





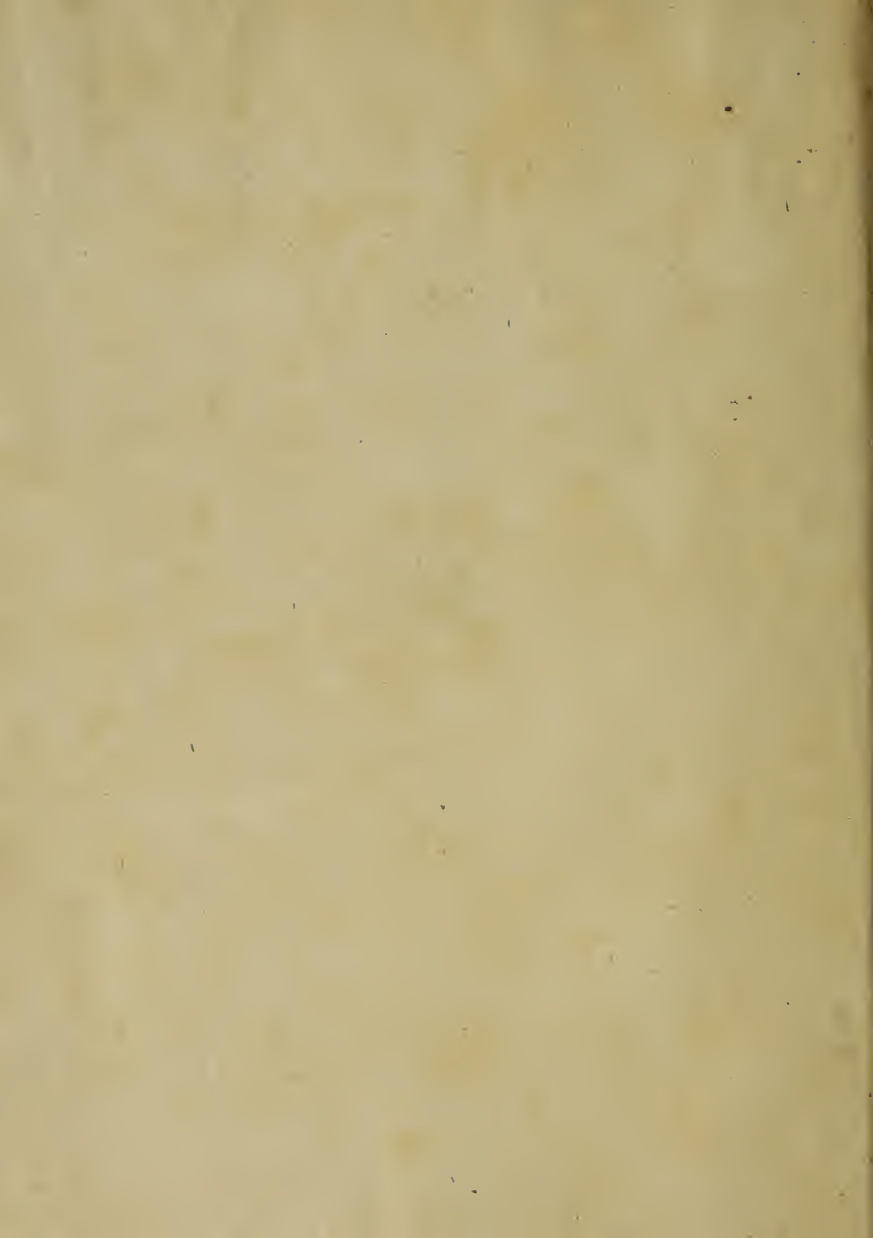
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THE
PRIVILEDGES
AND PRACTICE
OF
PARLIAMENTS
IN
ENGLAND.

Collected out of the Commou
Lawes of this Land.

*Scene and allowed by the Learned in
the Lawes.*

COMMENDED
To the High Court of Parliament
now Assembled.



Printed. 1640.

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The principall Contents of this
ensuing Discourse.

1. **T**He Originall of Parliaments.
2. The Saxons denominations of Parliaments.
3. The French and Germane denominations of the same.
4. The great difference betwixt our Parliaments and the Court of Parliaments in France.
5. The King may call a Parliament by his Deputies, or Lieutenants, though hee himselfe be absent in transmarine parts.
6. The King may call and hold a Parliament before his Coronation; as also in his Minoritie or Nonage.
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*A discourse of the Priuiledge
and practice of the high Court of
Parliament in England, colle-
cted out of the Common-Lawes
of this Land.*



The most Common and best meanes
for the preservation and Conserva-
tion aswell of private as publique
Tranquillitie and Societic vsed in
all Ages, and by all Nations, is by
way of lawfull Assembly, and Con-
sultation, which wee call *Parlia-
ment*, to looke into the necessity of

publique Condition, and so to foresee seasonable re-
medie.

*Where no Counsell is, the people fall, But where many
Counsellers are, there is health, Prou. 11. and 14. Tully
saith, Communis utilitatis de relictio contra naturam
est. The Saxons called this Court Miclegemot, the
great Assemblie, and Witenagemot, the Assemblie of
wise men; The Latine Authors of those times called it
Commune Consilium, magna curia generalis conventus,
&c. But WILLIAM the Conquerour as it seemeth
changed the name of this Court, and first called it by
the*

the name of *Parleament*. But manifest it is, that the Conquerour changed not the frame or Iurisdiction of this Court in any point; yea, the very names which are attributed to this Court before the Conquest are continued after the Conquest to this day. And where some doe suppose, That in the Parliament holden at *Westminster* in the 3. *Ed. 1.* called *Westminster* the first, the word *Parliament* first crept in where it is called the first generall *Parliament* by the assent, of the Archbishops, Bishops, Abbots, Earles, Barons, and all the Communitie of the Land summoned to the same; yet it is manifest that the name of *Parliament* was long before that time, and for prooffe thereof note: 21. *Ed. 3. fol. 60.* and in Sir *Edwards Cokes* Preface to his 9th. Booke, where it is fully proued; That the Conquerour himselfe did hold this Parliament, and other his mediate Successors. Although in the bookes of Statutes mention is not made of any Statute before *Magna Charta*, in the 9th. yeare of *Hen. 3.*

And this is not that Court, which in *France* beareth the name of *Parliament*, for they are but ordinary Courts of Justice; But this is that Court which both *England* and *Scotland* agreeth in naming it *Parliament*, which the *French* call, *Assemblée des estates*, or *Les estates*. And the *Germanes*, *A Rikes Daggh*, or *Dyet*.

Of this Court it may be said, *Si vetustatem spectes est antiquissima, si dignitatem est honoratissima, si jurisdictionem est copiosissima.* And as Sir *Edward Coke* observeth in his Preface to his 9. Booke. This great and Honorable assembly hath a Three-fold end; First, that the Subject might be kept from offending, that is, that offences might be prevented, both by good and provident

vident Lawes and by due execution of them. Secondly, that men might live safely in quiet; And thirdly, that all men might receive Iustice by certaine Lawes and holy Judgement. To the end that Iustice might be the better administred, That questions and defects in Law by this high Court of Parliament: be explained and brought to certainty and judgement.

Our Sovereigne King *Charles* in his late Proclamation calls it, *The Great Counsell of Vs and Our Kingdome.*

And for somuch as this *great* and *principall* Court is the Kings Court, and the Court of the Kingdome, whereof the King is supream head and Governour, neither the Lords nor the Commons can summon it nor appoint any certaine time or place for the Assembly of the Parliament; For that onely doth appertaine to the King to doe, See the Statute 21, Ric. 2. Ca. 12. And in the Kings name onely such summons must be made as an absolute Perogative incident to his Crowne and Dignity. Like as divers things doe solely belong to the King, whereof the Subiect hath nothing to doe: as *facere Percutere* to make leagues, or *bellum indicere*, 9. Ed. 4. fol. 6. The King onely without the Subject, may make letters of *Denisation*, to whom and how many he will. And the King by his Proclamation; may make any Coyne lawfull money of England: And many other things doe appertaine to the King as speciall flowers of his Crowne.

And if the King happen to be in any forreine part, yet the Parliament holden in this Realme in the Kings absence must be sommoned in the Kings name vnder the *Testo* of the Kings *Lieutenant*, as by the Statute 8. Hen, 5. Ca. 1. may appeare.

Bracton saith, Parliaments have beene holden by the Kings Lieutenant Procurator or Deputy, as in the 13. Ed. 2. the King constituted Adomarum de Valen-
tia Comitem Pembrocia custodem, regni sui, & locum suum tenendum quamdiu Rex in partibus transmarinis moram fecerit.

And the Kings of this Land have constituted as their Lieutenants or Deputies to summon the Parliament 3 or 4 in a Commission as in the 24, of Hen. 8, at his being at Callice a Parliament was holden by Commission as followeth :

Henricus 8 Dei gratia Anglia, Francia, Rex fidei defensor : Dominus Hibernia Reverendissimo in Christo Patri Edwardo Archiepiscopo, Eborac. Predelicto & fideli suo Thome Audeley Militi, duo custodi Magni Sigilli, ac Charissimo consanguineo suo Roberto Comiti Suffex salutem: Cum Presens Parliamentum nostrum apud Civitatem nostram London 3. die Novembris Anno regni nostri vicesimo primo in Choat, & vsque Westm. Prorogat, & ibidem post diuersas continuationes & Prorogationes idem Parliamentum nostrum apud Westminstr. 14, diem Novembris apud Westminstr. etiam Prorogat fuerat. Ibidem tunc tenendum nos idcirco considerante absentiam nostram a regno nostro Anglia apud Calice existent in causis urgentissimis nos & rem Publicam regni nostri, concernent alijsq; Considerationibus nos specialiter moventibus ac de fidelitate, integritate, industria, & circumspectione vestris Plenus confidentes, de aduisamento & assensu consilij nostri assignamus vos & duos vestrum Dantes vobis & duobus vestrum plenam potestatem, facultatem, & auctoritatem, hac instante die lune ad & in quartum diem Februar. Prox. futurum vsq; Westm. Predictum Prorogandum & con-
tinuandum.

tinuandum ibidem tunc teneendum. Et idio vobis mandamus quod circa premissa diligenter intendatis, ac ea in forma predicta effectualiter expleatis, Damus autem universis & singulis Archiepiscopus, Episcop. Abib. Prior Duabus, Marchionib, Commitibus, Vicecommit. Baronibus, Militib, Ciuibus, Burgensib, ac omnibus, aliis quorum interest, aut intere potent, in hac parte: in mandatis quod ipsi omnes, &c. Singula in premissis omnibus singulis faciendum & exequendum intendentes fuit consulentes & obedientes prout decet. In cuius rei Testimonium has literas nostras fieri fecimus Patentes, Teste me ipso apud Westm. 4. Die Novembris, anno regni nostri vicesimo quarto,

Penals.

And a King in possession of his Kingdome during his raigne may before his Coronation summon his Parliament as taking one example in a case so cleere for all : King *Hen. 6*, was not crowned vntill the 8 yeare of his raigne, and yet in his 1, 2, 3, 4, 5, and 6, yeare of his raigne divers Parliaments were holden, (as also our gracious Sovereigne King *Charles*. called a Parliament *Anno, 1.* before his Coronation) And summoned by him *Hen. 6*, as in the Statutes may appeare: For it is cleerely resolved by all the Iudges of England, that presently by discent he is absolutely and compleately King without any essentiall ceremony or act to bee done *ex post facto*, and that Coronation is but a royall ornament or outward solemnization of the discent, And the King is as absolute and compleate a King both for matter of Iudicatorie as Graunrs, &c. both before his Coronation as hee was after.

Also the King being within age, may aswell summon his Parliament as if he were at full age, as by the example was seene in the said *Hen. 6.* and *Ed. 6.* and obserue the case of the Dutchie of *Lancaster in Plowdens Commentaries, 221.6.* Where it is agreed, that the person of the King is not infeebled by his nonage, for his person doth alwayes remaine of full age, aswell to make guifts and graunts as in administration of Iustice.

And the diversity of Sex maketh no difference as by the Statute made in the first yeare of *Queene Mary* holden by *Prorogation Cap. 1.* is declared.

Also a King being in possession of his Kingdome whether by rightfull Title or by wrong as an *Vsurper.* He is a person able *Ipsa facto* to summon a Parliament, asby the example holden by *Hen. 6.* before and after the redemption of his Crowne being remoued therefrom by *Ed. 4.* wherein the said *Edward* was in his Remitter as is to be seene in *Baggots alsise*, in the 9. yeare of *Ed. 4.* fol. 1. 6. & *sequentium* whereby it is said, that *Hen: 6.* was King in possession. And it was necessary that the Realme haue a King vnder whom the Lawes may be holden and maintained. And therefore though he was but vsurpation, yet every act Judicially done by him, which doth concerne his Jurisdiction Royall shall be good, and bind the rightfull King his regresse, and diuers other Examples there are hereof. See 1 *Hen. 7.* fol. 3.

In ancient times after the King had summoned his Parliament to be holden at a certaine day and place, Innumerable multitudes of people did make there accessse thereunto, pretending that priuiledge of right to belong to them, and not onely to the Lords spiritu-

all

all and Temporall but also to the Commonalty being Freeholders : But King *Hen. 3.* having had experience of the mischiefes and inconveniences by occasion of such popular confusion, did take order and restrained that over great access. So that none might come to his Parliament but those who were specially summoned, which his sonne *Edw. 1.* did carefully keepe and obserue, according to that auncient saying, *Ad Consilium ne accesseris antequam voceris.* And so ever since this speciall manner of summons of Parliament now vsed hath bene put in practise. The usuall forme of summons for the Parliament for the Commonaltie, is not speciall, but a generall Writ is directed to the Sheriffe of euery County or Shire in *England* and *Wales*, in this forme.

Rex vice. N. Salutem quia de advisamento & assensum Consilij nostri quibusdam arduis & urgentibus negotijs nos Statum & defensionem Regni nostri Angliae, & Eccles. Anglicane concernent quandam Parliamentum nostrum apud Civitatem nostram Westm. 17. die Martij Prox. futurum teneri ordinavimus & ibidem cum Prelatibus magnatibus & proceribus dicti Regni nostri colloquium Habere, & tractare, Tibi Praecipimus firmiter iniungentet quod facta Proclamacione in Prox. com. tuo post receptionem hujus brevis nostri tenendum die & loco Predicto, duos Milites, gladijs tinctis magis idoneos & discretos cum predict. &c. Et Electionem illam in pleno com. tuo factu distincte & aparte, sub Sigillo tuo & sigillis eorum qui Electioni illi inter fuerunt nobis in Cancellariam nostram ad dictum diem & locum certificates indilate, Teste meipso, &c. vide Statut. 23. H. 6. Ca. 15.

And concerning those of *Wales* to be summoned to the Parliament, read the Statute thereof 27, *Hen. 8, cap. 26*, Intituled, *an act for Lawes and Justice to be ministred in Wales*, in like forme as it is in this Realm. And also that other Statute made 35, *Hen. 8, cap. 11*. Intituled *an Act for the due payment of Fees and wages of Knights and Burgesses of the Parliament, in Wales*. And thereof see in *Flowdens Comitaries* 120, *Sir Richard Bulkleyes Case* and in *Dyer* 13.

And concerning those of the County Palatine of *Chester*, and of the City of *Chester* in this behalfe, see the Statute made 34, *Hen. 8, cap. 13*.

In *Anno 1*, of *Queene Mary* a great doubt was moved amongst the Iustices and Serjeants, If the *Queenes* writ of summons of the Parliament in which the Stile or Title of *Supremum Caput Ecclesia Anglicana* were omitted, were good and sufficient or vterly voide, &c. Because the said stile is vnited and annexed by the Statute made the 26, and 35, *Hen. 8*, to the Imperiall Crowne of the Realme, but the greater opinion was, such summons is good enough, for they said that *Supremum Caput* is not parcell of the *Queenes* name, but an addition, and the words in the Statute are onely in the affirmatiue and not negatiue-ly; That the Stile shall be of necessity so written of the *Queene*. And this doubt was by *Queene Elizabeth* againe moued in the first Parliament and was aduised and resolved by great advise and deliberation (*ut supra*) see the Statute 1, and 2 of *Phit. and Mascap. 8*, And in *Master Foxes* Acts and Monuments so: The argument of *John Hales* to the contrary, *cuiuscunque potissima Pars est Principium*, which Rule is expressed in *Sir Edward Cokes* 10. part 49. 1. *but ibidem fol.*

161. a the ancient rule is cited, *qui libet potest renun-
ciare Iuris Pro se interducta*,

At every County after the delivery of the Parlia-
ment writ to the Sheriffes, Proclamation shall be made
in the full County of the day and place of the Parlia-
ment, And that all men shall attaine for election of
the Knights for the same County for the Parliament,
The which Knights must be resident within the same
County, whereof they are to be chosen the day of the
writ of summons of the Parliament, whereof every one
ought to have 40, S. of Free-hold within the said
County beyond all charges. And such who have the
greatest number of the said Electors, shall be returned
Knights for the same County, see 7. Hen. 4, cap. 12, 1,
Hen. 6, cap. 1, 8, Hen. 6, cap. 13, and 10, Hen. 6, cap. 7.

The Sheriffe may examine every one of the said
Electors vpon the said Evangelists how much hee may
dispend by yeare if he doubt of the value thereof, 8,
Hen. 6, cap. 15.

The said Election shall be made in the full County
betweene the houres of 8, and 9, before noone; 23,
Hen. 6, cap. 15.

The said Knights shall be returned into the Chan-
cery by Indenture sealed betweene the Sheriffe and the
said Electors, 8, H. 6, Cap. 7, 7. H. 4, cap. 1, 23, H. 6, cap.
6, *ut patet per breue supra*.

Every Sheriffe who doth not make a true returne
of such election of Knights to come to the Parliament
according to the Statute in that behalfe made, that is
to say, The Statute 8, H. 6, cap. 7, shall forfeit 100^l to
the King, and 100^l to the Knight so chosen, who shall
Commence his action within 3. moneths after the
parlia-

Parliament commenced. And if hee so doe not and prosecute his suite in effect and without fraud: Any other man who will may haue the said suite, for the said 100. as the Knight had, and costs of suit also shall be awarded to the said Knight or other who will sue in his behalfe, 23. Hen. 6. Ca. 15.

No Sheriffe shall be chosen for a Knight of the Parliament nor for a Burgesse, see the booke of Entries 411. And at a Parliament holden 38. Hen. 8. It was admitted and accepted that if a Burgesse of the Parliament bee made Mayor of a Towne, or haue Iudiciall Jurisdiction, or another is sicke, That these are causes sufficient to those others. And so was done by the Kings Writ out of the Chancery, comprehending this matter which was in *Commune domo Parliamenti*, 7. and 38. Hen. 8.

In every writ of Parliament directed to the Sheriffe, this clause shall be inserted: *Electiorem tuam in pleno Com. tuo factum distincte & aperte sub Sigillo tuo & Sigillis coram qui electioni illi inter fuerunt nos in Cancellariam nostram ad diem & locum in breue Content. certifies indilato*: Hen. 4. Cap. 15.

The Sheriffe after the receipt of the writ of Election, &c. shall deliver without fraud a sufficient precept vnder his seale to every Mayor, and Bayliffe or Bayliffes where no Mayor is, of City and Burrough within his County, reciting in his precept the writ of Parliament, commanding them by the said precept; If it be a City to those Citizens for the same City by Citizens, And if it be a Burrough then Burgesse, by Burgesse of the same to come to the Parliament,
And

And that the said Maior, or Bayliffe, or Bayliffes, where no Mayor is, shall recurre lawfully the said precept to the Sheriffe : and those who made the Elections, and of the names of the said Citizens & Burgesles by them so chosen ; 23. *Hen. 6. Cap. 15.*

The Sheriffe shall make a good returne of his writ, and of euery returne of the Mayor and Bayliffe or Bayliffes, or Bayliffes where no Maior is to him made. And if the Sheriffe doe contrary to this Statute made for the election of Knights, Citizens, and Burgesles to come to the Parliament, he shall incurre the paine of 100. pounds to the King, and shall bee imprisoned for one whole yeare, without Bayle or maine-price. And the Knight for the County returned contrary to the said Ordinances, shall loose their wages by the Statute, 8. *Hen. 6. Cap. 7.* And the Sheriffe shall loose 100. pounds to euery Knight, Citizen, and Burgesse, chosen in his County to come to the Parliament ; And not duely returned, or to any other who will sue in his default by action of Debt, with costs expended in that case : In which suite, the Defandant shall not wage Law, nor be essoyned, *Anno 23. Hen. 6. Cap. 15.*

If the Mayor, and Bayliffe, or Bayliffes, or Bayliffes where no Mayor is, doe returne others, then those who be chosen by the Citizens and Burgesles of the Cities and Borough, , where such Election shall bee made, hee shall forfeit to the King 40. pounds, and so much to the Citizen or Burgesse chosen to come to the Parliament and not duely returned by the Mayor or Bayliffe ; or Bayliffes where no Mayor

is, or to any other person who in default of such Citizen or Burgesse so chosen, will sue for it by action of debt with costs expended. And they shall haue a writ of debt for the said 40 pounds, in which the defendant shall not wage his Law nor shall be essoyned, 23. Hen. 6. Cap. 15.

Every Knight, Citizen, or Burgesse, chosen and not returned, shall Commence his action within 3. Moneths next after the commencing of the said Parliament. In which he must proceed effectually without fraud, And if he so doe not, any other who will sue for it, shall haue the said Action for the said Forfeiture, and costs in the same expended: in which the Defendant shall not wage Law, nor shall be essoyned; Anno 23. Hen. 6, cap. 15,

If any Knight, Citizen, or Burgesse, that shall be returned by the Sheriffe to come to the Parliament, be after such returne put out, and another put in his place, he that is in his place so put out, if he take vpon him to be a Knight, Citizen, or Burgesse, shall forfeite to the King 100. pounds, and so much to the Knight, Citizen, or Burgesse, returned by the Sheriffe: and so afterwards put out, and the same Knight, Citizen, or Burgesse, so put out, shall haue an Action of debt against him so put in his place, his Executors and Administrators, and shall commence his action within 3. Moneths after the beginning of the Parliament: and if he sue not as before, any other who will, shall haue the said suit; in which the Defendant shall not wage his law, nor shall bee essoyned; so that such Knights of the Parliament chosen, be a Knight

Knight, or such Esquire or Gentleman of the same County, who may be a Knight, and none to be such a Knight, who stands in the Degree of a Yeoman; *Anno* 23. *Hen. 6, Cap. 15.*

All persons and Commonalties who shall bee summoned to the Parliament, shall come as it hath bene accustomed of the Ancient time: And he that cometh not hauing no reasonable excuse shall bee amerced, and otherwise punished as of ancient time hath bin vsed, 5. *R. 2. Statut. 2. Cap. 4.*

If any Archbishop, Bishop, Duke, Marquis, Earle or Baron, be summoned by the Kings writ to come to the Parliament, and thorough sicknes or any other infirmitie he cannot make his appearance at the said Parliament, he must procure from the King his Warrant of absence, as in like case was graunted to the Abbot of *Eusham* in the 23 yeare of *Hen. 8.* in forme following.

H. 8.

By the King.

Trusty and welbeloued. Wee greet you well, and albeit you have monition among other Prelates of our Realm to bee present at our high Court of Parliament to be holden: yet nevertheless wee of our especiall grace considering your debility and age, bee content and by these presents Licence you to be absent from our said Parliament during the continuance, prorogation, or adiournment of the same: The said Monition, or any other

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writ

writ directed to you, or Commandement given by vs to you notwithstanding under our Seale, signed at our Mannor of Greenwich, The 6. of Iannary in the 23. of our raigne.

To our trustie and welbeloued in God, the Abbot of our Monastery of Eusham.

And it appeareth to be true which *Fortescue* saith in his 18. *Cap. Fol. 40.* That Acts of Parliament and Statutes in England, are not made onely by the Princes pleasure, but also by the consent of the whole Realme: So that of necessity they must procure the Weale of the whole Realme, and in no wise tend to their hinderance. And it cannot bee otherwise thought but that they are replenished with much wit and wisdom, seeing they are not ordained by the advice of one man onely, or of a 100. wise Councillors, but of more then 300. chosen men, which agreeth with the ancient number of ancient Senators of Rome.

No Baron, Knight, Citizen or Burgesse, who shalbe chosen to come to the Parliament, shall not depart vntill that Parliament be ended or prorogued if he haue not license of the Speaker, and of the Commons assembled in that Parliament, which license shalbe entered in the Booke of the Clarke of the parliament appointed for the Commons *House*, vpon paine of losing their wages, whereof all Counties and Burroughs shall be discharged, 6. *Hen. 8. cap. 16.*

Con:

Concerning the due leauying of Knights Fees and wages for attendance at the Parliament, see the Statute made 23, *Hen. 6. Cap. 11.*

Knights and Burgeses for the Parliament must take the *Oath of Allegiance*, and so shall Citizens and Barons for the Five ports, for the parliament before they doe enter into the parliament house *Anno 5, Eliz. Cap. 1.* and they must also take the *Oath of Supremacie*, made 7, *Iacobi cap. 6.* Which two Oathes shall be taken before the Lord Steward for the time being, or his Deputy or Deputies.

Memorandum in the Statute made, *Anno 25, Hen. 8, Cap. 19.* entituled an Act concerning the submission of the Clergie of the Kings Majestie, is contained, that the Convocation is and alwayes hath bin and ought to be assembled by the Kings writ, The forme whereof is thus set downe by Doctor Cowell in his *Interpreter Verbo Proclam.* First, the King directeth his writ to the Archbishop of each province, for the summoning of all Bishops, Deanes, Archdeacons, Cathedrall and Collegiate Churches, and generally all the Clergie of his province: after their best discretions and judgements, assigning to them the time and place in the said writ, Then the Archbishops proceed in their accustomed course one example may shew both. The Archbishop of *Canterbury* vpon his writ of summon received, directeth his letters to the Bishop of *London* as his Deane provincieall: First citing him peremptorily, And then willing him to Scite in like manner all the Bishops,
 C 3 Deanes,

Deanes, Arch-Deacons, Cathedrall and Collegiate Churches, and generally all the Clergie of his Province, to the place and against the day prefixed in the writ, but directeth withall: That one Proctor sent for every Cathedrall or Collegiate Church, and two for the body of the inferior Clergie of each Dyocesse may suffice, and by vertue of these Letters, Authentically sealed. The said Bishop of *London* sendeth the like Letters severally to the Bishops of every Diocesse of the Province, cyting them in like manner, and commandeth them not onely to appeare, but also to admonish the said Deanes and Archdeacons, personally to appeare, and the Cathedrall and Collegiate Churches, also of the common Clergie of the Dyocesse, to send their Proctors at the day appointed in the Writ: And also will them to certifie the Archbishop, the names of all and every one so summoned by them, in a schedule annexed to their Letters Certificatorie. The Bishops proceed accordingly, and the Cathedrall and Collegiate Churches: as also the Clergie make choise of their Proctors, which done and certified to the Bishop, he returneth all answerable to his charge, (*Cave lector*) for the Clergie of the Convocation house, are no part or member of the Parliament: as you may see resolved by the Lord *Richard* Lord *Windsor*, and others; in the beginning of the sixt Examination of Master *Philpot*, in the beginning of the raigne of *Queene Mary*: in Master *Foxes* booke of Martyrs, *Fol. 1639.* contrary to the opinion of Doctor *Cowell*, *ubi supra.* Neverthelesse it is enacted by the Statute 8. *Hen.6. Cap. 1.* That all the Clergie called to the Convocation House by the Kings writ, and their servants and familiars shall haue and fully

fully vse euery such libertie and defence, in comming, abiding, and going, as the Great men and commonality of the Land (to bee called to the Parliament of the King) shall haue,

And because mention is here made of the Priuiledges appertaining to those of the Parliament house; take heere a word or two thereof. The Words of the Statute made the 11. *Hen. 6. cap. 11.* are as followeth: The King willing to prouide for ease and tranquility of those that come to his Parliament: Hath ordained and established, That if any assault or affray be made vpon any Lord Spirituall or Temporall, Knight of the Shire, Citizen or Burgesse, comming to the Parliament, or the Councell of our Soueraigne Lord the King. That then Proclamation shall be made, in the most open place of the City or Towne where the affray was so made, by 3. severall dayes, That the party that made such affray and assault, yeild himselfe before the King and his Bench, within a quarter of a yeare after the proclamation so made, if it be in the time of the Terme, or otherwise in the next day in the time of the Terme following the said quarter. And if he so doe not, that he bee attainted of the deede, and pay to the partie greued his double damages, to bee taxed at the discretion of the Iustices of the same Bench for the time being, or by inquest if it be needfull: and make Fine and Ransome at the Kings will, and if he come and be found guilty by inquest, examination or otherwise of such affray or assault, then he shall pay vnto the partie greued thereby, his double damages found by the Inquest, or to be taxed by the discretion of the Iustices,

Justices, and make Fine and Ransome at the will and pleasure of our Sovereigne Lord the King.

Every Knight, Citizen, Burgesse, Baron of the Five Ports or others, called to the Parliament of the King; Shall have priviledge of the Parliament during the Sessions of Parliament, so that he that doth arrest any of them during that time, shall bee imprisoned in the Tower by the Nether House, of which he is and shall be put to his fine and the Keeper also, if hee will not deliver him when the Serjant at Armes doth come for him by the commandement of the house whereof he is: See *Dyer*, 60.

The servants attending vpon their Masters during Parliament who are necessary, and also such Officers as bee attending vpon the Parliament, as the Serjeant at Armes, the Porter of the doore, Clearkes and such like, and in the same manner of their chattells and goods necessary, so that they shall not bee arrested nor taken by any Officer, if it be not in case of Fellony or Treason, in the same manner, as the Judges and Ministers of other Courts shall have for their servants, goods and chattells necessary, see *Cromptons Courts*, fol. 11, a.

But the Parliament doth not giue priuiledge *Tempore vacationis sed Scedente curia*. See *Brooks Title priuiledge*, 56. It appeareth that in the Parliament 31. *Hen. 6.* in the vacation, the Parliament being continued by prorogation, *Thomas Thorpe* the Speaker was condemned in a Thousand markes, damages by an Action of Trespasse brought against him

him by the Duke of *Yorke*, and was committed to prison in Execution for the same, and after when the Parliament was re-assembled the Commons made suite to the King and Lords to haue *Thorpe* their Speaker, delivered for the good exployte of the Parliament: whereupon the Dukes Councell declared the whole cause at large, whereupon the Lords demanded the opinion of the Iudges, whether in that case, *Thorpe* ought to bee deliuered out of prison by priuiledge of Parliament; The Iudges made this answer, that they ought not to determine the priuiledge of that high Court of Parliament: But for Declarations of proceedings in Law, Courts in case where writs of *Superfediis* for the priuiledge of the Parliament to be brought vnto them, they answer; That if any person that is a member of the Parliament be arrested in such case as it be not for Treason or Felony, or for surety of the Peace, or for condemnation had before the Parliament. It is vsed that such persons be released and may make Attorney, so as they may haue their freedome and liberty freely to attend that Parliament: Hereupon it was concluded, That *Thorpe* should still remaine in prison according to the Law. Notwithstanding, the priuiledge of Parliament, and that he was the Speaker, which resolution was declared to the Commons by *Walter Moile* one of the Kings Serjeants at Law, and then the Commons were commanded in the Kings name by the Bishop of *Lincolne*, in the Absence of the Arch-Bishop of *Canterbury* then Chanceller, to choose another Speaker.

It hath beene much doubted whether one taken in Execution during the Parliament, may be set at liberty by writ of Parliament, as is to be serue in the first of *Eliz. 4. Fol. 8. a. Dyer, 60.* But at this day the Law is explained in that case by the Statute made, *1. Iacob Cap. 19.* Intituled *an act for new execution to be sued against any who shall hereafter be delivered out of prison by priuiledge of Parliament. And for discharge of them out of whose custody such prisoners shall be delivered.*

The forme of a Protection to be made by any person of eyther House of Parliament, vnto such of their Servants as may stand in danger of Arresting in time of Parliament.

Whereas by the ancient Priviledges, Lawes and Customes of this Realme heretofore used and approved. The Lords Spirituall and Temporall, the Knights, Citizens and Burgeses of the Parliament, haue alwayes had their servants and followers priuiledged and free from any molestation, trouble, arrest or imprisonment, for some certaine dayes, both before the beginning and after the ending of the same. And whereas at this time a Parliament is summoned where my selfe being a Baron and Peere of the Realme (or Knight, or Burgesse) and there to make my appearance, I vnderstand notwithstanding, that you or some of you, haue now in your hands some Processe, Writ or Warrant, to molest, arrest, imprison I. B. my household Seruant in ordinary.

whese

whose attendance I have speciall cause to use and employ
 in matters which doe much concerne and import my e-
 state, and other occasions to be followed and solicited by
 him during this Sessions of Parliament These are there-
 fore to Charge and Command you, and every one of you,
 both to withdraw the same Processe, Writ or Warrant,
 if any such bee; As also, if thereby you or any of you,
 haue molested, arrested, or imprisoned him the said J. B.
 within the Compasse of the foresaid dayes of priviledge;
 That then upon sight hereof, you presently set him at
 liberty, as you or any of you will answer the contrary.
 Given under my hand and Seale the 16. day of Februa-
 ry, 1627.

To all Maiors, Sheriffes, Bayliffes, Sergeants,
 Knights, Marshals-men, and all other
 his Majesties Officers.

R, S,

The forme of a Letter directed to the Sheriffe of I. for discharge of a Seruant that is Arrested vpon Execu- tion, and during the time of the Parliament notwithstanding his Protection.

*Mr. Sheriffe, whereas I was to be attended to the Parliament, I wanted one of my household servants, a Gentleman of mine, called B. to whom I had giuen a priuiledge for this Session of Parliament, to prevent any arrest or imprisonment for his debts, to the end he might waite on mee, and prosecute my busines with more diligence and lesse danger of Interruption in that kinde. But I now understand hee is in the Custody of the Sheriffe of Middlesex, within the dayes limited vpon an Execution of 1000. pounds, And that hee doth detaine him and will take no notice of my priuiledge vnder my hand and Seale, although it hath beene shewed him: I haue chosen rather to write to you then to take the Ancient priuiledges and liberties of the vppermost House of Parliament, and the honour of a Peere of this Kingdome into your friendly consideration, then that I would be offensiu to any of your subordinate Officers, in sending for them and the Plaintiffe by a Sericant at Armes, or to conuent them before the Lords for their contempt. And Mr. Sheriffe, I am further giuen to understand, that the Deputy is brother to the vnder Sheriffe, and that hee did execute the Office the last yeare, which is a plaine defrauding of the Law, not
being*

being three yeares betwixt them, being well knowne that his brother doth not intermeddle in the Office at all, nor taketh any notice at all what warrants are made foorth in his name, or of what writs are brought to his hands, for his Deputie doth take the whole benefit of the place into his owne hands. And by this meanes the under Sheriffe being in Gloucestershire, he hath a collour as his Deputy not to take notice of our priuiledges being directed to the Sheriffe; herewith I thought good to acquaint you, expecting your answere and the release of my Seruant, otherwise, I purpose not to loose the priuiledge of a Peere of the Realme. whilest it concernes our honour. And is no Indempnity to the Plaintiffe, whose Iudgement and Execution is in as much force and strength, by a late Statute to take hold of B, afterwards us it was before.

Concerning the vpper house of Parliament: first it is obserued, that thither commeth all Lords of the Parliament aswell Spirituall as Temporall, and they are summoned by the Kings writ also, but *Separatim*, and not by a generall writ to the Sheriffe of the County, as the Commons are summoned who

are of the lower house of the Parliament, the forme of which writ is as followeth.

Carolus, &c. Charissimo consanguineo suo comiti Oxford Quia de advisamento & assensu Consilij nostri, Pro quibusdam arduis & urgentibus negotijs nos Stat. & defensionem Regni nostri & Eccles. Anglicanis concernerent quandam Parliamentum nostrum apud Civitate nostram Westm. 12. die Martij, Prox. futur. teneri ordinavimus, & ibidem vobiscum ac cum Prelatibus magnatibus & proceribus dicti Regni nostri Colloquum habere & tractare; vobis sub fide & legeancijs quibus nobis tenenum firmiter injugenes Mandamus quod considerationem dictorum negotiorum arduate & periculis in mentibus Cessante executione quicunq; dicto die & loco personaliter intersitis nobiscum, ac cum Prelatibus magnatibus & preceribus supradictis negotijs, tractare vestrumq; consilium impensur. Et hoc sicut nos & honorem nostram, & rempublicam, & salvationem, & defensionem Regni & Ecclesia, predict. expeadicionemq; negotiorum dictorum diligitis nulla tenus omitatis. Teste me ipsa apud Westm. 18. die Januarij Anno Regni nostri, &c.

At the first day appointed by the King for the Parliament vsually the King in person doth ride thither as it wereto open the doore of their Authority, attended by all the Lords Spirituall and Temporall in their Parliament Roabes. But if the King be let per *Egritudinem* or by other Causes, his Majesty may command the adjournment of the Parliament to be held at some other day at his pleasure, as was done at the first day of the Parliament holden the first year of the

the

the late *Queene Eliz.* as appeareth in *Dyer, Fol. 20. 3. a.* Which Parliament was prorogued by writ Patent, vnder their entire great Seale and signet with the hand of the *Queene*: by which Booke the printed Booke of the Statutes may be corrected.

And the King may vnder his great Seale assigne 2. or 3. of the Lords of the Parliament to supply his place in Parliament, if he be sicke, or will not come for any other cause, *vt factum fuit, Anno 31. Eliz.* At which time the Archbishop of *Canterbury*, The Lord Treasurer of *England*, and the Earle of *Derby*, were Commissioners, vnder the great Seale appointed and assigned to represent her Majesties person in Parliament,

And they doe sit one space lower from the Cloath of Estate in the Parliament House, See *Cromptons Courtes. Fol. 12. a.*

By the Statute made *Anno 23. Hen. 8. Cap. 21.* It is thus defaced, the Assent of the King by his Letters Patents vnder the great Seale of *England*, and signed with his hand and notified in his absence to the Lords of the Parliament, and Commons assembled in the higher House, is and ever was of as good force and strength as if the person of the King had bin there present; and had assented openly and publickly to the same. And such Royall assent as is aforesaid shall be taken, for good and effectuell to every intent without any ambiguity of Custome or vsage to the contrary notwithstanding.

In this Court is attending, The Lord Chancellor of England, or the Lord Keeper of the great Seale, or some other sage man as the King shall choofe. By whom the King doth shew his mind to the Lords. And hee doth put them in remembrance of those things whic are to be treated there before the Lords, who if hee bee no Baron, or Peere of the Realme, sitteth neare the King behind the cloath of Estate, And is as the Speaker of the vpper house of Parliament.

In the 31^o yeare of Hen. 8. Cap. 10. Intituled an Act concerning placing of the Lords in the Parliament Chamber, and other assemblies and conferences of Counsell; It is enacted as followeth. Forasmuch as in all great Counsels and Congregations of men having sundry degrees in the Common wealth, it is very requisite and couenient, that an order be had and taken for the placing and setting of such persons as are bound to resort to the same; To the intent that they knowing their places, may vse the same without displeasure or let, of the Councell: Wherefore the Kings most Royall Majesty, although it appertaineth to his Prerogative Royall to giue such honor, places and reputation to his Councillors and other his subjects as shall seeme best to his most excellent Majesty, He is nevertheless pleased and contented for an order to be had and taken in this his most high Court of Parliament, That it shall be enacted by authority of the same, in manner and forme as here after followeth.

First,

First, it is enacted by authority aforesaid, that no person or persons of what estate, degree or condition soever he or they be of (except onely the Kings Children) shall at any time hereafter attempt or presume to sit, and have place at any side of the Cloath of State, in the Parliament Chamber, neither of th' one hand of the Kings Highnesse, nor on the other: whether the Kings Majestie be there personally present, or absent, And for as much as the Kings Majestie is justly and lawfull Supreme head in Earth, of the Church of England, under God. And for the exercise of the said most royall Dignity and Office, hath made Thomas Lord Cromwell, and Lord privie Seale, his Vicegerent, for good and due ministracion of Justice to be had and used in all Causes and Cases touching the Ecclesiasticall Jurisdiction; and for the godly reformation and redresse of all Errors, Heresies, and abuses in the same Church. It is therefore enacted by authority aforesaid, That the said Lord Cromwell, having the said Office of Vicegerent, and all other persons who shall hereafter have the said Office of the grant of the Kings Highnesse, his heires and Successors, shall sit and be placed as well in this present Parliament, as in all Parliaments whatsoever hereafter to be holden, on the right side of the Parliament Chamber; and on the same forme that the Archbishop of Canterbury sitteth upon; and above the said Archbishop and his Successors, and shall have place in every Parliament to assent or dissent, as other the Lords of the Parliament.

And it is enacted; that next to the said Vicegerent shall sit the Archbishops of Canterbury and Yorke, and then next him on the same forme and side the Bishop of London, and next to him on the same forme and side the Bishop of Duresme, and next to him, on the same forme and side, the Bishop of Winchester: and then all the other Bishops

of both Provinces of Canterbury and Yorke shall sit and be placed on the same side after their ansienties, as it hath beene accustomed,

And for as much as such persons as now haue, or hereafter shall happen to haue other great Offices of the Realme, That is to say, The Office of the Lord Chancellour, Lord Treasurer, Lord President of the Kings Councell, The Lord priuie Seale, The Great Chamberlaine of England, The Marshall of England. The Lord Admirall, The Grand Master or Lord Steward of the Kings most honourable Household; The Kings Chamberlaine, and the Kings Secretary, haue not beretofore beene appointed and ordered for the placing and sitting in the Kings most high Court of Parliament, by reason of their Offices, It is therefore now ordered, and enacted by authority aforesaid, That the said Lord Chancellour, Lord Treasurer, the President of the Kings Councell, and the Lord priuie Seale, being of the degrees of Barons, or above, shall sit and be placed as well in this present Parliament, as in all other Parliaments hereafter to be holden in the left hand of the Parliament Chamber, on the higher part of the forme on the same side, aboue all Dukes (except onely such as shall be the Kings Sonne, the Kings Brother, the Kings Vnckle, the Kings Nephew, or the Kings Brother or Sisters Sonnes.

And it is also ordained, and enacted by authority aforesaid, That the great Chamberlaine, the Constable, the Marshall, the Lord Admirall, the Grand Master or Lord Steward, and the Kings Chamberlaine shall sit and be placed after the Lord priuie Seale, in manner and forme following, That is to say, every of them shall sit and be placed aboue all other personages being of the same estate or degree, that they shall happen to be of; That is to say, the Great Chamberlaine first, the Constable second, the Marshall third:

third: the Lord Admirall fourth: the Grand Master
or Lord Steward fifth, and the Kings Chamberlaine
the sixth.

And it is also enacted by authority aforesaid, That the
Kings chiefe Secretary, being of the degree of a Baron
of the Parliament, shall sit and be placed above and before all
other Barons, not having any of the Offices afore remembred,
and if he be a Bishop, That then he shall sit and be placed a-
bove all other Bishops, not having any of the Offices above
remembred.

And it is also ordained and enacted by authority afore-
said, That all Dukes not before mentioned, Marquisses,
Earles, Viscounts, and Barons, not having any of the Of-
fices aforesaid, shall sit and be placed after their ancientie, as
it hath bene accustomed.

And it is further enacted, that if any person or persons
which at any time hereafter shall happen to haue any of the
Offices aforesaid, of Lord Chancellour, Lord Treasurer,
Lord President of the Kings Counsell, Lord priuie Seale,
or chiefe Secretary, shall be vnder the degree of a Baron of
the Parliament; By reason whereof they haue no interest to
giue any assent or dissent in the said house: That then in eue-
ry such Case, such of them as shall happen to be vnder the
said degree of a Baron, shall sit and be placed at the vpper
most part of the Sackes, in the midst of the Parliament
Chamber, either there to sit upon one forme, or upon the vp-
permost Sacke: The one of them above the other in order as
is above rehearsed.

Be it also enacted by authority aforesaid, that in all
tryals of Treason by Peeres of this Realme: If any of the
Peeres that shall be called hereafter to be Tryers of such
Treason,

Treason, shall happen to have any of the Offices aforesaid, That then they having such Offices, shall sit and be placed according to their Offices, above all th'other Peeres that shall be called to such tryals, in manner and forme as is above mentioned and rehearsed.

And it is also enacted by authority aforesaid; That as well in all Parliaments, as in the Star Chamber, and in all other Assemblies, and Conferences of Councell: The Lord Chancellour, the Lord Treasurer, the Lord President, the Lord privie Seale, the Great Chamberlaine, the Constable, the Marshall, the Lord Admirall, the Grand Master or Lord Steward, the Kings Chamberlaine, and the Kings chiefe Secretary, shall sit and be placed in such order and forme as is above rehearsed, and not in any other place, by authority of this present Act.

And in Sir Edward Cokes II. part, fol. 1. The cause concerning priority of place in the vpper house of Parliament was as followeth, at the Parliament held the 39. Eliz. The case was thus:

Thomas Lamarre Knight, Lord Lamarre, sonne and heire of William, sonne and heire of George, Brother and heire of Thomas, Sonne and heire of Thomas Lord Lamarre, exhibited his petition to the Queene to this effect, That whereas Thomas the Great-grand-father was called to Parliament by Writ of Summons, 3. H. 8. and afterwards this Thomas the Great-grand-father dyeth; After whose death, Thomas his sonne, was called to divers Parliaments by Writ of Summons. And afterwards by act of Parliament 3. E. 6. for divers causes in the said act mentioned, it was enacted, That the said William during his life, should be disabled to claime or enjoy any dignity or superiority, in any right, estate, &c. by descent, remainder, or otherwise. And afterwards

wards the said *Thomas* the sonne of *Thomas* dyeth; after whose death the said *William* being disabled, was not called to any Parliament, by writ of Summons, till *Queene Elizabeth* called him to Parliament by writ of Summons, and sitteth as yongest Lord of the Parliament: And afterwards he dieth, and now the said *Thomas* his sonne being called to Parliament by writs of Summons, such to the *Queene* that he may have place in Parliament, of his Great-grand-father (that is to say) betweene the Lord *Berkley* and the Lord *Willoughby* of *Eresby*: And the said petition was indorced in these words; Her Majesty hath commanded mee to signifye to your good Lordships, that vpon the humble suite of the Lord *Lamarre*, Shee is pleased that the matter shall be considered and determined in the House.

Roberts Cecil.

Which petition being read in the vpper house of Parliament: The consideration of this was referred and committed to the Lord *Burley*, Lord Treasurer of *England*, and diuers other Committees, who at his Chamber at *Whitehall* heard the learned Councell on both sides, in the presence of the two chiefe Justices, and diuers other Iustices: And two objections were made against the Lord *Lamarre*: first, in so much that his Father was disabled by act of Parliament to claime the dignity: The petitioner may not conuay by him who was disabled, as heire to his Great-grand-father, and by consequence he may not have the place of his Great-grand-father:

But it was resolved by all the Iudges, That there was a difference betweene a personall and a Temporary disability, and absolute and perpetuall disability: As

(57)
whereas one is attainted of Treason or Felony; this is absolute and perpetuall disability by corruption of blood, for any of his posterity to claime any hereditament in Fee simple, either as heire to him, or any other: But disability by Parliament without any Attainder, to claime the dignity for his life; That is Personall disability for his life onely, and his heires after his death may claime as heire to him, or any other Ancestor above him: The second objection is, that the said *William* hath accepted new Creation of the *Queene*; which dignity newly gained, descendeth to the petitioner which may not wave: and for that the Petitioner may not have other place then his Father had.

To this it was answered and resolved, that th'acceptance of a new Creation by the said *William*, may not hurt the Petitioner, because the said *William* was at that time disabled, and in truth he was no *Baron*, but onely an *Esquire*; so that when th'old and new dignity descended together, th'old shall be preferred: which resolution was well approved by all the Lords Committees, which was accordingly reported to all the Lords of the Parliament, and allowed by them all: whereupon it was ordered by the Lords, that the *Queen* should be acquainted with this by the Lord Keeper, which was done accordingly.

Whereupon at the said Parliament, the Lord *Lawre* in his Parliament Robes, was by the Lord *Zouch* supplying the place of the Lord *Willoughby*, within age at that time; And the Lord *Berkley* also in his Robes, brought into the house, and placed in his said place (that is to say) next after the Lord *Berkley*, *Garret* King at Armes attending vpon him, and doing his Office.

In the vpper house of Parliament doth sit the Justices vpon sacks of Wool, *in medir-Camere*; who are called

called thither by the Kings Writ, *quod personaliter inter sitis nobiscum ac cum ceteris de consilio nostro predictis negotiis, tractat vestrumque consilium impensurum*: And this *negotia* be *Ardua & urgentia negotia Regni, &c.* And their oath amongst other things is, that they shall counsell the King truly in his businesse, but they have no voyce among the Lords.

If the Reader be desirous to see particular cases happening in Parliament, wherein the opinion of the Iudges there had beene recreated: And how their opinions delivered in Parliament ought to be regarded, he may reade at large in *Egertons postnati, fol. 16. & sequentium.*

If a Writ of Error be brought in Parliament vpon a Iudgement given in *Kings Bench*; The Lords of the Higher house onely, without the Commons are to examine the Errors, and that is by th'advice and counsell of the Iudges, who are to informe them what the Law is, and so to direct them in their Iudgement, and if the Iudgement be reversed, then commandement is to be given to the Lord Chancellour to doe execution accordingly. And so was done in the 7. of R. 2, in a Writ brought in Parliament by the Deane and Chapter of *Litchfeild*, against the Prior and Covent of *Newport Pannell*, as appeareth by the Record. And if the Iudgement be affirmed, then the Court of Kings Bench are to proceed to execution of the Iudgement, as appeareth in *Hower dewes case, 1. II. 7. fo. 19.*

But it is to be noted, that in all such Writs of Errors, the Lords are to proceed according to the Law; and for their judgement therein, they are informed and guided by the Iudges, and doe not follow their owne opinions, or discretions. See *Egertons postnati, fol. 23.*

There doth also sit the Secretaries of estate, who are

to answer such Letters or things passed in the Councell whereof they have the keeping; And with them the Master of the Roles; But they have no voice in Parliament, if they be not of the degree of a Baron.

Note by Kirby, Clerke of the Roles of the Parliament: It is thus in the Bokes of the Law, the 33. H. 6. cap. 17. If a Bill come first to the Commons, and they doe passe it; then the vse is to indorse it in this forme, *Soyt Bayle a seigneures*: And then if the Lords nor King doe not alter the Bill, then it shall be inroled by the Clerke of the Parliament: and if the Bill passe, then it shall be Inroled, but if it be a particular Bill, then it shall be filed vpon *filaces*, and that shall suffice, vnlesse the party whom it particularly concernes will sue to haue it Inroled, that it may be Inroled to be sure.

If the Lords will alter a Bill, sent to them from the Commons house, in a thing that may stand with the Bill, they may doe so without remanding to the Commons. And if the Commons doe grant donage for foure yeares, and the Lords will grant it but for two yeares, this Bill shall not be delivered againe to the Commons: But if the Commons doe grant but onely for two yeares, and the Lords doe grant it for foure yeares, then the Bill must be remanded vp to the Commons, and in that case the Lords must make a *Secndle* of their intent, or else indorsed in this forme, *Los seigneures se assent pur durar pur quater anne*: And when the Commons haue the Bill againe, if they doe not assent to it, then it is no Act or Statute; and if the Commons doe consent, then they doe indorse their assentes vpon the Margent within the Bill in a certaine forme.

And then it shall be delivered vnto the Clerke of the Parliament, *vt supra*.

If the Bill be first delivered to the Lords, and the Bill
doth

doth passe them, they vse not to make any indorsement, but to send the Bill to the Commons, and if it passe them also, it is vsed to be thus indorsed, *Les Communes font assentant, &c.* And therefore if *John at Stile* be attainted of Trespasse by Parliament, if hee doe not come in by such a day, he shall forfait such a sum. And the Lords doe giue a longer day, if it doe not come to the Commons againe, it is no Act or Statute, because it was not remanded againe to the Commons after the enlargement of the day given by the Lords.

Every Bill that doth passe the Parliament in both Houses, shall have relation to the first day of the Parliament: And the vse is, not to make mention what day the Bill was delivered into the Parliament: If no day be specially appointed by the Statute, when it shall Commence: As if one Parliament be holden by divers prorogations, *Plowdens Commentaries fol. 79. a. 6.*

If a Parliament doe Commence before Pentecost, and hath continuance after Pentecost, and the Commons doe agree to a Bill after Pentecost, and in the same doe give day till Pentecost next coming; and the Lords doe so also, because the Bill shall have no relation the first day of the Parliament. Therefore if it be not prevented, it shall be taken for that Pentecost that is past at that Session, whereas th' intent of the Lords and Commons was, that it should be a future Pentecost after that Pentecost mentioned in the Bill. See *Brookes Prerogatives and Parliaments. 4.*

The Barons in the vpper house of Parliament may in some cases give their voyces by procuracie, not so in the Commons house, and those Procters must be Barons, and of the Higher house of Parliament. But in the Cōmons house of Parliament it is otherwise, for the Clarke of the Parliament takē the notice of the most hands or voyces sounding at once. And therefore if

their assent be issuable, the Clergie may say *Per majorem numerum generalis*. So in case of Election of Crowner or a Knight of the parliament. See *Plowdens Commentaries*. 126, a.

All the priviledges which doe belong to those of the Commons house of parliament: *a fortiori* doe appertain to all the Lords of the vpper house; for their, persons are not onely free from arrests during the Parliament, but during their liues, neuerthelesse th'originall cause is by reason they haue place and voyce in Parliament: And this is manifest by expresse authorities grounded vpon excellent reasons in the Bookes of Law.

And if a Baron, Viscount, Earle, Marquesse or Duke, of *England* bring any action reall or personall, and the defendant pleadeth in abatement of the Writ, That hee is no Baron, Viscount, Earle, &c. And thereupon the demaundant or plaintiffe pleadeth in abatement of the Writ, and taketh issue; This Issue shall not be tryed by a Jury, but by the Records of the Parliaments whether he or his ancestors, whose heire he is, were called to serue there as a Peere, or one of the Nobility of the Realme, See *for Edw. Cokes 6 part. 53. & 7 part. fol. 17. a.*

In the ancient *Britanes* and *Saxons* Kings dayes, the Archbishops and Bishops were called to their Parliaments, or other assemblies of State; which was done not so much in respect of their tenures, for in those dayes all their tenures were *Francki Almonage*, but especially because the Lawes and Councils of Men were then most currant and commendable, and had a more blessed issue and successe, when they were grounded vpon the feare of God, the root and beginning of wisdom. And therefore our wise and religious Ancestors called thither those chiefe and principall persons of the Clergie, who by their place and possession, by their graui-

gravities, learning and Wisedome might best advise them, what was the law of God, his acceptable will and pleasure : That they might from their humane Lawes answerable, or at the least not contrary or repugnant thereunto. Neuerthelesse shortly after the Norman Conquest, the Conquerour altered the tenure of the Bishopricks, not without some complaint and griefe of the Clergie, as it is mentioned in *Mathew Paris, Anno 1070.*

And in the Constitutions of *Clarendon*, in the time of H. 2. *Anno 1164.* It is expressed in the eleaventh Article.

Thereby we see the presence of the Bishops in Parliament, in respect of their Baronies, *quousque Perueniatur ad dimiucionem, &c.* for so even vnto our times, when question is had of the Attainder of any Peere, or other in Parliament ; the Archbishops and Bishops depart the higher house, and doe make their Proctours ; for by the decrees of the Church, they may not be Judges of life and death. Ever since the Conquest the Archbishops and Bishops haue no title to haue place and voyce in Parliament, but onely in respect of their Temporall Baronies.

And it is to be observed, that although of latter times the vse and manner of pening of Statutes, is that it is enacted by the Lords Spirituall and Temporall, and the Commons in the same assembled : yet the ancient forme was not so, which you may see exemplified in *Sir Edward Cokes 8. part. fo. 19.*

And good Acts of Parliaments may be made, though the Archbishops and Bishops would not consent thereunto : for a Statute was made *Anno 1196.* by the King, the Barons, and the Commons (*Clero excluso :*) And this was at a Parliament holden at *Saint Edmundsbury*, in the raigne of E.1. as it is reported by *Iewell Bishop*

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of *Salisbury* against *Harding*. fo. 644. And in the province of *Mirton*, in the time of H. 8. 1272. a matter was moved of Bastardy, touching the legitimation of Bastards, borne before Marriage; where it is said, That the Statute did passe intirely with the Lords temporall, against the wils of the Lords spirituall: which Statute is in the Bookes in the 20 yeare of H. 8. 3. c. 9.

And in the 11. yeare of R. 2. cap. 3. It is enacted, that the Appeals, Pursuits, Accusements, Proceffes, Judgements, and Executions, made and given in this present Parliament, be approved, affirmed and established; as a thing duely made for the weale and profit of the King our Sovereigne Lord, and of all the Realme, notwithstanding that the Lords Spirituall and their procurators did absent themselves out of the Parliament, the time of the said Judgement given, for the honesty and saluation of their estates, as it is contained in a protestation made by the Lords Spirituall; and their procurators delivered in this present Parliament.

See *Kelbaucyes* Booke, fo. 184. in the 7. H. 8. The Iustices did say, that our Sovereigne Lord the King may well hold his Parliament by him and his Temporall Lords, and by the Commons also, without the Spirituall Lords, for the spirituall Lords have not any place in the Parliament Chamber, by reason of their spirituallties, but onely by reason of their Temporall possessions.

The Sovereigne power of this high Court of Parliament is this; That albeit the Kings Majestie hath many great priviledges and prerogatives, yet many things there are, not effectuall in Law, to passe vnder the great Seale by the Kings Charter without Parliament: as vpon this point it was resolved by all the Judges in the Princes case, That the Dukedome of *Cornewall*, &c. did not, nor could passe from E. 3. by his

his Charter made in Parliament; That his Sonne and heire apparant, and to his heeres informe, as it was intended and made in Anno 11. of his raigne. But of necessity it was, and so was done by authority of Parliament: which Case is notable and worth the reading. See Sir Edw. Cokes 8. part. fo. and his 7. part. fo. 7. a. The King by his Letters Patents may make a devision but cannot naturalise him to all purposes, as an Act of Parliament may doe; for the Kings Charter cannot make any hereditable, in this case, that by the common Lawes cannot inherit. And herewith agreeth the 36. of H. 8. *Denizon Brooke.*

Bracton in the beginning of his second Booke, saith; *Nihil aliud potest Rex in terris cum sit dei minister & vicarius quam quod de jure potest: and a little after, Itaq; Potestas sua est Iuris non injuria & sicut sit author Iuris non debet inde Injuriam nasci occasio unde jura nascuntur.*

And it appeareth in *Fitzbarberts natura Breuium* 222 in the Writ *ad quam damnum*, that every grant of the King or gift, hath his condition expressed or imployed, as by the Law annexed to it; *Itaque quod per adonationem illam patria magis solito non overetur sui grauetur.*

And therefore it was resolved by all the Iudges 4. *Jacobi*, that they who digge for salt-Peter, may not dig within the Mansion house of any Subject, without his assent, for the manifest inconveniences that thereby may grow to the owner of the house. See Sir Edward Coke 11. part. 82.

Also the Commission to be made, the purveyers for Timber, for the Kings use; yet they cannot by that authority make Timber Trees growing vpon any mans Freehold: for that is prohibited by *Magna Carta* ca. 21. *nos nec ballini nostrinec alij capemus boscum alie-*

num ad castra vel ad alia agenda nostransi per voluntatem cuius boscus ille fuerit.

A Commission was awarded to take singing Boyes in Cathedrall Churches, or in other places where such are instructed for the furnishing of the Kings Chappell; these generall words by construction shall have a reasonable vnderstanding: That is to say, such children who be taught to sing, thereby to acquire or get their livings, such may be taken for the Kings service; But the sonne of a Gentleman, or any other, who is taught to sing for his recreation, ornament, or delight, may not be taken against his will, or against the will of his parents, or friends, and so it was resolved by all the Iudges, and whole Court of Starre-Chamber 43. *Eliz.*

If a man be attainted of Felony or Treason, by Verdict, Outlary, Confession, &c. his blood is corrupted: which is a perpetuall and absolute disability for him or his posterity, to claime any hereditament in Fee-simple, either as heire to him or any Ancestor *Paramount* him, and he shall not be restored to his blood without Parliament: and the King may give to any attainted person his life, by this Charter of Parliament. See *Stamfords pleas* 195. For the King cannot alter the Common Law, or the generall customes of the Realme, such as the discent of *Ganill kinde*, *Borough*, *English*, or such like, without Parliament. See *Brocks Prerogative* 15. & 11. H. 4. c. 73.

And it is set downe for a rule; That if a King haue a Kingdome by discent there, seeing by the Law of that Kingdome he doth inherit that Kingdome, he cannot change those lawes of himselfe, without consent of Parliament.

Fortescugh also saith in his 9. c. fo. 25. 6. If the power of the King over his Subjects were Royall onely, and
not

not politicke, then he might change the Lawes of the Realme, and charge his Subjects with Tallages and other Burdens, without their consent. And such is the dominion of the Civill Law purports, when they say, *quod principi placuit legis habet vigorem*. But by the lawes of this Kingdome, the King cannot by his Proclamation alter the Law; But the King may make proclamation that he shall incurre the indignation of his Majestie, that withstanding it. And by his absolute authority, the King may commit any one to prison during his pleasure, see *Stamford* 72. But the penalty of not obtaining his proclamation, may not be upon paine of forfeiture of his goods, his Lands, or his life without Parliament. see *Cromptons Courts* 14. a. & 16. 6. *sed omnes non capit hoc verbum*: for they of another profession in Law say, that of these two, one must needs be true, that either the King is above the Parliament, that is the positive law of the Kingdome; or else, that he is an absolute King. *Arrest. lib. Pliet. c. 16*. And therefore though it be a mercifull pollicie, and also a pollicicke mercy; not alterable without great perill, and to make Lawes by the consent of the whole Realme, because no one party shall have cause to complaine of a partialitie, yet simply to bind the King to or by those lawes, were repugnant to the nature and constitution of an absolute Monarchy.

In some speciall cases there sometimes may be liking of Subjects without land of possession, as in the government which *Moses* had over the children of *Israel*; in the *Wildernesse*, and in the case which *Sir Iohn Popham*, the late Lord chiefe Iustice, did put in the Parliament, If a King and his Subjects be driven out of his Kingdome by his Enemies, yet notwithstanding he continueth still King over his subjects, and they still are bound to him by their bonds of allegiance, where-
 soever

soever they be : But he cannot be a King without Subjects, for that were *Imperium inbellans & Rex & Subdita sunt relativa,*

I beleeeve *Salomon* that saith, *per me reges regnant & Principes in sta dicerunt,* and I make no doubt, but as God ordained Kings, and hath given Lawes to Kings themselves, so he hath authorized and given power to Kings to give Lawes to their Subjects, and so Kings did first make Lawes, and then ruled by their Lawes, and altered and changed their Lawes from time to time as they saw occasion, for the good of themselves and of their Subjects.

By the Premisses it appeareth, that Acts of Parliament and Statutes are made in this high Court of Parliament by the King, with the consent of the Commons, or by the greater part of them, for so saith *Littleton* in the 15. E. 4. fo. 2. a.

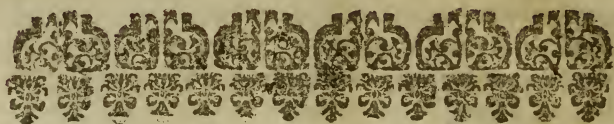
In the Parliament, if the greater part of the Knights of the Shierdoe assent to the making of an Act of Parliament, and the lesser part will not agree to it, yet this is a good Act or Statute, to last in *perpetuum* : and that the law of *Maior pars* is so in all Counsels, Elections, &c. both by the rules of the Common law and the Civill, and Common Law also.

In this Court of Parliament, they doe make new positive Lawes or Statutes, and sometimes they inlarge some of them, as vnto them seemeth good : and it is good counsell, that in making of lawes, *quod ciui fieri possit, quam plurima legibus disiuientur quam pacissima vera iudicis arbitrio relinquantur,* Yet for so much as every considerable circumstance cannot be fore-seene at the time of the making of the law, for, *rerum progressus ostendunt multa quo in initio Precaueri seu prouideri not possunt.* Therefore by the very intent of the makers of the Statute, they doe many times leaue to be supplied

supposed by the discretion of th'executioner of the Law, that thing which was not conveniently comprehended before hand, by the wisdom of the Authors of the same : for the expounding of the Lawes doth ordinarily belong to the reuerend Judges, and in case of greatest difficulty of importance, to the high Court of Parliament. See *Plowdens Commentaries*, fol. 363. a. 364. & 365.

And the Judges doe say, that they may not make any interpretation against the expresse words of the Statute, where th'intent of the makers of the Law doe appeare to the contrary, and where no inconuenience by the Statute shall ensue: for in such cases *A verbis legum non est recedendu.*

But to exemplifie all the severall kinds and formes of penning them, and the words of them taken and construed, sometimes by execution, sometimes by restriction, sometimes by implication, sometimes by distinction, sometimes a disjunctiue for a copulatiue, sometimes a copulatiue for a disjunctiue, the present tence for the future, the future for the present, sometimes by equitie out of the reach of the words, sometimes taken in a contrary sence, sometimes singularly, as *Continens pro content*, and such like, will aske a volume by it selfe, and in my opinion is not incident to this discourse of the *Jurisdiction of high Court of Parliament.*



Hereunto is annexed

A briefe Abstract of the worthinesse of, and some memorable matters done by PARLIAMENTS in this Kingdome of ENGLAND.

B*Y Parliaments all the wholesome fundamentall Lawes of this Land were and are established and confirmed.*

By Act of Parliament the Popes Power and Supremacie, and all superstition and Idolatry are abrogated, abolished and banished out of this Land.

By Act of Parliament Gods true Religion, worship and service are maintained and established.

By Act of Parliament the two famous Universities of Cambridge and Oxford haue many wholesome and helpesfull Immunities.

By Parliament one Pierce Gaveston, a great favourite and notable misleader of K. Edw. 2. was removed, banished, and afterwards by the Lords executed.

By Parliament Empson and Dudley, two notorious Polers of the Common wealth, by exacting pen-
nall

all Lawes on the Subiects, were discovered, and afterwards executed.

By Parliament the damnable Gunpowder-Treason (hatched in Hell) is recorded to be had in eternall Infamie.

By Parliament one Sir Giles Mompesson, a Moderne Caterpillar and poler of the Common-Wealth, by exacting upon Inholders, &c. was discovered, degraded from Knighthood, and banished by Proclamation.

By Parliament Sir Francis Bacon, made by King James Baron, Verulam and Viscount St. Albanes, and Lord Chancellor of England, very grievous to the Common wealth, by bribery, was discovered and displaced.

By Parliament Sir Iohn Bennet Judge of the Prerogative Court, pernicious to the Common-wealth in his place, was discovered and displaced.

By Parliament Lyonell Cranfield (sometimes a Merchant of London) made by K. James Earle of Middlesex, and Lord Treasurer of England, hurtfull in his place to the Common-wealth, was discovered and displaced.

By Parliament one Sir Francis Mitchell, a jolly Justice of Peace for Middlesex in the Suburbes of London, another notable Cankerworm of the Common-wealth, by corruption in exacting the penall Lawes upon poore Alehouse-keepers and Victuallers, &c. was discovered, degraded from Knighthood, and utterly disabled for being Justice of Peace.

By Parliament Spaines late fraud was discovered, and by *Act* the two Treaties, with that perfidious Nation, for the match of the Prince, our now gracious King; and restitution of the Palatinate were dissolved and annihilated: both which had cost the King and his Subjects much monie, and much blood. We may remember that that sage Counsellor of State Sir William Cecill Lord Burleigh and Lord Treasurer of England, was oft times heard to say, He knew not what an Act of Parliament might not doe: which sage saying was approved by King James, and by his Maiestie alleaged in one of his published speeches.

Which being so, now the face of Christendome being at this present so torne and miserably maserated, and the Christian World distracted; the Gospell in places, almost persecuted, both Church and Common-wealth, where the Gospell is professed, in all places beyond the Seas, lying a bleeding (as wee may say) and we our selves at home not without feare and danger. To conclude, what good may we not hope and pray for, by this present and other ensuing Parliaments: the onely meanes to rectifie and remedy matters in Church and Common-wealth much to misse. Amen.

Vivat Rex
 Floreat Regnum
 Bene valeat Parlamentum;

FINIS;





