Chester. See the statutes of 2 E. 6. ca. 28. & 43 Eliz. cap. 15. But of these and other matters concerning this county palatine we have thought good to set down the resolution of four reverend judges (whom we knew) upon view of records and evidences, and mature deliberation thereupon in writing, in these words.

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Sir James Dier,
Weston.
Harpur.
Carns.
10 Febr. 11 regine Elizab.

The opinion of Sir James Dier knight, chiefe justice of the common pleas at Westminster, Richard Weston and Richard Harpur esquires, two other justices of the same common pleas, and of Thomas Carns esquire one of the justices of the pleas to be holden before the queens majesty, declared and presented to her highnesse the 10 day of February *anno dom.* 1568. by vertue of her majesties letters to us directed the second day of the same month concerning the jurisdiction and liberties of the county palatine of Chester, and the authority of the chamberlain, and his office there: and concerning the controversie between the lord president and councill in Wales, and the said chamberlains office lately grown upon Thomas Radfords case exhibited unto us: as ensueth.

* King H. 7. made it a county of it selfe. Camden. 459. 2.
* By prescription.

First, by that which we have seen and considered, the county of Chester (wherein * the city of Chester is now; and by a good time past hath been a county of it selfe) of * very ancient time before the reign of king H. 3. hath been, and yet is a county palatine; with other members thereunto belonging: and so from time to time hath been received and allowed in the law. And therefore the lawes, rightfull usages, and customes of the said county palatine are to be preserved and maintained.

The chamberlain of Chester.

It further evidently appeareth, that by the like time of antiquity and continuance, there hath been and yet is in the said county palatine one principall or head officer called the chamberlain of Chester, who hath, and ever had all jurisdictions belonging to the office of a chancelour within the said county palatine.

The justice of Chester.

And that there is also within the said county palatine a justice for matters of the common pleas, and the pleas of the crown, to be heard and determined within the said county palatine, commonly called the justice of Chester.

Error; herein plea and forcin vovther.

We also see that all pleas of lands or tenements and all other contracts, causes, and matters rising and growing within the same county palatine are pleadable, and ought to be pleaded, heard, and judicially determined within the said county palatine, and not else where out of the said county palatine. And if any be pleaded, heard, or judged out of the said county palatine, the same is void, and *coram non iudice*, except it bee in case of error, foreign plea, or foreign voucher.

We also see that no inhabitant of the same county palatine by the liberties, lawes, and usages of the said county palatine ought to be

be called or compelled by any writ or proces to appear or answer any matter or cause out of the same county palatine for any the causes aforesaid, but only in causes of treason and error. And the queens writ doth not come, nor ought to be allowed or used within the said county palatine, but under the seal of the said county palatine, except writs of proclamation by the statute of E. 6. *anno regni sui primo.*

Treason and error.

Seal of the county palatine

It doth further appear unto us by good matter of record to us shewed, that the court of the exchequer at Chester is, and by the time of antiquity and continuance aforesaid hath been used as the chancery court for the same county palatine, and that the chamberlaine of Chester is the chief officer and judge of that court, and that he is, and time out of mind hath been a conservator of the peace by vertue of the same office, and hath like power, authority, preheminance, jurisdiction, execution of law, and all other customs, commodities, and advantages pertaining to the jurisdiction of a chancelour within the said county palatine of Chester, as the chancelor of the duchy of Lancaster hath used, had and ought to have used and executed within the said county palatine of Lancaster: which more evidently appeareth also by the understanding of the first grant made by king E. 3. to John his sonne then duke of Lancaster, whereby he made the same county palatine of Lancaster, referring the said duke to have his chancelor, liberties, and regall jurisdiction to a county palatine belonging, *ad id libere et integre, sicut comes Cestrice infra eundem comitatum Cestrice dignoscitur obtinere.*

Court of the exchequer is the chancery court.

Chamberlaine judge of that court.

A conservator of the peace.

See the grant before.

Also it appeareth unto us that the vicechamberlain did lawfully and orderly commit to prison Thomas Radford named in the case presented unto us, for that he refused to put in sureties of the peace within the said exchequer upon affidavit made in that behalf. And that the proceedings of the counsell of the marches touching the enlargement of the said Radford from the said imprisonment, and also their further order and dealing against the said vicechamberlain was, and is without sufficient authority, and contrary to the jurisdiction of the office of the said chamberlain, and the ancient laws and liberties of the same county palatine.

Vice-chamberlain.

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Councell of the marches.

And we doe also affirm that the statute of 34 and 35 H. 8. called the ordinances of Wales, whereby the authority of the lord president and counsell within the dominion and principality of Wales and marches of the same is established, and hath the force of a law, for or concerning the determination of causes and matters of the same, comprehendeth not the counties of Chester, and the city of Chester, because the same counties of Chester and the city of Chester be no part nor parcel of the said dominion or principality of Wales, or of the marches of the same.

The president and council of Wales and the marches of the same.

The counties of Chester, and the city of Chester no part of the marches of Wales.

Between Sir John Egerton plaintiff, and William earl of Derby chamberlain of Chester and others defendants, for the trust of an interest of a term in lands in the county of Chester, these points were resolved by the lord chancelour and by the chief justice of England, justice Dodderidge, and justice Winche, whom the lord chancelor called to be his assistants as followeth.

Hil. 11 Jac. 1^a the chancery.

First, that the chamberlain of Chester being sole judge in equity, or his deputy, cannot decree any cause wherein he himself

¶ Id. in the charter of Durham, anno 30 E. 1. Coram rege.

is party, for he cannot be *judex in propria causa*, but in that case he may complain in the chancery of England.

21 H. 3. bre.
881.

Vide 21 H. 3. *breve* 881. in *rationabili parte versus comitem Cestrie de hereditate D. quondam comit' Cestrie*. Comes dicit quod noluit respondere de terra in com' Cestrie ubi: *brevia domini regis non currunt extra libertates suas nisi cur' consider', et consideratum fuit per curiam quod respondeat.*

18 Aff. 382.
13 E. 3. tit.
jurisd. 5 E. 3.
30. 38 ff. 6. 6.
7 H. 6. 37.
8 E. 4. 8. 11 H.
4. 27. &c.

2. If the defendant dwell out of the county palatine, if any of the county palatine have cause to complain against them for matter of equity for lands or goods within the county palatine, the plaintiff may complain in the chancery of England, because he hath no means to bring them to answer, and the court of equity can bind but the person, for otherwise the subject should have just cause of suit, and should not have remedy: and when particular courts fail of justice, the general courts shall give remedy, *ne curiæ regis deficerent in justitia exhibenda.*

3. It was resolved, that the king cannot make any commission to hear and determine any matter of equity, but matters of equity ought to be determined in the court of chancery, whose jurisdiction therein have had continuall allowance, and so was it resolved in * Perots case.

♦ See this case in the chaoter of the Chancery, pa. 87.

4. Upon consideration had of the said certificate of the lord Dier, and the said other judges, it was resolved, that for things transitory though in truth they were emergent within the county palatine, yet by the generall rule of law, the plaintiff may alledge these to be done in any county where he will, and the defendant cannot plead to the jurisdiction of the court, that they were done, &c. within the county palatine: but if the plaintiff suppose the transitory cause of action to be in the county palatine, that may be pleaded to the jurisdiction, otherwise it is of things local.

See in the chapt. of the County palatine of Durham.

An office found by commission in the nature of a mandamus issuing out of the chancery at Westminster before the commissioners in com' Cestrie for lands holden in *capite* in the same county, was holden void *per consilium curiæ wardorum*, for it ought to be by writ or commission out of the exchequer in the county palatine, which is the court of chancery there.

If an erroneous judgment be given before the chamberlain in the exchequer in any matter wherein he proceedeth according to the course of the common law, the writ of error shall be directed *Camerario seu ejus locum tenenti*; but if the judgment be given before the justice of Chester, then the writ is directed *Justiciario Cestrie sive ejus locum tenenti*. And note that in a writ of error to the * county of Chester, day shall be given by so long time, that three counties may be holden before the return of the same writ in the kings bench, which is^d four months, by which time the justices or lieutenant within the same county may redresse the error, if they will, and this by the usages of the same county; but in a writ of error upon a fine they have no such power: and the plaintiff ought to bring the writ of error to the next county after the *teste*, and there it shall be read, *coram judicatoribus ratione tenurarum suarum ibidem*; and the plaintiff shall assign the error without praying processe against the tenant or defendant, but only to pray *judicatus* to examine the error, and if error be found they may advise thereon, or presently reform.

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Regist fo. 17. a.
14 H. 6. 42.
6 H. 4. 9. Lib.
Intr. Rast. 272.
Dier 15 El. 320.
321. Dier 18 El.
345, 346.
* Note these
generall words
extend as well
to the chamber-
lain as to the
justice by the
rule of the Re-
g. ubi sup.

reform it, and award restitution, or by their discretion they may award proceſſe returnable at the next county againſt the tenant or defendant *ad audiend' errores*, (which is reaſonable and neceſſary to be granted) and ſo return their own judgment given by them or their predeceſſor, and then there is an end of the buſineſſe, and the record ſhall remain there without removing; and by this means they ſhall ſave an hundred pound forfeiture to the king. But if they affirm the judgment which is erroneous, their affirmation and the record ought to be removed into the kings bench, if the party plaintiff be grieved therewith: and if their affirmation be erroneous, although their firſt judgment was given by their predeceſſors, notwithstanding they ſhall forfeit the hundred pounds. And the party grieved by their affirmation or reverſall ought to bring a ſpecial writ of error peremptory, which ſhall not be examined by them, for that all this is to be underſtood where error in law is aſſigned: for upon the writ of error firſt brought, if any error *in fact* be aſſigned, as death of one of the parties, hanging the plea, or the like, which is tryable by the country, they cannot hold plea thereof, but return the record, with the writ into the kings bench. Neither can they hold plea of a releaſe of errors after the judgment or the like, for they are only to examine the errors of the record or proceſſe, and all this doth notably appear in our books. But if no ſuch uſage had been, the record ought to have been removed by the writ of error into the kings bench, as it ought to be in other caſes.

Egerton the queens ſolicitor moved in the chancery to have a *certiorari* to the county palatine of Cheſter for the removing of a record of aſſiſe taken in that county between Cotton and others plaintiffs, and Venables and others defendants, wherein the recognitors of aſſiſe gave a falſe verdict, and to the intent, that a writ of attain might be brought in the kings bench, a *certiorari* was prayed. And it was doubted, whether an attain did lye in this caſe, out of the county palatine. And by the opinion of Wray and Anderſon chief juſtices, and Manwood chief baron, upon conſideration had of the ſtaute of 23 H. 8. cap. 3. whereby it is enacted in theſe words, That all attaints hereafter to be taken ſhall be taken before the king in his bench, or afore the juſtices of the common place, and in no other courts; they reſolved and ſo certified the lord chancellor that for a falſe verdict given in the county palatine of Cheſter, the attain ought to be brought either in the kings bench or common place, and not in the county palatine of Cheſter, and thereupon a *certiorari* was granted for the removing of the record.

Hil. 29 Eliz.

Wid. 3 El. Dier
202. b. Bendloes
3 Eliz.

Hil. 29 Eliz. *coram rege*. The caſe was that queen Elizabeth by her letters patents granted the cuſtody of the caſtle of Cheſter to John Paſton, and Richard Huddleſtone eſquires, and the ſurvivor of them; John Paſton died, and in a *ſcire fac'* againſt Huddleſton in the exchequer before the chamberlain, (Glaſier then being deputy chamberlain) to repeal the ſaid grant, &c. judgment was given againſt Huddleſton that the patent ſhould be adnulled and cancelled, and hereupon Huddleſton brought his writ of error. And it was objected that before any writ of error ought to have been granted, Huddleſton ought to have ſued to the queen by petition to have a writ of error according to the book in 23 E. 3. fo. 24.

Hil. 29 El. Co-
ram rege, Hud-
dleſtons caſe, in
brevis de errore.

23 E. 3. fo. 24
F. N. B. fo.

But it was answered, that here in this case no inheritance was recovered by the judgment, and if Huddleston that claimed the office * but for term of his life should be driven to his petition, wherein great delay might be used, his life might end before he could obtain his writ of error, therefore the writ of error in this case was to be granted without any petition: and of that opinion was the whole court of the kings bench, and so the writ of error did stand.

Pasch. 9 E. 2.
Coram rege
Rot. 32.
34 H. 8. ca. 13.

Judices et sectatores com' Cestrie non consueverunt apponere sigilla sua alicui recordo in presentia justiciariorum.

Before the statute of 34 H. 8. neither the county palatine of Chester sent knights to the parliament, nor citizens out of the city of Chester.

27 H. 8. ca. 5.

Before the statute of 27 H. 8. the lord chancellor of England appointed no justices of peace, justices of quorum or goal delivery within the county of Chester.

22 E. 4. Jurisd.
61. Lib. Int.
Rast. fo. Si te-
neatur imme-
diate or mediate.

The manor of C. in the county of York was holden of the prince, as of the county of Chester, and that all pleas real and personall rising within the county, or within any parcell of land holden of the county ought to be impleaded within the said county palatine: for the king by his letters patents may ordain a court at York, or in any other county which shall have jurisdiction through the whole realm, and so it was resolved.

Lit. Pat. 6. Apr.
21 H. 7.

The city of Chester was made a county of itself by king H. 7. by letters patents, dat. 6 Aprilis 21 of his reign.

5 El. cap. 23.
18 El. cap. 8.

See the statute of 5 El. cap. 23. concerning writs of *significavit* and *excom' capient'*. See the statute of 18 El. cap. 8. making of more justices then one.

8 H. 6. cap. 10.
Vide cap. 13.

By the statute of 8 H. 6. cap. 10. it is provided, That upon every indictment or appeal by which any person dwelling in any other county then there where such indictment or appeal is, or shall be taken of treason, felony, and trespassse, &c. before any exigent awarded, &c. that after the first writ of *capias*, another writ of *capias* shall be awarded directed to the sherif of the county whereof he is or was supposed to be conversant in the indictment, &c. otherwise the outlawry to be void.

19 H. 6. 1, 2.

In an appeal in the kings bench in the county of Dorset where the appellee was demurrant at Chester, proceffe continued untill he was outlawed without any *capias* into Chester, and it was objected that the *capias* could not issue into Cheshire, for it is a franchise into which the kings writ runneth not. Holden at the common law for certain things a writ shall issue to the franchise of Chester as for treason, and the statute is made by authority of parliament, and is generall as well within franchise as without, and therefore the act being generall shall be taken generally to extend into Chester, *quod conceditur*, but this is a leading case.

Vid. lib. Int. Coke, fo. 230, 231, 232, & 296, 297. See an act of parliament. Rot. par. 9 H. 4. nu. 45. touching adjournment in pleas.

C A P. XXXVIII.

Of the County Palatine of Durham

THIS is also a county palatine by prescription parcell of the bishoprick of Durham, which was first raised, as it is said, soon after the time of William the Conqueror.

Yet I find that this county palatine hath been questioned (but with evil successe.) For at the parliament holden *anno 11 H. 6.* Thomas bishop of Durham prayed a commission under the great seal to certain there named, who by vertue thereof sat and inquired at Hartlepole being within his county palatine of the rights of the county palatine with all the dependents. Whereupon Sir William Eure knight the kings attorny made divers objections, that the bishop ought to have no county palatine, neither liberties royall. On the contrary part the bishop produceth his proofs, and the matter on both parts seriously debated. In the end judgment was given in parliament for the bishop, and that the said inquisitions returned in the chancery or elsewhere should be void. See the record being very long, and yet worthy the reading.

When the bishop himself, that ought to doe justice and right to others, will doe injury and wrong within his county palatine, and that he cannot be a judge in his own cause: see a notable record intituled thus. *Recordum coram domino rege porrectum per manus Willielmi de Bereford et Rogeri de Heigham justiciar' domini regis ad querelas infra libertatem episcopatus Dunelm' audiend' et terminand' assignat' in hæc verba.*

Placita apud Dunelm' coram Willielmo de Bereford et Rogero de Heigham justiciariis domini regis ad veteres querelas Ricardi prioris Dunelm' et aliorum hominum episcopatus ejusdem domini regis prius porrectas et non determinatas audiend' et terminand' assignat'.

*Ricardus de Hoton prior Dunelm' queritur de * Antonio episcopo Dunelm', &c.* The record is long, but therein you shall observe severall complaints of the prior against the bishop, whereupon issues are joyned, and verdicts given against the bishop, and judgments given worthy the reading. By which record it appeareth that the bishop had within the county of Duresme *regalitatem suam.*

I find also another record in the same kings time, viz.

Placita coram domino rege apud Westm' de termino Sancti Michaelis anno regno regis E. filii regis Henrici 33. finiente, 34 ro. 32.

*Dominus rex mandavit breve suum episcopo Dunelm' in hæc verba. Edwardus dei gratia rex Angliæ, dominus Hiberniæ, et dux Aquitanie venerabili in Christo patri A. eadem gratia episcopo Dunelm' salutem. Cum Odeliva filia Ricardi de Hurcheworth, Matild' de Swyneburne, et Ricardus Bouche, et Agnes uxor ejus arrantaverunt quandam assisam mortis antecessoris infra libertatem vestram episcopatus prædicti * coram Lamberto de Trykingham, Guyehardo de Charroun, et Petro de Thoresby per*

10 E. 3. 41.
12 E. 3. Vouchee 115. 17 E. 3. 36. 5 R. 2. Triall 54. 13 H. 4. Vouchee 39. 11 H. 4. 40. 18 H. 6. 33. 34. 19 H. 6. 12. 52. 21 E. 4. 8. 1 Mar. stat. 2. ca. 2. Rot. par. 11 H. 6. nu. 23. See Rot. par. Pasch. 21 E. 1. rot. 5. a notable record for the liberties of the bishop of Duresme.

Pasch. 30 E. 1.

Northumb. Dunelm.

* This was Anthony Beak, of that state and greatnesse as never any bishop was, Woolsey except.

Mich. 34 E. 1. Coram rege Rot. 32.

* Justices of the bishop. Per breve vestrum.

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Forein voucher.

Si vobis constiterit ita esse.

Dunelm.
Pater Odellivæ
avus Matildæ.

per breve vestrum versus Galfridum fil' Johannis le Maschun de Herterpole de uno mesuagio, sex toftis et una carucata terræ cum pertin' in Hurcheworth Brian. Ac prædictus Galfridus Johannem le Maschun de Herterpole intrinsecum versus prædicti' Odellivam, Matildam, Ricardum et Agnet' inde vocaverit ad warrant'. Et idem Johannes ten' prædicti' eidem Galfrido warrantizans Simon' filium Simon' de Mora intrinsecum versus eisdem Odellivam, Matildæ, Ricardum et Agnet' ulterius inde vocaverit ad warrant'. Ac idem Simon' eadem ten' eidem Johanni warrantizans inde vocaverit ad warrant' versus eosdem Odellivam, Matildæ, Ricardum et Agn' per auxilium cur' nostræ Aymerum de Rochesford et Julianam uxorem ejus, Johannem Swayne, et Aviciam uxorem ejus, et Thom' de Fishburn juniorem forinsecus, qui terras aut tenementa infra libertatem prædictam aut alibi infra districtionem vestram non habent, per que per ballivos vestros libertatis prædicti' ad warrant' illam faciend' distringi possunt, ut accepimus. Nos attendentes expediens esse et necesse quod nos super recordo et processu assise prædictæ plenius certioremur, ut partibus prædictis, quod justum fuerit in hac parte ulterius fieri faciamus. Vobis mandamus quod inspectis recordo et processu prædicti' si vobis constiterit ita esse, tunc recordum et processum assise prædictæ cum omnibus ea tangentibus nobis sub sigillo vestro distincte et aperte mittatis et hoc breve, ita quod ea habeamus a die Sancti Michaelis in 15 dies ubicunque, &c. partibus eundem diem præfigentes quod sint ibi statui et receptor' quod curia nostra consideraverit in hac parte, ut nos finito placito warrant' prædicti' in curia nostra record' et proces' totius negotii memorati vobis remittamus ad procedend' in eodem secundum legem et consuetudinem libertatis prædicti'. T. me ipso apud Wynelingfeld 13 die Julii anno regni nostri 33. Virtute cujus brevis prædictus episcopus misit recordum et processum in hac verba. Placita de assise apud Dunelm' coram Guyehardo de Charroun et Petro de Thoresby justiciar' assignat', associat' sibi L. de Trikingham die Martis proxim' post clausum Pasch. anno regni regis E. 33. et promot' domini A. Dunelm' episcopi 22.

Assis' venit recognitur' si Ricardus de Hurcheworth pater Odellivæ fil' Ricardi de Hurcheworth et avus Matildæ de Swynesburne, et Agn' uxor' Ricardi Bouche fuit scisitus in dominico suo ut de feodo de uno mesuagio, sex toftis et una carucata terræ cum pertin' in Hurcheworth Brian dia quo, &c. Et si, &c. quæ Galfridus fil' Johannis le Maschun de Herterpole. Et sciendum quod tertia pars prædicti' tenement' excipit' eo quod prædicti' Odellivam alias comparuit in curia, et modo non sequitur pro parte sua, &c. Et Galfridus alias venit et dixit quod ipse tenet prædicta tenementa ad terminum vitæ suæ ex dimissione Johannis de Maschun de Herterpole et in forma prædicta vocavit ipsum Johannem ad warrant' Simon' fil' et heredem Simonis de Mora, qui modo venit per sum' et ei warrantiz'. Et vocat ulterius inde ad warrant' per auxilium cur' hic et cur' domini regis Aymerum de Rochesford et Julianam uxorem ejus filiam et unam heredum Nicholai de Swynesburne, Johannem Swayne et Aviciam uxorem ejus filiam et alterum heredem prædicti Nicholai, et Thomam de Fishburn filium Christianæ cohered' prædicti Julianæ et Avicie sum' in com' Northumb. Et quia curia ista jurisdictionem in prædicti' Aymero et aliis warrant', &c. qui exec' datus est dies partibus hic die Martis proxim' post festum Sancti Jacobi apostoli. Et dictum est prædicto Simon' quod sequatur versus warrant' suos per auxilium cur' domini, prout sibi viderit expedire, &c. Postea ad diem illum ven' tam prædicti' Matilda, Ricardus et Agn', quam prædicti' Simon, et iidem Matildæ et alii petentes petunt quod procedat ad assisiam

assiam capiend' per defaltam prædicti' Simonis ex quo quod nondam sectus fuit versus warrantos, &c. Et super hoc idem Simon profert breve domini regis hic de mittendo recordum et processum assise prædictæ eidem domino regi à die Sancti Michaelis in quind. cem dies ubicunque, &c. quæ quidem recordum et processus, et etiam breve domini regis prædicti' quod habuit record' confus' per prædicti' Matild', Ricardum et Agnet' domino regi mittitur juxta tenorem brevis sui prædicti'. Et idem dies præfixus est partibus coram eodem domino rege ubicunque, &c. Et prædicti' Ricardus et Agn' po: lo: suo prædicti' Matild' in placito prædicti', &c. Ad quem diem coram ipso domino rege venerunt partes, et quia constat per recordum prædicti' quid prædicti' vocati ad warran' sunt extrinseci, et quod vocati sunt ad warran' per auxilium curiæ domini regis qui est superior dominus totius regni, et qui omnibus et singulis de regno suo justitiam facere tenetur, et maxime in defectu aliorum per quorum defectum idem dominus rex vocatur in auxilium; præceptum est vicecom' Northumb' quod summoneat prædicti' Aymerum de Rocheford et Julianam uxorem ejus filiam et unam hæred' Nicholai de Swyneburn Johannem Swayne et Aviciam uxorem ejus fil' et alteram hæred' prædicti' Nicholai, et Thom' Fishburn fil' Christianæ cohæredis prædictarum Julianæ et Aviciæ, quod sint coram rege à die Sancti Hilarii in 15 dies ubicunque, &c. ad warran', &c. Idem dies datus est petentibus et similiter prædicti' Simoni tenen' per warran' in banco, &c. Idem Simon po: lo: suo Walterum de Mildleton et William de Burgham loquela prædicti', &c. Et quia prædictus episcopus non misit breve originale simul cum prædicti' record', et necesse est prædicti' breve hic mittat; mandatum est prædicto episcopo vel ejus locum tenenti, quod prædicti' breve domino regi mittant, ita quod illud habeant ad præfatum terminum, &c. Ad quem diem præd' Simon tenens per warran' venit; et prædicti' Matild' de Swyneburn, Ricardus Bouche, et Agnes uxor ejus petentes non venerunt, nec, &c. Ideo prædicti' Simon inde sine die. Et prædicti' Matilda, Ricardus et Agn. et plegii sui de prosequend. in misericordia, &c.

Nota,

In an information against Thomas bishop of Durham for a contempt in not certifying a record, he pleads that he is *comes palatinus, et dominus regalis cujusdam terræ vocat' the bishoprick of Durham, et habet omnia jura regalia quæ ad comitem palatinum et dominum regalem pertinent, per se, justic', et ministros suos exercenda.*

Pasch. 46 E. 3.
Coram rege.
Rot. 42.

In this county palatine there is a court of chancery which is a mixt court both of law and equity, as the chancery at Westminster: herein it differeth from the rest, that if an erroneous judgment be given either in the chancery upon a judgment there according to the common law, or before the justices of the bishop, a writ of error shall be brought before the bishop himself, and if he give an erroneous judgment thereupon, a writ of error shall be sued returnable in the kings bench.

But now let us see what we find in our books concerning this county palatine.

In a formedon in Durham the tenant pleaded the warranty of the auncestor of the demandant, with assets in a forain county, whereupon the court awarded that the tenant should goe quit without day. And the demandant upon this judgment sued a writ of error before the bishop, and assigned for error, that the justices awarded that the tenant should goe quit without day, where they ought to have continued the plea by adjournment untill the record had been removed. And for this error the bishop reversed the judgment, and day given to the parties before his justices where the plea was pleaded.

Mich. 14 F. 3.
tit. error 6.
F. N. B. 27. g.
8 El. Dier 250.

pleaded. At which day the tenant was effoined, and a day given over. At that day a writ came to remove the record in the common bank, and a day given to the parties in the common bank, and this proceeding of the bishop was according to the usage there. And after by the advice of the whole court a *vine fac* issued out of the common bank to try the issue joyned at Durham.

32 E. 3. Vouch.
97. 14 H. 6.
fo. 3.

13 E. 3. Voucher
165. 45 E. 3. 17.
Vid. 19 E. 3.
triall 66. 19 E.
3. jurisd. 29.
33 E. 3. ib. 57.
45 E. 3.
Vine 50.

If a man in the county palatine of Durham vouch a foreigner to warranty, the demandant may counterplead that the vouchee hath assets within the county palatine for the delay.

In a writ of trespass *des biens emportes deins un certaine ville*, the defendant said, that the place where the plaintife suppoled the taking away, is within the franchise of the B. of Durham, where the kings writ runneth not, but is a franchise royall, *judgement de breife*. Whereunto the plaintife said, that the defendant came in by distresse, and so the court seised of the plea. Finchden giving the rule of the court said, the court is not in this case seised of the plea, but that should be where co-usance or franchise is challenged, which lieth not in this case, but the bishop hath franchise royall into which the kings writ runneth not, and therefore for not denying of the exception the writ abated. Note the towne wherein the transitory trespassse was alledged by the plaintife was within the county palatine.

19 H. 6. 52.

If the tenant vouch two, one within the county palatine of Durham, and the other at the common law, summons shall be awarded to the lord of the county palatine, commanding him to summon the vouchee to be at a certain day before the justices here to try the warranty: in this case if the tenant recover in value, the justices shall write to the lord of the county palatine to render in value, *quod fuit concessum*.

Dier 12 El. 288.
which was the
case of James
Pilkington
bishop of Dur-
ham.

* 13 H. 4.
Vouch. 39.
36 H. 6. ib. 49.
a Prærogativa
reg. cap. 1.

See Dier 12 El. where he that hath *jura regalia* shall have forfeiture of high treason, whereof *vide* before in the chap. of the County Palatine of Lanc.

* If the one be vouched, and the tenant prayeth that he may be summoned in the county of York, and the county palatine of Durham, the voucher shall stand, for if he be summoned in the county of York, it sufficeth.

^a *Dominus rex habebit custodiam omnium terrarum eorum qui de ipso tenent in capite per servicium militare, de quibus ipsi tenentes fuer' seistis in dominico suo ut de feodo die quo obierunt de quocunque tenuerunt per hujusmodi servicium, &c. exceptis feodis episcopi Dunelm' inter Tine et Tese.*

16 E. 3. tit.
Livery 29.
Glanv. li. 7. c.
20. Bract l. 2.
fo. 85. 9 H. 3.
prær. 25. 21 H.
3. ib. 26.
* Prær. regis
ca. 3.

Trin. 38. El. in
curia wardorum.

1. This exception extendeth not to the body. 2. If the bishop did after this statute purchase any feignory between Tine and Tese it extendeth not to that. 3. That before this statute, the king ought to have had the wardship of the lands, as appeareth in our books, contrary to Poles opinion in this case.

* The third chapter of the said statute of *prærogativa regis* doth give the king primer seison, &c. without any saving of the bishop of Duresme.

Sir Thomas Gray knight was seised in fee of the manner of Chillingham in the county of Northumberland holden of the queen by knights service *in capite*, and of the mannor of Rosse in the county

county palatine of Durham holden of the bishop of Durham by knights service *in capite*, and died seised of both, his sonne and heir of full age. And although on the behalfe of the bishop some presidents were shewed in like case, yet the two chief justices Popham and Anderson *prima facie* did hold, that the primer seison of and for the mannor of Rosse belonged to the king.

The town of Creke in the county of York holden of the bishop of Durham, &c. shall be impleaded within the county palatine of Durham, and in no other place: and so is the manner of Howden in the county of York. 22 E. 4. jurisd. pl. 61.

The king shall have the temporalities of the bishop of Durham, and for a church that becommeth void the king shall have a *quare impedit*. 5 R. 2. triall 94.

See the statute of 5 El. ca. 23. concerning the writs of *significavit* and *excom' capiendo*. 5 El. ca. 23.

It was holden by all the justices, that if a man be surety for another to keep the peace, and after he breaketh the peace, and the surety hath lands in the county * palatine of Durham, the king shall command the bishop of Durham or his chancellor to do execution. And so it is in the other counties palatines. In the same manner it is of a statute staple, &c. Recognizances, &c. 21 E. 3. 49.
1 E. 4. 10.
Regist. 153.
F. N. B. 132.
* [220]

Vide 5 E. 3. fol. 58. 17 E. 3. fol. 56. rot. parl. 7 E. 6. rot. pat. 7 E. 6. part. 8. 1 Mar. cap. 3.

C A P. XXXIX.

Of the Royall Franchise of Ely.

IN divers statutes it is named the county palatine of Ely. King H. 1. in the 10 year of his reign, of the rich monastery of Ely made a cathedrall church, and of the abby made a bishoprick, and for his diocesse assigned unto him the county of Cambridge, which before was within the diocese of Linc': in recompence whereof Robert Bluet bishop of Lincoln, then chancelor of England had to him and his successors three mannors, parcell of the possessions of the abby, viz. Spaldwiche, Bicklesworth, and Bugden. And for the chapter of this new bishop, he instituted that there should be a prior and convent. But in respect of the revenues, for that their principall mannors were granted away, the number of monkes being 70 were brought down to 40. And king H. 1. granted to this new bishop and his successors *jura regalia* within the Isle of Ely. But the said prior and convent were in the reign of H. 8. suppressed, and in stead thereof a dean and prebendaries were raised to be the chapter of the bishop, and a grammar school for a master and 24 scholars. 33 H. 8. cap. 10.
5 El. cap. 23.

This royall jurisdiction the bishop hath by prescription grounded upon the said grant as well in pleas of the crown, as in common pleas before his justices.

The

Trin. 3 E. 1.
 Rot. 62. Coram
 Rogero de Scry-
 ton et sociis suis
 justiciariis de
 banc. Trin.
 16 E. 1 in com-
 muni banco
 Rot. 89. Cant.
 3 H. 6. trial 2.

The liberty of the bishop of Ely hath been anciently allowed by the court of common pleas for lands in Wisbich, within the isle whereof a *præcipe quod reddat* was brought.

Again, *Allocatur libertas episcopo Eliensi pro terris infra insulam de Ely prout alias, scilicet in rotulo Martini de Littlebury et sociis suis annis 55 & 56 H. 3. anno 14 regis nunc coram Thoma de Wayland et sociis suis. Item Mich. 16 regis nunc. rot. 27.*

In trespass the defendant pleaded an arbitrament made at A. in the Isle of Ely, and thereupon issue was joyued, the plaintiff shewed that Ely is a franchise royall, and they of the isle shall not be impannelled out, and prayed a *venire fac'* to the sherif of Cambridge.

Lib. Int. Rast.
 fo.

Issue being joyued and the visne to come out of Ely, the entry is, *Super quo prædict' (querens) dicit quod E. prædict' est infra insulam Eliens', quodque episcopus Eliens' talem habet libertatem in insula prædicta, quod nullus justiciar' nec aliquis minister domini regis insulam illam ingredi debet ad aliquod officium ibi exercend', nec libri tenentes nec residentes in eadem insula illam ingredi debent ad aliquam juratam extra insulam illam faciend', et petit breve domini regis de venire fac' hic 12. de vicineto de Soham, quæ est propinquior villa in prædict' com' Cantab' extra insulam prædict' adiacen' prædict' villæ de Ely ad triandum exitum præd'. Et quia videtur justiciariis hic quod petitio illa est rationi consonans, ideo præcept' est vic' Cant' quod venire fac' hic tali die 12. de vicineto illo, per quas, &c.*

46 E. 3. 8.

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5 E. 2. conusans
 68. 21 E. 4. 35.

Sentence was given in the ecclesiasticall court in Cambridge, and the defendant was summoned at Hadington in the isle and franchise of Ely, as he might be, for where the action is intire, and not severall, whereof part is within the franchise and part without, the franchise shall not be allowed. As if one take a man in a place at the common law, and carry him into a franchise and there imprison him, this court shall hold plea, *quia magis dignum trahit ad se minus dignum, et sic de similibus.*

24 E. 3. conu-
 sans 74. 20 E. 3.
 ibid. 85. 49 E.
 3. 24. See 23 E.
 3. 22. accord.

In an action of account against one as baylif of lands in H. and A. and H. is within the franchise of the Isle of Ely, and because the plaintiff might have charged the defendant as baylif of A. and it is no reason that by joyning of them in one writ to disherit the bishop of his franchise, the writ abated.

C A P. XL.

Of the County Palatine of Pembroke.

THIS was an ancient county palatine within Wales, and the earle was *comes palatinus*, and had *jura regalia*, and all things belonging to a county palatine, but the jurisdiction hereof was taken away by the statute of 27 H. 8. cap. 26. the county palatine then being in the king's hands.

And for further proof that it was a county palatine, see the charter of E. 3. to Lawrence de Hastings in these words.

Rex omnibus ad quos, &c. salutem. Sciatis quod circumspectionis et elegantie presagium quod ex aptis consanguinei nostri charissimi Laurentii de Hastings juventutis auspiciis concepimus, merito nos inducunt, ut ipsum in his que honoris sui debitam conservationem respiciunt, promissis favoribus prosequamur. Cum itaque hereditas bonae memorie Audomari de Valentia comitis Pembrochie (ut dicitur) jampridem sine herede de corpore suo procreato decedentis ad sorores suas fuerit devoluta, inter ipsas et earum heredes proportionabiliter dividenda: quia constat nobis quod presatus Laurentius qui dictus Audomar' in partem hereditatis succedit est ex ipso Audomari sorore seniori descendens, et sic peritorum assertione, quos super hoc consulimus, sibi debeat praerogativa nominis; et honoris sustum et debitum reputamus ut idem Laurentius ex seniori sorore causam habens, assumat et habeat nomen comitis Pembrochie, quod dictus Audomarus habuit dum vivebat: quod quidem (quantum in nobis est) sibi confirmamus, ratificamus, et etiam approbamus; volentes, et concedentes ut dictus Laurentius praerogativam et honorem comitis palatini in terris quas tenet de hereditate dicti Audomari, adeo pleno, et eodem modo habeat et teneat, sicut idem Audomarus illas habuit et tenuit tempore quo decessit. In cujus, &c. Teste rege apud Montem Martini die Octob. anno regni 13.

Rot. parliamenti Hil. 18 E. 1. fo. 6. Totus com' Pembroke fuit com' palatinus, et habuit cancel. et sigillum, &c. 27 H. 8. cap. 26. Carta regis E. 3. an. 13 regni sui. 13 Octob. Ro. pat. 13 E. 3. m. 12.

Note here, that the eldest sister ought to have the honor, upon consultation with learned men.

Prærogativa et honor comitis palatini. Sicut Audomarus illas habuit.

C A P. XLI.

Of the Franchise of Hexam and Hexamshire:

THIS was sometime parcell of the possessions of the archbishop of York, and claimed by him to be a county palatine.

At the parliament holden in 2 H. 5. it is resolved that Hexamshire was a franchise where the kings writ went not.

And in the statute of 33 H. 8. it is named a county palatine.

But at the parliament holden in anno 14 Eliz. it was seriously examined, and in the end four conclusions were enacted by authority of parliament. 1. That whiles it was in the hands of the archbishop it was termed and named a county palatine, where in right or proof there was none such: 2. That it is within, and parcell of the county of Northumberland. 3. That al pleas of the crown, and suits between party and party shall receive like triall, &c. as the rest of the subjects of Northumberland ought to have. 4. That the sherif and other officers of the county of Northumberland may execute his or their office, &c. within Hexam and Hexamshire. So as whatsoever it was before 14 Eliz. it is now no county palatine, nor franchise royall.

2 H. 5. cap. 5.
9 H. 5. cap. 7.
8 E. 4. cap. 2.
33 H. 8. cap. 10.
14 El. ca. 13.

C A P. XLII.

Of the Courts of the Cinque Ports.

Domesday.
Chent.
Lib. Int. Rast.
fo.

AT the first the privileged ports were but three. For at the making of the book of Domesday, which was in the 14 year of the Conqueror, there are but three named in that book, viz. Dover, Sandwich, and Rumney, and that these three in the time of Edward the Confessor were exonerated of such charges and burthens, as others did bear; after two ports were added to them by the Conqueror, viz. Hastings and Hithe.

Bract. li. 3.
f. 118.

* Memorandum
quod Pharanus
de Bolonia venit

ad conquestum tempore Willielmi regis bastardi, et in illo conquestu perquisivit wardam de Doveria in feodo, et habuit, et tenuit toto tempore prædict' regis Willielmi usque ad tempus regis Henrici, avi regis Henrici filii regis Johannis, et dictus rex Hen. avus dedit dicto Pharano 60. libratas terræ in eschambio pro Doveria, viz. manerium de Wendovre pro xl. libr. terræ, Kingshull pro x. libr. terræ, et 7 hidas in Eton pro 10 li. terræ. In lib. de Abbathia Miss. fo. 114.

Rex Vic' Norff. et Suff. salutem. Sciatis quod sommonij fecimus ad talem diem apud Sheprey omnia placita de Quinque Portibus sicut tenentur ad bene;

debent, et solent coram justiciariis apud Shipwey. Et ideo tibi præcipimus quod hoc sciri facias hominibus de Fernemerwe, et balivis de Donewiz, ita quod si aliquis conqueri voluerit de aliquo qui sit de libertate vel infra libertatem Cinque Portuum, tunc sit apud Shepwey coram præfatis justiciariis nostris querelam suam propositurus, et justitiam inde recepturus. Teste, &c.

After two more, viz. Winchelsey and Rye were added: for I find a record anno 1 regis Johannis, quod Winchelsey et Rye debent esse in auxilium villæ de Hastings ad faciend' regis servicium 20 navium, &c.

In Douf. cart. anno 1 Re. Jo. pa. te 2. m. 12.

And these have the same franchises and liberties that the former had; and every one of these send two burgeses by the name of barons of the Cinque Ports to the parliament, as by the records of the return of them remaining in chancery at every parliament doth appear. And albeit two be added, yet they hold their former name of the Cinque Ports. These ports or havens doe lye towards France, and therefore prudent antiquity provided, that they should be vigilantly and securely kept, for performance whereof these ports have a speciall governor or keeper, called by his office lord warden or keeper of the Cinque Ports, and is also admirall, and hath the jurisdiction of the admiralty amongst them, and is exempt from the admiralty of England. This warden in former times was ever a man of great fidelity, wisdom, courage, and experience, for that he had the charge of the principall gates of the realm. He is also constable of the castle of Dover, his jurisdiction as constable is limited by the statute of *Artic. super Cartas*, anno 28 E. 1. which you may read, and the exposition thereof in the second part of the Institutes.

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50 E. 3. 5.

Artic. super Cart. cap. 2. 2. part of the Institutes. 2 E. 4. 17. 17 E. 4. 16, 17. 36 H. 6. 34. Fortesc. lib. Int. Rast. fo.

The franchise of the Cinque Ports hath been time out of mind partly by ancient parliaments, partly by ancient charters, &c. and confirmed by expresse name by the statute of Magna Carta, ca. 9. and were made five by William the Conqueror.

For the better understanding of our books; it is to be known that there is a great diversity between the principality of Wales, the counties palatines, &c. and the Cinque Ports. For Wales was originally no part of England, but county palatines were parcell of the realm of England and divided in jurisdiction, and the Cinque Ports are parcell of the county of Kent, and yet *ubi breve domini regis non currit*, but have not *jura regalia*, and therefore regularly no writ of error did lie of a judgement in Wales, otherwise it is in the counties palatines. A judgment here of lands in Wales or in the county palatine is void, but a judgement given here of lands in the Cinque Ports is good if the priviledge be not pleaded, for they be part of the county, and the franchise may be demanded in another action.

9 H. 7. 12. 36 H. 6. 33, 34

And it is to be observed that within the Cinque Ports there be divers courts, one before the constable of the castle of Dover, (whereof somewhat hath been said before) there be other courts within the ports themselves, before the maiors and the jurats, and another which is called *curia Cinque Portuum apud Shepwey*, whereof we shall speak hereafter.

If any of the kings courts doe write to have a record in the Cinque ports, or for doing of any thing within the same, the writ shall be directed *Constabulario castri de Dover, et gardiano Cinque Portuum*, for

33 E. 3. Jurisd. 60.

IV. INST.

S

he

he is the immediate officer to the kings courts for execution of the kings writs within the Cinque Ports. For example :

30 H. 6. 6 & 7.

If a man plead a record within the Cinque Ports, and the other plead *nil tiel record*, there shall goe a writ to the constable of Dover to certifie the record, for the course is for the kings courts to write to the constable, and he shall send to the barons, that is to the maior and jurats, to certifie him of the record which is before them, and he shall certifie the kings court, and so the constable is the immediate officer to the kings court.

Regist. fo.
F. N. B. 80. b.
240. 2.

Note, though books say that the writs shall be directed to the constable of Dover, yet the writ is to be directed *Constabulario castri de Dover, et gardiano Cinque Portuum*.

Regist. fo.
F. N. B. 80. b.
132. 21. E. 3. 49.
See I. E. 4. 10.

A man hath a judgment in any of the kings courts, and the defendant hath no land or goods but in the Cinque Ports, the plaintiff shall have a writ to the constable of Dover to make execution. And so it is if a man will have surety of the peace against any person within the Cinque Ports, then he shall have a writ out of the chancery directed to the constable of Dover, for the doing thereof.

Regist. 153.

• Rot. parl.
anno 18 E. 1.
fo. 6. nu. 115.
Inter Ab-
batem de Fe-
versham et Ba-
ron' de port de
Feversham.

• *Et quia in quadam carta d' mini regis nunc continetur, quod omnes querelae versus ipsos barones Cinque Portuum apud Shepwey terminari debent coram custode Cinque Portuum, praecipit' est Stephano de Penecestr' nunc custodi quod partibus praedictis coram eo certum diem assignet et fac' justicie complementum.*

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• 30 H. 6. 6 & 7.
Dier 23 El. 376.
Brook Cinque
Ports 25.
Temps H. 8. di-
versity des
courts.
• Hil. 18 E. 1.
f. 6. Rot. par.
nu. 115 Dorf.
claus. anno 30 E.
1. m. 12.

• If an erroneous judgment be given in the Cinque Ports before any of the maiors or jurats, it shall be redressed before the constable of Dover at the court at Shepwey, which court was raised of ancient time by letters patents of E. 1.

• *Curia Cinque Portuum de Shepwey.* Nota, this for the stile of the court. See Bract. lib. 3. Ubi supra.
• 50 E. 3. 5.
33 E. 3. tit. Jurisd. 60.
1 E. 3. fo. 2.
49 E. 3. 24.
11 R. 2. bre.
636. 45 E. 3. 8.
33 H. 6. 4.
8 H. 4. 7.
• 39 E. 3. 17.
30 Aff. pt. 1.
8 E. 3. 27.
• 49 E. 3. 24.

• The court of the Cinque Ports holden at Shepwey adjudged the abbot of Feversham (which abby was within the Cinque Ports) for his offence to be imprisoned, for the which the archbishop of Canterbury caused the kings ministers of Dover to be cited into the ecclesiasticall court, &c. The record saith, *Quia secundum consuetudinem regni a probatum, et ratione juris regii, ministri regis pro aliquibus que fecerunt ratione officii sui, trahi non debeant. Rex prohibuit archiepiscopo Cant' ne molestari faciat ministros suos Dover', de eo quod abbatem de Feversham pro delicto suo incarcerationem per considerationem e' curiae Cinque Portuum de Shepwey, &c.* The whole record is worthy to be read over; this shall suffice for the end that I aim at.

Vide Fleta lib. 2. cap. 48. the Hustings *apud Shepweye*.

• The jurisdiction of the Cinque Ports is general, and extends as well to personall actions, as to actions reall and mixt, or which touch the freehold, but so it is not in ancient demesne, for regularly that jurisdiction extends not to personall actions.

If a *precipe* be brought of land, part within the Cinque Ports, and part without, the whole writ shall abate: *et sic de similibus*.

• And there is a diversity between a franchise to demand consufans, and a franchise, *ubi breve domini regis non currit*: for in the first case the tenant or defendant shall not plead it, but the lord of the franchise must demand consufans, but in the other case the defendant may plead it to the writ.

• The manor of P. within the Cinque Ports was holden of the king as of the honour of Egle, and escheated to the king for want of heir,

heir, the king granteth the mannor of P. to another. And it is adjudged that the seison of the king in this case doth not make it of another nature than it was afore: for the priviledge runneth with the land.

C A P. XLIII.

[225]

The Court of the Escheator, and of Commissioners for finding of Offices, &c.

THE gift of the office of escheator belongeth to the office of the lord treasurer, who granteth the same by his deed. He is to continue in his office but one year, or once in three years. 14 E. 3. cap. 8.
1 H. 8. cap. 8.
3 H. 8. cap. 2.

For the derivation of his name, his antiquity, and some part of this office, see the first part of the Institutes, sect. 4. where the ancient authors, and many authorities be quoted: he ought to be seised of 40. marks land, except escheators in cities and counties palatine.

All writs originall of *diem clausit extremum, mandamus, devenerunt, melius inquirend', quæ plura, &c.* are directed to him to finde an office for the king after the death of his tenant, which held by knights service *in capite*, or otherwise by knights service.

This officer in case of escheats for treason, felony, or in case of wardship, or primer seison, may find an office *virtute officii*. But in case of wardship, or primer seison, if he finde an office *virtute officii*, if the land, &c. be of the yearly value of 5. li. (or above) he shall lose every time he shall sit 5. pounds. 3 H. 8. cap. 2.

Offices found before him *virtute officii*, he may returne either into the court of chancery, or into the exchequer, saving at this day for wardships, or primer seison, which he must return into the chancery: for by the statute of 32 H. 8. cap. 46. the court of exchequer is barred to deale with the same. And offices found before him *virtute brevis*, are to be returned by him into the chancery. Lib. 1. fo. 42. b.
Alton woods.
4 4-24-
Stanf. prer. 70 b.

If he sit by force of a writ, he ought to take the inquest within a moneth next after the delivery of the writ, and he ought to returne the same within a moneth after he taketh it either by writ, or *virtute officii*. 3 H. 8. cap. 2.
8 H. 6. 16.
18 H. 6. 7.

See *capit' eschaetrix*, whereof the escheator may inquire: and the statute *de eschaetoribus, anno 29 E. 1.* Vide Dier. 248. 249. Mag. Cart.
1 part. fo. 160,
161.
a Keylw. 6 H. 8.
17.
b 1 A. 8. cap. 8.
3 H. 8. cap. 2.
c 34 E. 3.
cap. 13. 36 E.
3. cap. 17. other-
wise void.
8 H. 6. cap. 16.
18 H. 6. cap. 7.

Neither he nor the commissioners can take any enquest of inquiry

quiry of any other persons, but such as be impanelled and returned by the sherife.

1 H. 8. cap. 8.
3 H. 8. cap. 2.

If he or the commissioners shall deny any person to give evidence openly in his presence to such enquests as shall be taken before him for the finding of an office, he shall forfeit 40 li. If he, or the commissioners, or any of them shall refuse to take a verdict of the enquest offering to present the same, he shall lose 100 li. to the party grieved.

24 E. 3. 55.

An office found before commissioners is as forcible in law as if it had been found before the escheator.

See the 2. part
of the Institute,
W. 2. cap. 26.
23 H. 6. cap. 17.
1 H. 8. cap. 8.

* [226]

The escheator ought to take no fee by the statute of W. 1. but of the king only, but if he find an office by force of any writ, and according to the same for the king, hee shall have a fee of 40 s. by the statute of 23 H. 6. but if it be found * before him by writ, or *ex officio*, that the lands are holden of a subject, or if he find an office for the king *virtute officii*, there is no fee due to him. But the commissioners ought to take no fee at all, though an office be found for the king, because they are not within the statute.

a 33 H. 8.
cap. 22.

b 32 H. 8.
cap. 46.

c 5 E. 3. cap. 9.
12 E. 4. cap. 9.
F. N. B. 100. c.
9 H. 6. fo. 60.

The escheator finding an office for the king by force of any writ, not exceeding the value of 5 li. shall not take above 15 s. and the commissioners can take nothing: b but the master of the wards may allow commissioners, counsellours, and feodaries their costs. c The escheator may make deputies, but such able men, for whom he will answer, and that have sufficient lands in the same county, &c. and the escheator shall certifie the name or names of his deputy or deputies, under his letters patents into the exchequer within twenty dayes after deputation made. And no deputy shall take upon him to occupy that office, except the escheator hath lands to the value of 20. li. d And if any sub-escheator be made, not having sufficient, he may be removed by the kings writ directed to the escheator *de subeschaetore amovendo*.

d 5 E. 3. cap. 4.
Register, 177.

e 21 E. 4. 23.
F. N. B. 100. c.
1 H. 8. cap. 8.
3 H. 8. cap. 2.
9 H. 6. fo. 60.
f Regist. fo.
301. b.

e If the escheator, subescheator, or commissioner, returne a false office, an action upon the case doth lye against them by the party grieved, although they be offices of record, besides the penalty of 100 l. by the statutes of 1 H. 8. and 3 H. 8. f The oath of the escheator expressing his duty, appeareth in the Register, fo. 301. b.

g 10 H. 7. 7. b.

g If I be possessed of the goods of a man outlawed in trespass, and I deliver them to the escheator, I am discharged, *quod Brian affirmavit*: for he said that the escheator is the kings minister, and chargeable for the goods.

C A P. XLIV.

Courts in the Universities of Cambridge and Oxford.

IT is true that each of these universities hath divers courts, jurisdictions, and powers, by the charters of the kings of this realme, divers of which were not grantable by charter, but by authority of parliament, which being espyed, queene Elizabeth, (who could (we speake it of knowledge) not onely speak the languages of French, Italian, and Spanish, but was learned in the Latine and Greek learned tongues, and excelled all others of her sex in knowledge both divine and humane,) for the great love and favour that her majestie bare to her highnesse universities, and for the great zeal and care that the lords and commons in parliament had for the maintenance of good and godly literature, and the vertuous education of youth within either of the said universities; and to the intent that the ancient privileges, liberties and franchises of either of the said universities, granted, ratified and confirmed by the queenes highnesse, and her most noble progenitors, might be had in great estimation, and be of greater force and strength, for the better increase of learning, and the further suppressing of vice: it was enacted by authority of parliament holden in the 13. yeare of her most prosperous reigne: 1. That each of the universities should be incorporated by a certaine name (albeit they were ancient corporations before.) 2. That all letters patents of the queens highnesse, or by any of her progenitors or predecessors, made to either of the said corporated bodies severally, or to any of their predecessors of either of the said universities, by whatsoever name or names, the chancelor, masters, and scholars of either of the said universities, in any of the said letters patents had bene named, should be good and effectually, and available in law, to all intents, constructions and purposes, &c. as amply, fully, and largely, * as if the said letters patents were recited *verbatim* in that act of parliament, any thing to the contrary notwithstanding. 3. That the chancelor, masters and scholars of either of the said universities, and their successors for ever, should severally have, hold, possesse, and enjoy, and use to them and their successors for ever, all manner of mannors, &c. and hereditaments, and all manner of liberties, franchises, immunities, quietances, and privileges, view of frankpledge, law dayes, and other things whatsoever they be, which either of the said corporated bodies had held, occupied or enjoyed, or of right ought to have had, used, occupied, and enjoyed, according to the true intent and meaning of the said letters patents whatsoever, any statute, law, usage, custome, or other thing or things, made or done to the contrary notwithstanding. 4. That all letters patents of the queenes highnesse, or any of her progenitors or predecessors, and all manner of liberties, franchises,

Liberrall arts and sciences are *luminaria reipublicæ.*

* Note these general brief and effectual words.

• Nota hoc.

Note these general binding and effectually words. *Actus benedictus.*

• *Haud facile emergunt quorum virtutibus obstat res vexata domini.*

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Nota (prob dolor) the ancient charters, records, &c. of the university of Cambridge burnt by rebels,

immunities, quietances, and privileges, leets, law dayes, * and all other things whatsoever therein expressed, given or granted to either of the said universities, by what name soever, be, and by vertue of this act should be established and confirmed, any statute, law, usage, custom, construction, or other thing to the contrary notwithstanding.

By this blessed act of parliament, all the courts, franchises, liberties, priviledges, immunities, &c. mentioned in any letters patents, &c. to either of the said universities (which were too long here to be recited) * that they might prosper in their study with quietnesse, are established, made good and effectually in law, against any *quo warranto*, *scire facias*, or other suits, or any quarrell, concealment or other opposition whatsoever. See the letters patents of king H. 8. bearing date *primo Aprilis anno 14.* of his reigne, made to the university of Oxford: and other letters patents bearing date *26 Aprilis, anno 3 regni Eliz.* made to the university of Cambridge, both which are by expresse name established and confirmed by the said act of 13 Eliz. In which act there is a saving to all, other then to the queenes majesty, her heires and successors. *Et sic omnia in tuto.*

Touching the jurisdiction and confians of divers things belonging to the university of Cambridge, see the parliament roll of 5 R. 2. nu. 45, &c. till nu. 66.

The maior, bailifes, and comminalty of Cambridge were accused, for that they in the late tumults and uprores confedered with divers other misdoers, brake up the treasury of the university of Cambridge, and therout took and burned fundry the charters, &c. of the said university, and also compelled the chancelor and scholars of the said university, under their common seals to release to the said maior and burgeses, all manner of liberties, and also all actions reall and personall, and further to be bound to them in great summes of money: whereupon it was agreed in forme following: that one writ should be directed to the maior, bailifes, and comminalty of Cambridge, that then were to appeare in the parliament, and to answer (the forme thereof doth there appeare.) And that another writ in forme aforesaid should be directed to the maior and bailifes that were at the time of the offence, (the forme whereof doth there appeare also.) The maior and bailifes that then were appeared in proper person, and pleaded not guilty, ne witting thereto; the comminalty by their atturneyes appeared at the day. The maior and bailifes, that before were at the time of the offence, appeared also in proper person, and the said maior answered, That he was not privy to any such act, but only by compulsion of others, if any thing were therein done; the which the kings learned councill then did disprove, as by the record appeareth. The burgeses of Cambridge delivered into the parliament the said two deeds sealed by the chancelor and scholars, the one deed contained a release of all liberties and priviledges with a bond of 3000. li. to release all suits against the said burgeses. The other was a release of all actions reall and personall, as there doth appeare. Upon the reading of which two deeds, they both were commanded to be cancelled for the causes aforesaid. After this the chancelor and scholars aforesaid by way of petition, and in form of fundry articles exhibited, shewed the beginning and whole discourse of the said maior and bailifs effectually

effectually and largely. Upon reading of which bill, it was demanded of the said burgessees what they could say, wherefore their liberties late by the king confirmed should not be seised into the kings hands as forfeited.

They require 3. things, viz. 1. A copy of the bill, 2. Councell, and 3. Respight to answer. To the copy of the bill was answered, that sithence they heard the same, it should suffice, for by law they ought to have no copy. To councell, it was said, that wherein councell was to be had, they should have, wherefore they then were appointed to answer to no crime or offence, but only touching their liberties. After many dilatory shifts and subterfuges, the said burgessees touching their liberties only, having no colour of defence, submitted themselves to the kings mercy and grace, saving their answers to all other matters. The king thereupon by common consent of the parliament, and by authority of the same, seised the same liberties into his hands as forfeited. And after the king granted to the chancelor and scholars aforesaid, within the said town of Cambridge and * suburbs of the same the assise, conufance, and correction, of bread, ale, weights, measures, regrators, and forestallers, with the fines, and amerciaments of the same, yeelding therefore yearly at the exchequer 10 l. And certain liberties the king after granted to the said maior and baillies, and increased their former fee farm.

Nota, by act of parliament. Vid. Rot. parl. 8 R. 2. nu. 11. Nota, suburbs proventh a city. Nota, the priority of the grant to the university.

This university of Cambridge hath power to print within the same *omnes et omnimodos libros*, which the university of Oxford hath not. See a notable record in parliament, 13 H. 4. concerning the university of Oxford, by the which it was decreed and adjudged by authority of parliament, that the popes bul should not impeach, or alter the right and custome of any thing concerning that university, and therefore was disallowed, too long to be here inserted.

Rot. par. 13 H. 4. nu. 15, 16, 17.

C A P. XLV.

[229]

The Courts of the Stanneries in Cornwall and Devon.

THE stile of the court of stannery is, and alwayes hath been, *Magna curia domini regis ducatus sui Cornubiæ apud Crokerenton in com' Devon' coram A. B. custode stannariæ dicti domini regis in dicto com' Devon.*

The stile of the court.

The officers of this court be the steward, underwarden, &c.

The officers.

It is called *stannaria*, à *stanno*, because the lord warden hath jurisdiction of all the tynne in Cornwall and Devon. Tynne is a Saxon word, and derived à *tinnitu*, and the tynners are called *stannatores*.

The jurisdiction of this court is guided by special lawes, by customes, and by prescription time out of mind, which so far as we find it to be allowed by the resolution of the judges, or by act of parliament, we will recite.

The jurisdiction. See the first part of the Institutes sect.

In cancellaria apud Westm. coram Nicho. Bacon milite custod' magni sigilli Angliæ pro stannatoribus, die Veneris, viz. 14 die Novembris anno regni Elizabethæ reginæ quarto. Inter Martinum Trewynarde quer' in cur' stannar' com' Cornub', et Johannem Killegreu et Georgium Trewynard defend.

Mich. 4 Eliz. in
cancellar.
Trewynards
case.

Where the 14 day of October last past, the matter in question touching the allowing or disallowing of writs of error, as well between the parties aforesaid, as also for and concerning all other writs of error touching all causes determinable in the stannary court in Cornwall, was by the order of the lord keeper of the great seal of England committed to the hearing and examination of Sir William Cordel knight master of the rols, and Sir James Dier knight chief justice of the common pleas, and justice Weston; to the intent upon the due consideration of the cause they should make report unto the said lord keeper of their opinions and proceedings therein, as in their judgements should seem most agreeable to justice and equity: who having accordingly travelled diligently for the understanding of the truth of the premises upon the deliberate hearing and examining of the cause in the presence of the council learned of both sides, and upon the perusing and consideration of the ancient prescriptions, customes, liberties, and charters exhibited by the said parties concerning the premises, have this day made their report unto the said lord keeper as followeth. That is to say: that for as much as the said plaintife could not, nor did not thew forth any record or president, whereby any judgements or executions heretofore passed in any of the said stannery courts have been reversed by writ of error in any of the queens majesties courts of her bench or common pleas: and for that it appeareth unto them that divers and sundry inconveniencies were likely to ensue by allowing of such writs of error, and upon other causes and considerations them especially moving: they in their opinions think it not meet nor convenient that any writs of error should passe or be suffered in such case to reverse any of the said judgements or executions. Upon which report made, it is this day ordered by the said lord keeper of the great seale, that the order heretofore taken the 15 of June last past made against the lord warden of the stanneries aforesaid, his officers and others mentioned in the same, concerning the not allowing or not executing of any writ or writs of error: and all and singular the contempts contained in the same order supposed by them to be committed, concerning the not allowing or not executing of any writ or writs of error as is aforesaid, shall be clearly frustrated and void, and they and every of them clearly released and discharged, any thing in the same order to the contrary notwithstanding. And that the said defendants and every of them shall be at their liberty to take their advantage against the said plaintife for their executions had or to be had in any of the said stannery courts according to the custome of the same courts without let or impeachment of any writ or writs of error, or of false judgement sued or to be sued in any of the said courts of the kings bench or common pleas. And that from henceforth, no writ or writs of error or false judgement be hereafter sued in any of the said courts of the kings bench or common pleas to reverse any judgement or judgements in any of the said courts of stanneries heretofore given, or hereafter to be given, untill upon further consideration
of

No writ of error
lyeth upon any
judgement in the
stannery courts.
Vide simile.
Dier 23 Eliz.
fo. 376.
But judgements
shall be reversed
by appeal as in
the next page
appeareth.

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of the ancient grants and liberties of the said courts of stanneries, or upon some other sufficient cause or matter, it shall be otherwise ordered and determined by this court of the chancery.

In camera stellata apud Westm' coram concilio ibidem die Mercurii, viz. 29 die Novemb. anno regni dnæ. Eliz. Dei gratia reginæ Angliæ, Franciæ, et Hiberniæ, fidei defensor', &c. septimo 1564.

Mich. 7 Eliz.
Reginæ in Ca-
mera Stellata
29 Nov.

Where a matter in variance hath been heretofore moved, and depending in this honourable court, between Martin Trewynard plaintife, and John Raskarrock, William Gilbert, John Killegrew the yonger, James Drewe, and other defendants by two severall bills exhibited into this court, whereof the last bill containeth no other matters of effect being not mentioned in the first bill, other then the taking of certaine cattell of the said complainant and others. And where also it appeareth this present day, that the taking of the said cattell was by certaine of the said defendants lawfully authorized for that purpose by the steward of the stannery court of Penwith and caried into the county of Cornwall for an execution upon a condemnation by judgement had in the said court against the said plaintife. Touching which condemnation the said complainant hath complained as well in the court of chancery by bill, and in the kings bench by writ of error, as also in this court, as appeareth in the first of the said two bills here depending, meaning by some of these wayes to call in question the validity of the said judgement, and was out of the said severall courts by order discharged and dismissed, referring the proceeding upon the said judgement to the order of the said stannery court, according to divers ordinances by divers ancient charters, customes, and liberties belonging to the stannery ratified by act of parliament. And where it doth also appear that the taking of the said cattell, whereupon the said last bill in this court is exhibited was only for the execution of the said recovery. And where also it doth further appeare, that by the lawes and ordinances of the said stannery (if any such cause of complaint be ministred) the same is to be redressed by appellation in severall degrees, viz. first to the steward of the stannery court where the matter lyeth, then to the underwarden of the stanneries, and from him to the lord warden of the same stanneries: and for default of justice at his hands, to the princes privy counsell, and not examinable either here in this court or in any other court. It is therefore this present day ordered, that the said severall bills of complaints, and the said defendants named in the same, with all the causes therein mentioned, be forthwith dismissed out of this court to be determined according to the said lawes and ordinances in the said stannery, and not elsewhere.

Erroneous judg-
ments in the
stannery are to
be reveried by
appellation, and
to whom this
appellation shall
be made.

The resolution of all the judges (by force of his majesties letters) concerning the stanneries in Devonshire and Cornwall upon the hearing of the counsell learned of both parties at severall dayes, and what could be alledged and shewed on either party, and upon view and hearing of the former proceedings in the courts of the stanneries both before and since a certaine act of parliament made concerning the stanneries in * 50 E. 3.

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Term Mich.
4 Jac. regia.

First, we are of opinion, that as well blowers as all other labourers and workers (without fraud or covine) in or about the stanneries

* See this act of
parliament here-
after in this
chapter.

ries in Cornwall and Devon, are to have the privilege of the stanneries during the time that they do work there.

Secondly, that all matters and things concerning the stanneries, or depending upon the same, are to be heard and determined in those courts according to the custome of the same time out of mind of man used.

Thirdly, that all transitory actions between tynner and tynner or worker and worker (though the cause be collaterall, and not pertaining to the stannery) may be heard and determined within the courts of the stanneries according to the custome of the said courts, albeit the cause of action did rise in any place out of the stanneries, if the defendant be found within the stannery; or may be sued at the common law at the election of the plaintiffe. But if the one party only be a tinner or worker, and the cause of action being transitory and collaterall to the stannery do rise out of the said stanneries, then the defendant may by the custome and usage of those courts plead to the jurisdiction of the court, that the cause of action did rise out of the stanneries, and the jurisdiction of those courts, which by the custome of the court he ought to plead in proper person upon oath. And if such plea to the jurisdiction be not allowed, then a prohibition in that case is to be granted. And if in that case the defendant do come to plead to the jurisdiction of the court upon his oath, he ought not to be arrested *causando, redendo, vel morando*, at the suit of any subject in any corporation, or other place where the said courts of the stannery shall be then holden.

Fourthly, if the defendant may pleade to the jurisdiction of the court in the case before mentioned, and will not, but plead and admit the jurisdiction of the court, and judgment is given, and the body of the defendant taken in execution, the party cannot by law have any action of false imprisonment, but the execution is good by the custome of that court. But if in that case it doth appear by the plaintiffes own shewing, that the contract or cause of action was made or did rise out of the stanneries, and the jurisdiction of those courts, or if it appear by the condition of the bond whereupon the action is grounded, that the condition was to be performed in any place out of the jurisdiction of those courts, then all the proceedings in such cases upon such matter apparent, are *coram non iudice*.

Fifthly, we are of opinion, that no man ought to demurre in that court for want of form, but only for substance of matter. As if an action be brought there for words which will bear no action, or an action of debt upon a contract against executors or administrators, or such like: in such cases a demurrer may be upon the matter. And that the proceedings there must be according to the custome of those courts used time out of minde of man: for that no writ of error doth lye upon any judgement given there, but the remedy given to the party grieved is by appeal, as hath been time out of minde of man accustomed.

Sixthly, that the courts of the stannery have not any jurisdiction for any cause of action that is locall, rising out of the stanneries.

Seventhly, that the priviledge of the workers in the stanneries do not extend to any cause of action that is locall rising out of the stanneries (for matters of life, member, and plea of land are by expresse

expresse words excepted in their charters) and no man can be exempt from justice.

Vide lib. Intr. Coke fo. 467. tit. Prohibition, and fo. 23. 293. b. in error. Vide Fleta lib. 6. cap. 7. § *Servitia vero*.

Such charters, records, and acts of parliament as we have observed concerning the stannery, we will according as we have done throughout this treatise recite *in serie temporis*.

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*Johannes dei gratia rex Angliæ, &c. Sciatis quod intuitu Dei, et pro salute animæ n̄stræ dedimus et concessimus, ac præsentī carta n̄stra confirmavimus Deo, et ecclesiæ beati Petri Exon', et venerabili patri * Simoni Exon' episcopo et successoribus suis Exon' episcopi decimam de antiqua firma stanni in com' Devon' et Cornub. habendum sibi et successoribus suis cum omnibus libertatibus et liberis consuetudinibus ad eam pertinentibus per manus illius vel illorum qui stannariam habuerint in custodia, &c.*

In Registro Episcopi Exon.
* This was Simon de Apulia, first dean of York, and consecrate bishop.
8 Johan.
10 E. 2. Inquis.
2. nu. 29.
Rot. pat. 1 H. 3. m. 4.
* She was the daughter of Aymer earl of Angouleme.

*Rex Roberto de Courtney salutem. Mandamus vobis quod sine dilatione et difficultate aliqua habere faciatis * Isabellæ reginæ matri n̄stræ stannariam com' Devon' cum cuncto et omnibus pertinent'. Teste com' marcschalco, &c.*

* Rot. fin. 4 H. 3. b Rot. pat. 10 H. 3. m. 9.
c Rot. pat. 33 E. 1. The liberties and privileges of the tynners.
d Pl. Com. 327. 328.
e 35 E. 1. in the treasury.
f Rot. pat. 4 E. 2. 5 12 E. 3. part. 1. nu. 17.

* Rex concessit Johanni filio Rici stannariam in Cornubiæ, reddendo mille marcas. Simile anno 5 H. 3. rot finium.

b Rex, &c. Sciatis quod commissimus Ric'o dilecto fratri nostro stannariam nostram Cornubiæ cum omnibus pertin', &c.

c There be two severall charters of liberties and priviledges both bearing date 10 Aprilis anno 33 E. 1. the one made *ad emendationem stannariarum n̄strarum in com' Devon*, and the other *ad emendationem stannariarum n̄strarum in com' Cornubiæ*, which you may read at large in Pl. Com. * These charters were allowed in anno 35 E. 1.

f The charter of 33 E. 1. was confirmed to the tynners of Devon', *de verbo in verbum*, and the like in 1 E. 3. and 17 E. 3.

g Vide rot. *Almania*, anno 12 E. 3. part. 1. nu. 17. An ordinance of the king by advice of his counsell concerning tynne.

A lease made to *Tideman de Linberghe de cunagio stannariæ et de emptione totius stanni in com' Devon' et Cornub' pro fine mille marcarum et 3500. marcarum redditus*. These were things done *de facto*, but let us turn our selves to that, which hath the force of a law, viz.

h an excellent declaration, limitation and exposition of the said charters of 33 E. 1. that was made in the parliament holden in an. 50 E. 3. by authority of the same, but never printed, (which we have set down in *hæc verba*, to the end that no syllable of the same should be omitted) it is enacted as followeth.

Rot. pat. 21 E. 3.
Vide Rot. pat. 26 Apr. anno 7 E. 6. Gilbert Brockhouse.
h Rot. par. 50 E. 3. holden the Monday after the feast of S. Gregory.

A tres excellent et tresredout seigneur le roy, supplic sa poure commune del county de Devonshire que luy pleasse per l'aveu des prelatz, countees, barons, et autres sages in cest present parliament ordeiner remedié de ceo que les esteymors, et les ministres del esteynery del dit county ont long temps a la dit commune fibien as seigneurs come as autres fait, et font de jour in autre diverses extortions, oppressions et grievances per colour de les franchises a eux grantes per les chartres nostre seigneur le roy, et de ses progenitors encontre la ley et le purport des ditz chartres, et per leur malvoies interpretation dicelles: et que les ditz chartres et les franchises comprises en ycelles puissent leuz et declarer d' article en article si q; la commune du dit county puissent estre apries droitement d'ycelles, et que cest declaration soit mys en record. Et si nul article y soit en les ditz chartres que touche customes ou usages, que plesse a p̄stredit seigneur le roy d'ordeiner et mander en breif temps suffisants justices

fices seignours et autres apries de la ley a celles parties denquiver des dites customes et usages, et quils eyent pour Loyr et terminer tous les conspiracions, confederations, alliaunces, champerties, extortions, oppressions, grieuances, fauzines et maintenances qu'eux les ditz esteynors et leur ministres ont fait a la dite commune, cu a nul de eux qui prendre se verra, et ce auxi bien al suit le roy, come de la party entendants que le roy nostre seignior ent gaigner a molt, et d'autre parte se remede ne lour y soit ore fait ilz serrount en breife temps pur la greinder party disherites, et destruitz a toutz jours, que Dieu ne voilla. Le teneur d'ascuns des articles de la dites chartres que leur besaignent de declaration sensuent cy apres premerement, cest assastavoir.

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Sciatis nos ad emendationem stannarij nostrj in com' Devon' ad tranquillitatem et utilitatem stannatorum nostrorum predictorum eorundem concessiss' pro nobis et heredibus nostris, quod omnes stannatores predicti operantes in stannariis illis que sunt dominica nostra, dum operantur in eisdem stannariis liberi sint et quieti de placitis nativorum, et de omnibus placitis et querelis curiam nostram et heredum nostrorum qualitercunque tangentibus, ita quod non respondeant coram aliquibus iusticiariis vel ministris nostris seu heredum nostrorum de aliquo placito seu querela infra predictum stannarias emergentibus, nisi coram custode nostro stannariarum nostrarum predictarum qui pro tempore fuerit, (exceptis placitis terræ, vitæ, et membrorum) nec non recedant ab operationibus suis per summotionem alicujus ministrorum nostrorum seu heredum nostrorum, nisi per summotionem dicti custodis nostri. Et quod quieti sint de omnibus tallagiis, theloniis, stallagiis, auxiliis et aliis custumis quibuscunque in villis, portubus, feriis et mercatis infra com' predictum de bonis suis propriis, &c.

Sur quoy plese declarer si autres personnes que les estainors overants in les estayneries averont et emoyront la franchise grante per la dite chartre du roy descome la dite chartre voet, quod omnes stannatores predicti operantes in stannariis illis sint liberi, &c. Et autres personnes que les overours, cest assastavoir leurs maistres que les lovent et leurs seroants et autres claymont mesme la franchise. Et auxint plese declarer si les ditz overours y averont les franchises en autre temps que quant ilz overont in mesme l'esteyncy, descome la chartre voet dum operantur in eisdem stannariis liberi sint, &c.

Endroit de les dites paroles. Operantes in stannariis illis, et dum operantur in eisdem stannariis, soient clerement entendus, de operariis laborantibus duntaxat in stannariis illis sine fraude et dolo, et non de aliis, nec alibi laborantibus.

Item soit declare si mesmes les overours averont mesme les franchises tant come ils averont aillors que in les desmesnes que furent au roy laiell nostre seignior le roy que ore est. La quel roy ayell leur grantra la dite chartre autemps del dit grant des franchises descome la chartre voet, quod omnes stannatores predicti operantes in stannariis illis que sunt dominica nostra, dum operantur in eisdem stannariis sint liberi, &c. Et ilz clamont d'avoir tous soit il einst qu'ils overont aillours qu'en les dites desmesnes le roy layel.

Endroit de cest article pur ce que il y a une autre article en mesme la chartre, que leur donne conge et licence de fover, in terris, moris, et vastis ipsius domini regis et aliorum quorumcunque in com' predicto, et aquas, et cursus aquarum ad operationes stannariarum predictarum divertere ubi et quotiens opus fuerit, et emere buscum ad funcluram stanni, sicut antiquitus fieri consuevit, sine impedimento domini regis, heredum suorum, episcoporum, abbatum, comitum, baronum, seu aliorum quorumcunque, &c. Il semble un besoignable chose en ce case que leur custumes et usages soient diligemment

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diligemment enquiz, et que le gardein de lesteynerie soit charge que il ne soffre nul overour del dit esteynerie fover en prees, ne autre boys, neve abate autry boys ou autry measons, ne bestover eaue ou cours de eaue per malice. Et si per case le dit gardein se y vorra excuser que les dits esteynors ny voillent obeire a ses maundements, ne cesser leur malice pur luy que tant tost il se face monstrier al grand conseil le roy, et due et hastive remedy ent ferra ordeignes.

Item soit declares in speciall comen les justices qu'ore ferront assignes d'aller celles marchers pur ent faire la dite enquerre prendont liffue du pais si ascun y chiete entre parties, et coment ceste article precedont touchant les custumes et usages estoit uses devant la festaunce de la dit chartre l'avel, et per queux gents tielle liffue ferra tries, cestascavoir le quel per foreins solement, ou per estaynors seulement, ou per ambideux, &c.

Endroit de cest article, en soit la vus pris du grant conseil et y soient les records en cyre si nulles y soient, et autres evidences et remembrances deins le treasury le roy et aillours, et auxint les remembrances des seigniors queux y ont estre pur le temps serches et duement examines, et auxint soient les liures et evidences quelles les dits estaynors ent ont envers eux venes et regardes, issint que le y purra le mieulx venir al droit verity.

Item soit declare si le gardein del estaynery puisse tenir plee entre esteynor et forein de querele sourdant aillours que in les lieux ou ilz sont overants desuome la chartre voet, quod custos noster prædictus vel ejus locum tenens teneat omnia placita inter stannatores prædictos emergent et etiam inter ipsos et alios forinsecos de omnibus transgressionibus, querelis, et contractibus factis in locis in quibus operantur infra stannarias prædictas similiter emergent, &c. Quar' il tient plee de tieux quereles sourdants chascune partie deins la dit counte.

Endroit de cest article. Se ont extende la jurisdiction clerelement selon les paroles del dit Chartre, cestascavoir, in locis ubi iidem operarii operantur, et nemi aillours, ne en autre manner.

Item plese declarer de ceo que la dite chartre voet ensi. Et si qui stannatorum prædictorum in aliquo deliquerint per quod incarcerationi debeant per custodem prædictum arresstentur, et in prisona nostra de Leidford et non alibi detineantur, quousque secundum legem et consuetudinem regni nostri deliberentur. Et en cest case que esteynor soit prise pur felony et liverex au gardein, il est suffert sovent aller a large de quoy grand perill avient moult de fois et aussi de ceo que la delivrance del dit gaole nest passe fait une foitz en dis ans. Et que pis est per colour de mesme ceste article le dit gardein prent hors dautre prison les emprisonnes pur arverages sur accompts, et les mette a Lydeford ou ilz sont in tant foveres quilz ny font force de jamays fair gree a leur seigniors.

Endroit de ceste article en soit enquiz diligemment devant les justices que ore y ferront prochemement assignes denquerre per quelle authority ilz y fait ensy de puis que en mesme la chartre sont exceptes per speciall toutes ples de terre et de vie, et de membre, et celle enqueste retourne soit declare en speciall sil buisoigne.

And according to this act a commission issued out in these words.

Edwardus Dei gratia Angliæ et Franciæ rex et dominus Hiberniæ dilectis et fidelibus suis * Guidoni de Brian et Johanni de Montague, Roberto de Belknap, Hugoni de Segrave, Henrico Perchaie, et Waltero de Clopton, salutem. Cum dominus Edwardus quondam rex Angliæ avus noster per cartam suam quam confirmavimus ad emendationem stannariorum suarum in con' Devon' ad tranquillitatem, et utilitatem stannatorum

Rot. pat. 50 E. 3.

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* These two former were barons and lords of parliament, and sat in the last parliament of 50 E. 3.

Pleas of land,
life and member
are excepted.

suorum eandem concefferit pro se et hæredibus suis, quod omnes stannatores prædicti operantes in stannariis illis quæ fuerunt dominica sua, dum operentur in eisdem stannariis essent liberi et quieti de omnibus placitis nativorum, et de omnibus placitis et querelis curiam suam et hæredum suorum qualitercumque tangentibus: ita quod non responderent coram aliquibus iusticiariis vel ministris ipsius avi nostri vel hæredum suorum de aliquo placito vel querela infra prædictas stannarias emergent' nisi coram custode stannarium prædictarum qui pro tempore fuerit: (exceptis placitis terræ, vitæ, et membrorum,) nec recederent ab operationibus suis per summonitionem aliquorum ministrorum dicti avi nostri seu hæredum suorum nisi per summonitionem communem dicti custodis, et quod quieti essent de omnibus tallagiis, theloniis, auxiliis, stallagiis, et aliis customis quibuscumque in villis, portibus, feriis et mercatis infra com' prædictum de bonis suis propriis. Concefferit etiam eisdem stannatoribus quod fodere possunt stannum et turbas ad stannum fundendum ubique in terris, moris et vasis suis et aliorum quorumcumque in com' prædicto, et aquas, et cursus aquarum ad operationem stannariorum prædictarum divertere, ubi et quoties opus fuerit, et emere buscram ad functionem stanni sicut antiquitus fieri consuevit, sine impedimento ipsius avi nostri vel hæredum suorum, episcoporum, abbatum, priorum, comitum, baronum, seu aliorum quorumcumque. Et quod custos prædictus vel ejus locum tenens teneat omnia placita inter stannatores prædictos emergentia, et etiam inter ipsos et alios forinsecos de omnibus transgressionibus, querelis et contractibus factis in locis in quibus operentur infra stannarias prædictas similiter emergent', et quod idem custos haberet plenam potestatem ad stannatores prædictos et alios forinsecos in hujusmodi placitis iusticiandi et partibus iusticiam faciend' prout iustum, et prius in stannariis illis fuisse usitatum. Et si qui stannatorum prædictorum in aliquo delinquant per quod incarcerari deberent, per custodem prædictum arrestentur, et in prisona de Lydesford, et non alibi custodiantur, et deliverentur, quousque secundum legem et consuetudinem regni Angliæ deliberarentur. Et si aliqui stannatorum prædictorum super aliquo facto infra com' prædictum non tangente stannarias prædictas se posuerint in inquisitionem patriæ, una medietas juratorum inquisitionis hujusmodi esset de stannatoribus prædictis, et alia medietas de forinsecis. Et de facto totaliter tangente stannarias prædictas fuerint inquisitiones sicut fieri consueverint, sicut per inspectionem rotulorum cancellariæ nostræ nobis constat. Ac etiam ex clamorosa insinuatione tam magnam quam communitat' com' prædict' in presenti parlamento nostro graviter conquerentium ad nostrum pervenerit auditum, quod stannatores prædicti ac officarii, balivi et ministri dict' stannariæ cartam prædictam pro libito suæ voluntatis interpretantes, et debitum intellectum ejusdem cartæ pervertentes, et etiam excedentes, ac quidam alii in magno numero asserentes se fore stannatores cum non fuerint, habitis inter eos conspirationibus, confederationibus, et alligantiis, quamplurima extorsiones, oppressiones, falsitates, deceptiones, cambipartias ambidextras, manumvenias, transgressiones, damna, gravamina et excessus diversis subditis nostris dict' com' colore cartæ supradictæ per plures vices fecerunt, et indies facere non desistant in nostri contemptum et ipsorum conquerentium grave præjudicium, dict' com' verisimilem destructionem et eversionem manifestam. Nos affectantes singulos subditos nostros sub quieto et debito regimine gubernare, et nolentes tanta maleficia, si per prædict' stannatores, officarios, balivos vel ministros, aut alios quoscumque perpetrata existunt, aliquoties transire impunita; assignavimus vos, quinque, quatuor, tres et duos vestrum, (quorum vos præfat' Robert' unum esse volumus) iusticiarios

arios nostros ad inquirendum per sacramentum proborum et legalium hominum de com' prædictâ tam infra libertates quam extra, per quos rei veritas melius sciri poterit, et aliis viis et modis quibus melius fore videritis de quibuscunque conspirationibus, confœderationibus, alligamentis, extortionibus, oppressionibus, falsitatibus, deceptionibus, cambipartiis, ambidextris, manutentionibus, transgressionibus, damnis, gravaminibus et excessibus per quoscunque stannatores vel alios in com' prædictâ factis, et per quos, vel per quem, quibus personis, ubi et quibus temporibus, qualiter et quomodo, et de aliis articulis et circumstantiis præmissa qualitercunque tangentibus plenius veritatem; et ad præmissa omnia et singula tam ad seclam nostram quam dictorum conquerentium et eorum singulorum et aliorum quorumcunque pro nobis, aut pro seipsis prosequi volentium, audiendâ et terminandâ secundum legem et consuetudinem regni nostri Angliæ: salvo semper dictis stannatoribus libertatibus et privilegiis eis per cartam prædictam concessis. Et idco vobis mandamus quod ad certos diem et loca quos vos, quinque, quatuor, tres vel duo vestrum (quorum vos præfat' Robert' unum esse volumus) ad hoc provideritis diligenter super præmissa faciatis inquisitiones; et conspirationes, confœderationes, alligantias, extortiones, oppressiones, falsitates, deceptiones, cambipartias, ambidextras, manutentionias, transgressiones, damna, gravamina, et excessus prædicta audiat et terminetis in forma prædicta, facturi inde quid ad justitiam pertinet, secundum legem et consuetudinem regni nostri Angliæ. Salvo nobis americana mentis at aliis ad nos inde spectantibus. Mandavimus enim vic' com' prædictâ quod ad certos diem et loca quos vos, quinque, quatuor, tres vel duo vestrum (quorum vos præfat' Robert' unum esse volumus) ei scire fac' venire fac' coram vobis quinque, quatuor, tres vel duobus vestrum tot et tales probos et legales homines de baliva sua tam infra libertates quam extra, per quos rei veritas melius sciri poterit et inquire. In cujus rei testimonium has literas nostras fieri fecimus patentes. Teste me ipso apud Westm' sexto die Julii, anno regni nostri Angliæ 50. Regni vero nostri Franciæ 37. Per consilium in parlamento.

But what was done upon this commission we have not yet found.

The said charter of 33 E. 1. to the tynners of Cornwall was confirmed.

Rot. pat. 8 R. 2.

And the charter of 33 E. 1. to the tynners of Devon' was also confirmed.

Rot. pat. anno
1 E. 4.
Rot. pat. 3 H. 7.

The like confirmation to the tynners of Devon.

See the statute of 11 H. 7. cap. 4. concerning cunage and weights.

It was resolved by the whole court that *stannum*, tyn, otherwise whitelead, nor black lead, nor any other base metall did belong to the king by his prerogative, as gold and silver doe, albeit there may be tried out of the base metall gold or silver, but that is as the feed or strength of the base metall, which being extracted becomes defective.

Mich. 4 Jac. In
Camera Stellata.

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There be five kindes of base metals, viz. *æs*, sive *cuprum* (because it was found out, as some hold, in *Cypro*) copper, *stannum* tynne, *ferrum* iron, *plumbum* lead, and *orichalcum* latyn. Polybius 209 years before Christ wrote that this island was abundantly stored with tynne. *Britanni qui juxta * Belerium promontorium incolunt mercatorum usu, qui eo stanni gratia navigant, humaniores reliquis erga hospites habentur, hii ex terra saxosa cujus venas seclati effodiunt stannum igne educunt in quandam insulam ferunt Britannicam juxta, quam Vcclam*

Polybius lib. 3.
Plinius lib. ca. 8,
9. Diodorus Si-
culus lib. 5. ca.
8. fo. 142. flo-
ruit sub Augusto.
* Aut Vestrum,
i. the cape of
Cornwall.

vocant :

vocant : ex hiis insulis mercatores emptum stannum in Galliam portant inde diebus fere triginta cum equis ad fontem Eridani fluminis perducunt.

See M. Camden, pa. 134. in Cornwall.

And for as much as tynne is a staple commodity, let us in the next place treat of the court of the mayor of the staple.

C A P. XLVI.

The Court of the Mayor of the Staple.

* 27 E. 3. cap. 22.
See the first part
of the Institutes.
Sect. 3. verb. in
la ley. m.

27 E. 3. cap. 19.

27 E. 3. stat. 2.
c. 21.

The jurisdiction.

The law merchant.

THIS court is guided by the law merchant, which is the law of the staple, and is holden at the wool-staple at Westm. And there are also two constables, * and a certain number of correctors to do that which pertaineth to their office, as in other staples is accustomed.

This court (though it was far more ancient) is strengthened and warranted by act of parliament which can best expresse the jurisdiction thereof, and followeth in these words.

Item, because the staples cannot long continue, nor the ordinances thereof made and to be made be kept, if good executors and justices be not stablished to make thereof good and ready execution: we have ordained and established, that in every towne where the staple is ordained, a mayor, good, lawful, and sufficient shall be made and established, having knowledge of the law merchant, to governe the staple, and to doe right to every man after the law aforesaid, without favour, sparing, or griefe doing to any. And in every place where the staple is, shall be two covenable constables now at his beginning put by us, to do that pertaineth to their office, as in other staples is accustomed; and when they shall be dead or changed, then other shall be chosen by the comminalty of the merchants of the said places. And that no maior hold the office over the year, unlesse he be newly chosen by the comminalty of the merchants, as well of strangers, as of denizens. And that the said mayor and constables have power to keep the peace, and to arrest offenders in the staples for debt, trespass, or other contract, and them to put in prison, and punish after the law of the staple. And a prison shall be ordained for the safe keeping of them that so shall be imprisoned. And the mayors, sheriffs, and bailiffs of the townes, where the staple is, or joyning to the staple, shall be attending to the mayor and ministers of the staple to do execution of their commandments upon pain of grievous forfeiture: and one lord or other of the most sufficient in the country where the staple is, shall be assigned to be aide to the mayor and ministers of the staple to justifie the rebels, which by the said mayor and ministers cannot

cannot be justified, and to maintain and counsell them when need shall be to the good governance of the staple, and to redresse at every mans complaint that that shall be done amisse by the said mayor or ministers, or other, and to do right to the complainants in this behalfe. And that the same mayor and constables do not, nor ordaine any thing contrary to this ordinance, nor make interpretation nor exception to them otherwise then the words do purport, but if there be any thing that is doubted, it shall be shewed to our councell, and there declared by good advice.

^a See the statute of 36 E. 3. cap. 7. That merchant strangers may either sue before the mayor of the staple according to the law merchant, or at the common law.

^a 36 E. 3. cap. 7. Rot. par. 6 H. 6. nu. 29.

^b The bounds of the staple at Westm. begin at Temple Bar, and extend to Tuthill. In other cities and towns; within the wals: where no wals be, the bounds of the staple shall extend through all the city or town.

^b 28 E. 3. ca. 15. The bounds of the staple.

^c See 27 E. 3. how triall shall be had *per medietatem lingue: et vide* 11 E. 1. *Cart Mercator*.

^c 27 E. 3. ca. 8. 28 E. 3. ca. 13. Rot. Cart.

^d See the statute of 27 E. 3. that the mayor of the staple may take recognifances of debt under the seal of the office, but not with the seal of the party, and how execution shall be done thereupon.

31 E. 1. nu. 44.

^e The mavor of the staple at Westm. and the recorder of the city of London, in the absence of the two chief justices, out of term have power to take recognifances of debts according to the form of the statute of 23 H. 8. And this is in nature of a statute staple, but it hath besides the seal of those that take it, the seal of the party.

^d 27 E. 3. cap. 9. F. N. B. 131. d. Pl. com. 62. b.

^f The mayor and the constables shall be sworn in the chancery to do lawfully that which pertain unto them.

15 H. 7. 16. Flota, lib. 2.

^g There are five staple merchandises of England, viz. wooll, woolfels, leather, lead, and tynne.

ca. 57. See 5 H.

This word staple, anciently written ^h estaple, commeth of the French word *estape*, which signifieth a mart or market. So as the court of the staple is, as much to say, as the court in the staple market, and is incident to that market, ⁱ and it was oftentimes kept at Callice, and sometimes in Bridges in Flanders, and at Antwerpe, Middleburgh, &c. (and therefore it was necessary that this court should be governed by law merchant) and at severall times in many places within England, and now (as hath been said) is kept at Westm.

4. ca. 12. ^e 23 E. 8. cap. 6.

We use for this word staple, *stapula*, as *major stapula, statutum stapule*, &c. And we may truly say that we have but *umbratitem stapulam*, which in times past was so renowned and beneficiall, ^k as it enriched every place where it was holden, and it was commonly said, that riches followed the staple.

^f 27 E. 3. cap. 23.

58 H. 6. cap. 17.

See the statute of 2 E. 3. cap. 9. and a writ thereupon. 7 E. 3. in *scaccario*. ^l *Et original de scaccario anno* 12 E. 3. Rot. 2. *ibid.* 13 E. 3. Rot. 12. and Rot. Pat. 15 E. 3. 2 part. See the statute of the staple *anno* 27 E. 3. through all the chapters, 36 E. 3. cap. 7. 28 E. 3. cap. 13, 14. 43 E. 3. ca. 1. 12 R. 2. cap. 16.

^h 27 E. 3. cap. 8. Dier 4. Mar. 144.

ⁱ *Vid. Cart. Mercator, ubi sup. Merchants as well strangers as subjects and merchandizes.*

IV. INST.

T

CAP.

^k Able to furnish the king w. ch. money.

Rot. Parl. 7 E.

4. nu. 9

12 E. 4. nu. 59.

Rot. parl. 9 R. 2.

nu. 4. ^l Original, de Scac. 7 E. 3. rot. 9.

C A P. XLVII.

Of the Legall Courts and their Jurifdictions
within the Principality of Wales.

See W. 1. cap. 17.
the second part
of the Institutes,
p. 195.

Stat. Wallize
anno 12 E. 1.
in Vet. Mag.
Cart. part 2.
fo. 3.

^b 27 H. 8. ca. 26.
34 H. 8. cap. 26.
^c Lamb. verb.
Wallus.

15 E. 3. record.
38. & tit. Error.
2 H. 5. cap. 6.

19 H. 6. fo. 12.
^d Realme from
the French word
roiaume, and both
à regno.

^e Domefday in
com. Cestr. Ep.
Cestr.

^f Domefday in
com. Hereford.
Rex in Aren-
field. Rex Griff-
fin et Ble vaffa-
verunt hanc ter-
ram T. E.

Quandoque rex
Griffin nomina-
tur rex Maria-
doc.

^g Rot. pat. anno
7 H. 7.

^h Cadwallader
king of the Bri-
tains Mat. Par-
ker archiep.
M. S.

ⁱ This blessed
queen reigned
the years of Au-
gustus, and lived
the age of David,
a king elder
then any king or
queen since the
conquest, and

yet had *vegetum corpus et viridum ingenium*. ^k Lib. 7. fo. 21. b. in Calvins case. Tr. 5 E. 3. 40. alien.
Bracton (who wrote *tempore* H. 3.) lib. 5. fo. 395. b. Fleta lib. 1. cap. 16. 10 H. 4. fo. 6. acc. Pl.
com. 129 a. b. Dier 3 Mariae 113.

THIS principality consisteth of 12 counties, whereof 6. viz. Anglifica, Carnarvan, Merioneth, Flint, Carmorthen, and Cardigan were erected by the act intituled *statutum Wallie* anno 12 E. 1. ^b and the rest of the statute of 27 H. 8.

Wallia, Wales, so called by the Saxons *Bryrwealas*, unde *Wal-lenses*, ^c *Walli*, i. *exteri seu peregrini*: and the Britons call Englishmen to this day *Sajsons*; these are of the posterity of the ancient Britons inhabiting on the west part of Great Britany. This was some time ^d a realm or kingdome and governed *per suos regalos*, ^e *rex E. dedit regi Griffino totam terram quæ jacebat trans aquâ que vocatur*

^f *Sed postquam ipse Griffin forisfecit ei, abstulit ab eo hanc terram, et reddidit episcopo Cestrice et omnibus suis hominibus, qui ante ipsam tenebant.*

^g By force of a commission directed to divers discreet and learned men as well English as Welsh, viz. Griffith ap Lluellin, Gitten Owen, John King and others, it was found that Owen ap Meredith ap Theodore which married Katherine daughter of France and dowager of king H. 5. was lineally descended from ^h Cadwallader king of the Britains, and gave the armes of the princes of Wales.

And here we are justly occasioned to discover the error of those that have given to our late soveraigne lady queen Elizabeth, of ever glorious and blessed memory, the surname of Tydur, and consequently to her grandfather, father, brother, and sister: which whether it were out of ignorance or malice some do question, because if she had any surname at all it was Theodore and not Tydur, which is a nick or by-name. But we rather take it to grow out of ignorance, for that in truth she had no surname at all; for this Owen her ancestor had no surname: and therefore was called (Owen ap Meredith, that is the sonne of Meredith, ap Theodore, the sonne of Theodore) ap Grano, &c. All which were Christian names: so as they should rather have called her Elizabeth Owen, his own name, or Elizabeth Meredith, his fathers name, then Theodore his grandfathers Christian name; but Almighty God would not suffer her to have a surname, because by his grace and goodnesse she should deserve for her imperial vertues to be called ⁱ Elizabeth the Great.

^k But *jure feodali* the kingdome of Wales was holden of the crown of England, and thereby as Bracton saith, was *sub potestate regis*. And so it continued untill the 11 year of the reign of king E. 1. when he subdued the prince of Wales rising against him,

and

and executed him for treason, whereof Fleta who lived in those dayes speaketh thus. *Et unico malefactori plura poterunt infligi tormenta, sicut contigit de Davide principe Walliæ cum per Edwardum quinque judiciis mortalibus torqueretur, suis namq; meritis exigentibus, detractus, suspensus, dismembratus fuit et combustus, cujus caput principali civitati, quatuorq; quarteria ad quatuor partes regni in odium tradit' deferebantur suspendend'.*

▪ The next year viz. in the 12 year of king E. 1. by authority of parliament it is declared thus, speaking in the person of the king (as ancient statutes were wont to do) *Divina providentia, quæ in sua dispositione non fallitur, inter alia suæ dispensationis munera, quibus nos et regnum nostrum Angliæ decorari dignata est, terram Walliæ cum incolis suis prius nobis * jure feudali subiectam jam sui gratia in proprietatis nostræ dominium, obstaculis quibuscunque cessantibus, totaliter et cum integritate convertit et coronæ regni præditi, tanquam partem corporis ejusdem annexuit et univit.* Yet this wise and warlike nation was long after this not satisfied nor contented, and especially, for that they truly and constantly took part with their rightfull soveraigne and liege lord king Richard the second; in revenge whereof they had many severe and invective lawes made against them in the reigns of H. 4. H. 5. &c. All which as unjust are repealed and abrogated. And to say the truth, this nation was never in quiet, untill king H. 7. their own country man obtained the crown. ^b And yet not so really reduced in his time, as in the reign of his sonne king H. 8. in whose time by certaine just laws made at the humble suit of the subjects of Wales, the principality and dominion of Wales was incorporated and united to the realm of England: and enacted that every one born in Wales should enjoy the liberties, rights, and laws of this realm, as any subjects naturally born within this realm should have and inherit, and that they should have knights of shires and burgesses of parliament, &c. By the which the jurisdiction of the legall courts are thereby so perfectly and plainly established and declared, and their proceedings to be according to the lawes and customes of England, as we have thought good to refer the judicious reader to those acts of parliament without recitall of them, where he shall find the excellent venerable variety of seats and courts of justice, with their proper jurisdictions according to the laws of England, the golden metwand, whereby all mens causes are justly and evenly measured. Only we will adde certaine things which have not been published before.

By the said statute of 34 H. 8. it is enacted that there shall be holden and kept sessions twice every year in every of the said ^c twelve shires, that is to say, Glamorgan, Brecknock, Radnor, Carmarthen, Pembroke, Cardigan, Mountgomery, Denby, Flint, Carnarvan, Merioneth, and Anglese, which sessions shall be called the kings great sessions of Wales.

^d A fine was levied of lands in the county of Carmarthen, and the writ of covenant was *coram justiciariis nostris magnæ assise in com' Carmarthen*, and because all the judiciable presidents were in that forme ever since the making of the statute, it was adjudged to be good, for *communis error facit jus.*

Also in the said act of 34 H. 8. it was enacted, that the kings most royall majesty should from time to time change, &c. all man-

^m Statutum Walliæ anno 12 E. 1. Vid. 10 H. 4. fo. 6.

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^e Note, divers monarchs hold their kingdoms of others *jure feudali.* As the duke of Lumbardy, Cicill, Naples, and Bohemia of the Empire. Granado, Leons of Aragon. Navarre, Portugal, of Castile. And so others. Dorf. clauf. 15 E. 2. m. 13. *De Wallensibus ad parl. apud Eborum venire fac'* viz. 24 de discretioribus, legallioribus et vultioribus hominibus de partibus Soutwalliæ, et 24 de partibus Nortwalliæ Rot. clauf. 20 E. 2. m. 3. accord. 21 Jac. ca. 28. ^b 27 H. 8. ca. 26. 34 H. 8. ca. 26. 37 H. 8. ca. 26. 18 Eliz. cap. 7.

^c The twelve counties of Wales.

^d Trin. 34 Eliz. in the case of Morgan of the report of the chiefe justice Popham.

So it was resolved by divers justices in Hil. 5 Jac. regis.

21 Jac. regis c. 10.

Hil. 5 Jac.

Rot. clauf. anno 20 E. 2. m. 3.

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12 were English. and 12 Welsh.
Rot. Clauf.
15 E. 2. in dorf. m. 13. Wallenses vocat. ad parliamentum.

7 H. 4. cap. 15.
11 H. 4. cap. 1.
1 H. 5. cap. 1.
8 H. 6. cap. 7.
10 H. 6. cap. 2.
23 H. 6. cap. 15.
6 H. 6. cap. 4.
27 H. 8. cap. 26.
34 H. 8. cap. 26.
35 H. 8. cap. 11.

Marchia Walliæ.

Wallica consuetudo.

ner of things before in that act rehearsed, as to his most excellent wisdom and discretion should be thought convenient, and also to make laws and ordinances for the common-wealth of his said dominion of Wales at his majesties pleasure, &c. And albeit the common opinion was that the same power in so high a degree of trust, as the alteration of laws, &c. was personall to H. 8. and referred to his wisdom, discretion, and pleasure, and therefore extended not to his successors, yet for that the subjects of the country and dominion of Wales had been constantly loyall and obedient, and had lived in all dutifull subjection to the crown of England, to prevent all questions and danger the said branch of the said statute of 34 H. 8. is repealed and made void.

It was resolved by all the justices upon a reference made to them by the lords of the privy councill upon consideration had upon the statutes of 34 H. 8. cap. 26. and 18 Eliz. cap. 8. that the justices in Wales are to be constituted and made by letters patents, as they had been ever since the making of the statutes, and not by commission. And upon report of their opinion to the lord chancelour baron Snigge was constituted and made by patent accordingly.

Rex dilecto et fidei suo Rico' Damory justiciar' suo Northwalliæ salutem. Mandamus vobis quod habito adjuvamento cum illis hominibus de partibus prædictis, cum quibus melius fore videritis faciend' diversimode sine dilacione venire faciatis ad præsens parlamentum apud Westm. convocatum 24 homines de partibus illis tam Anglicos quam Wallenses ad consentiendum hiis quæ ibid. pro communi commodo et pace et tranquillitate regni nostri et partium præd. favente domino contigerit ordinari, et habeatis ibi nomina præd. 24 hominum, et hec br'e. Teste rege apud Kenilworth 11 Januarii anno 20 E. 2. rot. clauf. m. 3.

By this and others of like nature it appeareth that Welshmen were in the reigne of E. 2. E. 3. &c. called to our parliaments.

But now seeing there be sheriffs throughout all Wales, the writs are directed to the sheriffs to cause to be elected knights, citizens, and burgeses, and returnable into the chancery, where before they were returned into the parliament.

We have seen a charter of the earle of Arundell proving, that by the ancient custome of Wales, females could not inherit.

Omnibus Christi fidelibus præsens scriptum inspecturis Johannes comes Arundel et dominus de Mautrovers, salutem in domino. Sciatis nos prædicti. comitem ad prosecutionem et specialem supplicationem communitatis tenen' nostrorum tam duarum partium quam tertie partis domini nostri de Oswaldestrie in marchia Walliæ concessisse pro nobis et hæredibus nostris et per præsentem confirmasse tenen' nostris prædicti, hæred' et assign. suis, quod eorum filie pro defectu exit' masculini, ac eorum proximi consanguinei, tam masculini quam femelle de cætero hereditare valeant imperpetuum terras, tenementa et reddit' antecessorum et consanguineorum suorum ubique infra dominium nostrum præd' eisd' modo et forma quibus utitur in communi lege Angliæ, Wallica consuetudine prius ibid. de contrario usitat' in aliquo non obstante: salvo semper nobis et hæred' nostris hereditis, relevis, feoff' cur' et al' consuetudinib' quibuscunq; de dictis terris et tenementis ante hanc nostram concessionem nobis quomodolibet pertinen'. In cujus rei testimonium huic præsentis scripti' nostro concessimus sigillum nostrum fecim' apponi: hiis testibus, Will'c'mo Rynnan, Thoma Barret, Willielmo Sideney armigeris, Hugone Burgh, sen' domini nostri præd', Rich. Irland, Hoel ap Ogn' Gouch, et aliis. Dat' in hospicio nostro London

don vicefimo quinto die menfis Aprilis an. regni regis Henrici sexti post conquestum octavo.

At this day women are inheritable in Wales, according to the common law in England.

• *Ordinatio de consuetudinibus Northwalliæ et Westwalliæ.*

These Britons were ever lovers of the laws of England, for at the parliament holden ^a in 4 H. 4. they petitioned the king, that in all cases of the crowne throughout every liberty in Wales, the laws of England might be only used. Whereunto the king yeilded, and that his counsell should take order therein. ^b *Quia episcopi Wallenses ex antiqua consuetudine testamentum aliquod condere non potuerunt, rex licentiam dedit episcopo Bangor, quod possit condere testamentum suum non obstante quod episcopi Wallenses ex antiqua consuetudine testamentum aliquod condere non possunt.* See the chapter of the Consistory Courts of Arch-bishops and Bishops, fol.

^c Where execution shall be made of lands in the marches by the sheriffe of the county next adjoining, *sicut solebat antiquitus.* See the record at large.

^d *Affach* is a Brittifh word and signifieth a custome in Wales, which was to excuse one of the death of a man by the oath of 300 men. But this strange kind of excuse or acquittal is abrogated by statute.

^e There was also a certain triall in Wales called a *raythe*, but that is also abrogated.

• 9 E. 2. m. 3.
 • Rot. par. 4 H.
 4. nu. 100.
 • Rot. pat. 13 E.
 1. m. 21.
 Vid. Hil. 20 E.
 1. coram rege.
 Ro. 37. 22.
 Wallia Pasch.
 10 E. 2. coram
 rege. 107. 37
 18 E. 2. rot. 73.
 Trin. 5 E. 3.
 rot. 40. Coram
 rege.
 c Hil. 18 E. 2.
 rot. 73. cor.
 rege. Glouc.
 18 E. 2. aff. 382.
 Rot. par. 18 E.
 1 rot. 3. 13 E. 3.
 jurisdiction. 33.
 28 E. 2. ca. 2.
 5 E. 3. fo. 30.
 45 E. 3. bre. 588.
 21 H. 3. bre.
 881. simile.
 d 1 H. 5. cap. 6.
 e 6 H. 6. nu. 33.

C A P. XLVIII.

[242]

The Court of the President and Councill in the Dominion and Principality of Wales, and the Marches of the same.

LEAIVING now the legall courts in the dominion of Wales, to proceed by the right rule, *secundum legem et consuetudinem Angliæ*, let us speak somewhat of the court of equity before the president and council there.

This court is strengthened and warranted by the statute of 34 H. 8. ca. 26. with a reference to prescription before it, in these words.

Rot. par. 16 R.
 2 nu. 44. there
 was a president
 of Wales.
 34 H. 8. cap. 26.

Item, that there shall be, and remain a president and council in the said dominion and principality of Wales, and the marches of the same, with all officers, clerks, and incidents to the same in manner and form as heretofore hath been used and accustomed: which president and council shall have power and authority to hear and determine by their wisdomes and discretions such causes and matters as be, or hereafter shall be assigned to them by the kings majesty, as heretofore hath been accustomed and used.

They sit by force of the kings commission and instructions, and proceed as in a court of equity by their wisdoms and discretions. Herefordshire, Worcestershire, Shropshire, and Gloucestershire are included within this commission, pretending that these four shires are within the marches of Wales.

That these four shires are no part of the marches of Wales, but ancient shires of the realm of England, appeareth by six manner of proofs.

First, by expresse books, viz. 18 E. 2. Aff. 82. 1 E. 3. 14. in Dower. 7 E. 3. 9 E. 3. in Dower. 6 H. 4. fo. 9. in Scire fac, F. N. B. 168.

Secondly, by acts of parliament, viz. Prærog. regis. 17 E. 2. cap. 1. 28 E. 3. cap. 2. 2 H. 4. cap. 12. and 16, 17. 23 H. 6. cap. 5. 27 H. 6. cap. 4. 31 H. 6. cap. 4. 32 H. 8. cap. 13. 13 El, cap. 13.

Thirdly, by records of parliament. 3 R. 2. nu. 29. and 30.

Fourthly, by reason. 1. These four shires were ancient English shires, and governed by the laws of England, and not by the discretion of the president and council; and this were to bring their inheritances, goods, &c. *ad aliud examen*. 2. At one and the same time there were in former times earles of the marches of Wales, and severall earles of these four counties, and therefore they could not be one and the same.

See before in the chapter of the County Palatine of Chester, p. 212.

Fifthly, by the resolution aforesaid of those four judges concerning Cheshire and Flynthire (which were included also within the commission) that they were not within the marches of Wales, and therefore out of the jurisdiction of the president and council, and so remain untill this day: for a commission without an act of parliament cannot raise a court of equity, as often hath been said before.

Mich. 2. Jac. reg. the case of Edward lord Zouch president of Wales.

Lastly, by the commandment of the king, all the justices of England, and barons of the exchequer were assembled concerning the jurisdiction of the president and council of Wales, and the marches of the same, who upon hearing of council learned on divers days, and upon mature deliberation resolved *una voce*, that the said four counties were not within the jurisdiction of the president and council. 2. That forasmuch as the president and council have a limited authority if they proceed in any matter that is out of their jurisdiction either in respect of the place or of the authority limited to them, a prohibition may be granted, as to the marshalsea and the like. Which resolution being made known to his majesty, his majesty was graciously pleased, that the lord presidents commission should be reformed: whereupon the lord Zouch gave over his place. And yet the commission was not after reformed in all points, as it ought to have been.

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Regist 4 & 8.
F. N. B. 39 b.
45 f. 46 a. 171.
159. 185, 186,
187. 19 H. 6.
54.

This is added for the better understanding of records and histories concerning Wales.

Rodry Maure, or Rodry the Great, king of Wales, son of Mersyn Fryth had issue three sons. Mervyn, Anarawd, and Cadelh. In the year wherein he died, viz. *anno dom.* 877. (king Alfred, alias Alured, then reigning in England,) this great Rodry divided his kingdom of Wales into three principalities. The first he called *Gwyneth*, the English North Wales, the Latinist *Venedotia*. The second principality was called *Powis land*, in Latin *Powisia*, of some West Wales, bordering upon England. The third he called *Deheubarth*, the English South Wales, in Latin *Demetia*. The first

first principality, some say, he gave to Mervin, after others, to Anarawd. The second to Anarawd, some say, to Cadelh. The third to Cadelh, some say, to Mervyn. The first was the best, because it was the quietest. The second was often invaded and troubled by the English. Into the third often incursions were made by the English, the Norman, and the Fleming. The division of this kingdome (howsoever it was) wrought in proesse of time such a division between these princes, as it was never quiet untill it came under one monarch and king again: for the royall dignity of a monarch or king, from whence all other subordinate dignities, *tanquam lumen de lumine*, are derived without any division, will suffer no division. *Regia dignitas est indivisibilis; et qualibet alia derivativa dignitas est similiter indivisibilis.*

The most woful event that fell out in this realm, when Gorbodug divided this kingdome between his two sons, Ferrex and Porrex, and what heavy event came to passe, untill it was reduced again under one monarch, let our histories tell you: and letting passe others, I cannot over-passe the miserable estate within this kingdome under the heptarchy, untill all was reunited under one soveraign. And this is the reason, that in England, Scotland, and Ireland, the royall dignity is descensible to the eldest daughter or sister, &c.

But let us look a little into forain parts. Oedipus king of the Thebanes had issue two sons, Polynices, and Eteocles: he ordained, that after his decease, his two sons should *alternam* by course, &c. reign in his kingdome. But what was the event? *Fratres de regni hæreditate dissidentes singulari certamine congressi mutuis vulneribus ceciderunt.* But to return again to our Wales.

It is divided from England by a ditch after the name of that king that made it, called King Offa his ditch.

King E. 3. at the parliament holden anno 17 of his reign, by charter established by authority of parliament, created Edward (called the Black Prince) prince of Wales in these words, *De concilio prælatorum, comitum, baronum et communium in generali parlamento nostro apud Westm' die Lunæ in quindena Paschæ proxime præterito convocato ipsum Edw. principem Walliæ fecimus et creavimus, et dictum principatum sibi dedimus et concessimus, et per cartam nostram confirmavimus, ac ipsum de dicto principatu, ut ibidem præsciendo præsideat, et præsidendo dictas partes dirigat et defendat, per ^a ferrum in capite, et anulum in digito aureum, ac ^b virgam argenteam investivimus juxta morem: habendum et tenendum de nobis sibi et hæredibus suis regibus Angliæ imperpetuum, &c.* Out of this charter we observe, that in this creation there is a great mystery, for lesse then an estate of inheritance to great a prince could not have, and an absolute estate of inheritance in so great a principality as Wales, the kings meaning was (this principality being so dear unto him) he should not have: therefore a qualified fee therein he had in this form, *sibi et hæredibus suis regibus Angliæ*, that by his decease, or attaining to the crown this dignity might be extinguished in the crowne, to the end that the king for the time being should ever have the honour and power to create his heir apparent prince of Wales, as he himself had been by his progenitor. But otherwise it is in case of the duchy of Cornwall, as in the Princes case, *ubi sup.* appeareth.

Sta. in Theb.

Camden in the county of Radnor.

Carta creationis principis Walliæ autoritate parliamenti, anno 17 E. 3.

^a A chapelet of gold made in form of a garland.

^b This virge, rod, or scepter in latter creations for more honor is changed from silver to a virge or scepter of gold.

Sibi et hæredibus regibus Angliæ.

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See the Princes case. Lib. 5.

And

T 4

Vide cartam E. 3. dat. apud Pontem fracti. 18 Martii. 7 E. 3. and Hil. 33 E. 3. irrotulata in scaccario ex parte rememorator' Theſaur'. Rot. 15. the Black Prince created earl being three years old.

* Hil. 20. 20 E. 1. Coram rege 10r. 14. Wallia. † Commissio- narii.

Inauditum est.

Irrotulatur istud recordum inter placito de banco term' Paic. an. 14 E. 1.

^a Ortelius in Carta antiqua Britannia.

^b Humph. Lloyd apud Ortelium in the same geography.

^c Idem in Fragma. Britan' Historie.

^d Tacitus. Vide supra pa. 9.

^e Nota validissimas gentes.

^f Rot. pat. 9 E. 2. m. 3.

^g Lib. Int. Co. fo. 549, 550.

And in the same manner is the dignity of the noble and primary county palatine of Chester at the same time granted to the prince, *sibi et hæredibus suis regibus Angliæ.*

* *Ob quamplurimos excessus more hostili vexillo displicato per Gilbertum de Clare comitem Glouc' et Hertf. et homines suos de Mergannon illatos contra Humfredum de Bohun comitem Heref' et Essex et homines suos de Brekenock, dominus rex assignavit † episcopum Eliens' et alios commissarios ad inquirendum, &c. Mandavit etiam dominus rex per literas suas dilectis et fidelibus suis Johanni Hastings, Johanni fil' Reginaldi, Edmundo de Mortuo mari, Rogero de Mortuo mari, Theobaldo de i'erdon, Johanni Tregeſe et Galfrido de Cannil, quod interfint apud Brekenock, &c. Et postea venerunt apud Laundon. Voluit idem dominus rex pro statu et jure suo per ipsos justiciarios quod inde rei veritas inquireretur per sacram' tam magnatam, quam aliorum proborum, et legalium hominum de partibus Walliæ et com' Glouc' et Heref' per quos, &c. cujuscunque conditionis fuissent, ita quod nulli parceretur in hac parte, eo quod res ista dominum regem et coronam et dignitatem suam tangit, &c. Dicitur est ex parte domini regis Johanni de Hastings et omnibus aliis magnatibus supra nominatis quod pro statu et jure regni, et pro conservatione dignitatis coronæ et pacis suæ apponant manum ad librum, ad faciend' id quod eis ex parte domini regis injungeretur; qui omnes unanimiter respondens, quod inauditum est quod ipsi vel eorum antecessores hætenus in hujusmodi casu ad præstandum aliquod sacramentum coacti fuer', &c. Ac pluries eisdem magnatibus ex parte ipsius regis conjunctim et separatim, libroque eis porrecto, injunctum est quod faciant sacram'; responderunt demum omnes singulatim quod nihil inde facerent sine consideratione parium suorum. Demum comes Glouc' fecit finem cum domino rege pro decem millibus marcarum, et comes Essex pro mille marcis, et uterque eorum committitur mareschallo. (Recordum per longum est, et continet tres rotulos.) Et ob affinitatem, et consanguinitatem cum rege perdantur plurima, tamen forsiferunt libertates suas durante vita ipsorum. Et post decessum eorum, hæredes sui rehabant.*

But now to take our leave of this principality of Wales, this is that the Romans called by the name of ^a *Britannia secunda*, and sometimes ^b *Valentia*, and by the Britains themselves called ^c *Cambria*. And we will conclude this treatise of Wales, &c. with that which that ^d excellent historian speaking of the wars between the Roman and the ancient Britain, saith, *Nec aliud adversus ^e validissimas gentes pro nobis utilius, quam quod in commune non consulunt, rarus ad propulsandum commune periculum conventus: ita dum singuli pugnant, universi vincuntur.*

^f See 2 part. pat. 9 E. 2. m. 3. *Ordinat' de consuetud' North-walliæ et West-walliæ.*

^g Vid. Lib. Int. Co. fo. 549, 550. Three notable matters concerning Wales. 1. Of the government of Wales before 27 H. 8. 2. Of lordship, marchers, and their authorities and liberties. 3. The act of 1 & 2 Ph. and Mar. concerning the same.

C A P. XLIX.

The President and Council in the North.

THIS council is neither warranted by act of parliament, nor by prescription, but raised by king H. 8. by his commission upon these occasions, and in the manner hereafter expressed. After the suppression of monasteries of the yearly value of two hundred pound or under, which was by act of parliament 4 Febr. anno 27 H. 8. in the beginning of 28 H. 8. there was a great insurrection of the lord Hussey and 20800 persons in Lincolnshire pretending it to be for the cause of religion: against whom Charles Brandon duke of Suff. went and appeased them. As soon as they were appeased, a great rebellion for the same pretence of 40000 of that county, of whom sir Robert Aske was leader: against whom the duke of Norf. and others went, and dispersed them. Soon after a great commotion for the same pretence was raised in Lancashire of men in that county, and in Cumberland, Westmerland, and Northumberland: against whom the earl of Derby was employed, and quieted them. After this Mufgrave Tilly and others to a great multitude did rise, and assaulted Carlisle castle, whom the duke of Norf. overthrew. Soon after sir Francis Bigot with a great number of people rose at Settrington, Pickering, Leigh, and Scarborough in Yorkshire, whom the duke of Norf. pacified. And after this the lord Darcy, Ask, Constable, Bulmer, and others began a new rebellion about Hull in Yorkshire, whom the duke of Norf. appeased. And all these rebellions fell out between the beginning of 28 H. 8. and 30 H. 8.

The king intending the suppression of the great monasteries, which in effect he brought to passe in anno 31 H. 8. for preventing of future dangers and keeping those northerh counties in quiet, in anno 31 of his reign raised a president and council there, and gave them besides two severall powers and authorities under one great seal, the one of oier and terminer, *De quibuscunq; congregationibus et conventiculis illicitis coadunationibus, confederationibus, Lollaridiis. misprisionibus, falsis allegantiis, transgressionibus, riotis, routis, retentionibus, contemptibus, falsitatibus, maculentibus, oppressionibus, violentiis, extortionibus, et aliis malefactis, offensis, et injuriis quibuscunq; per quæ pax et tranquillitas subditorum nostrorum in com' Eborum, Northumberland, Westmerland, Durham, et com' civitatis Eborum, Kingston super Hull, et Newcastle super Tinam gravetur, &c. secundum legem et consuetudinem regni nostri Angliæ, a vel aliter secundum sanas discretiones vestras audientia et terminand'. The other authority was ^b Nec non quascunq; actiones reales, seu de libero tenemento, et personales causasque debitorum et demandorum quorumcunq; in com' prædictis, quando ambæ partes vel al-*

Anno 31 H. 8. 6. parte Roberto Landavens' episcopo presidenti concilii, &c. et aliis fact.

^a First, it was resolved by all the judges of the court of common pleas. Trin. 6 Jac. that this

clause is against law, as the like had been formerly often resolved. See before cap. of the Court of Requests. ^b 2. It was then also clearly resolved, that this latter clause was against law, not only for the cause aforesaid, but also for that actions real and personall were not to be heard and determined by commission, but according to the laws of the realm. Vid. 2 Eliz. Dier 175.

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tera pars sic paupertate gravata fuer', quod commode jus suum secundum legem regni nostri aliter prosequi non possit, similiter secundum leges et consuetudines regni nostri Anglice, vel aliter secundum sanas discretionem vestras audiend' et terminand'.

But these authorities were granted, to the end that commissioners by mediation might quiet controversies when one of the parties or both were poor, who are ever most clamorous. And all the authority they had was expressed in the patents or commission under the great seal, without any reference to instructions or any instructions at all. But afterwards, for that the said commission was against law, and to the end, that their authority should not be known, they procured the first institution to be *ex diametro* altered, viz. that their commission should not give them any expresse authority at all, but wholly did refer their authority to certain instructions which they kept themselves in private, and were not enrolled in any court, whereunto the subject might have resort. *Sed misera servitus est, ubi jus est vagum, aut incognitum.* And thereupon king James being informed hereof by the judges of the common pleas (who had granted prohibitions to the president and council) gave order that their instructions should be enrolled, to the end that the subject might take advice of learned council what course he might take to enjoy the benefit of the laws of the realm, his best birthright.

And it appeareth in the subsidy in *anno* 32 H. 8. cap. 50. that H. 8. raised not only this president and council, but a president and council also having like authority in the western parts, pretending it to be for their ease to receive justice at their own doors, but they of Cornwall, Devon' &c. desirous to live under the immediate government of the king, and the common law, opposed it, *et sic commissio illa cito evanuit*, which commission under the great seal we have seen. See in the statute of 13 El. where the president and council of York is mentioned, and no man doubteth, but that there is a president and council *de facto*, but what jurisdiction they have is the question.

Thus much (having taken upon us to write) we have clearly and plainly delivered our opinion, and he that searcheth the secret of hearts, knoweth that we have published nothing herein or in any other of our works, *reluctante conscientia*.

And in respect of some continuance it hath had, and many decrees made, it were worthy of the wisdom of a parliament for some establishment to be had therein.

This is left out of the print in latter time, but it is in the parliament rol, &c.

13 El. cap. 13. See in the chapter of the court of request, answer made to this objection in like case.

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C A P. L.

The Courts and their Jurisdictions within the City of London; and first of

The Court of the Husting.

FOR the antiquity and name of this noble city, you may read in Lambard, *inter leges Edouardi regis*, fo. 136. b. *Sed utere tuo iudicio, nihil enim impedito.* * But Ammianus Marcellinus an approved author above 1200 years since, calleth it *vetustum oppidum*. And Cornelius Tacitus, (who married the daughter of Lucius Agricola the Roman, and was here with him by the space of seven years) affirmeth *Quod Londinum tempore Neronis* (which is above 1500 years past) *fuit copia negotiorum et comenatu maxime celebre*. To be short, it is *camera regis, reipublicæ cor, et totius regni epitome*.

Lib. 8. fo. 190. in the case of the city of London. * For the antiquity. For the antiquity and name.

And in searching among such records as we had observed, of or concerning this noble city, we have observed a charter in the Saxon tongue made by William the Conqueror in these words; *William Cýng gnerit william Býrceop 7 Godþneger portregeran 7 ealle þa Buphpanen þe on Lundben beon, &c.* 1. William the king greeteth William the bishop and Godfrey the portreve, and all the burgeses that in London be, &c.

This is the highest court and of the greatest celebrity within London. It is holden before the maior and sherifs, of all pleas, reall, mixt, and personall. *Nota*, the rule of the Register is, *Quodlibet breve, quod tangit liberum tenementum in London, dirigitur majori sive custodi et vicecomitibus; et alia brevia tantum vicecomitibus*.

Regist. 2. b. F. N. B. 6. 5.

This word *husting* is derived of two Saxon words, viz. *hus* which signifieth a house, or bench, and *things*, that is, causes, or pleas, as much to say, as the bench, or court of pleas, for *bancus* or bench is taken for a court, as the kings bench, the common bench, &c.

Fleta lib. 2. in his chapter *De differentiis curiarum. Habet rex curiam suam, &c. Et in civitatibus et burgis et in hustingis London, Lincoln, Winton et Eborum et alibi in libertatibus, &c. Et cap. 48. Habet rex curiam suam in civitatibus, burgis et locis exemptis, sicut in hustingis London, Winton, Lincoln, Eborum, et apud Shepey, ubi barones et cives recordum habent, &c.* So as neither the name nor the court is appropriated to London.

Fleta, lib. 2. ca. 2. & 28.

* F. N. B. 61. q. juris utrum. 62. b. partition. & 199. ex gravi querela. b.

^b For writs of error to be brought of any judgment in the hustings; see the Register and F. N. B.

^b Regist. 130, 131. F. N. B. 23 e.

^c Concerning forain vouchers, and forain pleas, see F. N. B. fo. 6. E. et stat. de Glouc. cap. 12.

^c F. N. B. 6. e. Glouc. cap. 12. 2 part Institutes. 33 E. 3. jurisd. 60. 36 H. 6. 33.

Of lands holden, no writ doth lye but in London according to the custome. Dier 15 El. 317. Judgment of the outlawries in the hustings is not given by the maior, who is coroner or his deputy, but by the recorder by the custome of this city.

2, 3. The

2, 3. *The two Courts of the Sheriffs.*

Regist. ubi sup.
F. N. B. 23. a.

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Stephanides cap.
de dispositione
urbis.

In curia civitatis prædictæ coram vicecom' sine brevi nostro secundum consuetudinem ejusdem civitatis. If an erroneous judgment be given before the sherifs the party grieved shall sue a writ of error, and remove this before the maior and sherifs in the hustings.

For the antiquity of the sherifs and their courts, Fitz-Stephen, who wrote of the government of London in the reign of king Stephen, of this city saith ;

Hæc civitas urbe Roma, secundum chronicorum fidem, satis antiquior est, &c. Unde et adhuc antiquis ejusdem utuntur legibus communibus institutis ; hæc similiter illi regimibus est distincta, habet annuos pro consulis vicecomites, habet senatoriam dignitatem, et magistratus minores, &c. ad genera causarum, deliberative, demonstrative, judicialis loca sua fora singula, habet sua diebus statutis comitia, &c.

Nota-

In Lib. abbat de
Ramley.
• Tempore H. 1.

In the booke of the abby of Ramsey to a conveyance or concord * without date made in the court of the hustings of London of a certain house in Walbroc within the city, between *Wilmothas de Walbroc*, and *Renaldum abbatem de Ramsey*, the witnesses were (amongst others) *Willielmus de Einsford vicecomes de London*, et *Johannes subvicecomes ejus*, et *Gervasius clericus ejus*. More might be said hereof, but it is clear, that so long as this city hath been a county of it self, so long there have been sherifs, for it cannot be a county without sherifs. There are within the wals of this city 97 parishes, and out of the wals 16 parishes, standing partly within the liberties of the city, and part without in Midd. and Surry.

4. *The Court of Equity before the Lord Mayor, commonly called, The Court of Conscience.*

1 H. 6. 14.
Lib. 8. fo. 126.
Lib. Int. Rast.
Custome 21 and
Ville 1.

The custome of London is, and hath been time out of mind, that when a man is impleaded before the sherifs, the mayor upon the suggestion of the defendant may send for the parties and for the record, and examine the parties upon their pleas, and if it be found upon his examination that the plaintiff is satisfied, that he may award that the plaintiff shall be barred : and this was holden by the court to be a good custome, but by no custome he can examine after judgment. Note, a court of equity may be had by prescription, but cannot be raised by grant, as hath been said in the chapter of the Chancery, and of the County Palatine of Chester.

5. *The Court of the Mayor and Aldermen.*

See 43 E. c. 12.
In fine.
Lib. 4. fol. 64,
65. Fulwoods
case. The print
is 28 E. 3. cap.
10. but it should
be 27 E. 3. cap. 10. And so resolved by parliament, in 1 H. 4. cap. 15. Altered in the penalty. 17 R. 2. Rot. par. nu. 26. explained by parliament not to extend to error in judgment.

This is a court of record, and consisteth of the lord mayor, the recorder and 23 aldermen, whereof the two sherifs being aldermen are part.

It is ordained and established that the mayor, sherifs and aldermen, which have the governance of the city, shall redresse and cor-

rect

rect the errors, defaults and misprisions which be used in the city of London, for default of good governance of the mayor, sherifs and aldermen, &c. This is declaratory of their former power of governance, and for this cause principally amongst others, this court was instituted.

In this court are many courts, as namely,

6. *The Court of Orphans.*

The mayor and aldermen by custome have the custody of orphans within the city. And if they commit the custody of the orphans to another man, he shall have a ravishment of ward, if the orphan be taken away.

It is enacted, that the mayor and chamberlain of London for the the time being, shall have the keeping of all the lands and goods of such orphans as happen within the city, saving to the king and other lords their rights of such as hold of them out of the same liberty.

A recognizance may be acknowledged in this court before the mayor and aldermen to the chamberlain for orphans.

The chamberlain is a sole corporation to him and his successors for orphans: and a recognizance or bond made to him and his successors concerning orphans shall by custome goe to his successor.

The government of orphans belong to the mayor and aldermen, and they have jurisdiction of them, and therefore if any orphan sue in the ecclesiasticall court, or elsewhere for a legacy, or duty due to them by the custome, a prohibition doth lye. See the first part of the Institutes, sect. 267. how the goods of a freeman of London shall be divided.

For the liberties of London, see 50 E. 3. fo. 143.

An act was made in 7 H. 4. cap. 9. much prejudiciall to the liberties of this city, which is in print, and it was repealed in 9 H. 4. nu. 30. which is not printed.

It would aske a treatise by it self to handle at large the other authorities and powers of the mayor and aldermen in the court of aldermen, and of the other courts within this city, which we will run over as briefly as we can. And the rather, for that in my books of reports I have published many cases concerning the courts, customes, liberties, franchises, and priviledges of this city, and also in the first part of the Institutes, and in this and other parts thereof.

Vide Lib. 11. fol. 53. & 194. James Bagges his case. See the first part of the Institutes fol. 176. h. sect. 267. See the second part of the Institutes, Mag. Cart. cap. 9.

7. *The Court of Common Council.*

This court hath some resemblance of the high court of parliament, for it consisteth of two houses, viz. the one of the mayor and aldermen, and the other of such as be of the common assembly resembling the whole comminalty of London. In this court they may make constitutions and lawes for advancement of trade and traffick: for the better execution of the lawes and statutes of the

F. N. B. 142. g. 32 E. 3. gard. 31. 8 R. 2. ibid. 166. Li. 4. 64, 65. Rot. par. 1 R. 2. nu. 130.

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Lib. 4. fol. 64. 65, Fulwoods case. Lib. 4. ubi sup.

7 H. 4. cap. 9. Rot. par. 9 H. 4. nu. 30.

Lib. 2. fol. 57. Lib. 4. fo. 18. 54. 64. 65. & 113. Lib. 5. fo. 63. 64. 73. 83. 107. Lib. 8. fol. 122. 125. 126. 127. 129.

Lib. 5. fo. 62. 63. the chamberlains case. Lib. 8. fo. 123. 125. Le case del city de Londres.

the realme, or *pro bono publico*, and for the good government of the city. So as these constitutions and laws be not contrary to the laws and statutes of the realm. And this being made by the mayor, aldermen, and comminalty, do bind within this city and the liberties thereof. They of the common assembly do give their assent by holding up their hands.

8. *The Court of the Ward-mote.*

7 H. 6. 36. 38.
7 H. 7. 4. Wardmote is derived from ward and mote, that is, the ward court. In London the parishes are as towns, and the wards are as hundreds, and therefore *riens diens gard* was a good challenge at the common law.

32 H. 8. cap. 17. In this city there are 26 wards divided for the government of them amongst the 24 aldermen of the city. This wardmote inquest, consisting of 12 or more of every ward shall enquire of such persons as have not paved or amended their parts and portions of the streets and lanes within the said city, &c.

9. *The Court of Hall-mote.*

This is derived of hall and mote, as much to say as the hall court, i. *Conventus civium in aulam publicam*, every company of London having an hall wherein they keep their courts; and this court anciently called hall-mote or folke-mote.

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10. *The Court of the Chamberlaine for Apprentices.*

Lib. 8. fo. 129.
the case of the
city of London.

This court concerning the making free of apprentices. One may be free of London three manner of wayes, viz. by service, as here in case of apprentices: 2. By birthright, the sonne of a freeman: and 3. By redemption, by order of the court of aldermen.

* Rot. par. 7 R.
2. nu. 37.
Vid. inf. 252.
253.
* Nota hoc.
8 H. 7. 4. b.
Dier 22 Eliz.
373. 7 H. 6. 1.
21 H. 7. 16. 17.
Pl. com. 36. b.
38. 47. 59.
Lib. 8. fo. 129.

Now to treat of the great and notable franchises, liberties, and customes of the city of London, would require a whole volume of it self. But there is a most beneficiall statute made for the strengthening and preservation of the same, which I know no other corporation hath. * It is enacted that the citizens of London shall enjoy all their whole liberties whatsoever with this clause, *Licet us non fuerunt vel abusi fuerunt*, and notwithstanding any * statute to the contrary, &c. *Lege statutum*, for by this act the city may claim liberties by prescription, charter, or parliament, notwithstanding any statute made before 7 R. 2. And this is the statute mentioned in our books.

11. *The Court of the Conservation of the Water and River of Thames &c.*

4 H. 7. cap. 15. The maior of London for the time being hath the conservation and rule of the water and river of the Thames, and the issues, breaches, and lands overflown, &c. from the bridges of Stanes
unto

unto the water of Yendall and Medwey, and authority as touching punition for using unlawfull nets, and other unlawfull engines in fishing, and to all correction and punishment there concerning unlawfull nets and engines there. In all commissions touching the water of Ley, the mayor of London shall be one. See hereafter cap. Commission of Sewers the statute of 3 Jac. cap. 14. that sewers that fall into the Thames shall be subject to the commission of sewers.

Rot. parl. 2 H.
5. nu. 15.

Rot. parl. 2 H. 5.
nu. 16.
3 Jac. cap. 14.

12. *The Court of the Coroner in London.*

The mayor is coroner within the city of London, and the court of the coroner is holden before him or his deputy. *Vide postea* in the chapter of the Coroner.

13. *The Court of the Escheator in London.*

The lord mayor is also escheator within the city, and this court is holden before him or his deputy. See before in the chapter of Escheator.

14. *The Court of Policies and of Assurances in London.*

This court sitteth by force of the commission under the great seal warranted by act of parliament an. 43 Eliz. cap. 12. there being an officer or clerk to register assurances, the jurisdiction of which court you may reade in that act of parliament made to encourage merchants to trade and traffick, the benefit whereof appeareth there, and is too long to be recited, and the rather for that we can adde nothing to that act of parliament.

43 Eliz. cap. 12.

15. *The Court of the Tower of London.*

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This court is holden within the virge of London before the steward there by prescription of debt, trespassse, and other actions of any summe greater or lesser, whereof you may reade in 4 E. 4. fo. 36. a. b.

4 E. 4. 36. a. b.

Note, where it is said, that the Tower of London is within the city of London, it is thus to be understood, that the ancient wall of London (the mention whereof yet appeareth) extendeth through the Tower, and all that which is invironed with the said wall, viz. on the west part thereof, is within the city of London, that is to say, in the parish of All-Saints-Barking within the ward of the Tower of London. And the residue of the Tower of London, on the east part of that ancient wall is within the county of Middlesex. And this upon view and examination was found out, Mic. 13 Jac. regis, in the case of Sir Thomas Overbury, who was poysoned in a chamber in the Tower on the west part of that old wall. And therefore Weston the principall murderer was tried before commissioners of oier and terminer in London, and so was Sir Gervase Elvice lieutenant of the Tower, as accessory.

16. *Of*

16. *Of the Jurisdiction and Authority of the President, Censors, and Comminality of the Colledge of Physicians scituate in Knight-Riderstreet in the Ward of Castle Barnard within the City of London and 7 Miles Compasse.*

Lib. 8. fo. 107.
&c. Dr. Bonhams case.
See the statutes of 3 H. 8. c. 6. & 11. 14 H. 8. cap. 5. 1 Mar. cap. 9. 32 H. 8. ca. 40. 42. 34 H. 8. cap. 8. Rot. pat. 32 H. 6. m. 17. by what warrant physick is to be given to the king.

Of this colledge, and of their jurisdiction and authority, sufficient hath been said in the 8 Book of Reports in Doctor Bonhams case, whereunto we refer the studious reader. Hereunto we will add for the safety of physicians, especially of the kings physicians a record worthy of observation.

* *Rex adversa valetudine laborans de assensu concilii sui assignavit Johannem Arundel, Johannem Saceby, et W. Hatcliffe medicos: Robertum Warren et Johannem Marshall chirurgos ad libere ministrandum et exequendum in et circa personam suam; imprimis, viz. quod licite valeant moderare sibi dietam suam et quod possint ministrare potiones, syrupos, confectioes, laxativas medicinas, clysteria, suppositoria, caput purgea, gargarismata lealen, epithimsta, fomentationes, embrocationes, capitis rasuran, unctioes, emplastra, cerera ventos. cum scarificatione vel sine, emorodorum provocaciones, &c. Dantes singulis in mandatis quod in executione premissorum sint intendentes, &c.*

Upon this, four things are to be observed. First, that no physick ought to be given to the king without good warrant. 2. That this warrant ought to be made by the advice of his councill. 3. They ought to minister no other physick then that which is set down in writing. 4. That they may use the aide of those chirurgions named in the warrant, but of no apothecary; but to prepare and do all things themselves, &c. And the reason of all this is the precious regard had of the health and safety of the king, which is the head of the common-wealth. * The science of physick containeth the knowledge of chirurgery.

* 32 H. 8. cap. 40.

3 E. 3. coron. 163.

If one that is of the mysterie of a physician take a man in cure and giveth him such physick as within three days he dye thereof, without any felonious intent, and against his will, it is no homicide.

Britton cap. 5. De homicides.

But Britton saith, that if one that is not of the mysterie of a physician or chirurgion, take upon him the cure of a man and he die of the potion or medicine, this is, (saith he) covert felony.

Mirror cap. 4. § De homicide. Verb. [dau' part]

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Physitians and chirurgions soient sages en leur faculties, eyent sanes les consciences, cy que rien ne ent failli a suivre cure, silz ne scavoient a bone chese mitter, ou silz a bone chese scavoient et sentre mettent nequidant follement ou negligentment, issint que ilz mittont froide per chaude ou le revers, ou trope peu de cure, ou nemi mitter un due diligence, et noismement in arsons et abscessions que sont defenda' a faire forsq; al peril des mesters si leur patients moreront ou perdent memorie, in tiels cafes sont ils homicides ou mayhemers.

And thus much concerning physitians.

For courts holden in other cities, towns corporate, and burghs, our purpose is not, to treat of them, because they are private and sufficiently known; but let us say somewhat of the liberties, franchises, and immunities of this noble city.

Parl. 17 R. 2. no. 26.

It is enacted, that the statute of 28 E. 3. cap. 10. shall not extend

tend to any erroneous judgement given or to be given in the city of London.

See after cap. 54. the ancient office of garbling of spices, &c.

There is a writ in the Register necessary to be put in execution for the wholefomenesse of aire in London, and in all other cities, &c. *De vicis et venellis mundandis.*

Regist. 267. b.

Lourglary, or lourgary is an offence when any cast any corrupt thing appoysoning the water in or about London, compounded of these two words *lour* corruption, and *laron* a thief or felon, as * burglary: and if any dye by reason of any such offence within a year after, it is felony, and extendeth to all other cities, burghs, &c.

* See the third part. of the Inst. cap. Burglary or Burglary.

It was petitioned to the king, that no man in cities, towns, or elsewhere, do carry maces of silver, but only the kings serjeants at armes, but that they carry maces of copper and of no other metall. Whereunto the king answered, [The same shall be so, except the serjeants of the city of London, who may carry their maces of silver within the liberties of London before the mayor in the presence of the king.]

Omnes homines Lond. n. sint quieti et liberi, et omnes res eorum per totam Angliam, et per portus maris de theolonio et passagio, et ab omnibus aliis consuetudinibus.

V. Cartam H. 1. Deliber. London.

In the charter of H. 3. bearing teste 18 Febr. anno regni sui 11. the king granted to the city of London *vicecomitatum London et Midd. &c.* And in that charter this speciall franchise and priviledge is granted to the sherifes of London and Middlesex for the time being in these words. *Ita scilicet quod si illi qui pro tempore fuerint vicecomites constituti aliquod delictum fecerint, unde misericordiam pecuniæ debeant incurvere, non judicentur ad plus nisi ad misericordiam viginti libr' et hoc sine damno aliorum civium si vicecomit' non sufficiant' ad misericordiarum suarum solutionem. Si verò aliquod delictum fecerint, per quod periculum vitæ vel membrorum incurvere debeant, judicentur sicut judicari debent per legem civitatis: de hiis autem quæ ad prædictum vicecomitatum pertinent respondeant vicecomites ad seaccarium nostrum coram iusticiariis nostris. Salvis eisdem vicecomitibus libertatibus quas alii cives London habent.*

11 H. 3. 18 Febr. speciall and rare liberties granted to the city of London.

In the charter of the same king bearing date 16 Martii anno regni sui undecimo *supradicto*, the king granted to the city of London *Quod nullus civis civitat' prædictæ faciat duellum, et quod de placitis ad coronam pertinent' se possint distracionare secundum antiquam consuetudinem civitatis, et quod infra muros civitatis, neque in portebokne nemo capiat hospitium per vim vel per liberationem mareschal', &c. et si quis in aliqua terrarum nostrarum citra mare, vel ultra, sive in portibus maris citra mare, vel ultra theolonium vel aliquam aliam consuetudinem ab hominibus London ceperit postquam ipse à recto defecerit, vic' London namium inde apud London capiant.*

Anno 11 H. 3. 16 Martii duellum. Hospitium. Per liberationem mareschalli.

In another charter of the same king bearing date 18 Augusti anno 11 *supradictæ* the king did disafforest and diswarren the forest and warren of Stanes in the county of Middlesex.

Anno 11 H. 3. 18 Augusti.

And by another charter of the same king bearing date 26 Martii anno regni sui 52, the king granted to the citizens of London in these words, *Concessimus eisdem civibus quod de placitis ad coronam pertinent', et hiis maxime, quæ infra civitatem prædictam et ejus suburbium fieri contingent, se possint distracionare secundum antiquam consuetudinem civitatis*

Anno 52 H. 3. 26 Martii. De placitis ad coronam.

Super tumultos.

civitatil prædictæ, eo tamen excepto, quod super tumultos mortuorum de eo quod dicitur essent mortui si viverent non liceat præcise jurare, sc. loco mortuorum qui ante obitum suum electi fuerint ad eos distracionandos qui de rebus ad coronam spectantibus appellati fuerint, vel restati alii liberi et legales eligantur qui idem sine dilacione faciant quod per defunctos memoratos, si venirent fieri oporteret, et quod tam forinseci quam alii attorney facere possint in hustingo London tam agendo quam defendendo in curia nostra.

Attornati in hustingo.

The citizens or burgesles of London were before and after the conquest governed by portgraves or portgreves untill the reign of R. 1. by whose charter they were governed by two bailiffs: and yet king Richard in the first year of his reign appointed them a mayor, who continued therein untill the eighth year of king John, and then king John appointed a mayor. And forasmuch as sometimes the mayor appointed by the king was no citizen of London, king John in the tenth year of his reign granted to the citizens liberty and authority to choose *de se ipsis* a mayor, &c. And so it continueth unto this day.

An. 10 Johannis.

Mayor de se ipsis

Aldermen.

The aldermen of London were changed by election every year untill 28 E. 3. Then it was ordered they should not be removed without some speciall cause. But rot. parl. 17 R. 2. nu. 25. it is enacted that the aldermen of London shall not from henceforth be yearly chosen, but remain till they be put out for reasonable cause, notwithstanding the ordinances of E. 2. and E. 3. and so it still continueth.

Rot. parl. 17 R.
2. nu. 25. enacted.

Rot. pat. anno 1 E. 3. the king granted that the citizens of London should not be constrained to go out of the city of London to any war: and the liberties of this city shall not for any cause be taken into the kings hands. Rot. parl. 1 E. 3. *Auctoritate parliamenti.*

Warre.

Liberties not to be taken into the kings hauds.

See hereafter cap. of Forests, pag. Cart' H. 1. for their recreation by hunting, &c.

Mag. Cart. cap.

9. Rot. pat.

11 H. 3.

Rot. parl. 5 R. 2.

nu. 19.

50 E. 3. nu. 145.

* Rot. par. 7 R.

2. nu. 37.

Vid. sup. pag.

250.

* Nota hoc.

Albeit by the statute of Magna Carta and other acts of parliament, the liberties, priviledges, and franchises of the city of London be confirmed: yet the most beneficiall of them all is that of * 7 R. 2. before mentioned: whereby it is enacted, that the citizens of London shall enjoy the same, with this clause, *Licet usi non fuerint vel abusi fuerint,* * and notwithstanding any statute to the contrary.

These notable, rare, and special liberties and priviledges we have attempted to remember: but whether herein we have done that good to the city that we intended, we know not, for we have omitted many more of no small number of great rarity and consequence too long here to be recited.

See before pag. 125. *Breve de listis et barris pro duello fac.* Vid. rot. cart. 18 Februarii 11 H. 3. against the exaction of the lieutenant of the Tower of Kidelles, &c. 2 part of the Institutes Mag. Cart. cap. 23.

The Court of the Justices assigned for the Government of the Jews.

Justiciarü ad Custodiam Judæorum assignati.

OMNES Judæi ubicunq; in regno sunt, sub tutela et defensione regis ligea debent esse, nec quilibet eorum alicui diviti se potest subdere sine regis licentia: Judæi enim et omnia sua regis sunt. Quod si quispiam detinuerit eos, vel pecuniam eorum, perquirat rex, si vult, tanquam suum proprium.

Inter leges Edwardi, Lamb. cap. 29. fo. 133. b.

These justices did hold a court concerning the custody and government of the Jewes, as (amongst many other records) it appeareth rot. pat. an. 41 H. 3. m. 4. nu. 6. And that then Philip Basset, Philip Luvell, Henry de Bathon, and Simon Passel, &c. were then justices *ad custodiam Judæorum assignati*. But when the Jewes were utterly (as hath been said) banished, this court ceased, which was in 18 E. 1. anno domini 1293. See the second part of the Institutes, stat. *de Judaismo*, rot. clauf. 18 E. 1. memb. 6. See Tho. Walf. in *hypodigmate Neustriæ* 18 E. 1.

Rot. pat. 41 H. 3. m. 4. nu. 6.

The Courts of Stainclife and Frendles Wapentakes.

BECAUSE I find mention made in acts of parliament of the courts of Stainclife and Frendles Wapentakes, &c. I thought good to refer you to those acts.

3 H. 5. cap. 2. 9 H. 6. cap. 10.

C A P. LI.

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Of the City of Westminster.

IT hath his name of the monastery, which minster signifieth, and it is called Westminster in respect of the Eastminster not far from the Tower of London.

This Westminster Sebert the first king of the East Saxons that was christened, founded; and he founded also the univerfity of Cambridge, as works and witnesses of his Christianity.

Sebert began his reign anno Domini 603.

But leaving these, and others of like nature, to others not lying properly in my way; let us turn our eye to such particular jurisdiction as within this city is exercised. For the better understanding whereof it is to be known, that within this city there are twelve

U 2 verall

This act was at the first but a probationer, but is continued to this day.

See before in the chapter of the High Court of Parliament.

Rot. parl. anno 50 E. 3. nu. 8.

Tempore E. 1. Vid. 2 R. 3. f. 10. a.

verall wards, out of which there are elected one burgesse and one assissant in every severall ward; and out of these twelve, two are elected yearly in the Thursday in the Easter week for chief burgesse to continue for one whole year following. To these burgesse authority is given by act of parliament in the 27 year of the reign of queen Eliz. (not printed) to hear, examine, determine, and punish according to the laws of the realm and lawfull customes of the city of London, matters of incontinency, common scolds, inmates, and common annoyances, and likewise to commit such persons as shall offend against the peace, and thereof to give knowledge within 24 hours to some justice of peace within the county of Midd.

One thing concerning this ancient monastery is observable, that after the high court of parliament was divided into two severall houses (whereof we have said somewhat in the chapter of the High Court of parliament) the accustomed place of that thrice worthy assembly of the knights, citizens, and burgesse of parliament (when the parliament was holden in Westminster) was in the chapter house of the abbot of Westminster, there to debate and consult *De arduis et urgentibus negotiis regni, et statum regni et ecclesie Anglicane concernentibus, &c.* And this continued untill the statute of 1 E. 6. c. 14. which gave to the king colleges, free chappels, chaunteries, and whereby the king enjoyed the ancient and beautifull free chappell of S. Stephens, founded by king Stephen, which had lands and revenues of the old yearly value, of 1085 l. 10 s. 5 d.) Since which time the chappell thereof hath served for the house of commons when parliaments have been holden at Westminster.

Radulphus de Ingham chief justice of England, (a very poor man being fined before him at 13 s. 4 d.) in another tearm, moved with pity caused the record to be rased and made 6 s. 8 d: for which he (for his fine) made the clock (to be heard into Westminster Hall) and the clockhouse in Westminster, which cost him 800, marks, and continueth unto this day, which sum was entered into the roll. And almost in the like case in the reign of queen Elizabeth, Sir Robert Catlyn chief justice of England would have had justice Southcote (one of his companions justice of the kings bench) to have altered a record, which the justice denied to doe, and said openly in court, that he meant not to build a clockhouse.

This monastery in anno 30 H. 8. was surrendered to the king, who erected thereof a dean and chapter. Anno 33 H. 8. it was raised to a bishoprick, and Thomas Thurlby made thereof the first and last bishop, &c. Queen Eliz. made it a colledge consisting of a dean, twelve prebends, a schoolmaster, an usher, 40. scholars, and 12 almshouses, and so it was named the collegiate church of Westminster.

37 H. 8. cap. 12.

In anno 37 H. 8. the kings mannor of Westminster was made an honor.

C A P. LII.

Of the City of Norwich, &c.

WITHIN this city there was in the reign of king Edward the Confessor 1300. citizens, and then this city paid to the king 20 l. and to the earl 10 l. And besides tnetē 20 s. and four prebendaries and six sextaries of honv, a bear, and six dogs to bait him. Now it yeeldeth 70 l. to the king, and a 100s. to the queen, and a palfrey, and twenty pound of white rent to the earl, &c.

In the book of Domelday made by William the Conqueror.

The foundation of the incorporation of this city is very ancient, for in ancient manuscripts it appeareth that *in tempore Steph. regis de nova fundata et ut villa populata communitas fact'*.

This city is highly commended for many things, for it is truly said of it, *Quod suis opibus, frequentia, edificiorum elegantia, templorum pulchritudine et numero, (parvas enim plus minus 30. complectitur) civium sedulitate, in principem fide, in * exteros humanitate, inter celeberrimas Britanniae urbes merito communeranda, &c. Manibus validis (in quibus crebrae dispositae turres, et undecim portae) undique obseptae, nisi ad ortum qua flumen (cum sinuoso flexu 4. pontibus per vicium septentrionalem urbis partem interlurrit) profundo abreo et precipitibus ripis defendit.* * It is preferred before all the cities in England except London. It hath above 30 parishes, and it is as large within the wals as London. It had within it and the liberties six religious houses and one hospitall.

Camden in Britannia.
* Urbanitas ab urbe.

* Alex. Nevill,

For the better establishing of the ecclesiasticall jurisdiction belonging to the bishop of Norwich (of which jurisdiction in generall we are to treat hereafter) it shall not be impertinent to set down the true state of this bishoprick.

In anno 27 H. 8. and before William Rugge doctor of divinity of the univerfity of Cambridge was abbot of the * monastery of S. Bennets de Hulmo in the county of Norf. and the bishoprick of Norwich becoming void by the death of Richard Nick commonly called the blind bishop, the king nominated the said abbot to be bishop of Norwich. And afterwards the 4. of Febr. anno 27 H. 8.

* This monastery was founded by king Kanute and increased by Edw. the Confessor, and the monastery made of that strength as it seemed to be *potius castrum quam claustrum.* It was of the order of S. Benedict of black monks.

^b Statut. de 27 H. 8. concerning the bishoprick of Norwich.

^c The like is not in England.

^b It was (*amongst other things*) enacted by authority of parliament, that such person as should be elected and consecrated bishop of the said sea should have and enjoy to him and his successors bishops of the said bishoprick of Norwich united and knit to the said bishoprick the monastery of S. Bennets, and all and singular mannors, lands, tenements, &c. belonging to the said monastery, &c. And that the person which should be named bishop of Norwich and his successors bishops of the same bishoprick from thenceforth ^c should be abbots of the monastery of S. Bennets, and have the dignities of the said ab-

bacy united, incorporated, and knit to the sea of the said bishop, &c.

See before in the chapt. of the royall Franchise of Ely, that king H. 1. of the monastery of Ely made a bishop. but king H. 1. had therein one end, and king H. 8. another.

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But peruse the statute, and you shall find that doctor Rugge had *beneficium viscatum*, for the bishoprick lost much more by that act then it gained. And afterwards this doctor was elected and consecrated bishop of Norwich: and being patron, in the right of his bishoprick, of the hospitall of S. Giles in Norwich, he as patron, and Nich. Shaxton master of the said hospitall by their deed acknowledged and inrolled bearing date 6 *Martii*, anno 1 E. 6. did give and grant to king E. 6. his heirs and successors the said hospitall and the possessions and hereditaments belonging to the same, and all other their possessions and hereditaments in the said county of Norf. certain concealors (*templorum helluones*) by pretext and colour of the said generall words passed the possessions and hereditaments of the said monastery of S. Bennets de Hulmo in a book of concealments under certain obscure words (which appear in the act of parliament hereafter mentioned) by letters patents of concealment bearing date the 2 day of August, anno 27 Eliz. and William Redmain doctor of divinity, and bishop of Norwich caused one Hamond a friend of his to take an estate to him and his heirs of and from the said concealors of all or the greatest part of the said monastery: which I (being then her majesties attorny generall) understanding, and utterly misliking the proceeding herein, conferred with the said bishop about the same, and in the end he was brought to agree, that an act of parliament should passe for the establishment of the said bishoprick and of the possessions thereof, which act (wherewith I was well acquainted) passed at the parliament holden in anno 39 El. and is in print, which you may read at large, wherein you shall observe the fraud and falshood of the concealors.

39 El. cap. 22.

Lib. 3. fo. 73. the case of the dean and chapter of Norwich.

What attempts these concealors (gracelesse and wicked men) made to the subversion of the deanery and chapter of the cathedrall church of Norwich, you may read in the third book of my Reports, fo. 73. *Sed (favente Deo et auspice Christo) isti helluones non prævaluerunt.* Which I have the rather remembered both for the establishment of the said bishoprick, as for the repose and quiet of very many fermors, officers, and other persons claiming interests in the said possessions in my native country.

21 Jac. cap. 2.

And if any question shall hereafter be made either concerning any of the possessions of this bishoprick, or any other, or of any dean and chapter, or of the colledges in either of the universities, &c. by any concealor or other; their possessions are established by the act of parliament of 21 Jac. cap. 2. intituled, An act for the generall quiet of the subject against all pretence of concealment whatsoever.

For the courts of justice within this city (which is our principall aime) we have treated of the like before in the city of London. To this we will adde an act of parliament concerning the jurisdiction of this city (wherof we have not found the like that we remember in any other) which in effect is as followeth.

Par. 2 R. 2. nu. 39. not in print.

It is enacted for the citizens of Norwich, that if their customs and usages heretofore used or hereafter to be used, be difficult

difficult or defective in part or in all, or that the same need any due amendment for any matter arising, whereof remedy was not aforetime had, that then the * bailiffs and 24. citizens of the same city, so therefore yearly to be chosen, or the greater part of them, shall from henceforth have power to ordain and provide from time to time such remedies which are most agreeable to faith and reason, and for the most profit, the good and peaceable government of the same town, and of strangers thereto repairing, as to them shall seem best, so as such ordinances be profitable for the king and his people.

* It hath now a mayor and 24. aldermen. Vide Rot. Cart. anno 4 H. 4. *

It is a county of itself, and hath two sherifs and large liberties without the wals. See the statute of 33 H. 6. cap. 7. how many attornies should be in this city. See before in the chapter of the high court of parliament concerning new draperies, &c. and worsteads, &c. made in this city. See rot. parl. 18 E. 1. fo. 5. concerning the ancient liberties of this city.

33 H. 6. cap. 7.

* *Burgi et civitates fundat' et ædificat' sunt ad tuitionem gentium, et populorum regni, et idcirco observari debent cum omni libertate, integritate et ratione.*

* Int. leges Wil. Conq. Lam. 125. Int. Leges Ethelstani et Canuti fo. 62. & 106. Oppida instaurantur, &c. * Par. 14. H. 4. nu. 47. not in print.

* 14 H. 4. It is enacted, that the merchants and artificers of worsteads in Norf. may sell their single worsteads to any place or persons being of the kings amity notwithstanding any inhibition or liberty to the contrary.

He that desires the tearms, true makings, and quantities of worsteads: let him read the statute of 11 H. 4. rot. parl. nu. 48.

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Trin. 13 E. 1. *in banco*, rot. 76. *Inspeimus cart. H. 3. Civibus Norwic. de libertatibus concess'.*

Rot. par. 11 H. 4. nu. 48. Trin. 13 E. 1. *in banco* rot 76.

The beautifull cathedrall or mother church of Norwich was begun to be built by Herbert bishop of Norwich, anno 9 *Willielmi Rufi.*

The bishops of this see had the first fruits of ecclesiasticall livings within their diocesse before the statute of 26 H. 8. ca. 3. which no bishop, or archbishop of this realm had.

19 E. 3. *jurisd.* 22. 26 H. 8. cap. 3.

It hath also a famous river abounding with fish, especially the perch.

The strong and noble castle of Norwich called Blanchflower environed about with the city, but no part thereof but of the county of Norf. was not (as some suppose) built by Bigot earl of Norf. which some upon view thereof have conjectured, for that the arms of earl Bigot are graven on the wals thereof. For we find a charter of king Stephen in these words. *Stephanus rex Anglorum archiepiscopis, episcopis, abbat', justic', comitibus, baronibus, viccomitibus, ministris, et omnibus fidelibus suis Angliæ, salutem. Sciatis me dedisse in feodo et hæreditate * Willielmo comiti Warren' filio meo castellum Norwici cum toto burgo, &c.*

* This William married Isabel daughter and heir of William earl Warren, and in her right was earl Warren. Vid. Mat. Par. pag. 92.

And Rafe de Waet earl of Norwich defended this castle of Norwich against William the Conqueror, who was driven out of England, and travelled with his wite to Jerusalem.

But true it is that earl Bigot being after owner thereof, did both repair

repair and enlarge the same, and set his arms upon the wals thereof. And so much for the antiquity (a great ornament of this city) of this castle, which now for want of reparation is ready to fall.

To conclude, this famous and free city is justly to be commended for profession of true religion, their loyalty to their prince in all times of tumult, the good government of themselves, and the exercise of works of charity.

This is the chief city of my native country.

*Nescio qua natale solum dulcedine cunctos
Ducit, et inmemores non finit esse sui,*

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C A P LIII.

The Court of the Tourne.

2. Part of the
Inst. Mag. Cart.
ca. 35.
12 H. 7. 18. Fi-
noux. Rot. pat.
2 R. 2. nu. 5.

WE have spoken of this court (being a court of record) in the Second part of the Institutes, Mag. Cart. cap. 35. whereunto we will adde a charter of William the Conqueror, which we find inrolled 2 R. 2. nu. 5. *pro decano et capitulo ecclesie beate Mariæ de Lincoln'.*

* This Remigius was the first bishop of Lincoln; the sea being removed from Dorchester to Lincoln.

*Willielmus gratia Dei rex Anglorum, comitibus, vicecomitibus, et omnibus francigenis et qui in episcopatu * Remigii episcopi terras habent, salutem. Sciatis vos omnes, et ceteri mei fideles qui in Anglia manent, quod episcopales leges quæ non bene, nec secundum sanctorum canonum præcepta usque ad mea tempora in regno Anglorum fuerunt, communi concilio, et concilio archiepiscoporum meorum et cæterorum episcoporum et abbatum et omnium principum regni mei emendandas judicavi. Propterea mando, et regia autoritate præcipio, ut nullus episcopus vel archidiaconus de legibus episcopalibus amplius in * hundredto placita teneant, nec causam quæ ad regimen animarum pertinet ad iudicium sæcularium hominum adducant, sed quicunque secundum episcopales leges de quacunque causa vel culpa interpellatus fuerit, ad locum quem ad hoc episcopus elegerit, et nominaverit, veniat, ibique de causa sua respondeat, et non secundum * hundredtum, sed secundum canones et episcopales leges rectum deo et episcopo suo faciat. Si vero aliquis per superbiam elatus ad iustitiam episcopalem venire non voluerit, vocetur semel, et secundo, et tertio; quod si nec sic ad emendationem venerit, excommunicetur: et, si opus fuerit, ad hoc vindicand', fortitudo, et iustitia regis vel vicecomitis adhibeatur: ille autem qui vocatus ad iustitiam episcopi venire noluit, pro unaquaque vocatione legem episcopalem emendabit: hoc etiam defendo, et mea autoritate interdico, ne ullus vicecom' aut præpositus, aut minister regis, nec aliquis laicus homo de legibus quæ ad episcopum pertinent se intromittat: nec aliquis laicus homo alium hominem sine iustitia episcopi ad iudicium adducat; iudicium vero in nullo loco portetur nisi in episcopali sede, aut in illo loco quem ad hoc episcopus constituerit.*

• i. In turno.

• This is not intended of the hundred court but that in those times the sheriff did hold his tourn per hundreda. See Mag. Cart. cap. 35. and the exposition thereupon.

For the confirmation of this charter, see in the register of the bishop of London. *Willielmus Dei gratia rex Anglorum R. Bainerdo. et S. de Magna Villa, P. de Vabines, cæterisque meis fidelibus de Essex et de Herefordshire, et de Middlesex, salutem. Sciatis vos omnes,*
Etc.

Et c. Tenor istius cartæ est in Anglico de verbo in verbum in eadem carta. Consimilis carta ut ante ex libro cartarum archiepiscopi Cantuar'. Against this charter it is objected. First, the time of the enrolling thereof, viz. in 2 R. 2. being never heard of before. Secondly, out of the red book, *inter leges H. 1. cap. 8. de generalibus placitis comitatum, i.* as well of the tourn, as of the county court.

^a *Sicut antiqua fuerit institutione firmatum, salutari regis imperio, vera nuper est* ^b *recordatione firmatum, generalia comitatum placita certis locis et vicibus et definit tempore per singulas Angliæ provincias convenire debere, nec ullis ultra fatigationibus agitari, nisi propria regis necessitas, vel commune regni commodum sæpius adjiciant. Intersint autem episcopi, comites, vicedomini, vicarii, centenarii, aldermanni, præfecti, præpositi, barones, vavassores, tungrevii et cæteri terrarum domini diligenter intendentes ne malorum impunitas, aut gravionum pravitatis, vel judicium subversio solita miseros laceratione consintiant. Agantur itaque primo debita veræ* ^c *Christianitatis jura; secundo* ^b *regis placita; postremo* ^c *causæ singulorum dignis satisfactionibus expleantur.* Whereupon they conclude, that ecclesiasticall causes were handled in the tourn in the reign of H. 1. long after the said supposed charter. And certain it is that the bishops consistories were erected, and causes ecclesiasticall removed from the tourn to the consistory after the making of the said red book: *ideo penes lectorem sit judicium.*

In the same chapter of the said Red Book it is further said, *Et quoscunque* ^a *shiregemote discordantes inveniet, vel amore congreget, vel sequestret judicio: debet enim shiresgemot* ^b *bis, hundreda et wapentachia* ^c *duodecies in anno congregari.*

The tourn is a court of record holden before the sheriff: the ancient institution thereof was before Magna Carta ^a to hear and determine all felonies (death of man excepted) and common nuisances. ^b See the statute of Magna Carta, cap. 17. and the exposition upon the same in the second part of the Institutes.

The stile of this court is *curia visus franc. domini regis apud B. coram vicecomite in turno suo, &c.* and not *turnum vicecom' tent'*, *&c.* for *turnum est nisi perambulatio.* The articles inquirable in the tourn are known and need not be here rehearsed.

^a Lib. rubeus in custodia remem. regis compositus tempore H. 1. cap. 8. Read the whole chapter. Vide ib. cap. 12. ^b Int. leges Edw. Lamb. 135. Vid. stat. de Marlbr. cap. 10. [260]

^a Ecclesiasticall causes. ^b Pleas of the crown in the tourn. ^c Private causes in the county court.

^d Turnum as it is here taken.

^e And so is the turn holden to this day. Mag. Cart. 35.

^f And so is the county court holden at this day. Mag. Cart. 35. 2 E. 6. 25. 22 E. 4. 22.

^h 2. Part of the Inst. Mag. Cart. cap. 17.

C A P. LIV.

The Court of the Leet or View of Frankpledge.

See Mich. 7 E. 1. rot. 9 North-
ampt. abbas de
Burgo. See the
2. part of the
Inst. Mag. Cart.
cap. 35.
Int' leges Edw.
cap. 35.

THIS is a court of record, and at the first derived and taken out of the tourn, and is holden before the steward, and he is judge thereof. Of the antiquity and jurisdiction of this court, you shall read in the second part of the Institutes, Magna Carta cap. 35. And what the ancient jurisdiction of the leet was, you shall also read in the second part of the Institutes, Mag. Carta cap. 17.

Leþ, leth, or leet is a Saxon word, and commeth of the verb zelapian or zeleþian (z being added *euphonia gratia*) i. *convocare*, to assemble together, *unde conventus*.

If a common nuisance, &c. done within the jurisdiction of the leet be not presented in the leet, the sheriff in his tourn cannot enquire of it, for that which is within the precinct of the leet is exempt from the tourn, otherwise there might be a double charge; but in that case a writ may be directed to the sheriff to enquire thereof, &c. against the opinion of Fineux in 12 H. 7. if his opinion be not misreported. And by the book of 29 E. 3. this writ is not taken away by the statute of 28 E. 3. cap. 9. made the year before, which was then fresh in the judges memory.

29 E. 3. 21.
Wilby. 12 H. 7.
18.

See the second part of the Institutes, in the exposition upon the statute of 31 El. cap. 7. concerning cottages and inmates, special matter concerning the jurisdiction of the leet. See for the jurisdiction of the leet the statute of 2 E. 6. cap. 10. concerning making of malt.

Rot. par. 17 E. 3.
du. 38.

The commons petitioned that excessive fines set on the kings subjects by such as have leets may be redressed, whereunto the king answered, The king would the same.

Mich. 18 E. 1.
in banco rot.
156. Norf.

See a notable case concerning the jurisdiction of the leet and court baron, Mich. 18 E. 1. in banco rot. 156. Norf. *Et ibi tenetur quod clericus ad letam venire non habet necesse, nisi ejus presentia ex certis causis et considerationibus sit necessaria.*

Stat. de visu
Franc. 18 E. 2.
9 H. 6. 53. b.
a Vid. 11 E. 4.
6. b. per Neal
and Brian.
1 R. 3. 1. a.
7 H. 4. 14, 15.
Brook tit.
Leet. 1.
b In the stat. at
large p. 17.
Mag. Carta parte
2. 23, 24.
c 14 E. 3.
cap. 12.

This court of the leet may enquire of corrupt victuall as a common nuisance, whereof some have doubted, both for that it is omitted in the statute of the leet, and of the weak authority of the book of 9 H. 6. where Martyn saith, that it is ordained that none should sell corrupt victuall. And Cottismore held opinion that it is *actio popularis*, whereupon it is collected, that the nuisance thereof belongs to the leet. ^a And Martyn and Neal 11 H. 4. agreeing with him said truly, for by the ^b statute of 51 H. 3. *Stat. pillor' et tumbrel', et affis' panis et cervois'*, and by the statute made in the reign of E. 1. intituled, *Stat. de pistoribus et brastatoribus et aliis vitellariis*, it is ordained that none shall sell corrupt victualls. And by the ^c statute of 14 E. 3. it appeareth that this act was ordained in the time of his grandfather, which was E. 1.

Britton

^d Britton who wrote after the statute of 51 H. 3. and following the same saith thus; *Puis soit inquis de ceux queux achatent per un manner de mesure et vendent per meinder mesure faux, et ceux sont punies come vendors des vines, et auxi ceux que serront atteints de faux aunes, et faux poyz, et auxi les * macegrievés, et les gentz que de usage vendent a trespasants mauvoise viands corrumptus et wacrus, et autrement perilous a la saunty de home. Et les forstallers, &c. Et fo. 33. he doth conclude the like passage with these words, Enconter le forme de nous statutes.*

^d Britton, f. 77. ^a

^{*} Maccellarius, a butcher or victualler.

Est etiam atrox injuria quæ perpetuam inducit infamiam cum poena pillorali et tumbrelli, quæ quandoque fit per pistores, brasatores, et alios qui falsis ponderibus utuntur et mensuris, quæ etiam fit per cibaria corrupta, et semicoccta vendentes, &c. But none of these statutes gave the conuance to survey and correct victuallers for corrupt victuall to our court of the leet, therefore further authority therein is desired. Wherein we will produce that which is *omni exceptione majus*, and that is by a resolution in parliament.

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Fleta, lib. 2. ca. 1. §. Est etiam. Et cap. 11. §. Item si dominus.

By the statute of 12 E. 4. cap. 8. it is rehearsed, That mayors, bailiffs, and other like governors of every city, borough, and town of substance within this realm of England for the most part have courts of leets and views of frankpledge holden yearly within the same, and surveying of all victuallers there, and correction and punishment of the offenders, and breakers of the assise of the same, to be presented and amerced if default be found in the said courts, &c. And where divers persons intending their singular avail and profit, and to oppress the said victuallers, and to enter and break the liberty of divers places in this realm having franchises (*that is, leets aforementioned*) and surveying of all victuallers, and correction of the same, had purchased letters patents of king E. 4. to be surveyors and correctors of all such victuallers within divers cities, boroughs and other places, of ale, ^a beere, wine, and other victuals, &c. in ^b wrongfull derogation of the liberties and franchises of the said cities, boroughs, and other places, &c. *as by the said act is rehearsed.* It is established and ordained, that all letters patents granted by that king, or after to be obtained of any office of searching or surveying of wine, ale, beer, or other victual, shall be utterly void and of none effect. And that no person other then such governors before rehearsed, &c. (*that is, in respect of their before rehearsed leets*) shall use or exercise any such office, &c. And besides the declaration of the same to be void and against law, a penalty of 40l. is inflicted upon such as shall exercise any such office so obtained or after to be obtained. An excellent act of parliament both for the declaration of the law in the case abovesaid, as also that the king by his letters patents cannot make any new office for the surveying, correction, &c. of any thing which belong to the jurisdiction and conuance of any former court which by consequent hath a large extent, and therefore we have cited the same the more at large.

12 E. 4. ca. 8.

Nota.

^a These words follow after in the act, and nota by this it appeareth, that beer is not of such late time as some suppose. See also Rot. par. anno 4 H. 4. nu. 53. Beer and ale mentioned to be then in Calice. Beer is a Saxon word bier, and beer is within the word *cerevisia* in the ancient statutes. For it is but as the putting of a new button to an old coat, viz.

hops to malt and water, to make it continue the longer. ^b Hereby it appeareth that those letters patents were against law, and that this is a statute declaratory with addition of a penalty.

Some doe hold that it is within the statute of 18 E. 2. some say as an incident to the assise of bread and ale, and others hold that by that

that act power is given to the lord of the leet to enquire of that assise of bread and ale, that is to say, of the statute intituled, The Assise of Bread and Ale, which is the said act of 51 H. 3. in which act sellers of corrupt victuals are to be punished. And herewith (say they) agreeth the book in 1 R. 3. fo. 1. that of corrupt victuall the leet had jurisdiction by the statute, howsoever that is conceived, it is the leet that hath conuſance thereof.

Paſch. 18 E. 2.
Coram rege
Rot. 76. Southt.

And albeit malt, *braſum*, be no victuall of it ſelf, as it is adjudged in anno 18 E. 2. *Quod venditio braſii non eſt venditio victualium, nec debet puniri ſicut venditio panis, vini et cerviſie, et huiusmodi contra formam ſtatuti*. Yet becauſe it is the principall ingredient of beer, and ſerveth to victuall the kings houſhold, &c. (as it is ſaid in the ſtatute of 17 R. 2.) and tendeth, if it be corrupt and not wholeſome, to the great hinderance of health and increaſe of diſeaſes, we will examine how the law ſtandeth therein at this day.

17 R. 2. cap. 4.

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Mealt or Malt is a Saxon word. In Latin we call it *braſum* derived of *braſſo*, i. *ebullio, ferueo*. In the ancient ſtatutes *braſiator* is taken for a brewer. In Fleta, *ubi ſupra, braſiatrix*: in Britton, *ubi ſupra, bracerceſſes*, for brewers. In Latin we uſe the word *pandaxator* or *poſifex*: and *braſiator* at this day is uſed for a maltmaker or malſter.

2 E. 6. cap. 10.

Malt is made of barley, and cannot be well and perfectly made, unleſſe it hath the time of 12 dayes in the making thereof, and both in the making thereof in the ſat, ſloor, ſteeping, and ſufficient drying of the ſaid malt 3 weeks at the leaſt, except it be in the moneths of June, July, and Auguſt, and in thoſe moneths by the ſpace of 17 dayes at the leaſt.

* Gurguliones.
17 R. 2. cap. 4.

The maltmaker ought not ſlackly and deceitfully dry the malt, to the intent to have an inordinate increaſe thereof by ſwelling of the ſame, which being not ſufficiently dried, within a ſhort time will be muſty and full of * wivels.

2 E. 6. cap. 10.

No perſon ought to put to ſale any malt which ſhall not be well and ſufficiently troden, rubbed, and well fanned, whereby there may be conveniently fanned out of one quarter thereof half a peck of duſt, or more.

No perſon ſhall mingle any malt not being well and ſufficiently made, or being made of mow-burnt or ſpiced barley, with other good malt, and after put the ſame to ſale. All theſe be *mala in ſe*, and puniſhable by the common law.

2 E. 6. cap. 10.

And this ſtatute of 2 E. 6. hath added a penalty, if the ſuit be brought upon this ſtatute. And if the brewer put to ſale any beer, which he hath brewed with unlawfull (as all is unlawfull that have not the qualities foreſaid) and unwholeſome malt, he may be preſented for the ſame in the leet, &c. as ſelling of corrupt and unwholeſome victuall. And by this ſtatute power is given that the juſtices of peace in every of their ſeſſions, and alſo the ſteward in every leet ſhall hear and determine, as well by preſentment of 12 men, as by accuſation or information of two honeſt witneſſes of, for, and upon all and every the offences and forfeitures in that act, &c. So as the juſtices of peace or ſtewards in leets, may either proceed at the common law or upon this ſtatute. It is further provided by this act, that the bailifs and conſtables of every borough, and market town or other town where malt ſhall be made or put to ſell, ſhall from time to time ſearch and ſurvey the ſame; and if the ſame be

be found to be evill made or mingled with evill malt, they by the advice of one justice of peace shall cause the same to be sold at such reasonable price, and under the common price in the market, as to his discretion shall seem expedient. This act extends not to the making of any malt for a mans own provision for his own house or family. And the offences against this act are to be presented within a year.

This act of 2 E. 6. cap. 10. is continued, and yet standeth in force. 27 Eliz. cap. 4. 1 Jac. cap. 25, &c. 4 Car. cap. 4.

That which hath been said (*de malis in se*) of malt, may also be applyed to hops another ingredient in beer, and punishable by the common law. But against divers and many falsehoods practised in packing of foreign hops, for that the subjects of the realm have been by reason thereof of late years abused and deceived unto the value of 20 thousand pounds yearly at the least (for that in sacks of foreign hops there is not found one third part to be good and clean hops, the rest being drosse and soile,) a good law is made *anno* 1 Jac. and every person offending therein shall forfeit the same hops so brought into the realm. And it is further enacted by the same act, that if any brewer of beer or ale shall employ and spend any hops unclean, corrupt, or mixt with any powder, dust, drosse, sand, or any other soile whatsoever, he shall forfeit the value of those hops so employed, to be recovered, &c. in any of the kings courts of record.

1 Jac. cap. 18.

The reason wherefore these courts of the tourn and leet are courts of record, and not the courts of the county, of the hundred, and of the court baron (whereof we shall next in order treat) is, for that the tourn and the leet are instituted for the common-weal, as for conservation of the kings peace, and punishment of common nufances, &c. And for conservation of the peace, the sheriffe in the tourn, and the steward in the leet may take recognifances for keeping of the peace. But the said inferior courts of the county, hundred, and the court baron have jurisdiction of private causes under the value of 40s. between party and party.

F. N. B. 82.

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- - - *Fuit hæc sapientia quondam
Publica privatis fecernere, sacra profanis.*

And forasmuch as unclean, corrupted, and mingled spices and drugs be so unwholesome and hurtfull, as they tend to the jeopardy of mans body, we will hereunto adde the exposition of the statute of 1 Jac. cap. 19. the penalty of spices not garbled.

Whereas heretofore great deceits and abuses have been committed in uttering, selling, and putting to sale, sundry sorts of uncleane, corrupt and mingled spices, &c. garbleable: to the jeopardy of his majesties person, &c.

Garbleable.] To garble, signifieth in our legall understanding, to sever and divide the good and sufficient from the bad and insufficient; and extendeth not only to spices and drugs mentioned in our statute, but to other wares and merchandizes. As for example. By the statute of 1 R. 3. it is provided that no bowstaves shall be sold ungarbled, &c. that is, untill the good and sufficient be severed and divided from the bad and insufficient; and this garbling of

1 R. 3. cap. 17.

12 E. 4. cap. 2. the statute appointeth who shall garble them.

of bows hath reference to the statute of 12 E. 4. cap. 2. where garbling of bows is well expounded, that is, that the bowstaves be searched and surveyed, &c. and that such as be not good and sufficient be marked, &c. Some think that it is derived from the French verb *garber*, to make fine, neat, clean, &c. Others fetch it from *cribler* and that of *cribrare* to sift or sever the good from the bad, *unde cribrum, sic dictum, quia crebris pertusum est foraminibus ad res purgandas à pulvere et immundis (unde cribrarius, the garbler)* which well agreeth with our act.

A five and to sift do come from the Saxons, viz. *fiſ, fiſe*. This act consisteth of a preamble and a body. In the preamble it is rehearsed, That unclean, corrupt, and mingled spices, drugs, wares, and merchandizes garbleable do tend to the jeopardy of his majesties person, and of his subjects using the same in their meats, drinks, and other needfull occasions, &c.

The selling of such unclean, corrupt, and mingled spices and drugs used in meats, and drinks, is *malum in se*, and (as hath been said) in divers like cases punishable by the common law. But this act tendeth to the prevention of such deceits and abuses, by garbling and purifying of the same before they be sold, and by punishment if they be sold before they be garbled and purified.

All that is garbleable must be garbled and cleansed and sealed by the garbler before sale, upon pain of forfeiture of the same or value thereof, for which an action popular is given.

There be 32 kindes of spices and drugs by special name mentioned in this act, viz.

1 Pepper, 2 cloves, 3 mace, 4 nutmegs, 5 cinnamon, 6 ginger, 7 long-pepper, 8 worme-seeds, 9 comyn-seeds, 10 any-seeds, 11 colliander-seeds, 12 bynny-pepper, 13 almonds, 14 dates, 15 gals, 16 spiknard, 17 galingall, 18 turmerick, 19 setwell, 20 cassia-histula, 21 ginny-pepper, 22 seme, 23 barbaries, 24 rice, 25 erins, 26 staves-acre, 27 calamus, 28 fennyrick, 29 cassia, 30 lignum, 31 graines, 32 caraway-seeds.

And in generall words, 1. Gums of all forts and kinds garbleable. 2. All other spices, drugs, wares, and merchandizes garbleable.

* Nota, garbles signifie the dust or soile or uncleanness that is severed.

Be it furthermore enacted, that if any of the said spices, drugs, wares, or other merchandizes be mixed with * garbles, matter or thing whatsoever after the same be garbled, &c. That then the said spices, drugs, &c. or the value thereof shall be wholly forfeited.

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It shall and may be lawfull for the garbler of spices, &c. within the city of London and the liberties of the same, &c.

* This had been implied if it had not been expressed.

There hath been of ancient time an officer in London and the liberties of the same, called the garbler of spices, &c. who may make his deputies. And this act giveth him authority at all and every time and times * in the day time to enter into any shops, warehouses, or seller, to view and search such drugs, spices, &c. and to garble and make clean the same.

There is a proviso, that if any merchant or other person (other then merchants alien, or made or to be made denizen) shall bring any spice, drugs, or other merchandizes garbleable into this realme,

realme, and shall not offer the same to sale or sell the same within this realme, &c. and shall transport the same *bona fide* within eight moneths (accounting 28 dayes to the moneth) after his first landing, &c. shall not incurre any of the penalties of this act.

And this proviso was added in respect of a generall law made in 16 R. 2. that no manner of spicery, after that it be brought into the realm, shall be carried out of the same by alien or denisen, upon pain of forfeiture of the same. And this proviso extendeth only to the natural born subjects, and not to merchants alien, or made or to be made denizens.

And by the act of 16 R. 2. cap. 1. it is enacted, that aliens shall sell wines by whole vessels, and spicery by whole vessels and balls, and in no other manner.

The court of the leet may inquire of these offences following by authority of parliament.

De visu franc. Articles of the leet, to which we will adde

Concerning tracing and killing of hares.

Of hostlers making horsebread under the assise.

Of breeders of horses under stature.

Of artillery, butts, and bows.

Concerning shooting in crossebows and handguns.

Concerning victuallers, artificers, workmen, and labourers.

Against great prices and excesse of wines.

For amendment of high wayes, 2 & 3 Ph. and Mar. cap. 3. 5 Eliz. 13. 18 Eliz. 9.

Concerning musters.

For the preservation of the spawn and fry of fish.

Against taking of pheasants and partridges.

Against the erection of cottages and inmates. Hereof see before in this chapter.

By these and divers other acts of parliament the jurisdiction of this court of the leet hath been much increased, to the end that the subject might have remedy and justice at his own dores: and therefore it is requisite that the steward of this court be learned in the law, for *ignorantia judicis est calamitas innocentis*. See rot. parl. 51 E. 3. nu. 47. concerning taverners.

The stile of this court of the leet is, *curia visus franc' pleg' teni' apud B. coram A. B. seneschallo, &c.*

Francus plegius Saxonice fneborogh fneboroe, Anglice, freepledge.

The constables or petty constables are chosen by the common law at the leet or torn, and are by the common law conservators of the peace, and may take surety of the peace by obligation, and are as ancient as torns or leets be, and began not about the beginning of E. 3. as some have supposed, vide the chapter of the hundred court for the cheif constable, and 9 E. 4. 36. 5 H. 7. 6. 11 H. 4. 12. 38 E. 3. 3.

But, to say once for all: repetition without addition is but losse of time, and altogether unprofitable.

16 R. 2. cap. 1.

18 E. 2. De visa franc.

14 H. 8. cap. 11.

32 H. 8. cap. 14.

32 H. 8. cap. 13.

33 H. 8. ca. 8, 9.

33 H. 8. cap. 6.

2 E. 6. cap. 15.

7 E. 7. cap. 5.

4 & 5 P. and M.

c. 3.

1 Eliz. 17.

1 Jac. 25.

22 Eliz. cap. 10.

31 Eliz. cap. 7.

3 H. 4. 9. 103.

4. 17. 44 E. 3.

bar. 202. 32 E.

3. ib. 259.

46 E. 3. ib. 214.

Vid. Rot. parl.

6 E. 3. post. nu.

6. Fitz. just. of

peace 172.

3 E. 3. cor. 288.

12 H. 7. 18.

Fineux.

C A P. LV.

The Court of the County.

See the second part of the Inf. Mag. Cart. ca. 35.

THE style of this court is: *Buck. curia prima comitatus E. C. militis vicecomitis com' prædict' ten' apud B. &c.* And the next court *curia secunda E. C. vicecom' com' prædict' &c.* And so forth.

See the statute of W. 2. cap. 36. against procurement of suits in this court.

Lib. 6. fo. 12.
Jentlemans case.
Stat. de Merton
cap. 3. 44 E. 3.
10. 2 part of the
Inf. Mag. Cart.
ca. 35.
F. N. B. 119.
g. h. 1b. 85. g.
&c. & 138. b.
&c.

This court is no court of record, and the suitors are the judges thereof. But in a *rediffison* the sheriffe is judge by the statute of Merton cap. 3. and a writ of error lyeth of his judgement.

Of the antiquity and jurisdiction of this court, you shall reade in the statute of Magna Carta, cap. 35. It holdeth no plea of any debt or damages to the value of 40s. or above, nor of any trespassse done *vi et armis*, because a fine is due thereby to the king. But of debt, detinue, trespassse, and other actions personall above 40s. the sheriffe may hold plea by force of a writ of *justicies* to him directed, for that is in nature of a commission to him, and is *vi-cou-tes*, and not returnable. And he may before any county court award a summons to his baillie returnable within 2 or 3 dayes at his discretion, to summon the defendand by his goods, &c. to answer; and if the baillie retorne *nilil*, and the plaintiff removeth the same by a *pone* into the common place, that court shall not grant a *capias*, for the nature of the writ doth not warrant a *capias*, and the sheriffe could not grant the same, neither doth the writ of *justicies* alter the nature of the court of the county, for therein the sheriffe is not judge, but the suitors; and upon a judgement given therein a writ of false judgement doth lye, and not a writ of error. And in divers reall actions a writ of *justicies* doth lye as it appeareth in our books, as in *breve d'admesurement* of dower or pasture, in customs and services, *mesne, quod permittat, rationabilibus divis, sell' ad molend', de nuisans, de curia claudenda, annuity, &c.*

4 Eliz. Dier 222.
15 Eliz. 317. 2.

In the county court upon the exigent after 5 exact, the coroners give judgement, *Idco utlagetur per judicium coronatorum*. But by this judgement no goods are forfeited before the outlary appear of record: and that is the reason, that no man can claim the goods of outlaws by prescription. Neither shall such an outlary disable the party: but if upon a *cestiorari* to the coroners they certifie the outlary, this shall serve the king for the forfeiture of his goods, but shall not disable the party till the exigent be returned.

C A P. LVI.

The Court of the Hundred.

THIS is no court of record, and the suitors be thereof judges. Of the antiquity and jurisdiction hereof vide Magna Carta, *ubi sup.* And as the leet was derived out of the tourn for the ease of the people, so this court of the hundred for the same cause was derived out of the court of the county, and is a court baron in his nature.

2 Part of the
Inf. Mag. Cart.
ca. 35. 12 H.
7. 18.

By the statute of 14 E. 3. hundreds (except such as then were of estate in fee) are rejoyned (as to the bailywick of the same) to the counties, and all grants made of the bailywick of hundreds since that statute are void, and the making of the bailiffs thereof belong to the sheriffe, for the better execution of justice and of his office. And so it was resolved by the lord treasurer Lea and all the barons of the exchequer, and so decreed in the exchequer chamber, between Fortescue of Buckinghamshire plaintife, and the sheriffe of the same defendant, term. 2 *Caroli regis*, the plaintife having of late divers hundreds granted to him for life in the county of Buck. reserving a rent, which the sheriffe disallowed and put in bailiffs of his own. And a commandment was given by the court to the attorney generall to avoid the like in other counties, for that they were against law, and belonged to the office of the sheriffe, and were occasions of delays and hindrances of justice. See the statute of W. 2. cap. 36. against procurement of suits in this court.

14 E. 3. cap. 9.
4 E. 3. cap. 15.

The style of this court is, *Curia E. C. militis hundredi sui de B. in com. Buck. ten'*, &c. *Coram A. B. seneschallo ibidem.*

If there be a bailiffe of a liberty appointed by the lord of the liberty, or the sheriffs bailiffe of any hundred, wapentake, or tything, which have not lands or tenements sufficient in that county, there lyeth a writ *de balivo amovendo*, grounded upon the statute of 4 E. 3. cap. 9. There are constables of the hundred commonly called, chief constables, so named, because constables of towns are called petit constables. These constables of hundreds were created by the statute of 13 E. 1. and their authority limited to five things. 1. To make the view of armour. 2. To present before justices assigned such defaults as they do see in the country about armour. 3. To present defaults of suits of tourns. 4. Of high-ways. 5. To present all such as lodge strangers in uplandish towns, for whom they will not answer. Divers and many acts of parliament have given the chief constable and pety constable more authority and power then originally they had, which hath been well collected by others. For no officer that is constituted by act of parliament hath more authority then the act that creates him, or some subsequent act of parliament doth give him, for he cannot

9 E. 2. Linc.
stat. Unicum.
4 E. 3. cap. 9.
5 E. 3. cap. 4.
Register 178.
F. N. B. 164. b.

Stat. de 13 E. 1.
De Winch. ca. 6.

Lambard, &c.
See cap. Lect for
the pety Con-
stable.

IV. INST.

X

prescribe

prefcribe as the officer by the common law may. Nota 10 E. 4. fo. 17. the petit constable was an officer by the common law *per curiam*, Vid. 4 E. 3. cap. 3. 25 E. 3. ca. 2. See in the chapter of Hue and Cry in the third part of the Institutes hue and cry always by the common law made by the constables of towns, &c.

Fleta lib. 1. cap. 2. § *De vic' et constabulariis, &c.*

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C A P. LVII.

The Court Baron.

See the second part of the Inst. Mag. Cart. ca. 25.

THIS is a court incident to every mannor, and is not of record, and the suitors be thereof judges, although the plea be holden by force of a writ of right.

There is also a customary mannor whereof you may read in the first part of the Institutes sect. 73. verb. Court, &c.

And this was first instituted for the ease of the tenants, and for the ending of debts and damages under 40 s. at home, as it were at their own doores.

1 Part of the Inst. sect. 73.

See there for the antiquity and institution of this court, and the articles inquirable therein are usuall and well known.

The stile of the court is: *Curia baronis E. C. militis manerii sui prædicti* (having the manors name written in the margent) *ten' tali die, &c. Coram A. B. seneschallo ibidem.*

In the reigne of E. 1. we have seen court rols having the manors name in the margent. *Aula ibidem ten' tali die, &c.* the court of the mannor being so called, because it was holden in the hall of the mannor: as the court of the marshalsea is called *curia aula hospitii domini regis*, because of ancient time it was holden in the kings hall.

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C A P. LVIII.

The Court of ancient Demefne.

See the second part of the Inst. W. 2. c. 31. f. 456.

See 21 E. 3. 32.

Herein Fitz. in his N. B. fo. 16. ascribing it to

THOSE manors are called the ancient demefnes of the crowne which were in the hands of St. Edward the Confessor or William the Conquerour, and so expressed in the Book of Domesday made or begun in the 14 year of William the Conquerour; for so we finde it in *libro rubro scaccarii in custodia rememb' regis* fo. 47, *quod liber vocatus Domesday compositus fuit anno 14 Willielmi regis conquestoris.* And Radulphus Niger monk of Cogishall in Essex in *vita Willielmi conquestoris* hath these words, *Annis 1081, 1082, 1083, 1084, 1085, 1086, rex Willielmus describit fecit omnes barones et feudatos*

ſeudatos milites, et quot carucatas terræ quiſque habebat et redditus poſſeſſionem. And anno Domini 1081, was the 14 year of William the Conqueror; and this great and excellent ſurvey laſted 6 years. And in *Lucubrat' Okham* it is worthily called *Liber Judicatorius*, becauſe it is the only triall of ancient demeſne; againit which, for the uncontrollable truth and verity thereof, there can be taken no averment. And therefore in that reſpect like the doome and judgement at doomeſ-day.

In Chen' archiepi. Cant' : Sandwice in anno quo facta eſt hęc deſcriptio. In doomeſ-day it ſeſe *lege librum*, for hereby it appeareth that it was made in the time of the Conquerour.

All thoſe that hold of theſe manners in ſocage are tenants in ancient demeſne: and they plowed the kings demeſnes of his manners, ſowed and harrowed the ſame, mowed and made his medows, and other ſuch ſervices of huſbandry for the ſuſtenance of the king and his honourable houſhold, maintenance of his ſtable and other like neceſſaries pertaining to the kings huſbandry. And to the end theſe tenants might the better apply themſelves to their labours for the profit of the king, they had ſix privileges. Firſt, that they ſhould not be impleaded for any their lands, &c. out of the ſaid mannor, but have juſtice adminiſtered to them at their own dore by the little writ of right cloſe directed to the bailiffs of the kings manners, or to the lord of the mannor, if it be in the hands of a ſubject; and if they were impleaded out of the mannor, they may abate the writ. 2. They cannot be impannelled to appear at Weſtm. or elſewhere in any other court upon any inqueſt or triall of any cauſe, 3. They are free and quiet from all mannor of tols in fairs and markets for all things concerning huſbandry and ſuſtenance. 4. And of taxes and tallages by parliaments, unleſſe they be ſpecially named. 5. And of contribution to the expences of the knights of the parliament, &c. 6. If they be ſeverally diſtrained for other ſervices, they all for ſaving of charges may joyn in a writ of *monſtraverunt*, albeit they be ſeverall tenants.

Theſe privileges remain ſtill, although the mannor be come to the hands of ſubjects, and although their ſervice of the plough is for the moſt part altered and turned into money: *Avra in Domeſday Grentbrigſh Rexforſham, ſed tamen ſemper inveniat averam vel 8 d. in ſervicio regis*, that is, a dayes work of a ploughman, or 8 d.

This court is in nature of a court baron, wherein the ſuiters are judges, and is no court of record, for *brevia claufa recordum non habent*.

Nota, the demandant in a writ of right cloſe cannot remove the plea out of the court of the lord for any cauſe, the tenant may remove the ſame for 7. cauſes, viz. 1. For that he holdeth it *ad communem legem*. As if a fine and recovery be levied or ſuffered thereof in the court of common pleas, this maketh the land frank ſee ſo long as they ſtand in force. 2. If the land be not holden of the mannor being ancient demeſne. 3. If the land be holden by knights ſervice, for as hath been ſaid, the ſervice of the plow and huſbandry is the cauſe of the privilege. 4. * If there be no ſuitors, or but one ſuitor, for that the ſuitors are judges, and therefore the demandant muſt ſue at the common law, for that there is a failer of juſtice within the mannor. 5. If the tenant accept a releaſe of his lord of his ſeignory, or the ſeignory be otherwiſe extinguished

Edw. the Confeſſor, was deſe. Vid. the Preface to the third book of my Reports.

See the ſecond part of the Inſt. Artic. ſup. Cart. cap. 2.

The privilege of tenants in ancient demeſne.

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• Regiſt. fo. 17 E. 3. 44. F. N. B. 13. c. 41 E. 3. 22. 49 E. 3. 7. 50 E. 3. 14.

† *Domestday*
sepe berciare, or
berciare of the
French word
[*berce*.]

¶ *Vid.* li. 5. fo.
105. *Allens. case.*
44 E. 3. 38.
46 E. 3. 1.
49 E. 3. 7. 44 E.
3. 22. 21 E. 3.
10. 32. 40 E. 3.
4. 28 E. 3. 95.
34 E. 1. *Anc*
demesne 98.
21 E. 4. *Anc*
demesne 6.
22 *Aff.* 45.
F. N. B. 136. k.
30 E. 3. 12.
b 2 E. 2. *Execut.*
118. 15 E. 3.
ib. 62. 8 E. 2. ib.
136. 7 H. 4. 19.
Lib. 5. fo. 105.
19 H. 6. 64.
c 4 E. 2. *Redif-*
feisin 9.
d 7 H. 6. 35.
8 H. 6. 34.
32 H. 6. 35.
F. N. B. 139. g.
Lib. 5. fo. 105.
Allens. case.
22 *El. Dier* 373.
7 H. 7. 11.
e 2 E. 4. 26.
8 E. 4. 6.
7 H. 4. 44.
8 H. 4. 24.
17 E. 3. 31.
Tr. 16 E. 3.
Coram rege rot.
132. *Eborum.*
Tr. 13 E. 3.
Coram rege rot.
108 *Glouc*
(finis) Tr. 3 H.
5. *coram rege*
rot. 9. Effex.
(finis) 21 E. 3.
20. 56. 21 *Aff.*
4. 26 E. 3. 63.
f *Vid. Dier* 22 *El.*
373.
E 3 E. 3. 9.
F. N. B. 19. d.
b *Dier* 22 *El.*
373. 27 *Aff.* 5.
44 E. 3. 38.
i 21 E. 3. 32.

tinguished by reason of the seison of the king or otherwise. 6. Of if the lord disseise his tenant and maketh a feoffment in fee. 7. If the lord grant the services of his tenant, and the tenant attorn.

† *Arabant et heviabant ad curiam domini*, i. they did plough, and harrow at the mannor of the lord.

* And this priviledge doth not extend to meer personall actions, as debt upon a lease, trespassse, *quare clausum fregit*, and the like, in which by common intendment the title of the freehold shall not come in debate. But otherwise it is of all reall actions, and also in actions of account, replevin, *ejectione firmæ*, writ of mesne and the like, where by common intendment the realty shall come in question.

b Lands in ancient demesne are extendable upon a statute merchant, staple, elegit, and regularly all generall statutes extend to ancient demesne.

c But a redisseisin although they concern the realty, doth not lie in ancient demesne, because the proceeding in a redisseisin is appointed by the statutes to be made by the sherif, *assumptis secum coronatoribus comitatus*, &c. and in ancient demesne there are no coroners, d but otherwise it is in an action of wast.

And as the tenants in ancient demesne are carefull to preserve their priviledges, so the lord is as careful to preserve his seigniory, and the tenure of this tenancy in ancient demesne. * And therefore if the tenant levy a fine, or suffer a recovery in the court of common pleas, &c. whereby for the time the land is become frankfee, the lord by a writ of deceit may not only restore himselfe to his true seigniory, but utterly avoid the fine, and restore his tenant against the recovery and his own fine to the land again in his former estate: and the reason thereof is, for that the recovery or fine was not suffered or levied before a competent judge in the right court, which ought to have been in the court of ancient demesne, f and therefore after the reverfall in the writ of disceit, it is now *tanquam coram non iudice*, and the parties to the fine or recovery shall be fined and imprisoned *pro deceptione curiæ*.

¶ But if in a writ of right close in ancient demesne, the demandant maketh his protestation to sue in the nature of assise of mord', the tenant plead in abatement of the writ, and the writ by judgement is abated, the demandant brings a writ of false judgement wherein the writ is affirmed to be good, the court of common pleas shall proceed as the inferior court should have done, and although that judgment be given to recover the land in the common place, yet the land is not frankfee, but remains ancient demesne, because the beginning and foundation thereof was in ancient demesne.

h They may levy a fine in ancient demesne which by a custome it is said to be a bar of the estate taile; but certainly that will not hold.

i If the tenant remove the plea for the cause mentioned in the *recordare*, he may come into the kings court, and assign other cause, and twenty, if he hath, to maintain the jurisdiction of the kings court.

C A P. LIX.

The Court of the Coroner.

THIS coroner *coronator* is so called, because he deals principally with pleas of the crown or matters concerning the crown: he is eligible by the freeholders of the county, and so continues to this day, as of ancient time the * sheriff and ² conservators of the peace were, because the people had a great interest and safety in the due execution of their offices, and so long as they were eligible, they continued, notwithstanding the demise of the king, as the coroner doth to this day. And of ancient time this office was of great estimation, for none could have it under the degree of a knight. ^b And it appeareth by the writ *de coronatore eligendo*, that he must have two properties, viz. sufficient knowledge, ability and diligence in execution of his office implied in these words, *et talem eligi facias, qui melius sciat, et possit officio illi intendere.* ^c And the sheriff after he be elected, shall give unto him his oath duly to execute his office: and the court which he holdeth is a court of record. And commonly there are four in every county of England; but in the twelve shires in Wales, and in Cheshire there are but two.

Now concerning his jurisdiction, what it was before the statute of Magna Carta, and what he hath at this day, and of his antiquity, you may read in the second part of the Institutes, Mag. Cart. cap. 17. and the exposition upon the same. Merton cap. 3. Redisseisin, and W. 1. cap. 10. & 26. & Artic. super Cart. cap. 3. and the exposition of the same.

He is to take nothing for doing his office upon grievous forfeiture, but by 3 H. 7. he is to have upon an indictment found of murder 13 s. 4 d. of the goods of the murderer, and if he hath nothing of the amerciament of the township for the escape, &c. See also the ancient authors, *Mirror des Justices*, cap. 1. §. *del officio del coroner*. Bracton lib. 3. fo. 121, 122, 123. Britton cap. 1. Fleta, lib. 1. ca. 18. *Statutum de anno 4 E. 1. de officio coronatoris*, and *Stanf. Pl. Coronæ* fol. 48, 49, 50.

And as the sheriff in his tourn may enquire of all felonies by the common law, saving of death of man, so the coroner can enquire of no felony but of the death of man, and that *super visum corporis*: he shall also enquire of the * escape of the murderer, of treasure trove, deodands, and wrecks of the sea. But hereof you shall read more in the authorities before cited, and in the third part of the Institutes, in the title of Appeals.

He ought to deliver the inquisition of death taken by him at the next gaol-delivery, or certifie the same into the kings bench. * Upon an inquisition found before him of murder or manslaughter he ought to put in writing the effect of the evidence given to the jury before him being material, and hath power to binde over

X 3

witneses

Regist. 172.
F. N. B. 164.

* Artic. sup.
Cart. cap. 8.
& 13. 12 R. 2.
cap. 2. 14 E. 3.
cap. 7.

² Ro. pat. 5 E. 1.
Lambard justice
of peace. 16. b.
^b Regist. 177.
F. N. B. 164.
Stanf. 48. e.

W. 1. cap. 10.
^c 14 E. 3. ca. 8.
He must have
sufficient land
in the county
whereof he may
answer all people.
F. N. B. 164.
34 H. 8. 35 H.
8. cap. 13.

3 H. 7. cap. 1.

Ver. Mag. Cart.
4 E. 1. part. 1.
119. Stanf. 49.
c. f.

35 H. 6. 23.

* 3 H. 7. ca. 1.
4 E. 1. ubi sup.

3 H. 7. ca. 1.

* 1 & 2 Ph. and
M. cap. 13.

witnesses to the next gaol-delivery in that county. See before in the chapter of the Courts in London.

To conclude, besides his judicial place, he hath also authority ministeriall as a sheriff, &c. viz. when there is just exception taken to the sheriff, judicall proceffe shall be awarded to the coroners for the execution of the kings writs, in which cases he is *locum tenens viccomitis*, and in some speciall case the kings originall writ shall be immediately directed unto him.

Pl. Com.

Pach. 9 E. 3.
Coram rege rot.
30. Ebor. Westm.

In defectu vic' pro brevibus regis exequendis, videtur curiæ hic, quod aliis quam coronatoribus non est demandand'. Vide Vet. Mag. Cart. parte 2. fo. 19, 20. 21. Stat. Exoniæ. Fleta lib. 1. cap. 18.

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C A P. LX.

Bract. l. 5. f.
334. a.

The Court of *Pepoudres*, vulgarly Pipowders, *Curia Pedis pulverisati*.

THIS court is incident to every fair and market, as a court baron to a manor, and is derived of two Latin words, as is apparent, and so called, because that for contracts and injuries done concerning the fair or market, there shall be as speedy justice done for advancement of trade, and traffick, as the dust can fall from the foot, the proceeding there being *de hora in horam*. And therefore Bracton saith, *Item propterea qui celerem debent habere justitiam, sicut sunt mercatores quibus exhibetur justitia pepoudrous, &c.*

Bract. l. 5. f.
334. a.

6 H. 4. 3. 6 E.
4. 3. b. 7 E. 4.
23. Li. 6. fo. 12.
a. & 20.
* See before
cap. Justices in
Eire. simile
pag. 185.
^a Mich. 42 & 43
El. Coram rege,
Lib. 10. fo. 61.
En le case del
Marshalsey Jones
case.

This is a court of record to be holden before the steward of the court, and the jurisdiction thereof consisteth in four conclusions. 1. The contract or cause of action must be in the same time of the same fair or market, * and not before or in a former. 2. It must be for some matter concerning the same fair or market, done, complained on, heard and determined. 3. It must be within the precinct of that fair or market. 4. The plaintiff must take an oath according to the statute of 17 E. 4. cap. 2. but that concludeth not the defendant. * And all this was resolved, and adjudged in a writ of error brought by Hall against Jones, and the case was this: Jones being register of the bishop of Glouc', brought an action upon the case in a court of pipowders belonging to the market in Gloucester against Hall for these words; Master Jones and his clerks have by colour of his office extorted and gotten 300 l. *per annum*, by unlawfull means for many years together above their ordinary fees, for proving of testaments and granting administrations. And not guilty being pleaded, &c. it was tried and adjudged for the plaintiff: and divers errors were assigned, but the judgment was reversed for these errors following. 1. That this court of pipowders, being incident to the market, hath no jurisdiction but of such things as concern the market; and these slanderous words did in no sort concern the market: but if one slander the wares of any in the market, whereby he cannot make sale of them, an action doth lie in that court. 2. It appeared in the record that

that the words were spoken the day before the market; ^b and no action lyeth in that court but for an injury within the jurisdiction of the court done, complained on, heard and determined on the same market day, the proceeding being *de hora in horam*, and within the precinct of the market. And herewith agreeth 3 Mar. Dier 132. And it was resolved that this court was incident as well to a market as to a fair.

^a And there may be a court of pipowders by custome without fair or market, and a market without an owner. Another error was assigned, for that it is provided by the ^d statutes of 17 E. 4. and 1 R. 3. that no plea shall be holden in the court of pipowders, except the plaintiff or his attorney will make oath, that the contract or other deed contained in the declaration was done or committed within the time of the fair: but this error was disallowed by the court, for although this ought to be done, if the defendapt will stand upon it, notwithstanding it shall not be made part of the record.

Vide Lib. Intrat. Raft. fo. 464. Pipowder 1, 2. fo. 18. Execution 3. fol. 158. Gaoler 1.

^b 7 H. 6. 18, 19. Kelw. 23 H. 7. 99 Doct. and St. fo. 11. 3 Mar. Dier 132. Pint' Hall and Pinder. 45 E. 3. 1. 1 H. 4. 6. 13 H. 7. 19. v. 12 H. 7. 16, 17. ^c 13 E. 4. 8. b. 8 H. 7. 4. 5. 12 E. 4. 9. 19 H. 8. Br. incidents 34. 12 H. 6. 3. b. ^d 17 E. 4. c. 2. 1 R. 3. cap. 6.

C A P. LXI.

[273]

The Court of the Clerk of the Market.

HE is to this day called *clericus mercati hospitii regis*, for of ancient time there was a continuall market kept at the court gate, where the king was better ^a served with viands for his household then by purveyors, the subject better used, and the king at far lesse charge in respect of the multitude of purveyors, &c. And the officer of the market of the kings household retaineth his name still, although the good end thereof according to the first institution ceaseth.

The ^b clerk of the market shall hold no plea but such as were holden in the reign of E. 1. And at this day there is no great need of him, for the justices of assise, the justices of oier and terminer, justices of peace, and the sherifs in their tourns, and the lords in their leets, may and do inquire of false weights and measures.

^c He doth keep a court and inquireth of weights and measures whether they be according to the kings standard or no, and for that purpose he maketh processe to sherifs and bailiffs to return pannels before him, &c. ^d And he is to deliver the estreats of those things which touch his office into the exchequer.

^e Of drink (that is to say) of wine, ale, and beer, and of corn and grain there ought to be but one measure: *una mensura vini, ceruvisæ et bladi, et virgæ*, and of all other merchandize *per totum regnum. De ponderibus vero sicut de mensuris.*

16 R. 2. cap. 3. 9 H. 5. cap. 8. 11 H. 7. cap. 4. 12 H. 7. cap. 5.

Britton fo. 75. b. Fleta l. 2. c. 20. Rm. par. 50 E. 3. nu. 87. & 152. 13 R. 2. cap. 4. 32 H. 8. cap. 20. 17 H. 8. ca. 24. Lib. Int. Co. 445. ^a See the 2 part of the Institutes, 28 E. 1. Artic. sup. Cart ca. 2. and the exposition thereupon. ^b Rot. parl. 8 H. 4. nu. 82. ^c 16 R. 2. ca. 3. ^d Stat. de modo mittendi extract. in Scaccarium. Anno 16 E. 1. & 15 E. 2. ^e Mag. Cart. c. 25. 27 E. 3. ca. 10. 25 E. 3. cap. 9. 24 E. 3. ca. 12. 13 R. 2. cap. 9. 15 R. 2. 4. 1 H. 5. cap. 10.

X 4

But

Weights.
Trutina cam-
pana. Ordinatio
mensurar'
31 E. 3.

But notwithstanding these statutes there be within this realm two kind of weights, the one called troy weight, which is commanded by the statute, and this derived from the grain or corn of barley from the middest of the ear and dry. 24 of these corns or grains make a penny weight, and 20 of these penny weights make an ounce, and 12 ounces make a pound troy. A grain contains 20 minutes, a minute contains 24 droits, a droit contains 24 blanks. 12 grains of fine gold make a caret, 24 carets of fine gold make an ounce, and 12 ounces make a pound of fine gold. By this troy weight are weighed according to law pearls, precious stones, gold and silver, bread, wheat, and such like.

There is another kinde of weight called *aver de pois*. A pound of this consisteth of 16 ounces, every ounce having 20 penny weight, every penny weight 21 grains, and $\frac{2}{5}$ of a grain. It is called *aver de pois*, because thereby they have full measure. Hereby are weighed all physicall drugs, wax, pitch, tarre, iron, steele, lead, hemp, flaxe, flesh, butter, cheefe, and divers other commodities, but specially every commodity subject to wast. There was another weight called the aunzell or ansell weight, which was when the scales were fixed to a beam or staffe, and he that weighed by it, used his forefinger or hand in the middest, wherein was great deceit, and therefore is put out by the statute of 25 E. 3. cap. 9. 34 E. 3. cap. 5. 8 H. 6. cap. 5. It is derived *ab ansa*, which is the handle of the ballance, and this weight was guided by the hand.

Of measures.

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Ordinatio men-
sur'. 31 E. 1.
ubi sup.

Measures of troy be of three kinds, viz. of things that be dry, of liquor and of longitude, latitude and profundity.

Of dry things, 4 grains make a penny weight, 20 penny weight make an ounce, 12 ounces a pound or pinte (for a pound weight is a pinte in measure) two pounds or pintes make a quart, two quarts make a pottle, two pottles make a gallon, two gallons make a peck, four pecks make a bushell, four bushels make a combe, two combes make a quarter, six quarters make a wey, and ten quarters make a last.

Of liquor 12 ounces make a pound, 8 pound make a gallon of wine, 8 gallons of wine make a bushell of London, which is the 8 part of a quarter.

Of wine see the statutes of 1 R. 3. cap. 13. 28 H. 8. cap. 14.

See assisa panis
et cervisiz.
51 H. 3.

Vet. Mag. Cart.
fo. 31, 32.

2 part.
Ibidem 44. b.
Compositio ul-
narum et perti-
carum Vet. Mag.
Cart. 2 parte 45.
46. Anno 31.
E. 1. statut' de
terris mensur'.

Of ale and beer

the ferkine	8	}	Gallons.	
the kilderkin	16			
the barrell	32			
the hogthead	}			63
or quarter				

 Et sic de cæteris.

See the statute *compositio de ponderibus*.

Statut' de pistoribus, Vet. Mag. Cart. 2 parte 23, 24

Statut' panis et cervisiz.

Of longitude, latitude, and profundity, 3 grains of barley in length make an inch, 12 inches make a foot, 3 foot make a yard, a yard and a quarter make an ell, 5 yards and a half make a perche, 40 perches in length make a furlong, 8 furlongs make a mile.

I may speak of the sellers by the weight of *aver de pois*, as Tacitus spake of the augures in Rome. *Hoc genus hominum semper vitabitur, et semper in civitate retinebitur.*

But

But now let us see what fees the clerk of the market ought to take. By the statute of W. 1. cap. 26. it is enacted that no sheriff or other minister of the king shall take any reward for doing his office, &c. And the kings clerk of the market is the kings minister, and therefore he is within the purvien of this statute.

W. 1. an. 3 E. 2. ca. 26.

I find that in 8 R. 2. in open parliament a groat was allowed to him for marking and sealing of every bushell, 2 d. of every half bushell, 1 d. of every peck, and so according to that rate.

Rot. par. 3 R. 2. nu. 11.

By the statute of 7 H. 7. the chief officer of every city and borough shall take for sealing of every bushell a penny, of every other measure a half penny, of every hundred weight 1 d. and of every half hundred ob. and of every weight under a farthing, and not above.

7 H. 7. ca. 3.
11 H. 4. cap. 4.

The clerk of the market in the reign of queen Eliz. claimed by custome for the examination and view of every bushell sealed before by the clerk of the market, whether it were lawfull or unlawfull 2 d. and in like manner of every lesser measure of wood 1 d. and in like manner of inholders measures 4 d. and of the measures of victuallers 2 d. and divers other fees for examination and viewing of weights and measures whether they were lawfull or unlawfull, as is aforesaid. And it was resolved by all the judges of England, that no fee was due to the clerk of the market for view and examination only of weights and measures for three causes. 1. The said parliament roll of 8 R. 2. alloweth a fee for sealing, and so doth 7 H. 7. and 11 H. 7. but no allowance for view or examination. 2. The weights and measures are either true, according as before they were sealed, or false: if true, it should be against reason to charge the innocent, for that were *disperdere justum cum impio*; if false, then by the statute of 13 R. 2. they ought to be burnt, and the end of the view and examination is to find out falsehood, to the end they might be punished, and fined to the king, as appeareth by the statute of 13 R. 2. but no fee is to be taken therefore. 3. Whereas the clerk of the market affirmed that these fees had been of long time taken, the judges said, that *malus usus abolendus est*, and the taking of fees for view and examination only was extortion, and that they could not prescribe against the said statute of W. 1. See in the 2. part of the Institutes, the exposition of the said statute of W. 1.

13 R. 2. cap. 4.
38 Aff. p. 11.

By the said statute of 13 R. 2. he ought to take no common fine, for before that statute he did use to take a reward (which the act tearmeth a fine) for not inquiry of defaults, whereby the king was prevented of his fine, the delinquent not punished, and the people wronged by extortion, and permission of false measures: and therefore the act provided that no common fine shall be taken, as is aforesaid (but that every person which is found in default touching the same office be punished according to his desert. And the clerk of the market cannot set any price of any thing saleable in the market, for that belongs not to weights and measures: and by the common law *arbitrio domini res estimari debet*, which cannot be altered but by parliament; and again, *nemo cogitur rem suam vendere etiam justo precio*; and things saleable in the market of one kinde are not of one goodnesse: but he ought to assise weights and measures.

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12 E. 4. fo. 8. b.
23 E. 3. cap. 6.
13 R. 2. cap. 2.
3 H. 8. cap. 2.

6 R. 2. cap. 13.
Rot. par. 37 E. 3. nu. 39.

It

* Which are before in this chapter.

It is enacted that good examination and correction be had in towns infranchised touching weights and measures, so as the * statutes thereof made be duly observed.

C A P. LXII.

The Court of the Commissioners of Sewers.

a Vid. Pasch. 22 E. 1. in banco rot. 52. Kanc' Ric' de Cras com' de sewers. Vi. Regist. 287. z. Certiorar. b Rot. parl. anno 35 E. 1. at Carlisle. c 23 H. 8. cap. 5. d Lib. 5. f. 99. 200. Rookes case. Lib. 10. fo. 137. *Le case de Molyn de Chester*, 200 fo. 139. Keighleys case. Ib. 141. *Le case de Isle de Ely*. Vid. Regist. 252. b. De antiqua trachea obstruenda et nova facienda vel habenda ad quod damnum. Ibid. 254. b. De aquae ductu, et 255. a. F. N. B. 225. e. Tr. 31 E. 3. fol. 44. b. in libro meo M. S. 19 E. 5. barre 279. e 23 H. 8. cap. 5. 10. To whom and by whom this commission shall be granted. f 23 H. 8. cap. 5. g 13 Eliz. cap. 9. h 23 H. 8. cap. 5. Lib. Intr. Coke 292. 293. i How many commissioners must sit. k 1 Mar. cap. 11. To what nances the commission of sewers extend not.

QUANDO * *aqua profluit*, that is, when water doth issue, vulgarly, sue: hereupon cometh the word *fuera*, for a sewer, passage, channell, or gutter of water.

b At the complaint of Henry de Lacye earle of Lincolne, a commission of sewers was granted to Roger de Brabaion mayor, and the sheriffs of London.

c Their authority is by commission under the great seal *in hæc verba*, at this day grounded and warranted by the act of parliament of 23 H. 8.

d Of their jurisdiction you may read in my Reports, and see the statutes of 6 H. 6. cap. 5. 8 H. 6. cap. 8. 23 H. 6. cap. 9. 12 E. 4. ca. 6. 4 H. 7. ca. 1. 6 H. 8. cap. 10. 23 H. 8. cap. 5. & 10. 3 E. 6. cap. 8. 1 Mar. cap. 11. 13 Eliz. cap. 9.

e Certain necessary observations upon some of these statutes, and principally wherein the statute of 23 H. 8. cap. 5. hath been explained, declared, or altered by any of the said subsequent statutes.

f 1 This commission shall be granted to such substantiall and indifferent persons as shall be named by the lord chancellor, the lord treasurer, and the two chiefe justices, or any three of them, whereof the lord chancelour to be one.

g 2 Every commissioner before he take upon him the execution thereof shal take the corporall oath mentioned in that act before the lord chancelour, or such as the lord chancelour shall direct by writ of *ded' potestatem*, or before the justices of peace in their quarter sessions, and s ought to have lands or tenements of the clear yearly value of 40 marks of some estate of freehold (except as in the statute is excepted) upon pain of forfeiture of 40 li. and no farmer of lands within the precinct of the commission, unlesse he hath lands of some estate of freehold of the yearly value of 40 li. and yet he not to meddle with the lands he hath in farm.

h 3 The avowry or justification for a distresse taken by force of this commission shall be general, that the said distresse, &c. was taken, &c. by force of the commission of sewers for a lot or tax assessed by the said commission, or for such other act or cause, &c.

i 4 There must be six commissioners, &c. at the least, which shall sit by force of the said commission.

k 5 That the said act of 23 H. 8. doth not extend to, nor give authority to the commissioners of sewers to reform the great hurt

1 Mar. cap. 11. To what nances the commission of sewers extend not.

and

and nuisance by reason of the said rising out of the sea, and driven to land by storms and winds. A special provision is there made for the county of Glamorgan.

It is adjudged by act of parliament *anno 3 Jacobi regis cap. 14.* That wals, ditches, banks, gutters, sewers, gates, cauleys, bridges, and watercourses in or about the city of London, * where no passage for boats is used, nor the water therein doth usually ebbe or flow: which wals, ditches, banks, gutters, sewers, and other the premises, do fall into the river of Thames, are not under the survey, correction and amendment of the commissions of sewers, nor of the statutes made for sewers in *anno 23 H. 8.* or of any other statute of sewers, as it is rehearsed by full consent of parliament: and therefore provision is made that those wals, ditches, banks, gutters, sewers, and other the premises, shall be subject to the commission of sewers.

3 Jac. cap. 14.

* Nota, an excellent exposition of the statute of 23 H. 8. by this parliament of 3 Jac.

6 That a commission of sewers shall continue ten years, unless it be repealed or determined by reason of any new commission, or by superfeudas.

13 Eliz. cap. 9. How long the commission shall endure.

7 That laws, ordinances and constitutions made or to be made by force of any such commission, and written in parchment indented under the seals of the said commissioners or six of them, whereof one part shall remain with the clerk, &c. and the other part in such place as six of the said commissioners shall appoint, shall without any certificate, and without the royall assent stand and continue in full force notwithstanding any determination of any such commission by superfeudas, untill the same be altered by the commissioners of sewers after to be assigned, &c.

13 Eliz. cap. 9. The laws written in parchment & indented, &c. Without certificate or royall assent.

8 And if any such commission be determined by expiration of ten years next ensuing the teste thereof; then such laws, &c. so indented and sealed, &c. shall continue for one whole year. And that the justices of peace or six of them, whereof one to be of the quorum, shall have authority during that year to execute the said laws, &c.

Determination by expiration.

Justices of peace.

9 That by the granting of a new commission within that year, the power of the justices of peace to cease.

10 The said commissioners shall not be compelled to make any certificate or return the said commissions, or of any of their ordinances, laws, or doings, by authority of the said commissions.

Nota, no certificate or retour of the commissions or of any the ordinances, laws, or doings.

11 See also an alteration by the statute of 13 Eliz. concerning fees.

12 Lastly, this is certain, that neither the commissioners of sewers, nor any other, have such an absolute authority, but that their proceedings are bound by law.

Vide the ancient commission of sewers by the common law in the Register, and F. N. B.

Regist. 126, 127. F. N. B. 113, 114.

A generall commission of sewers enacted by authority of parliament, not printed.

Rot. parl. 2 H. 6. nu. 57. 6 H. 6. cap. 5.

A generall commission of sewers enacted by parliament, and in print. But the commission by the statute of 23 H. 8. standeth now in force. And yet by diligent perusal of the former, and by advised comparing of them with the latter, it will manifest wherein the former defects were, and how continually by the latter they were supplied and amended, and give a great light for the true understanding of that which now standeth.

Stat. 25 E. 3. ca. 4. 45 E. 3. cap. 2.

See

Hil. 13 E. 2.
 Coram rege rot.
 55 Norf.
 Pasch. 44 E. 3.
 Coram rege rot.
 2 Mid.
 19 E. 3. tit.
 bar. 279.
 2 E. 3. fo. 26.
 e The court of
 sewers of Rum-
 ney Marsh.

See Hil. 13 E. 3. *coram rege, Leges et consuetudines approbatae pro reparatione murorum maritimorum et mundatione fossatarum et fuerarum in paludibus quae hic exprimentur per commissionem regis ad hoc faciendum in Merksland^a*

^a A particular commission granted to S. Joh. de Sutton, and Sir Rob. de Scrope.

^b A commission concerning the river of Lee.

^c Rumney Marsh in the county of Kent containing 24000 acres, is at this day, and long time hath been governed by certain ancient and equall lawes of sewers made by a venerable justice Henry de Bathc, in the reign of H. 3. from which laws not only other parts in Kent, but all England receive light and direction: for example: the said generall act of 23 H. 8. ca. 5. in the clause which giveth power to the commissioners to make statutes, ordinances, and provisions, &c. necessary and behovefull after the laws and customes of Rumney Marsh in the county of Kent, or otherwise by any wayes or means, &c,

Both the towne and marsh of Rumney took their name of one Robert Rumney. This Robert (as it appeareth by the booke of Domesday) held this town of Odo bishop of Baieux, wherein he had 13 burgeses, who for their service at the sea were discharged of all actions and customes of charge, except felony, breach of the peace and forestalling.

See before in the chapters of the Courts of London, &c. the jurisdiction that the lord mayor hath in the river of Thames.

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C A P. LXIII.

The Court of the Commissioners upon the Statutes of Bankrupts.

* The derivation and signification of bankrupt.
 Cicero pro Flaminio: *In qua civitate nummus moveri nullus potest sine quinque praetoribus, 3 praetoribus et quinque mensariis.*

WE have fetched as well the name as the wickedness of bankrupts from foreign nations: for *banque* in the French is *mensa*, and a banquer or eschanger is *mensarius* and *route* is a signe or mark, as we say, a cart rout is the signe or mark where the cart hath gone: metaphorically it is taken for him that hath wasted his estate, and removed his banque, so as there is left but a mention thereof. Some say it should be derived from *banque* and *rumpue*, as he that hath broken his banque or state.

25 E. 3. stat. 3.
 cap. 23.
 Parl. 50 E. 3.
 an. 160. against
 Lombards.
 * 41 E. 3. an. 51.
 Vit. 50 E. 3.
 ca. 6. & 2 R. 2.
 cap. 3. stat. 2.
 against frauds
 generally 34 H.
 8. cap. 4.

In former times as the name of a bankrupt, so was the offence it self (as hath been said) a stranger to an Englishman, who of all other nations was freest of bankruptcy. And the first statute that we find against this crime, was indeed made against strangers, viz. against Lombards, who after they had made obligations to their creditors, suddenly escaped out of the realm without any agreement made with their creditors. * It was therefore enacted, that if any merchant of the company knowledge himself bound in that manner, that then the company shall answer the debt: so that another merchant which is not of the company shall not be thereby grieved nor impeached: neither do we find either any complaint in parliament, or act of parliament made against any English bankrupt until the 34 year of H. 8. when the English merchant had rioted

rioted in three kinds of coftineffes, viz. coftly building, coftly diet, and coftly apparell, accompanied with neglect of his trade and fervants, and thereby confumed his wealth.

He is called in Latin * *decoftor*, à *decoquendo*, for confuming of his eftate in riotous and delicate living. The faid act of 34 H. 8. is altered by the ftatutes of 13 Eliz. cap. 7. 1 Jacobi, cap. 15. & 21 Jacobi, cap. 19.

And it is to be obferved, that all the aforefaid ftatutes and laws made againft bankrupts, and for relief of creditors, fhall be in all things largely and beneficially conftituted, &c. for the aid, help and relief of the creditors.

A bankrupt is defcribed by the ftatute of 13 Eliz. cap. 7. and 1 Jac. cap. 15. but more effectually by the ftatute of 21 Jac. cap. 19. So as by all thefe three he is perfectly defcribed. And the commiffion doth extend to all and every of the faid defcriptions and articles thereof.

* The authority of the commiffioners is by commiffion under the great feal; their jurifdiction and power is by force of the faid acts of parliament which ought to be purfued, ^b or elfe they are fubject to the action of the party grieved, for he hath no other remedy. ^c The lord chancelour or lord keeper upon complaint made unto him in writing hath authority to grant the faid commiffion.

The law hath provided that thefe commiffioners ought to have ^a three qualities, viz. wifdome, honefty, and difcretion; which if it be obferved, it is the beft means for the due execution of the faid ftatute, and the life of thefe laws doth confift in the due execution thereof: and for fuch commiffioners if any action fhall be brought againft them, &c. for doing of any thing by force of the faid ftatutes, they may plead generally, and not to be driven to any fpecial pleading.

They have power to examine the offender upon oath, and after he be declared a bankrupt, to examine his wife upon oath, and to examine witneffes alfo upon oath. See the ftatute. And they have power to break any the houfes, chambers, warehouses, &c. trunks and chefts of fuch offenders. See the other parts of this act of 21 Jacobi, which are plainly and effectually expreffed, and need not here to be recited.

For the expofition of the faid ftatute of 13 Eliz. * fee in my Reports lib. 2. fo. 25, 26. Cullamers cafe. Lib. 8. fo. 98, in Bafpoles cafe, & ibid. fo. 121. *inter Cutt et Delabar.*

Cicero in Cæli-
nam: *Exercitium
callatum ex ru-
ficis, mendicantia,
et decoftoribus.*

The defcription
of a bankrupt.

^a The authority
of the commif-
fioners and their
jurifdiction.

^b Lib. 2. f. 22.
Int' Cutt and
Delabar.

^c 13 Eliz. cap. 7.
who may grant
the commiffion.

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^{*} Three qualities
of every of thefe
commiffioners.

General plead-
ing. 1 Jac.
cap. 15.
21 Jac. cap. 19.

* Lib. 2. fo. 25,
26. Cullamers
cafe. Lib. 8. fo.
98. Bafpoles cafe.
Ib. fol. 121.
Int' Cutt and
Delabar.

C A P. LXIV.

Commissioners for Examination of Witneffes.

FORASMUCH as the court of ftar-chamber, the chancery in cafes of equity, the exchequer chamber in cafes of equity, the court of wards, and the duchy of Lancafter do proceed upon witneffes examined before commiffioners, or in court before the examiners, it fhall be neceffary (as a matter of great importance to fay fomewhat of the power, authority, and duty of the faid commiffioners and examiners, and incidently of witneffes.

The

278 Commis. for Examination of Witnesses. Cap. 64.

See li. 9. fo. 70.
71. Peacocks
case, for this and
some of the cases
following.

Lib. 9. ubi sup.

Lib. 9. ubi sup.

Lib. 9. ubi supra.

Aug. Serm. 28.
de verbis Apostoli.
*Jurare est jus ve-
ritatis Deo red-
dere.*
Azo. *Jururan-
dum est affir-
matio vel nega-
tio, religione
adhibita.* See the
third part of the
Institutes cap.
Perjury.

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* 8 H. 6. 13.
2 E. 2. triall 46,
&c.
Dier 2 Eliz. 185.
13 Eliz. 306.
Of witnesses.
Additions to the
1 part of the
Institutes. sect.
1. fo. 6.
And to the third
part of the In-
stitutes, cap.
Perjury.
* 12 Aff. 12.
23 Aff. n.
11 Aff. p. 19.
* Deut. 6. 13.
b 16 Januarii
14 Eliz.
c Prov. 19.
d Bract. lib. 5.
fo. 400. b.
2 H. 7. Kelw.
96. a. b.
e Bract. lib. 5.
359.

The commissioners, albeit named by the parties reciprocally, ought to stand indifferent, and do their uttermost endeavour to find out by due examination the whole truth, and to suppress no part thereof; for their authority is to that end merely and wholly from the king by force of his commission.

Neither commissioner nor examiner are strictly bound to the letter of the interrogatory, but ought to explain every other matter or thing which riseth necessarily thereupon, for manifestation of the whole truth concerning the matter in question.

Neither commissioner nor examiner ought to discover to either of the parties or to any other, any of the depositions or any part of them, which they have taken before publication be granted.

Neither commissioner nor examiner after the examination begun, ought to confer with either party touching the examination, or take new instructions concerning the same.

For as much as the witness by his oath, which is so sacred, as he calleth Almighty God (who is truth it self and cannot be deceived, and hath knowledge of the secrets of the heart) to witness that which he shall depose; it is the duty both of the commissioner and the examiner gravely, temperately, and leisurely to take the deposition of the witness, without any menace, disturbance, or interruption of them in hinderance of the truth, which are grievously to be punished. And after the depositions taken, the commissioners and examiners ought to read the same distinctly to the witnesses, and suffer them to explain themselves for the manifestation of the whole truth. And it is safe for the commissioner and examiner that the witnesses subscribe their names or marks to the paper-booke, but they must be certified in parchment.

And albeit the commissioners be not equal in state or degree, yet are they all of equal power and authority: for, as it hath been said of old, that there might be priority, but no superiority amongst commissioners.

Interrogatories ought to be single and plaine, pertinent to the matter in question, and in no sort captious, leading, or directory.

In some cases the courts of the common law do judge upon witnesses, but they must ever give their testimony *viva voce*. * As in dower if the issue be whether the husband be alive or no, &c.

Witness is derived of the Saxon verb *weten*, i. *scire*, quia de quibus sciunt testari debent, et * *omne sacramentum debet esse certæ scientiæ*. In Latin *testis à testando: et testari est testimonium perhibere: unde regula juris, plus valet unus oculatus testis, quam auriti decem: testis de visu præponderat aliis*.

* An oath ought to be accompanied with the fear of God, and service of God for advancement of truth, *Dominum Deum tuum timebis, et illi soli servies, et per nomen illius jurabis*.

-Bracton saith that an alien born cannot be a witness: which is to be understood of an alien infidell: b for the bishop of Rosse being a Scot born, was admitted to be a witness, and sworn anno 14 Eliz. in the case of the duke of Norfolk by the opinion of the justices assitants. c *Testis falsus non erit impunitus*.

Nocte dieque suum gestat sub pectore testem: his conscience always gnawing and vexing him. d *Vox simplex nec probationem facit, nec præsumptionem inducit*.

e *Testium numerus si non adjicitur, duo sufficiunt*.

Jurato creditur in judicio.

[†] *Testibus deponentibus in pari numero dignioribus est credendum.*

[‡] *Testimones ne possunt testificari de negativa, nisi affirmativa.*

[§] *Allegans contraria non est audiendus, verum vero consentiens est falsum nec vero nec falso.*

Juramentum est indivisibile, et non est admittendum in parte verum, et in parte falsum.

[¶] *Allegans suam turpitudinem non est audiendus.*

Judex non potest esse testis in propria causa.

Fusurandum inter alios facti nec nocere, nec prodesse debet.

Facultas probationum non est angustianda.

De crimine in lupanari commisso, lupanares testes esse possunt.

Qui prodit in scenam mercedis ergo, infamis est.

Witnesses ought to come to be deposed untaught, and without instruction, and should wish the victory to the party that right hath, and that justice should be administered: and should say from his heart, *Non sum doctus, nec instructus, nec curo de victoria, modo ministraretur justitia.* See Britton 134, 135.

† Vid. 2 E. 3. trial 45.
 ‡ F. N. B. 106. 107.
 § 16 E. 4. 10. 2.
 ¶ Trin. 13 E. 2. in com. banco.
 Rich. de Raynham's case.

Histriones Mercenarii.

C A P. LXV.

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Curia Curfus Aquæ apud Gravesend.

OF this court, and others like, which are in private, we intend not to treat, for that the labour herein were infinite, and serveth nothing for the publick, whereat our principall aim hath been.

C A P. LXVI.

The Kings Swanheard.

WHAT authority the kings swanheard hath, being of ancient time by his office *magister deductus cygnorum*, you may reade *rot. patentium anno 11 H. 4. part. 1. m. 14. rot. pat. 30 E. 3. part 1. m. 20. and lib. 7. fo. 15, &c. Le case de Swannes*, but court he hath not: no fowle can be a * stray but a swan.

So likewise there is an ancient officer of the kings alneger of the kings gift being before any statute: as taking one example for many. ^a In 14 E. 1. Sir Thomas Darlington was by the kings letters patents alneger of broad cloth, and had a fee of the king for the exercise of his office; for the fee that he had of the subject was (as it ought to be) by act of parliament. 27 E. 3. st. 1. cap. 4. ^b Alneger of *alme* in French, and that of *ulna, ulnator*. See before concerning the alnaging of new draperies, cap. of the High Court of Parliament, pag. 31.

Rot. pat. 16. R. 2. part. 1. m. 39.
^a Tr. 33 E. 1. Essex coram rege rot. 124-7 H. 6. acc. The kings alneger.
^b Rot. pat. 14 E. 1. Tho. Darlington militi.
 This appeareth also by the statutes themselves.
 25 E. 3. cap. 1. stat. 4. 27 E. 3. stat. 1. cap. 4. 3 R. 2. cap. 3.

17 R. 2. cap. 2. & 5. 1 H. 4. cap. 17. 11 H. 4. 6. 13 H. 4. 4. 11 H. 6. 1. 31 H. 6. 5. 4 E. 4. 2. 3 E. 4. 1 R. 3. Rot. claus. 17 R. 2. m. 14. ^b The derivation of alneger.

C A P.

C A P. LXVII.

23 H. 8. cap. 16.
31 H. 6. cap. 3.
3 E. 4. cap. 2.
22 E. 4. cap. 8.

The Wardens Courts in the East, West, and Middle Marches adjoining to Scotland.

4 H. 5. cap. 7.
23 H. 8. cap. 16.

THEY proceeded according to the law called the March law, or Borders law, but their jurisdiction was increased by act of parliament. The limits of their jurisdiction was within the Marches, which were confined to the counties of Northumberland, Cumberland, Westmerland, and the towne of Newcastle upon Tyne in the county of York.

33 H. 6. cap. 3.

For the word [Marches,] see before cap. President and Councill of Wales.

4 Jac. cap. 1.

But since king James was monarch of both kingdomes, the batable grounds on both sides are become quiet, and so peaceable, as all the said courts in the east, west, and middle marches are vanished, and hostile laws on both sides by authority of parliament in either of the kingdoms repealed. See the said statute of 4 Jacobi. See the first part of the Institutes, sect. 3.

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C A P. LXVIII.

Of Callais or Callis Caletum.

Rot. par. 50 E. 3. nu. 211, 212.
6 H. 6. nu. 41.
See the statute of 27 H. 8. concerning good lawes and orders for Callis and the marches thereof and
1 H. 7. cap. 3.
b 21 H. 7. 33.
11 H. 8. Kelw. 202. b.
Par. 3 R. 2. nu. 48.
c Pat. 15 E. 3. 2 part.
Parl. 9 R. 2. nu. 4.
d 42 E. 3. cap. 10. lib. 7. in Calvyns case.
e Rot. parl. 9 R. 2. nu. 4. 9 H. 5. stat. 2. ca. 5.
f 1 R. 2. nu. 37.
g Parl. 50 E. 3. nu. 209.

THIS strong port town, the famous and flourishing mart, staple, and vent of English commodities was holden and kept by the space of 211 years by eleven severall kings, viz. E. 3. R. 2. H. 4. H. 5. H. 6. E. 4. E. 5. R. 3. H. 7. H. 8. E. 6. and holden and lost by King Philip and Mary the first queen regnant of this realm, the lord Wentworth then deputy there.

It was governed by Englishmen and by English laws, some particular customes excepted. ^b And of a judgement given there a writ of error did lye returnable into the kings bench. ^c Before the staple at Callais, it was kept at Bruges in Flanders.

^d The children born there were inheritable in England and so declared by authority of parliament.

^e And there the king had his mint in such manner as in the tower of London. Certaine it is that riches followed the staple wheresoever it was kept. ^f And it could not be appointed in any place but by act of parliament.

^g The staple being at Callais, upon all rodes forth of the town by the captain, the mayor of the staple furnished him forth of merchants and their servants to the number of 100 bill-men and 200 archers without any wages. And yet it appeareth in the parliament roll of 2 R. 2. nu. 15. that Callais cost the king yearly twenty thousand pounds.

See the parliament roll of 50 E. 3. nu. 211, 212. for the mayors courts, &c. and liberties, and franchises, &c. there. Many acts of parliament have been made concerning this town, and the staple

ple therein, which need not here to be recited; only we thought it not good totally to pretermitt it, because the kings right remains to it, and it may hereafter be restored (which is so much desired) to the right owner.

C A P. LXIX.

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Of the Isle of Man, *Insula Euboniæ, modo Mannæ*, and of the Law and Jurisdiction of the same.

THIS isle hath been an ancient kingdome, as it appeareth in lib. 7. in Calvins case, which need not here to be recited. And yet we find it not granted or conveyed by the name of a kingdome, *sed per nomen insulæ, &c. cum patronatu episcopatus*. He hath the patronage of the bishoprick of Sodor, which is a visible mark of a kingdome; albeit of ancient time the archbishop of Canterbury was patron of the bishoprick of * Rochester, and the earl of Glouc' of the bishoprick of Landaf. *Vide Lib. M. S. in Recept. Scaccarii fo. 166. et Lib. Parliam. in Turri London temp. E. 1. fo. 19. 21.*

Walf. pa. 387. lib. 7. fo. 21. in Calvins case.

* Rot. Cart. 16 Johan. m. 6.

William le Scrope emit de domino Willielmo de Monte acuto insulam Euboniæ, (i. Mannæ :) est nempe jus ipsius insulæ ut quisvis illius sit dominus rex vocetur, cui etiam fas est corona aurea coronari.

Anno Dom. 1393. Walf. an. 17 R. 2.

Corona aurea. Of the quality of him. See Walf. Ubi supra. Rot. pat. 1 H. 4. Rot. 2. Bundello 2. parte 5. m. 36.

* A pele or pile, a fortresse in a small isle belonging to the Isle of Man. Note, the title of the king by conquest is affirmed by parliament.

The lord Scrope forfeited the same to H. 4. for high treason. King H. 4. granted the same to Henry earl of Northumberland in these words. *Rex, &c. De gratia nostra speciali d. dimis et concessimus Henrico comiti Northumbriæ insulam, castrum, * pelam, et dominium de Man, ac omnia insulas et dominia eidem insulæ pertinen' quæ fuer' Willielmi le Scrope chivalier defuncti, quem in vita sua conquestati fuimus, et ipsum sic conquestatum decrevimus, et quæ ratione conquestus illius tanquam conquestata cepimus in manum nostram. Quæ quidem conquestum et decretum in presenti parlamento nostro de assensu dominorum temporalium in eodem parlamento existentium quoad personam præfati Willielmi, ac omnia, terras, tenementa, bona, et catalla sua tam infra regnum nostrum quam extra ad supplicationem communitatis regni nostri affirmata existunt, &c. Habenda et tenenda eidem comiti et hæredibus suis, &c. per servic' portandi diebus coronationis nostræ et hæredum nostrorum ad sinistrum humerum nostrum et sinistros humeros hæredum nostrorum per seipsum aut sufficientem et honorificum deputatum suum illum gladium nudum quo cincti eramus quando in parte de Holdernes applicuimus, vocatum Lancafter Sword, durante processione et toto tempore solemnizationis coronationis supradictæ.*

In this little kingdome there are 2 castles, 17 parishes, 4 market towns, and many villages, and in that isle there is a bishoprick, as hereafter shall be shewed.

Anno 5 H. 4. the said Henry earl of Northumberland was attainted of treason, and by act of parliament 1 Martii, 7 H. 4. it is enacted that the king should have the forfeiture of all his lands and tenements. And afterwards in H. 4. the king granted the Isle of Man *una cum patronatu episcopatus* to Sir John Stanlye for life: and after

Rot. pat. 7 H. 4. parte 2. m. 18. Cum patronatu episcopatus.

IV. INST.

Y

III

in the same year he granted the same isle *una cum patronatu episcopatus*, to the said Sir John Stanley and to his heirs; *Tenend de rege hæredibus et successoribus suis per homagium ligum: reddendo nobis duos falcones semel tantum, viz. immediate post homagium hujusmodi facti: et reddendo hæredibus nostris regibus Angliæ duos falcones diebus coronationis eorundem hæredum nostrorum pro omnibus aliis serviciis, consuetudinibus et demandis, adeo libere, plene, et integre, sicut Willielmus Scrope chevalier vel aliquis alius, &c.*

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This Sir John Stanley had issue Sir John Stanley knight, who had issue Sir Henry Stanley lord chamberlain to king H. 6. who created him lord Stanley, who had issue George, who had issue Thomas, whom king H. 7. created earl of Derby to him and the heirs males of his body, who had issue Thomas, who had issue Edward, who had issue Henry, who had issue Ferdinando and William. Ferdinando had issue Anne, Frances, and Elizabeth, and died without issue male: and between these daughters being heirs general, and William earl of Derby being heir male, question was moved concerning the title of the Isle of Man: which by queen Elizabeth was referred to the lord keeper Egerton, and to divers lords of the councill, and to Popham chief justice of England, Anderson chief justice of the common pleas, and Peryam chief baron, who Trin. 40 Eliz. upon hearing of the councill of both sides, and mature deliberation, resolved these five points. 1. That the Isle of Man was an ancient kingdome of it selfe, and no part of the kingdome of England. 2. They affirmed a case reported by Keilw. anno 14 H. 8. to be law, viz. Mich. 14 H. 8. an office was found that Thomas earl of Derby at the time of his death was seised of the Isle of Man in fee; whereupon the countesse his wife, by her councill, moved to have her dower in the chancery: but it was resolved by Brudnell, Brook, and Fitzh. justices, and all the kings councill that the office was meere void, because the Isle of Man was no part of the realm of England, nor was governed by the law of this land, but was like to Tourny in Normandy, or Gascoign in France, when they were in the king of Englands hands, which were meere out of the power of the chancery, which was the place to endow the widow of the king, &c. 2. It was resolved by them that the statute of W. 2. *De donis conditionalibus*, nor of 27 H. 8. of Uses, nor the statutes of 32 or 34 H. 8. of Wils, nor any other generall act of parliament did extend to the Isle of Man for the cause aforesaid, but by speciall name an act of parliament may extend to it. 3. It was resolved that seeing no office could be found to entitle the king to the forfeiture of treason, that the king might grant by a commission under the great seal to seise the same into the kings hands, &c. which being done and returned of record is sufficient to bring it into the kings seisin and possession, and into charge, &c. 4. That the king might grant the same under the great seal, because he cannot grant it in any other manner. And herewith agreeth divers grants under the great seal of this Isle, ^b viz. 4 Junii, 18 E. 1. rex E. 1. *concessit Waltero de Huntercombe, &c. Rex E. 2. concessit Petro de Gaveston, &c. 1 Maii, 5 E. 2. Gilberto Magaskill*, and in the same year granted *Hemrico de Bello monte insulam prædictam cum omni dominio et justitia regali pro termino vite, &c.* 5. It was resolved that a fee simple in this isle passing by the letters patents to Sir John Stanley and his heirs, is descendent to his heirs according

Vide 33 H. 8. c. 6. a proviso for the subjects of the Isle of Man. 14 El. cap. 5.

^a In Turri Lond' 3 Junii. 6 H. 4. such a commission under the great seal was granted to Sir John Stanley and William Stanley, &c. to seise, &c. in this very case. ^b In tur' Rot. pat. 18 E. 1. and anno 5 E. 2.

to the course of the common law, for the grant it self by letters patents is warranted by the common law in this case: and therefore if there be no other impediment, the isle in this case shall descend to the heirs generall, and not to the heir male; as the grand seigniories and connots in Wales were impleadable at the common law, but the lands holden of them by the customes of Wales, &c. Which resolutions we have thought good to report, because they are the best directions that we have found, both in these, and for the like cases.

By these letters patents it appeareth, that Simon Montacute had intruded into and occupied the said isle *in nostri exheredationem*, for which he was attached to answer the same in the kings bench at the suit of the king, but what proceeded thereupon we yet find not.

Rot. pat. 2 Apr. 6 E. 2.

But now let us come to their laws, and jurisdiction of this isle, the like whereof ye find not in any place. Their judges they call * *deemsters*, which they choose out of themselves. All controversies they determine without proces, pleading, writing, or any charge or expence at all. If any case be ambiguous and of greater weight, it is referred to 12, which they call *claves insulae*, the keys of the island. They have coroners (*quos annuos vocant*) who supply the office of a sherif.

* A *dema* a Saxon word for a judge. *Giraldus: sunt duo iudices in insula Mannia (olim Etwania nuncupata) qui de litibus ibidem emergentibus cognoscunt.*

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But albeit this be so, yet when this isle was in the kings hands, if any injustice or injuries were done to any of his subjects there, the king might grant a commission for redresse thereof: the like whereof we finde rot. pat. anno 20 E. 1. in these words; *Rex dilectis et fidelibus suis Nicholao de Segrave seniori, Osberto de Spaldington, et Johanni de Suthewell, salutem. Sciatis quod assignavimus vos justiciarios nostros ad querelas omnium et singulorum de Insula de Man se conqueri volentium de quibuscunque transgressionibus, et injuriis eis per quoscunque tam balivos et ministros nostros quam alios in praedicta insula illatis audiend' et terminand', et ad plenam et celerem justitiam partibus inde facien' secundum legem et consuetudinem partium illarum. Et ideo vobis mandamus quod ad certos dies et loca quos, &c. in insula praedicta querelas, &c. audiatis et terminetis in forma praedicta, facturi, &c. salvo, &c. Mandavimus enim custodi nostro insulae praedictae; quod ad certos, &c. in insula praedicta venire fac' coram vobis tot et tales, &c. In cujus, &c. Iste rege apud Berewick, 15 die Julii.*

In the margin, thus; *De querelis bminum Insulae de Man audiend' et terminand'.*

Nota, secundum legem et consuetudinem Insulae de Man.

So as albeit the kings writ runneth not into the Isle of Man, yet the kings commission extendeth thither for redresse of injustice and wrong: but the commissioners must proceed according to law and justice of the isle. They have peculiar laws or customes; for example: if a man steal a horse, or an ox, it is no felony, for the offender cannot * hide them, but if he steal a capon, or a pigge he shall be hanged, &c. Upon the sale of a horse or any contract for any other thing, they make the stipulation perfect *per traditionem stipulae*. *Nota*, the true derivation of stipulation. And as they have peculiar laws, so have they a proper language.

* They have no woods. 12 H. 8. fo. 5. 2.

This isle hath a bishop instituted by Gregory the fourth bishop of Rome, and he is under the archbishop of York, but hath neither place nor voice in the parliament of England. *In hac insula iudex ecclesiasticus citat, definit, et infra octo dies parent, aut carceri intraduntur.*

Ep'us Soborensis.

The inhabitants of this isle are religious, industrious, and true people without begging or stealing.

C A P. LXX.

Of the Isles of Jerfey *alias* Gearfey, *olim* *Cæsarea*, and Garnfey, *olim* *Saruia*, and of the Law, and Jurisdiction of the same.

Jerfey hath 12
parishes.
Garnfey 10.

BOTH these isles did of ancient time belong to the duchy of Normandy: but when king H. 1. had overthrown his elder brother Robert duke of Normandy, he did unite to the kingdome of England perpetually the duchy of Normandy together with these isles: and albeit king John lost the possession of Normandy, and king H. 3. took money for it, yet the inhabitants of these isles with great constancy remained, and so to this day do remain true and faithfull to the crown of England: and the possessions of these islands being parcell of the duchy of Normandy, are a good feisin for the king of England of the whole duchy.

Concerning the judicature and customes of these isles whereat we principally aim, it appeareth by the kings records in the Tower, *Quod rex Johannes constituit 12 coronatores juratos ad placita et jura ad coronam spectantia custodienda, et concessit pro securitate insularum, quod balivus de cætero per visum coronatorum poterat placitare sine brevi de nova disseisina fac' infra annum, de morte antecessorum infra annum, de diti similiter infra annum.* And for the most part they proceed according to the customes of Normandy.

Pasch. 17 E. 2.
coram rege rot.
67 Jerfey.
9 E. 3. fo. 5. b.
The abbot of
the Mount of
S. Mich. caſe.

Drugo Barentyne dicit quod 40. an' est tempus extra memoriam secundum consuetudinem partium illarum.

King E. 3. assigned Hen. de Guldeford and others, justices errants in the isles of Garnfey and C. by his commission to inquire if he had right in the mannor of C. & c. and there it appeareth that they demanded adviſement of the men of the isles learned in their customes, who informed them of the customes of the isles, which the justices followed, and there it appeared that if the information was against the laws of the isles, they may be holpen by the laws of the same.

Rot. clauf. 9 E. 3.

& 25 E. 3.
Mich. 41 E. 3.
coram rege rot.
109 Jerfey in
placito transgr.
* Secundum
conf. Insulæ
præd.

^b Mich 6 H. 8.
172. b. Kelw.
to the baylif and
jurates of Jerfey.
Lib. 7. fo. 20,
21. in Calvina
caſe.

^c Regiſt. fo. 22.

^d These little
isles of Serk and
Aureney doe lye
between and neer
the other, and
were parcell also
of the duchy of
Normandy.

See the book.

Quod in custumis et aliis rebus tanquam indigenæ et non alienigenæ tractetur, &c. Quod juratores in insula, &c. non protrahunt judicicia sua ultra unius anni spacium.

An action of trespassse was brought by A. in the itle of Jerfey: whereupon in the record this entry was made. *Et quia negotium prædictum in curia hic terminari non potest, eo quod juratores insulæ præd' coram justiciari' hic venire non possunt, nec de jure debent, nec aliqua negotia de insula prædicta emergentia non debent * terminari nisi secundum consuetudinem insulæ prædictæ, ideo totum recordum negotii mittatur in cancellariam domini regis, ut inde fiat ^b commissio domini regis, cui vel quibus domino regi placuerit ad negotium prædictum in insula prædicta audiend' et terminand' secundum consuetudinem insulæ prædictæ.*

By this it appeareth, that albeit the kings writ runneth not into these isles, yet his commission under the great seal doth, but the commissioners must judge according to the laws and custome of these isles.

** De alternato generali in insulis de Gernfey, Jerfey, ^d Serk et Aureney fac' virtute brevis domini regis. Rex omnibus balivis et fidelibus suis in insulis de Gernfey, Jerfey, Serk et Aureney ad quos, &c. Sciatis, &c.*

*Et. in quibuscunque curiis nostris insularum earundem, Et. post adventum ipsius A. in insul' predict' si contingat * ipsum A. interim venire ad partes illas. Teste, Et.* They are not bound by our acts of parliament, unless they be specially named.

Vid. 33 H. 8. c. 6.

The king hath granted to the men of the isles of Gernesey, Serk and Aureny, that they during the space of 8 years shall be free of all manner of tols, exactions and customes within the realm as his liege men and denizens.

Rot. par. 14 R. 2. nu. 30.

Insulani petunt, quia sunt in mari constituti, quod non ulterius extra insulas predictas presequerentur ad eorum periculum, et non facile possunt sequi curias regis in Anglia.

For the isles of Jerzey and Garnsey, see Mich. 5 E. 3. *coram rege* rot. 46. Pasch. 17 E. 2. *coram rege* rot. 67.

Within Garnsey there are ten parishes, one market town being the port or haven called S. Peters port by the castle of Cornet. Jerzey hath S. Albans and Hillary two little islands adjacent, it hath twelve parishes, and four castles.

C A P. LXXI.

De Insula Vectis or *Vecta*, of the Isle of Wight.

OF this we shall not need to say any thing, because it is and ever hath been part of Hamshire, and ever governed by the laws of England, as the other shires have been: but seeing we have named it, we will relate some things which we have observed.

First, there hath been an ancient baron, *de insula*, of the Isle, or Lisle, and of latter times there was a viscount of the same, which is to be understood of the Isle of Wight: for in the parliament rols of E. 2. I find him called *de insula Vecta*.

Secondly, Henry de Beauchamp earl of Warwick for the singular favour which king Henry the Sixth bare to him, crowned him king of Wight: but we could never find any letters patents of this creation, because (as some do hold) the king could not by law create him a king within his own kingdome, because there cannot be two kings of the same place in one kingdome: and after the same king named him *primus comes totius Angliæ*. But of this it is truly said: *cum illo nomen hic et insolitus titulus omnino evanuit*.

Camden.

See the statute of 4 H. 7. cap. 16. against taking of farms within this isle, and the power of judicature given thereby to the captain of this isle, or his lieutenant in a certain case.

C A P. LXXII.

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Of the Island called Lindesfarne or Leidisfarne, scituate by the River Lied having on the South Eastward the Island of Farn, and is called the Holy Island.

IT hath one castle, one church, and one parish, and a safe haven defended by a block-house.

It is called the holy island, for that it being a solitary place-holy men in times past retired themselves thither for their better,

and more devout service of God. It was of ancient time a bishops feat, which was after translated to Duresme, and is governed by the law of England.

Farne Isle.

For that this Isle of Farne hath neither church nor towne, but only a castle, I passe it (and other like isles) over.

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C A P. LXXIII.

Of the Forests, and the Jurisdiction of the Courts of the Forest.

Domesday in co'

Glouc' et alibi.

2 Mar. Dier 169.

1 part of the Inf.

sect. 378. f. 233.

2. Ockam cap.

Quod regis fo-

resta. Bracton

fo. 231. & 316.

Britton fo. 34.

Fleta l. 2. c. 34.

35.

1. pt. of the

Inf. sect. 1. fo.

5. b. In the

Saxons time fo-

rests were called

walds unde

waldegrave,

1. *præpositus fo-*

resta.

Virgill.

Sylva, as in

Domesday saltus

à saltando, quia

ibi feræ saltant.

• Like to an

evill conscience

in the false and

furious officer of

the forest if any

such be.

Cart de foresta

cap. 16.

The court of

attachments.

1 E. 3. cap. 8.

7 R. 2. cap. 4.

Cart. de forest.

cap. 6

The court of the

lawing of dogs.

FOR the word *foresta*, see Domesday in Glouc' et alibi.

For the derivation and description thereof, and some other things concerning the same; see the first part of the Institutes.

In Latin it is called *saltus*, or *sylva*. And so in Domesday, *sylva est in defens'*, *scilicet, in foresta regis*.

A forest doth consist of 8 things, viz. of soil, covert, laws, courts, judges, officers, game, and certain bounds.

* *Foresta est nomen collectivum*, and by the grant thereof the soil, game, and a free chase doth passe.

And seeing we are to treat of matters of game and hunting; let us (to the end we may proceed the more cheerfully) recreate our selves with the excellent description of Didoes doe of the forest wounded with a deadly arrow sticken in her, and not impertinent to our purpose.

Uritur infelix Dido, totaque vagatur

Urbe furens, qualis coniecta cervæ sagitta,

Quam procul incautam nemora inter Cressta fixit

Pastor agens telis, liquitque volatile ferrum

Inscius: illa fuga sylvas saltusque peragrat

Diæcos, hæret lateri lethalis arundo.

And in another place using again the word [*sylva*] and describing a forest, saith;

Ibat in antiquam sylvam stabula alta ferarum.

King John the 15 of June in the 18 year of his reign at Kungsmigmead, *alias* Kyme meade between Stanes and Windsor, granted the like charter as *carta de foresta* is.

And now let us set down the courts of the forest.

Within every forest there are these courts.

1. The court of the attachments or the woodmote court, this is to be kept before the werderors every forty days throughout the year, and thereupon is called the forty day court. At this court the foresters bring in the attachments *de viridi et venatione*, and the presentment thereof, and the verdere s do receive the same, and inroll them, but this court can only inquire, and not convict; but it is to be observed, that no man ought to be attached by his body for vert or venison, unless he be taken with the manner within the forest, otherwise the attachment must be by his goods.

2. The court of regard or survey of dogs is holden every third year for expedition or lawing of dogs by that court.

3. The

3. The court of * swanimote is to be holden before the ver-
derors as judges by the steward of the swanimote thrice in the year,
and the foresters ought to present their attachments at the next
swanimote court, and the freeholders within the forest are to appear
at the swanimote to make enquests and juries. * And this court
may inquire *de supermeratione forestariorum et aliorum ministrorum
forestæ, et de eorum oppressionibus populo nostro illatis.* And this
court may not only inquire, but convict also, but not give judg-
ment.

ria ministrorum forestæ, so called because it is but a preparative for the justice seat.
34 E. 1. 34 E. 1. cap. 4.

For the jurisdiction of this court I find a notable case in 45 E. 3.
in a writ of trespass of false imprisonment brought against I. de
W. The defendant said that he is forester in fee of the forest, and
that at a certain swanimote it was presented by the * foresters, ver-
derors, regarders, and agisters that the plaintiff had chased and
taken deer within the forest, whereupon the defendant being fo-
rester in fee came to the plaintiff and prayed him to finde pledges
to answer the same before the justice in eire in this country (that is,
at the justice seat) and that to doe the plaintiff refused, by force
whereof he retained him, untill he had performed the statute in
that case provided, and justified the imprisonment. The plaintiff
replied *de son tort demesne sans tiel cause,* and the issue was receiv-
ed by the court. And it was said that before the justice in eire
he should have no averment against the presentment of the fo-
resters.

Out of this case we doe observe 6. conclusions. 1. That the
law of the forest is allowed, and bounded by the common laws of
this realm, and therefore it is necessary, that the judges should
know, and be learned in the same. 2. That though the verderors
* be judges of the swanimote, and the steward but a minister, yet
the presentment in that court is as well by them as verderors as by
foresters, or keepers, regarders, and agisters, by the law of the fo-
rest. 3. ^b That a forester or keeper may arrest any man that kills
or chafeth any deer within the forest when he is taken with the
manner within the forest, or if the offender be indicted. But then
it is demanded, ^c what if a man be so imprisoned, and after offer
sufficient pledges, and they are not taken, what remedy for the
party, seeing there are very seldome justice seats for forests holden?
The answer is, that in the term time he may have *ex merito justitiæ*
a *habeas corpus* out of the kings bench, or if he have privilege, out
of the court of common pleas, or of the exchequer, or out of the
chancery without any privilege either in the term time, or out of
the term in time of vacation, and upon the return of the writ, he
may be bailed to appear at the next eir to be holden for the forest,
&c. And may also be bailed by force of a * writ *de homine reple-
giando* directed *custodi forestæ.* ^d if he be arrested by the officers of
the forest for hunting, &c. whereof he stands indicted or presented
taken with the manner he finding 12 pledges: but if he be adjudged
by the justices in eire, and imprisoned he cannot be bailed by that
writ *de homine replegiand* directed *custodi forestæ,* &c. and ^e if he be
unjustly proceeded withall there he hath remedy by law, as here-
after, when we treat of the justice seat, shall be declared. And it

Y 4

Cart. de forest.
cap. 3. Of Swa-
nimote.

1 E. 3. ca. 8.
50 E. 3. assis'
442.

* Swanimote is
derived of *swan*,
that is, *swanice*,
minister, et *mote*,
or *gemote*, which
is *curia*, i. ca-

* Ordinat' forestæ,

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45 E. 3. fo. 7.

* We will here-
after shew from
whence these se-
veral names be
derived, and the
duty of their se-
veral places.

See Domesday
Warw. Si vero
per mare contra
hostes ibat rex,
vel quatuor bac-
tineus, vel qua-
tuor libras dena-
riorum ei mitte-
bant.

* Ordinatio fo-
restæ. 34 E. 1.

^b Regist. 8. b.

F. N. B. 67. c.

^c See the 2. part
of the Inst.

Magna Carta,
cap. 29.

* Rot. par. anno
E. 3. nu.

Int' petitions.

^d See the 2. pt.
of the Inst. W. 1.
cap. 15. Bracton
lib. 3. fo. 154.

Fleta, lib. 2. c. 2.

^e F. N. B. 67. 2.

Register.

1 E. 3. c. 8.

Is to be observed, that there is a diversity between the writ *de homine replegiando* directed to the sheriff, for he is restrained by the statute of W. 1. cap. 15. to replevy any man imprisoned for the forest, being taken with the manner or indicted, but this statute extends not to the writ *de homine replegiando* directed *custodi foreste*, &c.

Regist. 80. b.
43 E. 3. 30. a.
& b.

The fourth conclusion is, that the offender may be retained by him until he hath found pledges to appear before the justice in eire, because (as hath been said) the court of the swanimote hath no power of judicature, but if he offer sufficient sureties, he ought not to be imprisoned.

Consuetud' et
assisa de foresta.
Ver. Mag. Cart.
parte 2. fo. 29.

5. That this justice in eire at his sessions may by the law of the forest proceed upon the presentments or verdicts in the court of the swanimote, though they be taken in another court, as the justices in eire might have done in like cases as before in the chapter of justices in eire appeareth.

* Nota, the entry
is *Præsentatum*,
et *convictum per
viridar*.
† 50 E. 3. aff.
442. Ordinat'
forest. 34 E. 1.
Presentment by
36.

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21 E. 3. 48.

6. Lastly, Note the issue joyned upon the plea of the forester, viz. *de injuria sua propria absque tali causa*, and allowed by the court, and the consequent thereupon. And thus much for the case the reporter saith, that it was said that the party should * not traverse the presentment of the foresters, verderers, regarders, and agisters: † and herewith agreeth 50 E. 3. and note the presentment was in that case by 36. And herein this diversity is to be observed, that if at the swanimote the presentment of the foresters be found true by the jury concerning vert or venison, the offender standeth thereof convict in law, and cannot traverse the same: but an indictment or presentment before the chief justice of the forest at a court of the justice seat by a jury, and not found in the swanimote, may be traversed. 8 E. 3. *Itinere Pickering* 147. a. because it is not presented but by one jury.

The justice seat.

* The like office
*citra Trentam
mutatis mutandis*.
Note, anciently
this great officer
was created by
writ, as other
justices in eire
were, but now
by the statute of
27 H. 8. ca. 24.
he is to be creat-
ed by Let. pat.
See before cap.
Justices in Eire.
† This is to be
understood of
parks, chases and
warens within
the forests, as
hereafter shall
appear.

‡ It is by the
statute of 32 H.
8. cap. 35.

4. This case also giveth just occasion to speak of the court of the justice seat holden before the chief justice of the forest, aptly called in the said book justice in eire, for so he is, and hath authority and jurisdiction to hear and determine concerning vert and venison &c. by force of letters patents under the great seal, whereof there be two, one for the forest on this side of Trent, the other beyond. By which letters patents the king doth grant unto him *officium gardiani capitalis justiciarii ac justiciarii sui itinerantis omnium et singularum forestarum, parcorum, chacearum et warrennarum suarum cum suis pertin' quibuscunque * ultra Trentam existen'*, &c. *dantes et concedentes eidem A. B. plenam auctoritatem et potestatem terrore prædictarum literarum patentium omnia et omnimoda placita, querelas, et causas forestarum, parcorum, chacearum et warrennarum prædictar' tam de viridi gram, quam de venatione, ac de aliis causis quibuscunque infra easdem forestas, * parcos, chasas et warrennas, evincien' sive emergent' audiend' et determinand' & habend', occupand', paucend' et exercend' offic' præd' cum pertin' per se vel per sufficient' b deputatum suum sive deputatos suos suffic' durante vita ipsius A. B. &c.*

And this court of the justice seat cannot be kept oftener than every third year, and other justices in eire kept their courts every seventh year. And (as before other justices in eire) it must be summoned forty days at the least before the sitting thereof: and one writ of summons is to be directed to the sheriff of the county, which writ you shall find hereafter in this chapter.

There

There is another writ of summons directed *custodi forestæ domini regis vel ejus locum tenenti in eadem*, and this writ consisteth upon two parts. First, to summon all the officers of the forest, and that they bring with them all records, &c. Secondly, all persons, which claim any liberties or franchises, within the forest, &c. and to shew how they claim the same. ^c And this court or justice seat hath jurisdiction to inquire, hear, and determine two things. 1. All trespasses within the forest, according to the laws of the forests. 2. All the claims of franchises, privileges, and liberties within the forest, as to have parks, warrens, vivaries, to be quit of asserts, and purprestures, to cut down his own woods without view of the forester, &c. Likewise claims of leets, hundreds, felons goods, waifs, strays, fugitives, and to kill hares and other beasts of chase within the forest, or to have a wood *infra metas forestæ et extra regardum forestæ*, that is, to be out of jurisdiction of the forest, and other franchises, privileges, liberties, immunities, freedoms, &c. within the forest, whereof you shall read excellent matter in the case of Pickering in 8 E. 3. rot. 31, where Guilberd of Acton claimed his woods *extra regardum forestæ*, &c.

^c Cart. de forest. cap. 16. 21 H. 7. 30.

This chief justice may by the statute of 32 H. 8. make his deputy (yet all the writs of commons ancient and late, are *coram* (the justice *itinerant*) *aut ejus deputato*.)

Before any justice seat be holden, the * regarders of the forest must make their regard by force of the kings writ, and the regard is *obambulare*, to go through and view the whole forest and every bayliwike of the same, *ad videndum, inquirendum, imbreviandum et certiscandum* all the trespasses in the forest: his office extendeth through the whole forest, and every part thereof, to inquire of all offences concerning vert and venison, and of all concealments of any offences or defaults of the foresters, and all other officers of the kings forest. He is a ministerial officer, and is constituted either by letters patents of the king, or by the chief justice at the justice seat, or to be chosen by writ to the sheriff. The duty of this officer appeareth by the writ hereafter mentioned.

32 H. 8. ca. 35. ^a A regarder is derived of the French word *regardeire*, that is, to view or see, because he cannot present any thing but upon his own sight and view. To speak once for all, the names of all the officers from the highest to the lowest, put them in mind of their duty: *Conveniunt rebus nomina sæpe suis: Nomina sunt notæ rerum.*

Before a justice seat there ought to be preparations for the same, to the end, * that good service may be done there, *et quod itinera non sint umbratilia*, as taking one or two examples instead of many.

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Rex vic' Not. sulum. Præcipimus tibi quod venire fac' certis die et loco quos ad h'c duxerimus providend' omnes forestarios et regardatores de Sherwood' ad regard' faciend' in forest' prædict' ante advent' justiciariorum nostrorum de forest', et loco regardatorum nostrorum qui mortui sunt et infirmi alios eligi fac' ita quod 12 sint in quolibet regard', et nomina illorum imbreventur. Et forestar' debent jurare quod 12 militis ducent per totam balivam suam, ad videndum omnes transgressiones quæ exprimentur in scriptis capitulorum quæ tibi mittimus, et hoc non omittent pro aliqua re: debent etiam milites jurare quod facient regard', sicut debet fieri et solet. Et quod ibunt sicut forestar' eos ducent ad prædicta videnda. Et si forestar' noluerint eos ducere, vel aliquid forisact' concealere voluerint, ipsi milites non omittent pro illis quin forisact' illud videant et imbreviari faciant: et hoc pro nulla re dimittant. Et quod regard' fiat circa fest' beati Petri ad Vincula prox' futur'. Teste, &c.

Breve de regardo cum artic'.
^a Forest' de Sherwood. i. Limpida Sylva.
^b Cart. de forest. cap. 7.

^c 12 capit. patent. inferiu'. In this writ 9. things are to be observed.

1 Videnda

The 12. chapters above-mentioned are these which the regarders duty is to prepare.

Nota, all these 11. are to be upon his view, *super visum*, and in this respect may be resembled to a coroner, *super visum al'*.

- 1 *Videnda sunt omnia assarta, &c.* Assarts.
- 2 *Videndæ sunt omnes purprestur' in boscis, &c.* Purprestures in woods.
- 3 *Videndæ sunt omnes purprestur' in terris arabil', &c.* In arable.
- 4 *Videndæ sunt omnia vassa boscorum, &c.* Wast of woods.
- 5 *Vidend' sunt omnes bosci domini regis, &c.* The kings woods.
- 6 *Vidend' sunt omnes haia domini regis, &c.* The hedges of the king.
- 7 *Item omnes purprestur' et omnia assarta, et omnia vassa, &c.* Generall words.
- 8 *Vidend' sunt omnes aeræ austurcorum, espervorum, falconum, &c.* Ayeries of haulks.
- 9 *Vidend' sunt omnes forgæ et mineræ, &c.* All forges and mines.
- 10 *Vidend' sunt portus maris, &c.* The havens of the sea.
- 11 *Vidend' est mel, si quid, &c.* Hony.

12 *Item milites debent attente inquirere in itinere suo quis habuerit arcus et sagitt' vel balifcas leporarius, burchetas vel aliquid ingenium ad malefaciend' domino regi de feris suis. Balista, or arcubalista, signifieth a crosbow.*

Leporaria, a harepipe. *Burcheta* of the French word *berche*, a kind of gunne.

Ordinatio forestæ.
34 E. 2.

In primis ordinavimus pro nobis et hæredibus nostris quod de transgres' in forestis nostris de viridi et de venatione de cætero fact', forestar' infra quorum balivas hujusmodi transgres' fieri contigerint, præsentant easdem ad prox' suanimotum coram forestar', viridar', regardator', agifator', et aliis earundem forestarum ministris. Et super præsentationibus hujusmodi ibidem coram forestar' viridar' et omnibus aliis ministris supradictis per facram' tam militum quam alioru' n' proborum et legalium hominum de partibus vicinioribus, ubi transgressiones sic præsentatæ fact' fuer' non suspectorum, per quos rei veritas plenius inquiratur. Et sic inquisita veritate præsentationes illæ per communem concordiam et assensum ministrorum prædictorum roboentur et sigillis suis sigillentur. Et si alio modo fuit indictament' pro null' penitus habeatur.

This ordinance being made by the king only without authority of parliament, albeit it was in affirmance of the law, did not binde, and therefore was not executed: and that it was but an ordinance, or declaration made by king E. 1. it appeareth expressly by the statute of 1 E. 3. and by that act of 1 E. 3. the said declaration is rehearsed as a law, the observation whereof is also an excellent preparation for a justice seat.

1 E. 3. ca. 8.
34. 1. F. N. B.
364.
Viridarius à *viridi*, vert, or green-hue, for that his office principally concerneth to look to the vert, or grene, and to see it be maintained.

Viridarius is a judicial officer of the forest, and chosen in full county by force of the kings writ. His office is to observe and keep the assises or laws of the forest, and to view, receive, and inroll the attachments and presentments of all manner of trespasses of the forest of vert and venison, and to do equall right and justice as well to poor as to rich. All this and much more you may read in the oath which he taketh before the sheriffe. There be most commonly four verderors in every of the kings forests.

Agifator,

Agistor, so called, because he taketh beasts to agistment, that is, to depasture within the forest, or to feed upon the pawnage, and comineth of the French word, *gysier*, to lye, because the beasts that feed there are there levant and couchant, lying and rising. And his office consisteth in *agistando, recipiendo, imbreviando, et certificando*.

Agistatores.
Const. & Ass.
forest. ubi sup.

And this officer is constituted by the kings letters patents: and of these in such forests where there is any pawnage, there be four in number.

Gruarii, (of whom you shall read in forest records is derived from the French word *gruyer*, which signifieth generally the principall officers of the forest. *Et ipsi gruarii vocantur ad similitudinem eorum qui aucupio regis in grues olim præerant*.

Gruarii.

See the Cust. de Norm.

Forestarius.

Bracton, lib. 4.
fo. 316. a. & b.
& 231. a.

Forestarius is taken for a woodward not only of the king within his forest, but *ex vi termini* of any subject of his woods wheresoever they lye: which appeareth by a writ in Bracton in these words. *Rex vic' salut. Scias quod propter destructionem quæ facta est in bosco et terra quam A. de N. tenet in dotem in tali villa de B. de N. Provisum est in curia nostra coram iusticiariis nostris, quod idem apponat forestarium suum ad prædictum boscum custodiend', ita quod prædict' A. non habeat in eodem bosco nisi rationabile estoverium suum ad arandum et claudendum tantum super eandem terram quam ipse tenet in eodem, &c.* But in legall understanding he is taken for a sworn officer ministeriall of the kings forest, and his duty appeareth by his oath, which consisteth on five parts. 1. That he shall be loyall and true to the master of the forest. 2. That he shall truly walk and keep the office of the forestership, and true watch make both early and late both of vert and venison. 3. Truly attache, and true presentment make of all manner of trespasses done within this forest to his knowledge, and specially within the keeping of his bailiwick. 4. The kings counsell, his fellows, and his own, he shall truly keep. 5. No concealment make for no favour, meed or dread, but well and truly to behave himself therein.

^a Officers of the forest shall not be sworn on enquests out of the forest.

^b *Messorius* is a mower or harvester derived à *metendo*. Fleta lib. 2. cap. 75. *messor. 30 ass.*

Thystylis et rapido fessis messoribus æstu

Allia serpyllumque herbas contundit olentes.

Surcharge of the forest.] *Superoneratio forestæ*, is when a commoner in the forest putteth on more beasts then he ought, and so surchargeth the forest. It is taken from the writ *De secunda superoneratione pasturæ* in the same sense when the commoner surchargeth. Where it is said (*tempore coronationis regis Henrici avi*, that is, of H. 2.) It is to be known that he was crowned twice, viz. the 20 of December in the first year; he caused his sonne Henry to be crowed king the 15 of June in the 16 year of his reign; Henry his son died the 11 of June in the 28 year of his reign; after whose death king Henry Fitz Emprresse was crowned again.

^a Ordinat. forest.
34 E. 1 cap. 5.
Regist. 183.
F. N. B.
^b Assisa et consuet. forest. 6 E. 1. c. 16.
Virgill.

Regist. and
F. N. B. 126. a.
c. & c. surcharge.
Mag. Cart.
cap. 5.

Domesday.
Sudsex Cicestr.
et sæpe.

Desertum, id quod ab hominibus deseritur, et feris relinquitur.

Masura terræ, sunt in eisdem masuris 60 domus plus quam ante fuerunt. Mas de tra, that is an exchange of land where there is a house.

Fugacia

Carta Matildis Imperatricis Miloni de Glocest.

Int. leges Canuti cap. 77. Lamb.

Johannes Rufus, et alii post eum.

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Deorsaid. Falda serina.
Domesday.
Chent. Certh.
Fb. parcus sylvatic' bestiarum.
Devoncoire.
Winchelere.
Hertfordscire.
Belinton.
A. Mil. forest.
6 E. 1. cap. 2.

Ibid. 8 E. 3.
Kinere Picker.
Guilbert of Acons case.

Ib. Artic. 27.
Camia continet spacium octo palmorum in longitudine.
Dorf. clauf. an. 26 E. 2. m. 30.

• Bract. lib. 3. fo. 32.

Fugacia signifieth a chase, and is all one with *chafa*. See the charter of Mawde the empress, stiling her self *Anglorum domina*, made to Miles of Gloucester, creating him thereby earl of Hereford, wherein towards the end follow these words. *Præcipio quod hæc omnia supradicta teneat de me libere et quiete in bosco et plano, in forestis et fugacis, in pratis et pasturis, &c. Præterea autem concedo ut in propriis ipsius prædiis quisque tam in agris, quam in sylvis excitet ogitetq; feras; meas autem ne venetur, iis præsertim in locis quos privilegio circumscripti meo cum pæna præcipio.*

That H. 1. made at Woodstock a park, which was, saith he, the first park in England. But it is out of doubt that there were parks in the days of the Saxons, which were called *deerfa'd* of two Saxon word of *deor* for deer, and *fald* for a place inclosed with pale, hedge, or wall. And in the book of Domesday often mention is made by expresse name *de parcis*. *Parcus bestiarum*. *Parcus sylvaticus bestiarum*.

Haia taken for *parcus* of the French word *heye* for an inclosure *Rot. Inquisit. 36 E. 3. in scacc' de forest'*.

Haia de Kingestie in Hamshire.

Hulmus, i. *insula* an isle. *Bercaria*, vid 1 part. Instit. sect. 1. *Mastivus mutulatus* is a mastiffe expeditated or lawed, and not used: for no dog by the law of the forest ought to be muffed. *Mutulatus* commeth of the verbe *demutulo*, i. *demembro*. *Bissa*, i. *cerva*, of the French word *biche* for a hinde. *Mureleges*, à *legendo mures*, of getting of mice, a wilde cat. *Tesson* of the French word *tesson*, for a gray, brock, or badger. *Befonus* of *bifon* a French word for a wilde ox.

Ham, *Saxonice domus*, home, sometime *villa*, as *Mileham olim Mildham*, because the aire was milde and temperate.

Hue and *cry*, *hutesium et clamor*, the one being an exposition of the other, each of them signifying crying and showing; *verba dolentis*. And *hue* is derived of the French word *huier* and *crier*. But *hue* and *cry* by the forest law is not to be made for trespass in vert, but in venison only. This *hue* and *cry* cannot be pursued but only within the bounds of the forest; and the offence must be committed within the forest, and not within the purlieu. And this *hue* and *cry* may be made by any of the kings ministers of the forest, for any of them may arrest the malefactor, and none can make *hue* and *cry* but he that may arrest in that case, and cannot. And so are the generall words, *si quis viderit*, &c. to be understood.

Si quis viderit, &c. If any township or village follow not the *hue* and *cry*, they shall be amerced at the justice seat.

Taken with the *mayneer*, à *mann* is in 4 kinds, viz. dog-draw, that is, drawing after a deer which he hath hurt. Stable stand, viz. at his standing with any knife, gunne, or bow, or close with greyhounds in his leash ready to shoot or course. * Back-bear, that is, carrying away the deer which he killed. Bloody hand, that is, when he hath shot or coursed, and is imbrued with blood.

But what if injustice be done at the justice seat? For example, as if a claim be made of any liberty at a justice seat, and is there allowed, what remedy hath the party grieved in this case? which I do the rather propound, because I find not this doubt resolved in any of the readings upon this statute of *Carta de Foresta*, or in any that have written of the forest laws. And I find this question resolved

solved by a notable book case in 21 E. 3. agreeable with the Register and other books; where the case was this. *A* and *B*. before the justices of the forest of Pickering claymed to have within the wood of *E*. within the same forest a woodward proper, and also to have the windfals in the same wood, which claime was allowed by the said justices, where in truth the said claime was false, to the disherison of the commoners there: for that the commoners within the said town of *E*. had the choice of the said woodward, and all the windfals for their reasonable estovers as belonging to their freehold. Thereupon on the behalf of the commoners the record before the justices of the forest was removed by *certiorari*, (which in the forest law is called a *venire facias* record) into the kings bench (which court is above all eires) and two of the commissioners, viz. Robert de Scarburgh and Robert Wich sued out a *scire fac'* upon the said record against the said *A* and *B*. &c. And they declared upon the said writ that all the commoners had the liberties aforesaid: exception was taken to the writ, that the grievance is as well supposed to others, as to those two which were plaintifes in the *scire fac*. Whereunto it was answered, that although the grievance was to others, yet those two that would complain might maintaine this suit. And if the others be of record with *A* and *B*. yet these two may sue, and these two might have joyned in assise. And there it is holden, that if a profit be granted to a comminalty out of the forest, the claime ought to be made by them all, but otherwise it is within the forest, where every one shall have his action by himself for that which belongs to him; and in the end the writ was adjudged to be good. But in this case somewhat is implied, for by the law of the forest when a claim is made of any liberty within the forest, although no issue be joyned thereupon, yet the entry is, *Et quia videtur justiciariis quod expediens et necesse ad inquirendum super præmissis rei veritatem antequam ad allocationem clamei prædicti procedatur, inquiratur inde veritas per ministros ejusdem forestæ*: and sometime *tam per ministros forestæ quam per alios liberos et legales homines*, at the discretion of the justices for the advancement of truth: and accordingly the foresters, verderors, regarders, and agisters doe enquire thereof. * Also if a claim be made before the justices of the forest, whereupon there groweth difficulty, or if a demurrer in law be thereupon joyned, the justices may adjourn the same into the kings bench to be there adjudged, and then the entry is, *Ideo quoad clameum prædicti pro eo quod justiciarii prædicti nondum advisantur de judicio inde vedicendo. datus est dies eidem H. coram domino rege (in tali return') ubicunq; Sc. de audiendo inde judicium, &c. Et dictum eidem H. quod interim sequatur bre. de venire fac' inde recordum, &c. Postea dominus rex mandavit præfat' justic' bre. suum in hæc verba.* * *Edw. Dei gratia rex Angliæ, &c. Dilecto et fidei suo Rico. de Willowbye salutem. Cum vos et socii vestri justiciarii nostri ad placita forestæ, &c. tenend' assignat' quoddam clameum de diversis libertatibus per dilectum et fidelem n. frum H. de Percy coram vobis et sociis vestris prædictis in eadem forest' fact' propter quosdam difficultates in eodem clameo contenti coram nobis adhornaveritis. ut accepimus, vobis mandamus quod si ita est, tunc omnia clamea prædicta nec non recorda et process. inde coram vobis habita coram nobis ubicunq; fuerint in Anglia sub sigillo vestro sine dilacione mittatis juxta adjornamentum*

21 E. 3. 42. a.
In scire fac.
Vid. 25 E. 3.
fo. 43. Nichol.
Gowers case.
Vid. Regist. 263.
b. Breve de in-
quirendo de li-
bertatibus allo-
catis.

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* 6 E. 3. Itinere
Picker. Henry
de Percyes case
which depended
in advisement
for difficulty
four years before
R. de Willowby;
and other
justices of the
forest.
Venire fac.
Record.
Certiorari.
* A certiorari
before judge-
ment out of the
chancery return-
ed into the kings
bench directed
to R. de Wil-
lowbie (being the
ancient primary
judge) only, be-
cause he only
hath the keeping
of the records.

namentum prædictum hoc bre. nobis remittentes. Teste, &c. anno 12 E. 3.

Virtute cujus brevis clameum prædicti, nec non recordum et process. prædicti mittuntur coram rege ad diem prædicti una cum brevi prædicto.

Postea dominus rex mandavit præfato R. de W. quoddam aliud bre. claus. in hæc verba. Edw. &c. dilecto et fideli R. de W. salutem. Cum vos et socii vestri justiciarii nostri ad placita foresti in foresti H. com' Lanc' de Pick' in com' Eborum tenend' assign' quædam clam' de diversis libertatibus per dilectum et fidelem nostrum H. de Percy coram vobis et sociis vestris prædicti in eadem foresti habend' facti propter quædam difficultat' in eisdem clameis interveniend' coram nobis adjornaveritis, et quædam alia clamea sua similiter ibidem de quibusdam aliis libertatibus facti allocaveritis, prout accepimus; nos volentes tam super dictas libertates sic adjornat' quam super al' allocat' certis de causis certiorari, vobis mandamus quod si ita est, tunc omnia clamea præd' nec non record' et process. inde coram vobis, et sociis vestris prædicti habit' coram nobis ubicunque fuerimus in Anglia sub sigillo vestro sine dilatione mittatis, et hoc breve, ut hiis inspectis ulterius fieri faciemus, quod de jure fore viderimus faciend'. T. E. duce Cornub. com' Cestriae filio nostro charissimo custod' Angl' apud Berkhamsted primo die Februarii anno regni nostri 13. Virtute cujus brevis clam' præd' tam adjornat' quam allocat' mittuntur coram rege una cum bri. prædicti, &c.

By all which cases the former question is resolved, which case and consequents thereupon is worthy of serious consideration.

Nicholas Gower was indicted for that he killed the kings game in the kings forest, when he was the kings steward of the same, and also had taken ransome for indictments, which indictments were removed coram rege, and the steward was put to answer thereunto.

25 E. 3. 43.

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27 E. 1. coram rege rot. 13. Wigorn'. Note the writ of the justice of the forest return' into the kings bench. Breve justiciarii forestæ. Versus Godfridum Episc. Wigorn'. Ad finem faciend' pro transgress. venationis in foresta de Windesfor.

Hugo le Despencer justic' foresti citra Trentam mandavit quoddam breve suum vic' Wigorn' return' coram domino rege in crastino Sancti Johannis Baptistæ prox' præterito, &c. in hæc verba. Hugo le Despencer justic' foresti citra Trentam vic' Wigorn' salutem. Mandamus vobis quod distring' Godfridum episcopum Wigorn' per omnes terras et catalla sua in balliva vestra, ita quod nec ipse, nec aliquis per eum ad ea manum apponat, donec aliud a domino rege seu à nobis inde habueritis in mandatis. Et quod de exitibus coram domino rege respondeatis et quod habeatis corpus ejus coram domino rege in festo Sancti Johannis Baptistæ ubicunque tunc fuerit in Anglia, ad finem faciend' pro transgressione venationis per ipsum facta in foresta de Windesfor sicut per legalem inquisitionem secundum assisam forestæ coram nobis apud Windesfor captam plenius nobis constat. Et unde eidem episcopo per literas nostras ex parte domini regis aliàs mandavimus, quod pro fine suo inde faciendo veniret coram nobis apud London, ita quod esset ibi in crastino Sanctæ Trinitatis prox' præterito, vel sufficientem attorneyatum suum ibidem mitteret suam plenam potestatem in hac parte habentem: qui ad diem illum coram nobis non venit, nec attorneyatum in hac parte misit sicut ei ex parte domini regis mandatum fuit; et habeatis ibi hoc breve. Dat' apud Lugtheburghe die Jovis in octab' Ascensionis Domini anno regni regis Edwardi vicesimo sexto. Ad quem diem vic' nihil inde fecit, sed mandavit quod præceperat ballivis libertatis ejusdem episcopi de Osfordesforwe qui nihil inde fecerunt. Per quod præceptum fuit eidem vic' quod non omitteret propter prædictam libertatem, quin distring' prædictum episcopum per omnes vias, &c. Et quod de exitibus, &c. Et quod haberet

haberet corpus ejus coram rege in octabis Sancti Michaelis, ubicunque, &c. ad finem faciend', &c. cum domino rege pro transgress. prædict', &c. Et similiter quia procedi non potuit ad finem capiend' de præd' episcopo, &c. sine record' prædicti Hugonis justic' &c. de transgress. præd. &c. Mandatum fuit eidem Hugoni justic' &c. quod recordum inde coram eo habitum regi mitteret ad præfatum terminum tum omnibus recordum illud tangentibus. Et vic' nullum breve retornavit coram rege ad præfatum terminum Sancti Michaelis: nec prædictus Hugo justic', &c. aliquod recordum misit, &c. propter quod, sicut prius præcept' fuit vic' quod non omitteret propter prædictam libertatem, quin distring' prædictum episcopum per omnes terras, &c. Et quod de exitibus, &c. Et quod haberet corpus ejus coram rege in octabis Sancti Hilarii ubicunque, &c. ad finem faciend' in forma prædict', &c. Et vic' retorn' breve, sed prædictus Hugo justic' nullum recordum misit. Et super hoc venit quidam Aluredus de Northgrave pro prædicto episcopo, et dicit quod præfatus Hugo justic', &c. distingit præd' episcopum per diversa brevicia sua in com' Wigorn' et Glouc' ad finem faciend' coram ipso de eadem transgr. et nihilominus paratus est satisfacere domino regi pro prædicto episcopo de prædict' transgress. secundum recordum prædicti Hugonis, et secundum quod cur' regis consideraverit, &c. Et quia dicitur Hugo justic' nullum recordum misit per quod procedi potest ad finem capiend' de prædicto episcopo, &c. Ideo quoad prædictum episcopum cessat distr' usque à die Paschæ in unum mensem ubicunque, &c. Et dictum est prædicto Aluredo quod tunc sit ibi ad finem faciend' pro prædicto episcopo, vel quod habeat warrantum de prædicto Hugone justic' quod finem fecit vel finem facere debeat coram prædicto Hugone justic', &c. de transgressore prædict', &c. Et nihilominus mandatum est præfato Hugoni justic', &c. quod venire fac' recordum prædictum, ut prædictum est, coram rege præfatum terminum, &c.

Procedi non potuit ad finem, cap. sine recordo, &c. A certiorari to the justice of the forest for the record.

Episcopus paratus est satisfacere.

Observe well the parts of this record, and a ready way to help the king to his fines after the eire of the forest is ended.

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On the other side it is demanded what if a man make a just and lawfull claim to certain liberties at the justice seat, and cannot obtain the same to be allowed by the justices of the forest, what remedy for him that maketh such claim? • Whereunto the answer is, that he shall have a writ *De libertatibus allocandis*, directed to the justices of the forest, which writ doth appear in the Register.

• And any person that is to make any claim may the first day of the eire either make it in person or by attorney, F. N. B. 26. g. And he that appears upon a presentment or indictment taken before the justices in eire, and traverteth the indictment, may after appear by attorney. See before cap. Justices in Eire the writ in the Regist. 19. a. W. 2. cap. 10.

• And the entry is *A. B. po: lo: suo T. B. vel L. N. de omnibus placitis seu querelis motis seu movendis et ad omnes libertates calumniand', prosequend', et defendend' durante itinere isto*: whereby it appeareth in what generality an attorney may be made.

• And this agreeth with the Register, fo. 19. b. by 5 kind of writs which are worthy of observation, viz. ¹ *Breve de clameo admittend' in itinere per attornatum primo die itineris, &c.* ² *De libertatibus exigendis in itinere*: ³ *De attornat' in omnibus placitis et querelis in itinere, et ad libertates calumniandas*: ⁴ *Aliter in omnibus placitis et querelis in itinere juxta formam fiat' de Merton cap. 10. Glouc' cap. 8. et W. 2. cap. 10.* ⁵ *Aliter de attornatis, &c.*

And these writs are to be granted *ex merito justitiæ*, without any

* Regist. 164. and F. N. B. 229. b. & 230. a. & In' communia de Scaccar. de anno 14 E. 1. de libertatibus allocandis et vide L. Ockham f. 47, 48.

¹ 8 E. 3. Itinere Hick. 148. a. ² 8 E. 3. Itinere Pick. the case of the prioress of Rocela. Reg. 19. b.

³ Regist. 29. b.

any denyall as well to the justices in eire of the forest, as other justices in eire for the admitting of attornies. Vid. 2. part of the Institutes W. 2. cap. 10.

And upon search made I find the like writ beginning, *Omnibus balivis et fideibus suis, &c.* in the eire of Pickering, 19 b. for the prior of St. Johns of Jerusalem to make an atturny before the justices of the forest.

2 E. 3. fo. 29.
Lib. 9. fo. 28. b.
Labbot de Strata
Marcellas case.

But what if the justice in eire give an erroneous judgment, &c. what remedy hath the party grieved? He may have a writ of error out of the chancery returnable into the kings bench, and there justice shall be done.

8 E. 3. Itin'
Pick. fo. 165.
the case of William
of Persay and Petronilla de
Kinthorp.
8 E. 3. Itin'
Pick. fo. 22.
Itin' Lanc' fo. 4.

¶ If a man make his claim by grant or prescription, and he or his councill mistaketh his right title in some material point, so as the claim is found against him, it is good for him that his true title be found by the same verdict specially, for then may the party by petition make a fine and pray licence to make a new claim, and thereunto he ought to be admitted.

And concerning claims it is specially to be observed, that by the forest law a grant made of a privilege within the forest to all the inhabitants being freeholders within the forest or such other comminalties not incorporated, is good.

8 E. 3. Itin'
Pick. fo. 15.
Lanc. f. 64.

* If a man make a false claim by claiming more then he ought, he shall be fined for his false claim, but that which he ought to have shall not be feised: as the prior of York claimed by charter to have tithes of all venison, *tam in carne quam in corio*, where he ought not to have it *in corio*, for which he was fined and enjoyed it *in carne*.

Pickerings case.

In the eire of Pickering holden before Richard de Willowby, Robert de Hungerford and John de Hambury justices in eire for the forest of Pickering, anno 8 E. 3. a claim was made by Thomas de Pickering and Margaret his wife, viz. *Habere in dominico bosco suo de Lofton woodwardum ad custodiendum boscum suum, et quod nullus in eo amputet aut prostrare faciat arborem aliquam sine voluntate sua, et quod ipsi in bosco suo possunt prostrare et dare pro voluntate sua arbores vires et siccas, et dare et vendere arbores suas pro voluntate sua sine visu forestariorum, &c.* and prescribed in the same in the right of the said Margaret, where this prescription was inquired of and allowed to be good in law, but it was found, as to the taking of the trees without the view of the forester, to be untrue.

• In cur' Scaccor' coram Edw. Sanders capital bar. et aliis baronibus tempore R. Eliz. of the report of Popham chief justice.

† [298]
Constit. & Ass.
Forest' ubi sup.
A man may claim to have dogs in expedite and hounds within the forest.

* The like prescription made by Sellinger to take and cut down timber trees within his own woods within the forest of Hays in the county of † Hereford without the view of the forester, and upon argument and long advisement it was adjudged, that the prescription was good notwithstanding the ordinance of 34 E. 1. and the statute of 1 E. 3. cap. 2. And the reason was, because that statute was but in affirmance of the common law of the forest, and against such a statute a man may prescribe. And that 34 E. 1. was but an ordinance and no statute, see F. N. B. 167. a. Register, which judgment was agreeable to Pickerings case abovesaid, and is of great consequence: for the statute of Carta de Foresta, and most of the statutes concerning forests are likewise *declaratio antiqui juris*; and therefore, as against the common law, so against them a man may prescribe upon a just and reasonable cause; but if they were

introductivus

introducitiva novi juris, then no prescription can be made against them, unless he hath another statute to preserve the liberties.

And if a man hath a wood in a forest, and hath no such prescription, the law doth appoint him a means to sell both wood and timber, so it be no prejudice to the game, but sufficient is left besides, and that is, by a writ of *ad quod damnum*, upon return whereof the king doth licence him, &c.

Regist. 257. a.
F. N. B. 226. f.
2 E. 2. trans. 9.
Ad quod damnum.

Pasch. 5 Jac.
Reg.

Vid. Reg. 258. a.
Bowland is called libera chassa de Bowland.

By the kings commandment under his signature and signet, all the judges were assembled about certain questions concerning his forests of Leicester in the county of Leicester, and of Bowland in the county of Warwick, to be moved to them by the attorney of the duchy. And the first question which was moved, was, whether the said forests were forests in name only, or in law: which being *questio facti*, the judges could give no answer: but by way of direction they resolved, that if they were forests in law, it must appear of record, for there be certain incidents inseparable to every forest, viz. courts of record, and officers of record, courts of record, as courts of attachments, swanimote, and justice seats. Officers of record, as foresters, verderers, regarders, agisters, &c. who are made (as it appeareth before) by matter of record, &c. but appellation or naming of them forests in offices, pleadings, grants, or other conveyances, are no proofs, that they be forests in law.

2. It was resolved by them, that if they be but free chases and no forests in law, that then the owners of woods within such chases may cut down timber or wood growing therein without view of any officer, or licence of any; but if they cut down so much as they leave not sufficient covert, and bruise wood for the game, they shall be punished at the kings suit. And so it is if a common person hath liberty of chase in other mens woods, the owners of the wood cannot cut down all the woods, but leave sufficient for covert, and bruise, as hath been accustomed, no more then the owners of woods in which others have common of estovers, can destroy the whole woods, but leave sufficient for the estovers.

Tempo E. 1.
trespasse 249.
the case is to be understood of a forest where forester: (there named) be, for every forest is a free chase, but not *à converso*.
43 E. 3. 8.

3. And being demanded whether in the kings free chases a man might have common and feeding for sheep, and warren by prescription or grant? It was resolved cleerly they might, but they must not surcharge to the prejudice of the kings game, but the owner of the soil within such a free chase cannot erect a warren without a charter from the king. And it seemeth to me that by prescription a man may have common for his sheep within the kings forest: for, first, I find no authority in our books (that I remember) against it; and that generally a man may common in a forest, it appeareth by *carta de foresta*, cap. 1. 33 E. 1. stat. 5. 34 E. 1. cap. 6. And if for common in generall, especially for common appendant so much favoured in law, and particularly for sheep, as wel as for horses and mares. 12 H. 3. common 25. F. N. B. 230. a. And to conclude this point the prioresse of Wicham prescribed to have common in the forest of Pickering, *pro omnibus averiis suis, except caprellis*, before the justices in cire in 8 E. 3. rot. 31. which being found to be true was allowed to her, &c. and such a prescription may have a lawfull beginning by the kings grant.

Vid. Dier 6 E. 6.
fo. 70.

IV. INST.

Z

4. That

4. That he that hath a warren within a free chase may build upon his own inheritance within his warren a convenient lodge for preservation of his game. And Popham chief justice before all the rest of the judges cited the said case of Selenger adjudged in the exchequer.

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Some question being moved between the earl of Nott. justice in eire in all the kings forests, and the earl of Dorset treasurer of England, concerning the disposing of the kings woods in his forests; for resolving whereof by the kings commandment all the judges of England were assembled, who upon conference and mature deliberation resolved these seven points following.

1. That the justices in eire, and the kings officers within his forest have charge of venison, and of vert or green hue for the maintenance or preservation of the kings game, and therein of all manner of trees for covert, bruise and pawnage. But when need is to fell seasonable woods within his forest, or timber for his majesties use, the same must be sold or taken by force of the great seal, or eschequer seal by the view of the forester to the intent that the woods or the timber shall not be taken in places inconvenient for the game. But the justice in eire, or any of the kings officers within the forest cannot sell or dispose of any wood within the forest without commission: and so the exchequer and the foresters have *divisum imperium*, the one for the profit of the king, and the other for his pleasure.

2. That regularly neither the court of the exchequer, nor any of the kings officers can dispose of the kings timber or woods, but it ought to be done by commission, &c. as is aforesaid, for the kings best profit.

3. That every man in his own woods within the forest may take housebote and heybote by the view of the foresters. The kings fermers that have clauses in their leases to take timber, &c. by view, &c. may take the same accordingly: and so may freeholders by prescription, and copyholders, which by custome have used to take housebote, &c. take the same by view of the foresters, &c. or otherwise according to the custome.

4. It was resolved, that no officer of the forest could claim windfalls or dotard trees for their fees by prescription, because they were once parcell of the kings inheritance, but they ought to be sold by commission, as before it appeareth for the kings best benefit.

5. That he that hath the herbage, or pawnage of a parke by the grant or demise of the king or any other, cannot take any herbage or pawnage but of surplufage over and above the competent and sufficient pasture, and feeding of the game: and if the owner of the game suffer the game so to increase, as there is no surplufage, then he that hath the herbage and pawnage cannot put any beasts in the park.

6. That the owner of the park may divide any competent parcell of the park with rail, pale or hedge for the feed of the game in winter, and he that hath the herbage cannot put any beasts therein.

Lastly,

In бага de forestis in custodia rem. regis. 12 E. 2. Com' to sell the underwood in the park of Clarendon. 17 E. 2. Com' to sell windfalls in the park of Northampton. 28 Com' to sell wood in Clarendon. Nota, minuti blaterones quercuum curli et curbi in foresta de Grovele vendi. virtute brevis domini regis. Simile ibidem 10, 11, 13, et 14 E. 4. Simile 17 H. 6. virtute literarum pat. H. 6.

1 E. 3. stat. 2. c. 2. Contit. & Ass. Forest. ubi sup.

Vid. Itin' Pick. 8 E. 3. rot. 30. the case of William de Persey and Petronilla his wife.

Lastly, if the pasture and pawning of the park be but sufficient to feed the game in winter and summer, the owner thereof may drive out the beasts of him that hath the herbage and pawning. And thereupon by like assent of all the judges the court of the exchequer took this order following with some reasonable additions.

Rot. par. 18 E. 1. fo. 16. the king may grant estovers in his forest without view of the forester.

Whereas heretofore some question hath been moved between the lord treasurer of England, and the warden and chief justice, and justice itinerant of all the kings majesties forests, chases, parks and warrens on this side the water of Trent, what appertaineth to each of their offices and places concerning the dealing with and disposing of woods, trees, and coppices within his highnesse parks, forests and chases, which being by his majesty referred to the consideration and determination of his judges, and barons, they have resolved touching the same by one uniform assent, as hereafter followeth, viz. that as the lord treasurer of England for the time being, and court of exchequer have the only ordinary power under the king to deal therein so far forth as the same concerns the inheritance and profit of the crown, as in the sale of woods, trees, coppices and such like: so in like manner it concerns the warden and chief justice and justice itinerant of all the kings majesties forests, chases, parks, and warrens, and their ministers to deale therein so far as it may concern the preservation and maintenance of the game, in respect of the shades, coverts, pawning, and such like for the deer. And therefore it is resolved by all their opinions, that the lord treasurer of England and court of exchequer may not fell any woods or coppices within any the kings parks, forests, or chases, (except windfals, rootfals, and meer dead and fear trees) without the privy and allowance of the said warden, and chief justice, and justice itinerant, within whose jurisdiction it is: nor may cut down the dead and fear trees, nor carry them or windfals or rootfals away, but at fit times, and by the view of such as have charge of the game, whereby it may be seen unto, that the same may be done at fit and convenient times: and that no trees, other then those that be dead and fear, and merely windfals and rootfals, may be thrown down or taken away without the privy and allowance of the warden, and chief justice, and justice itinerant of his majesties parks, forests, or chases.

The order of the exchequer upon the resolution of the judges.

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And as for the warden, and chief justice, and justice itinerant, and the keepers and other ministers of parks, forests, and chases appertaining to the king, they may not cut down any trees for new paling or railing, or for repair of lodges, without the warrant and allowance of the lord treasurer of England for the time being: but timber needfull for mending of small defects in old pales or rails that are broken, so as the same do not exceed two or three timber trees in any one forest, park, or chase, in any one year, they may be permitted to take of trees in places fit, without making waste thereof, or any spoile or prejudice to the kings inheritance, making the kings surveyor of the woods speedily acquainted, who is to see that the same hath been accordingly well employed: and needfull browse also in places fit, and times seasonable the keepers may take for the deer, not cutting down the limmes or great boughs of the trees. And therefore it is ordered by this court, that from henceforth where it shall be thought requisite to sell any of the kings woods or coppices within any his parks, forests, or chases, that a

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writ or commission in nature of an *ad quod damnum* shall be directed unto the warden and chief justice, and justice itinerant within the forests, within whose government the same is to be done, to enquire and certifie what number of trees and what coppices may be sold, and in what places, with least prejudice to the kings game; and that upon the return thereof the sale shall be made of such trees and coppices, as upon such certificat shall be thought fit to be sold. And in like manner it is ordered, that for the new paling, and new railing, and new building of lodges in any place within or about any his majesties parks, forests, or chases, and the great repairs of old pales, rails, or lodges in or about the same; that it is to be done upon certificate from the warden and chief justice, and justice itinerant, and the surveyor of his majesties woods within whose jurisdiction it is, by warrant from the lord treasurer of England for the time being.

42 E. 3. cap. 1.

^a Confirm. Cart.

25 E. 1.

^b Cart. de foresta. cap. 1. & 2.

^c This is an act of restitution, for if the king might have made a forest in other mens woods, then could not the owner have felled down his own woods without view or license, et sic ad damnum illius, &c.

^d Nota, all manner of commons are saved.

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Pl. com' Seignior Berkleys case. fo. 236.

It is very observable, that if any act of parliament hath been made against any of the articles of the statute of *carta de foresta*, by the act of parliament of 42 E. 3. the same is made void, and by the statutes of ^a *confirmations cart'* all judgements given against any of the points of *carta de foresta*, shall be holden for void. And where H. 2. Fitz Empresse claimed that he might make forests not only within his own woods and grounds, but in the woods and grounds of his subjects, and thereupon made divers such forests within his own and other mens woods and grounds: whereupon some readers and others that have followed them are of opinion that H. 2. might *de jure* do that which he did. But this act of *carta de foresta*, which is but a declaratory law restoring the subject to his former right, is directly against that concept in these words.

^b *In primis omnes forestæ, quas Henricus avus noster afforestavit, videantur per bonos et legales homines; et si ^c boscum aliquem alium quam suum dominicum afforestaverit ad damnum illius cujus boscus ille fuerit, statim deafforestetur; et si boscum suum proprium afforestaverit, remaneat foresta, salva ^d communia de herbagio et aliis in eadem foresta illis qui prius eam habere consueverunt.* To the same effect is the third chapter.

Neither could H. 2. or any other king have made or raised a free chase, park, or warren for himself in any of the grounds of the subjects; for it is truly said in Pl. Com'. that the common law hath so admeasured the kings prerogatives, that they should not take away, nor prejudice the inheritance of any. But we agree, that all the lands of the subject are originally derived from the crown. And therefore when the ancient kings had the most part in their own hands, or at least great desarts, waste and woody grounds for want of habitation, they might make what forests it pleased them therein, which may be a reason and cause of a lawfull beginning, and therefore a forest may be by prescription good in law over other mens grounds. But the king in his own grounds may make a forest at this day, which is also proved by these two chapters, for such forests are thereby saved and enacted to stand.

31 H. 8. cap. 5.

King H. 8. intending to make a forest about his house at Hampton Court assigned and limited a certain territory of grounds for nourishing and generation of beasts of venery, and fowls of warren, extending over the lands and grounds of divers and many freeholders, and coppisholders, within the manners, townships, and villages of Eastmulsey, Westmulsey, Walton, Ether, Weybridge, and part of Cobham: and finding that he could not erect either forest or chase over other mens grounds without their consents, did

agree with the freeholders and customary tenants, as by his indenture bearing date the first day of October in the 29 year of his reign, between him on the one part, and Sir Richard Page knight, Thomas Henage esquire, and other the freeholders and customary tenants in the towns and villages aforesaid of the other part, wherein the king doth name it (*ad faciendum populum* for the easier passage) Hampton Court chase. But afterwards (in close words in severall places) that it should have all such and like liberties, jurisdictions, and preheminences, laws, statutes, officers, &c. * as any chase or forest within this realm had, &c. And all offences done within the same, should be punished as if the same had been done within any chase or forest within this realm. And the king did thereby covenant and grant, that the freeholders and copyholders aforesaid might fell and take their woods, groves, and coppices, at their will and pleasure without any view, &c. and to make their hedges and fences about their corn, &c. to keep out the deer, &c. And (for recompence to both freeholders and copyholders, &c.) that the third part of the fye rent of every freehold should be deducted, and the moiety of the fine of the heir of every copyholder should be also deducted, &c. which indenture and all the covenants therein being recited, it is enacted by authority of parliament accordingly. By which act and divers generall clauses referring to forests, the king intended to have it a forest. But hereby it plainly appeareth both by the kings said indenture, and by the judgement of the whole parliament, that the king could neither erect any chase or forest over any mans grounds without their consent and agreement. And yet king H. 8. did stand as much upon his prerogative as any king of England ever did.

* Nota.

But to join this new with some that is ancient. In rot. par. anno 18 E. 1. there is a notable record in these words :

Rogerus episcopus Coventr' et Lichf. queritur contra Rogerum Extraneum et socios suos justic' domini regis de foresta in com' Staff. Eo quod seis. in manus domini regis boscos ipsius episcopi de maneriis suis de Camock et Rugelegh, &c. Rogerus et alii justiciar' ven' et dicunt, quod in itinere suo presentatum fuit per viridar', forestar' et alios fideles domini regis, quod predicti bosci super dominum regem et ejus progenitor' per ipsum episcopum et predecessores suos purprestabantur. Et eo quod licet eis justiciariis in itineribus suis purpresturas factas infra metas forestæ domini regis in manus domini regis seisisse, ideo seisisse fecerunt, &c. Et episcopus bene concedit quod sunt infra metas forestæ: sed dicit quod rex Ric' per cartam suam dat' 4 die Decembris anno regni sui primo dedit Hugoni tunc episcopo Coventr' et Lich. predecessori suo et successoribus suis dicta duo maneria cum ecclesiis, hundred', et omnibus aliis libertatibus. Et per aliam cartam dat' 30 Nov. anno regni sui primo concessit dicto Hugoni quod omnia maneria sua, terræ et omnes homines sui et feod' ecclesiæ de Coventr' et Lichf. de Cestr' et Salop, et de Gnowshall et omnium ecclesiarum suarum, libera essent et quietæ de foresta, et de placitis forestæ, de vastis et assartis et regardis forestæ, cum multis aliis libertatibus in eisdem cartis recitatis, &c. Virtute quarum cartarum, ipse et omnes predecessores sui à tempore consecrationis earundem cartarum solebant fugare in dictis boscis, et voluntatem suam inde facere, &c. Et petit quod dominus rex, &c. Et predicti justic' dicunt quod dominus H. rex pater domini regis nunc fuit in seisisna dictorum maneriorum et boscorum. Et scrutatis voluit, et brevibus scaccarii invenitur primum breve regis H. anno regni sui 14 vic' Staff.

Petitio episcopi Covent. et Lich. contra justiciarios forestæ.

Purprestur'.

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Gnowshall.

Nota, in boscis deafforestatis per cartam licet fugare, et voluntatem inde facere; à fortiori, in boscis deafforest' virtute actus pari. de carta de foresta.

38 H. 6. fo. 10.
ac.

Adjourned into
parliament.

Deafforestation
per. Chart. nota.

• Nota, infra
metas forestæ, et
tamen extra fo-
restam.
Foresta de Can-
nock.

See hereafter
pag. 307.

1 E. 3. ca. 1.
stat. 2. Rot. parl.
1 R. 2. nu. 61.
5 R. 2. 84.

directi, et quod sciat, quod reddidit A. tunc episcopo Covent' et Lich. dicta maneria, &c. Item 2 alia brevia baronibus de scaccario directi quod computent vic' Staff. 30 s. 6 d. pro med' pro anno 14. Item comp. &c. 61 s. pro anno 10. pro dictis maneriis, &c. Et præd' justic' dicunt, quod patet per easdem cartas quod carta per quam episc. clam' esse quietus de foresta, &c. data fuit et facta ante cartam per quam dictus rex R. dedit episcopo manerium et boscos prædictos, per quod dicunt quod prædictus episcopus non potest clamare dictos boscos esse quietos, &c. per formam dictæ cartæ factæ ante donationem dictorum boscorum: ob quod datus est dies dicto episcopo, &c. in unum mensem ad parliamentum. &c. Postea ad parliamentum nunc, &c. venit predict' episc. in propria persona sua, et reddidit regi dictos boscos ut jus ipsius regis. Et idem dominus rex ex gratia sua concessit et dedit eisdem boscos prædicto episcopo per easdem metas, bundas et divisiones per quas ipse et prædecessores sui à tempore consecutionis cartæ prædictæ Richardi regis boscos illos tenuer', &c. Et quod habeant et teneant liberos ab omnimodis placitis forestæ, &c. * Et quod nec justiciar' forestæ seu forestar' viridar' et regardatores, seu alii ministri quicumq. se intromittant infra metas supradictas licet sint infra metas forestæ antiquas de Cannock. Et pro hac, &c. idem episcopus cognovit se teneri domino regi in mille libris sterling.

Observe well this record, and the parts of the same. And it is to be known, that where divers perambulations were made in the reign of H. 3. E. 1. and E. 2. that all these perambulations and others that should be made (albeit there be no charters thereof now extant) are established and made good, both by the statute of 1 E. 3. cap. 1. stat. 2. in print; and by an act of parliament in 1 R. 2. nu. 61. in the roll of parliament and not in print; and by another act of parliament 5 R. 2. nu. 84. not in print. For albeit it be to be presumed that charters have been made according to the perambulations; yet forasmuch as time wears out many things, if charters should now be required, many places should become forest againe, which now are in peace and deafforested.

The form of the perambulation of a forest is, *Perambulatio facta in com' Eborum de foresta de G. die anno regis, &c. apud E. coram A B. C D. justiciariis domini regis ad dictam perambulationem faciend' assignatis per sacramentum F G. M P. N S. &c. Qui dicunt super sacramentum suum, &c.* And so set down the metes and bounds of the forest, shewing what is within the forest, and what to be extra forestam secundum tenorem Magnæ Cartæ de foresta, eo quod afforestata fuerit post coronationem domini Henrici regis 2, &c. In cujus rei testimonium, &c.

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Nota, the charters be generall and short to this effect. *Rex omnibus ad quos presentes literæ pervenerint, salutem. Sciatis quod volumus et concedimus pro nobis et hæredibus nostris, quod perambulationes factæ coram A B. C D. ad hoc assignat' per præceptum nostrum de forestis nostris in com. Eborum de cætero teneantur et observentur per metas et bundas contentas in eisdem perambulationibus, quarum tenor de verbo in verbum sequitur in hunc modum.* And rehearse the whole perambulation.

Rot. parl. 22 E.
3. nu. 26.

A long complaint in parliament against foresters, for afforesting of mens purlieus, for undue triall, and for their extortions, too long here to be rehearsed, but worthy to be read, with a prayer that the great charter may be kept, and that all men may enjoy their purlieus according to the perambulations made in the reign of king E. 3. whereunto the king answered, [The king would the great charter

charter to be kept: and that such as will complaine in the right of their purlieu, may have writs out of the chancery.] See rot. parl. 50 E. 3. nu. 80. and 1 R. 2. nu. 60.

Purlieu containeth such grounds which H. 2. R. 1. or king John added to their ancient forests over other mens grounds, and which were disafforested by force of the statute of *carta de foresta*, cap. 1. and cap. 3. and the perambulations and grants thereupon. And is derived from a French adjective and a French noun, viz. *pur* which signifieth clear, entire, and exempt, and *lieu*, that is, a place entire, clear, or exempt from the forest. And both of these derived from the Latin adjective and noun, viz. *purus locus*; and in this sence the civillians called that *purum locum qui sepulchrorum religioni non est obstrictus*. And the perambulation whereby the purlieu is deafforested is called in French *pourallee*, i. *perambulatio*, so as the purlieu and *pourallee* are two distinct things, and * purlieu is the right name of the place deafforested.

Purlieu what it is, and whereof derived.

33 E. 1. stat. 5.

By this it appeareth that chases that never were any forests cannot have any purlieu, and consequently the case in 16 Eliz. Dier 326, 327. is mistaken, for the chase of Whaddon never was any forest. Whereby it may be observed, how necessary the true derivation of words is, according to the example of Littleton, as in divers parts of the first part of the Institutes appears.

By this deafforestation the owners of the grounds within the purlieu may at their will and pleasure fell, cut down, eradicate, and stub up all the timber, woods, and underwoods, convert their pastures, meadows and other grounds to arable, inclose them in with any kind of inclosure, build and erect new edifices upon the same or any part thereof, and to dispose and use the same after the disafforestation, as they never had been afforested.

And where some have conceived, that *quoad* to the owners of the soyle the purlieu is disafforested, but not as to others, but as to them it should remaine a forest, by reason of these words in the first chapter, *ad damnum illius cujus boscus ille fuerit*, those words were added to shew the unlawfulness of the afforestation, because it was *ad damnum*, &c. as hath been proved before. And then these men must make a diversity between a deafforestation by force of the first chapter of afforestations in the reign of H. 2. and deafforestations made by force of the third chapter of afforestations, in the reigns of R. 1. and king John, for there the clause of *ad damnum* is omitted, and therefore those afforestations are utterly made void against all men.

The statute of *carta de foresta* hath been above 30 times, and lastly in 4 H. 5. confirmed and enacted and commanded to be put in execution, and we finde no authority in law that we remember against our opinion herein: therefore we proceed and do hold, that in any purlieu a man may as lawfully hunt to all intents and purposes within the purlieu within his own grounds, as any other owner may do in his grounds that never were afforested at all.

Some have endeavoured to limit the purlieu man to hunt by custome or prescription, but all the said statutes were made within time of memory against which they cannot prescribe. Some endeavour to maintain it to be by forest law, but it is questioned whether there be any such forest law, in that point, for *quod non legitur non creditur*: but to conclude this point, no forest law can stand against laws enacted by authority of parliament. Others think,

See the first part of the Institutes sect. 170.

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that the said statute of 33 E. 1. stat. 5. or some other statute in the reign of E. 1. E. 2. or E. 3. doe in some sort restrain their hunting, which is utterly denied, that they are restrained by any such in any of the said kings times; but if any such statutes were, they are, being contrary to the statute of *carta de foresta*, repealed by the statute of 42 E. 3. cap. 1. And all the statutes or assises, either that of Woodstock in the reign of H. 2. or any other in his time, or in the reigns of R. 1. or king John are all abrogated by the statute of *carta de foresta* made in 9 H. 3. cap. 1. and 3. as to the deafforestations, &c. And the statute or assise of Woodstock doth extend to deafforestations before, and not after, the words thereof being, *Nullus faciat aliquam installationem inter foresta' et boscos, &c. p. ipsum vel progenitores suos deafforestatos*. And for the same reason the purlieu man may keep his dogs within the purlieu unexpeditated, and seeing the wilde beasts doe belong to the purlieu man *ratione soli*, so long as they remain in his grounds, he may kill them, for the property *ratione soli* is in him; so as hereby concerning purlieus, and by the resolution of the judges concerning chases, it appeareth, that the makers of the statute of 22 E. 4. mistook the law in both of them, viz. concerning chases and purlieus, but the statute being in the affirmative worketh no prejudice to any. And if he chase them with greyhounds, and the beasts of the forest do flee towards the forest for their safety, if the owner pursue them to the bounds of the forest, and then call back his dogs, and do his endeavour to call them again from the pursuit, although the dogs follow the chase in the forest, and kill the kings deer there, this is no offence, so as the owner enter not into the forest, nor meddle with the deer so killed. But if the dogs fasten upon the deer, before he recover the forest, and the deer drag the dogs into the forest, there the purlieu man may follow his dogs and take the deer.

Rot. par. 51 E. 3.
nu. 39.

22 E. 4. cap. 7.

43 E. 3. 8. the
case of Arundels
case.

38 E. 3. f. 10.
b. simile. 12 H.
S. fo. 10. a.

20 E. 3. Rot.
pat. 1 pars pro
deafforest' fo-
restæ de Kem-
sam.

Vide Rot. parl.
12 E. 3. nu. 26,
27. a complaint
of the purlieu
men, and the
kings anwer.

The oath of the
ranger.

In some letters patents of the perambulations or purallies of forests made by king E. 3. to any county where lands are disaforested, which we have seen, there is reserved to the king forty days for his wild beasts within the purlieus to return again, and for his rangers within that time to rechase them into the forest, which is taken to be a convenient time for that purpose. And albeit these purlieus be absolutely disaforested, and have no liberty of forest there, yet for conveniency it hath been permitted that the rangers of the forest should as often as the wild beasts of the forest range into the purlieu, with his hound rechase the same: and these rangers have used to present unlawfull hunting and hunters of the kings deer within the purlieu, as in the night, or at unseasonable deer, or killing of the kings deer in purlieus by no purlieu men, but unlawfull hunters or the like: such as should not take advantage of their own wrong both to the king and the purlieu men, and that they are known to be deer belonging to the kings forest, because there are no other within the purlieu; wherein the best rule we can (for avoiding of tediousness) give the reader, is to follow the judicial records and presidents of the eires holden before grave and learned justices in eire, as those of Pickering, Lancaster, and the like, concerning presentment of matters done within the purlieus of the rangers whereunto we do rather incline, when we consider the oath which the rangers have anciently taken and continually in these words. You shall truly execute the office of a ranger in the purlieu

purlieu of P. upon the border of the kings forest of P. You shal rechafe with your hound and drive the wild beasts of the forest, as often as they shall range out of the same forest into the purlieus: you shall truly present all unlawfull hunting and hunters of wild beasts of venery and chafe * as well within the purlieus, as the forest, and those and all other offences you shall present at the kings next court of attachments, or swanimote which shall first happen: So help you God. And it is to be noted, that in such forests, as have no purlieus, there is no ranger.

It was petitioned in parliament, that no man be impeached for hunting within the purlieu or without the bound of the forest, and that there be levied no assart rents.

This petition consisting on two parts. 1. Concerning hunting in the purlieu, or out of the bounds of the forest, the second concerning assart rents.

To the first: the king answereth, That the charter of the forest shall be kept, which is a yeelding to the petition for that part, for by that charter the bounds of the forests are established, and no purlieu excepted.

As to the second: he answered, That the demand was unreasonable.

The commons made petition that men might enjoy their purlieus freely, and that perambulations might be made as was in the time of king H. 2.

Whereunto the king answered, The king thinketh the perambulations are duly made, and who will may complain, and shall be heard.

The abbot of Whitby had a forest called Whitby forest (by the grant of H. 2. and king John with all officers incident thereunto) adjoining to the forest of the earl of Lancaster called Pickering forest, and the game of the forest of Pickering ranged into the forest of Whitby, *Idem abbas habens exploratores suos statim ponere fecit retia, et alia ingenia sua juxta Hakenessæ et alibi distan' à foresta ista per tractum unius arcus et aliquando plus, et postea cum canibus excitare fecit feras, ita quod p' excitationem illam plures ferarum illarum in redoundo et fugiendo versus forestam de Pickering decidunt in retibus et ingeniis prædictis et capiuntur, et annuatim capere facit in destructionem ferarum forestæ prædictæ de Pickering ad damnum domini, et nescitur quo warranto; per quod præceptum fuit viccomiti, quod venire faciat prædictum abbatem.* Whereupon the abbot came and pleaded his title to the forest, *ut supra.* *Et quod omnes abbates loci prædicti' virtute concessi', Sc. prædictos cervos et cervas in locis prædictis ubi retia et ingenia prædicta posita fuerunt, et quæ fuerunt infra limites forestæ suæ de Whitby, et quoad quod idem habens exploratores super feras domini, Sc. retia et ingenia poni fecit prope forestam de Pickering, Sc. per quod in redoundo plures feræ capt' fuerunt, quod omnino est contra assis' forestæ, idem abbas dicit, quod ad hoc respondere non debet, Sc. Et quia manifeste liquet curiæ, Sc. quod feræ de foresta ad forestam aliter committi non possunt, nisi ipsius in cujus foresta inveniuntur, eo quod signo aliquo non consistunt signatæ nec diversas aliquas cognoscunt. Ideo consideratum est, quod idem abbas eat sine die.*

By which record and many others it doth appear, that when the kings game of the forest do range out of the forest (and purlieu, if

any

* This proveth that the purlieus are no part of the forest; but distinct things. Rot. par. 51 E. 3. nu. 39. 50 E. 3. nu. 80. 1 R. 2. nu. 60.

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2 R. 2. nu. 48.

In itin' Pick. 8 E. 3. rot. 42.

Nota, for harts, hyndes.

The kings deer are not branded or signed with any mark, that they may be known whole they are out of the forest.

7 H. 6. fo. 36.

any be) they belong not to the king, but are at their naturall liberty, et occupanti conceduntur.

And this is the reason that some have said, that where the king was seised of the forest of M. in fee, and that a custome was pleaded time out of mind, that if any beast of the forest should range into the free chase of the abbot *de Dien* adjoining to the said forest, that the foresters of the said forest, &c. might enter into the said chase, and with little dogs rechaſe the kings beaſts of his forest into the forest again, that this custome is against law, for that (besides the reason yeelded in the abbot of Whitbies case) immediately when they are out of the bounds of the forest, the property is out of the king, for the being within the forest maketh the property in that case. But the book of 7 H. 6. is left at large whether the prescription be good or no, and yet aid was thereupon granted: and Dier 16 Eliz. 326, 327. agreeth therewith. But in the abbot of Whitbies case there is no prescription for the king but against him.

Lib. 5. fo. 104.
h. Roltons case.

16 Eliz. Dier
326, 327.

Vide itin' Pick.
8 E. 3. The
prior of Ellor-
tons case.
Rot. 35. Et ibid.
the prior of
Maltons case.
Rot.

It is to be observed, that by the law of the forest when any claim is made by any ancient charter of any franchise, liberty, or immunity, or discharge within the forest by ancient and obscure tearms and words, the entry is (for example) *Et quia non liquet curia manifeste cujusmodi libertates prædictæ vocabulorum idem prior habere intendit, dictum est priori quod prædictæ vocabula declarat, &c.* And after he that maketh the claim, declareth, that is, explaineth the same, and pleadeth further, *Quod ipse et prædecessores sui semper à confessione cartæ prædictæ sine interruptione usi sunt et gaviſi sunt libertatibus prædictis* (according to his declaration) *et hoc paratus est verificare per ministros istius forestæ, &c.* *Ideo inquiratur rei veritas per eosdem, &c.* Or the entry is after the declaration made, *Et quia videtur justiciariis quod expediens est et necesse, quod curia certioretur super possessionem ipsius prioris in hac parte, inquiratur inde veritas per ministros ejusdem forestæ,* and thereupon the foresters, verderers, and regarders are sworn, and so much as they find have been continually used, is allowed, and so much as hath not been used is disallowed; so as use and continuall possessions are the best expositors of ancient and obscure words.

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Regula.
Hil. 6 E. 3. rot.
179. Coram rege
diurnitas et
longæva possessio
virtute generalium
verborum in
antiquis cartis
sufficiunt.

For example: *Quietum esse de misericordia forestæ,* is to be quit of all americiaments in the which he in any fort might fall within the forest. And here *misericordia* is taken as well for a fine, as for an americiament.

Quietum esse de vasto, if he did waſt in his woods within the forest he should not be americed, nor for any other waſt.

Quietum esse de rewardo, that is, to be quit of americiament whereſoever in any mariſh within the forest, if the usage hath been accordingly.

Quiet' de omnibus geldis, i. quiet' esse de omni putura forestar', et de omni præstatione, ad collectionem garbarum, agnorum et lanæ ad opus forestar' ejusdem forestæ.

De wolgeldis, i. quiet' esse de omni collectione in foresta præd' ad opus quorumcumque ministrorum forest' præd' ratione boſcorum.

De horngeldis, quietum esse de omni collect' in foresta de bestis cornutis asses'.

De fotegeldis, i. quiet' esse de finibus et americiamentis pro canibus infra forestam inexpediatas, if the usage hath been accordingly, other-
wife

8 E. 3. itin'
Pick. Lambstons
case putura.
Geldum in Do-
mesday sæpe pro
Scot Anglice.
23 H. 3. gard.
248.

wife not: for ancient charters by the law of the forest must be adjudged according to the continued usage, and not *ex vi termini*.

De bucfall, i. *ubi homines convenire tenentur, ibidem convenire ad stabilem faciend' circa feras, et ad eisdem congregand', quietum esse de hoc servicio, quando dominus chaceaverit.*

De triftis, anciently written *traiftis*, and is derived of *traist*, i. trust, and signifieth, *ubi alii homines manentes in eadem foresta tempore quo dominus chaceaverit in eadem venire debent, et confisi sunt, Anglice are trusted, ad tenend' leporarios certis locis assignatis pro feris ibidem expectand' et capiend', quietum esse de hoc servicio.*

De fledwite, of *fled*, a Saxon word, a fugitive, one that fleeth, an outlaw, and *wite* a Saxon word also, a freedom.

*De careio, cum aliqua carra, seu careta cartata transeuntes per forestam, et similiter * summagia, seu somagia equorum consuet' sunt solvere secundum magis vel minus ministris ibidem pro chemino ibidem habend'.* Quietum esse de hujusmodi solutionibus. *Summagium* or *sommagium* cometh of the French word *sommier* or *summier*, which signifieth a horse carrying any load. *Chimagium*, a toll for way-faring men through a forest, derived from the French word *chemin* for a way.

De scoto, seu shoto, quando homines faciunt collectum inter se ad ali-quod obtinendum seu evitandum. Quietum esse de tali collecto. De tal-lagio, idem ut de scoto.

Extra regardum forestæ. If any man within a forest doe hold his woods or lands by grant or prescription to be *extra regardum forestæ*, the woods or lands are deafforested.

Exilium, i. cum homines utlegantur in itinere istius forestæ pro trans-gressione viridis seu venationis.

De escapio, secundum assisam forestæ si averia alicujus in landis veti-tis, vel tempore vetito in eadem inveniantur, prima vice pro quolibet pede averiorum prædict' ipsi quorum fuerint amercentur ad unum denarium; et si secundo ibidem inveniantur, similiter pro quolibet pede unum de-narium; et si tertio ibidem inveniantur, averia illa remaneant domino fo-risfacta, de quibus amercentur et forisfacturis per hujusmodi vocabu-lum, de escapio, extiter' quieti.

De pannagio, that is, to be quit to pay any thing for pawnage.

Affertum, *assert*, is so called of the effect (as some hold) and is derived (say they) of *ad* and *sero*, *affero*, because of wood grounds, marshes, or wast grounds they are converted to be sown with corn, and therefore in the Register, and F. N. B. it is written *assertare*, with an E, and so it is in Carta de Foresta cap. 4. Bracton hereof saith, *Illud quod fuit aliquando boscus, et locus vastæ solitudinis et communia et jam inde efficitur assertum, vel redactum est in culturam.* And herewith agreeth Fleta, *Illud olim fuit foresta et boscus, &c. et jam efficitur assertum, et redactum est in culturam, et idem dici poterit de mariscis et aliis vastitatibus in culturam redactis.*

Others fetch it otherwise, but we hold, that it is derived of the French word *assarter*, to grub up, or cleer a ground of wood, &c. and this appeareth by Domesday. *Herefordsh. Merchelay in eodem manerio sunt 58 acrae terræ pro velt' de sylva*, written over the same *essars, de essari' sylvæ exeunt 17 s. et 4d.* E being turned into A.

Radulphus episcopus Karleol petit versus priorem ecclesiæ Karleol decimas duarum placearum terræ de nova assartarum in foresta de Inglewood, quarum una vocat' Lynthwoyrt et alia Kynthwoyrt, quæ sunt infra limites parochiæ suæ de Aspaterick. Et super hoc similiter venit Mr. Hen. de Burton

* Carta de foresta, cap. 14.

§ E. 3. itin' Pick. fo. 149.

F. N. B. 230.

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Regist. 157.
Fleta, li. 2. c. 35.
F. N. B. 226. 1.
Cart de forest.
cap. 4.
Bract. li. 4. fo. 226.
Fleta li. 4. ca. 22. Lib. 2. cap. 25. Vide Lucubr. Ockam 20. b.
Rot. par. 51 E. 3. nu. 39.

Rot. plac. parl. de anno 18 E. 1. rot. 8. Inter episcopum Karleol' et priorem ejusdem de decimis assartorum.

Burton persona ecclesie de Thorisby, et easdem decimas clamat ut pertinet ad ecclesiam suam. Et prior venit et dicit quod Henr. rex vetus concessit dicto Deo et ecclesie sue beate Mariæ Karleol' omnes decimas de omnibus terris quas in culturam redigerent infra forestam, et inde eos feoffavit per quoddam cornu eburneum quod dedit ecclesie sue prædictæ, &c. Et Willielmus Inge qui sequitur pro rege dicit quod decimæ prædictæ pertinet ad regem et non ad alium, quia sunt infra bundas forestæ de Inglewood. Et quod rex in foresta sua prædictæ potest villas ædificare, ecclesias construere, terras assartare, et ecclesias illas cum decimis terrarum illarum pro voluntate sua cuicumque voluerit conferre, &c. Et quia dominus rex super præmissis vult certiorari, ut unicuique tribuatur quod suum est, assignetur, &c. et certificent regem ad proxim' parlamentum, &c.

• Glauvil. li. 9. cap. 11, 12.
• Fleta, lib. 2. cap. 35. 18 E. 2. de visu franc' pleg. Dier 7 El. 240.

• Cart. de forest. cap. 12.

• § 3 E. 3. Itin' Pick. fo. 17.

• Cart. de forest. cap. 7. Fleta. li. 2. cap. 35. cap. Itin' W. 1. cap. 4. de pastor' pauperum.

• Potura.

Vid. 45 E. 3. 15. & F. N. B. 209.

b. De potura pauperum, a drinking or sustenance for the poor. 12 H. 4. 24. Hil. 5 E. 3. Coram rege ro. 30. Eborum. § 3 E. 3. Itin' Pick. fo. 150. b. Potura

• § 3 E. 3. Itin' Pick. prior de Ellortons case.

Quis de geldis is to be quit de potura. § 25 E. 3. cap. 7. stat. cap. Itineris fillenale, of the Saxon word fillen, or fullen, and ale, i. an ale feast, wherent they were filled with ale. Bracton, lib. 3. fo. 117. in reciting of Capitula Itineris, calleth it *fillenale*, i. *filldale*, an extortion colore *comptationis*. Vide Fleta, lib. 1. ca. 20. Carta de foresta, cap. 7.

• Putura in chacea de Bowland, i. consuetudo clamata per forestarios, et aliquando per balivos hundredorum, recipere victualia, tam pro seipsis, hominibus, equis et canibus de tenentibus et inhabitantibus infra perambulationem forestæ seu hundredi quando eo pervenerint, nihil inde solvend'. Where the statute of Carta de Foresta speakheth. Nullus forestarius seu balivus de cætero faciat scotales, &c. • by the statute of 25 E. 3. it is enacted, that no forester or keeper of forest or chase, nor any other minister shall make or gather sustenance, nor other gathering of victuals, nor other thing by colour of their office against any mans will within their bailiwick or without, but that which is due of old right, that is, those fees, which time out of mind they ought to have within that forest, and as shall appear to be due by the oath of 12 regarders.

• Purpresture. For this and the derivation, see in the second part of the Institutes, Statutum de Bigamis, cap. 4. and the exposition upon the same, and Carta de Foresta, cap. 4.

• Coopertura is a thicket or covert of wood.

• Maeremium is derived of the old Normandy word *marisme* for timber.

• Scotales, scotalæ, derived of two English words *scot* and *ale*, as much to say as a tribute or contribution of drinking for the ministers of the forest when they came to the house of any, whereunto others are contributory within the perambulation of the forest, which then was called • *potura*, a drinking. And after they claimed the same for all victuals for themselves their servants, horses, and dogs, which was called *putura*; and this doth notably appear by a record in 5 E. 3. in these words.

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• § 3 E. 3. Itin' Pick. Sir John de Melfaes case.

Fleta, li. 2. c. 47.

Trin. 2 E. 3. coram rege rot. 12.

Chablicia, or *cablicia*, browse wood, derived of the French word *chablis*, as *boys chablis*, either rent down from trees by the wind, or branches of trees cut for the browse of deer.

Parkebote, to be quit of enclosing of a park or any part thereof, derived of two English words, *parke*, and *bote*.

Brigbote, or *bruckbote*, to be quit of making of bridges.

Pannagium, or *panagium*, is derived from the French word *pannage*, i. *pastura pecorum in nemoribus de glandibus et aliis fructibus arborum*.

Expallare canes, i. *expeditare canes*. *Expeditatio* is derived of *ex* et

et pede, because the dog is lamed in the foot, *inexpeditatus* is unlamed.

Canis in this act is taken for *mastivus* by these words, *talis expeditatio facta p' assiam communiter usitatam*, which hath reference to the assise of the forest, *tempore H. 2. art. 6.* which speaketh only *de expeditatione mastivorum, et assis' et consuetud' forestæ*, 6 E. 1. cap. 9. speaketh only *de mastivo*.

Carta de foresta cap. 6.

Ortelles, this word is taken from the French word *orteiles*, in English, claws.

Pellota, of the French word *pelote*, and they from *pila*: in this act it is taken for the ball of the foot, *sine pelota*, without the ball of the foot. And therefore by the expresse words of this act the ball of the foot of the mastiff is not to be cut off, but the three claws of the forefoot to the skin. This extendeth only to mastiffs, and to no other dogs, for *ubi non est lex, ibi non est transgressio*; and necessary it is, that such as dwell in forests where there are coverts, that they should keep other dogs unexpeditated, and the mastiff expeditated for the defence of their house, or for giving of warning of theeves and robbers, &c. *Molossus* (the old British word) is a mafe-theef, because he doth mafe or amafe a theef, &c.

Carta de foresta ubi supra.

Managium et mesagium, is commonly in ancient records taken for *mesuagium*.

M. S. Priorat. Coveat' fo. 14. b.

The words of this act are *De expeditatione canum existentium in foresta*, and therefore in purlieus or places deafforested, a man may keep a mastiff without being expeditated. And that I may say it once for all, my intention is chiefly to explain the obscure words of this statute of Carta de Foresta, and other acts, and leave the reader to the text itself being plain: for, *satius est petere fontes, quam sectari rivulos*.

Who may keep greyhounds or other dogs to hunt, or ingens, &c. either in a forest, or out of the forest, appeareth by certain statutes.

13 R. 2. cap. 12.
19 H. 7. cap. 11.
1 Jac. cap. 27.
3 Jac. cap. 13.
Assisa forestæ.

But if greyhounds be founds running *ad nocumentum*, the forester ought to retain them, and present them in the presence of the verderers, and send them to the king, or to the chief justice of the forest.

We find not that any chapter or article of Carta de Foresta, doth extend to chases or parks, but only the 11 chapter. *Quicumque archiepiscopus, episcopus, comes vel baro ad mandatum nostrum transferit per forestam nostram, &c.* which chapter doth not only extend to the forests of the king, but to his chases and parks also, for so was the law before the making of this act, which is but in affirmance of the common law of the forest before this act.

1. In respect of the persons, for every lord of parliament, be he spirituall or temporall, had this priviledge besides those that be named in this chapter, as such abbots and priors, as were lords of parliament, and so of dukes, marquesses, and viscounts, which were erected and created, afterwards being lords of parliament have the same priviledge also.

2. By reason of the kind of commandment *ad mandatum nostrum*, saith the statute, which words have reference to the writ of parliament directed to every lord of parliament. *Ideo vobis mandamus, &c.* and is a legall commandment by writ directed severally to each and every lord of parliament to appear at the kings court of parliament,

8 E. 3. Itin' Pick. fo. 134.
A forester or any other officer of the forest cannot give a nobleman a course in the forest but it is presentable.

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ment, &c. to treat *de arduis et urgentibus negotiis regni, statum et defensionem regni et ecclesie Anglicane concernentibus*, and to recreate themselves *veniendo*, and after *redeundo*, they may passing by any of the kings forests, chases, or parks, hunt and kill one or two of the kings deer. The lords of parliament may doe it at other times *ex gratia*, but by law *eundo et redeundo* to and from the parliament.

3. Here is implied that the lord of parliament may in the absence of the forester or keeper after the blowing of the horn, kill one or two of the kings deer *propriis suis canibus, aut arcu suo proprio*.

Linwood de Venatore Clerico, &c.
 Cart. de Foresta cap. 11.
 Assisa forestæ.
 6 E. 1.
 13 R. 2. cap. 13.
 19 H. 7. cap. 11.
 3 Jac. ca. 27.
Muta canum is derived from the French word *muit de cheines*.
 See 25 H. 8. cap. 29, &c.

4. Here is a secret conclusion of law, that albeit spirituall persons are prohibited by the cannon law to hunt, yet by the common law of the land they may for their recreation, to make them fitter for the performance of their duty and office, use the recreation of hunting, as here it directly appeareth: and in *assisa forestæ* 6 E. 6. it appeareth that the abbot of Peterborow had a right of hunting in the forest of Rockingham. And this appeareth in other statutes, viz. 13 R. 2. 19 H. 7. 1 Jac. And at this day, and time out of mind, the king hath had after the decease of every archbishop and bishop (*inter alia mutam suam canam, &c.*) his kennell of hounds, or a composition for the same, which and other things are in the exchequer called *multa*.

5. The last conclusion is, that all cannons against the laws or customes of the realm are void and of none effect.

Of the Drifts of the Forests, *Agitatio Animalium in Foresta.*

The drifts of the forests are said to be when all the cattle as well of commoners as of strangers are driven by the officers of the forest to some certain pound or place inclosed, and the end hereof is threefold, viz. First, to see whether those that ought to common doe common with such kind of cattle as by prescription or grant they ought. Secondly, if they common with such cattle as they ought, whether they doe surcharge or no. Thirdly if the cattle of any stranger be there, which ought not to common at all.

32 H. 8. cap. 13.

By the statute of 32 H. 8. it is enacted, That all forests, chases, commons, moors, heaths, and waste grounds within the realm of England and Wales, and the marches of the same, and every of them shall be driven at the feast of St. Michael the Archangell next comming or within 15. days then next after, and so yeerly to be driven by the lords, owners, and possessors of the said forests or chases, or by the officers of the same, and by the constables, headboroughs, bailiffs, bursholders, and tithing men, within whose offices, precincts, and limits the commons, moors, marishes, heaths, and wast grounds being out of the forests and chases be or lie upon pain of xl. s. to be forfeited to our said sovereign lord the king by every of the said officers, bailiffs, constables, headboroughs, bursholders and tithing men, as often, and at every time as the said drift shall

shall be omitted, or left undone, or not effectually done within 15. days after the said feast of St. Michael the Archangel, as is aforesaid. And it shall be also lawfull to the lords, owners and possessioners of the said forests and chases by their officers of the same, and by the constables, bailifs, headboroughs, bursholders and tithing-men, and every of them within the limits of their offices to make like drift of the said forests, chases, commons, moors, marishes, heaths, and wast grounds at any other season and time of the yeare whensoever, and as often as they shall think meet and convenient.

Out of this act of parliament, as to the drift of the forest or chase, these five conclusions are to be observed. 1. By what persons this drift is to be made, and therein if the forest be in the kings hands it must be made by all the kings officers of attendance in the forest, and by four men and the reve of every town within the forest, who to that purpose are included under the name of officers. And if they be in a subjects hands, then either by the owners or possessors of the said forests, or chases, or by such officers, as is before said. 2. At what certain time such drift in forests or chases is to be made? It appeareth by this act that it ought to be effectually done yeerly within 15. days after the feast of St. Michael the Archangel. 3. The said drift may be made at other season or time of the year whensoever, and as often as they shall think meet and convenient. 4. That stoned horses under 15 handfull high are prohibited to common in any forest. See the statute. 5. For commons, &c. out of any forest or chase. In these words are included purlieus and other grounds wherein men have common, and these are to be driven by the owners and possessioners of the same, and by the constables, headboroughs, bailifs, bursholders, and tithingmen, within whose offices, precincts, and limits the said commons, &c. being out of any forest, or chase doe lie at such times as are aforesaid.

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The statute speaketh *de aeriis accipitrum, esperorum, falconum, aquilarum, et hieronum*, which is but in affirmance of the common law, for it extendeth to ayeries of other hawks then be specially named, as to ayeries *merleonorum in boscis suis de Levesham*.

Ayeries of hawks 8 E. 3. Itin. Pick. Sir John de Melfaes case. 29 H. 8. tit. officers, br. 47.

A forester by patent for his life is made justice in eire of the same forest *hac vice*, the forestership is become void, for these offices be incompatible, because the forester is under the correction of the justice in eire, and he cannot judge himself: the same law is of a warden of a forest and of a justice in eir of the same forest: though the offices of the steward and justice of the forest be both judiciable, yet whether he be steward of the swanimote, or of the eire he is under the correction of the justice in eire, and therefore incompatible.

We have been requested to set down what persons and what officers either that then were, or which have been since the last eire, and how many sorts of officers, and what number doe belong to a forest, which we cannot better resolve and satisfie, then by the records of the eires of forests, and specially by the writ of summonns of those eires, which we have thought good to set down *verbatim*, not only

only for answer to the said questions, but for divers other observations as we find it in the said eire of Pickering with the exact and particular return of the same.

Vic' Eborum.
The persons that ought to appear before the justices in eire of the forest, &c.
Forestr Hen. com. Lanc'.

Under these words are included the constable of the castle, the warden, the ranger, the agisters, the steward, the howbearer.

Four great learned men justices in eire of the forest.

See Cart de forest cap. 2.
Forestar' Viridar'.

To what end the officers are summoned.

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Regardatorus.

Notes, the punctuall and direct answer to all the points of the writ.

*Edwardus Dei gratia rex Angliæ, dominus Hiberniæ et dux Aquitanie vic' Eborum salutem. Summon' per bonos summonitores archiepiscopos, episcopos, abbates, priores, comites, barones, milites, et omnes libere tenentes, qui terras seu tenementa habent infra metas forestæ dilecti consanguinei et fidelis nostri Henrici com' Lanc' de Pick' in com' prædict', et de qualibet vil' ejusdem com' infra metas ejusdem forestæ existent' quatuor homines et præpositum et forestar' villarum, et * omnes alios, qui coram justiciari' ad placita forestæ venire solent et debent, quod sint apud Pickering die Lunæ prox' post fest' Sancti Michaelis prox' futur' coram dilectis et fidelibus nostris * Ricardo de Willoughby, Jo. de Shardehowe, Roberto de Hungerford, et Johanne de Hambury, tribus vel duobus eorum quos ad requisitionem dilecti consanguinei nostri constituimus justic' ad itinerandum hac vice ad placita forestæ ipsius comitis in com' prædict' à tempore quo Edmundus nuper com' Lanc' pater præd' Henrici, cujus hæres ipse est, placita forestæ in eadem foresta virtute * concessions sibi per dominum E. nuper regem Angliæ avam nostrum inde facti ultimum tenuit, auditur' et factur' præceptum nostrum de hiis quæ ad placita præd' pertin'. Fac' etiam venire coram justic' prædictis omnes forestar', viridar' et omnes illos qui fuer' forestar' et viridar' forest' prædict' in com' prædict' post ultima placita prædict' cum † omnibus attachiamentis suis tam de viridi quam venatione quæ post ult' placita forestæ sunt emersa et nondum terminat' (viz.) tam de illis attachiamentis quæ manent infra metas forestæ, quam de illis quæ manent extra forestæ: fac' etiam venire coram eisdem justiciariis tribus vel duobus eorum regardatores ipsius comitis in balliva tua, ita quod habeant ibi omnia regarda sua sigillis suis signat' et omnes agistatores præfat' com' in eadem balliva sua cum omnibus attachiamentis. Et habeas ibi sum' et hoc breves. T. me ipso apud Westm' 17 die Augusti, anno regni nostri 8.*

Ad quod breve Petrus de Saltmarsh vic' Eborum retornavit quod fecit plenum retornum istius brevis Hugoni de Nevil ballivo libertatis H. comit' Lanc' honor' de Pickering, cui executio istius brevis restat faciend'; qui sibi respond' quod summon' fecit archiepiscopos, episcopos, abbates, priores, comites, barones, milites, et omnes libere tenen' qui terras et tenementa habent infra met' foresti', et de qualibet vill' ejusdem com' infra metas ejusdem foresti' existent' quatuor homines et præposit' et forestar' villar' et omnes alios qui coram justiciari' ad placita venire solent et debent, quod sint apud Pickering ad diem in brevi prædict' content' coram præfat' justiciari' tribus vel duobus eorum, auditur' et factur' præcept' domini regis de hiis quæ ad prædict' placita pertinent'. Et quod venire fecit forestar', viridar' et omnes illos qui fuer' forestar', et viridar' forest' præd' in balliva sua post ult' placita præd' cum omnibus attachiamentis præd' tam de viridi quam de venatione quæ post ult' placita forestæ sunt emersa et nondum terminat'. Et etiam quod venire fac' coram eisdem justic' tribus vel duobus eorum regardatores ipsius comitis in balliva sua, ita quod haberent ibi omnia regarda sua sigillis suis signat' et omnes agistatores præfat' comitis in eadem balliva sua cum omnibus agistamentis prout patet in schedula retorn' suo prædicto attachiata.

Forestar

<p>Forestar' de feodo in le westward istius forestæ de Pickering, viz.</p>	}	Willielmus de Percehay miles.
		• Petronilla de Kynthorpe, et po. lo. suo Edmundum de Hastings ad omnia faciend' quæ forestar' incumbunt durante itinere isto, et fecit sacramentum.
<p>Forestar' custod' forestæ in le eastward, viz.</p>	}	Rogerus de Leicester.
		Hugo de Yeland, Willielmus le Parker.

• Nota, a woman that is a forester in fee cannot execute the office herself, but she may make a deputy during the time, and her deputy shall be sworn.

&c. By Carta de foresta cap. 7. Tot forestarii ponantur ad forestas custodiend' quot ad illas custodiend' rationabiliter viderint sufficere.

• Viridar' forestæ de Pickering, viz. { Robertus Thurnese.
Rogerus Browne.
Robertus Playce.
Jo. de Kilwardbye.

• Viridarii 4.

<p>Regardatores forestæ de Pickering.</p>	}	Willielmus de Everly.	Rogerus de Alveston.
		Rogerus le Longe.	Johannes filius Gasfridi.
		Johannes Boye.	Rogerus de Stapleton.
		Johannes filius Alani.	Rogerus Strutcocke.
		Galfridus de Kinthorp.	Radulphus de Colloughton.
<p>Thomas Thurnese. Hugo de Nevill.</p>	}	Johannes de la Chemnie.	

Regardator' 13. By the statute de Carta de foresta cap. 7. there are to be 12 at the least, and, as here it appeareth, there may be more.

<p>Agistatores in le westward istius forestæ</p>	}	Johannes Dringe.	}	[312]
		Richardus Ruffill.		Agistatores 4.
<p>Agistatores in le eastward istius forestæ</p>	}	Willielmus de Roston.	}	
		Willielmus Ruffell.		

Nomina forestar' nunc istius forestæ, et eorum qui fuerunt forestar' istius forestæ, et eorum qui fuerunt viridar' istius forestæ. Nomina forest' et viridar' qui fuerunt.

Alanus de Newton } Capital' forestar' Willielmi de Percehay unius
Johannes de Wardesden. } forestar' de feodo forestæ de Pick. in le westward ibidem.

Henry de Ripley } Capital' forestar' Petronille de Kinthorp alterius
Thomas de Dalby } forestar' de feodo forestæ de Pickering.

David de Neuton } Capit' forestar' Hugon' de Yeland for' custodis fo-
Thomas de Rippely } restæ in le eastward.

Nomina subforestariorum forestæ prædictæ.

Johannes de Harley.	Johannes Manmewe.	Forestar' Radulphi	}	Subforestarii. 8.
Ricardus de Aleinostes.	Johannes Scot.	de Hastings cu-		
Willielmus Gower.	Willielmus Courtman.	stod' forestæ præ-		
Ricardus de Helmestry.		dictæ nunc.		

Nomina subforestar' qui fuer' in foresta ista post ultimum iter, &c.:

Galfridus de Harwly.	Johannes Rouceby.	Adamus fil' Willielmi.
Robertus de Wigan.	Rogerus fil' Nich.	Johannes de Nevil.
Petrus Lilly.	Alanus fil' Radi.	Thomas de Newton.

Bernardus de Bergh, qui obiit, fuit viridar' in foresta ista, et Alexander de Bergh filius ejus et heres venit et reddidit rotulos suos tam
IV. INST. A a d:

de viridi quam de venatione tangen' forestam istam de tempore prædicto.

The law of the forest is, that if a verderor die, his heir is to bring in the rols of his auncestors time, which if he doe, then the entry is *ut supra*.

Adam de Bruis qui obiit fuit viridar' in foresta prædicta, et nullus est qui venit ad rotul' reddend', ideo vic' seifiri fac' omnia terras et tenementa quæ fuer' præd. Adæ quousque, &c. Postea venit Willielmus B. filius ejus et hæres, et fecit finem pro rotulis prædictis, et admittitur per 40 s. prout patet in rotul' de extractis.

If the verderor alien his lands or die seifed, and no man bringeth in the rols, then shall the land by the law of the forest be seifed by the sherif, which the verderor had, untill the rols be brought in, and if the rols be lost, then till he make his fine and have his *ouster le main*, and the entry is, as is next above.

Ricardus de Shelton, qui obiit, fuit constabular' castr' præd. et custos istius forestæ, et nullus est qui venit ad rotul' et munimenta ist' forestæ tangen' reddend', ideo veniant ejus terr' et tenementa tenentes ad respondend', &c.

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If the warden of the forest dye, and his heyre, or tertenant bring not in the rols, &c. his heyre or tertenant shall answer for the same.

26 Aff. p. 60.

And here it is to be observed, that where the forest of Pickering was appendant or belonging to the castle of Pickering, that he that is the constable of the castle is ever by the law of the forest chiefe warden of that forest. And so it is of the forest of Windsor belonging to Windsor castle, of the forest of Rockingham belonging to the castle of Rockingham, and all other forests belonging to castles. And accordingly here you may observe, that the office of constableship and wardenship are in this record conjoynd one with the other.

Trin. 14 E. 1.
in banco rot. 7.
Staff.

Philippus de Monte Gomeri qui sequitur pro domino rege, petiit vers' Radulphum Quintyn ballivam custodiæ liberæ horeæ regis de Alrewas quæ pertinet ad serjantiam regis senescall' forestæ regis de Canoco, et quæ ab eadem serjantia alienata est sine assensu prædecessorum regum regum Angliæ. Et Radulphus venit, et per licentiam reddit domino regi inde suam suam, &c.

Custos forestarum.

The duty of a woodward doth appeare by his name, and by his oath. *Nomina sunt notæ rerum.*

Hil. 13. E. 3.
Coram rege rot.
103. Eborum.
8 E. 3. Itin.
Pick. acc.
• Roe-bucks,
capreoli.

Hil. 13 E. 3. it is thus resolved: *Quilibet woodwardus secundum assisam forestæ debet portare hatchettum, et non arcum et sagittas pro sinistra suspitione venationis deponend' ad præsentand' tam de viridi quam de venatione. Et videtur justic' hic et concilio regis quod * capreoli Angliæ roes, sunt bestię de warrenna et non de foresta, eo quod fugant alias feras*

Bedellus is an officer of the forest, that doth warne all the courts of the forest, and doth execute the proces of the forest, and make all proclamations as well within the courts, as without; and is derived of the Saxon word *bydder*, to call or warne, or of the French word in Normandy *bedeau*, a bailiffe or apparator.

16 E. 4. fo. 1. a.
Cart de foresta
cap. 8.

A master of the game of the forest. *Mensis vetitus*, fence month, or defence month, so called, because it is the fawning month, when the does have fawnies, for the preservation whereof they ought to be fenced, and defended from hurt

and

and disquiet. It containeth a moneth containing 31 dayes, and beginneth in the fifteenth day before midsommer (that is, the nativity of St. John Baptist) in the beginning of which a swanmote is to be holden, and endeth fifteene dayes aiter. See the statute of *carta de foresta* cap. 8. whereby it is enacted, *quod tertium swanimotum teneatur in initio 15 dierum ante festum Sancti Johannis Baptistæ, quando agistatores nostri conveniunt pro * fœonatione seu fœonatione bestiarum nostrarum.*

This word *fœonatio*, or *fœonatio*, is derived of the French word *fœonier*, that is to fawne, or for does to bring forth, &c.

^a See rot. parl. 18 E. 1. fo. 3. nu. 37. the punishment of a forrester for doing trespass in the forest.

^b If the king or other lord doth pardon a trespass in a forest, and the offender at a justice seat by his learned counsell plead the same; in the proceeding thereupon we doe observe two things. First, that by the law of the forest, before any allowance thereof, the justices charge the ministers of the forest to enquire whether the delinquent hath done any trespass in vert or venison after the date of the pardon. Secondly, when the pardon is allowed, then the entry is, *quod invenit manucaptors quod amodo non forisfac*, i. *non delinqueret aut peccaret*. ^c But if an offender be convicted for trespass in the forest in hunting, &c. and adjudged to be fined or imprisoned, which fine, though it be paid, yet shall he finde sureties for his good abearing, &c. in these words ^d *quod amodo se bene geret, et in foresta prædicta non forisfac. i. non delinqueret seu peccaret. Unde forisfactura pro delicto.*

^e By the absence or non venue of the justices in eyre at the day of the adjournment, the justice seat is discontinued, and how and by what means it may be recontinued, and resummoned, it appeareth in 8 E. 3. *itinerè Pickering.*

No jury shall be compelled by any officer of the forest, or any other person whatsoever, to give their verdict in any other place, then where their charge is given, against their good will, nor by malice, menace, or other dures, shall be constrained to give their verdict of a trespass in the forest, otherwise then their conscience will clearly informe them. This law extendeth to forests only.

Albeit there be some beasts that be no beasts of forest, as the buck, &c. and some beasts and fowles that be no beasts and fowles of warren, yet if any man hunt or hawke at them within the forest, it is against the assise of the forest, and punishable by the lawes of the forest, for all manner of hunting or hawking there without warrant is unlawfull, because it disquieteth the beasts of the forest.

We reade that king H. 1. by his charter granted, *quod cives Londoniæ habeant fugationes suas ad fugandum sicut melius, et plenius habuerunt * antecessores eorum, scilicet Siltre, et Middlesex et Suer.*

The king being seized of a forest, did grant the forest to another in fee, the grantee shall have no forest, because he hath no power to make justices and officers of forest to hold courts, &c. but yet though it cannot take effect *ex vi termini*, as a forest, yet together with the game the same shall passe as a free chase for the savages and conies: for as hath been said every forest is a free chase, *et quædam amplius.*

* The printed book is *venariæ* which ought to be amended, and made *fœonatio* or *fœonatio*, which signifieth the fawning.

^a Rot. parl. 18 E. 1. fo. 3. nu. 37.

^b 8 E. 3. *Itin* Pick. Sir Raphe Hastings case.

^c This is the word of *Carta de foresta* cap. 10.

^d *Ibidem* Rob. Saltmerthes case: *Carta de foresta* cap. 10.

^e 8 E. 3. *Itin*. Pick. of William de Persey, and William de Kinthorp fo. 165.

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7 R. 2. cap 3.

Carta regis H. 1. civibus Londoniæ.

* Nota, the citizens of London had this privilege before this charter.

42 E. 3. a. 2. in *Trans.*

Regist. 8. b.

Chasea est ad communem legem, and is not to be guided by the forest laws, and so are parks.

See the first part
of the Institutes,
sect. 1. verb
T' res ou ten' ts.

But if the king doth grant a forest to a subject, and granteth further that upon request made in the chancery, he and his heires shall have justices of the forest, then the subject hath a forest in law, as the duke of Lancaster had the forests of Pickering and Lancaster, and the abbot of Whitbye had the forest of Whitbye in the county of York, which being not understood, hath been the cause that readers and others have erred. Vide 12 H. 7. Kelw. 13. and 14. &c. 4 E. 3. 55. Malins case. 2 H. 6. 15. Forest of Exmore. 27 H. 8. cap. 7. 1 E. 3. cap. 2. 22 E. 4. cap. 7. 32 H. 8. cap. 13.

Mich. 18 E. 1.
in banco rot.
255. Eborum.

Ricardus de Cornubia et 9. alii attach. fuerunt ad respondend' Johanni de Sallaye quare ipsum ceperunt, et in prisona detinuerunt per decem septimanas apud castrum de Knareburgh, &c. Ricardus et alii dicunt quod castrum et honor de Knareburgh cum foresta de Bestayne fuit aliquando in feifna domini H. regis, patris domini regis nunc, et eo tempore fuit talis consuetudo in foresta prædicta, quod si quis indictatus fuerit per forestarios coram seneschallo ejusdem honoris de transgressione de venatione facta in eadem foresta, idem seneschallus tales transgressores ubicunque fuerint inventi infra eandem libertatem prædicti honoris, licite potest arrestare et imprisonare, et eos in prisona detinere quousque satisfecerint de transgressione, &c. Qui rex Hen. dedit prædict' honorem cum foresta, &c. Ricardo fratri suo com' Cornub' patri Edmundi com' Cornub' qui toto tempore suo usus est tali libertate arrestandi, &c. Johannes de contra dicit, nullam talem fuisse consuetudinem arrestandi malefactores, nisi quando capti fuerunt cum manuopere, et hoc ab antiquiore tempore, quia idem comes non habet ibidem forestam, sed chaceam tantum. Et quod tempore Willielmi de Stotevill domini dictæ chaceæ qui dedit regi J. dictam chaceam, et tempore dicti regis J. et tempore regis H. patris, dum dicta chacea fuit in manu sua, nunquam arrestaverunt aliquos de transgressione in chacea illa, nisi illos qui capti fuerunt cum manuopere, et hoc offert verificare per patriam, &c. Ricardus dicit quod non possunt prædictam verificationem sine prædicto com' verificare. Ideo præc' est vic' quod sum' prædict' com', &c. Consimile placitum et consimilis responsio in eodem rotulo. Item al' in rot. 163.

By the grant of
a forest a chase
passeth.

Nota, capti cum
manuopere.

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Rot. parl. 14 R.
2. nu. 13.

King R. 2. granted to Thomas duke of Gloucester in speciall taile, the castle of Saint Brionel, and the forest of Deane, (whereby nothing passed, as hath been said, but a frank chase) now by authority of parliament it is enacted, that the said duke should hold the said forest as a forest, and to constitute such justices and officers, &c. as belong to a forest.

But what was the title of the courts of eyre of forests in the hands of subjects? we answer, taking one example of the forest of Pickering in the hands of Henry earle of Lancaster: *placita forestæ Henrici comitis Lanc' de Pickering ten' apud Pickering coram Ricardo de Willowby, Jo. de Shavelowe, Roberto de Hungerford, et Johanne de Hanbury, justiciariis ad itinerand' hac vice, ad placita forestæ prædictæ in com' Eborum assignat' die Lunæ prox' post festum Sancti Michaelis, anno regni regis E. 3. post conquestum 8.*

12 E. 3. coron.
119. feloniam.

If any felony be committed within the forest, it shall be enquired of before the judges of the common law, and doth not belong to the conformance of the chiefe justice of the forest.

Transgressio.

Mich. 9 E. 1. coram rege rot. 6. Huntingdon. *Transgressio in foresta regis pro venatione regis non est hic terminanda.*

Nota,

Nota, before Scroope and other justices in eire, according to the course of the common law, a man claimed to be quit of pawnage in the kings forest, and also he claimed in the same forest pawnage of his tenant *pur agistes*; and for that this belonged to the justices of the forest, they would not meddle with it. And the reason of that is, the words of the statute of *carta de foresta*, cap. 16. *Præsententur capitalibus justiciariis nostris de foresta, cum in partes illas venerint, et coram eis terminentur.* So as the termination and ending thereof belongeth to the chiefe justices of the forest, by the expresse words of the statute. And where the statute saith, *coram capitalibus justiciariis nostris, &c.* it is to be knowne, that there is but one chiefe justice of the forests on this side Trent, and he is named *justiciarius itinerans forestarum, &c. citra Trentam.* And there is another *capitalis justiciarius*, and he is *justiciarius itinerans omnium forestarum, &c. ultra Trentam*; who commonly is a man of greater dignity then knowledge in the laws of the forest. And therefore when justice seats are to be holden, there be associated to him such as the king shall appoint, who together with him shall determine *omnia plucita, &c. forestæ*, with a patent of *si non omnes*, and a writ *de admittendo, &c.* And the chiefe justice of the forest, and these associates, are *capitales justiciarii forestæ*, and named *capitales* in respect of the verderors and others, that to some purposes (as hath been said) have inferior judiciall places.

And seeing, as it hath before appeared, the forest laws differ in many cases from the common laws of England, it is good reason they should be determined before men learned in the laws of the forest, as in other cases. As if a trespassse be done either in vert or venison in any forest in the hands of a subject, in the life of the ancestor, lord of the forest, it shall be punished in the life of the heire. But so it is not in the chafes or parkes of a subject, for by the common law *actio personalis moritur cum persona.*

If a man committed a trespassse in a forest, and dye, by the forest law the trespassse is dispunishable, agreeable to the rule of the common law.

But by the statute of 19 H. 7. he that shall stalk with any bush or beast in any park, chafe, or forest, without licence, &c. shall forfeit for every time he so stalketh x. li. to any person that will sue for the same by action of debt, wherein no wager of law, protection, or essoine shall be allowed, and two justices of peace may examine the same, &c. See the statute of 1 H. 7. cap. 7. See the third part of the Institutes, cap. Felony.

* If a forestership or a bailiwick of a forest be granted in fee, if it be found out at an eire for the forest, that the grantee hath misdome in his bailwicke, the bailiwick is forfeited. Nota, the justices in eire have power to enquire thereof. In these offices of foresterships or bailiwicks in fee within a forest, albeit they have an absolute fee simple therein, yet are they of such trust that they cannot be granted over without the kings license, and before such license be granted, there goeth out a writ of *ad quod damnum* to the king, if such license shall be, &c.

There be many beasts of the forest by the laws of the forests of England. The hart in summer, the hinde in winter, and all that proceed as of them: the buck in summer, the doe in winter, and the proceed of them: the hare male and female, and their proceed:

A a 3

the

V. Cartam de foresta cap. 16. Temps E. 3. Kelw. 150. b. V. 21 H. 7. 22. & 30.

For these associations and other writs, see a notable preident 8 E. 3. Itin. Pickering in the case of William of Persay, &c. fol. 165.

8 E. 3. Itin. Pick. Hugh Latimers case.

19 H. 7. cap. 11. In this act see the great penalty for keeping of nets called deer-hayaes and buck-stals by any that hath not any forest, park, or chafe.

* 26 Aff. p. 60.

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Register 10. 257. F. N. B. 226.

For the beasts of chafe and warren, and fowls of warren being not proper to this treatise.

See the first part
of the Inst. sect.
378 Rot. parl.
18 E. 1. nu. 20.

the wild boar male and female, and their proceed: and the wolf male and female and their proceed: the fox male and female, and their proceed: the martin male and female: *capreolus* the roe, as it appeareth before, is no beast of the forest, but it is a beast of chase.

• *Lutra animal amphibium.*

But I find that in 18 E. 1. John de Claret was amerced in 100 li. *pro uno cervo et duobus lutris captis in foresta de Pek*, and he petitioned to the king in parliament to be discharged thereof and was denied. Yet I take an otter is no beast of the forest: but all hunting in the forest, as hath bin said, is unlawfull.

The proceeds of the hart and hinde. The male the first year a calf, the second a broket, the third a spayad, the fourth a staggard, the fifth a stag, the sixth a hart, and so after. The female, the first year a calf, the second year, a brockets sister, the third year a hinde.

The proceeds of the buck and doe. The first year a fawn, the second year a pricket, the third a forell, the fourth a fore, the fifth a buck of the first head, the sixth a great buck.

The proceeds of the hare, the first year a leyeret, the second a hare, the third a great hare. Of a wilde boar: a pig, a hogge, a hog-steer, a boar, and after a fanglier.

The seasons by the law of the forest for the beasts of the forest are these. Of the hart and the buck, beginneth at the feast of S. John Baptist, and endeth at Holy Rood day. Of the hinde and doe, beginneth at Holy Rood and continueth till Candlemasse. Of the fox at Christmasse, and continueth till the 25 of March. Of the hare, at Michaelmas, and lasteth till Midsummer. Of the bore, from Christmasse till Candlemasse.

Cart. de foresta,
ca. 8. 10. 16. &c.
And so it is taken
1 Reg. ca. 4. yer.
21. *Venatio cer-
vorum*, the ve-
nition of hares.
• *O cinatio fo-
restæ* ca. 1. 5.

In the statute of Carta de Foresta in divers places *venatio* signifieth venifon in French *venaison*, and so in effect in Duch and other languages. It is called venifon or *venaison*, of the mean whereby the beasts are taken, *quoniam ex venatione capiuntur*, and being hunted are most wholesome. • They are called beast of venary (not venery as some term it) because they are gotten by hunting. No beast of the forest that is *folivagum et nocivum* is venifon, as the fox, the wolf, the martin, because they be no meat, but *caro eorum est nociva: a fortiori*, the bear is no venifon not only because he is *animal folivagum et nocivum*, but because he is no beast of the forest, and whatsoever is venifon must be a beast of the forest, *sed non è converso*. On the other side, *animalia gregalia non sunt nociva*, as the • wilde boar; for naturally the first three years he is *animal gregale*, and after trusting to his own strength, and for the pleasure of man becometh *folivagum*. He is then called fanglier, because he is *singularis*, but he is venifon and to be eaten. The hare is venifon also, which the poet preferreth before all others,

Aristotle.

Aristotle.

• Sanglier, quia singularis.

Martial.

Deer à de, Græce
i. fera bellua
est élonay, and
their flesh is
called caro fe-
ringa.

Inter quadrupedes gloria prima lepus,

So as the red-deer, the fallow-deer, the wilde boar, and the hare, are venifon. Whereupon these two conclusions in the law of the forest do follow. First whatsoever beast of the forest is for the food of man is venifon, and therewith agreeth Virgil, describing a feast,

Impletus

Implentur veteris bacchi pinguisq; ferina.

They had their belly full of old wine and fat venison. So venison was the principall dish of the feast.

2. Whatsoever beast of the forest is not for food of man is no venison. Therefore *capreolus* being no beast of the forest, as hath been said, is not by the law of the forest venison, for though it be food and taken by hunting, it is no venison. Nature hath endued the beasts of the forest which are venison with two qualities, swiftnesse, and feare, and their feare increaseth their swiftnesse.

Pedibus timor addidit alas: but yet the deer are the most fearefull.

*Dente tuetur aper, defendunt cornua taurum,
Imbellis damæ quid nisi præda sumus?*

Having spoken somewhat *de venatione*, it followeth that we should say somewhat *de viridi*, because the statute saith, *Tam de viridi quam de venatione*, and other statutes speak of vert and venison.

* *Viridis*, green hue, à *viriditate*, the French calleth it verd, and we vert, whatsoever beareth green leaf, but specially of great and thick coverts. And vert is of divers kinds, some that beareth fruit that may serve as well for food of men as of beasts, as pear trees, chefnut trees, apple trees, service trees, nut trees, crab trees, &c. and for the shelter and defence of the game: some called ^b *haut-boys*, serving for food and browse of and for the game, and for the defence of them, as oaks, beeches, &c. Some *haut-boys*, for browse and shelter and defence only, as ashes, poples, &c. Of *sub-boys* some for browse and food of the game, and for shelter and defence, as maples, &c. some for browse, and defence, as birch, fallow, willow, &c. some for shelter and defence only, as alder, elder, &c. Of bushes and other vegetables, some for food and shelter, as the hawthorn, blackthorn, &c. some for hiding and shelter, as brakes, gorsie, heath, &c. To sum up all, *Plantarum tria sunt genera: arbores, arborescentes, et herbæ.* *Arbores*, as *haut-boys*, et *sub-boys*. *Arborescentes*, as bushes, brakes, &c. *Herbæ* as herbs and weeds, which albeit they be green, yet our legall *viridis* extendeth not to them.

A viridi commeth, as hath been said, *viridarii*, because their office is to see to the preservation of vert, which in troth is the preservation of venison. The poet speaking to the trees, saith,

*Quercus es in sylvis pulcherrima, pinus in hortis,
Populus in fluviis, abies in montibus altis.*

See for the punishment of trespassse done *de viridi*, either in the kings woods, or in the woods of the subject, *Consuet' et assis' forest'*, *ubi supra*.

The philosophicall poet in describing the most delightfull pleasures of woods, &c. and green hue, saith,

*Devenere locos lætos, et amæna vieta
Fortunatorum nemorum, sedesque beatas.*

And because it should be hard and difficult that any man should hunt and kill the kings deer in his forest and passe away without discovery, unlesse there were procurers, plotters, assisters, and receivers: by the law of the forest, whosoever receiveth within the forest,

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Marial.

De viridi, viri-
tum verectum,
&c.
Cart. de forest.
cap. 8. 16.
1 E. 1. ca. 8.
* Consuet. et as-
sis de forest.
6 E. 1. cap. 1.
20, 21.
Hil. 13 E. 3.
Coram rege rot.
103. Virgil.
Itur in antiquam
sylvam stabala
alta ferarum.
* Deut. 20. v.
19.
^b Consuet. et as-
sis forest. 6 E.
1. c. 2. & 20.

Virgil.

Of principall
and accessory.
8 E. 2. Itin.
Pick. fo. 3. & 5.

12 E. 4. 9. 15 E.
 4. 15. b. 14 H.
 6. 26. 27.
 37 Aff. 8.
 38 Aff. 6.
 38 E. 3. 18.
 17 H. 7. 12. 13.
 Nota, that in
 the highest and
 lowest offences,
 viz. high trea-
 son and trespassse
 there are no ac-
 cessaries, but in
 felony which is
 between both,
 there be access-
 aries both be-
 fore and after.
 See the 3. part
 of the Instit.
 cap. Principall
 and Accessary.

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forest any such malefactor either in hunting or killing, knowing him to be such a malefactor, or any flesh of the kings venison knowing it to be the kings: in this case he is a principall trespassser, wherein the law of the forest differeth from the common law, for by the common law he that receiveth a trespassse and agreeth to a trespassse after it be done, is no trespassser, unlesse the trespassse was done to his use, or for his benefit, and then his agreement subsequent amounteth to a commandment, for in that case, *Omnis rati habitio retrahitur et mandato equipatur*, but by the law of the forest, such a receiver is a principall trespassser, though the trespassse was not done to his use, as well as the procurers and plotters; but by the common law in case of felony such a receiver is but an accessory. But in the case abovesaid, if the receipt be out of the forest, he cannot be punished by the law of the forest, because it is out of the jurisdiction of the forest, which jurisdiction is locall. And seeing the jurisdiction of the forest is locall, the law of the forest hath provided, that the forest should be inclosed by metes and bounds, which indeed are the inclosure of the forest: for as parks are inclosed with wall, pale, or hedges, so forest and chases are inclosed by metes and bounds, and as a parke cannot be a parke without such an inclosure in deed, as is aforesaid, so it can be neither forest nor chase without an inclosure in law, that is, by metes, and bounds. *Metæ sunt clausuræ forestarum et chaccarum* and *Foresta est locus in quo feræ includuntur, venandi ergo, solis metis*. And where by the statute of 6 E. 1. cap. 18. it is provided, *quod omnes metæ forestæ sint integræ domino regi*, that is so to be understood, *quoad jurisdictionem et imperium, et non quoad dominium*: for if rivers or high-ways be bounds, as most commonly they be, yet the king hath no more interest in the soil, way, river, or fishing, then of right he ought, but only for his jurisdiction of his forest which extendeth over the whole way, river, &c. And where mills and other houses, trees, &c. of other men, and such like, be metes and bounds of the forests, yet thereby the king hath no interest in such mills, houses, or trees, &c. And therefore old woodmen have divided metes, *quoad jurisdictionem et imperium*, into metes inclusive, as ways, rivers, &c. and into metes exclusive, as churches, church-yards, chappels, mills, houses, trees, &c. which bound the forest, but are excluded from any jurisdiction: and that the said law of 6 E. 1. is intended only of metes inclusive, if any man kill or hunt any of the kings deer in any part of the river, high-way, &c. being an inclusive boundary of the forest, he is as great an offender, as if he had killed or hunted within the main continent of the forest, albeit the state and interest of the soil of the high-way or river be in other men; but neither of these kinds of metes and bounds are removeable, because they are the inclosure of the kings forest, and if either of them be removed, it is punishable by the laws of the forest. This word *meta* is only used in this statute: in ancient perambulations and records you shall read *secundum metas, maras, bundas, et * marchias forestæ*. *Mara* is fetched from the Saxon word *mere*, and that of *μειω* Grecè, which signifieth to divide or bound. *Bunda* a bound, is derived from the Saxon word *bunna*, signifying a higher thing, as hills, houses, trees, &c. *Marchia* is derived from the Saxon word *mark*, now a mark. *Sed meta accipitur pro quocunque termino, limite, seu fine*.

* 3 E. 3. Itin'
 Pick. fo. 6.
 Meta.
 Buncæ.
 Marchia.
 Meta.

{fi

His ego nec metas rerum, nec tempora pono.

Virgil.

And it is to be observed, that a man may have a free chase as belonging to his manor in his own woods, at well as a warren or park in his own grounds; for the chase, warren and park are collateral inheritances, and not issuing out of the soil, as the common doth, and therefore if a man hath a chase in other mens grounds, and after purchase the grounds, the chase remaineth.

Regist. Judic. 35, 36.
Dier 16 El. 326.
327.

After Easter following the parliament holden in February, anno 9 H. 3. according to the statute of Carta de Foresta, Hugh de Nevill, and Brian de Lisle were appointed commissioners to take inquisitions of the ancient metes and bounds of such forests, as either H. 2. or any king after had enlarged. And in the reign of H. 3. divers perambulations, and deafforestations were made, and many other in the reigns of H. 3. E. 1. E. 2. and E. 3. &c. All which were returned into the chancery, and remain of record in the Tower.

Perambulations of forests according to the ancient metes and bounds. Vid. sup. pa. 302.

The commons of Herefordshire pray remedy against the evill customes of the forest of Ewyastone; namely, for taking their cattell comming thereunto as forseit. Whereunto the royall answer of the king in parliament was in these words, The old good laws and customes of the forest to be observed, and the contrary forbidden by a writ under the privy seal. *Regalis sanè et digna Plantagineforum genere sententia*, wherewith we will conclude, that new opinions of new authors, or single opinions of readers not grounded upon the authorities of our books or judiciall presidents, are not to be allowed, but the laws both good and old, and specially the statute of Carta de Foresta, and other statutes, and the resolution of the judges thereupon are to be duly observed. See also the old and just articles of the charge in Fleta lib. 2. cap. 35. and reject all new inventions without warrant of law.

Rot. par. anno 9 H. 4. nu. 40.

The good old laws of the forest to be observed.

* Two of the principall and ancient articles, the one concerning venison, and the other concerning vert, be, First, that the chief forester at the justice seat ought to answer for all manner of venison delivered by warrant, or otherwise, in this manner: the twelve jurors ought to present before the justices in eire the number of deer that have been killed since the last eire, and then the chief forester is to answer by what warrant the same were killed, and such warrants as are lawfull ought to be allowed, and such as be unlawfull are to be disallowed. Secondly, the twelve jurors shall present what okes, trees, and other woods have been felled and delivered out of the forest by the officers of the same, and they to answer and shew by what warrants the same were done; whereupon it will appear whether the warrants be sufficient or no, the truth whereof shall be inquired by the foresters, verderers, and regards. But these or any other minister of the forest are not to be returned of any jury out of the forest.

Nota, the charge and articles inquirable by the good old law of the forest, which is worthy to be advisedly read and followed. Vid. Lib. 2. fo. 80. Lib. 137, 138. Lib. 9. 49, 50.

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8 E. 3. Itin' Pick. fo. 112, 113.

Vide Register. F. N. B. 167. a. 34 E. 1.

The laws of the forests of England are certain and established by authority of parliament, and not, as in other countries, changeable and floting in uncertainty, *ad principis placitum*.

The commendation of the forest laws of England.

For the antiquity of such forests within England as we have treated of, the best and surest argument thereof, is, that the forests in England (being in number 69.) except the new forest in Hampshire erected by William the Conqueror, as a conqueror, and Hampton Court forest by H. 8. by authority of parliament, are so

The antiquity of forests. The number of the forests is 69. with the forest of Hampton Court.

†

ancient

ancient as no record or history doth make any mention of any of their erections or beginnings.

* Holt Saxonice,
sylva Læuin.
Levit. 17. 13.
4 Reg. cap. 2.
Psal. 50. 10.
Psal. 80. 14.
104. 29. 4 Efdr.
5. 15. Jer. 5. 6.
Ezech. 34. 6.

Our ancestors the Saxons called a forest * *buckholt*, i. *sylva ferina* or *cervina*: we dare not fetch our kind of forest, as some do, from the holy history of scripture, for therein we find no such forests as we have. And it is worthy of observation that in the Customary of Normandy cap. 10. fo. 17. b. *Le seneschal au prince vifiteit les forests et hayes du prince et ronoquoit les forfeits, &c.* So as we fetch not our chief justice of the forest from Normandy, where the kings steward was the chief judge of the forest.

And as forests are of great antiquity, so the care and charge of them was in England always committed to great and honourable personages, and the like was also in forain nations.

Virgil.

Si canimus sylvas, sylvæ sunt consule dignæ.

Suetonius in
Cæsare.
Vid. Fleta, lib.
2. cap. 35.
De veteribus
capit' forestæ.
Voluptates com-
mendat rarior
utis.

For of ancient time the consuls of Rome had the government of the forests, &c. But take Suetonius as he is, *Ab optimatibus datam scribit operam ut provinciæ futuris consulibus minimi negotii, i. sylvæ collecti decernerentur*; for to say the truth, recreations should not be used as professions, and trades, but to be used as medicines, to make men more able and fit for higher and greater affairs, and therefore they are called recreations, because they newly create spirits, *tanquam instaurationes spirituum*; but yet these pleasures are accounted *inter res minimi negotii. Nonnulli principes immoderato venatus studio ita correpti, et corrupti sunt, ut ei omnia posthabeant magno dedecore, et ingenti aliorum damno.*

*Hæc bis bina, canes et aves, servi atque caballi,
Dicantur dominos sæpe vorare suos.*

And to say the truth, the hunter sitteth on a beast, he is compassed about with beasts, and hunteth and chaseth beasts, and therefore not to be used daily as a trade. And it was justly provided by the tenth chapter of this charter of the forest, *Quod nullus de cætero amittat vitam pro venatione nostra, &c.* Hereof John Salisbury speaking of hunting and hunters saith, *In tantum hujus vanitatis insinatu erupere, ut hostis naturæ ferent conditionis suæ immemores, divini judicii contemptores, dum in vindictam ferarum imaginem dei exquisitis judiciis subjugarent, nec veriti sunt hominem pro bestiola perdere quem unigenitus Dei redemit sanguine suo.*

Johannes Sarum
lib. 1. de nugis
curialium, c. 4.
Vid. 31 H. 8.
c. 12. *Quod cito
pervenit,* repeated
1 E. 6. cap. 12.
3 Mar. cap. 1.

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Duo clarissima
mundi lumina,
authoritas et
ratio.

Thus have we wandered in the wilderness of the laws of the forest: where in we have dissented from others, we have produced our authorities, and shewed our reasons, the two maine lights and guides, which herein we have followed. We have faithfully published divers resolutions of the judges concerning forests and forest lawes, wherewith we were well acquainted, which are the safest grounds to build upon. Many things which are evident by the text of Carta de Foresta, and other statutes concerning forests, we have not so much as touched, but left the same to the judicious reader, whom we advise to beware to give credit to our new authors, either vouching of acts of parliament, booke cases or judgements in eire, &c. for we have found many of them mistaken, vouched without warrant, or not understood, which the judicious reader will soone finde: nor to Carta de Foresta of king Canutus granted (as it is published in print) at a parliament holden at Winchester, *anno domini 1016.* We confesse that in that yeare, which was the first yeare

Manwood fo. 1.

yeare of his reigne, he held a parliament at Winchester, and made divers lawes as well for the honour and worship of Almighty God, as for the good government of his people, which he published in the Saxon tongue, (neither doe we reade that he ever published any law for England in the Danish tongue, as they affirme he did this). In all these laws he never maketh mention of this Carta de Foresta, or of any of these supposed laws of the forest therein contained, which he had just occasion to doe; for amongst his other lawes at the same parliament, he maketh this law the 77. chapter in the Saxon tongue, which is thus translated into Latine: *Præterea autem concedo ut in propriis ipsius prædiis quisque tam in agris quam in sylvis excitet agitetque, feras autem meas ne venetur cum pama præcipio.* Now in the supposed Carta de Foresta of king Canutus, in the 30. chapter, it is thus contained: *Volo ut omnis liber homo pro libito suo habeat venem seu viridem in planis suis, sine chafca tamen: et devent omnes meam ubicunque eam habere voluero.* Which we hold greatly to differ from the true law before rehearsed in two respects. First, that the true law extendeth to woods as well as to plains, and this to plaines only. Secondly, by that they might hunt, &c. by this they cannot; therefore we leave that Carta de Foresta of king Canutus as justly suspected, till we receive better prooffe of them: whatsoever it be, it is of little use, for so many of the chapters therein as be contrary to, or differing either from our Magna Carta de Foresta, or any other act of parliament, are certainly of no force.

Thus have we as briefly as we could, treated of the courts of the forest, and incidently of such forest lawes as now stand in force; wherein (as the studious reader may well perceive) we have respected matter more than method. See Carta de Foresta anno 9 H. 3. & Cart. 17. regis Johannis. Matth. Par. pag. 264.

C A P. LXXIV.

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Of Ecclesiasticall Courts, anciently called Hali-mots, (i. Holy Courts) Circgemots, or Chircgemots.

WHERE some may doubt, how we that professe the common law should write of ecclesiasticall courts, which proceed not by the rules of the common lawes. To this we answer by good authority in our bookes, that the kings lawes of this realme do bound the jurisdiction of ecclesiasticall courts, and that the king is well apprised of all ^a his judges which he hath within his realme, as well spirituall as temporall, as archbishops, bishops, and their officers, deanes, and other ministers, which have ^b spirituall jurisdiction. And that the popes collector or minister (so say our ancient books) had no jurisdiction within the realme.

^a H. 4. 9.
 Rot. clauf. 4 H.
 4. m. 11. optime.
 Rot. clauf. 11 E.
 2. dorf.
^a Nota, the kings
 judges.
^b Spirituall ju-
 risdiction.

And it is declared by the king, the lords spirituall and temporall,
 and

* 25. H. 8. cap. 21.

• If so, then much more at this day. See before pag. 43.

♠ The spirituall jurisdiction.

The temporall jurisdiction.

Of what things they have jurisdiction.

Articuli cleri per totum, lib. 5. f. 1. Cawdries case.

See before cap. of the Chancery, the articles against cardinall Wolsey art. 1. 13. 14. 17. 18. 19. 22. 24. 25. 29. 30. Bract. lib. 5. cap. 2. &c. Britton fo. 20. b. Rot. parl. 15 E. 3. nu. 22. * See *Dier. Mich.* 6 & 7 Eliz.

8 Eliz. cap. 1.

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Parker in libro de Antiquitate Britannicæ Ecclesiæ, sub titulo *Martian.* Imprinted 1572. 13 Eliz.

and the commons in full parliament, * That the spirituality (now being usually called the English church) always hath been reputed, and also found of that sort, that both for * knowledge, integrity and sufficiency of number it hath been always thought, and is also at this houre sufficient and meet of it selfe, without the intermeddling of any exterior person or persons, to declare and determine of such doubts, and to administer all such offices and duties as to their rooms ♠ spirituall doth appertain: for the due administration whereof, and to keep them from corruption and sinister affection, the kings most noble progenitors, and the antecessors of the nobles of this realme have sufficiently endowed the said church both with honour and possessions. And the lawes temporall for triall of property of lands and goods, and for the conservation of the people of this realme in unity and peace, without rapine or spoile, was and yet is administrated, adjudged, and executed by sundry judges and ministers of the other part of the said body politique, called the temporality: and both their authorities and jurisdictions do conjoyne together in the due administration of justice, the one to help the other.

Of what things the clergy hath spirituall jurisdiction, is evident in our books, and particularly in Cawdries case, whereof there is no question. And certain it is, that this kingdome hath been best governed, and peace and quiet preserved, when both parties, that is, when the justices of the temporall courts, and the ecclesiasticall judges have kept themselves within their proper jurisdiction, without inchoaching or usurping one upon another; and where such inchoachments or usurpations have been made, they have been the seeds of great trouble and inconvenience; for preventing and avoiding whereof, we have composed this treatise of the ecclesiasticall courts of the realm.

The adversary hath made divers objections against our archbishops and bishops made about the beginning of the reign of queene Elizabeth, and by consequent against the bishops ever since. * First, that they were never consecrated according to the law, because they had not three bishops at the least at their consecration, nay never a bishop at all, as was pretended; because they being bishops in the reign of E. 6. were deprived in the reign of queen Mary, and were not (as was pretended) restored before their presence at the consecration. These pretences being (in troth) but meer cavills, tending to the scandall of the clergy (being one of the greatest states of the realm, as it is said in the statute of 8 Eliz. cap. 1.) are fully answered by the said statute, and provision made by authority of that parliament for the establishing of the archbishops and bishops both in *presenti* and in *futuro*, in their bishopricks. Of this statute archbishop Parker in his book *De Antiquitate Britannicæ Ecclesiæ* speaking of himself saith, *anno Domini 1559. Cantuar' episcopus electus est à decano et capitulo ecclesiæ metropolitanicæ Cantuar' posteaq; eodem anno 17 Decembris adhibitis quatuor episcopis, &c. lege quadam de hac re lata, requisitus consecratus est.* Another objection was made against our archbishops and bishops, for that the commission (being never enrolled whereby the bishops made in queen Maries time were deprived before the fourth year of the reign of queen Elizabeth: or the record of the approbation of them cannot be found: and therefore it was pretended that the archbishops and

and bishops made by queen Elizabeth, living the former should be no lawfull bishops. But by the statute of 39 Eliz. cap. 8. the archbishops and bishops are adjudged lawfull, as by the said act appeareth. And by these two statutes, these and all other objections against our bishops are answered, which we have thought good to remember, seeing we are to treat of their jurisdiction, *ut obstruatur es iniqua loquentium.*

39 Eliz. cap. 8.

Of the Court of Convocation.

It is called the convocation of the clergy. In England there being two provinces, the one of Canterbury, and the other of York, the bishops and suffragans belonging to York, are the bishops of Duresme, Carlisle, Chester, and the Isle of Man, and all the rest of the bishops are within the province of Canterbury.

In *domo convocationis* the whole clergy of either province are either present in person, or by representation: * but these provinces and they only sit in the parliament time, and this consisteth of two parts, viz. the upper house, where the archbishops and bishops sit, and the lower house where the rest do sit.

cap. 8. Quosque churchgemot discordantes inveniet, vel amore congreget, vel sequestret judicio. * 21 E. 4. 45. 46.

Anno Domini 686 Augustine assembled in councell the Britain bishops, and held a great synod.

The name. F. N. B. 269. B. Regist. fo. See the first part of the Instituta sect. 133. 23 H. 8. cap. 1. 32 H. 8. cap. 23. & 33 H. 8. ca. 31. Anciently called churchgemote. Int. leges Hen. 1.

cap. 13. Bract. lib. 3. fo. 123, 124. 6 H. 3. Hol. 203. Rot. parl. 18 E. 3. nu. 2. Rot. parl. 2 H. 4. nu. 29. F. N. B. 269. 8 H. 6. cap. 1.

Beda. The antiquity. Newburgh lib. 2

The clergy were never assembled or called together at a convocation but by the kings * writ, *adjutoria regis*, as Beda saith *ubi supra*. Vid. parl. 18 E. 3. nu. 1. *Int' leges Inæ anno Domini 727*, a convocation of the clergy called *magna servorum Dei frequentia*.

By what authority assembled. * 13 E. 3. Rot. parl. 16. 24. Dorf. clauf. 17 E. 2. m. 30. 31. 25 H. 8. cap. 19.

Their jurisdiction was to deal with heresies, schismes, and other meer spirituall and ecclesiasticall causes, and therein they did proceed *juxta legem divinam et canones sanctæ ecclesiæ*. * And as they could never assemble together of themselves, but were always called together * by the kings writ, so were they oftentimes commanded by the kings writ to deal with nothing that concerned the kings lawes of the land, his crown and dignity, his person, or his state, or the state of his councell or kingdome: as to illustrate this matter to remember one or two examples.

What their jurisdiction was.

Regist. fol. F. N. B. 269. * *De procurat. Cler.* See in the chapter of the High Court of Parliament, Regist. 261. and F. N. B. 229. a. and Parl. 6 E. 3. nu. 6. 8 H. 6. cap. 1. * 2 Chron. 29. 15. Ezechias. Num. ca. 10. v. 1, 2. vid. sup. pa. 43.

Merton cap. 9. 21 E. 4. 45. 1. per Vavasor. and b. per Starkey, Brown and Vavasor. 20 H. 6. 13. 34 H. 6. 39. 28 H. 6. 11.

Mandatum est omnib' episcopis qui conventuri sunt apud Gloucestriam die Sabbathi in crastino Sanctæ Katherinæ firmiter inhibendo quod sicut baronias suas (quas de rege tenent) diligunt, nullo modo præsumant consilium tenere de aliquibus quæ ad coronam regis pertinet, vel quæ personam regis

Rot. pat. 18 H. 3. 2 part. m. 17. De prohibitione fact. Episcopis.

regis vel statum suum, vel statum concilii sui contingunt. Scituri pro certo quod si fecerint, rex inde se capiet ad baronias suas. Teste rege, &c.

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Stat. de Carlisle
35 E. 1.
Rot. pat. 15 E. 2.
1 part. m. 8. pro
rege de inhibitione
facienda.

See the statute of Carlisle anno 35 E. 1.

Rex, &c. Venerabilibus in Christo patribus eadem gratia W. archiepiscopo Cantuariensi, totius Angliæ primati, ac cæteris episcopis et prælatis Cant' provinciæ ad concilium provinciale apud London in proximo conventuris. Mandamus vobis in fide et dilectione quibus nobis tenemini firmiter inhibentes ne in dicto concilio quicquid in nostri, aut status coronæ nostræ vel regni nostri præjudicium statuatis, faciatis, seu quoquo modo libet ordinatis. Teste rege, &c.

De isto negotio scribitur præfatis prælatis per literas de credentia, ut in rotulo clausurarum sub eodem datu continetur.

Prohibitio fact' archiepiscopo Cant' et clero conventur' post festum Sancti Barth. quod nihil attemptent in præjudicium coronæ.

Vide cap. of the High Court of Parliament, pag. 4. & 5. a. for procuratores cleri, & 21 R. 2. cap. 2.

6 E. 3. dorf.
claus. part 2. m.
15. &c.

51 E. 3. nu. 42.
46 E. 3. prem. 8.
21 E. 4. 45. ubi
sup. Rot. parl.
1 R. 2. nu. 114.
* 25 H. 8. cap.
19. 19 E. 3.
Quare non admittit
acc' 10 H.
7. 6. per Brian.
& 2 Ph. & Mar.
cap. 8. the prerogatives,
and laws of the crown saved. *Versus finem.*

And further the king did often appoint commissioners by writ to sit with them at the convocation, and to have consents of such things as they meant to establish, that nothing should be done in prejudice, *ut supra*. * And therefore the statute of 25 H. 8. ca. 19. (whereby it is provided, that no canons, constitution, or ordinance should be made or put in execution within this realm by authority of the convocation of the clergy, which were contrariant or repugnant to the kings prerogative royall, or the customes, laws, and statutes of this realm) is but declaratory of the old common law.

What their jurisdiction now is.

But by the said act of 25 H. 8. their jurisdiction and power is much limited and straitened concerning their making of new canons: for they must have both licence to make them, and after they be made, the kings royall assent to allow them, before they be put in execution. But in the end of that act there is an expresse proviso, that such canons as were made before that act, which be not contrariant nor repugnant to the kings prerogative, the laws, statutes or customes of the realm, should be still used and executed as they were before the making of that act. But before that act a disme granted by the clergy at the convocation, did not binde the clergy before the kings royall assent.

3 R. 3. 4. 21 E.
4. 42. 47.
20 H. 6. 13.

26 H. 8. cap. 1.

King H. 8. was acknowledged supream head in divers convocations.

24 H. 8. ca. 12.
1 Eliz. cap. 1.

And if any cause shall depend in contention in any ecclesiastical court which may or shall touch the king, his heirs, or successors, the party grieved shall or may appeale to the upper house of convocation within 15 dayes after sentence given.

As there be two houses of convocation, so are there two prolocutors, one of the bishops of the higher house, chosen by that house, another of the lower house, and presented to the bishops for their prolocutor.

It is called convocation à *convocando*, because they are called together by the kings writ.

8 H. 6. cap. 1.

The clerks of the convocation called by the kings writ, and their

their servants and familiars shall have such priviledge in comming, tarrying, and going, as the great men, and comminallty of this realm, called to the kings parliament.

Of Subscription.

Subscription required by the clergy is twofold: one by force both of an act of parliament confirming and establishing the 39 articles of religion agreed upon at a convocation of the church of England, and ratified by queen Elizabeth under the great seal of England. Another by canons made at a convocation of the church of England, and ratified by king James, as is aforesaid.

By the act of 13 Eliz. cap. 12. referring to canons made by the clergy of England at a convocation holden at London in *anno Domini* 1562. containing 39 articles of religion, and ratified as is aforesaid.

The other is by canons of the church of England made and ratified by king James, as is aforesaid.

The subscription hereby required is to three articles.

The first is, that the kings majesty under God is the only supreme governor of the realm, and of all other his highnesse dominions and countries, &c.

2. That the Book of Common Prayer, and of ordering of bishops, priests, and deacons, containeth nothing in it contrary to the word of God, &c.

3. That he allowed of the said 39. articles of religion, and acknowledged them to be agreeable to the word of God.

And in this section, *ubi supra*, 1 Jac. the form of the subscription is set down, which was not expressed in the act of 13 Eliz.

By the statute of 13 Eliz. the delinquent is disabled and deprived *ipso facto*, but the delinquent against the canon of king James is to be proceeded withall by the censures of the church. This statute of 13 is well expounded in Dier 23 El. 377. & lib. 6. fo. 69. in Grenes case.

And I heard Wray chief justice in the kings bench, * Pasch. 23 El. report, that where one Smith subscribed to the said 39 articles of religion, with this addition (so far forth as the same were agreeable to the word of God) that it was resolved by him, and all the judges of England, that this subscription was not according to the statute of 13 Eliz. because the statute required an absolute subscription, and this subscription made it conditionall; and that this act was made for avoiding a diversity of opinions, &c. And by this addition the party might by his own private opinion take some of them to be against the word of God; and by this means diversity of opinions should not be avoided, which was the scope of the statute, and the very act it self made touching subscription hereby of none effect.

He must also bring a testimoniall from men known to the bishop, to be of sound religion, a testimoniall both of his honest life, and profession of the doctrine expressed in the said articles; and he ought to be able to answer, and render to the ordinary an account of his faith in Latin, &c.

Besides this subscription, when any clerk is admitted and instituted

13 Eliz. ca. 12.
At a convocation holden at London anno Dom. 1562. and 5^{to} Eliz.

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Ats convocation begun at London, anno dom. 1603. 1 Jac. regia § 36.

This book is ratified and confirmed by act of parliament, viz. 2 E. 6. cap. 1. 5 E. 6. c. 1. 1 El. cap. 2. 8 El. cap. 1. 23 El. ca. 1.

Dier 23 El. 377- Lib. 6. fo. 69- Grenes case. * Smiths case.

tuted to any benefice, he is sworn to canonical obedience to his diocesan.

Of the High Commission in Causes Ecclesiasticall.

Pafch. 9 Jac. the resolution of the court of common pleas upon mature deliberation, set down in writing by the commandment of king James.

Two questions have been made concerning the jurisdiction of these commissioners.

First, what causes doe belong to the high commissioners by force of the act of 1 El. cap. 1. and of the letters patents thereupon grounded.

Secondly, in what cases the high commissioners by the said act of 1 Eliz. cap. 7. and of the letters patents to them granted, may impose fine and imprisonment, and in what not.

It is said, by force of the statute of 1 El. For that before this act it is agreed, that all ordinaries and ecclesiasticall judges whatsoever, ought in all ecclesiasticall causes to have proceeded according to the censures of the church, and could not in any case have punished any delinquent by fine or imprisonment, unless they had authority so to doe by act of parliament. And the papall authority (as hath been confessed) did never fine or imprison in any case, but ever proceeded only by ecclesiasticall censures. Seeing then the state of the question concerning fine and imprisonment dependeth wholly upon the statute of 1 Eliz. and is of greatest consequence, and openeth the way to the other question, for it is confessed that by letters patents only (without an act of parliament) such power to fine and imprison in ecclesiasticall causes cannot be granted; the point of fine and imprisonment shall be first handled. And for that every act of parliament doth consist of the letter, and of the meaning of the makers of the act: the act of 1 Eliz. doth neither by meaning nor letter give any power to the high commissioners to fine and imprison any, but in certain particular causes, as shall manifestly out of the act it self appear hereafter. And seeing every act of parliament upon consideration had of all the parts thereof together, is the best expofitor of it self, the parts of this act of 1 Eliz. doe necessarily fall into consideration.

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The title of the act.

First, the title of the act is, *An act restoring to the crown the ancient jurisdiction, &c.* By this the nature of the act doth appear to be an act of restitution.

And this is also manifest by the preamble of the act, where it is said:

The preamble of the act.

Whereas divers good laws were made in the time of the late king Henry the eighth, for the extinguishment of all foreign power, and for the restoring unto the crown of this realm the ancient rights and jurisdictions of the same.

1 Ratio.

From whence this reason is drawn, that seeing the expresse letter and meaning is to restore to the crown the ancient jurisdiction ecclesiasticall, and no commissioner by force of that ancient ecclesiasticall jurisdiction could impose fine and imprisonment, that these commissioners having their force from this act of restitution, cannot punish

punish any party by fine or imprisonment, otherwise then shall be hereafter expressed.

The first clause of the body of the act (to let in the restitution of the ancient right and jurisdiction ecclesiasticall within the realm) doth abolish all forain jurisdiction out of the realm.

Then followeth the principall clause of restitution and uniting of the ancient jurisdiction ecclesiasticall, being the main purpose of the act, in these words.

Be it enacted, that such jurisdiction, &c. spirituall or ecclesiasticall, as by any spirituall or ecclesiasticall power or authority hath heretofore been, or lawfully may be exercised or used for the visitation of the ecclesiasticall state and persons, and for reformation, order, and correction of the same, and of all manner of errors, heresies, schismes, abuses, offences, contempts, and enormities, shall for ever by authority of this parliament be united and annexed to the imperiall crown of this realm.

And upon this clause being the final intention of this act expressed in the title and preamble, doe the subsequent clauses depend; therefore this clause is especially to be considered, and therein these things are to be observed.

First, that by this clause queen Elizabeth was not declared supream head, &c. but by a former clause in this act, viz. that the statute of 1 & 2 Ph. and Mar. cap. 8. (whereby amongst others, the act of 26 H. 8. cap. 1. and 35 H. 8. cap. 3. were repealed) was by this act made utterly void, and consequently the act of repeal being repealed, the acts of 26 H. 8. cap. 1. and 35 H. 8. cap. 3. were among others implicite revived, by which acts of 26 H. 8. and 35 H. 8. it is declared and enacted, that the king, his heirs and successors should be taken and accepted the only supream head in earth of the church of England, and should have and enjoy annexed to the imperiall crown of this realm, as well the title and stile thereof, as all honours, dignities, preheminences, jurisdictions, &c. to the said dignity of supream head belonging, &c. By which stile, title, and dignity of supream head of the church of England, king H. 8. his heirs and successors had and have all ecclesiasticall jurisdiction whatsoever. So as the first clause reviving the act of 26 H. 8. &c. thereby queen Elizabeth, her heirs and successors were supream head of the church of England. And there this act extending to raise a commission for the necessity of the time, intended only to restore and annex to the crown such jurisdiction in some particular points as by the intent of the statute, the commissioners should execute, and not to declare by this clause that her majesty should be supream head of the church, for that was provided for before.

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Secondly, that no jurisdiction is by this act restored and united to the crown, but such as before the act had been, or lawfully might be exercised or used for the reformation, &c. correction, &c. Whereupon it is concluded, that seeing that no man could be fined or imprisoned by force of any jurisdiction ecclesiasticall, which had been used, or lawfully might be used before this act, that therefore by this act no power of fining and imprisoning in ecclesiasticall causes is given by this act.

2 Ratio.

The third observation is, that this clause divideth itself into two branches: the first concerning the visitation of the ecclesiastical state and persons. This branch was enacted out of necessity, for that all the bishops, and most of the clergy of England, being then popish, it was necessary to raise a commission to deprive them, that would not deprive themselves, and in case of restitution of religion to have a more summary proceeding then by the ordinary and prolix course of law is required. This branch concerns only ecclesiastical persons: so as, as necessity did cause this commission, so it should be exercised but upon necessity, for it was never intended that it should be a continuall standing commission, for that should prejudice all the bishops of England in their ecclesiastical jurisdiction, and be grievous to the subject to be drawn up from all the remote parts of the realm, where before their own diocesan they might receive justice at their own doors.

The first commission upon these statutes, whereby about 20 bishops were deprived, and many others of the popish clergy, is said to be lost, and inrolled it is not, as it ought to have been. And it is affirmed by some that have seen it, that it passed not above twenty sheets of paper copy wise; but now the high commission contains above three hundred sheets of paper. And it is likewise affirmed, that never any high commission was inrolled (as they all ought to have been) untill my lord chancelor Egertons time, so as no man before that time could know what their jurisdiction was till that time.

The second branch is, And for reformation, order, and correction of the same (*that is, of ecclesiastical persons*) and of all manner of errors, heresies, schismes, abuses, offences, contempts, and enormities. So as these two branches extend not to the universality of the supremacy, but only to those points whereunto the commission to be raised by this act should extend, for which purpose nothing is restored or united by this act, but only the visitation of the ecclesiastical state and persons, and the reformation of the same, and of all errors, heresies, schismes, abuses, offences, contempts, and enormities which be criminall.

The jurisdiction being restored to queen Eliz. her heirs and successors, next and immediately doth the act, &c. give her power to assign and authorize commissioners to execute this jurisdiction restored and united to her, for which purpose it is further enacted.

The clause of assignation of the jurisdiction restored by this act.

That your highnesse, your heirs and successors shall have power and authority by vertue of this act by letters patents, &c. to assigne, name, and authorize, &c. such persons being naturall born subjects, &c. as your majesty, your heirs and successors shall think meet to exercise, use, occupy, and execute under your highnesse, your heirs and successors, all manner of jurisdiction, &c. in any wise touching or concerning any spirituall or ecclesiastical jurisdiction, &c. and to visit, reforme, &c. all errours, heresies, schismes, abuses, offences, contempts and enormities, which by any manner spirituall or ecclesiastical power, authority, or jurisdiction, can or may lawfully be reformed, corrected, restrained, or amended.

Out

Out of this clause of assignation it is to be observed, that the substance of the commission of assignation or deputation is described and purtrayed out both for manner and matter by this clause.

1. That it ought to be under the great seal.
2. The commissioners to be assigned ought to be naturall born subjects of queen Eliz. her heirs or successors.
3. Their authority, viz. to exercise, use, occupy, and execute under your highnesse, your heirs and successors, all manner of jurisdiction, &c. and to visit and reform all such errors, heresies, schismes, abuses, offences, &c. which by any manner of ecclesiasticall or spirituall power can, or lawfully may be reformed, corrected, &c.
4. The local limits and bounds of their commission, viz. within the realm of England, &c.

So as by this clause there is no question, but the commissioners for such causes as are committed to them by force of this act, may, if the commissioners be competent, proceed to deprivation of the popish clergy, which was the main object of the act, or to punish them by ecclesiasticall censures, and by no words, or meaning hitherto can punish by fine or imprisonment, for that no ecclesiasticall power could reform and correct (as the statute speaketh) in that manner. And without question, if the commissioners be competent, that is, if they be spirituall men, they may proceed to sentence of excommunication, which may right well be certified as well as excommunication before commissioners delegates; both of these authorities being under the great seal, and each of them having authority by force of severall acts of parliament. And excommunication certified by commissioners delegates hath been allowed, as it appeareth in 23 Eliz. Dier 371. And in many cases acts of parliament have adjudged men excommunicate *ipso facto*. But if they be meer lay men, the fault is not in the statute or in the law, but in the nomination: and upon certificate made of the excommunication according to law, a *significavit* or *cap. excom.* shall be awarded out of the chancery, for the taking and imprisoning of the bodies of such excommunicate persons.

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3 Ratio.

The high commissioners may excommunicate if they be competent. Dier 23 El. 371.

Now after the letters patents of the commission are described, and limited, followeth a clause of direction for the commissioners to keep themselves within their commission in these words.

And that such persons so to be named, &c. after the said letters patents to them delivered shall have power and authority by vertue of this act and the said letters patents under your highnesse, your heirs and successors to exercise, use, and execute all the premisses according to the tenor and effect of the said letters patents, any matter or cause to the contrary in any wise notwithstanding.

The clause of execution.

This is a clause of reference meerly to the former parts of the act, and yet by colour of this clause the high commissioners doe pretend to fine and imprison.

That this clause referreth wholly to the former parts of the act, it is apparent by the very words thereof, for first, the words be to exercise, use, and execute all the premisses, which word (premisses) referreth to all the former branches of the act, viz. 1. To the ancient jurisdiction ecclesiasticall restored by this act, by which ancient

cient jurisdiction no person could be corrected by fine or imprisonment. 2. To such jurisdiction spirituall or ecclesiasticall, as by any spirituall or ecclesiasticall power hath heretofore been, or lawfully might be exercised, or used; for these be the expresse words of the main clause of restoring and uniting of the ancient jurisdiction to the crown. But it is agreed, that before this act no man could be punished by fine or imprisonment by any ecclesiasticall power, unlesse it were by force of some act of parliament; therefore by these words in this clause (to execute the premisses) the commissioners cannot fine or imprison. This word (premisses) hath relation to these words in the clause of assignation next going before this clause, viz. to visit, reform, redresse, order, correct, and amend all such errors, heresies, schismes, &c. which by any manner, power, authority, or jurisdiction ecclesiasticall or spirituall can, or may lawfully be reformed, &c. corrected, &c. but no correction before this act could be by fine or imprisonment, but in certain speciall cases.

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- Premises.
- Said.

Then this clause followeth, (according to the tenor and effect of the said letters patents) which words also do wholly refer to the former parts of the act. For if these words (to execute all the * premisses) be words of reference, then the addition of these (according to the tenor and effect of the * said letters patents, any matter or cause to the contrary in any wise notwithstanding) must of necessity be referred also to the former parts of the act, by none of which power is given to fine or imprisonment.

Also this word (execute) cannot but be referred to the former authority. And it is not said according to the tenor and effect of any letters patents, and yet if the words had been so, the same being coupled to the word (premisses) had not restrained them, for they could in that case but only have executed the premisses, but the words be according to the tenor and effect of the letters patents before limited by the said act, that is, first that the letters patents be under the great seal. 2. That they be made to naturall born subjects. 3. Their authority is declared with a limitation. 4. The locall limits and bounds of the commission is set down: and this is the true and genuine sense of these words, viz. to execute the premisses according to the tenor and effect of the said letters patents. And therefore we marvell how in a case of so great consequence, and so visible to every eye that looks into the act of 1 Eliz. the very words thereof are (for the advantage of the high commissioners) in the very binding clause altered, and changed. For there it is alleged, that the statute of 1 Eliz. saith, that the high commissioners shall execute the premisses by virtue of this act according to their commission indefinitely without reference or restraint, whereas the words of the act be, according to the said letters patents, the effect whereof was limited and expressed before. And by the authority that is claimed by the commissioners, who seeth not, but that confiscation of lands, forfeiture of goods and chattels, &c. as well may be imposed, as fine and imprisonment? But were it not a violent interpretation directly against the letter and meaning of the act, and full of great inconvenience to make of these latter words this construction, viz. that the high commissioners should correct and punish all the errors, heresies, schismes, offences, abuses, contempts, and enormities, &c. under such pains, forfeiture, and penalty, as queen Elizabeth, her heirs, and successors, by any letters patents should impose or appoint; and that consequently

Nota.

quently by force of the generality of this construction, she did impose and appoint fine and imprisonment. Which construction should be first directly against the words and meaning of the act for the causes aforesaid. Secondly, that by the same reason by the generality of such a construction queen Elizabeth might have imposed forfeiture of lands, confiscation of goods, nay corporall punishment, losse of member, and of life also, for incontinency, solicitation of chastity, working on a holiday, or any inferiour offence punishable by the ecclesiasticall law, and yet the sentence of the commissioners in such cases should be both fatal and final, and uncontrollable by any ordinary means, either by appeal, error, *moderata misericordia*, or otherwise. Thirdly, that this violent construction, under mysticall and cloudy words, should extend to fine and imprisonment, &c. all persons, as well laymen of what estate, degree, or sex soever, in cases ecclesiasticall (where they were not to be fined and imprisoned before) as to ecclesiasticall persons, who were the proper objects of this act. And then by the construction that hath been made of the other side in cases where an executor detaineth a legacy, or a parishioner payeth not his tythes, or the like concerning *meum* and *tuum*, the queen, &c. might have inflicted (as hath been said) what punishment she would, and the high commissioners fine and imprisonment (as it standeth at this day) without limitation of time, be it never so great, or time of imprisonment, be it never so long, and without controlment by any ordinary remedy, be the sentence never so unjust or erroneous; then which nothing could be more absurd and inconvenient. *Talis interpretatio in ambiguis semper fienda est, ut evitetur inconueniens et absurdum.* But this construction should not be *in ambiguis*, but directly against the words and meaning of this act. And seeing it hath been granted that the papall authority or any other having ecclesiasticall jurisdiction could not fine and imprison before this act of 1 Eliz. and that it is expressly said in the preamble of this act, that where in the reign of king Hen. 8. divers good laws were made as well for the extinguishment of forein authority, as for restoring to the crown the ancient jurisdictions, &c. by reason whereof the subjects were kept in order, and disburdened of great and intolerable charges and exactions (which good laws being repealed by queen Mary the said act doth revive and restore) it followeth *à concessis*, and by the letter of this act, that it was never the meaning of the makers thereof to extend the said clause to fine and imprison the subject for ecclesiasticall causes, and to make him subject to greater confiscations, forfeitures, and punishments, where his body before this act was not subject to imprisonment but upon the kings writ *de executione capiendo*, nor his body, lands, and goods, to fines, or other penalties, or punishments, by them to be imposed, &c. for this were not by this act of restitution to ease them of former intolerable charges (as the statute speaketh) but by this act to make them subject to greater and more heavy pains, punishments, and charges then ever they were before. And the statute of 27 H. 8. cap. 15. saith, that the canons, &c. were overmuch onerous to his highnesse subjects, but they were never so onerous as this act should be. But *uno absurdo dato infinita sequuntur.* We must therefore retire ourselves to the text of the act of 1. Eliz. the only ground of this question, and thereupon the conclusion is, that no letters patents can by vertue of

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1 H. 7. cap. 4.

this act of 1 Eliz. give any power to the commissioners to imprison, except it be in certain particular cases, which now fall into consideration. For example. The statute of 1 H. 7. cap. 4. doth give power to bishops, &c. to commit priests convicted of any incontinency to prison, and that no bishop, &c. shall be chargeable therefore in an action of false imprisonment. Now seeing that such jurisdiction ecclesiasticall (that is, to hear, determine, and punish, &c.) as by any spirituall or ecclesiasticall power or authority before the said act of 1 Eliz. had been, or might lawfully have been exercised or used for the visitation of the ecclesiasticall state and persons, and for reformation and correction of the same, and of all manner of errors, heresies, schisms, &c. and that every bishop, &c. might punish such offenders by imprisonment according to the said act, that such power (and the like in any other case by act of parliament if any be) is united to the crown and may be committed over to the high commissioners as before the said act by any spirituall or ecclesiasticall power had been or lawfully might be used, which be the words of the act itself.

Vid. stat. of
2 H. 4. ca. 13.
& 1 Eliz. ca. 1.
and observe them
well.

Pasch. 38 Eliz.
Coram rege the
lord Darcies case.

But these generall words, viz. which have been or lawfully might be used, &c. do not extend to any authority or power given by any act of parliament to any ecclesiasticall judge: which act stood repealed and adnulled by a former act of parliament, and had no essence at the time of the making of this act of 1 Eliz. and that for two reasons: first, for that this act of 1 Eliz. doth repeal and revive divers acts of parliament, and therefore shall not be construed to repeal or revive any other by the said generall words. Secondly, for that generall words shall not extend to authorities repealed or adnulled by act of parliament. And so it was adjudged in the lord Darcies case in the kings bench Pasch. 38 Eliz. where the case was, that the lord of the manor of Thorp Kirby was amongst other franchises and immunities discharged by the letters patents of king E. 4. of purveyance; which charter for the point of discharge of purveyance was adnulled by the statute of 27 H. 8. cap.

Mich. 21 & 22
El. in Scaccario,
the lord Pagets
case.

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And after the manor comming to the hands of king E. 6. he by his letters patents granted the said manor to the lord Darcie and his heirs: and further granted *Tot, talia, eadem, hujusmodi et consimilia jura, jurisdictiones, franchiseas, privilegia, &c. quot, quanta, qualia, et quæ, &c. prout aliquis dominus manerii habuit, tenuit, seu gavisus fuit virtute alicujus cartæ, doni, seu concessionis aut aliquarum literarum patentium per præfatum regem, aut per aliquem progenitorum suorum quorumcumq; facti concessi seu confirmati, aliquo statuto non obstante.* And it was adjudged as it had been before in the lord Pagets case, Mich. 21 & 22 Eliz. in *scaccario*: that albeit such a generall grant had been enacted and confirmed by act of parliament, yet had not those generall words extended to revive any authority, franchise, priviledge, &c. once granted, and which was after, and before the grant repealed or resumed by act of parliament, unlesse there had been speciall words to revive the same, but should extend to other authorities, franchises, and priviledges which stood not then repealed.

1 H. 7. fo. 12, 13.

And there is a far stronger case reported in 1 H. 7. fo. 12. & 13. By authority of parliament all preheminences, prerogatives, franchises, and liberties were given to king H. 7. in taile generally without limitation or saving. And the question was whether the franchises

franchises and liberties of lords and other inferior subjects were given: and it was resolved by all the judges that they were not, for that the act was to be intended to do no inferior subject wrong, but the general words were to be intended of such as might be intailed without prejudice of the subject: which is a stronger case then this, for besides the prejudice of the inferior ordinary for his jurisdiction, and for the subject for taking away his appeal, and drawing him from remote parts to his intolerable charge, where he might receive justice at home, the clause preceding of uniting, and latter particular words do limit and expound the generality of the former words.

Now that divers and many other acts of parliament, which are general in words, have upon consideration of the mischief, and all the parts of the act (for the avoiding of the inconvenience and absurdity that might follow) received a particular interpretation, it appeareth in our books in cases of far lesse inconvenience and absurdity.

Pl. com. in Stowels case, fo. 369. the preamble is to be considered, for it is the key to open the meaning of the makers of the act, and mischiefs which they intend to remedy. The judges of the law have ever in such sort pursued the intents of the meaning of the makers of acts of parliament, as they have expounded acts general in words to be particular, where the intent hath been particular (which are the words of the book) and therefore upon that rule it is there adjudged, that where the statute of 7 E. 6. is general; if any receiver or minister accountant, &c. receive of any person any summe of money for payment of any fees, &c. shall forfeit 6s. 8 d. for every penny; that this do not extend according to the generality of the words to the receiver of common persons, because these words subsequent be added, (otherwise then he lawfully may by former laws and statutes.) Now the judges restrained the generality to a particular, to the kings receiver only: for that no law or statute was formerly made concerning common persons receivers, &c. But in the case in question, as well the precedent clause of restitution, as the subsequent clause expressing offences in particular, and the words in the same general sentence viz. under your highnesse, &c. and principally the cause of the making of this act do qualifie the generality of the words. And yet notwithstanding it was resolved by all the court in the said case of Stradling, fo. 203. a. that the receiver of common persons were within the words of the said statute. But there it is said, that if a man consider in what point the mischief was before the statute, and what thing the parliament meant to redresse by this, he shall perceive that the intent of the makers of the act was to punish only the ministers of the king. And a little after the judges say that the stile of that act is. An act for the true answer of the kings revenues. And by this also the intent of the makers of the act is to be collected, and these be the words of the book, which is a far stronger case then the case in question.

Pl. Com. fo. 369.
Stowels case.

4 E. 4. fo. 4 & 12. Every statute ought to be expounded according to the intent of them that made it, where the words thereof are doubtfull and uncertain, and according to the rehearfall of the statute; and there a general statute is construed particularly upon consideration had of the cause of making of the act, and of the

4 E. 4. 4. & 12.

B b 4

rehearfall

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rehearfall of all the parts of the act. To conclude this point with a generall rule allowed by all laws in construction of statutes. *Quævis lex generaliter loquitur, restringenda tamen est, ut cessante ratione et ipsa cesset: cum enim ratio sit anima vigorq; ipsius legis non videtur legislator id sensisse, quod ratione careat, etiamsi verborum generalitas prima facie aliter suadeat.* Seeing then so many inconveniences against reason, and the meaning of the makers of the act should follow, it is evident that the generality of the said words in the clause of assignation shall (as they ought) be limited by the clause of restitution, as hath bin said. And it agreeth not well with the stile of the high commission to deal in petty and inferiour causes. And for the recital of a branch of this act in the statute of 8 Eliz. cap. 1. It referreth to the act of *primo* it self, and is only in the preamble, and therefore doth neither increase nor diminish the same. But albeit they have confusance and jurisdiction of enormous and heinous causes, according to the originall institution, yet cannot they punish the offender in the same by fine or imprisonment, unlessse the same were punishable by fine or imprisonment before the making of the said act of 1 Eliz. by some act of parliament unrepealed at the making of this act.

2 E. 3. cap. 2.

But it is said (*enormous*) is uncertain; surely in an act whereof many of the makers are lay and unlearned men, it hath been expounded by law to be equipollent to heinous, horrible and exorbitant. And this appeareth by the statute of 2 E. 3. cap. 2. Commission of oier and terminer, &c. shall not go out, but where the trespassse is horrible. Now if such commission be granted for a small cause, a revocation thereof, which is a flat prohibition, doth lye, as it appeareth in the Register 125, and the words thereof be, *Quia non enormis læsio.* Which word (*enormis*) in that writ doth expresse this word [horrible] in the said act, and there is as great uncertainty in that case upon this word [*enormis*] to prohibit the commissioners of oier and terminer, as in the case now in question concerning the ecclesiastical commission, and especially in this act of *primo* it ought to be taken to be horrible, exorbitant, *es extra omnem normam*; for that the high commissioners do claim to send for all degrees of men and women, and out of all the parts of England or Wales, be the place never so remote, &c. But the commission of oier and terminer cannot be taken but in the proper county where the fact was done. And yet it is evident by all which hath been said, that his majesty hath, and queen Elizabeth before him had as great and ample supremacy and jurisdiction ecclesiastical as ever king of England had before them, and that had justly and rightly pertained to them by divers other acts, and by the ancient laws of England, if the said clause of annexation in the said statute of 1 Eliz. had never been inserted.

This act of 1 Eliz. provideth against them that should by printing, writing, or words, maintain or defend the jurisdiction spirittual of any forein prince, prelat, &c. within this realm; that every such person being lawfully convicted by the course of the common law, shall for the first offence forfeit and lose all his and their goods and chattels. And if any person so convicted shall not be worth of his proper goods and chattels to the value of 20 li. then such person so convicted shall suffer imprisonment one whole year, &c. Now albeit upon the maintenance or defence of the popes supremacy

macy depend so many mischiefs as the principall scope of this and other acts was utterly to abolish and extinguishe the same, and that it is high treason in the second degree: yet see how temperately this act doth punish that most dangerous and damnable error. And albeit the proceedings at the common law are reverfible by writ of error: yet the statute addeth two cautions, that no persons should be impeached for any of the offences by preaching, teaching, or words, unless they be lawfully indicted within the space of one half year. And if any person be imprisoned, and be not indicted within half a year, then the person so imprisoned shall be set at liberty. Now if the party offending in so high and supreme an offence, as the maintaining of the popes supremacy, shall be punished for the first offence so temperately, and with such caution and limitation, it was never the meaning of the statute to charge the subject with fine or imprisonment by the discretion of the commissioners without limitation either of time of imprisonment, or quantity of fine, for lesser crimes and offences, whereunto he was not subject before the making of this act.

But if the meaning of the makers of the act had been to have inflicted newly upon the subject not only fine and imprisonment, but by the same reason confiscation of goods, forfeiture of lands, nay any corporall punishment, &c. they would not under such cloudy and dark words have inflicted those greater punishments for lesser offences without some limitation, as they did for the greatest offences of all, and not to have left lesser offences to the absolute and uncontrollable power of the high commissioners by any ordinary mean.

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If the high commissioners might have fined and imprisoned men for offences against the ecclesiasticall laws, to what end were the statutes of 23 Eliz. 28 Eliz. &c. made against men for abstaining and not coming to divine service, &c. and why did those acts inflict a penalty of 20 l. the month, and imprisonment, &c. with a discharge of the penalty, &c. upon submission, if the high commissioners might have fined and imprisoned them absolutely without certainty of any sum, or limitation of any time of imprisonment, and without any ability or power by submission or conformity to ease themselves? and yet absence from divine service is a meer ecclesiasticall cause; and the like may be said of divers other acts of parliament of like nature.

Thus hath this statute been plainly expounded by the parts of the same, according to the naturall and genuine sense, and the originall institution and jurisdiction of the high commission by force of the said act truly expressed.

And concerning the form of commissions and practice by the high commissioners in the reign of the late queen Eliz. by fining and imprisoning for adultery, fornication, simony, usury, defamation, &c. it may be that such fines have been imposed, but, as we be informed, not one of them levied in all the reign of queen Eliz. by any judiciall proceffe out of the exchequer in the time of Sir Edward Sanders, who was chief baron at the time of the making of the said act, Sir Robert Bell, Sir John Jefferies, Sir Roger Manwood, or Sir William Peryam chief barons of the exchequer: so as in all the late queens time (as we be informed) no fine was levied, or any subject in his body, lands or goods charged there-
with,

with, which would not have been by so many worthy men assisted with divers other grave and learned barons pretermitted to be either levied or written for by the court, if by law the same ought to have been levied. And the subjects (for the greatest part) being wrongfully fined, imprisoned, and injured by colour of the high commission, asked no advice to take any ordinary remedy, for that the high commissioners (knowing the weaknesse of their authority) kept the commission secret, and contrary to law and justice suffered not the same to be inrolled in the chancery, so as the subject lived under an unknown commission and authority (*et misera est servitus ubi jus est vagum aut incognitum*) untill of late the lord chancellor (as hath been said) according to law caused the same to be inrolled; and very few upon serious consideration took an exact survey of all the parts of the act of 1 Eliz. And this is the cause why their presidents (if they affirm truly) may be many, especially against the weaker sort: and the judgments and presidents in the kings courts concerning these matters, few, as they give out, charging the judges of the realm with innovation. And yet some being intolerably grieved, sometime to their utter undoing, by the high commissioners, upon complaint made to the highest courts of ordinary justice in this realm, the judges upon consideration had of the statute of 1 Eliz. which is the foundation whereupon the high commission is grounded, have, as often as complaint hath been made, relieved them according to law and justice.

In *Ameres* case the whole court of exchequer in the late queens reign, judicially resolved, being the kings proper court, that the high commissioners could not punish any man for working on a holy day, albeit it be a matter of ecclesiasticall consufance, but ought by the true meaning of the statute of 1 Eliz. to be punished by the diocefan, which is to be seen of record.

Also in the reign of queen Eliz. William Taylor clerk, parson of Springfield in Essex did implead William Maffy gent. before the high commissioners for giving unreverent speeches to the minister, &c. for carrying his corn on holy days, * for not suffering the parson and parishioners to come thorough his yard in rogation week in the perambulation, and not giving them a repast as usually he had done, that he whistled and knocked on the parsons barn door, and said he did it to make him musique for his daughters marriage, and many other articles of like nature; and it was ruled upon open motion, and often debating by the whole court of common pleas, that the high commissioners could not deal with such inferiour offences, but are to be left to the proper diocefan, who is to reform the same with lesse charge and travell in the proper diocese. And thereupon a prohibition was granted by the court of common pleas, whereby it appeareth, that they cannot hold plea of all ecclesiasticall causes.

The like prohibition was granted out of the common pleas in the said late queens reign, between Robert Pool clerk parson of Winchelsey, and Thomas Gray, to the high commissioners, for that they held plea for assaulting and laying violent hands on the said Robert Pool being a parson, upon open motion and argument by the whole court.

Hil. 3 Jac. regis, in communi banco, between Lyn and Wats for promise of a yeerly sum in marriage.

Taylor's case.
Mich. 44 & 45
El. rot. 1255.
Simile 43 & 44
El. rot. 503.

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Graves case,
Vid. infra pa.
334. i. rin. 44 El.
rot. 1233. in
com. banco.
Simile 40 Eliz.
rot. 422 in com.
banco.
The like in the
kings bench.
Pasch. 39 Eliz. rot. 100. & Pasch. 41 Eliz. ibidem rot. 235.

Trin.

* Trin. 3 Jac. *in communi banco*, between Jeneway parson of T. in Essex, and Porter for defamation, and laying violent hands on a clerk.

* Tr. 3. Jac. *in com' banco*
Porters case.

* And concerning fine and imprisonment, anno 9 regine Eliz. which was about eight years after the statute of 1 Eliz. Sir James Dier and divers other of the judges were then living, that were present at the making of the said statute, Thomas Lee an attorney of the common pleas, being convented before the high commissioners for hearing of a masse, was by them in their proceedings committed to prison, which matter being returned by *habeas corpus*, he was upon great consideration had, by the lord Dier and the whole court of common pleas discharged of his imprisonment, for that the high commission had no power to imprison him in that case.

* Mich. 9 & 10
El. rot. 1556.
Lees case.

The like resolution was in 18 Eliz. by the lord Dier, and the whole court of common pleas, in the case of one Hinde, who being convented before the high commissioners for usury, to answer, &c. was thereupon imprisoned by them, and by *habeas corpus* delivered, for that the imprisonment in that case was unlawfull.

18 El. Dier fo.
Hindes case.

By warrant from the high commissioners in the reign of queen Eliz. directed to Richard Butler constable of Aldrington in the county of Northampton, for attaching and arresting of the body of John Simpson of Aldrington aforesaid, and bringing his body before the high commissioners in case of adultery with the wife of Edward Fuste, the constable being assisted with one William Johnson servant of the said Edward Fuste, the said constable with Johnson came to a widows house in Aldrington where the said Simpson was, and the doors being open would have at eight of the clock at night arrested Simpson by the said warrant, which the said constable read unto him, notwithstanding the said Simpson resisted them, and in his own defence (and shewed how) slew the said Johnson that came in aid of the said constable. Now the question before the justices of assise of that county, (Simpson being in the gaol therein) what his offence was? wherein the doubt rested in this, whether the constable might lawfully attach and arrest the body of the said Simpson, (which in law is an imprisonment) for if he had lawfull authority to arrest him, then the offence was wilfull murder in killing one that came in aid of a minister of justice in execution of his office: but if the constable had no lawfull authority to arrest his body by force of the high commissioners warrant, then was it but *se defendendi*, a small offence, which doubt wholly consisted upon construction of the statute of 1 Eliz. for by the letters patents expresse authority is given to the high commissioners to send for the body of any offender, &c. by pursevant, or by warrant. The matter being weighty, and the said Simpson being by the coroners inquest indicted of wilfull murder, supposing the said warrant to be lawfull, the justices of assise thought: not good to proceed against him at those assises, but deferred it till the next assises: at what time after this long time of deliberation, and upon conference, it was resolved, that the statute of 1 Eliz. gave no power to the high commissioners to make any warrant to arrest the body of Simpson in that case, but ought to have proceeded by citation: and therefore that Simpson killing the said Johnson had committed no murder: and so the jury upon his arraignment found him not guilty of murder according to the direction of the court, as it appeareth by the record itself. And it was resolved in Graves case

Simpsons case
before the judges
of assise in Nor-
thamptonshire,
42 Eliz.

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Supra pag. 333.
Graves case.

foreſaid, that for the battery of a miniſter they could not fine and imprifon.

William Thicknes caſe, in communi banco.

William Thicknes having the privilege of the court of common pleas, had a *habeas corpus* to the ſherif of London for his body, with the cauſe, he being under their cuſtody, who returned that the high commiſſioners had committed him to their cuſtody by force of his majeſties commiſſion for cauſes eccleſiaſtical, and of the ſtatute in that caſe provided, for that he was convicted before them of adultery, and other contempts and enormities appertaining to eccleſiaſtical conuſance. And the caſe being debated in open court, he was diſcharged of his imprifonment, for that by the ſtatute of 1 El. they could not imprifon him.

25 H. 8. cap. 19.

By the ſtatute of 25 H. 8. cap. 19. it is enacted, that for lack of juſtice at or within any of the courts of the archbiſhops of this realm, or in any of the kings dominions, it ſhall be lawfull to the parties grieved to appeal to the kings court of chancery, and that upon every ſuch appeal commiſſions ſhall be directed under the great ſeal to ſuch perſons as ſhall be named by the kings highneſſe, &c. which commiſſioners ſo by the kings highneſſe, &c. to be named or appointed, ſhall have full power and authority to hear and finally determine ſuch appeal, and that ſuch judgment and ſentence as the ſaid commiſſioners ſhall make and decree in and upon ſuch appeal, ſhall be good, effectual, and definitive. Which words, albeit they be more generall, and with leſſe reference to the precedent matter, then the act of 1 El. yet have ſuch commiſſioners no colour to fine or imprifon any: but where the words be [and ſuch judgment and ſentence as the ſaid commiſſioners ſhall make and decree] theſe generall words have theſe words implicate annexed to them [according to the eccleſiaſtical laws] ſhall be good, effectual, &c. So in the ſtatute of 1 Eliz. ſuch words are implicate to be added to the ſaid claufe, viz. that the high commiſſioners ſhall execute the premiſſes according to the ſaid letters patents by the rule of the eccleſiaſtical law or authority of parliament. And ſince the high commiſſion was inrolled and made publique, many prohibitions have been granted according to law and juſtice upon complaint made by the parties grieved.

And in the reign of the ſaid late queen Eliz. it was reſolved, that the high commiſſion ſhould be limited to certain particular enormous and exorbitant cauſes, which if it were purſued would breed great quiet and repoſe within the realm.

In the reign of the ſaid late queen a prohibition was granted by Sir James Dier chief juſtice, and the whole court of common pleas, 10 Febr. anno 21 Eliz. to the high commiſſioners for that they did hold plea *de jure advocacionis*.

^a And in my lord Anderſons time in the reign of queen Elizabeth both the court of common pleas granted divers prohibitions, as it appeareth before, and two of ſpecial note ^b between Baker and Broughton, and another between Blackheath and the biſhop of Glouceſter. And in my lord Gaudies time who ſucceeded the lord Anderſon and enjoyed his place but a ſhort time, yet in that time the court of common pleas granted prohibitions alſo to the high commiſſioners.

Many other prohibitions have been granted to the high commiſſioners out of the court of common pleas of after times.

In the kings bench there are alſo many prohibitions granted to the

See Hil. 17 El. rot. 1402. Inter Henr. Evans clericum queren^t et Thomam Jefferies clericum defendant.

^a Hil. 3 Jac.
^b M. ch. 41 & 42 El. rot. 2919. and an attachment thereupon, Mich. 42 & 43 El. rot. 3332.

the high commissioners in the times of the lord Wray, lord Popham, lord Fleming, &c. which are to the same effect as those which have been cited be.

And we will conclude with the confession of the lord archbishop Bancroft himself in his 22 article, his own words being: Of latter dayes, whereas certain lewd persons, (two for example sake) one for notorious adultery and other intolerable contempts, and another for abusing of a bishop of this kindome, by threatning speeches and sundry rayling tearmes, no way to be endured, were thereupon fined and imprisoned by the high commissioners till they should enter into bonds to perform further orders of the said court, the one was delivered by *habeas corpus* out of the kings bench, and the other by a like writ out of the common pleas, and sundry other prohibitions have been likewise awarded to his majesties said commissioners upon these suggestions, that they had no authority to fine or imprison any man, &c.

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See the articles and answers in the 2 part of the Institutes, in the exposition of *Articuli Cleri*, &c.

By this article it appeareth, that before the time of the chief justice of the court of common pleas that now is, and before divers of the judges that now be, were called to be judges by the judgment and resolution both of the court of kings bench and common pleas by *habeas corpus*, the parties that were fined and imprisoned by the high commissioners in case of adultery and scandall of a bishop, &c. were by the law discharged, for that the fining and imprisonment of them was unlawfull.

And these were the resolutions of the whole court of common pleas Pasch. 9 *Jacobi regis*, upon often conference and mature deliberation, and accordingly they proceeded.

The Prerogative Court of the Archbishop of Canterbury.

Curia Prerogativa Archiepiscopi Cantuariensis.

This is the court wherein all testaments be proved, and all administrations granted, where the party dying within his province hath *bona notabilia*, in some other diocesse then where he dieth, which regularly is to be to the value of 5 l. but in the diocesse of London it is 10 l. by composition.

The bishops, lords, and commons assented in full parliament, that the king, his heirs and successors might lawfully make their testaments, and that execution shall be done of the same, whereof some doubt was made before. See rot. par. 1 H. 5. nu. 13. the testament of king H. 4. and his executors refused, the archbishop of Canterbury was to grant administration with the testament annexed to the same. See 1 H. 6. nu. 18. the last will and executors of H. 5. 10 H. 6. nu. 27.

Rot. par. 16 R.
2. nu. 10. not
in print.

When the king is made an executor of the last will and testament of any other, the king doth appoint certain persons to take the execution of the will upon them (against whom such as have cause of suit may bring their action) and appointeth others to take the account. See rot. par. 15 H. 6. Katherine queen dowager of England, mother of H. 6. made her last will and testament, and thereof constituted king H. 6. her sole executor. And thereupon the king appointed Robert Rolleston, clerk, keeper of the great wardrobe,

Rot. par. 15 H.
6. nu. 32.
Obiit 2 Junii
1436. apud Ber-
mondsey.

wardrobe, John Merston and Richard Alreed esquires, to execute the said will by the oversight of the cardinal, the duke of Glouc', and the bishop of Linc', or two of them to whom they should account.

The probate of every bishops testament or granting of administration of his goods, although he hath not goods but within his own jurisdiction, doth belong to the archbishop.

The like court the archbishop of York hath.

From this court the appeal is to the king in chancery. Now touching the jurisdiction of this court, and the consistories of bishops, &c. Such points as have been judicially resolved, are necessary to be remembered, both for the safety of the judge, and the benefit of the party interested.

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If a man die intestate having *bona mobilia* in divers diocesses, the judge of this court hath used to asseſſe a convenient sum to be employed *in pios usus*, but with these limitations following: 1. It must be after administration granted, and the inventory made and returned, to the end the estate of the intestate may be known. 2. The administrator before any asseſſment must be called to it, to the intent the judge may be informed of the true state of the intestate, and of his children and kindred, for whose succour and relief there is great piety. The 3. the asseſſment must be in particular, how much, to whom, and to what use. 4. There must a publique act be made of it before any payment be made. 5. Payment must be made according to the act. Lastly, the judge ought not directly or indirectly to take any thing thereof to his own use, nor for the asseſſment thereof or entering the publique act, and if he doth, it is extortion.

Mich. 20 Jac. in camera stellata.

And *termino Mich. 20 Jacobi regis*, Sir John Bennet judge of this court, for not observing of these rules was sentenced in the star-chamber for extortion, and fined at twenty thousand pounds, imprisoned, and disabled ever after to bear an office, as by the sentence appeareth. And the like orders and rules must be observed in all respects (saying the two former) in commutation of penance, which two former doe not concern this matter. And these rules as well concerning asseſſments *in pios usus*, upon granting of administrations, as for commutation of penance, may serve for the direction of all the ordinaries and judges in ecclesiastical courts in England.

21 H. 8. esp. 5.
Mich. 6 Jac.
reg. rot. 1301.
in communi
banco.

There was an act made *anno 21 H. 8.* concerning fees for probate of last wils and testaments, and granting of administrations. In the case of James Rowſe commissary of the archdeacon of Huntingdon, in an information against him by Edmonde Neale, for extortion upon the said statute of 21 H. 8. whereunto he pleaded not guilty, and was found guilty, the point in question upon the information was, if the probate be not written upon the testament it self, but upon the transcript ingrossed, whether the taking of a fee by the defendant for the ingrossing were within the said statute? And it was upon debate in open court resolved by the chief justice, and the rest of the justices, Walmsly, Warburton, Foster and Daniel, that such a fee taken for the ingrossing was within the statute, for that the act is in the negative. And if the executor request any to ingross the testament, he must agree with him,

See the 3 part
of the Instit.
cap. Extortion.

See the act.

him, that he so request (or * bring one ready ingrossed with him as he did in the case in question, which is a safe and ready way) bu the ordinary or commissary ought not to exact a fee for it of the party as a fee due to him, for divers causes. First, for that the words are expresse for the probate, &c. or for registering, sealing, writing, praising, making of inventories, &c. which word (writing) extends to this case. Secondly, the words be, or any thing concerning the same probate, and when the seal and probate is put to the transcript, this concerns the probate, for the probate is not put to any other writing. Thirdly, if such a construction should be made, that this case is out of the statute, this beneficiall law should be illusory and vain, for if the ordinary or his commissary might take what he would for the ingrossing by his clerks as a fee due to him, the act should be of none effect; and the manner of the precise penning of the act, and the certainty of the fees, and not above, should be all in vain. And the ordinary, if he will, may annex the probate to the testament it self, as seeing he can have no other fee then is in the statute, it may be hereafter he will doe; but for the misreciting of the act of 21 H. 8. in the information, *Curia ad visum vale*: and this resolution extending to all courts of ecclesiasticall jurisdiction that have probate of testaments, we thought it necessary to make a memoriall of it.

* Note this.

See the words of the act at large.

The Court of the Arches of the Archbishop of Canterbury.

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This court is called *curia de arcibus*, and hath been anciently holden in Bow church of London. For I read of it in a record of a prohibition *termino Hil. coram rege anno 7 E. 1. rot. 8. in curia Christianitatis coram decano de arcibus London.* Of Bow church in London, where the court hath continually been kept, which and 12 other parishes in London, whereof Bow is the chief, are within the peculiar jurisdiction in spirituall causes of the archbishop of Canterbury, and exempt from the bishop of London.

Hil. 7 E. 1 coram rege. rot. 8. Pasch. 12 E. 1. in banco Essex. Gulielmus de Mortuo mari clericus, &c. See Dier 7 Elia. 241.

The judge of this court is called the dean of the arches, unto whose officialty in spirituall causes to the archbishop of Canterbury is annexed the peculiar jurisdiction of these 13 parishes. He hath ordinary jurisdiction in spirituall causes of the first instance, and by appeal through the whole province of Canterbury, as it appeareth by the statute of 24 H. 8. cap. 12. His power to call any person for any cause out of any part of his province in the diocess of any other, unlesse it be upon appeal, is restrained by the statute of 21 H. 8. cap. 9. This court in the statute of 25 H. 8. cap. 19. is called the court of the arches, or audience of the archbishop of Canterbury: and from this court of the arches the appeal is to the king in chancery by the said act of 25 H. 8.

24 H. 8. cap. 12. 1 Elis. cap. 1.

21 H. 8. cap. 9. 25 H. 8. cap. 19.

The Court of Audience. Curia Audientie Cantuariensis.

This court is kept by the archbishop in his palace, and medleth not with any matter between party and party of contentious jurisdiction, but dealeth with matters *pro forma*, as confirmations of bishops elections, consecrations, and the like, and with matters of voluntary jurisdiction, as the granting of the gardianship of the spiritualties

spiritualties *fedē vacante* of bishops, admission and institution to benefices, dispensing with banes of matrimony, and such like.

The Court of the Faculties.

Vi. 28 H. 8.
ca. 16. 21 H. 8.
cap. 13. 5 Eliz.
cap. 16.

This is also a court, although it holdeth no plea of controversie (like the court of audience next before.) It belongeth to the archbishop, and his officer is called *magister ad facultates*. And his power is to grant dispensations, as to marry, to eat flesh on dayes prohibited, (and so may every diocesan) the sonne to succeed his father in his benefice, one to have two or more benefices incompatible, &c. It is called faculties in the statute of 28 H. 8. which in one sense signifieth a dispensation. So as *facultates* (in this sense) *dispensationes et indulta* are *synonyma*.

* Commonly called the master of the faculties.
* Trin. 44 Eliz. in com. banco. rot. 155. lib. 4. f. 117. Lib. pl. Co. pa. 512, 513.
b 2 E. 6. cap. 19. 5 E. 6. cap. 3. See the third part of the Instit. cap. Dier pag. 200. 5 Eliz. ca. 5 35 Eliz. cap. 7. 27 Eliz. cap. 11. Lib. pl. Co. 371. 27 Eliz. ca. 11. 3 Caroli ca. 4. Vid. 35 Eliz. ca. 7.

This authority was raised and given to the archbishop of Canterbury by the statute of 25 H. 8. cap. 21. whereby authority is given to the said archbishop and his successors to grant dispensations, faculties, &c. by himself or his sufficient and substantiall * commissary or deputy for any such matter, whereof heretofore such dispensations, faculties, &c. then had been accustomed to be had at the see of Rome, or by authority thereof. * This branch of this act you shall find pleaded lib. plac. Co. pag. 512, 513.

b Concerning the power of the archbishop to grant dispensations to any to eat flesh on Fridayes, Saturdayes, embring dayes, vigils, and Lent, the same is limited by the statute of 5 Eliz. cap. 5. And the penalty of 5 Eliz. in that case is diminished and made lesse by 35 Eliz. cap. 7. Note the statute of 5 Eliz. concerning eating of flesh on Wednesdayes is repealed by 27 Eliz. ca. 11. which act of 27 Eliz. is affirmed by the act of 35 Eliz. and by 21 Jac. cap. 28. and expressly by the statute of 3 Caroli cap. 4.

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Curia Peculiarum. The Court of Peculiaris.

The archbishop of Canterbury hath a peculiar jurisdiction in divers parishes within the city of London and other diocesses, &c.

The Consistory Courts of the Archbishops and Bishops.

See Lit. sect.
133. 136 648.

24 H. 4. cap. 12.

The consistory court of every archbishop and bishop of every dioces in ecclesiastical causes is holden before his chancelour in his cathedrall church, or before his commissary in places of the dioces far remote and distant from the bishops consistory, so as the chancelour cannot call them to the consistory without great travel and vexation: and he is called *commissarius foraneus*. From these the appeal is to the archbishop of either province respectively: when consistories of archbishops and bishops began within this realm, see before in the chapter of the tourn of the sheriffe.

Rot. clauf. 30 H. 7. m. a. mandatum est Th. m. de Stanford, &c. Ro. pat. 13 E. 1. m. 21. Rex licent. audit episcop. Bangor, &c.

It appeareth by many records in the reigns of H. 3. and E. 1. (as taking some one or two examples for many) that by the law and custome of England no bishop could make his will of his goods or chattels comming of his bishoprick, &c. without the kings license. The bishops that they might freely make their wils, yielded to give to the king after their deceases respectively for ever six things.

1. Their

1. * Their best horse or palfrey with bridle and saddle. 2. A cloak with a cape. 3. One cup with a cover. 4. One basin and ewer. 5. One ring of gold. 6. His kennell of hounds. For these a writ issueth out of the exchequer after the decease of every bishop: For example. *Rex, &c. Vic' Eborum. Præcipimus tibi, quod non omit' propter aliquam libertatem, quin etiam ingred' et distring' omnes executores testamenti et ultimæ voluntatis reverendissimi in Christo patris Matthæi nuper archiepiscopi Eborum defuncti, ac administratores et occupatores bonorum et catallorum quæ fuer' dicti nuper archiepiscopi, nec non hæred' et tenent' terrarum et tenementorum quæ nuper sua fuer' per omnes terras et catalla sua in balliva tua. Ita quod nec ipsi nec aliquis per ipsos ad ea man' appon' donec al' inde tibi præciperimus. Et quod de exitibus earundem terrarum nobis respond', et quod habeas corpora eorum coram baronibus de scaccario nostro apud Westm' à die Paschæ in tres septimanas ad respond' nobis de uno optimo equo sive palfredo cum cello et fræno. Una chlamyde sive cloca cum capella. Uno citho cum coopertorio. Una pelve cum lavatorio sive aquar'; et uno annulo aureo, nec non * muta canum quæ nuper fuer' ejusdem nuper archiepiscopi tempore mortis suæ: et quæ ad nos ratione prærogativæ nostræ spectant et pertinent, et de precio sive valore inde, unde nobis nondum est res. ons. Et habeas ibi tunc nomina executorum et aliorum prædict' et hoc breve.*

The most ancient of this kind that we find and remember (but certainly there were such writs before) is *inter memorand' de scaccario, anno 2 E. 2.* the bishop of Bathe and Wels case. *Tr. 36 E. 3, ibid. Int. com'ia.* the bishop of Chesters case, *Hil. 5 E. 4. ibid.* adjudge upon demurrer, that the duty being to the king after the decease of every bishop, it extendeth to an archbishop, the archbishop of Yorks cases for every archbishop is a bishop. It is sometimes called *multura* or *multura de episcopis*, sometime *monuiter, &c.* The king by verdict of twelve recovered ten thousand marks against the bishop of Norwich for that he prosecuted against the abbot of S. Edmonds Bury to appear before him against the kings prohibition, for which it was adjudged that his temporalties should be seised, and his body taken.

* Upon consideration had of the statutes of 3 R. 2. 7 H. 4. 1 H. 5. & rot. parl. 6 H. 4. nu. 48. & 4 H. 6. nu. 29. If an alien or stranger born be presented to a benefice, the bishop ought not to admit him, but may lawfully refuse him: which we have added, for that the abridgements or late impressions may deceive you.

* It is said that this was given by the bishops being secular persons ecclesiastical for all the secular clergy.

* *Muite des cheins, of muith cometh muta, signifying a kennell.*
Int com' de Hil. 2 E. 2. in scaccar. proces vers. Episc. de Bath et Wels.

Mic. 19 E. 3. coram rege. rot. 157. Norff. Tr. 21 E. 3. rot. 170. coram rege 21 E. 3. fo. 60.

* 3 R. 2. cap. 3. 7 H. 4. cap. 12. 1 H. 5. cap. 7. Rot. parl. 6 H. 4. nu. 48. 4 H. 6. nu. 29.

The Court of the Arch-Deacon, or his Commissary.

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This court is to be holden where and in what places the archdeacon either by prescription or composition hath jurisdiction in spirituall causes within his archdeaconry. And from him the appeal is to the diocesan. He is called *oculus episcopi*.

In some acts of parliament and many records and histories you shall read of the bishops pall, *pallium episcopale*. It is a hood of white wooll, to be worn as doctors hoods be upon the shoulders, with four crosses woven into it, &c. the form and colours whereof you may see in the book *De Antiquitate Britannicæ Ecclesiæ*, page 1.

IV. INST.

C c

for

24 H. 8. cap. 12.

20 H. 8. c. 20, &c. Vid. Cassaneus 4 part. Catalogi gloriæ mundi fo. 103. a. 26 Consideratio, ubi legas, si placet, multa de pallio.

for a stall is the arms belonging to the see of Canterbury, and therefore expressed there, and commonly in other places.

Vocabular' juris.

Palla est vestis qua altare cooperitur, viz. ut lineus pannus consecratus qui super altare ponitur, super quem extenditur corporale.

Regl. 51 E. 3.
an. 33.

The clergy petitioned in parliament, that of every consultation conditional, the ordinary may of himself take upon him the true understanding thereof, and therein proceed accordingly.

Whereunto the kings answer was, That the king cannot depart with his right, but to yeild to his subjects according to law. *Nota hoc, et stude bene.*

The Court of Delegates and consequently of Appeals.

25 H. 3. ca. 19.

It is so vulgarly called, because these delegates do sit by force of the kings commission under the great seal upon an appeal to the king in the court of chancery in three causes. First, when a sentence is given in any ecclesiasticall cause by the archbishop or his official. Secondly, when any sentence is given in any ecclesiasticall cause in places exempt. Thirdly, when a sentence is given in the admirall court in suits civill and marine by the order of the civill law. And these commissioners are called delegates, because they are delegated by the kings commission for these purposes.

Now because we have generally spoken of appeals in ecclesiasticall causes, which are grounded upon acts of parliament, it shall be pertinent to our purpose to set down the resolution of the judges, and of the learned in the ecclesiasticall law, which doth summe up in what causes, from what courts, and in what time appeals are to be made, and other necessary incidents concerning the same, as the lord Dier under his own hand hath reported, but are left out of the print, and yet worthy to be known and published, which you shall hear in his own words and language.

Of Appeals.

Appeals. Anno
24 H. 3. ca. 12.

First, in cases testamentary, matrimony, and tithes, from the archdeacon or his official, if the matter be there commenced, to the bishop of the dioces, and from the bishop diocesan or his commissary in such case, or if the matter be there commenced, within fifteen dayes after sentence given, to the archbishop of the province, and no further.

Item, from the archdeacon or commissary of the archbishop, if the matter be there commenced within fifteen dayes, &c. to the audience or arches of the said archbishop: and from thence within other fifteen days, &c. to the archbishop himself, and no further. And if the cause be commenced before the archbishop, then to be there definitively determined without further appeal.

Item, where the matter toucheth the king, the appeal within fifteen days to be made to the higher convocation house of that province, and no further, but finally to be there determined.

A generall prohibition, that no appeales shall be pursued out of the realme to Rome, or elsewhere.

Luce, a generall clause that all manner of appeales, what matter soever

See infra, this is altered by the statute of 25 H. 3. in the next page.

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25 H. 3. cap. 19.

soever they concern, shall be made in such manner, forme and condition within the realm, as it is above ordered by 24 H. 8. in the three causes aforesaid; and one further degree in appeales for all manner of causes is given, viz. from the archbishops court to the king in his chancery, where a commission shall be awarded for the determination of the said appeale, and from thence no further.

Vide supr. pag. precedent.

Item, that persons exempt shall likewise pursue their appeale in the chancery, *ut supra*, and not to the archbishop.

Note, in case where a sentence is given by commissioners delegates by the prince, as by the late visitors, *anno* 1 Eliz. the party grieved appealing, such appeale is out of the orders prescribed by the said statutes, and the prince in that case may grant a new commission to others to determine that appeale. *Et ceo fuit fait per l'opinion del plusieurs des justices en le case de Goodman deprive del deanery de Wells.*

Nota, Stephen Gardener evesque de Winton fuit deprive al Lambeth per commission del roy E. 6. fait a 10 persons proceeding sur ceo ex officio mero mixto vel promotio omni appellacione remota summarie de plaus, absque omni forma et figura judicii, sola facti veritate inspecta.

Et vide Mich. 3 & 4 Eliz. Coveney president del Novel Colledge in Oxon' deprive per le evesque de Winton, visitor del dit colledge, et exempt de tout jurisdiction ordinary, fait appeale al roy in son chancery, et commission illong; grant a A. Browne et Weston justices, que sur conference ove auters justices et civilians, resolve que le appeale ne gist, ne aucun autre remede pur le appell. ant pur ceo que cesti case fuit hors del dit statute de 24 & 25 H. 8. car cest deprivation est mere temporall, et come p. ley prov'. Ex quo sequitur, que une assise gist, &c.

This case is in print, Dier fol. 209. a.

Nota, in appellis per doctorem Lewes judic admiral' et al' &c. Forasmuch as an appeale is a naturall defence, it cannot be taken away by any prince or power, and in every case generally when sentence is given, and appeale made to the superior, the judge that did give the sentence is bound to obey the appeale, and proceed no further untill the superiour hath examined and determined the cause of appeale. Nevertheless where this clause (*appellacione remota*) is in the commission, the judge that gave sentence is not bound to obey the appeale, but may execute his sentence, and proceed further, untill the appeale be received by the superior, and an inhibition be sent unto him: for that clause (*appellacione remota*) hath three notable effects. The first is, that the jurisdiction of the judge that gave sentence, is not by the appeale suspended or stopped, for he may proceed the same notwithstanding. The second, that for proceeding to execution or further proces he is not punishable. The third, that those things that are done by the said judge after such appeale cannot be said void, for they cannot be reversed *per viam nullitatis*.

But if the appeale be just and lawfull, the superior judge ought of right and equity to receive and admit the same, as he ought to do justice to the subjects. And so if the cause of the appeale be just and lawfull, he ought to reverse and revoke all meane acts done after the said appeale in prejudice of the appellat. Thus far the report of the lord Dier truly translated.

* At the parliament holden at Clarendon called *assisa de Clarendon anno* 10 H. 2. cap. 8. the formes of appeales in causes ecclesiasticall, are set down within the realm, and none to be made out of the

* Parliam. at Clarendon 10 H. 2. cap. 8. Mat. Par. pa. 97.

* Rot. clauf. in dorf. anno 8 H. 5. part. 1. m. 29. Rex Dublin archiepiſc. &c. Rot. part. 13 E. 1. rot. 1. William de Valentia. & rot. 3. nu. 39. Wil. de Martingham acc. See Howenden fol. 284.

† [34†]
* Hayward doctor of the civill and canon law in the life of William 2. 8 Eliz. cap. 5.

the realm. *Ne quis appellat ad dominum papam, * rex agrè tulit appellat ad papam in causa bastardie, ut contra dignitatem regis de confilio igitur* (the record speaking in the person of the king) *magnatum et fidelium nobis aſſiſtent' vobis mandamus, firmiter injungentes quatenus non abſtante appellatione præmiſſa non differatis pro eo ſententiam, &c.* So as the firſt article of the ſtatute of 25 H. 8. concerning the prohibition † of appeales to Rome is declaratory of the ancient law of the realme.

* And it is to be obſerved, that the firſt attempt of any appeale to the ſee of Rome out of England was by Anſelme biſhop of Canterbury, in the reign of William Rufus, and yet it took no effect.

See 8 Eliz. cap. 5. an appeale in civill and marine cauſes before the lord admirall, &c. a ſentence before commiſſioners delegates is finall.

See before page 125. upon a ſentence given by the conſtable and maſſhall proceeding by the civill law *in cauſa armorum*, there lyeth an appeal to the king, but none of the ſaid ſtatutes extend to this kind of appeale.

See rot. cl. anno 30 H. 3. part 2. m. 11. *de appellatione pro rege fac' in electione abbatiffæ de Shaftesbury.*

The Court of the Commiſſioners of Review.

Ad Revidendum.

24 H. 8. ubi ſup. 25 H. 8. ubi ſup.

Albeit the ſaid acts of 24 H. 8. and 25 H. 8. do upon certaine appeales make the ſentence definitive as to any appeale, for the words be [ſhall be definitive] and that no further appeale ſhould be had: yet the king after ſuch a definitive ſentence, as ſupreme head, may grant a commiſſion of review, *ad revidendum, &c.* for two cauſes. 1. For that it is not refrained by the ſtatute. 2. For that after a definitive ſentence the pope as ſupreme head by the canon law uſed to grant a commiſſion *ad revidend'*: and ſuch authority as the pope had, claiming as ſupreme head, doth of right belong to the crowne, and is annexed thereunto by the ſtatutes of 26 H. 8. cap. 1. and 1 Eliz. cap. 1. And ſo it was reſolved in the kings bench Trin. 39 Eliz. where the caſe was, that ſentence being given in an eccleſiaſticall cauſe in the country, the party grieved appealed according to the ſaid act of 25 H. 8. to the archbiſhop, before whom the firſt ſentence was affirmed. Whereupon according to the ſtatute of 25 H. 8. he appealed to the delegates: before whom both the former ſentences were repealed and made void by definitive ſentence, and thereupon the queen as ſupreme head granted a commiſſion of review, *ad revidend'* the ſentence of the delegates. And upon this matter a prohibition was prayed in the kings bench, pretending that the commiſſion of review was againſt law, for that the ſentence before the delegates was definitive by the ſtatute of 25 H. 8. But upon mature deliberation and debate the prohibition was denied, for that the commiſſion for the cauſes abovesaid, was reſolved to be lawfully granted. In this caſe I being then the queens attorney was of counſell to maintain the queens power. And precedents were cited in this court in Michelots caſe, anno 29 Eliz. and in Goodmans caſe, and Huets caſe, in 29 Eliz. alſo.

See

Trin. 39 Eliz. in the kings bench. Hoſlingworths caſe. Lib. late. Raſt. fol. 16. Appeale to Rome. lb. Rome 389.

See the statute of 8 Eliz. cap. 5. and observe like words in that statute, *ut supra*.

Upon a sentence given by the high commissioners, a commission of review may be granted to and for the party grieved, as by an expresse clause within that commission appeareth. And if no such clause had been therein, yet a commission of review might have been granted. *Quia sicut fontes communicant aquas fluminibus cumulativè, non privativè; sic rex subditis suis jurisdictionem communicat in causis ecclesiasticis vigore statuti in hujusmodi casu editi et provisi cumulativè, non privativè,* by construction upon that act.

The high commission.

Le Court des Conservators des Priviledges de St. Johns de Jerusalem, &c.

There were two courts holden *coram conservatoribus privilegiorum*, the one *hospitaliorum*, and another *templariorum*. Of whose jurisdiction, and of their restraint to grant any general citations *priusquam exprimatür super qua re fieri debeat citatio, et si viderint hujusmodi conservatores quod petatur citatio de aliqua re cujus cognitio spectat ad forum regium, hujusmodi conservatores nec citationes faciant nec cognoscant,* as by the statute of W. 2. appeareth.

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W. 2. cap. 43.

See the second part of the Institutes, the exposition upon that statute.

The templers were dissolved in 4 E. 2. and the hospitlers in 32 H. 8. so as these courts are determined.

Now for a conclusion concerning England, I have reserved to say somewhat for the honour, and supream estate of both the relatives of our sovereign lord the king, and of this his kingdome, which I conceive to be necessary to that which in this part of the Institutes we have taken in hand, for that it graceth and strengtheneth all the rest.

By the whole parliament of 24 H. 8. wherein, besides the archbishops and bishops of the realm, there were 29 abbots and priors lords of parliament: it was resolved, and so declared by an act, That by divers and sundry old antique histories, and chronicles, it is manifestly declared and expressed, that this realme of England is an empire, and so hath been accepted in the world, &c.

24 H. 8. cap. 12.

But against the truth hereof, opposition hath been made. First, that this is the only parliament that hath affirmed it. Secondly, that this declaration is unjust and untrue, and that history or chronicle doth not affirm the same.

Vid. stat. de 28. cap. 2. in Hibernia.

As to the first I answer: that one act of parliament is *instar omnium*, being a proof of the unanswerable and highest nature, but this is not the only; for so much in effect (as to this point) is affirmed by all the lords spirituall and temporall, and the commons by authority of parliament long before the reign of H. 8. that the crown of England hath been so free at all times, that it hath been in no earthly subjection, but immediately subject to God in all things touching the regality of the same crown, and to no other.

Stat. de 16 R. 2. cap. 5. an. domini 1392.

Publique notaries made by the emperor claimed *de jure* to exercise their offices here in England, but because it was against

Rot. clauf. 13 E. 2. m. 6.

the dignity of a supream king, they were prohibited by the kings writ.

Bracton who wrote in the reign of H. 3. Lib. 1. ca. 8. nu. 5. anno dom. 1270. Int. leges Edovardi. cap. 17. an. dom. 1050.

And long before, these by the ancient law of the crown of England, were due to the king. *Omnis quidem sub rege, et ipse sub nullo, sed tantum sub Deo. (Et ibidem paulo post eodem numero) Ipse autem rex non debet esse sub homine, sed sub Deo, &c.*

And therewith agreeth the law before the conquest. *Rex autem, quia vicarius summi regis est, ad hoc est constitutus, ut regnum terrenum, et populuni domini, et super omnia sanctam veneretur ecclesiam ejus et regat, et ab injuriis defendat, et maleficos ab ea eveliat, et destruat et penitus disperdat.*

Anno dom. 169.

And long before that anno 169. à passione Christi dominus E!cutharius papa Lucio regi Brytanniæ scripsit, ad petitionem regis et procerum regni Brytanniæ. *Petistis à nobis leges Romanas et Cæsaris vobis transmitti, quibus in regno Brytanniæ uti voluistis: leges Romanas et Cæsaris semper reprobare possumus, legem Dei nequaquam. Suscepistis enim nuper inspiratione divina in regno Brytanniæ legem et fidem Christi. habetis penes vos in regno utranque paginam, ex illis Dei gratia per consilium regni vestri sume legem, et per illam Dei patientia vestrum reges Brytanniæ regnum, vicarius vero Dei estis in regno, &c.* and higher I cannot goe.

22 E. 4. nu. 19.

And by the way it is to be observed in the severall grants by abbots and priors made to king E. 4. they severally stile him by these very words, *supremus dominus noster E. 4. rex.*

25 H. 8. cap. 21.

And by three other acts of parliament, viz. by the statute of 25 H. 8. cap. 21. wherein by authority of parliament it is enacted and declared (directing their declaration to the king) That this your graces realm recognizing no superior under God but only your grace, hath been and is free from subjection to any mans laws, but only to such as have been devised, made and ordained within this realm for the wealth of the same, or to such other, as by sufferance of your grace and your progenitors, the people of this your realm have taken at their free liberty by their own consent to be used amongst them, and have bound themselves by long use and custome to the observance of the same, not as to the observance of the laws of any forain prince, potentate, or prelate, but as to the customed and ancient laws of this realm originally established as laws of the same, by the said sufferance, consents and custome, and none otherwise.

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25 H. 8. cap. 21.

1 El. cap. 1.

1 Jac. cap. 1.

* Pl. com. 398.
b. Doct. & Stud.
fo. 164. cap. 55.

And by the statutes of 25 H. 8. cap. 21. 1 El. cap. 1. and 1 Jac. cap. 1. the crown of this kingdome is affirmed to be an imperiell crown.

As to the second: I might answer * that *le court de parliament est de tresgrand honor et justice, de que nul home doit imaginer chose disbonorable.* And with the Doctor and Student upon the statute of 45 E. 3. cap. that it cannot be thought that a statute that is made by the authority of the whole realm as well of the king, and of the lords spirituall and temporall, as of all the commons, will recite a thing against the truth.

The like charter to the house of Donnington by king Edgar.

But to be short, king Edgar stiled and subscribed himself in his charter, *Basileus, imperator et dominus*, which you may read in the preface to the fourth part of my Reports. Vide rot. pat. 1 E. 4. parte 6. m. 23.

Edward commonly called St. Edward son of king Edgar in a charter

charter which he made to the abby of Ramsey (which I have) stiled himself, *Ego Edwardus totius Albionis Dei moderante gubernatione basileus.*

Another charter of king Edwine to the abby of Crowland intituled, *Carta regis Edwini filii regis Edmundi fratris regis Edgari de stiled in Jeckelea.* Wherein he is stiled *Edwinus Anglorum rex et totius Brytannicæ telluris gubernator et rector,* and many others.

To conclude this point with a late and learned writer, whom I will cite for that he agreeth with the former authorities, he saith, that the regall estate and dignity of a king is of two manners. The one is imperiall or supream, such a one is our sovereign lady Elizabeth by the grace of God queen of England, France and Ireland, which sovereign queen holdeth her empire and kingdomes with her people and subjects immediately of the Lord of heaven and earth, without any other mean feignory or attendancie of corporall or bodily service or allegiance to any other worldly prince or potentate, maugre the head of either her forain enemies or intestine and homeborn traitorous vassals, and also from her sentence (she and we all her faithfull and loyall subjects acknowledging to her estate no superiour) lyeth no appeal.

There is also a king, and he a homager or feudatory to the estate and majesty of another king as to his superior lord, &c. As that of Navar and Portugall to the king of Castell: the kingdomes of Granado and Leons to Aragon: the kingdomes of Lombardy, Sicill, Naples and Bohemia to the sacred empire: the old kingdome of Burgundy, and now the late erected title of the king of Arles, to the king of the French men, and so forth of the rest.

The king which is supream and imperiall is equivalent within his land to the power and authority that Cesar can challenge within his own dominions, and such a king challengeth of right to set upon his head a * crown imperiall with a diademe elevated on high, to signifie the perfection and greatnesse of their estate; but to the other kings homagers a crown not elevated is due. And that we may (as duty is) both with reverence and dutifull fear discern and judge the office and function of our sovereign to be most holy and sacred: let us see with what honours a sovereign king (such a one as is her majesty) is illustrated and made redoubted to his subjects, first, what great majesty, honor, power, and glory is intended by setting a crown upon her head, for in the reverend and majesticall action of coronation, she is first anointed, then blessed, after that consecrated; to signifie unto her and unto us that she is of God, that her power is from Christ, and that she is to rule over Christian people: the crown set on her head is called triumphant, and it is of gold to signifie her excellent majesty; it is called triumphant by reason that the like crown in fashion and form was given the emperours and captains of the Romans in their triumphs over kings and nations. This crown triumphant is most due to her excellent majesty even by the strict course of laws of arms, since that her ancestors have triumphed over many kings and mighty people, as H. 1. over five kings of Ireland, E. 1. triumphed over the Scottissh and Welsh nations. E. 3. and H. 5. both of them over France. In the triumphant crown of our sovereign lady there be placed (not only for the ornament of her regall diademe, but also to signifie

I. F. of the Inner Temple, in his book intituled, The glory of generosoty, p. 140, 141.

Nota.

* A crown imperiall.

With what majesty crowned.

A crown triumphant.

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the princely virtues of a king) twelve gems or stones of precious esteem.

And for this Kingdome of England, the other part of the relative, hear what an ancient poet hath said.

Bartolomæus.

*Anglia gens fortis, et fertilis angulus orbis :
Insula prædives quæ toto vix eget orbe,
Et cujus totus indiget orbis ope.
Anglia plena jocis, gens libera et apta jocari,
Libera gens, cui libera mens, et libera lingua ;
Sed lingua melior liberiorque manus.*

*The Answer to certain Objections against the Kings Stile of
Defender of the Faith.*

This bull you may see in Speeds Chronicle, p. 759. nu. 41. anno domini 1521. 13 H. 8. See Laert. Cherub. Bullar. tom. 1. pag. 619.

And where some doe object that the king our sovereign lord ought not *de jure* to enjoy the title and stile of defender of the faith, *defensor fidei*: for (say they) pope *Leo decimus, anno pontificatus sui*, by his bull granted the same to king H. 8. *et posteris suis*. Well, *veritas à quocunque dicitur, à Deo est*. But they say that by the bull of pope Paul the third, against king H. 8. upon his suppression of the lesser houses of religion in anno 27 H. 8. he did not only depose him of this title, but of his crown also, and gave his kingdome to him that could get it: which, say we, was done *de facto, sed non de jure*; and we confesse also that by colour of that bull, pope July the third in his bull to king Philip and queen Mary his direction was *Charissimis in Christo filiis nostris Philippo regi et Mariæ reginæ illustribus*, wherein he omitted the title of defender of the faith: but besides the popes bull, which (as it seemeth) is countermendable at his pleasure, the king hath a surer right thereunto to this stile, for by the full consent of all the lords spirituall and temporall and the commons assembled in parliament, and by authority of the same, in anno 35 H. 8. it is enacted, that all his majesties subjects should from thenceforth accept and take his majesties stile as it is declared and set forth in manner and form following, that is to say, in the Latin tongue by these words; *Henricus octavus Dei gratia Angliæ, Franciæ, et Hiberniæ rex fidei defensor et in terra ecclesiæ Anglicanæ et Hiberniæ supremum caput*, and in the English tongue by these words: Henry the eight by the grace of God king of England, France, and Ireland, defender of the faith, and of the church of England, and also of Ireland, in earth supream head: and that the said stile should be from thenceforth by authority aforesaid united and annexed for ever to the imperiall crown of his highnesse realm of England. Hereunto it is objected, that this act of parliament is repealed by the act of 1 Mar. but that is mistaken, for as the treasons made and enacted by subsequent clauses of the said act of 35 H. 8. are repealed by the act of 1 Mar. but the stile and title of the crown without question remaineth of force unrepealed; and accordingly queen Mary in all her severall sessions of parliament before her marriage and after her marriage, she and king Philip used the stile and title of defender of the faith in all their parliaments, letters patents, &c. according to the said act of 35 H. 8. and by the way she used the title also of *supremum caput* in the second session of her parliament in the first year of her reign. And by the resolution of

the judges in *anno* 1 Mar. it appeareth that the statutes of 26 H. 8. 1 Mar. Diar 94. cap. 1. and 35 H. 8. cap. 3. concerning the stile of the king remains in force, for thereupon did the question depend: so as albeit pope July in his bull vouchsafed not to give king Ph. and queen Mary their stile of defender of the faith, yet both she before, and both of them after their marriage, according to their right took it upon them notwithstanding the thundring bull of pope Paul the third. Lastly, all the kings and queens regnant of England have at their coronation time out of minde been sworn to defend the faith, and therefore were of common right defenders of the faith: by reason of which oath they may take upon them the stile, and are more firmly bound to perform and do it, then by the popes bull.

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Having spoken of England, and of the petty islands and dominions of the same, and intending to speak of that noble island and kingdom of Ireland, I could not passe over that ancient and renowned kingdom of Scotland wholly in silence, but as it were to salute it by the way, and yet to adde somewhat, which none that have written of that kingdom have (to my remembrance) touched.

C A P. LXXV.

OF SCOTLAND.

CONCERNING this kingdom there are many things worthy of observation.

1. That these two mighty, famous, and ancient kingdoms, viz. England and Scotland (I use the words of the act of parliament) were anciently but one.

1 Jac. regis ca. 1.

2. That one religion and service of God is holden and celebrated by both.

Vide 4 Jac. ca. 10. & 7 Jac. cap. 1.

3. That as there is one language in both, so there was one kind of government and one law in ancient time that ruled both with many unanimous agreements between them, which evidently appeareth by many proofs. First, that the laws of Scotland are divided as the laws of England be into the common laws, acts of parliament, and customes. Their common laws are principally contained in two books. The first called *Regiam majestatem*, because it beginneth (as Justinians Institutes do) with these words [*regiam majestatem.*]

11 Jac. regis ca. 1. & 2. in Ireland.

The second book is called *Quoniam attachiamenta*, because it beginneth with those two words.

The first book doth in substance agree with our * Glanvil, and

* First printed by the perswa-

sion and procurement of Sir William Stanford a grave and learned judge of the common pleas anno dom. 1554. 1 & 2 Ph. and Mar. Of whom hear what Hovenden saith an. dom. 1180. (et regni H. 2. 26.) *Henricus rex Angliæ pater constituit Ranulphum de Glanvilla summum justitiarium totius Angliæ, cujus sapientia conditæ sunt leges subscriptæ quas Anglicanas vocamus. This Hovenden lived in the reigne of H. 2. and died in the time of king John. See Pl. Com. 368. b. per Catlyn in Epist. to the eight book of reports.*

most

most commonly *de verbo in verbum*, and many times our *Glanvill* is cited therein by speciall name.

Secondly, the crown of Scotland is descendible to the daughter or heir female where there is no issue male. If there be many daughters or heirs female, it descends to the eldest. Likewise they have the like descents of lands to subjects as England hath, as none can inherit in the right line ascendant. The eldest daughter hath *initiam partem*. All the daughters of subjects do inherit.

Parliament.

Thirdly, they have the high court of parliament, as we in England have, and called by the same name, consisting of the same members, viz. lords spirituall, lords temporall, and the commons. It is summoned and called at the kings pleasure for a certain time. When they meet, the king or his chancelor sheweth the causes of calling them together. But there of later times the lords spirituall do choose eight temporall lords, and the lords temporall choose eight spirituall lords. These sixteen make choice of eight chosen for the counties, and eight of cities and burghs, in all, thirty two. But whatsoever is agreed upon by them, the king doth allow or disallow by moving of his scepter, &c.

Fourthly, they have the same degrees of nobility, as dukes, marquesses, earls, viscounts, barons, &c.

Fifthly, they have the same great officers, as chancelour, that keepeth the great seal, lord treasurer, lord privy seal, secretary, &c.

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Sixthly, and the same ministers of justice, as sheriffs, coroners, &c.

Seventhly, the same laws for the most part *quarto modo* appropriated to England, viz. tenant by the curtesie, because they had the same law that England had.

Eighthly, the like writs, *brevia*, as *de resto*, assise of *novel dissein*, *mordanc*, *de gard*, *de ideot* inquiring, *de divisis fac*, *replegiar*, *attachm*, &c.

Ninthly, they agree with *Magna Carta* concerning wardships, &c.

Tenthly, with *Carta de foresta* cap. 11. for it is lawfull for bishops, earls, and barons comming or returning through the kings forests at the kings command to kill one or two beasts in the sight of the forester, or otherwise in his absence to blow his horn, that he appear not to take it thievishly.

11. The lord of whom the land is holden by knights service *per antiquius feoffmentum* shall have the wardship of the body.

12. The sheriffes should cause the acts of parliament to be proclaimed, &c. All which, and many more are the ancient laws of both kingdoms, as it appeareth in the said books of *regiam majestatem*, and *quoniam attachiamenta*, &c.

13. The sheriffes there have an inheritance in their office, as sometime in England they had, and yet in Cumberland they have.

14. The same vocables of art are used in the laws of both kingdoms, as *ordelium*, i. the court of water and iron, *filus mulieratus*, *marchetum*, *serplait* or *serpler*, *judicamenta*, &c. *macheum* or *machemium*, *murdrum* or *murchrum*, *chancemley*, *mote*, *misericordia*, *mesuagium*, *slightwright*, *medlerum*, *remanere*, *manerium*, *recognitio per assisam*, *pipoules*, *pannagium*, *ora*, *nonclayme*, *soc* or *sok*, *serjanteria*, *graund serjanty*, *pty serjeanty*, *seclator* a suiter, sheriffs of inheritance there,

there, the sheriffs court or county court, *toll*, *tunbrellum* or *tumbrellum*, *thainus*, foccage, *burgage*, *servicium militare*, relief or relieve, *them* and *teme*, theftbote, *in libera elemofyna*, *terræ dominicales*, *liberum tenementum*, *vidiare duellum*, *wavrenna* or *varenna*, *valvasfores* or *vavafores*, waif, stray, castleward, *verediſtum*, *viridarii*, infangthief, outfangthief, outlawry, outlawed, justice in eire, wreck of the ſea, voucher, *vicenetum*, *hamfockne*, *hida terræ*, *bovata terræ*, *heriot* or *heregeld*, *huteſum* or *hueſum*, regrateurs, foreſtallers, a guilde, falſifying of dooms or recovery, *quaventena*, *felonia*, *feodum*, homage, fealty, *eftroverium*, *offinium*, *exitia pars*, diſparagement, diſſeiſons, diſclaimer, *ſaccarium*, *colliſtrigium*, *champertie*, *maeremium*, *averia*, *catalla*, bote, bloodwite, grand aſſiſe, aſſiſe of novel diſſin', barrators, affidavit, adjournment, reſponſals, attornies, and many others.

There was an heptarchy in Scotland, but now a monarchy. There are there two archbiſhops, the one of St. Andrew, the other of Glaſco: St. Andrew hath eight biſhops under him, and Glaſco three.

There are there thirty counties or ſherifdoms.

The ancient motto of the king of England is, God and my right (*intelligitur*) ſhall me defend. Of the king of Scotland, In my defence God me defend.

There are alſo two famous univerſities, one in St. Andrews, the other in Glaſco.

The length of Scotland from Twede to the uttermoſt coaſt is 480 miles: it is longer then England, but narrower, and endeth like a wedge.

Of ancient time all the biſhops of Scotland were ſacred, and confirmed by the archbiſhop of York.

But by reaſon of their acts of parliament, which in many points have altered, diminished, and abrogated many of the old, and made new laws and other proceedings: the diſtinct kingdoms as they now ſtand have many different laws.

Item, It is ordained by the king by conſent and deliverance of the three eſtates, that all and ſingular the kings lieges of the realme live and be governed under the kings laws and ſtatutes of the realm allanerly: and under na particular laws, nor ſpeciall privilege, nor be na laws of uther countries nor realms.

Item, It is ſtatute and ordained, that all our ſovereigne lordis lieges beand under his obeifance, and in ſpeciall the iſles be ruled by our ſovereigne lordis awn laws and the common laws of the realm, and be nane uther laws.

King James at his parliament holden *anno 1* of his reigne, endeavoured to have made an union of both kingdomes, and to have erected a new kingdom of Great Britain. And thereupon authority was given to certain commiſſioners of the higher and lower houſe of parliament, to treat with certain commiſſioners of Scotland for and concerning an union of both kingdomes. Amongſt theſe commiſſioners there grew a queſtion, whether there could be made an union of the kingdomes by raiſing a new kingdom of Great Britaine before there was an union of the laws. Which queſtion by the kings commandment was referred to all the judges of England in Trinity terme, *anno 2* Jac. who unanimouſly reſolved

Par. 3 Jac. 1. ca.
48. 11 Martii
anno dom. 1425.

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Parl. Jacobi 4.
ca. 79. 11 Martii
anno dom.
1503.
1 Jac. cap. 2.

folded (I being then attorney generall, and present) that *Anglia* had laws, and *Scotia* had lawes, but this new erected kingdome of *Britannia* should have no law. And therefore where all the judiciable proceedings in England are *secundum legem et consuetudinem Angliæ*, it could not be altered *secundum legem et consuetudinem Britannia*, untill there was an union of the lawes of both kingdomes, which could not be done but by * authority of parliament in either kingdome.

Vid. supra p. 36.

* Ex instrumento Lib. Hofp. Sancti Leonardi in com. Eborum. Egbert rex in parlamento apud Wintoniam mutavit nomen regni de consensu populi sui, et iussit illud de cætero vocari Angliam. Iste rex Egbertus obiit anno dom. 673. See a proclamation 15 Septemb. 1603. 2 Ja.

* H. 7.

Anno 3 Ja. ca. 3. An act made for things to be done by force of the said act of 1 Ja. cap. 2. in any other session of parliament.

Anno 4 Ja. cap. 1. A repeale of hostile lawes and of hostility between England and Scotland, &c. And it is enacted, that no Englishman shall be sent out of England into Scotland for any offence done in Scotland, untill such time as both realmes should be made one in lawes and government. So as the resolution of the judges was approved by parliament. See a proclamation 20 Octob. 2 Ja. concerning the kings stile of king of Great Britaine, wherein all judiciable and legall proceedings, &c. are excepted.

I never read of any union of divided kingdomes, and therefore I conceive it to be without precedent. And in this union many things would fall into consideration, and those of great weight, other then the union of lawes, though that be a maine one: as for example, the severall crownes are descendible to severall heyres of * blood. And question may be made who should be heyre of this new kingdome.

But the learned poet hath found out an union without danger, directing his verses to king James.

*Cum triplici fulvum conjunge Leone Leonem,
Ut varias atavus junxerat ante rosas.
Majus opus, varios sine cæde unire leones,
Sanguine quam varias confociasse rosas.*

Whosoever is desirous to know such miscellanea as we have observed concerning Scotland, let him reade these records and authorities following.

The records of parliament from the beginning thereof, for the receivers and tryers of petitions in the lords house. Rot. liberat. anno 3 Ed. 1. m. 2. per Johannem Lovetot, rot. paten' anno 20 Ed. 1. Gilberto comiti Glovornia et Hereford. Scotia rot. parliament. 21 Ed. 1. inter placita rot. 1. and 2. Hovenden 1194. pag. 7. carta regis R. 1. Mat. Westm. anno dom. 1260, pag. 302. H. 3. rot. Scotia 21 E. 1. carta f. 1. et l'rae Alexandri regis Scotiae, rot. Vasconia 25 E. 1. m. 2. 3. in dorf. Trin. 25 E. 1. coram rege rot. 6. Norff. Rafe de Tonyes case. Anno 29 E. 1. *Præ quas rex per se et quas comites et barones Angliæ per se miserunt domino papæ anno 29 E. 1. autoritate parliamenti, quæ irrotulatae sunt etiam in scaccario.* Vid. Walsingham 48. and 49.

Rot. parl. apud Linc. 29 E. 1. Anno dom. 1300 Literæ omnium nobilium Angliæ, &c. Papæ.

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Rot. pat. 24 E. 1. episcopis Scotiae. Mich. 33 E. 1. coram rege rot. 127. Scotia rot. parl. 35 E. 1. in brevi de parlamento, & auter 1 E. 2. 1 E. 3. fo. 17. Grayes case. 6 E. 3. 18. The abbot of Crowlands case. 9 E. 3. 6. John Darcyes case. rot. pat. 10 E. 3. 2 ps. comes Arundel. rot. parl. 14 E. 3. nu. 15. stat. 4. rot. clauf. 22 E. 3. & 23 E. 3. breve de parlamento magnifico principi, &c.

22 Aff.

22 Aff. p. 85. 39 E. 3. fo. 35. rot. parliament. 42 E. 3. nu. 7. 42 E. 3. fo. 25. 8 R. 2. tit. cont. clayme pl. ultimo. 13 H. 4. fo. 5. rot. pat. 2 H. 5. part. 3. m. 1. 8 H. 5. fo. 5. 32 H. 6. 25. 20 E. 4. 6. b. Litt. sect. 100. & 165. 1 part of the Institutes. Stat. de 2 & 3 E. 6. cap. 36. Fortescue cap. 13. Pl. com. 126. Dier manuscript 3 Eliz. 22. b. & 13 Eliz. fo. 68. m. 5. Dier 12 Eliz. fo. 287. in print. Lib. 7. fo. 22, 23, &c. Calvyns case. lib. 9. fo. 114. Seignior Zanchers case. See before in the chapter of the High Court of Parliament.

Polidor. Virgil. Hollingsh. 1 part. fol. 116, 117. 2 part. 286. Stowe 303. Matth. Westm. 428, 425, 443, 444, 445. Walsingham 17, 28, 32, 129, &c.

Historie.

Thus have you all which we have observed in our reading concerning this matter, and which the benevolent reader may peruse at his pleasure; to whose censure we wholly refer the same. *Multa, nemo omnia novit.*

You have observed, that those of Scotland do agree with us in language, and as hath been said, differ in lawes. On the other side, the subjects of Ireland differ from us in language, and agree with us in lawes, and therefore of them we shall speak somewhat the more at large.

Amongst variety of authors from whence this noble nation of the Scots originally came, we follow venerable Bede in his history of England, lib. 1. cap. 1. and also from whence the * Picts originally came. And there you shall reade, that the Picts arriving in Britania planted themselves in the north parts thereof, for the Britains had taken up the south part before. And whereas the Picts having no wives did require the Scots to marry their daughters, the Scots agreed to grant them their boone, under condition, that as often as the matter was in doubt, they should choofe their king rather of the next of the house of the woman then of the man.

Bede in history of England lib. 1. cap. 1. * Redhanks.

Cap. 12.

And that Palladius in the eight yeare of Honorius the emperour, anno domini 411. was sent by Celestinus bishop of Rome to the Scots that had received the faith of Christ, to be their first bishop.

* That the Scots do nothing differre from the Britains in their conversation.

* Et. lib. 2. cap. 4.

Both these famous kingdomes have found by wofull experience, that unwise and incertaine making of leagues, greatly indamageth the commonwealth, and the fatal danger of such leagues to the princes themselves.

Beda in his history of England, lib. 1. cap. 11. Vid. supr. p. 157.

C A P. LXXVI.

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Of the Kingdome of Ireland.

WE shall not need to undertake another work to write of the courts of justice there, for that they have the same which we have in England, and the same law, saving, where some that have written of them have in some maine points mistaken the matter;

1 Jacobi cap. 1. & 11 Jac. &c. cap. 1. & 6. in Ireland Vid. the 1 part of the Institutes, 62. matter; 212.

matter; we will convince the same by direct matter of record, and we intend to adde some things which are necessary to be known, which no man that hath written of that country hath vouched, or if they have remembered the same, it is with so light a touch, as much is omitted out of the record, or case resolved itselfe, worthy to be known, which we intend to supply for the honour of the king, and benefit of his subjects there. And the rather, for that I have been informed by many of them that have had judicciall places there, and partly of mine owne knowledge, that there is no nation in the Christian world that are greater lovers of justice (whereof we shall principally treat) then they are, which vertue must of necessity be accompanied with many others; and besides they are descended of the ancient Britaines, and therefore the more indeared unto us.

Parliaments in Ireland of ancient time.

* Pag. 12.

First, concerning the parliaments of Ireland, being the highest court there, where some have supposed that the same begaune in 17 E. 3. we shall make it appeare by matter of record, that not only king John, as all men agree, but H. 2. also, the father of king John, as * before it hath appeared, and in the next page shall be touched, did ordaine and command at the instance of the Irish, that such lawes as he had in England should be of force and observed in Ireland: hereby Ireland being of it selfe a distinct dominion, and no part of the kingdome of England (as it directly appeareth by many authorities in Calvins case) was to have parliaments holden there as England; and thereupon in the reigne of king John himselfe a parliament was holden there, as by this record ensuing appeareth.

Rot. ann. 18 H. 3. m. 17. nu. 21. See the first part of the Institutes, sect. 212.

^a Nota, Rex de communi omnium consensu (ac communi consilio teneri statuit) is by act of parliament. ^b Nota [omnium] that all received the lawes, &c. Many things in these letters patents are worthy of observation.

Rex comitibus, baronibus, militibus, et liberis hominibus, et omnibus aliis de terra Hiberniæ, salutem. Quia manifestè esse dignoscitur contra coronam, et dignitatem nostram et consuetudines, et leges regni nostri Angliæ, quas bonæ memoriæ dominus Johannes rex, pater noster, de communi omnium de Hibernia consensu teneri statuit in terra illa, quod placita non teneantur in curia christianitatis de advocacionibus ecclesiarum et capellarum, vel de laico feodo, vel de catallis quæ non sunt de testamento vel matrimonio. Vobis mandamus, prohibentes quatenus hujusmodi placita in curia christianitatis nullatenus sequi præsumatis in manifestum dignitatis et cironæ nostræ præjudicium, scituri pro certo, quod si feceritis, dedimus in mandato justiciario nostro Hiberniæ, statuta curiæ nostræ in Anglia contra transgressiones hujus mandati nostri cum justitia procedat, et quod nostrum est exequatur. In cujus, &c. Teste rege apud Winchcomb 28. die Octobris anno regni nostri decimo octavo. Et mandatum est justiciario Hiberniæ per literas clausas, quod prædictæ literas patentes publicè legi et teneri faciat. But as true it is that the father of king John, viz. H. 2. when he had conquered Ireland, sent that treatise, intituled, *Modus tenendi parliamentum*, in a faire parchment roll, for their better holding of parliaments there, which you may reade more at large before, cap. The high Court of Parliament, p. 12.

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Rex Henricus 3. anno regni sui 12. mandavit justiciario suo Hiberniæ, ut convocatis archiepiscopis, episcopis, baronibus et militibus ibidem coram eis legi faciat cartam regis Johannis, quam legi fecit, et jurari à magnatibus Hiberniæ de legibus et consuetudinibus Angliæ observandis, et quod leges illas teneant et observent.

Rot. pat. 30 H. 3.

Quia pro communi utilitate terræ Hiberniæ, et pro unitate terrarum, proviujum

provisam est, quod omnes leges et consuetudines quæ in regno Angliæ tenentur in Hibernia teneantur, et eadem terra eisdem legibus subjacet, ac per easdem regatur, sicut Johannes rex cum illic esset * statuit, et firmiter mandavit. Ideo volumus quod omnia brevia de communi jure quæ currunt in Angliâ similiter currant in Hibernia sub novo sigillo regis. Teste, &c. Apud Woodstock.

* Nota.

Major Dublin, qui querebatur vers. thesaurarium scaccarii Dublin, et vers. barones scaccarii de gravaminibus per ipsos illatis, remittitur parlamento, et inde huc : cui per curiam dictum est, quod gravamina sua proponat, qui dicit quod non adhuc est consultus, super quo dies datus est. Ad quem diem nullas proposuit querebas, ideo committitur turri London, et finem fecit domino regi.

Coram rege Mich. 33 E. 1. Rot. 124. Hibernia.

Sometimes the king of England called his nobles of Ireland to come to his parliament of England, &c. And by speciall words the parliament of England may binde the subjects of Ireland, as taking one example for many.

10 Octobris rex affectans pacificum statum terræ Hiberniæ, mandavit Ricardo de Burgo com' Ulton' et aliis nobilibus terræ prædictæ, quod sint ad parlamentum suum quod summoneri fecit apud Westm' in octabis Sancti Hilarii prox' ad tractand' ibid' cum proceribus, &c. regni sui super statu terræ prædictæ.

Rot. parl. 3 E. 2. m. 31.

An excellent president to be followed, whensoever any act of parliament shall be made in England, concerning the state of Ireland, &c.

Anno 35 E. 3. De concilio summonit' pro ter' habentibus in Hibernia.

Rot. parl. 35 E. 3. 1. rot. 6c.

- Maria comitissa Norff.
- Aelianora comitissa Ormond.
- Jana la Despenser,
- Philippa com. de la Marche,
- Johanna Fitzwater,
- Agnes comitissa Penbroke,
- Margareta de Roos,
- Matildis comitissa Oxoniæ,
- Catherina comitissa Athol.

} ad mittendum fide dignos ad colloquium.

^a De parliamentis singulis annis in Hibernia tenendis, et de legibus et consuetudinibus ibidem emendandis.

^a Rot. parl. anno 10 E. 2. Rot. clauf. 10 E. 2. m. 38. & rot. clauf. 12 E. 2. m. 3. Annales Hiberniæ anno dom. 1309. 2 E. 2. parliam. tent. apud Kilkennie per com. Ulton. et Johannem Wagan. Justic. Hiberniæ et Magnar. &c. ^b Rot. parl. 17 E. 2. 1. part. pat. anno prædict. m. 3.

Hereby it appeareth that there were parliaments holden in Ireland before this time, and order taken at this parliament that they should be holden every yeare, and the like acts were made in England in 4 E. 3. & 36 E. 3. for parliaments to be holden in England.

^b In octabis Sancti Martini apud Nottingham rex de consensu communis consilii sui fecit certas ordinationes pro reformatione status sui Hiberniæ, et ministrorum regis ibidem.

^c Volumus et præcipimus quod nostra et terræ nostræ negotia, præsertim majora et ardua, per peritos consiliarios, ac prælatos, et magnates, et quosdam de discretioribus hominibus in parliamentis tractentur, discutiantur et terminentur.

This ordinance doth regulate the parliaments in Ireland according to the institution and end of the parliaments in England, as in the writ of parliament, which is to confer and treat de arduis et urgentib' negotiis nos (i. regem) et statum et defensionem regni et ecclesiæ Anglicanæ

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^c Int. Ordinationes pro statu Hiberniæ anno 17 E. 3. in turri, &c.

Vid. Lib. Album
in scaccario.
Diverse acts
here made con-
cerning Ireland,
and transmitted
thither to be in-
rolled in the
chancery there.

* 25 H. 8 cap. 12.
F. N. B. 178. a.
22 R. 3. 12.
Anno 10 H. 7.
Poynings law.
* Nota.

Anglicanæ concernentibus; the effect whereof is contained in the ordinance of 17 E. 3. but that ordinance doth not erect any parliament there, as some have (without any colour) supposed.

See 20 H. 6. fol. 8. which began Mic. 18 H. 6. rot. 46. coram rege, & 2 R. 3. fo. 12. See before in the Chapter of the High Court of Parliament.

And seeing good and profitable acts of parliament made in the realm of England since the reign of king John extended not into Ireland, unless it were specially named or by general words included, * as within any of the kings dominions, a right profitable act was made at a parliament holden in Ireland in anno 10 H. 7. before Sir Edward Poynings then deputy or prorex in Ireland, and thereupon called Poynings law.

Whereby it is enacted, That * all statutes late made within the realm of England concerning or belonging to the common or public weale of the same, from henceforth be deemed good and effectually in the law, and over that be accepted, used, and executed within this land of Ireland, in all points at all times requisite according to the tenor and effect of the same. And over that by the authority aforesaid, that they and every of them be authorized, proved, and confirmed, in this same realm of Ireland. And if any statute or statutes have been made within the said land heretofore to the contrary, that they and every of them by the authority aforesaid be adnulled, revoked, and made void, and of none effect in the law.

And Hil. 10 *Jacobi regis*, it was resolved by the two chief justices and chief baron, that this word [late] in the beginning of this act had the sense of [before] so that this act extended to Magna Carta, and to all acts of parliament made in England before this act of 10 H. 7. but it is to be observed that such acts of parliament as have been made in England since 10 H. 7. wherein Ireland is not particularly named or generally included, extend not thereunto, for that albeit it be governed by the same law, yet it is a distinct realm or kingdom, and (as hath been said) hath parliaments there.

Books concern-
ing Ireland.

Vide Bracton lib. 5. fo. 395. b. temps E. 1. Voucher 239. 14 H. 3. stat de Homage. 13 E. 2. Bastardy 25. 7 E. 3. 9. 8 aff. 17. Britton fo. 1. a. 45 E. 3. 19. Tr. 29 E. 1. coram rege 10 E. 3. 41, 42. 11 H. 4. 7. 8 R. 2. Proces 224. 3 H. 7. 10. 7 E. 4. 27. pl. com. 368. 13 Eliz. Dier 303. 20 Eliz. Dier 360. lib. 7. Calvins case. 1 part of the Institutes sect. 95.

Parliaments in
Ireland holden
at this day.

How and in what manner a Parliament is to be holden in Ireland, and how Bills ought to passe in the same.

Hil. 10 *Jacobi regis*.

The lords of the councell directed their letters to the two chief justices and chief baron in these words.

After our hearty commendations to your lordships. Where- as his majesty for divers weighty considerations hath resolved to hold a parliament in the realm of Ireland, and that by an act made in the tenth year of H. 7. called Poynings Act, it is provided that all such bills as shall be offered to the parliament there shall be first transmitted thither under the great seal of that

that kingdom: and having received allowance and approbation here, shall be put under the great seal of this kingdom, and so returned thither to be preferred to the parliament: forasmuch as there are accordingly transmitted hither from thence divers bills as well publick as private, some of which bills were first agreed on here, some others were framed and conceived there, and comming now hither may happily receive amendment or alteration: we have thought meet for avoidance of any question or inconvenience that may arise of the manner and form of proceeding in amending or altering of these bills, hereby to pray and require you, calling to you his majesties attorney and solicitor to look into Poyning's act, and to consider of some such course as shall be fit to be held concerning the same, &c.

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Dated ultimo Januarii 1612.

Whereupon in this tearm the said chief justices and chief baron, and the attorney and solicitor were assembled two severall dayes at Serjeants Inne, and had consideration not only of the said act of 10 H. 7. cap. 4. but of the act of 3 & 4 Ph. and Mar. cap. 4. intituled, An act declaring how Poyning's act shall be expounded and taken.

3 & 4 Ph. and
Mar. cap. 4.

For by the said act of 10 H. 7. it is provided that no parliament be hereafter holden in the said land of Ireland, but at such season as the kings lieutenant and councill there first do certifye the king under the great seal of that land, the causes and considerations, and all such acts as them seemeth should passe in the same parliament, and such causes, considerations, and acts affirmed by the king and his councill to be good and expedient for that land, and his license thereupon, as well in affirmation of the said causes and acts, as to summon the said parliament under his great seal of England had and obtained. That done, a parliament to be had and holden after the forme and effect afore rehearsed. And if any parliament be holden in that land contrary to the form and provision aforesaid, it be deemed void, and of none effect in law.

Sur quel act divers doubts et ambiguities fuer' conceive et ascuns de eux fuer' de greinder difficulty que auters.

1. Et primerment un doubt fuit conceive le quel le dit act de 10 H. 7. extend al successors le roy H. 7. intant que l' act parle solement del roy generalment et ne' de ses successors. 2 si le roigne Marie fuit deins cest parol roy. Et coment que ceux ne fuer' matters aascun ambiguity, car cest parol roy que import son politique capacity ne unques mort, et esteant parle indefinite extend in ley a toute ses successors, uncore ceo est issint expound per le dit act de 3 & 4 Ph. & Mar. Et que le dit act de 10 H. 7. extendra to the king and queens majesty, her heirs and successors.

2. Ou le act de Poyning's dit (the kings lieutenant and councill there) scruple fuit conceyve, si le roy appoint un per nomine de le deputie, ou

lord justice, ou fil constitute 2 lords justices, chief gouverours or governour, et le counsell, &c. Et quant a ceux est explaine per le act de 3 & 4 Ph. & Mar. que le dit act de Poynings extend a tout ceux.

3. Le greinder et plus difficult doubt fuit sur ceux parols in laet de Poynings. And such causes, considerations, and acts affirmed by the king and his counsell to be good and expedient for that land, &c. Le quel le roy poet fair ascun change ou alteration des causes, considerations ou acts que sevr' transmitt' icy del lieutenant et counsell d' Ireland, car ceo n'est pas affirmation mes correction et alteration de eux. Et pur ceo fuit necessary destre explaine, que laet de 3 & 4 Ph. & Mar. fait in ceux parols. Either for the passing of the said acts, &c. in such forme and tenor as they should be sent into England, or else for the change and alteration of them, or any part of the same.

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4. Autre question fuit sur les parols del primer act. sc. That done a parliament to be had and holden, &c. si a mesme le parliament auters acts que fuer' affirme ou alter icy poent estre enacts per authority del parliament la. Le quel est explaine per le dit darrein act in ceux parols, for passing and agreeing upon such acts, and no others, as shall be so returned under the great seal of England.

5. Grand doubt fuit conceve sur les dix parols (that done a parliament to be holden) le quel le lieutenant et counsell d' Ireland apres le parliament commence la, et pendente parlamento poient sur debate et conference la, transmitt ascun auters considerations, causes, tenors, provisions, et ordonances come sembles a eux bone destre enati' a mesme le parliament deins le realme d' Ireland, le quel est explaine per le dit act de 3 & 4 Ph. & Mar. in expresse parols, que ils poient, &c.

Nota lesteur lorder del proceeding et sommons del parliamen: in Ireland. Primerment le lieutenant et counsell la doient certifier de south le grand seale d' Ireland le causes et considerations de toutz tielz acts come semble a eux bone a passer en parliament, issint que le original covient a commencer la. 2. Ils covient destre affirme ou alter et change et retourne de south le grand seale D' Anglitterre. 3. Licence de south le grand seale a summoner et tener un parliament. 4. A transmitter billes pendente parlamento come appiert devant. Et fuit auxi resolve una voce. 1. Que les causes, considerations, et billes transmittes icy desouth le grand seale d' Ireland doient destre custodie et preserve icy in le chancery d' Anglitterre, et ne remaunde. 2. Silz soient affirme, ilz doient destre transcript desouth le grand seale et retourne in Ireland, et tout ceo que passe le grand seale doit destre inrolle icy in le chancerye. 3. Si les acts transmitts icy soient in ascun part alter ou change icy, laets issint alter et change doient come en un continent destre retourne desouth le grand seale D' Anglitterre a ceux in Ireland, tout quel doit destre inrolle icy in le chancerye D' Anglitterre. Mes le transcript desouth le seale d' Ireland que le remaine in le chancerye icy, ne serra amend, mes l' amendement serra desouth le grand seale D' Anglitterre come est avandit. 4. Les amendments ou alterations icy sevr' come est avandit retourne in Ireland sans ascun signification ou certificat dallowance de ceux per ceux de Ireland, car sicome les acts movent originalment de Ireland, issint les amendments ou alterations movent icy in Anglitterre. 5. Tous les bills que sont transmitts icy de Ireland sont ove le petition del deputye et counsell le roy tous ensemble desouth un grand seal d' Ireland. 6. Tous les bills que sont affirme ou alter icy soient retourne ensemble desouth un grand seale d' Anglitterre.

And thus much concerning the parliaments of Ireland.

The

The Case of the Earl of Shrewsbury upon the Statute of 28 H. 8. of Absentees.

Per force de certain letters patents de 28 Martii 1612. del seignieurs del privy counsell direct al Sir Humfrye Winche, Sir James Lea, Sir Anthony Sentleger, et James Fullerton, ilz certifient aux seignieurs le claim de Guilbert countee de Salop aux dignities del countee de Waterford et barony de Dongarvan in Ireland come ensuist. Le 17 H. 6. per ses letters patents anno 24 de son reign granta a son treschier cofin John countee de Shrewsbury in consideration de ses approved et foyall services in le city et county de Waterford in Ir. land, pro eo quoque quod per eundem consanguineum nostrum prædicta terra nostra Hibernia in partibus illis contra hujusmodi inimicorum et rebellium nostrorum insultus potentius defenderetur, ipsum in comitem Waterford una cum stilo et titulo ac nomine et honore eidem debitus ordinamus, præficimus et creamus habendum, al dit countee, et a les heires males de son corps. Et oustre per mesme les letters patents granta les castles, seigniories, honors, terres et barony de Dungarvan al dit John countee et a les heires males de son corps, les premisses destre tenus del roy et ses heires per homage et fealty, et le service destre seneschal a son majesty in le realm d'Ireland. Puis al parliam:nt (communement appelle des absentees) tenus al Dublyn in Ireland, 1 Maii an. 28 H. 8. fuit enacté (per reason del long absence del George countee de Salop hors de mesme le realm) que le roy, ses heirs et assignes avera et enjoyera in droit de son corone d'Angleterre tous honors, manors, castles, seigniories, franchises, hundreds, liberties, county palatines, jurisdictions, annuities, fees des chivaler, terres, tenements, &c. et tous et singular possessions, hereditaments, et tous auters profits, cibien spirituell come temporall, queuncque ceux le dit George countee de Shrewsbury, et Waterford, ou ascun auter person ou persons a son use avoient, &c. Le roy H. 8. per ses letters patents, anno 29 de son reign recitant le dit statute de absentees, Nos remisissã considerantes et nolentes statum, honorem, et dignitatem prædicti comitis diminuerè, sed amplius augere, ex certa scientia, et mero motu, &c. granta al dit countee et ses heirs l'abby de Rufford ove les terras a ceo perteynant in le county de Nottingham, et le seignory de Rotheram in le county de York, les abbeyes de Chesterfield Shirebroke et Glosopdale in le county de Derby ove divers auters terres et tenements de grand value destre tenus in capite, et les questions fuer'.

28 Martii
anno Domini
1612.

1. Le quel per le longie absence del countee de Salop hors de Ireland per que les roys et subjects wanted leur defence et assistance la, enconter le expresse consideration del creation, le title del honor est perdue ou forfeit, le dit countee esteant pier del ambideux realms, et residing icy.

2. Le quel per le dit statute des absentees, anno 28 H. 8. le title del dignity del countee de Waterford soit prise del dit countee de Shrewsbury cibien come les manors, terres, tenements et auters hereditaments in mesme laet specific,

Et puis per auters letters des seignieurs del counsell, 27 Septemb. 1612. les deux chief justices et chief baron fuere require a consider del dit case (que fuit encluse deins leur letters) et a certifie leur opinions de ceo.

Quel case fuit argue per counsell erudite del dit county devant les dit chief justices & chief baron, sur que ilz presteront a voisement (apres que ilz ont divers soitz lye le preamble et tout le dit act de 28 H. 8.) jesque a

term de St. Mich. anno decimo Jacobi regis, et donques fuit unement resolvee per eux come ensuist.

Quant al primer fuit resolvee, que intant que nappiert que ascun defence fuit requisite, et que le consideration executory nest trouve per office destre infreint, ne judgement done in seire fac', a cest cause que le dit countee de Salop, ceo nient obstant, remain countee de Wateisford.

Quant al 2 fuit resolvee, que le dit act de 28 H. 8. des absentees nait tolle solement les possessions, que fuer' done a luy al temps de son creation, mes auxi le dignity mesme, car coment que un poet aver dignity sans ascuns possessions, uncore ceo serroit pleine de inconvenience, et a cest cause le dit act de 28 H. 8. (come tous auters acts doivent estre) serra expound douster tout inconvenience, et pur ceo per les generall parols del act, (sc. des honors et hereditaments) le dignity mesme ove les terres dones pur maintenance de ceo sont done al roy, et le dignity extint in le corone.

Rot. parl. tent.
apud Westm'
16 Jan. anno
regis E. 4. 17.
Degradatio Geo.
ducis Bedford.

Et est digne de observation le cause de degradation de George Nevill duke de Bedford, que fuit fait per force dun act de parliament, 16 Januarii, anno 17 E. 4. quel act reciting the erection and making the said George duke, expresse le cause de son degradation in ceux parols.

And for so much as it is openly known, that the said George hath not, nor by inheritance may have any livelihood to support the said name, estate, and dignity, or any name of estate, as oftentimes it is seen, that when any lord is called to high estate, and have not livelihood convenient to support the same dignity, it induceth great poverty and indigence, and causeth oftentimes great extortion, imbracery, and maintenance to be had, to the great trouble of all such countries where such estate shall happen to be inhabited. Wherefore the king by the advice of his lords spirituall and temporall, and the commons in this present parliament assembled, and by the authority of the same, ordaineth, establissheth and enacteth, that from henceforth the same erection and making of the same duke, and all the names of dignity to the said George or to John Nevil his father be from henceforth void and of noue effect, &c.

In quel act 3 choses fuer' observee, 1. Que comment le dit duke navoiert ascun possessions a supporter son dignity, uncore son dignity ne poet estre tolle de luy sans act de parliament. 2. Les inconveniences appiert ou grand estate ou dignity nest pas accompany ove livelihood. 3. Ceo est bone cause a toller le dignity per parliament, et pur ceo le dit act de 28 H. 8. serra expound selonque le generalty del letter a toller tiel inconvenience, et coment que le dit countee de Salop soit non solement de grand honor et vertue, mes auxi des grand possessions in Engleterre, uncore ne fuit lentiontion del act a continuer luy countee in Ireland quant ses possessions in Ireland fuer' tolle de luy, mes que le roy a son pleasure puit conferre cibien le dignity, come les possessors a ascun auter pur le defence de mesme le realm. Et les dits letters patents de anno 29 H. 8. nad parols a restorer le dignity que l'act de parliament ad tolle, auxi ne fuit l'entent del roy diminuer le statut, honorem et dignitatem ipsius comitis, sed augere, ceux sont destre entendes des possessions pur maintenance de son dignity, car tant viert per cest parol [augere] car il increase per mesme les letters patents ve exceeding grand bounty le revenues del dit countee de Salop en Angleterre, quel le roy pense fuit un imcrease de son state, honor et dignity, isint son dignity in Angleterre fuit increase ove large possessions in Angleterre in lieu de tout ceo que fuit tolle de luy per l'act de 28 H. 8. Et ou fuit object que les generall parols [des honors et hereditaments] sont explain et qualifie

qualifie per les dits parols relative subseqnent (queux le dit George countee de Salop ou ascun auter a sons oeps,) et pur ceo ne ferrā entēde dascun honor ou hereditament mes dont auters poient estoier seise al use, et ceo nul poet del dit dignity, et pur ceo le dit act extēdera a ceo. Mes ceo est destre prise reddendo singula singulis, et les parols queux ledit George countee avoit sont sufficient a passer le dignity, et ove ceo accord le opinion de tous les justices Dengleterre in Nevils case, sur autiels parols in le statute 26 H. 8. in le 7 part de mes reports, fo. 33 et 34.

There is an act made in 3 H. 2. worthy here of remembrance, which never was yet printed. It is enacted, that all manner of persons whatsoever, who have any lands or tenements, offices or other living ecclesiasticall or temporall within Ireland, shall reside or dwell upon the same. And that all such as have there any castles or other forts, shall fortifie the same and furnish it with men able for defence, and thereupon also dwell. And if they at any time depart, then during their absence to appoint some able to supply his room, otherwise the governor to dispose the half of their living to such defence. See the act at large, necessary to be put in execution in these dayes.

Dominus rex vult et præcipit quod de cætero singulis annis semel in anno compositus Hiberniæ, &c. per thesaur' Hiberniæ reddatur ad scaccarium Angliæ, et ibidem audiat per thesaur' et barones suos. A necessary law, and much for the benefit of the king to be observed.

A long record touching the custody of the body and lands of heirs within age, wherein these words are contained. *Et cum una et eadem lex esse debeat tam in regno Angliæ quam Hiberniæ.* Like writs of error of judgements given in the kings bench in Ireland, Mich. 32 E. 1. coram rege. Theobald Verdons case, *Breve de errore super bre. de errore rot. 76. Pasch. 30 E. 1. coram rege rot. 50. in breve de errore &c.* William de la Rivers case, et Tr. 33 E. 1. rot. 56. ^a *Concordatum est per omnes de concilio regis, episcopis et aliis in Hibernia unanimiter quod consuetudo usitata in Hibernia de bonis testatorum talis est, quod ubi, &c.*

^b *Prisage vinorum in Hibernia*, and the manner of the taking of the same.

At a synod holden in Ireland by St. Patrick their apostle, it was unanimously agreed that Irish priests should have wives.

^c *Tres petitiones porrectæ regi contra Eliam de Ashburnham militem justiciar' domini regis in Hibernia de diversis malefactis, &c. per ipsum perpetratis, qui dicit quod non debet tractari, nisi in Hibernia, et ibidem terminari: et quod oportet ipsum dominum regem informari per indictmentum 12 jur' vel per appellum formatum et attachiamen' ad seclam partis secundum legem et consuetudinem regni regis Angliæ hætenus usitat'.* Curia vult inde advisari, et interim manucapitur. Postea dominus rex mandavit breve quod caperent manucapt' ad respondendum in Hibernia.

^a *Admittitur episcopus Exon' pro fine 200 marc' pro contemptu in non admittendo præsentatum regis ad ecclesiam de Southwell, pro quo contemptu omnia temporalia seistia fuerunt in manus regis, et tunc temporis ante finez fact' vacavit archidiaconat' Cornubiæ ratione quod incumbens electus fuit in ^e archiepiscopum Dublin in Hibernia (temporalibus episcopi Exon' ad tunc in manibus regis existen') per quod dominus rex recuperavit vers. episcopum dict' archidiaconat'.*

D d 3

In

Rot. par. 3 R. 2. nu. 42.

Rot. par. 21 E. 1. Rot. 3. Hibernia.

Trin. 13 E. 1. coram rege rot. 38. in breve de errore Hibernia.

Apud Westm'. 22 E. 1. rot. 5. in breve de errore int' William de Vesey & P. filium Thomæ, & rot.

parl. 23 E. 1. 5 E. 2. error 89. 15 E. 3. ibid. 72. 34 Ass. p. 7. reg. F.N.B. fo. 24. c.

11 H. 8. Kelw. 202. 15 E. 3. Record 38.

^a Pasch. 28 E. 1. coram rege rot. 98. Hibernia.

^b Tr. 33 E. 1. coram rege rot. 124. Hibernia.

^c Tr. 18 E. 3. coram rege rot. 148. Hibernia.

Sir Elias Ashburnhams case. ^d Pasch. 24 E. 3. rot. 25. coram rege. Cornubia.

^e Bracl. li. 5. f. 195. 7 E. 3. 9. 12 E. 3.

41, 42.

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* This is apparent by many authorities.
 Trin. 32 E. 1. coram rege, rot. 75. John de Bonhams case. 17 E. 3. fo. 40. 21 E. 3. 40. 41 E. 3. 5. 46 E. 3. 32. 6 Eliz. Dier 228. b. pl. 48. resolve.
 b Rot. pat. 18 H. 6. part 2. m. 24. A bishop made a cardinal.
 c 45 E. 3. fol. 9.
 d Rot. pat. anno 52 H. 3. m. 26. Aurum reginæ.

The like grant was made of the land of Ireland by H. 2. to his son John.

* 33 H. 8. cap. 1. And so it appeareth by this act that the king and his progenitors had before this act kingly jurisdiction and royal authority.
 † See before pag. 12, 14. the grant of king John to the pope declared to be void by the parliament in 40 E. 3. These thus (*) marked cannot be granted by letters patents.

In this record two conclusions are to be observed. 1. Though Ireland (as hath been said) be a distinct kingdome of it self, yet it is governed by one and the same law that England is. 2. That when the archdeacon was by the king preferred to a bishoprick, he had the presentation to the archdeaconry in respect of the temporalities of the bishop of Exeter patron of the archdeaconry, and not by any * prerogative. And so it is, if an incumbent in Ireland be made a bishop in England.

If a bishop in England be made a * cardinal, the bishoprick becomes void, and the king shall name the successor, because the bishopricke is of his patronage.

* See 45 E. 3. 9. upon the repeale of a ratification of the incumbent, a *procedendo* out of the chancery here to the justices in Ireland to proceed in the *quare impedit* brought by the king.

I finde an ancient record touching Ireland necessary to be explained in these words.

d Rex thesaurario Hiberniæ, salutem. Cum Edwardus primogenitus noster terram Hiberniæ habcat et teneat de dono nostro cum omnibus pertinentiis suis adeo liberè et quietè sicut eam in manu nostra teneremus, per quod charissima filia nostra Alianora consors dicti filii nostri aurum suum tam de finibus quam sponte oblati in terra Hiberniæ habere debet, sicut charissima consors nostra Alianora regina Angliæ aurum suum habet de eislem in regno nostro Angliæ: Vobis mandamus, &c. quatenus præfate consorti filii nostri prædicti aurum prædictum de finibus et sponte oblati, et etiam de quibuscunque aliis finibus prædictis habere facias in forma prædicta. Et hoc, &c. In cuius, &c. Teste rege 29 die Februarii, anno 52 H. 3.

By this record first it appeareth, that, as the law was taken at that day, by gift of king H. 3. his eldest sonne prince Edward was lord of the dominion and lordship of Ireland. Secondly, that albeit the wife of prince Edward was not queen in name, but had the effect of it, therefore she should have a duty called *aurum reginæ*, as well as the queene of England, being but lady in Ireland. * For albeit the kings of Ireland were (until the statute of 33 H. 8.) stiled by the name of lord of Ireland, yet was he *supremus*, and *absolutè dominus*, and had royall dominion and authority, and that his consort was *in rei veritate regina*, or else she could not have had *aurum reginæ*.

† Albeit this royall dominion and land of Ireland was of ancient time permitted to be granted *de facto* to the kings sonnes before mentioned, yet by the law the king by his letters patents could not grant so royall a member of his imperiall stile to any, no more then he could doe of the kingdome of England. And that doth well appeare by this, that when king R. 2. by his letters patents created Robert de Vere earle of Lincolne, and marquesse of Dublin to be duke of Ireland, he granted to him for life * *totam terram et dominium Hiberniæ, et insulas eidem terræ adjacentes, ac omnia castra, comitatus, burgos, villas, * portus maris, &c. una cum homagiis, * obedientiis, vassalis, serviciis, et recognitionibus prælatorum, comitum, baronum, &c. * advocacionibus et patronatibus ecclesiarum metropolitanarum et cathedralium abbatiarum, &c. * constituere cancellar, thesaurar, justiciar, &c. cum regaliis, regalitatibus, libertatibus, &c. et omnibus aliis * quæ ad regaliam nostram pertinent, * cum mero et mixto imperio, adeo plenè, integre, et perfecte, sicut nos ea tenuimus et habuimus, tenuerunt et habuerunt progenitorum*

*progenitorum nostrorum aliqui ullis unquam temporibus retroactis. Tenendum per * homagium ligeum tantum.*

§ The said letters patents were authorized by parliament, *assensu prælatorum, ducum, et aliorum procerum, et communitatis nostræ Angliæ in parlamento, &c.* albeit it was *contra legem et consuetudinem parliamenti*, as before it appeareth, pa. 13, 14. to assent to any thing to the disherison of the king and his crown. *Sed novus iste insolitus et umbratilis honor cito evanuit.*

Rot. par 13 R. 2. nu. 21. the king by authority of parliament gave the title of duke of Aquitaine to his uncle John of Gaunt, duke of Lancaster, and it was by consent of parliament, and could not be granted by letters patents, because it was one of the titles and stiles of his royall crowne. And this also did first begin and end in him.

But now it is necessary to be knowne what this duty of *aurum reginæ* is. Wherein three things are to be considered. First, what authority and warrant in law there is for this duty. Secondly, what it is. Thirdly, what is due thereby. First, in Lib. Rub. in scaccario fo. 46. *de auro reginæ*, where it is said, that it is to be taken *de hiis qui sponte se obligant regi, &c.* This present record of 52 H. 3. Vet. Mag. Carta 2. part. fo. 65. vid. 10 H. 3. stat. de Roteland to the same effect.

A record in the exchequer *termino Hil. anno 4 E. 1.* Another there, Hil. 12 E. 3. rot. 3. *ex parte rem. regis*, and divers other records in the reignes of R. 2. H. 4. &c. untill the reign of H. 7.

In acts of parliament, viz. 15 E. 3. cap. 6. 31 E. 3. cap. 13.

2. In divers of these records it appeareth that the queen should have *de sponte oblati * pro centum marcis argenti unam marcam auri solvend' per ipsum qui sponte se obligat.* And Pasch. 4. *Jacobi regis* the king did require the two chiefe justices and chiefe baron to certifie him what belonged to the queene for this duty at this day. And after many conferences, and hearing of counsell learned on both sides and view of records, at last it was resolved by them all, and so did Popham chiefe justice report to the king, that the duty belonged to the queene with these four limitations. 1. It must be *sponte*, from the subject, and at his pleasure whether he will give it or no, and no right in the crowne. And therefore fines for offences, for alienations, or the like, are no part of this duty. 2. It must be freely, without any consideration of any grant, sale, or lease of any thing wherein the king hath any revenue, estate, or interest. And therefore sales, leases, grants of lands, tenements, wardships, or the like, are out of the same, for there is *quid pro quo*. 3. It must be *sponte super aliqua consideratione, &c.* For example if the subject *sponte* offer to the king for a licence in mortmaine, or to create a tenure of himselfe, or to have a faire, market, or to make a parke, or the like, where the king diminisheth no part of his revenue, state, or interest, there *aurum reginæ* is due to the queene. 4. Of subsidies, fifteens, or any other gratuity of the meere grace or benevolence of the subject, there is nothing due to the queene, and so it was resolved, Hil. 4 E. 1. &c. *ubi supra*. And so much upon this occasion *de auro reginæ*.

* A Tainist was successor apparent under the chiefe lord or capitaine of every severall country, and was eligible by the country.

D d 4

Brehan.

* Per hom. li-geum for tenant for life could not do other homage.

Rot. pat. 9 R. 2. m. 2. & rot. par. 9 R. 2. nu. 9. & 10 m. 3.

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Aurum reginæ.

Hil. 4. E. 1. in scac. ex parte rem. reg. Hil. 12 E. 3. ibid. rot. 3.

Rot. clauf. 12 E. 3. part. 1. m. 21.

Rot. parl. 7 R. 2. nu. 61.

Certaine Irish words necessary to be explained. * Thane apud Britannos pro viro nobili, seu regis ministr

^b Brehons.
Bellagines.

^c Parliament 40
E. 3. at Kil-
kenny.

^d Cuttings.

^e Cosheries.

Termondland.

Erick.

Galloglaffes.

Kernes.

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Ro. par. 9 Jo-
hannis regis Jo-
hanni maresc-
allo, of whom
the lord Morly
is descended.
Regist. 294.

F. N. B. 169.
170.

^a Carta Johan-
nis regis 15 Jan.
apud novum
London ann. 18.
Bishops before
were donative
by the king.
10 E. 3. 1. b.
per Perring.
17 E. 3. 40. per
Stone &c.
^b Auferat obli-
vicio, si potest, si
non, utcu que
ficientium tegat.

The charter of
king Edgar
made ann. Dom.
964. and in the
6. of his reign.

^b *Brehon*. The Irish called their judges *brehons*, and thereupon the Irish law is called the brehon law.

^c At a parliament holden in Ireland by Howel duke of Clarence, lieutenant there, anno 40 E. 3. at Kilkenny, and therefore called the statute of Kilkenny, the brehon law is no law, but a lewd custome crept in of latter times, and never was the law of the ancient Brittaines from whom they are descended.

^d *Cuttings*. Under that name they comprehend tallages and impositions.

^e *Cosheries* are reprehendinations, when the chief lord and his retinue, &c. came to his tenants house, and fed upon their provisions till all were spent.

Termondlands are the glebe of the church.

Erick signifieth a fine for an offence.

Galloglaffes, equites triarii qui securibus utuntur acutissimis.

Kernes sunt pedites qui jaculis utuntur.

The *prorex* there in former times hath beene called *custos*, warden, lieutenant, chiefe justice, deputy of Ireland.

These expositions we have added for the better instruction of him who will reade the Irish lawes.

Rex, &c. Johanni marescallo dedimus et concessimus pro homagio et servicio suo marescalciam nostram totius Hiberniæ cum omnibus pertinentiis, &c. Habendum sibi et hæredibus suis de nobis et hæredibus nostris.

See the Register, that if an archbishoprick or bishoprick in Ireland be void, that the chapter shall sue to the king in England to goe to election, and after election made they ought upon certificate thereof made to the king to obtaine his royall assent to this election, and thereupon a writt shall be directed out of the chancery here, to the chiefe justice of Ireland, or his lieutenant rehearing all this matter, and commanding him to take fealty of the bishop, and to restore him to his temporalties. But now the course is in Ireland to make such writs there in the name of the king. But the king names the archbishops and bishops there, as he doth in England; and then the chapter choose him whom the king names to them, and thereupon the writs are made of course.

And the reason of this change is worthy to be knowne: for the charter of king John for election of bishops, &c. extended only to the bishops, &c. of England. But after that the whole dominion of Ireland (as well concerning the church as the commonwealth) was established to be governed by one law with the kingdome of England, as is abovesaid, then the course of the Register was changed, and the same course taken there, as it is in England.

And whereas heretofore some, not without scandall, have divided this kingdome into the English pale, and the wilde Irish, let oblivion bury it, or silence cover it, for now all are reduced to obedience and civill behaviour. So as a man may justly say of them as of the old Brittaines, *Sunt in bello fortes, et in pace fideles*. And for that some have given out that the crown of England had this country of Ireland of the donation of the pope, we will ingeniously manifest the truth therein by the records and writings themselves at large.

Altitonantis Dei largiflua clementia, qui est rex regum, et dominus dominantium, ego Edgarus Anglorum basileus, omniumque rerum insularum oceani quæ Britanniam circumjacent, cunctarumque nationum quæ

infra

infra eam includuntur imperator et dominus, gratias ago ipsi Deo omnipotenti regi meo, qui meum imperium sic ampliavit et exaltavit super regnum patrum meorum. Qui licet monarchiam totius Angliæ adepti sunt à tempore Athelstani, qui primus regum Anglorum omnes nationes quæ Britanniam incolunt sibi armis subegit, nullus tamen eorum ultra fines imperium suum dilatare aggressus est. Mihi tamen concessit propitia divinitas cum Anglorum imperio omnia regna insularum oceani cum sui ferocissimis regibus usque Norvegiam maximamque partem Hiberniæ, cum sua nobilissima civitate de Dublin Anglorum regno subjugare, quos etiam omnes meis imperiis colla subdere, Dei favente gratia, coegi. Quapropter et ego Christi gloriam et laudem in regno meo exaltare, et ejus servitium amplificare devotus disposui. Et per meos fideles fautores, Dunstanum, viz. archiepiscopum Aelyolanum ac Oswaldum archiepiscopos, quos mihi patres spirituales et consiliatores elegi, magna ex parte disposui, &c. Facta sunt hæc anno domini 964. indictione 8 regni vero Edgari Anglorum regis 6. in regia urbe quæ ab incolis Ocleayceastræ nominatur in natale Domini festiuitate sanctorum innocentium feria 4. &c. ✠ Ego Edgar basileus Anglorum, et imperator regum gentium, cum consensu et principum et archiepiscoporum meorum hanc meam mansuetiam signo meo corroboravi. ✠ Ego Alfrye regina consensi et signo crucis confirmavi. Ego Dunstan archiepiscopus Dorobor' ecclesiæ Christi consensi et subscripsi ✠ Ego Osiel archiepiscopus Eboracensis ecclesiæ consensi et subscripsi. Ego Alferic dux. Ego Buthnod dux. Ego Atradgari dux ✠

King Athelstane reduced England to a monarchy.

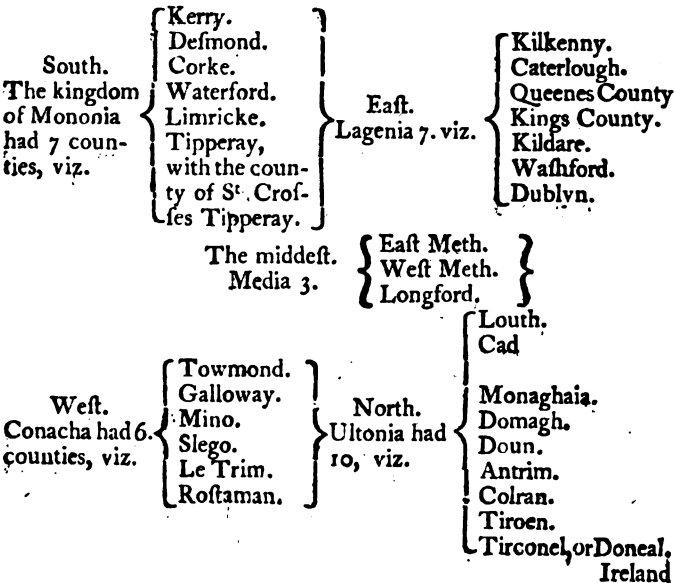
King Edgar conquered the greatest part of Ireland, with the most noble city of Dublin. Note the piety of this king. Int. leges Edw. regis & confessoris fo. 137. b. Lamb. Arthurus qui quondam fuit incluytissimus rex Britannorum, &c. subjugavit sibi strenue (inter alia) Hiberniam, &c.

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And what ecclesiasticall jurisdiction the archbishop of Canterbury had in Ireland of ancient time before it was subject to the crown of England, you may read in Cambdens Britannia, pag. 735. & 765. as namely in the consecration and confirmation of their bishops, by reason of his primacy in Ireland.

A justice in Ireland constituted by letters patents under the great seale of England, cannot be removed from his office but by the king only.

Mich. 5 E. 3. coram rege rot. 43. Hibernia.



Ireland hath 33 counties, besides cities, that are counties of themselves.

King H. 2. at a parliament holden at Oxford, *anno regni sui* 23. created his sonne John king of Ireland. But the succeeding kings wrote themselves *domini Hiberniæ*, untill the 33 year of H. 8. in which yeare he took upon him the name of king of Ireland.

Rot. parl. 3 R. 2. nu. 43. in England.
Mines of gold and silver.
Braft. li. 2. fo. 222.
Fleta lib. 4. fo. 319. Pl. Com. in the case of mines.
Coynage at Dublin.
* Rot. pat. 5 H. 6. 1. part.

It was enacted by authority of parliament, that every man during six years might dig in his own proper foyle in Ireland gold or silver, &c. yeelding to the king the ninth part thereof, and that they make plate or coyne thereof at the kings coynage in Dublin, paying the fees: and that none carry thereout any of the said gold, silver, or bullion, but into England, without the kings licence, on paine to lose the same.

* A grant of all mines of gold and silver within England, &c. to the duke of Bedford, regent of France, &c. rendring to the church the tenth part: to the king the fifteenth part; to the owner of the foyle the twentieth part.

To conclude with somewhat which tends to the honour of that noble nation, Certain it is, that whiles the liberall sciences in Europe lay in a manner buried in darknesse, then did their lustre shine forth most clearly here in Ireland; thither did our English Saxons repayre, as to a fayre or market of good letters: whence of the holy men of those times we often reade in ancient writers, *Amandatus est ad disciplinam in Hiberniam*: he was sent into Ireland to study there.

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Camden in Hibernia.

He that is desirous to read more records concerning this kingdom of Ireland, he may read these coram rege in the kings bench. Trin. 13 E. 1. rot. 36. 38. Hibernia. Mich. 17 E. 1. rot. 31. 38. Hibernia. Hil. 19 E. 1. rot. 68. Hibernia. Pasch. 19 E. 1. rot. 69. Hibernia. Trin. 20 E. 1. rot. 40. Pasch. 34 E. 1. rot. 104. Mich. 5 E. 3. rot. 40. & 46. Mich. 6 E. 3. rot. 55. Hibernia.

Of the Precedency of the Great Officers, Nobility, and others of this Realme.

For of the precedency of the king himself and of other kings, and supreme princes, I take not upon me to write, but referre you to learned Camden, *Lib. Annal. anno Domini* 1600. 42 Eliz. pag.

Præcedere est præcedendo incedere. Qui præcellit, præcedere debet.
Most ancient is most honourable.
Aristot. 1 Metaph. cap. 3.
31 H. 8. cap. 10. in the preamble.
ed to R. Earl of

At the common law, the king by his prerogative royall might give such honour reputation, and placing to his counsellors and other his subjects, as should be seeming to his wisdome, which prerogative was so declared by act of parliament.

* By this prerogative, *Henrico Beauchamp concessit rex Henricus sextus, ut primus et præcipuus esset Angliæ comes, et hoc titulo uteretur; Henricus præcomes totius Angliæ et comes Warwici, Vectæ insulæ regulum dixit; posteaque ducem Warwici creavit, et concessit, ut haberet*

² Rot. pat. 23 H. 6. Vid. Rot. pat. 28 H. 6. a parte m. 23. Precedency granted to R. Earl of Warwick.

sedem

sedem in parliamento, et alibi proximam duci Norf. et ante ducem Buckinghamiæ.

The same king created Edmond of Hadham to be earl of Richmond, and granted him precedency before all other earls. He also created Jasper of Hatfield earl of Pembroke, and gave him precedency before all other earls next to his brother the said Edmond earl of Richmond. But hereof these examples shall suffice.

King H. 8. though standing as much upon his prerogative as any of his progenitors, yet finding how vexatious it was to himself, and how distastfull to his ancient nobility to have new raised degrees to have precedency of them, and finding that this kind of controversy for precedency was of that nature, that it had many partakers, spent long time, and hindred the arduous, urgent, and weighty affairs of the parliament, was content to bind and limit his prerogative by act of parliament concerning the precedency of his great officers, and of his nobility. And first for the lords (spirituall (who sit in parliament on the kings right hand) amongst themselves.

31 H. 8. cap. 18.

1. The archbishop of Canterbury. 2. The archbishop of York on the same form. 3. The bishop of London. 4. The bishop of Duresme. 5. The bishop of Winchester, and then all the other bishops of both provinces shall sit and be placed after their auncienties, as before this act was accustomed. But having regard to the lords and noble peers of the realm, both the archbishops have place above all the great officers and nobility in parliament, councill and commissions, saving in the star-chamber, the lord chancellor or lord keeper hath the precedency of them. But the other bishops have place above all the barons of the realm, because they hold their bishopricks of the king *per baroniam*, but they give place to viscounts, earls, marquesses and dukes.

Concerning the great officers of the realm. 1. The lord chancellor or lord keeper of the great seal. 2. The lord treasurer. 3. The lord president of the kings councill. 4. The lord privy seal, being of the degree of barons of parliament, or above, shall sit and be placed in parliament on the higher part of the form above all dukes, except only such as shall happen to be the kings son, the kings brother, the * kings nephew, or the kings brothers or sister sons. See an act made in 28 H. 8. cap. 18. making it treason for marrying, &c. with any of the blood royall within certain degrees: but it is repealed. 5. The great chamberlain of England. 6. The constable. 7. The marshall. 8. The lord admirall. 9. The lord steward of the kings house. 10. The kings chamberlain shall sit and be placed after the lord privy seal in manner and form following, viz. every of them shall sit and be placed above all other personages being of the same state and degree: as if he be a baron, above all barons: if a viscount, above all viscounts: if an earl above all earls, &c. 11. The kings principall secretary being a baron of the parliament shall sit above all barons not having any of the offices aforesaid. But if he be a viscount, an earl, or any other higher degree, he shall not take the place of any viscount, earl, or higher degree, as it was resolved in the case of Robert Cecil, earl of Salisbury. And if the secretary be a bishop, he shall take the place of all other bishops not having any of the offices aforesaid, but not above the archbishops.

All

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 Nota, the Lord Steward of England is not here mentioned, because it was intended that when the use of him should be necessary, he should not endure longer then *bac vice*. * i. the kings granchilde. Note the degrees within that act.

The general clause.

All other dukes not before mentioned, marquisses, earls, viscounts and barons, not having any of the offices aforesaid, shall all sit and be placed after their ancientie, as hath been accustomed.

All other dukes, &c. If the king should create a duke to the estate of archduke, yet by force of these words he shall not take place of any duke that was his ancient, *et sic de similibus*; otherwise this statute might be made of no force; and an archduke is some other duke.

If any person being lord chancellor, lord keeper, lord treasurer, lord president, lord privy seal, or chief secretary, shall be under the degree of a baron of parliament, they shall in parliaments sit in the uppermost part of the saks in the midst of the parliament chamber, &c. But in the starchamber, and all other assemblies and conferences of counsell, they shall sit and be placed as is above rehearsed; and in * no other place. Lastly, the lord chancellor, lord keeper, lord treasurer, lord president, lord privy seal, being lords of parliament: the great chamberlain, the constable, the marshall, the lord admirall, the lord steward, the kings chamberlain, and the kings chief secretary shall sit and be placed in such order and fashion as is above rehearsed, and not in any other place, by authority of this parliament. Vid. statut. de 10 R. 2. cap. 1.

* The words negative were added to avoid all scruple that the order for precedency set down in this parliament should not be altered by any *non obstante*.

^a Rot. parl. anno 3 H. 6. in principio, et nu. 10.

^b Ro. par. 27 H. 6. nu. 18. Vide rot. parl. 11 H. 6. m. 9. nu. 32, 33, 34, 35. between the earl of Arundell and Mowbrey earl of Norf. Rot. par. 3 H. 6 in principio cited in the earl Marshalls case.

^c Hol. Chron. pa. 620. 10. Hall 143. &c. anno 20 H. 6.

^d Rot. par. 6 H. 6. nu. 22, 23, 24.

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^a 7 H. 6. fo. 15. Vid. rot. parl.

15 E. 3. nu. 7.

^b This is put for an example, for it extendeth to all trials by peeres, not only in case of treason, but in case of felony, imprisonment of treason and felony, and so ever since this statute hath it been put in use.

^a He that is desirous to understand the true rules of precedency of the nobles of this realm in the high court of parliament, &c. let him reade the great case between John earl Marshall and Richard earl of Warwick, in parliament, and the affirmations, answers, and replications on both parts exceeding long, but full of notable rules, reasons, and presidents concerning precedency, both in respect of the blood-royall, and otherwise: together with the lines and pedegrees, seats, and places of many noblemen very delightful to be read.

^b Another between William earl of Arundel, and Thomas earl of Devon: wherein you shall reade notable matter concerning the castle and honour of Arundel, precedently adjudged by the lords in parliament in the reigne of H. 4. between the earl of Arundel and the earl of Kent.

^c If a bishop of this realm be made a cardinall, he shall not take any place of precedency in parliament as cardinall, but take his place in right of his bishoprick, which he holdeth of the king *per baroniam*, in respect whereof he sitteth in parliament.

^d If a duke or earl, &c. be made protector of the realm in parliament, he shall have no other place but as a duke or earl, &c. Hereby you may perceive how necessary it was to set down by authority of parliament in certainty the place and precedency that great officers should have in parliament, who sit not there in right of their offices, but of their nobility: and the names of dignities of the nobility are parcell of their names, and so ought to be named in the kings writs: but the offices of chancellor, treasurer, and other offices are not parcell of their names, and therefore in the kings writs ed not to be so named.

It is also enacted by authority of the said act of 31 H. 8. that in all trials of ^b treasons by the peers of this realm, the said great officers of this land shall sit and be placed according to their offices, above all other the peers, as is aforesaid.

We have perused the list of the names of the lords of parliament sitting

sitting in parliament both of ancient and later time, wherein we can gather no certainty for precedency.

Thus far for avoiding of contention about precedency in parliaments, star-chamber, and all other assemblies and conferences of counsell, and upon trials by the peers of the realm was necessary.

Now he that desireth to know the places and precedency of the nobility and subjects of the realm, as well men as women, and of their children: we for avoiding of tediousnesse will refer them to a record of great authority in the reign of H. 7. (for we will not vouch ^c Barth. Cassaneus or any other foreign author) ^d intituled *Series ordinum omnium procerum, magnatum, et nobilium, et aliorum quorumcunque infra hoc regnum tam virorum quam seminarum, posita et distincta per nobilissimum Jasparrum ducem Bedford et alios nobiles appunctuacione domini regis Henrici septimi*: (but this record dealeth not with the places of any of the great officers) ^e whereunto we will refer you: wherein you shall see what places both the sons, * wives, and daughters, of lords of parliament, as dukes, marchesses, earls, viscounts, and barons shall have, and of banerets, knights, esquires, and gentlemen, and of their wives and children shall have.

^f If any question be moved in parliament for privileged or precedency of any lord of parliament, it is to be decided by the lords of parliament in the house of the lords, as all privileges, and other matter concerning the lords house of parliament are, as privileges and other matters concerning the house of commons are by the house of commons to be decided.

The determination of the places and precedencies of others doth belong to the court of the constable and marshall, unlesse any question riseth upon the said act of parliament of 31 H. 8. for that being part of the law of the realme (as all other statutes be) is to be decided by judges of the common law.

* *Nobilis est qui generis sui imagines proferre potest.* ^h *Flavia gens obscura quidem et sine imaginibus.*

*Tota licet veteres exornent undique cervæ
Atria, nobilitas sola est atque unica virtus.*

Major est nobilitas quam virtus: virtus enim sine nobilitate esse potest, nobilitas autem sine virtute esse non potest.

* *Arma seu insignia gentilitia ex antiquo habuerunt loco imaginum.* So as now the best discussing of antiquity of gentry is *per insignia*.

— *Armæque fixit
Troia.* —

Virgill.

And by the lawes of England as all the degrees of nobility and honour were derived from the king as the fountaine of honour: * so all the lands in England † were originally derived from the crowne of England, and are holden of the same mediately or immediately. See before in the chapter of the High Court of parliament.

As names make knowne singular persons, so armes distinguish severall families.

It is worthy of remembrance, and fit for example, that when Thomas Lord Cromwel by a flattering herald was offered in the time of king H. 8. to fetch his pedigree from the ancient lord Cromwel, that he might beare his coat, he answered that he would

^c Bart. Cassaneus in catalogo gloria mundi.

^d Series ordinum tempore H. 7.

^e Vid. Camden

Eliz. pa. 475.

* Which we

have added the

rather, for that

the contention

about preceden-

cy between per-

sons of that sex

is ever fiery, fu-

rious, and some-

time fatall.

Vid. the par-

liam. rolls ubi

supra.

^f Vid. rot. parl.

31 H. 6. nu. 27.

See 3 H. 6. nu. 10.

betweene Mow-

bray earl of

Norf. and Beau-

champ earle of

Warwick.

* Cicero.

Plin. lib. 39.

apud majores,

&c. optime.

^h Tranquillus in

Vesp.

ⁱ Juvenal. i Ce-

rezæ imagines.

^k Cotte de

armes, a coat

armour, that is,

a long coat over

armour with his

armes embroi-

dered upon it.

* See the 1 part

of the Institutes,

sect. 1. &c. and

in that first part

in divers places

many things

concerning nobi-

lity and their

creations, and of

the gaining and

losing thereof,

&c. viz. sect. 9.

fo. 17. a. b. sect. 1.

fo. 9. b. sect. 95.

fo. 69. a. b. sect.

112. f. 83. b.

sect. 241. fo. 165.

a. sect. 14. 15.

fo. 20. a. sect.

137. fo. 97. a.

sect. 201. f. 134.

a. sect. 648. fo.

344. a. &c.

weare

weare a coat of his own, lest another mans coat might be taken from him: unto whom the king as advanced by him gave this coat, quarterly indented *per fesse*, or and azure, four lions counterchanged: where the old lord Cromwels coat was argent, a chiefe gules, a bend azure. The said act of 31 H. 8. extendeth not to archbishops and bishops, therefore it is necessary to speak somewhat of them also. In ancient time they had great precedency, even before the brother of the king, as it appeareth by the parliament roll of 18 E. 1. and many others, which continued untill it was altered by ordinance in parliament in the reign of king H. 6. as it appeareth by a roll of parliament of that kings reign, entred in the back of the parliament roll. The precedency in parliament, and other places of councill at this day (whereunto we ayme) is, the two archbishops have the precedency of all the lords temporall; and every other bishop in respect of his barony have place of all the barons of the realm, and under the estate of the viscount and other superior dignities. The bishops between themselves have this precedency. First, the bishop of London, and after him the bishop of Duresme, and then the bishop of Winchester, and after him every bishop as he is in feignlorty. But to this day, in all acts, ordinances, and judgments, &c. of parliament it is said, the lords spirituall and temporall.

Rot. pat. 9 Jacobi 8. part. 1. m. 45. Baronets and others.

The first creation of baronets was in *anno 9 Jacobi regis*: what place and precedency these baronets and divers others shall hold, you may reade rot. pat. 10 *Jacobi regis* part 10. m. 8. and rot. pat. *anno 14 Jacobi regis* part 2. m. 24.

To conclude this chapter with the code of Theodosius, &c. *Ut dignitatum ordo seruetur, si quis indebitum sibi locum usurpaverit, nulla se ignoracione defendat, sitque plane sacrilegii reus.*

THE EPILOGUE.

THUS have we by the great goodnesse of the Almighty brought this painfull Work, consisting of such, and so many varieties and difficulties, concerning the jurisdiction of such, and so many distinct courts (above the number of 100) to a conclusion: and in some few cases, where we have differed from others in opinion, we have shewed the cause and beginning of these errors (as we take them:) for it is a sure rule, *Quod errores ad sua principia referre, est refellere*, to bring errors to their first, is to see their last. Wherein we have strengthened our opinion with our two great guides, authority and reason, and not trusted abridgements, poly-anthea's, or taken any thing upon trust, but have searched the fountaines themselves, alway holding this rule, *Quod satius est petere fontes, quam sectari rivulos*: and our desired end is, that all these high and honourable tribunals, and other subordinate courts and venerable seats of justice may prosper and flourish in distribution of justice, which assuredly they shall doe, if they derive all their power and strength from their proper roots.

Whilest we were in hand with these foure parts of the Institutes, we often having occasion to go into the city, and from thence into the country, did in some sort envy the state of the honest plowman, and other mechanics; for the one when he was at his work would merrily sing, and the plowman whistle some self-pleasing tune, and yet their work both proceeded and succeeded: but he that takes upon him to write, doth captivate all the faculties and powers both of his minde and body, and must be only intentive to that which he collecteth, without any expression of joy or cheerfulness, whilest he is in his work.

Throughout all this treatise we have dealt cleerly and plainly concerning some pretended courts, which either are no courts warrantable by law, as we conceive them, or which without warrant have inroached more jurisdiction then they ought. *Qui non liberè veritatem pronuntiat, proditor veritatis est*. Wherein if any of our honourable friends shall take offence, our apology shall be, *Amicus Plato, amicus Socrates, sed magis amica Veritas*. Having ever in memory that saying of the kingly prophet, *Keepe innocency and take heed to the thing that is right, and that will bring a man peace at the last*.

Psal. 37. 38.

And you honourable and reverend judges and justices, that do or shall sit in the high tribunals and courts or seats of justice, as aforesaid, fear not to do right to all, and to deliver your opinions justly according to the laws: for feare is nothing but a betraying of the succours that reason should afford. And if you shall sincerely execute justice, be assured of three things: first, though some may ma-

Lib. Sap. cap. 17.
12. Nihil est timor nisi proditiō cogitationis auxiliiorum.

The Epilogue.

signe you, yet God will give you his blessing. Secondly, that though thereby you may offend great men and favourites, yet you shall have the favourable kindnesse of the Almighty, and be his favourites. And lastly, that in so doing, against all scandalous complaints and pragmaticall devices against you, God will defend you as with a shield: * *For thou Lord wilt give a blessing unto the righteous, and with thy favourable kindnesse wilt thou defend him, as with a shield.*

And for that we have broken the ice, and out of our owne industry and observation framed this high and honourable building of the jurisdiction of courts, without the help or furtherance of any that hath written of this argument before, I shall heartily desire the wise hearted and expert builders (justice being *architectonica virtus*) to amend both the method or uniformity, and the structure it selfe, wherein they shall finde either want of windowes, or sufficient lights, or other deficiency in the architecture whatsoever. And we will conclude with the aphorisme of that great lawyer and sage of the law (which we have heard him often say) *Blessed be the amending hand.*

• Psal. 5. 13.

Aristotle.

Edm. Plowden.

Deo gloria et gratia.

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